

**COMPANY NO. 8176197**

**COMPANIES ACT 2006**

**PRIVATE COMPANY LIMITED BY GUARANTEE**

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# **ARTICLES OF ASSOCIATION**

**RAIL DELIVERY GROUP LIMITED**

**INCORPORATED ON 10<sup>TH</sup> AUGUST, 2012**

**COMPANIES ACT 2006**

**PRIVATE COMPANY LIMITED BY GUARANTEE**

**ARTICLES OF ASSOCIATION OF**

RAIL DELIVERY GROUP LIMITED (COMPANY NO. 8176197)

(Adopted by special resolution passed on 23<sup>rd</sup> June, 2014)

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**1. PRELIMINARY**

1.2 The regulations in the Companies (Model Articles) Regulations 2008 as in force at the date of incorporation of the Company shall not apply to the Company.

1.3 In these Articles

**Act** means the Companies Act 2006 including any modification or re-enactment of it for the time being in force,

**alternate director** means a person appointed by a director pursuant to and in accordance with Article 11 (Alternate Directors),

**Annual Report** has the meaning given in Article 51.1,

**Articles** means these articles of association, as altered from time to time by special resolution,

**Associate Member** has the meaning given in Article 33.1,

**auditors** means the auditors of the Company,

**bankruptcy** includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy,

**body corporate** shall have the meaning given in section 1173 of the Act,

**Business Day** means any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business,

**Chairman** has the meaning given in Article 10.1,

**chairman of the meeting** has the meaning given in Article 38 (*Chairing General Meetings*),

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

**Companies Acts** has the meaning given by section 2 of the Act and includes any enactment passed after those Acts which may, by virtue of that or any other such enactment, be cited together with those Acts as the “Companies Acts” (with or without the addition of an indication of the date of any such enactment),

**Company** means Rail Delivery Group Limited,

**Conflict** means a situation in which a director has or can have a direct or indirect interest that conflicts or possibly may conflict with the interests of the Company and includes a conflict of interest and duty and a conflict of duties,

**control** means, in relation to a Group, the power of a body corporate to secure that the affairs of that Group are conducted in accordance with its wishes,

**Deputy Chairman** has the meaning given in Article 10.2,

**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,

**Director General** has the meaning given in Article 10.4,

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

**electronic form** has the meaning given in section 1168 of the Act,

**Founder Member** means Abellio Transport Holding B V, Arriva plc, DB Schenker Rail (UK) Ltd, Directly Operated Railways Limited, First Group plc, Freightliner Group Ltd, Govia Limited, National Express Group plc, Stagecoach Group plc and Virgin Rail Group Limited,

**Freight Member** means a Member whose entitlement to membership of the Company arises pursuant to Article 28.2(a),

**Group** shall have the meaning given to the term “group” in section 1261 of the Act but any Group shall be deemed to (i) include any Joint Company that is associated with that Group by virtue of a notice served pursuant to Article 29 (*Joint Companies*) and which has not been revoked; and (ii) exclude any other Joint Company ,

**Joint Company** means any body corporate with two shareholders which is not a subsidiary of either shareholder, or which is a subsidiary of both shareholders,

**Licensed Member** has the meaning given in Article 32 (*Licensed Members*),

**Member** has the meaning given in section 112 of the Act,

**Membership Levy** has the meaning given in Article 30.1,

**Network Rail** means Network Rail Infrastructure Limited,

**office** means the registered office of the Company,

**participate**, in relation to a directors’ meeting, has the meaning given in Article 17 (*Participation in Directors’ Meetings*),

**Passenger Member** means a Member whose entitlement to membership of the Company arises pursuant to Article 28.2(b),

**Prescribed Amount** means

(a) in relation to the Founder Members and only for the period ending on 1 April 2015, £100 million,

(b) otherwise £250 million

or such other amount as the directors may with the approval of the Office of Rail Regulation from time to time determine

**proxy notice** has the meaning given in Article 44.1,

**Railway Year** means any consecutive period of 12 months commencing on (and including) 1 April and ending on (and including) 31 March,

**Railways Act** means the Railways Act 1993,

**Railway Licence** means a licence which authorises the holder either (i) to operate trains for the purposes of carrying passengers by railway or (ii) to operate trains otherwise than for the purposes of carrying passengers by railway and which, in either case, is issued

(a) under the Railways Act, or

(b) under the Railway (Licensing of Undertakings) Regulations 2005 as a European Licence with statement of national regulatory provisions

**seal** means the common seal of the Company and includes any official seal kept by the Company by virtue of section 49 or 50 of the Act,

**Secretary** means the Secretary of the Company (if any) or any other person appointed to perform the duties of the Secretary of the Company, including a joint, assistant or deputy Secretary,

**subsidiary** has the meaning given in section 1159 of the Act,

**the United Kingdom** means Great Britain and Northern Ireland,

**Turnover Criterion** has the meaning set out in Article 28.2(a) or (b), as the context requires, and

**writing** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise, and written shall be construed accordingly.

1.3 References to a document or information being **sent, supplied or given** to or by a person mean such document or information, or a copy of such document or information, being sent, supplied, given, delivered, issued or made available to or by, or served on or by, or deposited with or by that person by any method authorised by these articles, and sending, supplying and giving shall be construed accordingly.

#### 1.4 In these Articles

- (a) words denoting the singular number include the plural number and vice versa, words denoting the masculine gender include the feminine gender and the neuter gender and words denoting persons include corporations,
- (b) words or expressions contained in these Articles which are not defined in these Articles but are defined in the Act have the same meaning as in the Act (but excluding any modification of the Act not in force at the date these articles took effect) unless inconsistent with the subject or context,
- (c) subject to Article 1.4(b), references to any provision of any enactment or of any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978 include any modification or re-enactment of that provision for the time being in force,
- (d) headings and marginal notes are inserted for convenience only and do not affect the construction of these articles,
- (e) powers of delegation shall not be restrictively construed but the widest interpretation shall be given to them,
- (f) no power of delegation shall be limited by the existence or, except where the terms of delegation expressly provide, the exercise of that or any other power of delegation, and
- (g) except where the terms of delegation expressly provide, 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 these Articles or under another delegation of the power.

## 2. LIABILITY OF MEMBERS

The liability of each Member is limited to £1, being the amount that each Member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a Member or within one year after he ceases to be a Member, for:

- (a) payment of the Company's debts and liabilities contracted before he ceases to be a Member;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) adjustment of the rights of the contributories among themselves.

## 3. OBJECTS

3.1 The objects for which the Company is established are to lead the rail industry in Great Britain through

- (a) being the leadership body and collective voice of the rail industry on cross-industry issues,

- (b) developing and issuing policies, strategies and plans for the rail industry; and promoting their adoption by industry participants,
- (c) promoting a better alignment of conflicting interests between and among train operators and between train and network operators in each case, in Great Britain,

with a view to advancing the provision of a safe, efficient, high quality rail service in Great Britain for users and for taxpayers; and to do any and all other acts and things which a natural person is capable of doing and which are necessary, desirable, expedient or conducive to achieving these objects.

3.2 The objects stated in each part of Article 3.1 shall not be restrictively construed but shall be given the widest interpretation.

#### **4. APPOINTMENT OF DIRECTORS**

4.1 Subject to Articles 4.2 and 4.3, any person who is

- (a) willing to act as a director,
- (b) permitted by law to do so, and
- (c) an executive director or senior executive of the appointing Member,

may be appointed as a director of the Company by a Member serving a written notice of appointment on the Secretary.

4.2 Subject to Article 4.3, each Member shall

- (a) on becoming a Member, promptly appoint a person who satisfies the other requirements of Article 4.1 to be a director of the Company by written notice to the Secretary,
- (b) on the director it has appointed vacating office as an executive director or senior executive of that Member, promptly by written notice to the Secretary
  - (i) notify the Company of that event, and
  - (ii) appoint another person who also satisfies the requirements of Article 4.1 to be director of the Company, and

(c) on the director it has appointed vacating office as a director of the Company or that director ceasing to be a director pursuant to Article 5 (Termination of director's appointment), promptly by written notice to the Secretary

- (i) notify the Company of that event, and
- (ii) appoint another person who also satisfies the requirements of Article 4.1 to be a director of the Company.

4.3 No Member other than Network Rail shall be entitled to appoint more than one director. If and for so long as Network Rail is a Member of the Company, Network Rail shall appoint two persons who are executive directors or senior executives of Network Rail to be directors of the Company.

## **5. TERMINATION OF DIRECTOR'S APPOINTMENT**

A person ceases to be a director as soon as

- (a) the Member who appointed that person ceases to be a Member,
- (b) the Member who appointed that person by written notice to the Secretary revokes that appointment,
- (c) notification is received by the Secretary that that person has ceased to be an executive director or senior executive of the Member that appointed him,
- (d) that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law,
- (e) a bankruptcy order is made against that person,
- (f) a composition is made with that person's creditors generally in satisfaction of that person's debts,
- (g) a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months,
- (h) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have, or
- (i) that person resigns his office by written notice to the Company.

## **6. DIRECTORS' INTERESTS**

The Members expressly authorise any Conflict which any director may have which arises out of or as a consequence of his meeting the qualification requirements for becoming a director of the Company.

## **7. NUMBER OF DIRECTORS**

The number of directors shall not be subject to any maximum.

## **8. POWERS OF DIRECTORS**

8.1 Subject to the provisions of the Act, these Articles and to any directions given by special resolution, the business of the Company shall be managed by the directors who may exercise all the powers of the Company.

8.2 The directors may, subject to Article 12.4, by power of attorney or otherwise, appoint any person to be the agent of the Company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

## 9. MEMBERS' RESERVE POWER

The Members may, by special resolution, direct the directors to take, or refrain from taking, specified action.

## 10. CHAIRMAN, DEPUTY CHAIRMAN AND DIRECTOR GENERAL

10.1 The directors may appoint a director to be the chairman of the Company (**the *Chairman***) for such term as they may specify, to

- (a) act as chairman of any meeting of the directors at which he is present, and
- (b) promote the Company and its objects within and among the railway industry of Great Britain and its stakeholders and to the public generally.

10.2 The directors may appoint a director to be deputy chairman of the Company (**the *Deputy Chairman***) for such term as they may specify, to

- (a) act as chairman of any meeting of the directors at which he is present but the Chairman is not, and
- (b) assist the Chairman in the performance of his responsibilities pursuant to Article 10.1.

10.3 The directors may terminate the appointment of the Chairman or Deputy Chairman at any time.

10.4 The directors may appoint a person who is not a director of the Company to the role of director general (**the *Director General***) to perform as an employee of the Company such responsibilities as may be assigned to him by the directors on such terms, including as to remuneration, as they may specify.

## 11. ALTERNATE DIRECTORS

11.1 A director, but not an alternate director, may

- (a) appoint any person who is willing to act, and qualified to act as an alternate director, to be an alternate director, and
- (b) revoke that appointment and so remove from office the alternate director appointed by him.

11.2 A person is qualified to act as an alternate director

- (a) if he is not a director of the Company but satisfies the qualification requirements pursuant to Article 4.1 for appointment as a director, or
- (b) if he is an executive director or senior executive of a minority shareholder in the appointing Member or of a minority shareholder in any body corporate in the appointing Member's Group

11.3 An alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a Member, to attend and vote at any such meeting at which the director appointing him is not personally present, and generally to perform all the functions of his appointor as a director in his absence.

11.4 An alternate director whose qualification to act arises under Article 11.2 (b) may also attend, but may not vote, at any such meetings at which the director appointing him is personally present.

11.5 An alternate director shall be entitled to be indemnified by the Company to the same extent as if he were a director.

11.6 A person shall cease to be an alternate director as soon as

- (a) his appointor ceases to be a director,
- (b) his appointor revokes his appointment pursuant to Article 11.1(b),
- (c) on the happening of any event which, if he were a director, would cause him to vacate his office as director, or
- (d) if he resigns his office by written notice to the Company.

11.7 Any appointment or removal of an alternate director shall be by notice to the Secretary by the director making or revoking the appointment and shall take effect in accordance with the terms of the notice on receipt of such notice by the Company.

11.8 Save as otherwise provided in these Articles, an alternate director shall be deemed for all purposes to be a director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the director appointing him.

## **12. DIRECTORS MAY DELEGATE**

12.1 Subject to Article 12.4, the directors may delegate any of the powers which are conferred on them under these Articles

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

in each case, as they think fit.

12.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

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

12.4 The directors may not delegate any powers which are conferred on them under these Articles pursuant to Article 12.1 that relate to

- (a) the appointment of the Chairman, Deputy Chairman or Director General,
- (b) the eligibility of persons for membership, licensed membership or associate membership of the Company,
- (c) the approval of any policy or strategy for achieving the Company's objects,
- (d) entering into or disposing of any material interest in real property,
- (e) the approval of the Company accounts,
- (f) the approval of the Annual Report,
- (g) the formation, including the establishment of the objects, of any subsidiaries,
- (h) proposed Member resolutions, and
- (i) the amount of the Membership Levy and the proportions in which it is paid by the Members.

### **13. COMMITTEES**

13.1 Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of these Articles which govern the taking of decisions by directors.

13.2 The directors may make rules of procedure for all or any committees, which prevail over rules derived from these Articles if they are not consistent with them.

### **14. PROCEEDINGS OF DIRECTORS**

Subject to the provisions of these Articles, the directors may regulate their proceedings as they think fit.

### **15. DIRECTORS DECISIONS**

15.1 Decisions of the directors may be taken

- (a) subject to Article 15.2 and 15.3 by simple majority at a directors' meeting, or
- (b) in the form of a directors' written resolution in accordance with Article 22. (*Adoption of Directors' written resolutions*).

15.2 Subject to Article 15.3, a decision of the directors pursuant to Article 15.1(a) shall not be effective if either a director appointed by Network Rail or a director appointed by a Freight Member casts his vote against such a decision.

15.3 Where Article 15.2 applies the decision shall be remitted for further consideration at a later meeting of the directors as determined by the Chairman, but in any event within 56 days of the earlier meeting. The decision of the directors on the matter at that later meeting must be by a majority decision at that meeting but a decision at that later meeting shall not be effective if a director appointed by Network Rail casts his vote against the decision.

15.4 The Chairman shall have a discretion to withhold any matter from being put to the meeting of directors for a decision if it appears to him that

(a) a delay in putting the matter for decision would be likely to reduce any division in opinion among the directors, and

(b) the advantages of there being no division or a lesser degree of division in opinion outweigh any disadvantage there may be in any resulting delay in the directors coming to a decision.

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

16.1 Three directors may, and the Secretary at the request of three directors shall, call a meeting of the directors by giving at least fourteen Business Days' notice (or such lesser notice as the directors may agree) of the meeting to each director.

16.2 Notice of a meeting of the directors shall be deemed to be properly sent to a director if it is sent to him personally, or sent in hard copy form to him at his last known address or such other address (if any) as may for the time being be specified by him or on his behalf to the Company for that purpose, or sent in electronic form to such address (if any) as may for the time being be specified by him or on his behalf to the Company for that purpose. Any director may waive notice of a meeting and any such waiver may be retrospective.

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

Without prejudice to Article 14 (*Proceedings of Directors*), a person entitled to be present at a meeting of the directors or of a committee of the directors shall be deemed to be present for all purposes if he is able directly (or, with the approval of the Chairman, by audiovisual or telephonic communication) to speak to and be heard by all those present or deemed to be present simultaneously. A director so deemed to be present shall be entitled to vote and be counted in a quorum accordingly. Such a meeting shall be deemed to take place where it is convened to be held or (if no director is present in that place) where the largest group of those participating is assembled, or, if there is no such group, where the chairman of that meeting, as provided for in accordance with Article 20 (*Chairing of Directors' Meetings*), is. The word **meeting** in these Articles shall be construed accordingly.

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

18.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

18.2 The quorum requirement for any meeting of directors shall be four, of whom one is an appointee of Network Rail, one is an appointee of a Freight Member and two are appointees of Passenger Members. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum. Any director who ceases to be a director at a directors' meeting may continue to be present and to act as a director and be counted in the quorum until the termination of the directors' meeting if no director objects.

18.3 If the total number of directors in office for the time being is less than the quorum required, the directors must not take any decision other than a decision to call a general meeting so as to enable the Members to appoint further directors.

## **19. VOTING AT DIRECTORS' MEETINGS**

Subject to these Articles, each director and alternate director taking a decision has one vote. Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes

- (a) the Chairman, Deputy Chairman or other director chairing the meeting shall not have a second or casting vote, and
- (b) the relevant resolution shall not be passed.

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

The Chairman, or, in his absence, the Deputy Chairman, shall chair meetings of the directors. In the absence of both of them at a directors' meeting, within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

## **21. PROPOSING DIRECTORS' WRITTEN RESOLUTIONS**

21.1 Any director may propose a directors' written resolution.

21.2 The Secretary must propose a directors' written resolution if a director so requests.

21.3 A directors' written resolution is proposed by giving at least 14 Business Days' notice of the proposed resolution to the directors.

21.4 Notice of a proposed directors' written resolution must include

- (a) the proposed resolution, and
- (b) the time by which it is proposed that the directors should adopt it.

21.5 Notice of a proposed directors' written resolution must be given in writing to each director.

## **22. ADOPTION OF DIRECTORS' WRITTEN RESOLUTIONS**

A resolution in writing agreed to by all the directors entitled to vote at a meeting of the directors or of a committee of the directors (not being less than the number of directors required to form a quorum) shall be as valid and effectual as if it had been passed at a meeting of the directors or (as the case may be) a committee of the directors duly convened and held. For this purpose

- (a) a director signifies his agreement to a proposed written resolution when the Company receives from him a document indicating his agreement to the resolution authenticated in the manner permitted by the Companies Acts for a document in the relevant form,
- (b) the director may send the document in hard copy form or in electronic form to such address (if any) for the time being specified by the Company for that purpose, or in default of such specification to the office,
- (c) if an alternate director signifies his agreement to the proposed written resolution, his appointor need not also signify his agreement, and
- (d) if a director signifies his agreement to the proposed written resolution, an alternate director appointed by him need not also signify his agreement in that capacity.

## **23. VALIDITY OF ACTS OF THE BOARD**

All acts done by a meeting of directors, or by a committee of directors, or by a person acting as a director, shall be valid, even if it is discovered later that there was a defect in the appointment of any director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote.

## **24. MINUTES**

The directors shall cause minutes to be made in books kept for the purpose

- (a) of all appointments of officers made by the directors, and
- (b) of all proceedings at meetings of the Company, of the directors and of committees of directors, including the names of the directors present at each such meeting.

## **25. DIRECTORS' DISCRETION TO MAKE FURTHER RULES**

Subject to these Articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

## **26. DIRECTORS' AND ALTERNATE DIRECTORS' REMUNERATION**

Neither directors nor alternate directors shall be entitled to receive any remuneration from the Company in respect of their services as a director or as an alternate director. Directors and alternate directors may undertake any services for the Company that the directors decide, but shall not be entitled to any remuneration for any service they perform.

## **27. DIRECTORS' AND ALTERNATE DIRECTORS' EXPENSES**

Neither directors nor alternate directors shall be entitled to be paid by the Company for any expenses incurred by them in connection with their attendance at meetings of directors or committees of directors or general meetings or otherwise in connection with the discharge of their duties.

## **28. CRITERIA FOR MEMBERSHIP**

28.1 Network Rail shall be entitled to apply for and remain a Member of the Company for so long as it holds a Network Licence under the Railways Act.

28.2 Subject to Article 28.3

- (a) any body corporate that, either on its own or together with or by virtue of one or more bodies corporate in its Group, appears to the directors to be likely to derive in the next Railway Year a turnover in excess of the Prescribed Amount from its rail freight operations on Network Rail's infrastructure in Great Britain (the *Turnover Criterion*) shall be entitled to apply to become a Member of the Company, and
- (b) any body corporate that, either on its own or together with or by virtue of one or more bodies corporate in its Group, appears to the directors to be likely to derive in the next Railway Year a turnover in excess of the Prescribed Amount from its passenger rail operations on Network Rail's infrastructure in Great Britain (the *Turnover Criterion*) shall be entitled to apply to become a Member of the Company.

28.3 Where:

- (a) different bodies corporate within the same Group appear to be entitled to apply for Membership of the Company under Articles 28.2(a) and (b), each of those bodies corporate shall, subject to Articles 28.3(b) and (c), be entitled to apply to become a Member of the Company,
- (b) more than one body corporate within the same Group appears to be entitled to apply for Membership of the Company under Article 28.2(a) only the body corporate in the Group that appears to the directors of the Company to be exercising leadership of that Group's rail freight activities on Network Rail's infrastructure in Great Britain shall be entitled to apply to become a Member of the Company,

- (c) more than one body corporate within the same Group appears to be entitled to apply for Membership of the Company under Article 28.2(b) only the body corporate in the Group that appears to the directors of the Company to be exercising leadership of that Group's passenger rail activities on Network Rail's infrastructure in Great Britain shall be entitled to apply to become a Member of the Company.

28.4 For the purposes of assessing whether or not the Turnover Criterion in Article 28.2 is likely to be satisfied,

- (a) the entirety of the turnover that it appears to the directors that any body corporate within the Group, including any turnover attributable to any minority interests, is likely to derive in the next Railway Year from its rail freight operations or its passenger rail operations (including the amount of any subsidy or other payments receivable from passenger rail procuring authorities) on Network Rail's infrastructure in Great Britain shall be attributed to that Group for the purposes of this Article 28;
- (b) the directors may assume that the relevant Group's turnover in any Railway Year is likely to be the same as its turnover in the last Railway Year for which audited financial information is available (subject to reasonable adjustments for any gain or loss of passenger franchise contracts or other identifiable sources of material gains or losses) but need not seek to make any assessment of the impact of fluctuating levels of business or economic activity.

28.5 The directors may prescribe additional administrative rules concerning Membership.

28.6 No person shall become a Member of the Company unless

- (a) that person has completed an application for Membership in a form approved by the directors from time to time, and
- (b) the directors, having regard to the matters set out or referred to in this Article 28, have approved the application.

28.7 The Secretary shall send a letter to each successful applicant confirming its Membership of the Company and the details of each successful applicant shall be entered into the register of Members by the Secretary.

28.8 The directors shall notify any unsuccessful applicant and give reasons for declining to accept any application. The directors' decision in respect of any matter relating to Membership in this Article 28 shall be final and binding, other than by way of appeal to the Office of Rail Regulation. Where the Office of Rail Regulation determines on appeal that a person is entitled to membership of the Company, the directors shall give effect to that determination.

## **29. JOINT COMPANIES**

29.1 Any Joint Company that does not, either on its own or together with or by virtue of one or more bodies corporate in its Group, satisfy the Turnover Criterion may, by notice in

writing to the Company pursuant to this Article 29, associate itself with one or other (but not both) of its shareholders for the purpose set out in this Article 29.

29.2 The purposes of association pursuant to this Article 29 are

- (a) to enable the shareholder with whom the Joint Company gives notice of association to include the Joint Company as a company within its Group for purposes of satisfying the Turnover Criterion,
- (b) where the Joint Company is a subsidiary of both shareholders, to disable the Joint Company from being included as a company within the Groups of both of its shareholders at the same time.

29.3 A Joint Company may associate itself with one or other (but not both) of its shareholders by notice in writing to the Company stating which shareholder it wishes to be associated with. Any notice of association shall remain in force unless and until revoked in accordance with Article 29.5.

29.4 A Joint Company may give a notice of association at any time but may not give more than one such notice in respect of any Railway Year.

29.5 A Joint Company may revoke a notice of association at any time.

29.6 Where a Joint Company is included in the Group of one of its shareholders for purposes of satisfying the Turnover Criterion the entirety of the turnover that it appears to the directors that the Joint Company is likely to derive in the next Railway Year from rail freight operations or passenger rail operations on Network Rail's infrastructure in Great Britain shall be attributed to that Group for the purposes of Article 28.

29.7 The directors may prescribe additional administrative rules concerning notices of association.

## **30. MEMBERS' RESPONSIBILITIES**

30.1 Network Rail shall pay to the Company fifty per cent of an annual levy of such amount decided by the directors from time to time (the **Membership Levy**). All Members other than Network Rail shall pay their Relevant Share of the Membership Levy equal to fifty percent of the Membership Levy divided in a manner determined by a decision of the directors. The directors shall determine each Member's Relevant Share at least annually or if they see fit on a more frequent basis. Once a Member's Relevant Share has been determined by the directors it will be the basis for apportioning the Membership Levy payable for such time until a new Relevant Share is determined and approved by the directors.

30.2 A Member must ensure that any director nominated by it actively participates in the proceedings of the board of directors.

30.3 In this Article 30, **Relevant Share** means each respective Member's share of the Membership Levy expressed as a percentage and determined in accordance with Article 30.1

## **31. TERMINATION AND TRANSFER OF MEMBERSHIP**

31.1 A Member's membership of the Company ceases if the directors decide that such Member no longer fulfils the Turnover Criterion. The Secretary shall inform such a Member of the directors' decision in writing. The directors' decision in respect of such shall be final and binding, other than by way of appeal to the Office of Rail Regulation.

31.2 Where the Office of Rail Regulation determines on appeal that a person is entitled to membership of the Company, the directors shall give effect to that determination.

31.3 Membership is not transferable.

## **32. LICENSED MEMBERS**

32.1 A body corporate holding a Railway Licence that contains a condition relating to membership of the Company may apply to become a Licensed Member of the Company.

32.2 The Company shall grant Licensed Membership to any body corporate that applies to become a Licensed Member pursuant to Article 32.1 and the Secretary shall promptly send a letter to each such body corporate confirming its Licensed Membership of the Company.

32.3 Licensed Members shall not be Members of the Company and shall not be regarded or treated as, or have any of the rights of, Members of the Company for the purposes of section 112 of the Act.

32.4 Licensed Members shall, subject to and in accordance with any administrative rules or arrangements that the directors may make, be entitled to:

- (a) contribute to the work carried out by the Company;
- (b) attend any annual forum organised by the Company; and
- (c) receive a copy of the Annual Report.

32.5 Any person who is a Licensed Member and who ceases to be the holder of a Railway Licence shall thereupon cease to be a Licensed Member of the Company. The directors' decision in respect of such shall be final and binding, other than by way of appeal to the Office of Rail Regulation.

32.6 Where the Office of Rail Regulation determines on appeal that a person is entitled to Licensed Membership of the Company, the directors shall give effect to that determination.

32.7 Licensed Membership shall not be transferable.

32.8 The directors may prescribe additional administrative rules concerning licensed membership of the Company.

### 33. ASSOCIATE MEMBERS

33.1 Any body corporate that reasonably considers it is likely to be able to make a material contribution to the achievement of the Company's objects may apply to become an associate member of the Company (an **Associate Member**).

33.2 The directors may decline to accept any application for Associate Membership if they are not satisfied that the applicant is likely to be able to make a material contribution to the achievement of the Company's objects. The directors shall notify any unsuccessful applicant and give reasons for declining to accept any application.

33.3 Associate Members shall not be Members of the Company and shall not be regarded or treated as, or have any of the rights of, Members of the Company for the purposes of section 112 of the Act.

33.4 Associate Members shall, subject to and in accordance with any administrative rules or arrangements that the directors may make, be entitled to

- (a) contribute to the work carried out by the Company;
- (b) attend any annual forum organised by the Company; and
- (c) receive a copy of the Annual Report.

33.5 Associate Membership shall not be transferable.

33.6 An Associate Member may terminate its associate membership on no less than 14 days written notice to the Company.

33.7 The directors may on not less than 14 days written notice to an Associate Member revoke its associate membership if the directors reasonably consider that the Associate Member is not able to make a material contribution to the achievement of the Company's objects.

33.8 The directors' decision in respect of any matter relating to Associate Membership in this Article 33 shall be final and binding, other than by way of appeal to the Members.

33.9 Where the Members determine on appeal:

- (a) from a decision pursuant to Article 33.2 to revoke an Associate Membership, that a person is able to make a material contribution to the achievement of the Company's objects, the directors shall extend an invitation to become an Associate Member to that person;
- (b) from a decision pursuant to Article 33.7 to decline an application for Associate Membership, that a person is likely to be able to make a material contribution to the achievement of the Company's objects, the directors shall reinstate that person's Associate Membership.

33.10 The directors may prescribe additional administrative rules concerning Associate Membership of the Company.

#### **34. CALLING GENERAL MEETINGS**

The directors may call general meetings and, on the requisition of Members pursuant to the provisions of the Act, shall forthwith proceed to convene a general meeting in accordance with the provisions of the Act. If there are not sufficient directors within the United Kingdom to call a general meeting, any director or any Member of the Company may call a general meeting.

#### **35. NOTICE OF GENERAL MEETINGS**

35.1 General meetings shall be called by at least fourteen clear days' notice, but a general meeting may be called by shorter notice if it is so agreed by

(a) a majority in number of the Members having a right to attend and vote at that meeting being a majority together representing not less than ninety per cent. of the total voting rights at that meeting of all the Members, or

(b) where there are less than 10 Members having a right to attend and vote at that meeting, all but one of those Members.

35.2 The notice shall specify the time and place of the meeting and the general nature of the business to be transacted.

35.3 Subject to the provisions of these Articles, the notice shall be given to all the Members, to the directors and to the auditors.

#### **36. ATTENDANCE AND SPEAKING AT GENERAL MEETINGS**

36.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

36.2 A person is able to exercise the right to vote at a general meeting when

(a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

(b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

36.3 The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

36.4 In determining attendance at a general meeting, it is immaterial whether any two or more Members attending it are in the same place as each other.

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

### **37. QUORUM FOR GENERAL MEETINGS**

No business shall be transacted at any meeting unless a quorum is present. Four persons (including Network Rail, at least two Passenger Members and one Freight Member) entitled to vote upon the business to be transacted, each being a Member or a proxy for a Member or a duly authorised representative of a corporation, and shall be a quorum.

### **38. CHAIRING GENERAL MEETINGS**

38.1 If the directors have appointed a Chairman, the Chairman shall chair general meetings if present and willing to do so, and if not, the Deputy Chairman shall do so if present and willing to do so.

38.2 If the directors have not appointed a Chairman, or if the Chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start or any of same applies in respect of a Deputy Chairman

- (a) the directors present, or
- (b) if no directors are present, the meeting,

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

38.3 The person chairing a meeting in accordance with this Article 38 is referred to as ***the chairman of the meeting***.

### **39. ATTENDANCE AND SPEAKING AT GENERAL MEETINGS**

39.1 Directors may attend and speak at general meetings.

39.2 The chairman of the meeting may permit other persons who are not Members to attend and speak at a general meeting.

### **40. ADJOURNMENT OF GENERAL MEETINGS**

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

40.2 The chairman of the meeting may adjourn a general meeting at which a quorum is present if

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

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

40.4 When adjourning a general meeting, the chairman of the meeting must

- (a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and
- (b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

40.5 If the continuation of an adjourned meeting is to take place more than fourteen days after it was adjourned, the Company must give at least seven clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)

- (a) to the same persons to whom notice of the Company's general meetings is required to be given, and
- (b) containing the same information which such notice is required to contain

40.6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

#### **41. VOTING AT GENERAL MEETINGS**

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

41.2 Subject to the Act, at any general meeting every Member who is a corporation and is present by a duly appointed representative (or by proxy) shall have one vote on a show of hands or on a poll.

#### **42. ERRORS AND DISPUTES AT GENERAL MEETINGS**

42.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

42.2 Any such objection must be referred to the chairman of the meeting whose decision is final.

#### **43. POLL VOTES**

43.1 A poll on a resolution may be demanded

- (a) before the general meeting where it is to be put to the vote, or
- (b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

43.2 A poll may be demanded by:

- (a) the chairman of the meeting,
- (b) the directors,
- (c) two or more persons having the right to vote on the resolution, or
- (d) a person or persons representing not less than one tenth of the total voting rights of all the Members having the right to vote on the resolution.

43.3 A demand for a poll may be withdrawn if

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

43.4 A demand withdrawn in accordance with Article 43.3 shall not invalidate the result of a show of hands declared before the demand was made.

43.5 Polls must be taken in such manner as the chairman of the meeting directs.

#### **44. CONTENT OF PROXY NOTICES**

44.1 Proxies may only validly be appointed by a notice in writing (***a proxy notice***) which

- (a) states the name and address of the Member appointing the proxy,
- (b) identifies the person appointed to be that Member's proxy and the general meeting in relation to which that person is appointed,
- (c) is signed by or on behalf of the Member appointing the proxy, or is authenticated in such manner as the directors may determine, and
- (d) is delivered to the Company in accordance with these Articles not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in accordance with any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate.

44.2 A proxy notice which is not delivered in accordance with Article 44.1 shall be invalid, unless the directors, in their discretion, accept the notice at any time before the meeting.

44.3 The Company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

44.4 Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

44.5 Unless a proxy notice indicates otherwise, it must be treated as

- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and
- (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

#### **45. DELIVERY OF PROXY NOTICES**

45.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the Company by or on behalf of that person.

45.2 An appointment under a proxy notice may be revoked by delivering to the Company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

45.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

45.4 If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

#### **46. SECRETARY**

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

#### **47. AMENDMENTS TO ARTICLES**

47.1 Subject to Article 47.2, these Articles may be amended in any way permitted by law.

47.2 Any amendment to these Articles shall take effect subject to the written consent of the Office of Rail Regulation.

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

48.1 Any notice to be sent to or by any person pursuant to these Articles (other than a notice calling a meeting of the directors) shall be in writing.

48.2 Subject to Article 48.1 and unless otherwise provided by these Articles, the Company shall send or supply a document or information that is required or authorised to be sent or supplied to a Member or any other person by the Company by a provision of the Companies Acts or pursuant to these Articles or to any other rules or regulations to which the Company may be subject in such form and by such means as it may in its absolute discretion

determine provided that the provisions of the Act which apply to sending or supplying a document or information required or authorised to be sent or supplied by the Companies Acts shall, the necessary changes having been made, also apply to sending or supplying any document or information required or authorised to be sent by these Articles or any other rules or regulations to which the Company may be subject.

48.3 Unless otherwise provided by these Articles or required by the directors, such document or information shall be authenticated in the manner specified by the Companies Acts for authentication of a document or information sent in the relevant form.

48.4 A Member present, either in person or by proxy, at any meeting of the Company shall be deemed to have been sent notice of the meeting and, where requisite, of the purposes for which it was called.

48.5 The directors may from time to time issue, endorse or adopt terms and conditions relating to the use of electronic means for the sending of notices, other documents and proxy appointments by the Company to Members and by Members to the Company.

48.6 Proof that a document or information sent in hard copy form was properly addressed, prepaid and posted shall be conclusive evidence that the document or information was sent. A document or information sent by the Company to a Member by post shall be deemed to have been received

- (a) if sent by first class post or special delivery post from an address in the United Kingdom to another address in the United Kingdom, or by a postal service similar to first class post or special delivery post from an address in another country to another address in that other country, on the day following that on which the document or information was posted,
- (b) if sent by airmail from an address in the United Kingdom to an address outside the United Kingdom, or from an address in another country to an address outside that country (including without limitation an address in the United Kingdom), on the third day following that on which the document or information was posted, or
- (c) in any other case, on the second day following that on which the document or information was posted.

48.7 A document or information sent by the Company to a Member by hand shall be deemed to have been received by the Member when it is handed to the Member or left at his registered address or an address notified to the Company in accordance with Article 48.6.

48.8 Proof that a document or information sent or supplied by electronic means was properly addressed shall be conclusive evidence that the document or information was sent or supplied. A document or information sent or supplied by the Company to a Member by electronic means shall be deemed to have been received by the Member on the day following that on which the document or information was sent to the Member. Such document or information shall be deemed received by the Member on that day notwithstanding that the Company becomes aware that the Member has failed to receive the relevant document or information for any reason and notwithstanding that the Company subsequently sends a hard copy of such document or information by post to the Member.

48.9 A document or information sent or supplied by the Company to a Member by means of a website shall be deemed to have been received by the Member

- (a) when the document or information was first made available on the website, or
- (b) if later, when the Member is deemed by Article 48.6, 48.7 or 48.8 to have received notice of the fact that the document or information was available on the website. Such a document or information shall be deemed received by the Member on that day notwithstanding that the Company becomes aware that the Member has failed to receive the relevant document or information for any reason and notwithstanding that the Company subsequently sends a hard copy of such document or information by post to the Member.

#### **49. SEAL AND CERTIFICATION**

49.1 Any common seal may only be used with the authority of the directors.

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

49.3 Unless otherwise decided by the directors, if the Company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

49.4 For the purposes of this Article 49, an authorised person is

- (a) any director of the Company,
- (b) the Secretary,
- (c) the Director General, or
- (d) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

49.5 Any director or the Secretary or any person appointed by the directors for the purpose shall have power to authenticate and certify as true copies of and extracts from

- (a) any document comprising or affecting the constitution of the Company, whether in hard copy form or in electronic form,
- (b) any resolution passed by the Company, the Members of the Company, the directors or any committee of the directors whether in hard copy form or in electronic form, and
- (c) any book, record and document relating to the business of the Company whether in hard copy form or in electronic form (including without limitation the accounts).

49.6 If certified in accordance with Article 49.5, a document purporting to be a copy of a resolution, or the minutes of or an extract from the minutes of a meeting of the Company, the Members, the directors or a committee of the directors, whether in hard copy form or in electronic form, shall be conclusive evidence in favour of all persons dealing with the

Company in reliance on it or them that the resolution was duly passed or that the minutes are, or the extract from the minutes is, a true and accurate record of proceedings at a duly constituted meeting.

## **50. NO RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS**

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

## **51. ANNUAL REPORT AND TRANSPARENCY**

51.1 The directors shall ensure that the Company produces an annual report in such a form and in such a manner as may be determined by the directors or the Members from time to time (the *Annual Report*).

51.2 Each Annual Report shall set out, amongst other things

- (a) for the 12-month period ending the day before the date of the Annual Report, the activities that the Company has undertaken in that period in order to achieve the objects of the Company, and
- (b) for the 12-month period commencing on the date of the Annual Report, the activities that the Company will undertake in that period in order to achieve the objects of the Company.

51.3 The directors shall ensure that the Company publishes the Annual Report on the Company's website.

## **52. DIRECTORS' INDEMNITY**

52.1 Subject to the provisions of the Act, every director or other officer of the Company (other than any person (whether an officer or not) engaged by the Company as auditor) shall be indemnified out of the assets of the Company against any liability incurred by him for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company, provided that this Article 52.1 shall be deemed not to provide for, or entitle any such person to, indemnification to the extent that it would cause this Article, or any element of it, to be treated as void under the Act.

52.2 Article 52.1 is without prejudice to any indemnity to which the person concerned may otherwise be entitled.

## **53. DIRECTORS' INSURANCE**

53.1 The directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant director in respect of any relevant loss.

53.2 In this Article 53

- (a) **a relevant director** means any director or former director of the company or an associated company,
- (b) a relevant loss means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company, and
- (c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.