

# Appendix 1

THE COMPANIES ACT 2006

COMPANY LIMITED BY SHARES

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ARTICLES OF ASSOCIATION

of The Coventry & Solihull Waste Disposal Company Limited  
(adopted by special resolution on 2014)

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Appendix 1

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### Annex A

Provisions of the Memorandum of Association treated as provisions of the Articles of Association in accordance with Section 28 of the Companies Act 2006.

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

of The Coventry & Solihull Waste Disposal Company Limited (Company number 2690488)  
(the "**Company**")

## INTERPRETATION AND LIMITATION OF LIABILITY

### 1. DEFINED TERMS

1.1 In these articles ("**articles**"), unless the context requires otherwise:

**"Act"**

means the Companies Act 2006;

**"alternate" or "alternate director"**

has the meaning given in **article 23**;

**"A" ordinary share"**

means an ordinary share of £1 for the time being in the capital of the Company having the designation "A";

**"A" preference share"**

means a cumulative redeemable preference share of £1 for the time being in the capital of the Company having the designation "A";

**"associated company"**

has the meaning given in **article 65.2**;

**"bankruptcy"**

means individual insolvency proceedings and includes similar proceedings in a jurisdiction other than England and Wales;

**"Board"**

means the Board of directors of the Company from time to time;

**"B" ordinary share"**

means an ordinary share of £1 for the time being in the capital of the Company having the designation "B";

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**"B" preference share"**

a cumulative redeemable preference share of £1 for the time being in the capital of the Company having the designation "B";

**"call notice"**

has the meaning given in **article 31.2**;

**"call payment date"**

has the meaning given in **article 31.2**;

**"Chairman of the Board"**

has the meaning given in **article 15**;

**"chairman of the meeting"**

has the meaning given in **article 54**;

**"clear days"**

means, in relation to a period of notice or otherwise, that period excluding the day when the notice or other document is received or deemed to be received and the day for which it is sent or on which it is to take effect;

**"conflict situation"**

has the meaning given in **article 18**;

**"connected person"**

The connected person of any person as defined by Section 839 Income and Corporation Taxes Act 1988 (and **"connected"** shall be construed accordingly);

**"C" ordinary share"**

means an ordinary share of £1 for the time being in the capital of the Company having the designation "C";

**"director"**

means a director of the Company, and includes any person occupying the position of director, by whatever name called and an alternate director appointed by a director;

**"distribution recipient"**

has the meaning given in **article 45**;

**"document"**

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

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**"electronic form"**

has the meaning given in section 1168 of the Act;

**"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"**

means the Company and every subsidiary and holding company of the Company and every subsidiary and holding company of such subsidiary and holding company;

**"group company"**

means any company which is a member of the group;

**"hard copy form"**

has the meaning given in section 1168 of the Act;

**"holder"**

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

**"holding company"**

has the meaning given in section 1159 of the Act;

**"instrument"**

means a document in hard copy form;

**"Local Authority"**

means the Council of the City of Coventry or the Metropolitan Borough of Solihull or Warwickshire County Council or together Local Authorities;

**"ordinary resolution"**

has the meaning given in section 282 of the Act;

**"ordinary share"**

any "A" ordinary share or "B" ordinary share or "C" ordinary share;

**"paid"**

means paid or credited as paid;

**"participate"**

in relation to a directors' meeting, has the meaning given in **article 13**;

**"preference share"**

any "A" preference share or "B" preference share;

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**“proper officer”**

in the case of the Metropolitan Borough of Solihull the Director of Resources for the time being thereof in the case of the Council of the City of Coventry the Executive Director- Resources for the time being thereof in the case of Warwickshire County Council the Strategic Director of Resources for the time being thereof (or such successor positions or officers as are nominated by the Local Authorities from time to time) in the case of the Company a director or the company secretary and in the case of any other company that becomes a shareholder, a director or the company secretary of such company;

**"proxy notice"**

has the meaning given in **article 58**;

**"relevant rate"**

has the meaning given in **article 32.2**;

**“restricted acquisition”**

any acquisition or transaction as a result of which a controlling interest is obtained in the circumstances and by the persons referred to in article 42;

**"shareholder"**

means a person who is the holder of a share;

**"Shareholders' Agreement"**

the Agreement dated 15<sup>th</sup> March 1994 as amended from time to time and entered into between the Council of the City of Coventry (1) the Metropolitan Borough of Solihull (2) Warwickshire County Council (3) and the Company (4);

**"shareholder's group"**

means, in relation to a shareholder that is a company, the shareholder and every subsidiary and holding company of that shareholder and of such subsidiary and holding company;

**"Shareholders' Panel"**

the panel constituted by the shareholders in the manner set out in the Shareholders' Agreement;

**"shares"**

means shares in the Company;

**"situation involving a transaction or arrangement"**

has the meaning given in **article 19**;

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**"special resolution"**

has the meaning given in section 283 of the Act;

**"subsidiary"**

has the meaning given in section 1159 of the Act;

**"transfer"**

in relation to any share, means any sale, transfer, assignment, pledge, charge or other disposal of any share or any interest in that share, and **"transferred"** has a similar meaning;

**"voting "A" shares"**

the "A" ordinary shares and those of the "A" preference shares carrying for the time being the right to vote in general meetings;

**"voting "B" shares"**

the "B" ordinary shares and those of the "B" preference shares carrying for the time being the right to vote in general meetings;

**"voting "C" shares"**

the "C" ordinary shares carrying for the time being the right to vote in general meetings;

**"Waste Disposal Contract(s)"**

The Contracts entered into between the Company and each of the Shareholders from time to time relating to the waste disposal services provided by the Company to each of the Shareholders

**"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.

**"2003 Act"**

Means the Local Government Act 2003 which expression shall include where the context so requires any regulations issued under that act.

- 1.2 Unless already defined in these articles, words or expressions contained in these articles bear the same meaning as in the Act. The singular shall include the plural and the masculine the feminine and neuter and vice versa.

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## **2. LIABILITY OF SHAREHOLDERS**

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

## **DIRECTORS**

### **3. NUMBER OF DIRECTORS**

The maximum number and minimum number respectively of the directors may be determined from time to time by ordinary resolution of the Company. Subject to and in default of any such determination there shall be a maximum of five directors and the minimum number of directors shall be one.

### **4. DIRECTORS' GENERAL AUTHORITY**

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.

### **5. BORROWING POWERS**

The amount for the time being remaining undischarged of moneys borrowed or secured or for which the Company is indebted under bonds or other obligations created otherwise for cash shall not exceed such sums as may be sanctioned by the Company from time to time by ordinary resolution but no debt incurred or security given in respect of moneys outstanding in excess of the foregoing limit shall be invalid or ineffectual except in the case of express notice at the time when the debt was incurred or the security was given that such limit had been or was thereby exceeded.

### **6. POWERS OF DIRECTORS**

The directors shall have no power or authority to approve any contract, transaction, arrangement, matter or thing listed below unless the relevant matter has first been approved in accordance with clause 18 of the Shareholders' Agreement:

- 6.1 the acquisition or formation of any subsidiary by the Company or any other investment in or acquisition of another company, a partnership, consortium or joint venture;
- 6.2 the adoption of a new head office for the administration of the Company, or of a new registered office;
- 6.3 the acceptance of any contracts for the disposal of waste the consequence of which is or may be that any waste to be disposed of for the Local Authorities is diverted away from the energy from waste plant operated by the Company at London Road, Coventry;
- 6.4 the early repayment of any finance owed to any shareholder;

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- 6.5 any single capital expenditure or revenue scheme with a value in any year in excess of £1,000,000, even if specifically allowed for in the Corporate Plan (as defined in the Shareholders' Agreement);
- 6.6 the acquisition or disposal of any freehold or leasehold property or parts thereof or the granting or surrendering of a lease in respect thereof by the Company;
- 6.7 the acquisition or disposal of assets by the Company (other than in the ordinary course of business) where the item to be disposed of is a capital item the net book value of which exceeds £1,000;
- 6.8 any loan or advance by the Company or the granting of any guarantee or indemnity of the obligation of any person, firm or company by the Company (other than an advance against expenses or salary which is repayable on the next due date for payment of such salary and other than in the ordinary course of business);
- 6.9 any transaction, arrangement or agreement with or for the benefit of a shareholder or any director of the Company or any subsidiary or any person connected with any such shareholder or director;
- 6.10 the making of any political contributions or gifts by the Company;
- 6.11 the making of any charitable contributions or gifts by the Company of a value in excess of £5,000 in any financial year;
- 6.12 the factoring of the Company's debts;
- 6.13 creating or allowing to subsist any incumbrances over the Company's assets;
- 6.14 the Company entering into any loan, leasing arrangement, bond or contract which is or is likely to be a credit transaction (as that term is defined in the 2003 Act) without the prior written consent of the Local Authorities;
- 6.15 the adoption of or change in accounting policies or practices employed in the preparation of the management accounts or audited accounts of the Company or of a new accounting reference date or the preparation of any accounts which (by writing off any asset or creating provision or reserve for any liability or otherwise) thereby showing distributable profits lower than would be shown had such accounts insofar as lawfully permitted not included such item;
- 6.16 the approval, signing or filing at Companies House of any audited accounts of the Company without having first notified year end results to the Shareholders' Panel no later than 7 weeks after the end of the accounting period to which they relate;
- 6.17 the cessation or material reduction of the Company's business or any change in the nature of the Company's business or activities;
- 6.18 the appointment of new auditors to the Company; and
- 6.19 the entering into a written service agreement with any director or connected person or a variation of any existing service agreement with any such person;

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- 6.20 the increase in the remuneration package of any director of the Company above the limits set out in article 24.5;
- 6.21 the entering into by the Company of a waste disposal agreement with a customer on terms which, when taken over the anticipated duration of the proposed agreement, are more favourable than those enjoyed by the Shareholders under their respective Waste Disposal Contracts

### **7. SHAREHOLDERS' RESERVE POWER**

- 7.1 The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- 7.2 No such special resolution and no alteration of the articles invalidate anything which the directors have done before the resolution is passed or the articles are altered (as appropriate).

### **8. DIRECTORS MAY DELEGATE**

- 8.1 Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles:
- 8.1.1 to such person or committee;
  - 8.1.2 by such means (including by power of attorney);
  - 8.1.3 to such an extent;
  - 8.1.4 in relation to such matters or territories; and
  - 8.1.5 on such terms and conditions,
- as they think fit.
- 8.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
- 8.3 The directors may revoke any delegation in whole or part, or alter its terms and conditions.

### **9. COMMITTEES**

- 9.1 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.
- 9.2 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.

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### 10. DIRECTORS TO TAKE DECISIONS COLLECTIVELY

The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting of the directors or a decision taken in accordance with **article 11**.

### 11. UNANIMOUS DECISIONS

- 11.1 A decision of the directors is taken in accordance with this **article 11** when all eligible directors indicate to each other by any means that they share a common view on a matter.
- 11.2 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.
- 11.3 References in this article to eligible directors are to directors who would have been entitled, in accordance with the articles, to vote on the matter had it been proposed as a resolution at a directors' meeting.
- 11.4 A decision may not be taken in accordance with this **article 11** if the eligible directors would not have formed a quorum at such a meeting.

### 12. CALLING A DIRECTORS' MEETING

- 12.1 Directors' meetings shall be held at least once a quarter.
- 12.2 Any director or any shareholder entitled to exercise the rights contained in articles 21.1 or 21.2 may call a directors' meeting by giving reasonable notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.
- 12.3 Notice of any directors' meeting must indicate:
  - 12.3.1 its proposed date and time;
  - 12.3.2 a brief outline of the matters to be discussed;
  - 12.3.3 where it is to take place; and
  - 12.3.4 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.
- 12.4 Notice of a directors' meeting must be given to each director and shareholder, but need not be in writing.
- 12.5 Notice of a directors' meeting need not be given to directors or shareholders who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company, and notice of the waiver may be given before or after 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.

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### **13. PARTICIPATION IN DIRECTORS' MEETINGS**

- 13.1 Directors participate in a directors' meeting, or part of a directors' meeting, when:
- 13.1.1 the meeting has been called and takes place in accordance with the articles; and
- 13.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 13.2 In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.
- 13.3 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.

### **14. QUORUM FOR DIRECTORS' MEETINGS**

- 14.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 14.2 The quorum for directors' meetings shall be three directors (present in person or by alternate) and must include at least one of those nominated under either article 21.1 or 21.2 or their alternates.
- 14.3 If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision to call a general meeting so as to enable the shareholders to appoint further directors.

### **15. CHAIRING OF DIRECTORS' MEETINGS**

- 15.1 The directors shall appoint one of the directors not including those appointed under articles 21.1 and 21.2 to be the Chairman of the Board.
- 15.2 The person so appointed for the time being is known as Chairman.
- 15.3 If a Chairman appointed in accordance with this article 15 is not participating in a directors' meeting within 10 minutes of the time at which it was to start, the participating directors may appoint one of themselves to chair it.

### **16. NO CASTING VOTE**

The Chairman or other director chairing the meeting shall not have a second or casting vote.

### **17. RECORDS OF DECISIONS TO BE KEPT**

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 decision taken by the directors.

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## 18. DIRECTORS' CONFLICTS

- 18.1 A "**conflict situation**" means a situation in which a director or an alternate has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company:
- 18.1.1 including a situation relating to the exploitation of any property, information or opportunity, irrespective of whether the Company could take advantage of the property, information or opportunity;
- 18.1.2 excluding a situation which could not reasonably be regarded as likely to give rise to a conflict of interest; and
- 18.1.3 excluding a situation involving a transaction or arrangement.
- 18.2 A director or an alternate shall not infringe his duty to avoid a conflict situation if the matter or situation which would otherwise result in that director or alternate infringing that duty arises out of or results from that director or alternate:
- 18.2.1 being a director, alternate, officer, employee, consultant or member of any other group company; or
- 18.2.2 being (directly or indirectly) involved with or interested in, any other group company;
- for the reason that any such matter or situation is hereby authorised and no further authorisation, whether pursuant to **article** 18.3 or otherwise, is required in respect of such matter or situation. In addition, any such director or such alternate shall not be in breach of any other duties he owes to the Company, including the duty to exercise independent judgment, as a result of him being involved in other group companies in the manner referred to in this **article** 18.2.
- 18.3 Any other matter or situation which would otherwise result in a director or an alternate director infringing his duty to avoid a conflict situation may be authorised by the directors. Any such authorisation will only be effective if:
- 18.3.1 the quorum at the meeting of the directors at which that matter or situation is considered is met without counting the director or alternate in question or any other interested director or alternate; and
- 18.3.2 the matter or situation was agreed to without their voting or would have been agreed to if their votes had not been counted.
- 18.4 Any authorisation given by the directors in accordance with **article** 18.3:
- 18.4.1 may (at the time it is given or at any subsequent time) be made subject to such terms and such conditions as the directors consider appropriate; and
- 18.4.2 may be revoked or varied by the directors (any such revocation or variation will not affect anything previously done by the director or alternate in accordance with such prior authorisation).
- 18.5 Where in relation to a director or an alternate, a matter or situation is authorised under **article** 18.2 or specifically authorised by the directors under **article** 18.3, that director or alternate shall, irrespective of his interest in the matter or situation giving rise to the conflict situation, and subject, at all times, to the terms and conditions (if any) of any authorisation:

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- 18.5.1 be entitled to:
- (a) receive any papers or other documents in relation to or concerning, such matter or situation;
  - (b) attend any meeting (or any part of any meeting) of the directors or of a committee of the directors, at which such matter or situation is discussed or absent himself from any such meeting (or any part of any such meeting); and
  - (c) be counted in the quorum and vote at, any such meeting; and
- 18.5.2 not be required to:
- (a) disclose to or use for the benefit of the Company, any confidential information relating to such matter or situation if such disclosure or use would constitute a breach of confidence; and
  - (b) account to the Company for any benefit which he derives from such matter or situation.

### 19. DIRECTORS' INTERESTS IN TRANSACTIONS AND ARRANGEMENTS

- 19.1 A **"situation involving a transaction or arrangement"** means a situation in which a director or an alternate is in any way, directly or indirectly, interested in a transaction or arrangement with the Company in circumstances where the provisions of sections 177 or 182 of the Act apply.
- 19.2 The provisions of **article** 18 shall not apply to a situation involving a transaction or arrangement.
- 19.3 Any person who is appointed under article 21.1 or 21.2 by a Local Authority shall not be regarded as being interested in any proposed contract, transaction or arrangement with such Local Authority.
- 19.4 Any director or alternate may be interested in a situation involving a transaction or arrangement as long as he declares the nature of his interest in accordance with section 177 or, as the case may be, section 182, of the Act.
- 19.5 Where, in relation to a director or an alternate, a situation involving a transaction or arrangement has arisen and the director or alternate has declared the nature of his interest in accordance with section 177 or, as the case may be, section 182, of the Act, that director or alternate shall, irrespective of his interest in the matter giving rise to the situation involving a transaction or arrangement, be entitled to receive any papers or other documents in relation to or concerning, such matter, but shall not be entitled to:
- 19.5.1 attend a meeting (or any part of any meeting) of the directors or of a committee of the directors, at which such matter is discussed, unless invited to do so by the Board; or
  - 19.5.2 be counted in the quorum and vote at any meeting (or any part of any meeting) of the directors or a committee of the directors at which such matter is discussed.

### 20. DIRECTORS' DISCRETION TO MAKE FURTHER RULES

Subject to the articles, the directors may regulate their proceedings and the manner in which they take decisions as they see fit.

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## 21. METHODS OF APPOINTING DIRECTORS

- 21.1 A shareholder or shareholders from time to time holding a majority in nominal value of the issued voting "A" shares shall have power from time to time and at any time to appoint one person as the A director and (subject to article 22.2) to remove from office any director so appointed by them.
- 21.2 A shareholder or shareholders from time to time holding a majority in nominal value of the issued voting "B" shares shall have power from time to time and at any time to appoint one person as the B director and (subject to article 22.2) to remove from office any director so appointed by them.
- 21.3 Any appointment or removal pursuant to articles 21.1 or 21.2 shall be effected by an instrument which shall be in writing signed by the shareholder or shareholders making the same or by their duly authorised attorneys (or in the case of a shareholder being a company or in the case of a shareholder being a Local Authority signed by its Proper Officer) and shall subject to articles 21.4, 21.5 and 22.2 take effect upon such instrument of appointment or removal being lodged with or otherwise communicated to the Company at its registered office. The shareholder or shareholders removing a director pursuant to articles 21.1 or 21.2 respectively shall indemnify the Company against any loss suffered by it arising out of any claim made by such a director for loss of office or otherwise in respect of the termination of his employment or office with the Company arising from such removal.
- 21.4 No appointment under articles 21.1 or 21.2 shall take effect until notice in the form therein described in article 21.3 has also been served on the other shareholders (such notice to be addressed to the proper officer of such shareholders where applicable).
- 21.5 Before the effective date of any removal or subsequent appointment under article 21.1 or 21.2, the shareholder wishing to remove a director or appoint a new director shall notify the other shareholders and the Board of the proposed removal and appointment and such notification shall (save where the urgency of the matter requires otherwise) be given at least 14 days before such removal or appointment to allow consultation between the shareholders and the Board provided always that such consultation shall be without prejudice to the shareholder's right to make such removal or appointment under article 21.1 or 21.2.
- 21.6 The appointment and removal of any directors other than those appointed under article 21.1 or 21.2 shall be effected only by resolution of the Shareholders' Panel and, for the avoidance of doubt, the Shareholders' Panel shall have no right to remove any director appointed under article 21.1 or 21.2 and no appointment shall be made by the Shareholders' Panel in breach of article 3 and it is hereby confirmed that for the purposes of observing article 3 any appointment under articles 21.1 and 21.2 shall take priority over any appointment by the Shareholders' Panel.
- 21.7 Any appointment or removal pursuant to article 21.6 shall be effected by an instrument which shall be in writing signed by the chairman or vice-chairman of the Shareholders' Panel and shall subject to articles 21.8 and 21.9 take effect upon such instrument being lodged with or otherwise communicated to the Company at its registered office.
- 21.8 Save where appointment is pursuant to articles 21.1 or 21.2 and save where appointment is to

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replace an outgoing director or to fill a vacancy, no person shall be appointed a director at any general meeting unless either:

he or she is recommended by the directors; or

not less than fourteen nor more than thirty-five clear days before the date appointed for the meeting of the Shareholders' Panel to consider such appointment, notice signed on behalf of the Shareholders' Panel has been given to the Company of the intention to propose that person for appointment, together with notice signed by that person of his or her willingness to be appointed.

The directors shall have no power to appoint any director.

No director appointed under article 21.1 or 21.2 may be removed other than under those articles or the relevant provisions of article 22.

### 22. TERMINATION OF DIRECTOR'S APPOINTMENT

22.1 A person ceases to be a director as soon as:

22.1.1 that person ceases to be a director in accordance with any provision of the Act or is prohibited from being a director by law;

22.1.2 a bankruptcy order is made against that person;

22.1.3 a composition is made with that person's creditors generally in satisfaction of that person's debts;

22.1.4 he is removed from office under section 168 of the Act;

22.1.5 he is removed from office in accordance with article 21.1 or 21.2;

22.1.6 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; or

22.1.7 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.

22.2 Any removal of a director under article 22.1.5 shall not be effective unless and until any requirement of Section 18 of the 2003 Act to obtain the Secretary of State's direction to disregard such removal has been complied with.

### 23. APPOINTMENT AND REMOVAL OF ALTERNATE DIRECTORS

23.1 Any director (other than an alternate director) (in this article, the "**appointor**") may appoint any person (whether or not a director) to be an alternate director ("**alternate**" or "**alternate director**").

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- 23.2 Subject to article 23.3, in the absence of the alternate's appointor, the alternate director may exercise the powers and carry out the responsibilities of his appointor in relation to the taking of decisions by the directors.
- 23.3 An alternate director shall only be entitled to vote at any meeting of the directors if he represents a director appointed under article 21.1 or 21.2.
- 23.4 An alternate director proposed to represent a director nominated under article 21.1 or 21.2 will require the approval of the shareholder or shareholders having the right to appoint or remove the director wishing to appoint such alternate.
- 23.5 Any appointment or removal of an alternate director shall be made by notice in writing to the Company signed by the appointor.
- 23.6 The notice must:
- 23.6.1 identify the proposed alternate director; and
- 23.6.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that he is willing to act as the alternate director of the appointor.
- 23.7 Subject to article 23.3, an alternate director has the same rights, in relation to any decision of the directors, as the alternate's appointor.
- 23.8 Except as otherwise provided in the articles, alternate directors:
- 23.8.1 are deemed for all purposes to be directors;
- 23.8.2 are liable for their own acts and omissions;
- 23.8.3 are subject to the same restrictions as their appointors; and
- 23.8.4 are not deemed to be the agents of or for their appointors.
- 23.9 Each alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member.
- 23.10 A person who is an alternate director, but not a director:
- 23.10.1 may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's appointor is not participating); and
- 23.10.2 subject to article 23.3, may participate in decisions of the directors (but only if his appointor is eligible to participate in relation to that decision and does not himself participate).
- 23.11 Subject to article 23.3, on any decision of the directors, in addition to his own vote, a director who is also an alternate director is entitled (in the absence of his appointor) to a separate vote on behalf of his appointor (provided that his appointor is eligible to participate in relation to that decision).
- 23.12 An alternate director may be paid expenses and may be indemnified by the Company to the same extent as if he were a director. An alternate director shall not be entitled to receive from the Company any remuneration in his capacity as an alternate director except such part (if any) of the remuneration otherwise payable to his appointor as the appointor may by notice in writing to the Company from time to time direct.

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- 23.13 An alternate director's appointment as an alternate terminates:
- 23.13.1 when the alternate's appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate; or
  - 23.13.2 when an event occurs in relation to the alternate which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director; or
  - 23.13.3 when the alternate director's appointor ceases to be a director for whatever reason.

### **24. DIRECTORS' REMUNERATION**

- 24.1 Directors may undertake any services for the Company that the Company may by ordinary resolution decide.
- 24.2 Directors are entitled to such remuneration as the directors determine:
- 24.2.1 for their services to the Company as directors; and
  - 24.2.2 for any other service which they undertake for the Company.
- 24.3 Subject to the articles, a director's remuneration may:
- 24.3.1 take any form; and
  - 24.3.2 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.
- 24.4 Unless the directors decide otherwise, directors' remuneration accrues from day to day.
- 24.5 An increase in the remuneration package of the directors shall require prior approval of the Remuneration Committee if the increase is more than that awarded to the workforce in general. The Remuneration Committee shall be made up of the Director of Business Support of the Metropolitan Borough of Solihull, the Executive Director - Resources of the Council of the City of Coventry and the Strategic Director of Resources of Warwickshire County Council (or such successor positions or other officers who are nominated by the Local Authorities from time to time) and the Chairman of the Board of the Company.

### **25. DIRECTORS' EXPENSES**

The Company may pay any reasonable expenses which the directors properly incur in connection with their attendance at:

- 25.1 meetings of directors or committees of directors;
  - 25.2 general meetings; or
  - 25.3 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 duties and responsibilities in relation to the Company.

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## SHARES AND DISTRIBUTIONS

### 26. ISSUED SHARE CAPITAL

26.1 The issued share capital of the Company at the date of adoption of these articles is £7,725,100 divided into 66 "A" ordinary shares of £1 each, 33 "B" ordinary shares of £1 each, 1 "C" ordinary share of £1 each, 5,150,000 "A" preference shares of £1 each and 2,575,000 "B" preference shares of £1 each.

26.2 The rights attaching to the respective classes of shares shall be as follows:

#### 26.2.1 Income

The distributable profits of the Company shall be applied:

- a) In accordance with the dividend policy set out in clause 12 of the Shareholders' Agreement amongst the holders of the "A" ordinary shares and "B" ordinary shares according to the amounts paid up or credited as paid up thereon (including any premium) *pari passu* as if the same constituted one class of shares.
- b) For the avoidance of doubt no dividend shall be payable to the holders of the preference shares in relation to any financial year commencing on or after 1 April 1999 (but without prejudice to any obligation of the Company arising prior to that date)
- c) For the avoidance of doubt no dividend shall be payable to the holders of the "C" ordinary shares.

#### 26.2.2 Capital

On return of capital on liquidation or otherwise (except on the redemption of shares of any class) the assets of the Company remaining after the payment of its debts and liabilities and of the costs, charges and expenses of any such liquidation where applicable shall be applied in the following manner and order of priority:

- a) first in paying to the holders of the preference shares the sum of £1 per share together with a sum equal to any arrears, deficiency or accruals of dividends payable on the preference shares in relation to any financial year ending on or before 31 March 1999 calculated down to the date of the return of capital and payable whether such dividend has been declared or earned or not;
- b) the balance of such assets shall be distributed amongst the holders of the "A" ordinary shares and the "B" ordinary shares (*pari passu* as if the same constituted one class of shares) in proportion to the amounts paid up or credited as paid up (including any premiums) on the ordinary shares held by them. For the avoidance of doubt the holders of the "C" ordinary shares shall not be entitled to a distribution of the balance of such assets.

#### 26.2.3 Redemption of the preference shares

The Company shall be entitled to elect at any time to redeem the preference shares (subject to the provisions of the Act) at par rateably amongst the holders thereof provided

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that in any event the preference shares of a shareholder shall fall due for redemption at par (subject to the provisions of the Act) at the election of that shareholder effected immediately prior to, or at any time after, a restricted acquisition and (subject thereto and subject to the provisions of the Act) in any event at the election of that shareholder effected at any time after the fifteenth anniversary of the date of allotment of the preference shares and the following provisions shall have effect:

- a) election for redemption shall be effected by notice in writing given by the Company to the holders of preference shares or by notice in writing given by a holder of preference shares to the Company (as appropriate) stating the number of preference shares to be redeemed in accordance with such notice (which, for the avoidance of doubt, may be all or some only of that shareholder's preference shares) and redemption shall take place within 28 days following the service of such notice;
- b) on the date fixed for redemption each registered holder of preference shares shall be bound to surrender to the Company the certificate for the preference shares which are to be redeemed in order that the same may be cancelled, and upon such surrender the Company shall pay to such holder the amount payable in respect of such redemption provided that if a certificate so surrendered includes preference shares not then redeemable a fresh certificate for the balance of the preference shares not redeemable shall be issued to the holder by the Company;
- c) there is to be paid on each of the preference shares to be redeemed the sum of £1 together with a sum equal to any arrears, deficiency or accruals of dividends payable on the preference shares in relation to any financial year ending on or before 31 March 1999;
- d) if upon the date or dates fixed for redemption, redemption is not effected because the provisions of the Act do not permit such redemption then the preference shares which were then due for redemption shall be redeemed as soon thereafter as circumstances enable the Company to do so in accordance with the provisions of the Act. Such redemption shall, if necessary, and as often as necessary, be effected partially and rateably amongst the holders of the preference shares and the provisions of this article shall apply accordingly to such redemption;
- e) the Company shall be under no obligation to effect any redemption of the preference shares out of capital and the provisions of this article shall be construed accordingly provided always that the preference shares shall nevertheless have become due for redemption;
- f) if the preference shares in issue at any time fixed for redemption shall have been subscribed on more than one date the redemption of all preference shares subscribed for on the earlier date shall take place before the redemption of the preference shares subscribed for on any later date or dates.

26.3 Whenever the capital of the Company is divided into different classes of shares the special rights attached to any class may be varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding up with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class but not

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otherwise. To every such separate meeting all the provision of these articles relating to general meetings of the Company shall, mutatis mutandis, apply except that the necessary quorum shall be two persons holding or representing by proxy at least three-fourths nominal amount of the issued shares of the class and any holder of shares of the class present in person or by proxy may demand a poll ( so that if at any adjourned meeting of such holders a quorum as above defined is not present any holder of shares of the class who is present shall be a quorum), and that the holders of shares of the class shall, on a poll, have one vote in respect of every share of the class held by them respectively. For this purpose the "A" ordinary shares, the "B" ordinary shares and the "C" ordinary shares shall be treated as being three separate classes of shares and the "A" preference shares and the "B" preference shares shall be treated as being two separate classes of shares. Without prejudice to the generality of this article, the special rights attached to the preference shares shall be deemed to be varied (save where such prior consent as aforesaid shall have been given):

- 26.3.1 by the calling of any meeting of the Company (which in these articles shall include the issue by the Company of a written resolution) for the purpose of effecting any alteration or increase or reduction or sub-division or consolidation of the authorised or issued capital of the Company or of any of its subsidiaries, or by any variation of the rights attached to any of the shares for the time being in the capital of the Company or of any of its subsidiaries; or
- 26.3.2 by any alteration of the restrictions on the powers of the directors of the Company and its subsidiaries to borrow give guarantees or create charges; or
- 26.3.3 by the calling of a meeting of the Company for the purpose of considering a resolution for the winding up of the Company; or
- 26.3.4 by the calling of a meeting of the Company for the purpose of considering a resolution to approve a contract by the Company to purchase or redeem any of its shares; or
- 26.3.5 by the calling of a meeting of the Company for the purposes of amending or adopting new articles of association of the Company.

## 27. ALLOTMENT OF SHARES

- 27.1 All shares which the directors propose to issue shall first be offered to the shareholders in proportion as nearly as may be to the number of the existing shares of that class held by them respectively (or where the shares to be issued are of a new class, in proportion to the ordinary shares held by them) unless the Company shall by special resolution otherwise direct. The offer shall be made by notice specifying the number of shares offered, and limiting a period (not being less than 42 days unless all the shareholders agree to any shorter period) within which the offer, if not accepted, will be deemed to be declined. After the expiration of that period, those shares deemed to be declined shall be offered in the proportion aforesaid to the persons who have, within the said period, accepted all the shares offered to them; such further offer shall be made in like terms in the same manner and limited by a like period as the original offer. Any shares not accepted pursuant to such offer

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or further offer as aforesaid or not capable of being offered as aforesaid except by way of fractions and any shares released from the provisions of this article by any such special resolution as aforesaid shall be under the control of the directors, who may allot, grant options over or otherwise dispose of the same to such persons, on such terms, and in such manner as they think fit, provided that, in the case of shares not accepted as aforesaid, such shares shall not be disposed of on terms which are more favourable to the subscribers therefore than the terms on which they were offered to the shareholders. The foregoing provisions of this article 27.1 shall have effect subject to the provisions of the Act.

27.2 In accordance with section 567(1) of the Act, sections 561 and 562 shall not apply to any allotment of equity securities made by the Company.

### **28. COMPANY MAY ISSUE PARTLY PAID SHARES**

The Company may issue shares which are wholly or partly unpaid in respect of their nominal value or any premium to be paid to the Company in consideration for their issue.

### **29. COMPANY'S LIEN OVER PARTLY PAID SHARES**

29.1 The Company has a lien over every share which is partly paid for any part of:

29.1.1 that share's nominal value; and

29.1.2 any premium at which that share was issued,

which has not been paid to the Company, and which is payable immediately or at some time in the future, whether or not a call has been made in respect of it.

29.2 The Company also has a lien over every share, whether fully paid or not, registered in the name of any person indebted or under liability to the Company, whether he shall be the sole registered holder thereof or shall be one of two or more joint holders, for all moneys presently payable by him or his estate to the Company.

29.3 The Company's lien over a share:

29.3.1 takes priority over any third party's interest in that share; and

29.3.2 extends to any dividend or other money payable by the Company in respect of that share and (if the lien is enforced and the share is sold by the Company) to the proceeds of sale of that share.

### **30. ENFORCEMENT OF A LIEN**

30.1 Subject to the provisions of this article, if a lien enforcement notice has been given in respect of a share and the person to whom the notice was given has failed to comply with it, the Company may sell that share in such manner as the directors decide.

30.2 A lien enforcement notice:

30.2.1 may only be given in respect of a share which is subject to the Company's lien, in respect of which a sum is payable and the due date for payment of that sum has passed;

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- 30.2.2 must specify the share concerned;
- 30.2.3 must require payment of the sum payable within 14 days of the notice;
- 30.2.4 must be addressed either to the holder of the share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise; and
- 30.2.5 must state the Company's intention to sell the share if the notice is not complied with.
- 30.3 Where shares are sold under this article:
  - 30.3.1 the directors may authorise any person to execute an instrument of transfer of the shares to the purchaser or a person nominated by the purchaser; and
  - 30.3.2 the transferee is not bound to see to the application of the consideration, and the transferee's title is not affected by any irregularity in or invalidity of the process leading to the sale.
- 30.4 The net proceeds of any such sale (after payment of the costs of sale and any other costs of enforcing the lien) must be applied:
  - 30.4.1 first, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice;
  - 30.4.2 second, to the person entitled to the shares at the date of the sale, but only after the certificate for the shares sold has been surrendered to the Company for cancellation or a suitable indemnity has been given for any lost certificates, and subject to a lien equivalent to the Company's lien over the shares before the sale for any money payable in respect of the shares after the date of the lien enforcement notice.

### 31. CALLS ON SHARES

- 31.1 Subject to the terms of allotment of the relevant shares, the directors may make any call (a **"call"**) upon the shareholders in respect of any sum whether in respect of nominal value or premium that is unpaid on their shares.
- 31.2 Each shareholder shall, subject to receiving at least 14 clear days' notice (a **"call notice"**) specifying when and where payment is to be made (the **"call payment date"**), pay to the Company as required by the notice the amount so called on his shares. A call may be revoked in whole or part before receipt by the Company of any sum due in respect of such call and payment of a call may be postponed in whole or part as the directors think fit.
- 31.3 The holder of a share at the time a call is due to be paid shall be the person liable to pay the call, and in the case of joint holders they shall be jointly and severally liable.

### 32. FAILURE TO COMPLY WITH A CALL NOTICE

- 32.1 If any amount payable in respect of a share on allotment or at a fixed date, whether in respect of nominal value or premium or as an instalment of a call, is not paid:
  - 32.1.1 the directors may issue a notice of intended forfeiture to that person; and

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32.1.2 until the call is paid, that person must pay the Company interest on the call from the call payment date at the relevant rate, together with all expenses that may have been incurred by the Company by reason of such non-payment.

32.2 For the purposes of this **article 32** the "**relevant rate**" is:

32.2.1 the rate fixed by the terms on which the share in respect of which the call is due was allotted;

32.2.2 such other rate as was fixed in the call notice which required payment of the call, or has otherwise been determined by the directors; or

32.2.3 if no rate is fixed in either of these ways, five per cent per annum.

32.3 The directors may waive any obligation to pay interest on a call wholly or in part.

### **33. NOTICE OF INTENDED FORFEITURE**

A notice of intended forfeiture:

33.1 may be sent in respect of any share in respect of which a call has not been paid as required by a call notice;

33.2 must be sent to the holder of that share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise;

33.3 must require payment of the call and any accrued interest by a date which is not less than 14 clear days after the date of the notice;

33.4 must state how the payment is to be made; and

33.5 must state that if the notice is not complied with, the shares in respect of which the call is payable will be liable to be forfeited.

### **34. FORFEITURE**

34.1 If a notice of intended forfeiture is not complied with before the date by which payment of the call is required in the notice of intended forfeiture, the directors may decide that any share in respect of which it was given is forfeited, and the forfeiture is to include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.

34.2 Subject to the articles, the forfeiture of a share extinguishes:

34.2.1 all interests in that share, and all claims and demands against the Company in respect of it; and

34.2.2 all other rights and liabilities incidental to the share as between the person whose share it was prior to the forfeiture and the Company.

34.3 Any share which is forfeited in accordance with the articles:

34.3.1 is deemed to have been forfeited when the directors decide that it is forfeited;

34.3.2 is deemed to be the property of the Company; and

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- 34.3.3 may be sold, re-allotted or otherwise disposed of as the directors think fit.
- 34.4 If a person's shares have been forfeited:
- 34.4.1 the Company must send that person notice that forfeiture has occurred and record it in the register of members;
- 34.4.2 that person ceases to be a shareholder in respect of those shares;
- 34.4.3 that person must surrender the certificate for the shares forfeited to the Company for cancellation;
- 34.4.4 that person remains liable to the Company for all sums payable by that person under the articles at the date of forfeiture in respect of those shares, including any interest (whether accrued before or after the date of forfeiture); and
- 34.4.5 the directors may waive payment of such sums wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.
- 34.5 At any time before the Company disposes of a forfeited share, the directors may decide to cancel the forfeiture on payment of all calls and interest due in respect of it and on such other terms as they think fit.

### **35. PROCEDURE FOLLOWING FORFEITURE**

- 35.1 If a forfeited share is to be disposed of by being transferred, the Company may receive the consideration for the transfer and the directors may authorise any person to execute the instrument of transfer.
- 35.2 If the Company sells a forfeited share, the person who held it prior to its forfeiture is entitled to receive from the Company the proceeds of such sale, net of any commission, and excluding any amount which:
- 35.2.1 was, or would have become, payable; and
- 35.2.2 had not, when that share was forfeited, been paid by that person in respect of that share,
- but no interest is payable to such a person in respect of such proceeds and the Company is not required to account for any money earned on them.

### **36. SURRENDER OF SHARES**

- 36.1 A member may surrender any share in respect of which the directors may issue a notice of intended forfeiture or which the directors may forfeit.
- 36.2 The effect of surrender on a share is the same as the effect of forfeiture on that share, and a share which has been surrendered may be dealt with in the same way as a share which has been forfeited.

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### **37. POWER TO ISSUE DIFFERENT CLASSES OF SHARE**

- 37.1 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.
- 37.2 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.

### **38. COMPANY NOT BOUND BY LESS THAN ABSOLUTE INTERESTS**

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.

### **39. SHARE CERTIFICATES**

- 39.1 The Company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.
- 39.2 Every certificate must specify:
- 39.2.1 in respect of how many shares, of what class, it is issued;
  - 39.2.2 the nominal value of those shares; and
  - 39.2.3 either that the shares are fully paid, or the amount paid up on each share.
- 39.3 No certificate may be issued in respect of shares of more than one class.
- 39.4 If more than one person holds a share, only one certificate may be issued in respect of it.
- 39.5 Certificates must be executed in accordance with the Act.

### **40. REPLACEMENT SHARE CERTIFICATES**

- 40.1 If a certificate issued in respect of a shareholder's shares is:
- 40.1.1 damaged or defaced; or
  - 40.1.2 said to be lost, stolen or destroyed,
- that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.
- 40.2 A shareholder exercising the right to be issued with such a replacement certificate:
- 40.2.1 must return the certificate which is to be replaced to the Company if it is damaged or defaced; and
  - 40.2.2 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

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### 41. RESTRICTIONS ON TRANSFERS OF SHARES

Notwithstanding any other provision of these articles but subject as hereinafter provided:

- 41.1 Any shareholder wishing to dispose of or to charge or encumber any of its shares in the Company or the beneficial interest therein ("**the transferor**") shall give notice in writing ("**a transfer notice**") to the Company that it wishes to dispose of one or more of its shares. A transfer notice may provide that unless all the shares the subject of the transfer notice are sold to the persons offered the same pursuant to sub-articles 41.3 and 41.6 of this article none shall be sold ("**a total transfer condition**").
- 41.2 Every transfer notice shall specify the number and class of shares to be transferred, shall be accompanied by the certificate for the shares the subject thereof and shall constitute the Company agent for the sale of the shares in accordance with this article at a price to be determined in accordance with article 41.4 ("**the sale price**"). If the capital is divided into separate classes of shares a separate transfer notice shall be given (or be deemed to have been given) for each such class of shares. A transfer notice shall be revocable by written notice to the Company from the proposing transferor within one week after receipt of the Accountant's certification under article 41.4 whereupon the proposing transferor will be responsible to bear all the Accountant's costs in so certifying.
- 41.3 Subject to the sale price being agreed or determined (as the case may be) in accordance with article 41.4 within 15 days of receipt of a transfer notice or if later forthwith upon such determination the directors shall:
- 41.3.1 give notice in writing of the transfer notice specifying the sale price (an "**offer notice**") to all shareholders of the Company (other than the transferor) holding shares of the same class as the shares the subject of the transfer notice in proportion to their respective holdings of shares of that class inter se (a "**first offer**") and for this purpose the "A" ordinary shares, the "B" ordinary shares and the "C" ordinary shares will be treated as the same class and the "A" preference shares and the "B" preference shares will be treated as the same class.

A first offer shall be limited to a period of 42 days ("**the first period**") from the date of the offer notice and shall if not accepted within such time be deemed to have been declined. The first offer shall give the shareholders to which it is made the right to claim shares offered in addition to their due proportion. If any such shareholders do not accept their due proportion then the unaccepted shares shall be distributed among those shareholders claiming additional shares in proportion or as nearly as may be to their said holdings (but no shareholder shall be bound to take more shares than those he has claimed) up to the maximum number of shares that each shareholder is prepared to take. If any shares comprised in a first offer remain unaccepted the directors shall issue a further offer notice (a "**second offer notice**") in respect of such shares to all the shareholders (other than the transferor and the shareholders to whom the first offer was made) in proportion to the nominal value of their holdings of shares inter se (a "**second offer**") and the provisions of this article shall apply thereto.

Every second offer shall be limited to a period of 15 days ("**the second period**") from the date of the second offer notice and shall if not accepted by any such shareholders within such time be deemed to have been declined by such shareholders. The second offer shall give the shareholders of the Company to which it is made the right to claim shares offered in addition to their due proportion if any other such shareholders do not accept

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their due proportion. If any such shareholders do not accept their due proportion then the unaccepted shares shall be distributed among those shareholders of the Company claiming additional shares in proportion or as nearly as may be to their said holdings (but no shareholder shall be bound to take more shares than those he has claimed) up to the maximum number of shares that each shareholder is prepared to take. If the number of shares comprised in the transfer notice is insufficient to enable them to be offered exactly pro rata to all the eligible shareholders of the Company then the indivisible balance shall be offered individually to such shareholders by the drawing of lots and the provisions of this sub-article shall apply accordingly;

- 41.3.2 if the Company shall within the first period or the second period (as the case may be) find a transferee or transferees for the shares or any of them it shall give notice thereof to the transferor and he shall be bound upon payment of the appropriate sale price to transfer the shares (or the appropriate number of them) to the relevant transferee or transferees provided always that if the transfer notice contained a total transfer condition then unless the Company shall within such periods and in the manner as aforesaid find a transferee or transferees for all but not some only of the shares offered for sale as herein referred to, the provisions of this article 41.3.2 shall not apply.
- 41.4 The sale price of the shares comprised in any transfer notice shall be either the price thereof agreed between the transferor and all other shareholders within 15 days of the service of the transfer notice or (as the case may be) the date when the transfer notice is deemed to have been served or in default of agreement within such period such price as an independent firm of Chartered Accountants (other than the Auditors of the Company) ("**the Accountants**") shall on the application of the transferor or any of the other shareholders, certify in writing to be the fair value thereof per share as at the date of the relevant transfer notice. For this purpose a firm of Chartered Accountants who are the auditors of any shareholder that is a body corporate shall not merely thereby be regarded as not independent. The fair value shall be calculated on the basis of the fair price of such shares on a going concern basis between a willing seller and a willing buyer and on the basis that no additional or reduced value is attached to a holding of shares by virtue of such holding comprising or after purchase conferring or giving rise to a majority or minority of the total issued equity share capital of the Company and on the basis that for this purpose a value of £1 (plus a sum equal to any arrears deficiency or accruals of dividends payable on the preference shares in relation to any financial year ending on or before 31 March 1999) is attached to the preference shares. The nomination of such Accountants shall in the event of disagreement between the transferor and the other shareholders be made by the President for the time being of the Institute of Chartered Accountants in England and Wales. In so certifying the Accountants shall be considered to be acting as experts and not as arbitrators with regard to their determination and their decision shall be final and binding on the parties. The reasonable costs of the Accountants shall be borne equally by all the shareholders.
- 41.5 If the transferor, after having become bound to transfer its shares as aforesaid, makes default in transferring the same the Company may receive the purchase money tendered by the relevant purchasing shareholders and the proposed transferor shall be deemed to have appointed any one director or the secretary of the Company as his agent to execute a transfer of the shares which are the subject of the transfer notice to the purchasing shareholders and upon the execution of such transfer the Company shall hold the purchase money in trust for the transferor. The receipt of the Company for the purchase money shall be a good discharge to the purchasing shareholders and after their name has been entered

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on the register of shareholders in purported exercise of the powers conferred by this article 41.5, the validity of the proceedings shall not be questioned by any person.

- 41.6 If the Company shall not find a transferee or transferees before the expiry of the second period in accordance with the preceding provisions of this article the Company may, subject to the provisions of the Act and, where appropriate, with the sanction of the shareholders or any class thereof and with or without the consent of the transferor, exercise its power to purchase all or any of the shares comprised in the transfer notice. If the Company declines or is unable to exercise such power it shall promptly notify the transferor who shall be at liberty within a period of two months from receipt of such notification on a bona fide sale to transfer the shares together with the beneficial interest therein (or where there are more shares than one, those not transferred in accordance with the foregoing provisions of this article), to any person at a price not less than the sale price previously determined or to retain them for the transferor's own benefit provided, in the case of sale, that if the transfer notice contained a total transfer condition the transferor shall not be entitled under this article 41.6 to transfer some only of the shares comprised in the transfer notice.
- 41.7 If any shareholder ("**the defaulting shareholder**") shall breach a material provision of the Shareholders' Agreement or of the Waste Disposal Contract to which they are a party a transfer notice shall be deemed to have been served in accordance with article 41.1 provided that:
- 41.7.1 a transfer notice shall only be deemed served if a party to the Shareholders' Agreement or Waste Disposal Contract shall have served notice stated to be for the purpose of this article on the defaulting shareholder within one month of such party discovering such breach; and
- 41.7.2 if notice has been served under article 41.7.1 the transfer notice shall (where such breach is not capable of remedy) be deemed to have been served on the date of service of notice under article 41.7.1 or (where such breach is capable of remedy, and if the defaulting shareholder shall have failed to remedy the breach within 14 days following service of such notice) on the 14<sup>th</sup> day following the party discovering such breach having served on the defaulting shareholder a further notice invoking the deemed service of a transfer notice under this article; and
- 41.7.3 where a transfer notice shall be deemed to have been served then the provision of articles 41.1 to 41.6 shall mutatis mutandis apply subject to the following variation thereto:
- 41.7.3.1 a total transfer condition shall be deemed to have been specified in the transfer notice;
- 41.7.3.2 there shall be no right of revocation of the transfer notice under article 41.2.
- 41.7.4 for the avoidance of doubt, the failure of a party to serve notice under article 41.7.1 (or, where appropriate, article 41.7.2) shall be without prejudice to any other right or remedy available to it and shall not imply that that party has released or waived such breach in any way;
- 41.8 Subject to the preceding paragraphs of this article, any transfer of shares made otherwise than in accordance with the foregoing provisions of this article shall be void and have no

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effect provided that the foregoing provisions of this article may be set aside with the consent in writing of all the shareholders.

### 42. LIMITATION ON TRANSFER OF CONTROL

- 42.1 No sale or transfer of the legal or beneficial interest in any shares in the Company may be made or validly registered without the previous written consent of the holders of at least 75% of the "A" ordinary shares and of at least 75% of the "B" ordinary shares and of at least 75% of the "C" ordinary shares if as a result of such sale or transfer (or as a result of such sale or transfer together with any previous sale or transfer) on registration thereof a controlling interest (as hereinafter defined) is obtained in the Company:
- 42.1.1 by a company (other than a company to which article 42.1.2 applies) or a person or persons (other than a company) who was or were not a shareholder or shareholders of the Company on the date of adoption of these articles unless the proposed transferee or transferees or his or their nominees are independent third parties acting in good faith and has or have offered to purchase all the ordinary shares at the specified price (as hereinafter defined); or
- 42.1.2 by a company in which one or more of the shareholders of the Company or persons acting in concert (which expression shall have the meaning ascribed to in it the January 1988 Edition of the City Code on Takeovers and Mergers) with any shareholder of the Company has or as a result of such sale or transfer will have a controlling interest.
- 42.2 for the purpose of this article 42:
- 42.2.1 the expression "**a controlling interest**" shall mean an interest (within the meaning of sections 820 to 825 of the Act) in shares in a company conferring in the aggregate 50% or more of the total voting rights conferred by all the issued shares in that company.
- 42.2.2 the expression "**the specified price**" shall mean the higher of (a) a price per ordinary share of £1; and (b) a price per ordinary share at least equal to that offered or paid or payable by the proposed transferee or transferees or his or their nominees for any other ordinary shares plus an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holders of such other ordinary shares which having regard to the substance of the transaction as a whole can reasonably be regarded as an addition to the price paid or payable for such other ordinary shares provided that if any part of the price per share is payable otherwise than by cash the holders of the remaining ordinary shares may at their option elect to take a price per share of such cash sum as may be agreed by them having regard to the substance of the transaction as a whole; and in the event of disagreement the calculation of the specified price shall be referred to an independent firm of Chartered Accountants (acting as expert and not as arbitrator) nominated by the parties concerned (or in the event of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales) whose decision shall be final and binding (and whose costs shall be borne as such firm shall decide). For this purpose a firm of Chartered Accountants who are the auditors of any shareholder that is a body corporate shall not merely thereby be regarded as not independent.

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42.3 All other regulations of the Company relating to the transfer of shares and the right to registration of transfers shall be read subject to the provisions of this article 42.

### **43. GENERAL PROVISIONS RELATING TO SHARE TRANSFERS**

43.1 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, and unless the share is fully paid, the transferee.

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

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

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

43.5 The directors shall refuse to register any transfer prohibited by the provisions of articles 41 or 42 unless it is made in accordance therewith and shall refuse to register a transfer unless:

43.5.1 it is in favour of a person who is not, or persons none of whom is, a minor; and

43.5.2 it is lodged at the registered office or at such other place as the directors may appoint and is accompanied by the certificate for the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and

43.5.3 it is in respect of only one class of shares (and for this purpose the "A" ordinary shares, the "B" ordinary shares and the "C" ordinary shares shall be treated as different classes of shares and the "A" preference shares and the "B" preference shares shall be treated as different classes of shares); and

43.5.4 it is in favour of not more than four transferees.

But, subject thereto, the directors shall be obliged to register any transfer made in accordance with articles 41 and 42.

43.6 The provisions of these articles 41, 42 and 43 shall apply to transfers, renunciations and nominations of shares and/or of the right to subscribe for shares in like manner as they apply to transfers of shares.

43.7 If the directors refuse to register the transfer of a share 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.

### **44. PROCEDURE FOR DECLARING DIVIDENDS**

44.1 The Company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.

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- 44.2 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.
- 44.3 No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- 44.4 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.
- 44.5 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.
- 44.6 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.
- 44.7 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.

### 45. PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS

- 45.1 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:
- 45.1.1 transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;
- 45.1.2 sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;
- 45.1.3 any other means of payment as the directors agree with the distribution recipient in writing or as the directors may otherwise decide.
- 45.2 In this article, the "**distribution recipient**" means, in respect of a share in respect of which a dividend or other sum is payable:
- 45.2.1 the holder of the share; or
- 45.2.2 if the share has two or more joint holders, whichever of them is named first in the register of members; or
- 45.2.3 if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the person entitled to such share.

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### **46. NO INTEREST ON DISTRIBUTIONS**

Subject to the articles, the Company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by:

- 46.1 the terms on which the share was issued; or
- 46.2 the provisions of another agreement between the holder of that share and the Company.

### **47. DEDUCTION FROM DIVIDENDS**

The directors may deduct from any dividend payable on or in respect of a share all sums of money presently payable by the holder to the Company on any account whatsoever.

### **48. UNCLAIMED DISTRIBUTIONS**

- 48.1 All dividends or other sums which are:
  - 48.1.1 payable in respect of shares; and
  - 48.1.2 unclaimed after having been declared or become payable,  
  
may be invested or otherwise made use of by the directors for the benefit of the Company until claimed.
- 48.2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it.
- 48.3 If:
  - 48.3.1 12 years have passed from the date on which a dividend or other sum became due for payment; and
  - 48.3.2 the distribution recipient has not claimed it,  
  
the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the Company.

### **49. NON-CASH DISTRIBUTIONS**

- 49.1 Subject to the articles or 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).
- 49.2 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:
  - 49.2.1 fixing the value of any assets;
  - 49.2.2 paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
  - 49.2.3 vesting any assets in trustees.

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### 50. WAIVER OF DISTRIBUTIONS

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:

- 50.1 the share has more than one holder; or
- 50.2 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.

### 51. AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS

- 51.1 Subject to the articles, the directors may, if they are so authorised by an ordinary resolution:
  - 51.1.1 decide to capitalise any profits of the Company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the Company's share premium account or capital redemption reserve; and
  - 51.1.2 appropriate any sum which they so decide to capitalise (a "**capitalised sum**") to the persons who would have been entitled to it if it were distributed by way of dividend (the "**persons entitled**") and in the same proportions.
- 51.2 Capitalised sums must be applied:
  - 51.2.1 on behalf of the persons entitled; and
  - 51.2.2 in the same proportions as a dividend would have been distributed to them.
- 51.3 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.
- 51.4 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.
- 51.5 Subject to the articles the directors may:
  - 51.5.1 apply capitalised sums in accordance with **articles** 51.3 and 51.4 partly in one way and partly in another;
  - 51.5.2 make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and
  - 51.5.3 authorise any person to enter into an agreement with the Company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

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## DECISION-MAKING BY SHAREHOLDERS

### 52. NOTICE, ATTENDANCE AND SPEAKING AT GENERAL MEETINGS

- 52.1 General meetings shall be called by at least 14 clear days' notice (that is, excluding the day of the general meeting and the day on which the notice is given).
- 52.2 A general meeting may be called by shorter notice if it is so agreed by a majority in number of the shareholders having a right to attend and vote, being a majority together holding not less than 90 per cent in nominal value of the shares giving that right.
- 52.3 The notice shall specify the date, time and place of the meeting and the general nature of the business to be transacted.
- 52.4 Subject to the articles and to any restrictions imposed on any shares, the notice shall be given to all the shareholders, to all persons entitled to a share in consequence of the death or bankruptcy of a shareholder and to the directors and auditors of the Company.
- 52.5 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.
- 52.6 A person is able to exercise the right to vote at a general meeting when:
- 52.6.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
- 52.6.2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- 52.7 The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- 52.8 In determining attendance at a general meeting, it is immaterial whether any two or more shareholders attending it are in the same place as each other.
- 52.9 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.

### 53. QUORUM FOR GENERAL MEETINGS

- 53.1 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.
- 53.2 The number of persons who shall constitute a quorum shall be two persons entitled to vote upon the business to be transacted of whom:
- 53.2.1 (for so long as the preference shares do not entitle any of the holders thereof to vote in general meetings but not otherwise) one shall hold (or represent the holder of) at least one "A" ordinary share and of whom one shall hold (or represent the holder of) at least one "B" ordinary share; and

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- 53.2.2 (for so long as any "A" preference share entitles the holder thereof to vote in general meetings) one shall hold (or represent the holder of) at least one "A" preference share; and
- 53.2.3 (for so long as any "B" preference share entitles the holder thereof to vote in general meetings) one shall hold (or represent the holder of) at least one "B" preference share.

### **54. CHAIRING GENERAL MEETINGS**

- 54.1 If the directors have appointed a Chairman under article 15, the Chairman shall chair general meetings if present and willing to do so.
- 54.2 If the directors have not appointed a Chairman, or if such Chairman is unwilling to chair the meeting or is not present within 10 minutes of the time at which a meeting was due to start:
- 54.2.1 the directors present; or
- 54.2.2 (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.
- 54.3 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**

- 54.4 Directors may attend and speak at general meetings, whether or not they are shareholders.
- 54.5 The chairman of the meeting may permit other persons who are not:
- 54.5.1 shareholders in the Company; or
- 54.5.2 otherwise entitled to exercise the rights of shareholders in relation to general meetings, to attend and speak at a general meeting.

#### **Adjournment**

- 54.6 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.
- 54.7 The chairman of the meeting may adjourn a general meeting at which a quorum is present if:
- 54.7.1 the meeting consents to an adjournment; or
- 54.7.2 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.
- 54.8 The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.

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- 54.9 When adjourning a general meeting, the chairman of the meeting must:
- 54.9.1 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
  - 54.9.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 54.10 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 seven clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):
- 54.10.1 to the same persons to whom notice of the Company's general meetings is required to be given; and
  - 54.10.2 containing the same information which such notice is required to contain.
- 54.11 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.

### **55. VOTING: GENERAL**

- 55.1 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.
- 55.2 Subject to any special rights or restrictions as to voting attached to any shares by or in accordance with these articles on a show of hands every shareholder who, being an individual, is present in person or (being a corporation) is present by a representative, shall have one vote and on a poll every shareholder who is present in person or by proxy or (being a corporation) is present by a representative or by proxy shall have one vote for each share of which he is the holder provided that the preference shares shall entitle the holders thereof to receive notice of general meetings but shall only entitle the holders to requisition, attend and vote at any general meeting if (subject to article 55.3):
- 55.2.1 at the date of the notice or requisition to convene the meeting any dividend payable on the preference shares in relation to any financial year ending on or before 31 March 1999 is in arrear and has not been either wholly or temporarily waived in writing by the holders of all preference shares; or
  - 55.2.2 the Company shall have failed to redeem any of the preference shares in accordance with these articles and the holders of the preference shares in question have not agreed in writing to the deferral of the redemption; or
  - 55.2.3 any of the special rights attaching to the preference shares shall be deemed to have been varied in accordance with article 26.3 without the prior consent or approval therein mentioned and the breach has not been wholly or temporarily waived in writing by the holders of all the preference shares.
- 55.3 The right to requisition, attend and vote in the circumstances listed in article 55.2 shall not become exercisable until the holder of any preference shares in question serves written election on the Company electing for such right (or any of them) to become exercisable by that shareholder (and any such shareholder may subsequently serve notice waiving again

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the exercise of such rights or any of them until such later time as such shareholder may service notice electing to exercise such rights or any of them).

### 56. ERRORS AND DISPUTES

- 56.1 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.
- 56.2 Any such objection must be referred to the chairman of the meeting, whose decision is final.

### 57. POLL VOTES

- 57.1 A poll on a resolution may be demanded:
- 57.1.1 in advance of the general meeting where it is to be put to the vote; or
- 57.1.2 at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- 57.2 A poll may be demanded by:
- 57.2.1 the chairman of the meeting;
- 57.2.2 the directors;
- 57.2.3 two or more persons having the right to vote on the resolution; or
- 57.2.4 a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.
- 57.3 A demand for a poll may be withdrawn if:
- 57.3.1 the poll has not yet been taken; and
- 57.3.2 the chairman of the meeting consents to the withdrawal.
- 57.4 A demand for a poll which is withdrawn shall not invalidate the result of a show of hands declared before the demand was made.
- 57.5 A poll demanded on the election of a chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time (not being more than 30 days from the date of the meeting or adjourned meeting at which that poll is demanded) and place and in such manner as the chairman of the meeting directs.

### 58. CONTENT OF PROXY NOTICES

- 58.1 Proxies may only validly be appointed by a notice in writing (a "**proxy notice**") which:
- 58.1.1 states the name and address of the shareholder appointing the proxy;
- 58.1.2 identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;

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- 58.1.3 is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and
- 58.1.4 is delivered to the Company in accordance with the articles and, subject to **article 58.5**, any instructions contained in the notice of the general meeting to which they relate.
- 58.2 The Company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- 58.3 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.
- 58.4 Unless a proxy notice indicates otherwise, it must be treated as:
- 58.4.1 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
- 58.4.2 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.
- 58.5 The last time for delivery of the proxy notice to the Company must not be earlier than the following time:
- 58.5.1 in the case of a meeting or adjourned meeting, 48 hours before the time for holding the meeting or adjourned meeting;
- 58.5.2 in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll; and
- 58.5.3 in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.
- 58.6 The directors may specify in the notice of meeting that in calculating the time for delivery of proxies, no account has been taken of any part of a day that is not a working day.

### **59. DELIVERY OF PROXY NOTICES**

- 59.1 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.
- 59.2 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.
- 59.3 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.
- 59.4 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.

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### **60. AMENDMENTS TO RESOLUTIONS**

- 60.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
- 60.1.1 notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine); and
- 60.1.2 the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- 60.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:
- 60.2.1 the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
- 60.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 60.3 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.

### **ADMINISTRATIVE ARRANGEMENTS**

#### **61. MEANS OF COMMUNICATION TO BE USED**

- 61.1 Subject to the other provisions of these articles, anything sent or supplied by or to the Company under the articles may be sent or supplied in any way in which the Act 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.
- 61.2 Subject to the other provisions of these articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.
- 61.3 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.
- 61.4 The address for service of the Company shall be the office or such other place as the directors may appoint. The address for service of each shareholder shall be his address in the register of members within the United Kingdom or such other address for service, which may include an electronic address, as the addressee may from time to time notify to the Company for the purposes of this article. In the absence of such address the shareholder shall not be entitled to receive from the Company notice of any meeting.
- 61.5 In the case of joint holders of a share, a notice or other document or information shall be sent or given to the joint holder whose name stands first in the register of members in

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respect of the joint holding and notice or other documents or information so sent or given shall be sufficiently sent to all the joint holders.

- 61.6 Notices or other documents or information will be deemed to be received:
- 61.6.1 if personally delivered, at the time of delivery and, in proving service, it shall be sufficient to produce a receipt for the notice or other document or information signed by or on behalf of the addressee;
  - 61.6.2 if by letter, at noon two days after such letter was posted and, in proving service, it shall be sufficient to prove that the letter was properly prepaid or stamped first class, addressed and delivered to the postal authorities;
  - 61.6.3 if by electronic communication to an electronic address, on the same day it is sent and, in proving service, it shall be sufficient to prove that it was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators from time to time; and
  - 61.6.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.
- 61.7 For the purposes of this article, no account shall be taken of any part of a day that is not a working day.

### **62. COMPANY SECRETARY**

The directors may appoint any person who is willing to act as the secretary for such term and at such remuneration and upon such conditions as they may think fit and from time to time remove such person and, if the directors so decide, appoint a replacement.

### **63. COMPANY SEALS**

- 63.1 Any common seal may only be used by the authority of the directors.
- 63.2 The directors may decide by what means and in what form any common seal is to be used.
- 63.3 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.
- 63.4 For the purposes of this article, an authorised person is:
- 63.4.1 any director;
  - 63.4.2 the company secretary (if any); or
  - 63.4.3 any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

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### 64. NO RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS

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.

### 65. INDEMNITY

65.1 Subject to the provisions of the Act, the Company may:

65.1.1 indemnify to any extent any person who is or was a director, or a director of an associated company, directly or indirectly (including by funding any expenditure incurred or to be incurred by him) against any loss or liability, whether in connection with any proven or alleged negligence, default, breach of duty or breach of trust by him or otherwise, in relation to the Company or any associated company; or

65.1.2 indemnify to any extent any person who is or was a director of an associated company that is a trustee of an occupational pension scheme, directly or indirectly (including by funding any expenditure incurred or to be incurred by him) against any liability incurred by him in connection with the company's activities as trustee of an occupational pension scheme.

65.2 Companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

### 66. INSURANCE

Subject to the provisions of the Act, the Company may purchase and maintain insurance for any person who is or was a director, or a director of any associated company, against loss or liability, whether in connection with any proven or alleged negligence, default, breach of duty or breach of trust by him or otherwise, in relation to the Company or any associated company.

## **The Coventry & Solihull Waste Disposal Company Limited (the "Company")**

### **Annex A**

The following clause 3 (objects of the Company), which on 1 October 2009 was included in the Company's Memorandum of Association, is now treated by virtue of section 28 of the Companies Act 2006 (which came into force on 1 October 2009) as being a provision of the Company's Articles of Association.

3. The Company's objects are:-

- (a) (i) To acquire and take over the relevant part of the undertaking of each of the Council of the City of Coventry and the Metropolitan Borough of Solihull transferred to the Company by and in accordance with a transfer scheme made in accordance with Schedule 2 to the Environmental Protection Act 1990 and the property, rights or liabilities transferred to and vested in the Company by or pursuant to that transfer scheme

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(ii) To carry on all or any of the activities of the disposal, keeping or treatment of waste on behalf of the Local Authorities and any activities incidental or conducive to or calculated to facilitate such activities but excluding the collection of waste (and insofar as any such word used in this sub-clause 3(a) (ii) is defined in the Environmental Protection Act 1990 such word shall bear the same meaning herein).

None of the objects set out in any paragraph of sub-clause 3 (a) shall be restrictively construed but the widest interpretation shall be given to each such object, and none of such objects shall, except where the context expressly so requires, be in any way limited or restricted by reference to or inference from any other object or objects set forth in such paragraph, or by reference to or inference from the terms of any other paragraph or the name of the Company; and none of the paragraphs of sub-clause 3(a) and none of the objects therein specified shall be deemed subsidiary or ancillary to any of the objects specified in any other such paragraph, and the Company shall have as full a power to exercise each and every one of the objects specified in each such paragraph as though it contained the objects of a separate company.

In furtherance of or in connection with the above objects and any of them but not further or otherwise the Company shall have the following powers: -

- (b) To purchase or by any other means acquire and take options over any property whatever, and any rights or privileges of any kind over or in respect of any property.
- (c) To apply for, register, purchase or by other means acquire and protect, prolong and renew, whether in the United Kingdom or elsewhere any patents, patent rights, brevets d'invention, licences, secret processes, trade marks, design protections and concessions and to disclaim, alter, modify, use and turn to account and to manufacture under or grant licences or privileges in respect of the same, and to expend money in experimenting upon, testing and improving any patents, inventions or rights which the Company may acquire or propose to acquire.
- (d) To acquire or undertake the whole or any part of the business, goodwill, and assets of any person, firm or company carrying on or proposing to carry on any of the businesses which the Company is authorised to carry on and as part of the consideration for such acquisition to undertake all or any of the liabilities of such person, firm or company, or to acquire an interest in, amalgamate with, or enter in to partnership or into any arrangement for sharing profits, or for co-operation, or for the mutual assistance with any such person, firm or company, or for subsidising or otherwise assisting any such person, firm or company, and to give or accept, by way of consideration for any of the acts or things aforesaid or property acquired, any shares, debentures, debenture stock or securities that may be agreed upon, and to hold and retain, or sell, mortgage and deal with any shares, debentures, debenture stock or securities so received.
- (e) To improve, manage, construct, repair, develop, exchange, let on lease or otherwise, mortgage, charge, sell, dispose of, turn to account, grant licences, options, rights and privileges in respect of, or otherwise deal with all or any part of the property and rights of the Company.
- (f) To invest and deal with the moneys of the Company not immediately required in such manner as may from time to time be determined and to hold or otherwise deal with any investment made.
- (g) To lend and advance money or give credit on any terms and with or without security to any person, firm or company (including without prejudice to the generality of the foregoing any holding company, subsidiary or fellow subsidiary of, or any other company associated in any way with, the Company), to enter into guarantees, contracts of indemnity and suretyships of all kinds, to receive money on deposit or loan upon any terms, and to secure or guarantee in any manner and upon any terms the payment of any sum of money or the performance of any obligation by any person, firm or company (including without prejudice to the generality of the

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foregoing any such holding company, subsidiary, fellow subsidiary or association company as aforesaid).

- (h) To borrow and raise money in any manner and to secure the repayment of any money borrowed, raised or owing by mortgage, charge, standard security, lien or other security upon the whole or any part of the Company's property or assets (whether present or future), including its uncalled capital, and also by a similar mortgage, charge, standard security, lien or security to secure and guarantee the performance by the Company of any obligation or liability it may undertake or which may become binding on it.
- (i) To draw, make, accept, endorse, discount, negotiate, execute and issue cheques, bills of exchange, promissory notes, bills of lading, warrants, debentures, and other negotiable or transferable instruments.
- (j) To apply for, promote, and obtain any Act of Parliament, order, or licence of the Department of Trade or other authority for enabling the Company to carry any of its objects into effect, or for effecting any modification of the Company's constitution, or for any other purpose which may seem calculated directly or indirectly to promote the Company's interests, and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the Company's interests.
- (k) To enter into any arrangements with any government or authority (supreme, municipal, local, or otherwise) that may seem conducive to the attainment of the Company's objects or any of them, and to obtain from any such government or authority any charters, decrees, rights, privileges or concessions which the Company may think desirable and to carry out, exercise, and comply with any such charters, decrees, rights, privileges, and concessions.
- (l) To subscribe for, take, purchase, or otherwise acquire, hold, sell, deal with and dispose of, place and underwrite shares, stocks, debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any other company constituted or carrying on business in any part of the world, and debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any government or authority, municipal, local or otherwise, in any part of the world.
- (m) To control, manage, finance, subsidise, co-ordinate or otherwise assist any company or companies in which the Company has a direct or indirect financial interest, to provide secretarial, administration, technical, commercial and other services and facilities of all kinds for any such company or companies and to make payments by way of subvention or otherwise and any other arrangements which may seem desirable with respect to any business or operations of or generally with respect to any such company or companies.
- (n) To promote any other company for the purpose of acquiring the whole or any part of the business or property or undertaking or any of the liabilities of the Company, or of undertaking any business or operations which may appear likely to assist or benefit the Company or to enhance the value of any property or business of the Company, and to place or guarantee the placing of, underwrite, subscribe for, or otherwise acquire all or any part of the shares or securities of any such company as aforesaid.
- (o) To sell or otherwise dispose of the whole or any part of the business or property of the Company, either together or in portions, for such consideration as the Company may think fit, and in particular for shares, debentures, or securities of any company purchasing the same.
- (p) To act as agents or brokers and as trustees for any person, firm or company, and to undertake and perform sub-contracts.
- (q) To remunerate any person, firm or company rendering services to the Company either by cash payment or by the allotment to him or them of shares or other securities of the Company credited as paid up in full or in part or otherwise as may be thought expedient.

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- (r) To distribute among the Members of the Company in kind any property of the Company of whatever nature.
- (s) To pay all or any expenses incurred in connection with the promotion, formation and incorporation of the Company, or to contract with any person, firm or company to pay the same, and to pay commissions to brokers and others for underwriting, placing, selling or guaranteeing the subscription of any shares or other securities of the Company.
- (t) To support and subscribe to any charitable or public object and to support and subscribe to any institution, society, or club which may be for the benefit of the Company or its directors or employees, or may be connected with any town or place where the Company carries on business; to give or award pensions, annuities, gratuities, and superannuation or other allowances or benefits or charitable aid and generally to provide advantages, facilities and services for any persons who are or have been Directors of, or who are or have been employed by or who are serving or have served the Company, or any company which is a subsidiary of the Company or the holding company of the Company or a fellow subsidiary of the Company or the predecessors in business of the Company or of any such subsidiary, holding or fellow subsidiary company and to the wives, widows, children and other relatives and dependants of such persons; to make payments towards insurance including insurance for any Director, officer or Auditor against any liability as is referred to in Section 310 (1) of the Act; and to set up, establish, support and maintain profit sharing or share purchase schemes for the benefit of any of the employees of the Company or of any such subsidiary, holding or fellow subsidiary company and to lend money to any such employees or to trustees on their behalf to enable any such purchase schemes to be established or maintained.
- (u) Subject to and in accordance with a due compliance with the provisions of Sections 155 to 158 (inclusive) of the Act (if and so far as such provisions shall be applicable), to give, whether directly or indirectly, any kind of financial assistance (as defined in Section 152(1) (a) of the Act) for any such purposes as is specified in Section 151(1) and/or Section 151(2) of the Act.
- (v) To procure the Company to be registered or recognised in any part of the world.
- (w) To do all or any of the things or matters aforesaid in any part of the world and either as principals, agents, contractors or otherwise, and by or through agents, brokers, sub-contracts or otherwise and either alone or in conjunction with others.
- (x) To do all such other things as may be deemed incidental or conducive to the attainment of the Company's objects or any of them.

AND so that: -

- (1) The word "Company" in this Clause, except where used in reference to the Company, shall be deemed to include any partnership or other body of persons, whether incorporated or unincorporated and whether domiciled in the United Kingdom or elsewhere.
- (2) In this Clause the expression "the Act" means the Companies Act 1985, but so that any reference in this Clause to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of that provision for the time being in force.

### Note:

Clauses 1, 2, 4 and 5 of the Memorandum of Association were deleted by the following special resolution of the Company passed by written resolution on 2011:

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“that the Articles of Association of the Company be amended by deleting clauses 1, 2, 4 and 5 of the Company's Memorandum of Association which, by virtue of section 28 Companies Act 2006, are treated as provisions of the Company's Articles of Association.”

As a consequence of this deletion, these clauses are no longer treated as provisions of the Company's Articles of Association under section 28 of the Companies Act 2006.