

FairShares Company Model

Model Articles

a new model for self-governing social enterprises operating under Company Law.



FairShares (CC)
*Social
Enterprise*



Prepared By

Dr Rory Ridley-Duff, Senior Lecturer, Sheffield Business School

Cliff Southcombe, Managing Director, Social Enterprise Europe Ltd

r.ridley-duff@shu.ac.uk

cliff@socialenterprise.co.uk



Model Articles of Association

FairShares Social Enterprise

Version 1.2, 31st January 2013

Licensed to the FairShares Association under a Creative Commons Licence by Rory Ridley-Duff and Cliff Southcombe.

FairShares Company Model rules are provided 'as is' under a Creative Commons Licence. The model rules can be shared and adapted for either your own or commercial use, providing the authors' work is fully acknowledged and any new versions are made available under the same Creative Commons Licence.

© FairShares Association Ltd, 2013

Creative Commons 3.0: Attribution, Share Alike



No warranty is provided that they are suitable for your situation. They are provided to stimulate and inform innovation in co-operative and social enterprise development, to inform practice, and also to stimulate new thinking about the democratisation of management, ownership and governance in a socially enterprising economy.

As with all model rules, professional advice is recommended to help you adapt them to your specific needs and circumstances.

The FairShares Model, supporting document and further model Articles of Association are available from the FairShares Wiki at www.fairshares.wikispot.org. Files are available for download to members of the FairShares Association.



Model Articles for a FairShares Social Enterprise

© FairShares Association Ltd, 2013
Creative Commons 3.0: Attribution, Share Alike.



THE COMPANIES ACTS 1985, 1989 and 2006. Company Limited by Shares

ARTICLES OF ASSOCIATION OF

[COMPANY NAME]

1. **Definitions.** In these Articles:-

“**the Act**” means the Companies Act 1985 and any amendments in force, including those enacted in the Companies Act 1989 and 2006.

“**Cash**” includes cheques, electronic fund transfers, IOUs, promissory notes and money orders.

“**Member**” a holder of a Labour, User, Investor or Founder Share.

“**Beneficiary**” a service user, member holding only Investor Shares, or company listed in Clause 54 as a beneficiary of the community dividend.

“**Quorum**” a meeting in which a sufficient number of people are present to take decisions.

“**Ordinary Resolution**” means a proposal accepted by a majority of votes cast irrespective of shareholder class, subject to any adjustments provided for in Clause 23 and 24 of these rules.

“**Class Resolution**” means a proposal accepted by a majority of votes cast in one shareholder class on a one-shareholder one-vote basis.

“**Special Resolution**” means a proposal accepted by a majority of votes cast in each shareholder class separately, on a one-shareholder one-vote basis, plus at least 75% of all members in favour irrespective of shareholder class on a one-shareholder one-vote basis.

“**Reserves**” exclude the current year's profit and loss account.

“**Labour Share**” is a share owned by a member who invests labour in the Company, entitling her or him to participate in Company governance and receive a share of surplus. For the purposes of clarity, any person recognised in UK Employment law as a ‘worker’ will qualify for Labour Shares if they have been under contract to work for the company continuously for more than 1 year.

“**User Share**” is a share owned by a member who is a user of the company's services, entitling her or him to participate in Company governance and receive a share of surplus. For the purposes of clarity, any person recognised as a beneficiary or a customer of the organisation will qualify for User Shares if they have contracted to use services regularly for more than 1 year.

“**Investor Share**” is a share owned by a member who invests unremunerated labour or equity capital entitling him or her to a share of the Company's assets and surplus.

“**Founder Share**” is a share owned by a company founder, entitling them to govern the company.

“**IPS**” is an Industrial and Provident Society.

“**CIC**” is a Community Interest Company.



2. Regulations in Table A in the Schedule to the Companies Regulations 1985, and subsequent amendments in the Companies Act 1989 and 2006 do not apply unless they are referenced directly in these rules.
3. The name of the company is [COMPANY NAME]
4. The registered office of the company is in [England and Wales].
5. The company's object is:
 - a. to carry on business as a general commercial company;
 - b. to pursue trading activities that are both economically and socially responsible;
 - c. to contribute to the development of a socially enterprising business culture;
 - d. to develop a social enterprise rooted in co-operative values and principles for the encouragement, development and promotion of business services that support human relationships and democratic governance;
 - e. to abide by the internationally recognised values and principles of co-operative identity as defined by the International Cooperative Alliance, in particular the values of self-help, self-responsibility, democracy, equality and solidarity and the ethical values of honesty, openness, social responsibility and caring for others;
 - f. to abide by principles of equality of opportunity and oppose forms of discrimination on the grounds of social class, race, ethnic origin, gender, sexual preference, age, disability and religion; and
 - g. [Add other community interest / public interest objectives here].
6. The liability of members is limited.
7. The company has the power to do anything which is incidental or conducive to the furtherance of its objects.
8. The company's initial share capital is [£5]:
 - a. [5] Founder Shares of nominal value £1
9. These Articles of Association may be altered only by Special Resolution of all shareholder classes, i.e. passed by a majority of votes cast in each shareholder class separately and an overall 75% of members in favour, on a one-shareholder, one-vote basis.

CAPITAL

10. Share Capital.

- (a) The rights and conditions attaching to shares are:
 - (i) **Founder Shares:** issued at a £1 par value to the natural or legal persons who found the enterprise; non-transferable; one vote per shareholder at General Meetings (except as defined in Clauses 23 and 24); 1p fixed preference dividend; forfeited on holder's death, bankruptcy or insolvency; cancelled without payment on winding up.
 - (ii) **Labour Shares:** issued at £1 par value to natural or legal persons who invest remunerated labour in proportion to their labour contribution; non-transferable; one vote per shareholder at General Meetings (except as defined in Clauses 23 and 24); 1p fixed preference dividend each; forfeited on holder's death, bankruptcy or insolvency; cancelled upon cessation of contracts to provide labour; cancelled without payment on winding up.
 - (iii) **User Shares:** issued at a £1 par value to natural or legal persons who use company products and services; non-transferable; one vote per shareholder at General Meetings (except as defined in Clauses 23 and 24); 1p fixed preference dividend each; forfeited on holder's death, bankruptcy or insolvency; cancelled upon cessation of a trading relationship; cancelled without payment on winding up.



(iv) **Investor Shares:** issued to any natural or legal person; issued at a fair price to investors of equity capital upon payment; issued to providers of unremunerated labour in proportion to their labour contribution; issued to customers / service users in proportion to the value of their trading activity; one vote per shareholder at General Meetings (except as defined in Clauses 23 and 24); redeemable after 5 years or termination of membership or retirement or death or insolvency by transfer (with compensation at the current 'fair price') to one of the following:

- a. An Employee Benefit Trust or Co-operative Society established for the purpose of buying and selling (redeeming) Labour shareholders' investor shares and managing the income from them for the benefit of employees;
- b. A Charitable Trust, Charitable Company or Charitable Incorporated Organisation established for the purpose of buying and selling (redeeming) members' investor shares and managing the income from them to support charitable projects;
- c. A Community Interest Company, Community Benefit Society, FairShares Company or FairShares Co-operative created or selected to purchase (redeem) members' investor shares and manage the income from them to make social investments in a community.

(b) **Alteration of Share Capital.** The Company may issue only new Labour, User or Investor Shares.

11. Transfer of Investor Shares.

- (a) Investor Shares may be sold (redeemed) at the 'fair price' (see Clause 15) to institutions created in accordance with Clause 10 (a)(iv), providing the investor shareholder is not in debt to the Company.
- (b) The 5 members who have traded the most Investor Shares over the last 5 years should be listed, together with their contact details, at the start of the register of members.
- (c) Nothing in these articles requires title to securities to be evidenced or transferred by a written instrument if the Act permits otherwise.

12. Equity Capital Stakes.

- (a) Every natural and legal person contracted to provide labour continuously for more than one year (director, employee, supplier or self-employed contractor) will be offered Labour Shares proportionate to their labour contribution at the conclusion of their probationary period. They will also be offered a chance to buy Investor Shares at the Fair Price to the value of [15%] of their initial labour contract (i.e. a person's annual salary, or projected annual value of their contract for services) after 366 days (1 year + 1 day) of continuous service;
- (b) Every natural and legal person who has contracted to be a customer or user of the company's products and services for more than one year will be offered User Shares proportionate to their usage of the company's services. They will also be offered a chance to buy Investor Shares at the Fair Price to the value of [15%] of the value of the products and services provided to them;
- (c) The Company may lend money to an existing member at 3% above the bank base rate of the [Co-operative Bank] for the purpose of buying Investor Shares;
- (d) A contract for labour (director, employee or contractor) may specify that part of the remuneration will be made in the form of Investor Shares;
- (e) After the anniversary of a labour contract (12 months), Investor Shares offered by the Directors can be purchased at the then current Fair Price as defined in 15(b) and 15(c);
- (e) Subject to special resolution, the provisions in clauses 12 (a) to (d) can be applied to other legal entities (companies, associations, charities etc.) who support the work of the Company.
- (f) The Directors shall not be entitled to withhold share offers or prevent share transfers, or reject applications for membership, on the grounds of social class, age, politics, race, creed, religion, culture, ethnic origin, sex or sexual orientation, marital status or disability.



13. Valuation.

- (a) Pre-emption rights are excluded.
- (b) The Company is valued at the start of every financial year, and this is the “Reference Value”.
- (c) At incorporation, the Reference Value of the Company is £0.
- (d) Thereafter, the Reference Value shall be calculated as the book value of fixed assets plus 20 (twenty) times the [Investor Share] for the previous accounting period (see Clause 44).
- (e) A Class Resolution can require revaluation of the Company or any of its assets.

14. Share Issues.

- (a) Excluding issues of Free Shares, a “Major Issue” of Investor Shares (increasing issued Investor Shares by more than 50% within 6 months) must be at a share price agreed by ordinary resolution.
- (b) Any other issue of Investor Shares should be at the Fair Price (see 15 (b) and 15 (c)).

15. Capital Gains, Free Shares and the Fair Price.

- (a) The “**Capital Gain Fraction**” is [0.5], and may be changed only by special resolution.
- (b) If the Company’s value at the end of an accounting period (the “**New Value**”) is greater than its Reference Value, then **Capital Gain** = (New Value – Reference Value) and:
 - the “Workers’ Gain” is $(\text{Capital Gain} \times \text{Capital Gain Fraction}) / 2$;
 - the “Users’ Gain” is $(\text{Capital Gain} \times \text{Capital Gain Fraction}) / 2$;
 - the new Fair Price is $(\text{New Value} - \text{Capital Gain}) \div (\text{number of Investor Shares in issue})$;
 - the number of Free Shares is $(\text{Capital Gain}) \div (\text{new Fair Price})$;

This number of Investor Shares will be issued to Labour and User Shareholders by any of the following means:

- i) Issuing Investor Shares to the value of Workers’ Gain credited as fully paid to those holding Labour Shares in proportion to the number of Labour Shares held at the commencement of the accounting period;
 - ii) Issuing Investor Shares to the value of Users’ Gain credited as fully paid to those holding User Shares in proportion to the number of User Shares held at the commencement of the accounting period;
 - iii) Purchasing Investor Shares (at the New Fair Price) from existing investor shareholders to the value of Workers’ Gain and then issuing them to Labour Shareholders in proportion to the number of Labour Shares held at the commencement of the accounting period;
 - iv) Purchasing Investor Shares (at the New Fair Price) from existing investor shareholders to the value of Users’ Gain and then issuing them to User Shareholders, in proportion to the number of User Shares held at the commencement of the accounting period;
 - v) Any combination of 15 i) to iv) that has the effect of acquiring for Labour and User Shareholders the number of ‘Free Shares’ to which they are entitled.
- (c) Otherwise, the new Fair Price is $(\text{New Value}) \div (\text{number of Investor Shares in issue})$.

Worked Example – Calculating the Fair Price and Free Investor Shares

<i>Investor Shares Issued:</i>	45,000
<i>Capital Gain Fraction:</i>	0.5 (50%)
<i>Reference Value:</i>	£60,000 (Existing fair price = £1.33)
<i>New Value:</i>	£75,000
<i>Capital Gain</i>	£15,000
<i>Workers' Gain:</i>	= £15,000 * 0.5) / 2 = £3,750
<i>Users' Gain:</i>	= £15,000 * 0.5) / 2 = £3,750
<i>New Fair Price</i>	= (£75,000 - £7,500) / 45,000 = £1.50
<i>Number of Free Shares:</i>	= 7,500 / 1.5 = 5,000
<i>Investor Shares (Revised):</i>	45,000 + 5,000 = 50,000

- 16. Borrowing.** The directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and assets (present or future) and to issue debentures.

GOVERNANCE

- 17.** The Directors may call General Meetings and, on the requisition of members holding a tenth or more of the shares in any class, must convene a General Meeting for a date not later than 4 weeks after receipt of the requisition.
- 18.** In each financial year, a minimum of one General Meeting will be held in addition to the Annual General Meeting (AGM).
- (a) No business shall be transacted at a General Meeting unless a quorum of members is present. Unless and until otherwise decided by General Meeting, two-fifths of the membership shall be the quorum, subject to the number of members being more than [10] and less than [50].
 - (b) In the event of the membership exceeding [50] the quorum shall be [20].
 - (c) In the event of the membership being less than [10], the quorum shall be one-half subject to a minimum of [3].
 - (d) No business shall be transacted at a General Meeting until the meeting has agreed a chairperson. Whenever a President is in post, the President will chair the General Meeting. If a President is not in post, or the President is not present, the meeting will elect one of the Directors to chair the meeting. If no Director is present, the meeting may elect a chairperson from amongst those present.
- 19.** The General Meeting can set corporate policy, approve/reject social enterprise plans, and take decisions about acquisition and disposal of property, and partnership arrangements with other organisations.
- (a) A proposal to acquire another organisation may be taken by Ordinary Resolution.
 - (b) A proposal to merge or sell the company must be put as a Special Resolution.
 - (c) A proposal to wind up or dissolve the company must be put as a Special Resolution.
- 20.** Corporate policy and social enterprise plans are implemented by a Chief Executive Officer or Executive Team appointed by the Directors. The board will stipulate their authority whenever appointed.
- (a) When no Chief Executive Officer or Executive Team is in post, the director with the most Labour Shares will assume the responsibilities of the Chief Executive Officer until a new Chief Executive Officer or Executive Team can be appointed.
 - (b) If the situation in 20(a) arises, and two or more directors have the same number of Labour Shares, the one with the most Investor Shares will assume the responsibilities of the Chief Executive Officer until a new Chief Executive Officer or Executive Team is appointed.



- (c) The Chief Executive Officer and Executive Team are responsible to the General Meeting and Board of Directors for the organisation and management of the company and the implementation of the Company's social enterprise plans.
- 21.** Every Founder, Labour, User and Investor shareholder can attend, speak and propose resolutions at a General Meeting, can stand (subject to clauses 30 and 31) for election as a Director and can cast one vote at General Meetings (except as provided for in clauses 23 and 24).
- 22.** Any person can act as a proxy for a member at General Meeting. An instrument appointing a proxy must be written in a usual form, or a form approved by the Directors.
- (a) A proxy may act for a maximum of one other member at General Meetings (i.e. can cast a maximum of two votes, including their own).
- 23.** Decisions at General Meetings are made by passing resolutions with a show of hands, unless a poll is demanded by at least [2] members. Unless required by law or by these articles, all decisions will be made by Ordinary Resolution, i.e. passed by a simple majority of votes cast.
- (a) For Ordinary Resolutions taken by a show of hands, Founder, Labour, User and Investor shareholders have one vote each, irrespective of the number of shares held and irrespective of the class(s) of share held.
- (b) For Ordinary Resolutions where a poll is called, only Labour Shareholders, User Shareholders and Investor Shareholders vote on the basis of their shareholdings. Founder shareholders may vote using their Labour, User and Investor Shares.
- (c) If a poll is requested by at least [2] members, the chairperson must offer each shareholder class a chance to pass a Class Resolution in accordance with the provisions of Clause 25 before proceeding with the poll.
- 24.** On a show of hands every member holding a share who is present in person or by proxy, has one vote. On a poll, every Labour, User and Investor shareholder who is present in person, by representative or by proxy, has one vote for every share held conferring a vote on the issue which shall then be subject to the following adjustments:
- (a) In the event of a poll, the total number of labour, user and investor votes for and against the resolution will be recalculated using the following formulae (see clause 44(a) for [Investor Share Fraction]; see clause 40 for [Labour Share Fraction] and [User Share Fraction]:
- i) $[\text{Investor Votes For}] / [\text{Investor Votes Cast}] * [\text{Investor Share Fraction}]$
 ii) $[\text{Investor Votes Against}] / [\text{Investor Votes Cast}] * [\text{Investor Share Fraction}]$
 iii) $[\text{Labour Votes For}] / [\text{Labour Votes Cast}] * [\text{Labour Share Fraction}]$
 iv) $[\text{Labour Votes Against}] / [\text{Labour Votes Cast}] * [\text{Labour Share Fraction}]$
 v) $[\text{User Votes For}] / [\text{User Votes Cast}] * [\text{User Share Fraction}]$
 vi) $[\text{User Votes Against}] / [\text{User Votes Cast}] * [\text{User Share Fraction}]$
- (b) The total vote for the resolution is the aggregate of i), iii) and v)
- (c) The total vote against the resolution is the aggregate of ii), iv) and vi)
- (d) For the resolution to pass, the aggregate of i), iii) and v) must be greater than 0.5, otherwise the resolution is not passed.

Worked Example – Taking a Poll for an Ordinary Resolution at a General Meeting

Investor Shares Cast:	3000	
Investor Shares For:	1800	= 1800 / 3000 * 30% = 18.0%
Investor Shares Against:	1200	= 1200 / 3000 * 30% = 12.0%
Investor Share Fraction	30%	
Labour Shares Cast:	17	
Labour Shares For:	5	= 5 / 17 * 35% = 10.3%
Labour Shares Against:	12	= 12 / 17 * 35% = 24.7%
Labour Share Fraction:	35%	
User Shares Cast:	170	
User Shares For:	40	= 40 / 170 * 35% = 8.2%
User Shares Against:	130	= 130 / 170 * 35% = 26.8%
User Share Fraction:	35%	

Total For = 18% + 10.3% + 8.2% = 36.5%

Total Against = 12% + 24.7% + 26.8% = 63.5%

The resolution is defeated.

- 25. A Class Resolution passed by any shareholder class can amend an Ordinary Resolution so that it becomes a Special Resolution (with the exception of contract terminations described in clause 51).**
- (a) A Special Resolution is passed if:
- a majority of votes cast in each shareholder class separately (on a one-shareholder one-vote basis) are in favour of the resolution;
 - at least 75% of all members cast their vote in favour of the resolution, irrespective of shareholder class, on a one-shareholder one-vote basis.
- 26.** Unless a poll is demanded, a declaration by the chairperson at the meeting that a resolution has, on a show of hands, been carried or lost and an entry to that effect in the book containing the minutes of the proceedings shall be conclusive evidence of the fact without proof of the number or proportions of the votes recorded in favour or against a resolution.
- 27.** A written resolution signed by all members is valid as if properly passed at a General Meeting.
- 28.** The proceedings of a meeting are not invalidated by the accidental omission to give notice of the meeting to, or the non-receipt of notice of the meeting by, a person entitled to receive notice.
- 29. Directors.** The Company shall have a Board of between one and [nine] directors except in the circumstances described in clauses 29(a) and (b). A sole director shall have authority to exercise all the powers and authorities vested in the Directors unless:
- The company is in receipt of grant or loan funding from a public authority, charitable body or other asset-locked organisation (e.g. a credit union, community cooperative or community interest company), in which case the minimum number of directors shall be three representing at least two shareholder classes, with at least one financial specialist.
 - The company has [50] or more members, in which case the minimum number of directors shall be five with at least one from each shareholder class, with at least one financial specialist.
- 30.** If the Company has fewer than [50] members, directors will be proposed by the Founders or existing Directors and approved by a vote of existing directors.
- Directors may freely negotiate contracts of any value until the company files its first set of accounts. Thereafter, directors may freely negotiate contracts to the value of [25%] of the company's annual turnover (as reported in the previous year's filed accounts). Contracts in excess of this amount require General Meeting approval.
 - A director may be removed at General Meeting by an Ordinary Resolution, or after a vote of no-confidence at a meeting of the Directors.



31. If the Company has [50] or more members, directors and a president will be elected annually as follows.
- (a) Labour Shareholders will elect a maximum of [two] directors (one will be subject to re-election by rotation every two-years), following Table A of the Companies Act 1985.
 - (b) User Shareholders will elect a maximum of [two] directors (one will be subject to re-election by rotation every two-years), following Table A of the Companies Act 1985.
 - (c) Investor Shareholders will elect a maximum of [two] directors (one will be subject to re-election by rotation every two-years), following Table A of the Companies Act 1985.
 - (d) Founder Shareholders will elect a maximum of [two] directors, who may be removed only by the provisions set out in 31(f).
 - (e) A maximum of [one] director may be appointed (co-opted) by the other directors for their specialist financial skills.
 - (f) A director may be removed from office at any General Meeting by a Class Resolution of a shareholder class that elected him or her, or by Ordinary Resolution.
 - (g) A company president will be elected from the Directors on a poll of all shareholders (one vote per shareholder) at the Annual General Meeting. The president has a non-executive role in the running of the company, and is responsible for overseeing board meetings, maintaining the public image of the company, and facilitating good communications between directors and company members. The president has a casting vote at board and General Meetings, but is not required to use it.
 - (h) In the absence of a president, or if a president is not elected, the holder(s) of Founder Shares will fulfil this role (as set out in 31(g)).
 - (i) A director cannot be removed by other directors except at General Meeting (as set out in 31 (f)).
 - (j) Company directors may freely negotiate contracts to the value of [12.5%] of the company's annual turnover (as reported in the previous year's filed accounts). Contracts in excess of this amount require General Meeting approval.
32. Directors' meetings may be held between General Meetings by any means defined within the Act, including video and audio conferencing.
- (a) All acts done by any meeting of the Directors or by any person acting as a member of the Board shall, even if it be afterwards discovered that there was some defect in the appointment of any Board members or person acting as such, 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 Board member.

EXPENSES, BENEFITS AND PAY

33. (a) Providers of labour (directors, employees, self-employed contractors) shall be paid reasonable expenses wholly incurred in relation to furthering the business of the company.
- (b) A schedule of acceptable fringe benefits and expenses may be agreed by ordinary resolution. Any expenses paid, or fringe benefits provided, outside the scope of an agreed schedule must be itemised in the annual accounts.
- (c) Fringe benefits and expenses must be itemised and recorded in such a way that they can be inspected by any member during normal office hours.
34. **Remuneration** has three components: Basic Wages ("Pay"), Labour Share dividends and Investor Share dividends.
- (a) Each provider of labour is subject to one or more contracts (employment contract, contract for services or company membership) which controls the manner in which they are remunerated for their labour. These articles, including subsequent modifications, are part of any contract between the Company and those providing labour (directors, shareholders, employees, self-



employed contractors). All members of the company shall be provided with a copy of these rules upon agreement or variation of a contract to supply labour.

- (b) Labour may be recognised solely through company membership and remunerated solely through Labour Share dividends. A formal contract of employment will be issued if, in the view of the directors, 'employee status' tests used in employment tribunals have been, or are expected to be, satisfied (i.e. a person works regular hours, receives regular pay, has agreed holiday entitlements and is subject to regular supervision etc.).
 - (c) If the company issues contracts of employment to members of staff, **the maximum ratio between the hourly rate of the highest and lowest paid member of staff shall be [3:1]**. This ratio can only be amended by a Class Resolution in a meeting of Labour Shareholders. This ratio may **not** be amended by Ordinary Resolution or Special Resolution.
 - (d) At the start of each accounting period, if the company has any employees, an amount equal to (Basic Wages × Current Inflation Rate) will be set aside for increases in Basic Wages. The application of any remuneration system to employees and self-employed contractors is at the discretion of the CEO or Executive Team (unless overridden by the procedure set out in clause 49). If the budget for increases in remuneration is not distributed within an accounting period, any unused part **must** be distributed as Investor Shares in proportion to Labour Shareholdings.
 - (e) An increase in the budget set in 34(d) can only be passed by Special Resolution.
 - (f) Directors' pay and conditions follow the same principles as other company members and employees.
35. (a) **"Total Revenue"** means sales plus earnings from services provided plus any other income, but excludes proceeds of new issues of securities or loans obtained.
- (c) **"Profit"** is equal to Total Revenue less the cost of materials and services, less depreciation, less rents, less interest.
36. **"Associated Costs"** means the costs directly associated with a given amount of Pay, including employee's and employer's contributions for National Insurance, superannuation, healthcare plan, childcare, staff club and any other benefits deducted from pay, together with sickness, maternity, paternity or other statutory pay, and Pay-As-You-Earn income tax.

RESERVES, CORPORATION TAX AND DIVIDENDS

37. **"Surplus"** is equal to Profit, less Pay including their Associated Costs, less corporation tax.
- (a) The first [£10,000] of surplus or 30% of profits (whichever is greater) will be allocated to Reserves as working capital. This amount will be deducted from Surplus before calculating User Share Dividends, Labour Share Dividends and Investor Share Dividends.
 - (b) [50%] of the Surplus transferred to reserves will be held in a **"Redemption Fund"**, set aside to fund the creation of organisations defined in Clause 10(a)(iv) that enable members to redeem their Investor Shares.
38. Additional Capital Expenditure, Extraordinary and Research and Development Costs in excess of [£5,000] not financed by an Investor Share Issue must either:
- (a) be deducted from Surplus in exchange for new Investor Shares credited as fully-paid, or
 - (b) be paid for from Reserves,
- or as determined by special resolution or a qualified accountant. Any member may ask a qualified accountant to determine if an item comes under these categories.
39. **"Labour Share" and "User Share"**. The Labour and User Share of Surplus, distributed in dividends, is calculated by multiplying [Surplus] (if greater than zero) for the relevant period by the [Labour Share Fraction] and [User Share Fraction]. If [Surplus] is less than or equal to zero, no Labour Share or User Share dividends are paid.



40. “Labour Share Fraction” and “User Share Fraction”

The Labour Share Fraction and User Share Fraction are both [0.35] and may be changed only by special resolution. If the Labour Share Fraction or User Share Fraction is decreased, Investor Shares credited as fully paid at the fair price must be given to holders of Labour and User Shares in proportion to the projected loss of dividends for the next 3 years.

No Labour or User Shareholder may receive a dividend of more than [Surplus] x [Labour Share Fraction].

41. “Labour Share Dividends” and “User Share Dividends”

At the end of an accounting period, the Labour Share and User Share are distributed as follows to each Labour and User shareholder:

[Labour Share] x (Member’s Labour Shareholding / All Issued Labour Shares).

[User Share] x (Member’s User Shareholding / All Issued User Shares)

42. Labour Share Advances.

At the discretion of the directors, members and employees may be advanced a proportion of their projected Labour Share dividends on a regular basis in addition to monthly Pay. Advances must be listed in the Annual Accounts.

43. Providers of labour (directors, employees, self-employed contractors) may, subject to mutual consent, be part-paid with new Investor Shares, credited as fully paid.

44. **Investor Share Dividends** are paid after Labour and User Share dividends.

(a) The “**Investor Share Fraction**” is [0.3] and the “**Investor Share**” is [Surplus] x [Investor Share Fraction]. This may be changed only by special resolution.

(b) The Investor Share Dividend paid in any accounting period is the lowest of the following:

- (i) that which may be paid by law;
- (ii) the [Investor Share] x (1 – [Capital Gain Fraction]); *and*
- (iii) the balance of the profit and loss account, if greater than zero;

(c) otherwise it is zero.

(d) The dividend is divided equally between all Investor Shares.

(e) Dividends, if payable, must be paid within [6] calendar months of the end of the accounting period. Interest at the company’s bank overdraft rate is to accumulate on unpaid dividends after this time.

45. **Shares instead of Dividends.** The directors can offer all Investor shareholders the choice of receiving additional Investor Shares credited as fully paid, instead of some or all of the dividend. The directors must specify a procedure fair to all Investor shareholders for exercising this choice.

46. No additional sum may be transferred from the profit and loss account to Reserves unless it represents new Investor Shares credited as fully-paid, or is approved by special resolution, or is required by law.

ACCOUNTING AND AUDITING

47. Financial and social accounts will be prepared for Board and General Meetings by a person with appropriate bookkeeping and accounting skills / qualifications. They will use accounting conventions agreed by the Board, or as required by law. Any member or person authorised in writing by a member may inspect the accounting records during normal working hours.

(a) If the Company has fewer than [50] members, the Board may put an ordinary resolution to the General meeting to approve one of the following:

- i. **Either:** the appointment of independent accountants and/or auditors to undertake financial and social audits;



- ii. **Or:** an application for exemption from audit under the provisions of the Companies Act;
- (b) If the Company has [50] or more members:
- i. The board shall recommend a choice of financial and social auditors for approval in General Meeting.
 - ii. The selected financial auditor shall audit the company's financial accounts prior to their approval in General Meeting for filing with Companies House.
 - iii. The selected social auditor shall assist with audit of the internal democracy and decision-making of the company, the wages, health and safety, skill sharing and educational opportunities of its members and employees, or other matters concerning the overall personal or job satisfaction of members and employees; an assessment of the company's activities externally, including effects on people, the environment and other organisations.
 - iv. An audit committee of up to four people (comprising non-Board members from at least two shareholder classes) will be elected at each AGM.
 - v. The purpose of the audit committee is:
 - 1. to assist and check the preparation of financial records presented to General Meetings so that they are accurate, authentic and meet the needs of members;
 - 2. to assist and check the preparation of the information needed for a social audit;
 - 3. to organise elections to the Board at the AGM in accordance with Clause 31;
 - 4. to record, check and authenticate that the procedures in clauses 17 to 27 are being followed when voting takes place in a General Meeting.

48. Accountants, Auditors and Independent Experts. These must be chosen by ordinary resolution.

- (a) The financial auditor shall be from a Recognised Qualifying Body (RQB).

DISPUTE RESOLUTION AND INTELLECTUAL PROPERTY

49. Labour Contract Revaluations. In the event of a dispute, the escalation procedure is:

- (a) Valuation by a recruitment agency or recruitment consultant agreeable to all parties;
- (b) Appeal (with resolution) subject to a vote at General Meeting;
- (c) Advisory, Conciliation and Arbitration Service (ACAS).

In the event that a labour contract revaluation leads to a breach of the ratio between the highest and lowest paid member of staff (as set in clause 34(c)) the revaluation will only be applied if Labour Shareholders pass a Class Resolution adjusting the ratio to permit the new level of pay. Until such time as a Class Resolution is passed, the maximum pay permissible is capped in accordance with the current ratio (e.g. if the ratio is 3:1, the maximum pay is 3x the lowest paid).

50. Relationship Disputes. In the event of a dispute between two or more members, the escalation procedure is:

- (a) Mediation by the President, or a Director, a management consultant, trade union official, Co-operatives UK official, Regional Co-operative Council official or other third-party agreeable to all parties;
- (b) Appeal (with resolution) subject to a vote at General Meeting;
- (c) Advisory, Conciliation and Arbitration Service (ACAS).

51. Except in the case of resignation or voluntary termination by both parties, a member's employment, supplier contract or company membership may be terminated only after an Ordinary Resolution proposing the termination of the contract has been passed in General Meeting.

- (a) Termination is subject to the satisfaction of all lawful terms contained in the member's employment and/or trading contract(s). A resolution to terminate an employment or supplier



contract, or company membership, cannot be modified by Class Resolution to become a Special Resolution (clause 25 does not apply).

52. The Company may pay for directors' and officers' indemnity insurance against liabilities related to Company business, excluding negligence and/or fraud.
53. **Intellectual Property (IP).** The Company shall record which members have created and contributed intellectual property (IP) to further company objects, and ensure that ownership of all IP remains vested in its creator(s). For the avoidance of doubt, the Company shall not own IP created by members before, during or after their period of membership unless ownership is freely and voluntarily transferred by those members to the Company.
- (a) All IP created by members while working for the Company will be vested in them individually and/or collectively.
 - (b) As a condition of membership and/or employment, all IP created by members during their work for the Company shall be licensed to the Company under a Creative Commons Licence for both non-commercial and commercial use, with permission to adapt, share and re-use the IP in product and service development. Any product or service offered will use the same Creative Commons licence unless a variation of this is negotiated with the creator(s) of the IP.
 - i. Where a member creates (or members create) IP for the Company during their period of membership, the Company shall have an exclusive right to use and commercialise the IP while they remain a member. If the member leaves the Company, upon termination of their membership, the Company shall retain a non-exclusive right to continue using and adapting their IP in both non-commercial and commercial ventures.
 - ii. Members who leave the Company retain a non-exclusive right to use IP they created for the Company in both non-commercial and commercial ventures.
 - (c) IP transferred to the Company by members, and IP bought by the Company from third parties, shall be made freely available to members for non-commercial use and private study.
 - (d) The Company shall use its best endeavours to manage IP as if it were an 'intellectual commons' for the benefit of Company members.

DISSOLUTION

54. Upon dissolution, a qualified accountant or auditor will calculate the value of “**residual assets**” ([shareholder funds] + [accumulated profit and loss account] + [assets – liabilities]). After satisfaction of all creditors, **residual assets** will be distributed to Investor Shareholders in proportion to their shareholding after satisfying the following requirement:
- (a) If the company has received grant funding from a public authority, charitable body or other asset-locked social enterprise (e.g. a community benefit society or community interest company), a qualified accountant or auditor will verify the amount of funding received, and calculate a “**community dividend fraction**” and “**community dividend**”. The **community dividend fraction** will be calculated using the formula shown in 54 (a) (i). The **community dividend** will be calculated using the formula shown in 54 (a) (ii):
 - i. $[\text{community and public funding}] / ([\text{community and public funding}] + [\text{shareholder funds}])$
 - ii. $([\text{shareholder funds}] + [\text{profit and loss account}] + [\text{other assets}]) * [\text{community dividend fraction}]$.



Worked Example – Calculating the Community Dividend

Community and Public Funding	£100,000
Shareholder Funds	£345,000
Profit and Loss Account	£200,000
Assets - Liabilities	£100,000

Community Dividend Fraction
= $100,000 / (100,000 + 345,000) = 22\%$

Residual Assets
= $345,000 + 200,000 + 100,000 = £645k$

Community Dividend
= $£645k * 22\% = £144,944$

- (b) If the total value of **residual assets** is greater than [£5,000], not less than **[community dividend]** will be divided equally between the following bodies:

Organisation Name: _____

CIC Company No: _____

or Charity No: _____

or IPS Registration Number: _____

Organisation Name: _____

CIC Company No: _____

or Charity No: _____

or IPS Registration Number: _____

Organisation Name: _____

CIC Company No: _____

or Charity No: _____

or IPS Registration Number: _____

- (c) Any remaining assets will be divided equally between Investor Shareholders **in proportion to the number of Investor Shares reported in the company's most recent Annual Return, or as set out in the registration document at Companies House (if no Annual Return has been filed)**. For the avoidance of doubt, changes in shareholdings since registration (if not filed in an Annual Return), or since the most recent Annual Return, will be ignored for the purposes of calculating the share of residual assets paid out when the company is dissolved.
- (d) In finalising the dissolution of the company, and subject to the requirements of Insolvency Law, debts and payments to creditors and shareholders will be satisfied in the following order:
- vi) Outstanding debts to **employees, workers and contractors** (e.g. wages/fees)
 - vii) Outstanding debts to other **priority creditors** (e.g. VAT and taxes)
 - viii) Outstanding debts to **suppliers** (e.g. unpaid supplier invoices)
 - ix) Outstanding debts to **other creditors** (e.g. loan balances)
 - x) Payment of the **community dividend**
 - xi) Division of remaining **residual assets** to Investor Shareholders

