

Company Number: 3547531

THE COMPANIES ACTS 2006

PRIVATE COMPANY LIMITED BY GUARANTEE AND NOT  
HAVING A SHARE CAPITAL

## ARTICLES OF ASSOCIATION

### BRITISH EQUITY COLLECTING SOCIETY LIMITED

*as adopted by written Special Resolution passed on \_15 December 2017\_  
and effective from \_15 December 2017\_*

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## 1. DEFINITIONS

### 1.1 In these Articles:

**“the Act”** means the Companies Act 2006 (as defined in Section 2 Companies Act 2006) to the extent in force from time to time, insofar as they apply to the Society and references to the Companies Act 2006 shall be construed accordingly.

**“Annual Transparency Report”** means the annual report on the operations and financial performance of the Society in such form and containing such information as is required by law.

**“the Articles”** means these Articles of Association or other articles of Association of the Society from time to time in force and shall include reference to the Memorandum of the Society to the extent relevant and applied prior to the date of adoption of these Articles of Association.

**“Board Member”** means a member of the Board of Management.

**“Board of Management”** means the board appointed to manage the powers of the Society within the constraints of the Act and the Articles.

**“Chair”** has the meaning set out in Article 19.3.

**“clear days”** in relation to the period of notice means the period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect.

**“Collective Management Organisation”** means any organisation which

- (a) is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one Right Holder, for the collective benefit of those Right Holders, as its sole or main purpose, and
- (b) is either owned or controlled by its members or is organised on a not-for-profit basis, or both.

**“Conflicted Director”** has the meaning set out in Article 18.2 (Authorisation of conflicts of interest).

**“Conflict Situation”** has the meaning set out in Article 18.2 (Authorisation of conflicts of interest).

**“the Constitution”** means these Articles of Association together with any rules and bye-laws approved and applied as provided by these Articles of Association from time to time.

**“the Copyright Act”** means the Copyright, Designs and Patents Act 1988 or any relevant law amending or re-enacting that Act for the time being in force and all the expressions defined in the Copyright Act shall have the same meaning herein.

**“Council”** or **“Council of Equity”** means the Governing Body of Equity as defined in the Rules of Equity from time to time.

**“Council of Management of the PMA”** means the members’ of the PMA appointed to the council of management of the PMA in accordance with the rules of the PMA from time to time.

**“Deceased Performer”** means a Performer who had died.

**“Dispute Resolution Procedures”** means the dispute resolution procedures which the Society shall publish from time to time to ensure that:

- (a) its Members;
- (b) Right Holders who are not Members but who have a direct legal relationship with the Society by law or by way of assignment, licence or other contractual arrangement;
- (c) Collective Management Organisations on whose behalf the Society manages rights under representation agreements; and
- (d) licensees of the Society and users or other persons who require or may require a licence from the Society;

have access to dispute resolution procedures as regards disputes concerning compliance with the Regulations, including independent and impartial dispute resolution procedures.

**“Distribution Share”** means the share of revenue that is allocated to a Member in accordance the Distribution Policy.

**“Distribution”** means any payment of monies which may, pursuant to the terms of the Distribution Policy, be made by the Society to Members out of its funds and “distributed” and “available for distribution” shall have corresponding meanings.

**“Distribution Policy”** means the documents setting out the general policies of the Society with respect to the distribution of Performers’ Remuneration due to Members and the general policy on deductions from rights revenue and on any income arising from investment of rights revenue, as this may be varied by the Members of the Society in accordance with the Constitution, or varied following application of, and in accordance with, the Dispute Resolution Procedures, and which is published on the Society’s website.

**“EC Directive 2014/26/EU”** means Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

**“electronic communication”** has the same meaning as under the Electronic Communications Act 2000 and includes website communication in accordance with Article 38.

**“Equity”** means the independent trade union known as Equity and formerly known as British Actors’ Equity Association.

**“Executive Director”** means the person appointed by the Board of Management to act as the Chief Executive Officer of the Society from time to time when Article 15.8 shall apply.

**“Management Committee of the Co-operative Personal Management Association”** means the members of the Co-operative Personal Management Association appointed to its management committee in accordance with the rules of the Co-operative Personal Management Association from time to time.

**“Mandated Rights”** means the rights of the Member as a Performer which are mandated to the Society under the Membership Agreement including authorisation for the collection of all Performers’ Remuneration relevant to such rights.

**“Meeting” or “General Meeting”** means a general meeting of the Society including an Annual General Meeting.

**“Members”** shall have the meaning in Article 4.

**“Members’ Resolution”** means the approval of the Members by Special Resolution or Ordinary Resolution in General Meeting or by written resolution pursuant to the Constitution.

**“Membership Agreement”** means an agreement of such form as may from time to time be prescribed by the Board of Management of the Society relating to the membership of the Society.

**“Non-Member”** means a Right Holder who is not a Member of the Society.

**“Office Holder”** means the liquidator, administrator, administrative receiver, receiver or other person entitled to control the affairs or winding up of the corporation or the partnership for the purposes of Article 11.10.

**“the PMA”** means the Personal Managers’ Association Limited being a company limited by guarantee and registered in England under company number 00487049.

**“the Society”** means the company registered in England under company number 3547531 with the name as at the date of these Articles taking effect of British Equity Collecting Society Limited.

**“the Office”** means the registered office for the time being of the Society.

**“participate”** in relation to a meeting of the Board of Management, shall have the meaning set out in Article 30.

**“Performers”** means actors, singers, dancers and other persons who act, sing, deliver, declaim, play in or otherwise perform literary, dramatic or musical works or otherwise perform in any way other than performers who perform as musicians when such performance is fixed in a sound recording but not in any audio-visual form.

**“Performer Heir”** means a beneficiary of a Deceased Performer who is entitled to represent the rights of Performers for the collection and receipt of Performers’ Remuneration and who has executed a Membership Agreement and been admitted as a Member of the Society.

**“Performers’ Remuneration”** means any income or remuneration arising or payable to Performers: -

- (a) in respect of the rental of a sound recording or film either by way of
  - (i) the exercise of the rental right, or
  - (ii) the right to equitable remuneration for the rental in the United Kingdom under: -
    - S191 and 182C of the 1988 Act or
    - 191G of the 1988 Act or
- (b) in other countries pursuant to: -
  - any legislation in respect of the rental right and/or such equitable remuneration, and/or their implementation of Articles 2 and 4 of the Rental Directive, or
- (c) from any blank tape levy, private copying levy or other levies on copying media or devices, or
- (d) in respect of the cable re-transmission of programmes incorporating their performances or other relays relevant to the Membership Agreement of the Society for which rights to collect remuneration for or on behalf of Performers may only be exercised through a collecting society or Collective Management Organisation, or
- (e) for which rights to collect remuneration of a similar statutory and collective nature for or on behalf of Performers may only be exercised through a collecting society or Collective Management Organisation and which the Members acting by the Supervisory Committee resolve should fall to be collected by the Society and which are paid to the Society either under representation agreements entered into between the Society and other Collective Management Organisations or under licences issued by or on behalf of the Society.

**“proxy notice”** has the meaning set out in Article 35.10.

**“Regulations”** means the Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 and The Collective Management of Copyright (EU Directive) Regulations 2016.

**“the Rental Directive”** means Directive 2006/115/EC as the same has codified and amended Directive No 92/100/EEC of the Board of the European Communities of November 19 1992 on Rental and Lending Right and on Certain Rights Related to Copyright in the Field of Intellectual Property.

**“Representative”** means an executor, administrator or other personal representative, trustee in bankruptcy, receiver, curator bonis or other person entitled to exercise powers with regard to the property or affairs of a person by reason of his mental disorder to the extent that such a person or representative is entitled to represent the rights of Performers or Deceased Performers for the collection and receipt of Performers’ Remuneration under the provisions of Article 2.7.

**“Right Holder”** means any person or entity, other than a Collective Management Organisation which

(a) holds a copyright or related right, or

(b) under an agreement for the exploitation of rights, or by law, is entitled to a share of rights revenue.

**“the Seal”** means any common or official seal that the Society may be permitted to have under the Statutes.

**“Secretary”** means any person appointed to perform the duties of the Secretary of the Society from time to time.

**“Special Resolution”** and **“Ordinary Resolution”** have the meaning provided by the Act.

**“Statutes”** means the Act and every other act, statute, statutory instrument, regulation or order for the time being in force concerning companies and affecting the Society or its purposes.

**“Supervisory Committee”** means the committee appointed by the Members to provide the supervisory function that shall be set up to continuously monitor the activities and performance of the duties of the persons who manage the business of the Society. The Supervisory Committee shall consist of the appointed members of the Board of Management with the exception of any Chief Executive or other executive officer of the Society who may be a member of the Board of Management at any time.

**“the United Kingdom”** means Great Britain and Northern Ireland, the Isle of Man and the Channel Islands, together with the territorial waters of the United Kingdom and the United Kingdom sector of the continental shelf referred to in Section 161 of the Copyright Act and British ships, aircraft and hovercraft as provided by Section 162(2) of the Copyright Act.

**“Vice-chair”** has the meaning set out in Article 19.2.

**“working day”** has the meaning set out in s 1173 Companies Act 2006.

In these Articles (if not inconsistent with the subject or context) any reference to:

a **“document”** includes reference to both an electronic communication and a document in electronic form; a document being **“executed”** includes references to it being executed under hand or seal or, in the case of an electronic communication, by electronic signature or such other means of verifying the authenticity of the communication that the Directors may from time to time approve;

**“an instrument”** means a written document having tangible form (by way of example on paper) which is not contained in an electronic communication;

**“in writing”** and **“written”** mean the representation of words, numbers or symbols in a legible and non-transitory form by any method or combination of methods, including electronic communication (as defined in the Act), facsimile, e-mail, printing and photography.

Unless the context otherwise requires words or expressions contained in these Articles shall bear the same meaning as in the Act.

Reference to any statute or statutory provision includes a reference to statutory instruments and orders made further to it and includes consolidations or amendments or modifications or re-enactments.

Save as expressly provided:

- (a) reference to the singular includes a reference to the plural and vice versa;
- (b) reference to any gender includes a reference to all other genders;
- (c) words importing persons shall include firms corporations and unincorporated associations.

The headings are inserted for convenience only and shall not affect the construction of these Articles.

## **2. OBJECTS AND FUNCTIONS**

The objects for which the Society is established are, subject always to Article 13 (setting out powers of Members): -

2.1 To operate with its main purpose as a Collective Management Organisation established to exercise and enforce the Mandated Rights and to collect, distribute and administer on behalf of Performers to enable the collection and distribution of all and any Performers’ Remuneration relating thereto.

2.2 To obtain from Performers and others assignments, licences, assurances, appointments as agent, powers of attorney and authorities relating in any way to the exploitation of rights of Performers relevant to statutory entitlements to Performers’ Remuneration anywhere in the world and to enter into agreements with Performers authorising the Society to exercise and enforce in its own name or otherwise the said rights and remedies on their behalf.

2.3 Secondary to the objects of the Society in acting as a Collective Management Organisation for the representation of Performers, Mandated Rights and Performers’ Remuneration and beyond its main purpose provided under Article 2.1 to provide services in the capacity of a distribution agent of third parties to provide for and support the collection of monies and subsequent processing and

payment to nominated payees in accordance with the instructions of the principals who appoint the Society to act as appointed distribution agent.

2.4 To obtain from Performers (and/or Equity) such assignments, licences, assurances, mandates or other authorities or instruments as may be deemed necessary or expedient to enable the Society to collect monies on behalf of Performers (and/or to receive and distribute monies derived from the exploitation of all such rights and remedies as aforesaid).

2.5 To execute and do all such assurances, agreements and other instruments and acts as may be deemed necessary or expedient for the purpose of the exercise or enforcement by the Society of the rights to Performers' Remuneration and remedies as aforesaid and in their exercise or enforcement to collect and receive and give effectual discharges for all royalties fees equitable remuneration and other monies collected.

2.6 To take all steps as it may in its absolute discretion think fit including the taking of legal proceedings in any form to secure the recovery of monies deriving from rights to Performers' Remuneration.

2.7 To make and from time to time rescind or vary any policies, rules, guidelines or practices in respect of

(a) the manner in which and the period or periods for which and the conditions under which Performers shall authorise the Society to exercise and enforce rights to Performers' Remuneration;

(b) the method and proportion by and in which and the times at which the net monies so received by the Society shall be distributed;

(c) the manner in which any secondary distribution activities of the Society are conducted subject to the Act and the Regulations; and

(d) the administration of the property or business of the Society and any matters incidental thereto.

### 3. POWERS

The Society has, subject to Article 13 (setting out the powers of Members), the power: -

3.1 To apply and distribute the net monies received by the Society in the exercise of the powers and objects herein contained among Performers entitled thereto in accordance with the rules for the time being in force relating to the distribution thereof after making provision for the expenses and carrying out the purposes and operations of the Society and for any contributions or payments for any of the purposes specified in Article 3.2.

3.2 To create and maintain an indemnity fund available subject to such administrative costs and deductions as, subject to Article 13, the Board of Management shall lay down

(1) to reimburse Performers who have not entered into a contractual relationship with the Society or who are otherwise unidentifiable but are eligible for a share in distribution of the net monies aforesaid and

(2) to reimburse or settle claims brought against the Society by third parties pursuant to indemnities given in blanket licences or otherwise in respect of claims brought against those bodies by Non-Members.

3.3 To license exercise and enforce on behalf of Performers all their rights and remedies whether in the nature of Performer's rights or otherwise in respect of the exploitation or use in any way of their performances recorded, broadcast or live.

3.4 To research lobby publicise and negotiate with governments licensing bodies copyright agencies and all other authorities and bodies whether in the United Kingdom or abroad for the purposes of such legislation and other reforms as may be necessary from time to time in the discretion of the Society for the purpose of establishing or improving the licensing and collection arrangements in respect of rights to Performers' Remuneration in the United Kingdom and worldwide extending and improving such rights and the rights of Performers generally and making representations to the European Commission in this connection.

3.5 To join with other licensing bodies in the grant of collective licences to users of recorded or live performances.

3.6 To set up and administer trust funds, scholarships, training grants and other facilities for young Performers' as it thinks fit.

3.7 To establish support subscribe to and aid in the establishment and support of funds, trusts, societies or institutions calculated to benefit Performers collectively.

3.8 Alone or in collaboration with others to organise or promote performances concerts festivals recordings and broadcasts (whether profit-making or not) for the purpose of publicising or advancing the activities of the Society or of benefiting or otherwise advancing the activities of Performers and

to apply any surpluses realised either as an addition to the funds of the Society or for the benefit of Performers either individually or collectively.

3.9 To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property which may be deemed necessary or convenient for any of the purposes of the Society.

3.10 To construct, maintain and alter any offices, buildings, or works necessary or convenient for the purposes of the Society.

3.11 To take any gift of property, whether subject to any special trust or not, for any one or more of the objects of the Society.

3.12 To take such steps by personal or written appeals, direct-mail, public meetings, or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Society, in the shape of donations, annual subscriptions, or otherwise, or for the purpose of advancing the interests of Performers.

3.13 To print and publish any newsletters, periodicals, books or leaflets and to carry on any research or other investigations that the Society may think desirable for the promotion of its objects.

3.14 To sell, manage, lease, mortgage, dispose of, or otherwise deal with all or any part of the property of the Society.

3.15 To borrow raise and lend money in such manner as the Society may think fit.

3.16 To invest the monies of the Society not immediately required for its purposes in or upon such investments, securities or property as may be thought fit, subject, nevertheless to such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law.

3.17 To undertake and execute any trusts or any agency business which may seem directly or indirectly conducive or complementary to any of the objects of the Society.

3.18 To subscribe to any local or other charities, and to grant donations for any public purpose, and to provide a superannuation fund for the employees of the Society, or otherwise to assist any such employees, their widows and children.

3.19 To establish and support, and to aid in the establishment and support of, any other Societies formed for all or any of the objects of this Society.

3.20 To amalgamate with any companies, institutions, societies or Societies having objects altogether or in part similar to those of this Society.

3.21 To purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies, institutions, societies with which this Society is authorised to amalgamate.

3.22 To transfer all or any part of the property, assets, liabilities and engagements of this Society to any one or more of the companies, institutions, societies or Societies with which this Society is authorised to amalgamate.

3.23 To collect such other remuneration royalties or payments or to do all such other lawful things as may be decided by the Society or the Board of Management.

PROVIDED THAT:

- (a) In case the Society shall take or hold any property which may be subject to any trusts, the Society shall only deal with or invest the same in such manner as allowed by law, having regard to such trusts.
- (b) The Society shall not support with its funds any object, or endeavour to impose on or procure to be observed by its Members or others, any regulation, restriction or condition which if an object of the Society would make it a trade union.

#### 4. MEMBERS

4.1 For the purposes of registration the number of Members of the Society is declared to be unlimited.

4.2 The subscribers to the Memorandum and such other persons as are admitted to membership in accordance with the Articles shall be members of the Society (“**the Members**”).

4.3 No person shall be admitted a Member of the Society unless he or she is a Performer or he or she or it is a Performer Heir and (a) is approved by or in accordance with Membership Criteria set down by the Members acting by the Supervisory Committee from time to time; and (b) executes a Membership Agreement in accordance with Article 6.

#### 5. MEMBERSHIP CRITERIA

Irrespective of their nationality, residence or place of establishment, any Performer or Performer Heir who holds or is entitled to represent the rights of a performer when at least one of the performances of the relevant performer has been or is reasonably expected to be broadcast or recorded and fixed for subsequent audio or audio-visual use may apply to the Society for admission to membership.

## **6. MEMBERSHIP APPLICATION**

Every person (including a Performer Heir) who wishes to become a Member shall deliver to the Society an application for membership in such form as the Board of Management require and executed by him or her in the form of the Membership Agreement together with such other documentation as the Society may from time to time require applicants to provide to verify that they are able to authorise the rights to be mandated to Society.

## **7. MEMBERSHIP AGREEMENTS**

7.1 All Members are required to observe the Articles of Association and the terms of the Membership Agreement (as the same may be amended from time to time).

7.2 Applicants who meet the Membership Criteria of the Society will be required to execute a Membership Agreement including authorising the Society to exercise the Mandated Rights and to lodge this with the Society before membership of the Society can take effect.

## **8. OBJECTIVE, TRANSPARENT AND NON-DISCRIMINATORY APPROACH FOR MEMBERSHIP CRITERIA**

The Membership Criteria and the membership application process set out in Article 9 will be applied so as to ensure the timely, transparent, objective and non-discriminatory processing of applications for membership.

## **9. MEMBERSHIP APPLICATION PROCESS**

9.1 The names of all applicants not formally admitted to membership but from whom applications for membership have been received by the Society, shall be reported to the first scheduled meeting of the Board of Management after applications have been received.

9.2 The Board of Management shall either:

(a) confirm that an applicant meets the Membership Criteria and in which event the applicant shall, subject to Article 7, be admitted to membership from the date specified in the Membership Agreement signed by the applicant; or

(b) specify the reasons why the applicant does not meet the Membership Criteria of the Society as provided by Article 10.

9.3 Every Member shall during his or her or its membership and as a condition of continued Membership from time to time if, and when requested by the Society in writing so to do, execute all or any further agreement or agreements, assignments, assurances, powers of attorney or other authorities or instruments in the form prescribed by the Society

as may from time to time be resolved by the Board of Management or by the Society in General Meetings.

- 9.4 Subject to the provisions of Articles 9.3 and 11 no Member shall be or purport to be at liberty to transfer his membership to any third party or to alienate, deal in or exercise the rights vested in the Society by the Member, or controlled by the Society by virtue of his or her membership, or required by the Articles to be so vested or controlled.

## **10. APPLICATIONS FOR MEMBERSHIP WHICH DO NOT MEET MEMBERSHIP CRITERIA**

- 10.1 Any applicant who does not meet the Membership Criteria will be informed in writing and an explanation provided setting out why the Membership Criteria have not been met.
- 10.2 If an applicant is informed that the application fails to meet the Membership Criteria or if the applicant is refused membership for refusing to enter into the Membership Agreement, the applicant may:
- (a) accept the refusal; or
  - (b) in compliance with the Regulations propose that the application is referred for review in an arbitration or mediation in accordance with the Dispute Resolution Procedures.
- 10.3 Nothing in these Articles shall interfere with any legal right which applicants may have to submit a complaint to the Secretary of State pursuant to the Regulations.

## **11. TERMINATION OF MEMBERSHIP**

- 11.1 Upon the dissolution of the Society the rights (if any) vested in the Society by any Member or controlled by the Society by virtue of his or her or its membership under the terms of the Membership Agreement shall revert to such Member.
- 11.2 A Member may at any time withdraw from the Society by giving six months' notice to the Society to take effect at the end of the financial year of the Society provided always that the Board of Management may accept any withdrawal of membership with less or no notice if in its absolute discretion it so decides.
- 11.3 Save as permitted under the rules of the Society and application of Article 11.4 membership shall not be transferable and shall automatically cease on death or if an organisation on dissolution or liquidation.
- 11.4 In the case of a Member who is an individual, his membership of the Society shall cease on the death of that Member ("the "Deceased Performer") but the provisions concerning recognition of Representatives of such Deceased Performer shall then become relevant.

11.5 If a Performer who is a Member:

- (a) is declared bankrupt; or
- (b) is suffering from mental disorder and an order is made by a Court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his or her property or affairs;

then the membership of the Society will not be transmissible or transferable to any third party but the provisions concerning recognition of Representatives of such Member shall become relevant.

11.6 Notwithstanding the cessation of such membership of a Member under Article 11.4 the Mandated Rights vested in the Society by the Member shall remain so vested until such time as those rights shall have been assigned to or at the direction of the Member's Representative to the beneficiary or Office Holder of the rights formerly granted to the Society by the Member under their Membership Agreement.

11.7 In the circumstances set out in Article 11.5 the rights vested in the Society by the Member shall remain so vested until such time as the rights shall have been administered at the direction of the Member's Representative.

11.8 Until the time of any assignment to a beneficiary under Article 11.9 or completion of any administration or appointment under Article 11.5 any payment to which the Member would have been entitled to but for the circumstances in Article 11.4 or 11.5 (b) shall be made to the Representative of the Deceased Performer or Member as the case may be.

11.9 Once the rights of a beneficiary to receive Performers' Remuneration relevant to the work of a Deceased Performer shall have been vested in the beneficiary any assignment of such rights to the Society shall be executed in accordance with the applicable Membership Agreement after service of a written notice by the Representative of the Deceased Performer on the Society or by the Society on the Representative requesting such assignment; but prior to executing the assignment the Board of Management shall be entitled to require proof in such form as they fit of the entitlement of the Representative to require or direct the assignment in question.

11.10 In the case of a corporation or partnership, being a Member of the Society in its capacity as a Performer Heir, its membership shall cease, in the case of a corporation, in the event of and upon the corporation being dissolved or struck off the register of companies and in the case of a partnership, in the event of and upon such partnership being dissolved. Notwithstanding

the cessation of such membership, the Mandated Rights vested in the Society by such corporation or partnership shall remain so vested until such time as those rights shall have been assigned to or at the direction of the liquidator, administrator, administrative receiver, receiver or other person entitled to control the affairs or winding up of the corporation or the partnership as the case may be (in this paragraph called the "**Office Holder**").

Until that time, if any resolution has been passed or any order has been made for the winding up, liquidation or administration or a receiver or administrative receiver has been appointed over all or part of the assets of such corporation or as the case may be, partnership, any payment to which the corporation or partnership would have been entitled shall be made to the Office Holder or (if different) the person entitled for the time being to receive debts due to the corporation or partnership.

Any assignment of rights to any new party eligible to become a Member shall be executed in accordance with the applicable Membership Agreement after service of a written notice served by the Office Holder on the Society or by the Society on the Office Holder requesting such assignment; but prior to executing the assignment the Board of Management shall be entitled to require proof in such form as they think fit of the entitlement of the Office Holder to require or direct the assignment in question.

- 11.11 If an individual who is a Performer Heir dies the Performer Heir shall be treated as a Deceased Performer for the purposes of Article 11.4.
- 11.12 Upon the dissolution of the Society the rights (if any) vested in the Society by any Member or controlled by the Society by virtue of his or her or its membership under the terms of the Membership Agreement shall revert to such Member.

## **12. EXERCISE OF MANDATED RIGHTS AND OTHER RIGHTS OF THE SOCIETY**

- 12.1 Upon admission to membership the Member shall in accordance with this Article empower the Society to carry out its functions with respect to the Mandated Rights of the Member:

- (a) which the Member himself, herself or itself owns or controls; or
- (b) which the Member is authorised to own or control;

for the purposes of exercising Mandated Rights.

- 12.2 The Membership Agreement for each Member shall refer to these Articles and to the powers of the Society under these Articles to ensure that licences secured under Article 12.3 include relevant authorisation to enable the Society to carry out the functions provided in Article 2.

- 12.3 The power of the Society to carry out its functions with respect to rights on behalf of Members shall, subject to Article 13, be vested in the Society by assignment, licence or such other form of appointment transfer or mandate as the Directors shall, from time to time, determine; and subject to Article 7 and Article 13 the Membership Agreement or other instrument by which the Society is empowered by a Member shall be in such form as the Directors shall prescribe.
- 12.4 After admission a Member may request the Society in writing to carry out the functions entrusted to it with respect to additional categories of rights within the scope of Mandated Rights. Every such request will be considered by the Directors who may in their discretion agree that the Society shall carry out its functions with respect to additional rights on behalf of the Member.

### 13. MEMBERS' POWERS

- 13.1 The Members may, subject to the Act and by Ordinary or Special Resolution (as required by the Act), direct the Directors to take, or refrain from taking, specified action.
- 13.2 No such Resolution as referred to under Article 13.1 invalidates anything which the Directors have done before the passing of the resolution.
- 13.3 The following matters shall not be carried out without the approval of the Members or (where responsibility for such matters has been delegated to the Directors who are members of the Supervisory Committee carrying out the supervisory function as specified in Article 14) a resolution supported by at least 50% of those Directors:
- (a) the adoption of or any amendment to any Distribution Policy where such change could constitute a change to the Society's general policy as to
    - (i) the distribution of amounts due to Members or
    - (ii) the deductions from distributable revenue and from any income arising from the investment of such revenue;
  - (b) the adoption of or any amendment to the general investment policy with regard to:
    - (i) revenue received under representation agreements with other Collective Management Organisations or licence revenue; and
    - (ii) any income arising from the investment of such revenue;
  - (c) the adoption of or any amendment to the general policy on the use of non-distributable amounts;

- (d) the use of non-distributable amounts;
- (e) any terms and conditions governing membership of the Society;
- (f) any changes to the standard terms of the Membership Agreement;
- (g) any changes to the Mandated Rights;
- (h) the adoption of or any amendment to the risk management policy;
- (i) the approval of any acquisition, sale or hypothecation of immovable property;
- (j) the approval of mergers and alliances, the setting-up of subsidiaries, and the acquisition of other entities or shares or rights in other entities;
- (k) the approval of taking out loans, granting loans or providing security for loans;
- (l) the delegation of responsibility for the matters listed at sub-paragraphs (h) (i), (j), and (k) of this Article to the Supervisory Committee exercising the supervisory function pursuant to Article 14.

13.4 The Members may, and shall by Ordinary Resolution in General Meeting:

- (a) decide upon the appointment and dismissal of Directors;
- (b) approve any remuneration and other benefits of Directors including without limitation pensions benefits and severance pay;
- (c) decide upon the appointment and removal of the auditor;
- (d) approve the Annual Transparency Report.

## 14. SUPERVISORY FUNCTION AND COMMITTEE

14.1 The supervisory function required under the Regulations shall be exercised by a Supervisory Committee comprising the non-executive Directors of the Society in providing a fair and balanced representation of the different categories of Members of the Society, who shall, acting in compliance with the requirements of the Regulations, continuously monitor the activities and the performance of the duties of the persons who manage the business of the Society, including the implementation of the decisions of the general assembly of Members and may, subject to Article 13.3, recommend, consider and/or approve remuneration and other benefits of Directors including without limitation pensions benefits and severance pay.

14.2 The persons exercising the supervisory function shall meet quarterly and shall report annually on its activities to the Members in General Meeting.

14.3 The persons exercising the supervisory function shall have responsibility for the matters set out in Article 13.3 (h) (i) (j) and (k) where these matters have been delegated to those persons by a Special Resolution of the Members.

## **15. BOARD OF MANAGEMENT AND APPOINTMENT OF DIRECTORS**

15.1 The members of the Board of Management shall be the directors of the Society within the meaning of Part 10 of the Act. The members of the Board of Management shall be appointed by the Members pursuant to Article 13.4 following nominations by: -

- (a) the election process under Article 15.9 or application of Article 15.9;
- (b) the Management Committee of the Co-operative Personal Management Association (in accordance Article 15.6);
- (c) the Council of Management of the PMA (in accordance with Article 15.7); and
- (d) the Council of Equity in accordance with Article 15.4.

15.2. The number of Board of Management members shall at no time be less than three and shall not, unless otherwise determined by Ordinary Resolution of the Members, exceed 9.

15.3 The Board of Management shall ordinarily be comprised of the following: -

- (a) up to five persons appointed under the provisions of Article 15.9;
- (b) one person nominated by the Council of Management of the Co-operative Personal Management Association under the provisions of Article 15.6;
- (c) one person nominated by the Council of Management of the PMA under the provisions of Article 15.7;
- (d) one Executive Director under the provisions of Article 15.8; and
- (e) one person being a Member of the Society nominated by the Council of Equity under the provisions of Articles 15.4 and 15.5.

15.4 The Council of Equity is entitled to nominate one Director who is also a Member of the Society in their own right for election to the Board of Management. Any such nomination shall be confirmed in writing by Equity and served on the Society at its registered office. No such nomination for appointment shall take effect until confirmation and commencement of appointment to serve as a Director of the Society is ratified by Ordinary Resolution of the Members in General Meeting and any such appointment shall then apply for a term as

provided under Article 15.5, renewable following nomination and ratification as provided by this Article 15.4 and the Constitution.

15.5 A Director appointed to the Board of Management of the Society pursuant to Article 15.3 and 15.4 shall hold office for a two year term and shall retire from office at the end of the two year term unless upon appointment, the Members shall resolve that the two year term shall continue until such time as a new nominee from the Council of Equity under Article 15.4 has been proposed to the Members and such new appointment shall have been ratified by the Members in General Meeting.

15.6 The Management Committee of the Co-operative Personal Management Association is entitled to nominate one Director for election to the Board of Management. Any such nomination shall be confirmed in writing by the Co-operative Personal Management Association and served on the Society at its registered office. No such nomination for appointment shall take effect until confirmation and commencement of appointment to serve as a Director of the Society is ratified by Ordinary Resolution of the Members in General Meeting and any such appointment shall then apply for a term of one year, renewable following nomination and ratification as provided by this Article 15.6 and the Constitution.

15.7 The Council of Management of the PMA is entitled to nominate one Director for election to the Board of Management. Any such nomination shall be confirmed in writing by the PMA and served on the Society at its registered office. No such nomination for appointment shall take effect until confirmation and commencement of appointment to serve as a Director of the Society is ratified by Ordinary Resolution of the Members in General Meeting and any such appointment shall then apply for a term of one year, renewable following nomination and ratification as provided by this Article 15.7 and the Constitution.

15.8 EXECUTIVE DIRECTOR.

If the terms and conditions for the engagement of the Chief Executive Officer of the Society approved by the Board of Management from time to time shall provide for the individual to take on the role of Executive Director as part of the approved terms, the appointed Chief Executive Officer shall become an Executive Director and member of the Board of Management from the date of approval. Any Executive Officer so appointed shall then hold

office whilst his or her appointment as Chief Executive Officer of the Society shall continue subject always to Article 17.

#### 15.9 ELECTED DIRECTORS

Whenever a vacancy shall arise on the Board of Management relevant to Article 15.3 the Board of Management shall be entitled to invite nominations from Members for election to the Board of Management. Any Member wishing to run for election shall be required to complete a nomination form in the form approved by the Board of Management from time to time ("Nomination Form"). All nominations for vacancies shall be collected and published at the same time in the same way as publication of a notice of a General Meeting or the Annual General Meeting of the Society at which Members will be invited to vote on or approve the nominations.

Each nomination will be subject to approval of any corporate governance committee of the Board of Management to ensure that the nomination complies with criteria for election to the Board of Management prior to presentation to the Members in a Meeting.

At any Meeting when nominations for vacancies on the Board of Management under Article 15.3 are to be considered if there are more nominees than vacancies a vote will be held and the candidates with the highest number of votes shall be elected.

Members appointed under Article 15.3 will be elected to serve on the Board of Management for a period of three years subject to the Constitution with a new election taking place every three years thereafter. Any Member appointed to the Board of Management under Article 15.3 shall be entitled to stand for re-election after any three-year term.

15.10 No person shall be or become incapable of being appointed as a member of the Board of Management by reason only of his or her having attained the age of seventy or any other age nor shall any special notice be required in connection with the appointment or the approval of the appointment of such person, and no member of the Board of Management shall vacate his or her office at any time by reason only of the fact that he or she has attained the age of seventy or any other age.

15.11 A member of the Board of Management who shall have been absent from meetings of the Board of Management for either:

- (a) a consecutive period of 12 months or
- (b) in aggregate one half of the meetings called during his or her period of office

shall not be eligible for re-election at any time save with the prior approval of the Board of Management.

## **16. DUTIES OF DIRECTORS AND RECORDS**

- 16.1 The Directors shall cause minutes to be made of all appointments of officers made by them, of the names of the Directors present at each meeting of the Directors and of any committee or working group of the Directors, and of all resolutions and proceedings at all meetings of the Society, and of the Directors, and of committees or working groups of Directors and any such minutes if signed by the Chair of such meeting or by the Chair of the next succeeding meeting shall be sufficient evidence without any further proof of the facts therein stated.
- 16.2 The Directors may act notwithstanding any vacancy in the Board of Management but if the number of Directors is less than the minimum prescribed herein they may only act as Directors to admit persons to membership of the Society fill vacancies in the Board of Directors or summon a General Meeting.
- 16.3 Each Director shall make an annual individual statement in writing that shall be put before the Members in General Meeting containing the following information:
- (a) any interests in the Society;
  - (b) any agreed remuneration or benefits (including pensions and benefits in kind received in the preceding financial year from the Society);
  - (c) any amounts received in the preceding financial year as a Performer; and
  - (d) any actual or potential conflict between any personal interests and those of the Society or between any obligations owed to the Society and any duty owed to any other natural or legal person.

## **17. TERMINATION AND DISQUALIFICATION OF DIRECTORS - REMOVAL OF BOARD OF MANAGEMENT MEMBER**

- 17.1 The office of a Board Member shall be vacated if:
- (a) he or she ceases to be a Board Member by virtue of any provision of the Act, or he or she becomes prohibited by law from being a company director;
  - (b) he or she becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
  - (c) he or she is, or may be suffering from mental disorder and either: -

(i) is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1980, or

(ii) an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his or her detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his or her property or affairs;

(d) he or she resigns his or her office by notice;

(e) he or she shall for more than six months have been absent without permission of the Board of Management from meetings of Board of Management held during that period and the Board of Management resolve that his or her office be vacated;

(f) the provisions of Article 15.11 above are of effect;

(g) a Special Resolution of the Members at a General Meeting of the Society is passed to that effect;

(h) in the case of a Board Member of the Board of Management appointed pursuant to Article 15.4 he or she ceases to be a member of the Council of Management of Equity;

(i) their term of office expires under Article 15.4, 15.6 or 15.7 without renewal;

(j) in the case of any Executive Director, the individual ceases to be the appointed Chief Executive Officer of the Society.

17.2 The Society may by Ordinary Resolution of which special notice has been given in accordance with Section 312 of the Act, remove any Director before the expiration of the Director's term of office notwithstanding anything in these Articles or in any agreement between the Society and such Director.

## **18. AUTHORISATION AND REPORTING OF CONFLICTS OF INTEREST AND QUORUM FOR BOARD OF MANAGEMENT BUSINESS**

18.1 A Director who is in any way directly or indirectly interested in a contract or a proposed contract with the Society shall declare the nature of his interest at a meeting of the Directors in accordance with Sections 177 and 182 of the Act.

18.2 Subject to and in accordance with the Act,

(a) The Directors may authorise any matter or situation arising on or after the date of adoption of these Articles in which a Director (the "Conflicted Director") has, or can

have, a direct or indirect interest which conflicts, or possibly may reasonably be regarded to conflict, with the interests of the Society (including, without limitation, in relation to the exploitation of any property or information which the Society could take advantage of) and for this purpose a conflict of interest includes a conflict of interest and duty and a conflict of duties (the "Conflict Situation");

- (b) any authorisation given in accordance with this Article 18 shall be effective only if:
  - (i) any requirement as to the quorum at any meeting of the Directors at which the matter is considered is met without counting either the Conflicted Director or any other interested Director; and
  - (ii) the matter or situation was agreed to and any relevant resolution was passed without counting the votes of the Conflicted Director and without counting the votes of any other interested Director (or such matter or situation would have been so agreed and such relevant resolution would have been so passed if their votes had not been counted);
- (c) in considering any request for authorisation in respect of a Conflict Situation, the Directors shall, acting in the best interest of the Society, be entitled to exclude the Conflicted Director from any meeting or other discussion (whether oral or written) including in (but not limited to) circumstances when the declared interests of the Director pursuant to Article 18.1 relate to litigation or arbitration proceedings (whether current or proposed) in which the Society is or is likely to be involved and the Conflict Situation is relevant to the same. In such circumstances the Directors who are not Conflicted Directors shall also be entitled to withhold from such Conflicted Director any board papers or other documents, papers or information concerning the recognition and/or authorisation of such Conflict Situation.
- (d) subject always to the duty of each Director to declare any interests as required by Article 18.1 and the Act and to the provisions of Article 18.2 (c) and subject to prior authorisation by the Directors pursuant to Articles 18.2(a) , it is confirmed and acknowledged that, to ensure the operational efficiency and effectiveness of the Society, a Conflicted Director may be authorised by the board of Directors to participate and vote on any matter relevant to Directors notwithstanding that such Director may otherwise have a Conflict Situation. Any authorisation by the board of Directors as to whether a Conflicted Director can vote, will be made by the board of Directors at any meeting convened pursuant to Article 18.2 and the provisions of Article 18.2(b) will apply mutatis mutandis.

- 18.3 If any Conflict Situation is authorised or otherwise permitted under these Articles, the Conflicted Director:
- (a) shall not be required to disclose to the Society (including the Directors) any confidential information relating to such Conflict Situation which that Director obtains or has obtained otherwise than in that Director's capacity as a Director of the Society, if to make such disclosure would give rise to a breach of obligation or confidence owed by that Director to another person in relation to such matter, office, employment or position;
  - (b) shall, subject to authorisation pursuant to Article 18.2(d), be entitled to attend or be absent from all or any meetings of the Directors (or any committee) at which anything relating to such Conflict Situation will or may be discussed; and
  - (c) shall, subject to authorisation pursuant to Article 18.2(d), be entitled to make such arrangements as that Director thinks fit to receive or not to receive documents or information (including, without limitation, board papers (or those of any committee of it)) relating to any such conflict; and in so doing, such Conflicted Director shall not be in breach of any general duty owed to the Society pursuant to Sections 171 to 177 (inclusive) of the Act, and the provisions of this Article 18 shall be without prejudice to any equitable principle or rule of law which may excuse the Conflicted Director from disclosing information or attending meetings or receiving documents or information, in circumstances where such disclosure, attendance or receipt would otherwise be required under these Articles.

18.4 For the purposes of this Article, any interest of a person who is for any purpose of the Act (excluding any statutory modification thereof not in force when this regulation becomes binding on the Society), connected with a Director shall be treated as an interest of the Director.

#### 18.5 **QUORUM**

The quorum at any meeting of the Directors or a committee or working group of the Directors, to the extent of considering and voting on any resolution in relation to which a Director is not entitled to vote by virtue of a Conflict Situation, shall be the greater of three eligible Directors or one third of the eligible Directors (or the nearest number but not exceeding one third) and the eligible Directors shall exercise all the powers of the Society in relation to the matter in question.

- 18.6 Any Conflict Situation which arises as a result of any Director being a director or employee of a Member, or an associated company of any Member, or otherwise owing any duty to any such person shall, without prejudice to Articles 18.1 and 18.2 and matters disclosed by the Director in the Register of Interests of the Society be deemed noted and authorised at any future meeting of the Directors for the purposes of section 185 of the Act.
- 18.7 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chairperson, the question is to be decided by a decision of the Directors at that meeting, for which purpose the Chairperson is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

## **19. DIRECTORS' GENERAL AUTHORITY AND POWERS AND APPOINTMENT OF CHAIR**

- 19.1 Subject to these Articles and in particular Articles 13 and 14, the Directors are responsible for the management of the business of the Society, for which purpose they may exercise all the powers of the Society.
- 19.2 The Directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Generally, unless otherwise provided in these Articles or the Act, all questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the Chair shall have a second or casting vote.
- 19.3 The Directors may elect from amongst the current Directors a Chair and Vice-Chair of meetings of the Board of Directors, meetings of the Members and meetings of persons undertaking the supervisory function under Article 14 and may determine the period for which the Chair or Vice-Chair is to hold office. If no such Chair or Vice-Chair is elected, or if at any meeting the Chair or Vice-Chair is not present within ten minutes after the time appointed for holding the same, the Directors present may choose one of their number to be Chair of the meeting. If at any time during a meeting the Chair ceases to be a participating Director, the participating Directors must appoint one of their number to chair the meeting (or the part of the meeting in relation to which a Chair ceases to be a participating Director, as the case may be).
- 19.4 A meeting of the Directors at which a quorum is present, shall be competent to exercise all the authorities, powers and discretions by or under the regulations of the Society for the time being vested in the Directors generally.
- 19.5 All monies received by the Society from the grant of licences or otherwise shall, subject to Article 13, be distributed or dealt with by the Directors in accordance with approved

Distribution Policy or (if relevant to powers exercised under Article 2.3) in accordance with the contractual requirements put in place by the Society to enable the Society to provide services as an appointed distribution agent within approved powers under Article 2.3.

- 19.6 The Directors may, subject to Article 13 and to Distribution Policy and other applicable relevant decisions adopted by the Members:
- (a) pay or provide for all the expenses and outgoings of the Society and for the repayment of loans raised by the Society and the interest (if any) thereon;
  - (b) pay any remuneration or benefits to any person at any time in the employment of the Society and the families and dependants of any such person and contribute to any pension or similar fund which may be established for the benefit of any such employees; and
  - (c) set aside such sum as it thinks necessary as a reserve fund to meet contingencies and to invest the sums set aside and deal with and vary such investments.
- 19.7 The Directors may, subject to Article 13 and to securing the agreement of the Members in General Meeting whenever required by the Regulations, make (and from time to time alter, delete and add to) rules which may deal with the following matters (without limitation):
- (a) the terms and conditions of the Membership Agreement, Distribution Policy and any other procedures which are relevant to the contractual relationship between the Members and the Society;
  - (b) the form of proxy approved for General Meetings;
  - (c) the forms of licence to be granted to such bodies as may be appropriate or the arrangements under which the Society may act as a distribution agent under Article 2.3. The Board of Directors may enter into contractual arrangements with any appropriate and suitable organisation being an organisation properly authorised and constituted for such purpose for it to grant the licences or enter into the agreements determined by the Directors, to enforce such licences and agreements and to collect the appropriate fees or other payments under such licences and distribute them in accordance with the procedures agreed by the Directors;
  - (d) the payments to be made by such bodies for such licences, differentiating (if necessary) between different categories of licences;
  - (e) accounting procedures relating to the fees collected from licensed bodies;
  - (f) the method and frequency of distribution to Members;
  - (g) how unclaimed payments are to be dealt with; and
  - (h) whether legal proceedings may be commenced without the sanction of the Board of Directors.

- 19.8 The Directors must ensure that the society keeps a record, in writing, for at least ten years from the date of the decision recorded, of every unanimous or majority decision taken by the Directors.
- 19.9 Subject to these Articles, the Directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to Directors.

## **20. DELEGATION OF DUTIES OF DIRECTORS**

- 20.1 The Directors may delegate any of their powers to committees consisting of such Directors as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations which may be imposed on it by the Directors. All acts and proceedings of such committees shall be reported as soon as is reasonably practicable to the full body of Directors.
- 20.2 The Directors may revoke any delegation in whole or part, or alter its terms and conditions.
- 20.3 A resolution in writing, signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors, shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held.
- 20.4. All acts done by any meeting of the Directors or by a committee of Directors, or by any person acting as a Director shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

## **21. COMMITTEES**

- 21.1 Committees to which the Directors delegate any of their powers must follow procedures and terms of reference which are based as far as they are applicable on those provisions of these Articles which govern the taking of decisions by Directors.
- 21.2 A committee may elect a Chair of its meetings. If no such Chair is elected, or if at any meeting the Chair is not present within ten minutes after the time appointed for holding the same, the Members present may choose one of their number to be Chair of the meeting.
- 21.3 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall, unless otherwise provided by these Articles be determined by a majority of votes of the Directors present, and in the case of an equality of votes the Chair shall have a second or casting vote.

## **22. ALTERNATE DIRECTORS**

22.1 Any person being a member of the Board of Management appointed under Article 15.4 or Article 15.6 or Article 15.7 (other than an alternate director) may appoint any other member of the Board of Management or any other person approved by resolution of the Board of Management and willing to act, to be an alternate director to a member of the Board of Management appointed under either Article 15.4 or Article 15.6 or Article 15.7 and may remove from office an alternate director so appointed by him or her.

A Director may appoint another person as their alternate and may at any time revoke such appointment.

22.2 An alternate director appointed under Article 22.1 shall be entitled to receive notice of all meetings of the Board of Management and of all meetings of committees of the Board of Management of which his or her appointer is a member, to attend and vote at any such meeting at which the member of the Board of Management appointing him or her is not personally present, and generally to perform all the functions of his or her appointor as a member of the Board of Management in his or her absence but shall not be entitled to receive any remuneration from the Society for his or her services as an alternate director. It shall not be necessary for the Society to give notice of such a meeting to an alternate director who is absent from the United Kingdom.

22.3 An alternate Director shall be deemed not to be an office of the Society but shall be deemed to be the agent of his or her appointor.

22.4 An alternate Director shall cease to be an alternate Director if for any reason their appointment is revoked. In the event that their appointer ceases to be a Director, the alternate may continue to act and attend meetings as a representative of a Member until such time as a new Director is nominated and ratified pursuant to Article 15.2 whereupon the new Director shall be entitled to appoint their own alternate under Article 22.1.

22.5 All appointments and revocations of appointment of alternate Directors shall be in writing under the hand of the appointer left at the Society's registered office.

22.6 Every instrument appointing an alternate Director shall as nearly as circumstances will admit be in the following form, or to the effect following, on paper bearing the name of the Society:-

I \_\_\_\_\_, a Director of this Society in pursuance of the power in that behalf contained in the Articles of Association of the Society do hereby nominate and appoint \_\_\_\_\_ of \_\_\_\_\_ to act as alternate Director in my place at any meeting of the Directors which I am unable to attend and to exercise all my duties as a Director of the Society AS WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

### 23. DIRECTORS' REMUNERATION

- 23.1 Directors may undertake any services for the Society which the Directors decide.
- 23.2 Directors shall not be entitled to any remuneration from the Society for their services without the prior recommendation of the persons exercising the supervisory function in accordance with Article 14.3 and Ordinary Resolution of the Members in accordance with Article 13.4(b).

### 24. DIRECTORS' EXPENSES

Subject to Article 14.3 the Society may pay any reasonable expenses which the Directors and the Secretary of the Society (if any) properly incur in connection with their attendance at (or returning from): meetings of Directors or committees of Directors; or General Meetings; or otherwise in connection with the business of the Society, the exercise of their powers and the discharge of their duties and responsibilities in relation to the Society.

### 25. SECRETARY

- 25.1 The Directors may appoint any person who is willing to act as the Secretary of the Society for such term, at such remuneration and upon such conditions as they may think fit, and any Secretary so appointed may be removed by them at any time.
- 25.2 The Directors may from time to time, by resolution, appoint a temporary substitute for the Secretary or two or more persons as joint secretaries and one or more deputy and/or assistant secretaries and any person so appointed shall for all the purposes of these Articles be deemed during the term of his or her appointment to be the Secretary.

### 26. THE SEAL

- 26.1 The Directors shall provide for the safe custody of the Seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors in

that behalf, and every instrument to which the Seal shall be affixed shall be signed by a Director and shall be countersigned by the Secretary or by a second Director or by some other person appointed by the Directors for the purpose.

- 26.2 A document signed with the authority of the Directors or a committee of the Directors, by a Director and the Secretary or by two Directors and expressed to be executed by the Society shall have the same effect as if executed under the Seal.

## **27. DECISION MAKING BY DIRECTORS**

The general rule about decision-making by Directors (who are not Conflicted Directors) is that any decision of the Directors must be:

- (a) a majority decision at a meeting; or
- (b) a decision taken in accordance with Article 28 (Unanimous Decisions).

## **28. UNANIMOUS DECISIONS**

- 28.1 A decision of the Directors is taken in accordance with this Article when all eligible Directors indicate to each other by any means they share a common view on a matter.
- 28.2 Such a decision may take the form of a resolution in writing where each eligible Director has signed one or more copies of it or to which each eligible Director has otherwise indicated agreement in writing.
- 28.3 A decision may not be taken in accordance with this Article if the eligible Directors would not have formed a quorum at a Directors' meeting held to discuss the matter in question.

## **29. CALLING A DIRECTORS' MEETING**

- 29.1 Any Director, including the Chief Executive Officer appointed by the Directors from time to time, may call a Directors' meeting by giving notice of the meeting to the Directors or by authorising the Secretary (if any) to give such notice.
- 29.2 Notice of any Directors' meeting must indicate:
- (a) its proposed date and time;
  - (b) where it is to take place;
  - (c) the matters to be discussed and
  - (d) 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.

- 29.3 Save as provided otherwise in these Articles, notice of a Directors' meeting must be given to each Director in writing but may be communicated by electronic means as provided by these Articles.
- 29.4 Notice of a Directors' meeting need not be given to Directors who waive their entitlement to notice of that meeting.

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

- 30.1 Subject to these Articles, Directors participate in a Directors' meeting, or part of a Directors' meeting, when:
- (a) the meeting has been called and takes place in accordance with these Articles, and
  - (b) they can each communicate orally (including by means of telephone, video conference or other audio or audio-visual link or any other form of telecommunication) to the others any information or opinions they have on any particular item of the business of the meeting.
- 30.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other, provided that all persons participating in the meeting can hear each other.
- 30.3 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.

### **31. REGISTER OF MEMBERS**

- 31.1 The Directors shall cause a Register of Members to be kept at the registered office of the Society.
- 31.2 The Directors shall cause the Register of Members which is kept under the provisions of this Article to be completed and made available for inspection in accordance with the provisions of the Act.

### **32. DECISION MAKING BY MEMBERS AND GENERAL MEETINGS**

- 32.1 The Society shall hold a General Meeting as its Annual General Meeting in each calendar year in addition to any other meetings in that year, and shall specify the meeting as such in the notice calling it. The Annual General Meeting shall be held at such time and place as the Directors shall appoint.
- 32.2 All General Meetings other than Annual General Meetings shall be called General Meetings.

- 32.3 The Directors may, whenever they think fit, convene a General Meeting, and General Meetings shall also be convened on such requisition, or, in default, may be convened by such requisitioners, as provided by Sections 303 and 304 of the Companies Act 2006.
- 32.4 A General Meeting may be called at the requisition of
- (a) any three members of the Board of Management;
  - (b) 100 Members of the Society.

### **33. NOTICE OF GENERAL MEETINGS**

- 33.1 Any General Meeting of the Society including an Annual General Meeting or a meeting called for the passing of a Special Resolution or a resolution appointing a person as a Director shall be called by at least fourteen clear days' notice in writing unless the Members shall have given consent to shorter notice being provided for the transaction of business as required by the Act or in accordance with Article 34.11.
- 33.2 The notice shall specify the place, the day and the hour of meeting and the general nature of the business to be dealt with at that meeting and shall be given, in any manner permitted by these Articles (as permitted by the Act) or in such other manner, if any, as may be prescribed by the Society in General Meeting, to such persons as are, under these Articles, entitled to receive such notice from the Society provided always that a meeting of the Society shall, notwithstanding that it is called by shorter notice than that specified in this Article be deemed to have been duly called if it is so agreed:-
- (a) in the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote; and
  - (b) in the case of any other meeting, by agreement of not less than the equivalent of 80% of the Members having a right to attend and vote at the meeting.
- 33.3 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

### **34. PROCEEDINGS AT GENERAL MEETINGS**

- 34.1 All Members of the Society shall have the right to participate in, and the right to vote at, any General Meeting of the Society. When a Member gives notice that they wish to participate in a General Meeting by telephone link, the Member will be enabled to participate in this way.

- 34.2 No business shall be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Twenty five persons, or one twentieth of the Members, whichever is the lesser entitled to vote upon the business to be transacted, each being a Member or a proxy for a Member or a duly authorised representative of a corporation, shall be a quorum.
- 34.3 If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall be a quorum.
- 34.4 The Chair or in his or her absence the Vice-Chair shall preside as Chair of the Meeting, but if neither the Chair nor the Vice-Chair be present within fifteen minutes after the time appointed for holding the Meeting or if neither of them is willing to act, members of the Board of Management present shall elect one of their number to be Chair and, if there is only one Board of Management member present and willing to act, he or she shall be Chair.
- 34.5 A Board Member shall, notwithstanding that he or she is not a Member, be entitled to attend and speak at any Meeting.
- 34.6 The Chair may, with the consent of any Meeting at which a quorum is present (and shall if so directed by the Meeting), adjourn the Meeting from time to time and from place to place, but no business shall be transacted at any adjourned Meeting other than business which might properly have been transacted at the Meeting had the adjournment not taken place. It shall not be necessary to give any Notice of an adjourned Meeting.
- 34.7 A resolution put to the vote of the Meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll is duly demanded by the Chair or by any Member present in person or by proxy and entitled to vote.
- 34.8 Unless a poll is duly demanded a declaration by the Chair that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the Minutes of the Meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

The demand for a poll may, before the poll is taken, be withdrawn with the consent of the Chair and a demand so withdrawn shall not be taken to have invalidated the result on a show of hands declared before the demand was made.

34.9 A poll shall be taken in such manner as the Chair directs and he or she may appoint scrutineers (who need not be Members) and fix a place and time for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the Meeting at which the poll was demanded.

34.10 In the case of an equality of votes, whether on a show of hands or on a poll, the Chair shall be entitled to a casting vote, in addition to any other vote he or she may have.

34.11A poll demanded on any question shall be taken either forthwith or at such later time and at such place as the Chair of the Meeting directs not being more than thirty days after the conclusion of the Meeting. The demand for a poll shall not prevent the continuance of a Meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the Meeting shall continue as if the demand had not been made.

34.12 No notice need be given of a poll not taken forthwith if the time and place at which it is taken are announced at the Meeting at which it is demanded. In any other case, seven clear days' notice at the least shall be given specifying the place, the day and the time at which the poll is to be taken.

34.13 If at any General Meeting any vote shall be counted which ought not to have been counted, or might have been rejected, the error shall not vitiate the results of the voting unless it be pointed out at the same meeting, and not in that case unless it shall, in the opinion of the Chair of the meeting, be of sufficient magnitude to vitiate the result of the meeting.

## **35. VOTES OF MEMBERS AND PROXY NOTICES**

35.1 Every Member shall have one vote.

35.2 On a poll votes may be given either personally or by proxy. Every Member has the right to appoint another person as proxy to participate in, and vote at, a General Meeting of members on the Member's behalf provided that the appointment does not result in a conflict of interest.

35.3 An appointment of a proxy shall be

(a) by means of an instrument or contained in electronic form;

- (b) any usual or common form or in any other form which the Directors may from time to time approve; and
- (c) executed by the Member or his or her or its agent or, if the Member is a corporation by a duly authorised officer, attorney or other authorised person or under its common seal.

35.4 For the purpose of this Article 35, an electronic communication which contains a proxy appointment need not comprise writing if the Directors so determine. In such case, if the Directors so determine, the appointment shall not be executed but shall instead be subject to such conditions as the Directors may approve.

35.5 The Directors may, if they think fit, but subject to the Act, at the expense of the Society send forms of proxy for use at the meeting and issue invitations contained in electronic communications to appoint a proxy in relation to the meeting in such form as the Directors may approve.

35.6 A proxy need not be a Member of the Society.

35.7 The appointment of a proxy shall

- (a) in the case of an instrument, be delivered personally or by post to the registered office or such other place within the United Kingdom as may be specified by or on behalf of the Society for that purpose:
  - (i) in the notice convening the meeting; or
  - (ii) in any form of proxy sent by or on behalf of the Society in relation to the meeting; not less than 48 hours before the time fixed for holding the meeting.
- (b) in the case of an appointment contained in an electronic communication, where an address has been specified by or on behalf of the Society for the purpose of receiving electronic communications
  - (i) in the notice convening the meeting; or
  - (ii) in any form of proxy sent by or on behalf of the Society in relation to the meeting; or
  - (iii) in any invitation contained in an electronic communication to appoint a proxy issued by or on behalf of the Society in relation to the meeting be received at that electronic address not more than 48 hours before the time appointed for holding the meeting. In calculating the 48 hour period above, no account shall be taken of any day or part of a day that is not a working day.

35.8 No appointment of a proxy shall be valid after the expiration of twelve months from the date stated in it as the date of its execution.

35.9 An appointment of a proxy shall, unless the contrary is stated on the proxy, also be

valid for any adjournment of the meeting as for the meeting to which it relates. An appointment relating to more than one meeting (including any adjournment of a meeting) having been duly delivered for the purposes of any meeting shall not need to be delivered again in relation to any subsequent meetings to which it relates.

35.10 An instrument or electronic communication appointing a proxy shall be in the following form or any other form which the Directors may approve from time to time: -

I/We \_\_\_\_\_ of \_\_\_\_\_, being a Member/Members of the above-named Society, hereby appoint

\_\_\_\_\_ of \_\_\_\_\_ or failing \_\_\_\_\_ of \_\_\_\_\_

as my/our proxy to vote for me/us on my/our behalf at the (Annual General or General as the case may be) Meeting of the Society to be held on the \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_, and at any adjournment thereof.

Signed this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

35.11 The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

## **36. ACCOUNTS AND DIRECTORS' AND ANNUAL TRANSPARENCY REPORT**

36.1 The Directors shall cause proper books of account to be kept in accordance with the provisions of Section 386 of the Companies Act 2006 with respect to: -

(a) all sums of money received and expended by the Society and the matters in respect of which the receipt and expenditure takes place; and

(b) the assets and liabilities of the Society; and

(c) all those matters required by the Act to be shown in the accounts of the Society.

36.2 Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the affairs of the Society and to explain its transactions.

36.3 The books of account shall be kept at the registered office of the Society, or, subject to Section 388 of the Companies Act 2006 at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

36.4 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the

Society or any of them shall be open to the inspection of Members or representatives not being Directors, and no Member or representative (not being a Director) shall have any right of inspecting any account or books or document of the Society except as conferred by the Regulations or at law or authorised by the Directors or by the Society in General Meeting.

- 36.5 The Directors shall from time to time cause to be prepared and laid before the Society in General Meeting such profit and loss accounts, balance sheets and Directors' reports and Annual Transparency Reports as are provided for in the Act and the Regulations.
- 36.6 A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Society in General Meeting, together with a copy of the Auditors' report, shall not less than fourteen days before the date of the meeting be sent to every Member of, and every holder of debentures of, the Society, provided that this Article shall not require a copy of those documents to be sent to any person of whose address the Society is not aware.
- 36.7 The declaration of the Directors supported by the certificate of the Auditors as to the amount of the monies received by the Society shall be conclusive.

### **37. AUDIT**

Auditors shall be appointed and their duties regulated in accordance with the Act and the Regulations.

### **38. COMMUNICATIONS**

- 38.1 Subject to the provisions of the Act (and save as otherwise provided in these Articles), any document or information required or authorised to be sent or supplied by the Society to any Member or any other person (including a Director) pursuant to these Articles, the Act or any other rules or regulations to which the Society may be subject, may be sent or supplied in hard copy form, in electronic form or in any other way in which documents or information may be sent or supplied by the Society pursuant to the Act.
- 38.2 Subject to these Articles, any notice or document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or documents for the time being.
- 38.3 The provisions of the Act which apply to sending or supplying a document or information required or authorised to be sent or supplied by the Act by making it available on a website shall, mutatis mutandis, apply to the sending or supplying of any document or information required or authorised to be sent by these Articles or any other rules or regulations to which the Society may be subject, by making it available on a website.

- 38.4 The Society may send or supply any document or information to a Member or any other person (including a Director) pursuant to these Articles, the Act or any other rules or regulations to which the Society may be subject, either personally, or by post in a prepaid envelope addressed to the Member (or such other person) at its registered address or address for service, or by leaving it at that address or any other address for the time being notified to the Society by the Member (or such other person) for the purpose, or by sending or supplying it using electronic means to an electronic address for the time being notified to the Society by the Member (or such other person) for the purpose, or by any other means authorised in writing by the Member (or such other person) concerned.
- 38.5 If, on at least two consecutive occasions, the Society has attempted to send any document or information by electronic means to any address specified (or deemed specified) for the purpose and a delivery failure (or other similar) notification has been received by the Society, the Society thereafter shall send documents or information in hard copy form or electronic form (but not by electronic means) to such Member at its registered address or address for service within the United Kingdom (whether by hand, by post or by leaving it or them at such address), in which case the provisions of Article 38.6 shall apply.
- 38.6 If on three consecutive occasions, documents or information have been sent or supplied to any Member at its registered address or address for service of such documents or information but have been returned undelivered, such Member shall not thereafter be entitled to receive any documents or information from the Society until he or she or it shall have communicated with the Society and supplied in writing a new registered address or address for the service of documents or information or an electronic address to which documents or information may be sent or supplied using electronic means.
- 38.7 Any Member present, in person or by proxy, at any meeting of the Society shall be deemed to have received due notice of such meeting and, where requisite, of the purpose for which such meeting was called.
- 38.8 Save as provided otherwise in these Articles, any document or information addressed to a Member (or other person to whom such document or information is required or authorised to be sent pursuant to these Articles, the Act or otherwise) at its registered address or address for service or electronic address, as the case may be, shall:
- (a) if hand delivered or left at a registered address or other address for service be deemed to have been served or delivered on the day on which it was so delivered or left;
  - (b) if sent or supplied by post be deemed to have been received at the expiration of 48 hours after the envelope was posted;
  - (c) if sent or supplied by electronic means (other than by means of a website), be deemed to have been received (if sent or supplied between the hours of 9 a.m. and 5 p.m. on a working day) at the time it was sent, or (if sent or supplied at any other time) at 9 a.m. on the next following working day; and
  - (d) if sent or supplied by means of a website, be deemed to have been received when the material was first made available on the website or, if later, when the recipient received

(or is deemed to have received) notice of the fact that the material was available on the website.

- 38.9 In calculating a period of hours for the purpose of Article 39.8 no account shall be taken of any part of a day that is not a working day.
- 38.10 A Director may agree with the Society that 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 those set out in Article 38.8.
- 38.11 Subject to Article 38.6, in providing such service or delivery it shall be sufficient to prove that the envelope containing the document or information was properly addressed and put into the post in a prepaid envelope or, in the case of a document or information sent or supplied by electronic means, that it was sent or supplied in accordance with the guidance issued by the Institute of Chartered Secretaries and Administrators entitled "Electronic Communications with Shareholders 2007" (as such guidance is amended or updated from time to time).
- 38.12 The Society shall not be held responsible for any failure in transmission beyond its reasonable control and the provisions of this Article shall apply regardless of any document or information being returned undelivered and regardless of any delivery failure notification or "out of office" or other similar response and any such "out of office" or other similar response shall not be considered to be a delivery failure.
- 38.13 Notice of every General Meeting shall be given in any manner herein before authorised to:-
- (a) every Member except those Members who (having no registered address within the United Kingdom) have not supplied to the Society an address within the United Kingdom or overseas for the giving of notice to them;
  - (b) the Auditor for the time being of the Society.
- No other person shall be entitled to receive notices of General Meetings.

### **39. INDEMNITY AND FUNDS**

Subject to the provisions of the Act, but without prejudice to any indemnity to which he or she may otherwise be entitled, each person who is a Director, Alternate Director, officer, manager or Secretary of the Society shall be indemnified out of the assets of the Society against all costs, charges, losses, and liabilities incurred by him or her in the proper exercise of his or her powers, authorities and discretions including, without limitation, a liability incurred:

- (a) defending proceedings (whether civil or criminal) in which judgement is given in his favour or in which he or she is acquitted, or which are otherwise disposed of without a finding or admission of material breach on his or her part; or
- (b) in connection with any application in which relief is granted to him or her by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Society.

For these purposes “the Act” as defined in Article 1 shall be deemed to include the Companies (Audit and Investigations and Community Enterprise) Act 2004 (the “2004 Act”) including any statutory modification or any statutory re-enactment or substitution of the 2004 Act and any regulations made under the 2004 Act for the time being in force.

#### **40. INSURANCE**

40.1 Without prejudice to Article 39 the Directors shall have the power to purchase and maintain insurance for or for the benefit of any person who is or was at any time:

- (a) a Director or other officer of any Relevant Company (as defined in Article 40.2 below) or
- (b) a trustee of any pension fund or retirement, death or disability scheme for the benefit of any employee of any Relevant Company or employees’ share scheme in which the employees of any Relevant Company are interested,

including (without limitation) insurance against any liability within Article 39 incurred by him or her in relation to any Relevant Company, or any such pension fund, retirement or other scheme or employees’ share scheme.

40.2 In these Articles “Relevant Company” shall mean the Society or any other undertaking which is or was at some time:

- (a) a subsidiary undertaking of the Society; or
- (b) otherwise associated with the Society or any subsidiary undertaking or the predecessors in business of the Society or of any subsidiary undertaking or associate.

#### **41. WINDING UP**

41.1 The liability of the Members is limited.

41.2 Every Member of the Society undertakes to contribute such amount as may be required (not exceeding £1) to the assets of the Society should it be wound up while he or she is a Member or within one year after he or she ceases to be a member, for payment of the Society’s debts and liabilities contracted before he or she ceases to be a Member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

41.3 In the event of and upon the winding up or dissolution of the Society, whether voluntary or otherwise, at any time, there remains, after the satisfaction of all its debts and liabilities, any property whatsoever (other than any rights vested in or controlled by the Society pursuant to these Articles and any sums distributable) the same shall not be paid to or distributed among the Members of the Society but shall be given or transferred to some other

institution or institutions for the benefit of Performers and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as imposed on the Society under these Articles, such institution or institutions to be determined by the Members of the Society at or before the time of dissolution, and if and so far as effect cannot be given to such provision, then to some other charitable object for the benefit of Performers.