

**Dated 15<sup>th</sup> October 2013**

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**The Construction Plant-hire Association**

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**RULES**

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## **RULES**

### **1. DATE OF OPERATION**

1.1 These rules shall come into operation on Tuesday 18<sup>th</sup> October 2011 and shall supersede all previously issued constitutions, regulations and bye-laws.

1.2 Any reference to "plant hire" shall be deemed to include not only plant hire but the hiring of tools, equipment or any other product or service undertaken by Members of the Association.

### **2. NAME**

The name of this Association shall be "The Construction Plant-hire Association".

### **3. OFFICE**

The office for the principal management of the business of the Association shall be in London or at such place as may be determined by the Council.

### **4. OBJECTS**

The objects for which the Association is established are:

4.1 To create conditions of contract for plant hire, contract lifting and any other appropriate conditions for the use of Members, such conditions to be fair and reasonable to all parties.

4.2 To promote, encourage, foster, develop and protect the plant hire industry and trade, together with ancillary and allied industries, and to apply such conditions to the conduct of the trade or business as in the opinion of the Association may be conducive to that object, and to give Members of the Association all such legal and other advice as the Council shall in its full and entire discretion deem proper and desirable.

4.3 To promote and encourage best practice in carrying on business in the plant hire industry.

4.4 To encourage and foster new businesses within the plant hire industry

- 4.5 To endeavour to encourage a high standard of workmanship in the maintenance of Members' plant fleets.
- 4.6 To promote, finance and foster research in the interests of the plant-hire industry.
- 4.7 To acquire and absorb other kindred organisations where approved by the Council.
- 4.8 To collect and disseminate information amongst Members either collectively or individually including (without limiting the generality of the foregoing provision) the collection and compilation of statistics relevant to the plant-hire industry.
- 4.9 To represent the interests of the Members and of the plant-hire industry and to institute, promote, support or oppose legislative or other measures or proceedings which may affect the plant-hire industry.
- 4.10 To co-operate with other organisations in promoting or advancing the betterment of the conditions of the construction industry, and to join with them in negotiations with outside bodies on matters affecting the well-being of the plant-hire and associated industries.
- 4.11 To promote the plant-hire industry through publications, exhibitions and seminars.
- 4.12 To promote or support any charitable cause or benevolent fund established for the benefit of those engaged in or connected with the construction industry in such manner as the Association may determine and to apply Association funds or otherwise raise funds in support of the same.
- 4.13 To develop and sustain reciprocal relations with kindred organisations within the European Union and in other countries.
- 4.14 To promote and co-operate with, become a member of, act as or appoint agents or delegates for any organisation with objects similar to those of the Association.
- 4.15 To borrow any moneys required for the purposes of the Association upon such terms and by providing such securities as may be determined.
- 4.16 To invest Association monies not immediately required for the purposes of the Association.

- 4.17 When the Council so determines, to negotiate with the Trade Unions of those so employed in the plant-hire industry and ancillary and allied industries in the United Kingdom and to enter into agreements with Trade Unions and/or labour organisations for the benefit of Members.
- 4.18 To nominate, select or recommend adjudicators or arbitrators, in accordance with any agreement to which a Member is a party.
- 4.19 To promote, directly or indirectly, to Members and others, on payment of a fee or otherwise, credit control facilities, management systems and services, secretarial services, specialist stationery, advertising material, consultancy services and other goods, services and benefits.
- 4.20 To make such arrangements for the administration of and contribution to a staff pension scheme as the Council may, in its absolute discretion, deem appropriate.
- 4.21 To engage in commercial activities, with a view to earning income for the Association, where, in the opinion of the Council, such activities will promote the objects and enhance the standing of the Association.
- 4.22 To do all other lawful things incidental or conducive to the attainment of the objects of the Association or any of them.

## **5. MEMBERSHIP**

- 5.1 Membership of the Association shall be limited to individuals, companies and firms under the following categories:
  - 5.1.1 Those who are primarily engaged in the business of plant hire in the United Kingdom. (Category A)
  - 5.1.2 Those who are engaged in plant-hire activities in the United Kingdom as a secondary or ancillary business activity. (Category B)
  - 5.1.3 Those whose business activity touches upon the plant-hire industry, either in the United Kingdom or overseas. (Category X)
  - 5.1.4 New entrants to the plant-hire industry upgraded to full membership status after one year's successful trading. (Category XX)

5.2 Upon receiving an application for membership from an individual, company or firm falling within one of Categories A, B, X, or XX, the Council shall approve the applicant for membership if it appears to at least two-thirds of the Council that the interests and objects of the Association would be furthered by its admission to membership.

5.2.1 In considering whether membership of the applicant would further the interests and objects of the Association, the Council may have regard to the nature, scope and extent of the business of the applicant or its predecessors, and the trading history and financial standing of the applicant or its predecessors.

5.2.2 If it appears to the Council that to admit the applicant to membership would not at the time of application further the interests and objects of the Association, then it may invite the applicant to re-apply in the future.

## **6. REGISTER OF MEMBERS**

The membership department of the Association shall keep a Register of Members which shall contain in suitable form the following particulars:

6.1 the full name of the Member (individual, firm or company);

6.2 name of representative;

6.3 his address;

6.4 the date of admission to membership and his voting power;

6.5 the membership number;

6.6 the category of membership;

6.7 his telephone and fax number;

6.8 his email and/or website address.

**7. RESIGNATION, EXCLUSION, DETERMINATION OF MEMBERSHIP AND RE-INSTATEMENT ETC.**

- 7.1 A Member may resign his membership in writing addressed to the Council and such resignation shall take effect at the next following meeting of the Council, provided that no Member shall be entitled to resign whilst indebted to the Association. The resigning Member shall remain subject to all rules of the Association up to the date when the resignation becomes effective.
- 7.2 Any member may be expelled from the Association for misconduct by resolution of two-thirds of the Council. Any such Member shall be given fourteen clear days' notice of the Council meeting and may attend the meeting to make representations but shall not be present at the discussion or entitled to vote.
- 7.3 Membership shall also cease:
- 7.3.1 If a Member being a corporate body or limited company is dissolved or goes into receivership, liquidation, whether voluntary or compulsory (otherwise than for the purpose of reconstruction).
- 7.3.2 If a Member being an individual or a firm becomes a bankrupt or makes any assignment for the benefit of or by way of trust for his or their creditors.
- 7.3.3 If a Member ceases to be qualified for membership under Rule 5.1.
- 7.3.4 If a Member's subscriptions or other monies owed to the Association remain overdue for payment after measures have been taken by the Association to urge the Member to make payment.
- 7.4 The Council may in its discretion reinstate to membership any former Member whose membership has terminated for any cause on payment of that former Member's entrance deposit and administration fee and on payment of any Association dues unpaid from that Member's previous membership.
- 7.5 The Council may in its discretion substitute the successor in business of any Member as a Member and in such case the Member so substituted shall enjoy all the rights and privileges of the Member in whose place he is admitted upon payment of the entrance deposit and administration fee. The successor will not be entitled to the benefit of the

unexpired portion of any subscription paid in advance by the Member whom he succeeds.

- 7.6 If for any reason a Member shall cease to be a Member of the Association, he shall forfeit any monies paid by such Member thereto other than his entrance deposit, but shall not be relieved thereby from any then existing liability to the Association.
- 7.7 On cessation of membership the Member concerned shall immediately discontinue the use of the device/logo of the Association on any paper, advertisement or document upon which such device/logo may be printed or impressed or containing any indication of membership of the Association, he shall return forthwith to the Association any property of the Association then in his possession, shall desist from using any contract conditions published by the Association in all amended or unamended form and shall desist from visiting any password protected area of the Association's website. This clause 7.7 shall survive and be enforceable after cessation of membership of the Association.

## **8. ENTRANCE DEPOSIT AND SUBSCRIPTION**

- 8.1 The entrance deposit of each Member shall be £100 (or such other sum as the Council may from time to time decide) which, or the balance of which, shall, on demand, be repayable to the Member upon his ceasing to be a Member or upon dissolution of the Association, provided that the Association at that time is solvent. Any arrears of subscriptions incurred by, or due from, the Member or his share of any deficiency of the Association at the date of ceasing to be a member or upon dissolution shall form a charge upon such deposit and shall be deducted before making any repayment of deposit to the Member.
- 8.2 The annual subscription shall be such sum as the Council may fix from time to time having regard to the financial requirements of carrying out the functions of the Association.
- 8.3 All subscriptions shall be payable in advance on 1 July or on such date as the Council shall from time to time determine in each year.
- 8.4 A member elected during the Association's accounting year shall pay his subscription forthwith for the remaining proportion of the accounting year in which he is elected.



- 8.5 If any Member neglects to pay the subscription within ninety days after the same shall have become due such Member may be suspended from all rights and privileges of membership and such suspension shall continue until the payment in full of all arrears of the Member so suspended or until the determination of the membership of the suspended Member.
- 8.6 The Council may, in addition to the above-mentioned subscriptions and providing there is a majority of three-quarters of the Council in favour of such procedure; raise a levy for any approved purpose.
- 8.7 Upon application for membership, each applicant shall pay an administration charge of £50 (or such other sum as the Council may from time to time decide.) In the event that any applicant is refused admission to membership, the Association will retain all of the charge to defray administration costs.

## **9. MANAGEMENT**

- 9.1 The general management and control of the business and affairs of the Association shall be vested in the Council ("the Council") which shall be elected annually at the Annual General Meeting. The Council may exercise all the powers, authorities and discretions of the Association subject to such lawful directions as may be given by the Members of the Association from time to time at any Ordinary or Extraordinary General Meeting of the Association, provided always that no Rule made by the Association in General Meeting shall invalidate any prior act of the Council which would have been valid if that Rule had not been made.
- 9.2 The Council shall appoint a Director/Chief Executive to whom it shall delegate authority for the conduct of the Association's business. The Chief Executive is a member of Council but has no voting rights. The Director/Chief Executive may appoint such ancillary officers as are reasonably required to assist him in fulfilling the secretarial, administrative and other functions of the Association. These ancillary officers have no voting rights. The emoluments of the Director/Chief Executive shall be fixed from time to time by the Trustees.
- 9.3 The Council shall consist of up to 15 Members or such other number as the Council shall from time to time determine, together with other Council members as provided for by these Rules.

- 9.4 Nominations for election to the Council shall be made by Members of the Association, shall be supported by the Principals of two other Members and shall be delivered to the Association not later than 21 days before the Annual General Meeting. Election to the Council shall be at the Annual General Meeting, and shall be determined by Members attending and a postal/email/fax ballot of Members.

## **10. OFFICERS/COUNCIL MEMBERS/TRUSTEES**

### **10.1 President**

10.1.1 At the Annual General Meeting of the Association the Members shall elect a President, such President being a Member of the Council, to hold office until the next Annual General Meeting of the Association and thereafter subject to his re-election for a maximum period of a further four years, unless otherwise approved, for exceptional reasons, by Council. The President becomes Past President after his term of office as President for a maximum period of five years unless otherwise approved, for exceptional reasons, by Council.

10.1.2 The President, if present, shall preside at all General Meetings of the Association. In his absence the Chairman of the Council, if present and failing him the Vice-Chairman of the Council shall preside.

### **10.2 Chairman and Council Members**

10.2.1 The Council shall elect from its own number, at its first meeting in each year after the Annual General Meeting, a Chairman and (if the Council so determines) a Vice-Chairman to hold office for one year and thereafter subject to their re-election for a maximum period of a further four years, unless otherwise approved, for exceptional reasons, by Council.

10.2.2 The Immediate Past President, the President and the Chairman of the Association shall during their tenure of Office continue to be *ex-officio* a member of the Council. On retiring from that Office, they shall only be eligible to serve on the Council if either elected, co-opted or made a Life Member of the Council.

10.2.3 The Council in its discretion, may elect a Council member to the position of Life Member of Council to recognise a lifetime of dedication and

achievement which has contributed significantly to the Association and the industry. A Life Member of Council is a full voting member of the Council.

- 10.2.4 The Council shall have the power to co-opt further members to the Council admitted to membership as set out in Rule 5.1. The Council may also in its discretion, in certain circumstances, co-opt members to the Council who are not Members of the Association to fulfil a specific role. Such appointments shall continue until the ensuing Annual General Meeting. Co-opted members of Council have no voting rights.
- 10.2.5 Representation on the Council shall have regard to number of members, the levels of subscriptions from regions, the activities of the Association's special interest groups or on such other basis as the Council may from time to time determine.
- 10.2.6 Nominees for the Council shall be elected by Members at the Annual General Meeting or, if so determined by the Council, by a postal/email/fax ballot of Members of the Association. Such appointments shall continue until the ensuing Annual General Meeting. Retiring members shall be eligible for re-election.
- 10.2.7 The Council may continue to act notwithstanding any vacancy in its members.
- 10.2.8 A member of the Council may resign his office by notice in writing/email/fax addressed to the Council and such resignation shall take effect at the next meeting of the Council.
- 10.2.9 The Association may by Extraordinary Resolution remove any member of the Council before the expiration of his period of office and may, by an Ordinary Resolution, appoint any person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a member of the Council on the day on which the member of the Council in whose place he is appointed was last elected or deemed to be elected a member of the Council.

- 10.2.10 Notwithstanding anything in these Rules contained or implied to the contrary, the Council shall determine the majority necessary for the carrying of any resolution or amendment thereto to any of its meetings.
- 10.2.11 Should a vacancy occur in the office of Chairman or (if the Council has determined to create such office) a Vice-Chairman the Council shall elect one of its number to fill such vacancy for the remainder of the current year.
- 10.2.12 The Council shall hold at least 7 (seven) meetings every year (unless the Council determines otherwise) and may adjourn and otherwise regulate its meetings as it thinks fit and determine the quorum necessary for the transaction of business. Unless and until otherwise determined seven members of the Council shall be a quorum. Not less than seven clear days' notice shall at least be given prior to any meeting of the Council unless in the opinion of the Chairman or (if such office has been filled) failing him in the opinion of the Vice-Chairman a meeting is required for the discussion of urgent business, in which case a meeting may be called by written notice sent through the post at not less than three days' notice or if such notice be by facsimile or email at not less than twenty-four hours' notice.
- 10.2.13 With the notice convening any meeting of the Council an agenda of the business to be discussed at such meeting shall be included.
- 10.2.14 The Chairman or (if such office has been filled) in his absence the Vice-Chairman shall chair all meetings of the Council but if neither the Chairman nor the Vice-Chairman is present within fifteen minutes after the time appointed for the holding of the meeting the Council may appoint one of its members to chair the meeting.
- 10.2.15 At Council meetings each member of the Council (other than the person chairing thereat) shall have one vote and in the case of equal voting the person chairing such meeting shall have a casting vote and all resolutions shall be decided on a simple majority vote. In case of equal voting where proxy votes have been counted, the resolution shall be decided on a simple majority vote amongst those Council members present.
- 10.2.16 If within a half-an-hour from the time appointed for the meeting a properly constituted quorum is not present, the business shall be transacted by the

members present who shall be deemed to be a quorum whatever their number.

10.2.17 Any meeting of the Council may be adjourned by resolution thereof to such time and place as may be determined thereby but no business shall be transacted at any adjourned meeting other than business left unfinished from the meeting the adjournment of which took place.

10.2.18 The Council may elect such Standing Committees from time to time as it may consider necessary, and may discharge or suspend any such Committees or remove any member thereof and may delegate to such Committee such powers and authorities as the Council shall think fit.

10.2.19 The Council shall have power to fill any vacancy which may occur in Committees appointed by it.

10.2.20 Any person who has been elected or co-opted to Council as provided for by these Rules may, in Council's discretion, continue as a member of Council until the ensuing Annual General Meeting, notwithstanding any change in their status as a Member of the Association.

### 10.3 **Trustees**

10.3.1 The Council shall appoint not less than three and not more than five Trustees to hold office until the Council Meeting held after the next Annual General Meeting. On any failure to elect the Trustees at any meeting, the retiring Trustees shall continue in office until other Trustees are appointed by the Council.

10.3.2 A Trustee shall cease to be a Trustee if at a meeting of the Council (of which such Trustee shall have twenty-one clear days' notice and at which if present he shall be given an opportunity of being heard) the Council pass a resolution removing him from his trusteeship.

10.3.3 A vacancy in the office of Trustee may be filled by the Council and any Trustee appointed by the Council to fill such vacancy shall hold office for the remainder of his predecessor's term of office and shall be eligible for re-election.

10.3.4 The funds and property of the Association shall vest in the Trustees. The Trustees shall hold the funds and property of the Association upon trust for the Members of the Association in accordance with the direction of the Council, and all Association monies, which are not invested in accordance with clause 10.3.5 , shall be held in a banking account/s in the name of the Association, to be operated by a panel of signatories comprising the Trustees, plus the Director/Chief Executive, plus any other nominated official of the Association and subject to the following requirements:-

Any dealings with banking accounts of the Association requiring signature (save for a depositing of money into such account) shall be subject to the following:-

- (a) If the transaction involves an amount of £25,000 or more, the signature of any two Trustees and the Director/Chief Executive. (Or three Trustees)
- (b) If the transaction involves an amount of £20,000 or more but less than £25,000 the signatures of any one Trustee and the Director/Chief Executive. (Or two Trustees)
- (c) If the transaction involves an amount of more than £2,000 but less than £20,000 the signature of any two authorised signatories and the Director/Chief Executive or a Trustee.
- (d) If the transaction involves an amount up to and including £2000, any two authorised signatories,

Provided that any transaction which consists only of transferring funds or securities of whatever amount or value between two or more accounts in the name of the Association may be effected by the signature of the Director/Chief Executive or his nominee. The Director/Chief Executive shall, with the approval and after consultation with two trustees, have discretion to substitute for the above provisions such other arrangements as, in the light of development in electronic banking and the transfer of monies, seem reasonable to him to provide appropriate levels of financial controls and security.

- 10.3.5 The Council shall have the power to invest, in the name of the Trustees, any funds which are not required for the immediate or contemplated purposes of the Association, in any investments, for the time being authorised by law, for the investment of trust funds with power to realise and vary such investments from time to time, and the Trustees shall carry out the directions of Council in this respect.
- 10.3.6 The Chairman is nominated as the person to appoint new Trustees within the meaning of section 36 of the Trustee Act 1925. A new Trustee or new Trustees shall be nominated by resolution of the Council and the Chairman shall duly appoint the person or persons so nominated by the Council as the new Trustee or Trustees of the Association in accordance with the provisions of the instrument of appointment of the original Trustees and the provisions of the Trustee Act 1925 which shall apply to any such appointment. Any statement of fact in any such instrument of appointment shall in favour of a person dealing bona fide with the Association be conclusive evidence of the fact so stated.
- 10.3.7 Every Trustee on ceasing to be a Trustee shall forthwith do all such acts and execute all such documents and/or instruments as may be necessary to vest the funds and property of the Association in the continuing Trustees and/or the new Trustee or Trustees as the case may be and shall do all acts and things as may be necessary to give effect thereto.

The President, Chairman, Director/Chief Executive, Vice-Chairman, Trustees and Council members shall be entitled to an indemnity out of the funds of the Association for their proper out-of-pocket expenses and other liabilities, costs, charges, losses, and damages incurred by them in connection with the bona fide fulfilment of their duties. They shall also be provided, at the Association's expense, with Professional Indemnity/Directors and Officers Insurance cover, appertaining to their duties whilst working on behalf of the Association.

## **11. GENERAL MEETINGS**

- 11.1 The Annual General Meeting of the Association shall be held once in every year at such time (not being more than fifteen months after holding the last preceding Annual General Meeting) and such place as the Council shall appoint.

11.2 The business of the Annual General Meetings shall be to elect a President, a Council, the Auditors, to receive the Accounts of the past year with the Auditors' Certificate and Report, to receive the Report of the Council on the last year's transactions and subject to these Rules such other business as the Council may determine.

11.3 Extraordinary General Meetings of the Association shall be convened by the Chairman and shall be called by the Association and held within twenty-one days.

11.3.1 On a resolution of the Council; or

11.3.2 On the request in writing/email/fax of the majority of the Council; or

11.3.3 On the requisition in writing/email/fax of not less than one tenth of the Members of the Association.

Any such requisition under 11.3.3 above must specify the objects of the meeting required, with the resolution or resolutions to be put before such meeting and must be signed by the Members making the requisition and lodged with the Director/Chief Executive. It may consist of several documents in like form each signed by one or more of the requisitionists. The meeting must be convened for the purpose specified in the requisition, and if convened otherwise than by the Council, for those purposes only. In default of such meeting being called within twenty-one days from the date of the requisition being so lodged as aforesaid, the requisitionists or a majority of them may themselves convene the meeting.

11.4 Fourteen days' notice at the least in the case of the Annual General Meeting and seven days' notice at the least in the case of an Extraordinary General Meeting (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice was given) specifying the place, day and hour of the meeting and in the case of special business the general nature of that business, shall be given in manner hereinafter contained to the Members of the Association. Accidental omission to give to or non-receipt of notice by, any Member shall not invalidate the proceedings at any General Meeting.

11.5 The President or failing him the Chairman or failing him the Vice-Chairman of the Council shall preside at all General Meetings of the Association. If there is no such officer or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as Chairman of the meeting



the Members present shall choose someone of their number to be Chairman of the meeting.

- 11.6 The Chairman of the meeting may with the consent of any such meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an Annual General Meeting. Save as aforesaid it shall not be necessary to give notice of adjournment or of the business to be transacted at an adjourned meeting.
- 11.7 At any general meeting voting shall ordinarily be by show of hands, and decisions shall be given by a simple majority.
- 11.8 A declaration by the Chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost and an entry made to that effect in the book of proceedings of the Association, shall be conclusive.
- 11.9 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote.
- 11.10 No person shall act as a proxy unless he is entitled on his own behalf or as a representative of a Member to be present and vote at a meeting at which he acts as a proxy.
- 11.11 A proxy shall be validly appointed by the Member completing the form sent by the Association prior to the meeting requiring him to identify his proxy and by that Member depositing the form at the office of the Association not less than forty-eight hours before the time for holding the meeting at which the person named in the form proposes to vote.
- 11.12 No business shall be transacted at any General Meeting unless at least ten of the Members of the Association entitled to vote be present at the commencement of the business as the quorum requisite. If at the expiration of half an hour from the time appointed for the meeting a quorum is not present the meeting if convened upon the

request of Members shall be dissolved. In any other case at the expiration of half an hour from the time appointed for the meeting the members present shall be a quorum.

11.13 Only fully paid-up Members shall be entitled to be present at or vote at any General Meeting.

11.14 No objection shall be made to the validity of any vote except at the meeting at which such vote shall be cast and every vote not disallowed at such meeting shall be deemed valid.

11.15 Proper minutes of all proceedings of General Meeting shall be kept by the Association and all resolutions passed at such meetings shall be entered in Minutes Books to be kept for that purpose.

## **12. ASSOCIATION'S ASSETS**

The interest of each Member in the funds, investments and other assets of the Association shall be limited to the amount of the entrance deposit paid to the Association by the Member provided that the Member continued his membership up to the date of passing of the Resolution of Dissolution by the Council mentioned in Rule 14 and that such Member's subscriptions were not in arrears at the time of any such resolution. The said interest of a Member whose membership shall terminate for any other reason shall immediately cease and determine and such Member and the Executive Representative of such Member shall have no claim against the Association or against the other Members or their representatives or any of them.

## **13. DISSOLUTION**

13.1 The Association shall continue until dissolved by a resolution of the Council at a meeting specifically called for that purpose on not less than thirty days' notice and confirmed by an Extraordinary Resolution passed at a General Meeting of the Association specially convened for that purpose.

13.2 Upon the dissolution of the Association its property not consisting of money shall be sold and the proceeds, together with so much of its property as shall consist of money, shall be applied firstly in satisfaction of the debts and liabilities of the Association and the expense of winding up. Any balance remaining shall then be used to repay to the Members of the Association their entrance deposits, or the

balances thereof. Any balance remaining thereafter shall then be applied to the members.

- 13.3 If the funds of the Association on dissolution shall prove insufficient to meet its debts and liabilities the expenses of winding up the deficiency shall be contributed by all the Members of the Association at the date of the Resolution for Dissolution passed by the Council rateably according to the scale of their yearly subscriptions last due and whether paid or not.

#### **14. ACCOUNTS**

The Council shall cause true accounts to be kept of the receipts and expenditure of the Association. Such accounts shall be kept at the office of the Association and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the Council, shall always be open to the inspection of the Members. For the convenience of the Members the Director/Chief Executive may cause the accounts to be published on the Association's website.

#### **15. AUDITORS**

Auditors, to audit the accounts of the Association, shall be appointed by the Council at each Annual General Meeting and shall be eligible for re-appointment.

#### **16. NOTICES**

16.1 A notice may be served by the Association upon any Member, either personally, by email or by sending it through the post in a prepaid letter addressed to such Member at his last registered address or by fax.

16.2 A notice so sent through the post shall be deemed to have been served on the day following that on which the letter containing the same is posted.

16.3 Any notice, requisition or other document which is required to be served on the Association may be served by leaving it at the office of the Association or sending it through the post in a prepaid letter addressed to the Association or by fax or by email.

## **17. ALTERATION OF RULES**

Any of the Association Rules may from time to time be amended, altered or added to by two-thirds majority of the votes of those members of the Association present (either personally or by proxy) or represented and voting on the proposals at a meeting of the Members of the Association, in the convening of which, notice has been given of intention to propose such amendment, alterations or additions.

## **18. COMPETITION LAW CODE OF CONDUCT**

### **1. INTRODUCTION**

1.1 This Code sets out the rules and principles of conduct to which Members<sup>1</sup> shall adhere in their dealings in and with the Association in order to prevent the infringement of all relevant EC, UK or other national competition laws. The provisions of this Code apply to:

- any form of interaction, discussion or co-operation between Members, whether in person or otherwise; and
- any use, disclosure or review of any information which is or may be commercially sensitive information to any Member and which if disclosed to another Member or Members, could distort competition in the relevant market.

### **Golden Rules**

This Code recognises that, to the extent that Members are competitors, they are prohibited by EC and UK competition law (and other national competition laws) from undertaking any form of concerted or collusive behaviour, exchanging commercially sensitive information and undertaking or entering into any other behaviour, agreements, arrangements or practices which have as their object or effect the prevention, restriction or distortion of competition.

The following golden rules should be adhered to at all times by Members and their employees:

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<sup>1</sup> 'Members' for the purposes of this document shall include; Trade Association Member, Corporate Member and Associate Member.

- Any form of **concerted and collusive behaviour** is prohibited – see Section 2 below.
- Any **exchange of commercially sensitive information** is prohibited – see Section 3.
- All **meetings** held under the auspices of the Association must adhere to **strict guidelines** – see Section 4.
- All **other forms of contact** between Members must adhere to these guidelines – see Section 5.

**Members should consult their legal departments or the Association’s Secretariat if they are in any doubt as to the permissibility of any conduct or activity.**

## **2. CONCERTED ACTION**

- 2.1 EC and UK competition law (specifically Article 101 of the Treaty on the Functioning of the EU and Chapter I of the UK Competition Act 1998) prohibit any agreements, arrangements or concerted practices between undertakings which may affect trade within the EC and/or UK and which have as their object or effect the prevention, restriction or distortion of competition.
- 2.2 Agreements, arrangements or practices that may **breach** the above prohibition include (but are not limited to) those that:
- directly or indirectly fix purchase or selling prices or other trading terms; or
  - limit or control production, markets, technical development or investment; or
  - share markets or sources of supply.
- 2.3 Members must ensure that they do not discuss with each other or reach any understandings or agreements which aim to regulate:
- Prices, terms and conditions of sale
  - Current or future levels of output or capacity
  - Costs, profits, margins or market shares
  - The sharing or allocation of markets
  - Distribution and supply practices
  - Bids, or their intention to bid or not to bid for any contracts or programmes
  - Selection, retention of and relations with customers or suppliers
  - New products, services or product/service innovations
  - Individual business and sales strategy

### 3. EXCHANGE OF COMMERCIALLY SENSITIVE INFORMATION

- 3.1 Competitors should not exchange commercially sensitive information. To do so may constitute a very serious competition law infringement breaching Article 101 of the TFEU and other national competition laws, including in the UK, Chapter I of the Competition Act 1998.
- 3.2 Commercially sensitive information is information that, if disclosed, would give to the recipient sufficient confidential and commercial information to allow it to have knowledge of and/or to predict the other party's market behaviour and thus reduce the rivalry and uncertainty which should characterise normal business relations under conditions of competition.
- 3.3 The table below sets out the type of information that may constitute commercially sensitive information. Exchange or disclosure of the information in the left-hand column is likely to give rise to competition law concerns and should be avoided.

<b>Information exchange which is likely to infringe competition law</b>	<b>Information exchange which is unlikely to infringe competition law</b>
The exchange of any information that relates to the <b>commercial behaviour or competitive position and strategy</b> of a company that a company would not normally disclose to any third party.	The exchange of <b>public domain</b> information, but also information which is widely known in the industry.
The exchange of <b>current</b> confidential information is likely to give the receiving party a competitive advantage.	The exchange of <b>historic</b> information is usually innocuous, but only where the information is sufficiently historic so as not to give an indication of current or future commercial strategy.
The communication of <b>specific information</b> – i.e. relating to individual customers or transactions or other information which is very precise.	If the information is in some way <b>general, aggregated or anonymised</b> , it will be more defensible
The provision of any confidential information relating to <b>pricing</b> is likely to be considered anti-competitive. This extends to:	When the information is <b>so historic</b> that it bears no relation to or could give no indication of the current or future commercial and competitive environment or the current or future practices of any

<p>Information on supply costs or other overhead costs;</p> <p>Customer-facing costs, discounts or rebates;</p> <p>Invoicing practices and payment terms;</p> <p>Margins;</p> <p>Customer-specific pricing strategy or price levels;</p> <p>Pricing negotiations;</p> <p>Current or future pricing trends at the individual level.</p>	<p>party, it is unlikely to give rise to any competition law problems</p>
<p>The communication of information which relates to <b>business development or strategy decisions</b> (existing or future).</p>	<p>Competition law concerns are unlikely to arise where there is a discussion about <b>industry practices, trends or conditions or general market developments</b> in which no company specific information is disclosed</p>

**4. CONDUCT OF COUNCIL , BOARD OR OTHER MEETINGS HELD UNDER THE AUSPICES OF THE ASSOCIATION**

4.1 General guidance as to the conduct of such meetings is set out in the Notes for Committee Chairs [attached as an Annex to this Code.]

**5. CONDUCT OF OTHER COMMUNICATIONS (BILATERAL TELEPHONE CALLS, EMAILS, FAXES AND LETTERS) BETWEEN MEMBERS**

5.1 Commercially sensitive information should not be shared by any means.

5.2 Circulation lists for any emails, faxes or letters should be controlled and consistent.

5.3 Where appropriate (for instance if there is any doubt as to whether information may be deemed to be commercially sensitive), a lawyer should be asked to review written communications prior to their being sent.

5.4 Telephone discussions or email chains should be terminated immediately if any commercially sensitive information or issues are raised.

**19. GUIDANCE FOR COUNCIL, BOARD AND COMMITTEE CHAIRMEN ON  
COMPETITION ISSUES**

**Before any meeting:**

- Review carefully the contents of any agenda to ascertain whether any information likely to be discussed is commercially sensitive information between any of the participants.
- When finalising an agenda or other materials, ensure that any commercially sensitive information (if disclosure of such information is essential) is anonymised or aggregated to prevent identification.
- Ensure that any reference to minutes of earlier meetings or topics previously discussed is also scrutinised so that specific sensitive information is not disclosed.

**During any meeting:**

- The agenda must be respected and the meeting should not stray beyond those items listed to be discussed. Always ensure that sensitive information which has been identified is not disclosed or discussed. It may be necessary to hold split meetings or ask certain personnel to leave the room if commercially sensitive issues are discussed.
- A minute should be taken of the meeting recording (i) the identity of the individuals participating in the meeting and (ii) all discussions during the meeting.
- If, despite best efforts, clearly competition-sensitive information is being discussed, stop the meeting and ensure that the minutes contain a record of why it has been stopped.
- If a participant wishes to clarify (for competition law compliance purposes) whether he or she can or cannot discuss a particular topic, or if any participant has any doubts about an issue he or she would like to raise for discussion, discussion of the topic should be deferred to enable participants to consult their legal departments.
- If any participant feels uncomfortable with the information or issues being discussed, he or she should immediately inform the meeting that he or she disagrees with the nature of the discussion leave the meeting and ask that their departure be recorded in the minutes.
- Report any concerns to the Association's Secretariat in the first instance.

**After any meeting**

- Take care that minutes do not contain any commercially sensitive information.