

Draft FairShares Company

ByLaws

a new model for self-governing social enterprises who want to implement the FairShares Model under Company Law.



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The association for multi-stakeholder co-operation in
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Draft ByLaws

For a FairShares Social Enterprise

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

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

The FairShares Model documentation is available on the FairShares Wiki at:

www.fairshares.coop/wiki.

To become a supporter of the FairShares Model, subscribe capital to the FairShares Association at:

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FairShares Social Enterprise



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General Corporation Law of the State of Delaware *Company Limited by Shares*

Draft ByLaws of High Flight Network Operating Company

Clause	Article Text
DEFINITIONS	
1	<p>Definitions. In these Articles:-</p> <p>“the Act” means the General Corporation Law of the State of Delaware and any amendments in force.</p> <p>“Cash” includes cheques, electronic fund transfers, IOUs, promissory notes and money orders.</p> <p>“Member” a holder of a Producer, Customer, Investor or Founder Share.</p> <p>“Beneficiary” a User member or other member holding only Investor Shares, or organisation listed in Clause 54 as a beneficiary of the community dividend.</p> <p>“Qualifying Contribution” means a commitment to trade with the Company in a way that meets the criteria for membership. Qualifying contributions are set for Producer and Customer Shareholders only.</p> <p>“Quorum” a meeting in which a sufficient number of people are present to take decisions.</p> <p>“Ordinary Resolution” means a proposal accepted by a majority of votes cast on a one-shareholder, one-vote basis, irrespective of shareholder class, subject to any adjustments provided for in Clause 23 and 24 of these rules.</p> <p>“Class Resolution” means a proposal accepted by a majority of votes cast in one shareholder class on a one-shareholder, one-vote basis.</p> <p>“Special Resolution” means a proposal accepted by a majority of votes cast in each shareholder class separately, on a one-shareholder one-vote basis, plus at least 80% (four fifths) of all members irrespective of shareholder class on a one-shareholder, one-vote basis.</p> <p>“Reserves” exclude the current year's profit and loss account.</p> <p>“Producer Shares” are shares owned by a labour member who makes qualifying labour contributions in the Company, entitling her or him to participate in Company governance and receive a share of surplus. For the purposes of clarity, any person recognised as an ‘employee’ or ‘worker’ under the employment laws of the territory in which the member works will qualify for Producer Shares if they make a qualifying contribution.</p> <p>“Customer Shares” are shares owned by a user member who makes a qualifying contribution through their trading or usage of the Company's products / services, entitling her or him to participate in Company governance and receive a share of surplus. For the purposes of clarity, any person recognised as a beneficiary or a customer of the organisation will qualify for Customer Shares if they make a qualifying contribution.</p> <p>“Investor Shares” are shares owned by an investor member who invests unremunerated labour or equity capital entitling him or her to a share of the Company's assets and surplus.</p> <p>“Founder Shares” are shares owned by a founder member, entitling them to govern the company.</p>

- Member Shares** is the name given to shares that will be distributed to **Producer** and **Customer** Shareholders as **Investor** Shares after an increase in the value of the Cooperative. Member Shares are distributed as **Investor** Shares following the process outlined in Clause 15.
- Regulations in **General Corporation Law of the State of Delaware** do not apply unless they are referenced directly in these rules.
- The name of the Company is **High Flight Network Operating Company**.
- The registered office of the Company is in **USA**.
- The Company's objects are:
- to engage in commerce and social activities that spreads wealth and power amongst the Company's primary stakeholders (**Founder**, **Producer** and **Customer** members);
 - to pursue trading activities that are economically, socially and environmentally sustainable, and which improve the well-being of the Company's primary stakeholders;
 - to promote the development of social entrepreneurship;
 - to advance **Cooperative Values and Principles** that create social capital through participatory management and democratic governance processes;
 - to abide by the internationally recognised values and principles of cooperative identity as defined by the International Cooperative Alliance (ICA), in particular the values of self-help, self-responsibility, democracy, equality, equity and solidarity and the ethical values of honesty, openness, social responsibility and caring for others;
 - to abide by principles of equality of opportunity and oppose forms of discrimination on the grounds of social class, race, ethnic origin, gender, sexual preference, age, disability and religion;
 - To operate the cooperatively owned assets of the commons network.**
To operate the cooperatively owned service/launch/recovery facilities..
- The liability of members is limited in accordance with the Act.
- The Company has the power to do anything which is conducive to the furtherance of its objects subject to constraints specified in these **ByLaws**.
- The Company's initial share capital is **\$ 1**:
- 1 Founder** Share(s) of nominal value **\$ 1.00** each.
- These rules may be altered only by Special Resolution of all shareholder classes, i.e. passed by a majority of votes cast in each shareholder class separately and an overall **80% (four fifths)** of members in favour, on a one-shareholder, one-vote basis.

MEMBERSHIP, CAPITAL AND FAIRSHARES BRANDING

- Membership and Share Capital:** The Company is open to applications for membership in the appropriate class without discrimination, subject to making a **qualifying contribution** agreed by members in **General Meeting**. A list of qualifying contributions will be made available to current and prospective members, and will specify: the conditions under which a **Producer** and/or **Customer** share will be issued; the transactions with the Company that qualify an applicant for membership in each class:
- If there are qualifying contributions for both **Producer** and **Customer** Shares, the Company may be branded as a FairShares Solidarity Enterprise.
 - If there are qualifying contributions for **Customer** Shares, but no qualifying contributions for **Producer** Shares, the Company may be branded as a FairShares User-Owned Enterprise.
 - If there are qualifying contributions for **Producer** Shares, but no qualifying contributions for **Customer** Shares, the Company may be branded as a FairShares Employee-Owned Enterprise.
 - If there are no qualifying contributions for either **Customer** or **Producer** Shares, the Company is not a FairShares Company / Social Enterprise, and shall not be entitled to use FairShares Branding, or call itself a FairShares Company / Social Enterprise.
- a. The rights and conditions attaching to shares are:
- Founder Shares:** issued at a **\$ 1.00** par value to the natural or legal persons who found the enterprise; non-transferable; one vote per shareholder at General Meetings (except as defined in Clauses 23 and 24); forfeited on holder's death, bankruptcy or insolvency; cancelled without payment on winding up.

- ii. **Producer Shares:** issued at a \$ 1.00 par value to natural or legal persons who make at least one **qualifying contribution** in respect of labour provided to the Company; issued in proportion to their labour contribution; non-transferable; one vote per shareholder at General Meetings; forfeited on holder's death, bankruptcy or insolvency; cancelled upon cessation of contracts pertaining to their labour contribution; cancelled without payment on winding up.
- iii. **Customer Shares:** issued at a \$ 1.00 par value to natural or legal persons who make a **qualifying contribution** in the use of the Company's products and services; non-transferable; one vote per shareholder at **General Meetings**; forfeited on holder's death, bankruptcy or insolvency; cancelled upon the cessation of all trading relationships and service agreements; cancelled without payment on winding up.
- iv. **Investor Shares:** issued to any natural or legal person; issued at the Fair Price to investors of equity capital upon payment; issued as 'Member Shares' to providers of labour in proportion to the **Capital Gain** created by their work; issued as 'Member Shares' to customers / service users in proportion to the Capital Gain created by their trading activity; one vote per shareholder in **General Meeting**; transferable after 3 years or termination of membership or retirement or death (with compensation at the Fair Price) to one of the following:
 - 1. A FairShares Labour Association, employee benefit trust, cooperative or mutual society established or selected for the purpose of buying and selling (redeeming) **Producer** Shareholders' **Investor** Shares and managing them for the benefit of the Company's workforce;
 - 2. A charitable association, trust or foundation established or selected to purchase (redeem) members' **Investor** Shares and manage them for public or environmental benefit;
 - 3. A FairShares User Association, company, cooperative or partnership, or other community enterprise or cooperative society established or selected to purchase (redeem) members' **Investor** Shares and manage them for community benefit;
 - 4. A crowd-funding / lending / investing platform or social investment fund proposed by the Directors and approved by members in General Meeting.
- v. For the avoidance of doubt, upon death, a member's **Founder**, **Customer** and **Producer** shares are cancelled without payment, and the member's **Investor** Shares will be transferred to other members or organisations established in accordance with Clause 10(a)(iv) with compensation at the Fair Price, then paid into the member's estate for the benefit of their next of kin. A member's next of kin may not inherit **Investor** Shares.
- vi. For the avoidance of doubt, each member has only one vote at General Meetings, irrespective of the number of shares and number of share classes held.
- b. **Alteration of Share Capital.** The Company may issue only new **Producer**, **Customer** or **Investor** Shares. No Share Certificates shall be issued to any members unless required by the Act.

11. **Transfer of Investor Shares.**

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

12. **Equity Capital Stakes.**

- a. Every natural and legal person (director, employee, supplier or self-employed contractor) who makes a qualifying labour contribution will be offered **Producer Shares** proportionate to their **qualifying contributions** at the conclusion of any probationary period agreed by the Company. They will also be offered a chance to purchase **Investor** Shares to the value of **25%** of their initial labour contract (i.e. a person's annual salary, or projected annual value of a contract for services) after 366 days (1 year + 1 day) of continuous service;
- b. Every natural and legal person (user, customer) who makes a qualifying user contribution will be offered **Customer Shares** in proportion to their **qualifying contributions**. They will also be offered a chance to purchase **Investor** Shares to the value of **25%** of their product and service purchases from the Company over the previous 12 months;

- c. The Company may organise a third-party loan or grant of money for an existing member for the purpose of establishing their **Investor** Shareholding;
- d. A contract for labour (director, employee or contractor) may specify that part of the remuneration will be made in the form of **Investor** Shares;
- e. After the anniversary of a contract to supply labour (12 months), **Investor** Shares offered by the Directors can be purchased at the then current Fair Price as defined in 15(b) and 15(c);
- f. Subject to special resolution, the provisions in clauses 12 (a) to (d) can be applied to other legal entities (companies, cooperatives, associations, foundations, charities etc.) who support the work of the Company.
- g. The Directors shall not be entitled to withhold share offers or prevent share transfers, or reject applications for membership, on the grounds of social class, age, politics, race, creed, religion, culture, ethnic origin, sex or sexual orientation, marital status or disability.

13. Valuation.

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

14. Share Issues.

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

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

- a. The "**Capital Gain Fraction**" is 0.5, and may be changed only by **special resolution**.
- b. If the Company's value at the end of an accounting period (the "**New Value**") is greater than its Reference Value, then **Capital Gain** = (New Value – Reference Value) x [Capital Gain Fraction] and:
 - the "Workers' Gain" is Capital Gain / 2;
 - the "Users' Gain" is Capital Gain / 2;
 - the New Fair Price is (New Value – Capital Gain) / (**Investor** Shares Issued);
 - the # of **Member Shares** is (Capital Gain) / (New Fair Price);

This number of Member Shares shall be issued as **Investor Shares** to **Producer** and **Customer** Shareholders by any of the following means:

 - i. Issuing **Investor** Shares to the value of Workers' Gain credited as fully paid to those holding **Producer Shares** in proportion to the number of **Producer** Shares held at the commencement of the accounting period;
 - ii. Issuing **Investor** Shares to the value of Users' Gain credited as fully paid to those holding **Customer Shares** in proportion to the number of **Customer** Shares held at the commencement of the accounting period;
 - iii. Purchasing **Investor** Shares (at the New Fair Price) from existing **Investor** Shareholders to the value of Workers' Gain and then issuing them to **Producer** Shareholders in proportion to the number of **Producer** Shares held at the commencement of the accounting period, capped at the Workers' Gain;
 - iv. Purchasing **Investor** Shares (at the New Fair Price) from existing **Investor** Shareholders to the value of Users' Gain and then issuing them to **Customer** Shareholders in proportion to the number of **Customer** Shares held at the commencement of the accounting period, capped at the Users' Gain;
 - v. Any combination of 15 i) to iv) that has the effect of acquiring for **Producer** and **Customer** Shareholders the number of 'Member Shares' to which they are entitled.
- c. Otherwise, the new Fair Price is (New Value) / (number of **Investor** Shares in issue).

16	<p>Borrowing and Investment.</p> <p>a. Borrowing: the Board of Directors may exercise all the powers of the Company to borrow money at commercial rates, and to mortgage or charge its undertaking, property and assets (present or future) and to issue debentures provided that:</p> <ol style="list-style-type: none"> No borrowing is authorised that exceeds the value of the Reserves unless: <ol style="list-style-type: none"> the lender does not take a charge over the assets of the Company; the loan amount or credit agreement is unsecured (i.e. does not require the Company to offer security); the borrowing secures for the Company an asset or contract with a value greater than the amount borrowed. The borrowing is authorised by an Ordinary Resolution. <p>b. Commercial Investments: the Board may exercise all the powers of the Company to make commercial investments, provided that the sum invested does not exceed one half of Reserves.</p> <ol style="list-style-type: none"> The balance of Reserves must be held in current or deposit accounts, low-risk stocks, bonds or accessible savings accounts. <p>c. Social investments may be made each year in accordance with Clause 10(iv) providing they total no more than one half of the opening balance of the Redemption Fund for that year.</p>
GOVERNANCE	
17	The Directors may call General Meetings and, on the requisition of members holding a tenth or more of the shares in any class, must convene a General Meeting for a date not later than 4 weeks after receipt of the requisition. General Meetings can take place through an online collaborative decision-making platform using technology agreed by members. General Meetings may be held in public, broadcast live, recorded and the records of such meetings can be made available to the public.
18	<p>In each financial year, a minimum of one General Meeting will be held in addition to the Annual General Meeting (AGM).</p> <ol style="list-style-type: none"> No business shall be transacted at a General Meeting unless a quorum of members is present. Unless and until otherwise decided by General Meeting, 30% of the membership shall be the quorum, subject to the number of members being more than 10 and less than 50. In the event of the membership exceeding 50 the quorum shall be 40% of members. In the event of the membership being less than 10, the quorum shall be one-half subject to a minimum of 3. An invitation to all members to join an online collaborative decision-making platform before a General Meeting shall be sufficient to satisfy the rules regarding a quorum providing all resolutions on which a vote is required are posted to the online collaborative decision-making platform before the meeting. No business shall be transacted at an off-line General Meeting until the meeting has agreed a chairperson. Online General Meetings do not require a chairperson. Whenever a President is in post, the President will chair an off-line General Meeting. If a President is not in post, or the President is not present, the meeting will elect one of the Directors to chair the meeting. If no Director is present, the meeting may elect a chairperson from those present.
19.	<p>The General Meeting can set corporate policy, approve/reject social enterprise plans, and take decisions about acquisition and disposal of property, and partnership arrangements with other organisations.</p> <ol style="list-style-type: none"> A proposal to acquire another organisation may be taken by Ordinary Resolution. A proposal to merge or sell the Company must be put as a Special Resolution. A proposal to wind up or dissolve the Company must be put as a Special Resolution.
20	<p>Corporate policy and social enterprise plans are implemented by a Chief Executive Officer or Executive Team appointed by Board Members. The Board will stipulate their authority whenever appointed.</p> <ol style="list-style-type: none"> When no Chief Executive Officer or Executive Team is in post, the Board member with the most Producer Shares will assume the responsibilities of the Chief Executive Officer until a new Chief Executive Officer or Executive Team can be appointed. If the situation in 20(a) arises, and two or more directors have the same number of Producer Shares, the longest serving member will assume the responsibilities of the Chief Executive Officer until a new Chief Executive Officer or Executive Team is appointed. The Chief Executive Officer or Executive Team is responsible to the General Meeting and Board for the organisation and management of the Company and the implementation of the Company's social enterprise plans.

21. Every **Founder, Producer, Customer** and **Investor** shareholder can attend, speak and propose resolutions at a General Meeting, can stand (subject to clauses 30 and 31) for election as a Director and can cast one vote at General Meetings (as provided for in clauses 23 and 24).
22. Any person can act as a proxy for a member at General Meeting. An instrument appointing a proxy must be written in a usual form, or a form approved by the Directors.
 - a. A proxy may act for a maximum of **one** other member(s) at General Meetings (i.e. can cast a maximum of **one** vote(s) in addition to their own).
23. Decisions at off-line General Meetings are made by passing resolutions with a show of hands, unless a poll is demanded by at least **3** members. At online General Meetings, decisions are made by approving a member proposal using the collaborative decision-making tools adopted by members.
 - a. For Ordinary Resolutions taken by a show of hands (or online vote), **Founder, Producer, Customer** and **Investor** shareholders have one vote each, irrespective of the number of shares held and irrespective of the class(s) of share held.
 - b. For Ordinary Resolutions involving a poll, and Special Resolutions, each member votes once, irrespective of the number of memberships held. Their vote counts toward the lowest numbered member class in which they hold membership (from the following list of member classes):
 - 1 - **Founder** members
 - 2 - **Producer** members
 - 3 - **Customer** members
 - 4 - **Investor** members(For example, if a person is both a **Founder** and **Producer** member, their vote would only be counted once in the **Founder** member class.)
 - c. If a poll is requested by at least **3** members, the chairperson must offer each shareholder class a chance to pass a Class Resolution in accordance with the provisions of Clause 25 before proceeding with the poll.
24. On a show of hands, online vote, or poll, every member who is present in person or by proxy, has one vote.
 - a. In the event of a poll, the total number of **Founder, Producer, Customer** and **Investor** votes for and against the resolution will be recalculated using the following formulae (see clause 44 for **[Investor Share Fraction]**; see clause 40 for **[Founder] Share Fraction**, **[Producer Share Fraction]** and **[Customer Share Fraction]**):
 - i. $\frac{[\text{Investor Votes For}]}{[\text{Investor Votes Cast}]} * [\text{Investor Share Fraction}]$
 - ii. $\frac{[\text{Investor Votes Against}]}{[\text{Investor Votes Cast}]} * [\text{Investor Share Fraction}]$
 - iii. $\frac{[\text{Producer Votes For}]}{[\text{Producer Votes Cast}]} * [\text{Producer Share Fraction}]$
 - iv. $\frac{[\text{Producer Votes Against}]}{[\text{Producer Votes Cast}]} * [\text{Producer Share Fraction}]$
 - v. $\frac{[\text{Customer Votes For}]}{[\text{Customer Votes Cast}]} * [\text{Customer Share Fraction}]$
 - vi. $\frac{[\text{Customer Votes Against}]}{[\text{Customer Votes Cast}]} * [\text{Customer Share Fraction}]$
 - vii. $\frac{[\text{Founder Votes For}]}{[\text{Founder Votes Cast}]} * [\text{Founder Share Fraction}]$
 - viii. $\frac{[\text{Founder Votes Against}]}{[\text{Founder Votes Cast}]} * [\text{Founder Share Fraction}]$
 - b. The total vote for the resolution is the aggregate of i), iii), v) and vii)
 - c. The total vote against the resolution is the aggregate of ii), iv), vi) and viii)
 - d. For the resolution to pass, the aggregate of i), iii), v) and vii) must be greater than 0.5, otherwise the resolution is not passed.

View [Worked Example](#) and use [this spreadsheet](#) to work out the results of a vote.
25. A **Class Resolution** passed by any shareholder class can amend an Ordinary Resolution so that it becomes a Special Resolution (with the exception of contract terminations described in clause 51).
 - a. A **Special Resolution** is passed if:
 - i. for each member class in which votes are cast, a majority of members cast their votes in favour of the resolution (on a one-shareholder one-vote basis);
 - ii. at least **80% (four fifths)** of all members cast their vote in favour of the resolution, irrespective of shareholder class, on a one-shareholder one-vote basis.
26. Unless a poll is demanded, a declaration by the chairperson at the meeting that a resolution has, on a show of hands, been carried or lost and an entry to that effect in the book containing the minutes of the proceedings (or equivalent record

- in an online collaborative decision-making forum) shall be conclusive evidence of the fact without proof of the number or proportions of the votes recorded in favour or against a resolution.
27. A written resolution signed by all members, or approved using designated technology, is valid as if properly passed at a General Meeting.
 28. The proceedings of a meeting are not invalidated by the accidental omission to give notice of the meeting to, or the non-receipt of notice of the meeting by, a person entitled to receive notice. Notice shall be deemed to have been given if sent to the email address, user account or other technological place of transmission, nominated or accepted by the party entitled to receive such notice.
 29. **Directors.** The Company shall have a Board of between one and **fifteen (15)** directors except in the circumstances described in clauses 29(a) and (b). A sole director shall have authority to exercise all the powers and authorities vested in the Directors unless:
 - a. The company is in receipt of grant or loan funding from a public authority, charitable body or other asset-locked organisation (e.g. a credit union, community-owned cooperative or company), in which case the minimum number of Directors shall be three (3) representing two shareholder classes, with at least one financial specialist.
 - b. The company has **50** or more members, in which case the minimum number of directors shall be five with at least one representing each shareholder class with active members and at least one financial specialist.
 30. If the Company has fewer than **50** members, directors will be proposed by **Founder** members or existing Directors and approved by a vote of existing Directors.
 - a. Directors may freely negotiate contracts of any value until the Company files its first set of accounts. Thereafter, Directors may freely negotiate contracts to the value of 25% of the company's annual turnover (as reported in the previous year's filed accounts). Contracts in excess of this amount require General Meeting approval.
 - b. A Director may be removed at General Meeting by an Ordinary Resolution, or after a vote of no-confidence at a meeting of the Directors.
 31. If the Company has **50** or more members, directors and a president will be elected annually as follows.
 - a. **Producer** Shareholders will elect a maximum of **three (3)** Director(s) (one will be subject to re-election by rotation every two-years), following the **General Corporation Law of the State of Delaware**.
 - b. **Customer** Shareholders will elect a maximum of **three (3)** Director(s) (one will be subject to re-election by rotation every two-years), following the **General Corporation Law of the State of Delaware**.
 - c. **Investor** Shareholders (if applicable) will elect a maximum of **one (1)** Director(s) (one will be subject to re-election by rotation every two-years), following the **General Corporation Law of the State of Delaware**.
 - d. **Founder** Shareholders will elect a maximum of **one (1)** Directors, who may be removed only by the provisions set out in 31(f).
 - e. A maximum of **four (4)** Director(s) may be appointed (co-opted) by the other Directors for their specialist financial, environmental and cooperative management skills.
 - f. A Director may be removed from office at any General Meeting by a Class Resolution of a shareholder class that elected him or her, or by Ordinary Resolution.
 - g. A Company President will be elected from the Directors on a poll of all shareholders (one vote per shareholder) at the Annual General Meeting. The President has a non-executive role in the running of the Company, and is responsible for overseeing board meetings, maintaining the public image of the Company, and facilitating good communications between Directors and company members. The President has a casting vote at board and General Meetings, but is not required to use it.
 - h. In the absence of a President, or if a President is not elected, the holder(s) of **Founder** Shares will fulfil this role (as set out in 31(g)).
 - i. A Director cannot be removed by other Directors except at General Meeting (as set out in 31 (f)).
 - ii. Company Directors may freely negotiate contracts to the value of 12.5% of the Company's annual turnover (as reported in the previous year's filed accounts). Contracts in excess of this amount require General Meeting approval.
 32. Directors' meetings may be held between General Meetings by any means defined within the Act, and through an online collaborative decision-making platform.
 - a. All acts done by any meeting of the Directors or by any person acting as a member of the Board shall, even if it be afterwards discovered that there was some defect in the appointment of any Board members or person acting as such, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Board member.

EXPENSES, BENEFITS AND PAY

33. Providers of labour (directors, employees, self-employed contractors) shall be paid reasonable expenses wholly incurred in relation to furthering the business of the Company.
 - a. A schedule of acceptable benefits and expenses may be agreed by Ordinary Resolution. Any expenses paid, or benefits provided, outside the scope of an agreed schedule must be itemised in the annual accounts.
 - b. Benefits and expenses must be itemised and recorded in such a way that they can be inspected by any member during normal office hours.
34. **Remuneration** has three components: Basic Wages ("Pay"), **Producer** Share dividends and **Investor** Share dividends.
 - a. Each provider of labour is subject to one or more contracts (employment contract, contract for services or company membership) which controls the manner in which they are remunerated for their labour. These articles, including subsequent modifications, are part of any contract between the Company and those providing labour (directors, shareholders, employees, self-employed contractors). All members of the company shall be provided with a copy of these rules upon agreement or variation of a contract to supply labour.
 - b. Labour may be recognised solely through Company membership and remunerated solely through **Producer** Share dividends. A formal contract of employment will be issued if, in the view of the Directors, 'employee status' tests used in employment tribunals have been, or are expected to be, satisfied (i.e. a person works regular hours, receives regular pay, has agreed holiday entitlements and is subject to regular supervision etc.).
 - c. If the Company issues contracts of employment to members of staff, **the maximum ratio between the hourly rate of the highest and lowest paid member of staff shall be 3:1** This ratio can only be amended by a Class Resolution in a meeting of **Producer** Shareholders. This ratio may **not** be amended by Ordinary Resolution or Special Resolution.
 - d. At the start of each accounting period, if the Company has any employees, an amount equal to (Basic Wages × Current Inflation Rate) will be set aside for increases in Basic Wages. The application of any remuneration system to employees and self-employed contractors is at the discretion of the CEO or Executive Team (unless overridden by the procedure set out in clause 49). If the budget for increases in remuneration is not distributed within an accounting period, any unused part **must** be distributed as **Investor** Shares in proportion to **Producer** Shareholdings
 - e. An increase in the budget set in 34(d) can only be passed by Special Resolution.
 - f. Directors' pay and conditions follow the same principles as other Company members and employees.
35.
 - a. **"Total Revenue"** means sales plus earnings from services provided plus any other income, but excludes proceeds of new issues of securities or loans obtained
 - b. **"Profit"** is equal to Total Revenue less the cost of materials and services, less depreciation, less rents, less interest.
36. **"Associated Costs"** means the costs directly associated with a given amount of Pay, including employee's and employer's contributions to insurance schemes, superannuation, healthcare plan, childcare, staff club and any other benefits deducted from pay, together with sickness, maternity, paternity or other statutory pay, and Pay-As-You-Earn income tax.
37. **"Surplus"** is equal to Profit, less Pay including their Associated Costs, less Corporation Tax.
 - a. The first \$ 100,000 of Surplus or 30% of Profits (whichever is greater) will be allocated to Reserves as working capital. This amount will be deducted from Surplus before calculating **Founder** Share Dividends, **Customer** Share Dividends, **Producer** Share Dividends and **Investor** Share Dividends
 - b. Half of the Surplus transferred to reserves will be held in a **"Redemption Fund"**, set aside to fund the creation of organisations defined in Clause 10(a)(iv) that enable members to sell their **Investor** Shares.
38. Additional Capital Expenditure, Extraordinary and Research and Development Costs in excess of \$ 10,000 not financed by an **Investor** Share Issue must either:
 - a. be deducted from Surplus in exchange for new **Investor** Shares credited as fully-paid, or
 - b. be paid for from Reserves,or as determined by special resolution or a qualified accountant. Any member may ask a qualified accountant to determine if an item comes under these categories.
39. **"Founder Share"**, **"Producer Share"** and **"Customer Share"**. The Founder, Producer and Customer Share of Surplus, distributed in dividends, is calculated by multiplying [Surplus] (if greater than zero) for the relevant period by the [Founder Share Fraction], [Producer Share Fraction] and [Customer Share Fraction]. If [Surplus] is less than or equal to zero, no Founder Share or Producer Share or Customer Share dividends are paid.

- a. In the event that there are no **Producer** Shareholders to pay dividends, the Company shall establish or increase a restricted fund to the value of the **Producer** Share. The Board of Directors may exercise discretion on how to allocate the restricted fund to projects that improve the well-being of the Company's workforce.
 - b. In the event that there are no **Customer** Shareholders to pay dividends, the Company shall establish or increase a restricted fund to the value of the **Customer** Share. The Board of Directors may exercise discretion on how to allocate the restricted fund to projects that improve the well-being of the Company's users and/or customers.
40. **"Founder Share Fraction", "Producer Share Fraction" and "Customer Share Fraction"**
- a. The **Producer** Share Fraction is **0.25** and **Customer** Share Fraction is **0.40** and **Founder** Share Fraction is **0.00**. These may be changed only by Special Resolution.
 - b. No **Producer** or **Customer** Shareholder may receive a dividend of more than [Surplus] x [Producer Share Fraction].
41. **"Founder Share Dividends", "Producer Share Dividends" and "Customer Share Dividends"**
- At the end of an accounting period, the **Founder**, **Producer** and **Customer** Share are distributed as dividends to each **Founder**, **Producer** and **Customer** shareholder using the following formulae:
- $$\begin{aligned}
 &[\text{Founder Share}] \times (\text{Member's Founder Shareholding} / \text{All Issued Founder Shares}) \\
 &+ \\
 &[\text{Producer Share}] \times (\text{Member's Producer Shareholding} / \text{All Issued Producer Shares}). \\
 &+ \\
 &[\text{Customer Share}] \times (\text{Member's Customer Shareholding} / \text{All Issued Customer Shares})
 \end{aligned}$$
42. At the discretion of the Board, all members and employees may be advanced a proportion of their projected **Producer** Share dividends on a regular basis in addition to monthly Pay. Advances must be listed in the Annual Accounts and deducted from the **Producer** Share before calculating **Producer** Share Dividends.
43. Providers of labour (directors, employees, self-employed contractors) may, subject to mutual consent, be part-paid in **Investor** Shares, credited as fully paid.
44. **Investor Share Dividends** are paid after **Founder**, **Producer** and **Customer** Share dividends.
- a. The **"Investor Share Fraction"** is **0.35** and the **"Investor Share"** is [Surplus] x [Investor Share Fraction]. This may be changed only by Special Resolution.
 - b. The **Investor** Share Dividend paid in any accounting period is the lowest of the following:
 - i. that which may be paid by law;
 - ii. the [Investor Share] x (1 – [Capital Gain Fraction]); and
 - iii. the balance of the profit and loss account, if greater than zero;
 - c. otherwise it is zero.
 - d. The dividend is divided equally between all **Investor** Shares.
 - e. Dividends, if payable, must be paid within **6** calendar months of the end of the accounting period. Interest at the Company's bank overdraft rate is to accumulate on unpaid dividends after this time.
45. **Shares instead of dividends.** The directors can offer **Investor** shareholders the choice of receiving additional **Investor** Shares credited as fully paid, instead of some or all of the dividend. The Directors must specify a procedure fair to all **Investor** Shareholders for exercising this choice.
46. No additional sum may be transferred from the profit and loss account to Reserves unless it represents new **Investor** Shares credited as fully-paid, or is approved by special resolution, or is required by law.

ACCOUNTING AND AUDITING

47. Financial and social accounts will be prepared for Board and General Meetings by a person with appropriate bookkeeping and accounting skills / qualifications. They will use accounting conventions agreed by the Board, or as required by the Act. Any member or person authorised in writing by a member may inspect the accounting records during normal working hours.
- a. If the Company has fewer than **50** members, the Board may put an ordinary resolution to the General meeting to approve one of the following:
 - i. **Either:** the appointment of independent accountants and/or auditors to undertake financial and social audits;
 - ii. **Or:** an application for exemption from audit under the provisions of the Act;
 - b. If the Company has **50** or more members:
 - i. The Board shall recommend a choice of financial and social auditors for approval in General Meeting.

- ii. The selected financial auditor shall audit the company's financial accounts prior to their approval in General Meeting for filing with the relevant regulatory authority.
 - iii. The selected social auditor shall assist with audit of the internal democracy and decision-making of the Company, the wages, health and safety, skill sharing and educational opportunities of its members and employees, or other matters concerning the overall personal or job satisfaction of members and employees; an assessment of the Company's activities externally, including effects on people, the environment and other organisations.
 - iv. An audit committee of up to four people (comprising non-Board members from at least two shareholder classes) will be elected at each AGM.
 - v. The purpose of the audit committee is:
 1. to assist and check the preparation of financial records presented to General Meetings so that they are accurate, authentic and meet the needs of members;
 2. to assist and check the preparation of the information needed for a social audit;
 3. to organise elections in accordance with Clause 31;
 4. to record, check and authenticate that the procedures in clauses 17 to 27 are being followed when voting takes place in a General Meeting.
48. Accountants, Auditors and Independent Experts. These must be chosen by ordinary resolution.
- a. The financial auditor (if appointed) shall be from a Recognised Qualifying Body (RQB).
 - b. Accountants, Auditors and Independent Experts shall require the accounts to record Members Capital and Cooperative Capital separately.
 - i. **"Members' Capital"** is defined as the sum of the value of members' **Investor** Shareholdings.
 - ii. **"Cooperative Capital"** is defined as the sum of grants and donations received from public authorities, charitable bodies and other asset-locked social enterprises (e.g. community benefit societies or community interest companies), plus any capital that members' are required by the Act to convert, or have voluntarily converted, to Cooperative Capital.

DISPUTE RESOLUTION AND INTELLECTUAL PROPERTY

49. **Labour Contract Revaluations.** In the event of a dispute, the escalation procedure is:
- a. Valuation by a recruitment agency or recruitment consultant agreeable to all parties.
 - b. Appeal (with resolution) subject to a vote at General Meeting;
 - c. **Federal Mediation and Conciliation Services**
- In the event that a labour contract revaluation leads to a breach of the ratio between the highest and lowest paid member of staff (as set in clause 34(c)) the revaluation will only be applied if **Producer** Shareholders pass a Class Resolution adjusting the ratio to permit the new level of pay. Until such time as a Class Resolution is passed, the maximum pay permissible is capped in accordance with the current ratio (e.g. if the ratio is 3:1, the maximum pay is 3x the lowest paid).
50. **Relationship Disputes.** In the event of a dispute between two or more members, the escalation procedure is:
- a. Mediation by the President, or a Director, a management consultant, trade union official, Social Enterprise International Director; FairShares Association Founder, Regional Social Enterprise Network official or other third-party agreeable to all parties;
 - b. Appeal (with resolution) subject to a vote at General Meeting;
 - c. **Federal Mediation and Conciliation Services**
51. Except in the case of resignation or voluntary termination by both parties, a member's employment, supplier contract (or company membership) may be terminated only after an Ordinary Resolution proposing the termination of the contract has been passed in General Meeting.
- a. Termination is subject to the satisfaction of all lawful terms contained in the member's employment and/or trading contract(s). A resolution to terminate an employment or supplier contract, or company membership, cannot be modified by Class Resolution to become a Special Resolution (clause 25 does not apply).
52. The Company may pay for Directors' and officers' indemnity insurance against liabilities related to Company business, excluding negligence and/or fraud.
53. **Intellectual Property (IP).** With the exception of trademarks, the Company shall record which members have created and contributed intellectual property (IP) to further company objects, and ensure that ownership of all IP remains vested in its creator(s). For the avoidance of doubt, the Company shall not own IP created by members before, during or after

their period of membership unless ownership is freely and voluntarily transferred by those members to the Company, or is modified by the provisions below.

- a. All IP created by members while working for the Company will be vested in them individually and/or collectively.
- b. As a condition of membership and/or employment, all IP created by members during their work for the Company shall be licensed to the Company under a Creative Commons Licence for both noncommercial and commercial trading, with permission to adapt, share and re-use the IP in product and service development. Any product or service offered will use the same Creative Commons licence unless a variation of this is negotiated with the creator(s) of the IP.
 - i. Where a member creates (or members create) IP for the Company during their period of membership, the Company shall have an exclusive right to use and commercialise the IP while they remain a member. If the member leaves the Company, upon termination of their membership, the Company shall be granted joint copyright in IP it contracted the member to create and retain a non-exclusive right to continue using and adapting that IP in both non-commercial and commercial ventures, including a unilateral right to enforce applicable Creative Commons licences.
 - ii. Members who leave the Company retain a non-exclusive right to use IP they created for the Company in both non-commercial and commercial ventures, including a unilateral right to enforce applicable Creative Commons licences.
- c. IP transferred to the Company by members, and IP bought by the Company from third parties, shall be owned collectively by all members and made freely available to them for non-commercial use and private study.
- d. The Company shall use its best endeavours to manage IP as if it were an 'intellectual commons' for the benefit of Company members.
- e. Members may wish to offer the Company joint copyright in IP they have created before or during their period of membership so that the Company can take legal proceedings on their behalf to enforce the terms of the applicable Creative Commons Licence.

DISSOLUTION

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

See [Worked Example](#) – Calculating the Community Dividend

- b. If the total value of **residual assets** is greater than \$ 100,000, not less than **[community dividend]** will be divided equally between the following bodies:
 1. **Organisation Name:** (or as decided in General Meeting)

FairShares Company No:
or Charity / Foundation / Association No:
or Cooperative Registration Number:
 2. **Organisation Name:** (or as decided in General Meeting)

FairShares Company No:
or Charity / Foundation / Association No:
or Cooperative Registration Number:
- b. Any remaining assets will be divided equally between **Investor** Shareholders in proportion to the number of **Investor** Shares reported in the company's most recent Annual Return, or as set out in the registration document at Companies House (if no Annual Return has been filed). For the avoidance of doubt, changes in shareholdings since registration (if not filed in an Annual Return), or since the most recent Annual Return, will be ignored for the purposes of calculating the share of residual assets paid out when the Company is dissolved.

- c. In finalising the dissolution of the company, and subject to the requirements of Insolvency Law, debts and payments to creditors and shareholders will be satisfied in the following order:
 - i. Outstanding debts to **employees, workers and contractors** (e.g. wages/fees)
 - ii. Outstanding debts to other **priority creditors** (e.g. VAT and taxes)
 - iii. Outstanding debts to **suppliers** (e.g. unpaid supplier invoices)
 - iv. Outstanding debts to **other creditors** (e.g. loan balances)
 - v. Payment of the community dividend
 - vi. Division of remaining **residual assets** to **Investor** Shareholders.
- d. In the event of a failure to agree within 6 months of dissolution which association(s), cooperative(s) and companies should receive the community dividend, or in the event that the organisations in Clause 54(b) have all closed, the [community dividend] will be donated to the FairShares Association to be reinvested in other FairShares associations, cooperatives, companies and partnerships.