MEMORANDUM NEW ARTICLES OF ASSOCIATION FOR SWIM ULSTER LIMITED (SUL)
BACKGROUND TO & REASONS FOR ADOPTING NEW ARTICLES OF ASSOCIATION FOR SUL

THE PURPOSE.

1. The Board of Swim Ulster Limited (SUL) has resolved to change its constitution for several reasons. Amongst those reasons are considerations of good governance. Accordingly, its solicitors (Kappa Solicitors; now the Morrow Wells Kappa Solicitors partnership) were instructed to produce a new constitutional document for SUL – the New Articles of Association.

2. This brief Memorandum is intended to set out the background to & reasons for SUL proposing to its Members the adoption of a fresh constitution.

3. While the trajectory for the new governing document has been circuitous (having passed through at least 12 iterations) the new proposed constitution has been rigorously reviewed and adopted by all key stakeholders.

4. The main reasons for proceeding down the road of a new constitution are set out below. Essentially, SUL's existing constitution is based on the old Companies (NI) Order 1986. This legislation is no longer operative in Northern Ireland. It has been replaced by a UK-wide law, the Companies Act 2006 (the new Companies Act). Although the new Companies Act does not require companies to adopt new constitutions, the act does, in certain important respects, streamline & better facilitate good governance for organisations such as SUL.

5. It should also be noted that while SUL's proposed New Articles of Association are based, largely, on the new Companies Act, several features of the existing regime have been retained – also to accommodate (& in close co-operation with) Swim Ireland Limited (SIL).

THE REASONS.

The following paragraphs contain (briefly) the main reasons for the SUL Board promoting for adoption by its Members, SUL's proposed new Articles of Association. (These reasons should also be read in conjunction with the appended document: the "Memorandum of Frequently Asked Questions").

1. The existing Articles of SUL restrict the completion of business unless a minimum number of Directors are present at meetings. In the event, SUL experiences difficulties in carrying out its business – indeed, this has been the case for several years. For decision-making the existing Articles require the Board to comprise a minimum of 11 Directors (articles 29 and 45 refer). Complying with this minimum requirement has been difficult. So, the requirement has been removed in the new draft Articles. In order now to make binding decisions affecting SUL business, only 5 Directors are required to be present at a meeting.

2. For the avoidance of doubt, the New Articles of Association, if adopted, retain existing provisions on governance, the division of responsibilities and respective roles as between Members and Directors. The definition of a Member has been changed but Members retain ownership and control of the company. And, the Board of Directors continues to be the organ which runs the organisation.

3. Now also introduced into the structure & composition of the Board are best practice guidelines. Sport NI recommends these. In particular, the concept of the "independence" of the Board as the organ of governance is a target within the associations Performance Focus Funding agreement. Posts for 2 'independent directors' are accordingly being proposed.

4. Key Performance Indicators (KPI's) are required by all organisations affiliated to Sport NI. So, SUL's relationship with SIL has been formalised; & the new draft Articles have been scrutinised in detail (& have been accepted) by SIL. In the event, SUL's new draft Articles of Association accord fully with new companies' legislation; and also with the requirements of SUL's main stakeholders, namely – Sport NI and SIL.

SWIM ULSTER LIMITED – T61/1110-2

MEMORANDUM
FREQUENTLY ASKED QUESTIONS – INDEX OF QUESTIONS

THE QUESTIONS – WITH NARRATION:

1. *Why produce new Articles of Association for SUL?*

2. *What was wrong with the Articles currently in place?*

3. *What are the main differences between the new Articles and those currently in place?*

4. *How will the Board be better able to transact business under the new Articles?*

5. *What prevents the Board from taking action that the Members disagree with?*

6. *What rights to Members have in such a case?*

7. *What can a Member do if it/he/she is unhappy about the way the Board is running SUL, or about a decision taken by the Board?*

8. *Why are there still AGMs under the new Articles?*

9. *Why are there still General Council Meetings under the new Articles?*

10. *Do the proposed new Articles weaken the position of clubs in outlying areas?*

– SWIM ULSTER LIMITED –

NEW CONSITUTION/
DRAFT NEW ARTICLES OF ASSOCIATION FOR SUL (v#10.1cln)

INCORPORATING
MEMORANDUM OF FREQUENTLY ASKED QUESTIONS

A. INTRODUCTION & CONTEXT

This Memorandum accompanies the draft version *Articles of Association* for Swim Ulster Limited. This final version has been produced by Kappa Solicitors on the instructions of Swim Ulster Limited. Input into this final version has been received from, individual Board Members of Swim Ulster Ltd together with the Operations Manager of client; but also representatives of Swim Ireland Limited.

B. THE QUESTIONS

The following series of questions are a sample of questions likely to be posed by interested parties. Such persons include appointed representatives of individual swimming clubs; their constituent members; and/ or by & on enquiry at an EGM of the Company

1. ***Question*:**

Why produce new Articles of Association for SUL?

Answer:

For several years, SUL have experienced difficulties transacting business due to the overly restrictive nature of the extant & current Articles of Association. These difficulties include (but are not limited to):

a) The requirement that the Board must consist of at least 11 members in order to transact business (old/ existing *article 29*). This clause to be read with old/ existing *article 45*

b) The composition & classes of membership.

c) The lack of adequate provision for voting by proxy.

d) The fact that any amendments to the Company's constitution require a special resolution, which in itself requires 75% support to pass (old *article 12(1)*).

e) The lack of provision to permit Directors to make further rules to improve the management of the Company.

f) The lack of provisions in respect of adjourned meetings.

The new Articles are intended to solve these problems, and to facilitate the efficient management of the Company by reducing unnecessary bureaucracy, and to present a more professional, business-like approach to the management of SUL.

2. ***Question:***

What was wrong with the Articles currently in place?

Answer:

a) The current Articles are unduly restrictive (perhaps unreasonably so). In essence key restrictive terms (*arts 29 & 45*) have become an obstacle to efficiently transacting Board business. In particular, the current Articles require 11 members to be on the Board of Directors before any substantive business can be transacted.

b) As a result, at times the Board had been acting unconstitutionally – in particular, at any time its numbers dropped below 11. Decisions, therefore, deliberated on & taken or made during that time might have been open to challenge (& struck down). Any business on the SUL agenda could not have been transacted without first addressing this constitutional deficiency.

c) In addition to overcoming this particular issue, adoption of the new *draft Articles* may result in ameliorating the bureaucratic load (although this remains to be seen – given the adoption of several terms which are not necessary or prescribed by the 2006 legislation); and present a more professional, business-like approach to the management of SUL.

3. ***Question:***

What are the main differences between the new Articles and those currently in place?

Answer:

The following are the key differences between SUL's existing Articles of Association and the new *draft Articles*:

a) The *Defined Terms section* has been updated and modified to give greater detail and to bring clarification to key issues.

b) *Object of the Company* provisions have been inserted (*article 2*).

c) *Liability of Members* has been specifically set out (*article 3*).

d) *Members' reserve powers* have been inserted (*article 7*).

e) *Standing Committees* have been set out in detail (*article 10*).

f) *The removal of the requirement that there must be a minimum of 11 Directors on the Board to enable the transaction of business.* This has been replaced with the requirement that a quorum of 5 Directors must be present at a meeting to transact business. (*article 15* - refers). Therefore, under the new *draft Articles*, the minimum number of Directors required is 5 (*article 6(2)* - refers.)

g) *Directors' Roles* have been defined and set out in detail to include Chairperson, Board Secretary, Athlete Representative, Coach Representative and 2 Independent Directors (*article 21(2)*). Provision is also made for the key roles of President and Finance Officer – who are ex-officio members of the Board and therefore not entitled to vote at Directors' meetings (*article 21(3)*). The qualifications required of Independent Directors are set out in *article 32(9)*.

h) *The composition of the Board* is less restrictive in the new *draft Articles*, encouraging efficient and flexible decision making – see *article 21(2)*. Note also that the number of Directors on the Board should also never exceed 9 (*article 6(2)*).

i) Provisions in respect of *classes of membership* have been changed completely (*article 26(7)*). In particular, please note that in the new *draft Articles*, *a Member is no longer a club or organisation, but a natural person*. The new constitutional document now sets out 4 classes of membership: *competitive members*, *non-competitive members*, *officials* and *affiliates*. This streamlines, clarifies and simplifies the position in respect of membership of SUL. The new *draft Articles* also provide for child members – but this is set out separately in *article 29*.

j) The number of Members required to *convene a general meeting* has been reduced from 10 clubs in the current Articles to 14 Members (2 individuals from at least 7 clubs) in the new Articles (*article 31(1)*).

k) Provisions in respect of *anti-doping* have been inserted (*article 49*).

l) Provisions in respect of *poll votes* have been inserted (*article 40*).

m) Provisions in respect of *proxy notices* have been expanded upon, and those in respect of *proxy attendances* inserted (*articles 41 & 42*).

n) Provisions in respect of *amendments to resolutions* have been inserted (*article 43*).

o) Provisions in respect of *means of communication* which can be used have been inserted – this offers much greater flexibility (*article 44*).

p) Provisions in respect of *company seals* (*article 45*), *provision for employees* (*article 47*) and *insurance* (*article 51*) have been inserted.

q) Provisions in respect of *vulnerable adults* have been inserted (*article 29*).

4. **Question:**

How will the Board be better able to transact business under the new Articles?

Answer:

a) Under the current Articles, there must be 11 Directors on the Board if it is to be able to transact substantive business (*article 29*). Under the new *draft Articles*, the only requirement is that a quorum of 5 directors be present at a meeting for business to be transacted (*article 15(2)*).

b) Relaxed rules in relation to means of communication will also increase Board efficiency.

5. ***Question:***

What prevents the Board from taking action that the Members disagree with?

Answer:

Article 7(1) of the new *draft Articles*, empowers the Members to pass a special resolution (a vote requiring 75% support to pass) to direct the Directors to either take, or refrain from taking a certain action – Members' reserve powers, refers.

6. ***Question:***

What rights do Members have in such a case?

Answer:

Article 7(1) of the new *draft Articles* empowers the Members to pass a special resolution (vote requiring 75% support to pass) to direct the Directors to either take, or refrain from taking a certain action.

Article 31(1) of the new *draft Articles* empowers Members (at least 14 in total – 2 individuals from at least 7 clubs) to convene a general meeting to bring issues to the Board for discussion.

Article 33 of the new *draft Articles* preserves provisions in respect of General Council meetings. This provides a forum for Members to exchange views. Decisions made at General Council constitute strong but non-binding recommendations to the Board.

The Members also have the ultimate power to remove and replace the Board, should they consider that the Board is no longer acting in the best interests of the Company.

7. ***Question:***

What can a Member do if it/he/she is unhappy about the way the Board is running SUL, or about a decision taken by the Board?

Answer:

Article 7(1) of the new *draft Articles* empowers the Members to pass a special resolution (vote requiring 75% support to pass) to direct the Directors to either take, or refrain from taking a certain action.

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Article 33 of the new *draft Articles* preserves provisions in respect of General Council meetings. This provides a forum for Members to exchange views. Decisions made at General Council constitute strong but non-binding recommendations to the Board

The Members also have the ultimate power to remove and replace the Board, should they consider that the Board is no longer acting in the best interests of the Company.

8. ***Question:***

Why are there still AGMs under the new Articles?

Answer:

There is no longer a legal requirement to hold AGMs under the *Companies Act 2006*. However, it was agreed at consultation between SUL and SIL to retain these provisions in the new *draft Articles*. There was also strong support amongst some members of the Board for these provisions to be retained.

9. ***Question:***

Why are there still General Council Meetings under the new Articles?

Answer:

It had been argued that over the last several years, General Council Meetings had fallen into disuse. However, there was support within the current SUL Board to retain provisions relating to General Council Meetings in the new *draft Articles*. It was also agreed at consultation between SUL and SIL to retain these provisions. General Council also improves accountability, transparency & communication between Company Members, and the Board.

10. ***Question:***

Do the proposed new Articles weaken the position of clubs in outlying areas?

Answer:

The new *draft Articles* in fact ***strengthen the position of outlying clubs***. Only 14 Members are now required to convene a general meeting (2 individuals from at least 7 clubs). At that meeting, decisions made are binding on the Board (if the quorum of 15 is achieved). Therefore outlying clubs have a direct avenue to air issues; have their voices heard; and to effectively and efficiently communicate with the Board, and the central administration of SUL.

In addition, provisions in respect of General Council have been preserved in the new *draft Articles*, (at *art 33*). This provides a forum for Members to exchange views. Decisions made at General Council constitute strong but non-binding recommendations to the Board.