

**THE COMPANIES ACT 2006**

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

**ARTICLES OF ASSOCIATION**

**of**

**CROSSDYKES COMMUNITY BENEFITS LIMITED**

**SC710786**

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**Constitution of company**

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

**Defined terms**

- 2 In these articles of association, unless the context requires otherwise:

- 2.1** “Act” means the Companies Act 2006;
- 2.2** “charity” means a body which is either a Scottish charity, or a “charity” within the meaning of section 1 of the Charities Act 2011, providing (in either case) that its objects are limited to charitable purposes;
- 2.3** “charitable purpose” means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts;
- 2.4** “conflict of interest” includes a conflict of interest and duty, and a conflict of duty;
- 2.5** “Conflict Situation” means any situation or matter (other than one which cannot reasonably be regarded as likely to give rise to a conflict of interest) in which any director has or could have a direct or indirect interest that conflicts, or possibly might conflict, with the interests of the company including (without limitation) any such situation or matter which relates to the exploitation of any property, information or opportunity (irrespective of whether the company could take advantage of the property, information or opportunity);
- 2.6** “OSCR” means the Office of the Scottish Charity Regulator;
- 2.7** “property” means any property, heritable or moveable, real or personal, wherever situated;
- 2.8** “Scottish charity” means a “Scottish charity” within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005;

**2.9** “subsidiary” has the meaning given in section 1159 of the Act.

3 Any reference to a provision of any legislation (including any statutory instrument) shall include any statutory modification or re-enactment of that provision in force from time to time.

## **Objects**

4 The company has been formed to benefit principally the community of Dumfriesshire East which comprises Eskdalemuir, Langholm, Lockerbie, North Milk, Middlebie and Waterbeck (“the Community”) with the following objects:

**4.1** The advancement of community development (including the advancement of rural regeneration) principally within the Community;

**4.2** The prevention and/or relief of poverty principally among residents of the Community;

**4.3** The advancement of education principally within the Community;

**4.4** The advancement of health principally within the Community;

**4.5** The advancement of the arts, heritage culture and science principally within the Community;

**4.6** The advancement of public participation in sport, principally within the Community;

**4.7** The provision of recreational facilities, in particular with a view to improving the conditions of life for the residents of the Community;

**4.8** The advancement of environmental protection and/or improvement, specifically in building resilience against the effects of climate change and helping nature to deliver benefits to the Community, principally within the Community;

**4.9** The relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage, principally among residents of the Community; and

**4.10** The advancement of animal welfare, principally within the Community.

5 The company’s objects are restricted to those set out in article 2 (but subject to article 2).

6 The company may (subject to article 8) add to, remove or alter the statement of the company’s objects in article 2; on any occasion when it does so, it must give notice to the registrar of companies and the amendment will not be effective until that notice is registered on the register of companies.

## **Powers**

7 The company has power to do anything which is calculated to further its objects (as set out in article 2) or is conducive or incidental to doing so.

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

- 8 The income and property of the company shall be applied solely towards promoting the company's objects (as set out in article 2).
- 9 No part of the income or property of the company shall be paid or transferred (directly or indirectly) to the members of the company, whether by way of dividend, bonus or otherwise.
- 10 No director of the company shall be appointed as a paid employee of the company; no director shall hold any office under the company for which a salary or fee is payable.
- 11 No benefit (whether in money or in kind) shall be given by the company to any director except:
- 11.1** repayment of out-of-pocket expenses; or
  - 11.2** reasonable payment in return for particular services (outwith the ordinary duties of a director) actually rendered to the company.
- 12 Notwithstanding the provisions of articles 3, 3 and 3, the company may make any payment to any individual who is a member or director of the company, or to any incorporated body which is a member where that payment is made in direct furtherance of the objects of the company.

## **Liability of members**

- 13 Each member undertakes that if the company is wound up while they are a member (or within one year after they cease to be a member), they will contribute - up to a maximum of £1 - to the assets of the company, to be applied towards:
- 13.1** payment of the company's debts and liabilities contracted before they cease to be a member;
  - 13.2** payment of the costs, charges and expenses of winding up; and
  - 13.3** adjustment of the rights of the contributories among themselves.

## **General structure**

- 14 The structure of the company consists of:
- 14.1** the MEMBERS - who have the right to attend the annual general meeting (and any other general meeting) and have important powers under the articles of association and the Act; in particular, the members appoint people to serve as directors and take decisions in relation to changes to the articles themselves; and
  - 14.2** the DIRECTORS - who hold regular meetings during the period between annual general meetings, and generally control and supervise the activities of the company;

in particular, the directors are responsible for monitoring the financial position of the company.

### **Qualifications for membership**

- 15 Membership shall (subject to articles 4, 4, 4 and 5) be open to:
- 15.1 up to 2 individuals nominated by the councillors of Middlebie and Waterbeck Community Council;
  - 15.2 up to 2 individuals nominated by the councillors of Eskdalemuir Community Council;
  - 15.3 up to 2 individuals nominated by the councillors of Langholm, Ewes and Westerkirk Community Council;
  - 15.4 up to 2 individuals nominated by the councillors of Lockerbie & District Community Council;
  - 15.5 up to 2 individuals nominated by the councillors of North Milk Community Council;
- 16 In the event that any of the Community Councils listed in article 4 ceases to exist or becomes inactive, the directors shall approach another organisation within the relevant community previously served by that Community Council with a view to obtaining a nomination for a suitable individual to represent that community. This shall be at the discretion of the board.
- 17 An individual shall not be eligible for nomination by the Councillors of a Community Council under article 4 unless he/she is aged 18 or over and is ordinarily resident within the Community (as defined in article 2).
- 18 No more than two individuals nominated by the Councillors of each community council under article 4 may be a member of the company at any given time.
- 19 An individual, once admitted to membership, shall cease to be a member if he/she ceases to be eligible for membership in terms of article 4 (as read with articles 4 and 4).
- 20 Employees of the company shall not be eligible for membership; a person who becomes an employee of the company after admission to membership shall automatically cease to be a member.
- 21 Each Community Council nominating an individual for membership under article 4 above, must review that nomination every three years and confirm that nomination to the company.
- 22 In the event that an individual nominated for membership by a Community Council under article 4 has represented that Community Council for a period exceeding 9 years, the Community Council must nominate another individual to represent that Community Council.
- 23 An individual who has represented a community council for a period exceeding 9 years will not be eligible to be nominated for a further period as a Community Council nominated member until a period of at least three years has passed.

## **Application for membership**

- 24 Any individual eligible for membership under article 4 (as read with articles 4 and 4) shall lodge with the company an application for membership either in writing, signed by them, *or* by way of an email issued by that individual; and the organisation which is nominating that individual for membership must also submit confirmation of that nomination (either in writing signed on its behalf by an appropriate officer of that organisation *or* by way of an email issued by an appropriate officer of that organisation).
- 25 A body or individual eligible for membership under article 4 shall (subject to articles 4 to 4) automatically constitute a member of the company immediately upon receipt by the company of an application for membership, duly signed on its behalf in accordance with article 5.

## **Membership subscription**

- 26 No membership subscription shall be payable.

## **Register of members**

- 27 The directors shall maintain a register of members, setting out the full name and address of each member, the date on which he/she/it was admitted to membership, and the date on which any individual or body ceased to be a member, together with (where applicable) details of the unincorporated body which nominated an individual for membership.

## **Withdrawal from membership**

- 28 Any individual who wishes to withdraw from membership shall give the company notice to that effect, either in writing, signed by that individual or by way of an email issued by that individual; on receipt by the company of that notice, the individual shall cease to be a member.
- 29 An organisation which has nominated an individual for membership under article 4 may withdraw its nomination at any time, by way of notice to the company to that effect, either in writing, signed by an appropriate officer of that organisation or via an email issued by an appropriate officer of that organisation; on receipt by the company of the notice, the individual will automatically cease to be a member.
- 30 An individual admitted to membership shall automatically cease to be a member if he/she ceases (for whatever reason) to be a director of the company.

## **Expulsion from membership**

- 31 Any individual may be expelled from membership by special resolution (see article 8), providing the following procedures have been observed:
- 31.1** at least 21 days' notice of the intention to propose the resolution must be given to the member concerned, specifying the grounds for the proposed expulsion;
  - 31.2** the member concerned shall be entitled to be heard on the resolution at the general meeting at which the resolution is proposed.
- 32 Where an individual who was admitted to membership on the basis of nomination by an unincorporated organisation is expelled from membership under article 5, no other individual nominated for membership by that organisation will be eligible for membership unless and until a special resolution to that effect is passed.

## **Termination/transfer**

33 Membership shall cease:

**33.1** in the case of an individual, on death;

**33.2** in the case of an individual admitted to membership on the basis of nomination by an organisation which is not a corporate body, if that organisation is wound up or dissolved.

34 A member may not transfer their membership to any other individual or organisation.

## **General meetings (meetings of members)**

35 The directors shall convene an annual general meeting in each year.

36 Not more than 15 months shall elapse between one annual general meeting and the next.

37 The business of each annual general meeting shall include:

**37.1** a report by the chair on the activities of the company; and

**37.2** consideration of the annual accounts of the company.

38 Subject to articles 6 and 6, the directors may convene a general meeting at any time.

39 The directors must convene a general meeting if there is a valid requisition by members (under section 303 of the Act) or a requisition by a resigning auditor (under section 518 of the Act).

## **Notice of general meetings**

40 At least 14 clear days' notice must be given of any general meeting.

41 The reference to "clear days" in article 6 shall be taken to mean that, in calculating the period of notice, the day after the notice is posted, (or, in the case of a notice sent by email, the day after it was sent) and also the day of the meeting, should be excluded.

42 A notice calling a meeting shall specify the time of the meeting, and (subject to article 7) the place where the meeting is to be held; and

**42.1** it shall indicate the general nature of the business to be dealt with at the meeting;

**42.2** if a special resolution (see article 8) (or a resolution requiring special notice under the Act) is to be proposed, shall also state that fact, giving the exact terms of the resolution; and

**42.3** it shall notify the members of their right to appoint a proxy.

- 43 If members and directors are to be permitted to participate in the meeting by way of audio and/or an audio-visual link, the notice (or notes accompanying the notice) shall:
- 43.1 set out details of how to connect and participate via (in the case of participation by way of audio) dial-in details, or (in the case of participation by way of an audio-visual link) that link; and
  - 43.2 (particularly for the benefit of those members who may have difficulty in using a computer or laptop for this purpose) draw members' attention to the following options:
    - 43.2.1 the ability to participate in the meeting via audio only means, using dial-in details (if that forms part of the arrangements);
    - 43.2.2 the ability of members to appoint the chairperson of the meeting as proxy, and to direct the chairperson on how they should vote in relation to each resolution to be proposed at the meeting; or
    - 43.2.3 (where attendance in person is to be permitted, either on an open basis or with a restriction on the total number who will be permitted to attend) the ability to attend and vote in person at the meeting;
    - 43.2.4 Submitting questions and/or comments in advance of the meeting.
- 44 If participation in the meeting is to be by way of audio and/or audio-visual links – with no intention for the meeting to involve attendance in person by two or more members in one place – the place of the meeting shall, for the purposes of the notice calling the meeting, be taken to be the place where the anticipated chairperson of the meeting is expected to be, as at the time fixed for the commencement of the meeting; and, if it transpires that the chairperson of the meeting is at some other place as at the commencement of the meeting, the meeting shall be taken to have been validly adjourned to that other place
- 45 Where a general meeting is to involve participation solely via audio and/or audio-visual links, the notice (or notes accompanying the notice) must include a statement inviting members to submit questions and/or comments in advance of the meeting, which (subject to article 7) the chairperson of the meeting will be expected to read out, and address, in the course of the meeting
- 46 Where article 7 applies, the chairperson of a general meeting will not require to read out or address any questions or comments submitted by members in advance of the meeting if and to the extent that the questions or comments are of an unreasonable length (individually or taken together), or contain material which is defamatory, racist or otherwise offensive.
- 47 A notice convening an annual general meeting shall specify that the meeting is to be an annual general meeting.
- 48 Notice of every general meeting shall be given to all the members and directors, and (if auditors are in office at the time) to the auditors:

- 48.1** in hard copy form; or
- 48.2** (where the individual to whom notice is given has notified the company of an email address to be used for the purpose of communications from the company) by way of email; or
- 48.3** (subject to the company notifying members of the presence of the notice on the website, and complying with the other requirements of section 309 of the Act) by means of a website.

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

- 49 For the purposes of these articles, a “special resolution” means a resolution passed by 75% or more of the votes cast on the resolution at a general meeting, providing proper notice of the meeting and of the intention to propose the resolution has been given in accordance with articles 6 to 7; for the avoidance of doubt, the reference to a 75% majority relates only to the number of votes cast in favour of the resolution as compared with the total number of votes cast in relation to the resolution, and accordingly no account shall be taken of abstentions or members absent from the meeting.
- 50 In addition to the matters expressly referred to elsewhere in these articles, the provisions of the Act allow the company, by special resolution:
- 50.1** to alter its name;
- 50.2** to alter any provision of these articles or adopt new articles of association.
- 51 If the company is a Scottish charity, amendments to the objects of the company (as set out in article 2) will require the prior approval of OSCR.
- 52 For the purposes of these articles, an “ordinary resolution” means a resolution passed by majority vote (taking account only of those votes cast in favour as compared with those votes against), at a general meeting, providing proper notice of the meeting has been given in accordance with articles 6 to 7.

### **Procedure at general meetings**

- 53 The board may, if they consider appropriate (whether on the basis of concerns relating to health risks associated with large gatherings, or otherwise) make arrangements for members and directors to participate in general meetings by way of audio and/or audio-visual links, providing:
- 53.1** the means by which members and directors can participate in this manner are not subject to technical complexities, significant costs or other factors which are likely to represent – for all, or a significant proportion, of the members – a barrier to participation;

- 53.2** the notice calling the meeting contains the information required under articles 6 and 7; and
- 53.3** the manner in which the meeting is conducted ensures, so far as reasonably possible, that those members and directors who participate via the audio or audio-visual links are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those members and directors (if any) who are attending in person (and vice versa).
- 54 A general meeting may involve two or more members or directors participating via attendance in person while other members and/or directors participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.
- 55 For the avoidance of doubt, an individual participating in a general meeting (whether as a member, as a proxy for a member, as the authorised representative of a member which is a corporate body, as a director, or as the chairperson of the meeting) via an audio or audio-visual link shall be deemed to be present (or, as the case may be, in attendance) at the meeting.
- 56 Where a general meeting is to involve participation solely via audio and/or audio-visual links, the board shall encourage any individuals participating in that general meeting who do not have access to a computer or to an adequate internet connection to dial-in to the meeting via audio means, failing which the board shall take reasonable steps to encourage such individuals to participate in the meeting through:
- 56.1** the submission of a proxy form (which may appoint the chairperson of the meeting as proxy, and with the proxy form being completed in a manner which directs the chairperson on whether to vote in favour of, or against, each of the resolutions to be proposed at the meeting); and/or
- 56.2** the submission of questions and/or comments, which (subject to article 9) the chairperson of the meeting will be expected to read out, and address, in the course of the meeting.
- 57 The requirements under paragraph 9 of article 9 shall not apply if and to the extent that the questions or comments are of an unreasonable length (individually or taken together), or contain material which is defamatory, racist or otherwise offensive.
- 58 No business shall be dealt with at any general meeting unless a quorum is present; the quorum for a general meeting shall be 6 members, either present or represented by proxy.
- 59 If a quorum is not present within 15 minutes after the time at which a general meeting was due to commence - or if, during a meeting, a quorum ceases to be present - the meeting shall stand adjourned to such time and (subject to article 10) place as may be fixed by the chairperson of the meeting.

60 Where participation in the adjourned meeting is to be by way of audio and/or audio-visual links - with no intention for the adjourned meeting to involve attendance in person by two or more members or directors in one place - the requirement under article 9 for the chairperson to fix the place of the adjourned meeting shall not apply.

61 The chair of the company shall (if present and willing to act as chairperson) preside as chairperson of each general meeting; if the chair is not present and willing to act as chairperson within 15 minutes after the time at which the meeting was due to commence, the directors present at the meeting shall elect from among themselves the person who will act as chairperson of that meeting.

62 The chairperson of a general meeting may, with the consent of the meeting, adjourn the meeting to such date, time and (subject to article 10) place as the chairperson may determine.

63 Every member shall have one vote, which (whether on a show of hands or on a secret ballot) may be given either personally or by proxy.

64 Where a member, or a proxy for a member, is participating in a meeting via audio or an audio-visual link, they may cast their vote on a given resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically – and providing the board have no reasonable grounds for suspicion as regards authenticity, any such action shall be deemed to be a vote cast via a show of hands.

65 The principles set out in articles 10 and 11 shall also apply in relation to the casting of votes by an individual in his/her capacity as proxy for a member.

66 Any member who wishes to appoint a proxy to vote on his/her behalf at any meeting (or adjourned meeting):

**66.1** shall lodge with the company, at the company's registered office, a written instrument of proxy (in such form as the directors require), signed by him/her; or

**66.2** shall send by email to the company, at such email address as may have been notified to the members by the company for that purpose, an instrument of proxy (in such form as the directors require),

providing (in either case), the instrument of proxy is received by the company at the relevant address not less than 48 hours before the time for holding the meeting (or, as the case may be, adjourned meeting).

67 An instrument of proxy which does not conform with the provisions of article 10, or which is not lodged or sent in accordance with such provisions, shall be invalid.

68 A member shall not be entitled to appoint more than one proxy to participate on the same occasion.

- 69 A proxy appointed to participate in and vote at any meeting instead of a member shall have the same right as the Member who appointed him/her to speak at the meeting and need not be a member of the company.
- 70 A vote given, or ballot demanded, by proxy shall be valid notwithstanding that the authority of the person voting or demanding a ballot had terminated prior to the giving of such vote or demanding of such ballot, unless notice of such termination was received by the company at the company's registered office (or, where sent by email, was received by the company at the address notified by the company to the members for the purpose of email communications) before the commencement of the meeting or adjourned meeting at which the vote was given or the ballot demanded.
- 71 If there are an equal number of votes for and against any resolution proposed at a general meeting, the chairperson of the meeting shall not be entitled to a casting vote.
- 72 A resolution put to the vote at a general meeting shall be decided on a show of hands unless a secret ballot is demanded by the chairperson (or by at least two persons participating in the meeting and entitled to vote, whether as Members or as proxies for Members); a secret ballot may be demanded either before the show of hands takes place, or immediately after the result of the show of hands is declared.
- 73 If a secret ballot is demanded, it shall be taken at the meeting and shall be conducted in such manner as the chairperson may direct.
- 74 Where a member, or a proxy for a member, is participating in a meeting via audio or an audio-visual link, the chairperson's directions regarding how a secret ballot is to be conducted may allow them to cast their votes on the secret ballot via any of the methods referred to in article 10, providing reasonable steps are taken to preserve anonymity (while at the same time, maintaining confidence in the validity of the process).
- 75 The result of any secret ballot shall be declared at the meeting at which the ballot was demanded.

### **Technical objections to remote participation in general meetings**

- 76 These articles of association impose certain requirements regarding the means which can be adopted for participation and voting at general meetings; providing the arrangements made by the board in relation to a given general meeting are consistent with those requirements:
- 76.1** a member cannot insist on participating in the general meeting, or voting at the general meeting, by any particular means;
- 76.2** the general meeting need not be held in any particular place;
- 76.3** the general meeting may be held without any number of those participating in the meeting being together at the same place (but on the basis that the quorum

requirements – taking account of those participating via audio or an audio-visual link – must still be met);

**76.4** the general meeting may be held by any means which permits those attending to hear and contribute to discussions at the meeting;

**76.5** a member will be able to exercise the right to vote at a general meeting (including where a secret ballot is to be held) by such means as is determined by the chairperson of the meeting (consistent with the arrangements made by the board) and which permits that Member's vote to be taken into account in determining whether or not a resolution is passed.

### **Categories of director**

77 For the purposes of these articles:

**77.1** “Member Director” means a director (who is also a member of the company) appointed under articles 12 and 13;

**77.2** “Appointed Director” means a (non-member) director appointed or re-appointed by the directors under articles 13 and 13.

### **Maximum number of directors**

78 The maximum number of directors shall be 15; out of that number, no more than 10 shall be Member Directors and no more than 5 shall be Appointed Directors.

79 At any given time, directors who are also Members must form a majority of the total number of directors in office.

### **Eligibility**

80 A person shall not be eligible for election/appointment as a Member Director unless he/she is a member of the company; a person appointed as an Appointed Director need not, however, be a member of the company.

81 A person shall not be eligible for election/appointment as a director if he/she is an employee of the company.

### **Appointment, retiral, re-election: Member Directors**

82 Each individual admitted to membership shall automatically become a director of the company immediately upon his/her admission to membership.

- 83 An individual holding office by virtue of article 12 who ceases (for whatever reason) to be a member of the company shall automatically cease to be a director with effect from the time at which he/she ceases to be a member of the company.

### **Appointment/re-appointment: Appointed Directors**

- 84 The directors may (subject to articles 12 to 12) at any time appoint any non-member of the company (providing he/she is willing to act) to be a director (an “Appointed Director”) on the basis that he/she has specialist experience and/or skills which could be of assistance to the directors.
- 85 For the duration of the loan agreement between the Company and Muirhall Energy Limited, one of the Appointed Directors to be appointed under article 13 must be an individual nominated by Muirhall Energy Limited.
- 86 At each annual general meeting, all of the Appointed Directors shall retire from office – but shall then (subject to articles 12 to 12) be eligible for re-appointment under article 13.

### **Termination of office**

- 87 A director shall automatically vacate office if:
- 87.1** he/she ceases to be a director through the operation of any provision of the Act or becomes prohibited by law from being a director;
  - 87.2** he/she becomes debarred under any statutory provision from being a charity trustee (within the meaning of section 106 of the Charities and Trustee Investment (Scotland) Act 2005);
  - 87.3** he/she becomes incapable for medical reasons of fulfilling the duties of his/her office and such incapacity is expected to continue for a period of more than six months;
  - 87.4** (in the case of a Member Director) he/she ceases to be a member or Associate Member of the company;
  - 87.5** he/she becomes an employee of the company;
  - 87.6** he/she resigns office by notice to the company;
  - 87.7** he/she is absent (without permission of the directors) from more than three consecutive meetings of the directors, and the directors resolve to remove him/her from office;
  - 87.8** he/she is removed from office by resolution of the directors on the grounds that he/she is considered to have committed a serious breach of the code of conduct for directors (as referred to in article 19);

**87.9** he/she is removed from office by resolution of the directors on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under sub-sections 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or

**87.10** he/she is removed from office by ordinary resolution (special notice having been given) in pursuance of section 168 of the Act.

88 A resolution under paragraphs 13 or 14 of article 13 shall be valid only if:

**88.1** the director who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for his/her removal is to be proposed;

**88.2** the director concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and

**88.3** at least two thirds (to the nearest round number) of the directors then in office vote in favour of the resolution.

### **Register of directors**

89 The directors shall maintain a register of directors, setting out full details of each director, including the date on which he/she became a director, and also specifying the date on which any person ceased to hold office as a director.

### **Officebearers**

90 The directors shall elect from among themselves a chair and such other office bearers (if any) as they consider appropriate.

91 All of the office bearers shall cease to hold office at the conclusion of each annual general meeting, but shall then be eligible for re-election.

92 A person elected to any office shall cease to hold that office if he/she ceases to be a director, or if he/she resigns from that office by written notice to that effect.

### **Powers of directors**

93 Subject to the provisions of the Act and these articles, and subject to any directions given by special resolution, the company and its assets and undertaking shall be managed by the directors, who may exercise all the powers of the company.

94 A meeting of the directors at which a quorum is present may exercise all powers exercisable by the directors.

## Personal interests

- 95 A director who has a personal interest in any transaction or other arrangement which the company is proposing to enter into, must declare that interest at a meeting of the directors; he/she will be debarred (under article 18) from voting on the question of whether or not the company should enter into that arrangement.
- 96 For the purposes of the preceding article, a director shall be deemed to have a personal interest in an arrangement if any partner or other close relative of his/hers or any firm of which he/she is a partner or any limited company of which he/she is a substantial shareholder or director or any limited liability partnership of which he/she is a member (or any other party who/which is deemed to be connected with him/her for the purposes of the Act), has a personal interest in that arrangement.
- 97 Provided:
- 97.1 he/she has declared his/her interest;
  - 97.2 he/she has not voted on the question of whether or not the company should enter into the relevant arrangement; and
  - 97.3 the requirements of articles 15, 15 and 18 are complied with,
- a director will not be debarred from entering into an arrangement with the company in which he/she has a personal interest (or is deemed to have a personal interest under article 15) and may retain any personal benefit which he/she gains from his/her participation in that arrangement.
- 98 The directors shall be entitled, for the purposes of section 175 of the Act, to authorise (by way of resolution to that effect) any Conflict Situation that may arise (such that the duty of the director concerned, under that section, to avoid conflicts of interest is not infringed) and to amend or vary any such authorisation; the directors may give such authorisation subject to such terms and conditions as they may consider appropriate and reasonable in the circumstances.
- 99 For the avoidance of doubt, article 15 shall not apply to a conflict of interest arising in relation to a transaction or arrangement with the company; any conflict of interest of that nature shall be governed by the provisions of articles 15 to 15 and articles 18 to 18 and the code of conduct referred to in article 19.
- 100 No director may serve as an employee (full time or part time) of the company, and no director may be given any remuneration by the company for carrying out his/her ordinary duties as a director.
- 101 Where a director provides services to the company or might benefit from any remuneration paid to a connected party for such services, then:

- 101.1** the maximum amount of the remuneration must be specified in a written agreement and must be reasonable;
- 101.2** the directors must be satisfied that it would be in the interests of the company to enter into the arrangement (taking account of that maximum amount); and
- 101.3** less than half of the directors must be receiving remuneration from the company (or benefit from remuneration of that nature).
- 102 The directors may be paid all travelling and other expenses reasonably incurred by them in connection with their participation in meetings of the directors, general meetings, or meetings of committees, or otherwise in connection with the carrying-out of their duties.

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

- 103 Any director may call a meeting of the directors or request the secretary to call a meeting of the directors.
- 104 Questions arising at a meeting of the directors shall be decided by a majority of votes; if an equality of votes arises, the chairperson of the meeting shall have a casting vote.
- 105 A resolution agreed to in writing (or by e-mail) by a majority of the directors (providing a copy of the resolution has been circulated to all of the directors) shall be as valid as if duly passed at a board meeting.
- 106 No business shall be dealt with at a meeting of the directors unless a quorum is present; the quorum for meetings of the directors shall (subject to article 16) be 6 (revised 24/01/23).
- 107 During the period of 6 months from the date of incorporation of the company, the quorum for the transaction of business shall be 3.
- 108 A quorum shall not be deemed to be constituted at any meeting of directors unless the Member Directors who are also Members form a majority of the total number of directors present at the meeting.
- 109 If at any time the number of directors in office falls below the number fixed as the quorum or ceases to comply with the provisions of article 16, the remaining director(s) may act only for the purpose of filling vacancies or of calling a general meeting.
- 110 The board may, if they consider appropriate (whether on the basis of concerns relating to health risks associated with gatherings, or otherwise) allow directors to participate in board meetings by way of audio and/or audio-visual links, providing:
- 110.1** the means by which directors can participate in this manner are not subject to technical complexities, significant costs or other factors which are likely to represent – for all, or a significant proportion, of the directors – a barrier to participation; and

- 110.2** the manner in which the meeting is conducted ensures, so far as reasonably possible, that those directors who participate via the audio or audio-visual links are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those directors (if any) who are attending in person (and vice versa).
- 111 A board meeting may involve two or more directors participating via attendance in person while other directors participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.
- 112 For the avoidance of doubt, a director participating in a board meeting in the manner provided for under article 16 shall be deemed to be present in person at the meeting.
- 113 If directors are to be permitted to participate in the meeting by way of audio and/or an audio-visual link, the directors shall, in advance of the meeting:
- 113.1** be provided with details of how to connect and participate via (in the case of participation by way of audio) dial-in details, or (in the case of participation by way of an audio-visual link) that link;
- 113.2** be made aware (particularly for the benefit of those directors who may have difficulties in using a computer or laptop for this purpose) of:
- 113.2.1 the ability to participate in the meeting via audio only means, using dial-in details (if that forms part of the arrangements); or
- 113.2.2 (where attendance in person is to be permitted, either on an open basis or subject to a restriction on the total number who will be permitted to attend) the ability to attend and vote in person at the meeting.
- 114 Where a director is participating in a board meeting via audio or an audio-visual link, they may cast their vote on a given resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically.
- 115 Unless he/she is unwilling to do so, the chair of the company shall preside as chairperson at every directors' meeting at which he/she is present; if the chair is unwilling to act as chairperson or is not present within 15 minutes after the time when the meeting was due to commence, the directors present shall elect from among themselves the person who will act as chairperson of the meeting.
- 116 The directors may, at their discretion, allow any person who they reasonably consider appropriate, to participate (whether in person or by way of an audio or audio-visual link) in any board meeting; for the avoidance of doubt, any such person who is invited to participate in a directors' meeting shall not be entitled to vote.

- 117 The directors shall be entitled to allow any person to attend and speak (but not vote) at any meeting of the directors in the capacity of adviser; the persons appointed may include (without limitation) a) a representative of Muirhall Energy Limited.
- 118 An individual invited to attend a meeting of the directors under articles 17 and 18 shall not be entitled to exercise any of the powers of a director, and shall not be deemed to constitute a director for the purposes of the Act or any provision of these articles.
- 119 A director shall not vote at a directors' meeting (or at a meeting of a sub-committee) on any resolution concerning a matter in which he/she has a personal interest which conflicts (or may conflict) with the interests of the company; he/she must withdraw from the meeting while an item of that nature is being dealt with.
- 120 For the purposes of article 18, a person shall be deemed to have a personal interest in a particular matter if any partner or other close relative of his/hers or any firm of which he/she is a partner or any limited company of which he/she is a substantial shareholder or director or any limited liability partnership of which he/she is a member, has a personal interest in that matter.
- 121 A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he/she is not entitled to vote.
- 122 The company may, by ordinary resolution, suspend or relax to any extent – either generally or in relation to any particular matter – the provisions of articles 18 to 18.
- 123 The principles set out in article 11 (technical objections to remote participation) shall apply in relation to remote participation and voting at board meetings, as if each reference in that article to a member were a reference to a director and each reference in that article to a general meeting were a reference to a board meeting.

### **Conduct of directors**

- 124 It is the duty of each director of the company to take decisions (and exercise his/her other powers and responsibilities as a director) in such a way as he/she considers will be in the best interests of the company and will promote the success of the company in furthering its objects, and irrespective of any office, post, engagement or other connection which he/she may have with any other body which may have an interest in the matter in question.
- 125 Each of the directors shall, in exercising his/her functions as a director of the company, act in the interests of the company; and, in particular, must:
- 125.1** seek, in good faith, to ensure that the company acts in a manner which is in accordance with its objects (as set out article 2);
  - 125.2** act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;

**125.3** in circumstances giving rise to the possibility of a conflict of interest of interest between the company and any other party;

125.3.1 put the interests of the company before that of the other party, in taking decisions as a director:

125.3.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the company and refrain from participating in any discussions or decisions involving the other directors with regard to the matter in question;

**125.4** ensure that the company complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005.

126 In addition to the duties outlined in article 18, all of the directors must take such steps as are reasonably practicable for the purpose of ensuring:

**126.1** that any breach of any of those duties by a director is corrected by the director concerned and not repeated; and

**126.2** that any director who has been in serious or persistent breach of those duties is removed as a director.

127 Each of the directors shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board of directors from time to time; for the avoidance of doubt, the code of conduct shall be supplemental to the provisions relating to the conduct of directors contained in these articles of association, and the relevant provisions of these articles shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

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

128 The directors may delegate any of their powers to any sub-committee consisting of one or more directors and such other persons (if any) as the directors may determine; they may also delegate to the chair of the company (or the holder of any other post) such of their powers as they may consider appropriate.

129 Any delegation of powers under article 19 may be made subject to such conditions as the directors may impose and may be revoked or altered.

130 The rules of procedure for any sub-committee shall be as prescribed by the directors.

### **Operation of bank accounts**

131 The signatures of two out of the signatories appointed by the directors shall be required in relation to all operations (other than lodgement of funds) on the bank and building society

accounts held by the company; at least one out of the two signatures must be the signature of a director.

- 132 Where the company uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in article 19.

### **Secretary**

- 133 The directors shall (notwithstanding the provisions of the Act) appoint a company secretary, and on the basis that the term of the appointment, the remuneration (if any) payable to the company secretary, and the conditions of appointment, shall be as determined by the directors; the company secretary may be removed by them at any time.

### **Minutes**

- 134 The directors shall ensure that minutes are made of all proceedings at general meetings, directors' meetings and meetings of committees; a minute of any meeting shall include the names of those present, and (as far as possible) shall be signed by the chairperson of the meeting.
- 135 Any person may request a copy of the minutes of general meetings or meetings of the directors of the company and, provided that the request is reasonable, the company must, subject to article 20, provide a copy of the minutes to that person within 28 days of the request.
- 136 Where a request for a copy of minutes is made under article 20, the company may withhold information contained in the minutes provided that the person requesting a copy of the minutes is informed of the reasons for doing so.

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

- 137 The directors shall ensure that proper accounting records are maintained in accordance with all applicable statutory requirements.
- 138 The accounting records shall be maintained by the treasurer and overseen by the chair, or otherwise by, or as determined by, the directors; such records shall be kept at such place or places as the directors think fit and shall always be available for inspection by the directors.
- 139 The directors shall prepare annual accounts, complying with all relevant statutory requirements.
- 140 Subject to article 20, the directors shall ensure that an audit of the annual accounts is carried out by an auditor.
- 141 Notwithstanding the provisions of article 20, an audit (within the meaning of the Act) by a company auditor (as defined in the Act) shall not be required, in a case where the company is

exempt (under the Act) from the requirement to have an audit, if and to the extent that proper arrangements for the auditing or independent examination of the company's accounts are made in a manner which satisfies the requirements of the Act and (if the company is a Scottish charity at the time) the requirements of the Charities and Trustee Investment (Scotland) Act 2005.

- 142 No member shall (unless he/she is a director) have any right of inspecting any accounting or other records, or any document of the company, except as conferred by statute or authorised by ordinary resolution of the company.

### **Notices**

- 143 Any notice which requires to be given to a member under these articles shall be given either in writing or by email (or, in the case of a notice of general meeting, by way of a website - (subject to the company notifying members of the presence of the notice on the website, and complying with the other requirements of section 309 of the Companies Act); such a notice may be given personally to the member or be sent by post in a pre-paid envelope addressed to the member at the address last intimated by him/her/it to the company or (in the case of a member who has notified the company of an address to be used for the purpose of email communications) may be given to the member by way of email.

- 144 Any notice, if sent by post, shall be deemed to have been given at the expiry of 24 hours after posting; for the purpose of proving that any notice was given, it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.

- 145 Any notice sent by email shall be deemed to have been given at the expiry of 24 hours after it is sent; for the purpose of proving that any notice sent by email was indeed sent, it shall be sufficient to provide any of the evidence referred to in the relevant guidance issued from time to time by the Chartered Institute of Secretaries and Administrators.

### **Winding-up**

- 146 If on the winding-up of the company any property remains after satisfaction of all the company's debts and liabilities, such property shall be paid or transferred to some charity or charities with similar purposes to those of the company, as determined (prior to the winding up) by the members of the company (subject to the identity of the transferee body or bodies being approved in writing by both Creative Scotland and City of Edinburgh Council).

- 147 To the extent that effect cannot be given to article 21, the relevant property shall be applied to some charitable purpose or purposes.

### **Indemnity**

- 148 Every director or other officer or auditor of the company shall be indemnified (to the extent permitted by sections 232, 234, 235, 532 and 533 of the Act) out of the assets of the company against any loss or liability which he/she may sustain or incur in connection with the execution

of the duties of his/her office; that may include, without prejudice to that generality, (but only to the extent permitted by those sections of the Act), any liability incurred by him/her in defending any proceedings (whether civil or criminal) in which judgement is given in his/her favour or in which he/she is acquitted or any liability in connection with an application in which relief is granted to him/her by the court from liability for negligence, default or breach of trust in relation to the affairs of the company.

- 149 The company shall be entitled (subject to the provisions of section 68A of the Charities and Trustee Investment (Scotland) Act 2005) to purchase and maintain for any director insurance against any loss or liability which any director or other officer of the company may sustain or incur in connection with the execution of the duties of his/her office, and such insurance may (subject to the provisions of section 68A) extend to liabilities of the nature referred to in section 232(2) of the Act (negligence etc. of a director).