

COMPANIES ACT 2014
CONSTITUTION
OF
NBI INFRASTRUCTURE DESIGNATED ACTIVITY COMPANY

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MEMORANDUM OF ASSOCIATION

OF

NBI INFRASTRUCTURE DESIGNATED ACTIVITY COMPANY

1 Private Company

1 The name of the company is: NBI Infrastructure Designated Activity Company.

2 The Company is a designated activity company limited by shares, that is to say a private company limited by shares, registered under Part 16 of the Companies Act 2014.

3 The objects for which the Company is established are:

The principal object for which the Company is established is to design, build, operate and maintain an ultrafast broadband network across the Republic of Ireland in accordance with the terms set out in the Agreement in respect of the National Broadband Intervention Project dated ___ November 2019 made between the Minister for Communications, Climate Action and Environment and the Company and to provide the Services, Wholesale Products and Network and own the Assets (such terms being defined in the Agreement). The Company shall in addition to the powers conferred on it by law have the following powers as listed below which are exclusively subsidiary and ancillary to the principal object and which powers may only be exercised in promoting the principal object. This paragraph 3 shall not be amended without prior Minister Special Shareholder Consent (as defined for the purposes of the Company's articles of association).

4.1 To carry on all or any of the businesses as aforesaid either as a separate business or as the principal business of the Company and to carry on any other business (whether manufacturing or otherwise) (except the issuing of policies of insurance) which may seem to the Company capable of being conveniently carried on in connection with the above objects or calculated directly or indirectly to enhance the value of or render more profitable any of the Company's property.

4.2 To purchase, take on lease or in exchange or otherwise acquire real and chattel real property of all kinds and in particular lands, tenements and hereditaments of any tenure whether subject or not to any charges or encumbrances, and to hold or to sell, develop, let, alienate, mortgage, charge, or otherwise deal with all or any of such lands, tenements or hereditaments for such consideration and on such terms as may be considered expedient.

4.3 To improve, manage, cultivate, develop, exchange, let on lease or otherwise, mortgage, charge, sell, dispose of, turn to account, grant rights and privileges in respect of, or otherwise deal with all or any part of the property and rights of the Company.

4.4 To acquire and hold shares and stocks of any class or description, debentures, debenture stock, bonds, bills, mortgages, obligations, investments and securities of all descriptions and of any kind issued or guaranteed by any company, corporation or undertaking of whatever nature and wheresoever constituted or carrying on business or issued or guaranteed by any government, state, dominion, colony, sovereign ruler, commissioners, trust, public, municipal, local or other authority or body of whatsoever nature and wheresoever situated and investments, securities and property of all descriptions and of any kind, including real and chattel real estates, mortgages, reversions, contingencies and choses in action.

4.5 To invest any moneys of the Company in such investments and in such manner as may from time to time be determined, and to hold, sell or deal with such investments and generally to purchase, take on lease or in exchange or otherwise acquire any real and personal property and rights or privileges.

- 4.6 To purchase or otherwise acquire and undertake, the whole or any part of the business, goodwill, property, assets and liabilities of any person firm or company, or to acquire an interest in, amalgamate with, or enter into partnership or into any arrangement for sharing profits, union of interests, or for co-operation, joint venture or for mutual assistance or reciprocal concession with any such person, firm or company, and to give or accept by way of consideration for any of the acts or things aforesaid or property acquired, any shares, debentures, debenture stock or securities that may be agreed upon, and to hold and retain or sell, mortgage and deal with any shares, debentures, debenture stock or securities so received.
- 4.7 To sell or otherwise dispose of the whole or any part of the business, undertaking, property or investments of the Company, either together or in portions for such consideration and on such terms as may be considered expedient.
- 4.8 To pay for any property, assets or rights acquired by the Company, and to discharge or satisfy any debt, obligation or liability of the Company, either in cash or in shares with or without preferred or deferred rights in respect of dividend or repayment of capital or otherwise, or by any other securities which the Company has power to issue, or partly in one way and partly in another, and generally on such terms as may be considered expedient.
- 4.9 To accept payment for any property, assets or rights disposed of or dealt with or for any services rendered by the Company, or in discharge or satisfaction of any debt, obligation or liability to the Company, either in cash or in shares, with or without deferred or preferred rights in respect of dividend or repayment of capital or otherwise, or in any other securities, or partly in one way and partly in another, and generally on such terms as may be considered expedient.
- 4.10 To advance, deposit or lend money, securities and property to or with such persons and on such terms as may seem expedient.
- 4.11 To borrow or raise money in any such manner and on such terms and for such purposes as the Company shall think fit, whether alone or jointly and / or severally with any person or persons, including, without prejudice to the generality of the foregoing, by the issue of debentures or debenture stock (perpetual or otherwise), and to secure, with or without consideration, the payment or repayment of any money borrowed, raised, or owing or any debt, obligation or liability of the Company or of any person whatsoever in such manner and on such terms as the Company shall think fit, and in particular by mortgage, charge, lien or debenture or any other security of whatsoever nature or howsoever described, perpetual or otherwise, charged upon all or any of the Company's property, undertaking, rights or assets of any description, both present and future, including its uncalled capital, and to purchase, redeem or pay off any such securities.
- 4.12 To pay and discharge, and to give guarantees, indemnities, counter indemnities and all manners of assurances against loss in respect of, any or all of the debts, obligations and liabilities of any person, firm or corporation, wherever resident, formed or incorporated and whether or not in any manner connected with or related to the Company, in favour of any person, firm or corporation (and in the case of any such guarantee, indemnity, counter indemnity or assurance whether by personal covenant or by mortgaging, charging, pledging or otherwise securing all or any part of the undertaking, property, assets and revenues present and future of the Company or by any combination of such methods), in each case whether with or without consideration or benefit to the Company and notwithstanding that the Company may derive no benefit from the same at any time, and whether or not the same is in the interests of the Company and notwithstanding that it may involve the use of the Company's property for the benefit of one or more directors of the Company or of any other person; the power contained in this paragraph shall be a separate, distinct and independent object of the Company and not ancillary or incidental to any of the other objects set out in any other paragraph, nor shall it be limited or restricted by references to or interference from the terms of any other paragraph.

- 4.13 Whether for the purpose of making a profit or avoiding a loss or managing a current or interest rate exposure or any other exposure or for any other purpose whatsoever, to engage in currency exchange, interest rate and commodity transactions, derivative transactions and any other financial or other transactions of whatever nature in any manner and on any terms and for any purposes whatsoever, including, without prejudice to the generality of the foregoing, any transaction for the purpose of, or capable of being for the purposes of, avoiding, reducing, minimising, hedging against or otherwise managing the risk of any loss, cost, expense, or liability arising, or which may arise, directly or indirectly, from a change or changes in any interest rate or currency exchange rate or in the price or value of any property, asset, commodity, index or liability or from any other risk or factor affecting the Company's business, including but not limited to dealings whether involving purchases, sales or otherwise in foreign currency, spot and / or forward rate exchange contracts, futures, options, forward rate agreements, swaps, caps, floors, collars and any such other foreign exchange or interest rate or commodity or other hedging arrangements and such other instruments as are similar to, or derived from, any of the foregoing.
- 4.14 To the extent that the same is permitted by law, to give financial assistance for the purpose of an acquisition made or to be made by any person of any shares in the Company or the Company's holding company for the time being (within the meaning of section 8 of the Companies Act 2014) and to give such assistance by any means howsoever permitted by law.
- 4.15 To redeem, purchase or otherwise acquire in any manner permitted by law and on such terms and in such manner as the Company may think fit any shares in the Company's capital.
- 4.16 To apply for, purchase or otherwise acquire and hold, use, develop, protect, sell, licence or otherwise dispose of, or deal with patents, brevets d'invention, copyrights, designs, trade marks, secret processes, know-how and inventions and any interest therein.
- 4.17 To form, promote, finance or assist any other company or association, whether for the purpose of acquiring all or any of the undertaking, property and assets of the Company or for any other purpose which may be considered expedient.
- 4.18 To facilitate and encourage the creation, issue, conversion and offering for public subscription debentures, debenture stocks, bonds, obligations, shares, stocks, and securities and to act as trustees in connection with any such securities and to take part in the conversion of business concerns and undertakings into companies.
- 4.19 To draw, make, accept, endorse, discount, negotiate, and issue bills of exchange, promissory notes, bills of lading and other negotiable or transferable instruments.
- 4.20 To act as managers, consultants, supervisors and agents of other companies or undertakings and to provide for such other companies or undertakings, management, advisory, technical, purchasing, selling and other services, and to enter into such contracts and agreements as are necessary or advisable in connection with the foregoing.
- 4.21 To establish, regulate and discontinue franchises, agencies and branches, appoint agents and others to assist in the conduct or extension of the Company's business and to undertake and transact all kinds of trust, agency and franchise business which an individual may legally undertake.
- 4.22 To make gifts or grant bonuses to the directors or any other persons who are or have been in the employment of the Company including alternate directors.
- 4.23 To make such provision for the education and training of employees and prospective employees of the Company and others as may seem to the Company to be advantageous to or calculated, whether directly or indirectly, to advance the interests of the Company or any member thereof.
- 4.24 To provide for the welfare of persons in the employment of or holding office under or formerly in the employment of or holding office under the Company or directors or ex-directors of the

- Company and the wives, widows and families dependents or connections of such persons by grants of money, pensions or other payments and by forming and contributing to pension, provident or benefit funds or profit sharing or co-partnership schemes for the benefit of such persons and to form, subscribe to or otherwise aid charitable, benevolent, religious, scientific, national or other institutions, exhibitions or objects which shall have any moral or other claims to support or aid by the Company by reason of the locality of its operation or otherwise.
- 4.25 To insure the life of any person who may, in the opinion of the Company, be of value to the Company, as having or holding for the Company interests, goodwill or influence or otherwise and to pay the premiums on such insurance.
- 4.26 To undertake and execute the office of nominees for the purpose of holding and dealing with any real or personal property or security of any kind for or on behalf of any government, local authority, mortgagee, company, person or body; to act as nominee or agent generally for any purpose and either solely or jointly with another or others for any person, company, corporation, government, state or province, or for any municipal or other authority or local body; to undertake and execute the office of trustee, executor, administrator, registrar, secretary, committee or attorney; to undertake the management of any business or undertaking or transaction, and generally to undertake, perform and fulfil any trust or agency business of any kind and any office of trust or confidence.
- 4.27 To constitute any trusts with a view to the issue of preferred and deferred or other special stocks or securities based on or representing any shares, stocks and other assets specifically appropriated for the purpose of any such trust and to settle and regulate and if thought fit to undertake and execute any such trusts and to issue, dispose of or hold any such preferred, deferred or other special stocks or securities.
- 4.28 To establish, on and subject to such terms as may be considered expedient, a scheme or schemes for or in relation to the purchase of, or subscription for, any fully or partly paid shares in the capital of the Company by, or by trustees for, or otherwise for the benefit of, employees of the Company or of its subsidiary or related companies.
- 4.29 To vest any real or personal property, rights or interest acquired by or belonging to the Company in any person or company on behalf of or for the benefit of the Company, and with or without any declared trust in favour of the Company.
- 4.30 To enter into any arrangements with any governments or authorities (supreme, municipal, local or otherwise), or any corporations, companies or persons that may seem conducive to the attainment of the Company's objects, or any of them and to obtain from any such government, authority, corporation, company, or person any charters, contracts, decrees, rights, privileges and concessions, including grant aid, which the Company may think desirable, and to carry out, exercise and comply with any such charters, contracts, decrees, rights, privileges, concessions and grant agreements.
- 4.31 To apply for, promote and obtain any Act of the Oireachtas, provisional order or licence of the Minister for Jobs, Enterprise and Innovation or other authority for enabling the Company to carry any of its objects into effect, or for effecting any modification of the Company's constitution, or for any other purpose which may seem expedient, and to oppose any proceedings or applications which may seem calculated, directly or indirectly, to prejudice the Company's interests.
- 4.32 To pay all costs, charges and expenses incurred or sustained in or about the promotion and establishment of the Company or which the Company shall consider to be preliminary thereto and to issue shares as fully or in part paid up, and to pay out of the funds of the Company all brokerage and charges incidental thereto.
- 4.33 To remunerate, by cash payment or allotment of shares or securities of the Company credited as fully paid up or otherwise, any person or company for services rendered or to be rendered to the Company whether in the conduct or management of its business, or in placing or assisting to place or guaranteeing the placing of any of the shares of the Company's capital, or

any debentures or other securities of the Company or in or about the formation or promotion of the Company.

- 4.34 To distribute in specie or otherwise as may be resolved, any assets of the Company among its members and in particular the shares, debentures, or other securities of any other company belonging to the Company or of which the Company may have the power of disposing.
- 4.35 To procure the Company to be registered in any part of the world.
- 4.36 To transact or carry on any other business which may seem to the Company capable of being conveniently carried on in connection with any of these objects or calculated directly or indirectly to enhance the value of or facilitate the realisation of or render profitable any of the Company's property or rights.
- 4.37 To do all or any of the above things in any part of the world, either alone or in conjunction with others and either as principals, agents, contractors, factors, trustees or otherwise and either by or through agents, contractors, factors, trustees or otherwise.

The word "company" in this clause except where used in reference to this Company, where the context so admits, shall be deemed to include any partnership or other body of persons whether incorporated or not incorporated or whether domiciled or registered in Ireland or elsewhere and the intention is that in the construction of this clause the objects set forth in each of the foregoing sub-paragraphs shall, except where otherwise expressed in the same paragraph, be regarded as independent objects and accordingly shall in no way be limited or restricted by reference to or inference from the terms of any other sub-clause or the name of the Company, but may be carried out in as full and ample a manner and construed in as wide a sense as if each defined the objects of a separate and distinct company.

Provided always that the provisions of this clause shall be subject to the Company obtaining, where necessary for the purpose of carrying any of its objects into effect, such licence, permit or authority as may be required by law.

- 5 The liability of the members is limited.
- 6 The share capital of the Company is €3,000,000,001, divided into 3,000,000,000 Ordinary Shares of €1.00 each and one (1) Special Share of €1.00.

ARTICLES OF ASSOCIATION
OF
NBI INFRASTRUCTURE DESIGNATED ACTIVITY COMPANY

1 Interpretation

1.1 In this Constitution:

“**Act**” means the Companies Act 2014 and every statutory modification or re-enactment thereof for the time being in force;

“**Agreement**” means the project agreement in respect of the national broadband intervention project dated ___ November 2019 between (1) the Minister and (2) the Company;

“**appointee**” has the meaning given to it in Regulation 41;

“**appointer**” has the meaning given to it in Regulation 41;

“**Approved Form**” has the meaning given to it in the Agreement;

“**Board**” means the board of directors of the Company;

“**Change in Ownership**” has the meaning given to it in the Agreement;

“**Change of Control**” has the meaning given to it in the Agreement, subject as provided in the definition of “Control” in this Constitution;

“**Commencement Date**” has the meaning given to it in the Agreement;

“**Company**” means NBI Infrastructure Designated Activity Company;

“**Company Personnel**” means all employees, agents, consultants and contractors (of any tier) of the Company and / or of any Subcontractor (of any tier) employed or engaged in the performance of the Agreement from time to time;

“**Compliance and Governance Officer**” has the meaning given to it in the Agreement;

“**Conflict of Interest**” has the meaning given to it in Regulation 40;

“**Conflicted Director**” has the meaning given to it in Regulation 40;

“**Constitution**” has the meaning set out in Regulation 1.2;

“**Contract Period**” has the meaning given to it in the Agreement;

“**Contract Term**” has the meaning given to it in the Agreement;

“**Contract Year**” has the meaning given to it in the Agreement;

“**Control**” has the meaning given to it in the Agreement;

“**Deployment Completion Date**” has the meaning given to it in the Agreement;

“**director**” means a director of the Company and the “**directors**” means the directors or any of them acting as the board of directors of the Company;

Disenfranchisement Notice” has the meaning given to it in Regulation 20.7;

“**dividend**” means any dividend, bonus or Distribution;

“**electronic communication**”, “**electronic signature**” and “**advanced electronic signature**” each has the meaning set out in the Electronic Commerce Act 2000;

“**Expiry Date**” has the meaning given to it in the Agreement;

“**Fund Manager Concerned**” has the meaning given to it in Regulation 20.5;

“**Governance Protocol**” has the meaning given to it in Regulation 42;

“**holder**” in relation to Shares means the member whose name is entered in the register of members as the holder of the shares;

“**Information Request Notice**” has the meaning given to it in Regulation 20.6;

“**Interest in Shares**” includes any beneficial or interest of any kind whatsoever in or to any Share or any direct or indirect right (through ownership or control of other entities or otherwise howsoever arising) to control the voting or other rights attributable to any Share or to receive any dividends or other distributions conferred on the holder of any Share disregarding any conditions or restrictions to which the exercise of any right attributed to such interest may be subject and “Interest” shall be construed accordingly;

“**Key Personnel**” has the meaning given to it in the Agreement;

“**Minister**” means the Minister for Communications, Climate Action and Environment of 29 to 31 Adelaide Road, Dublin 2, Ireland;

“**Minister’s Appointee**” has the meaning given to it in the Agreement;

“**Minister Special Shareholder**” means the holder for the time being of the Special Share;

“**Minister Special Shareholder Consent**” means the consent in writing of the Minister Special Shareholder;

“**Minister Special Share Preferential Dividend**” has the meaning given to it in Regulation 28.2;

“**NBPco Economic Group**” has the meaning given to it in the Agreement;

“**NBPco Termination Event**” has the meaning given to it in the Agreement;

“**Network Deployment**” has the meaning given to it in the Agreement;

“**ordinary resolution**” means a resolution passed by a simple majority of the votes cast by members of the Company as, being entitled to do so, vote in person or by proxy at a general meeting of the Company;

“**Ordinary Shares**” means the ordinary shares of €1.00 each in the capital of the Company;

“**Ordinary Shareholder**” means the holder for the time being of the Ordinary Shares;

“**paid**” means paid or credited as paid;

“**Project**” has the meaning given to it in the Agreement;

“registered person” means such person as is authorised to bind the Company in accordance with section 39 of the Act;

“Regulated Entity” has the meaning given to it in the Agreement;

“Regulations” means provisions of this Constitution, as amended from time to time;

“relevant notice” has the meaning given to it in Regulation 49;

“secretary” means the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary;

“Secured Party” shall have the meaning set out in Regulation 21.1.1;

“Service Provider” has the meaning given to it in the Agreement;

“Services” means the services, works, supplies, duties, functions, activities, responsibilities and tasks to be undertaken, provided and performed by the Company pursuant to the Agreement as more particularly described in the Agreement;

“Share” means any share in the capital of the Company and includes where the context so admits or requires, any Interest in Shares;

“Shareholder” means a holder for the time being of Shares;

“Shareholders’ Agreement” has the meaning given to it in the Agreement;

“single-member company” means a company which, for whatever reason, has, for the time being, a sole member;

“special resolution” means a resolution passed by not less than 75 per cent of the votes cast by such members of the Company as, being entitled to do so, vote in person or by proxy at a general meeting of the Company;

“Special Share” means the special share of €1.00 in the capital of the Company;

“State” has the meaning given to it in the Agreement;

“Subcontractor” has the meaning given to it in the Agreement;

“Subsidiary” has the meaning given to it in the Agreement;

“Top Tier Key Personnel” has the meaning given to it in the Agreement;

“transfer” where used in connection with a Share, includes, in addition to any transfer by means of a stock transfer form of the legal ownership of the Share:

- (a) any other transfer or assignment or disposal by any means of any Share or Interest in Shares or the creation of a trust or encumbrance or over a Share or any Interest in Shares or any other Change in Ownership in respect of a Share; and
- (b) any act, event, transaction or action howsoever described or effected which gives rise a Change in Ownership or a Change of Control of the Shareholder or the entity which is the registered or beneficial owner of that Share;

“Unsuitable Third Party” has the meaning given to it in the Agreement;

“UTP Restricted CiO” means a Change in Ownership restricted by the provisions of Clause 63.9.1 (Change in Ownership and of Control) of the Agreement or by Regulation 20; and

“Wholesale Products” has the meaning given to it in the Agreement.

- 1.2 The optional provisions of the Act (as defined by section 968 of the Act) shall apply to the Company save to the extent that they are excluded or modified by this constitution and such optional provisions (as so excluded or modified) together with the Regulations contained in this constitution shall constitute the Regulations of the Company (the **“Constitution”**).
- 1.3 Words denoting the singular number include the plural number and vice versa and words denoting a gender include each gender.
- 1.4 Words or expressions contained in this Constitution which are not defined in this Constitution but are defined in the Act have the same meaning as in the Act at the date of adoption of this Constitution unless inconsistent with the subject or context.
- 1.5 Headings are inserted for convenience only and do not affect the construction of this Constitution.
- 1.6 Any reference to a “person” shall be construed as a reference to any individual, firm, company, corporation, undertaking, government, state or agency of a state or any association or partnership (whether or not having separate legal personality).
- 1.7 Powers of delegation shall not be restrictively construed but the widest interpretation shall be given to them and except where expressly provided by the terms of delegation, the delegation of a power shall not exclude the concurrent exercise of that power by any other body or person who is for the time being authorised to exercise it under this Constitution or under another delegation of the power.
- 1.8 References to “writing” mean the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, and “written” shall be construed accordingly.
- 1.9 Any reference to any statute, statutory provision or to any order or Regulation shall (save as expressly provided in this Constitution) be construed as a reference to the statute, statutory provision, order or Regulation as extended, modified, amended, replaced or re-enacted from time to time (whether before or after the date of adoption of this Constitution) and all statutory instruments, Regulations and orders from time to time made thereunder or deriving validity therefrom (whether before or after the date of adoption of this Constitution).
- 1.10 Any capitalised terms used but not defined herein shall have the meanings given to them in the Agreement.

CORPORATE CAPACITY AND AUTHORITY

2 Tax Residency

The Company shall, throughout the Contract Term, be resident for tax purposes in the State.

3 Registered Person

Where the board of directors authorises any person as being a person entitled to bind the Company (not being an entitlement to bind that is, expressly or impliedly, restricted to a particular transaction or class of transactions), the Company may notify the Registrar of the authorisation in accordance with section 39 of the Act.

4 Powers of Attorney

The Company may empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds or do any other matter on its behalf in any place whether inside or outside the State. A deed signed by such attorney on behalf of the

Company shall bind the Company and have the same effect as if it were under its common seal.

5 The Common Seal

5.1 The Company shall have a common seal or seals that shall state the Company's name, engraved in legible characters.

5.2 The Company's seal shall be used only by the authority of its directors, or of a committee of its directors authorised by its directors in that behalf. Subject to Regulation 5.3, any instrument to which the Company's seal shall be affixed shall be signed by any one of:

5.2.1 a director;

5.2.2 the secretary; or

5.2.3 signed by a person (including a director) appointed for the purpose by its directors or a committee of its directors authorised by its directors in that regard,

and the signature or countersignature of a second such person shall not be required.

5.3 If there is a registered person in relation to the Company, the Company's seal may be used by such person and any instrument to which the Company's seal shall be affixed when it is used by the registered person may be signed by that registered person and shall not require countersignature by a second person.

5.4 Any instrument to which the common seal is affixed shall not be signed by the same person acting both as director and secretary.

5.5 Section 43(2) and section 43(3) of the Act do not apply.

6 Power for Company to have Official Seal for use Abroad

6.1 The Company may have for use in any place abroad (being a territory, district or place not situate in the State) an official seal which shall resemble the common seal of the Company with the addition on its face of the name of every place abroad where it is to be used.

6.2 A deed or other document to which an official seal is duly affixed shall bind the Company as if it had been sealed with the common seal of the Company.

6.3 If the Company has an official seal for use in any place abroad it may, by writing under its common seal, authorise any person appointed for the purpose in that place (the "**agent**") to affix the official seal to any deed or other document to which the Company is party in that place.

6.4 The authority of the agent shall, as between the Company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or, if no period is there mentioned, then until the notice of revocation or determination of the agent's authority has been given to the person dealing with him or her.

6.5 The person affixing an official seal shall, by writing under his or her hand, certify on the deed or other instrument to which the seal is affixed, the date on which and the place at which it is affixed.

SHARE CAPITAL, SHARES AND OTHER INSTRUMENTS

7 Shares

7.1 Shares in the capital of the Company shall have a nominal value.

- 7.2 Subject to Regulations 19 and 20, the Company may allot shares:
- 7.2.1 of different nominal values;
 - 7.2.2 of different currencies;
 - 7.2.3 with different amounts payable on them; or
 - 7.2.4 with a combination of two or more of the foregoing characteristics.
- 7.3 Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in the Company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the Company may from time to time by ordinary resolution determine.
- 7.4 Subject to Regulations 19 and 20, the Company may allot shares that are redeemable, which shall be known as “redeemable shares”.
- 7.5 The shares or other interest of any member in the Company shall be personal estate and shall not be of the nature of real estate.
- 7.6 Except as required by law, no person shall be recognised by the Company as holding any share upon any trust and the Company shall not be bound by or be compelled in any way to recognise (even when having notice of it):
- 7.6.1 any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share; or
 - 7.6.2 save only as the Act or other law otherwise provides, any other rights in respect of any share, except an absolute right to the entirety of it in the registered holder.
- 7.7 The foregoing Regulations shall not preclude the Company from requiring a member or a transferee of shares to furnish the Company with information as to the beneficial ownership of any share when such information is reasonably required by the Company or, for the avoidance of doubt, required pursuant to clause 63 of the Agreement or Regulation 20.
- 7.8 The Company shall not have power to issue any bearer instrument.
- 7.9 The number of members of the Company shall not exceed 149 but, in reckoning that limit, there shall be disregarded any of the following persons:
- 7.9.1 a person in the employment of the Company who is a member of it;
 - 7.9.2 a person who, having been formerly in the employment of the Company, was, while in that employment, and has continued after the termination of the employment to be, a member of it.
- 7.10 Where two or more persons hold one or more shares in the Company jointly, they shall, for the purposes of this Regulation, be treated as a single member.

8 Rights attaching to Ordinary Shares

- 8.1 Each Ordinary Shareholder shall be entitled to receive notice of and attend and speak at all general meetings of the Company and each Ordinary Share will confer on the Ordinary Shareholder one vote per Ordinary Share held.
- 8.2 Each Ordinary Shareholder will share in the revenue, expense, assets and liabilities of the Company on a pro rata basis (including any dividend rights, or rights to any other distribution, including capital repayment, or on a return of assets on liquidation or winding-up).

9 Rights attaching to the Special Share

- 9.1 The rights conferred on the Minister Special Shareholder under this Regulation 9 shall apply from the date of allotment of the Special Share up to and including the Contract Term Expiry Date. After the Contract Term Expiry Date, Regulation 20 and the following provisions of this Regulation 9, other than paragraphs 9.5 to 9.8 inclusive, shall cease to have effect.
- 9.2 The Special Share shall be issued at par and may be held only by, or transferred only to the Minister or some other person appointed by the Minister in writing. Any transfer of the Special Share to which the Minister or such other person has consented in writing shall be registered by the Company provided that it is duly stamped and accompanied by the relevant share certificate or an indemnity in a form acceptable to the Company in lieu.
- 9.3 Notwithstanding any other provisions of this Constitution, no resolution may validly be passed by the members of the Company or authorised by the directors where the effect of such resolution would be to:
- 9.3.1 amend, remove or alter all or insert any provision inconsistent with any of the following:
- (a) the Principal Objects (clause 3 in the Company's Memorandum of Association);
 - (b) this Regulation 9 or Regulations 12, 15, 18 to 22, 28, 31, 33, 35, 42, 43 and 44;
 - (c) the definitions of any of the terms used in this Regulation 9 or Regulations 12, 15, 18 to 22, 31, 33, 35, 42, 43 and 44; or
 - (d) other Regulations as necessary to preserve the Special Share rights;
- or,
- 9.3.2 implement or bring into effect any of the following matters without prior Minister Special Shareholder Consent:
- (a) conversion of the Company into any other form of body corporate; or
 - (b) any establishment of a body corporate or, acquisition of or suffering or permitting to continue or subsist ownership or control of, any interest in or right over a body corporate such that it is or becomes a subsidiary of the Company, or
 - (c) the declaration or payment of any dividend which would be in breach of any provision of the Agreement.
- 9.4 The Minister Special Shareholder shall be entitled to receive notice of and attend and speak at all general meetings of the Company but the Special Share shall confer on the Minister Special Shareholder no right to vote at such meetings.
- 9.5 On a return of assets in a winding up of the Company, the Minister Special Shareholder shall be entitled to repayment of the capital paid up on the Special Share in priority to any payment to other members but shall confer no further right to participate in the profits or assets of the Company.
- 9.6 Subject as provided in any Shareholders' Agreement, the Special Share shall not confer the right to receive any dividends on the Minister Special Shareholder other than the Minister Special Share Preferential Dividend.

9.7 In the event of any conflict between the provisions of this Regulation 9 or Regulation 20 and any other provision of this Constitution, the provisions of Regulations 9 or 20, as the case may be, shall prevail.

9.8 This Regulation 9 shall not be amended without prior Minister Special Shareholder Consent.

10 Limitation on Offers of Securities to the Public

10.1 The Company shall not:

10.1.1 make:

(a) any invitation to the public to subscribe for; or

(b) any offer to the public of,

any shares, debentures or other securities of the Company; or

10.1.2 allot, or agree to allot, (whether for cash or otherwise) any shares in or debentures of the Company with a view to all or any of those shares or debentures being offered for sale to the public or being the subject of an invitation to the public to subscribe for them.

10.2 The Company shall:

10.2.1 neither apply to have securities (or interests in them) admitted to trading or to be listed on; nor

10.2.2 have securities (or interests in them) admitted to trading or listed on,

any market, whether a regulated market or not, in the State or elsewhere; however, nothing in this Regulation prohibits the admission to trading or listing (or an application being made therefor) on any market of debentures (or interests in them) for the purposes of any of paragraphs (a) to (e) of section 68(3) of the Act.

11 Calls on Shares

11.1 Subject to Regulation 11.2, the directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium).

11.2 Regulation 11.1 does not apply to shares where the conditions of allotment of them provide for the payment of moneys in respect of them at fixed times.

11.3 Each member shall (subject to receiving at least 14 days' notice specifying the time or times and place of payment) pay to the Company, at the time or times and place so specified, the amount called on the shares.

11.4 A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect of which the call was made.

11.5 The application of section 77 of the Act shall be modified accordingly.

12 Lien

12.1 Notwithstanding any other provision of these Regulations, the Company's first and paramount lien on every Share called or payable at a fixed time in respect of that share and the extension of that lien to all dividends payable thereon shall not apply where any such shares have been mortgaged or charged by way of security in which event such lien shall rank behind any such security.

12.2 This Regulation 12 shall not be amended without prior Minister Special Shareholder Consent.

13 Forfeiture of Shares

13.1 In accordance with section 81 of the Act, if a member of the Company fails to pay any call or instalment of a call on the day appointed for payment of it, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

13.2 That notice shall:

13.2.1 specify a further day (not earlier than the expiration of 14 days after the date of service of the notice) on or before which the payment required by the notice is to be made; and

13.2.2 state that, if the amount concerned is not paid by the day so specified, the shares in respect of which the call was made will be liable to be forfeited.

13.3 Any forfeiture shall include all dividends or other moneys payable by the Company in respect of the forfeited shares and the application of section 81 of the Act shall be modified accordingly.

14 Financial Assistance for Acquisition of Shares

The Company may give any form of financial assistance that is permitted by the Act for the purpose of an acquisition made or to be made by any person of any shares in the Company or its holding company.

15 Minister Share Charge

15.1 The Minister Share Charge shall be enforceable as against the Company upon the occurrence of:

15.1.1 an NBPco Termination Event which is not rectified within the rectification period set out in the Agreement; or

15.1.2 a failure to pay any sums payable to the Minister on or after termination of the Agreement; or

15.1.3 as provided in accordance with the terms of the Minister Share Charge.

15.2 This Regulation 15 shall not be amended without prior Minister Special Shareholder Consent.

VARIATION IN CAPITAL

16 Variation of Company Capital

16.1 In accordance with section 83 of the Act, the Company may, by ordinary resolution, do any one or more of the following, from time to time:

16.1.1 consolidate and divide all or any of its shares into shares of a larger nominal value than its existing shares;

16.1.2 subdivide its shares, or any of them, into shares of a smaller nominal value, so however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

- 16.1.3 increase the nominal value of any of its shares by the addition to them of any undenominated capital;
- 16.1.4 reduce the nominal value of any of its shares by the deduction from them of any part of that value, subject to the crediting of the amount of the deduction to undenominated capital, other than the share premium account;
- 16.1.5 convert any undenominated capital into shares for allotment as bonus shares to holders of existing shares;
- 16.1.6 increase its share capital by new shares of such amount as it thinks expedient; and
- 16.1.7 with the exception of the Minister Special Share, cancel shares of its share capital which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

17 Reduction in Company Capital

The Company is authorised to reduce its company capital in accordance with section 84 of the Act.

18 Variation of Rights attached to Special Classes of Shares

If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, in accordance with section 982 of the Act, whether or not the Company is being wound up, be varied or abrogated with the consent in writing of the holders of 75 per cent, in nominal value, of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class but not otherwise. This Regulation 18 shall not be amended without prior Minister Special Shareholder Consent.

TRANSFERS AND ALLOTMENTS OF SHARES

19 Transfer of Shares and Debentures

- 19.1 In accordance with section 94 of the Act but subject to Regulation 20, a member may transfer all or any of his or her shares in the Company by instrument in writing in any usual or common form or any other form which the directors may approve.
- 19.2 The instrument of transfer of any share shall be executed by or on behalf of the transferor, save that if the share concerned (or one or more of the shares concerned) is not fully paid, the instrument shall be executed by or on behalf of the transferor and the transferee.
- 19.3 The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members of the Company in respect thereof.
- 19.4 The Company shall not register a transfer of shares in or debentures of the Company unless a proper instrument of transfer has been delivered to the Company.
- 19.5 Nothing in Regulation 19.4 shall prejudice any power of the Company to register as shareholder or debenture holder, any person to whom the right to any shares in, or debentures of the Company, has been transmitted by operation of law.
- 19.6 A transfer of the share or other interest of a deceased member of the Company made by his or her personal representative shall, although the personal representative is not himself or herself a member of the Company, be as valid as if the personal representative had been such a member at the time of the execution of the instrument of transfer.

- 19.7 On application of the transferor of any share or interest in the Company, the Company shall enter in its register of members, the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.
- 19.8 Notwithstanding anything to the contrary contained in this Constitution, no person shall be entitled to transfer any of his or its Shares and no allotment of Shares to any person shall be made or be effective or valid, nor may any relevant transfer or allotment be registered unless and until:
- 19.8.1 the provisions of any Shareholders Agreement have been fully complied with to the extent relevant; and
- 19.8.2 as applicable, the transferee or allottee has executed and delivered to the Minister, contemporaneously with the relevant transfer or allotment, a limited recourse guarantee and share charge in the Approved Form set out in, respectively, Schedule 7.6 (Limited Recourse Guarantee) and Schedule 7.7 (Minister Share Charge) in each case of the Agreement.
- 19.9 This Regulation 19 shall not be amended without prior Minister Special Shareholder Consent.

20 Transfers and Allotments Requiring Minister Special Shareholder Consent

- 20.1 Except as otherwise provided in this Regulation 20 and notwithstanding any other provision of this Constitution or the implied powers of the directors:
- 20.1.1 no Change of Ownership in respect of the Company or (for the avoidance of doubt) transfer of Shares to any person and no allotment of Shares to any person shall be made or be effective or valid without Minister Special Shareholder Consent at any time during the Contract Term, or if later, at any time up until the Expiry Date, to an Unsuitable Third Party; or
- 20.1.2 save as required to be effected pursuant to the Equity Subscription Agreement in its form at the Commencement Date, no Change of Ownership shall be made or be effective or valid without Minister Special Shareholder Consent at any time from the Commencement Date up until the date that is twelve (12) months after the Deployment Completion Date, and no allotment of shares shall be made or be effective or valid without Minister Special Shareholder Consent at any time during the Contract Period.
- 20.2 The Minister Special Shareholder shall be entitled to withhold his / its consent at his / its unfettered discretion in connection with any transfer or allotment referred to in Regulation 20.1.1 above. The Minister Special Shareholder shall not unreasonably withhold its consent in connection with any transfer or allotment referred to in Regulation 20.1.2 above.
- 20.3 Subject to the provisions of clause 63 of the Project Agreement, in order to determine whether or not a Minister Special Shareholder Consent will be given where required, any Shareholder proposing to transfer any Shares and, where any allotment of any Shares is proposed, the Company, shall give not less than forty two (42) days' notice of the proposed transfer or allotment as the case may be to the Minister Special Shareholder giving full details of the price at which such Shares are proposed to be transferred or allotted and the proposed transferee or allottee including its identity and the identity of any of its shareholders directly or indirectly having Control, howsoever described and shall consult with and provide to the Minister Special Shareholder such other information as the Minister Special Shareholder shall reasonably require at his / its discretion for that purpose. The Minister Special Shareholder shall use all reasonable endeavours to decide to give or withhold the Minister Special Shareholder Consent to the proposed transfer or allotment as soon as reasonably practicable but will in any event:

- 20.3.1 either give or withhold the Minister Special Shareholder Consent to the proposed transfer or allotment at his / its discretion in the case of a transfer or allotment under Regulation 20.1.1; and
- 20.3.2 either give or acting reasonably withhold the Minister Special Shareholder Consent in the case of a transfer or allotment under Regulation 20.1.2 on or prior to the expiry of a period of forty two (42) days after he/it shall have been provided with all such information as he / it may require to his / its satisfaction under this Regulation 20.3. If the Minister Special Shareholder gives the Minister Special Shareholder Consent to such transfer or allotment, the transfer or allotment may take effect and be registered by the directors, subject to Regulation 19.8.2. If the Minister Special Shareholder declines to give the Minister Special Shareholder Consent to such transfer or allotment, the transfer or the allotment, as the case may be, is not permitted under this Regulation 20 and may not be registered by the directors or be effected by the transferor or the transferee in the case of a transfer and may not be made or be effective or valid in the case of an allotment.
- 20.4 [Not used].
- 20.5 Except in respect of and subject to compliance with the requirements of Regulation 19.8, a transfer of Shares in respect of a person as a result of the following shall be disregarded for the purposes of Regulation 20.1.2 (but it shall not be disregarded for the purposes of Regulation 20.1.1 or Regulation 7 and the notice and information obligations under Regulation 20.3 and Regulation 20.5 shall apply as if it was not disregarded for the purposes of Regulation 20.1), where:
- 20.5.1 a holder of Shares on the Commencement Date is a fund manager owning or principally managing and advising an investment fund (a “**Fund Manager Concerned**”), a transfer of such Shares to another investment fund owned by or principally managed and advised by such Fund Manager Concerned; or
- 20.5.2 a transfer of Shares has occurred with the prior Minister Special Shareholder Consent pursuant to the provisions of Regulation 20.3 to a fund manager owning or principally managing and advising an investment fund (a “**Relevant Fund Manager**”), a transfer of such Shares to another investment fund owned by or principally managed and advised by such Relevant Fund Manager,
- (such an investment fund a “**Permitted Transferee**”); or
- 20.5.3 the Change in Ownership arises as a consequence of any change in legal or beneficial ownership of any interest in shares owned at the Commencement Date by the Minister Special Shareholder,
- If, during the period in which a transfer of Shares is restricted pursuant to this Regulation 20 or by the Agreement 20 (the “**Restricted Period**”):
- 20.5.4 a Change in Ownership to a Permitted Transferee is disregarded for the purposes of Regulation 20.1.2 pursuant to this Regulation 20.5; and
- 20.5.5 the relevant investment fund ceases to be an investment fund owned or managed and advised principally by, as applicable, the Fund Manager Concerned or a Relevant Fund Manager, then prior to ceasing to be a Permitted Transferee of the original owner, it shall be a breach of Regulation 20.1 if the relevant Shares are not, within twenty (20) Working Days of it ceasing to be an investment fund owned by or managed and advised principally by, as applicable, the Fund Manager Concerned or Relevant Fund Manager, transferred to a Permitted Transferee.
- 20.6 Each member shall be obliged to inform the Company by notice in writing if it knows or believes that an Unsuitable Third Party has an Interest in Shares held by it. The Company may at any time give a notice (an “**Information Request Notice**”) to any member or person

appearing to be interested in any shares of the Company (which expression includes any shares issued to the holder thereof after, or registered in the name of the holder thereof after, the date of any relevant Information Request Notice) under this Regulation requiring details of any person who is the registered or beneficial owner of the relevant shares in the Company.

20.7 Where it is determined by the Company at its discretion in respect of any shares in the Company ("**Default Shares**" which expression includes any shares issued to the holder thereof after, or registered in the name of the holder thereof after, the date of any relevant Information Request Notice) that:

20.7.1 any registered holder of shares or other person who appears to be interested in shares in the Company has failed in relation to any shares to give the Company the information required by the Information Request Notice within the period specified in the Information Request Notice (not being less than seven (7) days or more than fourteen (14) days after the date of service of the Information Request Notice); or

20.7.2 the Company has determined, following receipt of any replies to any Information Request Notice or otherwise, that a holder of the Default Shares or any person who appears to be interested in the Default Shares is an Unsuitable Third Party; or

20.7.3 a UTP Restricted CiO has taken place,

the Company shall give a notice in writing to the registered holder of the Default Shares ("**Disenfranchisement Notice**") that the following sanctions shall apply to and in respect of the Default Shares unless and to the extent that the Board determines otherwise with the approval in writing of the Minister Special Shareholder:

20.7.4 the holder of any Default Shares shall not be entitled to be present or to vote (either in person or by representative or proxy) at any general meeting or at any separate meeting of the holders of any class of shares or on any poll or to exercise any other right conferred by membership in relation to any such meeting or poll;

20.7.5 no dividend or other money including any return of capital on a winding up in excess of the nominal value of the Default Shares shall be payable or due in respect thereof and any liability of the Company in respect thereof shall be extinguished; and

20.7.6 no transfer, other than a transfer to a person who is not an Unsuitable Third Party and is made in a manner and to a person permitted under this Constitution and the Agreement shall be registered,

provided that the restrictions set out in the Disenfranchisement Notice shall cease to apply with effect from the date that any relevant shares are transferred to and registered in the name of a person in a manner permitted under this Constitution and the Agreement (but, for the avoidance of doubt, the transferee thereof shall have no entitlement to any dividends or distributions made prior to the date of such cessation).

20.8 Where, on the basis of information obtained from a member in respect of any Share held by him or her, the Company issues an Information Request Notice to any other person, it shall at the same time send a copy of the Information Request Notice to the member, but the accidental omission to do so, or the non-receipt by the member of the copy, shall not invalidate or otherwise affect the application of this Regulation 20. The Company shall also promptly furnish copies of all Information Request Notices and Disenfranchisement Notices issued by it and copies of all responses to Information Request Notices received by it to the Minister Special Shareholder.

20.9 For the purposes of this Regulation:

20.9.1 a person, other than the member holding the shares, shall be treated as appearing to be interested in any shares of the Company if the member holding such shares has given to the Company a notification under the Information Request Notice which

names such person as being so interested or if the Company (after taking account of any information obtained from the member or, pursuant to an Information Request Notice, from anyone else or otherwise) knows or has reasonable cause to believe that the person in question is or may be interested in the shares in the Company;

20.9.2 reference to a person having failed to give the Company the information required by a notice, or being in default as regards supplying such information, includes reference:

- (a) to the person's having failed or refused to give all of any part of it; and
- (b) to the person's having given information which he or she knows to be false in a material particular or having recklessly given information which is false in a material particular.

20.10 For the purposes of this Regulation 20, shareholdings of persons under common Control or who are acting in concert shall be aggregated and "acting in concert" has the meaning set out in the Irish Takeover Panel Act 1997 (and, notwithstanding anything to the contrary stated in the Agreement or the Constitution, the meaning of "acting in concert" does not change in the event of a change to the meaning of that term in the Irish Takeover Panel Act 1997).

20.11 The directors shall refuse to register a proposed transfer of a Share not made in accordance with or permitted by this Regulation 20 and any such purported transfer shall be void and of no effect.

20.12 The directors may refuse to register a transfer of a Share on which the Company has a lien.

20.13 If the directors refuse to register a transfer of a Share, the instrument of transfer must be returned to the transferee with the notice of refusal, unless they suspect that the proposed transfer may be fraudulent.

20.14 A person executing an instrument of transfer of a Share is deemed to remain the holder of the Share until the name of the transferee is entered in the register of members in respect of it.

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

20.16 This Regulation 20 shall not be amended without prior Minister Special Shareholder Consent.

21 Transfer of Shares – Secured Party

21.1 Notwithstanding anything to the contrary contained in this Constitution, the Companies Act 2014 or any agreement or arrangement applicable to any Shares:

21.1.1 the Directors shall promptly register any transfer of Share(s) and shall not suspend registration thereof where such transfer:

- (a) is to:
 - (i) a Secured Party; or
 - (ii) any nominee of a Secured Party; or
 - (iii) any transferee of or purchaser from such Secured Party or any nominee of such Secured Party (whether or not such transferee or purchaser is a third party transferee or purchaser); or
 - (iv) any combination of the foregoing,

for the purpose of registering such party or parties as legal owner(s) of the relevant Shares;

- (b) is delivered to the Company for the purposes set out at Regulation 21.1.1 by or on behalf of a Secured Party, by its nominee(s), by any receiver appointed by it or by any purchaser or transferee from a Secured Party or from any nominee of a Secured Party; and
- (c) is executed by (as appropriate) a Secured Party, its nominee(s) or any receiver appointed by it pursuant to any power of sale, right of appropriation or other power under, or arising in respect of, the security over those Shares created in favour of a Secured Party,

where “**Secured Party**” means the Minister or a person to whom the Minister has transferred or assigned any rights of security over such Shares in whose favour such Shares have been secured whether acting for its own benefit, or as agent, security agent, security trustee or otherwise for itself and/or another person or entity; and

21.1.2 no transferor or proposed transferor of any such Shares, nor any party listed in Regulation 21.1.1, shall be subject to, or obliged to comply with, any rights of pre-emption contained in this Constitution or in any other arrangement or agreement applicable to any Shares nor shall such person or entity be otherwise required to offer the Shares which are or will be the subject of any transfer contemplated by this Regulation 21 to any or all of the shareholders for the time being in the Company or to any other person or entity and no such shareholder, person or entity shall have any rights under this Constitution or otherwise to require that such Shares be transferred to them for consideration or otherwise.

21.2 No resolution may be proposed or passed the effect of which would be to delete or amend this Regulation 21 unless, for so long as a Secured Party holds security over shares in the Company, 45 days’ prior written notice is given to that Secured Party, which notice must be sent by pre-paid registered post to its registered office or principal place of business in the State, marked for the attention of the Company Secretary and these Regulations shall be modified accordingly.

21.3 This Regulation 21 shall not be amended without prior Minister Special Shareholder Consent.

22 Call Option of Minister Special Shareholder

22.1 If the Minister notifies the Company, in accordance with Paragraph 5.2.4 (Election as to Transfer of Assets or Shares) of Part 5 (Change in Ownership and Asset Transfer) of Schedule 6.9 (Consequences of Termination) of the Agreement, that it is exercising the Call Option (as hereinafter defined) then the Minister Special Shareholder (or its nominee(s)) shall, immediately upon such election, have the right to require all the other holders of Shares (other than the Special Share) (“**Called Shareholders**”) to transfer all of their Shares (the “**Called Shares**”) to the Minister Special Shareholder (or its nominee(s)) (“**Call Option**”).

22.2 The Call Option shall be exercised by the Minister Special Shareholder (or its nominee(s)) giving written notice of the exercise to the Called Shareholders (“**Call Option Notice**”).

22.3 Each of the Called Shareholders shall on or before the Scheduled Ownership Transfer Date deliver:

22.3.1 duly executed share transfer forms for the Called Shares with the relevant share certificate(s) to the Minister Special Shareholder (or its nominee(s)) (or an indemnity, in a form satisfactory to the Minister Special Shareholder (or its nominee(s)), in respect of any lost certificate);

22.3.2 an irrevocable power of attorney (in a form satisfactory to the Minister Special Shareholder (or its nominee(s)) whereby the Minister Special Shareholder (or its nominee(s)) is appointed as attorney of the Called Shareholders to receive notices and attend and vote at any meetings of the Company during the period while the

Called Shareholders remain as the registered holders of the Called Shares ("**Power of Attorney**"); and

- 22.3.3 a valid Irish tax reference number within the meaning of the Stamp Duty (e-stamping of Instruments and Self-Assessment) Regulations 2012 with confirmation of the relevant tax head to which it applies, sufficient for Irish stamp duty purposes ("**Tax Reference Number**").
- 22.4 If the Minister Special Shareholder exercises the Call Option, the Minister Special Shareholder (or its nominee(s)) shall, subject to compliance by the Called Shareholders with all of their obligations under Regulation 22.3, as consideration for the transfer(s) of the Called Shares, pay the Schedule 6.9 Payment (as such amount is determined in accordance with the provisions of Schedule 6.9 (Consequences of Termination) of the Agreement) to the Called Shareholders subject to, and in accordance with, Paragraph 11.1.1(A)(1) (Payment of Schedule 6.9 Payment and Buildco Consideration) of Part 6 (General) of Schedule 6.9 (Consequences of Termination) of the Agreement (and the other provisions of the Agreement including Paragraphs 8 (Payment by Instalments), 9 (State Aid) and 11.2 (Payment of Schedule 6.9 Payment and Buildco Consideration) and 17 (Retention) of Part 6 (General) of Schedule 6.9 (Consequences of Termination) and, failing such determination, the Minister Special Shareholder (or its nominee(s)) shall hold such money in trust (but without interest) for the Called Shareholders. The payment of the Schedule 6.9 Payment under this Regulation 22.4 when, to the bank account, in the amount and to the extent provided in the Agreement and this Constitution shall be a good and valid discharge of the Minister Special Shareholder's obligation to pay the Schedule 6.9 Payment and the Minister Special Shareholder shall not be concerned to see the application of the monies so paid and, for the avoidance of doubt, the Shareholders agree, accept and acknowledge the foregoing provisions of the Agreement in connection with the exercise and performance of obligations of the Minister and the Shareholders in respect of the Call Option.
- 22.5 If the Called Shareholders (or any of them) make default in transferring their Called Shares pursuant to this Regulation 22, then:
- 22.5.1 each of the Called Shareholders shall forthwith be deemed to have appointed the Minister Special Shareholder or any person or persons nominated for that purpose by the Minister Special Shareholder (or its nominee(s)) as attorney of the Called Shareholders ("**Called Shares Attorney**") with full power to execute, complete and deliver in the name and on behalf of the Called Shareholders all documents necessary to give effect to the transfer of the relevant Called Shares to the Minister Special Shareholder (or its nominee(s)), including, without limitation, any share transfer form, indemnity or Power of Attorney;
- 22.5.2 any Called Shares Attorney may, on behalf of any or all of the Called Shareholders, receive and give a good discharge for the Schedule 6.9 Payment as consideration for the transfer(s) of the Called Shares on behalf of the Called Shareholders and (subject to the transfer(s) being duly stamped) the Company shall, without delay, procure the entry of the name of the Minister Special Shareholder (or its nominee(s)) as the holder of the Called Shares as transferred to the Minister Special Shareholder (or its nominee(s)); and
- 22.5.3 the Minister Special Shareholder (or its nominee(s)) may pay the Schedule 6.9 Payment into a separate bank account in the name of the Minister Special Shareholder (or its nominee(s)) and shall hold such money in trust (but without interest) for the Called Shareholders ("**Escrow Amount**") until the Called Shareholders shall deliver up each certificate or certificates for the relevant Called Shares (or an indemnity, in a form satisfactory to the Minister Special Shareholder (or its nominee(s)), in respect of any lost certificate) to the Company and until the Called Shareholders shall deliver up a Power of Attorney and Tax Reference Number to the Minister Special Shareholder (or its nominee(s)), whereupon the Minister Special Shareholder (or its nominee(s)) shall instruct that the Called Shareholders shall be paid the Escrow Amount out of such bank account.

- 22.6 The appointment of any Called Shares Attorney referred to in Regulation 22.5.1 shall be irrevocable and is given to secure the performance of the obligations of the relevant Called Shareholders under this Constitution.
- 22.7 No transferor or proposed transferor of any Shares in accordance with this Regulation 22 nor any party listed in this Regulation 22, shall be subject to, or obliged to comply with, any rights of pre-emption contained in this Constitution, any Shareholders' Agreement or in any other arrangement or agreement applicable to any Shares nor shall such person or entity be otherwise required to offer the Shares which are or will be the subject of any transfer contemplated by this Regulation 22 to any or all of the Shareholders for the time being in the Company or to any other person or entity and no such Shareholder, person or entity shall have any rights under this Constitution, any Shareholders' Agreement or otherwise to require that such Shares be transferred to them for consideration or otherwise.
- 22.8 Notwithstanding anything to the contrary contained in this Constitution, the Companies Act 2014 or any agreement or arrangement applicable to any Shares, the Company shall register a duly stamped transfer or transfers of the Called Shares in any usual or common form executed under the provisions of this Regulation 22 promptly after delivery to the Company. After the Minister Special Shareholder (or its nominee(s)) has been registered as the holder of the Called Shares, the validity of such proceedings shall not be questioned by any person. Failure to produce a share certificate shall not impede the registration of the Called Shares under this Regulation 22.
- 22.9 Upon any person, following the issue of a Call Option Notice, becoming a Shareholder (or increasing an existing shareholding) including, without limitation, pursuant to the exercise of any option, warrant or other right to acquire or subscribe for, or to convert any security into, Shares (a "**New Shareholder**"), a Call Option Notice shall be deemed to have been served on the New Shareholder on the same terms as the previous Call Option Notice. The New Shareholder shall then be bound to sell and transfer all Shares acquired by it to the Minister Special Shareholder (or its nominee(s)) and the provisions of this Regulation 22 shall apply with the necessary changes to the New Shareholder, except that completion of the sale of the Called Shares of the New Shareholder shall take place on the Scheduled Ownership Transfer Date or immediately upon the New Shareholder becoming a Shareholder of the Company (if later) and the consideration for such transfer shall be the relevant portion of the Schedule 6.9 Payment that is attributable to the Shares of the New Shareholder that are to be transferred to the Minister Special Shareholder (or its nominee(s)) pursuant to this Regulation 22.9, such portion as may be conclusively determined by the Minister Special Shareholder (or its nominee(s)).
- 22.10 Except in respect of any outstanding obligations of the Minister Special Shareholder (or its nominee(s)) to hold on trust and/or to pay the Schedule 6.9 Payment, subject to and in accordance with the terms of this Regulation 22, each of the Called Shareholders and any New Shareholders shall, with effect from the Scheduled Ownership Transfer Date:
- 22.10.1 be deemed to have irrevocably and unconditionally released and discharged the Minister Special Shareholder (and its nominee(s)) from:
- (a) all obligations (past, present and future) arising under this Constitution, any Shareholders' Agreement or resulting from its membership or having been a Shareholder of the Company (including as to the sufficiency of any consideration received by them); and
 - (b) any claim or demand that any of them may have against the Minister Special Shareholder (and its nominee(s)), including in respect of any claim for oppression under Chapter 8 of the Act or otherwise, arising under or resulting from its membership or having been a Shareholder of the Company and which arose before the Scheduled Ownership Transfer Date;
- 22.10.2 not be entitled to exercise (and shall be deemed to have waived) any rights, entitlements or the benefit of any terms of this Constitution, any Shareholders'

Agreement or resulting from membership or having been a Shareholder of the Company or to make any claim or demand against the Minister Special Shareholder (and its nominee(s)) arising under any Shareholders' Agreement, this Constitution or resulting from its membership or having been a Shareholder of the Company.

22.11 The Minister Special Shareholder (and/or its nominee(s)) shall be entitled to assign and transfer all or any of its rights and obligations under this Regulation 22 and such assignee or transferee shall be entitled to enforce the same against the members and Shareholders of the Company as if it were named in this Regulation 22 as the Minister Special Shareholder (or its nominee(s)).

22.12 This Regulation 22 shall not be amended without prior Minister Special Shareholder Consent.

23 Allotment of Shares

23.1 Subject to Regulation 19.8 and Regulation 20, the directors, or any committee of the directors authorised by the directors in that behalf, shall have at any time unconditional and general authority to allot any shares of the Company.

23.2 Subject to Regulation 19.8 and Regulation 20, the directors, or any committee of the directors authorised by the directors in that behalf, may allot, grant options over or otherwise dispose of shares to such persons, on such terms and conditions and at such times as they may consider to be in the best interests of the Company and its shareholders.

23.3 The pre-emption provisions contained in section 69(6) of the Act shall not apply to any allotment of the Company's shares.

23.4 The application of section 69 of the Act shall be modified accordingly.

24 Restrictions on Transfer

24.1 Subject to Regulation 20, Regulation 21 and Regulation 22, the directors of the Company may in their absolute discretion, and without assigning any reason for doing so, decline to register the transfer of any share.

24.2 Subject to Regulation 20 Regulation 21 and Regulation 22, the directors' power to decline to register a transfer of shares (other than on account of a matter specified in 24.3) shall cease to be exercisable on the expiry of two months after the date of delivery to the Company of the instrument of transfer of the share.

24.3 Subject to Regulation 19.8, Regulation 20, Regulation 21 and Regulation 22, the directors may decline to register any instrument of transfer unless:

24.3.1 a fee of €10.00 or such lesser sum as the directors may from time to time require, is paid to the Company in respect of it;

24.3.2 the instrument of transfer is accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer; and

24.3.3 the instrument of transfer is in respect of one class of share only.

24.4 If the directors refuse to register a transfer they shall, within two months after the date on which the transfer was lodged with the Company, send to the transferee notice of the refusal.

24.5 The registration of transfers of shares in the Company other than the Minister Special Share may be suspended at such times and for such periods, not exceeding in the whole 30 days in each year, as the directors may from time to time determine.

25 Transmission of Shares

Section 96 of the Act shall apply to the transmission of shares in the case of the death of a member of the Company.

26 Share Certificates

26.1 In accordance with section 99 of the Act, a certificate under the common seal of the Company specifying any shares held by any member shall be prima facie evidence of the title of the member to the shares.

26.2 The Company shall, within two months after the date:

26.2.1 of allotment of any of its shares or debentures; or

26.2.2 on which a transfer of any such shares or debentures is lodged with the Company,

complete and have ready for delivery the certificates of all shares and debentures allotted or, as the case may be, transferred, unless the conditions of issue of the shares or debentures otherwise provide.

27 Acquisition of Own Shares

27.1 The Company is authorised to acquire its own shares by purchase, or in the case of redeemable shares, by redemption or purchase in accordance with section 105 of the Act.

28 Distributions

28.1 The Company may by ordinary resolution, but subject to any Shareholders Agreement and the provisions of this Constitution (and, in particular, Regulation 9.3.2(c)), declare dividends in accordance with the respective rights of the members, but no dividend shall exceed the amount recommended by the directors.

28.2 If any payment to be made to the Minister pursuant to any Shareholders' Agreement is not made when due, the Special Shareholder shall be entitled to receive, without the need for any approval by Shareholders or declaration by the Directors, at the time of and in priority to payment by the Company of any other Distribution or return of capital of any kind or repayment of any shareholder loan, a first priority preferential dividend ("**Minister Special Share Preferential Dividend**") of (a) an amount equal to the amount that should have been paid pursuant to any such Shareholders' Agreement; and (b) an additional amount equivalent to an annual rate of interest of three percent (3%) above the base rate of the European Central Bank (as adjusted by the European Central Bank from time to time) on the amount of the dividend due for the period of non-payment when due (if any) accruing daily, in priority to any other Distribution or return of capital or repayment of shareholder loan, together with the first priority preferential right to receive such amount on a winding up of the Company but only if and to the extent not received prior to a winding up of the Company.

28.3 The directors may, subject to any Shareholders Agreement and the provisions of this Constitution (and, in particular, Regulation 9.3.2(c)) pay interim dividends to members if it appears to them that such interim dividends are justified by the profits of the Company available for distribution. In paying such interim dividends the directors may, subject to the terms of any security granted to the Minister or a person to whom the Minister has transferred or assigned any relevant rights of security, satisfy such payment wholly or partly by the distribution of specific assets and in particular, but without limitation, of paid up shares, debentures or debenture stock of any other company or in any one or more of such ways, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof, may determine that cash payment shall be made to any members upon the footing of the value so fixed, in order to adjust the rights of

all the parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

- 28.4 If the share capital is divided into different classes, the directors may, subject to any Shareholders Agreement and the provisions of this Constitution (and, in particular, Regulation 9.3.2(c)), pay interim dividends on shares which confer deferred or non-preferred rights with regard to dividend as well as on shares which confer preferential rights with regard to dividend, but no interim dividend shall be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend (including any payable to the holder of the Special Share) is in arrears. The directors may also pay at intervals settled by them any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- 28.5 Provided the directors act in good faith they shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on any shares having deferred or non-preferred rights.
- 28.6 No dividend or interim dividend shall be paid otherwise than in accordance with the provisions of the Act relating to such distributions.
- 28.7 The directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the Company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the Company or be invested in such investments as the directors may lawfully determine. The directors may also, without placing the profits of the Company to reserve, carry forward any profits which they way think it prudent not to distribute.
- 28.8 Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall, subject to the Shareholders Agreement and the provisions of this Constitution (and, in particular, Regulation 9.3.2(c)), be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of these Regulations as paid on the share. All dividends shall, subject to any Shareholders Agreement and the provisions of this Constitution (and, in particular, Regulation 9.3.2(c)), be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date, such share shall rank for dividend accordingly.
- 28.9 The directors may deduct from any dividend payable to any member all sums of money (if any) immediately payable by him or her to the Company on account of calls or otherwise in relation to the shares of the Company.
- 28.10 A general meeting of the Company declaring a dividend or bonus may, subject to any Shareholders Agreement and the provisions of this Constitution (and, in particular, Regulation 9.3.2(c)), direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular, but without limitation, of paid up shares, debentures or debenture stock of any other company or in any one or more of such ways, and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the matter as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed, in order to adjust the rights of all the parties, and may vest any such specific assets in trustees as may seem expedient to the directors.
- 28.11 Any dividend, interest or other moneys payable in cash in respect of any shares may, subject to any Shareholders Agreement and the provisions of this Constitution (and, in particular, Regulation 9.3.2(c)), be paid:

- 28.11.1 by cheque or negotiable instrument sent by post directed to or delivered to the registered address of the holder, or, where there are joint holders, to the registered address of that one of the joint holders who is first named on the register or to such person and to such address as the holder or joint holders may in writing direct and every such cheque or negotiable instrument shall be made payable to the order of the person to whom it is sent; or
- 28.11.2 by agreement with the payee (which may either be a general agreement or one confined to specific payments), by direct transfer to a bank account nominated by the payee.
- 28.12 Any one of two or more joint holders may give valid receipts for any dividends or other moneys payable in respect of the shares held by them as joint holders, whether paid by cheque or negotiable instrument or direct transfer.
- 28.13 No dividend shall bear interest against the Company unless otherwise provided by the rights attached to the share in respect of which it is payable.
- 28.14 Any dividend which has remained unclaimed for twelve years from the date when it became due for payment shall, if the directors so resolve, be forfeited and cease to remain owing by the Company.
- 28.15 Section 124 and section 125 of the Act do not apply.
- 28.16 This Regulation 28 shall not be amended without prior Minister Special Shareholder Consent.

29 Bonus Issues

- 29.1 In this Regulation “relevant sum” means:
- 29.1.1 any sum for the time being standing to the credit of the Company’s undenominated capital;
- 29.1.2 any of the Company’s profits available for distribution;
- 29.1.3 any sum representing unrealised revaluation reserves; or
- 29.1.4 any part of the amount for the time being standing to the credit of any of the Company’s reserve accounts.
- 29.2 The Company in general meeting may resolve that any relevant sum be capitalised and applied on behalf of the members who would have been entitled to receive that sum if it had been distributed by way of dividend and in the same proportions in or towards paying up in full unissued shares or debentures of the Company of a nominal value equal to the relevant sum capitalised (such shares or debentures to be allotted and distributed credited as fully paid up to and amongst such holders and in the proportions as aforementioned).
- 29.3 The Company in general meeting may resolve that it is desirable to capitalise any part of a relevant sum which is not available for distribution, by applying such sum in paying up in full unissued shares to be allotted as fully paid bonus shares, to those members of the Company who would have been entitled to that sum if it were distributed by way of dividend (and in the same proportions).
- 29.4 The directors shall give effect to any resolution under Regulations 29.2 and 29.3.
- 29.5 For that purpose the directors shall make:
- 29.5.1 all appropriations and applications of the undivided profits resolved to be capitalised by the resolution; and

- 29.5.2 all allotments and issues of fully paid shares, if any, and generally shall do all acts and things required to give effect to the resolution.
- 29.6 Without limiting the foregoing, the directors may:
- 29.6.1 make such provision as they think fit for the case of shares becoming distributable in fractions (and, again, without limiting the foregoing, may sell the shares represented by such fractions and distribute the net proceeds of such sale amongst the members otherwise entitled to such fractions in due proportions); and
- 29.6.2 authorise any person to enter, on behalf of all the members concerned, into an agreement with the Company providing for the allotment to them, respectively credited as fully paid up, of any further shares to which they may become entitled on the capitalisation concerned or, as the case may require, for the payment by the application thereto of their respective proportions of the profits resolved to be capitalised of the amounts remaining unpaid on their existing shares.
- 29.7 Any agreement made under such authority shall be effective and binding on all the members concerned.
- 29.8 Where the directors of the Company have resolved to approve a bona fide revaluation of all the fixed assets of the Company, the net capital surplus in excess of the previous book value of the assets arising from such revaluation may be:
- 29.8.1 credited by the directors to undenominated capital, other than the share premium account; or
- 29.8.2 used in paying up unissued shares of the Company to be issued to members as fully paid bonus shares.
- 29.9 The application of section 126 of the Act shall be modified accordingly.

CORPORATE GOVERNANCE

30 Company Secretary

- 30.1 The Company shall have a secretary, who may be one of the directors.
- 30.2 The secretary shall be appointed by the directors 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.

31 Directors

- 31.1 Throughout the Contract Period, there shall be no less than 5 directors on the Board and no more than 9.

Composition of the Board

- 31.2 The Board shall be made up as follows:
- 31.2.1 one (1) non-executive director shall be the chairman of the Board:
- (a) who shall, subject to Regulation 31.2.1(b), be appointed directly by the Shareholders; and
 - (b) the Company shall procure that the identity of the chairman shall be subject to prior consultation by the Shareholders with the Minister Special Shareholder; and

- (c) a minimum of two (2) and,
 - (i) where the number of directors is seven (7), a maximum of three (3);
 - (ii) where the number of directors is eight (8), a maximum of four (4); and
 - (iii) where the number of directors is nine (9), a maximum of five (5),
 non-executive directors appointed directly by the Shareholders;
- (d) one (1) non-executive director who may from time to time be appointed directly by the Minister Special Shareholder (the “**Minister’s Appointee**”); and
- (e) one (1), and where the number of directors is more than five (5), two (2), non-executive independent director(s) appointed by the Shareholders from individuals identified pursuant to the process set out in Regulation 31.4 (the “**Independent Directors**”).

Independent non-executive directors

- 31.3 The Independent Director(s) of the Board shall be selected by the Shareholders in consultation with the Board at the relevant time of a potential retirement, resignation or vacancy (provided no such consultation is necessary with respect to the first appointees to the Board as at the Commencement Date) from a list of suitable non-executive independent directors provided by an external executive search firm in accordance with Regulation 31.3.
- 31.4 The list referred to in Regulation 31.3 shall have been compiled by means of an open, fair, competitive and transparent selection process conducted by the external executive search firm. The list may be compiled from time to time with respect to any appointments which may arise over a specified period or on a case by case basis in respect of specific required appointments.
- 31.5 The external executive search firm referred to in Regulations 31.3 and 31.4 shall be independent of the Company and the NBPco Economic Group.
- 31.6 The Company acknowledges and agrees and shall procure that, at all times during the Contract Term the Minister’s Appointee (where one stands appointed) shall not be removed from the Board without the Minister’s prior written consent.
- 31.7 Save for the chairman, the following requirements shall apply to directors of the Board and the Company shall procure that these requirements are complied with at all times throughout the Contract Period:
 - 31.7.1 the maximum term that any non-executive director may serve on the Board is seven years save where such non-executive director has retired by rotation and has been reappointed;
 - 31.7.2 one non-executive director shall retire by rotation after five Contract Years and shall be eligible for re-appointment on a first or subsequent retirement by rotation;
 - 31.7.3 two non-executive directors shall retire by rotation after six Contract Years and shall be eligible for re-appointment on a first or subsequent retirement by rotation; and
 - 31.7.4 where one stands appointed, the Minister’s Appointee shall retire by rotation after seven years and shall be eligible for re-appointment on a first or subsequent retirement by rotation.

Removal of directors

- 31.8 A director of the Board, other than the Minister's Appointee, may only be removed:
- 31.8.1 if the director has materially failed to perform any of the duties, including those set out in paragraph 6.14 (Board of Directors of NBPco) of Schedule 2.7 (NBPco Requirements) of the Agreement;
 - 31.8.2 if the director has breached any legal, regulatory or professional obligation which could reasonably be viewed as casting doubt over the character and/or capability of the director to fulfil his duties;
 - 31.8.3 if the director has not, despite appropriate notice of meetings having been served on or given to him, regularly attended board or subcommittee meetings or does not provide full and active participation. This matter shall be determined by the Board;
 - 31.8.4 if the director is adjudicated bankrupt or being a bankrupt has not obtained a certificate of discharge in the relevant jurisdiction;
 - 31.8.5 if the director becomes or is deemed to be subject to a disqualification order within the meaning of chapter 4 of part 14 of the Act;
 - 31.8.6 if the director resigns his or her office by notice in writing to the Board;
 - 31.8.7 if the director suffers ill-health such that he or she can no longer be reasonably regarded as possessing an adequate decision making capacity;
 - 31.8.8 if the director has had a declaration of restriction made in respect of him and the other directors of the Board, at any time during the currency of the declaration, resolve that his or her office be vacated;
 - 31.8.9 if the director is sentenced to a term of imprisonment following conviction of an indictable offence (and reference to a term of imprisonment includes a reference to such a term that is suspended); or
 - 31.8.10 for such other good and valid reasons as the Shareholders acting reasonably and in good faith may determine.

Minister's Appointee

- 31.9 Removal of the Minister's Appointee (where one stands appointed) shall be at the sole discretion of the Minister Special Shareholder. The chairman of the Board shall, with the consent of the Board (but excluding, for this purpose, the Minister's Appointee), be entitled to make representations to the Minister Special Shareholder as to whether any of the circumstances referred to in Regulation 31.8 apply in respect of the Minister's Appointee.

Objects of the Agreement

- 31.10 The directors and the Shareholders recognise and acknowledge that the principal objects for which the Company is established are to design, build, operate and maintain an ultrafast broadband network across the Republic of Ireland in accordance with the terms set out in the Agreement and shall use all reasonable endeavours to ensure that this Constitution conforms to the terms of that Agreement. The directors and the Shareholders recognise and acknowledge that, in the event of any inconsistency between the terms of the Agreement and the provisions of this Constitution, the Minister Special Shareholder shall resolve the inconsistency in favour of the Agreement or this Constitution, as the case may be, at its discretion (the "**Principal Objects**").
- 31.11 If an inconsistency between the Agreement and this Constitution becomes apparent or is discovered after the date hereof, the Shareholder shall use all reasonable endeavours to amend this Constitution so as to ensure its consistency with the Agreement.

31.12 This Regulation 31 shall not be amended without prior Minister Special Shareholder Consent.

32 Remuneration of Directors

32.1 The remuneration of the directors shall be such as is determined, from time to time, by the board of directors and such remuneration shall be deemed to accrue from day to day.

32.2 The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors, or general meetings of the Company, or otherwise in connection with the business of the Company.

32.3 The directors may provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any director who has held but no longer holds any executive office or employment with the Company or with any body corporate which is or has been a subsidiary of the Company or a predecessor in business of the Company or of any such subsidiary, and for any member of his family (including a spouse and a former spouse) or any person who is or was dependent on him, and may (as well before as after he ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit.

32.4 Without prejudice to the provisions of Regulation 32.2, the directors may exercise all the powers of the Company to purchase and maintain insurance for or for the benefit of any person who is or was:

32.4.1 a director, other officer, employee or auditor of the Company, or of any body corporate which is or was the holding company or subsidiary of the Company, or in which the Company or such holding company or subsidiary has or had any interest (whether direct or indirect) or with which the Company or such holding company or subsidiary is or was in any way affiliated or associated; or

32.4.2 a trustee of any pension fund in which employees of the Company or any other body corporate referred to in Regulation 32.4.1 is or has been interested,

32.4.3 including without limitation insurance against any liability incurred by such person in respect of any act or omission in the actual or purported execution or discharge of his duties or in the exercise or purported exercise of his powers or otherwise in relation to his duties, powers or offices in relation to the relevant body or fund.

PROCEEDINGS OF DIRECTORS

33 General Power of Management and Delegation

33.1 The business of the Company shall be managed by its directors, who may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Company in general meeting, but subject to:

33.1.1 any Regulations contained in this Constitution;

33.1.2 the provisions of the Act; and

33.1.3 such directions, not being inconsistent with the foregoing Regulations or provisions, as the Company in general meeting may (by special resolution) give.

33.2 Without prejudice to the generality of Regulation 33.1 (but subject to a limitation (if any) arising under Regulations 33.1.2 to 33.4), the directors of the Company may, provided it does not give rise to any breach of (clause 6.3.4 (Acknowledgements and Warranties) to clause 6.3.5 (Acknowledgements and Warranties)] of the Agreement or the Minister Security Documents, exercise all the powers of the Company:

33.2.1 to borrow money and to mortgage, charge, pledge or otherwise secure its undertaking, property and uncalled capital, or any part thereof; and

33.2.2 to give guarantees, indemnities, counter indemnities and all manners of assurances against loss in respect of, any or all of the debts, obligations and liabilities of any person, firm or corporation, (whether by personal covenant or by mortgaging, charging, pledging or otherwise securing its undertaking, property and uncalled capital, or any part thereof or by any combination of such methods),

notwithstanding that the Company may derive no benefit from the same, and notwithstanding that it may involve the use of the Company's undertaking, property, and uncalled capital for the benefit of one or more directors of the Company or of any other person.

33.3 The directors may establish, delegate its relevant power to and maintain committees to assist with the effective operations of the Company as they think fit. Any such committee shall, in the exercise of the powers so delegated, conform to any Regulations that may be imposed on it by the directors.

33.4 Decision making and responsibility for the Board Reserved Matters (which includes making decisions in respect of any strategic and tactical decisions and matters that relate to the Project) cannot be delegated by the Board to any committee it has established or otherwise.

33.5 This Regulation 33 shall not be amended without prior Minister Special Shareholder Consent.

34 Managing Director

In accordance with section 159 of the Act, the directors may from time to time appoint one or more of themselves to the office of managing director (by whatever name called) for such period and on such terms as to remuneration and otherwise as they see fit, and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment.

35 Meetings of Directors and Committees

35.1 Meetings of the Board will be held in Dublin or any other location that the directors at such meeting resolve.

35.2 Unless the Shareholders agree otherwise, the directors will meet together at least quarterly.

35.3 Save in the case of an emergency or an urgent operation matter which requires a decision of the Board to be taken promptly, at least 14 calendar days' notice will be given for all meetings of the Board.

35.4 Questions arising at any such meeting shall be decided by a majority of votes. The chairperson shall not have a second or casting vote.

35.5 A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

35.6 All directors shall be entitled to reasonable notice of any meeting of the directors but it shall not be necessary to give notice of a meeting of directors to any director who, being resident in the State, is for the time being absent from the State.

35.7 The quorum of directors required for the transaction of business at any Board meetings shall be three Directors of which there shall be a Holdco Director and a Minister Special Shareholder Director (where one stand appointed), or their duly appointed alternate Directors, provided that at any meeting of the Board adjourned for not being quorate, at any such adjourned meeting any three Directors shall form a quorum. If no Minister's Appointee stands appointed, the quorum shall be any three Directors.

- 35.8 Save in the case of emergency or an urgent operation matter which requires a decision of the Board to be taken promptly, if a meeting of the Board or meeting of any committee of the directors is validly convened but a quorum not obtained due to the absence of one or more directors (or directors and / or representatives if a meeting of any committee of the directors) appointed by a particular Shareholder, the meeting will be adjourned for a period of one week, and the adjourned meeting shall take place at the same time and place, at which any three directors may form a quorum.
- 35.9 The continuing directors may act notwithstanding any vacancy in their number but, if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the Company but for no other purpose.
- 35.10 The Shareholders may elect a chairperson of their meetings and determine the period for which he or she is to hold office, but if no such chairperson is elected, or, if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding it, the directors present may choose one of their number to be chairperson of the meeting.
- 35.11 A committee established under this Constitution may elect a chairperson of its meetings; if no such chairperson is elected, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding it, the members of the committee present may choose one of their number to be chairperson of the meeting.
- 35.12 A committee may meet and adjourn meetings as it thinks proper.
- 35.13 Questions arising at any meeting of a committee shall be determined by a majority of votes of the members of the committee present. The chairperson shall not have a second or casting vote.
- 35.14 The application of section 160 of the Act shall be modified accordingly.
- 35.15 This Regulation 35 shall not be amended without prior Minister Special Shareholder Consent.

36 Written Resolutions of Directors

- 36.1 A resolution in writing signed by all the directors of the Company, or by all the members of a committee of them, and who are for the time being entitled to receive notice of a meeting of the directors or, as the case may be, of such a committee, shall be as valid as if it had been passed at a meeting of the directors or such a committee duly convened and held. A resolution executed by an alternate director need not also be signed by his appointer.
- 36.2 A resolution referred to in Regulation 36.1 may be signed by electronic signature, advanced electronic signature or otherwise as approved by the directors.
- 36.3 Subject to Regulation 36.4, where one or more of the directors (other than a majority of them) would not, by reason of:
- 36.3.1 the Act or any other enactment;
- 36.3.2 the Constitution; or
- 36.3.3 a rule of law,

be permitted to vote on a resolution such as is referred to in Regulation 36.1, if it were sought to pass the resolution at a meeting of the directors duly convened and held, then such a resolution, notwithstanding anything in Regulation 36.1, shall be valid for the purposes of that Regulation if the resolution is signed by those of the directors who would have been permitted to vote on it had it been sought to pass it at such a meeting.

- 36.4 In a case falling within Regulation 36.3, the resolution shall state the name of each director who did not sign it and the basis on which he or she did not sign it.
- 36.5 For the avoidance of doubt, nothing in the preceding Regulations dealing with a resolution that is signed by other than all of the directors shall be read as making available, in the case of an equality of votes, a second or casting vote to the one of their number who would, or might have been, if a meeting had been held to transact the business concerned, chairperson of that meeting.
- 36.6 The resolution referred to in Regulation 35.1 may consist of several documents in like form each signed by one or more directors and for all purposes shall take effect from the time that it is signed by the last director.
- 36.7 The application of section 161 of the Act shall be modified accordingly.

37 Meetings of Directors by Conference

- 37.1 A meeting of the directors or of a committee of them may consist of a conference between some or all of the directors or, as the case may be, members of the committee who are not all in one place, but each of whom is able (directly or by means of telephonic, video or other electronic communication) to speak to each of the others and to be heard by each of the others and:
- 37.1.1 a director or member of a committee taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote and be counted in a quorum accordingly; and
- 37.1.2 such a meeting shall be deemed to take place in such location as the directors, or members of the committee, decide and failing that where the chairperson of the meeting is located.
- 37.2 Subject to the other provisions of the Act, a director may vote in respect of any contract, appointment or arrangement in which he or she is interested and he or she shall be counted in the quorum present at the meeting.
- 37.3 The application of section 161 of the Act shall be modified accordingly.

38 Holding of any other Office or Place of Profit under the Company by Director

- 38.1 A director may hold any other office or place of profit under the Company (other than the office of statutory auditor) in conjunction with his or her office of director for such period and on such terms as to remuneration and otherwise as the directors may determine in accordance with the Agreement, any Shareholders Agreement and the Governance Protocol.
- 38.2 No director or intending such director shall be disqualified by his or her office from contracting with the Company either with regard to his or her tenure of any such other office or place of profit or as vendor, purchaser or otherwise.
- 38.3 In particular, neither shall:
- 38.3.1 any contract with respect to any of the matters referred to in Regulation 38.2, nor any contract or arrangement entered into by or on behalf of the Company in which a director is in any way interested, be liable to be avoided; nor
- 38.3.2 a director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement,
- 38.3.3 by reason of such director holding that office or of the fiduciary relationship thereby established.

39 Counting of Director in Quorum and Voting at Meeting at which Director is Appointed

39.1 A director of the Company, notwithstanding his or her interest, may be counted in the quorum present at any meeting at which:

39.1.1 that director or any other director is appointed to hold any such office or place of profit under the Company as is mentioned in Regulation 38.1; or

39.1.2 the terms of any such appointment are arranged,

and he or she may vote on any such appointment or arrangement other than his or her own appointment or the arrangement of the terms of it.

40 Director's Conflict of Interest

40.1 In accordance with section 231 of the Act, a director with a conflict of interest (a "**Conflicted Director**") will declare the nature and extent of that conflict (a "**Conflict of Interest**") to the board of directors (or any committee of the board of directors).

40.2 The remaining directors (not nominated by the same Shareholder as the nominated Conflicted Director) will determine whether, notwithstanding a Conflict of Interest, the Conflicted Director will be entitled to vote at the meeting. If the remaining directors waive the Conflict of Interest, the Conflicted Director is entitled to be counted in the quorum, participate at the meeting and vote on any matters, including the Conflict of Interest. If the Conflicted Director is not waived by the remaining directors, the Conflicted Director is entitled to be counted in the quorum and to participate in the meeting but will not be entitled to vote on any resolutions in relation to which he has the Conflict of Interest.

40.3 The Conflicted Director will in any event and regardless of the determination of the remaining directors be entitled to recuse himself in respect of any matter relating to the Conflict of Interest. The above provisions relating to any Conflict of Interest are without prejudice to any Board Reserved Matters.

40.4 To the extent reasonably required and subject to all such persons adhering to all duties of confidentiality, the directors will be entitled to pass any information received by them that relates to the Company to the Shareholders and to any of their professional and financial advisers.

40.5 Subject to any legal and / or regulatory restrictions, the Shareholders will be entitled to pass any information received by them that relates to the Company on a confidential basis any of their professional advisers.

41 Alternate Directors

41.1 Any director (the "**appointer**") of the Company may from time to time appoint any other director of it or any other person to be an alternate director (the "**appointee**") as respects him or her.

41.2 The appointee may act as alternate director to represent more than one director, and an alternate director shall be entitled at meetings of the directors, or any committee of the directors, to one vote for every director whom he represents (and who is not present).

41.3 A director who is also an alternate will be entitled to:

41.3.1 a separate vote on behalf of the appointer in addition to his own vote; and

41.3.2 be counted as part of the quorum present at the meeting on his own account and in respect of the appointer.

41.4 The appointee, while he or she holds office as an alternate director, shall be entitled:

41.4.1 to notice of meetings of the directors;

41.4.2 to attend at such meetings as a director; and

41.4.3 in place of the appointer, to vote at such meetings as a director,

but shall not be entitled to be remunerated otherwise than out of the remuneration of the appointer.

41.5 Any appointment under this section shall be effected by notice in writing given by the appointer to the Company.

41.6 Any appointment so made may be revoked at any time by the appointer or by a majority of the other directors or by the Company in general meeting.

41.7 Revocation of such an appointment by the appointer shall be effected by notice in writing given by the appointer to the Company.

41.8 An appointee shall cease to be an alternate director:

41.8.1 if his appointer ceases to be a director; or

41.8.2 on the happening of any event which, if he were a director, would cause him to vacate his office as director; or

41.8.3 if he resigns his office by notice in writing to the Company.

41.9 The application of section 165 of the Act shall be modified accordingly.

42 Board of Directors Adherence to Governance Protocol

42.1 Notwithstanding anything to the contrary contained in this Constitution or any agreement or arrangement applicable to any Shares, the Company shall adopt and adhere to a governance protocol (or analogous arrangement) addressing the interaction (including disputes), between the Company and its board of directors with the board of directors of the Ordinary Shareholder (and, as applicable, the board of directors of any other relevant member of the NBPco Economic Group) (the "**Governance Protocol**"). The Governance Protocol shall include the terms of reference for the board of directors, and any committee established by the board of directors, in the form approved by the board of directors as notified to the Minister Special Shareholder. It shall also set out any matters reserved to the Ordinary Shareholders and the Board Reserved Matters and how the requirements of the Agreement relating to the Governance Protocol, confidentiality, non-discrimination and transparency, Top Tier Key Personnel, regard to industry benchmarks for operating costs, disputes as between the Company and the Shareholders or other members of the NBPco Economic Group shall be implemented by the board of directors. Neither this Regulation 42 nor the Governance Protocol shall be amended without prior Minister Special Shareholder Consent.

43 Non-Discrimination

43.1 Subject to the provisions of the Agreement, the Company shall ensure that Key Personnel (including the Top Tier Key Personnel), the Company Personnel, directors and other officers of the Company and the Company's Subcontractors, are not directly or indirectly incentivised, through their terms and conditions, performance measures, remuneration or any other way, to act in a discriminatory manner to the advantage of any particular Service Provider in relation to Network Deployment or in the performance of the Services or provision of the Wholesale Products.

43.2 The chairperson of the board of directors and the Chief Legal Officer shall provide an annual confirmation to the Minister Special Shareholder that all of the provisions of this Regulation 43 have been fully adhered to and complied with.

43.3 The Compliance and Governance Officer shall submit a monthly report to the board of directors and the Minister Special Shareholder (or at other intervals and frequency as reasonably required by the Minister Special Shareholder on notice in writing to the Company) with respect to the procedures put in place and measures taken in the relevant period to ensure compliance with this Regulation 43. The Compliance and Governance Officer shall report any instances of non-compliance to the board of directors for prompt resolution in the first instance with all instances of non-compliance subsequently reported to the Minister Special Shareholder (with details of any remedial measures directed by the board of directors). For the avoidance of doubt, if and to the extent that the NBPco Economic Group (or any relevant member of it) is a Regulated Entity, the Compliance and Governance Officer may report to the board of directors of the relevant member of the NBPco Economic Group in respect of any regulatory obligations applicable to the Company in the context of its membership of the NBPco Economic Group.

43.4 This Regulation 43 shall not be amended without prior Minister Special Shareholder Consent.

44 Stand-Alone Activities

44.1 Throughout the Contract Period, the Company shall ensure that the decision making and ultimate responsibility for the following activities are undertaken by the Company on a stand-alone basis within the Company's own organisation (and the decision making and ultimate responsibility for such matters shall not be provided by, outsourced or sub-contracted to the Shareholders or any other member of the NBPco Economic Group):

44.1.1 development and approval of the Company strategy;

44.1.2 development and approval of annual and longer term plans/budgets for the Company. For the avoidance of doubt (i) the aggregate amount and maximum costs to be incurred by NBPco as set out in each annual and longer term plans/budgets and (ii) any amendment to the aggregate amount and maximum costs to be incurred by The Company as set out in the Company's current annual and longer term plans/budgets from time to time, shall require the consent in writing of the Shareholder but, having so consented, the Company must be free to determine how such amount is allocated under the budget or budgets or plan or plans set by it;

44.1.3 development and approval of the Company annual and longer term capital expenditure plan (provided that this does not require any Shareholder to commit to provide more funding to the Company than is set out in the Deferred Equity Commitments and the Funding Documents). For the avoidance of doubt (i) the aggregate amount of capital expenditure to be incurred by the Company as set out in the Company's annual and longer term capital expenditure plan and (ii) any amendment to the aggregate amount of capital expenditure to be incurred by the Company as set out in its current capital expenditure plan from time to time, shall require the consent in writing of the Shareholder but, having so consented, the Company must be free to determine how such amount is allocated under the capital expenditure plan or plans set by it;

44.1.4 development and approval of capital expenditure projects. For the avoidance of doubt (i) the aggregate amount of any capital expenditure projects to be undertaken by the Company and (ii) any amendment to the aggregate amount of any capital expenditure project to be undertaken by the Company as set out in its current capital expenditure project from time to time, shall require the consent in writing of the Shareholder but, having so consented, the Company must be free to determine how such amount is allocated under the capital expenditure plan or plans set by it;

44.1.5 procurement decisions and all procurement activities (other than those expressly specified in Paragraph 12 (Shared Services) of the Agreement) (provided that, where applicable, this does not preclude the Company from leveraging from the group procurement and purchasing decisions of the Shareholders or other members of the

NBPco Economic Group in circumstances where doing so is not inconsistent with NBP's obligations under or pursuant to the Agreement);

- 44.1.6 recruitment of Key Personnel. For the avoidance of doubt, the appointment of Key Personnel (other than the Minister's Appointee) shall require the consent in writing of the Shareholder;
- 44.1.7 decisions on remuneration and incentivising Key Personnel;
- 44.1.8 internal audit;
- 44.1.9 Network design;
- 44.1.10 Network build;
- 44.1.11 management of Subcontractors;
- 44.1.12 management of Network maintenance services;
- 44.1.13 product development;
- 44.1.14 customer account management;
- 44.1.15 customer interaction – RSPs and WSPs;
- 44.1.16 pricing;
- 44.1.17 on-going marketing (but subject to Paragraph 10.1 (NBPco Branding, Marketing and Website));
- 44.1.18 analysis of network performance;
- 44.1.19 management of the End User database, including the Premise Database; and
- 44.1.20 provisioning of products.

For the avoidance of doubt, this provision shall not prevent the Company from engaging third party contractors to assist it in respect of the above matters provided that all decision making and ultimate responsibility for such matters shall remain with the Company.

- 44.2 Throughout the Contract Period, the Company shall ensure that when considering the cost of activities undertaken by it arising out of or in relation to the performance of the Agreement, it will have due regard to industry benchmarks for operating costs of a similar nature (in the telecoms sector in Ireland) during the Contract Period.
- 44.3 Throughout the Contract Period, all premises from which the Company carries out its business shall be located in physically separate and secure surroundings to those of any other member of the NBPco Economic Group. For the avoidance of doubt, this does not prevent the Company from carrying out its business in the same physical premises as any other member of the NBPco Economic Group provided that the Company's location is separately secured and can be accessed only by the Company and those authorised on behalf of the Company. The Minister Special Shareholder reserves the right to require full physical separation of the Company business where, at any time during the Contract Period, he has reasonable concerns to believe that co-location of the Company and other members of the NBPco Economic Group within the same building has or could reasonably be said to contribute to a breach by the Company of its obligations under Schedule 2.7 (NBPco Requirements) and/or Clause 36 (Non-Discrimination and Transparency) of the Agreement.
- 44.4 This Regulation 44 shall not be amended without prior Minister Special Shareholder Consent.

45 Minutes of Proceedings of Directors

- 45.1 The Company shall cause minutes to be entered in books kept for that purpose of:
- 45.1.1 all appointments of officers made by its directors;
 - 45.1.2 the names of the directors present at each meeting of its directors and of any committee of the directors; and
 - 45.1.3 all resolutions and proceedings at all meetings of its directors and of committees of directors.

GENERAL MEETINGS AND RESOLUTIONS

46 Annual General Meeting

- 46.1 Subject to Regulation 46.2, the Company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it and not more than 15 months shall elapse between the date of one annual general meeting of the Company and that of the next.
- 46.2 So long as the Company holds its first annual general meeting within 18 months after the date of its incorporation, it need not hold it in the year of its incorporation or in the following year.
- 46.3 The financial statements and report of the directors and the statutory auditors for a financial year shall be laid before a general meeting of the Company not later than nine months after the financial year end date.
- 46.4 Where the Company is a single-member company, the Company need not hold an annual general meeting in any year where the sole member entitled (at the date of the written resolution referred to in this Regulation) to attend and vote at such general meeting signs before the latest date for the holding of that meeting a written resolution:
- 46.4.1 acknowledging receipt of the financial statements that would have been laid before that meeting;
 - 46.4.2 resolving all such matters as would have been resolved at that meeting; and
 - 46.4.3 confirming no change is proposed in the appointment of the person (if any) who, at the date of the resolution, stands appointed as statutory auditor of the Company.

47 Location and Means for Holding General Meetings

- 47.1 An annual general meeting of the Company or an extraordinary general meeting of it may be held inside or outside of the State.
- 47.2 If the Company holds its annual general meeting or any extraordinary general meeting outside of the State then, unless all of the members entitled to attend and vote at such meeting consent in writing to its being held outside of the State, the Company shall make, at the Company's expense, all necessary arrangements to ensure that members can by technological means participate in any such meeting without leaving the State.
- 47.3 A meeting referred to in the foregoing Regulation may be held in two or more venues (whether inside or outside of the State) at the same time using any technology that provides members, as a whole, with a reasonable opportunity to participate.

48 Extraordinary General Meetings

- 48.1 The directors of the Company may, whenever they think fit, convene an extraordinary general meeting. If, at any time, there are not sufficient directors capable of acting to form a quorum, any director or any member of it may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.
- 48.2 One or more members of the Company holding, or together holding, at any time not less than 50 per cent of the paid up share capital of the Company as, at that time, carries the right of voting at general meetings of the Company may convene an extraordinary general meeting of the Company.
- 48.3 The directors of the Company shall, on the requisition of one or more members holding, or together holding, at the date of the deposit of the requisition, not less than 10 per cent of the paid up share capital of the Company, as at the date of the deposit carries the right of voting at general meetings of the Company, forthwith proceed duly to convene an extraordinary general meeting of the Company.
- 48.4 The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the Company and may consist of several documents in like form each signed by one or more requisitionists.
- 48.5 If the directors do not within 21 days after the date of the deposit of the requisition proceed to convene a meeting to be held within two months after that date (the "requisition date"), the requisitionists, or any of them representing more than 50 per cent of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months after the requisition date.
- 48.6 Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors to convene a meeting shall be repaid to the requisitionists by the Company and any sum so repaid shall be retained by the Company out of any sums due or to become due from the Company by way of fees or other remuneration in respect of their services to such of the directors as were in default.
- 48.7 For the purposes of Regulations 48.3 to 48.6, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice of it as is required by section 181 of the Act.
- 48.8 A meeting convened under Regulations 48.2 and 48.5 shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by directors.

49 Persons entitled to Notice of General Meetings

- 49.1 Notice of every general meeting of the Company ("**relevant notice**") shall be given to:
- 49.1.1 every member;
- 49.1.2 the personal representative of a deceased member of the Company, which member would, but for his or her death, be entitled to vote at the meeting;
- 49.1.3 the assignee in bankruptcy of a bankrupt member of the Company (being a bankrupt member who is entitled to vote at the meeting); and
- 49.1.4 the directors and secretary of the Company.
- 49.2 Unless the Company is entitled to and has availed itself of the audit exemption under sections 360 or 365 of the Act (and, where relevant, section 399 has been complied with in that regard), the statutory auditors of the Company shall be entitled to:

- 49.2.1 attend any general meeting of the Company;
- 49.2.2 receive all notices of, and other communications relating to, any general meeting which any member of the Company is entitled to receive; and
- 49.2.3 be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as statutory auditors.

50 Notice of General Meetings

- 50.1 A meeting of the Company, other than an adjourned meeting, shall be called:
 - 50.1.1 in the case of the annual general meeting or an extraordinary general meeting for the passing of a special resolution, by not less than 21 days' notice;
 - 50.1.2 in the case of any other extraordinary general meeting, by not less than seven days' notice.
- 50.2 A meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in Regulation 50.1, be deemed to have been duly called if it is so agreed by:
 - 50.2.1 all the members entitled to attend and vote at the meeting; and
 - 50.2.2 unless no statutory auditors of the Company stand appointed in consequence of the Company availing itself of the audit exemption under sections 360 or 365 of the Act (and, where relevant, section 399 has been complied with in that regard), the statutory auditors of the Company.
- 50.3 A resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority either:
 - 50.3.1 together holding not less than 90 per cent in nominal value of the shares giving that right; or
 - 50.3.2 together representing not less than 90 per cent of the total voting rights at that meeting of all the members.
- 50.4 Where notice of a meeting is given by posting it by ordinary prepaid post to the registered address of a member, then, for the purposes of any issue as to whether the correct period of notice for that meeting has been given, the giving of the notice shall be deemed to have been effected on the expiration of 24 hours following posting.
- 50.5 In determining whether the correct period of notice has been given by a notice of a meeting, neither the day on which the notice is served nor the day of the meeting for which it is given shall be counted.
- 50.6 The notice of a meeting shall specify:
 - 50.6.1 the place, the date and the time of the meeting;
 - 50.6.2 the general nature of the business to be transacted at the meeting;
 - 50.6.3 in the case of a proposed special resolution, the text or substance of that proposed special resolution; and
 - 50.6.4 with reasonable prominence a statement that:

- (a) a member entitled to attend and vote is entitled to appoint a proxy using the form set out in section 184 of the Act to attend, speak and vote instead of him or her;
- (b) a proxy need not be a member; and
- (c) the time by which the proxy must be received at the Company's registered office or some other place within the State as is specified in the statement for that purpose.

50.7 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 the meeting.

51 Quorum

51.1 No business shall be transacted at any general meeting of the Company unless a quorum of members is present at the time when the meeting proceeds to business.

51.2 The quorum necessary for a general meeting shall be the attendance of the Ordinary Shareholder.

51.3 If within 15 minutes after the time appointed for a general meeting a quorum is not present, then:

51.3.1 where the meeting has been convened upon the requisition of members, the meeting shall be dissolved;

51.3.2 in any other case:

- (a) the meeting 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
- (b) if at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the members present shall be a quorum.

52 Proxies

52.1 Subject to Regulation 52.3, any member of the Company entitled to attend and vote at a meeting of the Company shall be entitled to appoint another person (whether a member or not) as his or her proxy to attend and vote instead of him or her.

52.2 A proxy so appointed shall have the same right as the member to speak at the meeting and to vote on a show of hands and on a poll.

52.3 A member of the Company shall not be entitled to appoint more than one proxy to attend on the same occasion.

52.4 The instrument appointing a proxy (the "instrument of proxy") shall be in writing:

52.4.1 under the hand of the appointer or of his or her attorney duly authorised in writing; or

52.4.2 if the appointer is a body corporate, either under seal of the body corporate or under the hand of an officer or attorney of it duly authorised in writing.

52.5 The instrument of proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the Company concerned or at such other place within the State as is

specified for that purpose in the notice convening the meeting, and shall be so deposited not later than the 'appointed time' as defined in Regulation 52.6.

52.6 The appointed time is:

52.6.1 immediately before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or

52.6.2 in the case of a poll, immediately before the time appointed for the taking of the poll, and the application of section 183(6) of the Act shall be modified accordingly.

52.7 The depositing of the instrument of proxy referred to in Regulation 52.5 may, rather than it being effected by sending or delivering the instrument, be effected by communicating the instrument to the Company by electronic means, and this Regulation likewise applies to the depositing of anything else referred to in Regulation 52.5.

52.8 If Regulation 52.5 or Regulation 52.6 is not complied with, the instrument of proxy shall not be treated as valid.

52.9 Subject to Regulation 52.10, a vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the appointer or revocation of the proxy or of the authority under which the proxy was executed or the transfer of the share in respect of which the proxy is given.

52.10 Regulation 52.9 does not apply if notice in writing of the occurrence of one of the events mentioned in that Regulation is received by the Company concerned at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

52.11 Subject to Regulation 52.12, if, for the purpose of any meeting of the Company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the Company's expense to some only of the members entitled to be sent a notice of the meeting and to vote at it by proxy, any officer of the Company who knowingly and intentionally authorises or permits their issue in that manner shall be guilty of a category 3 offence.

52.12 An officer shall not be guilty of an offence under Regulation 52.11 by reason only of the issue to a member, at his or her request in writing, of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

53 Form of Proxy

53.1 An instrument appointing a proxy shall be in the following form or a form as near to it as circumstances permit:

[name of Company] ("the Company")

[name of member] ("the Member") of [address of member] being a member of the Company hereby appoint/s [name and address of proxy] or failing him or her

[name and address of alternative proxy] as the proxy of the Member to attend, speak and vote for the Member on behalf of the Member at the (annual or extraordinary, as the case may be) general meeting of the Company to be held on the [date of meeting] and at any adjournment of the meeting.

The proxy is to vote as follows:

| |
|------------------------------|
| Voting instructions to Proxy |
|------------------------------|

| (choice to be marked with an "X") | | | |
|--|-----------|---------|---------|
| Number or description of resolution | In favour | Abstain | Against |
| 1. | | | |
| 2. | | | |
| 3. | | | |
| Unless otherwise instructed the proxy will vote as he or she thinks fit. | | | |
| Signature of Member | | | |
| Date: | | | |

54 Representation of Bodies Corporate at Meetings of Companies

- 54.1 A body corporate may, if it is a member of the Company, by resolution of its directors or other governing body authorise such person (in this section referred to as an **"authorised person"**) as it thinks fit to act as its representative at any meeting of the Company or at any meeting of any class of members of the Company.
- 54.2 A body corporate may, if it is a creditor (including a holder of debentures) of the Company, by resolution of its directors or other governing body authorise such person (in this section also referred to as an **"authorised person"**) as it thinks fit to act as its representative at any meeting of any creditors of the Company held in pursuance of the Act or the provisions contained in any debenture or trust deed, as the case may be.
- 54.3 An authorised person shall be entitled to exercise the same powers on behalf of the body corporate which he or she represents as that body corporate could exercise if it were an individual member of the Company, creditor or holder of debentures of the Company.
- 54.4 The chairperson of a meeting may require a person claiming to be an authorised person within the meaning of this section to produce such evidence of the person's authority as such as the chairperson may reasonably specify and, if such evidence is not produced, the chairperson may exclude such person from the meeting.

55 Proceedings at Meetings

- 55.1 The chairperson, if any, of the board of directors shall preside as chairperson at every general meeting of the Company, or if there is no such chairperson, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairperson of the meeting.
- 55.2 If at any meeting no director is willing to act as chairperson or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of the members present and entitled to vote to be chairperson of the meeting.
- 55.3 The chairperson 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.
- 55.4 No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

- 55.5 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting but, subject to that, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 55.6 Unless a poll is demanded in accordance with section 189 of the Act, at any general meeting:
- 55.6.1 a resolution put to the vote of the meeting shall be decided on a show of hands; and
- 55.6.2 a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 55.7 Where there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote in addition to any other vote he or she may have.
- 55.8 The application of section 187 of the Act shall be modified accordingly.

56 Votes of Members

- 56.1 Subject to any rights or restrictions for the time being attached to any class or classes of shares, where a matter is being decided:
- 56.1.1 on a show of hands, every member present in person and every proxy shall have one vote, but so that no individual member shall have more than one vote; and
- 56.1.2 on a poll, every member shall, whether present in person or by proxy, have one vote for each share of which he or she is the holder or for each €15 of stock held by him or her, as the case may be.
- 56.2 Where there are joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose, seniority shall be determined by the order in which the names of the joint holders stand in the register of members.
- 56.3 Each of the following:
- 56.3.1 a member of unsound mind;
- 56.3.2 a member who has made an enduring power of attorney;
- 56.3.3 a member in respect of whom an order has been made by any court having jurisdiction in cases of unsound mind;
- may vote, whether on a show of hands or on a poll, by his or her committee, donee of a registered enduring power of attorney, receiver, guardian or other person appointed by the foregoing court.
- 56.4 Any such committee, donee of an enduring power of attorney, receiver, guardian, or other person may speak and vote by proxy, whether on a show of hands or on a poll.
- 56.5 No member shall be entitled to vote at any general meeting of the Company unless all calls or other sums immediately payable by him or her in respect of shares in the Company have been paid.
- 56.6 No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

56.7 Any such objection made in due time shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

56.8 The application of section 188 of the Act shall be modified accordingly.

57 Unanimous Written Resolutions

57.1 A resolution in writing signed by all the members of the Company for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly appointed representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the Company duly convened and held and if described as a special resolution shall be deemed to be a special resolution.

57.2 A resolution passed in accordance with Regulation 57.1 shall be deemed to have been passed at a meeting held on the date on which it was signed by the last member to sign, and, where the resolution states a date as being the date of his or her signature thereof by any member, the statement shall be prima facie evidence that it was signed by him or her on that date.

57.3 If a resolution passed in accordance with Regulation 57.1 is not contemporaneously signed, the Company shall notify the members, within 21 days after the date of delivery to it of the documents referred to in Regulation 57.4, of the fact that the resolution has been passed.

57.4 The signatories of a resolution passed in accordance with Regulation 57.1 shall, within 14 days after the date of its passing, procure delivery to the Company of the documents constituting the written resolution; without prejudice to the use of the other means of delivery generally permitted by the Act, such delivery may be effected by electronic mail or the use of a facsimile machine.

57.5 This Regulation does not apply to a resolution to remove a director or a resolution to effect the removal of a statutory auditor from office, or so as not to continue him or her in office.

57.6 A resolution referred to in Regulation 57.1 may be signed by electronic signature or advanced electronic signature.

58 Majority Written Resolutions

58.1 A resolution in writing that is described as being an ordinary resolution and signed by the requisite majority of members of the Company concerned, such resolution having being circulated to all the members in accordance with the provisions of the Act shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the Company duly convened and held.

58.2 In Regulation 58.1 "requisite majority of members" means a member or members who alone or together, at the time of the signing of the resolution concerned, represent more than 50 per cent of the total voting rights of all the members who, at that time, would have the right to attend and vote at a general meeting of the Company (or being bodies corporate by their duly appointed representatives).

58.3 A majority ordinary resolution shall be deemed to have been passed at a meeting held seven days after the date on which it was signed by the last member to sign, unless all of the members entitled to vote on the resolution sign a written waiver agreeing to the resolution being passed on such earlier date as may be specified in the resolution, being a date that is not earlier than the date of last signature of the resolution.

58.4 A resolution in writing that is described as being a special resolution and signed by the requisite majority of members such resolution having being circulated to all the members in accordance with the provisions of the Act, shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the Company duly convened and held.

- 58.5 In Regulation 58.4 “requisite majority of members” means a member or members who alone or together, at the time of the signing of the resolution concerned, represent at least 75 per cent of the total voting rights of all the members who, at that time, would have the right to attend and vote at a general meeting of the Company (or being bodies corporate by their duly appointed representatives).
- 58.6 A majority special resolution shall be deemed to have been passed at a meeting held 21 days after the date on which it was signed by the last member to sign, unless all of the members entitled to vote on the resolution sign a written waiver agreeing to the resolution being passed on such earlier date as may be specified in the resolution, being a date that is not earlier than the date of last signature of the resolution.
- 58.7 This Regulation does not apply to a resolution to remove a director or a resolution to effect the removal of a statutory auditor from office, or so as not to continue him or her in office.
- 58.8 A resolution referred to in these Regulations may be signed by electronic signature or advanced electronic signature.

59 Single-Member Companies — Absence of need to hold General Meetings

- 59.1 All the powers exercisable by the Company in general meeting under this Constitution or the Act or otherwise shall be exercisable, in the case of a single-member company, by the sole member without the need to hold a general meeting for that purpose.
- 59.2 Subject to Regulation 59.3, any provision of this Constitution and the Act which enables or requires any matter to be done or to be decided by the Company in general meeting, or requires any matter to be decided by a resolution of the Company, shall be deemed to be satisfied, in the case of a single-member company, by a decision of the member which is drawn up in writing and notified to the Company in accordance with this Regulation.
- 59.3 Regulation 59.1 shall not empower the sole member of a single-member company to exercise the powers to remove a statutory auditor from, or not continue a statutory auditor in, office without holding the requisite meeting provided for in the Act.

60 Minutes of Proceedings of Meetings of the Company

The Company shall, as soon as may be after their holding or passing, cause minutes of all proceedings of general meetings of it, and the terms of all resolutions of it, to be entered in books kept for that purpose. All such books kept by the Company in pursuance of this Regulation shall be kept at the same place.

61 Service of Notices on Members

- 61.1 Any notice to be given, served, sent or delivered pursuant to this Constitution (save where it is to be given, served, sent or delivered by electronic means) shall be in writing.
- 61.2 A notice or document to be given, served, sent or delivered in pursuance of this Constitution may be given to, served on, sent or delivered to any member by the Company:
- 61.2.1 by hand delivering it to the member or his authorised agent or where the member is a body corporate, to any officer of that body corporate;
- 61.2.2 by leaving it at the registered address of the member;
- 61.2.3 by sending it by post in a pre-paid letter addressed to the member at the registered address of the member;
- 61.2.4 by sending it by courier in a pre-paid letter addressed to the member at the registered address of the member;

- 61.2.5 by sending it by means of electronic mail or facsimile or other means of electronic communication approved by the directors to the address of the member notified to the Company by the member for such purpose (or if not so notified, then to the address of the member last known to the Company).
- 61.3 Any notice served, given, sent or delivered in accordance with the foregoing Regulations shall be deemed, in the absence of any agreement to the contrary between the Company (or, as the case may be, the officer of it) and the member, to have been served, given sent or delivered:
- 61.3.1 in the case of hand delivery, at the time of delivery (or, if delivery is refused, when tendered);
- 61.3.2 in the case of it being left, at the time that it is left;
- 61.3.3 in the case of its being posted or couriered on any day other than a Friday, Saturday or Sunday, 24 hours after despatch and in the case of its being posted or couriered:
- (a) on a Friday – 72 hours after despatch; or
- (b) on a Saturday or Sunday – 48 hours after despatch;
- 61.3.4 in the case of electronic means being used in relation to it, 12 hours after despatch.
- 61.4 In the case of joint holders of a share, all notices or other documents shall be sent to the joint holder whose name stands first in the register in respect of the joint holding. Any notice or other document so sent shall be deemed for all purposes sent to all the joint holders.
- 61.5 Every member shall be bound by a notice served, given, sent or delivered as aforesaid notwithstanding that the Company may have notice of the death, insanity, bankruptcy, liquidation or disability of such member.
- 61.6 Notwithstanding anything contained in these Regulations the Company shall not be obliged to take account of or make any investigations as to the existence of any suspension or curtailment of postal services within or in relation to all or any part of any jurisdiction or other area other than Ireland.
- 61.7 The signature (whether electronic signature, advanced electronic signature or otherwise) to any notice to be given by the Company may be written (in electronic form or otherwise) or printed.
- 61.8 In this Regulation “registered address” in relation to a member, means the address of the member as entered in the register of members.
- 61.9 Section 218 of the Act does not apply.

LIABILITY OF OFFICERS

62 Fiduciary Duties of Directors

For the purposes of section 228(1)(d) of the Act, a director is expressly permitted to use for his or her own, or anyone else’s benefit, any of the Company’s property (including computers, telephones, vehicles and accommodation) where such use is approved by the directors or by a person authorised by the directors or where such use is in the course of the discharge of the director’s duties, responsibilities or employment obligations.

63 Indemnity for Officers

- 63.1 Subject to the provisions of the Act, the Company may indemnify any officer of the Company against any liability incurred by him or her in defending proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted, or in connection with any proceedings or application referred to in, or under, section 233 or 234 of the Act in which relief is granted to him or her by the court.
- 63.2 Every officer of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities which he or she may sustain or incur in or about the execution of the duties of his or her office or otherwise in relation thereto and no officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his or her office or in relation thereto. This Regulation shall only have effect in so far as its provisions are not void under section 235 of the Act.

We, the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this constitution, and we agree to take the number of shares in the capital of the company set opposite our respective names.

| Names, Addresses and Descriptions of Subscribers | Number of Shares Taken by each Subscriber |
|--|---|
| George Brady For and on behalf of MATSACK NOMINEES LIMITED 70 Sir John Rogerson's Quay, Dublin 2 Body Corporate | 1 |
| Total shares taken | 1 |
| Signature of the above subscriber(s), attested by the following witness: Dated the 7th day of August 2018 Witness to the above signature: Name: Catherine Harmon Address: 70 Sir John Rogerson's Quay, Dublin 2 Signature of witness: _____ | |