Articles Of Association Of Open Health Technology CIC

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Articles Of Association Of Open Health Technology CIC

The Companies Act 2006

Community Interest Company Limited By Guarantee

Interpretation

1. The interpretation of these Articles is governed by the provisions set out in the Schedule.

Community Interest Company And Asset Lock

2. The Company is to be a community interest company.

3. **Asset lock**

3.1 The Company shall not transfer any of its assets other than for full consideration.

3.2 Provided the conditions in Article 3.3 are satisfied, Article 3.1 shall not apply to:

3.2.1 the transfer of assets to any specified asset-locked body, or, with the consent of the Regulator, to any other asset-locked body; and

3.2.2 the transfer of assets made for the benefit of the community other than by way of a transfer of assets into an asset-locked body.

3.3 The transfer of assets must comply with any restrictions on the transfer of assets for less than full consideration set out elsewhere in the Memorandum or these Articles.

3.4 If the Company is wound up under the Insolvency Act 1986 and all its liabilities have been satisfied, any residual assets shall be transferred in accordance with the Community Interest Company Regulations 2005, including obtaining the Regulator's consent where required.

4. **Not for profit**

4.1 The Company is not established or conducted for private gain. Any surplus or assets are used principally for the benefit of the community.

Objects, Powers And Limitation Of Liability

5. **Objects**

5.1 The objects of the Company are to carry on activities which benefit the community and, in particular, to advance health and healthcare for the public benefit by providing a neutral, sustainable and open-source home for health technology, from focused libraries to national-scale clinical software services.

5.2 In furtherance of Article 5.1, the Company may develop, maintain, publish, host, steward and support software, standards, technical documentation and other shared digital infrastructure; provide technical stewardship and operational support for clinical digital tools; provide clinical safety, regulatory and governance infrastructure; and support the people and organisations who use or maintain them.

6. **Powers**

6.1 To further its objects the Company may do all lawful things which further the Company's objects and, in particular but without limitation, may borrow or raise and secure the payment of money for any purpose, including investment or fundraising.

7. **Liability of members**

7.1 The liability of each member is limited to £1, being the amount that each member undertakes to contribute to the assets of the Company if it is wound up while they are a member or within one year after they cease to be a member, for:

7.1.1 payment of the Company's debts and liabilities contracted before they cease to be a member;

7.1.2 payment of the costs, charges and expenses of winding up; and

7.1.3 adjustment of the rights of the contributories among themselves.

Directors

Directors' Powers And Responsibilities

8. **Directors' general authority**

8.1 Subject to these Articles, the Directors are responsible for managing the Company's business and may exercise all the powers of the Company.

9. **Members' reserve power**

9.1 The members may, by special resolution, direct the Directors to take, or refrain from taking, specific action.

9.2 No such special resolution invalidates anything that the Directors have done before it was passed.

10. **Chair**

10.1 The Directors may appoint one of their number as Chair for a term they determine and may remove them from office at any time.

11. **Directors may delegate**

11.1 Subject to these Articles, the Directors may delegate any power conferred by these Articles, the implementation of their decisions, or day-to-day management of the Company's affairs:

11.1.1 to any person or committee;

11.1.2 by any means, including a power of attorney;

11.1.3 to any extent;

11.1.4 in relation to any matter or territory; and

11.1.5 on any terms and conditions;

as they think fit.

11.2 A delegation may authorise further delegation if the Directors so specify.

11.3 The Directors may revoke or alter a delegation in whole or in part.

Decision-Making By Directors

12. **Directors to take decisions collectively**

12.1 A decision of the Directors must be a majority decision at a meeting or a decision taken under Article 18. If the Company has only one Director, a majority decision is made when that Director makes a decision.

13. **Calling a Directors' meeting**

13.1 Two Directors may call, and the Secretary must at the request of two Directors call, a Directors' meeting.

13.2 A Directors' meeting must be called by at least seven Clear Days' notice unless all Directors agree or urgent circumstances require shorter notice.

13.3 Notice must be given to every Director.

13.4 Every notice must specify the place, day and time of the meeting and, if Directors are not expected to be in the same place, how they are to communicate.

13.5 Notice need not be in Writing and may be sent by Electronic Means to an Address provided by the Director.

14. **Participation in Directors' meetings**

14.1 Directors participate in a meeting, or part of a meeting, when it has been called and takes place in accordance with these Articles and they can each communicate to the others information and opinions on the business of the meeting.

14.2 It is irrelevant where a Director is or how they communicate when deciding whether they are participating.

14.3 If participating Directors are not in the same place, they may decide where the meeting is treated as taking place.

15. **Quorum for Directors' meetings**

15.1 No proposal may be voted on at a Directors' meeting unless a quorum is participating, except a proposal to call another meeting.

15.2 The Directors may fix the quorum, but it must never be less than two and, unless otherwise fixed, is two.

15.3 If there are fewer Directors than the required quorum, the Directors may only appoint further Directors or call a general meeting to enable members to appoint further Directors.

16. **Chairing of Directors' meetings**

16.1 The Chair, or in their absence a Director nominated by the Directors present, shall chair each Directors' meeting.

17. **Decision-making at meetings**

17.1 Questions arising at a Directors' meeting are decided by a majority of votes.

17.2 Each Director has one vote.

17.3 In the case of an equality of votes, the Chair has a second or casting vote.

18. **Decisions without a meeting**

18.1 The Directors may take a unanimous decision without a meeting by indicating to each other by any means, including Electronic Means, that they share a common view on a matter.

18.2 A decision under Article 18.1 is as valid as if passed at a duly convened meeting if:

18.2.1 every Director's approval is received by a person nominated in advance by all Directors for that purpose, or another person who volunteers if necessary (the "Recipient");

18.2.2 after receiving all responses, the Recipient communicates to every Director whether the resolution has been formally approved;

18.2.3 the date of the decision is the date of the Recipient's communication confirming approval; and

18.2.4 the Recipient prepares a minute under Article 32.

19. **Conflicts of interest**

19.1 A Director who is in a situation reasonably likely to give rise to a Conflict of Interest must declare it unless the other Directors are, or ought reasonably to be, aware of it.

19.2 A question as to whether a Director has a Conflict of Interest shall be decided by a majority of the other Directors.

19.3 When a matter is discussed or decided and a Director has a Conflict of Interest in it, then, subject to Article 20, they must remain only for the part of the meeting the other Directors consider necessary to inform the debate, must not count in the quorum for that part, and must withdraw during the vote without voting.

19.4 A Director who has declared a Conflict of Interest does not breach their duty to the Company by withholding confidential information if disclosure would breach another duty or obligation of confidence.

20. **Directors' power to authorise a conflict of interest**

20.1 The Directors may authorise a Director to be in a position of Conflict of Interest provided that, for the decision to authorise it, the conflicted Director complies with Article 19.3.

20.2 In authorising a Conflict of Interest, the Directors may decide how it is dealt with, including whether the conflicted Director may vote or count in the quorum, and may impose terms. The authorisation may be varied or ended at any time.

20.3 A Director is not accountable to the Company for a benefit derived from a matter, office, employment or position authorised under Article 20.1, subject to any limits or conditions of the authorisation.

21. **Register of Directors' interests**

21.1 The Directors shall maintain a register of Directors' interests. A Director must declare the nature and extent of any direct or indirect interest in a proposed, or unreported existing, transaction or arrangement with the Company.

Appointment And Retirement Of Directors

22. **Methods of appointing Directors**

22.1 The persons notified to the Registrar of Companies as the first Directors are the first Directors.

22.2 A person willing and permitted by law to act as a Director may be appointed by a decision of the Directors. The decision may be made at a Directors' meeting or, without a meeting, in accordance with Article 18.

23. **Termination of Director's appointment**

23.1 A person ceases to be a Director as soon as:

23.1.1 they cease to be a Director under the Companies Act 2006 or are prohibited from being a Director by law;

23.1.2 a bankruptcy order, or equivalent individual insolvency order in another jurisdiction, is made against them;

23.1.3 a composition is made with their creditors generally in satisfaction of their debts;

23.1.4 the Company receives notice of their resignation which has taken effect under its terms, but only if at least two Directors remain in office;

23.1.5 they fail to attend three consecutive meetings of the Directors and the Directors resolve that they be removed for this reason; or

23.1.6 they cease to be a member.

24. **Directors' remuneration**

24.1 Directors may undertake services for the Company as the Directors decide.

24.2 Directors are entitled to remuneration that the Directors determine for services as a Director or for any other service they undertake for the Company.

24.3 Subject to these Articles, a Director's remuneration may take any form and include pension, allowance, gratuity, death, sickness or disability arrangements.

24.4 Unless the Directors decide otherwise, remuneration accrues from day to day.

24.5 Unless the Directors decide otherwise, Directors are not accountable to the Company for remuneration they receive as directors, officers or employees of a subsidiary or another body corporate in which the Company is interested.

25. **Directors' expenses**

25.1 The Company may pay reasonable expenses properly incurred by Directors in attending Directors', committee, general or debenture-holder meetings, or otherwise in exercising their powers and discharging their responsibilities for the Company.

Members

Becoming And Ceasing To Be A Member

26. **Becoming a member**

26.1 The subscribers to the Memorandum are the first members of the Company.

26.2 Other persons admitted to membership in accordance with these Articles are members.

26.3 Each member must be a Director.

26.4 A person may be admitted as a member only with the approval of the Directors.

26.5 A person wishing to become a member must deliver an application in the form, containing the information, required by the Directors and executed by that person.

26.6 The Company may operate paid or unpaid public membership, subscription or participation programmes. A person does not become a member of the Company for the purposes of the Companies Acts, a Director or entitled to vote at a general meeting merely by subscribing to, paying for or participating in such a programme, regardless of whether it is described publicly as a membership.

27. **Termination of membership**

27.1 Membership is not transferable.

27.2 Membership terminates if the member dies or ceases to exist, otherwise in accordance with these Articles, or ceases to be a Director.

Decision-Making By Members

28. **Members' meetings**

28.1 The Directors may call a general meeting at any time.

28.2 General meetings must be held in accordance with the Companies Acts.

28.3 A person who is not a member has no right to vote at a general meeting, without prejudice to any right to vote on a resolution affecting the rights attached to a class of the Company's debentures.

28.4 Article 28.3 does not prevent a proxy for a member or a duly authorised representative of a member from voting at a general meeting.

29. **Written resolutions**

29.1 Subject to Article 29.3, a written resolution passed in accordance with this Article has effect as if passed at a general meeting.

29.2 A written resolution is passed as an ordinary resolution if passed by a simple majority of the total voting rights of eligible members, or as a special resolution if passed by members representing at least 75% of those rights and it states that it was proposed as a special resolution.

29.3 A members' resolution under the Companies Acts removing a Director or auditor before the end of their term may not be passed as a written resolution.

29.4 A copy of a proposed written resolution must be sent to every member with a statement explaining how to signify agreement and the date by which it must be passed. Communications about written resolutions must be sent to the Company's auditors in accordance with the Companies Acts.

29.5 A member signifies agreement when the Company receives an authenticated Document identifying the resolution and indicating agreement. A hard-copy Document is authenticated if it bears the member's signature. An electronic Document is authenticated if the member's identity is confirmed in a manner agreed by the Directors, or is sent from an email Address notified by the member for receiving Documents by Electronic Means.

29.6 A written resolution is passed when the required majority of eligible members have signified agreement.

29.7 A proposed written resolution lapses if not passed within 28 days beginning with its Circulation Date.

Administrative Arrangements And Miscellaneous

30. **Means of communication to be used**

30.1 Subject to these Articles, anything sent or supplied by or to the Company may be sent or supplied in any way that the Companies Act 2006 permits or requires Documents or information to be sent or supplied by or to the Company.

30.2 A notice or Document sent to a Director about Directors' decisions may also be sent by a means the Director has requested.

30.3 A Director may agree with the Company that notices or Documents sent to them in a particular way are deemed received within an agreed time, which may be less than 48 hours.

31. **Irregularities**

31.1 Proceedings at a meeting, poll, written resolution or decision are not invalidated by an accidental informality or irregularity, accidental failure to give or receive notice, want of qualification in a person present or voting, or business not referred to in the notice, unless the Companies Acts specify that it invalidates the proceedings.

32. **Minutes**

32.1 The Directors must ensure minutes are made and retained of officer appointments, Company and Director resolutions (including decisions without a meeting), and proceedings at Company, Director and committee meetings, including Directors present.

32.2 A minute signed, authenticated or purportedly signed by the chair of the relevant meeting or the next meeting is sufficient evidence of the proceedings against a member or Director.

32.3 Minutes must be kept for at least ten years from the date of the meeting, resolution or decision.

33. **Records and accounts**

33.1 The Directors shall comply with the Companies Acts concerning the members' register, financial records, audit or examination of accounts, and preparing and transmitting to the Registrar of Companies and the Regulator annual reports, annual returns and annual statements of account.

33.2 Except as law provides or the Directors or an ordinary resolution authorises, a person is not entitled to inspect the Company's accounting or other records or Documents merely because they are a member.

34. **Indemnity**

34.1 Subject to Article 34.2, a relevant Director of the Company or an associated company may be indemnified out of the Company's assets against liability incurred in connection with negligence, default, breach of duty or breach of trust in relation to the Company or an associated company; liability connected with the activities of the Company or an associated company as trustee of an occupational pension scheme; or any other liability incurred as an officer of the Company or an associated company.

34.2 This Article does not authorise an indemnity prohibited or void under the Companies Acts or other law.

34.3 In this Article, companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and a relevant Director means a Director or former Director of the Company or an associated company.

35. **Insurance**

35.1 The Directors may purchase and maintain, at the Company's expense, insurance for a relevant Director against a relevant loss.

35.2 In this Article, a relevant Director means a Director or former Director of the Company or an associated company; a relevant loss means a loss or liability incurred in connection with that person's duties or powers in relation to the Company, an associated company or a pension fund or employees' share scheme of either; and companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

36. **Exclusion of model articles**

36.1 The model articles for a company limited by guarantee are expressly excluded.

Open-Source Stewardship

37. **Open-source commitment**

37.1 In furtherance of its objects, the Company must preserve the open-source character of every Foundation Project.

37.2 The Company must make the source code, build and deployment configuration, and tests for each Foundation Project that it owns or controls publicly available in source form under an Open Source Licence. It must make the other Project Materials that it owns or controls publicly available under a licence permitting free use, study, modification and redistribution. The Company must maintain a publicly accessible source-code repository or equivalent public distribution channel for those Project Materials.

37.3 The Company must not, whether directly or through an agent, subsidiary, successor, assignee or licensee:

37.3.1 withdraw, revoke or purport to revoke an Open Source Licence or other public licence previously granted for Project Materials;

37.3.2 release a new version of Project Materials as proprietary or source-unavailable material;

37.3.3 impose contractual, technical or other restrictions that materially prevent the public from exercising the rights granted by an Open Source Licence or other public licence; or

37.3.4 transfer, exclusively license or otherwise dispose of Project Materials unless the arrangement preserves the public's continuing rights under the applicable Open Source Licence or other public licence and requires the recipient to comply with this Article 37.

37.4 Article 37.3 does not prevent the Company from charging for hosting, support, implementation, training or other services, or from developing a separate project, provided that it does not restrict rights in Project Materials or present source-unavailable material as a version of a Foundation Project.

37.5 A departure from Articles 37.2 or 37.3 is permitted only to the minimum extent and for the shortest period reasonably necessary where:

37.5.1 applicable law, a binding court order or a binding direction of a competent regulator requires it; or

37.5.2 the Directors reasonably determine, on the basis of documented technical advice, that a temporary restriction is necessary to prevent or mitigate an imminent and material information-security or system-security vulnerability.

37.6 Before relying on Article 37.5, or as soon as practicable afterwards in a genuine emergency, the Directors must record the reason, scope, evidence and planned end date in their minutes. They must review the restriction at least every 90 days, publish a proportionate notice unless publication would itself breach the legal requirement or materially worsen the security risk, and restore public availability as soon as the restriction is no longer necessary.

37.7 Nothing in Article 37.5 permits the Company to revoke rights already validly granted under an Open Source Licence or other public licence, except to the extent that applicable law requires otherwise.

38. **Protection of the open-source commitment**

38.1 Articles 37 and 38 are entrenched provisions for the purposes of section 22 of the Companies Act 2006. They may be amended or removed only with the unanimous written agreement of every member entitled to vote on the proposed change, in addition to any procedure otherwise required by law.

38.2 The Company must give the Registrar of Companies any notice required by section 23 of the Companies Act 2006 in relation to this entrenchment.

38.3 Any amendment to Articles 37 or 38 must not purport to reduce, retrospectively or prospectively, the public's rights under an Open Source Licence or other public licence already granted for Project Materials.

Schedule: Interpretation

1. In these Articles, unless the context requires otherwise:

Term	Meaning
Address	Includes a number or address used for sending or receiving Documents by Electronic Means.
Articles	The Company's articles of association.
asset-locked body	A community interest company, charity, Permitted Society, or body established outside the United Kingdom equivalent to any of those.
bankruptcy	Includes individual insolvency proceedings outside England and Wales or Northern Ireland with an effect similar to bankruptcy.
Chair	Has the meaning given in Article 10.
Circulation Date	In relation to a written resolution, has the meaning given in the Companies Acts.
Clear Days	A notice period excluding the day notice is given or deemed given and the day for which it is given or takes effect.
community	Is construed in accordance with section 35(5) of the Companies (Audit, Investigations and Community Enterprise) Act 2004.
Companies Acts	The Companies Acts, as defined in section 2 of the Companies Act 2006, insofar as they apply to the Company.
Company	Open Health Technology CIC.
Conflict of Interest	Any direct or indirect interest of a Director, whether personal, because of a duty of loyalty to another organisation or otherwise, that conflicts or might conflict with the interests of the Company.
Director	A director of the Company, including any person occupying the position of director by whatever name called.
Document	Unless otherwise indicated, any document sent or supplied in Electronic Form.
Electronic Form and Electronic Means	Have the meanings given in section 1168 of the Companies Act 2006.
Foundation Project	A software project formally accepted by the Directors for stewardship by the Company and identified as such in a public record maintained by the Company.

Term	Meaning
Memorandum	The Company's memorandum of association.
Open Source Licence	A licence approved by the Open Source Initiative as conforming to the Open Source Definition.
Permitted Society	A registered society with a restriction on the use of its assets in accordance with regulation 4 of the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006 or the Northern Ireland equivalent.
Project Materials	Source code, build and deployment configuration, documentation, tests, specifications and other materials which the Company owns or controls and which form part of a Foundation Project.
Regulator	The Regulator of Community Interest Companies.
Registered Society	A registered society within section 1(1) of the Co-operative and Community Benefit Societies Act 2014, or a society registered or deemed registered under the Industrial and Provident Societies Act (Northern Ireland) 1969.
Secretary	The secretary of the Company, if any.
specified	Specified in these Articles for the purposes of the relevant provision.
subsidiary	Has the meaning given in section 1159 of the Companies Act 2006.
transfer	Every description of disposition, payment, release or distribution, and the creation or extinction of an estate or interest in, or right over, property.
Writing	The representation or reproduction of words, symbols or other information in visible form by any method, whether in Electronic Form or otherwise.

2. Subject to paragraph 3 of this Schedule, a reference to an enactment includes that enactment as re-enacted or amended from time to time and subordinate legislation made under it.

3. Unless the context requires otherwise, words or expressions in these Articles have the meaning given to them in the Companies Acts as in force when these Articles become binding on the Company.