



# DEVON & SOMERSET FIRE & RESCUE AUTHORITY

<b>REPORT REFERENCE NO.</b>	<b>DSFRA/12/7</b>
<b>MEETING</b>	<b>DEVON &amp; SOMERSET FIRE &amp; RESCUE AUTHORITY</b>
<b>DATE OF MEETING</b>	<b>17 FEBRUARY 2012</b>
<b>SUBJECT OF REPORT</b>	<b>AUTHORITY COMMERCIAL TRADING GOVERNANCE ARRANGEMENTS</b>
<b>LEAD OFFICER</b>	<b>Chief Fire Officer and Clerk to the Authority</b>
<b>RECOMMENDATIONS</b>	<p>(a) <i>that the governance arrangements for commercial trading activities be noted;</i></p> <p>(b) <i>that the Articles of Association for Red One Ltd. as set out in Appendix A to this report, be approved;</i></p> <p>(c) <i>that the trading contract governing the relationship between the Authority and Red One Ltd., as set out in Appendix B to this report, be approved; and</i></p> <p>(d) <i>that the proposed revisions to the Terms of Reference for the Commercial Services Committee, as set out at paragraph 4.11 of this report, be approved.</i></p>
<b>EXECUTIVE SUMMARY</b>	<p>The Authority has, both directly and via the Commercial Services Committee, previously agreed reports on the undertaking of commercial trading activities. The key principle being that the commercial trading surplus will be used to underpin delivery of core business and in this respect should reduce the impact of Government grant reductions that would otherwise have been the case had a commercial service approach not been progressed.</p> <p>This report sets out to clarify the intended governance arrangements in relation to commercial trading activities on behalf of the authority and invites the Authority to delegate a number of matters to the Commercial Services Committee. This Committee meets monthly and ensures the interest of the Fire Authority are met.</p>

<b>RESOURCE IMPLICATIONS</b>	The are no resource implications associated with the proposed governance arrangements. Special Responsibility Allowances attracting to membership etc. of the Commercial Services Committee will be met from funding generated from commercial trading activities, as previously agreed by the Full Fire Authority (29 July 2011 Minute DSFRA/21 refers).
<b>EQUALITY IMPACT ASSESSMENT</b>	Not applicable to the governance arrangements. Individual trading initiatives may, however, require individual equality impact assessments.
<b>APPENDICES</b>	<p>A. Articles of Association for Red One Ltd.</p> <p>B. Trading Contract between the Authority and Red One Ltd.</p>
<b>LIST OF BACKGROUND PAPERS</b>	<p>The Local Authorities (Goods and Services) Act 1970</p> <p>The Fire and Rescue Services Act 2004</p> <p>The Fire and Rescue Services (England) Order 2004</p> <p>The Local Government Act 2003</p> <p>The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009</p> <p>The Localism Act 2011</p>

## 1. INTRODUCTION

- 1.1 The purpose of this report is to detail the governance arrangements in place for commercial trading activities undertaken on behalf of the Authority and proposes to extend the powers of the Commercial Services Committee.

## 2. SUMMARY OF CURRENT ARRANGEMENTS

- 2.1 There are, in essence, two tiers to the governance arrangements in place for current commercial activity as summarised in the diagram below. These are supported by officers who ensure the strategic intent outlined is delivered on a day to day basis. This arrangement is almost identical to the arrangement for delivery of core duties where the Chief Fire Officer has a wide range of delegated authority but where some key decisions are remitted to the Fire Authority for decision.

**FIGURE 1**

<b>Devon &amp; Somerset Fire &amp; Rescue Authority</b>	<ul style="list-style-type: none"><li>• approval of mechanism for commercial trading (e.g. establishment of company [Red One] inc. articles of association; governance arrangements between Authority and company);</li><li>• approval of overarching business case for commercial trading;</li><li>• approval of annual commercial services business plan</li></ul>
<b>Commercial Services Committee</b>	<ul style="list-style-type: none"><li>• development and recommendation of overarching business case for commercial trading and annual commercial services business plan;</li><li>• monitoring effectiveness of commercial activities against approved annual commercial services business plan;</li><li>• approval of investments in individual commercial trading activities up to limits delegated by Authority (as set out in annual commercial services business plan).</li></ul>

- 2.2 The responsibilities and activities of each of these tiers are outlined below.

## 3. DEVON & SOMERSET FIRE & RESCUE AUTHORITY

- 3.1 Currently, the Authority is responsible for:

- (a) approving the mechanism for commercial trading (e.g. establishment of company [Red One] inc. articles of association; governance arrangements between Authority and company); and
- (b) approving both the overarching business case for commercial trading and an annual commercial services business plan

### **(a) *Approval of Mechanism for Commercial Trading***

- 3.2 The current legislation governing commercial trading by public authorities requires, amongst other things, that this be undertaken by a separate company (unless trading in services provided to another public body).

- 3.3 Consequently, in preparation for undertaking commercial trading activities, Red One Ltd. was incorporated in September 2010. Red One Ltd. is a private company limited by shares and is subject to companies legislation – specifically the Companies Act 2006. In accordance with this legislation, it is required to have Articles of Association which set out, amongst other things:
- Director’s Powers and responsibilities
  - Decision making by Directors
  - Appointment of Directors
  - Shares and Distributions
  - Dividends and other Distributions
  - Capitalisation of Profits
  - Decision making by Shareholders
  - Voting at General meetings
- 3.4 The Articles of Association for Red One are attached at Appendix A to this report. They have been prepared in consultation with the legal adviser appointed by the Authority to assist in developing commercial trading opportunities (Bevan Brittan Ltd.) and are now commended to the Authority for approval.
- 3.5 Red One Ltd. is a private company limited by shares. The Authority will be the sole shareholder for Red One and for any other wholly owned Companies that may in future be incorporated for commercial purposes. It will also be the single shareholder for any jointly owned companies in which the Authority has a shareholding and as such will exercise shareholders rights and powers as detailed in the respective articles of association for each company.
- 3.6 The facilitation of commercial services activities by the Authority through the trading company Red One Ltd will be managed by a Trading Company Contract.
- 3.7 This contract describes the terms under which resources from the Authority may be utilised by Red One Ltd to facilitate trading. It is proposed that the contract should have an initial term of three years and thereafter be extended automatically unless appropriate notice is given.
- 3.8 Under this contract and subject to the terms described therein, Red One Ltd may enter into trading arrangements with other third parties for the provision of services and/or goods for commercial purposes. The contract also licenses the secondment of Authority staff, facilities, equipment and the benefit of Authority Contracts for the purposes of delivering or facilitating an agreed contract with any third party/ies.
- 3.9 The contract also makes provision for the use of Support Services, Intellectual Property, Insurance, Data Protection and Freedom of Information. In line with other standard legal contracts, terms are also included for Charging, Liability & Indemnification, Contract Termination, Assignment, Partnership/Agency rights, Variation, Severance, Warranty, Official notices, Third party rights and Governing Law/Jurisdiction.
- 3.10 Specific schedules lay out the terms under which Authority Staff shall be seconded to Red One Ltd as well as the license agreements and charges payable to the Authority as mentioned above.

- 3.11 The charges payable by Red One Ltd to the Authority shall be an amount equalling the total cost for all services, licenses, goods or benefits of whatever nature provided by the Authority to Red One Ltd.
- 3.12 As with the Articles of Association for Red One Ltd., the Contract has been prepared in consultation with the legal adviser appointed by the Authority to assist in developing commercial trading opportunities (Bevan Brittan Ltd.).
- 3.13 The Contract is attached as Appendix B to this report and the Authority is commended to approve entering into it.
- (b) Approval of Overarching Business Case and Annual Business Plan**
- 3.14 The overarching Business Case will conform with the relevant legislation in providing a comprehensive statement as to:
- the overall objectives for commercial trading activities;
  - the investment and other resources required to achieve those objectives;
  - any risks that may be faced, how significant these risks are and any mitigation for them; and
  - the expected financial results of such activities, together with any other relevant outcomes that are expected to be achieved.
- 3.15 In essence, therefore, the overarching Business Case will provide the mechanism for resource allocation and investment arrangements for commercial activity carried out on behalf of the Authority.
- 3.16 The Annual Commercial Services Business Plan will present an overview of the current business situation and will detail each of the trading activities that the Authority is currently engaged in or is planning to explore in the immediate future. This will also present a summary of the Business Case for each activity, along with appropriate financial projections and risk assessments, the investment required, timing and any resources that may be used to facilitate the activity.
- 3.17 As such, the Annual Commercial Services Business Plan will be used by the Commercial Services Committee both to direct various commercial activities in any given financial year and to review delivery and performance against the targets as outlined in the Plan.

#### **4. COMMERCIAL SERVICES COMMITTEE**

##### ***Background***

- 4.1 The Commercial Services Committee was established by the Authority at its meeting on 29 July 2011 with the following terms of reference (Minute DSFRA/21 refers):

##### **Advisory Only**

To consider and recommend to the Authority the Annual Commercial Services Business Plan and associated annual operating budget for Red One Ltd for each financial year;

To recommend to the Authority any revisions to the approved Annual Commercial Services Business Plan and/or annual operating budget as may arise during the course of operations during the financial year in question;

To make recommendations to the Authority on the utilisation of any year-end profit generated by commercial activities.

### **Matters with Delegated Power to Act**

To consider and approve any trading activities of Red One Ltd within overall parameters to be set out in the approved Annual Commercial Services Business Plan and associated annual operating budget;

To monitor the financial status and performance of Red One Ltd in terms of expenditure on operating costs, costs recovered and profit generated and to take corrective action and report to the Authority on these issues as necessary.

- 4.2 As indicated in the previous section, the Annual Commercial Services Business Plan will, by default, contain information on financial projections and risk assessments, investment required, timing and any resources that may be used to facilitate commercial activity. The Plan will work within the approved levels of delegation in relation to investment linked to commercial activity.

### ***Proposed Revisions to Terms of Reference***

#### ***(a) Introduction***

- 4.3 Given the already effective operation of the Commercial Services Committee and to allow an adaptable response to market opportunities, it is proposed that the approval of the overarching business case and business plans could be matters delegated to the Commercial Services Committee with decisions reported to the Fire Authority as appropriate.
- 4.4 If this approach is approved, the Commercial Services Committee will approve the individual Business Cases which must be prepared for any commercial activity it is proposed to enter into and which falls under the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (“the Order”) or any subsequent amending legislation.
- 4.5 Similarly, any commercial activities not falling under the Order will be detailed in relevant lead department Commercial Plan and captured within the Annual Commercial Services Plan which will detail the budgetary and resource requirement for that department, from a commercial perspective.
- 4.6 For similar reasons of securing “fleetness of foot” in commercial matters, it is also proposed to delegate to the Committee the ability to enter into new, joint venture trading initiatives and to approve staffing increases associated with commercial trading, subject to this being “cost neutral” for the Authority (i.e. to all the associated costs being met from commercial income).

#### ***Legal Issues***

- 4.7 Legal advice has been sought specifically on the appropriateness of delegating to the Committee power to enter into new joint trading ventures.
- 4.8 The response received concludes:  
“It is my view on the basis of the information provided that the decision to incorporate another trading company should be taken by the full Authority with delegation of certain tasks to the Commercial Services Committee as appropriate.”

- 4.9 It should be noted that this advice indicates only that such decisions “should” be taken by the full Authority. Balanced against this view, however, it remains the case that, as with other local authorities, the ability of this Authority to delegate matters to Committees is governed by Sections 101 and 102 of the Local Government Act 1972. In practice, there is little that cannot lawfully be delegated. The 1972 Act itself provides that delegations are subject to **express** provisions either in that Act or other Acts. The 1972 Act itself provides that “functions with respect to levying, or issuing a precept for, or borrowing money” (i.e. the setting of a budget) must be exercised by the full Authority. More recently, the Localism Act has provided that the approval of a Pay Policy Statement is another matter that may not be delegated (a paper on the Pay Policy Statement for the forthcoming financial year is contained elsewhere on the agenda for this meeting).
- 4.10 There would not appear to be any express statutory provision preventing the delegation of commercial trading activities (including approval of business cases, entering into joint trading ventures etc.) to a Committee. It should also be borne in mind that the fundamental principle behind commercial trading is first and foremost full recovery of associated costs. While this can never be totally guaranteed, the Service is committed to making every endeavour – including obtaining specialist legal and other advice as necessary – to ensuring this happens. It nonetheless remains a risk, however – albeit, it is contended, remote – that full cost recovery would not be secured. This would, as such, impact on the finances of the Authority.
- 4.11 The revised Terms of Reference set out below take account of the above issues and it is contended – specifically in relation to establishing new joint trading ventures – provide sufficient safeguards to mitigate risk and provide an appropriate balance between effective governance and the necessary flexibility of approach if the Authority is to be successful in commercial trading ventures. As such, it is proposed that the Terms of Reference of the Committee be amended to read as follows (any additions are shown in **bold, italics**):

**Advisory Only**

To recommend to the Authority ***in the first instance appropriate levels of delegation for investment and thereafter any revisions to changes in levels of delegation***, as may arise during the course of operations during the financial year in question in order to maximise commercial opportunities;

To make recommendations to the Authority on the use of any year-end trading surplus generated by commercial activities.

**Matters with Delegated Power to Act**

To ***approve both the overarching Business Case for commercial trading and, in line with the financial planning calendar, the Annual Commercial Services Business Plan***;

***In relation to the Annual Commercial Services Business Plan, to consider and approve any business case required to facilitate commercial trading in accordance with the provisions of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (“the Order”) or any subsequent amending legislation***;

To consider and approve any trading activities of Red One Ltd within overall parameters to be set out in the approved Annual Commercial Services Business Plan ***and specifically to authorise investments as required up to the limits as agreed by the Authority***;

***To authorise contracts to be entered into after consideration of risks and opportunities presented***;

***In each case subject to legal advice and guidance that it is appropriate to do so, to establish additional trading entities (as appropriate) (NOTE: in the event of legal advice indicating otherwise, such matters will be referred to the full Authority for determination);***

***To authorise any permanent staffing increases in the authorised establishment required to deliver the Commercial Services, subject to the costs being met from income generated.***

To monitor the financial status and performance of Red One Ltd in terms of expenditure on operating costs, costs recovered and profit generated and to take corrective action and report to the Authority on these issues as necessary.

## **5. COMMERCIAL SERVICES MANAGEMENT ARRANGEMENTS**

- 5.1 The delivery of all commercial activity agreed by the Commercial Services Committee will be implemented by the Chief Fire Officer in his role as Chief Executive/Chief Fire Officer and supported by the Senior Management Board and the Commercial Services Management Team.

## **6. CONCLUSION**

- 6.1 Commercial trading represents an exciting new approach which will see additional income generated. This will allow the Fire Authority to partially mitigate the impact of central Government grant reductions and reform the traditional model of public service provision.
- 6.2 This report sets out revised governance arrangements which it is felt strike an appropriate balance between effective Governance and the ability to be sufficiently fleet of foot, as is often required when operating in a commercial environment. These arrangements are, therefore, commended to the Authority for approval.

**LEE HOWELL**  
Chief Fire Officer

**MIKE PEARSON**  
Clerk to the Authority



APPENDIX A TO REPORT DSFRA/12/7

THE COMPANIES ACT 2006  
PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

**RED ONE LTD**

# **INDEX TO THE ARTICLES**

## **PART 1 INTERPRETATION AND LIMITATION OF LIABILITY**

1. Defined terms
2. Liability of members

## **PART 2 DIRECTORS DIRECTORS' POWERS AND RESPONSIBILITIES**

3. Directors' general authority
4. Shareholders' reserve power
5. Directors may delegate
6. Committees

### **DECISION-MAKING BY DIRECTORS**

7. Directors to take decisions collectively
8. Unanimous decisions
9. Calling a directors' meeting
10. Participation in directors' meetings
11. Quorum for directors' meetings
12. Chairing of directors' meetings
13. Casting vote
- 14A. Conflicts of interest – transactions or arrangements with the company
- 14B. Conflicts of interest requiring board authorisation
- 14C. Directors may vote when interested
15. Records of decisions to be kept
16. Directors' discretion to make further rules

### **APPOINTMENT OF DIRECTORS**

17. Methods of appointing directors
18. Termination of director's appointment
19. Appointment and removal of a director by majority of ordinary shareholders
20. Directors' remuneration and expenses

## **PART 3 SHARES AND DISTRIBUTIONS SHARES**

21. All shares to be fully paid up
22. Powers to issue different classes of share
23. Company not bound by less than absolute interests
24. Share certificates
25. Replacement share certificates
26. Share transfers

- 27. Transmission of shares
- 28. Exercise of transmitters' rights
- 29. Transmitters bound by prior notices

#### **DIVIDENDS AND OTHER DISTRIBUTIONS**

- 30. Procedure for declaring dividends
- 31. Payment of dividends and other distributions
- 32. No interest on distributions
- 33. Unclaimed distributions
- 34. Non-cash distributions
- 35. Waiver of distributions

#### **CAPITALISATION OF PROFITS**

- 36. Authority to capitalise and appropriation of capitalised sums

### **PART 4 DECISION-MAKING BY SHAREHOLDERS ORGANISATION OF GENERAL MEETINGS**

- 37. Attendance and speaking at general meetings
- 38. Quorum for general meetings
- 39. Chairing general meetings
- 40. Attendance and speaking by directors and non-shareholders
- 41. Adjournment

#### **VOTING AT GENERAL MEETINGS**

- 42. Voting: general
- 43. Errors and disputes
- 44. Poll votes
- 45. Content of proxy notices
- 46. Delivery of proxy notices
- 47. Amendments to resolutions

### **PART 5 ADMINISTRATIVE ARRANGEMENTS**

- 48. Means of communication to be used
- 49. Company seals
- 50. No right to inspect accounts and other records
- 51. Provision for employees on cessation of business

#### **DIRECTORS' INDEMNITY AND INSURANCE**

- 52. Indemnity
- 53. Insurance

# PART 1

## INTERPRETATION AND LIMITATION OF LIABILITY

### Defined terms

1. —(1) In the articles, unless the context requires otherwise—

"**articles**" means 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;

"**chairman**" has the meaning given in article 12;

"**chairman of the meeting**" has the meaning given in article 39;

"**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**" has the meaning given in article 14B;

"**director**" means a director of the company, and includes any person occupying the position of director, by whatever name called;

"**distribution recipient**" has the meaning given in article 31;

"**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;

"**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;

"**group company**" means, in relation to a company, a subsidiary undertaking or parent undertaking of the company or a subsidiary undertaking of any parent undertaking of the company, provided that the definition of "undertaking" in section 1161 of the Companies Act 2006 shall for these purposes also include any person (incorporated or unincorporated) created by statute;

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

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

"**instrument**" means a document in hard copy form;

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

"**paid**" means paid or credited as paid;

"**participate**", in relation to a directors' meeting, has the meaning given in article 10;

"**Permitted Situation**" has the meaning given in article 14B;

"**proxy notice**" has the meaning given in article 45;

"**shareholder**" means a person who is the holder of a share;

"**shares**" means shares in the company;

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

"**subsidiary**" has the meaning given in section 1159 of the Companies Act 2006;

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

"**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.

(2) No regulations or model articles contained in any statute or subordinate legislation, including those contained in the model articles for private companies limited by shares contained in Schedule 1 of the Companies Act (Model Articles) Regulations 2008, shall apply to the company.

(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.

### **Liability of members**

2. The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

## **PART 2**

### **DIRECTORS**

#### **DIRECTORS' POWERS AND RESPONSIBILITIES**

##### **Directors' general authority**

3. Subject to the 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.

##### **Shareholders' reserve power**

4.—(1) The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

##### **Directors may delegate**

5.—(1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles—

- (a) to such person or committee;
- (b) by such means (including by power of attorney);
- (c) to such an extent;
- (d) in relation to such matters or territories; and

(e) on such terms and conditions;  
as they think fit.

(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.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

## **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 the articles which govern the taking of decisions by directors.

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

## **DECISION-MAKING BY DIRECTORS**

### **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 8.

(2) If—

(a) the company only has one director, and

(b) no provision of the articles requires it to have more than one director,

the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

(3) If only one director is eligible to vote on any authorisation required under article 14B, 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 the articles relating to directors' decision-making.

### **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.

(2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

(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.

(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.

### **Calling a directors' meeting**

**9.—**(1) 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.

(2) Notice of any directors' meeting must indicate—

- (a) its proposed date and time;
- (b) where it is to take place; and
- (c) 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.

(3) Notice of a directors' meeting must be given to each director, but need not be in writing.

(4) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

### **Participation in directors' meetings**

**10.**—(1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—

- (a) the meeting has been called and takes place in accordance with the articles, and
- (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(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.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

### **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.

(2) Subject always to articles 7(2) and 7(3), the quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than two, and unless otherwise fixed it is two.

(3) Subject always to article 7(2), 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—

- (a) to appoint further directors, or
- (b) to call a general meeting so as to enable the shareholders to appoint further directors.

### **Chairing of directors' meetings**

**12.**—(1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairman.

(3) The directors may terminate the chairman's appointment at any time.

(4) If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

### **Casting vote**

**13.**—(1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote.

(2) But this does not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

### **Conflicts of interest – transactions or arrangements with the company**

**14A.**—(1) The relevant provisions of the Companies Act 2006 (including, without limitation, sections 177 and 182) shall apply in relation to declarations of interest in proposed and existing transactions or arrangements with the company.

(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 Acts, a director notwithstanding his office:

(a) may be a party to, or otherwise interested in, any contract with the company or in which the company is otherwise interested;

(b) may be a director or other officer of, employed by, a party to any contract with or otherwise interested in any group company or in any body corporate promoted by the company or any group company or in which the company or any group company is interested; and

(c) may act by himself or his firm in a professional capacity for the company (otherwise than as auditor).

(2) For the purposes of this article 14A:

(a) a director shall be deemed to have disclosed the nature and extent of an interest which consists of him being a director, officer or employee of any group company; and

(b) a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any contract in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such contract of the nature and extent so specified.

(3) Where a director is a director or other officer of, or employed by, a group company, he:

(a) may in exercising his independent judgment take into account the success of other group companies as well as the success of the company; and

(b) shall in the exercise of his duties, where that other group company is a parent company, have a duty of confidentiality to the parent company in relation to confidential information of the parent company, but he shall not be restricted by any duty of confidentiality to the company from providing information to any parent company.

### **Conflicts of interest requiring board authorisation**

**14B.**—(1) The directors may, subject to the quorum and voting requirements set out in the articles, authorise any matter which would otherwise involve a director breaching his duty under the Companies Acts to avoid conflicts of interest (a "**Conflict**").

(2) Any director (including the relevant director) may propose that the relevant director be authorised in relation to any matter the subject of a Conflict. Such proposal and any authority given by the directors shall be effected in the same way that any other matter may be proposed to and decided upon by the directors under the provisions of the articles save that the relevant director shall not count towards the quorum nor vote on any resolution giving such authority and save further that if there are insufficient directors eligible to vote and therefore to form a quorum, article 7(3) will apply.

(3) Where the directors give authority in relation to a Conflict:



(a) the terms of the authority shall be recorded in writing (but the authority shall be effective whether or not the terms are so recorded); and

(b) the directors may revoke or vary such authority at any time but this will not affect anything done by the relevant director prior to such revocation in accordance with the terms of such authority.

(4) A Conflict in relation to a director arising solely as a result of him being a director, officer or employee of any group company shall be deemed to have been authorised for the purposes of this article 14B and section 175 of the Companies Act 2006.

(5) Where paragraph (4) above applies or the directors otherwise give authority in relation to a Conflict, or where any of the situations referred to in article 14(A) (a "**Permitted Situation**") applies:

(a) the directors may (whether at the relevant time or subsequently) (i) require that the relevant director is excluded from the receipt of information, the participation in discussion and/or the making of decisions (whether at meetings of the directors or otherwise) related to the Conflict or Permitted Situation; and (ii) impose upon the relevant director such other terms for the purpose of dealing with the Conflict as they may determine;

(b) the relevant director will be obliged to conduct himself in accordance with any terms imposed by the board in relation to the Conflict or Permitted Situation; and

(c) the directors may provide that where the relevant director obtains (otherwise than through his position as a director of the company) information that is confidential to a third party, the director will not be obliged to disclose that information to the company, or to use or apply the information in relation to the company's affairs, where to do so would amount to a breach of that confidence.

(6) A director shall not, by reason of his office or of the fiduciary relationship thereby established, be liable to account to the company or the members for any remuneration, profit or other benefit realised by reason of his having any type of interest in a Conflict authorised under this article or in any Permitted Situation and no contract shall be liable to be avoided on the grounds of a director having any such interest.

### **Directors may vote when interested**

**14C.**—(1) Subject where applicable to disclosure in accordance with the Companies Acts or the articles and subject to any terms imposed by the directors in relation to any Conflict or Permitted Situation, a director shall be entitled to vote in respect of any matter in which he is interested directly or indirectly and if he shall do so his vote shall be counted and, whether or not he does, his presence at the meeting shall be taken into account in ascertaining whether a quorum is present.

(2) Subject to paragraph (3) below, if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.

(3) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

## **Records of decisions to be kept**

**15.** 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.

## **Directors' discretion to make further rules**

**16.** Subject to the 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.

# **APPOINTMENT OF DIRECTORS**

## **Methods of appointing directors**

**17.—**(1) Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

- (a) by ordinary resolution,
- (b) by a decision of the directors; or
- (c) by a notice of his appointment given in accordance with article 19.

(2) In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of paragraph (2), where 2 or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

## **Termination of director's appointment**

**18.** A person ceases to be a director as soon as—

- (a) 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;
- (b) a bankruptcy order is made against that person;
- (c) a composition is made with that person's creditors generally in satisfaction of that person's debts;
- (d) 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;
- (e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;
- (f) 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
- (g) notice of his removal is given in accordance with article 19.

## **Appointment and removal of a director by majority of ordinary shareholders**

**19.** Any member or members holding a majority in nominal amount of the issued ordinary share capital that confers the right to attend and vote at general meetings may at any time appoint any person who is willing to act, and is permitted by law to do so, to be a director (whether as an additional director or to fill a vacancy) and may remove from office any director (no matter how he was appointed) and any alternate director. Any such appointment or removal shall be effected by notice in writing to the company by the relevant member or members. Any such appointment or removal shall take effect immediately on deposit of the notice or one such later date (if any) specified in the notice. Any removal pursuant to this article shall be without prejudice to any claim that a director may have under any contract between him and the company.

## **Directors' remuneration and expenses**

**20.—**(1) Directors may undertake any services for the company that the shareholders approve in advance in writing.

(2) Directors are only entitled to such remuneration as approved by the shareholders in advance in writing—

- (a) for their services to the company as directors, and
- (b) for any other service which they undertake for the company.

(3) Subject to the articles, a director's remuneration may—

- (a) take any form, and
- (b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(5) Unless the shareholders decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

(6) The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—

- (a) meetings of directors or committees of directors,
- (b) general meetings, or
- (c) separate meetings of the holders of any class of shares or of debentures of the company,

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

## **PART 3**

### **SHARES AND DISTRIBUTIONS**

#### **SHARES**

#### **All shares to be fully paid up**

**21.—**(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.

(2) This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

### **Powers to issue different classes of share**

**22.**—(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.

(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.

### **Company not bound by less than absolute interests**

**23.** 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.

### **Share certificates**

**24.**—(1) The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

(2) Every certificate must specify—

- (a) in respect of how many shares, of what class, it is issued;
- (b) the nominal value of those shares;
- (c) that the shares are fully paid; and
- (d) any distinguishing numbers assigned to them.

(3) No certificate may be issued in respect of shares of more than one class.

(4) If more than one person holds a share, only one certificate may be issued in respect of it.

(5) Certificates must—

- (a) have affixed to them the company's common seal, or
- (b) be otherwise executed in accordance with the Companies Acts.

### **Replacement share certificates**

**25.**—(1) If a certificate issued in respect of a shareholder's shares is—

- (a) damaged or defaced, or
- (b) said to be lost, stolen or destroyed, that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

(2) A shareholder exercising the right to be issued with such a replacement certificate—

- (a) may at the same time exercise the right to be issued with a single certificate or separate certificates;
- (b) must return the certificate which is to be replaced to the company if it is damaged or defaced; and
- (c) must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

## **Share transfers**

**26.**—(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.

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

(3) The company may retain any instrument of transfer which is registered.

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

(5) 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.

## **Transmission of shares**

**27.**—(1) If title to a share passes to a transferee, the company may only recognise the transferee as having any title to that share.

(2) A transferee who produces such evidence of entitlement to shares as the directors may properly require—

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

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

(3) But transferees 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.

## **Exercise of transferees' rights**

**28.**—(1) Transferees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.

(2) If the transferee wishes to have a share transferred to another person, the transferee must execute an instrument of transfer in respect of it.

(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 transferee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

## **Transferees bound by prior notices**

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

## DIVIDENDS AND OTHER DISTRIBUTIONS

### Procedure for declaring dividends

- 30.**—(1) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.
- (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.
- (3) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- (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.
- (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.
- (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.
- (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.

### Payment of dividends and other distributions

- 31.**—(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—
- (a) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;
  - (b) 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;
  - (c) 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
  - (d) 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.
- (2) In the articles, "**the distribution recipient**" means, in respect of a share in respect of which a dividend or other sum is payable—
- (a) the holder of the share; or
  - (b) if the share has two or more joint holders, whichever of them is named first in the register of members; or
  - (c) if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

### No interest on distributions

- 32.** The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

- (a) the terms on which the share was issued, or
- (b) the provisions of another agreement between the holder of that share and the company.

### **Unclaimed distributions**

- 33.**—(1) All dividends or other sums which are—
- (a) payable in respect of shares, and
  - (b) 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.
- (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.
- (3) If—
- (a) twelve years have passed from the date on which a dividend or other sum became due for payment, and
  - (b) 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.

### **Non-cash distributions**

- 34.**—(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).
- (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—
- (a) fixing the value of any assets;
  - (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
  - (c) vesting any assets in trustees.

### **Waiver of distributions**

- 35.** 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—
- (a) the share has more than one holder, or
  - (b) more than one person is entitled to the share, whether by reason of the death or 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.

## **CAPITALISATION OF PROFITS**

### **Authority to capitalise and appropriation of capitalised sums**

- 36.**—(1) Subject to the articles, the directors may, if they are so authorised by an ordinary resolution—

- (a) 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
  - (b) 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.
- (2) Capitalised sums must be applied—
- (a) on behalf of the persons entitled, and
  - (b) in the same proportions as a dividend would have been distributed to them.
- (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.
- (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.
- (5) Subject to the articles the directors may—
- (a) apply capitalised sums in accordance with paragraphs (3) and (4) partly in one way and partly in another;
  - (b) 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
  - (c) 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.

## **PART 4**

### **DECISION-MAKING BY SHAREHOLDERS**

#### **ORGANISATION OF GENERAL MEETINGS**

##### **Attendance and speaking at general meetings**

- 37.**—(1) 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.
- (2) A person is able to exercise the right to vote at a general meeting when—
- (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
  - (b) 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.
- (3) 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.
- (4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.



(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

### **Quorum for general meetings**

**38.** No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

### **Chairing general meetings**

**39.—**(1) If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.

(2) If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(a) the directors present, or

(b) (if no directors are present), the meeting,

must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as "**the chairman of the meeting**".

### **Attendance and speaking by directors and non-shareholders**

**40.—**(1) Directors may attend and speak at general meetings, whether or not they are shareholders.

(2) The chairman of the meeting may permit other persons who are not—

(a) shareholders of the company, or

(b) otherwise entitled to exercise the rights of shareholders in relation to general meetings,

to attend and speak at a general meeting.

### **Adjournment**

**41.—**(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.

(2) The chairman of the meeting may adjourn a general meeting at which a quorum is present if—

(a) the meeting consents to an adjournment, or

(b) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairman of the meeting must—

(a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and

- (b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- (5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)—
  - (a) to the same persons to whom notice of the company's general meetings is required to be given, and
  - (b) containing the same information which such notice is required to contain.
- (6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

## **VOTING AT GENERAL MEETINGS**

### **Voting: general**

**42.** A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

### **Errors and disputes**

**43.—**(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.  
(2) Any such objection must be referred to the chairman of the meeting, whose decision is final.

### **Poll votes**

**44.—**(1) A poll on a resolution may be demanded—

- (a) in advance of the general meeting where it is to be put to the vote, or
- (b) 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.

(2) A poll may be demanded by—

- (a) the chairman of the meeting;
- (b) the directors;
- (c) two or more persons having the right to vote on the resolution; or
- (d) 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.

(3) A demand for a poll may be withdrawn if—

- (a) the poll has not yet been taken, and
- (b) the chairman of the meeting consents to the withdrawal.

(4) Polls must be taken immediately and in such manner as the chairman of the meeting directs.

### **Content of proxy notices**

**45.—**(1) Proxies may only validly be appointed by a notice in writing (a "**proxy notice**") which—

- (a) states the name and address of the shareholder appointing the proxy;

- (b) identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;
  - (c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and
  - (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.
- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- (4) Unless a proxy notice indicates otherwise, it must be treated as—
- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and
  - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

### **Delivery of proxy notices**

- 46.**—(1) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- (4) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

### **Amendments to resolutions**

- 47.**—(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—
- (a) 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 chairman of the meeting may determine), and
  - (b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- (2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—
- (a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and
  - (b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- (3) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

## **PART 5**

### **ADMINISTRATIVE ARRANGEMENTS**

#### **Means of communication to be used**

**48.**—(1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Companies Act 2006 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.

(2) Subject to the 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.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

#### **Company seals**

**49.**—(1) Any common seal may only be used by the authority of the directors.

(2) The directors may decide by what means and in what form any common seal is to be used.

(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.

(4) For the purposes of this article, an authorised person is—

(a) any director of the company;

(b) the company secretary (if any); or

(c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

#### **No right to inspect accounts and other records**

**50.** Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

#### **Provision for employees on cessation of business**

**51.** The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

## DIRECTORS' INDEMNITY AND INSURANCE

### Indemnity

**52.**—(1) Subject to paragraph (2), a relevant director of the company or an associated company may be indemnified out of the company's assets against—

- (a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company,
- (b) any liability incurred by that director 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),
- (c) any other liability incurred by that director as an officer of the company or an associated company.

(2) This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

(3) In this article—

- (a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and
- (b) a "**relevant director**" means any director or former director of the company or an associated company.

### Insurance

**53.**—(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.

(2) In this article—

- (a) a "**relevant director**" means any director or former director of the company or an associated company,
- (b) 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
- (c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

**DATED:**

**2011**

**DEVON AND SOMERSET FIRE AND RESCUE AUTHORITY**

**AND**

**RED ONE LTD**

**TRADING COMPANY CONTRACT**

**AGREEMENT** dated

20[11]

**BETWEEN**

- (1) Devon and Somerset Fire and Rescue Authority of Clyst St George, Exeter, Devon, England EX3 0NW (as established under The Devon and Somerset Fire and Rescue Authority (Combination Scheme) Order 2006) ("**Authority**")
- (2) Red One Ltd of Clyst St George, Exeter, Devon, England EX3 0NW (registered number: 7379630) ("**Company**")

**BACKGROUND**

- (A) The Authority is the sole shareholder of the Company which it has established in accordance with s.95 Local Government Act 2003 for the purposes of undertaking commercial trading.
- (B) The Authority is providing resources to the Company in order to facilitate the Company being able to trade.

**1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following definitions shall be used:

"Agreed Contract"	has the meaning given at clause 3.1;
"Agreement"	the agreement between the parties as set out in this document;
"Authority Contracts"	contracts entered into between the Authority and third parties for the provision of any services, goods, software or hardware of any nature whatsoever;
"Authority Equipment"	all equipment, hardware or other physical assets owned by the Authority;
"Authority's Intellectual Property"	Intellectual Property owned by the Authority;
"Authority Premises"	all premises licensed to the Company by the Authority in accordance with clause 5 and Schedule 2;
"Authority Staff"	employees of the Authority provided to the Company in accordance with the clause 4.1 and Schedule 1;
"Charges"	has the meaning given at paragraph 1.2 of Schedule 3;
"Commencement Date"	the date of this Agreement;
"Commercial Services Committee"	a committee of the Authority established with delegated authority to make certain decisions on behalf of the Authority in relation to the Company;
"Company's Intellectual Property"	Intellectual Property owned by the Company;

“Data Controller”	has the meaning given under the Data Protection Legislation;
“Data Processor”	has the meaning given under the Data Protection Legislation;
“Data Protection Legislation”	the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
“Extended Term”	has the meaning given in clause 2.2;
“FOI Legislation”	the Freedom of Information Act 2000, the Environmental Information Regulations 2004, and any subordinate legislation made under the Act or Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
“Initial Term”	has the meaning given in clause 2.1;
“Intellectual Property”	any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites;
“Total Cost”	has the meaning given at paragraph 1.3 of Schedule 3;
“Trading Contract”	has the meaning given at clause 3.1;
“VAT”	value added tax chargeable under the Value Added Tax Act 1994 or any similar or replacement tax.



- 1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

## **2 COMMENCEMENT AND DURATION**

- 2.1 This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 12 for a period of [three] years (“Initial Term”).
- 2.2 The term of the Agreement shall automatically extend for a further three year period (“Extended Term”) at the end of the Initial Term and at the end of each Extended Term, unless the Authority gives written notice to the Company before the end of the Initial Term or the relevant Extended Term, to terminate this agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

## **3 AGREED CONTRACTS**

- 3.1 The Company shall not enter into any contracts with third parties involving the provision of services and / or goods by the Company (“Trading Contract”) without the prior written consent of the Authority, to be exercised through the Commercial Services Committee or any such other committee, board or person within the Authority with due authority to make such decisions on behalf of the Authority as notified from time to time by the Authority to the Company (at which point the contract will be deemed an “Agreed Contract”).
- 3.2 The Authority shall not give its consent for the Company to enter into a Trading Contract until the Parties have agreed in writing the specific resources that the Authority would be required to provide to the Company in order that it could carry out its obligations under the Trading Contract (“Agreed Resources”) including in particular:
  - 3.2.1 the provision of Authority Staff;
  - 3.2.2 a licence to use any equipment or software owned or licensed by the Authority;
  - 3.2.3 a licence to use premises owned or occupied by the Authority;
  - 3.2.4 the provision of any necessary support services to service the Company’s activities.
- 3.3 All Agreed Resources shall be supplied by the Authority to the Company in accordance with the terms of this Agreement.

## **4 PROVISION OF AUTHORITY STAFF**

- 4.1 The Authority shall second the Authority Staff to the Company in accordance with Schedule 1.

## **5 LICENCE TO USE AUTHORITY PREMISES**

- 5.1 The Authority shall licence the Authority Premises to the Company in accordance with Schedule 2.

## **6 LICENCE FOR AUTHORITY EQUIPMENT AND CONTRACTS**

- 6.1 The Authority shall licence the Company to use the Authority Equipment for the purposes of delivering an Agreed Contract or facilitating, or preparing to bid for, the delivery of an Agreed Contract.
- 6.2 The Authority licences the benefit of Authority Contracts to the Company for the purposes of delivering an Agreed Contract or facilitating, or preparing to bid for, the delivery of an Agreed Contract.

## **7 SUPPORT SERVICES**

- 7.1 The Authority shall provide all support services that the Company requires unless the Parties agree otherwise in writing in advance of the Company entering into a contract with a third party for support services.

## **8 INTELLECTUAL PROPERTY**

- 8.1 The Company assigns ownership of all of the Company's Intellectual Property to the Authority.
- 8.2 The Authority provides a revocable, non-exclusive, royalty free licence to the Company to use the Authority's Intellectual Property for the Approved Purposes [provided that the Authority's Intellectual Property shall not be used without the prior written approval of the Authority].
- 8.3 The Company shall not sub-licence any part of the Authority's Intellectual Property without the prior written approval of the Authority.

## **9 CHARGES**

- 9.1 The Company shall pay the Authority the Charges in accordance with the terms contained in Schedule 3.

## **10 INSURANCE**

- 10.1 The Authority shall arrange for the activities of the Company relating to this Agreement to be covered by its insurance policies.
- 10.2 The cost to the Authority of providing insurance cover to the Company shall be accounted for in the Charges.

## **11 LIABILITY**

- 11.1 The Company shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with
- 11.1.1 the Company's breach of the terms of this Agreement.
- 11.1.2 any claim made against the Authority for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with an Agreed Contract;

11.1.3 any claim made against the Authority by a third party arising out of or in connection with the undertaking of an Agreed Contract by the Company.

11.2 This indemnity shall apply whether or not the Company has been negligent or at fault.

## **12 TERMINATION**

12.1 The Authority may terminate this Agreement:

12.1.1 upon serving [one month's] written notice to the Company with such notice to be served at any time; or

12.1.2 immediately upon serving written notice where the Company is in breach of its obligations under this Agreement.

## **13 DATA PROTECTION**

13.1 With respect to the Parties' rights and obligations under this agreement, the Parties agree that the Authority is the Data Controller and that the Company is the Data Processor.

13.2 The Company shall comply with any notification requirements under the Data Protection Legislation and both parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Agreement.

13.3 Notwithstanding the general obligation in clause 13.1, where the Company is processing Personal Data as a Data Processor for the Authority, the Company shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the Data Protection Act 1998; and

13.3.1 provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Company is complying with its obligations under the Data Protection Legislation;

13.3.2 promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 13.3; and

13.3.3 ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the Data Protection Legislation.

13.4 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

## **14 FREEDOM OF INFORMATION**

14.1 The Parties agree that the Company will be subject to the FOI Legislation as a company wholly owned by the Authority and the Parties agree to comply with their

legal obligations under FOI Legislation and work together cooperatively and in good faith to assist each other in complying with such obligations.

## **15 NO PARTNERSHIP OR AGENCY**

15.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any Party the agent of the other Party, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

## **16 ASSIGNMENT**

16.1 This Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, subcontract or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the other Party.

16.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

## **17 ENTIRE AGREEMENT**

17.1 This Agreement constitutes the whole agreement between the Parties and supersedes all previous agreements between the Parties relating to its subject matter.

17.2 Each Party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement.

17.3 Nothing in this clause shall limit or exclude any liability for fraud.

## **18 VARIATION**

18.1 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

## **19 SEVERENCE**

19.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

19.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

## **20 NOTICES**

20.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice as set out below:

Authority: [CONTACT][ADDRESS]

Company: [CONTACT][ADDRESS],

or as otherwise specified by the relevant party by notice in writing to each other party.

20.2 Any notice shall be deemed to have been duly received:

20.2.1 if delivered personally, when left at the address and for the contact referred to in this clause; or

20.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

20.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

20.3 A notice required to be given under this agreement shall not be validly given if sent by e-mail.

20.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## **21 COUNTERPARTS**

21.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement. No counterpart shall be effective until each party has executed at least one counterpart.

## **22 THIRD PARTY RIGHTS**

22.1 No person other than a party to this Agreement shall have any rights to enforce any term of this Agreement.

## **23 GOVERNING LAW AND JURISDICTION**

23.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute.

Signed for and on behalf of  
**DEVON AND SOMERSET FIRE AND  
RESCUE AUTHORITY**

.....  
[authorised signatory]

Signed for and on behalf of the  
**RED ONE LTD**

.....  
Director

.....  
Director / Secretary

## SCHEDULE 1– AUTHORITY STAFF

### 1 Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Schedule (unless the context requires otherwise).

**Employment Contract:** the terms of employment between the Authority and the Secondee.

**Management Issues:** all those matters under the Employment Contract requiring action, investigation and/or decisions by the Authority including in particular (by way of illustration only and without limitation) appraisals and performance issues; pay reviews and the award of other payments and benefits under the Employment Contract; periods of annual, sick or other leave; absence of the Secondee for any other reason; any complaint about the Secondee (whether or not that would be dealt with under the Authority's disciplinary procedure) and any complaint or grievance raised by the Secondee (whether or not that would be dealt with under the Authority's grievance procedure).

**Secondee:** the employees of the Authority that the Parties agree in writing will be seconded by the Authority to the Company for the purposes of facilitating the delivery of an Agreed Contract.

**Secondment:** the secondment of the Secondee by the Employer to the Company on the terms of this Agreement.

**Secondment Period:** in relation to each Secondee the period of time that the Parties agree in writing in advance that the Secondee shall be seconded to the Company for the purposes of this Agreement.

**Services:** in relation to each Secondee the services agreed between the Parties from time to time.

### 2 Secondment

- 2.1 The Authority shall second the Secondee to the Company for the Secondment Period to provide the Services in accordance with the terms of this Agreement.

### 3 Secondee's employment

- 3.1 The Employment Contract shall remain in force during the Secondment Period.
- 3.2 The Company shall not, and shall not require the Secondee to do anything that shall, breach the Employment Contract and shall have no authority to vary the terms of the Employment Contract or make any representations to the Secondee in relation to the terms of the Employment Contract.
- 3.3 The Company shall provide the Authority with such information and assistance as it may reasonably require to carry out its obligations as the Secondee's employer.
- 3.4 If the Secondee is held to be employed by the Company at any time during the Secondment Period then the Company may dismiss the Secondee and the Authority shall offer the Secondee employment on the terms that applied immediately prior to that dismissal.

## **4 Payments**

- 4.1 The Authority shall continue to pay the Seconded's salary and any allowances, provide any benefits due to the Seconded or their dependants, make any payments to third parties in relation to the Seconded and make any deductions that it is required to make from the Seconded's salary and other payments.
- 4.2 The Authority shall refund the Seconded all reasonable travel, accommodation and other expenses wholly, exclusively and necessarily incurred by the Seconded during the Secondment Period in or in connection with the exercise of the Services, if such expenses are evidenced in such manner as the Authority may specify from time to time. The Company shall provide information required by the Authority to evidence such expenses.

## **5 Management during the secondment**

- 5.1 The Authority shall continue to deal with any Management Issues concerning the Seconded during the Secondment Period, where relevant following consultation with the Company.
- 5.2 The Company shall provide any information, documentation, access to its premises and employees and assistance (including but not limited to giving witness evidence) to the Authority to deal with any Management Issues concerning the Seconded.
- 5.3 The Company shall have day-to-day control of the Seconded's activities but as soon as reasonably practicable shall refer any Management Issues concerning the Seconded that come to its attention to the Authority.
- 5.4 Both parties shall inform the other as soon as reasonably practicable of any other significant matter that may arise during the Secondment Period relating to the Seconded or their employment.

## **6 Data protection**

- 6.1 The Authority confirms that the Seconded has consented
  - 6.1.1 to the Company processing data relating to the Seconded for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to the Seconded.
  - 6.1.2 to the Company making such information available to those who provide products or services to the Company (such as advisers and insurers), regulatory authorities, governmental or quasi governmental organisations and, where relevant, potential purchasers of any of the Company's services..

## **7 Summary termination**

- 7.1 The Authority may terminate any Secondment with immediate effect without notice or payment in lieu of notice:
  - 7.1.1 on the termination of the Employment Contract; or



- 7.1.2 if the Company is guilty of any breach of the terms of this Agreement.
- 7.2 All Secondments shall terminate upon the termination of the Agreement under clause 12.

## **8 Liability**

- 8.1 During the Secondment Period the Authority, in consultation with the Company where appropriate, shall fulfil all duties relating to the Secondee's health, safety and welfare as if it was their employer and shall comply with the Employer's reasonable requests in connection with the Employer's duties in relation to the Secondee.
- 8.2 The Company shall indemnify the Authority fully and keep the Authority indemnified fully at all times against any loss, injury, damage or costs suffered, sustained or incurred by:
  - 8.2.1 the Secondee in relation to any loss, injury, damage or costs arising out of any act or omission by the Host or its employees or agents during the Secondment Period; or
  - 8.2.2 a third party, in relation to any loss, injury, damage or costs arising out of any act or omission of the Secondee during the Secondment Period.
- 8.3 The Company shall indemnify the Authority fully and keep the Authority indemnified fully at all times against any claim or demand by the Secondee arising out of their employment by the Authority or its termination during the Secondment Period (save for any claim that the Authority has failed to pay the Secondee's salary and any allowances, provide any benefits due to the Secondee or their dependants, make any payments to third parties in relation to the Secondee or make any deductions that it is required to make from the Secondee's salary and other payments).

## SCHEDULE 2– LICENCE TO USE AUTHORITY PREMISES

### AGREED TERMS FOR AGREED FACILITIES

#### 9 Interpretation

9.1 The definitions and rules of interpretation in this clause apply in this Schedule.

**"Building"**

In respect of each license, the building specified by the Authority as part of the written agreement between the Parties in relation to an Agreed Contract.

**"Common Parts"**

The roads, paths, entrance halls, corridors lifts, staircases, landing and other means of access in or upon the Building the use of which is necessary for obtaining access to and egress from the Property as designated from time to time by the Authority.

**"Competent Authority"**

Any statutory undertaker or any statutory, public, local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers.

**"Licence Period"**

In relation to each license the period agreed in writing between the Parties as part of the Authority approving an Agreed Contract.

**"Necessary Consents"**

All planning permissions and other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature that shall be required by any Competent Authority for the Permitted Use.

**"Permitted Use"**

In relation to each licence, the uses specified by the Authority in writing as part of the written agreement between the Parties in relation to an Agreed Contract.

**"Property"**

In relation to each licence, the properties specified by the Authority in writing as part of the written agreement between the Parties in relation to an Agreed Contract.

**"Service Media"**

All media for the supply or removal of heat, electricity, gas, water, sewage, air-conditioning, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media.

#### 10 Licence to occupy

10.1 Subject to paragraph 11 and clause 12, the Authority permits the Company to occupy the Property for the Permitted Use for the Licence Period in common with the Authority and all others authorised by the Authority (so far as is not inconsistent with the rights given to the Licensee to use the Property for the Permitted Use) together with the rights of the Licensee to use during the Licence Period:

10.1.1 such parts of the Common Parts for the purpose of access to and egress from the Property as shall from time to time be designated by the Authority for such purpose;

- 10.1.2 the Service Media serving the Property.
- 10.2 The Company acknowledges that:
  - 10.2.1 the Company shall occupy the Property as a licensee and that no relationship of landlord and tenant is created between the Authority and the Company by this Licence;
  - 10.2.2 the Authority retains control, possession and management of the Property and the Company has no right to exclude the Licensor from the Property; and
  - 10.2.3 subject to paragraph 10.3, the licence to occupy granted by this Licence is personal to the Licensee and is not assignable and the rights given in paragraph 10 may only be exercised by the Licensee and its employees.
- 10.3 The Company shall have the right to sub-licence the licence provided in this Agreement where such sub-licensing is done for the purposes of an Agreed Contract and to the extent agreed in advance in writing with the Authority.

## **11 Company's obligations**

The Company agrees and undertakes:

- 11.1 To keep the Property clean, tidy and clear of rubbish.
- 11.2 Not to use the Property other than for the Permitted Use.
- 11.3 Not to make any alteration or addition whatsoever to the Property.
- 11.4 Not to display any advertisement, signboards, name plate, inscription, flag, banner, placard, poster, signs or notices at the Property or elsewhere in the Building without the prior written consent of the Licensor.
- 11.5 Not to do or permit to be done on the Property anything which is illegal or which may be or become a nuisance (whether or not actionable), damage, annoyance, inconvenience or disturbance to the Licensor or to tenants or occupiers of the Building or any owner or occupier of neighbouring property.
- 11.6 Not to obstruct the Common Parts, make them dirty or untidy or leave any rubbish on them.
- 11.7 Not to apply for any planning permission in respect of the Property.
- 11.8 Not to do anything that will or might constitute a breach of any Necessary Consents affecting the Property or which will or might vitiate in whole or in part any insurance effected by the Licensor in respect of the Property and Building from time to time.
- 11.9 To observe any rules or regulations the Licensor makes and notifies to the Licensee from time to time in respect of the Property and the Common Parts.
- 11.10 To leave the Property in a clean and tidy condition and to remove the Licensee's furniture, equipment and goods from the Property at the end of the Licence Period.

11.11 To indemnify the Licensor and keep the Licensor indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability arising in any way from:

11.11.1 this Licence;

11.11.2 any breach of the Company's undertakings contained in paragraph 11; and/or

11.11.3 the exercise of any rights given in paragraph 10.

## **12 Termination**

12.1 The licence to occupy granted by this Licence shall end on the earliest of:

12.1.1 date on which Licence is to end;

12.1.2 immediately on notice given by the Authority at any time following breach of any of the Company's obligations contained in paragraph 11;

12.1.3 on termination of the Agreement in accordance with clause 12.

12.2 Termination is without prejudice to the rights of either party in connection with any antecedent breach of or other obligations subsisting under this Licence.

## **13 Exclusion of warranty**

13.1 The Authority gives no warranty that the Property possesses the Necessary Consents for the Permitted Use.

13.2 The Authority gives no warranty that the Property is legally or physically fit for the purposes specified in paragraph 10.

13.3 The Licensor is not to be liable for the death or, or injury to the Licensee, its employers, customers and authorised invitees or for damage to any property of theirs, or for any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by them in the exercise or purported exercise of the rights granted by paragraph 10.

## **SCHEDULE 3– CHARGES**

### **1 CHARGES PAYABLE**

- 1.1 The Company shall pay the Authority the Charges.
- 1.2 The Charges shall be an amount equalling the Total Cost for all services, licences, goods or benefits of whatever nature (collectively referred to as “Authority Support”) provided to the Company by the Authority under the terms of this Agreement, including:
  - 1.2.1 the provision of Authority Staff;
  - 1.2.2 the licence of Authority Premises;
  - 1.2.3 the licence of Authority Equipment;
  - 1.2.4 the provision of Support Services;
  - 1.2.5 the benefit of insurance cover.
- 1.3 The ‘Total Cost’ for each element of Authority Support provided to the Company shall be a fair and reasonable proportion of any costs or charges of any nature incurred by the Authority whether directly or indirectly in connection with or in relation to that element of Authority Support.
- 1.4 The Parties shall in respect of each element of Authority Support and before such support is provided by the Authority to the Company agree in writing the Total Cost, or where agreed as more appropriate an estimate of the Total Cost, for that element of Authority Support.

### **2 VAT**

- 2.1 The amounts agreed as the Charges payable by the Company to the Authority under or pursuant to this Agreement are exclusive of VAT (if any).
- 2.2 If any VAT is chargeable on any supply of Authority Support made by the Authority under or pursuant to this Agreement, the Company will on receipt of a valid VAT invoice, pay the Authority an amount equal to that VAT.

### **3 PAYMENT**

- 3.1 The Company shall pay the Authority the Charges upon receipt of an invoice from the Authority.