

Consolidated ESA10 amendments to standard form NPD articles of association

13 February 2015

Mandatory NPD Articles of Association

~~Version 2: June 2012~~

SCOTTISH
FUTURES
TRUST

Definitions

“A Director”	has the meaning given in Article [7.57-58-5]
“AA Director”	has the meaning given in Article [7.27-28-2]
“AB Director”	has the meaning given in Article [7.37-38-3]
“A Share”	has the meaning give in Article [11.111-112-1]
“A Shareholder”	means a Holder of an A Share
“Act”	means the Companies Act 2006
“Agreed B Director Job Description”	means the job description for the role of B Director set out in Appendix [2] to these Articles, as amended from time to time in accordance with Article [7.147-148-14]
“Agreed B Director Letter of Appointment”	means the letter set out in Appendix [3] to these Articles, as amended from time to time in accordance with Article [7.147-148-14]
“Agreed Order of Priorities”	means the agreed order of priorities adopted in accordance with Article [3.13-14-1] , as amended from time to time in accordance with Article [3.23-24-2]
“Agreement”	means the agreement relating to the Project between the Company and the Authority dated on or around the date of the resolution adopting these Articles
“Alternate Director”	has the meaning given in Article [10.140-141-1]
“Associate”	means <ul style="list-style-type: none">(a) in respect of any body corporate:<ul style="list-style-type: none">(i) any other body corporate which is a subsidiary undertaking or a parent undertaking of such body corporate or a subsidiary undertaking of any parent undertaking of such body corporate;(ii) any other body corporate of which that body corporate is a director;(iii) any body corporate in the same group as such body corporate; and(iv) any employee or director of that body corporate or of any body corporate in the same group;

- (b) in respect of a partnership that is a legal person under the law by which it is governed:
 - (i) any body corporate of which that partnership is a director;
 - (ii) any employee of or partner in that partnership; and
 - (iii) any person who is an associate of a partner in that partnership;
- (c) in respect of a partnership which is not a legal person under the law by which it is governed, any person who is an associate of any of the partners;

(and such that, in relation to a limited liability partnership, references in this definition to "**director**" shall be deemed to be references to "**member**")

“Authority”

means []

“Articles”

means the Company’s articles of association in force from time to time

“B Director”

means the Director appointed pursuant to Article [\[7.67-69-6\]](#) or (as the case may be) Article [\[7.107-108-10\]](#)

“B Director Criteria”

means the following requirements:

- (a) the relevant candidate for such role is not:
 - (i) engaged in providing significant consultancy services to the Nominator; and/or
 - (ii) employed by or a director of, or engaged in providing any significant consultancy services to, the Authority or any shareholder of Hold Co;

but on the understanding that he may (for the avoidance of doubt) be an employee and/or a director of the Nominator;

- (b) the Nominator, acting reasonably and having regard to the representations of the A Shareholders, is satisfied that the relevant candidate substantially meets the criteria set out in the Agreed B Director Job Description;

	(c) the relevant candidate has consented to such appointment; and
	(d) the relevant candidate is not disqualified from acting as a director
“B Director’s Letter of Appointment”	means a letter of appointment issued by the Company to the B Director, in terms consistent with the wording in the Agreed B Director’s Letter of Appointment
“B Share”	has the meaning given in Article [11.111-112.1]
“B Shareholder”	means the Holder of the B Share
“Board”	means the board of directors of the Company
“Chairman”	has the meaning given in Article []
“Conflict Situation”	means any situation or matter (other than one which cannot reasonably be regarded as likely to give rise to a conflict of interest) in which any Director has or could have a direct or indirect interest that conflicts, or possibly might conflict, with the interests of the Company including (without limitation) any such situation or matter which relates to the exploitation of any property, information or opportunity (irrespective of whether the Company could take advantage of the property, information or opportunity)
“Consultants’ Appraisal”	means a report from a firm of consultants commissioned pursuant to Article [3.16]
“Counterparty”	has the meaning given in Article [6.56-57.7]
“Director”	means a director of the Company from time to time
“Document”	includes, unless otherwise specified, any document sent or supplied in Electronic Form
“Electronic Form”	has the meaning given in section 1168 of the Act
“End Date”	means the latest of (i) the expiry of the Project Term (ii) the date upon which the Company has satisfied in full all of its liabilities in respect of the Loan Stock and any other loans made by Hold Co to the Company and (iii) the Secured Finance Liabilities Discharge Date and (iv) the date upon which the Company has no outstanding obligations or liabilities to, or outstanding liabilities or obligations due to it by, any third party which could (in any such case) have any direct or indirect financial effect on any shareholder of Hold Co or any Associate of any such shareholder

“Facility Agreement”	means the [facility agreement], dated on or around the date of the resolution adopting these Articles, among the Company, Hold Co and [] in its own right and as [Agent and Security Trustee for the Lenders (as defined therein)]
“Facilities”	has the meaning given in the Agreement
“Funding Agreements”	means, at any given time, the agreements in force at that time relating to the provision of funding to the Company in connection with the Project;
“Hold Co”	means [] or (in substitution) any successor entity as the Holder of the A Shares
“Hold Co A Shares”	means A shares as a class in Hold Co
“Hold Co B Shares”	means B shares as a class in Hold Co
“Holder”	in relation to Shares means the person whose name is entered in the register of members as the holder of the Shares
“Loan Stock”	means loan stock issued by the Company
“Loan Stock Holder”	means a holder of Loan Stock from time to time
“Net Present Value”	has the meaning given in the Agreement
“Nominator”	means Scottish Futures Trust Limited, a company incorporated in Scotland (with registered number SC348382) and having its registered office at 1 st Floor, 11-15 Thistle Street, Edinburgh EH2 1DT, or such other person as may be nominated by the Scottish Ministers from time to time
“Observer”	has the meaning given in Article [5.155-156.16]
“Project”	means []
“Project Term”	has the meaning given in the Agreement
“Qualifying Refinancing”	has the meaning given in the Agreement
“Refinancing”	has the meaning given in the Agreement
“Refinancing Gain”	has the meaning given in the Agreement
“Refinancing Notice”	means a notice given by the B Director pursuant to Article [3.3]

“Relevant Documents”	has the meaning given in the [Facility Agreement] and each is a “Relevant Document” ¹
“Reserved Matters”	means the matters specified in Appendix [1] to these Articles
“Secured Finance Liabilities Discharge Date”	means the date upon which the [Security Trustee (as defined in the Facility Agreement)] determines in Writing that the [Indebtedness] of the Company and Hold Co to the [Secured Creditors (as defined in the Facility Agreement)] under the [Finance Documents (as defined in the Facility Agreement)] has been fully and irrevocably paid or discharged and no such further [Indebtedness] is capable of becoming outstanding under such Finance Documents]
“Senior Funding Agreements”	has the meaning given in the Agreement
“Shares”	means shares in the Company
“Share Pledge”	means any pledge or other competent security granted over A Shares from time to time pursuant to a Funding Agreement
“Shareholder”	means a person who is the Holder of a Share
“Specified Place”	has the meaning given in Article [14.114-115-1]
“Subordinated Funding Agreements”	has the meaning given in the Agreement
“Surplus”	has the meaning given in the Agreement; and “Surpluses” shall be interpreted accordingly
“Surplus Payment”	means a payment of Surplus by the Company pursuant to clause [36] of the Agreement
“Surplus Payment Date”	means a payment of Surplus by the Company pursuant to clause [36] of the Agreement <u>has the meaning given in the Agreement</u>
“Transaction Document”	means (a) each Relevant Document in its form as at the date of execution of the Agreement or as amended in accordance with the requirements of clause [] of the Agreement and/or clause [] of the [Facility Agreement] and, where applicable, the provisions of these Articles or (where the context so permits) (b) each new document entered into in substitution for a Relevant Document which has terminated (or in substitution for a new document falling within this paragraph (b) which

¹ To include all project documents (including subcontracts etc) and funding documents to which the Company is party

has terminated) where such new document is entered into in accordance with the requirements of clause [] of the Agreement and/or clause [] of the [Facility Agreement] and, where applicable, the provisions of these Articles

“Trigger Event”

means:

- (a) breach of a legal duty (applying under the general law) incumbent on any Director; or
- (b) breach of any law binding upon the Company, its Shareholders, Loan Stock Holders or Directors; or
- (c) breach of any rules of any regulatory regime to which the Company, its Shareholders, Loan Stock Holders or Directors are subject; or
- (d) breach of any Transaction Document; or
- (e) failure to comply with the Agreed Order of Priorities;

“Users’ Group”

has the meaning given in Article [\[4.14-15-1\]](#)

“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.

Articles

1. Powers of Directors

1.1 For the avoidance of doubt, the Shareholders shall not be entitled (whether by special resolution or otherwise):

1.1.1 to alter the scope of the Directors' powers or functions; or

1.1.2 to require the Directors to act in a specified manner or issue any other direction to the Directors in relation to the exercise of any of their powers.

~~1.2 The Directors shall not, without the consent in Writing of the B Director, exercise the powers of the Company to implement any change to the insurance arrangements which would increase the level and/or scope of cover beyond that expressly required by any Transaction Document;~~

~~1.31.2~~ Subject to ~~Article 1.2 and~~ the provisions of the Act, the company and its assets and undertaking shall be managed by the Directors, who may exercise all the powers of the Company.

~~1.41.3~~ A meeting of the Directors at which a quorum is present may, subject to the provisions of these Articles, exercise all powers exercisable by the Directors.

~~2. Role of B Director~~

~~The A Directors shall note that the B Director is intended to have the following key roles (on the understanding that the A Directors shall not be under any obligation to ensure or verify that the B Director is in fact performing such roles):~~

~~2.1 _____ initiating a Refinancing as provided for in Articles [3.3 to 3.12]; and~~

~~2.2 _____ initiating and managing any proposal (as provided for in Articles [3.13 to 3.23]) which is intended to increase the level of profits available to maximise Surpluses.~~

~~3.2 Maximisation of Financial Performance~~

~~3.12.1~~ The Directors will be considered to be acting in the way most likely to promote the success of the Company for the benefit of the members as a whole by

~~3.1.12.1.1 _____ seeking to achieve the maximum sustainable profits available for making Surplus Payments; and~~

~~3.1.22.1.2 _____ provided that no Trigger Event would arise as a result, and subject to the obligations and restrictions on the Company set out in the Senior Funding Agreements and the Subordinated Funding Agreements, by paying to the Authority (or such other party as the Authority may, in its absolute discretion, direct) the Surplus available as at each Surplus Payment Date within 30 Business Days of the relevant Surplus Payment Date.~~

~~3.2 _____ With reference to Article [3.1.2], the B Director shall have the power to postpone any such payment if he considers it appropriate to do so.~~

~~3.3 If the B Director (acting reasonably) considers that there are funding terms generally available in the market which would be more favourable than those reflected in the Funding Agreements, the B Director may issue a notice in Writing to the Company~~

~~3.3.1 setting out in reasonable detail the grounds upon which the B Director believes such funding terms to be available; and~~

~~3.3.2 requiring the Company to request potential funders to provide terms for a potential Refinancing~~

~~(a "Refinancing Notice"):~~

~~3.4 The A Directors and the B Director shall meet to discuss the Refinancing Notice within 28 (twenty-eight) days and shall consider at that meeting the evidence available regarding the availability of funding terms for a potential Refinancing.~~

~~3.5 The B Director shall be entitled to withdraw a Refinancing Notice at any time.~~

~~3.6 If the B Director serves a Refinancing Notice then (unless and until the Refinancing Notice is withdrawn by the B Director pursuant to Article [3.5]) the Company shall:~~

~~3.6.1 act promptly, diligently and in good faith with respect to the potential Refinancing; and~~

~~3.6.2 subject to Article [3.7] use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing;~~

~~and, as soon as reasonably practicable after the meeting of the A Directors and the B Director pursuant to article 3.4,~~

~~3.6.3 either:~~

~~(a) provide to the B Director (copied to the B Shareholder) (i) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of the B Director that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in Article [3.6.2] and (ii) initial drafts of any changes to the Agreement (including any adjustments in relation to potential compensation on termination) which might be required to give effect to the proposed Refinancing; or~~

~~(b) if the Company (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Funding Agreements in accordance with the preceding requirements of this Article [3.6], provide evidence to the reasonable satisfaction of the B Director for such belief along with evidence to the reasonable satisfaction of the B Director that the Company has complied with its obligations under the preceding provisions of this Article [3.6].~~

~~3.7 With reference to Article [3.6.2] the Company:~~

~~3.7.1 need use its reasonable endeavours to obtain terms from existing and/or new lenders which would be likely to generate only a positive Refinancing Gain after~~

~~the deduction of costs in accordance with the provisions of [paragraph 7 of part 23] of the schedule to the Agreement; and~~

~~3.7.2 need not provide, pursuant to Article [3.6.3(a)], details of any Refinancing which a prudent board of directors of a company operating the same business in the United Kingdom as that operated by the Company, in similar circumstances, would not consider to be in the best interests of that company.~~

~~3.8 If the B Director (acting reasonably) considers that the Company is failing to use reasonable endeavours to progress and complete the matters contemplated in Article [3.6], the B Director (acting alone) shall have power to instruct professional advisers and/or take such other steps as the B Director may reasonably consider appropriate (in each case, in name of the Company and at the Company's expense) to perform the obligations of the Company under that Article.~~

~~3.9 Following receipt of the relevant evidence under paragraph (a) or (b) of Article [3.6.3], the B Director shall (with the prior written consent of the B Shareholder and subject to Article [3.12] below) either:~~

~~3.9.1 instruct the Company to implement the proposed Refinancing in accordance with Article [3.11]; or~~

~~3.9.2 instruct the Company to discontinue work in relation to the proposed Refinancing.~~

~~3.10 If the B Director is not satisfied (acting reasonably):~~

~~3.10.1 that the terms reflected in the financial model provided to him in pursuance of paragraph (a) of Article [3.6.3] represent the most favourable available terms for potential Refinancing; or (as the case may be)~~

~~3.10.2 that it is not possible to obtain funding terms which are more favourable than those reflected in the Funding Agreements in accordance with the requirements of Article [3.6];~~

~~the B Director (acting alone) shall have power to instruct professional advisers and/or take such other steps as the B Director may reasonably consider appropriate (in each case, in name of the Company and at the Company's expense) to take the steps contemplated in Articles [3.6.1 to 3.6.3] and Article [3.9] shall then apply in respect of the evidence which is provided to him (on completion of those steps) under paragraph (a) or (b) of Article [3.6.3].~~

~~3.11 If the B Director instructs the Company to implement the proposed Refinancing~~

~~3.11.1 the Company shall as soon as reasonably practicable use all reasonable endeavours to procure that such proposed Refinancing is implemented;~~

~~3.11.2 such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and~~

~~3.11.3 the provisions of [part 23] of the schedule to the Agreement shall apply (including, for the avoidance of doubt, the requirement to obtain the prior written consent of the Authority in accordance with [paragraph 1 of part 23] of the schedule to the Agreement).~~

- ~~3.12 The B Director shall be entitled to issue a Refinancing Notice under Article [3.3] at any time, but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under Article [3.5] will be taken to have been issued for the purpose of this Article [3.12].~~
- ~~3.13 Subject to Articles [3.19 to 3.21], the Company shall take such action as the B Director may direct to secure cost efficiencies or otherwise increase the net financial performance of the Company, provided that no Trigger Event would arise as a result and subject to the obligations and restrictions on the Company set out in the Senior Funding Agreements and/or the Subordinated Funding Agreements.~~
- ~~3.14 For the avoidance of doubt, the provisions of Article [3.13] and Articles [3.15 to 3.21] shall not apply in relation to any action to increase the net financial performance of the Company through Refinancing (which shall be governed by the provisions of Articles [3.3 to 3.12]).~~
- ~~3.15 The Company shall not be required to take any action of the nature referred to in Article [3.13] if:~~
- ~~3.15.1 the effect of such action would, or could reasonably be expected to, prejudice the performance of the Project in accordance with the Transaction Documents; and/or~~
 - ~~3.15.2 such action requires the consent of any third party and that third party has declined or failed to grant such consent (despite the Company using all reasonable endeavours to obtain such consent).~~
- ~~3.16 The Company shall (subject to Article [3.17]) commission, at the request of the B Director from time to time, a report from an appropriate firm of consultants with substantial experience in the field of project finance, identifying any opportunities for possible cost efficiencies and/or other methods of increasing the net financial performance of the Company.~~
- ~~3.17 The Company shall not be required to commission any such report requested by the B Director in pursuance of Article [3.16]:~~
- ~~3.17.1 more frequently than once in any rolling 12-month period; and~~
 - ~~3.17.2 unless the B Shareholder issues to the Company an undertaking in Writing, agreeing to meet the fees of the consultants (net of any VAT recoverable by the Company) and any increased remuneration due to the B Director under Article [10.2].~~
- ~~3.18 The question of which firm to appoint in pursuance of Article [3.16], and the remit to be given to the consultants, on each occasion shall be determined by the Directors on the recommendation of the B Director or, if the Directors fail to agree on which firm to appoint and/or any aspect of the remit, shall be determined by the B Director acting alone. If the Directors fail to proceed with instructing the relevant report within a reasonable period, the B Director, acting alone, will have power to instruct any such report on behalf of the Company providing that in doing so he is giving effect to the decisions of the Directors (and/or his own decisions, if the Directors failed to agree) in respect of the identity of the firm to be appointed and the remit to be given to that firm.~~

- ~~3.19 The B Director shall not issue a direction referred to in Article [3.13] which is inconsistent with the content of the most recent Consultants' Appraisal; and any such direction may be issued only within 6 months of completion of that Consultants' Appraisal.~~
- ~~3.20 The B Director shall, in directing the Company to take any action under Article [3.13], consult regularly with the A Directors prior to issuing such a direction; and shall have due and proper regard to any comments received from the A Directors in relation to the proposed course of action.~~
- ~~3.21 Following the issue of a direction under Article [3.13], the Company shall (subject to Article [3.22]) pursue the implementation of the course of action specified in that direction, in accordance with~~
- ~~3.21.1 the B Director's direction (and on the basis that Article [6.12] shall apply); and~~
- ~~3.21.2 the relevant provisions of the Agreement (the latter taking precedence over the former).~~
- ~~3.22 The Company's obligations under Article [3.21] shall not apply if the B Shareholder directs the Company not to proceed with the course of action specified in the relevant direction from the B Director.~~
- ~~3.23 If the B Shareholder meets the fees of the firm of consultants in pursuance of an undertaking issued pursuant to Article [3.17] and any increased remuneration due to the B Director under Article [10.2] and the Company has implemented any measures identified in the relevant Consultants' Appraisal for increasing the net financial performance of the Company, then the Company shall monitor the net savings thereby achieved and shall reimburse the B Shareholder in respect of the fees and increased remuneration met by the B Shareholder as soon as the amount of the net saving equates to the level of such fees and remuneration and any such reimbursement shall be treated as a Surplus Payment pursuant to the Agreed Order of Priorities.~~

4.3 Application of Revenues

- ~~4.1.3.1~~ The Directors shall adopt, at the first meeting of the Board, an order of priorities for the application of the Company's revenues in descending order of priority as follows:
- ~~4.1.3.1.1~~ any sums due and payable in respect of [Project Expenditure] (as defined in the Facility Agreement);
- ~~4.1.23.1.2~~ any sums due and payable under the Senior Funding Agreements to the [Agent, Security, any Hedging Counterparty and/or Account Bank] (each as defined in the Facility Agreement);
- ~~4.1.33.1.3~~ any amounts required to be transferred to the [Debt Service Reserve Account] and/or the [Maintenance Reserve Account] (each as defined in the Facility Agreement) in accordance with the Senior Funding Agreements;
- ~~4.1.43.1.4~~ any sums due and payable under the [Subordinated Funding Agreements] to the [Subordinated Lenders] (each as defined in the [Subordinated Funding Agreements]);

~~4.1.53.1.5~~ any amounts required in order to maintain a [cash buffer] of [] [Index-linked]; and

~~4.1.63.1.6~~ Surplus Payments pursuant to clause [36] of the Agreement and as referred to in Article ~~[2.12-13-4]~~.²

~~4.23.2~~ ~~At any time before an [Event of Default] (as defined in the Facility Agreement) has occurred, any variation to the Agreed Order of Priorities shall be effective only if recommended by the B Director and approved by the A Shareholders and the B Shareholder.~~ At any time following the occurrence of an Event of Default (for so long as the Event of Default is continuing) the Agreed Order of Priorities may ~~only~~ be varied ~~but only~~ as provided for in the Senior Funding Agreements.

~~4.33.3~~ The Directors shall be bound, in exercising their powers and functions, to give effect to the Agreed Order of Priorities, provided that no Trigger Event would arise as a result ~~and subject to the B Director's power to postpone payments of Surpluses (as referred to in Article [3.1]).~~

~~5.4.~~ **Users' Group**

~~5.14.1~~ The B Shareholder shall be entitled (but not obliged) to create a committee (referred to in these Articles as the "**Users' Group**"). The members of the Users' Group will consist of [].

~~5.24.2~~ The function of the Users' Group will be to prepare reports and recommendations on matters relevant to users of the Facilities, for consideration by the Board.

~~5.34.3~~ The procedures in relation to election, nomination, appointment and removal of the members of the Users' Group, and the rules relating to the conduct of meetings of the Users' Group, shall be as determined from time to time by the B Shareholder.

~~5.44.4~~ The Board shall give consideration to the reports and recommendations issued from time to time by the Users' Group but the Users' Group shall have no power to issue directions or instructions to the Board and the Directors must exercise their own judgement in determining whether or not to give effect to reports and/or recommendations issued by the Users' Group.

~~6.5.~~ **Proceedings of Directors**

~~6.45.1~~ Subject to the provisions of these Articles, the Directors may regulate their proceedings as they think fit.

~~6.25.2~~ Decisions relating to any action taken by, or proposed to be taken by, the Company in respect of any of the Reserved Matters may, subject to Article ~~[5.196-20]~~, only be taken at a meeting of the Board and, subject to Article ~~[5.196-20]~~, no such action shall be taken by or on behalf of the Company otherwise than in accordance with a decision taken at a meeting of the Board.

~~6.35.3~~ A Director may, and the secretary at the request of a Director shall, call a meeting of the Board.

² Note that the Company's share of any Refinancing Gain (including any Margin Gain) and of any savings generated by a Project Co Change will be available for distribution to investors before falling to the Surplus Account.

~~6.45.4~~ The Board must meet not less than four times in each financial year.

~~6.55.5~~ At least seven (7) days' notice shall be given in relation to each meeting of the Board, unless the Chairman (or, as the case may be, the other Director who is calling the meeting) is of the view (acting reasonably) that the delay associated with giving seven (7) days' notice would be likely to cause significant prejudice to the interests of the Company and/or the Shareholders, in which case he shall give such notice of the meeting as is reasonable in the circumstances.

~~6.65.6~~ Notice of every meeting of the Board shall be issued to each Director and Alternate Director.

~~6.75.7~~ Notice of every meeting of the Board (including a short agenda in relation to the business to be conducted at the meeting) shall be given to each Director and his Alternate Director (if one is appointed) at the address, fax number or e-mail address which was last notified by him to the Company for that purpose. Directors and Alternate Directors who are absent from the United Kingdom and have given the Company their addresses outside the United Kingdom shall be entitled to receive reasonable notice of every meeting of the Board and of every meeting of a committee of which they are members. Notice of a meeting of the Board or a committee of the Board shall not be required if all of the Directors or all of the members of that committee are present at the meeting.

~~6.85.8~~ Without prejudice to Article ~~[5.15-16.4]~~, a meeting of the Board or of a committee of the Board may consist of a conference between or among Directors who are not all in one place but who are able (directly or by telephone or other communication equipment) to speak to each other, and to be heard by each other simultaneously. A Director taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote and be counted in a quorum accordingly. Such a meeting shall be deemed to take place where the largest group of those participating in the conference is assembled or, if there is no such group, where the Chairman then is. The word "meeting" in these Articles shall be construed accordingly.

~~5.9~~ Subject to Articles ~~[2.12-13.4, 5.9A and 5.105-106.10 and 7.5 and the following provisions of this Article 5.9]~~ the quorum necessary for the transaction of the business of the Directors shall be two, one of whom shall be an A Director and one of whom shall be the B Director. An Alternate Director who is not himself a Director may, if his appointer is not present, be counted towards the quorum and shall be deemed, for the purposes of the preceding provisions of this Article ~~[5.96.9]~~ to fall into the same category of Directors as the Director for whom he acts as alternate.

~~5.9A~~ Without prejudice to Article 5.10, if a quorum required under Article 5.9 is not present within 30 minutes of the time for the relevant meeting as set out in the notice of meeting then the meeting shall be adjourned until such date (not being less than seven (7) days after the date of that meeting) as the Chairman may direct. The date of the adjourned meeting shall be notified to the Directors and Alternate Directors in accordance with Article [5.7]. If, within 30 minutes of the start of the adjourned meeting the quorum otherwise required under Article [5.9] is not present, the quorum shall be any two directors.

~~6.95.10~~ If, within fifteen (15) minutes after the start of a meeting of the Board at which a resolution of the Directors is to be proposed on which an A Director will not be entitled to vote, the quorum otherwise required under Article ~~[5.95-96.9]~~ is not present, the

meeting shall be adjourned until such date (being not less than seven (7) days after the date of that meeting) as the Chairman of that meeting may direct. The date of the adjourned meeting shall be notified to the Directors and Alternate Directors in accordance with Article ~~[5.75-76.7]~~. If, within fifteen (15) minutes after the start of the adjourned meeting, the quorum otherwise required under Article ~~[5.95-96.9]~~ is not present, the B Director (or his Alternate Director) shall, if present, be deemed to form a quorum even if no other Director or Alternate Director is present.

~~6.105.11~~ The B Director shall not be entitled to vote in relation to any resolution for approval of the transfer of an A Share or the transfer of Loan Stock, except (in either case) where the transfer is being effected in pursuance of Article ~~[13.813-814.8]~~ or Article ~~[13.913-914.9]~~.

~~6.11~~ If the B Director proposes that the Board should implement a proposal for refinancing or any other course of action referred to in Article ~~[3]~~ but the A Directors decline to carry the proposal into effect (except (a) where they are entitled to decline to do so by the provisions of these Articles or (b) in the case of a refinancing where the consent of the Authority has not been granted pursuant to ~~[paragraph 1 of part 23]~~ of the schedule to the Agreement) the matter will then be considered at an adjourned meeting of the Board. At any such adjourned meeting (and at any subsequent meeting of the Board) the A Directors will not be entitled to vote in relation to any resolution relating to the implementation of any such proposal (or any matter incidental to such implementation) and the B Director, acting alone, shall be entitled to take all decisions of a nature which would otherwise have fallen to be taken by the Directors and to take all other steps required to implement the proposal (and any matter incidental to the implementation of the proposal) in the name of (and at the cost of) the Company.

~~6.125.12~~ Matters arising at any meeting of the Board or of any committee shall be decided by a majority of votes of the Directors present, and on the basis that (subject to Articles ~~[2.12-13.1, and 5.115-116.11, 6.12 and 7.5]~~) every Director present at the meeting shall have one vote. The Chairman of a meeting of the Board shall not have a second or casting vote.

~~6.135.13~~ References in the preceding provisions of this Article ~~[556]~~ to any Director include references to any Alternate Directors and for this purpose an Alternate Director shall be deemed to fall into the same category of Directors as the Director for whom he acts as an alternate.

~~6.145.14~~ A Director who is also an Alternate Director shall be entitled in the absence of his appointer to a separate vote on behalf of his appointer in addition to his own vote.

~~6.155.15~~ The B Shareholder shall be entitled to appoint an individual as its representative (the "Observer") who shall be entitled:

~~6.15-15.15.1~~ to be invited to attend all meetings of the Board;

~~6.15-25.15.2~~ to receive (at or around the same time as they are received by the Directors) the agenda and all supporting papers circulated to the Directors in advance of each meeting of the Board or tabled at each meeting of the Board (including, without prejudice to that generality, six-monthly management accounts, budgets and management reports (including explanations of material variances against budget)) and the statutory accounts in respect of each financial year;

~~6.15.35.15.3~~ to attend and participate (but not vote) in all meetings of the Board;

~~6.15.45.15.4~~ to receive (at or around the same time as they are received by the Directors) copy minutes of meetings of the Board and all other Documents circulated to the Directors generally; and

~~6.15.55.15.5~~ to disclose any information received pursuant to this Article [~~5.155.156.16~~] in accordance with clause [61] of the Agreement.

~~6.165.16~~ The Directors shall be entitled to exclude the Observer from attending any meeting of the Board and withhold the agendas and supporting papers referred to in Article ~~5.155.156.16~~:

~~6.16.15.16.1~~ where and for so long as the conduct of the Observer is inappropriate; or

~~6.16.25.16.2~~ the Observer discloses information otherwise than in accordance with Article [~~5.15.55.15.56.16.5~~].

~~6.175.17~~ The Directors shall be entitled to exclude the Observer from attending any part of a meeting of the Board at which:

~~6.17.15.17.1~~ the exercise or purported exercise of contractual rights by the Company against the Authority or by the Authority against the Company; or

~~6.17.25.17.2~~ any claims or potential claims by the Company against the Authority or by the Authority against the Company; or

~~6.17.35.17.3~~ any matter of interpretation of the Agreement,

is discussed and shall be entitled to withhold from the Observer any supporting papers and information to the extent that they relate to the matters listed in Articles [~~5.17.15.17.16.18.4~~] to [~~5.17.35.17.36.18.3~~].

~~6.185.18~~ For the avoidance of doubt, an Observer shall not be entitled to exercise the powers of a Director; nor shall an Observer be deemed to be a Director for the purposes of these Articles or any provision of the Act.

~~6.195.19~~ A resolution in Writing signed by all of the Directors entitled to receive notice of a meeting of Board or a committee of the Board shall be valid and effectual as if it had been passed at a meeting of the Board or (as the case may be) a committee of the Board duly convened and held. Any such resolution may consist of a number of Documents in the same form, each signed by one or more Directors.

~~6.205.20~~ A resolution in Writing signed by an Alternate Director 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 be signed by the Alternate Director in that capacity.

7.6. Conflicts of Interest

~~7.46.1~~ A director may be an employee and/or a director of the Nominator, or an employee and/or a director of Hold Co or an employee and/or a director of any holder of Hold Co A Shares or Hold Co B Shares and, without prejudice to the following provisions of this Article [~~667~~], the duty of directors under section 175 of the Act (**s175**) to avoid situations under which they have, or could have, a direct or indirect interest that conflicts, or

possibly might conflict, with the interests of the company shall not extend to any such relationship.

~~7.26.2~~ In addition to the authorisation given by Article ~~[6.16-17.1]~~, the Directors shall be entitled, for the purposes of and in accordance with s175, to authorise (by way of resolution to that effect) any Conflict Situation that may arise (such that the duty of the Director concerned, under s175, to avoid conflicts of interest is not infringed) and to amend or vary any such authorisation and the Directors may give such authorisation subject to such terms and conditions as they may consider appropriate and reasonable in the circumstances.

~~7.36.3~~ A Director shall not, in the absence of agreement by him to the contrary, be accountable to the Company for any profit, remuneration or other benefit which he (or a person connected with him) derives from any matter authorised by Article ~~[6.16-17.1]~~ or authorised by the Directors in accordance with Article ~~[6.16-17.1]~~ and any contract, transaction or arrangement relating to that matter shall not be liable to be declared void on the grounds of any such profit, remuneration or benefit.

~~7.46.4~~ If any dispute arises out of, or in connection with, any Relevant Document, then no Conflicted Director shall (unless so authorised by the Board) have any authority to make any decision, or take any step, on behalf of the Company in relation to such dispute.

~~7.5 — A Conflicted Director shall not be entitled to:~~

~~7.5.1 — vote against or otherwise impede the passing of a resolution to enforce the Company's rights under a Relevant Document; or~~

~~7.5.2 — vote in favour of any resolution the effect of which is to~~

~~(a) waive any of the Company's rights under a Relevant Document; or~~

~~(b) approve any amendment to a Relevant Document; or~~

~~(c) approve the entering into of a new Relevant Document,~~

~~(the "Proposal") at any meeting or by written resolution if, in the reasonable opinion of the B Director, the Net Present Value of the projected Surplus Payments for the remainder of the Project Term after taking into account the effect of the Proposal minus the Net Present Value of the projected Surplus Payments for the remainder of the Project Term before taking into account the effect of the Proposal is less than zero.~~

~~7.6 — If any Conflicted Director votes contrary to the provisions of Article [7.5], his vote shall not be counted; and~~

~~7.6.1 — Neither his attendance nor the attendance of his Alternate Director shall be required (notwithstanding any other provision of these Articles) for that meeting to be quorate in relation to such matter; and~~

~~7.6.2 — Neither his signature nor that of his Alternate Director shall be required in respect of any resolution in Writing for that resolution to be valid and effectual under these Articles.~~

~~7.76.5~~ For the purposes of Articles ~~[6.46-47.4]~~ ~~[7.5]~~ and ~~[7.6]~~, a Director will be considered to be a "Conflicted Director" where:

7.7.16.5.1 the Director is an employee or director of, or shareholder or member with a [controlling/substantial] interest in, the counterparty to the relevant contract with the Company (the “**Counterparty**”); or

7.7.26.5.2 the Director has been appointed as a director of the Company or Hold Co by or on the nomination of the Counterparty; or

7.7.36.5.3 the Director is an employee, director, appointee of, or member with a [controlling/substantial] interest in, a body (a) which holds [a controlling/substantial] interest in the Counterparty or (b) in which the Counterparty has a [controlling/substantial] interest or (c) which is an Associate of the Counterparty;

and on the basis that a “**substantial interest**” shall be taken to be an interest which confers an entitlement to [10]³% or more of the voting rights at general meetings of the relevant body or [10]% or more of the distributable profits of the relevant body].

7.86.6 For the avoidance of doubt, every Director (whether or not a Conflicted Director) shall exercise his own discretion in determining how to cast his vote or votes; and in doing so shall have due regard to his duties under the Act with regard to promoting the success of the Company (in each case as read with Article 2.12-13.1) and other applicable law.

8.7. Appointment and Removal of Directors

8.17.1 The maximum number of Directors shall be at any given time:

8.1.17.1.1 no more than [] Directors shall be AA Directors;

8.1.27.1.2 no more than [] Directors shall be AB Directors; and

8.1.37.1.3 no more than one Director shall be a B Director.

8.27.2 The holder or holders of a majority in nominal value of the Hold Co A Shares shall be entitled (subject to Articles 7.17-18.1 and 7.47-48.4) to appoint any individual as a Director of the Company (an “**AA Director**”) and to remove any such AA Director from office.

8.37.3 The holder or holders of a majority in nominal value of the Hold Co B Shares shall be entitled (subject to Articles 7.17-18.1 and 7.47-48.4) to appoint any individual as a Director of the Company (an “**AB Director**”) and to remove any such AB Director from office.

8.47.4 No person may be appointed as a Director pursuant to Article 7.17-18.1 or 7.27-28.2 above unless that person is (or will simultaneously become) a director of Hold Co.

8.57.5 The [AA Directors and the AB Directors] shall together be the “**A Directors**” of the Company.

³ To be considered on a project by project basis on the basis of the proposed investment structure and relationships amongst investors and sub-contractors

~~8-67.6~~ Subject to Article [~~7.87-88-8~~ to ~~7.107-108-10~~] the B Shareholder shall be obliged to appoint any individual nominated by the Nominator as the B Director and to remove the B Director from office at the request of the Nominator.

~~8-77.7~~ Prior to the Nominator nominating any individual for appointment as the B Director, the Nominator shall give the A Shareholder and the B Shareholder not less than 14 days' notice of the identity of that individual together with such information relating to that individual as the A Shareholder or the B Shareholder may reasonably request; the Nominator shall have due regard to any representations made by the A Shareholder as to whether the individual meets the B Director Criteria or the criteria set out in the Agreed B Director Job Description.⁴

~~8-87.8~~ The B Shareholder, after having due regard to any representations received from the A Shareholder and any information received from the Nominator, may resolve to refuse to appoint a candidate nominated by the Nominator if the B Shareholder, acting reasonably, considers that the candidate fails to meet the B Director Criteria or the criteria set out in the Agreed B Director Job Description.

~~8-97.9~~ The B Shareholder, after having due regard to any representations received from the Nominator and/or the A Shareholder, may remove a B Director

~~8-9-17.9.1~~ if, in the reasonable opinion of the B Shareholder, it would be in the best interests of the Company to do so; or

~~8-9-27.9.2~~ if, in the reasonable opinion of the B Shareholder, the B Director is acting in breach of the terms of the B Director's Letter of Appointment or the Agreed B Director Job Description.

~~8-107.10~~ If at any time pursuant to Articles [~~7.77.67-68-6~~ to ~~8.9 or 8.9.2~~] there is no B Director in office, the B Shareholder shall be obliged to appoint the chief executive (or any other senior officer/representative determined by the Nominator) of the Nominator as the B Director.

~~8-147.11~~ Every appointment or removal of a Director under this Article [~~778~~] shall be effected by notice in Writing deposited at the registered office of the Company signed by or on behalf of the holders of a majority in nominal value of the relevant class of Shares. The notice shall take effect immediately upon receipt of such notice at the registered office of the Company (or, if a later date is specified in the notice, with effect from that later date).

~~8-127.12~~ The post of Chairman of the Board must not be held by the B Director.

~~8-137.13~~ For the avoidance of doubt, no Director shall be required to retire by rotation.

~~8-147.14~~ Any variation to the Agreed B Director Job Description or to the Agreed B Director Letter of Appointment shall in either case be effective only if approved by the A Shareholder, the B Shareholder and the Nominator.

9.8. Termination of Director's Appointment

A person will automatically cease to be a Director if:

⁴ These arrangements will be reflected in a letter issued by the Nominator to the Company.

9.#

9.# (in the case of an A Director) he ceases (for any reason) to be a director of Hold Co.

40.9. Directors' Remuneration and Expenses

40.19.1 Subject to Article ~~[9.29-210.2]~~, no Director shall be entitled to any remuneration, whether in respect of his office as director, or as holder of any other office under the Company.

40.29.2 The role of the B Director as a Director of the Company shall attract remuneration of £[] per annum (index linked) together with reasonable additional remuneration for

~~10.2.1 the work associated with any refinancing carried out in pursuance of Article [3] (to be met from any Refinancing Gain);~~

~~10.2.2 any proposal other than a refinancing carried out in pursuance of Article [3] (to be met by the B Shareholder and reimbursed by the Company as provided for in Articles [3.17 and 3.23]); and~~

~~10.2.3 any other additional work associated with the role of B Director which is substantially in excess of that associated with the performance of the B Director's normal duties.~~

Formatted: Indent: Before: 3.75 cm, No bullets or numbering

All amounts of remuneration referred to in this Article ~~[9.29-210.2]~~ shall be paid by the Company to the Nominator in such manner as is required by the B Director (acting reasonably).

40.39.3 The Directors may be paid travelling and other expenses properly incurred by them in connection with their attendance at meetings of the Board, general meetings, meetings of committees of the Board or otherwise in connection with the carrying out of their duties.

44.10. Alternate Directors

44.110.1 Any Director may (subject to Article ~~[10.210-211.2]~~) at any time, by notice signed by him and deposited at the office or delivered at a meeting of the Board, appoint any person (including another Director) to be his alternate director (an "**Alternate Director**") and may (in the same manner) at any time terminate such appointment.

44.210.2 A B Director shall not be entitled to appoint any person to be his Alternate Director unless, in the opinion of the other Directors (each being bound to act reasonably in this respect), that person satisfies the B Director Criteria, subject to the qualification that the reference, in paragraph (b) of that definition, to the Nominator shall be deemed for this purpose to be a reference to the other Directors.

44.310.3 The appointment of an Alternate Director shall terminate if his appointer ceases to be a Director or on the happening of any event which, if he were a Director, would cause him to vacate such office.

44.410.4 An Alternate Director shall be entitled to receive notices of meetings of the Board and shall be entitled to attend and vote as a Director at any such meetings at which the Director appointing him is not personally present and generally at such meetings to perform all the functions of his appointer as a Director and for the purposes

of the proceedings at any such meeting the provisions of these Articles shall apply as if he (and not his appointer) were a Director.

~~11.5~~10.5 If his appointer is for the time being absent from the United Kingdom or temporarily unable to act through ill-health or disability, the signature of an Alternate Director to any resolution in Writing of the Directors shall be as effective as the signature of his appointer.

~~11.6~~10.6 To such extent as the Directors may from time to time determine in relation to any committees of the Board, the preceding provisions of this Article ~~[10+11]~~ shall also apply *mutatis mutandis* to any meeting of such committee of which the appointer of an Alternate Director is a member.

~~11.7~~10.7 An Alternate Director shall not (save as provided in this Article ~~[10+11]~~) have power to act as a Director nor shall he be deemed to be a Director for the purposes of these Articles, but he shall be an officer of the Company and shall not be deemed to be the agent of the Director appointing him.

~~11.8~~10.8 An Alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified to the same extent as if he were a Director, but he shall not be entitled to receive from the Company in respect of his appointment as Alternate Director any remuneration except only such part (if any) of the remuneration otherwise payable to his appointer as such appointer may by notice in Writing to the Company from time to time direct.

~~12.11.~~ **Share Capital**

~~12.11.1~~11.1 The share capital of the Company as at the date of the adoption of these Articles is £[] divided into [] non-dividend 'A' Shares ("**A Shares**") and 1 non-dividend 'B' Share ("**B Share**"). The A Shares and the B Share shall each constitute different classes of shares for the purposes of the Act, but, except as expressly provided in these Articles, each A Share and the B Share rank equally in all respects.

~~12.2~~11.2 The Company is a private company and accordingly any invitation to the public to subscribe for any Shares or debentures of the Company is prohibited.

~~11.3~~ No Shares in the Company may be issued other than with the prior consent in Writing of all of the Shareholders. Unless all of the Shareholders consent in Writing otherwise, all new Shares created on any increase of capital shall be created as A Shares of £1 each, being issued only to the Holders of A Shares in proportion to the members' holdings of A Shares. No new Shares in the Company may be issued unless all of the Shareholders give their prior consent in Writing or unless in the opinion (given in final form and in writing) of an Independent Expert appointed by the Company in accordance with Article [17]:

~~11.3.1~~ the proposed issue of new Shares is necessary in order to avoid and/or to remedy any Trigger Event; and/or

~~11.3.2~~ the proposed issue of new Shares is necessary in order to ensure the long-term financial stability of the Company, having regard to the nature of its business; and/or

~~11.3.3~~ the proposed issue of new Shares:

(a) will not undermine stakeholder involvement in the Company or the transparency of the Company; and

(b) will not have a negative impact on the level of, or the Company's commitment to make (as set out in Article 3), Surplus Payments,

12.3 and the facts and assumptions on which the Independent Expert's opinion are based remain valid at the time of the proposed issue of new Shares. All new Shares issued in accordance with this Article 11.3 shall, unless all of the Shareholders consent in Writing otherwise or unless supported by the Independent Expert's opinion given in accordance with the foregoing provisions of this Article 11.3, be issued as A Shares of £1 each, being issued only to the Holders of A Shares in proportion to the members' holdings of A Shares.

Formatted: Indent: Before: 2.5 cm, No bullets or numbering

12.411.4 Whenever the capital of the Company is divided into different classes of Shares all provisions applicable to general meetings of the Company or to the proceedings at general meetings of the Company shall apply (with any necessary modifications) ~~apply~~ to any separate meeting of the Holders of Shares of any class except that:

12.4.11.4.1 the necessary quorum shall be one or more persons holding or representing by proxy at least two thirds (in aggregate) in nominal value of the issued shares of the class (but on the basis that if at any adjourned meeting of such Holders the quorum specified above is not present, the Shareholder or Shareholders present via their duly authorised representatives or represented by proxy shall be a quorum);

12.4.211.4.2 any Holder of Shares of that class present in person or by proxy may demand a poll, and each Holder shall on a poll have one vote in respect of every Share of that class held by it; and

12.4.311.4.3 the provisions of Article ~~[11.611.612.6]~~ shall apply in relation to any proposed variation of special rights attached to that class of Shares.

12.511.5 The rights conferred upon the Holders of the Shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the Shares of that class, be deemed to be varied by the creation or issue of further Shares ranking equally with them, provided that such further Shares are issued equally in all respects to all then existing Shares of that class.

12.611.6 Whenever the capital of the Company is divided into different classes of Shares, the special rights attached to any class may be varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding up, only with the consent in Writing of the Holders of all of the issued Shares of that class.

12.711.7 No Share shall carry any entitlement to a dividend or other payment or distribution.

12.811.8 No Share is redeemable.

12.911.9 If the Company is wound up under the Insolvency Act 1986 and some property of the Company remains after satisfaction of the Company's liabilities, the Shareholders shall be entitled to share in a distribution of such residual assets, in proportion to the number of Shares held by them respectively, but such that the maximum amount which

may be received by any Shareholder in this respect (or in respect of any other return of capital) shall not exceed £1 for each Share of which it is the Holder.

~~12.10~~11.10 Following distribution in accordance with Article [~~11.9~~11.9~~12.9~~12.9] on winding up of the Company, any remaining residual assets of the Company shall be given or transferred to the last person to have been nominated to receive Surplus Payments pursuant to clause 36 of the Agreement~~Authority~~ for no consideration.

~~13.12.~~ **Asset Lock**

~~13.1~~12.1 The Company shall not transfer any of its assets other than for full consideration.

~~13.2~~12.2 The preceding Article shall not apply to:

~~13.2.1~~12.2.1 any Surplus Payments to the Authority made in accordance with clause 36 of the Agreement;

~~13.2.2~~12.2.2 any transfer of assets to the Authority at the expiry of the Project Term pursuant to the Agreement; or

~~13.2.3~~12.2.3 any distribution of assets on a winding up, but only to the extent permitted under Article [~~11.9~~11.9~~12.9~~12.9] or Article [~~11.10~~11.10~~12.10~~12.10].

~~14.13.~~ **Transfer of Loan Stock and Shares⁵**

~~14.1~~13.1 Save as otherwise provided in these Articles, no Shareholder may transfer any Shares or any interest in Shares without the prior consent in Writing of all of the other Shareholders.

~~14.2~~13.2 The transfer of A Shares pursuant to any Share Pledge shall be deemed to be permitted under Article [~~13.1~~13.1~~14.1~~14.1].

~~14.3~~13.3 The transfer of any A Share shall be registered if both of the following conditions are satisfied:

~~14.3.1~~13.3.1 the transfer would not be prohibited in terms of the Agreement;

~~14.3.2~~13.3.2 the transfer would not be prohibited in terms of the Funding Agreements.

~~14.4~~13.4 During the Project Term, no Shareholder shall transfer the B Share otherwise than to a body which has at the time properly assumed the whole interest of the Authority under the Agreement.

~~14.5~~13.5 If any Loan Stock Holder wishes to transfer any of its interest in Loan Stock it shall, on or before the date on which it transfers such interest, transfer its entire holding or relevant proportion, as near as may be (if transferring only part of its holding of Loan Stock), of A Shares to the party or parties to whom such Loan Stock is being transferred.

⁵ The Loan Stock/Share stapling provisions will need to be replicated at HoldCo level (if applicable).

~~14.6~~13.6 If any Loan Stock held by a Loan Stock Holder is redeemed, the Loan Stock Holder shall, on or before the date of such redemption, transfer its entire holding or relevant proportion, as near as may be (if only part of its holding of Loan Stock is being redeemed on that occasion), of A Shares to such party or parties as the B Director may direct such that, following the date of such redemption, the A Shares are held by the Loan Stock Holders pro rata to the proportion of Loan Stock that they hold.

~~14.7~~13.7 If any A Shareholder wishes to transfer any of its A Shares it shall, on or before the date on which it transfers such A Shares, transfer its entire holding or relevant proportion, as near as may be (if transferring only part of its holding of A Shares) of Loan Stock to the party or parties to whom such A Share(s) is/are being transferred.

~~14.8~~13.8 ~~Following the End Date, the B Shareholder may require that the A Shareholder transfers the A Shares to the Authority or its nominee for no consideration~~Not used.

~~14.9~~13.9 If any Loan Stock Holder or Shareholder (as the case may be) fails to comply with the provisions of Article ~~[13.5]~~[13.513-514.5], Article ~~[13.6]~~[13.613-614.6], ~~or Article [13.7]~~or Article [14.8], the Directors shall be bound to transfer, as agents for that Loan Stock Holder or Shareholder (as the case may be), the relevant proportion of the A Shares or the Loan Stock held by that Shareholder to the party or parties to whom the Shareholder's Loan Stock or A Shares has/have been transferred or to transfer the relevant A Shares to the party or parties identified in the direction of the B Director ~~pursuant to Article 13.6 or to transfer the A Shares to the Authority or its nominee~~ (as appropriate by reference to the relevant Article). Each Shareholder holding Loan Stock and A Shares shall be deemed to have irrevocably appointed the Directors as its attorney for this purpose, with full power for the Directors to authorise any one of their number to sign the relevant stock transfer form(s) on behalf of the relevant Shareholder holding Loan Stock or A Shares and to deliver the stock transfer form(s) to the relevant transferee or transferees.

~~15.14.~~ **Proceedings at General Meetings**

~~15.14.1~~13.14.1 Any general meeting may be convened at or adjourned to more than one place. If a meeting or adjourned meeting is convened at or adjourned to more than one place, the notice of that meeting shall specify the place at which the Chairman of the meeting shall preside (the "**Specified Place**").

~~15.2~~14.2 The Directors may make arrangements for simultaneous attendance and participation at other places by Shareholders, provided that persons attending at any particular place shall be able to hear and see and be heard and seen (whether by audiovisual links or otherwise) by persons attending at the other places at which the meeting is convened. For the purposes of these Articles, the meeting shall be treated as being held at the Specified Place.

~~15.3~~14.3 No business shall be transacted at any meeting unless a quorum is present.

~~15.4~~14.4 One or more Shareholders present in person (in the case of a Shareholder which is a corporate body, present via its duly authorised representative) or represented by proxy holding more than 50% of the A Shares in issue shall be a quorum for all purposes, subject to Article ~~[14.5]~~[14.514.515.5].

~~15.5~~14.5 The provisions of Article ~~[14.4]~~[14.414.415.4] shall be qualified as follows:

~~15.5.1~~14.5.1 a quorum shall not be deemed to be present at any general meeting at which a resolution regarding the appointment or removal of the B Director is to be proposed unless the B Shareholder is present (via its duly authorised representative) or represented by proxy at the meeting;

~~15.5.2~~14.5.2 a quorum shall not be deemed to be present at any general meeting at which any resolution(s) of the nature referred to in Article ~~[15.5.15.5]~~16.5 is to be proposed unless the B Shareholder is present (via its duly authorised representative) or represented by proxy at the meeting.

~~15.6~~14.6 The B Shareholder shall have the right to vote at a general meeting of the Company subject to and in accordance with Article ~~[15.15]~~16.

~~15.7~~14.7 A resolution put to the vote of a meeting shall be decided on a show of hands unless before or on a declaration of the result of the show of hands a poll is duly demanded

~~16.15.~~ **Votes**

~~16.1~~15.1 Subject to any rights or restrictions attached to any Shares and to the provisions of Article ~~[14.6]~~14.6 and this Article ~~[15.15]~~16, on a show of hands every Shareholder present by a representative duly authorised in accordance with the Act or represented by proxy shall have one vote, and on a poll every Shareholder shall have one vote for every A Share of which it is the Holder or (as the case may be) one vote for the B Share of which it is the Holder.

~~16.2~~15.2 The A Shares shall not confer the right to vote, either on a show of hands or on a poll, upon a resolution for the appointment or removal from office of any B Director.

~~16.3~~15.3 The B Share shall not confer the right to vote, either on a show of hands or on a poll, upon a resolution for the appointment or removal from office of any A Director.

~~15.4~~ If any resolution of the nature referred to in Article ~~[16.5]~~ is proposed at any general meeting or by way of a written resolution, the B Shareholder, if voting against the resolution, shall be entitled to exercise, in relation to that resolution, the number of votes which exceeds by one the total number of votes which may be cast by all other Shareholders. A resolution of the nature referred to in Article ~~[15.5.15.5]~~ may only be proposed at a general meeting or by way of a written resolution if all of the Shareholders consent in Writing or if in the opinion (given in final form and in writing) of an Independent Expert appointed by the Company in accordance with Article ~~[17]~~:

~~15.4.1~~ the course of action proposed in the resolution (the "Proposal") is necessary in order to avoid and/or remedy any Trigger Event; and/or

~~15.4.2~~ the Proposal is necessary in order to ensure the long-term financial stability of the Company, having regard to the nature of its business; and/or

~~15.4.3~~ the Proposal:

~~(a)~~ will not undermine stakeholder involvement in the Company or the transparency of the Company; and

~~(b)~~ will not have a negative impact on the level of, or the Company's commitment to make (as set out in Article 3), Surplus Payments.

~~16.4~~ and the facts and assumptions on which the Independent Expert's opinion are based remain valid at the date the Proposal will become effective

Formatted: Indent: Before: 2.5 cm, No bullets or numbering

~~16.5~~15.5 The provisions of Article ~~[15.415.416.4]~~ shall apply in relation to:

~~16.5.1~~15.5.1 any resolution to ~~increase the Company's share capital by new Shares of such amount as the resolution prescribes, to~~ consolidate all or any of its share capital into Shares of larger amounts than its existing Shares, to subdivide its Shares (or any of them) into Shares of small amounts or to cancel Shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person;

~~16.5.2~~15.5.2 any resolution which would alter or exclude or modify the operation of any of the following provisions of these Articles:

- (a) ~~[14]~~ to ~~[778]~~ (Powers of Directors, ~~Role of B Director~~, Maximisation of Financial Performance, Application of Revenues, Users' Group, Proceedings of Directors, Conflicts of Interest and Appointment and Removal of Directors);
- (b) ~~[889]~~.# (Termination of Director's Appointment);
- (c) ~~[9910]~~ and ~~[104014]~~ (Directors' Remuneration and Expenses and Alternate Directors);
- (d) ~~[11.311.312.3]~~ to ~~[11.1011.1012.10]~~ (Share Capital);
- (e) ~~[121213]~~ to ~~[151516]~~ (Asset Lock, Transfer of Loan Stock and Shares, Proceedings at General Meetings, Votes);
- (e)(f) ~~[17]~~ (~~Independent Expert~~).

17.16. Insurance

~~17.16.1~~16.1 The Directors shall have the power to purchase and maintain insurance for or for the benefit of any persons who are or were at any time Directors, officers, employees or auditors of the Company (or any subsidiary of the Company) including (without prejudice to the foregoing generality) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported exercise of their powers or otherwise in connection with their duties, powers or offices in relation to the Company.

~~16.2~~ The Directors shall exercise the power referred to in Article ~~17.16.1~~ to purchase, and at all times maintain, insurance against any liability incurred by the B Director and/or his Alternate Director in respect of any act or omission in the actual or purported exercise of their powers or otherwise in connection with their duties, powers or offices in relation to the Company.

17. Independent Expert

~~17.1~~ In the event of any dispute amongst the Shareholders pursuant to Article 11.3 or Article 15.4 ('Expert Matter') then the Shareholders agree that the Expert Matter shall be referred to an Independent Expert whose identity shall be agreed amongst the

Shareholders within 20 Business Days of one Shareholder proposing to the others in writing an Independent Expert, failing which Clause 17.2 shall apply.

17.2 In the event of the Shareholders failing to reach agreement in terms of Article 17.1 then such Independent Expert shall be appointed, upon application by the referring Shareholder, by the President or other Senior Office Holder for the time being of the Institute of Chartered Accountants Scotland or the President or other Senior Office Holder for the time being of the Law Society of Scotland.

17.3 The application by the referring Shareholder shall specify the Expert Matter to be determined and provide the Independent Expert with relevant extracts from the Articles, which shall be copied simultaneously to all other Shareholders and the Independent Expert shall have jurisdiction to determine the Expert Matter which has been referred to the Independent Expert.

17.4 The Independent Expert shall act as an expert and not as an arbitrator. The decision of the Independent Expert shall be final and binding on the Shareholders to the Expert Matter and not subject to any appeal or reference to the court on points of law.

17.5 If required in writing by any Shareholder to the Expert Matter within seven days of his appointment, the Independent Expert shall invite written submissions and written counter submissions from the relevant Shareholders in respect of the Expert Matter and shall take account of such submissions and counter submissions, but only if submitted timeously 21 days from appointment in case of submissions and 35 days from appointment in the case of counter submissions).

17.6 Unless the Independent Expert decides otherwise, no oral submission shall be required.

17.7 The Independent Expert shall have power to determine liability for his own costs and those of the Shareholders to the Expert Matter.

17.8 The Shareholders to the Expert Matter shall seek to secure that the Independent Expert undertakes to issue his decision within fourteen days of the later of (i) the date of his appointment and (ii) the date for submission of counter submissions (should such submissions and counter submissions be required by any Shareholder).

17.9 The Independent Expert shall also take full account of the relevant provisions of these Articles in determining the Expert Matter.

17.10 If the Independent Expert shall die, refuse to act or become incapacitated from acting prior to the making of his decision a further Independent Expert shall be appointed in accordance with this Article 17 to replace him.

17.2

Formatted: Indent: Before: 2.5 cm, No bullets or numbering

Appendix [1]: Reserved Matters

Terms used in this Appendix 1 are as defined in the Articles or the Agreement (as appropriate).

1. Entering into any material financial transaction or material financial arrangement.
2. Agreeing to any amendment of a Transaction Document or entering into a new Transaction Document.
3. Proposing and agreeing any [Estimate] in response to an [Authority Change], obtaining any funding in respect of Capital Expenditure as required by clause [] of the Agreement in relation to an [Authority Change] and agreeing any changes to any Transaction Document which are necessitated by an [Authority Change].
4. Proposing any [Project Co Change], agreeing the relevant [Project Co Notice of Change] and agreeing any changes to any Transaction Document which are necessitated by the [Project Co Change].
5. Proposing and agreeing the details of any impact of any Relevant Change in Law or any Relevant Works Change in Law as required by clauses [] of the Agreement.
6. Implementing any change to the insurance arrangements of the Company which would increase the level and/or scope of cover beyond that expressly required by any Transaction Document;
7. Entering into any new management agreement (in respect of the management of all or any part of the Company's operations or contractual relationships) or varying the scope of services or terms of payment, remuneration and/or reimbursement of fees and/or expenses in connection with or pursuant to any such management agreement.

