

**THE COMPANIES ACT 2014**  
**DESIGNATED ACTIVITY COMPANY LIMITED BY SHARES**  
**CONSTITUTION**  
**OF**  
**THE NATIONAL MATERNITY HOSPITAL AT ELM PARK**  
**DESIGNATED ACTIVITY COMPANY**  
**MEMORANDUM OF ASSOCIATION**

Capitalised terms used in this Memorandum of Association shall have the meanings given to those terms in the Articles of Association.

**1. COMPANY NAME**

- 1.1 The name of the Company is The National Maternity Hospital at Elm Park Designated Activity Company (the “**Company**”).

**2. COMPANY TYPE**

- 2.1 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 (the “**2014 Act**”).

**3. PRINCIPAL OBJECT**

- 3.1 The principal object for which the Company is established is the promotion of health, in particular by the provision of all clinically appropriate and legally permissible healthcare services, including research, by a maternity, gynaecology, obstetrics and neonatal hospital, and a range of related health services in the community.
- 3.2 The services referred to in clause 3.1 shall be carried out in accordance with the clinical and other governance arrangements set out in or adopted pursuant to this Memorandum and Articles of Association, without religious ethos or ethnic or other distinction.

**4. SUBSIDIARY AND ANCILLARY OBJECTS OF THE COMPANY**

- 4.1 As objects incidental and ancillary to the attainment of the principal object set out above, the Company shall have the following subsidiary objects (and any income generated therefrom is to be applied in furtherance of the principal object only):
- 4.1.1 to acquire, as a going concern, the undertaking of the said Chartered Corporation, being the NMHD with the exception of the Retained Activities, and for that purpose:

- (i) to acquire the assets, undertaking, employees, entitlements, rights, franchises and licences of the Chartered Corporation; and
- (ii) to acquire and assume all appropriate commitments, obligations and liabilities, whether present or future and whether actual or contingent, of the said Chartered Corporation;

with the exception of the existing hospital building of the Chartered Corporation at Holles Street, Dublin 2 and adjoining buildings, which includes the buildings known as 58 - 61 Lower Mount Street, Dublin 2<sup>1</sup>;

- 4.1.2 to procure and provide finance, facilities, staff and any other resources that are required and conducive to the principal object of the Company;
- 4.1.3 as and to the extent determined by the Board from time to time, to take over from NMHD any other activities or services (including, without limitation, educational and research activities associated with the Chartered Trust;
- 4.1.4 to agree and enter into annual and/or multi-annual service arrangements or agreements with the HSE;
- 4.1.5 to participate in its own right (including independently of SVHG) as a member of any Hospital Group that may be established by the HSE or otherwise;
- 4.1.6 to monitor and assess the performance of the Company against the objectives and / or targets as set out in business plans and/or which are requirements of the HSE as may be set out in any service level agreements;
- 4.1.7 to review and advise on (or procure expert advice on) any matters that affect the operations of the Company or developments in the wider healthcare environment;
- 4.1.8 to prepare and implement annual plans for the New NMH (as defined in clause 5.1) in line with any service level agreement or memorandum of understanding in place from time to time between SVHG and the Company;
- 4.1.9 to ensure that the operations at the New NMH are managed and run efficiently and in accordance with any service level agreements in place with the HSE;
- 4.1.10 to undertake the appropriate legal, financial, regulatory and risk assessments in respect of the New NMH from time to time in accordance with statutory requirements and best practice and to ensure such assessments are maintained update to date;

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<sup>1</sup> **PL note:** to be clarified - what assets (and liabilities) of the Chartered Corporation are transferring/being excluded.

- 4.1.11 [in conjunction with SVHG (as defined in the Articles) on an agreed schedule, to implement and maintain, sufficient standards to obtain JCI accreditation;
- 4.1.12 to promote and carry out any educational and research activities, consistent with JCI accreditation and/or with SVHG protocols and operational procedures;]<sup>2</sup>
- 4.1.13 to provide such services connected with the principal object of the Company as are considered to be of assistance and benefit in furthering the principal object of the Company; and
- 4.1.14 to do all such other acts and things as the Company may consider incidental or conducive to the attainment of the principal object of the Company.

## 5. RESERVED POWERS

- 5.1 The Company shall, in addition to the powers conferred on it by law, have the following powers (the “**Reserved Powers**”) which are (i) exclusively subsidiary and ancillary to the principal object and which are to be carried out in furtherance of the principal object and (ii) to be exercised in a manner that is designed to preserve the independence and autonomy of the Company in all clinical and operational matters (to the exclusion of their exercise or purported exercise by any Member), in accordance with the provisions of the Articles:
  - 5.1.1 the independent:
    - (a) operation of the new maternity, gynaecology, obstetrics and neonatal hospital (without religious ethos or ethnic or other distinction) at Elm Park, Dublin (the “**New NMH**”);
    - (b) provision of medical, surgical, nursing, midwifery and other health services (without religious ethos or ethnic or other distinction), including strategic planning in relation to the development of such services in the future in the accordance with developing best practice;
  - 5.1.2 the right to control, utilise and protect all financial and budgetary matters of the Company;
  - 5.1.3 the right to retain and utilise any moneys received from the disposal of any assets, or the receipt of any gifts and bequests on the transfer of the NMHD (other than those derived from the transfer of the Holles St building which is to be transferred to the HSE as consideration for the grant of use of the new maternity hospital at Elm Park to the Company) and from any on-going specific gifts, bequests and donations for the sole use of maternity, gynaecology, obstetrics and/or neonatal or related services;

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<sup>2</sup> **PL note:** for review and discussion

- 5.1.4 the right to negotiate and agree with the HSE (or any like or successor agency) any service level agreements including those pertaining to budgets, staffing (including consultant numbers), targets and performance criteria;
- 5.1.5 the right to retain the mastership model of governance in the manner hereinbefore carried out by the Chartered Corporation at the NMHD in the context of the evolving governance and report structures outlined in Section 6.7 "Implementation of Maternity networks" of the National Maternity Strategy 2016 – 2026;
- 5.1.6 the right to appoint the Master (in accordance with the provisions of Article 7.1) the Secretary, the Chief Financial Officer, the Director of Midwifery and other senior personnel of the hospital;
- 5.1.7 the right to control the appointment of other personnel, professional and operational and to agree their terms and conditions of appointment and employment, save for medical consultant staff appointed under existing dual appointment arrangements; and
- 5.1.8 the right to the sole and exclusive protected use of the new maternity hospital facility at Elm Park, its identity and branding, subject to the permitted use of certain defined areas by SVHG in accordance with an operating licence to be entered into between the Company, the HSE and SVHG.
- 5.2 The Reserved Powers detailed in clause 5.1 above represent critical functions of the Company which, in addition to the powers reserved to and obligations imposed on the Company, must be exercised by the Directors independently, without religious ethos or ethnic or other distinction, in such a manner that any maternity, gynaecology, obstetrics and/or neonatal services which are lawfully available in the State shall be available in the New NMH, and in a manner that is designed to preserve the independence and autonomy of the Company in clinical and operational matters as specified in clause 5.1.
- 5.3 The Minister shall hold a share referred to as the Golden Share to provide legal protection to the inviolability of the Reserved Powers in the manner provided for in this Constitution, to ensure that the obligations of the Directors as contained in this Constitution are complied with and to ensure that any maternity, gynaecological, obstetrics and/or neonatal services which are lawfully available in the State shall be available in the New NMH.
- 5.4 In addition to the requirements of clause 12.4 in respect of any amendment to this Constitution, these Reserved Powers shall not be capable of amendment save with:
- (i) the prior unanimous approval of the Board from time to time, being a board that is fully constituted in accordance with the provisions of the Articles of Association; and
  - (ii) the prior written consent of the Minister.

## 6. GENERAL POWERS

- 6.1 The Company shall in addition to the powers conferred on it by law and the Reserved Powers have the following general powers which are exclusively subsidiary and ancillary to the principal object and which powers may only be exercised in promoting the principal object and insofar as they do not conflict with or operate to restrict the exercise of the Reserved Powers (or any of them) and provided that any income generated by the exercise of these powers is to be applied to the promotion of the principal object:
- 6.1.1 to raise funds and help raise funds for any charitable purpose;
  - 6.1.2 to contribute by donation, subscription, loan, guarantee or otherwise to any other charitable object whatsoever;
  - 6.1.3 to take such steps by personal or written appeals, or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company, by way of donations or otherwise;
  - 6.1.4 to subscribe to any local or other charities;
  - 6.1.5 to acquire by purchase, exchange, lease, fee farm grant or otherwise, whether for an estate in fee simple or for any less estate or interest, whether immediately or reversionary, and whether vested or contingent: any lands, tenements or hereditaments of any tenure, whether subject or not to any charges or encumbrances and to hold, farm, work or manage or to sell, let, alienate, mortgage, lease or charge land, houses, property, shops, flats, maisonettes, reversions, interests, annuities, life policies and any other property real or personal, movable or immovable, either absolutely or conditionally and either subject or not to any mortgage, charge, ground rent or other rents or encumbrances and to pay for any lands, tenements, hereditaments or assets acquired by the Company in cash or debentures or obligations of the Company, whether fully paid or otherwise, or in any other manner;
  - 6.1.6 to construct, maintain, and alter any houses, buildings, or works necessary or convenient for the purposes of the Company;
  - 6.1.7 to take any gift of property of any nature and any devise, legacy or annuity, subscription, contribution or fund, whether subject to any special trust or not, in furtherance of the principal object of the Company, and to apply to such purpose the capital as well as the income of any such legacy, donation or fund;
  - 6.1.8 to sell, manage, lease, mortgage, dispose of, or otherwise deal with all or any part of the property of the Company and to apply the net proceeds of such sale or mortgage for such charitable purposes of the Company as it may think fit and in particular for all or any of the charitable purposes of the Company;
  - 6.1.9 to borrow and raise money in such manner as the Company may think fit and to secure the payment of money by the issue of or upon debentures

or debenture stock, perpetual, terminable or otherwise, or bonds or other obligations, charged or not charged upon, or by mortgage, charge, hypothecation, lien or pledge of the whole or any part of the undertaking, property, assets and rights of the Company, both present and future, and generally in such other manner and on such terms as may seem expedient, and to issue any of the Company's securities, for such consideration and on such terms as may be thought fit, including the power to pay interest on any money so raised or borrowed, and also by a similar mortgage, charge, hypothecation, lien or pledge, to secure and guarantee the performance by the Company of any obligation or liability it may undertake, and to redeem or pay off any such securities;

- 6.1.10 to make, draw, accept, endorse, issue, discount, and otherwise deal with promissory notes, bills of exchange, cheques, letters of credit, circular notes and other mercantile instruments;
- 6.1.11 to establish or participate in other companies or associations whether as shareholder or member or otherwise;
- 6.1.12 to take or otherwise acquire, and to hold, membership interests, shares and/or securities of any company or association and to sell, hold, reissue, with or without guarantee, or otherwise deal with same;
- 6.1.13 to establish and support, and to aid in the establishment and support of, any other company or association formed for all or any of the principal object of the Company and to subscribe to any charitable purposes in any way connected with the principal object of the Company or which may be calculated to further its interests or any of them;
- 6.1.14 to amalgamate with any companies, institutions, societies or associations which are registered charities and which have objects similar to those of the Company;
- 6.1.15 to co-operate with other companies, institutions, societies or associations as the Company considers necessary and desirable;
- 6.1.16 to purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies, institutions, societies or associations with which the Company is from time to time authorised to amalgamate provided strictly that to do so would be in accordance with the charitable objects of the Company;
- 6.1.17 to transfer all or any part of the property, assets, liabilities and engagements of the Company to any one or more of the companies, institutions, societies or associations with which the Company is from time to time authorised to amalgamate provided strictly that to do so would be in accordance with the charitable objects of the Company;
- 6.1.18 to purchase or otherwise acquire and carry on the whole or any part of the business, property, goodwill and assets of any company carrying on or proposing to carry on any business which the Company is authorised to carry on or which can be conveniently carried on in connection with the same, or may seem calculated directly or indirectly to benefit the

Company, or possessed of property suitable for the purposes of the Company, and as part of the consideration for any of the acts or things aforesaid or property acquired to undertake all or any of the liabilities of such company or to acquire an interest therein, amalgamate with or enter into any arrangement for sharing profits, or for co-operation, or for mutual assistance with any such company and to give, issue or accept cash or any shares, debentures or other securities that may be agreed upon, and to hold and retain or sell, mortgage and deal with any shares, debentures or securities so received provided strictly that to do so would be in accordance with the charitable objects of the Company;

- 6.1.19 to promote any company for the purpose of acquiring all or any of the property and/or liabilities of the Company, or if undertaking any business or operations which may appear likely to assist or benefit the Company or to enhance the value of or render more profitable any property, assets or business of the Company, or for any other purpose which may seem directly or indirectly calculated to benefit the Company provided strictly that to do so would be in accordance with the charitable objects of the Company;
- 6.1.20 to invest the moneys of the Company not immediately required for its purposes in or upon such investments, securities or property as may be thought fit, subject nevertheless to such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law and subject also as hereinafter provided;
- 6.1.21 to accumulate capital for any purposes of the Company, and to appropriate any of the Company's assets for specific purposes, either conditionally or unconditionally (prior permission to be obtained from Revenue where it is intended to accumulate funds for a period in excess of two years);
- 6.1.22 to receive and administer and allocate grants and gifts made available to the Company for its principal object (and whether or not such grants or gifts are made from such public funds or otherwise) under the terms and conditions attached to such grants and gifts;
- 6.1.23 to collect all allocations, fees or other amounts payable for facilities and services provided by the Company;
- 6.1.24 to, create, maintain, invest and deal with any reserve or sinking funds for redemption of obligations of the Company, or for depreciation of works or stock, or any other purpose to advance the principal object of the Company;
- 6.1.25 to enter into any arrangements with any government or authority, supreme, municipal, local or otherwise, or company or association that may seem conducive to the Company's principal object, and to obtain from any such government authority or association, any charters, contracts, decrees, rights, privileges and concessions and to carry out, exercise and comply with any such arrangements, charters, contracts, decrees, rights, privileges and concessions;

- 6.1.26 to undertake and execute any trusts or any agency business which may seem directly or indirectly conducive to any of the principal object of the Company;
- 6.1.27 to produce any publications that the Company may think desirable for the promotion of its principal object;
- 6.1.28 to employ, engage and retain all such officers and servants and to appoint, engage and retain or direct the appointment, engagement or retention of such educational, administrative, clerical, financial and other employees, consultants and advisers of any description as may be required for the purposes of the Company and to make all reasonable and necessary provisions for the payment of wages, salaries, pensions, superannuation to or on behalf of employees and their widows, widowers and other dependents;
- 6.1.29 to grant pensions, gratuities, allowances or charitable aid to any person who may have served the Company or the Chartered Corporation as an employee, or to the wives, husbands, children or other dependents of such person provided that such pensions, gratuities, allowances or charitable aid shall be no more than that provided by a pension scheme covered by Part 30 of the Taxes Consolidation Act 1997 and provided that such pension scheme has been operated by the company and the beneficiary of the pensions, gratuities, allowances or charitable aid, or their spouse or parent, has been a member of the pension scheme while employed by the Company; and to make payments towards insurance and to form and contribute to provident and benefit funds for the benefit of any persons employed by the Company and to subscribe or guarantee money for charitable objects;
- 6.1.30 to procure the Company to be registered or recognised in any foreign country, jurisdiction or place;
- 6.1.31 to pay all or any expenses of, incidental to or incurred in connection with the formation and incorporation of the Company and the raising of its loan capital, or to contract with any person or company to pay the same, and to pay commissions to brokers and others for underwriting, placing, selling or guaranteeing the subscription of any debentures or securities of the Company;
- 6.1.32 to promote freedom of contract and to resist, insure against, counteract and discourage interference therewith, to join any lawful federation, union, association or party and to contribute to the funds thereof, or do any other lawful act or thing with a view to preventing or resisting directly or indirectly any interruption of or interference with the Company or any other trade or business or providing or safeguarding against the same, or resisting or opposing any strike, movement or organisation which may be thought detrimental to the interest of the Company or its employees and to subscribe to any association or fund for any such purposes;
- 6.1.33 to carry on any other business which may seem to the Company capable of being conveniently carried on in connection with the principal object or calculated directly or indirectly to enhance the value of or render profitable any of the Company's property, rights or interests;



- 6.1.34 to do all or any of the above things in any part of the world, and as principals, agents, contractors, trustees or otherwise, and either by or through trustees, agents, sub-contractors or otherwise and either alone in partnership or conjunction with any person, company or association, and to contract for the carrying on of any operation connected with the Company's principal object by any person, company or association; and,
- 6.1.35 to do all such other lawful things as are incidental or conducive to the attainment of the above principal object or any of them.
- 6.2 The Company shall not have the power to guarantee, support or secure, whether by personal covenant or by mortgaging or charging all or any part of the undertaking, property and assets (present and future) of the Company, the performance of the obligations of and the repayment or payment of the principal amounts and interest of any person, firm or company or the dividends or interest of any securities, including (without prejudice to the generality of the foregoing) any company which is the Company's holding company or a subsidiary or associated company of such holding company.

## **7. LIMITATION ON OBJECTS AND POWERS**

- 7.1 The Company shall not support with its funds or endeavour to impose on or procure to be observed by its Members or others any regulation or restriction which, if an object of the Company, would make it a trade union.
- 7.2 The above objects shall not be construed in any way so as to render any of them otherwise than exclusively charitable.
- 7.3 The objects and powers contained in clauses 4, 5 and 6 are ancillary and subsidiary to the principal object set out in clause 3.

## **8. LIMITED LIABILITY**

- 8.1 The liability of the members is limited.

## **9. AUTHORISED SHARE CAPITAL**

- 9.1 The share capital of the Company is €100.00 divided into ninety-nine (99) Ordinary Shares of €1.00 each and one (1) Golden Share of €1.00, having the respective rights given to them in the Articles of Association.

## **10. WINDING UP**

- 10.1 If upon the winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, it shall not be paid to or distributed among the Members. Instead, such property shall be given or transferred to some other company or companies (being a charitable institution or institutions) having principal object similar to the principal object of the Company, in particular objects pertaining to the provision of maternity, gynaecology, obstetrics and neonatal services in the community without religious or ethnic or other distinction. The company or companies (being a

charitable institution or institutions) to which the property is to be given or transferred shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of clause 11 hereof. Members shall select the company or companies (being a charitable institution or institutions) at or before the time of dissolution. Final accounts will be prepared and submitted that will include a section that identifies and values any assets transferred along with the details of the recipients and the terms of the transfer.

## **11. PROHIBITION ON PAYMENTS TO MEMBERS**

- 11.1 The income and property of the Company shall be applied solely towards the promotion of its principal object as set forth in this Memorandum. No portion of the Company's income and property shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to the Members.
- 11.2 Save for the Master, no Director shall be appointed to any office of the Company paid by salary or fees or receive any remuneration or other benefit in money or money's worth from the Company. However, nothing shall prevent any payment in good faith by the Company of:
  - 11.2.1 reasonable and proper remuneration to any Member, officer or servant of the Company (not being a Director (with the exception of the Master)) in return for any services rendered to the Company;
  - 11.2.2 interest at a rate not exceeding 1% above the Euro Interbank Offered Rate ("**Euribor**") per annum on money lent by any Director or any Member to the Company;
  - 11.2.3 reasonable and proper rent for premises demised or let by any Director or any Member to the Company;
  - 11.2.4 reasonable and proper out-of-pocket expenses incurred by any Director in connection with his attendance to any matter affecting the Company;
  - 11.2.5 fees, remuneration or other benefit in money's worth to any company of which a Director may be a member holding not more than one hundredth part of the issued capital of such company; or,
  - 11.2.6 sums to any Director or to any person with whom a Director has a personal connection (within the meaning of section 2(1) and 2(2) of the Charities Act) in return for services actually rendered to the Company, pursuant to an agreement entered into in compliance with section 89 of the Charities Act.

## **12. APPROVALS, ALTERATIONS OR AMENDMENTS**

- 12.1 The Company must ensure that the Charities Regulator has a copy of its most recent Constitution. If it is proposed to make an amendment to the Constitution which requires the prior approval of the Charities Regulator, advance notice in writing of the proposed changes must be given to the

Charities Regulator for approval, and the amendment shall not take effect until such approval is received.

- 12.2 No amendments of any kind shall be made to the provisions of clauses 10 and 11 of the Memorandum and no amendments shall be made to the Constitution to such extent that they would alter the effect of clauses 10 and 11 of the Memorandum, such that there would be non-compliance with the requirements of section 971 of the 2014 Act.
- 12.3 The matters referred to at Clause 5 of this Memorandum shall only be amended in accordance with the provisions of Clause 5.4.
- 12.4 The provisions of Article 5.7.2(iv) must be complied with in order to amend this Constitution.

### **13. REVENUE COMMISSIONERS ENTITLED TO ACCOUNTS**

For so long as the Company benefits from charitable tax-exempt status from the Revenue Commissioners, annual audited accounts shall be kept and made available to the Revenue Commissioners on request.

### **14. FACTUAL CONTEXT REGARDING THE COMPANY**

The [Subscribers<sup>3</sup>, the] NMHD, the Chartered Corporation, and the Minister wish to acknowledge the factual context which preceded the incorporation of the Company as follows:

- 14.1 The NMHD was founded in the year 1894 expressly for the relief of poor lying-in women and for the treatment of diseases peculiar to women;
- 14.2 By a Charter or Letters Patent under the Great Seal of Ireland bearing date the 14th day of May, 1903, certain persons therein named and such other persons as might from time to time be elected in the manner thereafter directed were incorporated into the Chartered Corporation (as further defined below), and certain powers were conferred and duties imposed upon the Chartered Corporation and the members thereof and certain provisions were made for the general regulation and management of the hospital;
- 14.3 The sphere of the work of the hospital having been considerably extended since its incorporation, it became expedient that the powers conferred by the Charter and the provisions for the regulation and management of the hospital therein contained should be extended and amended;
- 14.4 By the National Maternity Hospital, Dublin (Charter Amendment) Act 1936, further and other powers were conferred on the said Governors and further provisions were made for the administration and control of the affairs of the said Chartered Corporation by an executive committee and for other purposes relating to the said hospital;

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<sup>3</sup> **PL note:** identity of subscribers TBC

- 14.5 The said Governors have agreed with SVHG, the HSE and the Minister for Health to relocate all hospital activities from NMHD to a new maternity hospital facility to be constructed by the HSE at Elm Park in the City of Dublin to be operated by the Company with governance arrangements as provided by this Memorandum and Articles of Association;
- 14.6 It is intended that the Company shall independently provide maternity, gynaecological, obstetrics, neonatal and related services at the new maternity hospital facility at Elm Park, and the Company is to have exclusive protected use (as defined in an operating licence to be entered into between the Company, the HSE and SVHG), without interference from any outside body; and
- 14.7 The board of directors of SVHG and the executive committee of the Chartered Corporation have confirmed that any clinically appropriate maternity, gynaecological, obstetric, neonatal or related service which is lawfully permissible in the State shall be available in the new maternity hospital facility at Elm Park.

For the avoidance of doubt, this clause 14 is provided for background and context relating to the Company only and is to be ignored for the purposes of interpretation of this Constitution, and in particular, of the provisions of clause 5 (Reserved Powers).

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**CONSTITUTION**  
**OF**  
**THE NATIONAL MATERNITY HOSPITAL AT ELM PARK**  
**DESIGNATED ACTIVITY COMPANY**  
**ARTICLES OF ASSOCIATION**

**1 PRELIMINARY**

**1.1 Definitions**

In these Articles:

**“2014 Act”** means the Companies Act 2014;

**“Articles”** means these articles of association;

**“Board”** means board of directors for the time being of the Company;

**“Charities Act”** means the Charities Act 2009 (as may be amended from time to time);

**“Charities Regulator”** means the Charities Regulatory Authority, a body established by section 13 of the Charities Act to perform the functions conferred on it by the Charities Act;

**“Chartered Corporation”** means the body politic and corporate by the name of Governors of the National Maternity Hospital Dublin, founded by Charter dated 14th May 1903;

**“Company”** means the Company, the name of which appears in the heading of this Constitution;

**“Constitution”** means the Memorandum and the Articles;

**“Directors”** means the directors for the time being of the Company and includes any person occupying the position of director by whatever name called;

**“Golden Share”** means the golden share in the capital of the Company, having the rights specified in the Constitution;

**“HSE”** means the Health Service Executive, established under section 6 of the Health Act 2004, or such other body or agency as from time to time carries on the functions thereof;

**“Independent Director”** shall have the meaning ascribed thereto in Article 6.1.2 (iii);

**“Mandatory Provision”** means a provision of any of Parts 1 to 14 or Part 16 of the 2014 Act (together with any statutory modification thereof in force at the date on which these Articles become binding on the Company) that applies to companies limited by guarantee and that is not an Optional Provision;

**“Master”** means the individual for the time being holding the office and title of “Master of the National Maternity Hospital”, being an employee of the Company, who shall be appointed in accordance with these Articles;

**“Matters Reserved for the Board”** means those matters set out in a schedule of matters specifically reserved for the Board’s decision, as that schedule (and any amendments thereto) shall be approved by the Board from time-to-time, which matters cannot be delegated to any other person or any committee;

**“Member”** means a member of the Company, including for the avoidance of doubt the Minister as holder of the Golden Share;

**“Memorandum”** means the memorandum of association of the Company;

**“Minister”** means the Minister for Health for the time being, and in the event of there being a change in title or function of the said Minister, the member of the government with primary responsibility for women’s health;

**“NMHD”** means the National Maternity Hospital situate in Holles Street in the City of Dublin;

**“Optional Provision”** means a provision of any of parts 1 to 14 or part 16 of the 2014 Act (together with any statutory modification thereof in force at the date on which these Articles become binding on the Company) that applies to designated activity companies limited by shares and that:

- (a) contains a statement to the effect, or is governed by provision elsewhere to the effect, that the provision applies save to the extent that the constitution provides otherwise or unless the constitution states otherwise; or
- (b) is otherwise of such import;

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

**“Principal object”** the principal object of the Company as set out in Clause 3 of the Memorandum;

**“Reserved Powers”** the powers of the Company as set out in Clause 5 of the Memorandum;

**“Secretary”** means any person appointed to perform the duties of the secretary of the Company, and shall include any temporary, assistant or acting secretary;

**“Seal”** means the common seal of the Company;

**“SVHG”** means St. Vincent’s Healthcare Group, a company incorporated in Ireland with registered number 338585; and

“**year**” means a calendar year.

## 1.2 Interpretation

- 1.2.1 Words importing the singular number only shall include the plural number and vice versa. Words importing one gender shall include the other genders. Words importing persons shall include corporations.
- 1.2.2 Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and any other modes of representing or reproducing words in a visible form.
- 1.2.3 Unless the contrary intention appears, words or expressions contained in this Constitution shall bear the same meaning as in the 2014 Act, or any statutory modification thereof in force at the date at which this Constitution becomes binding on the Company.
- 1.2.4 Headings and footnotes used in this Constitution are for convenience of reference only and shall not be considered to form part of this Constitution.
- 1.2.5 Subject to the requirements of any Mandatory Provision, to the greatest extent possible the provisions of this Constitution shall take precedence over the provisions of the 2014 Act.

## 1.3 The Company shall not:

### 1.3.1 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

1.3.2 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 and section 981 of the 2014 Act shall apply to the Company.

## 2 MEMBERS

### 2.1 Number of Members

2.1.1 The number of Members with which the Company proposes to be registered is two.

2.1.2 The subscribers to the Constitution are its first Members and are:

(A) SVHG; and

(B) the Minister,

and each shall hold the Shares set out below.

## **2.2 Members' Rights and Obligations**

- 2.2.1 Each Member shall, on request, be entitled to be provided with a certificate of membership.
- 2.2.2 Each Member shall use his reasonable endeavours to promote the Principal Object and the interests of the Company and shall observe all of the Company's regulations contained in, or effective pursuant to, this Constitution or the 2014 Act, including in relation to the independent exercise by the Company (and the Board) of the Reserved Powers. No act by any Member or any Director nominated by that Member which purports to limit or fetter the exercise by the Company of the Reserved Powers in pursuance of the Principal Object shall be valid.
- 2.2.3 The rights of each Member shall not be transferable, transmissible or chargeable by his own act, by operation of law or otherwise.
- 2.2.4 A register shall be kept by the Company containing the names and addresses of all the Members, together with such particulars as may be required by the 2014 Act.
- 2.2.5 Each Member shall be entitled to notice of, and to attend and vote at, general meetings of the Company.

## **3 SHARE CAPITAL**

### **3.1 Authorised Share Capital**

- 3.1.1 The share capital of the Company is €100.00 divided into ninety-nine (99) Ordinary Shares of €1.00 each and one (1) Golden Share of €1.00.
- 3.1.2 SVHG shall hold the 99 Ordinary Shares.
- 3.1.3 The Minister shall hold the 1 Golden Share on behalf of his office.
- 3.1.4 The Ordinary Shares and the Golden Share shall rank *pari passu* in all respects save that the holder of the Golden Share, being the Minister, shall have the additional rights which are given to him in in this Constitution, including but not limited to:
  - (A) the right to give or withhold the Minister's consent to any proposed amendment to, the Reserved Powers;
  - (B) the right to give or withhold the Minister's consent to any other amendment to the Constitution; and
  - (C) the right to give directions to the Board pursuant to Article 9.1.1(E).

### **3.2 No Right to Dividend**

No dividends shall be payable on any of the shares of the Company.



### **3.3 Allotment of Shares**

Save with the unanimous written consent of all Members, the Directors shall not be authorised to allot shares within the meaning of section 69 (1) of the 2014 Act either generally or conditionally or otherwise.

### **3.4 Variation of capital**

Save with the unanimous written consent of all Members, the Company shall not:

- 3.4.1 increase the share capital;
- 3.4.2 consolidate its shares or any of them into shares of a larger amount than its existing shares;
- 3.4.3 subdivide its shares or any of them into shares of a smaller amount than its existing shares;
- 3.4.4 cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;
- 3.4.5 reduce its share capital in any way; or
- 3.4.6 re-designate any of the existing shares in the capital of the Company into redeemable shares.

3.5 The lien conferred by section 80 of the 2014 Act shall attach to fully paid shares and to all shares registered in the name of any person indebted or under liability to the Company, whether he or she shall be the sole registered holder of those shares or shall be one of several joint holders. The costs, charges and expenses of enforcing the Company's lien in respect of any shares or share shall be a first charge on the proceeds of sale of those shares.

3.6 Save with the unanimous written consent of all Members, the Company shall not purchase its own shares, including any redeemable shares in accordance with section 105 of the 2014 Act.

3.7 The Company shall not be entitled to vary the rights attached to any classes of shares.

## **4 TRANSFER OF SHARES**

4.1 Subject to the provisions contained in section 94 of the 2014 Act and the written consent of the Minister, and the approval of the Board of Directors, a Member may transfer all (and not some only) of its shares in the Company by instrument in writing in any usual or common form or any other form which the Directors approve, provided that no shares shall be transferred to any transferee that is not a charity registered with the Charities Regulator.

4.2 The instrument of transfer of any shares 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.

- 4.3 The transferor shall be deemed to remain the holder of the shares until the name of the transferee is entered in the register in respect thereof.
- 4.4 The Company shall not register a transfer of shares until a proper instrument of transfer is delivered to the Company and the necessary written consents obtained.
- 4.5 The Company shall, within two months after the date:
- 4.5.1 of allotment of any of its shares or debentures; or
- 4.5.2 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 and the provisions of section 99 of the 2014 Act shall apply to the Company.

## **5 GENERAL MEETINGS**

### **5.1 Location of General Meetings**

- 5.1.1 Annual general meetings and extraordinary general meetings of the Company may be held only inside the State.
- 5.1.2 General meetings must be held at a single venue.

### **5.2 Notice of General Meetings**

- 5.2.1 Subject to section 181 of the 2014 Act, a meeting of the Company, other than an adjourned meeting, shall be called in the case of an annual general meeting or an extraordinary general meeting for the passing of a special resolution, by not less than 21 days' notice, and in the case of any other extraordinary general meeting, by not less than 7 days' notice.
- 5.2.2 A meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in Article 5.2.1, be deemed to have been duly called if it is so agreed by all the Members entitled to attend and vote at the meeting and (unless no statutory auditors of the Company stand appointed in consequence of the Company availing itself of the audit exemption under section 360 or 365 of the 2014 Act, and, where relevant, section 399 of the 2014 Act has been complied with in that regard) by the statutory auditors of the Company.
- 5.2.3 The notice of a meeting shall specify the place, the date and the time of the meeting, the general nature of the business to be transacted at the meeting, in the case of a proposed special resolution, the text of that proposed special resolution and with reasonable prominence a statement that a Member entitled to attend and vote is entitled to appoint a proxy, that a proxy need not be a Member, and the time by which the proxy must be received at the registered office of the Company.
- 5.2.4 Notice of a meeting must be given to all Members (including the Minister), the Directors and the auditors for the time being of the Company.

- 5.2.5 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.
- 5.2.6 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 invalidate the proceedings at that meeting.
- 5.2.7 The Directors may, whenever they think fit, convene an extraordinary general meeting and extraordinary general meetings shall also be convened on such requisition or in default may be convened by such requisitionists as are provided for in Section 178 of the 2014 Act (as modified by Section 1203 of the 2014 Act).
- 5.2.8 If at any time there are not sufficient Members capable of acting to form a quorum, any Director or any Member 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.
- 5.2.9 Notice of every general meeting of the Company shall be given in the manner provided for in these Articles to such persons as are under the 2014 Act and these Articles entitled to receive notices from the Company including every Member, the Directors and the statutory auditors for the time being of the Company.
- 5.2.10 Notwithstanding any provision of Article 16, where notice of a general meeting is given by posting by ordinary prepaid post to the usual or notified address of a Member, then, for the purposes of an 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.

### **5.3 Proceedings at Annual General Meetings**

- 5.3.1 The business of the annual general meeting shall include the matters set out in section 186 of the 2014 Act.
- 5.3.2 The business of the annual general meeting shall not include the election and re-election of directors.

### **5.4 Quorum for General Meetings**

- 5.4.1 Save as herein otherwise provided, two Members present in person or by proxy shall be a quorum.
- 5.4.2 The Chartered Corporation shall have the right to attend and speak (but not to vote) at all general meetings of the Company by authorised representative.
- 5.4.3 No business shall be transacted at any general meeting unless a quorum of Members is present both at the time when the meeting proceeds to business and during the currency of the meeting.
- 5.4.4 If within half an hour after the time appointed for a general meeting a quorum is not present, then the meeting, if convened upon the requisition of Members shall be dissolved; and, in any other case, it shall stand adjourned to the

same day in the next week at the same time and place, and if at the adjourned meeting at least one Member is present (in person or by proxy) the meeting shall proceed and such Member shall constitute a quorum for the purposes of such meeting.

## **5.5 Chairperson of General Meetings**

5.5.1 The chairperson of the Board shall preside as chairperson at every general meeting of the Company, 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.

## **5.6 Adjournment of General Meetings**

5.6.1 The chairperson may, with the consent in writing of the Members present at the meeting at which a quorum is present, (and shall, if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

5.6.2 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.

5.6.3 When a meeting is adjourned for 29 days or less, it shall not be necessary to give any notice of an adjourned meeting or of the business to be transacted at an adjourned meeting.

## **5.7 Voting at General Meetings**

5.7.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with section 189 and the other relevant provisions of the 2014 Act.

5.7.2 At a general meeting, each Member shall have one vote for each share which he holds, provided however that:

- (i) on any resolution purporting to elect or re-elect, or to remove, a director nominated by the Chartered Corporation, each of the Members shall vote his Shares in accordance with the instructions of the Chartered Corporation;
- (ii) on any resolution purporting to elect or re-elect, or to remove, a director nominated by SVHG, each of the Members shall vote his Shares in accordance with the instructions of SVHG;
- (iii) on any resolution purporting to elect or re-elect, or to remove, a director nominated by the Minister, each of the Members shall vote his Shares in accordance with the instructions of the Minister;
- (iv) no resolution to amend or replace any provision of the Constitution (including the Reserved Powers) shall be effective unless all Members

vote in favour of such resolution, the Minister has given his prior written consent to such an amendment and (only in circumstances where the proposed resolution materially affects the rights of the Chartered Corporation as set out in the Constitution) the Chartered Corporation has consented in writing to such resolution.

5.7.3 A resolution in writing signed by or on behalf of all the Members 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, **provided always** that, the prior written consent of the Chartered Corporation has been obtained where such consent is expressly required in accordance with these Articles.

## 5.8 Voting by Proxy

5.8.1 Any Member of the Company entitled to attend and vote at a meeting of the Company shall be entitled to appoint one or more persons (whether a Member or not) as his proxy to attend and vote instead of him and the provisions contained in section 183 shall apply to the Company.

5.8.2 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 or at such other place within Ireland as is specified for that purpose in the notice convening the meeting of the company, and shall be so deposited not later than before the commencement of the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll, before the commencement of the taking of the poll.

5.8.3 An instrument of proxy shall be in the following form or a form as near thereto as circumstances permit:

National Maternity Hospital at Elm Park DAC (the "Company")			
We,		(the "Member") of	
in the County of		being a Member of the Company,	
hereby appoint			
of		or failing them	
		of	
as our proxy to attend, speak and vote for me/us on our behalf at the (annual or extraordinary, as the case may be) general meeting of the Company to be held on [date and time] and at any adjournment thereof.			
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 they think fit.			

Signature of Member.....
Dated: [date].....

5.8.4 Any body corporate which is a Member may by resolution of its directors or other governing body authorise such persons as it thinks fit to act as its representative at any meeting of the Company, and the person so authorised 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.

**5.9 Service of Notices**

5.9.1 This Constitution permits the service of notices, documents and any other form of communication on the Members by electronic means and in accordance with the provisions contained in section 218 of the 2014 Act and section 218(5) of the 2014 Act shall apply to the Company.

**6 DIRECTORS**

**6.1 Appointment of Directors**

6.1.1 The first Directors shall be:

- (i) [names] nominated by the Chartered Corporation;
- (ii) [names] nominated by SVHG; and
- (iii) [names] nominated by the Minister.

6.1.2 Thereafter, the Board shall be comprised at all time of nine (9) directors being:

- (i) three (3) directors nominated by the Chartered Corporation (one of whom shall be the Master) and two of whom shall, in addition to being Directors, be appointed by SVHG to its board;
- (ii) three (3) directors nominated by SVHG; and
- (iii) three (3) independent directors nominated by the Minister in accordance with the applicable processes from time to time operated by the Public Appointments Service or any other body to which the applicable functions of the Public Appointments Service may be transferred (the “**Independent Director(s)**”).

6.1.3 Notwithstanding the provisions of Article 5.7.2, a Director nominated by the Chartered Corporation or by SVHG or by the Minister, as the case may be, shall be deemed to have been duly appointed upon receipt by the Secretary from the Chartered Corporation or SVHG or the Minister, as the case may be, of a Form B10 (or its equivalent successor form) signed by the nominee.

6.1.4 Each of the Chartered Corporation, SVHG and the Minister agree that each Director will be appointed in accordance with the principle that his or her appointment shall be competence-based, the details of which competencies will be developed and agreed (and may from time to time be revised) by the Board (the “**Agreed Competencies**”) and in the case of any person that is proposed to be appointed to the Board (the “**Nominee**”) by the Chartered Corporation, SVHG and/or the Minister (as the case may be) (the “**Nominating Party**”), the Nominating Party shall have regard to: (a) the existing mix of competencies amongst the existing Directors, (b) the views of the Minister, the Chartered Corporation and SVHG in relation to competency requirements and (c) the Nominee’s ability to discharge the duties as Directors.

## 6.2 **Procedures for appointment of Independent Directors**

The State’s Public Appointments Service (or any other body to which the applicable functions of the Public Appointments Service may be transferred) (“**PAS**”) shall administer the selection process for the Independent Directors by publicly advertising the post(s) through its usual channels (specifying the Agreed Competencies). SVHG and the Chartered Corporation shall be invited to nominate a representative each to participate in the process to be overseen by PAS to develop a shortlist of suitable candidates, provided always that the Minister shall retain sole discretion to choose and appoint candidates from the shortlist.

6.3 Directors are not required to hold a share qualification and shall be entitled to attend, speak and receive notice of general meetings in accordance with section 180 of the 2014 Act.

6.4 The office of director shall be vacated if:

6.4.1 in the case of a Director nominated by the Chartered Corporation, the Secretary has received notice of removal of the Director from the Chartered Corporation;

6.4.2 in the case of a Director nominated by SVHG, the Secretary has received notice of removal of the Director from SVHG;

6.4.3 in the case of a Director nominated by the Minister, the Secretary has received notice of removal from the Minister;

6.4.4 the Director is disqualified from being a charity trustee of any charitable organisation pursuant to Section 55 of the Charities Act;

6.4.5 the Director is adjudicated bankrupt or being a bankrupt has not obtained a certificate of discharge in the relevant jurisdiction;

6.4.6 the Director becomes or is deemed to be subject to a disqualification order within the meaning of chapter 4 of part 14 of the 2014 Act;

6.4.7 the Director resigns his or her office by notice in writing to the Company;

6.4.8 the health of the Director is such that he or she can no longer be reasonably regarded as possessing an adequate decision making capacity;

- 6.4.9 a declaration of restriction is made in relation to the Director and the Directors, at any time during the currency of the declaration, resolve that his or her office be vacated;
- 6.4.10 the Director is sentenced to a term of imprisonment following conviction of an indictable offence (reference to a term of imprisonment includes a reference to such a term that is suspended);
- 6.4.11 the Director is for more than 6 months absent, without the permission of the Directors, from meetings of the Directors held during that period; or
- 6.4.12 the Director has held office for a period of nine years since the date of his appointment.

## **7 MASTER**

### **7.1 Appointment**

- 7.1.1 The Master shall be nominated for appointment by the Chartered Corporation, but the appointment of the Master and the terms of his or her appointment shall require the approval of the Board.
- 7.1.2 The Master shall not be removed from office save in accordance with his or her terms of appointment.
- 7.1.3 The Master shall not be entitled to be appointed as the chairperson of the Board.

### **7.2 Master's Powers of Management**

The Master shall be delegated with such powers and authority as are consistent with the mastership model of governance, as the Directors may more particularly determine from time to time, subject always to the Matters Reserved for the Board and any other policies adopted by or directions given by the Board from time to time.

## **8 CHAIRPERSON**

- 8.1 Subject to the succeeding provisions of this Article 8, the Directors will elect a chairperson of their meetings on a three-year rotational basis, as between Directors nominated firstly by the Chartered Corporation; secondly by SVHG; and thirdly by the Minister, respectively.
- 8.2 The first chairperson of the Board will be one of the directors nominated by the Chartered Corporation and, subject to Article 7.1.3, chosen by the Chartered Corporation to act as chairperson, who shall hold office for three years in accordance with Article 8.1.
- 8.3 If and whenever a chairperson nominated by the Chartered Corporation ceases to be a Director before the expiration of his or her term, then the Directors must elect another Director nominated by the Chartered Corporation as chairperson for the remainder of the unexpired term.
- 8.4 Immediately following the expiry of the term of office of the chairperson nominated by the Chartered Corporation pursuant to the preceding provisions of this Article 8, the



subsequent chairperson will be one of the directors nominated by SVHG and he or she shall hold office from appointment for a three year period. If and whenever a chairperson nominated by SVHG ceases to be a Director before the expiration of his or her term, then the Directors must elect another Director nominated by SVHG as chairperson for the remainder of the unexpired term.

8.5 Immediately following the expiry of the term of office of the chairperson nominated by SVHG pursuant to the preceding provisions of this Article 8, the subsequent chairperson will be one of the directors nominated by the Minister and he or she shall hold office from appointment for a three year period. If and whenever a chairperson nominated by the Minister ceases to be a Director before the expiration of his or her term, then the Directors must elect another Director nominated by the Minister as chairperson for the remainder of the unexpired term.

8.6 Thereafter a Director nominated by the Chartered Corporation, a Director nominated by SVHG and a Director nominated by the Minister shall be elected as chairperson for sequential three year rotating terms, in accordance with the procedures described in this Article.

## **9 POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

### **9.1 Directors' Powers of Management**

9.1.1 Subject to the provisions of this Constitution and the 2014 Act, the business of the Company shall be managed by the Directors, who may exercise all such powers of the Company which are not, by the 2014 Act or by this Constitution, required to be exercised by the Company in general meeting, including the powers which are set out in the succeeding provisions of this Article 9 and the following powers and duties:

- (A) monitoring and assessing the performance of the Company against the objectives and/or targets as set out in the business plans and/or requirements of the HSE as may be set out in or by virtue of any service level agreements;
- (B) reviewing and advising on (or procuring expert advice on) any matters that affect the operations of the new hospital or developments in the wider healthcare environment;
- (C) procuring the exercise by the Company of the Reserved Powers (or any of them) in a manner that is designed to preserve the independence and autonomy of the Company in all clinical and operational matters (to the exclusion of their exercise or purported exercise by any Member);
- (D) the carrying out of the Matters Reserved for the Board; and
- (E) the carrying out of any direction(s) of the Minister issued in writing, at his or her sole discretion, following consultation with SVHG and the Chartered Corporation (and whether arising from the expression of any grievance by any Director to him or her, or otherwise), for the purpose of ensuring that the Reserved Powers are exercised in accordance with Clause 5 of the Memorandum, including without limitation to ensure that

any maternity, gynaecological, obstetrical or neonatal service which is lawfully permissible in the State shall be available in the hospital, without religious ethos or ethnic or other distinction, and for the avoidance of doubt the Directors shall be obliged to comply with any such direction.

## **9.2 Borrowing Powers**

9.2.1 The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking and property or any part thereof and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligations of the Company.

9.2.2 The Board shall not purport to grant any guarantee or indemnity or provide any support in respect of the liability of any other person.

9.2.3 Article 9.2.2 shall not preclude the provision to any Director or employee of the Company of an indemnity in respect of any tort liability to third parties arising from the fulfilment of their duties for the Company.

## **9.3 Specific Duties of the Board**

9.3.1 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by such person or persons and in such manner as the Directors shall from time to time by resolution determine.

9.3.2 The Directors shall cause minutes to be made in books provided for the purpose:

- (i) of all appointments of officers made by the Directors;
- (ii) of the names of the Directors present at each meeting of the Directors and of any committee of the Directors;
- (iii) of all resolutions and proceedings at all meetings of the Company and of the Directors and of committees of Directors.

9.3.3 Any such minute, if purporting to be signed by the chairperson of the meeting at which the proceedings were held, or by the chairperson of the next succeeding meeting, shall be evidence of the proceedings.

## **10 PROCEEDINGS OF DIRECTORS**

### **10.1 Regulation and Meetings of the Board of Directors**

10.1.1 The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.

10.1.2 The Board shall hold a minimum of six meetings every year.

10.1.3 A Director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.

- 10.1.4 All Directors shall be entitled to reasonable notice of any meeting of the Directors.
- 10.1.5 A resolution in writing signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors shall be as valid as if it had been passed at a meeting of the Directors duly convened and held and may consist of several documents in the like form each signed by one or more of the Directors. Any such resolution in writing may consist of several documents in like form, each signed by one or more of the Directors and for all purposes shall take effect upon receipt at the registered office of the Company of all such several documents, by facsimile transmission or otherwise.
- 10.1.6 Any Director or member of a committee of the Board may participate in a meeting of the Directors or such committee by means of a conference or other telecommunication facility 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. Any Director or member of a committee participating at such a meeting will be deemed to be present in person at such meeting and shall be entitled to vote and be counted in a quorum accordingly.
- 10.1.7 All acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.
- 10.1.8 A Director may waive notice of any meeting, and such waiver may be retrospective.

## 10.2 **Voting at Meetings of the Board**

- 10.2.1 Unless otherwise expressly provided or required under this Constitution, questions arising and/or resolutions proposed at any meeting of the Board shall be decided by a majority of votes.
- 10.2.2 The chairperson shall not have a second or casting vote.
- 10.2.3 A Director nominated by the Chartered Corporation may nominate an alternate (being one of the other Chartered Corporation nominees) to cast a vote in his place at meetings of the Board where he is unable to attend, and a written notice of such appointment of an alternate addressed to the chairperson of the Board and copied to the Secretary shall be accepted by the meeting without any requirement for consent.
- 10.2.4 A Director nominated by SVHG may nominate an alternate (being one of the other SVHG nominees) to cast a vote in his place at meetings of the Board where he is unable to attend, and a written notice of such appointment of an alternate addressed to the chairperson of the Board and

copied to the Secretary shall be accepted by the meeting without any requirement for consent.

10.2.5 A Director nominated by the Minister may nominate an alternate (being one of the other Independent Directors) to cast a vote in his place at meetings of the Board where he is unable to attend, and a written notice of such appointment of an alternate addressed to the chairperson of the Board and copied to the Secretary shall be accepted by the meeting without any requirement for consent.

10.2.6 A person may be appointed an alternate director by more than one Director and such alternate is entitled to a separate vote on behalf of each Director who has appointed him as alternate, in addition to his own vote.

### **10.3 Quorum for Meetings of the Board**

10.3.1 The quorum necessary for the transaction of the business of the Directors shall be five.

10.3.2 The continuing Directors may act notwithstanding any vacancies in their number, but, if the number of Directors is less than the number fixed for the quorum, they may act only for the purposes of filling vacancies or calling a general meeting.

## **11 COMMITTEES**

### **11.1 Establishment and Regulation of Committees**

11.1.1 Subject always to the Matters Reserved for the Board and to Article 7.1 in respect of the nomination of the Master, the Directors may establish one or more committees, consisting in whole or part of Directors, as they think fit for such purposes, and with such functions as the Directors shall determine and, without prejudice to section 40 of the 2014 Act, the Directors may delegate any of their powers to such person or persons as they think fit, including committees.

11.1.2 Any committee formed by the Directors shall, in the exercise of the powers delegated to it, conform to any regulations that may be imposed on it by the Directors.

11.1.3 All committees established by the Directors shall be responsible to and report to the Directors.

### **11.2 Proceedings of Committees**

11.2.1 A committee may elect a chairperson of its meetings from among its number.

11.2.2 Subject to any regulations imposed on it by the Board, a committee may meet and adjourn as it thinks proper.

11.2.3 Questions arising at any meeting of a committee shall be determined by a majority of votes of the members.

## **12 THE COMPANY SECRETARY**

- 12.1 The Secretary shall be appointed by the Directors for such term and upon such conditions as they may think fit and any Secretary so appointed may be removed by them.
- 12.2 A provision of the 2014 Act or these Articles requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as Director and as, or in place of, the Secretary.
- 12.3 The Directors shall have a duty to ensure that the person appointed as Secretary has the skills or resources necessary to discharge his statutory duty and other duties.
- 12.4 The case to which the immediately preceding Article applies includes the case of an appointment of one of the Directors of the Company as Secretary.

## **13 ACCOUNTS**

- 13.1 The Company shall keep adequate accounting records that contain:
  - 13.1.1 day to day entries of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
  - 13.1.2 a record of the assets and liabilities of the Company;
  - 13.1.3 a record of all transactions whereby goods are purchased and whereby goods are sold, showing the goods and the sellers and buyers (except buyers of goods in ordinary retail trade) in sufficient detail to enable the goods and the sellers and buyers to be identified and a record of all the invoices relating to such purchases and sales;
  - 13.1.4 statements of stock held by the Company at the end of each financial year and all records of stockholdings from which any such statement of stock has been or is to be prepared; and
  - 13.1.5 a record of all transactions whereby services are provided and whereby services are purchased and of all invoices relating thereto.
- 13.2 Adequate records of accounting shall be deemed to be kept if they comply with section 282(1) of the 2014 Act and Article 13.1.
- 13.3 The accounting records of the Company shall be kept at the registered office or at such other place as the directors think fit and the provisions in section 283(2) of the 2014 Act shall apply to the Company.
- 13.4 The Directors shall from time to time in accordance with Chapter 4 of Part 6 of the 2014 Act cause to be prepared and to be laid before the annual general meeting of the Company such profit and loss account, balance sheet, and reports as are required by that Chapter to be prepared and laid before the annual general meeting of the Company.
- 13.5 A copy of the balance sheet (including every document required by law to be annexed thereto) which is to be laid before the annual general meeting of the

Company together with a copy of the Directors' report and statutory auditors' report shall, not less than 21 days before the date of the annual general meeting, be sent to every person entitled under the provisions of the 2014 Act to receive them.

## **14 AUDIT**

- 14.1 Auditors shall be appointed and their duties regulated in accordance with the provisions of the 2014 Act dealing with such matters.

## **15 THE COMPANY SEAL**

- 15.1 The Seal shall be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors in that behalf.

- 15.2 Any instrument to which the Seal shall be affixed shall be:

15.2.1 signed by a Director of it or by some other person appointed for the purpose by its Directors or by a foregoing committee of them; and

15.2.2 be countersigned by the Secretary or by a second Director or by some other person appointed for the purpose by the Directors or by a foregoing committee of them.

- 15.3 If a registered person has been authorised by the Company under section 39(1) of the 2014 Act, the 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 shall be signed by that person and countersigned by:

15.3.1 the Secretary; or

15.3.2 a Director; or

15.3.3 by some other person appointed for the purpose by the Directors or a committee of the Directors authorised by the Directors in that behalf.

- 15.4 The Company may have for use abroad an official seal which shall resemble the Seal with the addition on its face of the name of every place abroad where it is to be used.

## **16 NOTICES**

- 16.1 A notice may be given by the Company to any Member either in writing or by electronic means subject to the provisions of this Article 16.

- 16.2 A notice in writing may be served on or given to the Member in one of the following ways:

16.2.1 by delivering it by hand to the Member;

16.2.2 by leaving it at the usual or notified address of the Member;

16.2.3 by sending it by post in a prepaid letter or by courier to the usual or notified address of the Member; or

16.2.4 by electronic means.

16.3 Any notice served or given in accordance with the provisions of Article 16.1.2 shall be deemed, in the absence of any agreement to the contrary between the Company and the Member, to have been served or given:

16.3.1 in the case of its being delivered, at the time of delivery (or, if delivery is refused, when tendered);

16.3.2 in the case of it being left, at the time that it is left;

16.3.3 in the case of it being posted (to an address in the State) on any day other than a Friday, Saturday or Sunday, 24 hours after dispatch and in the case of its being posted (to such an address):

(i) on a Friday – 72 hours after dispatch; or

(ii) on a Saturday or Sunday – 48 hours after dispatch;

16.3.4 in the case of it being posted (to an address outside the State) on any day other than a Friday, Saturday or Sunday, 24 hours after dispatch and in the case of its being posted (to such an address):

(i) on a Friday – 168 hours after dispatch; or

(ii) on a Saturday or Sunday – 120 hours after dispatch; or,

16.3.5 in the case of electronic mail, at the time it was sent,

but subject to Section 181(3) of the 2014 Act (as reproduced at Article 5.2 of these Articles) regarding notice of general meetings.

## **17 WINDING-UP**

17.1 If the Company shall be wound up, the provisions contained in clause 10 of the Memorandum shall be performed and have effect in all respects as if the same were repeated in these Articles.

## **18 INDEMNITY**

18.1 Subject to the provisions of the 2014 Act, every officer of the Company shall be indemnified out of the assets of the Company against:

18.1.1 any liability incurred by him or her in defending any proceedings, whether civil or criminal, in relation to his or her acts while acting in such capacity which judgment is given in their favour or in which he or she is acquitted, or in connection with any application under sections 233 or 234 of the 2014 Act in which relief is granted to him or her by the Court; and

18.1.2 all losses that 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 to his office.

## **19 OPTIONAL PROVISIONS**

The Optional Provisions of the 2014 Act listed in column 1 below shall not apply to the Company. To the extent that a given Optional Provision has been replaced by or restated in or dis-applied by these Articles or by the Memorandum, this is identified in column 2 below.

	COLUMN 1	COLUMN 2
	OPTIONAL PROVISION OF THE 2014 ACT	CORRESPONDING PROVISION OF THESE ARTICLES (IF ANY)
1.	Section 43(2)(a) and (b) (common seal);	Restated at Article 15
2.	Section 43(3) (common seal);	Restated at Article 15
3.	Section 44(2) (common seal for use above)	Restated at Article 15
4.	Section 65 (powers to convert shares into stock)	Dis-applied
5.	Section 66 (4) (power to allot redeemable shares)	Replaced by a bespoke provision at Articles 3.3
6.	Section 69 (1) (allotment of shares)	Replaced by a bespoke provision at Articles 3.3
7.	Section 69 (4) (power of directors to allot shares)	Replaced by a bespoke provision at Articles 3.3
8.	Section 69 (8) (pre-emption rights)	Dis-applied – section 69 (6) applies to the Company
9.	Section 69 (12) (pre-emption rights)	Dis-applied – section 69 (6) applies to the Company
10.	Section 77, 78 and 79 (calls on shares)	Dis-applied
11.	Section 80 (Lien)	Replaced by a bespoke provision at Article 3.5
12.	Section 81 (Forfeiture of Shares)	Dis-applied
13.	Section 83 (Variation of company capital)	Replaced by a bespoke provision at Article 3.4
14.	Section 84 (Reduction in company capital)	Replaced by a bespoke provision at Article 3.4
15.	Section 94 (Transfer of shares)	Replaced by a bespoke provision at Article 4
16.	Section 95 (Restrictions on transfers)	Replaced by a bespoke provision at Article 4
17.	Section 96 (Transmission of shares)	Dis-applied
18.	Section 105 (Acquisition of own shares)	Replaced by a bespoke provision at Article 3.6
19.	Section 124 (Procedures for declarations, payments etc. of dividends and other things)	Dis-applied – no Member shall be entitled to receive dividends
20.	Section 126 (bonus issues)	Dis-applied
21.	Section 136 (share qualification)	Restated at Article 6.2



22.	Section 144(3)(a) (appointment of directors);	Replaced by a bespoke provision at Article 6.1
23.	Section 144(3)(b) (directors may fill a casual vacancy);	Dis-applied
24.	Section 144(3)(c) (directors appointed by casual vacancy hold office until next annual general meeting);	Dis-applied
25.	Section 144(3)(d) (company may increase or reduce the number of directors);	Dis-applied
26.	Section 144(3)(e) (company may appoint another person in place of a removed director);	Replaced by a bespoke provision at Article 6.1
27.	Section 148(2) (vacation of office);	Replaced by a bespoke provision at Article 6.4
28.	Section 155(2) (remuneration of directors set by the directors);	Dis-applied – No remuneration for Directors (as detailed at clause 11 of the Memorandum)
29.	Section 155(3) (directors expenses);	Restated at clause 11.2.4 of the Memorandum
30.	Section 158(1) (business of a company to be managed by its directors);	Restated at Article 9.1
31.	Section 158(2) (directions given by a company do not invalidate prior acts of the directors);	Restated at Article 9.1.1
32.	Section 158(3) (directors of the company may exercise powers to borrow, mortgage or charge);	Restated at Article 9.2.1
33.	Section 158(4) (directors may delegate their powers to committees);	Restated at Article 11.1
34.	Section 159 (managing director);	Dis-applied - No managing director
35.	Section 160(1) (directors may meet for the dispatch of business);	Restated at Article 10.1.1
36.	Section 160(2) (questions arising at a meeting of the directors shall be decided by a majority of votes);	Restated at Article 10.2.1
37.	Section 160(3) (summoning meetings of the directors);	Restated at Article 10.1.3
38.	Section 160(4) (notice of meetings of the directors);	Restated at Article 10.1.4
39.	Section 160(6) (quorum for meeting of directors);	Replaced by a bespoke provision at Article 10.3
40.	Section 160(7) (directors acting below a quorum);	Restated at Article 10.3.1
41.	Section 160(8) (directors may elect a chairperson);	Replaced by a bespoke provision at Article 8

42.	Section 160(9) (directors may establish committees);	Replaced by a bespoke provision at Article 11.1.1
43.	Section 160(10) (a committee may elect a chairperson);	Replaced by a bespoke provision at Article 11.2.1
44.	Section 160(11) (a committee may meet and adjourn);	Restated at Article 11.2.2
45.	Section 160(12) (questions arising at a committee meeting shall be decided by a majority of votes);	Replaced by a bespoke provision at Article 11.2.3
46.	Section 161(1) (written resolutions of directors);	Restated at Article 10.1.5
47.	Section 161(5) (taking effect of counterpart resolutions);	Restated at Article 10.1.5
48.	Section 161(6) (joining meetings by telephonic or electronic means);	Restated at Article 10.1.6
49.	Section 161(7) – (9) (director may vote in respect of contract which they are interested in);	Dis-applied – a director may not vote in respect of a contract which they are interested in
50.	Section 162 (Holding of any other office or place of profit under the company by director)	Dis-applied – a Director may only hold a place of profit in the Company as permitted by Section 89 of the Charities Act
51.	Section 164 (signing, drawing etc. of negotiable instruments and receipts);	Restated at Article 9.3.1
52.	Section 165 (alternate directors);	Replaced by bespoke provision at Article 10.2.3 and Article 10.2.4
53.	Section 180 (2) (relevant notice, joint holders)	Dis-applied – no joint holders
54.	Section 180 (4) (notice on death or bankruptcy)	Dis-applied – no natural person members
55.	Section 180 (5) (entitlement to attend AGM)	Replaced by bespoke provision at Article 5
56.	Section 181(1) (notice of general meeting)	Restated at Article 5.2.1
57.	Section 181(6) (accidental omission to give notice of a meeting);	Replaced by a bespoke provision at Article 5.2.6
58.	Section 182(2) (quorum for general meeting);	Replaced by a bespoke provision at Article 5.4
59.	Section 182(5) (dissolution and adjournment of general meeting);	Replaced by a bespoke provision at Article 5.4.4
60.	Section 183(1) as modified by Section 1205 (proxies);	Restated at Article 5.8
61.	Section 183(3) (no entitlement to appoint more than one proxy);	Restated at Article 5.8
62.	Section 183(6) (time for receipt of proxies);	Replaced by a bespoke provision at Article 5.8

63.	Section 186 (c) (business of annual general meeting – declaration of dividend and remuneration of auditors)	Restated at Article 5.3.1
64.	Section 186(d) (business of annual general meeting – election and re-election of directors);	Restated at Article 5.3.1
65.	Section 187(2) (chair of general meetings);	Restated at Article 5.5
66.	Section 187(3) (no director willing to act as chair)	Restated at Article 5.5
67.	Section 187(4) – (6) (proceedings at meetings);	Restated at Article 5.6
68.	Section 187(7)(a) and (b) (resolutions put to vote at general meeting);	Replaced by bespoke provision at Article 5.7.1
69.	Section 187(8) (chairperson entitled to a second or casting vote at general meeting);	Dis-applied at Article 10.2.2
70.	Section 188(2)-(5) (votes of members)	Replaced by bespoke provision at Article 5.7 5.7
71.	Section 188(6) as modified by Section 1206 (entitlement of members to vote at general meeting where monies payable to the company are in arrears);	Dis-applied – Members may vote where monies immediately payable to the company are in arrears
72.	Section 188(7) (objections to the qualification of voters);	Dis-applied – see bespoke provision at Article 5.7
73.	Section 188(8) (objection to be referred to the chairperson);	Dis-applied – see bespoke provision at Article 5.7
74.	Section 189(4) (taking of polls in such manner as the chairperson directs);	Restated at Article 5.7.1
75.	Section 189(5) (certain polls to be taken forthwith);	Restated at Article 5.7.1
76.	Section 189(6) (certain polls to be taken at such time as the chairperson directs);	Restated at Article 5.7.1
77.	Section 193(1) (as modified by Section 989) (resolution in writing signed by all the members of the company)	Dis-applied by Article 5.7.3
78.	Section 194(1)(as modified by Section 990) (majority written resolutions)	Restated at Article 5.7.3
79.	Section 194(4)(as modified by Section 990) (written special resolutions)	Restated at Article 5.7.3
80.	Section 218 (notices);	Restated at Article 5.9.1
81.	Section 230(b) (power of director to act in a professional capacity for the company);	Modified by clause 11 of the Memorandum

82.	Section 338(5) (electronic circulation of statutory financial statements)	Dis-applied – statutory financial statements will not be deemed provided to Member where they have been published on website
83.	Section 339(7) (right to demand copies of financial statements and reports)	Restated at Article 5.9.1
84.	Section 618(1)(b) (distribution of property of a company on a winding up);	Dis-applied - not applicable to a charity (distribution of assets addressed at clause 10 of the Memorandum)
85.	Section 977 (alteration of articles)	Replaced by a bespoke provision at Article 5
86.	Section 982(2) (variation of class rights)	Replaced with a bespoke provision at Article 3.7
87.	Section 982(3) (variation of class rights)	Replaced with a bespoke provision at Article 3.7
88.	Section 982(4) (variation of class rights)	Replaced with a bespoke provision at Article 3.7

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
Name Address Description	
Name Address Description	
Total shares taken	

Dated the            day of            20[22]

Witness to the above signatures:

Name:

Address: