

ENGLAND GOLF

GUIDE FOR INCORPORATION OF GOLF CLUBS

These notes and draft documents have been produced by England Golf, working in collaboration with law firm Mills & Reeve, and are provided to Golf Clubs by way of general guidance only.

The notes are not intended as advice in respect of particular circumstances relevant to any individual Golf Club.

Golf Clubs should seek their own legal and other professional advice and assistance with incorporation and the topics mentioned in these notes and draft documents (which are provided by way of example only).



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1 Steps to be taken

- 1.1 The Executive Committee of the Golf Club will need to:
 - 1.1.1 consider this guide;
 - 1.1.2 consider the benefits and implications of incorporation (see paragraph 2 below);
 - 1.1.3 identify the assets, contracts, employees and liabilities that would need to be transferred to a new company;
 - 1.1.4 liaise with England Golf for any further available advice and assistance;
 - 1.1.5 take their own specific legal and accounting advice;
 - 1.1.6 check the constitution of the Golf Club to see what is required to approve the incorporation and transfer;
 - 1.1.7 consider what licences may need to be transferred to the new company (an example is a licence to serve alcohol); and
 - 1.1.8 consider and seek advice on any tax implications and, if appropriate, apply for tax clearance. The corporation tax consequences of the incorporation and subsequent trading through a company need to be understood.
- 1.2 If the Executive Committee is in favour of proceeding it will need to arrange consultation with its members and hold presentation and consultation meetings with them.
- 1.3 Members may need to be given time to consider the proposition. It is recommended that the Executive Committee spend time discussing the details before presenting informally to club members for outline approval.
- 1.4 If the consultation with members appears favourable to incorporation the Executive Committee might wish to work on the Articles and Rules and to incorporate a company in advance of a general meeting (or this could be done after the general meeting).
- 1.5 A general meeting of the Golf Club will be required to approve or reject the proposition and transfer.
- 1.6 Depending on the complexity of what needs to be transferred and the constitution of the Golf Club a transfer agreement may be required or more simple resolutions may suffice.
- 1.7 Members will need to sign up to the new company by way of an invitation and acceptance or affiliation process.

2 Why incorporate?

- 2.1 A Golf Club which is not incorporated is an unincorporated association of its various members. As such, the Members and Committee Members may be liable for the debts of and any claims against the Golf Club.



- 2.2 As an unincorporated association a Golf Club cannot hold property in its own name. Property needs to be held by trustees and needs to be transferred to new trustees when any trustee dies or retires. Trustees may be liable under occupiers' liability and, in respect of leasehold property, also as tenants.
- 2.3 An unincorporated association cannot generally contract in its own name and cannot sue or be sued in its own name. Instead it contracts in the name of one or more of its Members.
- 2.4 Unincorporated bodies cannot therefore 'employ' people. This is technically done by the committee who assume personal liability for any claims, as with any litigation. Whilst insurance will cover many losses, it is common for clubs not to have any employment law insurance. Any claim would need to be met from assets of the club and, failing that, the committee members.
- 2.5 A company can both contract and hold property in its own name and can sue and be sued in its own name.
- 2.6 Directors of a company generally have the protection of limited liability and will only be liable personally if they have committed wrongdoing or if they have allowed the Company to continue to trade while insolvent, but see the Summary of the Duties and Liabilities of Directors (Appendix 1). Members also generally have the protection of limited liability.
- 2.7 It should be borne in mind that an unincorporated association is not generally subject to any outside scrutiny and its constitution and finances are private. Companies on the other hand are regulated under the Companies Act and must file certain documents at Companies House including their Memorandum and Articles of Association and their Annual Report and Accounts. Documents filed at Companies House are open to public inspection.
- 2.8 It is generally considered beneficial for any entity which employs staff, owns property or enters into material contracts to incorporate to limit exposure to personal liability. Insurance cannot cover every eventuality. It is one thing to ask people who are often volunteers to give up their time. They may be less willing if they understand their personal assets are also at risk.

3 The incorporation process

- 3.1 A sub-committee or steering group may be beneficial to consider all the documents and to drive the process.
- 3.2 Review the constitution of the existing unincorporated body. Does the constitution contain power to dissolve and/or transfer the assets to another body? If not, a resolution will be required to amend the constitution prior to the transfer of the assets and undertaking. In that regard what majority is required to amend or might unanimity be required?
- 3.3 Decide if the new company is to be a company limited by guarantee (which we have assumed) or a company limited by shares. The latter is only likely to be relevant if shareholding membership can be bought and sold and/or if the members are investing in the new company.



- 3.4 Identify the contracts, assets, employees and liabilities of the existing unincorporated body and any potential issues with transferring them to the new company. Remember that assets may be tangible (e.g. tables and chairs) or intangible (e.g. domain names and trademarks).
- 3.5 Decide whether the property is to be transferred to the new company (see paragraph 5).
- 3.6 Decide on the structure and make-up of the board of directors of the new company. This is an opportunity to modernise the governance structure to ensure it is fit for the challenges ahead. This might involve making the committee the Board of Directors answerable to the members in a general meeting.
- 3.7 Decide on the membership of the new company (including any different classes of members).
- 3.8 Decide on the name of the new company and check its availability.
- 3.9 Review the precedent Memorandum of Association (Appendix 2) and Articles of Association (Appendix 3) and decide on any changes required.
- 3.10 Review the content of Appendix 5 which sets out a list of typical matters addressed by Rules and draw up a proposed set for approval.
- 3.11 Has the Golf Club granted a mortgage or other security to its bank or other lenders? If so, their consent will be required before the process can complete.
- 3.12 Gather the information required for the first directors, secretary and subscribers.
- 3.13 Complete Form IN01 and file this with the Memorandum of Association and the agreed version of the Articles of Association at Companies House. Form IN01 can be downloaded from Companies House website but it may be beneficial to seek legal advice in respect of the incorporation documents and process.

4 What to incorporate?

This guide assumes that the decision to be made will be whether or not to incorporate the business and assets of the entire Golf Club. However, we are aware of alternatives that have been followed including the following:

- 4.1 One option has been to separate the land and buildings from the trading business of the Golf Club. This might be done for a few reasons including the stamp duty land tax (“**SDLT**”) cost of transferring the land and/or to ringfence the land from the business so that even if the business were to be rendered insolvent then the land would not be (subject to there being no cross guarantees or similar arrangements in place) subject to a claim by the creditors.
- 4.2 A second option has been to incorporate the management of the Golf Club. The theory is that if any decisions made by the Golf Club are made by a limited liability company then any claim that a third party might have that results from that decision would be made against the company and not the individuals themselves. In addition, that new company would enter into contracts on behalf of the unincorporated Golf Club (in the



way that individuals within an unincorporated Golf Club currently do) thereby making it the contracting party and insulating the relevant individuals.

5 Land

5.1 The major asset of the Golf Club is likely to be the land upon which the course is laid out. Please note paragraph 4.1 above concerning what to do with the land. If the land is to be retained outside of the new company (whether in another company or to be held by trustees for the membership as it currently may be) then it may be prudent to put a lease in place in favour of the new company. The Club will also need to consider insurance arrangements and for whose benefit that land is then held (e.g. if someone is a voting member of the club then are they also a member of the land owning company (assuming the land is put into a separate company)?).

5.2 If the land is to be retained outside of the company then that may impact on the company's ability to borrow as it will take away one of its principal assets that it could use as security for that borrowing (unless a guarantee is provided by the land owning entity).

5.3 Stamp Duty Land Tax is a tax payable on the transfer of land and may apply to this transfer. The tax is a percentage of the property value with the percentage depending upon that value. This cost can be significant and therefore what that cost will be should be ascertained and factored into the decision making process about whether to proceed or not. The tax is also potentially payable on any lease granted.

5.4 If there are land assets to transfer then that requires a formal written legal transfer.

6 Taxation

6.1 When the contracts, assets and liabilities of the existing Golf Club have been identified, but before any steps have been taken to incorporate or transfer any assets to the new company, advice should be taken on the tax implications of incorporation. Generally, if there are few assets and liabilities, there will be no tax consequences but it is important to check. It will normally be possible to effect incorporation as a reconstruction on a no gain, no loss basis. Clearance should be sought from HMRC in respect of Corporation Tax on capital gains and, where appropriate, on the preservation of mutual trading status.

6.2 The corporation tax consequences of trading through a company need to be understood and assessed.

6.3 On any transfer of land stamp duty land tax may be payable.

6.4 Advice from the Club's tax adviser is recommended.

6.5 In due course, HMRC will need to be informed of the details of the new company and the transfer of assets and undertaking to the new company. PAYE and VAT arrangements will also need to be addressed.

7 Invitation and acceptance

7.1 While the Articles provide that members of the unincorporated Golf Club contractually become members of the new company it is preferable for Members to sign to evidence



agreement to be bound by the Articles of Association and any Rules made pursuant to the Articles. This can be done by Members signing a form of Invitation and Acceptance or as part of a re-affiliation process.

- 7.2 A precedent form of Invitation and Acceptance for clubs is provided as Appendix 7.
- 7.3 From an administrative perspective the Club may find it easiest to undertake this process at the same time as renewal of subscriptions as Members will be signing paperwork at that time in any event.

8 Transfer of undertaking and assets

- 8.1 The constitution of the Golf Club will need to be checked to see what is required to authorise and approve the transfer of the undertaking and assets. If this is not provided for in the constitution it may be necessary to amend the constitution as a preliminary step, if permitted. Depending upon the terms of the constitution, the transfer will require approval by resolution in general meeting or by resolution of the Executive Committee or a combination of the two.
- 8.2 The Golf Club will need to resolve to incorporate and to transfer its assets, liabilities and undertaking to the new company. Specimen resolutions are provided at Appendix 6 for guidance.
- 8.3 In more complicated cases it may be appropriate to record the terms of the incorporation and transfer into a Transfer Agreement to identify exactly what is being transferred, especially if any particular assets or liabilities are being excluded from the transfer. A specimen Transfer Agreement can be found in Appendix 4. The Transfer Agreement would typically need to cover and identify:
 - 8.3.1 the names and details of the parties;
 - 8.3.2 any terms which need to be defined;
 - 8.3.3 what is to be transferred;
 - 8.3.4 any assets or liabilities to be excluded;
 - 8.3.5 the price (if any) to be paid on transfer or any consideration for the transfer;
 - 8.3.6 when the transfer is to take place;
 - 8.3.7 any items which need individual transfer or assignment such as land or intellectual property rights;
 - 8.3.8 any tax issues including value added tax;
 - 8.3.9 warranties - in an arm's length commercial transaction, the Buyer will normally want warranties to try and ensure that it gets what it is paying for and does not pick up any unexpected liabilities. This will not normally be the case on incorporation (no warranties are included in the specimen Transfer Agreement) but consider whether it is necessary for any particular reason;



- 8.3.10 employees - if the Golf Club has employees their employment will transfer automatically under TUPE. It is important to ensure that all consultation and other requirements of TUPE are complied with fully and it may be appropriate to specify the arrangements in the Transfer Agreement;
- 8.3.11 contracts - consider what is required in respect of any ongoing contract and set that out if necessary;
- 8.3.12 debts and creditors, apportionments and pre-payments – you will need to ascertain what is to happen to these, in particular, whether the new company will assume all obligations, or whether these will be split pre and post transfer.

The above should be a useful check-list for what needs to be considered and/or a starting point for a simple transfer agreement to record what is being transferred and the arrangements on transfer to the new company.

- 8.4 A precedent transfer agreement is set out in Appendix 4 from England Golf but legal and accounting advice should be taken on the terms of the agreement and what is required. The precedent provides for assets to be transferred "for no value", save for the liabilities assumed by the new company in exchange for acquiring the assets. This point, and its implications, will need to be considered with the Golf Club's advisers, to discuss whether it is the most appropriate structure. There may be a surplus left in the Golf Club after transfer and, subject to the terms of the constitution, that will presumably be passed to the new company.
- 8.5 The new company will need to hold a meeting of its directors to resolve to accept the transfer of the assets, liabilities and undertaking and to agree ongoing administrative arrangements.
- 8.6 Legal advice should be taken in respect of the transfer of freehold or leasehold property and in respect of the transfer of any intellectual property such as domain names, trademarks or copyright. The Golf Club should be clear on the legal status of its intellectual property whether or not it incorporates.
- 8.7 All contractual arrangements need to be clearly identified and discussed and novated or renewed in the name of the new company. All major contracts should be discussed with the other contracting party in advance to ensure that no contractual problems are created by the incorporation.
- 8.8 All insurance arrangements will need to be discussed and agreed with the insurers or brokers in advance.
- 8.9 A new bank account will be required for the new company. Standing orders or direct debits from and to the existing account will need to be transferred.
- 8.10 All employee contracts will automatically transfer under TUPE but it is important that the TUPE process including consultation with employees is followed correctly. Legal advice should be taken in respect of the TUPE process before any steps are taken to transfer the Undertaking and Assets.
- 8.11 Transfer of any investments, preparation of new stationery, registration under the Data Protection Act and any pension arrangements will also need to be addressed.



- 8.12 Stationery, invoices and websites will need to make it clear that the new entity is a company and contain certain prescribed information.

9 Commentary on the precedent Transfer Agreement

The Golf Club is advised to take legal and tax advice before amending the Business Transfer Agreement or entering into it. This is important to ensure that the optimal structure (from a legal, tax and accounting basis) are used and to ensure that any amendments to the document are appropriate for the circumstances of the Golf Club.

9.1 General

The Transfer Agreement assumes that the new company will not pay the current Club owner for the assets being transferred. Instead, the benefit to the current owner will be the agreement of the new company to assume all liabilities (whether relating to the period before or after the transfer) of the current owner in respect of the Golf Club.

Each Club will need to take accounting and tax advice as to whether this particular structure is suitable, or whether a payment (perhaps as cash or as a loan) should be made by the new company. If so, consideration may need to be given as to how this will be financed.

9.2 Parties

The Transfer Agreement anticipates that the transferor will be an unincorporated association and that the transferee will be a newly incorporated company.

Legally these will be separate bodies, but the reality will of course be that they will both be controlled by the Club members.

9.3 Clause 1 - Definitions

So as to ensure clarity throughout the Transfer Agreement, the definitions set out various words and phrases that are used repeatedly within the document. It may be necessary to supplement or to remove certain of these definitions.

9.4 Clause 2 – Sale and purchase

9.4.1 The agreement acts to transfer both the business of the Golf Club (described as the Undertaking) and all of the assets that it owns. A suggested list of the assets to be transferred is included in schedule 2 of the agreement – this will need to be amended to reflect the actual assets of the Club. Consideration will also need to be given as to whether any items should be excluded from the transfer, and remain with the current owner.

9.4.2 A seller of assets will often be required to provide various assurances (known as warranties) in respect of assets being transferred, to give a buyer comfort that (i) the seller is able to transfer the assets and (ii) it is fully aware of the assets and liabilities being acquired. As the transfer under the Transfer Agreement is to give effect to incorporation, the agreement does not contain any such warranties/assurances. Each Club will need to consider if it is happy to proceed on this basis.



9.5 Clause 3 – Capital Allowances

If real estate is to be transferred and consideration paid, it may be appropriate for an election in respect of Capital Allowances (which relates to the value paid for fixtures) to be included in the agreement. The need for such election should be considered by a Club's tax and legal advisers in respect of any particular transaction.

9.6 Clause 4 - VAT

9.6.1 If no consideration is to be paid in respect of a transfer of the Club's undertaking and assets, then it is unlikely that any VAT will be chargeable.

9.6.2 Although, typically, the transfer of goods and assets for consideration would require VAT to be charged on top of the amount paid, the VAT Act contains various exemptions. This includes situations where assets are sold as part of a transfer of a trading business. In these circumstances, the exemption should allow for the transfer to be made without VAT being charged.

9.6.3 The exact applications of the VAT rules will need to be considered by each Club and its advisors.

9.7 Clause 5 – Completion

The Transfer Agreement provides that, upon it being completed, all of the assets that can be delivered are to be passed from the current owner to the new company. This is purely a legal formality; the incorporation is a legal process, rather than a physical passing of assets from one party to another.

9.8 Clause 6 – Property

9.8.1 The exact basis on which the Club holds any real estate (if any) will determine the provisions that will need to be included in respect of property.

9.8.2 Clubs that own the freehold title to their property should be entitled to transfer the property, subject to any third party consents such as those owed to a bank or potentially subject to any leases that have been granted over the property. A separate property transfer document will be required.

9.8.3 The transfer of property which is held subject to a lease or a licence is likely to also require consent of the landlord. In this circumstances, Clubs are advised to start conversations at an early stage of process, to ensure that consent will be forthcoming. It is usual for landlords to require that their legal costs be paid by a tenant, when consent to transfer a lease or licence is sought.

9.9 Clause 7 – Post completion

9.9.1 In exchange for the Club transferring its assets to the new company, the Transfer Agreement provides that new company will agree to assume responsibility for any liabilities that relate to the period before its ownership. This could include liabilities in relation to employees, landlords or commercial suppliers. Although this would not release members from liabilities to third parties which relate to the period before the transfer, the

members would effectively have the benefit of an indemnity from the new company in respect of these.

- 9.9.2 Clause 7 also provides for insurances to be transferred to the new company. Each Club should discuss the incorporation process with its insurance broker to ensure suitable and continuous cover.

9.10 Clause 8 – Contracts

The Club will be party to a number of contracts with suppliers, amongst others. These contracts cannot be unilaterally passed by the Club to the new company, without the consent of the third party. If the Club has good relationships with its suppliers and wishes to be certain that there would be no disruption in the provision of the services, it may wish to approach suppliers to seek their consent before the transfer. Otherwise, the Club may proceed with the incorporation on the basis that the new company will simply start performing the contracts after completion. Whilst the third party supplier will not therefore have consented, over a period of time its ongoing dealing with the new company will effectively transfer the contract as a matter of law.

9.11 Clause 9 – Employees

9.11.1 The Transfer of Undertakings (Protection of Employment) Regulations 2016 (commonly known as TUPE) applies in respect of any transfer of a business which has employees. TUPE broadly provides that, where there is a transfer of a business (which would include the undertaking to be transferred by the Club to the new company), any employees engaged in that business will also transfer to the acquirer who becomes liable for wages and/or associated employment costs from the transfer date.

9.11.2 TUPE also requires that employees be given information about the transfer and, if their employment terms are to be changed, gives them right to object and to opt out of the transfer, in certain circumstances.

9.11.3 The TUPE provisions will apply to the incorporation of the Club, if the Club has any employees. If so, the exact process to be followed will need to be considered by each Club with its legal and/or HR advisors.

9.12 Clause 10 – Debts and creditors

The Transfer Agreement provides that all debts and creditors will be for the liability of new company from the transfer date. This is again based on the assumption that the members of the Club will wish to pass as many obligations and liabilities to the new company as is possible.

10 The Precedent Memorandum and Articles of Association

These notes relate only to the precedent Memorandum and Articles of Association for a company limited by guarantee included with this pack. They do not apply to any other form of Articles of Association or to any other form of company or corporate body. The Club is recommended to take legal advice before adopting or amending the precedent Memorandum or Articles.



10.1 Necessary Documentation

10.1.1 To register a new company, the following three documents must be filed with Companies House:

- (i) a Memorandum of Association;
- (ii) Articles of Association; and
- (iii) Form IN01.

10.1.2 The Club may also consider adopting some Rules to assist with the running of the Golf Club.

10.2 Memorandum of Association

10.2.1 A precedent Memorandum of Association is provided as Appendix 2. All companies incorporated on or after 1 October 2009 must file a Memorandum of Association ("**Memorandum**") in this form. The Memorandum just lists the Company's subscribers and states that the subscribers wish to form a company under the Companies Act 2006 and have agreed to become members. Each subscriber must sign against his or her name.

10.2.2 Matters that have historically been contained in the Memorandum, such as the company's objects, no longer appear. The Memorandum should not contain any extra information and, if it does, the application for registration is likely to be rejected.

10.3 Articles of Association

Precedent Articles of Association ("**Articles**") are provided at Appendix 3. The Articles govern the management of the company's internal affairs. The Articles, together with the Memorandum, form the constitution of the company and form a binding contract between the members of the company.

10.4 Form INO1

This form, which is available online from Companies House, must be completed with various details, e.g. the intended situation of the Registered Office of the company (this will be either in England and Wales, Northern Ireland, Scotland or Wales depending upon the location of the Golf Club unless its registered office is not to be at its location), the details of the Company Secretary and Director(s) and details of the subscribers. Unlike the Memorandum, the address of the subscribers must be set out in Form IN01.

10.5 Amendments

Once it has been filed the Memorandum cannot be amended. The Articles can, however, be amended, by Special Resolution (being a resolution passed by a 75% majority of the Members attending and voting at the relevant meeting).



10.6 Rules

10.6.1 For a body such as a Golf Club, the Articles will normally be supplemented by Rules which are not filed publicly at Companies House and which can be amended or updated more easily and frequently. The precedent provides for the Rules to be made, amended and updated by the Board of Directors.

10.6.2 The Rules should be made under the authority of the Articles but they will be subordinated to them.

10.6.3 It is likely that an existing unincorporated Golf Club will have one constitutional document, some of the provisions of which will be covered in the Articles of the new company and some of which will need to go into the Rules. It is important to ensure that the Rules do not conflict with the provisions in the Articles.

10.7 Commentary on the precedent Memorandum and Articles

10.7.1 The Club is advised to take legal and tax advice before adopting or amending the precedent Memorandum or Articles to ensure that the documents and any amendments to them are appropriate to the circumstances of the Golf Club.

10.7.2 If amendments to the precedent Articles are made it is important to check that the clause numbering and any cross references remain correct.

10.8 Memorandum of Association

10.8.1 For all companies incorporating after 1 October 2009, the Memorandum must be in the prescribed form. The precedent Memorandum is consistent with the requirements of the Companies Act 2006.

10.8.2 For any Member to become a voting member of the new company it must agree to do so. A precedent form of invitation and acceptance is provided as Appendix 7 for Members to sign up following incorporation. Once a Member has become a voting member he or she will remain a voting member until he or she ceases to be so within the terms of the Articles or Rules. A member should be required to cease membership, for example, should they fail to pay their annual subs (Article 30.3).

10.8.3 All companies are required to maintain a register of members setting out the name and address of each member and the date on which each member became and ceased to be a member.

10.9 Articles of Association

10.9.1 Article 1 - Definitions

It is helpful to define particular words which are used throughout the Articles so that it is clear precisely what is meant each time the word is used. Defined words should commence with a capital letter each time they are

used. Definitions of other words may be added to the list if appropriate or a definition may be deleted if it is not used.

10.9.2 Article 2 - The Objects

- (i) The name of the Golf Club needs to be added in Article 2.1.2.
- (ii) The 2006 Act provides that a company's objects will be unrestricted (and it will therefore have all the powers it requires to conduct its activities) unless the Articles specifically restrict them. However, it is anticipated that Golf Clubs will wish to still set out some of its objects, albeit in a manner that does not restrict the activities of the Golf Club. Article 2 sets out a list of sample objects but there may be other objects which a Golf Club already has or may want to include in the Articles and additional objects can be added where relevant. Alternatively, the Golf Club may wish to remove some of the sample objects. Article 2.2 is important as it retains the power to do anything it sees fit.
- (iii) It is not necessary for the Company to carry out every purpose listed in the objects all of the time, but the Company may only carry out purposes which are authorised by its objects. It is therefore important that the objects are drafted as widely as appropriate to allow the Company to operate as a Golf Club.
- (iv) The directors of a company have a duty to act within the limits of the objects clause and bona fide in the best interests of the company. A director who breaches this duty may become liable to the company. The members also have a right to prevent the company from undertaking something outside its objects.
- (v) It is possible to amend the objects at any point (by a special resolution which requires a 75% majority) to add, remove or alter the objects. Any such change must be notified to the Registrar of Companies at Companies House and the change to the objects does not take effect until it has been registered (unlike other changes to the Articles which take effect from the date of the resolution making the change).

10.9.3 Article 3 - Powers and the Application of Surplus Funds

- (i) Article 3 grants the Company all powers needed to exercise the objects set out in Article 2.
- (ii) companies can in certain circumstances be exempted from having to charge VAT in relation to certain sports supplies (typically members' subscriptions and playing fees). In order for the Company to benefit from the VAT exemption it must qualify as an eligible body. An eligible body must:
 - (A) be "non-profit-making";
 - (B) include a restriction on the distribution of profits; and

- (C) not be subject to commercial influence.
- (iii) To ensure that a company is not subject to commercial influence, it must not purchase certain goods or services (e.g. sports land, or management/administration services relating to the company's facilities or goods/services) for more than the normal market price from an officer, shadow officer or connected person.
- (iv) If the Company intends to employ or pay its officers and wishes to benefit from the VAT exemption, then Article 20.3 (which prohibits the directors' remuneration being determined by or conditional upon the profits or losses or gross income derived from the Company's activities) must be retained in the Articles. Excluding the right to remunerate directors does not prevent the payment of honoraria to officers (see Article 17.7) but to take the above VAT benefits, the amount of the honoraria again must not be calculated by reference to gross profits or gross income of the Company. However, there may be employment law issues with the payment of honoraria and therefore legal and tax advice should be taken before agreeing to the payment of honoraria.
- (v) It is important to note that claiming the exemption in relation to members' subscriptions and certain other members' payments such as playing fees does NOT exempt the Company from charging VAT altogether. Sales will be subject to VAT unless the Company's income from taxable supplies is less than the VAT threshold applying to all businesses.
- (vi) Articles 3.2 and 49 of the precedent Articles enable the Company to claim both the VAT exemption and mutual trading status (so that corporation tax is not payable on income from trade conducted with members). In addition to these tax benefits, the non-profit-distributing status of a the Company (as provided for in Article 3.2) can be important for the purposes of obtaining rate relief and eligibility to receive Lottery funding and grants from other grant-making bodies.

10.9.4 Article 4 - Liability of Members

- (i) The company's constitution must include a statement of guarantee that each Voting Member shall contribute to the assets of the company if it should be wound up while the Voting Member is a member (or within one year after the individual ceases to be a member) up to a specified maximum. The maximum amount of the contribution must be included in the Articles and is usually £1 (as suggested in the precedent Articles) or another nominal sum.
- (ii) A Voting Member is not obliged to pay the sum guaranteed while the company is a going concern. The liability only arises if a contribution is needed to pay the company's debts when it is wound up.

10.9.5 The Board

(i) Powers and Duties of the Board

- (A) Articles 5 to 7 set out the powers of the Board. The Board is responsible for the management, administration and finances of the Company and therefore must have adequate powers and autonomy to fulfil this responsibility without having to revert to the members to make every decision.
- (B) Article 5.2 permits the Board to make and vary rules relating to the Company.
- (C) Article 5.7 reserves power to the Voting Members to direct the Board by Special Resolution.
- (D) The directors' powers to delegate and to create committees is set out in Articles 6 and 7.
- (E) The Companies Act imposes specific statutory duties on directors. A Summary of the Duties and Liabilities of Directors is included at Appendix 1.

(ii) Proceedings of the Board

- (A) Articles 8 to 16 deal with the proceedings of the Board. These Articles are procedural and can be varied to reflect the desired arrangements for the particular company.
- (B) Article 11 allows directors to attend (and form part of the quorum for) board meetings remotely.
- (C) In Article 12.2 the quorum for a board meeting is suggested as a minimum of three, but should be set to such number as is thought to be appropriate.
- (D) It is anticipated that none of the Captains will also act as Chairman. Instead, it is anticipated that a separate Chairman will be appointed; it is recommended that appointment be for a three year term before the post comes up for re-election and a nine year maximum period of office (i.e. three terms of three years) at which time the Chairman should be changed. It needs to be decided whether that role has a casting vote (Article 14.1) at a Board meeting.

(iii) Officers

- (A) Articles 17 and 18 deal with the appointment of the Board. Article 17.1 sets out the minimum and maximum number of directors. These numbers can be changed to suit any particular Golf Club.

- (B) The appointment of the Board could mirror the voting arrangements in the unincorporated Golf Club. However, incorporation provides the opportunity to change existing arrangements. This is an opportunity to modernise the governance structure to ensure it is fit for the challenges ahead. In particular this might include a Chairman with a long term focus; staggered rotation of Board members to ensure continuity; gender equality with the recommended minimum of 30% of either gender on Boards; and skills based appointments to reflect the needs of the Board and Club.
 - (C) Article 17 provides for the first Directors following incorporation to be listed and their retirement dates specified. The Articles should make it clear for how long an officer or director holds office and whether or not he or she can be re-elected after this period. These decisions will depend on the practice in each particular Golf Club. Article 18 provides for a three year term but does not restrict re-election.
 - (D) The precedent Articles provide for both Elected Directors (proposed and seconded by Voting Members) and Appointed Directors (recruited and nominated on a "skills needed" basis by a Nominations Committee). They also provide for the creation of a nominations committee to assist with the recruitment and appointment of the Men's Captain, Women's Captain, Club Manager, Finance Director and Appointed Directors.
 - (E) Article 22 provides for the appointment and retirement of the President, Vice President and Immediate Past President to be dealt with in the Rules. There is no legal requirement for these posts, it is a matter of choice for each Club.
 - (F) There is no provision for retirement age for directors but consideration should be given to limiting the number of terms for which someone can serve as a director and/or as chairman (see Sport England Governance Strategy paper).
 - (G) Article 24 assumes the appointment of a Men's Captain and a Women's Captain but this will be subject to the requirements of each Club.
- (iv) Company Secretary

In the precedent Articles there is no provision for the appointment of a company secretary and there is no statutory requirement to appoint a company secretary. It is, however, important to ensure that either one is appointed or that the role and responsibilities of a company secretary are delegated to and carried out by one of the officers of the Company (possibly the Club Manager) to ensure that

the proper administration of the Company is carried out and that all necessary filings are made at Companies House.

(v) Membership

- (A) Articles 28 to 30 deal with membership and are important to establish the members of the Company and the legal relationship between the members and the Company. It is important for tax reasons that the members of the Company after incorporation are the same as the members of the Golf Club immediately prior to incorporation.
- (B) Those entitled to vote at the annual general meeting or annual council meeting of an unincorporated Golf Club should indicate who the voting members of that Golf Club are and who should therefore become the Voting Members of the Company.
- (C) Voting Membership may be limited to affiliated clubs in which case all other members will be Non-Voting Members.
- (D) Membership categories (including the requirements for membership, the rights, privileges and obligations of each category of member) should be set out in the Rules.
- (E) “**Voting Members**” and “**Non-Voting Members**” are defined in Article 1.
- (F) Article 28 provides that the Board has the power and discretion to admit members.
- (G) Article 30 deals with termination of membership whether by resignation, expulsion or non-payment of affiliation fees. Article 30.3 provides that a member whose affiliation fee is more than six months in arrears is deemed to have resigned automatically but gives the Board a discretion to vary that.

(vi) Affiliation Fees

- (A) Article 29.2 provides that membership and other fees are set by the Board but details of the fees and arrangements for payment and collection should be covered in the Rules. The Articles could provide for such fees to be set by the members in general meeting or an annual general meeting, or that they are to be approved by the members at the annual general meeting but, commercially, it makes more sense for the fees to be set by the directors as they are responsible for the administration and finances of the Company. Membership categories and the fees relating to membership categories should be set out in the Rules.

- (B) The Articles provide that voting rights are suspended for so long as fees remain unpaid following their due date for payment.

(vii) General Meetings

- (A) Although there is no legal requirement to hold one, the precedent Articles provide for the holding of an annual general meeting every year in the usual way. The holding of an annual general meeting is considered to be an important democratic part of the operation of a membership body such as a Golf Club. The suggested arrangements are set out in Article 31 which can be tailored to suit the particular requirements of any Golf Club. Please note that Article 31.3 also provides for the holding of additional general meetings in each year and, if that is not the practice or is not required, this should be deleted.
- (B) Article 32 sets out the arrangements for convening a general meeting. 14 days' notice is specified but that can be extended to, say, 21 days if preferred.
- (C) At Article 34 the quorum for general meetings is specified to be 10% of Voting Members entitled to attend. Consideration needs to be given to the percentage or to the number of Voting Members required to attend. While it is important to have meaningful attendance, the quorum should not be so large as to mean that meetings cannot proceed to business because of the lack of a quorum.
- (D) The Articles assume that it is only the Voting Members that are entitled to receive notice of, attend and vote at general meetings (though there is discretion for others to attend and speak but not vote). The Articles assume that each Voting Member is entitled to one vote. If voting rights or rights to receive notice of and/or attend meetings are to be different, that will need to be provided for.
- (E) Voting will normally be by way of show of hands. However, voting can also be by way of a poll or by way of a postal ballot or by way of a written resolution.
- (F) It is important to note that a member who is entitled to attend and vote is also entitled to appoint a proxy to attend and vote in his place. Arrangements in respect of postal ballots, polls and proxies are set out in the Articles. A precedent Form of Proxy is provided at Appendix 8. Requirements in respect of written resolutions are set out in the Companies Act.



(viii) Indemnity

The Companies Act permits a company to offer a wide indemnity to its directors and for them to purchase insurance and this is carried into the Articles in Articles 47 and 48.

(ix) Dissolution

It is important that the Articles set out what happens to any surplus monies on a winding up or dissolution of the Company. This is dealt with in Article 49 which provides that any surplus shall go back to the Voting Members. This is a requirement to enable the Company to claim the benefit of mutual trading but can be an issue if the Company wishes to apply for rating relief and some types of grant. An alternative would be to provide that the surplus should be gifted to another golf club; doing so would deprive the Voting Members of a potential windfall but the counter argument is that any decision to dissolve would not be influenced by that potential windfall.

11 Professional Advice

Please see the disclaimer on the front cover of this guide. Golf Clubs are strongly advised to seek legal, accounting and other professional advice in respect of the matters mentioned in this guide.

12 Queries

Any queries should please be referred to: Rod Findlay, Director of Business and Legal Services, England Golf.

Tel: 01526 354500

Email: compliance@englandgolf.org

Appendix 1

A Summary of the Duties and Liabilities of Directors of a Company registered in England and Wales

The Companies Act 2006 contains a statutory statement of directors' duties. The seven general duties of directors under the Act are:

- to act within powers;
- to promote the success of the company;
- to exercise independent judgement;
- to exercise reasonable care, skill and diligence;
- to avoid conflicts of interest;
- not to accept benefits from third parties;
- to declare an interest in a proposed transaction or arrangement.

1 Duty to act within powers

Section 171 of the 2006 Act introduces a duty on directors to act in accordance with the company's constitution (including shareholder and board decisions), and only to exercise their powers for proper purposes.

2 Duty to promote the success of the company

2.1 Section 172 of the 2006 Act places a duty on directors to promote the success of the company for the benefit of its members as a whole. The 'success' of the company is not defined in the Act but the government has suggested this will mean a 'long-term increase in value'.

2.2 In carrying out the duty to promote the success of the company, section 172 of the 2006 Act requires directors to have regard (among other matters) to:

- 2.2.1 the likely consequences of any decision in the long term;
- 2.2.2 the interests of the company's employees;
- 2.2.3 the need to foster the company's business relationships with suppliers, customers and others;
- 2.2.4 the impact of the company's operations on the community and the environment;
- 2.2.5 the desirability of the company maintaining a reputation for high standards of business conduct; and
- 2.2.6 the need to act fairly as between the members of the company.



- 2.3 One issue arising from the requirement to consider the factors set out above is the extent to which directors must make it clear that they have considered them. The extreme position would be to list each of the factors in the minutes passing any resolution of the company, which would clearly be administratively burdensome. However, some minuting of key considerations would be wise.
- 2.4 The duty to promote the success of the company will not require a director to 'do more than good faith and the duty to exercise reasonable care, skill and diligence would require' i.e. a director need not be right, only to be able to demonstrate good reasons for what he did.
- 2.5 The duty to promote the success of the company is subject to any enactment or rule of law requiring directors in certain circumstances to consider or act in the interests of the creditors of the company. Accordingly, the duty may be modified by an obligation to have regard to the interests of creditors if the company nears insolvency.

3 Duty to exercise independent judgement

Section 173 of the 2006 Act requires directors to exercise their powers independently. This does not appear to prevent a director from e.g. delegating to a committee established in accordance with the company's articles. Furthermore, he will not be in breach if he acts in accordance with an agreement entered into by the company which restricts the exercise of discretion by its directors. A director may also rely on the judgement of others if they are not competent or expert in a particular area. However, they must exercise their own independent judgement in deciding whether or not to follow such advice, for example by ensuring that the person whose advice they propose to take is properly qualified to advise them.

4 Duty to exercise reasonable care, skill and diligence

Section 174 of the 2006 Act imposes a requirement on directors to exercise reasonable care, skill and diligence. This test expects the director to be averagely competent as compared to his peers as a minimum but were he especially skilled in an area then a higher test may be imposed e.g. more can be expected of a trained finance director when considering accounts than can be expected of an operations director who is not an accountant.

5 Duty to avoid conflicts of interests

- 5.1 Section 175 of the 2006 Act requires directors to avoid situations in which they could have a direct or indirect interest that conflicts or may conflict with the interests of the company. This duty is not breached:
 - 5.1.1 if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 5.1.2 if the matter has been authorised by the directors (assuming the shareholders have delegated that authority to the directors) though the conflict may only be authorised if the interested director is not included in the quorum considering the authorisation and does not vote on the resolution.



- 5.2 Conflicts are not just in respect of the director but also e.g. a director's spouse or civil partner, parents and children or step-children, bodies corporate to which the director is connected by exercise of 20% or more of the control in that company, trustees of a trust of which the director or connected person is a beneficiary, where the director is a trustee of the company's pension scheme and a director's business partner.
- 5.3 The section 175 duty therefore has major implications for directors who are directors of more than one company.
- 5.4 The duty to avoid conflicts of interest will continue to apply after a person ceases to be a director as regards the exploitation of any property, information or opportunity of which they became aware when they were a director.

6 Duty not to accept benefits from third parties

- 6.1 Under section 176, directors may not accept a benefit from a third party that is conferred by reason of his directorship, or any actions (or inactions) as a director. The duty is again subject to a test of reasonableness, suggesting that gifts of a value that is not unreasonable in the circumstances will be acceptable (such as conventional corporate hospitality). It is important to note that this section does not allow the board to authorise the acceptance of a benefit by a director from a third party. A director may therefore only accept a benefit from a third party if his acceptance has been authorised by the shareholders of the company in general meeting or under the company's articles of association.
- 6.2 The duty not to accept benefits from third parties will continue to apply after a person ceases to be a director in relation to things done or omitted by them before they ceased to be a director.

7 Duty to declare interest

- 7.1 The 2006 Act imposes a duty on a director to declare an interest in a proposed or existing transaction or arrangement with the company. These duties are separate from the provisions relating to conflicts in section 175 (outlined above). A director may notify the company in two ways. The first is to declare the interest at a board meeting, the second is to give notice to the other directors in writing.
- 7.2 The declaration must be made before the company enters into the transaction or arrangement.
- 7.3 No declaration will be required:
- 7.3.1 Where the director is not aware of his or her interest or where the director is not aware of the transaction or arrangement, but directors will be treated as being aware of matters of which they ought reasonably to be aware.
- 7.3.2 If the interest cannot reasonably be regarded as likely to give rise to a conflict of interest, if the other directors are already aware of it.

8 Other statutory obligations

Other statutory obligations of directors are contained in the Companies Acts and in other legislation. They include administrative duties (mainly found in the Companies



Acts) such as the duty to keep the statutory books up to date, the duty to file annual compliance statement and the duty to maintain a register of people with significant control. The liability for breach of these duties usually attaches to the company and to all defaulting officers of the company. Other legislation that imposes criminal and civil liability on directors includes the Insolvency Act 1986 (for example where a director continues to trade when he knew or ought to have known that there was no reasonable prospect of the company avoiding insolvent liquidation or if he knowingly continues to carry on business with the intention of defrauding creditors in the knowledge that there was no reasonable prospect of the creditors being paid by the company); health and safety regulations and environmental legislation (if it is shown that the director contributed to a breach through consent, connivance or neglect); the Company Directors Disqualification Act 1986 (if a director acts while disqualified); as well as competition and securities law.

9 Loans to directors

- 9.1 Companies may make loans to directors of the Company, or give guarantees or provide security for loans made by any person to such directors, subject to shareholder consent.
- 9.2 The requirement to obtain shareholder consent is subject to limited exemptions, allowing companies to enter into transactions in certain circumstances. For example, loans up to a maximum amount of £10,000 (taking into account all other relevant transactions and arrangements) may be made to a director, funds may be provided to a director to meet expenditure incurred (or to be incurred) in performing his role as an officer of the Company and for expenses incurred (or to be incurred) in defending criminal or civil proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by a director in relation to the Company or an associated company.
- 9.3 The directors of a company have a duty to ensure that the prohibition on loans to directors without shareholder approval is complied with. Any director receiving a loan in breach of this prohibition, or who authorised the loan as a director of the company, may be required to account to the company for any gain made and to indemnify the company against any loss it suffers.

10 The liability of directors arising on corporate insolvency

- 10.1 When a company goes into insolvent liquidation, a director of the company may be exposed to a risk of personal liability. Generally, in the event of liquidation, the liquidator has a duty to realise the assets of the company, but to do this he will have to investigate the affairs of the company, including the actions of the directors. If there has been any breach of statutory duty or there have been unlawful payments such as loans or compensation, the liquidator will claim against the director.
- 10.2 Specifically, there are a number of provisions in the Insolvency Act 1986 which provide for the potential liability of directors, both in the period leading up to liquidation and during the liquidation itself. These include the following matters:

10.2.1 Fraud, etc in anticipation of winding-up

It is a criminal offence to conceal or destroy the company's property, books, records and the like within 12 months before insolvent liquidation (or up to

five years if done with intent to defraud the creditors). The court may also order repayment, restitution or the payment of compensation by the directors.

10.2.2 Concealment from, and failure to co-operate with, the liquidator

It is a criminal offence not to hand over property, books, etc to the liquidator, or deliberately to make a false Statement of Affairs.

10.2.3 Fraudulent trading

If a liquidator proves that a company carried on its business with the intent to defraud creditors, the court may order the directors responsible to contribute to the assets of the company. This is also a criminal offence.

10.2.4 Wrongful trading

The law is now intended to encourage, or even compel, the directors to protect the position of the creditors if, at any time before the commencement of the winding-up, the directors knew or ought to have concluded (on the basis of information which is or should have been available) that there was no reasonable prospect that the company would avoid going into insolvent liquidation. If they failed to act, the directors may be ordered by the court to contribute to the assets of the company i.e. to the liquidator, not to individual creditors. However, whilst dishonesty does not need to be proven, the directors will not incur any liability if they promptly took all the precautions they should have taken to minimise the loss to the company's creditors; this may include ceasing trading and/or initiating liquidation or inviting a bank to appoint a receiver.

10.2.5 Shareholder actions

The provisions of the Companies Act 2006 allow any minority shareholder to apply to the Court for permission to bring an action in the name of the company against one or more of the directors. Early indications are that courts will be unwilling to allow such applications lightly but directors would be wise to protect themselves by properly minuting their decisions and the reasons for them at the time the decisions were made.

10.2.6 Liability for the acts of other directors and officers

- (i) A director is not the agent of his co-directors and the other officers of the company are not the agents of the directors. Therefore, the fact that a particular director is liable to the company for breach of duty does not itself render liable any other director of the company. In the absence of negligence, a director is not liable for the breach of duty by other directors of which he was ignorant.
- (ii) However, where a director is under a duty of care, imposed by his contract or by the general law, to supervise the activities of another director and he fails to do so, or where he knowingly participates to some degree in or sanctions conduct which constitutes a breach of duty, he will be just as liable for those wrongful acts as the other



director. A relatively slight degree of participation will suffice. Similarly, closing one's eyes to the obvious will also potentially give rise to liability.

10.2.7 Chairman's duties

- (i) In common law, the person appointed as the chairman of the meeting is deemed to have been given authority by the meeting to regulate its proceedings. As this is a form of delegated authority, the chairman must still act in accordance with the wishes of the majority at the meeting, unless exercising a power conferred by statute or the company's Articles of Association, or one that the courts have ruled can be exercised by the chairman without reference to the members (e.g. the power to adjourn to restore order).
- (ii) In addition to the general duties that apply to a director, the chairman is responsible for: the proper conduct of the meeting; the preservation of order; ensuring that all shades of opinion are given a fair hearing; and ensuring that the sense of the meeting is properly ascertained and recorded.

10.2.8 Executive/non-executive directors

The law does not distinguish between the two "types" of director even though the distinction is important on a day to day basis. Therefore a non-executive director cannot excuse himself simply by pleading ignorance due to his status as a non-executive director - he is still obliged to make proper enquiry.

10.2.9 Director's liability insurance

Whilst this can and does provide protection for claims against directors, it does not and cannot cover the payment of e.g. regulatory fines levied on a director - he must pay them himself.

10.2.10 Summary

- (i) Directors are not intended to be guarantors of a company's success. The statutory obligation is that directors act in the way they consider would be most likely to promote the success of the company for the benefit of its members as a whole. Courts and policy makers alike have acknowledged that directors are in control of an entrepreneurial venture and that a degree of commercial risk-taking is a necessary part of earning a sufficient return on the capital invested. Further, it has long been accepted that directors are not liable for mere errors of judgement nor will a director be disqualified from holding office on the grounds of "ordinary commercial misjudgement".
- (ii) The holding of regular board and other management meetings and reviews, accompanied by clear minutes, have proved in practice to be the best evidence of the steps the directors took, and why.



Appendix 2

Precedent Memorandum of Association

MEMORANDUM OF ASSOCIATION

of

[] **GOLF CLUB LIMITED**

Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company.

	Name of each subscriber	Authentication by each subscriber
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

Dated:



Appendix 3

Articles of Association

No []

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY
GUARANTEE

ARTICLES OF ASSOCIATION

OF

[] GOLF CLUB LIMITED

(adopted on [] 20[])

MILLS & REEVE

DETAILS, INTERPRETATION AND LIMITATION OF LIABILITY**1 Defined terms**

1.1 In the Articles, unless the context requires otherwise:

“**2006 Act**” means the Companies Act 2006 as modified by statute or re-enacted from time to time;

“**Amateur Golf**” means the general name for the sport of golf which is governed by the Rules of Golf and played adhering to the Rules of Amateur Status;

“**Appointed Director**” means those Directors appointed under Article 26;

“**Articles**” means these articles of association, as may be amended from time to time;

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

“**Chairman**” means the person appointed to the post of that name in accordance with Article 22;

“**chairman of the meeting**” has the meaning given in Article 13.2 (in respect of a board meeting) or Article 35.3 (in respect of a general meeting);

“**Club**” means the golf club run by the Company known as [] Golf Club;

“**Club Manager**” the person having the title of manager or secretary of the Club from time to time;

“**Companies Acts**” means the Companies Acts (as defined in section 2 of the 2006 Act), in so far as they apply to the Company;

“**Director**” means a Director of the Company, and includes any person occupying the position of Director, by whatever name called;

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

“**Elected Director**” means a Director elected in accordance with Article 26;

“**electronic form**” has the meaning given in section 1168 of the 2006 Act;

“**England Golf**” means the English Golf Union Limited the governing body for Amateur Golf in England;

“**Finance Director**” means the person appointed from time to time as Finance Director under Article 23;

“**Member**” a person or body who or which is a member (whether voting or non-voting) of the Company for the purposes of the Articles and the Rules. The categorisation and the rights, privileges and obligations of each category of Member shall be laid down in the Rules;



“**Nominations Committee**” means all or any of the committees set up pursuant to Articles 23, 24, 25 or 26;

“**Non-Voting Members**” means all members of the Company other than the Voting Members. Non-Voting Members are not members for the purposes of the Companies Acts;

“**ordinary resolution**” has the meaning given in section 282 of the 2006 Act;

“**participate**” in relation to a Directors' meeting, has the meaning given in Article 11;

“**Poll Vote**” means a vote taken in accordance with Article 41;

“**President**” means the person elected from time to time as President in accordance with the Rules;

“**Regulations**” means the regulations and policies of the Company made by the Board in accordance with Article 5;

“**Rules**” means the rules of the Company made by the Board in accordance with Article 5;

“**Rules of Golf and Rules of Amateur Status**” means the rules for the sport of golf and governing amateur status as from time to time laid down by R&A Rules Limited (Company Number SC247046) or its successor body or bodies;

“**special resolution**” has the meaning given in section 283 of the 2006 Act;

“**subsidiary**” has the meaning given in section 1159 of the 2006 Act;

“**Vice President**” means the person elected from time to time as Vice President in accordance with the Rules;

“**Voting Members**” means those Golf Clubs admitted from time to time into membership pursuant to Article 28 and any applicable Rules which, under the Rules, are entitled to receive notice of, attend and vote at general meetings. Voting Members are members of the Company for the purposes of the Companies Acts;

“**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.

- 1.2 Unless the context otherwise requires, other words or expressions contained in the Articles bear the same meaning as in the 2006 Act as in force on the date when the Articles become binding on the Company.
- 1.3 Words importing the singular number shall include the plural number and vice versa. Words importing the masculine gender only shall include the feminine gender and vice versa.



versa. Gender shall mean masculine or feminine. Words importing persons shall include corporations and unincorporated associations.

- 1.4 Any reference to a committee shall include a sub-committee and vice versa.
- 1.5 For the purposes of section 20 of the 2006 Act, the relevant model articles shall be deemed to have been excluded fully and replaced with the provisions of the Articles.

2 Objects

2.1 The objects for which the Company is established are (hereinafter referred to as the “**Objects**”):

- 2.1.1 to acquire, own, manage and operate the golf club known as [] Golf Club for the benefit and use of its members, invitees and guests including the provision of clubhouse facilities;
- 2.1.2 to promote, administer, encourage the development of, and wider participation in and to further the interest of Amateur Golf;
- 2.1.3 to acquire and undertake all property and liabilities and to carry out the powers, obligations, duties and general objects of the present unincorporated association known as the [] Golf Club and to indemnify their officers, members and members of any of their councils, executive committees and any other committees and their employees against all costs, claims, demands, actions and proceedings relating to their assets and undertakings and in respect of all liabilities, obligations and commitments (whether legally binding or not and also in respect of the costs and expenses and outgoings from or attributable to the transfer of their assets and undertakings;
- 2.1.4 to arrange championships, trophy events, matches, competitions and such other activities as the Board may think fit;
- 2.1.5 to co-operate with England Golf, the Royal & Ancient Golf Club of St Andrews and county golf unions, associations and organisations in all matters relating to the administration, promotion and playing of Amateur Golf in such manner as the Board shall decide;
- 2.1.6 to affiliate to England Golf and co-operate with England Golf in all matters relating to Amateur Golf, including compliance with the Articles, rules, regulations or bye-laws of England Golf and the rules and regulations of any body to which England Golf is itself affiliated;
- 2.1.7 to assist in maintaining the unified handicapping system for the Council of National Golf Unions and to duly operate the Standard Scratch Score and Handicapping Scheme 1983 as amended from time to time;
- 2.1.8 to take such action from time to time as the Board may consider desirable for the benefit of its Members;
- 2.1.9 to support the principle and practice of equity, equality and equality of opportunity, challenge discrimination that is indirect, direct, intentional or



unintentional, work with England Golf to ensure that all people, irrespective of their age, gender, ability, social status, race, ethnic origin, religious belief, disability or sexual preference have a genuine and equal opportunity to participate in golf. In furtherance of this object the Company shall support and promote diversity, equality and fairness in its appointments to the Board, to committees and other posts and of representation at meetings.

- 2.2 to do all such other things as shall be thought fit to further the interests of the Company or to be incidental or conducive to the attainment of all or any of the Objects stated in this Article 2.

3 Powers

- 3.1 The Company shall have the powers to do all such lawful things as are consistent with the furtherance of its Objects (the “Powers”).
- 3.2 The income and property of the Company shall be applied solely towards the promotion of its Objects and no portion thereof shall be paid or transferred directly or indirectly, overtly or covertly by way of distribution, bonus or otherwise by way of profit to the Members.
- 3.3 Nothing in Article 3.2 shall prevent the payment in good faith by the Company:
 - 3.3.1 of honoraria in accordance with Article 17.6;
 - 3.3.2 to any Director, committee or sub-committee member of reasonable and proper out-of-pocket expenses in accordance with Article 21;
 - 3.3.3 of reasonable and proper out-of-pocket expenses to any Member when representing the Company;
 - 3.3.4 of interest on money lent by a Member or the Directors to the Company at a commercial rate of interest;
 - 3.3.5 of reasonable and proper rent for premises demised or let by any Member or by any Director;
 - 3.3.6 of any premium in respect of the purchase and maintenance of indemnity insurance in respect of liability for any act or default of the Directors (or any of them) in relation to the Company;
 - 3.3.7 of a reasonable and proper salary to any Member when employed in a non-playing capacity by the Company; or
 - 3.3.8 other payments as are permitted by the Articles.

4 Liability of Members

- 4.1 Only Voting Members shall be members of the Company for the purposes of s112 of the Companies Act 2006 and liable to contribute to the assets of the Company in the event of it being wound up.
- 4.2 The liability of each Voting Member is limited to £1, being the amount that each Voting Member undertakes to contribute to the assets of the Company in the event of its being



wound up while it is a Voting Member or within one year after it ceases to be a Voting Member for:

- 4.2.1 payment of the Company's debts and liabilities contracted before it ceased to be a Voting Member;
- 4.2.2 payment of the costs, charges and expenses of winding up; and
- 4.2.3 adjustment of the rights of the contributories among themselves.

DIRECTORS' POWERS AND RESPONSIBILITIES

5 Directors' general authority and Members' reserve power

- 5.1 Subject to the Articles, any Rules and Regulations made pursuant to them and the Companies Acts, the Board is responsible for the management of the Company's business, for which purpose it may exercise all the powers of the Company.
- 5.2 The Board may from time to time make, vary or revoke Rules relating to the Company and Regulations including mechanisms and standing orders for the better administration of the Company including (without limitation):
 - 5.2.1 Rules setting out different categories of membership of the Company, membership fees and conditions of membership;
 - 5.2.2 Rules setting out rights, privileges and obligations of the different categories of member;
 - 5.2.3 Regulations as to the function, role and operation of committees to assist the Board;
 - 5.2.4 mandatory Rules for Members;
 - 5.2.5 Regulations for the selection of competitors to represent the Club in matches and competitions and the management of any team of competitors so selected;
 - 5.2.6 Regulations to ensure compliance with the rules of England Golf;
 - 5.2.7 Regulations setting out disciplinary procedures for Members and Regulations to ensure compliance with the disciplinary procedures of England Golf;
 - 5.2.8 Regulations for the promotion and organisation of championships;
 - 5.2.9 safeguarding policies, which shall ensure compliance with the safeguarding policies and procedures of England Golf;
 - 5.2.10 equality policies which shall ensure compliance with the equality policies and procedures of England Golf; and
 - 5.2.11 such other Rules, Regulations and policies as the Board thinks fit.



- 5.3 No Rules or Regulations made by the Company shall invalidate any prior act of the Board which would have been valid if such Rule or Regulation had not been made.
- 5.4 All Rules and Regulations, for so long as they are in force, shall be binding on all Members.
- 5.5 Rules and Regulations made pursuant to this Article 5 must be compliant with the Companies Acts and these Articles in order to be valid. No Rules shall be inconsistent with, or affect or repeal anything contained in the Articles or be in breach of any statutory provision.
- 5.6 The Board shall adopt whatever means they consider sufficient to bring any Rules, Regulations, alterations and repeals to the notice of the Members.
- 5.7 The Voting Members may, by special resolution, direct the Board to take, or refrain from taking, specified action provided always that no such special resolution shall invalidate anything which the Board has done before the passing of such resolution.

6 Directors may delegate

- 6.1 Subject to the Articles, the Board may delegate any of the powers which are conferred on it under the Articles:
 - 6.1.1 to such person or committee;
 - 6.1.2 by such means (including by power of attorney);
 - 6.1.3 to such an extent;
 - 6.1.4 in relation to such matters or territories; and
 - 6.1.5 on such terms and conditions, as it thinks fit.
- 6.2 All acts and proceedings delegated under Article 6.1 above shall be reported to the Board in due course.
- 6.3 If the Board so specifies, any such delegation may authorise further delegation of the Board's powers by any person to whom they are delegated.
- 6.4 The Board may revoke any delegation in whole or part, or alter its terms and conditions.

7 Committees

- 7.1 Committees to which the Board delegates any of its powers must follow procedures which are based as far as they are applicable on those provisions of the Articles which govern the taking of decisions by the Board.
- 7.2 The Board may make rules of procedure for all or any committees, which prevail over rules derived from the Articles if they are not consistent with them.



DECISION-MAKING BY DIRECTORS

8 Directors to take decisions collectively

Any decision of the Board must be either a majority decision or a decision taken in accordance with Article 9.

9 Unanimous decisions

9.1 A decision of the Board is taken in accordance with this Article when all eligible Directors indicate to each other by any means that they share a common view on a matter.

9.2 Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible Director or to which each eligible Director has otherwise indicated agreement in writing.

9.3 References in this Article to eligible Directors are to Directors who would have been entitled to vote on the matter had it been proposed as a resolution at a meeting of the Board.

9.4 A decision may not be taken in accordance with this Article if the eligible Directors would not have formed a quorum at such a meeting.

10 Calling a meeting of the Board

10.1 Any Director may call a meeting of the Board by giving notice of the meeting to the Directors or by directing the Club Manager to give such notice.

10.2 Notice of any meeting of the Board must indicate:

10.2.1 its proposed date and time;

10.2.2 where it is to take place; and

10.2.3 if it is anticipated that the Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

10.3 Notice of a meeting of the Board must be given to each Director, but need not be in writing. A Director who is absent from Great Britain shall be entitled to notice of a meeting if he or she has provided a valid email address.

10.4 Notice of a meeting of the Board need not be given to Directors who waive their entitlement to notice of that meeting by giving notice to that effect to the Board not more than seven days after the date on which the meeting is held. Where such notice is given after the meeting has been held it shall be deemed to have been given before the meeting when considering the validity of the meeting or of any business conducted at it.

10.5 Without prejudice to the foregoing, the Board shall meet at such times and at such frequency as they consider fit from time to time. The Board shall meet not less than three times per calendar year but, subject to that, the actual number of meetings shall be determined by the Board.



11 Participation in meetings of the Board

- 11.1 Subject to the Articles, Directors participate in a meeting of the Board, or part of a meeting of the Board, when:
- 11.1.1 the meeting has been called and takes place in accordance with the Articles; and
 - 11.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 11.2 In determining whether Directors are participating in a meeting of the Board, it is irrelevant where any Director is or how they communicate with each other.
- 11.3 If all the Directors participating in a meeting of the Board are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

12 Quorum for Board Meetings

- 12.1 At a meeting of the Board, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 12.2 The quorum for meetings of the Board may be fixed from time to time by a decision of the Directors but it must never be less than three.
- 12.3 Subject to Article 12.4, the Board may act notwithstanding any vacancy in their body.
- 12.4 If the total number of Directors 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 Voting Members to appoint additional Directors.
- 12.5 Subject to Article 12.6, if a question arises at a meeting of the Board (or a meeting of a committee of the Board) as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before conclusion of the meeting, be referred to the Chairman whose ruling in relation to any Director other than the Chairman is to be final and conclusive.
- 12.6 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chairman, the question is to be decided by majority decision of the Directors at that meeting, for which purpose the Chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

13 Chairing of meetings of the Board

- 13.1 The Chairman shall chair meetings of the Board.
- 13.2 If the Chairman is either ineligible to take part in all of a board meeting or the post is vacant or the Chairman is not participating in a board meeting within 10 minutes of the time at which it was due to start, those members of the Board present and participating shall choose one of their number to be chairman of the meeting. The person so appointed for the time being is known as the chairman of the meeting.



14 Casting vote

- 14.1 If the numbers of votes for and against a proposal are equal, the Chairman of the meeting of the Board [has **OR** shall not have] a casting vote.
- 14.2 Article 14.1 does not apply if, in accordance with the Articles, the Chairman of the meeting is not to be counted as participating in the decision-making process for quorum or voting purposes.

15 Conflicts of interest

- 15.1 If a proposed decision of the Board is concerned with an actual or proposed transaction or arrangement with the Company in which a Director is interested, that Director is not to be counted as participating in the decision-making process for quorum or voting purposes save where Article 15.2 applies.
- 15.2 The prohibition under Article 15.1 shall not apply when:
- 15.2.1 the Board approves the Director as counting towards the quorum and voting on the transaction or arrangement notwithstanding such interest;
 - 15.2.2 the Company passes an ordinary resolution to approve the Director as counting towards the quorum and voting on the transaction or arrangement notwithstanding such interest
 - 15.2.3 the Director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 15.2.4 the Director's conflict of interest arises from a permitted cause.
- 15.3 For the purposes of Article 15.2, the following are “**permitted causes**”:
- 15.3.1 a guarantee, security or indemnity given, or to be given, by or to a Director in respect of an obligation incurred by or on behalf of the Company or any of its subsidiaries (if any);
 - 15.3.2 subscription, or an agreement to subscribe, for securities of the Company or any of its subsidiaries (if any), or to underwrite, sub-underwrite, or guarantee subscription for any such securities; and
 - 15.3.3 arrangements pursuant to which benefits are made available to employees and Directors or former employees and Directors of the Company or any of its subsidiaries (if any) which do not provide special benefits for Directors or former Directors.
- 15.4 For the purposes of this Article 15, references to proposed decisions and decision-making processes include any meeting of the Board or part of a meeting of the Board.
- 15.5 Subject to Article 15.7, if a question arises at a meeting of the Board or of a committee of the Board as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chairman of the meeting whose ruling in relation to any Director other than himself is to be final and conclusive.



- 15.6 Where proposals are under consideration concerning the appointment of two or more Directors to employment with the Company or any body corporate in which the Company is interested the proposals may be divided and considered in relation to each Director separately and (provided he or she is not for another reason precluded from voting) each of the Directors concerned shall be entitled to vote and be counted in the quorum in respect of each resolution except that concerning his own appointment.
- 15.7 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chairman of the meeting, the question is to be decided by a decision of the Directors at that meeting, for which purpose the Chairman of the meeting is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.
- 15.8 A Director may vote, and count towards the quorum, in regard to any transaction or arrangement in which he or she has, or can have, a direct or indirect conflict of interest that conflicts, or possibly may conflict with the interests of the Company only where such matter has been authorised by the Board in accordance with section 175 of the 2006 Act.
- 15.9 The Company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of the Articles prohibiting a Director from voting at a meeting of the Board or a committee formed under Article 6.

16 Records of decisions to be kept

The Board must ensure that the Company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every appointment by the Board and of every unanimous or majority decision taken by the Board (and all committees) and by the Company at general meeting.

APPOINTMENT OF DIRECTORS

17 Methods of appointing Directors

- 17.1 The number of Directors shall be not less than [five] and shall be subject to a maximum of [twelve].
- 17.2 [The Board shall take reasonable steps to ensure that it is composed of such number of men and such number of women as results in appointees of either gender making up not less than 30% of the total number of Board members from time to time. This requirement shall not extend to requiring the removal of Directors for the purpose of giving effect to it, but shall require that Directors take the requirement into effect when making appointments to the Board pursuant these Articles.]
- 17.3 The members of the Board shall include:
- 17.3.1 the Chairman;
 - 17.3.2 the Men's Captain;
 - 17.3.3 the Women's Captain;



person be as valid as if every such person had been duly appointed or had duly continued in office.

18 Elected Directors and Appointed Directors

18.1 Subject to Articles 17.3 and 17.4 each Elected Director or Appointed Director shall be appointed as Directors from the general meeting at which he or she is elected to or appointed to such role to the general meeting in the third year after his or her appointment or election.

18.2 The election or appointment for the office of the Men's Captain and the Women's Captain shall be conducted in accordance with Article 24 and the election or appointment for the offices of Elected Director or Appointed Director shall be conducted in accordance with Article 26.

19 Termination of Director's appointment

19.1 Without prejudice to the provisions of section 168 of the 2006 Act, a person shall cease to be a Director of the Company as soon as:

19.1.1 that person ceases to be a Director by virtue of any provision of the 2006 Act or is prohibited from being a Director by law;

19.1.2 a bankruptcy order is made against that person;

19.1.3 a composition is made with that person's creditors generally in satisfaction of that person's debts;

19.1.4 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;

19.1.5 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;

19.1.6 unless the Board resolves otherwise, that person shall have been absent for more than three consecutive Board meetings without sufficient reason or without permission of the Board;

19.1.7 that person is requested to resign by all of the other members of the Board acting together; or

19.1.8 notification is received by the Board from the Director that the Director is resigning from office, and such resignation has taken effect in accordance with its terms.



19.2 Any member of the Board who is removed from office as a Director for whatever reason shall be deemed to have resigned from office and the vacancy shall be filled in accordance with these Articles.

20 Directors' remuneration

20.1 Subject to the provisions of the Companies Acts, and to Article 20.3 below, the Board may enter into an agreement or arrangement with any Director for his employment by the Company or for the provision by him of any services outside the scope of the ordinary duties of a Director. Any appointment of a Director to an executive office shall terminate if he ceases to be a Director but without prejudice to any claim for damages for breach of the contract of service between the Director and the Company.

20.2 Subject to the provisions of the Companies Acts, and to Article 20.3 below, the Board may provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any Director who has held but no longer holds any executive office or employment with the Company or with any body corporate which is or has been a subsidiary of the Company or a predecessor in business of the Company or of any such subsidiary, and for any member of his family (including a spouse and a former spouse) or any person who is or was dependent on him, and may (as well before as after he ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit.

20.3 Subject to these Articles, a Director's remuneration may take any form and include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that Director provided that such remuneration:

20.3.1 is fixed having regard to the current remuneration of Directors in comparable posts;

20.3.2 does not exceed the general market rate for Directors providing comparable services; and

20.3.3 is not to any extent determined by or conditional upon the profits or losses derived from some or all of the activities of the Company or by reference to the level of the Company's gross income from some or all of its activities.

20.4 No Director shall take any loan from the Company.

20.5 For the avoidance of doubt, no payment shall be made by way of remuneration to a non-executive Director.

20.6 Unless the Board decides otherwise, Directors are not accountable to the Company for any remuneration which they receive as Directors or other officers or employees of any other body corporate in which the Company is interested (if any).



21 Directors' expenses

Without prejudice to Article 20, the Company may pay any reasonable expenses which the Directors (including non-executive Directors) properly incur in connection with their attendance at:

21.1 meetings of the Board or of any committee; or

21.2 general meetings,

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company.

APPOINTMENTS AND ELECTED POSITIONS

22 Chairman, President, Vice President and Immediate Past President

The Chairman, President, Vice President and Immediate Past President shall be elected, assume office and retire in accordance with, and shall have such powers as are specified in these Articles and in the Rules.

23 Other Officers

23.1 The Board may, subject to Articles 20 and 21 above, appoint such voluntary positions as may be set out in the Rules and which the Board feels are required in order to fulfil the Company's Objectives on such terms and for such periods as they think fit and may delegate to them such of their powers as they think desirable to be executed by them. Save if otherwise elected or appointed in accordance with these Articles, a person holding such a position shall not become a Director.

23.2 [Subject to the appointment process as set out in Article 26.4, the Board shall appoint a Finance Director. The Finance Director shall be a Director by virtue of his office and shall have such duties, rights and privileges as the Board shall from time to time prescribe.]

OR

The Board shall establish a Nominations Committee, made up of such Directors or other persons as it shall in its discretion decide, to recruit a Finance Director based on a skills matrix and any other criteria that the Board shall specify and the Nominations Committee shall nominate a Finance Director for approval and appointment by the Board.]The Finance Director shall be a Director by virtue of his office and shall have such duties, rights and privileges as the Board shall from time to time prescribe.]

24 Men's Captain and Women's Captain

24.1 The Board shall establish a Nominations Committee, made up of such Directors or other persons as it shall in its discretion decide, to recruit a Men's Captain and a Women's Captain based on a skills matrix and any other criteria that the Board shall specify and the Nominations Committee shall nominate a Men's Captain and a Women's Captain for approval by the Voting Members at each annual general meeting.

24.2 The Men's Captain and Women's Captain shall have such rights and privileges as the Board shall from time to time prescribe.

25 Employees

Subject to the provisions of the Articles, the Board may appoint employees to manage the business and operations of the Company for such terms at such remuneration and upon such conditions as they may think fit and such employees appointed may be removed by them. While such employee may have a different title within the Company, for the purposes of these Articles and the Rules the most senior employee shall be referred to as the Club Manager. When recruiting a new Club Manager the Board shall establish a Nominations Committee made up of such Directors or other persons as it shall in its discretion decide, to recruit based on the skills matrix and any other criteria that the Board shall specify and the Nominations Committee shall nominate a Club Manager for approval and appointment by the Board.

26 Elections and Appointments

- 26.1 Elected Directors and Appointed Directors shall be elected or appointed (as appropriate) at the relevant annual general meeting pursuant to these Articles.
- 26.2 Any Voting Member may propose a Voting Member to be an Elected Director for consideration by the Board. Any proposal must be made on the form prescribed from time to time by the Board and signed by the nominee. Any proposal must be seconded by another Voting Member. Each Voting Member may only propose or second one candidate for each post and the form must be completed and returned to the Club Manager not later than such date as the Board shall prescribe each year.
- 26.3 If there are fewer than or the same number of candidates as there are vacancies for Elected Directors, those candidates shall be declared elected unopposed. In the event of there being more nominations than vacancies, there shall be an election at the annual general meeting. The Board shall decide and announce in advance in any year the election method for an Elected Director.
- 26.4 [The Board shall recruit the Appointed Directors based on a skills matrix and any other criteria that the Board shall specify and the Board shall nominate up to such number of Appointed Directors as there are vacancies. Such nominees shall be approved by a simple majority of the Board.]

OR

The Board shall establish a Nominations Committee, made up of such Directors or other persons as it shall in its discretion decide, to recruit Appointed Directors based on a skills matrix and any other criteria that the Board shall specify and the Nominations Committee shall nominate up to such number of Appointed Directors as there are vacancies for approval and appointment by the Board.]

27 Casual Vacancies

- 27.1 A casual vacancy arising in the office of Vice President shall be filled by the Company in general meeting. The person so elected as Vice President to fill the casual vacancy shall hold office until such time as the person he or she replaces was due to retire.
- 27.2 A casual vacancy in the office of President shall be filled by the Board provided always that the person appointed by the Board to fill the casual vacancy shall hold office until the next annual general meeting. At such annual general meeting the Company shall



elect a new President who shall hold office until such time as the person he or she replaces was due to retire.

- 27.3 A casual vacancy in the office of Finance Director, Men's Captain, Women's Captain, Elected Director or Appointed Director shall be filled by the Board provided always that the person so appointed by the Board to fill the casual vacancy shall hold office only until the next general meeting. At such general meeting the Voting Members shall by majority vote elect a replacement who shall hold office until such time as the person he or she replaces was due to retire but shall be eligible for re-election or appointment in accordance with these Articles.

BECOMING AND CEASING TO BE A MEMBER

28 Applications for membership

- 28.1 The subscribers to the Memorandum of Association of the Company, the voting members of the unincorporated association known as [] Golf Club as at the date of incorporation and such other persons as are admitted to membership by the Board in accordance with the Articles (and any applicable Rules) shall, for so long as they are Members, be the Voting Members of the Company.

- 28.2 No person or body shall become a Voting Member of the Company other than a person who has:

28.2.1 completed an application for membership in such form as required by the Board, and

28.2.2 acknowledged in writing his or her obligations under Article 4,
and in respect of which the Board has approved the application.

- 28.3 Each body corporate or unincorporated association which is admitted as a Voting Member may exercise such powers as are prescribed by Part 9 of the Act.

- 28.4 All members as at the date of incorporation of the unincorporated association known as the [] Golf Club other than its Voting Members, and such persons as are admitted as Non-Voting Members in accordance with the Rules, shall be the Non-Voting Members.

29 Conditions of membership

- 29.1 All Members shall be subject to the Rules.

- 29.2 The Members shall pay such membership and other fees as shall be set by the Board from time to time.

- 29.3 If any membership or other fees are more than a month overdue then any right for that Member to attend, speak and vote at a general meeting shall be suspended until such membership or other fees are paid in full.

30 Termination of Membership

- 30.1 A Member may withdraw from Membership of the Company by giving notice in accordance with the Rules. Membership shall not be transferable in any event and



shall cease immediately on death, dissolution or any other circumstance prescribed in the Rules or on the failure of the Member to comply or to continue to comply with any condition of Membership set out in the Articles or the Rules.

30.2 A Member may be expelled as a Member through the following process:

30.2.1 the Board resolves by a simple majority of all of the Directors (not just a majority of those attending and voting but excluding any Directors conflicted from voting) that such expulsion is in the interests of the Company;

30.2.2 notice of such resolution shall be served on the affected Member. Such notice shall stipulate a date (which shall be not less than seven days after the deemed date of receipt of such notice) by which notice of appeal must be received by the Company failing which the affected Member shall be expelled on such date;

30.2.3 if a notice of appeal is received then a meeting of the Board shall be convened (on not less than 14 days' notice to each Director and the affected Member) at which meeting the affected Member shall be entitled to present a statement in its defence (verbally and/or in writing);

30.2.4 at such meeting and following consideration of such statement (if any) the Board shall vote (by a simple majority of those attending and voting) on whether to uphold its earlier decision to expel. Such decision shall be notified to the affected Member at such meeting (assuming he or she is represented at the meeting) or by notice in writing (if he or she is not represented at the meeting). Should the Board uphold its decision then the affected Member shall (subject to Article 30.2.5) be expelled with immediate effect;

30.2.5 the affected Member may appeal to a general meeting of the Company by serving notice of its appeal on the Company (such notice must be received within seven days of the date of expulsion). Such appeal shall be heard at the next general meeting of the Company (subject to there being sufficient time to include the same in the notice of the general meeting). The affected Member shall be entitled to present a statement in his or her defence (verbally and/or in writing) to the general meeting;

30.2.6 at such general meeting the expulsion shall be confirmed or overturned by a simple majority vote of those Voting Members attending and voting. Should the expulsion be overturned then the affected Member shall be reinstated with immediate effect. Should the expulsion be confirmed then the affected Member shall pay the additional cost to the Company of such hearing on demand.

30.3 Any Member whose annual membership or other fee is more than six months in arrears shall be deemed to have resigned as a Member unless the Board otherwise decides.

30.4 Any person ceasing to be a Member forfeits all rights in relation to and claims on the Company, its property and funds and has no right to the return of any part of his membership or other fees.



- 30.5 Any Member who has been suspended from the game of golf by England Golf will be expelled as a Member.

ORGANISATION OF GENERAL MEETINGS

31 Annual General Meetings

- 31.1 The Company shall hold a general meeting in every calendar year as its annual general meeting at such time and place as may be determined by the Board and shall specify the meeting as such in the notices calling it, provided that so long as the Company holds its first annual general meeting within 18 months after its incorporation it need not hold it in the calendar year of its incorporation or in the following calendar year.
- 31.2 The annual general meeting shall be held for the following purposes:
- 31.2.1 to receive from the Board the Company's financial statements;
 - 31.2.2 to receive from the Board a report of the activities of the Company since the previous annual general meeting;
 - 31.2.3 to appoint the Company's auditors;
 - 31.2.4 to receive a report from the President;
 - 31.2.5 to receive a report from the Men's Captain;
 - 31.2.6 to receive a report from the Women's Captain;
 - 31.2.7 as and when appropriate to elect the President and Vice-President;
 - 31.2.8 to elect the Elected Directors and appoint the Men's Captain, Women's Captain and Appointed Directors in place of any of those retiring; and
 - 31.2.9 to transact such other business as may be brought before it.
- 31.3 All general meetings, other than annual general meetings, shall be called general meetings. The Company may hold further general meetings in each calendar year after its year of incorporation. The business of such general meetings shall be decided by the Board subject to due notice having been given.

32 Calling general meetings

- 32.1 The Board may call general meetings and, on the requisition of at least [5%] [number] of the Voting Members, shall forthwith proceed to convene a general meeting for a date not later than six weeks after receipt of the requisition. Such requisition must state the object of the meeting and include one or more resolutions to be put to the meeting. If there are not within the United Kingdom sufficient Directors to call a general meeting, the Club Manager or any Director may call a general meeting.
- 32.2 At least 14 clear days' notice in writing of every general meeting shall be given to such persons as are under the Articles or under the 2006 Act entitled to receive such notices from the Company.



- 32.3 The notice shall specify the place, the day and the hour of the meeting and in the case of special business, the general nature of the business. All business transacted at a general meeting, and all that is transacted at an annual general meeting, with the exception of the business set out in Article 31.2, shall be deemed special business.
- 32.4 A Voting Member may propose a resolution (or resolutions) to be considered at a general meeting. Such proposed resolutions must be seconded by another Voting Member and made in writing addressed to the Club Manager and be received not less than 35 days before the General Meeting at which it is to be proposed.
- 32.5 The accidental omission to give notice of a meeting to, or the non-receipt of such notice by, any person entitled to receive notice thereof, shall not invalidate any proceedings of, or resolution passed at, any meeting.

33 Attendance and speaking at general meetings

- 33.1 Each Voting Member shall (subject to Article 29.3) be entitled to attend and speak at a general meeting.
- 33.2 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.
- 33.3 A person is able to exercise the right to vote at a general meeting when:
- 33.3.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
 - 33.3.2 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.
- 33.4 The Board may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- 33.5 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.
- 33.6 Two or more persons 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.

34 Quorum for general meetings

- 34.1 [10%] of Voting Members entitled to attend and vote present in person shall be a quorum.
- 34.2 No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

35 Chairing general meetings

- 35.1 The Chairman shall chair general meetings if present and willing to do so.



35.2 If the post of Chairman is vacant, or if the Chairman is not willing to chair the meeting or is not present within 10 minutes of the time at which a meeting was due to start:

35.2.1 the Directors present, or

35.2.2 (if no Directors are present), the meeting,

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

35.3 The person chairing a meeting in accordance with this Article is referred to as "the chairman of the meeting".

36 Attendance and speaking by Directors and non-Voting Members

36.1 Directors, the Club Manager, the President, the Vice President, the Immediate Past President and non-Voting Members may (subject to Article 29.3) attend and speak (but not vote) at general meetings.

36.2 The chairman of the meeting may permit other persons who are not Voting Members or representatives of Voting Members of the company to attend and speak (but not vote) at a general meeting.

37 Adjournment

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

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

37.2.1 the meeting consents to an adjournment, or

37.2.2 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.

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

37.4 When adjourning a general meeting, the chairman of the meeting must:

37.4.1 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

37.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

37.5 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the Company must give at least seven clear days' notice of it:

37.5.1 to the same persons to whom notice of the Company's general meetings is required to be given, and



- 37.5.2 containing the same information which such notice is required to contain.
- 37.6 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.

VOTING AT GENERAL MEETINGS

38 Voting: general

- 38.1 Every Voting Member shall (subject to Article 29.3) be entitled to receive notice of, to attend a general meeting and to cast one vote at such general meeting. Such Voting Member shall be entitled to attend in person or by proxy.
- 38.2 Scrutineers should be appointed to assist in determining the outcome of any vote.
- 38.3 A resolution put to the vote at a general meeting shall be decided on a show of hands unless a poll is demanded in accordance with the Articles.
- 38.4 In the case of an equality of votes the chairman of the meeting shall not have a casting vote.
- 38.5 Unless a poll is demanded, a declaration by the chairman of the meeting that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the Minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 38.6 A resolution may be put to the vote of the Voting Members by way of written resolution in accordance with the provisions of the Companies Acts.

39 Errors and disputes

- 39.1 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. Any such objection must be referred to the chairman of the meeting whose decision is final.
- 39.2 If any votes are given or counted at a general meeting which shall afterwards be discovered to be improperly given or counted, the same shall not affect the validity of any resolution or thing passed or done at the said meeting, unless the objection to such votes be taken at the same meeting, and not in that case unless the chairman of the meeting shall then and there decide that the error is of sufficient magnitude to affect such resolution or thing.

40 Postal ballot

- 40.1 The Board may decide, in advance of a general meeting, to call a postal ballot in respect of an election which would otherwise be put to the vote at the general meeting. If there is to be a postal ballot, the details of the resolution and voting papers shall be sent at such time as the Board shall prescribe to the Voting Members. Voting papers must be returned to the Club Manager in a sealed envelope by such time as the Board shall prescribe and shall be opened and counted by such person or persons as the Board shall decide.



- 40.2 The result of the postal ballot will be declared at the general meeting at which it would otherwise have been put to the vote by the Board.

41 Poll votes

- 41.1 A poll on a resolution may be demanded:

- 41.1.1 in advance of the general meeting where it is to be put to the vote, or
- 41.1.2 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.

- 41.2 A poll may be demanded by:

- 41.2.1 the chairman of the meeting;
- 41.2.2 the Board; or
- 41.2.3 two or more Voting Members having the right to vote on the resolution.

- 41.3 A demand for a poll may be withdrawn if:

- 41.3.1 the poll has not yet been taken, and
- 41.3.2 the chairman of the meeting consents to the withdrawal.

- 41.4 Polls shall be taken immediately and in such manner as the chairman of the meeting directs.

42 Content of proxy notices

- 42.1 Proxies may only validly be appointed by a notice in writing (a “**proxy notice**”) which:

- 42.1.1 states the name and address of the Member appointing the proxy;
- 42.1.2 identifies the person appointed to be that Member's proxy and the general meeting in relation to which that person is appointed;
- 42.1.3 is signed by or on behalf of the Member appointing the proxy, or is authenticated in such manner as the Directors may determine; and
- 42.1.4 is delivered to the Company in accordance with the Articles and any instructions contained in the notice of the general meeting to which they relate.

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

- 42.3 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.



- 42.4 Unless a proxy notice indicates otherwise, it must be treated as:
- 42.4.1 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
 - 42.4.2 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.

43 Delivery of proxy notices

- 43.1 Subject to the restrictions within the Companies Act, the Board shall stipulate from time to time when, how and where proxy notices should be delivered in respect of any general meeting.
- 43.2 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.
- 43.3 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.
- 43.4 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.
- 43.5 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.

44 Amendments to resolutions

- 44.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
 - 44.1.1 notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than seven days before the meeting is to take place (or such later time as the chairman of the meeting may determine); and
 - 44.1.2 the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- 44.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:
 - 44.2.1 the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
 - 44.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 44.3 With the consent of the chairman of the meeting, an amendment may be withdrawn by its proposer at any time before the resolution is voted upon.



- 44.4 If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

ADMINISTRATIVE ARRANGEMENTS

45 Means of communication to be used

- 45.1 Subject to the Articles, any notice or document to be sent or supplied by or to the Company under the Articles may be sent or supplied in any way in which the 2006 Act provides for documents or information which are authorised or required by any provision of the 2006 Act to be sent or supplied by or to the Company.
- 45.2 The applicable address shall be:
- 45.2.1 in the case of a Voting Member at his or her address as it appears in the register of members or by giving notice using electronic communications to an address for the time being notified to the Company by the Voting Member; and
 - 45.2.2 in the case of a Non-Voting Member, the President, the Vice-President or the Immediate Past-President or anyone else, at his or her last known address.
- 45.3 Subject to the Articles, any notice or document to be sent or supplied to a member of the Board in connection with the taking of decisions by the Board may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or documents for the time being.
- 45.4 A Director may agree with the Company that notices or documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.
- 45.5 Any Voting Member described in the register of members by an address not within Great Britain, who shall from time to time give the Company an address within England at which notices may be served upon him, shall be entitled to have notices served upon him at such address, or an address to which notices may be sent using electronic communications, but, save as aforesaid and as provided by the Act, only those Voting Members who are described in the register of members by an address within England shall be entitled to receive notices from the Company.
- 45.6 Any notice, if served by first class (or equivalent) post, shall be deemed to have been served on the day following that on which the letter containing the same is put into the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post as a prepaid letter. Any notice, if served by electronic communications, shall be deemed to have been given at the expiration of 48 hours after the time it was sent.

46 No right to inspect accounts and other records

Except as provided by law or authorised by the Board 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.



DIRECTORS' INDEMNITY AND INSURANCE

47 Indemnity

47.1 Subject to Article 47.2, a relevant Director of the Company or an associated company shall be indemnified out of the Company's assets against:

47.1.1 any liability incurred by that Director in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or an associated company;

47.1.2 any liability incurred by that Director in connection with the activities of the Company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the 2006 Act); and

47.1.3 any other liability incurred by that Director as an officer of the Company or an associated company.

47.2 This Article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

47.3 In this Article:

47.3.1 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and

47.3.2 a "**relevant Director**" means any Director or former Director of the Company or an associated company.

48 Insurance

48.1 The Board 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.

48.2 In this Article:

48.2.1 a "**relevant Director**" means any Director or former Director of the Company or an associated company;

48.2.2 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

48.2.3 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

49 Dissolution

If upon the winding up or dissolution of the Company there remains after the satisfaction of all its debts and liabilities any property whatsoever the same shall be paid to or distributed among the Voting Members of the Company equally.



Appendix 4

Precedent Transfer Agreement

DATED _____ **2018**

[] (1)

and

[] (2)

AGREEMENT
for the transfer of the [] business of
[]

MILLS & REEVE



AGREED FORM DOCUMENTS

[Deed(s) of Release]

[Novation agreement]

[Property conveyances, transfers, assignments and other documents]

[TUPE letters from Transferor and Transferee]

THIS AGREEMENT is made on

2018

BETWEEN:

- (1) [], an unincorporated association whose office is at []; (“**Transferor**”); and
- (2) [] LIMITED (No. []) whose registered office is at [] (“**Transferee**”).

BACKGROUND:

- (A) The Transferor carries on the Undertaking (as defined in clause [1.1]).
- (B) The Transferor has agreed that the best way to further its sporting purposes is to incorporate as a company limited by guarantee.
- (C) For the purposes of the incorporation, the Transferor has agreed to transfer and the Transferee has agreed to receive the property, rights and assets comprised in the Undertaking with effect from the Transfer Date (as defined in clause [1.1]) on the following terms and subject to the following conditions.

NOW IT IS AGREED:

1 Definitions and interpretation

1.1 In this Agreement, unless the context requires otherwise:

“**Assets**” means the assets of the Undertaking to be transferred by the Transferor to the Transferee, as set in part 1 of [Schedule 2];

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) on which banks in the City of London are ordinarily open for the transaction of normal banking business;

“**Cash**” means the sum of £[] being the cash in hand at the bank of the Transferor;

“**Completion**” means completion of the sale and purchase of the Undertaking and the Assets;

“**Contracts**” means the contracts listed in [Schedule 3], and all other contracts] for the supply of goods or services by the Transferor to customers or clients of the Undertaking outstanding at the Transfer Date;

“**Creditors**” means all the amounts payable in respect of goods or services supplied to the Transferor in respect of the Undertaking prior to the Transfer Date;

“**Debts**” means the trade debts owed to the Transferor in respect of the Undertaking at the Transfer Date;

“**Domain Names**” means the domain names “[]”;

“**Employees**” means the employees employed by the Transferor in the Undertaking listed in [Schedule 4];



“Employment Liabilities” means all awards, claims, costs, damages, debts, demands, expenses, fines, penalties and all other liabilities of any nature (including professional fees and legal costs on an indemnity basis as defined in [Rule 44.4\(3\)](#) of the [Civil Procedure Rules 1998](#)) and any VAT which is not recoverable by the Transferee;

“Excluded Assets” means the assets of the Undertaking to be excluded from the transfer by the Transferor to the Transferee, as set in part 2 of [Schedule 2];

“Goodwill” means the goodwill and undertaking of the Transferor in relation to the Undertaking together with the exclusive right for the Transferee to represent itself as carrying on the

“Intellectual Property Rights” means all industrial and intellectual property rights owned by the Transferor including, without limitation, the Domain Names, all patents, trade marks or trade names, rights to prevent passing off or unfair competition, registered designs, design rights and all know-how and copyright in each case, whether registered or not, and including applications or rights to apply for the same, together with all extensions and renewals of the same and all rights to sue for past infringement of the same;

“Plant and Equipment” means the items listed in [Schedule 5] and all other fixed and loose plant, machinery, tools and equipment, furniture, fixtures, fittings, vehicles and other items owned by the Transferor and used in connection with the Undertaking whether or not situate at the Property at the Transfer Date;

“Property” means the [freehold/leasehold] propert[y/ies] specified in [Schedule 6] together with all the buildings on [it/them] [and with all the landlord’s fixtures and fittings] but excluding in each case all items on the Property which are comprised in the Plant and Equipment;

“Transfer Date” means the close of business on [] 20[];

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended;

“Undertaking” means the business of a golf club, as carried on by the Transferor at the Transfer Date under the names “[] Golf Club”; and

“VAT” means Value Added Tax.

1.2 In this Agreement unless the context requires otherwise:

1.2.1 use of the singular includes the plural and vice versa;

1.2.2 use of any gender includes the other genders;

1.2.3 references to persons or companies include any corporation, governmental authority or agency, partnership, undertaking or other body of persons, whether or not incorporated and whether now existing or to be formed after the date of this Agreement;



1.2.4 references to a clause or Schedule are to a clause of, or a Schedule to, this Agreement and references to this Agreement include its Schedules; and

1.2.5 clause headings are for ease of reference only and do not affect the construction of this Agreement.

2 Sale and purchase

2.1 On and subject to the terms of this Agreement, with effect from the Transfer Date:

2.1.1 the Transferor:

- (i) transfers to the Transferee the Undertaking as a going concern, together with the Assets;
- (ii) assigns to the Transferee the Goodwill and Intellectual Property Rights; and

2.1.2 the Transferee hereby:

- (i) receives the Undertaking and Assets from the Transferor; and
- (ii) receives the benefit of an assignment of the Goodwill and Intellectual Property Rights of the Transferor.

2.2 The Transferee acknowledges and agrees that the Transferor and its trustees are not providing any warranty or representation in respect of the Assets and Undertaking.

2.3 Property and risk in the Assets shall vest in the Transferee with effect from the Transfer Date.

2.4 The Excluded Assets shall be excluded from the transfer by the Transferor to the Transferee pursuant to this Agreement.

3 Capital Allowances

3.1 ***[Note: to be included on an as required basis].***

4 Value Added Tax¹

4.1 The parties agree that the consideration for all supplies made by the Transferor under this Agreement is expressed exclusive of any VAT which is chargeable, and if any VAT is so chargeable the Transferee shall (subject to receipt of a valid VAT invoice) reimburse the Transferor an amount equal to any such VAT.

4.2 The parties intend that section 49 Value Added Tax Act 1994 and Article 5 of the Value Added Tax (Special Provisions) Order 1995 will apply to the transfer of the Assets and the Transferor and the Transferee will each use its reasonable endeavours to secure that pursuant to the provisions referred to above the transfer of the Assets is treated as neither a supply of goods nor a supply of services for the purposes of VAT but as the transfer of a business as a going concern. If, and to the extent to which, all or any

¹ If the consideration is £0, this clause can be deleted in its entirety.



part or parts of this transaction shall nevertheless be found to be such a supply, then the Transferee shall pay to the Transferor the amount of Value Added Tax payable in connection with such part or parts in exchange for an invoice giving the requisite details of that taxable supply and dated with the Transfer Date.

- 4.3 [The Buyer notifies the Sellers that paragraph 5(2B) of the Value Added Tax (Special Provisions) Order does not apply to the Buyer on the transfer of the Property.]²
- 4.4 The Seller warrants and undertakes to the Buyer that:
- 4.4.1 it is duly and properly registered for the purposes of VAT;
- 4.4.2 [neither it nor any entity in respect of which it is a “relevant associate” (as defined by paragraph 3 of Schedule 10 VATA) has made an option to tax in respect of the Property pursuant to Part 1 of Schedule 10 VATA and no such option to tax will be made before Completion.]³
- 4.5 The Buyer warrants and undertakes to the Seller that it is duly and properly registered for the purposes of VAT.
- 4.6 The Buyer confirms that:
- 4.6.1 it is acquiring the Assets as a beneficial owner and is not a nominee; and
- 4.6.2 it intends to continue using the Assets to carry on the same business as that carried on by the Seller prior to Completion, namely that of the Business.
- 4.7 [If HMRC notify the Seller that they do not agree that the sale of the Assets (or any part of them) pursuant to this Agreement falls within section 49 VATA and Article 5 of the Value Added Tax (Special Provisions) Order 1995, the Seller shall immediately on receipt of such notification or on Completion (whichever is the later) issue to the Buyer a valid VAT invoice in respect of the sale of the Assets (or the relevant part of them) together with a copy of such notification from HMRC. Upon receipt of such invoice the Buyer shall pay to the Seller, within 5 Business Days of the due date for payment, the VAT charged on the sale of the Assets (or the relevant part of them) plus any associated interest and penalties save to the extent that these are attributable to the Seller’s delay, default or negligence in addition to the Consideration.]

5 Completion

- 5.1 Completion shall take place immediately upon the execution and exchange of this Agreement when all matters set out in this clause [5] shall be effected.
- 5.2 The Transferor shall deliver to the Transferee:
- 5.2.1 at the premises where they are held, all the Assets capable of transfer by delivery, and all records and other documents establishing title to or relating to those Assets;

² On the sale of a business including land consisting of buildings less than three years old or where the Seller has made a VAT election the Buyer must give notification to the Sellers confirming that these anti-avoidance rules do not apply otherwise the sale cannot be treated as a transfer as a going concern (TOGC).

³ Only relevant if Property is being transferred and the Seller has opted to tax



5.2.2 duly executed deeds of release of the Assets from such mortgages or charges together with letters of non-crystallisation in relation to such charges in each case in a form approved by the Transferee; and

5.2.3 the Transferor shall deliver to the Transferee all records relating to the Undertaking in the Transferor's possession necessary to enable the Transferee to carry on the Undertaking in the ordinary course..

6 Property

6.1 The provisions of [Schedule 6] apply in relation to the Property.

7 Post Completion

7.1 Following Completion the Transferor shall wholly discontinue carrying on the Undertaking and shall not carry on any similar activities or undertaking to the intent that the Transferee may carry on and continue the Undertaking in succession to the Transferor.

7.2 Subject to clause 8 or as otherwise expressly set out in this Agreement, with effect from Completion the Transferee shall be responsible for and shall pay, satisfy, discharge, perform and fulfil all the relevant Liabilities and shall indemnify the Transferor against all liabilities, actions, demands, claims, proceedings and costs in respect of them.

7.3 With effect from Completion the Transferee shall be entitled to profits and receipts of the Undertaking, whether relating prior to or after the Transfer Date.

7.4 The Transferee shall, subject to the consent of the relevant insurance offices, be entitled to the benefit of all current insurances in respect of the Assets. The parties shall co-operate in requesting such offices to note the interest of the Transferee on the relevant policies and, insofar as is possible, to be substituted in place of the Transferor as policyholder and the Transferor undertakes with effect from the Transfer Date to direct the relevant insurance company or companies to pay all proceeds of insurance directly to the Transferee and to hold all proceeds of insurance on trust for the Transferee absolutely.

8 Contracts

8.1 To the extent that the benefit or burden of any Contract cannot effectively be transferred by the Transferor to the Transferee except by way of an agreement or novation or with the consent of a third party to the assignment, the Transferor and the Transferee shall seek to obtain the relevant agreement or consent as soon as practicable after Completion.

8.2 Until it is assigned to or assumed by the Transferee, the Transferor shall hold that Contract on trust for the Transferee absolutely and the Transferor shall give such assistance to the Transferee as the Transferee may reasonably require to enable the Transferee to perform that Contract.

8.3 If, prior to the Transfer Date, the Transferor made a prepayment or paid a deposit under any of the Contracts for the purchase of an asset for use in the Undertaking which is not included in the Assets, the Transferee shall reimburse to the Transferor

the amount of the prepayment or deposit within 21 days of delivery of the asset to the Transferee.

9 Employees

9.1 TUPE apply to the sale and purchase of the Undertaking effected by this Agreement and accordingly the contracts of employment between the Transferor and the Employees (save for the provisions and rights relating to occupational pension schemes excluded by regulation 10 TUPE) shall transfer to the Transferee with effect from the Transfer Date pursuant to TUPE.

9.2 The Transferor shall notify the Transferee in writing of the employee liability information as required by regulation 11 TUPE in the time and manner stipulated by that regulation and shall further notify the Transferee immediately in writing of any change in such information since the date it was provided.

9.3 [The Transferor shall on or before the Transfer:

9.3.1 pay all wages, salaries and other benefits of the Employees (including any contributions to retirement benefit schemes) and discharge all other financial obligations (including reimbursement of any expenses) owing to the Employees in respect of the period before the Transfer Date];

9.3.2 account to the proper authority for all PAYE tax deductions and national insurance contributions payable in respect of the Employees in the period before the Transfer Date.]

9.4 On such date as the parties may agree in writing:

9.4.1 the Transferor shall deliver to each of the Employees a letter in a form agreed with the Transferee; and

9.4.2 the Transferee shall deliver to each of the Employees in the same envelopes a letters agreed with the Transferor.

9.5 The letters to be delivered under clause 9.4 shall be handed personally to those Employees who are present for work on the date of such delivery and shall be despatched by first-class post to those Employees who are not so present.

9.6 The Transferee shall promptly provide to the Transferor in writing such information as will enable the Transferor to carry out its duties under regulation 13(2)(d) TUPE.

9.7 The parties intend that TUPE shall apply only to the Employees and accordingly the Transferor undertakes to indemnify the Transferee in full from all Employment Liabilities arising out of or in connection with:

9.7.1 any contract of employment (including, without prejudice to the generality of the foregoing, its termination) with; or

9.7.2 any obligation in relation to any matter whatsoever (whether arising before or after the Transfer Date) to

any person who is not an Employee where such contract or obligation, is transferred to the Transferee under TUPE (or under any EC directive, regulation or other



legislation having like effect) or is alleged by such person (or trade union, staff association, staff body or employee representative acting on behalf of such person) to have been so transferred.

9.8 The Transferee shall indemnify the Transferor in full against all Employment Liabilities arising out of or connected with:

9.8.1 any liability for breach of regulation 13 TUPE in so far as attributable to the Transferor acting in accordance with the instructions of the Transferee, or a breach by the Transferee of its obligations under 13(4) TUPE; and

9.8.2 where the Transferee makes an election under section 198A Trade Union and Labour Relations (Consolidation) Act 1992 to carry out pre-transfer-consultation, any liability for breach of its obligations under that Act before the Transfer Date.

9.9 The following provisions shall apply in the event of any claim being made or threatened against the Transferee which involves or gives rise to or is likely to involve or give rise to an obligation or liability which the Transferor is required to discharge or in respect of which or any part of which the Transferor is required to reimburse or otherwise make any payment to or indemnify the Transferee under this clause 9:

9.9.1 the Transferee shall notify the Transferor in writing immediately upon receipt by the Transferee or it otherwise becoming aware of the claim;

9.9.2 the Transferee shall allow the Transferor and its professional advisers to investigate the matter or circumstances alleged to give rise to such claim and whether and to what extent any amount is payable in respect of such claim and for such purpose the Transferee shall give all such information and assistance including access to premises and personnel and the right to examine and copy or photograph any assets, accounts, documents and records as the Transferor or its professional advisers may reasonably request. The Transferor agrees to keep all such information confidential and only to use it for the purposes of this clause;

9.9.3 no admission of liability shall be made by or on behalf of the Transferee and the claim shall not be compromised, disposed of or settled without the prior written consent of the Transferor; and

9.9.4 at its own cost the Transferor shall have the right to control, conduct or settle any such claim but shall consult fully with the Transferee as to the question of resisting, appealing, compromising or contesting it. If the parties cannot after consultation agree a course of action with regard to any such claim it shall be referred to a barrister of not less than 10 years standing agreed on by the parties (or in default of agreement appointed at the application of either party by the President of the Law Society for the time being) for his or her advice on a course of action, the cost of such advice to be borne equally by the parties.

9.10 The provisions of clause 9.9 shall apply mutatis mutandis in respect of any claim which is made or threatened against the Transferor which involves or gives rise to or is likely to involve or give rise to an obligation or liability which the Transferee is required to discharge or in respect of which or any part of which the Transferee is required to



reimburse or otherwise make any payment to or indemnify the Transferor under this clause and for such purposes all references in clause 9.9 to the Transferor shall be construed as references to the Transferee and vice versa.

10 Debts and Creditors

- 10.1 The Transferee shall pay all Creditors promptly as and when they fall due for payment.
- 10.2 The Transferor shall account to the Transferee for any payment which the Transferor may receive after the Transfer Date in respect of the Debts.
- 10.3 The Transferor shall give the Transferee such assistance as the Transferee may reasonably require to collect the Debts and may not waive or release any Debt without the prior written consent of the Transferee.

11 Notices

- 11.1 Any notice given under this Agreement shall be in writing signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by first class post to the address of the intended recipient given in this Agreement and any such notice shall be deemed to have been received:

- 11.1.1 if delivered personally, at the time of delivery; and

- 11.1.2 if sent by first class post, 48 hours after it was posted

Provided that if deemed receipt occurs before 9.00 am on a Business Day the notice shall be deemed to have been received at 9.00 am on that day, and if deemed receipt occurs after 5.00 pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9.00 am on the next Business Day.

- 11.2 For the avoidance of doubt, notice given under this Agreement shall not be validly served if sent by e-mail.
- 11.3 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the intended recipient and delivered either to that address or into the custody of the postal authorities as a pre-paid first class letter.

12 Continuing effects of this Agreement

- 12.1 All provisions of this Agreement shall so far as they are capable of being performed or observed continue in full force and effect notwithstanding Completion except in respect of those matters then already performed.
- 12.2 This Agreement shall be binding on and shall enure for the benefit of each party's successors and assigns.

13 Further assurance

- 13.1 The Transferor undertakes to the Transferee that it will at the request and cost of the Transferee do or procure the doing of all such further acts and things and execute or procure the execution of all such documents as the Transferee may require to vest in the Transferee the legal and beneficial ownership of the Undertaking and Assets in accordance with this Agreement.



14 Counterparts

- 14.1 This Agreement may be entered into in any number of counterparts, and each of the executed counterparts, when duly exchanged or delivered, shall be deemed to be an original, but, taken together, they shall constitute one instrument.

15 Applicable law and submission to jurisdiction

- 15.1 This Agreement shall be governed by and construed in accordance with English law. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Agreement (including any non-contractual dispute or claim).

IN WITNESS of which this Agreement has been executed [as a deed and delivered] on the date stated at the beginning.



Schedule 1

The Transferors

[NOTE: Schedule to be deleted if single Transferor]

Name	Address

Schedule 2**Part 1 - Assets**

1. the Goodwill
2. the Intellectual Property Rights
3. the Cash
4. the Plant and Equipment
5. [the Property];
6. the Assets (other than the Property, the Plant and Equipment, the Intellectual Property Rights and the Goodwill) and all other assets, rights and benefits of any nature which relate to or are used in connection with the Undertaking at the Transfer Date [other than the Excluded Assets].

[Note: Third party assets (e.g. those held subject to finance agreements to be considered if relevant]

Part 2 – Excluded Assets

[]

Schedule 3ContractsContracts with customers

[]



Schedule 4

Employees

Name	Position	Date of Birth	Service Yrs/Mths

Schedule 5

Plant and Equipment

[]





Schedule 6

Property

[Freehold Property]

Description	Title no or root of title	Occupiers(s)	Actual use

OR

[Leasehold Property]

Description	Date of Lease	Parties to Lease	Term and current rent	Occupier(s)	Actual use



Signed as a deed by **[SELLER]** acting by [)
] in the presence of:)

)
)

.....

Director's signature

.....

Director's name

Witness' signature:

.....

Witness' name:

.....

Witness' address:

.....

.....

.....

Witness' occupation:

.....

Signed as a deed by **[BUYER] LIMITED**)
acting by a director in the presence of:)

)
)

.....

Director's signature

.....

Director's name

Witness' signature:

.....

Witness' name:

.....

Witness' address:

.....

.....

.....

Witness' occupation:

.....

Appendix 5

Rules - Typical Matters

- 1 Categories of Membership (e.g. Voting, Non-Voting, Honorary, Life, Non-Playing and Other).
- 2 Club sections.
- 3 Rights attaching to each class of Membership.
- 4 Admission to and termination/cessation of Membership.
- 5 Fees and subscriptions.
- 6 Safeguarding.
- 7 Honorary Posts.
- 8 Running of the club (e.g. delegation of day to day operational matters to the Club Manager).
- 9 Posts within the Club (e.g. President, the various Captain's positions) their roles and responsibilities, how they are appointed and for how long.
- 10 Committees (names, their terms of reference, quoracy requirements and who sits on them).
- 11 Conduct of Meetings.
- 12 Competitions and matches.
- 13 Use of the Clubhouse.
- 14 Loyalty Cards.
- 15 Dress code.
- 16 Rules concerning the playing of golf including matters of etiquette.
- 17 Discipline.
- 18 Handicaps.
- 19 Visitors and guests.
- 20 Dogs.
- 21 Equality.
- 22 Compliance with England Golf rules and regulations.
- 23 Affiliations.

24 Limitation of liability.



Appendix 6

Specimen Resolutions relating to Incorporation to be passed by the Golf Club

A simple resolution would be as follows:

"It is hereby resolved to incorporate the Golf Club and pursuant thereto to transfer all the business, assets and liabilities [as identified in the attached list of assets and liabilities]/[in the attached Transfer Agreement] of the Golf Club to [] Limited"

or, if the arrangements have been set out in a Proposal put to Members:

"It is hereby resolved that the arrangements for incorporation of the Golf Club as set out in the Proposal Document presented to the meeting including the Transfer Agreement to [] Limited be approved".

The directors of the new company will need to pass a corresponding resolution to accept the transfer of the business, assets and liabilities of the Golf Club or, in the case of there being a Proposal, as set out in the Proposal Document.

Appendix 7Model Invitation and Acceptance**FORM OF INVITATION**

Company No: [insert when known]

[] GOLF LIMITED

Proposal for the incorporation of [] Golf Club ([] as [] Golf Club Limited

Date []

[Golf Club]

[Send one invitation to each Member. Insert name and address of each Member]

Invitation to become a Voting Member of [] Golf Club Limited

Subject to approval of the Proposal by the Council of [] you are hereby invited to become a Voting Member of [] Golf Club Limited.

[]

[Company Secretary] [insert name and title of person sending the invitation - President/Chairman/Company Secretary] for and on behalf of [] Golf Club Limited

Definitions:

In this Invitation and Acceptance:

“[] **Golf Club Limited**” means Company number [insert when known] registered in England and having its registered office at [].“**Proposal**” means the proposal for the incorporation of [] set out in a proposal document to be presented to the Annual Council Meeting of [] on [].“**Voting Member**” means a Voting Member as defined in the Articles of Association of [] Golf Club Limited.**FORM OF ACCEPTANCE**

[] GOLF CLUB LIMITED

Subject to the invitation as set out above I, [insert name of Member], hereby accept the invitation to become a Voting Member of [] Golf Club Limited and agree to abide by the provisions of its Articles of Association and any Rules made pursuant to the Articles of Association.

.....



[Insert name of Member]

Date





Appendix 8

Form of Proxy

[] Golf Club [Limited]

I / We,....., of

.....

being a member / members of the above-named Golf Club, hereby appoint

.....

of

.....

or failing him / her,

.....

of

.....

as my / our proxy to attend, vote and speak in my / our name(s) and on my / our behalf at the [annual] general meeting of the Golf Club to be held on 20[], and at any adjournment thereof. This form is to be used in respect of the resolutions mentioned below as follows:

Resolution No. 1 *for *against *abstain

Resolution No. 2 *for *against *abstain

*Strike out whichever is not desired.

Unless otherwise instructed, the proxy may vote as he / she thinks fit or abstain from voting.

.....

Signed this day of 20[]