

**THE COMPANIES ACT 2006**

**COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL**

**ARTICLES of ASSOCIATION**

**of**

**LOCH OF SHINING WATERS**

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##### **Constitution of company**

- 1 The model articles of association as prescribed in Schedule 2 to The Companies (Model Articles) Regulations 2008 are excluded in respect of this company.

##### **Defined terms**

- 2 In these articles of association, unless the context requires otherwise:-
  - 2.1 “Act” means the Companies Act 2006;
  - 2.2 “charitable purpose” means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts;
  - 2.3 “electronic form” has the meaning given in section 1168 of the Act;
  - 2.4 “property” means any property, heritable or moveable, real or personal, wherever situated;
  - 2.5 “subsidiary” has the meaning given in section 1159 of the Act.
- 3 Any reference to a provision of any legislation (including any statutory instrument) shall include any statutory modification or re-enactment of that provision in force from time to time.

##### **Objects**

- 4 The organisation is established for as a social enterprise, and in particular, the objects are to: -
  - 4.1 advance citizenship and community development through the provision of a community resource site, with the aim to highlight local positive and negative developments to raise awareness to the wider online public, publishing of local news, highlighting planning applications and planning issues and promoting local democracy & transparency and encourage local open debate;

- 4.2 advance environmental protection and improvement by working on a variety of regeneration projects, capacity projects and raising environmental issues;
  - 4.3 advance education through the provision of media & environmental workshops for youths and other socially excluded individuals and groups;
  - 4.4 advance the arts, heritage and culture by gathering and centralising historical information about the local area, and providing consultancy and media design services;
  - 4.5 provide local non-profit groups with an online platform to help raise awareness of their groups, their social objectives, and all their latest local events, news, developments, and projects and to promote creativity and community ownership and community initiatives and the sharing of information within the community;
  - 4.6 advance such similar purposes, promote, establish, operate and/or support others in and develop any other projects, initiatives or activities for the benefit of the community as the directors may consider appropriate and to supply all such ancillary services and facilities as the directors may consider appropriate from time to time.
- 5 To The company's objects are restricted to those set out in article 4 (but subject to article 6).
  - 6 The company may add to, remove or alter the statement of the company's objects (in article 4; on any occasion when it does so, it must give notice to the registrar of companies and the amendment will not be effective until that notice is registered on the register of companies.

#### **Powers**

- 7 The Company may carry out any activity and do all such lawful things as may further the Company's objects and, in particular, but, without limitation, may borrow or raise and secure the payment of money for any purpose including for the purposes of investment or of raising funds.

#### **Restrictions on use of the company's assets**

- 8 The company shall ensure, subject to article 9: -
  - 8.1 that the income and property of the company shall be applied solely towards promoting the company's objects; (as set out in article 4);
  - 8.2 that no part of the income or property of the company shall be paid or transferred (directly or indirectly) to the member/directors of the company, whether by way of dividend, bonus or otherwise (subject to Article 9);
  - 8.3 no director of the company shall be appointed as a paid employee of the company; no director shall hold any office under the company for which a salary or fee is payable; and

- 8.4 no benefit (whether in money or in kind) shall be given by the company to any director except
- 8.4.1 repayment of out-of-pocket expenses; or
  - 8.4.2 reasonable payment in return for particular services (not being of a management nature) actually rendered to the company.
- 9 The company shall, notwithstanding the provisions of article 8, be entitled: -
- 9.1 to pay a rent not exceeding the market rent for premises let to the company by any member/director of the company;
  - 9.2 to make any transfer or payment to a member/director where such transfer or payment is made in direct furtherance of the purposes of the company; and
  - 9.3 to pay reasonable remuneration, and provide reasonable pension and/or benefits, to an Executive Director (as defined in article 53) in his/her capacity as an employee of the company.

### **General Structure**

- 10 The structure of the Company consists of the Directors who are also the Company's only members and comprise the Board. The Board have important powers under the constitution, take decisions on changes to the constitution itself, hold regular meetings, and generally control the activities of the Company; for example, without prejudice to the generality of the foregoing, the Board is responsible for monitoring and controlling the financial position of the Company.

### **Liability of Directors (Members)**

- 11 Each member/director undertakes that if the company is wound up while he/she is a member/director (or within one year after he/she ceases to be a member/director), he/she will contribute - up to a maximum of £1 - to the assets of the company, to be applied towards:
- 13.1 payment of the company's debts and liabilities contracted before he/she ceases to be a member/director;
  - 13.2 payment of the costs, charges and expenses of winding up; and
  - 13.3 adjustment of the rights of the contributories among themselves.
- 14 The Directors have certain legal duties under the Companies Act 2006 and under the Charities and Trustee Investment (Scotland) Act 2005; and clause 11 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

### **Qualification for Directorship**

- 15 The subscribers to the Memorandum are the first member/directors of the Company.
- 16 Directorship is open to all and no application for Directorship will be refused on other than reasonable grounds. There will be no discrimination on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex; sexual orientation, political or other opinion.
- 17 All members of the Company shall also be Directors.

### **Application for Directorship**

- 18 Any person who wishes to become a member/director must sign, and lodge with the company, a written application for Directorship.
- 19 The Directors may, where there are reasonable grounds to do so, refuse to admit any person to Directorship.
- 20 The directors shall consider each application for Directorship at the first directors' meeting which is held after receipt of the application; the directors shall, within a reasonable time after the meeting, notify the applicant of their decision on the application.
- 21 If an application has been refused, an appeal may be made in writing to the Directors, who shall consider the appeal at its next meeting after the appeal is received, and who shall respond in writing to the applicant within 21 days of the meeting. The Director's decision on such appeals is final.

### **Directorship subscription**

- 22 No Directorship subscription will be payable.

### **Register of Directors**

- 23 The directors shall maintain a register of directors, setting out the full name and address of each member/director, the date on which he/she was admitted to Directorship, and the date on which any person ceased to be a member/director.

### **Withdrawal from Directorship**

- 24 Any person who wishes to withdraw from Directorship shall sign, and lodge with the company, a written notice to that effect; on receipt of the notice by the company, he/she shall cease to be a member/director.

### **Termination of office**

- 25 A director shall automatically vacate office if:-
  - 25.1 he/she ceases to be a director through the operation of any provision of the Act or becomes prohibited by law from being a director;

- 25.2 he/she becomes incapable for medical reasons of fulfilling the duties of his/her office and such incapacity is expected to continue for a period of more than six months;
- 25.3 he/she ceases to be a member/director of the company;
- 25.4 he/she resigns office by notice to the company;
- 25.5 he/she is absent (without permission of the directors) from more than three consecutive meetings of the directors, and the directors resolve to remove him/her from office; or
- 25.6 he/she is removed from office by resolution (special notice having been given) in pursuance of section 168 of the Act.

### **Termination/transfer**

- 26 Directorship shall cease on death.
- 27 A member/director may not transfer his/her Directorship to any other person.

### **General meetings**

- 28 The directors shall convene an annual general meeting in each year (but excluding the year in which the company is formed); the first annual general meeting shall be held not later than 18 months after the date of incorporation of the company.
- 29 Not more than 15 months shall elapse between one annual general meeting and the next.
- 30 The business of each annual general meeting shall include a report by the chair on the activities of the company or any proposed resolutions.
- 31 The directors may convene an extraordinary general meeting at any time.
- 32 The directors must convene an extraordinary general meeting if there is a valid requisition by member/directors (under section 303 of the Act) or a requisition by a resigning auditor (under section 518 of the Act).

### **Notice of general meetings**

- 33 At least 14 clear days' notice must be given of general meetings.
- 34 The reference to "clear days" in article 33 shall be taken to mean that, in calculating the period of notice, the day after the notice is posted, (or, in the case of a notice sent by electronic means, the day after it was sent) and also the day of the meeting, should be excluded.
- 35 A notice calling a meeting shall specify the date, time and place of the meeting; it shall (a) indicate the general nature of the business to be dealt with at the meeting and (b) if a

special resolution (see article 36) (or a resolution requiring special notice under the Act) is to be proposed, shall also state that fact, giving the exact terms of the resolution.

- 36 A notice convening an annual general meeting shall specify that the meeting is to be an annual general meeting; any other general meeting shall be called an extraordinary general meeting.
- 37 Notice of every general meeting shall be given
- 37.1 in hard copy form
  - 37.2 in writing or, (where the individual to whom notice is given has notified the company of an address to be used for the purpose of electronic communication) in electronic form; or
  - 37.3 (subject to the company notifying member/directors of the presence of the notice on the website, and complying with the other requirements of section 309 of the Act) by means of a website.

#### **Special resolutions and ordinary resolutions**

- 38 For the purposes of these articles, a “special resolution” means a resolution passed by 75% or more of the votes cast on the resolution at a general meeting, providing proper notice of the meeting and of the intention to propose the resolution has been given in accordance with articles 33 to 37; for the avoidance of doubt, the reference to a 75% majority relates only to the number of votes cast in favour of the resolution as compared with the number of votes cast against the resolution, and accordingly no account shall be taken of abstentions or member/directors absent from the meeting.
- 39 In addition to the matters expressly referred to elsewhere in these articles, the provisions of the Act allow the company, by special resolution:
- 39.1 to alter its name;
  - 39.2 to alter any provision of these articles or adopt new articles of association;
  - 39.3 to voluntarily wind up the company.
- 40 For the purposes of these articles, an “ordinary resolution” means a resolution passed by majority vote (taking account only of those votes cast in favour as compared with those votes against), at a general meeting, providing proper notice of the meeting has been given in accordance with articles 33 to 37.

#### **Written resolutions**

- 41 A resolution agreed to in writing (including by e-mail) by all the Directors will be as valid as if it had been passed at an AGM or Board meeting; the date of the resolution will be taken to be the date on which the last member/director agreed to it and it must be unanimous.

## Procedure at general meetings

- 42 No business shall be dealt with at any general meeting unless a quorum is present; the quorum for a general meeting shall be three (3) of those individuals entitled to vote (each being a Director or a proxy for a Director).
- 43 If a quorum is not present within 15 minutes after the time at which a general meeting was due to commence - or if, during a meeting, a quorum ceases to be present - the meeting shall stand adjourned to such time and place as may be fixed by the chairperson of the meeting.
- 44 The chair of the company shall (if present and willing to act as chairperson) preside as chairperson of each general meeting; if the chair is not present and willing to act as chairperson within 15 minutes after the time at which the meeting was due to commence, the directors present at the meeting shall elect from among themselves the person who will act as chairperson of that meeting.
- 45 The chairperson of a general meeting may, with the consent of the meeting, adjourn the meeting to such time and place as the chairperson may determine.
- 46 Every member/director shall have one vote, which (whether on a show of hands or on a secret ballot) may be given either personally or by proxy.
- 47 Any member/director who wishes to appoint a proxy to vote on his/her behalf at any meeting (or adjourned meeting):
- 47.1 shall lodge with the company, at the company's registered office, a written instrument of proxy (in such form as the directors require), identifying the individual proxy appointed, which should be signed by him/her; or
- 47.2 shall send by electronic means to the company, at such electronic address as may have been notified to the member/directors by the company for that purpose, an instrument of proxy (in such form as the directors require);
- providing (in either case), the instrument of proxy is received by the company at the relevant address not less than 48 hours before the time for holding the meeting (or, as the case may be, adjourned meeting).
- 48 An instrument of proxy which does not conform with the provisions of article 47, or which is not lodged or sent in accordance with such provisions, shall be invalid.
- 49 A member/director shall not be entitled to appoint more than one proxy to attend on the same occasion.
- 50 A proxy appointed to attend and vote at any meeting instead of a member/director shall have the same right as the member/director who appointed him/her to speak at the meeting and need not be a member/director of the company.
- 51 The termination of a proxy's authority by the member/director appointing him does not invalidate the vote given or ballot demanded, unless the company receives notice of the



termination before the commencement of the meeting or adjourned meeting. Such notice should be received by the company at the company's registered office (or, where sent by electronic means, was received by the company at the address notified by the company to the member/directors for the purpose of electronic communications).

- 52 If there are an equal number of votes for and against any resolution, the chairperson of the meeting shall not be entitled to a casting vote.
- 53 A resolution put to the vote at a general meeting shall be decided on a show of hands unless a secret ballot is demanded by the chairperson (or by at least two persons present in person at the meeting and entitled to vote (whether as member/directors or proxies for member/directors); a secret ballot may be demanded either before the show of hands takes place, or immediately after the result of the show of hands is declared.
- 54 If a secret ballot is demanded, it shall be taken at the meeting and shall be conducted in such a manner as the chairperson may direct; the result of the ballot shall be declared at the meeting at which the ballot was demanded.

#### **Executive Director**

55 For the purposes of these articles, the Executive Director is a Director who is also an employee of the organisation, in the role of Managing Director or similar executive position. The Executive Director will not receive remuneration for being a Director but will be entitled to retain all remuneration, and pension and/or other benefits, paid or provided to them in their capacity as employees of the organisation, provided that: -

55.1 the Board agrees that it is in the interests of the Company for the services to be provided by the service provider for this amount;

55.2 the maximum amount of remuneration is set out in a written agreement(s) and is reasonable in the circumstances;

55.3 only a minimum of the Directors will receive remuneration under the agreement(s) once entered into;

55.4 the Director receiving the remuneration does not partake in any discussions regarding that remuneration.

#### **Appointment: Executive Directors**

56 The directors shall, at the first meeting of the directors which is held after the appointment of any individual to the post/s of General Manager or similar executive position, appoint that individual as a director ("an Executive Director") of the company.

57 An Executive Director shall continue to hold office as a director of the company unless and until he/she ceases (for whatever reason) to hold the post of General Manager or similar executive position.

## **Office bearers**

- 58 The directors may elect from among themselves a chair and a treasurer, and such other office bearers (if any) as they consider appropriate.
- 59 All of the office bearers shall cease to hold office at the conclusion of each annual general meeting, but shall then be eligible for re-election.
- 60 A person elected to any office shall cease to hold that office if he/she ceases to be a director, or if he/she resigns from that office by written notice to that effect.

## **Powers of directors**

- 61 Subject to the provisions of the Act and these articles, and subject to any directions given by special resolution, the company and its assets and undertaking shall be managed by the directors, who may exercise all the powers of the company.
- 62 A meeting of the directors at which a quorum is present may exercise all powers exercisable by the directors.

## **Conduct of Directors**

- 63 Each of the directors shall, in exercising his/her functions as a director of the company, act in the interests of the company; and, in particular, must: -
- 67.1 seek, in good faith, to ensure that the company acts in a manner which is in accordance with its objects;
  - 67.2 promote the success of the company;
  - 67.3 exercise independent judgement;
  - 67.4 act with the due care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
  - 67.6 in circumstances giving rise to the possibility of a conflict of interest between the company and any other party:-
    - 67.6.1 put the interests of the company before that of the other party, in taking decisions as a director;
    - 67.6.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the company and refrain from participating in any discussions or decisions involving the other directors with regard to the matter in question.

## **Personal interests**

- 64 A director who has a personal interest in any transaction or other arrangement which the company is proposing to enter into, must declare that interest at a meeting of the

directors; he/she will be debarred from voting on the question of whether or not the company should enter into that arrangement.

65 For the purposes of the preceding article, a director shall be deemed to have a personal interest in an arrangement if any partner or other close relative of his/hers **or** any firm of which he/she is a partner **or** any limited company of which he/she is a substantial shareholder or director (or any other party who/which is deemed to be connected with him/her for the purposes of the Act), has a personal interest in that arrangement.

66 Provided:

66.1 he/she has declared his/her interest; and

66.2 he/she has not voted on the question of whether or not the company should enter into the relevant arrangement

a director will not be debarred from entering into an arrangement with the company in which he/she has a personal interest and may retain any personal benefit which he/she gains from his/her participation in that arrangement.

67 The directors may be paid all travelling and other expenses reasonably incurred by them in connection with their attendance at meetings of the directors, general meetings, or meetings of committees, or otherwise in connection with the carrying-out of their duties.

#### **Procedure at directors' meetings**

68 Any director may call a meeting of the directors or request the secretary to call a meeting of the directors.

69 Questions arising at a meeting of the directors shall be decided by a majority of votes; if an equality of votes arises, the chairperson of the meeting shall have a casting vote.

70 No business shall be dealt with at a meeting of the directors unless a quorum is present; the quorum for meetings shall be determined at the discretion of the directors but shall never be less than three (3) individuals entitled to vote.

71 If at any time the number of directors in office falls below the number fixed as the quorum, the remaining director(s) may act only for the purpose of filling vacancies or of calling a general meeting.

72 Unless he/she is unwilling to do so, the chair of the company shall preside as chairperson at every directors' meeting at which he/she is present; if the chair is unwilling to act as chairperson or is not present within 15 minutes after the time when the meeting was due to commence, the directors present shall elect from among themselves the person who will act as chairperson of the meeting.

73 The directors may, at their discretion, allow any person who they reasonably consider appropriate, to attend and speak at any meeting of the directors; for the avoidance of doubt, any such person who is invited to attend a directors' meeting shall not be entitled to vote.

- 74 A director shall not vote at a directors' meeting (or at a meeting of a committee) on any resolution concerning a matter in which he/she has a personal interest which conflicts (or may conflict) with the interests of the company; he/she must withdraw from the meeting while an item of that nature is being dealt with.
- 75 A person shall be deemed to have a personal interest in a particular matter if any partner or other close relative of his/hers **or** any firm of which he/she is a partner **or** any limited company of which he/she is a substantial shareholder or director, has a personal interest in that matter.
- 76 A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he/she is not entitled to vote.

### **Delegation to sub-committees**

- 77 The directors may delegate any of their powers to any sub-committee consisting of one or more directors and such other persons (if any) as the directors may determine; they may also delegate to the chair of the company (or the holder of any other post) such of their powers as they may consider appropriate.
- 78 Any delegation of powers under article 77 may be made subject to such conditions as the directors may impose and may be revoked or altered.
- 79 The rules of procedure for any sub-committee shall be as prescribed by the directors.

### **Secretary**

- 80 The directors may appoint a company secretary, and on the basis that the term of office, remuneration (if any), and other terms and conditions attaching to the appointment of the company secretary shall be as determined by the directors; the company secretary may be removed by the directors at any time.

### **Minutes**

- 81 The directors shall ensure that minutes are made of all proceedings at general meetings, directors' meetings and meetings of committees; a minute of any meeting shall include the names of those present, and (as far as possible) shall be signed by the chairperson of the meeting.

### **Accounting records and annual accounts**

- 82 The directors shall ensure that proper accounting records are maintained in accordance with all applicable statutory requirements.
- 83 The directors shall prepare annual accounts, complying with all relevant statutory requirements.

## Notices

- 84 Any notice which requires to be given to a member/director under these articles shall be given either in writing or by electronic means; such a notice may be given personally to the member/director *or* be sent by post in a pre-paid envelope addressed to the member/director at the address last intimated by him/her to the company *or* (in the case of a member/director who has notified the company of an address to be used for the purpose of electronic communications) may be given to the member/director by electronic means.
- 85 Any notice, if sent by post, shall be deemed to have been given at the expiry of 24 hours after posting; for the purpose of proving that any notice was given, it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.
- 86 Any notice sent by electronic means shall be deemed to have been given at the expiry of 24 hours after it is sent; for the purpose of proving that any notice sent by electronic means was indeed sent, it shall be sufficient to provide any of the evidence referred to in the relevant guidance issued from time to time by the Chartered Institute of Secretaries and Administrators.

## Winding-up

- 87 If on the winding-up of the company any property remains after satisfaction of all the company's debts and liabilities, such property shall not be paid to or distributed among the member/directors of the company but shall instead be transferred to some other charity or charities (whether incorporated or unincorporated) or other asset locked body whose objects are altogether or in part similar to the objects of the company.
- 88 The charity or charities or asset locked body to which property is transferred under article 87 shall be determined by the member/directors of the company at or before the time of dissolution or, failing such determination, by such court as may have jurisdiction at that time.
- 89 To the extent that effect cannot be given to the provisions of articles 87 and 88, the relevant property shall be applied to some other charitable purpose or purposes.

## Indemnity

- 90 Every director or other officer or auditor of the company shall be indemnified (to the extent permitted by sections 232, 234, 235, 532 and 533 of the Act) out of the assets of the company against any loss or liability which he/she may sustain or incur in connection with the execution of the duties of his/her office; that may include, without prejudice to that generality, (but only to the extent permitted by those sections of the Act), any liability incurred by him/her in defending any proceedings (whether civil or criminal) in which judgement is given in his/her favour or in which he/she is acquitted **or** any liability in connection with an application in which relief is granted to him/her by the court from liability for negligence, default or breach of trust in relation to the affairs of the company.

91 The company shall be entitled to purchase and maintain for any director insurance against any loss or liability which any director or other officer of the company may sustain or incur in connection with the execution of the duties of his/her office, and such insurance may extend to liabilities of the nature referred to in section 232(2) of the Act (negligence etc. of a director).