

THE COMPANIES ACTS 1985 TO 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

DAVID MACBRAYNE LIMITED
(the Company)

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PART 1 - INTERPRETATION AND LIMITATION OF LIABILITY

1. DEFINED TERMS

1.1 In the Articles, unless the context requires otherwise:

Act means the Companies Act 2006;

Articles means the Company's Articles of Association;

Board means the Board of Directors of the Company as constituted from time to time;

Board Meeting means a meeting of the Board intended to be held at least twice a year at the Company's offices or via conference call at a Director's request;

Business means the business of the Company as more fully detailed at Article 5.6;

Business Day means a day (other than a Saturday or Sunday) when clearing banks in Glasgow are open for business;

Corporate Plan means the business plan, as agreed by the Shareholder and published on the Company's website, setting out the main financial, commercial and operational aims and objectives for the Company for a three (3) year period, or for a time period to be agreed and no greater than a five (5) year period;

Chair has the meaning given in Article 32;

Chair of the meeting has the meaning given in Article 32;

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

Company means DAVID MACBRAYNE LIMITED, registered in Scotland with registered number SC015304;

Director means an appointed director of the Company;

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 be entitled to vote on the matter at a meeting of the Board;

External Borrowing means monies borrowed by the Company but excludes monies advanced by the Scottish Ministers;

Framework Agreement means the framework document in respect *inter alia* of the Company dated 23rd September 2025 (and effective from 1st October 2025) and as amended from time to time;

Fully Paid in relation to a share, means that the nominal value and any premium to be Paid to the Company in respect of that share have been Paid to the Company;

hard copy form has the meaning given in section 1168 of the Companies Act 2006;

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 Board Meeting, has the meaning given in Article 8;

Proxy Notice has the meaning given in Article 38;

Reserved Matters means those matters listed in Schedule 1 of the Shareholders' Agreement;

Scottish Ministers means the members of the Scottish Executive referred to in s.44(1) of The Scotland Act 1998;

Sequestration includes individual insolvency proceedings in a jurisdiction other than Scotland which have an effect similar to that of Sequestration;

Shareholder means a shareholder of the Shares from time to time being, at the date of adoption of these Articles, the Scottish Ministers;

Shareholders' Agreement means the shareholders' agreement relating *inter alia* to the Company entered into with the Scottish Ministers and dated 23rd September 2025 (and effective from 1st October 2025) and as amended from time to time;

Shareholder Consent means the prior written consent of the Shareholder to the Company;

Shareholder Representative means representatives of the Shareholder who shall be entitled to (i) attend Board Meetings of the Company for and on behalf of the Shareholder; (ii) to receive all information provided to Board members; and (iii) attend all formal discussions of each Board;

Shares means the shares in the Company;

Special Resolution has the meaning given in section 283 of the Companies Act 2006;

SPFM means the Scottish Public Finance Manual;

Sponsor means Transport Scotland;

Subsidiary has the meaning given in section 1159 of the Companies Act 2006;

Transmittee means a person entitled to a share by reason of the death or Sequestration of a Shareholder or otherwise by operation of law; and

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

- 1.2 Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Act as in force on the date when these Articles become binding on the Company.

2. LIABILITY OF MEMBERS

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

PART 2 - DIRECTORS

DIRECTORS' POWERS AND RESPONSIBILITIES

3. DIRECTORS' GENERAL AUTHORITY

- 3.1 Subject to the provisions of the Companies Acts, the memorandum of association of the Company and 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.

- 3.2 Individual Board members should act in accordance with the responsibilities of the Board of Directors as a whole and should comply with the rules relating to use of public funds and to conflicts of interest. In this context **public funds** means not only funds provided to the Company by the Scottish Ministers but also any other funds falling within the stewardship of the Company including trading and investment income, gifts, bequests and donations.
- 3.3 The Board shall have due regard to the provisions of both the Framework Agreement and Shareholders' Agreement particularly in relation to corporate and Board governance.
- 3.4 All borrowing by the Company (excluding agreed overdrafts) shall be from the Scottish Ministers in accordance with guidance in the Borrowing, Lending & Investment section of the SPFM. Other than the agreed overdrafts the Company shall not utilise any External Borrowing.

4. SHAREHOLDERS' RESERVE POWER

- 4.1 The Shareholder may, by Special Resolution, direct the Directors to take, or refrain from taking, specified action.
- 4.2 No such Special Resolution invalidates anything which the Directors have done before the passing of the resolution.

DECISION-MAKING BY DIRECTORS

5. DIRECTORS TO TAKE DECISIONS COLLECTIVELY

- 5.1 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 5.2.
- 5.2 If:
- (a) the Company only has one Director, and
 - (b) no provision of the Articles requires it to have more than one Director,
- the general rule does not apply, and the Director may take decisions without regard to any of the provisions of the Articles relating to Directors' decision-making.
- 5.3 The Directors should ensure that in reaching decisions they take into account relevant guidance issued by the Scottish Ministers.
- 5.4 The Directors shall ensure the Company delivers its functions effectively and efficiently and in accordance with the aims, policies and priorities of the Scottish Ministers as set out in The Corporate Plan. The overall strategic direction of the Company should be established within the policy, planning and resources framework determined by the Scottish Ministers.
- 5.5 The Board acknowledges that any decisions which relate to Reserved Matters shall require Shareholder Consent in accordance with the provisions of the Shareholders' Agreement.
- 5.6 The Business of the Company (as defined in the Shareholders' Agreement) shall be to advance the priorities and objectives of Scottish Ministers by:
- (a) providing high quality, safe, reliable, resilient and inclusive public ferry services which meets the needs of all passengers and communities it serves;
 - (b) prioritising and engaging local communities, businesses, passengers and other stakeholders to continuously deliver ferry service improvement;
 - (c) ensuring value for money, efficient, economic and effective use of resources as well as ensuring propriety and accountability in all aspects of its work;

- (d) contributing to the achievement of the Scottish Government's economic, social and environmental policy objectives; and,
- (e) advancing equality and non-discrimination.

5.7 The Purpose of the Company shall (as defined in the Shareholders' Agreement) be as follows:

- (a) to contribute to the creation of a more successful country with opportunities for all of Scotland to flourish through increased wellbeing, and sustainable and inclusive economic growth; by
- (b) aligning its corporate aims and objectives and day to day activities with the National Performance Framework, Programme for Government, Scotland's National Strategy for Economic Transformation, National Transport Strategy, National Islands Plan, the Islands Connectivity Plan and other key policies, plans and priorities of the Shareholder; and
- (c) delivered through providing high quality, safe, reliable, resilient and inclusive public ferry services which meets the needs of all passengers and communities it serves.

6. UNANIMOUS DECISIONS

- 6.1 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 agree with a decision on a matter.
- 6.2 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.
- 6.3 References in this Article to eligible Directors are to Directors who would have been entitled to vote on the matter had it been proposed as a resolution at a Board Meeting.
- 6.4 A decision may not be taken in accordance with this Article if the eligible Directors would not have formed a quorum at such a meeting.

7. CALLING A BOARD MEETING

- 7.1 Any Director may call a Board Meeting by giving at least seven (7) Business Days' notice of the meeting to the Directors or by authorising the Company secretary (if any) to give such notice.
- 7.2 A shorter period of notice of a Board Meeting than that specified in Article 7.1 may be given if at least two (2) Directors agree in Writing.
- 7.3 Notice of any Board Meeting must indicate:
 - (a) its proposed date and time;
 - (b) where it is to take place; and
 - (c) if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 7.4 Notice of a Board Meeting must be given to each Director as nearly as practicable at the same time and shall be accompanied by:
 - (a) an agenda specifying in reasonable detail the matters to be raised at the Board Meeting; and

(b) copies of any papers to be discussed at the Board Meeting.

7.5 Matters not on the agenda, or business conducted in relation to those matters, may not be raised at a Board Meeting unless all the Directors present agree.

7.6 Notice of a Board 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 seven (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.

8. PARTICIPATION IN BOARD MEETINGS

8.1 Subject to the Articles, Directors Participate in a Board Meeting, or part of a Board Meeting, when:

- (a) the meeting has been called and takes place in accordance with the Articles, and
- (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

8.2 In determining whether Directors are participating in a Board Meeting, it is irrelevant where any Director is or how they communicate with each other.

8.3 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.

9. QUORUM FOR BOARD MEETINGS

9.1 No business shall be conducted at any Board Meeting unless a quorum is present at the beginning of the meeting and at the time when there is to be voting on any business. If a quorum is not present within thirty (30) minutes after the time specified for a Board Meeting in the notice of the meeting then it shall be adjourned for five (5) Business Days at the same time and place. Each Director shall be notified in Writing by the Company of the date, time and place of the adjourned meeting.

9.2 Subject to Article 9.3, the quorum for Board Meetings may be fixed from time to time by Ordinary Resolution or by the majority Shareholder and unless otherwise fixed it is three.

9.3 Unless notified by the Sponsor in advance, the Shareholder shall attend all Board Meetings through the Shareholder Representative.

9.4 If only one Director is in office for the time being then that Director shall constitute a quorum.

9.5 All Directors of the Company shall be prohibited from appointing any other director or person to act as an alternate director at any Board Meeting.

10. CHAIRING OF BOARD MEETINGS

10.1 The Chair (as defined in Article 32) shall chair the meetings of the Directors.

10.2 The Chair of the Company is a non executive who shall be appointed by Scottish Ministers in line with the Ethical Standard Commissioner's Code of Practice for Ministerial Public Appointments to Public Bodies in Scotland. All appointments, reappointments and extensions of the Chair shall be carried out in line with the Ethical Standard Commissioner's Code of Practice for Ministerial Public Appointments to Public Bodies in Scotland. When an appointment term of the Chair ends, the appointing Scottish Minister may reappoint the Chair to the same position or extend the Chair's appointment term provided that:

- (a) the Chair's performance has been properly appraised as being effective during the current term and the Chair has been given the opportunity to demonstrate that they have the appropriate skills, knowledge and experience and other attributes required.
- (b) the reappointment or extension will continue to meet the board's needs for the period concerned.
- (c) the total period of appointment of a Chair shall not exceed eight (8) years.

11. THE CHAIR'S RESPONSIBILITIES

- 11.1 The Chair is accountable to the Scottish Ministers and, in common with any individual with responsibility for devolved functions, may also be held to account by the Scottish Parliament. Communications between the Board of Directors and the Scottish Ministers should normally be through the Chair. The Chair is responsible for ensuring that the Company's policies and actions support the Scottish Ministers' wider strategic policies and that its affairs are conducted with probity.

12. CONFLICTS OF INTEREST

- 12.1 Provided that he has disclosed to the Directors the nature and extent of his interest, a Director notwithstanding his office:
 - (a) may be a party to, or otherwise interested in, any existing or proposed transaction or arrangement with the Company or in which the Company is otherwise 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 in which the Company is otherwise interested;
 - (c) may act himself, or by a firm or company in which he is interested (as a partner, member, Director or otherwise), in a professional capacity for the Company as if he was not a Director; and
 - (d) shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate or from acting in such a professional capacity and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.
- 12.2 Subject to the provisions of the Act and provided he shall have declared his interest in the matter a Director shall be entitled to vote, and to be counted in the quorum, at a meeting of the Directors or of any committee of Directors on any resolution concerning a matter on which he has, directly or indirectly, an interest or duty which conflicts or may conflict with the interests of the Company.
- 12.3 Subject to Article 12.4, 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.
- 12.4 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.
- 12.5 For the purposes of this Article 12:

- (a) a general notice to the Directors that a Director is a member of a specified firm or company and is to be regarded as interested in contracts which are made with the Company or firm after the date of the notice shall be deemed to be a sufficient disclosure of the nature and extent his interest in relation to the contract;
- (b) 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 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 transaction or arrangement with the persons specified in the notice; and
- (c) 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.

12.6 The Directors may (subject to such terms and conditions, if any, as they think fit to impose from time to time, and subject always to their right to vary or terminate such authorisation) authorise in accordance with section 175 of the Act, to the fullest extent permitted by law:

- (a) any matter which would otherwise result in a Director infringing his duty 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 and which may reasonably be regarded as likely to give rise to a conflict of interest (including a conflict of interest and duty or conflict of duties); and
- (b) a Director to accept or continue in any office, employment or position in addition to his office as a Director of the Company and without prejudice to the generality of Article 12.6(a) may authorise the manner in which a conflict of interest arising out of such office, employment or position may be dealt with, either before or at the time that such a conflict of interest arises;

provided that for this purpose the Director in question and any other interested Director are not counted in the quorum at any Board Meeting at which such matter, or such office, employment or position, is approved and it is agreed to without their voting or would have been agreed to if their votes had not been counted.

12.7 If a matter, or office, employment or position, has been authorised by the Directors in accordance with this Article 12 then (unless the Directors shall have imposed different terms or conditions upon the authorisation):

- (a) the Director shall not be required to disclose any confidential information relating to such matter, or such office, employment or position, to the Company if to make such a disclosure would result in a breach of a duty or obligation of confidence owed by him in relation to or in connection with that matter, or that office, employment or position;
- (b) the Director may absent himself from meetings of the Directors at which anything relating to that matter, or that office, employment or position will or may be discussed; and
- (c) the Director may make such arrangements as such Director thinks fit for Board and committee papers to be received and read by a professional adviser on behalf of that Director.

12.8 A Director shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any matter, or from any office, employment or position, which has been approved

by the Directors pursuant to this Article 12 unless otherwise determined by Ordinary Resolution or by the majority Shareholder.

13. RECORDS OF DECISIONS TO BE KEPT

- 13.1 The Directors must ensure that the Company keeps a record, in Writing, for at least ten (10) years from the date of the decision recorded, of every unanimous or majority decision taken by the Directors.

14. SCOTTISH MINISTERS' DISCRETION TO MAKE FURTHER RULES

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

APPOINTMENT OF DIRECTORS

15. METHODS OF APPOINTING DIRECTORS

- 15.1 The Scottish Ministers will approve and appoint (i) the Chair and (ii) all Directors to the Board of Directors.
- 15.2 The minimum number of Directors on the Board shall be one (1). There shall be no maximum number of Directors.
- 15.3 The composition of the Board shall be reviewed regularly in consultation with the Scottish Ministers to ensure alignment with strategic priorities.
- 15.4 Subject to the necessary approval being obtained under Article 15.1, a Director may be appointed to be a Director:
- (a) by Ordinary Resolution,
 - (b) by a decision of the Directors, or
 - (c) by a notice to the Company by the Scottish Ministers which shall take effect at the time it is received by the Company or such faster time as is stated in the notice.
- 15.5 In any case where, as a result of death, the Company has no Shareholders and no Directors, the personal representatives of the last Shareholder to have died have the right, by notice in Writing, to appoint a person to be a Director.
- 15.6 For the purpose of this Article 15, where two (2) or more Shareholders die in circumstances rendering it uncertain who was the last to die, a younger Shareholder is deemed to have survived an older Shareholder.

16. TERMINATION OF DIRECTOR'S APPOINTMENT

- 16.1 A person ceases to be a Director as soon as:
- (a) 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;
 - (b) a Sequestration order is made against that person;
 - (c) a composition is made with that person's creditors generally in satisfaction of that person's debts;

- (d) 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 (3) months;
- (e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;
- (f) 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;
- (g) that person is absent for more than six (6) consecutive months without the permission of the Directors from meetings of Directors held during that period and the Directors resolve that his office should be vacated;
- (h) that person is removed from office under section 168 of the Act;
- (i) that person is convicted of a crime (other than minor traffic offences);
- (j) notice is received by the company from the Shareholder removing that person as a Director with effect from the time the Company receives the notice or such later time as may be specified in the notice;
- (k) that person holds any office of profit under the Company without the consent of the Shareholder; or
- (l) where that person holds any office under the Company, the fixed term for which that person has been appointed to such office expires without being reviewed.

17. DIRECTORS' REMUNERATION

- 17.1 The Directors shall undertake services for the Company in accordance with (i) the Business of the Company (as defined in Article 5.6); (ii) the Purpose of the Company (as defined in Article 5.7); and (iii) the terms of the Directors' appointment letters.
- 17.2 The appointment terms for Directors (including any remuneration terms) constitute a Reserved Matter under the Shareholders' Agreement and shall be determined accordingly.
- 17.3 Remuneration, allowances and expenses Paid to Board members must comply with specific guidance on such matters issued by the Scottish Ministers.

18. DIRECTORS' EXPENSES

- 18.1 The Company may pay any reasonable expenses which the Directors properly incur in connection with their attendance at:
 - (a) meetings of Directors or committees of Directors,
 - (b) general meetings, or
 - (c) separate meetings of the Shareholders of any class of Shares or of debentures of the Company,

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company.

19. EXECUTIVE APPOINTMENTS

- 19.1 Subject to Article 32.4 the Scottish Ministers may appoint a Director to the office of chief executive of the Company for such period and on such terms as they shall determine and the person so appointed for the time being shall be known as the Chief Executive. The person so appointed shall hold office until removed by the Scottish Ministers, or until he ceases to be a Director (the latter being without prejudice to any claim for damages, for breach of contract of services as a Director of the Company between the person concerned and the Company).
- 19.2 Subject to the provisions of the Act and to Article 32.4, the Directors may appoint one or more of their number to any executive office other than Chief Executive under the Company and may enter into an agreement or arrangement with any Director for his employment by the Company or for the provision by him of any services outside the scope of the ordinary duties of a Director. Any appointment of a Director to an executive office shall terminate if he ceases to be a Director but without prejudice to any claim to damages for breach of the contract of service between the person concerned and the Company.

20. APPOINTMENT OF SHAREHOLDER REPRESENTATIVE

- 20.1 The Scottish Ministers shall be entitled to appoint one Shareholder Representative to the Company, or as many as they may deem necessary, who may be removed from office only by the Scottish Ministers. Any appointment or removal of such Shareholder Representative shall be in Writing, a copy of which shall be intimated to the Company at its registered office. The Shareholder Representative shall be entitled to receive notice of, attend and speak at, but not vote at, any meeting of the Company, its Directors. In the event of the absence or unavailability of the Shareholder Representative, the Scottish Ministers shall be entitled to nominate a substitute to attend and act at meetings in place of the Shareholder Representative. Written evidence of such nomination shall be exhibited at the relevant meeting.

PART 3 - SHARES AND DISTRIBUTIONS

SHARES

21. ALL SHARES TO BE FULLY PAID UP

- 21.1 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.
- 21.2 This does not apply to Shares taken on the formation of the Company by the subscribers to the Company's memorandum.

22. POWERS TO ISSUE DIFFERENT CLASSES OF SHARE

- 22.1 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.
- 22.2 The Company may issue Shares which are to be redeemed, or are liable to be redeemed at the option of the Company or the Shareholder (**Redeemable Shares**) provided that no Redeemable Shares in the Company shall be allotted nor any right to subscribe for or to convert any security into Redeemable Shares in the Company shall be granted unless every member for the time being has consented in Writing to that allotment or grant and to the terms, conditions and manner of redemption of the Redeemable Shares.

22.3 The Company shall ensure compliance with any provisions relating to Shares which constitute Reserved Matters.

23. COMPANY NOT BOUND BY LESS THAN ABSOLUTE INTERESTS

23.1 The Company shall be entitled, but shall not be bound, to recognise in such manner and to such extent as it may think fit any trusts in respect of any of the Shares of the Company. Notwithstanding any such recognition the Company shall not be bound to see to the execution, administration or observance of any trust, whether express, implied or constructive, in respect of any Shares of the Company and shall be entitled to recognise and give effect to the acts or deeds of the registered Shareholders of such Shares as if they were the absolute owners thereof. For the purposes of this Article **trust** includes any right in respect of any Shares of the Company other than an absolute right thereto in the registered Shareholder thereof for the time being or such other rights in the case of transmission thereof as are mentioned in the Articles.

24. SHARE CERTIFICATES

24.1 The Company must issue each Shareholder, free of charge, with one or more certificates in respect of the Shares which that Shareholder holds.

24.2 Every certificate must specify:

- (a) in respect of how many Shares;
- (b) of what class it is issued;
- (c) the nominal value of those Shares;
- (d) that the Shares are Fully Paid; and
- (e) any distinguishing numbers assigned to them.

24.3 No certificate may be issued in respect of Shares of more than one class.

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

24.5 Certificates must:

- (a) have affixed to them the Company's common seal; or
- (b) be otherwise executed in accordance with the Companies Acts.

25. REPLACEMENT SHARE CERTIFICATES

25.1 If a certificate issued in respect of a Shareholder's Shares is:

- (a) damaged or defaced, or
- (b) said to be lost, stolen or destroyed,

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

25.2 A Shareholder exercising the right to be issued with such a replacement certificate:

- (a) may at the same time exercise the right to be issued with a single certificate or separate certificates;
- (b) must return the certificate which is to be replaced to the Company if it is damaged or defaced; and

- (c) must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the Directors decide.

26. SHARE TRANSFERS

- 26.1 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.
- 26.2 No fee may be charged for registering any Instrument of transfer or other Document relating to or affecting the title to any Share.
- 26.3 The Company may retain any Instrument of transfer which is registered.
- 26.4 The transferor remains the Shareholder of a Share until the transferee's name is entered in the register of members as Shareholder of it.
- 26.5 The Directors may refuse to register the transfer of a Share which is not accompanied by the certificate for the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer, 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.

27. TRANSMISSION OF SHARES

- 27.1 If title to a share passes to a Transmitttee, the Company may only recognise the Transmitttee as having any title to that share.
- 27.2 A Transmitttee who produces such evidence of entitlement to Shares as the Directors may properly require:
 - (a) may, subject to the Articles, choose either to become the Shareholder of those Shares or to have them transferred to another person, and
 - (b) subject to the Articles, and pending any transfer of the Shares to another person, has the same rights as the Shareholder had.
- 27.3 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 Shareholder's death or Sequestration or otherwise unless they become the Shareholders of those Shares.

28. EXERCISE OF TRANSMITTEES' RIGHTS

- 28.1 Transmitttees who wish to become the Shareholders of Shares to which they have become entitled must notify the Company in Writing of that wish.
- 28.2 If the Transmitttee wishes to have a share transferred to another person, the Transmitttee must execute an Instrument of transfer in respect of it.
- 28.3 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.

29. TRANSMITTEES BOUND BY PRIOR NOTICES

- 29.1 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.

PART 4 - DECISION-MAKING BY SHAREHOLDERS

ORGANISATION OF GENERAL MEETINGS

30. ATTENDANCE AND SPEAKING AT GENERAL MEETINGS

- 30.1 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.
- 30.2 A person is able to exercise the right to vote at a general meeting when:
- (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
 - (b) 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.
- 30.3 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.
- 30.4 The Directors may make whatever arrangements they consider appropriate to enable a person entitled to attend a general meeting to attend it in a place other than the place specified in the notice of the meeting. 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. A person attends a general meeting when the arrangements allow him to exercise his right to speak and vote.
- 30.5 A person who attends a general meeting at a place other than the place specified in the notice of meeting shall be entitled to be counted in the quorum.

31. QUORUM FOR GENERAL MEETINGS

- 31.1 No business other than the appointment of the Chair of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum. One person entitled to vote upon the business to be transacted, being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum.

32. CHAIRING GENERAL MEETINGS

- 32.1 The Scottish Ministers may appoint a Director to the office of Chair of the Company for such period and on such terms as they shall determine.
- 32.2 The person so appointed for the time being is known as the Chair.
- 32.3 The person so appointed shall hold office until removed by the Scottish Ministers, or until he ceases to be a Director (the latter being without prejudice to any claim for damages for breach of contract of services as a Director of the Company between the person concerned and the Company).
- 32.4 A Director appointed to the office of Chair may not, while holding that office, hold the office of Chief Executive or any other executive office within the Company.
- 32.5 The Chair shall chair general meetings if present and willing to do so.
- 32.6 If the Chair is unwilling to chair the meeting or is not present within ten (10) minutes of the time at which a meeting was due to start:

- (a) the Directors present; or
- (b) (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.

32.7 The person chairing a meeting in accordance with this Article is referred to as **the Chair of the meeting**.

33. ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-SHAREHOLDERS

33.1 Directors may attend and speak at general meetings, whether or not they are Shareholders.

33.2 The Chair of the meeting may permit other persons who are not:

- (a) Shareholders of the Company, or
- (b) otherwise entitled to exercise the rights of Shareholders in relation to general meetings, to attend and speak at a general meeting.

34. ADJOURNMENT

34.1 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.

34.2 The Chair of the meeting may adjourn a general meeting at which a quorum is present if:

- (a) the meeting consents to an adjournment, or
- (b) 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.

34.3 The Chair of the meeting must adjourn a general meeting if directed to do so by the meeting.

34.4 When adjourning a general meeting, the Chair of the meeting must:

- (a) 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
- (b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

34.5 If the continuation of an adjourned meeting is to take place more than fifteen (15) days after it was adjourned, the Company must give at least seven (7) clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):

- (a) to the same persons to whom notice of the Company's general meetings is required to be given, and
- (b) containing the same information which such notice is required to contain.

34.6 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

35. VOTING: GENERAL

- 35.1 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the Articles.

36. ERRORS AND DISPUTES

- 36.1 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.
- 36.2 Any such objection must be referred to the Chair of the meeting, whose decision is final.

37. POLL VOTES

- 37.1 A poll on a resolution may be demanded:
- (a) in advance of the general meeting where it is to be put to the vote, or
 - (b) 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.
- 37.2 A poll may be demanded by:
- (a) the Chair of the meeting;
 - (b) any Director;
 - (c) two or more persons having the right to vote on the resolution; or
 - (d) 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.
- 37.3 A demand for a poll may be withdrawn if:
- (a) the poll has not yet been taken, and
 - (b) the Chair of the meeting consents to the withdrawal.
- 37.4 Polls must be taken at a time decided by the Chair but in any event before the end of the meeting at which they are demanded and in such manner as the Chair of the meeting directs.

38. CONTENT OF PROXY NOTICES

- 38.1 Proxies may only validly be appointed by a notice in Writing (a **Proxy Notice**) which:
- (a) states the name and address of the Shareholder appointing the proxy;
 - (b) if it is not in respect of all the Shareholders' Shares in the Company, identifies the Shares to which the Proxy Notice relates;
 - (c) identifies the person appointed to be that Shareholder's proxy and the general meeting in relation to which that person is appointed;
 - (d) is signed by or on behalf of the Shareholder appointing the proxy, or is authenticated in such manner as the Directors may determine; and
 - (e) 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.

- 38.2 The Company may require Proxy Notices to be delivered in a particular form and may specify different forms for different purposes.
- 38.3 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.
- 38.4 Unless a Proxy Notice indicates otherwise, it must be treated as:
- (a) 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
 - (b) 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.

39. DELIVERY OF PROXY NOTICES

- 39.1 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 and the vote of that person shall prevail over any vote tendered by the proxy.
- 39.2 An appointment under a Proxy Notice may be revoked by delivering to the Company a notice in Writing given by or on behalf of the person by whom or on whose behalf the Proxy Notice was given.
- 39.3 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.
- 39.4 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.

40. AMENDMENTS TO RESOLUTIONS

- 40.1 An Ordinary Resolution to be proposed at a general meeting may be amended by Ordinary Resolution if:
- (a) 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 forty-eight (48) hours before the meeting is to take place (or such later time as the Chair of the meeting may determine), and
 - (b) the proposed amendment does not, in the reasonable opinion of the Chair of the meeting, materially alter the scope of the resolution.
- 40.2 A Special Resolution to be proposed at a general meeting may not be amended unless:
- (a) the Chair of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed;
 - (b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution, and
 - (c) the amendment is approved by an Ordinary Resolution.
- 40.3 If the Chair of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the Chair's error does not invalidate the vote on that resolution.

PART 5 - ADMINISTRATIVE ARRANGEMENTS

41. MEANS OF COMMUNICATION TO BE USED

- 41.1 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 the Act to be sent or supplied by or to the Company.
- 41.2 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.
- 41.3 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 forty-eight (48) hours.
- 41.4 The Company is generally and unconditionally authorised to communicate in Electronic Form with its Shareholders and Directors and in particular to send or supply Documents or information to its Shareholders by making them available on a website. Accordingly, the Company may subject to the provisions of the Companies Acts give or send to any members or Director any notice or other Document (excluding a share certificate) in Electronic Form.
- 41.5 The Company, the members and the Directors agree to communication in Electronic Form for sending copies of Documents to the members or Directors. Any communication will be sent in Electronic Form to such address (or to one of such addresses if more than one) as may for the time being be notified by the member or Director to the Company or by the Company to the member or Director, for that purpose.
- 41.6 The Company and the members agree to the members having access to Documents on a website (instead of the Documents being sent to them) provided that:
- (a) the text and images in the Documents can be (as appropriate) read or seen using the naked eye; and
 - (b) the member is notified in a manner for the time being agreed for the purpose between the member and the Company of:
 - (1) the presence of the Documents on a website;
 - (2) the address of that website;
 - (3) the place on that website where the Documents may be accessed and how they may be accessed; and
 - (4) the period of time for which the Documents will be available on the website, which must be the period specified in any applicable provision of the Act or, if there is no such period specified, for a period of not less than twenty eight (28) days from the date of notification or, if later, until the conclusion of any general meeting to which the Documents relate; and
 - (c) the Documents are published on that website throughout the period referred to in sub-Article 41.6 (b) above provided that, if the Documents are published on that website for a part but not all of such period, the Documents will be treated as published throughout that period if the failure to publish those Documents throughout that period

is wholly attributable to circumstances which it would not be reasonable to have expected the Company to prevent or avoid.

- 41.7 Where a notice or other Document is given or sent in Electronic Form, it shall be deemed to have been given or sent at the expiration of four (4) hours from the time it was sent to an address supplied by the member or Director or the Company. Proof that a notice or other Document given or sent by electronic communication was given or sent in accordance with current guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice or Document was sent or given.

42. COMPANY SEALS

- 42.1 Any common seal may only be used by the authority of the Directors.
- 42.2 The Directors may decide by what means and in what form any common seal is to be used.
- 42.3 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.
- 42.4 For the purposes of this Article, an authorised person is:
- (a) any Director of the Company;
 - (b) the Company secretary (if any); or
 - (c) any person authorised by the Directors for the purpose of signing Documents to which the common seal is applied.

43. NO RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS

- 43.1 Except as provided by law or authorised by the Directors or an Ordinary Resolution of the Company, no person is entitled to inspect any of the Company's accounting or other records or Documents merely by virtue of being a Shareholder. Notwithstanding the provisions of this Article, the Scottish Government's Internal Audit and Assurance Directorate shall be entitled to reasonable access to all reasonably requested Company documents including accounts and other records.
- 43.2 Further, the Shareholder Representative shall be entitled to any information which is specified in these Articles and/or the Shareholders' Agreement.

44. PROVISION FOR EMPLOYEES ON CESSATION OF BUSINESS

- 44.1 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

45. INDEMNITY

- 45.1 A relevant officer of the Company or an associated company will be indemnified to the fullest extent permitted by law out of the Company's assets against:

- (a) any liability incurred by that officer in connection with any negligence, default, breach of duty or breach of trust by him in relation to the Company or an associated company,
 - (b) any liability incurred by that officer 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),
 - (c) any other liability incurred by that officer as an officer of the Company or an associated company.
- 45.2 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.
- 45.3 In this Article:
- (a) companies are associated if one is a Subsidiary of the other or both are subsidiaries of the same body corporate, and
 - (b) a **relevant officer** means any Director, former Director or other officer or former officer of the Company or an associated company.
- 45.4 The provisions of this Article 45 are intended to be for the benefit of and directly enforceable by any relevant officer of the Company.
- 45.5 In addition, a Director's appointment letter may provide for the Scottish Ministers to indemnify that Director in certain circumstances.
- 46. INSURANCE**
- 46.1 The Directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.
- 46.2 In this Article:
- (a) a **relevant officer** means any Director, former Director or other officer or former officer of the Company or an associated company,
 - (b) 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
 - (c) companies are associated if one is a Subsidiary of the other or both are subsidiaries of the same body corporate.

JURISDICTION

47. JURISDICTION AND LAW

These Articles shall be governed by and construed in accordance with the Law of Scotland and the Company and the members and the Directors irrevocably submit to the exclusive jurisdiction of the Scottish Courts to settle any dispute with or claim against the Company that arises out of or in connection with these Articles, their subject matter or formation (including non-contractual disputes or claims).