

Report to: Shareholder Committee

Date of Meeting 29th January 2026

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A



Governance update for East Devon Environmental Services Ltd

Report summary:

This report updates the Committee on activities relating to governance of the Company and seeks agreement to key elements, specifically for controlling the LATCo through updating the Articles of Association and approving the Shareholder Agreement.

Is the proposed decision in accordance with:

Budget Yes ☒ No ☐

Policy Framework Yes ☒ No ☐

Recommendations:

1. The Shareholder Committee (SHC) to review and agree:
 - a. The updated Articles of Association
 - b. The Shareholder Agreement
2. The Shareholder Committee to review the proposed Terms of Reference and
 - a. Endorse them and propose their consideration by the Constitutional Working Group as changes to the Council's Constitution
 - b. Agrees to operate within the Terms of Reference until such time as the Constitution is amended to regularise the activities of the Committee

Reason for recommendation:

To adopt tailored articles and a shareholder agreement that the SHC have reviewed and which provide the required control and governance of this new venture.

Officer: David Robertson, Project Manager, Streetscene

Portfolio(s) (check which apply):

- ☐ Assets and Economy
- ☐ Communications and Democracy
- ☐ Council, Corporate and External Engagement
- ☐ Culture, Leisure, Sport and Tourism

- ☐ Environment - Nature and Climate
- ☒ Environment - Operational
- ☐ Finance
- ☐ Place, Infrastructure and Strategic Planning
- ☐ Sustainable Homes and Communities

Equalities impact Low Impact

There are no equalities impacts of this decision

Climate change Low Impact

Risk: Low Risk; .

Links to background information Cabinet Report July 2026

Appendixes

Appendix A: Shareholder Agreement

Appendix B: Articles of Association

Appendix C: Shareholder Committee terms of reference

Link to [Council Plan](#)

Priorities (check which apply)

- ☒ A supported and engaged community
- ☐ Carbon neutrality and ecological recovery
- ☒ Resilient economy that supports local business
- ☒ Financially secure and improving quality of services

Report in full

1. Background

- 1.1 East Devon Environmental Services Ltd (the LATCo) was formally registered as a company in November 2025 and is starting operations to prepare for the handover of service delivery in July 2026. It is currently governed by model Articles of Association, and the Council controls the company through its Shareholder Committee, which is a sub-committee of Cabinet.
- 1.2 Arrangements for governance of the company were agreed by Cabinet in July 2025. This report sets out the details of how this will be delivered.
- 1.3 Bevan Brittan has provided extensive legal advice to support creation of the company and ensure effective governance arrangements, and continues to support development of detailed governance and operating arrangements. The proposed Shareholder Agreement and updated Articles have been produced by Bevan

Brittan, working in conjunction with officers and members of the Shareholder Committee.

2. Shareholder Agreement

- 2.1 The Shareholder Agreement is a key document for governance and control of the company. It sets out the framework for how the Council will exert its control as the sole owner of the company, and strategic arrangements for how the company will operate. The proposed Agreement is in Appendix A of this report.
- 2.2 The document reflects governance arrangements agreed by Cabinet in July 2025. A draft was developed by Bevan Brittan and reviewed by officers within the Place Directorate alongside the Monitoring Officer, Section 151 Officer and Cllr Sam Hawkins. Feedback from the review process has been incorporated and the final version has the support of those involved in the review process.
- 2.3 The Shareholder Committee has authority to approve the Shareholder Agreement and to agree future changes. The Company's Directors, including the managing Director, are responsible for ensuring that it complies with the Agreement. From the Council side, the Executive Leadership Team and officers within the Place Directorate deliver the Council's 'owner' function in relation to the company, overseen by the Shareholder Committee. It is a key function of the Committee to monitor the Company's performance; the Shareholder Agreement sets out the framework for this to happen.
- 2.4 Key elements of the Shareholder Agreement are
 - 2.4.1 Duty on the Company to produce an annual Business Plan aligned with the Council's objectives and needs
 - 2.4.2 Duty on Company to produce annual and long term financial plans.
 - 2.4.3 Rights of the Council to exercise control over the company, specifically limiting its ability to usurp the functions of Directors
 - 2.4.4 Operation of the Company Board of Directors, including frequency of meetings and voting rights.
 - 2.4.5 Appointments to the Board of Directors and right for Council representatives to attend Board meetings
 - 2.4.6 Financing of the company, through the loan facility agreed by Council
 - 2.4.7 Duty on the Company to keep accurate financial records and the Council's rights to see information
 - 2.4.8 Duties on the Company to operate key policies and procedures including procurement, health and safety, equalities etc
 - 2.4.9 Audit, fraud and prevention of bribery
 - 2.4.10 Dispute resolution and contract termination

- 2.4.11 Matters of the Company which require the owners consent, such as appointment of Directors, some financial decisions and changing the nature and scope of the company ('reserved matters')

3. Updated Articles of Association

- 3.1 The company was registered using template Articles of Association, which enabled its formal creation but must be updated to reflect requirements in the Shareholder Agreement and wider governance needs. Bevan Brittan have developed fully formed Articles which have been reviewed by the Monitoring Officer and officers within Place Directorate. This proposed Articles are within Appendix B to this report.
- 3.2 The Articles of Association set out the basic structure and governance arrangements for the Company, which are built on by the Shareholder Agreement. This includes structure of the Board, role of Directors, and issuing shares.

4. Terms of reference for Shareholder Committee

- 4.1 Bevan Brittan have been instructed to produce proposals for the terms of reference for the Committee. These set out its purpose, functions and operating arrangements, to ensure it undertakes the Council's role as owner of the Company in an effective manner
- 4.2 The proposed terms of reference are attached in Appendix C

Financial implications:

The documents presented have been prepared by Bevan Brittan and appear comprehensive covering areas expected and required. The approval of an annual business plan and budget falls to Council which is key financial safeguard, along with monitoring arrangements through the year.

Legal implications:

The Committee are being asked to approve the Articles of Association, Shareholders Agreement and Terms of Reference for the Committee. All three documents have been produced by Bevan Brittan. The first two documents will be subject to approval of the Company and the Terms of Reference will need to go to the Constitutional Working Group and then Full Council for final approval.

Appendix A: Shareholder Agreement

Dated _____ **2026**

EAST DEVON DISTRICT COUNCIL

EAST DEVON ENVIRONMENTAL SERVICES LIMITED

SHAREHOLDER'S AGREEMENT
in relation to EAST DEVON ENVIRONMENTAL SERVICES
LIMITED

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SCHEDULE 1 - OWNER CONSENT MATTERS	

PARTIES

- (1) **EAST DEVON DISTRICT COUNCIL** of Blackdown House, Border Road, Honiton EX14 1EJ (the "Owner")
- (2) **EAST DEVON ENVIRONMENTAL SERVICES LIMITED** a company incorporated in England and Wales with company number 16840236 whose registered office is at Blackdown House, Border Road, Honiton, United Kingdom, EX14 1EJ (the "Company")

INTRODUCTION

- (A) The Company was incorporated on 7 November 2025 and, as at the date of this Agreement, the Owner is the sole shareholder of the Company.
- (B) The Parties intend that the Company is operated so as to be and to remain compliant with the Vertical Arrangement Exemption (as defined below).
- (C) The Company has been established for the purpose of performing the Business (as defined below).
- (D) This Agreement sets out the terms upon which the Owner will participate in the Company as its sole shareholder and the terms upon which the Owner will retain decisive influence over both the strategic objectives and the significant decisions of the Company.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

Articles means the articles of association of the Company

Business means the business of the Company as set out in clause 2

Business Day means a day (other than a Saturday or Sunday) on which the banks in the City of London are open for business

CA2006 means the Companies Act 2006

Data Protection Legislation means all applicable legislation and regulatory requirements in force from time to time in the UK relating to privacy and the protection and processing of personal data, including, without limitation (i) any data protection legislation from time to time in force in the UK including the UK GDPR, the Data Protection Act 2018, or any successor legislation, as well as (ii) to the extent it applies, the General Data Protection Regulation ((EU) 2016/679)

Director means a director of the Company

Environmental Information Regulations means the Environmental Regulations 2004

Financial Year means each accounting reference period of twelve (12) months ending on 31 March or such date, or longer or shorter period as the Owner shall from time to time determine

Finance Director means an executive Director with primary responsibility for the financial strategy and financial oversight of the Company in line with their employment contract and employment law

FOIA means the Freedom of Information Act 2000

Independent Director means a Director who is neither a member or officer of nor otherwise associated with the Owner and who shall be a non-executive

Information has the meaning given to it under section 84 of the FOIA

Loan Agreement means the revolving credit facility entered between the Owner and the Company on or around the date of this Agreement

Managing Director means an executive Director with primary responsibility for operation of the Company in accordance with their employment contract and applicable law

Objectives has the meaning given to it under clause 2.2

Observer means such person as nominated in writing by the Owner to the Company from time to time to act as an Observer on the board

Owner Consent means the prior written consent of the Owner

Owner Consent Matters means those matters listed in Schedule 1

Owner Representative means the portfolio holder with responsibility at the Owner for the Company or such other member of the Shareholder Committee or senior officer of the Owner as may be notified to the Company in writing from time to time

Procurement Code of Practice means the procurement policy adopted by the Company as amended from time to time

Prohibited Act means any of the following acts:

- (i) to directly or indirectly offer, promise or give any person working for or engaged by the Owner a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (ii) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (iii) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Owner; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Owner.

Remuneration Policy means a policy adopted by the Company (following receipt of Owner Consent) in relation to the provision of remuneration (including salary, bonus, the provision of benefits -in-kind or otherwise) for employees, officers and consultants

Request for Information has the meaning set out in the FOIA or any apparent request for information made under the FOIA

Shareholder Committee means the shareholder committee formed under that name in accordance with the constitution of the Owner

Subsidiary has the meaning given in the CA2006

UK GDPR has the meaning as set out in Section 3(10) of the DPA 2018, supplemented by Section 205(4) of the Data Protection Act 2018;

United Kingdom means the geographical area of the United Kingdom of Great Britain and Northern Ireland as at the date of this Agreement

Vertical Arrangement Exemption means the exemption for “vertical arrangements” as defined within paragraph 2 of Schedule 2 to the Procurement Act 2023

- 1.2 A reference to a statutory provision includes a reference to:
- 1.2.1 a statutory amendment, consolidation or re-enactment (whether before or after the date of this Agreement);
 - 1.2.2 statutory instruments or subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) or orders made under the statutory provision (whether made before or after the date of this Agreement); and
 - 1.2.3 statutory provisions of which the statutory provision is an amendment, consolidation or re-enactment.
- 1.3 Reference to:
- 1.3.1 a person includes a legal or natural person, partnership, trust, company, government or local authority department or other body (whether corporate or unincorporate);
 - 1.3.2 a statutory or regulatory body shall include its successors and any substituted body;
 - 1.3.3 an individual includes, where appropriate, his personal representatives;
 - 1.3.4 the singular includes the plural and vice versa; and
 - 1.3.5 one gender includes all genders.
- 1.4 Unless otherwise stated, a reference to a clause or Schedule is a reference to a clause of or schedule to this Agreement and a reference to this Agreement includes its Schedules.
- 1.5 Clause headings in this Agreement are for ease of reference only and do not affect its construction.
- 1.6 In construing this Agreement the so-called ejusdem generis rule does not apply and accordingly the interpretation of general words shall not be restricted by words indicating a particular class or particular examples.
- 1.7 For the purposes of this Agreement **Party** means a party to this Agreement and reference to **Parties** shall be to all or more than one of them as applicable.
- 1.8 A reference to **writing** or **written** includes email but not fax.
- 1.9 A reference to any agreement or document (or any provision of it) referred to in the Articles is a reference to that agreement or document (or the relevant provision of it) as varied, amended or supplemented (in each case, other than in breach of the provisions of that agreement or document) from time to time.

- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.11 A reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly).
- 1.12 A reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it.

2 BUSINESS AND BUSINESS PLAN

- 2.1 The business (**Business**) of the Company shall be (in accordance with the Objectives) to:
- 2.1.1 collect and dispose of waste on behalf of the Owner;
 - 2.1.2 dispose of recyclable materials;
 - 2.1.3 provide waste management services to the Owner;
 - 2.1.4 provide street cleansing, grounds maintenance and other environmental services to the Owner;
 - 2.1.5 to satisfy on its behalf, the Owner's duties in respect of the above pursuant to applicable laws (including but not limited to the Environmental Protection Act 1990 and the Environment Act 2020 (Simpler recycling)); and
 - 2.1.6 to provide such other services as may be required by the Owner from time to time as notified by the Owner in writing,
- together with any activities reasonably incidental to the above, in each case in accordance with the prevailing Business Plan.
- 2.2 The objectives (**Objectives**) of the Company shall be:
- 2.2.1 To operate in ways which support the Owner's wider missions and values;
 - 2.2.2 To reduce the direct environmental impact of operations and to improve indirect environmental impacts of households and businesses within the boundary of East Devon District Council or such area as notified to the Company by the Owner in writing from time to time;
 - 2.2.3 To support local economic development and contribute local value;
 - 2.2.4 To plan and deliver services which are aligned with changing local needs and national waste policy;
 - 2.2.5 To support delivery of the Owner's environmental objectives in relation to the services provided including climate change, biodiversity, resource use and national waste policy; and to manage its operational resources in ways which reduce its own environmental impacts; and
 - 2.2.6 To provide an efficient and effective business model which can be expanded to new services, and adopted by near neighbours and future unitary authorities.
- 2.3 The Parties intend that the Company shall at all times be compliant with the Vertical Arrangement Exemption.
- 2.4 The Company shall prepare in respect of each Financial Year a draft Business Plan to include:

- 2.4.1 an overview of the activity planned for:
 - (a) the following year including summary key operational delivery objectives and financial objectives;
 - (b) the following four years at a higher level than set out in clause 2.4.1(a),and how all planned activity furthers the Company's Objectives;
- 2.4.2 an annual operating revenue plan and capital expenditure requirements (including cashflow planning and details of funding sources);
- 2.4.3 an annual balance sheet forecast;
- 2.4.4 an annual forecast profit and loss account;
- 2.4.5 a minimum five year medium term financial strategy plan to include (amongst other items) all proposed investments, borrowings and new business of the Company, market analysis, and risk management;
- 2.4.6 a plan for the use of any surpluses made in a Financial Year and during the medium-term planning time horizon, and the making of any distribution of profit subject to the provisions of the Companies Act 2006; and
- 2.4.7 such other content the Owner may require from time to time and notify to the Company in writing.

2.5 The Company shall adopt the first draft Business Plan by no later than 1 July 2026. Thereafter, each draft Business Plan for the Company for a given Financial Year shall be:

- 2.5.1 prepared by the Board and circulated by the Board to the Owner in draft form by no later than 1 October each year; and
- 2.5.2 considered by the Owner and the Owner shall as soon as possible and in any event within two (2) months of the date of receipt of the draft Business Plan from the Board either:
 - (a) if thought fit, approve the draft Business Plan; or
 - (b) if the Owner has questions or requires changes to the draft Business Plan notify the Board of these in writing and the Board shall promptly respond in writing (where questions have been asked of it) and shall re-present the updated draft Business Plan for Owner consideration and approval or rejection (again pursuant to clause 2.5.2).

2.6 Upon the draft Business Plan being approved, it shall (from the date on which the draft Business Plan is intended to apply) become the Business Plan in place of the previous Business Plan and until such draft Business Plan is approved the most recently approved Business Plan shall continue to apply.

2.7 The Company may present an updated draft Business Plan at any time, together with an explanation as to why such an in-year amendment is being requested, which draft shall be considered pursuant to clause 2.5.2 as though it were an annual draft Business Plan.

2.8 Once a Business Plan has been approved it shall be the approved Business Plan for the Company, in accordance with which the Company covenants to carry on the Business.

3 OWNER'S ROLE

- 3.1 The Owner will monitor and control the Business and affairs of the Company through the Owner Consent Matters, through receiving periodic reports, through its Directors and through ad hoc information requests.
- 3.2 The Owner shall be permitted to exercise its rights in relation to the Company through any means it sees fit, including through any committee established for such purposes, and any reference to the Owner in this Agreement shall be construed as a reference to the Owner and / or any such committee as appropriate.
- 3.3 The Owner:
- 3.3.1 shall have unlimited, unrestricted and prompt access to any Company information and documents requested pursuant to this Agreement;
 - 3.3.2 will not usurp the functions of the Directors but will monitor the activities of the Company to ensure that they are acceptable and accountable to the Owner as ultimate owner of the Company; and
 - 3.3.3 may, in addition to those matters requiring Owner Consent:
 - (a) make recommendations from time to time to the Directors; and/or
 - (b) give directions by notice in writing from time to time to the Directors.
- 3.4 Any notice to or from the Owner shall be sent to or from the Owner Representative. Where a consent or approval is expressed in this Agreement to be required of the Owner (including Owner Consent), it shall be given by the Owner Representative. Such consent or approval shall be given in writing in advance of the decision or matter requiring consent or approval and the Owner shall use its reasonable endeavours to communicate any such decision, consent or approval (including any decision not to give consent or approval) to the Company without unnecessary delay and in any event within a period of 40 Business Days from receipt of the request provided that the Owner shall not be deemed to have made a decision or given its consent or approval by virtue of the fact that it has not communicated the same within that time limit. Where the Company requires the Owner to make any decision or provide any consent or approval, the Company shall provide such material information as the Owner may require to enable it to consider the decision, consent or approval in question.
- 3.5 Once a consent or approval is given in accordance with clause 3.4 then, to the extent a special or an ordinary resolution is required pursuant to the CA2006 or otherwise, and the form of consent or approval doesn't already take the form of such a special or ordinary resolution, the Company shall prepare and circulate to the Owner a draft resolution for consideration and, if thought fit, approval by the Owner. The Owner shall approve any resolution which is in line with a consent or approval previously given.
- 3.6 The Company shall ensure that the Directors and and/or any employees of the Company as requested by the Owner shall attend such meetings or parts of meeting(s) of the Owner as the Owner may require and shall answer questions put by the Owner and provide information regarding the activities of the Company as reasonably requested.

4 CONDUCT OF THE COMPANY'S AFFAIRS

- 4.1 Meetings of the Directors shall be held no less than four times in every year and at not more than three monthly intervals.
- 4.2 The quorum for the transaction of business at a meeting of Directors is:
- 4.2.1 two Independent Directors (or, if less, such number of Independent Directors as are then in office); and
 - 4.2.2 where there is at least one executive Director in office, one executive Director.

- 4.3 With the exception of the Owner Consent Matters, the management of the Company shall be vested in the Directors. The Company shall ensure that no Owner Consent Matters shall be carried out without Owner Consent.
- 4.4 The Owner or, where the Owner has not exercised its rights to do so, the Directors, shall appoint an Independent Director to chair the meetings of Directors. If the numbers of votes for and against a proposal are equal, the chair shall have a casting vote.
- 4.5 The Directors may, with Owner Consent, appoint a chief executive/managing director on such terms as they may think fit who shall be responsible for the day to day management of the Business within the terms of the business plan and budget then in force and this Agreement, and perform such duties as may be delegated to them by the Directors. The Directors may also remove such managing director, and appoint a replacement, in each case on such terms as they may think fit, providing that no appointment or removal shall be made without Owner Consent.
- 4.6 The Directors will determine the general policies of the Company and the manner in which the Business is to be carried out, subject to:
- 4.6.1 the business plan and the budget then in force;
 - 4.6.2 those matters requiring Owner Consent; and
 - 4.6.3 any other express provisions of this Agreement.
- 4.7 In particular, but without limitation, the Directors shall exercise all voting rights and other powers of control available to them in relation to the Company so as to procure (in so far as they are able in the exercise of such rights and power) that, at all times during the term of this Agreement, the Company shall:
- 4.7.1 comply with the Procurement Act 2023;
 - 4.7.2 comply with the Procurement Code of Practice adopted from time to time;
 - 4.7.3 carry on and conduct the Business and affairs in a proper and efficient manner, for its own benefit and in accordance with the business plan and budget and good business practices; and
 - 4.7.4 transact all its business on arm's length terms.
- 4.8 The Company shall not carry out any activity which would render the Owner's membership of the Company unlawful provided that where a proposed change of law would render such membership unlawful the Owner will use its reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to be a shareholder of the Company.
- 4.9 The Company will, if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, obtain and maintain the same in full force and effect.
- 4.10 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company and its Subsidiaries with the Owner's designated officers and executives at any time. All books, records, accounts and documents relating to the Business and the affairs of the Company shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the Owner properly informed about the Business and affairs of the Company or to protect its interests as Owner. Any information secured as a consequence of such discussions and inspections shall be kept confidential by the Owner and its designated officers and executives in accordance with the terms of clause 14.
- 4.11 The Company agrees with the Owner that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company and will generally keep the Owner informed of the progress of the Business and affairs and in particular will procure that

the Owner is given such information and such access to the officers, employees and premises of the Company as it may reasonably require for the purposes of enabling it to monitor its investment and interest in the Company.

4.12 The Company shall not breach nor cause the Owner to be in breach of:

4.12.1 the Local Authorities (Companies) Order 1995; nor

4.12.2 the Procurement Act 2023.

5 BOARD OF DIRECTORS

5.1 The appointment and removal of any Director or Observer shall be an Owner Consent Matter.

5.2 The Owner may appoint:

5.2.1 up to 4 Independent Directors provided that, where there is no Finance Director in office at least 1 of whom shall have relevant financial experience;

5.2.2 up to 2 executive directors being the Managing Director and Finance Director; and

5.2.3 up to three Observers

5.3 The Parties shall procure that each Independent Director is appointed for a term of up to three years following which an Independent Director may be re-appointed for a further term of up to three years. The Independent Directors shall each offer their resignation annually and the parties shall use their reasonable endeavours to avoid a situation in which the term of appointment for each Independent Director expires concurrently. Upon the expiry of this second term, the Independent Director shall not be permitted to hold office as a Director for a period of one year.

5.4 The appointment or termination of each Director, the position of Chair (who shall be one of the Independent Directors (subject to ad hoc appointments in absence in accordance with clause 4.4) and the Observers shall be made by the Owner in accordance with clause 5.7. The Chair shall have a casting vote.

5.5 At any time that the position(s) of Independent Director(s) or Managing Director or Finance Director is/ are vacant or at the request of the Owner, the Board shall promptly make written recommendations to the Owner of potential appointees, and the Owner shall notify the Board in writing within thirty (30) Business Days of receiving the recommendation (i) if it requires additional recommendations from the Board or (ii) of the appointment pursuant to clause 5.7 (which for the avoidance of doubt may be a third party or a potential appointee recommended by the Board).

5.6 The Owner shall notify the Company of the identity of the Observers from time to time in accordance with clause 5.7 (without the need for a Board recommendation).

5.7 Any appointments or terminations made by the Owner under this clause shall be effected by the Owner by giving notice in writing to the Company and the appointment shall be effective on the date on which the notice from the Owner is received by the Company or on any such later date specified in the notice.

5.8 On an annual basis the Company shall review the composition and membership of the Board in light of the Business Plan, with a view to whether it has the right mix of skills and experience to make sufficiently robust decisions in relation to those plans (**Board Review**), and shall detail how it intends to cover any gaps in skills and/ or experience which it identifies and shall provide the Owner with a written copy of the same. Where the suggestions in a Board Review include appointing additional Directors or replacing Directors, the Board shall make relevant recommendations for the post(s) (in accordance with clause 5.5).

5.9 Once in every two years (or such other period as the Owner may notify in writing from time to time) the Company shall arrange for an external review of the composition of the Board, the governance of

the Company and any required training (and such other matters as the Owner may notify in writing from time to time).

- 5.10 All Directors shall be appointed on terms to be approved by the Owner (pursuant to the Owner Consent Matter at Schedule 1, paragraph 6).
- 5.11 The Board may appoint a company secretary (or a company to provide such services) from time to time. Whilst there is no company secretary the Managing Director shall be responsible for this role.
- 5.12 The Company shall provide each Director with a summary of Director's duties in relation to the Company and a relevant induction and training (as required).

6 FINANCE FOR THE COMPANY

- 6.1 The Owner and Company have entered the Loan Agreement, pursuant to which the Owner shall advance to the Company sums in aggregate of up to £2.8m or such other sums as may be agreed from time to time. Having been repaid any balance may then be drawn down again, in accordance with the terms of the Loan Agreement.
- 6.2 If the Company requires additional capital:
 - 6.2.1 the Company may request such capital from the Owner provided that the Owner shall be permitted to provide such capital in any form it sees fit (including in the form of a loan) and the Owner not be obliged to provide any guarantee or security in respect of any indebtedness of the Company or to put up the finance concerned; and
 - 6.2.2 if the Owner is not providing that additional capital, the Company shall (subject to having received relevant Owner Consent either under an approved Business Plan or otherwise) endeavour to obtain it from a third party lender on the best terms which could reasonably be expected to be obtained in the open market provided that the Owner shall not be obliged to provide any guarantee or security in respect of any indebtedness of the Company.

7 MONITORING, ACCOUNTING AND ACCESS TO OTHER INFORMATION

- 7.1 The Directors shall procure that the Company shall at all times maintain accurate and complete accounting and other financial records including true and complete entries of all its dealings and transactions of and in relation to its Business.
- 7.2 The Company shall supply the Owner with the financial and other information necessary to keep the Owner informed about how effectively the Business is performing and to enable the Owner to comply with its reporting and other obligations arising from time to time. In particular, the Company shall supply the Owner with:
 - 7.2.1 on a monthly basis to be received within five Business Days of the end of the month to which the management accounts relate. monthly management accounts of the Company which shall include:
 - (a) profit and loss, balance sheet and cash flow position;
 - (b) cumulative management accounts for the Financial Year;
 - (c) such information that would allow the Owner to assess performance against any loan agreements; and
 - (d) such financial information as the Owner may reasonably request.
 - 7.2.2 on a quarterly basis (to be received within one month of quarter end) a report setting out progress against relevant timelines and key performance milestones in the Business Plan to include:

- (a) reconciliation between expenditure against budget; and
- (b) loan account.

7.2.3 on an ad-hoc basis:

- (a) notify the Owner of any material changes that would impact on financial performance and/or timely delivery of the Business Plan;
- (b) minutes of all board meetings within twenty (20) Business Days after the relevant meeting to which they relate; and
- (c) any other information reasonably required by the Owner from time to time, as notified to the Company in writing by the Owner.

7.2.4 The Company shall immediately notify the Owner of any legal action (potential, threatened or actual) of which it becomes aware which has been commenced by or against the Company.

7.3 The accounts of the Company shall be prepared in accordance with the accounting policies of the Owner.

7.4 The Owner and its authorised representatives shall have the right during the standard working hours of the Owner (as prescribed by the Owner's policies from time to time), on giving to the Company reasonable advance notice, to inspect the books and records of the Company from time to time and to be supplied with all information in such form as it or they may reasonably require to keep the Owner properly informed about the business and affairs of the Company and shall have the right to take copies of any such books and records or parts thereof.

8 PROCUREMENT

8.1 The Company shall adopt and maintain a compliant Procurement Code of Practice in accordance with requirements for public bodies under the Procurement Act 2023, and shall retain records of its procurement decisions in accordance with Section 98 of the Procurement Act 2023. The Company shall also retain a contracts register into which every contract entered into with an aggregate value which is greater than £30,000 or such other threshold as may be communicated by the Owner from time to time shall be recorded. Copies of which shall be provided to the Owner on written demand.

8.2 All procurement carried out by the Company shall be in accordance with the Procurement Code of Practice in force from time-to-time.

9 AUDIT AND FRAUD

9.1 The Company shall at all material times have auditors appointed (noting that this is an Owner Consent Matter).

9.2 The Company shall operate in accordance with and comply (where applicable) with the Owner's guidance, policies, codes, standards and practices in respect of audit and fraud in place from time to time.

9.3 The Company shall co-operate with any Owner representative and/ or auditor and/ or other third party appointed by the Owner in relation to auditing activities, which shall include but not be limited to:

- 9.3.1 providing access to the Company's premises and officers and employees;
- 9.3.2 providing access to and copies of all books, records or documents (both hardcopy and electronic);
- 9.3.3 promptly and fully answering any queries asked of it,

in all instances whether or not prior notice has been provided.

10 POLICIES AND PROCEDURES

10.1 In respect of policies and procedures of the Company (Policies and Procedures**):**

10.1.1 the Company shall adopt the Policies and Procedures that are relevant and required for its operational circumstances and that enable it to act legally, efficiently and appropriately as a subsidiary of a local authority, including, but not limited to:

- (a) an anti-collusion or counter fraud, bribery and corruption or anti-bribery policy;
- (b) a health and safety policy;
- (c) a conflict of interest policy;
- (d) an equalities policy;
- (e) a modern slavery policy; and
- (f) a Procurement Code of Practice,

and in the absence of any such Policies and Procedures, the Company shall adopt the relevant Policies and Procedures (or the nearest equivalent) of the Owner from time to time;

10.1.2 Policies and Procedures shall be fully documented and include planned dates for review and re-approval;

10.1.3 the Policies and Procedures shall be subject to an internal audit and audit by the Owner when requested by the Owner.

11 PREVENTION OF BRIBERY

11.1 The Company:

11.1.1 shall not, and shall procure that any Director, officer, employee, adviser or representative of any of them shall not, in connection with this Agreement commit a Prohibited Act;

11.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to (i) any person working for or engaged by the Owner or (ii) any elected member of the Owner, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Owner before execution of this Agreement;

11.1.3 shall, if requested, provide the Owner with any reasonable assistance, at the Owner's reasonable cost, to enable the Owner to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and

11.1.4 within five (5) Business Days of the date of this Agreement, and annually thereafter, certify to the Owner in writing (such certification to be signed by an officer of such company) compliance with this clause 11 by such company and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. Such company shall provide such supporting evidence of compliance as the Owner may reasonably request.

- 11.2 The Company shall have an anti-bribery policy (which shall be disclosed to the Owner) to prevent any of its Directors, officers, employees, advisers or representatives of the company from committing a Prohibited Act and shall enforce it where appropriate.
- 11.3 The Company shall ensure that the conflicts of interest policy (the approval of which is a Reserved Matter) is appropriately enacted.
- 11.4 If any breach of clause 11.1 is suspected or known, the Company must notify the Owner immediately.
- 11.5 If the Company notifies the Owner that it suspects or knows that there may be a breach of clause 11.1, the Company must respond promptly to the Owner's enquiries, co-operate with any investigation, and allow the Owner to audit books, records and any other relevant documentation.
- 11.6 The Owner may terminate this Agreement in respect of the Company or any other agreement with the Company by written notice with immediate effect if the Company or any Director, officer, employee, adviser or representative of the Company (in all cases whether or not acting with such Company's knowledge) breaches clause 11.1.
- 11.7 Any notice of termination under clause 11.6 must specify:
- 11.7.1 the nature of the Prohibited Act;
 - 11.7.2 the identity of the party whom the Owner believes has committed the Prohibited Act; and
 - 11.7.3 the date on which this Agreement shall terminate in respect of the Company.
- 11.8 Any dispute relating to:
- 11.8.1 the interpretation of this clause 10; or
 - 11.8.2 the amount or value of any gift, consideration or commission;
- shall be determined by the Owner and its decision shall be final and conclusive.
- 11.9 Any termination under clause 11.6 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Owner.

12 DISPUTE RESOLUTION

- 12.1 In the event of any disagreement or dispute arising between the parties in connection with this Agreement (a **Dispute**), the parties shall use all reasonable endeavours to resolve the matter on an amicable basis. If one party serves formal written notice on one or more of the others that a Dispute has arisen and the parties are unable to resolve the Dispute within a period of twenty (20) Business Days from the service of such notice, then the Dispute shall be referred for resolution to an Independent Director and a senior officer nominated by the Owner in accordance with clause 12.2.
- 12.2 The parties shall attempt to resolve the Dispute within the twenty (20) Business Days after the date of the notice given under clause 12.1.
- 12.3 If the Dispute cannot be resolved in accordance with clause 12.2 then an independent mediator (to be agreed by both parties) shall be appointed to attempt resolution of the Dispute within twenty (20) Business Days. If the Dispute still cannot be resolved within that period then:
- 12.3.1 the Owner may permit additional time for the parties to attempt to reach a resolution; or
 - 12.3.2 the Owner shall unilaterally determine the Dispute taking into account the mediator's report where the Owner considers it appropriate to do so.

Any decision of the Owner in accordance with this clause 12.3 shall be final.

13 TERMINATION

- 13.1 This Agreement shall terminate upon service of written notice by the Owner on the Company:
- 13.1.1 the making of an order or the passing of an effective resolution (in accordance with the terms of this Agreement) for the liquidation of the Company; or
 - 13.1.2 the Company ceasing to carry on its Business.
- 13.2 the written agreement of the Parties in accordance with the terms agreed; or
- 13.3 upon the Owner giving not less than three months' written notice of the date on which this Agreement will terminate.

14 CONFIDENTIALITY, FREEDOM OF INFORMATION AND DATA PROTECTION

- 14.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party except as permitted by clause 14.2.
- 14.2 Each Party may disclose the other Party's confidential information:
- 14.2.1 to its employees, officers, representatives or advisers who need to have such information for the purposes of carrying out the Party's obligations under this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 14; or
 - 14.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 14.3 Each Party acknowledges that the other Party is or may be subject to the requirements of the FOIA and the Environmental Information Regulations, and shall facilitate the other Party's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 14.4-14.7.
- 14.4 If either Party (the **Recipient**) receives a Request for Information in relation to Information that the other Party is holding and which the Recipient does not hold itself, the Recipient shall within 6 Business Days of receiving a Request for Information:
- 14.4.1 respond to the Request for Information explaining that that the other Party shall be responding within the required timeframe; and
 - 14.4.2 refer the Request for Information to the other Party explaining that the other Party is holding the relevant Information and that the Request for Information must be met by the other Party within the required timeframe.
- 14.5 The Recipient shall provide all necessary assistance as reasonably requested by the other Party to enable the other Party to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 14.6 The Parties acknowledge that (notwithstanding the provisions of clause 14.1) a Recipient may, acting in accordance with the Freedom of Information Code of Practice 2018 and the Regulation 16 Code of Practice on the discharge of the obligations of public authorities under the EIR (as appropriate) disclose Information concerning the other Party:
- 14.6.1 in certain circumstances without consulting with the other Party; or
 - 14.6.2 following consultation with the other Party and having taken their views into account. The Recipient shall have absolute discretion as to whether Information is exempt from

disclosure under the FOIA and the Environmental Information Regulations and whether Information is to be disclosed in response to a Request for Information.

14.7 Each Party shall transfer to the other Party any Request for Information which it receives but is addressed to the other Party as soon as practicable and in any event within 6 Business Days of receiving it.

14.8 The Parties acknowledge that any lists provided which itemise or outline confidential information are of indicative value only and that a Recipient may nevertheless be obliged to disclose confidential information in accordance with this clause 14.

14.9 The Parties shall comply with all Data Protection Legislation at all times when carrying out their respective obligations pursuant to this Agreement and any other agreement to which it is a party.

15 NO PARTNERSHIP

Nothing in this Agreement gives rise to a partnership between the Parties or constitutes one Party acting as the agent of the other.

16 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Unless the right of enforcement is expressly granted, it is not intended that a third party, other than a lawful successor in title or a lawful assignee, should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999. The Parties may rescind or vary this Agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided.

17 COSTS OF THIS AGREEMENT

Each Party shall pay its own costs in connection with the negotiation, preparation, execution and performance of this Agreement.

18 WAIVER

18.1 The rights of each of the Parties in respect of a breach of this Agreement shall not be affected by completing, rescinding, or failing to rescind, this Agreement, or failing to exercise, or delaying to exercise, a right or remedy, or by anything else, except a specifically authorised written waiver or release. A single or partial exercise of a right or remedy provided by this Agreement or by law does not prevent its further exercise or the exercise of another right or remedy.

18.2 Waiver of a breach of a term of this Agreement, or of a default under it, does not constitute a waiver of another breach or default nor affect the other terms of this Agreement.

18.3 The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies.

19 VARIATION

A purported variation of this Agreement is not effective unless in writing and signed by or on behalf of each of the Parties.

20 INVALIDITY

If a provision of this Agreement is held to be illegal or unenforceable, in whole or in part, under an enactment or rule of law, it shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected. The Parties agree to negotiate in good faith to agree the terms of a mutually satisfactory provision to be substituted for the provision found to be illegal or unenforceable.

21 ENTIRE AGREEMENT

- 21.1 This Agreement (together with any documents entered into under it or at the same time as it) supersedes all prior understandings and agreements between the Parties (whether written or oral) relating to its subject-matter and contains the entire agreement between the Parties relating to its subject-matter.
- 21.2 Each Party acknowledges that it does not enter into this Agreement on the basis of, and does not rely on, warranties or representations made, or agreed to, by any person (whether a party to this Agreement or not).
- 21.3 Each Party waives its rights against the other in respect of warranties and representations (whether written or oral) not expressly set out or referred to in this Agreement.
- 21.4 Nothing in this clause 21 limits or excludes liability for fraud.

22 STATUS OF THIS AGREEMENT

In the event of any ambiguity or discrepancy between the provisions of this Agreement and the Articles, then it is the intention of the Owner that the provisions of this Agreement shall prevail. Accordingly, the Owner shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to give effect to the provisions of this Agreement and shall further if necessary procure (insofar as it is able to do so by the exercise of those rights and powers) any required amendment to the Articles.

23 CONSENTS

- 23.1 Consents, notices, approvals or agreements to be given by the Owner under this Agreement (including Owner Consent) shall be given in writing.
- 23.2 Where this Agreement provides that a matter is subject to the consent, approval or agreement of either Party then (except as expressly provided otherwise), it shall be in the absolute discretion of that Party as to whether (and if so, on what terms and conditions) the consent, approval or agreement is made.

24 COMMUNICATIONS

- 24.1 Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first-class post or by email as follows:

24.1.1 if to the Owner:

Address: as recorded in the recitals in the recitals to this Agreement

Email: as notified to the other party from time to time

marked for the attention of the Owner Representative; and

24.1.2 if to the Company, to:

Address: its registered address from time to time

Email: as notified to the other party from time to time

marked for the attention of the Managing Director (or where one is not appointed any Director),

or to such other person, address, or email as any Party may specify by notice in writing to the other.

24.2 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

24.2.1 if delivered personally, when left at the address referred to in clause 24.1;

24.2.2 if sent by first class mail, other than airmail, two Business Days after posting it;

24.2.3 if sent by email, when sent and there has been no communication by the recipient to the sender that the email has not been received,

provided always that a notice given in accordance with the above but received on a day which is not a Business Day or after business hours on a Business Day will only be deemed to be given on the next Business Day.

25 COUNTERPARTS

This Agreement may be executed in counterparts and by the Parties on different counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart, when executed, shall be an original, but all the counterparts together constitute the same document.

26 GOVERNING LAW AND JURISDICTION

26.1 This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of England and Wales.

26.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in respect of any dispute or claim arising out of or in connection with this Agreement or any of the documents to be executed pursuant to this Agreement or their subject-matter or formation (including non-contractual disputes or claims).

26.3 This Agreement has been executed as a deed and delivered on the date stated at the beginning of this Agreement.

SCHEDULE 1 - OWNER CONSENT MATTERS

The table below sets out the Owner Consent Matters that are reserved to the Owner

Number	Reserved Matter
Constitution of the company	
1.	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the company.
2.	Changing the company's registered office.
3.	Changing the company's name.
4.	Increase or reduce the amount of its issued share capital, grant any option over or in its share capital, redeem or purchase any of its own shares or otherwise alter, or effect any reorganisation of, its share capital (where applicable).
5.	Apply for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market (where applicable).
Officers and Shareholders of the company	
6.	The appointment and the appointment terms (including any remuneration terms) and the removal and removal terms of any Director.
7.	The admission of further shareholders or members to the company or agreeing any rights or restrictions attaching to any shares or memberships allocated to such new shareholders or members as applicable).
Financial Regulation	
8.	Appointing and changing the company's auditors.
9.	Changing the Financial Year of the company.
10.	Declare or pay any end of year dividend of the company (where applicable).
11.	Creating or agreeing to create a charge, security or encumbrance over the company's assets, shares or income.
12.	Passing any resolution for its winding up or presenting any petition for or winding up or the appointment of an Administrator.
13.	Agree to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or the granting of trade credit to a company which has been approved under the Business Plan) or

Number	Reserved Matter
	giving any guarantee or indemnity (other than in the normal course of trading).
Future direction and development of the company	
14.	Changing the nature of the business or commencing any new business which is not ancillary or incidental to the business of the company.
15.	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle.
16.	Amalgamating or merging with any other company or business undertaking.
17.	Selling or disposing of any part of the business of the company.
18.	Agreeing or approving any material amendments to the Business Plan including any in-year material changes to the Business Plan and any amendments to the methodology of service delivery included within the Business Plan.
19.	Undertaking any business or action which is inconsistent with the Business Plan then in force or omitting to undertake any action which is required by that Business Plan except with the prior written consent of the Owner.
20.	Agreeing or approving any other material services the total value of which exceeds £250,000 per annum to be provided by the company to a third party not approved under the Business Plan.
21.	Appoint any agent (not being a subcontractor) to conduct the whole or any part of the business of the company, other than the appointment of an agent to conduct an area of the business of a company.
Management of the business of the company	
22.	Approving any matter that is reasonably likely to have an adverse effect on the reputation of the Owner.
23.	Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company the total value of which the Board reasonably expects will exceed £100,000 per instance, and is not already approved in the Business Plan
24.	Agreeing to enter into or entering into any acquisition of any vehicles in excess of the applicable approved purchase levels.
25.	Participating in a bidding or tendering process, of any nature, which could result in the award of a contract: • with a value for more than £250,000; or

Number	Reserved Matter
	• which has the potential to compromise the status of the Company as compliant with the Vertical Arrangement Exemption; • or which the Board consider carries high or unusual risks for the Company.
26.	Entering into a contract: • with a value for more than £250,000; or • which has the potential to compromise the status of the Company as compliant with the Vertical Arrangement Exemption; or • which the Board consider carries high or unusual risks for the Company;
27.	Giving notice of termination of any arrangements, contracts or transactions the total value of which exceeds £250,000 or materially varying any such arrangements, contracts or transactions and such termination or variation is likely to have an adverse impact on the financial status of a company.
28.	Agreeing or approving any material services to be provided by the Company to a third party the total value of which the Board reasonably expects will exceed 5% of the turnover of the Company for that given Financial Year
29.	Granting rights (by licence or otherwise) in or over any intellectual property owned or used by the company.

In witness whereof the parties have executed this Agreement as a deed.

Executed as a deed by affixing)

the common seal of)

EAST DEVON DISTRICT COUNCIL)

)

)

in the presence of)

)

.....)

Authorised signatory)

Executed as a deed by)

**EAST DEVON ENVIRONMENTAL
SERVICES LIMITED**)

)

acting by,)

)

Director

and

.....
Director

Appendix B: Articles of Association

COMPANY NUMBER 16840236

**THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION
OF
EAST DEVON ENVIRONMENTAL SERVICES LIMITED**

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THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION
OF

EAST DEVON ENVIRONMENTAL SERVICES LIMITED
(the “Company”)

1 DEFINED TERMS

1.1 Neither:

1.1.1 the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 2009/3229); nor

1.1.2 any other regulations or model articles contained in any statute or subordinate legislation, shall apply to the Company, but the following shall be the articles of association of the Company.

1.2 In these articles, unless the context requires otherwise:

articles mean the Company's articles of association

bankruptcy includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy

Chair has the meaning given in article 12

Companies Acts means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the Company

Conflict means a situation in which a Director has or can have, a direct or indirect interest that conflicts or possibly may conflict, with the interests of the Company

Director means a director of the Company

document includes, unless otherwise specified, any document sent or supplied in electronic form

electronic form has the meaning given in section 1168 of the Companies Act 2006

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

Independent Director means a non-executive Director who is neither a member or officer of nor otherwise associated with the Owner

instrument means a document in hard copy form

ordinary resolution has the meaning given in section 282 of the Companies Act 2006

Owner means a person or body whose name is entered in the Register of Members of the Company

participate, in relation to a Directors' meeting, has the meaning given in article 10

special resolution has the meaning given in section 283 of the Companies Act 2006

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

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

holder in relation to shares means the person whose name is entered in the register of members as the holder of the shares

paid means paid or credited as paid

proxy notice has the meaning given in article 23.4

shareholder means a person who is the holder of a share

shares means shares in the Company

transmittee means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law

1.3 Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act 2006 as in force on the date when these articles become binding on the Company.

1.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 LIABILITY OF THE OWNER

2.1 The liability of the Owner is limited to the amount, if any, unpaid on the shares held by it, being the amount the Owner undertakes to contribute to the assets of the Company in the event of it being wound up while it is an Owner or within one year after it ceases to be an Owner, such amount to be contributed towards:

2.1.1 payment of those debts and liabilities of the Company incurred before it ceased to be an Owner;

2.1.2 payment of the costs, charges and expenses of winding up; and

2.1.3 the adjustment of rights of contributors among themselves.

3 DIRECTORS' GENERAL AUTHORITY

3.1 Subject to these articles the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

4 OWNER'S RESERVE POWER

4.1 The Owner may, by special resolution, direct the Directors to take, or refrain from taking, specified action

4.2 No such special resolution invalidates anything which the Directors have done before the passing of the resolution.

5 DIRECTORS MAY DELEGATE

5.1 Subject to these articles, the Directors may delegate any of the powers which are conferred on them under these articles:

5.1.1 to such person or committee;

5.1.2 by such means (including by power of attorney);

5.1.3 to such an extent;

5.1.4 in relation to such matters or territories; and

5.1.5 on such terms and conditions,

as they think fit.

5.2 If the Directors so specify, any such delegation may authorise further delegation of the Directors' powers by any person to whom they are delegated.

5.3 The Directors or the Owner may revoke any delegation in whole or part, or alter its terms and conditions.

6 COMMITTEES

6.1 Committees to which the Directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of these articles which govern the taking of decisions by Directors.

6.2 At least one member of the committee must be a Director. The relevant Director must form part of the quorum of the committee for a decision of the committee to be validly taken.

6.3 The Directors may make rules of procedure for all or any committees, which prevail over rules derived from these articles if they are not consistent with them.

6.4 All proceedings of committees must be reported promptly to the Directors.

7 DIRECTORS TO TAKE DECISIONS COLLECTIVELY

7.1 The general rule about decision-making by Directors is that any decision of the Directors must be either a majority decision at a meeting or a decision taken in accordance with article 7.2.

7.2 If only one Director is eligible to vote on any authorisation under article 14 or if there is only one Director, the general rule does not apply and the eligible Director may take decisions in relation to the relevant matter without regard to any of the provisions in these articles relating to Directors' decision-making.

7.3 Every Director has one vote on each issue.

7.4 A procedural defect of which the Directors are unaware at the time does not invalidate decisions taken at a meeting.

8 UNANIMOUS DECISIONS

8.1 A decision of the Directors is taken in accordance with this article when all eligible Directors indicate to each other by any means that they share a common view on a matter.

8.2 Such a decision may take the form of a resolution in writing, which may consist of several copies each signed by one or more eligible Directors or to which the eligible Directors have otherwise indicated agreement in writing.

8.3 References in this article to eligible Directors are to Directors who would have been entitled to vote on the matter had it been proposed as a resolution at a Directors' meeting.

8.4 A decision may not be taken in accordance with this article if the eligible Directors would not have formed a quorum at such a meeting.

9 CALLING A DIRECTORS' MEETING

9.1 Meetings of Directors shall be held no less than four times in every year and at not more than three monthly intervals

9.2 The Owner or any Director may call a Directors' meeting by giving notice of the meeting to the Directors or by authorising the company secretary (if any) to give such notice.

- 9.3 A meeting of the Directors must be called by at least seven days' notice unless either:
- 9.3.1 the Directors unanimously agree otherwise; or
 - 9.3.2 urgent circumstances require shorter notice.
- 9.4 Notice of any Directors' meeting must indicate:
- 9.4.1 its proposed date and time;
 - 9.4.2 where it is to take place (which may be physical, virtual or a combination); and
 - 9.4.3 if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 9.5 Notice of a Directors' meeting must be given to each Director, but need not be in writing.
- 9.6 Notice of a Directors' meeting need not be given to Directors who waive their entitlement to notice of that meeting. A Director may waive the requirement that notice of a meeting of the Directors or of a committee of the Directors be given to him at any time before or after the date on which the meeting is held by notifying the Company to that effect. Where a Director gives such notice after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

10 PARTICIPATION IN DIRECTORS' MEETINGS

- 10.1 Subject to these articles, Directors participate in a Directors' meeting, or part of a Directors' meeting, when:
- 10.1.1 the meeting has been called and takes place in accordance with these articles; and
 - 10.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 10.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.
- 10.3 If all the Directors participating in a meeting are not in the same place, the meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the Chair of the meeting is.

11 QUORUM FOR DIRECTORS' MEETINGS

- 11.1 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 11.2 Subject to article 11.3 the quorum for the transaction of business of the Directors shall be:
- 11.2.1 two Independent Directors (or, if less, such number of Independent Directors as are then in office); and
 - 11.2.2 where there is at least one executive Director in office, one executive Director.
- 11.3 Where there are no Independent Directors appointed the quorum for the transaction of business of the Directors shall be 2 Directors.
- 11.4 If the total number of Directors for the time being is less than the quorum required, the Directors must not take any decision other than a decision to call a general meeting so as to enable the Owner to appoint further Directors.
- 11.5 If a quorum is not present with half an hour from the time appointed for the meeting, or during a meeting a quorum ceases to be present, the meeting shall be adjourned to such time and place as the Directors may determine.

12 CHAIRING OF DIRECTORS' MEETINGS

- 12.1 The Owner or, where the Owner has not exercised its rights to do so, the Directors, shall appoint an Independent Director (or, where there are no Independent Directors in office), any Director) to chair the meetings of Directors. The person so appointed for the time being is known as the Chair.
- 12.2 The Owner may terminate the Chair's appointment at any time.
- 12.3 If the numbers of votes for and against a proposal are equal, the Chair shall have a casting vote.

13 DIRECTORS' CONFLICTS OF INTEREST

- 13.1 A Director must declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Company or in any transaction or arrangement entered into by the Company which has not previously been declared. A Director must absent himself or herself from any discussions of the Directors in which it is possible that a Conflict will arise between his or her duty to act solely in the interests of the Company and any personal interest (including but not limited to any personal financial interest) and not count in the quorum nor vote on any such matters unless otherwise authorised by article 14.

14 AUTHORISATION OF DIRECTORS' CONFLICTS OF INTEREST

- 14.1 For the purposes of section 175 of the Companies Act 2006, as amended, consolidated or re-enacted from time to time, the Directors shall have the power to authorise any matter which would or might otherwise constitute or give rise to a breach by a Director of the duty to avoid conflicts of interest set out in that section of the Companies Act 2006. Any reference in these articles to a Conflict of interest includes a Conflict of interest and duty and a Conflict of duties.
- 14.2 Provided that he has disclosed to the Directors the nature and extent of any interest of his in accordance with and to the extent required by the Companies Act 2006, a Director notwithstanding his office may be an elected member, director or other officer of, employed by the Owner or any company in which the Owner has an interest.
- 14.3 For the purposes of article 14.2 a Director shall be deemed to have disclosed the nature and extent of an interest which consists of him being an elected member, director, officer or employee of the Owner or any company in which the Owner has an interest.
- 14.4 Where a Director is an elected member, director, officer, or employee of the Owner or any company in which the Owner has an interest, they:
 - 14.4.1 may in exercising his independent judgment take into account the success of the Owner or any company in which the Owner has an interest as well as the success of the Company; and
 - 14.4.2 shall in the exercise of his duties have a duty of confidentiality to the Owner or any company in which the Owner has an interest in relation to confidential information of the Owner or any company in which the Owner has an interest, but they shall not be restricted by any duty of confidentiality to the Company from providing information to the Owner or any company in which the Owner has an interest.
- 14.5 Save as pre-authorised under article 14.2, authorisation of a matter under this article 14 shall be effective only if:
 - 14.5.1 the matter in question shall have been proposed in writing for consideration by the Directors, or in such other manner as the Directors may determine;
 - 14.5.2 any requirement as to the quorum at the meeting of the Directors at which the matter is considered is met without counting the Director in question and any other interested Director (together, the **Interested Directors**); and
 - 14.5.3 the matter was agreed to without the Interested Directors voting or would have been agreed to if the votes of the Interested Directors had not been counted.

- 14.6 Unless otherwise determined by the Directors (excluding the Interested Directors), any authorisation of a matter under this article 14 shall extend to any actual or potential Conflict of interest which may reasonably be expected to arise out of the matter so authorised.
- 14.7 Any authorisation of a matter under this article 14 shall be on such terms and/or conditions as the Directors (excluding the Interested Directors) may determine, whether at the time such authorisation is given or subsequently and may be varied or terminated by the Directors (excluding the Interested Directors) at any time. Such terms or conditions may include (without limitation) terms and conditions as to the duration, renewal and/or revocation of the authorisation, and/or the exclusion of the Interested Directors from all information and discussion of the matter in question. A Director shall comply with any obligations imposed on him by the Directors (excluding the Interested Directors) pursuant to any such authorisation.
- 14.8 A Director shall not, save as otherwise agreed by him, be accountable to the Company for any benefit which he (or a person connected with him) derives from any matter authorised by the Directors under this article and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.

15 RECORDS OF DECISIONS TO BE KEPT

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

16 DIRECTORS' DISCRETION TO MAKE FURTHER RULES

- 16.1 Subject to these articles, the Directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to Directors.

17 APPOINTMENT AND REMOVAL OF DIRECTORS

- 17.1 Unless otherwise determined by the Owner, the maximum number of Directors shall be five.
- 17.2 The Owner shall appoint and remove Directors at any time and on such terms as the Owner determines. Every such appointment or removal shall be effected by notice in writing to the Company and shall take effect immediately (or on such later date, if any, specified in the notice).
- 17.3 A Director may not appoint an alternate Director or anyone to act on his or her behalf at meetings of the Directors.
- 17.4 Any removal pursuant to this article 17 shall be without prejudice to any claim that a Director may have under any contract between him and the Company.

18 TERMINATION OF DIRECTOR'S APPOINTMENT

- 18.1 A person ceases to be a Director as soon as:
- 18.1.1 that person ceases to be a Director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;
 - 18.1.2 that person has for more than six consecutive months been absent without permission of the Directors from meetings of Directors held during that period and the Directors resolve that person's office be vacated;
 - 18.1.3 a bankruptcy order is made against that person;
 - 18.1.4 a composition is made with that person's creditors generally in satisfaction of that person's debts;
 - 18.1.5 a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than three months;

- 18.1.6 that person (having an Owner employee at the time of their appointment as a Director) ceases to be employed by the Owner;
- 18.1.7 that person (having been an elected member of the Owner at the time of their appointment as a Director) ceases to be an elected member;
- 18.1.8 notification is received by the Company from the Director that the Director is resigning from office, and such resignation has taken effect in accordance with its terms; or
- 18.1.9 is removed by the Owner by notice in writing to the Company.

19 DIRECTORS' REMUNERATION

- 19.1 Directors may undertake any services for the Company that the Directors decide.
- 19.2 Subject to the Local Authorities (Companies) Order 1995 and the prior approval of the Owner, Directors are entitled to such remuneration as the Owner may determine:
 - 19.2.1 for their services to the Company as Directors; and
 - 19.2.2 for any other service which they undertake for the Company.
- 19.3 Unless the Owner decides otherwise, Directors are not accountable to the Company for any remuneration which they receive as Directors or other officers or employees of the Owner or of any other body corporate in which the Company is interested.

20 DIRECTORS' EXPENSES

- 20.1 Subject to the Local Authorities (Companies) Order 1995 and to such general rules and limitations as the Owner may from time to time determine, the Company may pay any reasonable expenses which the Directors properly incur in connection with their attendance at:
 - 20.1.1 meetings of Directors or committees of Directors;
 - 20.1.2 general meetings; or
 - 20.1.3 otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company.

21 COMPANY SECRETARY

- 21.1 The Directors may appoint a company secretary for such term, at such remuneration and upon such conditions as they think fit. Any company secretary may be removed or replaced by the Directors.

22 OWNER REPRESENTATIVE

- 22.1 Subject to the provisions of any agreement between the Owner and the Company in force from time to time, there shall be a sole Owner of the Company. The Owner may appoint up to three individuals to exercise its rights at general meetings and to give or receive notices and other documents under these articles.

23 CALLING A GENERAL MEETING

- 23.1 The Owner or the Directors may call a general meeting at any time.
- 23.2 The minimum period of notice required to hold a general meeting of the Company is fourteen clear days.
- 23.3 A general meeting may be called by shorter notice if it is so agreed by the Owner.
- 23.4 The notice of general meeting must specify the date time and place of, or online meeting location for, the meeting and the general nature of the business to be transacted. The notice must also

contain a statement setting out the right of the Owner to appoint a proxy under section 324 of the Companies Act 2006.

23.5 The notice must be given to the Owner and to the Directors.

23.6 The proceedings at a meeting shall not be invalidated because a person who was entitled to receive notice of the meeting did not receive it because of an accidental omission by the Company.

24 PROCEEDING AT A GENERAL MEETINGS

24.1 No business is to be transacted at a general meeting if the person(s) attending it do not constitute a quorum. A quorum is formed by the duly authorised representative of the Owner.

24.2 If:

24.2.1 a quorum is not present within half an hour from the time appointed for the meeting; or

24.2.2 during a meeting a quorum ceases to be present;

the meeting shall be adjourned to such time and place as the Owner shall determine.

24.3 General meetings shall be chaired by the duly authorised representative of the Owner.

24.4 A resolution put to the vote of a general meeting will be decided on a show of hands.

24.5 Each Owner, present in person or by proxy, whether an individual or an organisation, shall have one vote.

24.6 A person is able to exercise the right to vote at a general meeting when:

24.6.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

24.6.2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

24.7 The Directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

24.8 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

24.9 Directors may attend and speak at general meetings.

24.10 The chair of the meeting may permit other persons who are not:

24.10.1 appointed representatives of the sole Owner; or

24.10.2 otherwise entitled to exercise the rights of the sole Owner in relation to general meetings, to attend and speak at a general meeting.

25 ERRORS AND DISPUTES

25.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

25.2 Any such objection must be referred to the chair of the meeting, whose decision is final.

26 AMENDMENTS TO RESOLUTIONS

- 26.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
- 26.1.1 notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chair of the meeting may determine); and
 - 26.1.2 the proposed amendment does not, in the reasonable opinion of the chair of the meeting, materially alter the scope of the resolution.
- 26.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:
- 26.2.1 the chair of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
 - 26.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 26.3 If the chair of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chair of the meeting's error does not invalidate the vote on that resolution.

27 WRITTEN RESOLUTIONS

- 27.1 A resolution in writing agreed by the Owners who hold a simple majority (or in the case of a special resolution, a majority of not less than 75%) of the shares in the Company and who would have been entitled to vote upon it had it been proposed at a general meeting shall be effective provided that:
- 27.1.1 a copy of the proposed resolution has been sent to every eligible Owner;
 - 27.1.2 the Owners holding a simple majority (or in the case of a special resolution, a majority of not less than 75%) of the shares in the Company have signified their agreement to the resolution; and
 - 27.1.3 it is contained in an authenticated document which has been received at the registered office within the period of 28 days beginning with the circulation date.
- 27.2 A resolution in writing may comprise several copies to which one or more Owners have signified their agreement.
- 27.3 In the case of an Owner that is an organisation, its authorised representative may signify its agreement.

28 POLL VOTES

- 28.1 A poll on a resolution may be demanded:
- 28.1.1 in advance of the general meeting where it is to be put to the vote, or
 - 28.1.2 at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- 28.2 A poll may be demanded by:
- 28.2.1 the chair of the meeting;
 - 28.2.2 the Directors;
 - 28.2.3 two or more persons having the right to vote on the resolution; or

28.2.4 a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.

28.3 A demand for a poll may be withdrawn if:

28.3.1 the poll has not yet been taken, and

28.3.2 the chair of the meeting consents to the withdrawal.

28.4 Polls must be taken immediately and in such manner as the chair of the meeting directs.

29 MEANS OF COMMUNICATION TO BE USED

29.1 Subject to these articles, anything sent or supplied by or to the Company under these articles may be sent or supplied in any way in which the Companies Acts provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company.

29.2 Subject to these articles, any notice or document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or documents for the time being.

29.3 Any notice to be given to or by any person pursuant to these articles:

29.3.1 must be in writing; or

29.3.2 must be given in electronic form.

29.4 The Company may give any notice to the Owner either:

29.4.1 personally; or

29.4.2 by sending it by post in a prepaid envelope addressed to the Owner at the Owner's address; or

29.4.3 by leaving it at the address of the Owner; or

29.4.4 by giving it in electronic form to the Owner's address; or

29.4.5 by placing the notice on a website and providing the person with a notification in writing or in electronic form of the presence of the notice on the website. The notification must state that it concerns a notice of a company meeting and must specify the place date and time of the meeting.

29.5 An Owner who does not register an address with the Company or who registers only a postal address that is not within the United Kingdom shall not be entitled to receive any notice from the Company.

29.6 An Owner present in person at any meeting of the Company shall be deemed to have received notice of the meeting and of the purposes for which it was called.

29.7 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given.

29.8 Proof that an electronic form of notice was given shall be conclusive where the Company can demonstrate that it was properly addressed and sent, in accordance with section 1147 of the Companies Act 2006.

29.9 In accordance with section 1147 of the Companies Act 2006 notice shall be deemed to be given:

(a) 48 hours after the envelope containing it was posted; or

(b) in the case of an electronic form of communication, 48 hours after it was sent.

30 COMPANY SEALS

- 30.1 Any common seal may only be used by the authority of the Directors.
- 30.2 The Directors may decide by what means and in what form any common seal is to be used.
- 30.3 Unless otherwise decided by the Directors, if the Company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.
- 30.4 For the purposes of this article, an authorised person is:
- 30.4.1 any Director of the Company;
 - 30.4.2 the company secretary (if any); or
 - 30.4.3 any person authorised by the Directors for the purpose of signing documents to which the common seal is applied.

31 INDEMNITY

- 31.1 The Company may indemnify any relevant officer out of the assets of the Company from and against any loss, liability or expense incurred by him or them in relation to the Company (including any liability incurred in connection with the activities of the Company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006)) provided that this article shall have effect, and any indemnity provided by or pursuant to it shall apply, only to the extent permitted by, and subject to the restrictions of, the Companies Act 2006. This article does not allow for or provide (to any extent) an indemnity which is more extensive than as permitted by the Companies Act 2006 and any such indemnity is limited accordingly. This article is also without prejudice to any indemnity to which any person may otherwise be entitled.
- 31.2 To the extent permitted by, and subject to the restrictions in, the Companies Act 2006 and without prejudice to any indemnity to which he may otherwise be entitled, the Directors shall have the power to provide funds to meet any expenditure incurred or to be incurred by any relevant officer in defending any criminal or civil (including regulatory) proceedings, or in connection with an application under the Companies Act 2006, or to enable him to avoid incurring such expenditure.
- 31.3 Without prejudice to the provisions of article 32, the Directors may exercise all the powers of the Company to purchase and maintain insurance for the benefit of any person who is a relevant officer or an employee or former employee of the Company or any associated company or who is or was a trustee of a retirement benefits scheme or another trust in which a relevant officer or an employee or former employee is or has been interested, indemnifying him against liability for negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against by the Company.
- 31.4 In these articles:
- 31.4.1 companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and
 - 31.4.2 **relevant officer** means any current or former Director, secretary or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006)), other than any person (whether an officer or not) engaged by the Company (or associated company) as an auditor, to the extent he acts as an auditor.

32 INSURANCE

- 32.1 The Directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant Director in respect of any relevant loss.
- 32.2 In this article:

- 32.2.1 a **relevant Director** means any Director or former Director of the Company or an associated company; and
- 32.2.2 a **relevant loss** means any loss or liability which has been or may be incurred by a relevant Director in connection with that Director's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company; and
- 32.2.3 companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

33 ALL SHARES TO BE FULLY PAID UP

- 33.1 No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the Company in consideration for its issue.

34 POWERS TO ISSUE DIFFERENT CLASSES OF SHARE

- 34.1 Subject to the articles, but without prejudice to the rights attached to any existing share, the Company may issue shares with such rights or restrictions as may be determined by ordinary resolution.
- 34.2 The Company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the Company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

35 COMPANY NOT BOUND BY LESS THAN ABSOLUTE INTERESTS

- 35.1 Except as required by law, no person is to be recognised by the Company as holding any share upon any trust, and except as otherwise required by law or the articles, the Company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

36 SHARE CERTIFICATES

- 36.1 The Company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.
- 36.2 Every certificate must specify
 - 36.2.1 in respect of how many shares, of what class, it is issued;
 - 36.2.2 the nominal value of those shares;
 - 36.2.3 that the shares are fully paid; and
 - 36.2.4 any distinguishing numbers assigned to them.
- 36.3 No certificate may be issued in respect of shares of more than one class.
- 36.4 If more than one person holds a share, only one certificate may be issued in respect of it.
- 36.5 Certificates must:
 - 36.5.1 have affixed to them the Company's common seal, or
 - 36.5.2 be otherwise executed in accordance with the Companies Acts.

37 REPLACEMENT SHARE CERTIFICATES

- 37.1 If a certificate issued in respect of a shareholder's shares is:
 - 37.1.1 damaged or defaced, or

37.1.2 said to be lost, stolen or destroyed, that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

37.2 A shareholder exercising the right to be issued with such a replacement certificate:

37.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;

37.2.2 must return the certificate which is to be replaced to the Company if it is damaged or defaced; and

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

38 SHARE TRANSFERS

38.1 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the Directors, which is executed by or on behalf of the transferor.

38.2 The Directors may not register a transfer of shares without the consent of the Owner.

38.3 No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.

38.4 The Company may retain any instrument of transfer which is registered.

38.5 The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

38.6 The Directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

39 TRANSMISSION OF SHARES

39.1 If title to a share passes to a transmittee, the Company may only recognise the transmittee as having any title to that share.

39.2 A transmittee who produces such evidence of entitlement to shares as the Directors may properly require:

39.2.1 may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person, and

39.2.2 subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.

39.3 Transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

40 EXERCISE OF TRANSMITTEES' RIGHTS

40.1 Transmittees who wish to become the holders of shares to which they have become entitled must notify the Company in writing of that wish.

40.2 If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.

40.3 Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

41 TRANSMITTEES BOUND BY PRIOR NOTICES

- 41.1 If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee's name has been entered in the register of members.

42 PROCEDURE FOR DECLARING DIVIDENDS

- 42.1 The Company may by ordinary resolution declare dividends, and the Directors may decide to pay interim dividends.
- 42.2 A dividend must not be declared unless the Directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the Directors.
- 42.3 No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- 42.4 Unless the shareholders' resolution to declare or Directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.
- 42.5 If the Company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.
- 42.6 The Directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- 42.7 If the Directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

43 PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS

- 43.1 Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means:
- 43.1.1 transfer to a bank or building society account specified by the distribution recipient either in writing or as the Directors may otherwise decide;
 - 43.1.2 sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the Directors may otherwise decide;
 - 43.1.3 sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the Directors may otherwise decide; or
 - 43.1.4 any other means of payment as the Directors agree with the distribution recipient either in writing or by such other means as the Directors decide.
- 43.2 In these articles, "**the distribution recipient**" means, in respect of a share in respect of which a dividend or other sum is payable:
- 43.2.1 the holder of the share; or
 - 43.2.2 if the share has two or more joint holders, whichever of them is named first in the register of members; or
 - 43.2.3 if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

44 NO INTEREST ON DISTRIBUTIONS

44.1 The Company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by:

44.1.1 the terms on which the share was issued, or

44.1.2 the provisions of another agreement between the holder of that share and the Company.

45 UNCLAIMED DISTRIBUTIONS

45.1 All dividends or other sums which are:

45.1.1 payable in respect of shares, and

45.1.2 unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed.

45.2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it.

45.3 If:

45.3.1 twelve years have passed from the date on which a dividend or other sum became due for payment, and

45.3.2 the distribution recipient has not claimed it,

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the Company.

46 NON-CASH DISTRIBUTIONS

46.1 Subject to the terms of issue of the share in question, the Company may, by ordinary resolution on the recommendation of the Directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

46.2 For the purposes of paying a non-cash distribution, the Directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:

46.2.1 fixing the value of any assets;

46.2.2 paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and

46.2.3 vesting any assets in trustees.

47 WAIVER OF DISTRIBUTIONS

47.1 Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the Company notice in writing to that effect, but if:

47.1.1 the share has more than one holder, or

47.1.2 more than one person is entitled to the share, whether by reason of the death or

47.1.3 bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

48 CAPITALISATION OF PROFITS

- 48.1 Subject to the articles, the Directors may, if they are so authorised by an ordinary resolution—
- 48.1.1 decide to capitalise any profits of the Company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the Company's share premium account or capital redemption reserve; and
 - 48.1.2 appropriate any sum which they so decide to capitalise (a "**capitalised sum**") to the persons who would have been entitled to it if it were distributed by way of dividend (the "**persons entitled**") and in the same proportions.
- 48.2 Capitalised sums must be applied:
- 48.2.1 on behalf of the persons entitled, and
 - 48.2.2 in the same proportions as a dividend would have been distributed to them.
- 48.3 Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.
- 48.4 A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.
- 48.5 Subject to the articles the Directors may:
- 48.5.1 apply capitalised sums in accordance with paragraphs (3) and (4) partly in one way and partly in another;
 - 48.5.2 make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and
 - 48.5.3 authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

Appendix C: Shareholder Committee terms of reference

EAST DEVON DISTRICT COUNCIL SHAREHOLDER COMMITTEE TERMS OF REFERENCE

For insert at Part 3 Section 2: Terms of reference and delegated powers of committees at 2.1 Cabinet (to follow 'Portfolio Teams'). We would suggest the following preamble, 'Committees of the Executive', is inserted before the Shareholder Committee Terms of Reference. Alternatively, this preamble may be added to Article 6.

Committees of the Executive

The Leader or the Cabinet may delegate any of its functions to a committee of the Cabinet. Committees of the Cabinet shall report to the Cabinet. The Leader or the Cabinet may establish decision-making committees which may only include Cabinet members. The Leader or the Cabinet may establish advisory committees, the membership of which need not be limited to Cabinet members. The Leader or the Cabinet may change them, abolish them, or create further ones, at its own discretion.

Committees established by the Leader or the Cabinet shall be empowered to perform these functions with immediate effect unless the Leader or the Cabinet impose any express restriction when they are established. Unless stated otherwise, all decision-making committees will continue in operation until expressly abolished by the Leader or the Cabinet and all advisory or consultative committees will continue in operation only until the first meeting of the Cabinet in the next civic year following their establishment when they must be expressly renewed or they cease to exist.

All functions that have been delegated to a committee established by the Leader or the Cabinet can still be taken by the Cabinet as the parent body (where the Cabinet has delegated that function) or by the Leader either personally or in accordance with the Leader's delegation of those functions to an individual Cabinet member or an alternative committee of the Cabinet.

The establishment, abolition or cessation of committees and the amendment of their terms of reference will be reported to Full Council in due course for noting in the Council's Constitution.

Shareholder Committee

Membership: 5 Cabinet Members including the Leader of the Council, Cabinet Member with Portfolio Responsibility for Environment Operations, the Cabinet Member with Portfolio Responsibility for Finance, and 2 other Cabinet Members.

The Head of Paid Service, the Chief Finance Officer (Section 151 Officer), the Monitoring Officer and representatives of Council companies shall be invited to meetings on a non-voting basis.

The Committee will be chaired by the Cabinet Member with Portfolio Responsibility for Environment Operations.

Meetings: 4 times per year (or more frequently as appropriate)

Quorum: 3

Reserves: Members of the Shareholder Committee may appoint reserve members from within the Cabinet, including substituting membership with the relevant Cabinet portfolio lead for the company activities being considered.

Competency: All members of the Shareholder Committee and Cabinet members attending as reserves must:

- (a) have undertaken mandatory training in the relevant law and procedures which relate to the Committee's work; and
- (b) undertake further mandatory training, on an ad hoc basis, when there are changes to procedure or relevant legislation that are deemed significant by the relevant Director.

Terms of reference: The purpose of the Shareholder Committee is to represent the Council's interests as the owner of East Devon District Council's companies. The Shareholder Committee shall approve and

oversee the Council's strategic objectives across its companies and to support the development of these companies in line with the Council's regulations and ambitions. The Shareholder Committee will provide strategic oversight of the Council's companies and provide assurance to the Cabinet that these companies are compliant with the Council's constitution, rules and procedures; its corporate objectives; are achieving best value; and are fit for purpose.

The Shareholder Committee will not have operational control over the Council's companies. The day-to-day operation of each company is the responsibility of the directors of each company. Operational liaison with the Council's companies will be between the client service of the Council and the managing director of each company. The following matters are reserved for the Shareholder Committee. In the event that the Committee was not minded to determine any matter reserved to it, it may refer those matters to the Leader or Cabinet for determination:

- (a) The Shareholder Committee has the right to access the following information from Council companies to undertake the work of the Sub-Committee:
 - (i) The statutory accounts of the company;
 - (ii) Business plans including risk registers;
 - (iii) Reports on major projects;
 - (iv) Any reports on engagement and commercial activity; and
 - (v) Any additional information it considers necessary to undertake the work of the Committee.
- (b) To hold the Council's companies to account, providing strategic oversight of the arrangements with the companies including the delivery by the companies of the Council's policy aims;
- (c) To appointment/remove company directors;
- (d) To appoint auditors;
- (e) To approve changes to the constitution of the company;
- (f) To exercise any shareholder consents;
- (g) To approve the business plans of each of the Council's companies and any in-year variations to it, including providing strategic advice to the Cabinet on the robustness and suitability of each of the business plans;
- (h) To approval any matter outside of the business plan and/or which exceeds the thresholds as detailed in the reserved matters within the Shareholder Agreement
- (i) To approve any proposals to make a significant capital or revenue investment in any of the Council's companies;
- (j) To approve any other Reserved Matters provided for in the Shareholder Agreement;
- (k) To take any decisions in relation to the overall commissioning arrangements;
- (l) To prepare and maintain a strategic risk register in relation to the Council's companies;
- (m) To review and analyse the annual statement of accounts of each of the Council's companies;
- (n) To determine the distribution of any surplus or the issue of any dividends from any of the Council's companies
- (o) To be consulted on the following by the Council's companies:
 - (i) the strategy, business plan, financial and corporate performance of the company;
 - (ii) Company policies;
 - (iii) matters reserved for shareholder approval as and when appropriate; and
 - (iv) emerging issues and opportunities which may impact the company, to discuss solutions proposed by the company.
- (p) To provide assurance that:
 - (i) strategic commissioning arrangements for the Council's companies are fit for purpose or provide recommendations to ensure that they are;
 - (ii) the overarching performance arrangements for each of the Council's companies are fit for purpose or provide recommendations to ensure that they are;
 - (iii) the arrangements for Council's companies comply with the Procurement Act 2023;
 - (iv) all Council's companies are complying with the relevant statutory and regulatory framework for their respective areas of operation.
- (q) To prepare and present a strategic report to the Cabinet at least once a year on the overall governance, financial and performance arrangements for the Council's companies.