

## NORFOLK ENVIRONMENTAL CREDITS LIMITED

### Members' Agreement / Articles of Association - Term Sheet

No.	Term	Proposal
1.	<b>Company Name</b>	NORFOLK ENVIRONMENTAL CREDITS LIMITED
2.	<b>Trading Name</b>	Same as registered name – see above.
3.	<b>Type</b>	Company limited by guarantee
4.	<b>Registered office address</b>	c/o Birketts LLP, Kingfisher House, 1 Gilder's Way, Norwich NR3 1UB
5.	<b>Financial Year</b>	12 months from the month end when the company is registered
6.	<b>Business of the JV Co</b>	<p>The JV Co will:</p> <ul style="list-style-type: none"> <li>- buy environmental mitigation and sell environmental credits</li> <li>- provide an effective portfolio of projects to help mitigate the impact of nutrient enrichment arising from additional housing development;</li> <li>- oversee the creation, accreditation and monitoring of a range of large-scale mitigation measures;</li> <li>- work with local authorities who will be the “Competent Authority” under The Conservation of Habitats and Species Regulations 2017 for the purposes of nutrient neutrality</li> <li>- Work with organisations who are acting as the “Responsible Body” under the Environment Act 2021 for the purposes of biodiversity net gain, including ensuring “Conservation Covenants” and the means of enforcing them are in place, if necessary; and</li> <li>- source and deliver other environmental credits as and when opportunities arise in the future.</li> </ul>

7.	<b>Business Plan</b>	Each year the JV Co shall produce an annual business plan, a draft of which shall be circulated at least 2 months prior to the start of the next financial year.
8.	<b>Membership guarantee</b>	Each member shall give a guarantee of £1.
9.	<b>Members</b>	<p>(1) Anglian Water</p> <p>x5 Local Authorities:</p> <p>(2) South Norfolk Council</p> <p>(3) Breckland Council</p> <p>(4) North Norfolk District Council</p> <p>(5) Broadland District Council</p> <p>(6) Norwich City Council</p>
10.	<b>Membership voting</b>	<p>When decisions are put to the members:</p> <ul style="list-style-type: none"> <li>- Anglian Water shall be entitled to the same number of votes as the number of local authority (LA) members.</li> <li>- Each LA shall be entitled to 1 vote.</li> </ul>
11.	<b>Initial funding</b>	<p>2022/23: initial revenue seed funding of c£150k via a loan to be sourced, potentially from a single LA.</p> <p>2023/24: Each member to make an initial revenue loan to the JV Co as follows:</p> <ul style="list-style-type: none"> <li>(1) Anglian Water: £150k</li> <li>(2) South Norfolk Council: £30k</li> <li>(3) Breckland Council: £30k</li> <li>(4) North Norfolk Council: £30k</li> <li>(5) Broadland District Council: £30k</li> <li>(6) Norwich City Council £30k</li> </ul> <p>Term of loans tbc but, will need to be on arms' length terms:</p> <ul style="list-style-type: none"> <li>- Loan amount: see above</li> <li>- Term: 1 year for initial revenue loan</li> <li>- Interest: no interest would be payable on the initial revenue loan, other loan arrangements</li> </ul>

		<p>(including the seed funding) to be negotiated on a case-by-case basis.</p> <ul style="list-style-type: none"> <li>- Repayment: conditional upon the JV Co having sufficient funds</li> </ul> <p>Events of default: If the loan cannot be repaid in year one, repayment will be sought in future years. If the loan cannot be repaid the money would be written off.</p> <p>Further loans (including capital funding) may be made by any of the parties or third parties to the JV Co with terms to be agreed on a case-by-case basis by the members.</p>
<b>12.</b>	<b>Future investments</b>	No member is <u>required</u> to make further loans in the JV Co
<b>13.</b>	<b>Directors</b>	<p>Anglian Water shall have the right to appoint two directors.</p> <p>The Norwich based LAs (Broadland District Council, South Norfolk Council and Norwich City Council) shall have the right to appoint one director.</p> <p>The non-Norwich based LAs (i.e. North Norfolk District Council and Breckland Council) shall have the right to appoint one director.</p> <p>Each of the LA appointments shall be decided by a majority of the relevant LAs.</p> <p>Any member which does not have a director appointed shall be entitled to have an observer attend board meetings.</p> <p>A director will not be able to appoint an alternate.</p> <p>The appointment of any additional directors must be approved as set out in the Reserved Matters below.</p> <p>It is not anticipated that a Managing Director will be appointed at this stage.</p>
<b>14.</b>	<b>Secretary</b>	Secretarial support will be sought for the duties / administration of the JV Co, including maintaining a current list of members and directors, this person will not be designated as a Company Secretary.

15.	<b>Board Meetings</b>	Board meetings shall be held no less than 4 times per annum and no meeting shall take place more than 3 months after the previous meeting. Remote attendance permissible. It is envisaged that in the first year further Board meetings are going to be required. Third parties – including Natural England, Environment Agency, Department of Levelling Up, Housing and Communities representatives would also attend the Board by invitation for certain items.
16.	<b>Director voting powers</b>	Wherever possible a unanimous decision will be sought, thereafter decisions will be reached by majority. If voting is still tied the casting vote will rest with the local authority directors who are present.
17.	<b>Quorum</b>	Each board meeting shall be attended by:  A majority of the directors (including at least one director appointed by Anglian Water).
18.	<b>Chairman</b>	Chairing of the Board meetings to oscillate between Anglian Water and a local authority representative on the Board. A chairman shall not be appointed in addition to the Directors referred to above. The chairman will agree the agenda and business for the Board.  Any director shall be entitled to chair a board meeting.  The chairman shall not have a casting vote.
19.	<b>Conflicts</b>	Each director shall be required to declare any conflicts he/she might have, both situational (i.e. each LA director will have an inherent conflict on the basis that nutrient neutrality impacts planning and any mitigation measure is intended to influence the LPA) and transactional (e.g. where AW is presenting a mitigation measure, the AW director(s) will be conflicted).  Any director with a private, personal or direct financial conflict on an item shall declare it and be entitled to count in the quorum of a board meeting but not included in the discussion and vote itself on

		any of the items where the private, personal or direct financial conflict exists.
20.	<b>Reserved Matters (requiring consent of members and/or board of directors)</b>	<p><u>Part 1 – matters requiring the consent of a majority (including AW) of the members:</u></p> <ul style="list-style-type: none"> <li>- amending the JV Co's articles of association</li> <li>- altering any rights of membership</li> <li>- permitting registration of a new member otherwise than in accordance with the Members' Agreement or articles of association</li> <li>- the Credits Allocation Policy (CAP) setting out the criteria on which environmental credits will be allocated (and until such time as the CAP is agreed, no credits can be allocated)</li> <li>- the appropriate assessment of the mitigation to be provided</li> <li>- appointing/removing a director</li> <li>- approving the annual business plan</li> </ul> <p><u>Part 2 – matters requiring the consent of a majority of the board including at least one AW director</u></p> <ul style="list-style-type: none"> <li>- changing the JV Co's name / trading name(s) or registered office</li> <li>- ceasing to trade or changing the nature of the JV Co's business</li> <li>- conducting the business otherwise than in the ordinary course and on an arm's length basis</li> <li>- selling or disposing of the JV Co's business (whole or part)</li> <li>- entering into any contract above £500,000 and for any proposed contract of a value between £250,000 and £500,000, the board shall be notified with a one week notice period to call a vote to approve such contract</li> <li>- introducing any benefit plan for the directors/employees</li> <li>- employing anyone whose salary is greater than £50,000</li> </ul>

		<ul style="list-style-type: none"> <li>- increasing remuneration of an employee above £5,000</li> <li>- creating any encumbrance over the business</li> <li>- incurring borrowing above £500,000</li> <li>- making any extraordinary loans</li> <li>- merging with or acquiring another company or business</li> <li>- entering into any form of insolvency procedure (e.g. administration, liquidation etc)</li> <li>- [others?]</li> </ul>
<b>21.</b>	<b>Directors' pay</b>	No Directors of the company will be paid.
<b>22.</b>	<b>Dividend policy</b>	Dividends cannot be declared as the JV Co is limited by guarantee
<b>23.</b>	<b>Accountant / auditor</b>	The Company shall appoint an organisation to provide financial support, an accountant and auditor supplier(s) TBD
<b>24.</b>	<b>Tax</b>	<p>The Company shall be liable to pay corporation tax on profits. Although it envisaged that the JV will not be making a profit, any surplus will be reinvested.</p> <p>The Company shall be liable to pay PAYE and employer NICS in respect of any employees.</p>
<b>25.</b>	<b>VAT</b>	The Company shall [not] be registered for VAT and VAT shall [not] be charged on Environmental Credits sold. VAT position to be confirmed by specialist advisors]
<b>26.</b>	<b>Information rights</b>	<p>Members will be provided with:</p> <ul style="list-style-type: none"> <li>- monthly management accounts</li> <li>- audited accounts no later than 4 months after the end of the relevant financial year</li> <li>-access to trading and financial information, books and records</li> </ul> <p>Final details to be confirmed as part of the contracted accountancy service.</p>

27.	<b>Membership transfers</b>	<p>Membership shall be transferable only in specific circumstances:</p> <ul style="list-style-type: none"> <li>- members only permitted to transfer membership in accordance with the terms of the Members' Agreement and/or Articles of Association</li> <li>- membership may be transferred to any person with consent of <u>all</u> members</li> <li>- outgoing member ceases to have the right to appoint a director</li> </ul>
28.	<b>Deed of adherence</b>	<p>Any new member will be required to enter into a deed of adherence to be bound by the terms of the Members' Agreement</p>
29.	<b>Membership termination</b>	<p>A membership will be terminated in the following circumstances:</p> <ul style="list-style-type: none"> <li>- persistent/material of the Members' Agreement and/or Articles of Association</li> <li>- breach of restrictive covenant given in favour of the JV Co</li> <li>- if a member ceases to exist.</li> </ul>
30.	<b>Drag and tag rights</b>	<p>A minority member may be "dragged" (i.e. forced to sell its membership) if 80% or more of members wish to sell the JV Co</p> <p>If there is a change of control of the JV Co (i.e. 50% or more of the memberships are sold to a third party) a minority member should be able to "tag" along and receive the same offer for its membership]]</p>
31.	<b>Intellectual property</b>	<p>All intellectual property (IP) created by the JV Co shall belong to the JV Co.</p> <p>Anglian Water and the local authorities will have their own IP which they will bring into the JV Co and which will remain their property.</p>
32.	<b>Restrictive covenants</b>	<p>No member may have any involvement in a similar or competing business whilst they are a member and for 24 months thereafter</p>

33.	<b>Confidentiality</b>	Each member shall be subject to standard confidentiality provisions although they shall be permitted to share information internally and/or with other public authorities and government departments to the extent required in order to promote the success of the business and to progress developments around nutrient neutrality, biodiversity net gain and other environmental opportunities
34.	<b>Termination</b>	The Members' Agreement will terminate upon the following: <ul style="list-style-type: none"> <li>- winding up of the JV Co</li> <li>- JV Co entering into insolvency procedures</li> <li>- an exit i.e. a sale or listing</li> </ul>
35.	<b>Dispute Resolution / Deadlock</b>	In the event of a dispute arising between any of the members: <ul style="list-style-type: none"> <li>- first, the members in dispute shall seek to resolve such dispute in good faith</li> <li>- second, member voting shall be applied in order to try to resolve the dispute, including the application of a casting vote, which would be based on the majority decision of the local authority members.</li> <li>- third, if the issue cannot be resolved and impacts on the JV Co then with the agreement of the parties the matter shall be referred to mediation</li> </ul>
36.	<b>Winding Up</b>	On a solvent liquidation (members voluntary liquidation), the surplus assets (after first settling any outstanding liabilities including the repayment of member loans) shall be appointed to another business with a similar purpose, which is common for charity operating through a company limited by guarantee.
37.	<b>FCA Regulation</b>	Not to be progressed.
38.	<b>Procurement</b>	The JV Co will be required to comply with any procurement laws and regulations.



39.	OTHER	None
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