

Company Number 09136180

The Companies Act 2006

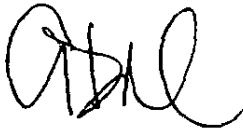
**SPECIAL RESOLUTION
OF
SMICoP LTD (the "Company")**

The following Special Resolution was duly passed on 29th November 2018.

SPECIAL RESOLUTION

A special resolution in accordance with section 283 of the Companies Act 2006:

That the draft articles of association in the form attached be and are adopted by the Company as its Articles of Association to the exclusion of and in substitution for the existing Articles of Association of the Company.



COMPANY SECRETARY



SMICOP Limited
(Company Number 9136180)
(the **Company**)

Articles of Association

Company limited by guarantee and not having a share capital.

As adopted by a special resolution passed on 29th November 2018.

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY GUARANTEE

ARTICLES OF ASSOCIATION

OF

SMICOP LIMITED

1 INTRODUCTION AND INTERPRETATION

- 1.1 SMICOP Limited (the **Company**) is a company limited by guarantee, being a company not having a share capital and in which the liability of its members is limited to such amount as the members undertake to contribute, in accordance with Article 2.4, to the assets of the Company in the event of its being wound up.
- 1.2 These Articles conform with the requirements of the Companies Act 2006 (the **Act**). The Companies (Model Articles) Regulation 2008 shall not apply to the Company and these Articles shall be the regulations of the Company.
- 1.3 Words and expressions used in these Articles bear the same meaning as those used in the Act, but so that any reference in these Articles to any provision of the Act or to any provision of any other act shall be deemed to include a reference to any statutory modification or re-enactment of that provision for the time being in force. References to a provision of the Gas Act 1986, the Electricity Act 1989 or the Licence Conditions (as defined below) shall be deemed to include a reference to any statutory modification or re-enactment of such provisions from time to time.
- 1.4 None of the objects set forth in any clause of these Articles shall be restrictively construed but the widest interpretation shall be given to each object, and none of the objects shall, *except where the context expressly so requires*, be in any way limited or restricted by reference to or inference from the terms of any other clause of these Articles, or by reference to or inference from the name of the Company.
- 1.5 None of the clauses of these Articles and none of the objects therein specified shall be deemed subsidiary or ancillary to any of the objects specified in any other such clause and the Company shall have as full a power to exercise each and every one of the objects specified in each clause of these Articles as though each clause contained the objects of a separate company.
- 1.6 The word "company" in these Articles, except used in reference to the Company shall be deemed to include any partnership or other body of persons, whether incorporated or unincorporated and whether domiciled in the United Kingdom or elsewhere.
- 1.7 In these Articles unless the context otherwise requires each of the following words and expressions shall have the following meanings:

Board means the board of Directors from time to time;

Budget means the budget setting out all anticipated costs that may be reasonably incurred by the Company in undertaking its activities and operating in an efficient and cost effective manner that achieves value for money;

Business Day means any day (other than a Saturday and Sunday) on which banks are generally open for normal business in London;

Code Administrator means the person who performs the functions of the SMICoP administrator in accordance with the provisions of SMICoP and the instructions of the Code Board;

Code Auditor means the person who performs the independent audits of compliance in accordance with the provisions of SMICoP;

Code Board means, from time to time, the SMICoP governance board appointed in accordance with the provisions of SMICoP;

Director means a director of the Company from time to time, and includes any person occupying the position of director, by whatever name called, and **Directors** shall be construed accordingly;

Domestic Customer means a Customer (as defined in the Licence Conditions) supplied or requiring to be supplied with gas and/or electricity at Domestic Premises but excludes such Customer insofar as such Customer is supplied or requires to be supplied at a premises other than Domestic Premises;

Domestic Premises means premises at which a supply of gas and/or electricity is taken wholly or mainly for a domestic purpose except where that premises is a Non-domestic Premises (as defined in the Licence Conditions);

Electricity Micro Business Consumer means Micro Business Consumer as defined in standard condition 7A of the Electricity Act 1989 standard conditions of electricity supply licence;

Funding Members has the meaning given in Article 3.3.2 and **Funding Member** shall mean any one of them;

Gas Micro Business Consumer means Micro Business Consumer as defined in standard condition 7A of the Gas Act 1986 standard conditions of gas supply licence;

Group means in relation to a company, that company, its Subsidiaries, any company of which it is a Subsidiary (its Holding Company) and any other Subsidiaries of any such Holding Company; and each company in a Group is a member of the Group. Unless the context otherwise requires, the application from time to time of this definition of Group to any company will apply to that company as it is at that time;

Holding Company and **Subsidiary** mean a "*holding company*" and "*subsidiary*" as defined in section 1159 of the Act and a company shall be treated, for the purposes only of the membership requirement contained in subsection 1159(1)(b) and (c), as a member of another company even if its shares that other company are registered in the name of (a) another person (or its nominee), by way of security or in connection with the taking of security, or (b) its nominee;

Incoming Member has the meaning given in Article 3.3.3;

Incoming Member Relevant Customers has the meaning given in Article 4.1.2(b);

Licence Conditions means the standard licence conditions for electricity and gas supply, including the licence conditions laid before Parliament in accordance with section 89(3) of the Energy Act 2008 which came into force on 26 August 2013;

Market Share Determination Date has the meaning given in Article 3.2.1;

Member has the meaning given in section 112 of the Act and **Members** shall be construed accordingly;

Micro Business Consumers means Gas Micro Business Consumers and Electricity Micro Business Consumers and **Micro Business Consumer** means any one of such person;

Quarter means the period beginning on a Quarter Day and ending immediately before the next Quarter Day;

Quarter Day means, in any year, each of 1 January, 1 April, 1 July and 1 October;

Relevant Customers means Domestic Customers and/or Micro Business Consumers and **Relevant Customer** means any one such person;

Relevant Supplier means a gas and/or electricity supplier which supplies gas and/or electricity to more than 50,000 Relevant Customers;

Secretary means the company secretary of the Company from time to time; and

Smart Metering Code of Practice (or "**SMICoP**") means the code of practice for the installation of Smart Metering Systems (as defined in the Licence Conditions) as required by the Licence Conditions.

2 PRELIMINARY

Objects

- 2.1 The Company's objects are to carry out the following objectives:
- 2.1.1 to procure, select and appoint a Code Administrator, from time to time and as may be requested by the Code Board;
- 2.1.2 to assist the Code Administrator in procuring and managing the Code Auditor from time to time and as may be requested by the Code Board in accordance with the provisions of SMICoP; and
- 2.1.3 to do all such other things as are incidental or conducive to the attainment of the above objects specified in this Article or any of them.

Powers

- 2.2 The powers of the Company shall only be exercised in furtherance of the objects of the Company as set out in Article 2.1 and shall include, without limitation, the powers:
- 2.2.1 to carry out any other trade or business whatsoever which can in the opinion of the Board be advantageously carried on in connection with or ancillary to the objects and activities specified in Article 2.1;
- 2.2.2 to establish arrangements for the purpose of ensuring that it is regularly provided with all appropriate advice that is:
- a) concerned with the means by which it can most efficiently and effectively achieve its objects; and
- b) procured from such persons, as selected by it, who have been reasonably determined to have expertise in matters that are relevant to, and will assist in, the efficient and effective achievements of its object;

- 2.2.3 to purchase or by any other means acquire and take options over any property whatsoever and any rights or privileges of any kind over or in respect of any property; and
- 2.2.4 to apply for, register, purchase, or by other means acquire and protect, prolong and renew, whether in the United Kingdom or elsewhere, any patents, patent rights, brevets d'invention, licences, secret processes, trade marks, designs, protections or concessions and to disclaim, alter, modify, use and turn to account and to manufacture under or grant licences or privileges in respect of the same, and to expend money in experimenting upon, testing and improving any patents, inventions or rights which the Company may acquire or propose to acquire.
- 2.3 Application of Funds
- 2.3.1 The income and property of the Company, from wherever derived, shall be applied solely towards the promotion of the objects of the Company as set forth in Article 2.1, and the conduct of the activities specified in Article 2.2, and subject to Article 12, no portion thereof shall be paid directly or indirectly, by way of dividend, bonus, or otherwise howsoever by way of profit to the Members or Directors.
- 2.4 Limited Liability and Winding-up
- 2.4.1 The liability of each Member is limited to £1, being the amount that each Member undertakes to contribute to the Company's assets if it should be wound up while he is a Member or within one year after he ceases to be a Member, for payment of the Company's debts and liabilities contracted before he ceases to be a Member and of the costs, charges and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves.
- 2.4.2 If upon the winding-up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, it shall be distributed to past and current Members in proportion to their contributions over the five years immediately prior to the winding-up or dissolution of the Company.
- 3 BUDGET, PROVISION OF SUPPLY DATA, AND FUNDING**
- 3.1 Budget
- 3.1.1 Each Budget other than the first Budget shall be for the period from 1 January to 31 December.
- 3.1.2 The Board shall review the Budget annually and propose the Budget to be recommended to the Members for approval by the Members in accordance with Article 3.1.4 Such Budget once approved by the Members shall constitute the Budget of the Company.
- 3.1.3 The Board may propose variations to the Budget including in relation to funding requirements in excess of the Budget, and recommend proposed variations to the Budget to the Members for approval by the Members in accordance with Articles 3.1.4. Such Budget once approved by the Members shall constitute the Budget of the Company.
- 3.1.4 The Budget shall require the approval of more than 50% of the Members whose voting rights have not been suspended pursuant to Article 3.4.

3.2 Provision of Relevant Customer data

3.2.1 The Company shall exercise its reasonable endeavours to procure (insofar as it lawfully may) preparation and delivery no later than 1 June in each year beginning 2018 (each such date being a **Market Share Determination Date**) from the Code Administrator of a report in such format as SMICoP may specify detailing the number of Relevant Customers supplied by each Member as at that Market Share Determination Date (including any Members who became a members of the Company on that Market Share Determination Date).

3.2.2 Any Member who does not comply with its obligations under SMICoP to supply information to the Code Administrator may by resolution of the Board have its voting rights suspended. Any suspension of voting rights pursuant to this Article 3.2.2 may be lifted by resolution of the Board.

3.3 Funding

3.3.1 The Members will contribute to the costs of the Company as set out in the Budget which:

(a) for Quarter beginning 1 October 2018 and ending 31 December 2018 and all preceding Quarters shall be divided equally between the Members and which shall be due and payable by way of financial contributions in four instalments payable on the Quarter Days, starting on 1 January of each year (or, where a Quarter Day is not a Business Day, the next Business Day following the Quarter Day); and

(b) for the Quarter beginning 1 January 2019 and all subsequent Quarters shall be funded by the Members as set out in the remaining provisions of this Article 3.3.

3.3.2 On each Quarter Day (or if such day is not a Business Day, the next Business Day) each Member who:

(a) is a member of the Company on that Quarter Day; and

(b) was a member of the Company on the immediately preceding Market Share Determination Date,

(Funding Members) shall pay to the Company an amount equal to £F (plus VAT (if applicable) at the prevailing rate from time time) in respect of the Quarter beginning on that Quarter Day, where, subject to Articles 3.3.3 and 4.1.3:

"A" means the aggregate costs of the Company to be funded by the Members as set out in the Budget of the year in which such Quarter Day falls

"B" means $A \div 4$

"C" means $(100 \div D) \times E$

"D" means the Secretary's determination of the aggregate number of Relevant Customers supplied by all Funding Members as at the immediately preceding Market Share Determination Date;

"E" means the Secretary's determination of the aggregate number of Relevant Customers supplied by such Funding Member as at the immediately preceding Market Share Determination

Date

"F" means $(B + 100) \times C$

3.3.3 If a person:

- (a) becomes a Member on a Quarter Day; or
- (b) became a Member in the Quarter immediately preceding that Quarter Day,

(in respect of that Quarter Day, an **Incoming Member**) for the purpose of determining the amount each Funding Member and each Incoming Member is obliged under Article 3.3.2 to pay on that Quarter Day (or if such day is not a Business Day, the next Business Day) in respect of the Quarter beginning on that Quarter Day:

- (c) "A" means the aggregate costs of the Company to be funded by the Members as set out in the Budget of the year in which such Quarter Day falls, less the aggregate of all Members funding already supplied to the Company under such Budget;
- (d) "B" means A (as adjusted by Article 3.3.3(c)):
 - (i) + 4, if such Quarter Day is 1 January;
 - (ii) + 3, if such Quarter Day is 1 April;
 - (iii) + 2, if such Quarter Day is 1 July; or
 - (iv) + 1, if such Quarter Day is 1 October;
- (e) "D" means the sum of:
 - (i) the Secretary's determination of the aggregate number of Relevant Customers supplied by all Funding Members other than the Incoming Member(s) as at the immediately preceding Market Share Determination Date; and
 - (ii) the Incoming Member Relevant Customers of the Incoming Member(s); and
- (f) "E" means:
 - (i) in respect of each Funding Member who is not an Incoming Member, the Secretary's determination of the aggregate number of Relevant Customers supplied by such Funding Member as at the immediately preceding Market Share Determination Date; and
 - (ii) in respect of each Incoming Member, the Incoming Member Relevant Customers of such Incoming Member.

3.3.4 If, in any year, the Budget for that year is varied pursuant to Article 3.1.3 and:

- a) as a consequence of such variation a Member has paid less than the amount due from such Member on any Quarter Day by reference to the varied Budget, such Member shall pay to the Company an amount equal the amount by which it underpaid within 20 Business Days of receiving a written request from the Company to do so;

- b) as a consequence of such variation a Member has paid more than the amount due from such Member on any Quarter Day by reference to the varied Budget, the Company shall within 20 Business Days of such variation repay to such Member an amount equal the amount by which it overpaid.

3.4 Any Member who has not paid amounts due from it pursuant to Article 3.3 shall:

3.4.1 be subject to the accrual of default interest at a rate of eight per cent (8%) above the Bank of England base rate, from (but excluding) the due date of payment to (and including) the date of actual payment;

3.4.2 incur an administration charge of £100.00; and

3.4.3 have its voting rights suspended until payment is made.

3.5 A Member's resignation from, disqualification from, or otherwise cessation of membership of the Company shall not:

3.5.1 entitle such Member to repayment of any payment made to the Company pursuant to Article 3.3; nor

3.5.2 terminate any obligation of such Member to make any payment due to the Company pursuant to Article 3.3 in respect of any period during which such person was a Member.

4 MEMBERS

4.1 Membership

4.1.1 Membership is open to any body corporate, partnership, association or any other group which the Board confirms is a Relevant Supplier as defined in the Licence Conditions.

4.1.2 Every person who wishes to become a Member shall deliver to the Company:

- (a) an application for membership, in such form as the Directors require, specifying whether he wishes to become a Member and giving reasons as to why he is eligible for such classification; and
- (b) a report (in such format as SMICoP may from time to time specify) detailing the aggregate number of Relevant Customers supplied by such person as at the first day of the month before the month in which the application referred to in Article 4.1.2(a) is delivered to the Company (such number being the number of the **Incoming Member Relevant Customers**),

and no person shall become a Member of the Company unless the Board has approved the application.

4.1.3 A person who becomes a Member between Quarter Days (but not on a Quarter Day) shall have no obligation to pay funds to the Company under Article 3.3.2 in respect of the Quarter in which such person became a Member.

4.2 Voting Rights

4.2.1 Subject to Article 3.4, Members shall have one vote at general meetings of the Company.

4.3 Resignation

- 4.3.1 A Member may at any time withdraw from the Company by giving to the Company at least three months' notice in writing in advance of the renewal date of its annual subscription. Membership shall be transferable with the agreement of the Board on such terms as the Board may specify and shall cease on death or dissolution of that Member.
- 4.3.2 A Member shall be deemed to have automatically tendered its resignation in the event of any of the following occurring:
- (a) its licence as a Relevant Supplier is revoked;
 - (b) it disposes of its licensed gas or electricity supply business; or
 - (c) it becomes insolvent or is otherwise unable to meet its debts as they fall due.
- 4.4 Disqualification
- 4.4.1 Membership shall be terminated by the Directors who shall pass a resolution to this effect in the event that:
- a) a Member is convicted of a criminal offence which makes it (in the opinion of the Board) no longer suitable to be a Member;
 - b) a Member is guilty of an act or conduct which brings the Company into disrepute and the Board acting unanimously reasonably considers the continued membership of that Member is no longer in the interest of the Company's other Members;
 - c) a Member provides materially inaccurate or misleading information in connection with its application for membership, unless such failure is capable of remedy and the position is remedied within 30 days; or
 - d) a Member fails to pay its subscription within 30 days of receipt of a notice requiring such payment.
- 4.4.2 Notwithstanding any other provision of these Articles, the Secretary of State may, in its sole discretion, issue a direction specifying the disapplication of the relevant Licence Conditions and as a result of such direction being issued, the Company will be disbanded on the date of the disapplication of the Licence Conditions, in which case any funds held by the Company will be returned to current and past Members in proportion to their contributions over the five years immediately prior to the disbanding of the Company.

5 DIRECTORS

- 5.1 The Board shall at all times be comprised as set out in this Article 5.
- 5.1.1 Each Member shall be entitled to appoint one person to be a Director save that where two or more Members belong to the same Group, that Members' Group shall only be entitled to appoint one person to be a Director. A Director appointed pursuant to this Article may at any time be removed from office by that appointing Member (or appointing Members' Group), who may appoint another such person in his place.
- 5.1.2 Each Director shall hold office until he is either removed pursuant to Article 5.1.1, dies, vacates office pursuant to Article 5.9, or retires in accordance with Article 5.8 whereupon the appointing Member (or appointing Members' Group) shall be entitled to re-appoint him (where he has resigned in accordance with Article 5.9 only) or appoint another Director in his place.

- 5.2 Powers of the Directors
- 5.2.1 Subject to the provisions of the Act, the Articles and to any directions given by special resolution of the Members, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company. A meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.
- 5.2.2 Without limitation to Articles 5.2.1 or the Directors' fiduciary or statutory duties, the Directors shall:
- (a) produce and maintain a plan for achieving the Company's objectives which meets the requirements of these Articles and the provisions of SMICoP (the **Plan**);
 - (b) implement the Plan;
 - (c) subject to and in accordance with Article 3 develop and produce an annual budget for the delivery of the Plan, which meets the requirements as set out in these Articles and the provisions of SMICoP;
 - (d) if requested to do so by the Code Board, produce a report on at least an annual basis (the **Annual Report**); and
 - (e) if requested to do so by the Code Board, publish the Plan, the Annual Budget and the Annual Report in accordance with these Articles and the provisions of SMICoP.
- 5.2.3 The Directors may by power of attorney or otherwise appoint any person to be the agent of the Company for specific purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.
- 5.2.4 Any such delegation may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered.
- 5.2.5 Subject to any such conditions, the proceedings of a committee with two or more Members shall be governed by the Articles regulating the proceedings of Directors so far as they are capable of applying.
- 5.3 Proceedings of Directors
- 5.3.1 Subject to the provisions of these Articles, the Directors may regulate their proceedings as they think fit.
- 5.3.2 The Board shall have the right to allow any other appropriate observers to attend Board meetings.
- 5.3.3 A Director may call a meeting of the Directors.
- 5.3.4 Except in extraordinary circumstances, all Directors shall be given not less than seven days' notice of meetings of the Board.
- 5.3.5 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they are in communication with each other.
- 5.3.6 All questions and resolutions of the Board arising at a meeting shall be decided by a simple majority of votes of the Directors present and participating at the meeting.

- 5.3.7 The quorum for the transaction of the business of the Directors shall be any three Directors. A person who holds office only as an alternate Director shall, if his appointer is not present, be counted in the quorum.
- 5.3.8 The continuing Directors or a sole continuing Director may act notwithstanding any vacancies in their number, but, if the number of Directors is less than the number fixed as the quorum, the continuing Directors or Director may act only for the purpose of filling vacancies or of calling a general meeting.
- 5.3.9 The Directors present may appoint one of their number to be chairman of the meeting who shall not have a casting vote.
- 5.3.10 All acts done by a meeting of Directors, or of a committee of Directors, or by a person acting as a Director shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment of any Director or that any one of them was disqualified from holding office, or had vacated office, or was not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director and had been entitled to vote.
- 5.3.11 A resolution in writing signed by all Directors entitled to receive notice of a meeting of Directors or of a committee of Directors shall be as valid and effective as if it had been passed at a meeting of Directors or (as the case may be) a committee of Directors duly convened and held. The resolution may consist of several documents in the right form, each signed by one or more of the Directors.
- 5.3.12 A resolution pursuant to Article 5.3.11 signed by an alternate Director appointed in accordance with Article 5.7 need not also be signed by his appointer and, if it is signed by a Director who has appointed an alternate Director, it need not to be signed by the alternate Director in that capacity.
- 5.3.13 Subject to Article 5.6.3 a Director may vote at any meeting of the Directors or of any committee of the Directors, on any resolution, notwithstanding that it in any way concerns or relates to a matter in which he has, directly or indirectly, any kind of interest whatsoever, and if he shall vote on any such resolution as aforesaid his vote shall be counted; and in such resolution as aforesaid he shall (whether or not he shall vote on the same) be taken into account in calculating the quorum present at the meeting.
- 5.3.14 If a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any Director other than himself shall be final and conclusive.
- 5.4 Remuneration of Directors
- 5.4.1 The Directors shall not be entitled to remuneration.
- 5.5 Directors' expenses
- 5.5.1 The Directors shall not be entitled to be paid any expenses incurred in connection with the discharge of their duties.
- 5.6 Directors' interests

- 5.6.1 Subject to provisions of the Act and Article 5.6.3 and provided that he has disclosed to the Directors the nature and extent of any material interest of his, a Director notwithstanding his office:-
- a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;
 - b) may be a Director or other officer of, or be employed by, or a party to any transaction or arrangement with, or otherwise interested in any body corporate promoted by the Company or in which the Company is otherwise interested; and
 - c) shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.
- 5.6.2 For the purposes of Article 5.6.1:
- (a) a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and the extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified; and
 - (b) 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.
- 5.6.3 A Director may vote on a matter in which his appointing Member (or appointing Members' Group) has a material interest unless another Director objects to such Director voting and it would contravene either European Union or United Kingdom competition law, or the objects set out in Article 2.1, if the Director were to vote on the matter.
- 5.7 Alternates
- 5.7.1 Each Director shall have the power, subject to Article 5.7.2, to appoint any individual to be his alternate. The Board shall have the right to veto such appointment. Each Director may at his discretion remove an alternate so appointed by him. Any appointment or removal of an alternate shall be effected by notice in writing executed by the appointer and tendered at a meeting of the Board. If his appointer so requests, an alternate shall be entitled to receive notice of all meetings of the Board which take place while his appointer is a Director. An alternate shall also be entitled to attend and vote at any such meeting of the Board at which the Director appointing him is not personally present and at the meeting to exercise and discharge all the functions, powers and duties of his appointer as if a Director.
- 5.7.2 The appointing Director shall ensure that any alternate has any necessary approvals to represent the persons or bodies the Director represents and complies with any relevant requirement of Licence Conditions.
- 5.7.3 Every person acting as an alternate shall exercise the voting rights of his appointer. Execution by an alternate of any resolution in writing of the Board shall, unless the notice of his appointment provides to the contrary, be as effective as execution by his appointer.

5.7.4 References in these Articles to a Director shall, unless the context otherwise requires, include his duly appointed alternate.

5.8 Retirement

5.8.1 Each Director shall retire from office at the next annual general meeting of the Company following the date that is two years after his appointment or election, as the case may be.

5.8.2 A retiring Director shall be eligible for re-election or reappointment, as the case may be.

5.8.3 The office of a Director shall be vacated if he resigns his office by notice in writing to the Company.

5.9 Disqualification and removal

5.9.1 The office of a Director shall be vacated if:-

(a) he ceases to be a Director by virtue of any provision of the Act or he becomes prohibited by law from being a Director;

(b) he becomes bankrupt or makes any arrangement or composition with his creditors generally;

(c) he becomes incapable by reason of illness, injury or mental disorder of managing his own affairs;

(d) he fails (without formal leave of absence from the Directors) to attend three consecutive meetings that have been duly convened but have not been held as a result of a lack of quorum due to his (or his alternate's) non-attendance; or

(e) he fails to act or perform in a professional manner.

6 **RESERVED MATTERS**

6.1 The Company shall not take any of the actions set out below without the approval of 75% or more of all Members validly exercising a right to vote on such action whose voting rights have not been suspended pursuant to Article 3.4:

6.1.1 any change to the Articles;

6.1.2 the sale of a material part of the Company's business; or

6.1.3 any resolution that could, in the opinion of the Board acting reasonably, cause a Member to be in breach of its Licence Conditions or have a material adverse effect on a Member's ability to comply with the terms of its licence.

7 **MEETINGS**

7.1 General

7.1.1 In every calendar year the Company shall hold a general meeting as its annual general meeting.

7.1.2 The Directors shall determine the time and place of the annual general meeting.

- 7.1.3 Every annual general meeting shall be held not more than 15 months after the last one.
- 7.1.4 All general meetings other than annual general meetings shall be extraordinary general meetings.
- 7.1.5 An extraordinary general meeting may at any time be convened by the Directors.
- 7.1.6 On the requisition of Members pursuant to the provisions of the Act, the Directors shall forthwith proceed to convene an extraordinary general meeting for a date not later than 4 weeks after receipt of requisition. If there are not within the United Kingdom sufficient Directors to call a general meeting, any Director or any Member of the Company may call a general meeting.
- 7.1.7 Subject to Article 7.1.6 above, the Directors shall determine the time and the place of an extraordinary general meeting.
- 7.2 Notice of General Meetings
- 7.2.1 The Company shall give notice in writing to all Members of the holding of a general meeting.
- 7.2.2 The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify the meeting as such.
- 7.2.3 The Company shall give the following periods of notice;
- (a) for an annual general meeting at least 21 days' notice;
 - (b) for a general meeting at which there is to be proposed a resolution appointing a person as a Director, at least 21 days' notice;
 - (c) for a general meeting convened to pass a special resolution at least 21 days' notice; and
 - (d) for every other general meeting at least 14 days' notice.
- 7.2.4 A general meeting may be called by shorter notice if it is so agreed:-
- (a) in the case of an annual general meeting, by all the Members entitled to attend and vote thereat; and
 - (b) in the case of any other meeting by a majority in number of the Members having a right to attend and vote being a majority of not less than 95% of the Members of the Company.
- 7.2.5 The period of notice to be given for a general meeting shall exclude the day in which the notice is given and the day of the meeting.
- 7.2.6 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.
- 7.3 Proceedings of General Meetings
- 7.3.1 No business shall be transacted at any meeting unless a quorum is present. The quorum for the transaction of business at a general meeting shall be such number of Members present in person or by proxy, who together are not less than 75% of all the then Members.

- 7.3.2 If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Directors may determine.
- 7.3.3 Directors present shall elect one of their number to be chairman, and if there is only one Director present and willing to act, he shall be chairman but he shall not have a casting vote.
- 7.3.4 If no Director is willing to act as chairman, or if no Director is present within 15 minutes after the time appointed for the holding of the meeting, the Members present shall choose one of their number to be chairman who shall not have a casting vote.
- 7.3.5 The chairman may, with the consent of a meeting at which a quorum is present, adjourn the meeting from time to time and from place to place. He shall do so if directed by the meeting.
- 7.3.6 No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.
- 7.3.7 When a meeting is adjourned for 14 days or more, at least 7 clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.
- 7.3.8 A resolution put to the vote of a general meeting shall be decided on a show of hands unless a poll is demanded under Article 7.3.10 before or upon the declaration of the result of the show of hands.
- 7.3.9 Subject to Article 7.3.8, following a show of hands, a declaration by the chairman of a general meeting that a resolution has been carried, that it has been carried unanimously or by a particular majority, or that it has been lost or lost by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive.
- 7.3.10 Subject to the provisions of the Act, a poll may be demanded by at least two Members having the right to vote at the meeting; and a demand by a person as proxy for a Member shall be the same as a demand by the Member.
- 7.3.11 The chairman at a general meeting shall decide the time, the place and the manner of holding the poll, not being more than 30 days after the poll is demanded.
- 7.3.12 The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 7.3.13 The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.
- 7.3.14 The demand for poll shall not prevent the continuance of a meeting or the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

- 7.3.15 Notice shall be given specifying the time and place at which the poll is to be taken;
- (a) in the case of a poll to be taken more than 5 days after it is demanded, at least 2 days' notice;
 - (b) in the case of a poll to be taken more than 3 days, but less than 5 days, after it is demanded, at least 24 hours' notice;
 - (c) in the case of a poll to be taken less than 3 days after it is demanded, such notice as the Directors determine.

7.4 Votes of Members

7.4.1 A Member may appoint another person as proxy to attend a general meeting of the Company and vote instead of him. A proxy need not be a Member of the Company.

7.4.2 Every Member shall have one vote:-

- (a) on a show of hands if present in person or by proxy at a general meeting of the Company;
- (b) on a poll if present at a general meeting of the Company in person or by proxy; and
- (c) on a poll taken by postal ballot.

7.4.3 The appointment of a proxy shall be in writing, executed by or on behalf of the appointer and shall be in any form which is usual or which the Directors may approve.

7.4.4 The written appointment of a proxy (together with any document such as a power of attorney under which it is signed) shall:

- (a) be deposited at the registered office of the Company not less than 48 hours before the time for holding the meeting at which the person named in the instrument proposes to vote;
- (b) in the case of a poll to be taken more than 48 hours after it is demanded, be deposited at the registered office of the Company at least 24 hours before the time appointed for taking the poll; or
- (c) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting for which the poll was demanded and handed to the chairman of the meeting or to any Director, and
- (d) an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

7.4.5 As an alternative to being deposited at the registered office of the Company, a written appointment of proxy may be deposited at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting not less than 48 hours before the time for holding the meeting at which the person named in the instrument proposes to vote.

7.4.6 A vote exercised or poll demanded by proxy or by the duly authorised representative of a corporation is valid even if the proxy or authorisation has been revoked or ended in some other way, unless notice of its revocation or termination

was received before the start of the meeting at which the vote is exercised or (when the poll is not taken on the same day as the meeting) before the time appointed for taking the poll.

- 7.4.7 A resolution in writing signed by the required percentage of Members or of any group of Members shall be as valid and effective as if it had been passed at a general meeting or a meeting of the relevant group of Members.

8 NOTICES

- 8.1 Any notice to be given to or by any person pursuant to the Articles shall be in writing except that a notice calling a meeting of the Directors need not be in writing.
- 8.2 The Company may give any notice to a Member:-
- 8.2.1 personally;
- 8.2.2 by sending it by post in a pre-paid envelope addressed to a Member's address as it appears in the register of Members or to a person's last known address;
- 8.2.3 by leaving it at the address referred to in Article 8.2.2; or
- 8.2.4 by any appropriate means for sending written material by methods of telecommunications (including email).
- 8.3 A person whose address is not within the United Kingdom and who gives to the Company an address within the United Kingdom at which notices may be served is entitled to service of notices at that address, or, if they so request in writing, at their overseas address.
- 8.4 A Member present, either in person or by proxy at any meeting of the Company shall be deemed to have received notice of the meeting, and where requisite, of the purposes for which it was called.
- 8.5 Any notice shall be deemed served on or delivered to the intended recipient:
- 8.5.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five Business Days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five Business Days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
- 8.5.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address; and
- 8.5.3 if properly addressed and sent or supplied by electronic means, two hours after the document or information was sent or supplied.
- 8.6 For the purposes of Article 8.5, no account shall be taken of any part of a day that is not a Business Day; and in proving that any notice was properly addressed, it shall suffice to show that the notice was addressed to an address permitted for the purpose by the Act.

9 **MINUTES**

- 9.1 Minutes shall be kept recording the proceedings and resolutions of meetings of the Company, and of the Directors, and of committees of Directors, including the names of the Directors present at each such meeting.

10 **ACCOUNTS**

- 10.1 Proper accounts and records of the Company shall be kept.
- 10.2 Arrangements for audit and presentation of accounts at the annual general meeting, and for rights of Members to inspect the accounts and books shall be determined by the annual general meeting.

11 **SEAL**

- 11.1 The Directors shall decide whether the Company has a seal.
- 11.2 If the Company has a seal:
- 11.2.1 it shall only be used by the authority of the Directors or of a committee of Directors authorised by the Directors; and
- 11.2.2 the Directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by two Directors.

12 **INDEMNITY**

- 12.1 Directors and officers of the Company (excluding auditors) (in this Article referred to as "The Appropriate Officers of the Company") shall be indemnified out of the funds of the Company against any liability, loss or expenditure incurred in defending any civil or criminal proceedings that relate to anything done or omitted to be done (as well as anything alleged to be done or omitted to be done) in the course of or arising out of their role with, responsibilities to or duties for the Company.
- 12.2 The indemnity shall apply to cases where judgement is given in favour of the Appropriate Officers of the Company or where those officers are acquitted and to cases that are disposed of without any finding or admission of guilt, dishonesty or fault on the part of the Appropriate Officers of the Company. The indemnity shall apply to any liabilities, loss or expenditure incurred in connection with any application in which relief is granted by the court for liability in respect of any such act or omission.
- 12.3 The Appropriate Officers of the Company shall be indemnified out of the funds of the Company against liability for damages, costs and other liability incurred by them or which they may become liable to pay for defamation or slander of goods. But the indemnity shall not apply if at the time of the publication of the matter complained of they knew that the matter was defamatory and did not reasonably believe that there was a good defence to any action brought upon it.
- 12.4 The Board may purchase and maintain insurance at the expense of the Company for the benefit of the Appropriate Officers of the Company against any liability that may arise or loss or expenditure incurred in relation to anything done or omitted to be done (or alleged to have been done or omitted to be done) by Appropriate Officers of the Company either in the course of the administration of the affairs of the Company or undertaken in breach of trust but under an honest mistake.

13 **CONFIDENTIALITY**

13.1 In this Article, **Confidential Information** means any information which the Company and/or the Secretary receives relating to the number of Relevant Customers of a Relevant Supplier.

13.2 Neither the Company nor the Secretary shall

13.2.1 use Confidential Information for any purpose other than as required or expressly permitted under this Articles; nor

13.2.2 authorise access to nor disclose any Confidential Information except:

- (a) to an officer, employee or professional adviser of the Company acting in the proper course of such person's duties and whose function requires such person to have such Confidential Information; and/or
- (b) where it is required to be disclosed by any applicable law or regulation or by any court or governmental or administrative authority competent to require the same.