Articles of Association (the “Articles”) for The Property Ombudsman Limited (the “Company”)

Summary Explanatory Note of the Articles of Association of the Company as amended and adopted by special resolution on 24 January 2019.

1 Introduction

This summary note is intended to provide a brief index and summary of the key provisions of the Company’s Articles. It is not intended to obviate the need for personnel to familiarise themselves with the detailed terms of the Articles nor should this note be relied upon as a substitute for legal advice from a qualified solicitor regarding any actual legal issue arising from the governance of the Company.

2 Addressees

This note is prepared for the Board and senior management team of the Company and is subject to our terms of engagement. It should not be disclosed to or relied upon by any other person or made public without our prior written consent.

3 Definitions

The following defined terms are used throughout this note:

Director: means a director of the Company who is either an Independent Director or a Sector Director;

Eligible Director: means a Director who would be entitled to vote on the matter at a meeting of Directors (but excluding any Director whose vote is not to be counted in respect of the particular matter);

Independent Director: means a non-executive Director who is a natural person, independent of the Sector and whom the Board considers to be at the time of their appointment or reappointment a representative of public or consumer interests concerned with any aspect of the Company’s activities;

Ordinary resolution: means a resolution of the Company Members which requires at least 50% plus 1 of the votes cast in favour of it in order to pass;

Sector: means the business sectors of estate agency, property management and lettings and such other industries as may be determined by the Board from time to time;

Sector Director: means a non-executive Director who is a natural person and in the opinion of the Board is widely recognised as an expert in any significant part of the Sector;

Special resolution: means a resolution of the Company Members which requires at least 75% of the votes cast in favour of it in order to pass.

Additional defined terms are used in context within the relevant sections of this note.

4 Company Structure

The Company is constituted as a private company limited by guarantee. Please note that the Company is not currently set up as a charitable company and although it may be operating on a non-profit basis this does not grant it charitable status under English Law.

The Company therefore has no share capital and has members (known as “Company Members” in these Articles). The Company Members, in agreeing to become members of the Company, have each guaranteed to contribute £1 to liabilities of the Company if it were
ever to be wound up and its resources are insufficient to repay creditors (Article 5). Note that this guarantee is not a membership subscription and does not need to be paid ‘up-front’ by Company Members.

Accordingly, the Company does not have the capacity to issue shares nor do the Company Members hold an interest in the Company that could be traded for value or profit.

5 Objects and Powers (Article 2).

5.1 The Company has chosen to limit and set out its objects. These are set out in Article 2.1 and describe the functions of the Company.

5.2 The powers available to the Company to enable them to achieve their objects are set out at Article 2.2 and include a broad range of actions normally utilised by private companies.

5.3 If the Company acts outside these objects or powers (known as acting ‘ultra-vires’) it would not immediately make those actions void and a contract with a third party, entered into in good faith, would remain valid. However, acting ultra-vires may lead to the Directors of the Company being found personally liable and they may be in breach of their general duties as directors in permitting such action to take place.

6 Income (Article 3)

6.1 Article 3 sets out how the Company may use its income. It must be used only in promoting the Company’s objects.

6.2 Accordingly, the Company may not pay any dividends or other distributions of its capital to Company Members.

6.3 However, this does not prevent the Company from:

6.3.1 paying Company Members and Directors proper remuneration for services they provide (including payment as officers and employees of the Company);

6.3.2 paying interest on money lent at a reasonable and proper rate by Company Members or Directors; and

6.3.3 payment of properly incurred expenses to Directors.

(Article 3.3)

7 Directors (Part 2 of the Articles)

7.1 Role of Directors (Article 6/7)

7.1.1 The Directors of the Company (together “the Board”) are charged with overall responsibility for the management and oversight of the Company for which they may use any or all of the powers granted in the Articles.

7.1.2 It should be noted that the Directors are under a general statutory and common law duty to act in good faith and in the best interests of the Company.

7.2 Composition of the Board

7.2.1 There must be a minimum of 2 Directors and a maximum of 9 (Article 20.1).

7.2.2 The Directors are made up of “Sector Directors” and “Independent Directors”:

(a) There may be up to 3 Sector Directors; and
(b) There may be up to 6 Independent Directors.

7.2.3 However, at all times at least half of the Directors must be Independent Directors.

7.2.4 Note that only “natural persons” may be Directors of the Company.

7.3 Appointment and Term

7.3.1 All Directors are appointed for a term of 4 years and may be reappointed for 1 further term only (Article 22.1). Directors can therefore only serve for a maximum of 8 consecutive years.

7.3.2 All candidates for appointment as Director have to be recommended and put forward by the Remunerations and Nominations Committee of the Company (Article 21.2). (NB: the Board will set the terms of reference for the Remunerations and Nominations Committee).

7.3.3 Candidates may then be appointed (or Directors re-appointed, as applicable) either by:

(a) A decision made by the existing Directors; or

(b) An Ordinary resolution of the Company Members.

7.4 Termination of Directors’ Appointments (Article 23)

7.4.1 A Director ceases to be a Director in the circumstances set out in Article 23.1. This happens automatically when the relevant event occurs (e.g. when the Director becomes subject to a bankruptcy order, Article 23.1.3).

7.4.2 In addition, a Director may be removed by an Ordinary resolution passed by the Company Members under the Companies Act 2006.

7.4.3 A Director may also resign on notice given to the Company, which shall take effect on the date such notice is given.

7.5 Remuneration and Expenses (Articles 24 and 25).

7.5.1 The Company may pay Directors’ reasonable expenses incurred with attendance at meetings and otherwise incurred in discharging their responsibilities as Directors (Article 24.1).

7.5.2 Directors, solely or collectively, are entitled to such other remuneration as the Board decides in connection with their services given to the Company (either as directors or for any other services they undertake for the Company) (Article 25).

7.6 Services by Directors (Article 26)

7.6.1 Directors are permitted to undertake and perform services (except as an Auditor) for the Company (for which they are entitled to be paid) e.g. as employees or contractors.

7.6.2 However, Independent Directors are not permitted to hold executive or employee positions within the Company.

7.6.3 Independent Directors are also not permitted to act in a professional capacity for or on behalf of the Company, e.g. as an accountant or legal advisor (Article 19.1.4).
7.7 Company Secretary (Article 28)

7.7.1 The Board may appoint a Company Secretary on such terms as they see fit but are not obliged to do so. The Company Secretary’s principal role is to manage the Company filings and other administrative functions of the Company, but they may also sign documents on its behalf.

8 Decision Making by Directors

8.1 Collective Decision Making (Articles 11 and 12).

8.1.1 Directors may make decisions in the following ways:

(a) By a majority decision at a “Directors’ Meeting” (described below); or

(b) By unanimous decision by means of a “Written Resolution”.

8.1.2 A Written Resolution is passed by means of a resolution circulated and signed or otherwise agreed to in writing by all Eligible Directors (Article 12.1). Note that the Directors do not have to sign the same single document and a Written Resolution may be approved by circulating a copy by email or other means, providing the Directors’ assent is given in writing. This may also be by email.

8.2 Directors’ Meetings

8.2.1 Directors Meetings must take place at least 4 times a year.

8.2.2 Any Director may call a Directors’ Meeting on 10 Clear Business Days’ notice (unless all of the Directors agree to having a shorter period).

8.2.3 Notice of the Meeting must be given in writing to each Director who has not specifically waived the right to require such notice. Article 13.5 sets out what the notice must contain.

8.2.4 A Director may waive the right to receive notice any time before the Meeting is convened or may do so retrospectively up to 7 days after it was actually held.

8.2.5 Directors do not need to be physically present at the place where the Meeting is convened providing they can each communicate with each other (e.g. by conference call) (Article 15). If all the Directors participating in a Meeting are not in the same place, they may decide that the Meeting is to be treated as taking place wherever any one of them is at that time.

8.3 Quorum (Article 16)

8.3.1 The Quorum for Directors’ Meetings is:

(a) a minimum of 2 Eligible Directors; and

(b) at least 1/3rd of all Directors in office (rounding down if required); and

(c) At least half must be Independent Directors.

(Article 16.2).

8.3.2 If there is no quorum, then no decision can be made save for a decision to call another meeting.
8.3.3 There are special rules for quorum decisions where a conflict of interest arises, please see section 8.7 below.

8.4 Chair (Article 17).

8.4.1 The Board may appoint a chair and a vice chair for their Board meetings. Such appointment is terminable at any time.

8.4.2 If the Chair is not present within 10 minutes of the start of the meeting, then the vice chair shall chair the meeting. If neither is present then the Directors may appoint any Independent Director as a temporary substitute.

8.4.3 The Chair has a casting vote in case of any tied decisions, provided the Chair is:

(a) an Independent Director; and
(b) an Eligible Director.

(Article 11.4).

8.5 Conflicts of Interest (Article 18)

8.5.1 We would recommend that the Conflict of Interest provisions set out in the Articles are read in full and reviewed by each Director.

8.5.2 Company directors are, under statute, subject to a duty to avoid conflicts of interest with their appointing company. These conflicts may be direct or indirect and actual or potential in nature. The Director(s) affected by such conflict are known in the Articles as “Interested Directors”.

8.5.3 The Articles provide for Eligible Directors to authorise a conflict and participation by an Interested Director in decision making around that conflict (Article 18.2).

8.5.4 A conflict may only be authorised if:

(a) Any requirement for quorum is met without counting the Interested Director; and
(b) The matter is agreed to without the Interested Director voting, or would have been agreed to if the Interested Director had not voted.

8.5.5 The Directors may set terms for the authorisation in accordance with Articles 18.4 and 18.5.

8.5.6 Notwithstanding their duties to act in the Company’s best interests, Interested Directors are not obliged to disclose to the Company any confidential information they hold on any third party where this would be a breach of confidence in respect of that third party.

8.6 Interested Directors and Conflicts of Interest Generally (Article 19).

8.6.1 A Director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company may only exercise the rights granted to them in Articles 19.1.1 to 19.1.5 if they fully declare the nature and extent of their interest to the Company.

8.6.2 A Director with a declared interest is entitled to attend Meetings and is treated as an Eligible Director, but may not vote.
However, at all times, an Independent Director may not (whether personally or via a firm) act in any professional capacity for the Company.

A Director who has appropriately declared their interest is not accountable to the Company for any benefit they obtain from the relevant transaction.

**8.7 Quorum and Voting in case of Conflicts of Interest**

8.7.1 Where there is only 1 Eligible Director after deducting all Interested Directors from the Directors participating at a Meeting, the quorum for that Meeting (or part thereof) will be 1.

8.7.2 The Chair has a final say over whether a Director may participate in a Meeting in whole or in part as an Interested or Eligible Director, unless the question concerns whether the Chair should be counted as participating. In the latter instance, the remainder of the Directors may decide whether the Chair can participate.

**8.8 Delegation by Directors (Article 7)**

8.8.1 Directors may delegate their authority to the extent and to such person or committee as they see fit. Such delegation may be revoked at any time.

**8.9 Committees (Article 8)**

8.9.1 Committees established by the Board must follow the procedures set out in the Articles (insofar as applicable). However, Directors are permitted to establish 'rules of procedure' for a Committee which may prevail over the procedures in the Articles.

8.9.2 The Articles establish a number of standing committees, which are set out in Article 9.1. The Board appoints the chair of each of the standing committees and each Director must serve as a chair or member of at least 1 of these committees.

**9 Company Members (Part 3 of the Articles)**

9.1 Composition of Company Members

9.1.1 Only the Directors in office from time to time may be Company Members.

9.1.2 Company Membership cannot be transferred or sold to another party.

9.1.3 Company Membership ceases if the relevant Company Member ceases to be a Director.

9.2 Decision Making by Company Members

9.2.1 Company Members are entitled to pass Special resolutions and Ordinary resolutions (on the basis of one vote per member).

9.2.2 Resolutions may be passed at general meetings or by means of a Written Resolution circulated to the Company Members.

**10 General meetings (Article 30)**

10.1 There is no requirement to hold regular or scheduled general meetings.

10.2 Notice of general meetings must be issued to Company Members and other such persons who may be entitled or required to attend (including auditors).
10.3 Company Members are counted as participating in a general meeting if they are able to exercise the right to speak, communicate and vote, so do not need to be present 'in person'.

10.4 The quorum for general meetings is:

10.4.1 Any 2 Company Members; and

10.4.2 1/3rd of all current Company Members (rounding down as needs be); and

10.4.3 At least half must be Independent Directors.

(Article 31).

10.5 The Directors may appoint a person to chair a general meeting. If they do not, or if the appointee is not present within 10 minutes of the meeting’s start, then the Company Members present must appoint either a Director or one of the Company Members to chair the general meeting (Article 32.1).

10.6 Only Company Members (and their proxies) and Directors may attend and speak at general meetings, and only Company Members are entitled to vote. No other person or body, including Scheme Members and Registered Agents, may attend or speak at a general meeting without the permission of the chair of the general meeting.

10.7 Voting at general meetings takes place on a show of hands unless a poll vote is demanded in accordance with Article 38.

10.8 Proxies for Company Members may only be appointed by notice in writing. The requirements for such notices are set out at Article 39.1.

10.9 Proxies may be told how they should vote by their appointors (Article 39.3).

10.10 The Company Member who appointed a proxy is still entitled to attend and vote at a general meeting.

11 Scheme Membership (Articles 43 and 44)

11.1 The Articles permit a class of individuals or organisations as “Scheme Members” of the Company. These are individuals and organisations who carry out activities in the Sector and may use the services of the Company subject to the terms of a membership deed they are required to enter into on joining.

11.2 Scheme Members are not members of the Company from a company law perspective. As noted above at paragraph 10.6, they are not entitled to vote at a general meeting nor (without permission of the chair of the meeting) are they entitled to attend or speak at a general meeting.

11.3 The Board shall set the admission criteria and application process for accepting new Scheme Members but are entitled to refuse admission at their sole discretion (Article 42.3 and 42.4).

11.4 To become Scheme Members applicants must:

(a) Execute a membership deed in such form as approved by the Board from time to time; and

(b) pay any Subscriptions (as defined below) due for the preceding year.

(Article 42.5)
However, Propertymark and RICS are exempt from this requirement.

11.5 Scheme Members cease to be Scheme Members with immediate effect (save where the Board is required to determine some matter) if any of the criteria set out in Article 46.1 apply.

11.6 Scheme Members may withdraw on 1 month’s notice to the Company (Article 46.1.4). However, the liabilities of a Scheme Member (including payment under the membership deed) continue until the later of:

(a) 6 months (or another time set by the Board); and

(b) When the Ombudsman has completed any matter previously referred to it.

11.7 The Board or Company Secretary shall keep registers of Scheme Members (Article 42.8).

12 Registered Agents (Articles 44 and 45)

12.1 The Articles also establish a class of “Registered Agents”, being entities that carry out work in the Sector that wish to use the redress services of the Company but without becoming a Scheme Member (Article 44.2.2).

12.2 In the same way as Scheme Members, Registered Agents are not ‘members of the Company’ from a company law perspective. As noted above at paragraph 10.6, they are not entitled to vote at a general meeting nor (without permission of the chair of the meeting) are they entitled to attend or speak at a general meeting.

12.3 The Board shall set the admission criteria and application process for accepting new Registered Agents but are entitled to refuse admission at their sole discretion.

12.4 To become Registered Agents applicants must:

(a) Execute a membership deed in such form as approved by the Board from time to time, and which shall specify that Registered Agents do not subscribe to the Company’s Codes of Practice and therefore cannot use the Company’s logo; and

(b) pay any Subscriptions due for the preceding year.

12.5 Registered Agents cease to be Registered Agents with immediate effect (save where the Board is required to determine some matter) if any of the criteria set out in Article 47.2 apply.

12.6 Registered Agents may withdraw on 1 month’s notice to the Company (Article 47.2.4). However, the liabilities of a Registered Agent (including payment under the membership deed) continue until the later of:

(a) 6 months (or another time set by the Board); and

(b) When the Ombudsman has completed any matter previously referred to it.

13 Cessation of Scheme Membership or Registered Agent Status (Article 48)

13.1 Ex-Scheme Members or ex-Registered Agents are not entitled to a refund of any Subscriptions previously paid.
13.2 Ex-Scheme Members or ex-Registered Agents must still pay any Subscriptions that were due at the time they ceased to be Scheme Members or Registered Agents and also any Subscriptions due up to 6 months thereafter.

13.3 Ex-Scheme Members or ex-Registered Agents also agree to be bound to pay any award or other sum determined as due by the Ombudsman under the Company’s redress scheme for a complaint received before they ceased to be Scheme Members or Registered Agents.

14 Subscriptions (Article 49)

14.1 The Board manages “Subscriptions” for the purposes of the Company’s objects and which are to be collected from time to time from Scheme Members and Registered Agents.

14.2 The Board may set out the amounts and calculations of monies due from each Scheme Member and Registered Agent according to criteria as the Board may determine (and the relevant Scheme Member or Registered Agent shall give the Board such information and certificates as the Board requires) (Article 49.2)

15 The Ombudsman (Article 50)

15.1 The Board is to appoint an “Ombudsman” as an officer of the Company for a term of up to 5 years. This is to be on the terms that the Board see fit and in accordance with the “Terms of Reference” that the Board may set and amend from time to time.

15.2 The Ombudsman may be reappointed but is only entitled to serve a maximum consecutive term of 9 years (Article 50.1).

15.3 The Ombudsman must be “impartial, free from bias, independent of the Sector and shall not during the period of 5 years immediately prior to their appointment have held an appointment in the Sector subject to the Ombudsman’s jurisdiction” (Article 50.6).

15.4 The Ombudsman is not permitted to be (or to be an employee or officer of):

(a) a Scheme Member;

(b) a Director;

(c) a Company Member; or

(d) any member of any group of which any of the above are a member, e.g. a parent or subsidiary company of a Scheme Member.

15.5 The Ombudsman is entitled to claim reasonable expenses incurred in connection with the business of the Company.

15.6 The Ombudsman is required to resign in the circumstances set out in Article 50.3.

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