

Registered Number: 08482351

**Memorandum and Articles  
of Association**

of

**ILFRACOMBE TOGETHER LIMITED**

COMPANY LIMITED BY GUARANTEE AND  
NOT HAVING A SHARE CAPITAL

THE COMPANIES ACT 2006

Anthony Collins Solicitors LLP  
134 Edmund Street  
Birmingham  
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Ref: DSA.39705.02

**COMPANY NOT HAVING A SHARE CAPITAL**

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**MEMORANDUM OF ASSOCIATION OF  
ILFRACOMBE TOGETHER LIMITED**

**Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the Company.**

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**Name of each subscriber**

**Authentication by each  
subscriber**

Stephen Round

Stephen Round

David Alcock

David Alcock

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**Dated: 9<sup>th</sup> April 2013**

**COMPANY NOT HAVING A SHARE CAPITAL****ARTICLES OF ASSOCIATION  
ILFRACOMBE TOGETHER LIMITED  
PART A. INTRODUCTION****1 INTERPRETATION**

## 1.1 In these Articles

"the Act"	means the Companies Act 2006
"AGM"	means an annual general meeting of the Company
"the Articles"	means these Articles of Association of the Company
"Associate Members"	means those persons or organisations designated as such by the Board pursuant to Article 10.5
"Beneficiary"	means a person to whom the Company may grant benefits in furtherance of the Objects
"the Board"	means the board of Directors of the Company and (where appropriate) includes a Committee and the Directors acting by written resolution
"Board Meeting"	means a meeting of the Board
"Business Day"	means any day other than a Saturday, Sunday or a bank holiday
"Chair"	means (subject to the context) either the person elected as chair of the Company under Article 32 or where the Chair of the Company is not present or has not taken the chair at a meeting means the person who is chairing a Board Meeting or General Meeting at the time
"Clear Days"	in relation to a period of notice means the period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect

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“Committee”	means a committee of the Board exercising powers delegated to it by the Board
“Companies House”	means the office of the Registrar of Companies
“the Company”	means the company intended to be regulated by the Articles
“Company Member”	means a member for the time being of the Company
“Contracting Authority”	means a contracting authority for the purposes of the Public Contracts Regulations 2006 (SI 2006/5) or such re-enactment as may replace it from time to time
“Director”	means any director of the Company
“EGM”	means an extraordinary general meeting of the Company
“General Meeting”	means an AGM or an EGM
“including”	means "including without limitation" and "include" and "includes" are to be construed accordingly
“Independent Director”	means a Director appointed under Article 23.5
“the Memorandum”	means the Memorandum of Association of the Company
“NEW Devon CCG”	means NHS Northern, Eastern and Western Devon Clinical Commissioning Group
“the Objects”	means the objects of the Company set out in Article 4 of the Articles
“Observers”	means those persons (other than Directors) present under Article 34 at a Board Meeting
“Public Sector Co-opted Director”	means a Director appointed under Article 23.11
“Registered Office”	means the registered office of the Company
“Subsidiary”	means a Company in which the Company owns the majority of the shares or in which the Company holds the majority of the voting rights

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"Secretary"	means the secretary of the Company including a joint, assistant or deputy secretary
"Senior Officer"	means any officer of the Company designated as such by the Board
"United Kingdom"	means Great Britain and Northern Ireland
"Vice-Chair"	means a person elected as a Vice-Chair of the Company under Article 32
"Working Party"	means a body established by the Board to make recommendations to the Board but without decision-making powers

## 1.2 In the Articles

1.2.1 terms defined in the Act are to have the same meaning,

1.2.2 references to the singular include the plural and vice versa and to the masculine include the feminine and neuter and vice versa,

1.2.3 references to "organisations" or "persons" include corporate bodies, public bodies, unincorporated associations and partnerships,

1.2.4 references to legislation, regulations, determinations and directions include all amendments, replacements or re-enactments and references to legislation (where appropriate) include all regulations, determinations and directions made or given under it,

1.2.5 references to articles are to those within the Articles, and

1.2.6 the headings are not to affect the interpretation of the Articles

1.3 None of the model articles in the Companies (Models Articles) Regulations 2008 applies to the Company

1.4 For the avoidance of doubt the system of law governing the Memorandum and the Articles is the law of England and Wales

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### **2 NAME**

The name of the Company is Ilfracombe Together Limited .

### **3 REGISTERED OFFICE**

The Registered Office of the Company will be situated in England and Wales

### **4 OBJECTS**

4.1 The Company's objects are principally for the benefit of the community in Ilfracombe and the neighbouring areas:

- 4.1.1 the promotion of health and the relief of sickness;
- 4.1.2 the relief of unemployment;
- 4.1.3 the stimulation and development of the local economy, including tourism;
- 4.1.4 the promotion of the effective use of resources;
- 4.1.5 the promotion of urban or rural regeneration;
- 4.1.6 the improvement of the quality of life of residents;
- 4.1.7 the relief of the public purse;
- 4.1.8 to develop the capacity and skills of the members of the socially disadvantaged community in such a way that they are better able to identify, and help meet, their needs and to participate more fully in society, and
- 4.1.9 such other purposes as determined by the Board from time to time.

#### **4.2 Equal Opportunities**

In the furtherance of the Objects the Company shall at all times actively promote and take into consideration the principles of equality of opportunity.

### **5 POWERS**

The Company may do anything that a natural or corporate person can lawfully do which is not expressly prohibited by these Articles in order to further the Objects (but not otherwise) and in particular it has powers:

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### **Staff and Volunteers**

- 5.1 to employ staff or engage consultants and advisers on such terms as the Board thinks fit and to provide pensions to staff, their relatives and dependants as may be required by law,
- 5.2 to recruit or assist in recruiting and managing voluntary workers, including paying their reasonable expenses,

### **Property**

- 5.3 to purchase, lease, exchange, hire or otherwise acquire any real or personal property rights or privileges (including shared or contingent interests),
- 5.4 to construct, alter, improve, convert, maintain, equip, furnish and/or demolish any buildings, structures or property,
- 5.5 to sell, lease, licence, exchange, dispose of or otherwise deal with property,
- 5.6 to provide accommodation for any other organisation on such terms as the Board decides (including rent free or at nominal or non-commercial rents),

### **Borrowing**

- 5.7 to borrow and give security for loans,

### **Grants and Loans**

- 5.8 to make grants, donations or loans, to give guarantees and to give security for those guarantees,

### **Fund Raising**

- 5.9 to raise funds, to invite and receive contributions,

### **Trading**

- 5.10 to trade in the course of carrying out the Objects and to charge for services,

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### **Publicity**

5.11 to hold, conduct or promote meetings, conferences, lectures, exhibitions or training courses and to disseminate information to publicise the work of the Company and other organisations operating in similar fields,

5.12 to promote or carry out research and publish the results of it,

### **Contracts**

5.13 to co-operate with and enter into contracts with any person or organisation,

### **Bank or building society accounts**

5.14 to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments and to operate bank or building society accounts in the name of the Company,

### **Investments**

5.15 to:-

5.15.1 deposit or invest funds,

5.15.2 employ a professional fund-manager, and

5.15.3 arrange for the investments or other property of the Company to be held in the name of a nominee

in the same manner and subject to the same conditions as trustees of a trust are permitted to do by the Trustee Act 2000

### **Insurance**

5.16 to insure the assets of the Company to such amount and on such terms as the Board decides, to pay premiums out of income or capital and to use any insurance proceeds as the Board decides (without necessarily having to restore the asset),

5.17 to insure and to indemnify its employees and voluntary workers from and against all risks incurred in the proper performance of their duties,



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- 5.18 to take out insurance to protect the Company and those who use premises owned by or let or hired to the Company,
- 5.19 to take out indemnity insurance to cover the liability of the Directors and officers of the Company who are not Directors for negligence, default, breach of duty or breach of trust in relation to the Company but this insurance may not extend to
- 5.19.1 any claim arising from any act or omission which a Director or officer knew was a breach of duty or breach of trust or which was committed by a Director or officer in reckless disregard of whether it was a breach of duty or breach of trust or not, or
- 5.19.2 the costs of an unsuccessful defence to a criminal prosecution brought against a Director or officer in his capacity as a Director or officer of the Company,

**Other Organisations**

- 5.20 to establish, promote, assist or support (financially or otherwise) any trusts, companies, industrial and provident societies, associations or institutions which have purposes which include any one or more of the Objects or to carry on any other relevant purposes,
- 5.21 to co-operate or join with any charity, voluntary body or public or statutory authority or any other organisation in any location whatsoever in furthering the Objects or allied purposes, to exchange information and advice and to undertake joint activities with them,
- 5.22 to amalgamate with any body which has objects similar to the Objects,
- 5.23 to undertake and execute any charitable trusts,
- 5.24 to affiliate, register, subscribe to or join any organisation,
- 5.25 to act as agent or trustee for any organisation,

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### **Reserves**

5.26 to accumulate income in order to set aside funds for special purposes or as reserves against future expenditure,

### **Formation expenses**

5.27 to pay the costs of forming the Company and of complying with all relevant registration requirements, and

### **General**

5.28 to do anything else within the law which promotes or helps to promote the Objects.

## **6 APPLICATION OF FUNDS**

### **6.1 General**

The income and property of the Company must be applied solely towards promoting the Objects and (except to the extent authorised by this Article 6)

6.1.1 no part may be paid or transferred directly or indirectly by dividend bonus or profit to a Company Member, and

6.1.2 a Director may not directly or indirectly receive any payment of money or benefit from the Company.

### **6.2 Benefits to Company Members**

For the avoidance of doubt nothing in Article 6.1 is to prevent the following payments to Company Members:

#### **Rent**

6.2.1 payment of reasonable and proper rent, service charges or other payments properly payable under the provision of any lease, agreement for lease or licence in respect of premises let to the Company by a Company Member

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or a reasonable hiring fee for premises hired to the Company by any Company Member,

**Interest on organisation's loans**

6.2.2 payment of reasonable and proper interest on money lent by any Company Member (or other person with the right to appoint Company Members),

**Supply of Goods or Services**

6.2.3 reasonable payments to a Company Member (or other person with the right to appoint Company Members) in return for goods and/or services supplied to the Company pursuant to a contract,

**Out of Pocket Expenses**

6.2.4 the payment of reasonable and proper out of pocket expenses to those Company Members who are engaged by the Company as volunteers in the work of the Company or in work which is directly funded (in whole or in part) by the Company and which are actually incurred by them in carrying out their work as volunteers, and

**Benefits to Company Members**

6.2.5 the grant of a benefit to a Company Member in furtherance of the Objects including, subject to such consents as the law requires, the disposal of a property (outright or by lease, licence or otherwise)

**6.3 Benefits to Directors**

Notwithstanding Article 6 1, the Company may make the following payments or grant the following benefits to Directors:-

**Out of pocket expenses**

6.3.1 the reimbursement of reasonable and proper out-of-pocket expenses (including travel and dependants' care costs) actually incurred in enabling them to carry out their duties as Directors,

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- 6.3.2 the payment of reasonable and proper out of pocket expenses to those Directors who are engaged by the Company as volunteers in the work of the Company or in work which is directly funded (in whole or in part) by the Company and which are actually incurred by them in carrying out their work as volunteers,

### **Indemnity**

- 6.3.3 an indemnity in respect of any liabilities properly incurred in running the Company (including the costs of a successful defence to criminal proceedings),
- 6.3.4 the benefit of indemnity insurance under Article 5.21,

### **Fees to companies in which Directors have negligible Interests**

- 6.3.5 a payment to a company in which a Director has no more than a 1% shareholding,

### **Interest and Rent**

- 6.3.6 payment of reasonable and proper interest on money lent by any Director to the Company,
- 6.3.7 a reasonable rent, service charges or other payments properly payable under the provisions of any lease, agreement for lease or licence in respect of premises let by any Director to the Company or a reasonable hiring fee for property let or hired by any Director to the Company,

### **Beneficiaries**

- 6.3.8 benefits provided in furtherance of the Objects to Directors where those Directors can only benefit in the same way that other members of the community living in Ilfracombe may benefit, and

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### **Exceptional Circumstances**

- 6.3.9 other payments or benefits (approved in advance by way of written resolution of the Company Members pursuant to Article 21) in exceptional cases.

## **7 LIMIT OF LIABILITY**

The liability of the Company Members is limited.

## **8 GUARANTEE**

Every Company Member promises, if the Company is wound up whilst he is a Company Member or within one year after ceasing to be a Company Member, to contribute such amount as is required up to a maximum of £1 towards the costs of winding up the Company and liabilities incurred whilst the contributor was a Company Member.

## **9 WINDING UP**

- 9.1 If the Company is wound up any property remaining after all its debts and liabilities have been satisfied must be applied to another organisation or organisations which have objects similar to the Objects or to Ilfracombe Town Council.

- 9.2 The organization or organisations to which the Company's property is transferred under Article 9.1 is:-

9.2.1 to be nominated by the Company Members at or before the time of dissolution,

9.2.2 in default of any nomination under Article 9.2.1 to be selected by Ilfracombe Town Council.

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**PART B. COMPANY MEMBERSHIP**

**10 MEMBERS**

10.1 The Company Members are the subscribers to the Memorandum and others admitted to membership of the Company under the Articles, but only so that the following bodies may become Company Members:

- 10.1.1 Ilfracombe Town Council;
- 10.1.2 North Devon District Council;
- 10.1.3 Devon County Council;
- 10.1.4 Devon and Somerset Fire and Rescue Service;
- 10.1.5 NEW Devon CCG;
- 10.1.6 any other Contracting Authority that wishes to enter into a service contract with the Company and is approved by the Board.

10.2 A body may not be admitted as a Company Member:-

- 10.2.1 unless a duly approved representative of that body has signed a written application on behalf of the body to become a Company Member in such form as the Board requires, and the application has been approved by the Board,
- 10.2.2 unless the body is a Contracting Authority,
- 10.2.3 if that body would immediately cease to be a Company Member under the Articles.

10.3 Company membership is personal and not transferable.

10.4 The status of a Company Member must be stated in the company's Register of Members.

10.5 The Board may admit individuals or organisations as non-voting Associate Members.

10.6 The Board may determine the rights and obligations of Associate Members, conditions for admission as an Associate Member, conditions for ceasing to be an Associate

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Member and any other matters in relation to or affecting Associate Members.

- 10.7 Associate Members are not members for any purposes under the Act and are not Company Members. Any reference in these Articles to “members”, “membership”, “Company Member” or “Company Membership” does not include or apply to Associate Members.

## **11 CESSATION OF COMPANY MEMBERSHIP**

- 11.1 An organisation will cease to be a Company Member:

11.1.1 if it is wound up, abolished, or otherwise ceases to exist,

11.1.2 on giving written notice of resignation to the Secretary,

11.1.3 if the Company Members resolve by a 75% majority of those Company Members voting to terminate the membership of a Company Member for a reasonable cause subject to giving the Company Member concerned a reasonable opportunity to explain why that body should not be removed.

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**PART C. GENERAL MEETINGS**

**12 ANNUAL GENERAL MEETINGS**

12.1 The Company shall hold an AGM each year

12.2 The AGM is to be held at such time and place as the Board decides

12.3 The business of the AGM is:–

12.3.1 to receive the annual Directors' report,

12.3.2 to consider the accounts and the auditors' report,

12.3.3 to appoint the auditors (if necessary),

12.3.4 to consider the (re-)appointment of Directors, and

12.3.5 to transact any other business specified in the notice convening the meeting

**13 EXTRAORDINARY GENERAL MEETINGS**

13.1 A General Meeting other than an AGM is called an EGM

13.2 An EGM is to be called by the Board

13.3 If there are insufficient Directors available to form a quorum at a Board Meeting to call an EGM it may be called by any two Directors or by a Director and the Secretary.

13.4 On receiving a requisition from the percentage of the Company Members required under the Act the Board must promptly convene an EGM

**14 NOTICE OF GENERAL MEETINGS**

14.1 Every General Meeting must be called by at least 14 Clear Days' notice



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- 14.2 A General Meeting may be called by shorter notice if this is agreed by a majority in number of the Company Members who may attend and vote and who together hold 90% or more of the total voting rights of all of the Company Members at the General Meeting
- 14.3 The notice must specify:-
- 14.3.1 the time, date and place of the General Meeting,
  - 14.3.2 the general nature of the business to be transacted, and
  - 14.3.3 in the case of an AGM, that it is the AGM
- 14.4 Subject to the Act no business may be transacted at a General Meeting except that specified in the notice convening the meeting
- 14.5 Notice of a General Meeting must be given to all of the Company Members, the Directors and the Company's auditors (if any)
- 14.6 The accidental omission to give notice of a General Meeting to, or the non-receipt of notice of a General Meeting by, any person entitled to receive notice will not invalidate the proceedings at that General Meeting

**15 QUORUM**

- 15.1 No business may be transacted at a General Meeting unless a quorum is present
- 15.2 The quorum for General Meetings is four or one half of the Company Members for the time being (whichever is the lesser) present in person or by proxy, provided that a duly appointed representative of Ilfracombe Town Council must be present for the meeting to be quorate.
- 15.3 A Company Member may be part of the quorum at a General Meeting if a representative of that Company Member can understand, comment and vote on the proceedings through telephone, video conferencing or other communications equipment.

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- 15.4 If a quorum is not present within 15 minutes from the time of the General Meeting or a quorum ceases to be present during a General Meeting it must be adjourned to such time and place as the Board decides
- 15.5 If at the adjourned meeting there are again insufficient Company Members present within 15 minutes from the time of the adjourned General Meeting to constitute a quorum then those Company Members who are present (provided that they number at least three) shall constitute a quorum for the purpose of allowing any business of the adjourned meeting to be conducted
- 15.6 Reasonable notice of an adjournment of a General Meeting because of a lack of quorum and the time and place of the adjourned General Meeting must be given to all Company Members
- 15.7 Any person who in the reasonable opinion of the Board has an interest in the work of the Company may attend a General Meeting and may with the permission of the Chair speak but unless he is a Company Member he may not vote.

## **16 CHAIR AT GENERAL MEETINGS**

- 16.1 The Chair is to chair General Meetings
- 16.2 If the Chair is not present within 15 minutes from the time of the General Meeting or is unwilling to act then the Vice-Chair must chair the General Meeting
- 16.3 If neither the Chair nor the Vice-Chair is present and willing to act within 15 minutes from the time of the General Meeting, the Company Members present must choose one of their number to chair the General Meeting

## **17 ADJOURNMENT OF GENERAL MEETINGS**

- 17.1 The Chair may, with the consent of a General Meeting at which a quorum is present (and must if so directed by the General Meeting), adjourn it to a time and place agreed by the General Meeting
- 17.2 The Chair may adjourn a General Meeting if it appears to the Chair that:-

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- 17.2.1 more people wish to attend the meeting than was reasonably to be expected and the room is too small,
  - 17.2.2 unruly conduct is likely to prevent the orderly holding of the meeting, or
  - 17.2.3 for any other reason an adjournment is necessary for the business of the meeting to be properly conducted
- 17.3 The only business which may be transacted at an adjourned General Meeting is that left unfinished from the General Meeting which was adjourned
- 17.4 It is not necessary to give notice of a General Meeting which is adjourned under Article 17.1 or 17.2 unless it is adjourned for 30 days or more in which case 7 Clear Days' notice must be given
- 17.5 Resolutions passed at an adjourned General Meeting are to be treated as having been passed on the date on which they were actually passed

**18 VOTING AT GENERAL MEETINGS**

- 18.1 Resolutions are to be decided on a show of hands unless a ballot is properly demanded.
- 18.2 Each Company Member present in person or by proxy has one vote both on show of hands and a ballot.
- 18.3 A Company Member which is an Organisation may, by resolution of its governing body (or a committee or officer of that Organisation acting under powers delegated by its governing body), authorise such person as it thinks fit to act as its representative at General Meetings of the Company.
- 18.4 A person authorised under Article 18.3 may exercise the same powers on behalf of the Organisation as the Organisation could exercise if it were an individual Company Member.
- 18.5 If there is an equality of votes on a show of hands or a ballot the Chair is entitled to a second or casting vote.

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- 18.6 An objection to the qualification of any voter may only be raised at the General Meeting at which the vote objected to is tendered. Every vote not disallowed at the General Meeting is valid. An objection made in time must be referred to the Chair whose decision is final
- 18.7 A declaration by the Chair that a resolution has been carried (or not carried) unanimously, or by a particular majority, which is entered into the minutes of the meeting is conclusive evidence of the fact unless a ballot is demanded.

**19 BALLOTS**

- 19.1 A ballot may be demanded by the Chair or any two Company Members before or on the declaration of the result of a show of hands
- 19.2 A demand for a ballot may be withdrawn before the ballot is taken. If the demand for a ballot is withdrawn the result of the show of hands will stand
- 19.3 The demand for a ballot will not prevent the General Meeting continuing to transact business other than in relation to the question on which the ballot is demanded
- 19.4 A ballot is to be taken as the Chair directs. The Chair may appoint scrutineers (who need not be Company Members) and set a time and place to declare the result. The result will be the resolution of the General Meeting at which the ballot was demanded but will be treated as passed when the result is declared
- 19.5 A ballot on the election of a chair or an adjournment must be taken immediately. A ballot on any other question may be taken either immediately or at such time and place as the Chair directs
- 19.6 At least 7 Clear Days' notice must be given of the time and place at which the ballot is to be taken unless the time and place are announced at the General Meeting at which it is demanded

**COMPANY NOT HAVING A SHARE CAPITAL****20 PROXIES**

- 20.1 A Company Member may appoint a proxy in writing. A proxy need not be a Company Member. The Board may from time to time prescribe a form to appoint a proxy by standing orders made under Article 43. A proxy may not appoint another proxy.
- 20.2 The document appointing a proxy may instruct the proxy which way to vote on particular resolutions
- 20.3 A proxy will only be valid if the document appointing a proxy (and any power of attorney or other authority (if any) under which it is signed) or a properly certified copy is deposited at the Registered Office at least 24 hours before the starting time for the General Meeting or adjourned General Meeting at which the proxy proposes to vote
- 20.4 No document appointing a proxy will be valid for more than 6 months
- 20.5 A vote given or ballot demanded by proxy is to be valid despite:-
- 20.5.1 the revocation of the proxy: or
  - 20.5.2 the death or insanity of the principal
- unless written notice of the death, insanity or revocation is received at the Registered Office before the start of the General Meeting or adjourned General Meeting at which the proxy is used
- 20.6 A proxy form will not be valid for any part of a General Meeting at which the Company Member who appointed the proxy is present

**21 COMPANY MEMBERS' WRITTEN RESOLUTIONS**

- 21.1 Subject to the Act, a written resolution signed by a simple majority (or in the case of a special resolution by a majority of not less than 75%) of the Company Members entitled to attend and vote at a General Meeting (provided those Company Members would constitute a quorum at a General Meeting) is as valid as if it had been passed at a General Meeting provided that:-

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- 21.1.1 a copy of the proposed resolution has been sent to every eligible Company Member,
  - 21.1.2 a simply majority (or in the case of a special resolution a majority of not less than 75%) of Company Members have signified their agreement to the resolution, and
  - 21.1.3 such agreement is contained in an authenticated document that has been received at the Registered Office within the period of 28 days beginning with the circulation date.
- 21.2 A resolution under Article 21.1 may consist of several documents in similar form each signed by one or more Company Members.

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**PART D. DIRECTORS**

**22 APPOINTMENT OF DIRECTORS**

22.1 Unless the Company Members resolve otherwise :-

22.1.1 the minimum number of Directors is 3, and

22.1.2 subject to Article 23.11, the maximum number of Directors is two Directors appointed by Ilfracombe Town Council, one Director appointed by each other Company Member, six Independent Directors, and such Public Sector Co-opted Directors as the Board may choose to appoint.

**23 COMPOSITION OF THE BOARD**

23.1 Ilfracombe Town Council shall have the right to appoint two Directors. Each other Company Member shall have the right to appoint one Director.

23.2 An appointment under Article 23.1 is to be made:

23.2.1 in writing to the Registered Office; or

23.2.2 by email to the Secretary (if there is one); or

23.2.3 by email to the Chair.

23.3 The appointment of a Director is not to take effect until he has signed the prescribed Companies House form. The appointment of any person as a Director who has not done so within one month of appointment is to lapse unless the Board resolves that there is good cause for the delay.

23.4 If a Director appointed under Article 23.1 retires or is removed in accordance with Article 25, then a replacement may be appointed by the relevant body pursuant to the provisions of Article 23.2.

23.5 The Board may appoint the initial Independent Directors up to the maximum number.

23.6 A person may not be a Director:-

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- 23.6.1 if he would immediately cease to hold office under Article 25,
- 23.6.2 unless he is aged 18 or over, and
- 23.6.3 if he is or has been an employee of the Company in the past 12 months
- 23.7 Subject to Article 25, each initial Independent Director is to retire from office as follows:
- 23.7.1 one third of the initial Independent Directors shall retire at the start of the first AGM,
- 23.7.2 one third of the initial Independent Directors shall retire at the start of the second AGM, and
- 23.7.3 the remaining initial Independent Directors shall retire at the start of the third AGM.
- 23.8 Subject to Article 23.7, each Independent Director is to retire from office at the start of the third AGM since their appointment.
- 23.9 At each AGM the Company Members may replace the retiring Directors. Retiring Directors may be re-appointed.
- 23.10 The Board may at any time co-opt any person duly qualified to be appointed as an Independent Director to fill a vacancy in their number, but a Director so co-opted holds office only until the next AGM where they may be re-appointed.
- 23.11 The Board may also appoint any person representing a public sector organization which is not a Company Member as a Public Sector Co-opted Director, for such period as the Board may reasonably determine, provided that the Independent Directors and the Public Sector Co-opted Directors, taken together, do not constitute a majority of the Board. The Board may also remove a Public Sector Co-opted Director from office.
- 23.12 In the event that Ilfracombe Town Council passes a resolution to exercise its rights under this Article by the majority required by Article 23.13 then Ilfracombe Town Council may at any time and from time to time by notice in writing to the Company:



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23.12.1 remove one or more Directors, in such number and for such period as Ilfracombe Town Council may determine; or

23.12.2 call an EGM to consider such resolutions as may be proposed by Ilfracombe Town Council.

23.13 A resolution by Ilfracombe Town Council to exercise its rights under Article 23.12 shall only be binding on the Company in the event that at least 75% of all serving councillors on Ilfracombe Town Council have voted in favour of such resolution.

**24 OBLIGATIONS OF DIRECTORS**

24.1 The Board must set out the obligations of every Director to the Board and to the Company in writing. The statement of Directors' obligations is not intended to be exhaustive and the Board must review and may amend it from time to time

24.2 The statement of the obligations of the Directors to the Company must include:–

24.2.1 a commitment to its values and objectives (including equal opportunities),

24.2.2 an obligation to contribute to and share responsibility for the Board's decisions,

24.2.3 an obligation to read Board papers and to attend meetings, training sessions and other relevant events,

24.2.4 an obligation to declare relevant interests,

24.2.5 an obligation (subject to any overriding legally binding requirement to the contrary) to keep confidential the affairs of the Board,

24.2.6 an obligation to comply with their fiduciary duties, including:-

24.2.6.1 to act to the best interests of the Company,

24.2.6.2 to declare any interests a Director may have in matters to be discussed at Board meetings and not put himself in a position where his personal interest or a duty owed to another conflicts with the duties owed to the Company,

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24.2.6.3 to secure the proper and effective use of the Company's property,

24.2.6.4 to act personally,

24.2.6.5 to act within the scope of any authority given,

24.2.6.6 to use the proper degree of skill and care when making decisions particularly when investing funds,

24.2.6.7 to act in accordance with the Memorandum and Articles, and

24.2.6.8 a reference to their obligations under the general law

24.3 A Director must sign and deliver to the Board a statement confirming he will meet his obligations to the Board and to the Company within one month of his appointment or election. The Board may change the statement from time to time

## **25 RETIREMENT AND REMOVAL OF DIRECTORS**

25.1 A Director will cease to hold office if he:-

25.1.1 dies,

25.1.2 ceases to be a Director under the Act or is prohibited by law from being a Director or is disqualified from acting as a charity trustee under the Charities Act 1993,

25.1.3 becomes incapable of managing and administering his own affairs because of mental disorder illness or injury,

25.1.4 is declared bankrupt or makes any arrangement or composition with his creditors,

25.1.5 is in the opinion of the Board guilty of conduct detrimental to the interests of the Company and the Board resolves by a 75% majority of the Directors present and voting that he should be removed provided that the Director

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concerned has first been given an opportunity to put his case and to justify why he should not be removed as a Director,

- 25.1.6 resigns by written notice to the Secretary,
- 25.1.7 is absent without good reason from three consecutive Board Meetings held no more frequently than once per month and the Board resolves (by a 75% majority of the Directors present and voting) that he should cease to be a Director,
- 25.1.8 is or has been convicted of any offence which in the opinion of the Board is likely to bring the Company into disrepute and the conviction is unspent under the Rehabilitation of Offenders Act 1974 and the Board resolves (by a 75% majority of the Directors present and voting) that he should be removed provided that the Director concerned has first been given an opportunity to put his case and to justify why he should not be removed as a Director,
- 25.1.9 fails to sign a statement of his obligations under Article 24 within one month of his election or appointment and the Board resolves that he be removed,
- 25.1.10 is detained in prison unless the Board resolves by a 75% majority of the Directors present and voting) that he should continue as a Director, or
- 25.1.11 being appointed under Article 23.1, is removed by the body that appointed him by written notice to the Company;
- 25.1.12 is removed from office by Ilfracombe Town Council pursuant to Article 23.12,
- 25.1.13 being an Independent Director, comes to the end of his term of office;
- 25.1.14 being a Public Sector Co-opted Director, if the public sector organization that he represents becomes a Company Member;
- 25.1.15 becomes an employee of the Company,
- 25.1.16 is removed from office under Article 26.

**COMPANY NOT HAVING A SHARE CAPITAL****26 COMPLAINTS ABOUT DIRECTORS**

- 26.1 If the Chair receives a written complaint identifying the complainant and alleging conduct by a Director which in that person's reasonable opinion is detrimental to the interests of the Company and suggests that there is a prima facie case for the complaint to be investigated in accordance with the provisions of this Article the Chair may suspend the Director concerned
- 26.2 Conduct detrimental to the interests of the Company includes but is not limited to: -
- 26.2.1 any breach of a Director's obligations as set out in the statement of obligations of Directors signed by that person under Article 24 or otherwise, and
- 26.2.2 conviction for any offence which has or is likely to bring the Company into disrepute
- 26.3 Where the Chair is absent or unable or unwilling to act as Chair in relation to the complaint or the complaint is about the Chair then the Vice-Chair may exercise the power to suspend a Director under Article 26.1 in the same circumstances as the Chair
- 26.4 The Director whose conduct is complained of must immediately be notified in writing either by the Secretary or by the Chair or the Vice Chair of the complaint and of any suspension which if exercised under Article 26.1 or 26.3 will be effective from the date of the notice. During the period of any suspension the Director must not:-
- 26.4.1 participate in a Board Meeting,
- 26.4.2 authorise or incur expenditure on behalf of the Company,
- 26.4.3 make use of any property belonging to or in use by the Company in that person's capacity as a Director,
- 26.4.4 hold himself out as a Director of the Company, or
- 26.4.5 seek to commit the Company to any obligation

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- 26.5 On receipt of a complaint under Article 26.1 the Chair or the Vice-Chair must as soon as reasonably practicable put in place a fair system for hearing the complaint in question and for deciding what action (if any) is required to be taken in relation to the Director concerned
- 26.6 As a minimum, the complaints procedure setup under Article 26.5 must:-
- 26.6.1 allow the Director who is the subject of the complaint reasonable opportunity to answer the complaint and justify why he should not be removed from office as a Director, and
  - 26.6.2 provide to the Director concerned written reasons following the determination of the complaint explaining the conclusions reached and any action taken as a result
- 26.7 The complaints procedure may conclude that:-
- 26.7.1 no further action is required and that any suspension be lifted,
  - 26.7.2 the Director be removed from office as a Director, or
  - 26.7.3 other action is required

## **27 DIRECTORS' INTERESTS**

### **27.1 Declaration of Interests**

- 27.1.1 If a Director is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the Company, he must declare the nature and extent of that interest to the other Directors
- 27.1.2 In accordance with the Act, the declaration may be made at a Board Meeting or by written notice

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27.1.3 If a declaration of interest proves to be or becomes inaccurate or incomplete a further declaration must be made

27.1.4 Any required declaration of interest must be made before the Company enters into the transaction or arrangement

27.1.5 A declaration is not required in relation to an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question. For this purpose a Director is treated as being aware of matters of which he ought reasonably to be aware

27.1.6 A Director need not declare an interest:-

27.1.6.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interests, or

27.1.6.2 if, and to the extent that, the other Directors are already aware of it (and for this purpose the other Directors are treated as being aware of anything of which they ought reasonably to be aware)

### **27.2 Authorisation of direct conflicts of interests**

A Director may enter into a transaction or arrangement with the Company only if and to the extent that such an arrangement is authorised by Article 6

### **27.3 Authorisation of Indirect conflicts of interest**

27.3.1 Where, for whatever reason, a Director has any form of indirect interest in relation to a transaction or arrangement with the Company (which shall include a conflict of duty) and the transaction or arrangement is not authorised by virtue of any other provision in the Articles then it may be authorised by those Directors not having a conflict provided that:-

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27.3.1.1 the Director with the conflict (and any other interested Director) is not counted when considering whether or not there is a valid quorum for that part of the meeting and does not vote in relation to the matter giving rise to the conflict, and

27.3.1.2 the Directors who do not have a conflict in relation to the matter in question consider it is in the best interests of the Company to authorise the transaction

27.3.2 The Directors who do not have a conflict in relation to the matter in question may, in their absolute discretion, determine that the Director with the conflict and/or any other interested Director should absent himself from the part of the meeting at which there is discussion concerning the transaction or arrangement giving rise to the conflict

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**PART E. BOARD MEETINGS**

**28 FUNCTIONS OF THE BOARD**

28.1 The Board must direct the Company's affairs in such a way as to promote the Objects. Its functions include:-

28.1.1 defining and ensuring compliance with the values and objectives of the Company,

28.1.2 establishing policies and plans to achieve those objectives,

28.1.3 approving each year's budget and accounts before publication,

28.1.4 establishing and overseeing a framework of delegation of its powers to Committees and employees under Article 33 with proper systems of control,

28.1.5 monitoring the Company's performance in relation to its plans budget controls and decisions,

28.1.6 appointing (and if necessary removing) Senior Officers,

28.1.7 satisfying itself that the Company's affairs are conducted in accordance with generally accepted standards of performance and propriety, and

28.1.8 ensuring appropriate advice is taken on the items listed in Article 28.1.1 to 28.1.7 and in particular on matters of legal compliance and financial viability

**29 POWERS OF THE BOARD**

29.1 Subject to the Act, the Memorandum and the Articles, the business of the Company is to be managed by the Board who may exercise all of the powers of the Company

29.2 An alteration to the Memorandum or the Articles does not invalidate earlier acts of the Board which would have been valid without the alteration



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- 29.3 In performing their functions the Board must consider the interests of the Company's employees (if any) as well as those of Beneficiaries

## 30 BOARD MEETINGS

- 30.1 Subject to the Articles, the Board may regulate Board Meetings as it wishes
- 30.2 Board Meetings may be called by any Director or the Secretary
- 30.3 The Secretary must give 14 days' notice of Board Meetings to each of the Directors and Senior Officers but it is not necessary to give notice of a Board Meeting to a Director or Senior Officer who is out of the United Kingdom
- 30.4 A Board Meeting which is called on shorter notice than required under Article 30.3 is deemed to have been duly called if at least two Directors certify in writing that because of special circumstances it ought to be called as a matter of urgency
- 30.5 Questions arising at a Board Meeting are to be decided by a majority of votes
- 30.6 If there is an equality of votes the Chair is entitled to a second or casting vote
- 30.7 A technical defect in the appointment of a Director or in the delegation of powers to a Committee of which the Board is unaware at the time does not invalidate decisions taken in good faith

## 31 QUORUM FOR BOARD MEETINGS

- 31.1 At the first Board meeting the quorum is one half of the Directors for the time being. Thereafter the quorum for Board Meetings is five or one half of the Directors for the time being (whichever is the lesser) provided that at least one Director appointed by Ilfracombe Town Council forms part of the quorum
- 31.2 A Director may be part of the quorum at a Board Meeting if he can understand comment and vote on the proceedings through telephone, video conferencing or other communications equipment

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- 31.3 The Board may act despite vacancies in its number but if the number of Directors is less than three then the Board may act only to:-
- 31.3.1 call a General Meeting, or
  - 31.3.2 admit Directors under Article 23
- 31.4 At a Board Meeting which remains inquorate for 15 minutes after its starting time or one which becomes inquorate for more than 15 minutes the Directors present may act only to:-
- 31.4.1 adjourn it to such other time and place as they decide, or
  - 31.4.2 appoint Directors under Article 23,
  - 31.4.3 call a General Meeting
- 31.5 If at the adjourned meeting there are again insufficient Directors present within 15 minutes from the time of the adjourned General Meeting to constitute a quorum then those Directors who are present (provided that they number at least three shall constitute a quorum for the purpose of allowing any business of the adjourned meeting to be conducted

**32 CHAIR AND VICE-CHAIR**

- 32.1 The Company must have a Chair and may have a Vice-Chair elected by the Board. The Board shall elect a Chair and if desired a Vice-Chair at the first Board meeting following the AGM. Both the Chair and (if appointed) the Vice-Chair may be re-elected
- 32.2 The Chair and the Vice-Chair may resign from their positions at any time (without necessarily resigning as Directors at the same time)
- 32.3 Where there is no Chair and no Vice-Chair the first item of business of a Board Meeting must be to elect a Chair or Vice-Chair or both

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- 32.4 Subject to Article 32.5 the Chair shall hold office for a term of three years. A Director may serve a maximum of two terms as Chair. A Vice Chair shall hold office for a term to be determined by the Board.
- 32.5 The Chair and the Vice-Chair (if any) may be removed only at a Board Meeting called for the purpose at which a resolution with a majority in favour is passed. The Chair or the Vice-Chair (as the case may be) must be given an opportunity to say why he should not be removed
- 32.6 The Chair is to chair all Board Meetings and General Meetings at which he is present unless he does not wish, or is not able, to do so
- 32.7 If the Chair is not present within 5 minutes after the starting time of a Board Meeting or if the Chair is unwilling or unable to chair a Board Meeting, then the Vice-Chair (if any) must chair that Board Meeting unless he is unwilling or unable to do so
- 32.8 If both the Chair and the Vice-Chair (if any) are not present within 5 minutes after the starting time of a Board Meeting or both are unwilling or unable to chair the meeting then the Board must elect one of the Directors who is present to chair the Board Meeting
- 32.9 The functions of the Chair are :-
- 32.9.1 to act as an ambassador for the Company and to represent the views of the Board to the general public and other organisations,
  - 32.9.2 to ensure that Board Meetings and General Meetings are conducted efficiently,
  - 32.9.3 to give all Directors an opportunity to express their views,
  - 32.9.4 to establish a constructive working relationship with, and to provide support for, the Senior Officers,
  - 32.9.5 where necessary (and in conjunction with the other Directors) to ensure that, where the post of any Senior Officer is or is due to become vacant, a replacement is found in a timely and orderly fashion,

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- 32.9.6 to encourage the Board to delegate sufficient authority to its Committees to enable the business of the Company to be carried on effectively between Board Meetings,
- 32.9.7 to ensure that the Board monitors the use of delegated powers, and
- 32.9.8 to encourage the Board to take professional advice when it is needed and particularly before considering the dismissal of a Senior Officer
- 32.10 The role of the Vice-Chair is to deputise for the Chair during any period of his absence and, for that period, his functions shall be the same as those of the Chair
- 32.11 Except to the extent that the Articles provide otherwise, neither the Chair nor the Vice-Chair has any authority beyond that of any other Director

**33 COMMITTEES AND WORKING PARTIES**

- 33.1 The Board may:-
- 33.1.1 establish Committees consisting of those persons whom the Board decide,
- 33.1.2 delegate to a Committee any of its powers, and
- 33.1.3 revoke a delegation at any time
- 33.2 The Board may establish Working Parties consisting of those persons whom the Board decide. A Working Party may not take decisions on behalf of the Board but may consider issues in depth with a view to making recommendations to the Board
- 33.3 The members of a Committee or a Working Party are to be appointed by the Board but the Board may give a Committee or a Working Party the right to co-opt individuals to its membership The Board is to determine the chair of each Committee or Working Party
- 33.4 Each member of a Committee or Working Party (including the chair) is to hold office from the date of his appointment until the term of office for which he has been appointed expires or until he resigns or is removed by the Board from the Committee or Working Party

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- 33.5 The Board must determine the quorum for each Committee and Working Party it establishes
- 33.6 The Board must specify the financial limits within which any Committee may function. A Working Party can have no authority to incur expenditure
- 33.7 Every Committee or Working Party must report its proceedings and decisions to the Board as the Board determines

**34 OBSERVERS**

- 34.1 Subject to Article 34.4, the Board may allow individuals who are not Directors to attend Board Meetings as Observers on whatever terms they decide
- 34.2 Observers may not vote but may take part in discussions with the prior consent of the Chair
- 34.3 The Board may exclude Observers from any part of a Board Meeting where the Board considers the business is private
- 34.4 The Board must exclude an Observer from any Board Meeting at which a possible personal benefit to him is being considered

**35 DIRECTORS' WRITTEN RESOLUTIONS**

- 35.1 A written resolution signed by a simple majority of the Directors entitled to receive notice of a Board Meeting (provided they would constitute a quorum at a Board Meeting) is as valid as if it had been passed at a Board Meeting
- 35.2 A written resolution signed by a simple majority of the members of a Committee (provided they would constitute a quorum of that Committee) is as valid as if it had been passed at a meeting of that Committee
- 35.3 A resolution under Articles 35.1 or 35.2 may consist of several documents in similar form each signed by one or more of the Directors or Committee Members and will be treated as passed on the date of the last signature

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**PART F. OFFICERS**

**36 THE SECRETARY**

36.1 A Secretary may but need not be appointed by the Board for such a term as the Board decides

36.2 Where appointed, a Secretary may be removed by the Board at any time

36.3 No Director may occupy the salaried position of Secretary

**37 INDEMNITIES FOR OFFICERS AND EMPLOYEES**

37.1 The Company may indemnify any officer or employee (other than a Director) against any liability incurred by him in his capacity as such except when that liability is due to his own dishonesty or gross negligence

37.2 Subject to the Act (in particular sections 232-238 or any section of any other statute amending or replacing sections 232-238) and Article 37.3, the Company may indemnify any Director against any liability incurred by him in his capacity as such

37.3 The indemnity provided to a Director in accordance with Article 37.2 may not include any indemnity against liability:-

37.3.1 to the Company or a company associated with it,

37.3.2 for fines or penalties, or

37.3.3 incurred as a result of his unsuccessful defence of criminal or civil proceedings

37.4 The indemnity provided to a Director in accordance with Article 37.2 may include the provision of funds to cover his legal costs as they fall due on terms that the Director in question will repay the funds if he is unsuccessful in his defence of the criminal or civil proceedings to which these costs relate

37.5 In respect to its auditor the Company may:-

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- 37.5.1 purchase and maintain insurance for his benefit against any liability incurred by him in his capacity as such, and
  
- 37.5.2 indemnify him against any liability incurred in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted or in connection with any application under Section 1157 of the Act or any section of any other statute amending or replacing Section 1157 in which relief is granted to him by the Court

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**PART G. STATUTORY AND MISCELLANEOUS**

**38 MINUTES**

- 38.1 The Board must arrange for minutes to be kept of all General Meetings
- 38.2 The Board must arrange for minutes to be kept of all Board Meetings. The names of the Directors present must be included in the minutes
- 38.3 Copies of the draft minutes of Board Meetings must be distributed to the Directors as soon as reasonably possible after the meeting and in any case seven days before the next Board Meeting (unless the next Board Meeting is an urgent Board Meeting)
- 38.4 Minutes must be approved as a correct record at the next General Meeting (as regards minutes of General Meetings) or Board Meeting (as regards minutes of Board Meetings). Once approved they must be signed by the person chairing the meeting at which they are approved
- 38.5 The Board must keep minutes of all of the appointments made by the Board

**39 ACCOUNTS ANNUAL REPORT AND ANNUAL RETURN**

- 39.1 The Company must comply with the Act in:-
- 39.1.1 preparing and filing an annual Directors report and annual accounts, and
- 39.1.2 making an annual return to the Registrar of Companies
- 39.2 The Company must comply with the Act relating to the audit or examination of accounts (to the extent that the law requires)
- 39.3 The annual Directors' report and accounts must contain:-
- 39.3.1 revenue accounts and balance sheet for the last accounting period,



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39.3.2 the auditors report on those accounts (if applicable), and

39.3.3 the Board's report on the affairs of the Company

39.4 The accounting records of the Company must always be open to inspection by a Director

## **40 BANK AND BUILDING SOCIETY ACCOUNTS**

40.1 All bank and building society accounts must be operated by the Board and must include the name of the Company

40.2 A cheque or order for the payment of money must be signed in accordance with the Board's instructions

## **41 EXECUTION OF DOCUMENTS**

41.1 Unless the Board decides otherwise, documents which are executed as deeds must be signed by:-

41.1.1 two Directors, or

41.1.2 one Director and the Secretary (where appointed), or

41.1.3 one Director in the presence of a witness who attests the Director's signature

## **42 NOTICES**

42.1 Notices under the Articles must be in writing except notices calling Board Meetings

42.2 A Company Member present in person at a General Meeting is deemed to have received notice of the General Meeting and (where necessary) of the purposes for which it was called

42.3 The Company may give a notice to a Company Member, Director, Secretary or auditor either:-

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- 42.3.1 personally,
  - 42.3.2 by sending it by post in a prepaid envelope,
  - 42.3.3 by facsimile transmission,
  - 42.3.4 by leaving it at his address, or
  - 42.3.5 by email
- 42.4 Notices under Article 42.3.1 to 42.3.5 may be sent:-
- 42.4.1 to an address in the United Kingdom which that person has given the Company,
  - 42.4.2 to the last known home or business address of the person to be served, or
  - 42.4.3 to that person's address in the Company's register of Members
- 42.5 Proof that an envelope containing a notice was properly addressed prepaid and posted is conclusive evidence that the notice was given 48 hours after it was posted
- 42.6 Proof that a facsimile transmission was made is conclusive evidence that the notice was given at the time stated on the transmission report
- 42.7 A copy of the notification from the system used by the Company to send emails that the email has been sent to the particular person will be conclusive evidence that the notice was sent and such notice will be deemed to have been delivered 24 hours after it was sent
- 42.8 A notice may be served on the Company by delivering it or sending it to the Registered Office or by handing it to the Secretary
- 42.9 The Board may make standing orders to define other acceptable methods of delivering notices

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**43 STANDING ORDERS**

43.1 Subject to Article 43.4:-

43.1.1 the Board may from time to time make standing orders for the proper conduct and management of the Company: and

43.1.2 the Company in General Meeting may alter, add to or repeal the standing orders

43.2 The Board must adopt such means as they think sufficient to bring the standing orders to the notice of Company Members

43.3 Standing orders are binding on all Company Members and Directors

43.4 No standing order may be inconsistent with or may affect or repeal anything in the Memorandum or the Articles