

**THE COMPANIES ACT 2006**

**PRIVATE COMPANY LIMITED BY GUARANTEE**

**ARTICLES OF ASSOCIATION**

**of**

**EAST RENFREWSHIRE CULTURE & LEISURE LIMITED**

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**EAS24.26**

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## PART 1 - INTERPRETATION AND LIMITATION OF LIABILITY

### 1 Definitions and interpretation

1.1 In these Articles, unless the context requires otherwise:

**"Act"** means the Companies Act 2006;

**"Articles"** means these articles of association;

**"Bankruptcy"** includes individual insolvency proceedings in a jurisdiction other than Scotland which have an effect similar to that of bankruptcy or sequestration;

**"Charitable Purposes"** means a charitable purpose under section 7 of the Charities Act which is also regarded as a charitable purpose in relation to the application of the Taxes Acts;

**"Chairperson"** has the meaning given in article 26;

**"Chairperson of the Meeting"** has the meaning given in article 34;

**"Charities Act"** means the Charities and Trustee Investment (Scotland) Act 2005;

**"Clear Days"** means the period of the length specified in these Articles excluding the day of the meeting and the day on which the notice is given. Where the notice is sent by post to an address in the United Kingdom, and the Company can show that it was properly addressed, pre-paid and posted, notice is deemed to have been given to the intended recipient 48 hours after it was posted;

**"Company"** means East Renfrewshire Culture & Leisure Limited;

**"Council"** means East Renfrewshire Council, a local authority constituted in terms of the Local Government etc. (Scotland) Act 1994 and having a principal office at Eastwood Park, Giffnock, East Renfrewshire G46 6UG;

**"Council Trustee"** means a Trustee appointed or re-appointed under article 8

**"Document"** includes, unless otherwise specified, any document sent or supplied in Electronic Form;

**"Electronic Form"** means, in relation to the sending or supply of a document or information, the sending or supply by electronic means (such as by e-mail or fax) or by any other means while in an electronic form (such as sending a disk by post);

**"Eligible Trustee"** means a Trustee who would be entitled to vote on the matter at a meeting of Trustees, but excluding any Trustee whose vote is not to be counted in respect of the particular matter;

**"Employee Representative Trustee"** means a Trustee appointed or re-appointed under article 11;

**"Independent Trustee"** means a Trustee appointed or reappointed under article 9;

**"Member"** has the meaning given in section 112 of the Act;

**"Objects"** means the objects of the Company described in article 2;

**"Ordinary Resolution"** has the meaning given in section 282 of the Act;

**"Participate"**, in relation to a Trustees' meeting, has the meaning given in article 23 and **"Participating"** shall be construed accordingly;

**"Proxy Notice"** has the meaning given in article 40;

**"Special Resolution"** has the meaning given in section 283 of the Act;

**"Trustee"** means a director of the Company and includes any person occupying such position, such persons being charity trustees for the purposes of the Charities Act, by whatever name called; and

**"Writing"** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in Electronic Form or otherwise.

1.2 Unless the context otherwise requires:

- 1.2.1 other words or expressions contained in these Articles bear the same meaning as in the Act as in force on the date when these Articles become binding on the Company;
- 1.2.2 words in the singular include the plural and in the plural include the singular; and
- 1.2.3 Unless the context otherwise requires, a reference to one gender includes a reference to the other gender;

1.3 These Articles apply instead, and to the exclusion, of the model articles for private companies limited by guarantee set out in schedule 2 of The Companies (Model Articles) Regulations 2008.

## 2 Objects

- 2.1 The Company will promote, advance and further Charitable Purposes and activities through the provision of services which enhance and contribute to the health, fitness and personal development and wellbeing of the residents of East Renfrewshire (and beyond) including, but not limited to, educational, sporting, culture and heritage based community activities.

2.2 In promoting, advancing and furthering Charitable Purposes and activities as detailed in article 2.1 the Company seeks to:-

2.2.1 encourage the population of the East Renfrewshire area to be more active in promoting and supporting the development of sporting and health and fitness opportunities that are accessible for everyone;

2.2.2 support people to be more creative and nurture potential for personal success and wellbeing through the provision of cultural facilities and resources;

2.2.3 help individuals and community groups to benefit from social engagement, community interaction and volunteering; and

2.2.4 promote and make available lifelong learning opportunities, including the promotion of literacy and digital inclusion, and stemming from these opportunities make a social and economic contribution to society.

2.3 For the purposes of the Charities Act the following Charitable Purposes are relevant and for the purposes of the Charities Act are the Charitable Purposes identified as applicable from section 7 of the Charities Act:-

2.3.1 the advancement of education;

2.3.2 the advancement of the arts, heritage or culture;

2.3.3 the advancement of public participation in sport; and

2.3.4 the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the condition of life for the persons from whom the facilities or activities are primarily intended.

2.4 For the purposes of the Taxes Acts the provisions set out in articles 2.1 to 2.3 inclusive shall be read together to ensure the Charitable Purposes of the Company are compliant with the Taxes Act.

### **3 Charitable Declaration**

3.1 It is declared that the assets of the Company shall only be applied for Charitable Purposes and the Trustees shall:-

3.1.1 act in accordance with the Charities Act; and

3.1.2 do nothing to prevent the Company qualifying and continuing to qualify as charitable.

3.2 Each of the Trustees shall, in exercising his powers and duties as a Trustee, act in the interests of the Company. In doing so the Trustees must seek, in good faith, to ensure that the Trustees act in

a manner which is in accordance with the purposes of the Company and act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person.

#### **4 Powers**

In furtherance of the Objects the Company shall have the following powers:

##### **SERVICES**

- 4.1 to promote, establish, operate and manage facilities for culture, education, recreation, sports and other leisure time activities;
- 4.2 to prepare, organise, support (financially and/or otherwise) participate in, and/or conduct conferences, seminars, courses, programmes and events of all kinds;
- 4.3 to commission and/or conduct research, and to publish and promote the results of such research;
- 4.4 to design, prepare, publish and/or distribute informational and promotional materials, including information packs, leaflets, books, newsletters, magazines, posters and other publications, audio and video recordings, multimedia products, display materials and online or electronic resources;

##### **FINANCIAL**

- 4.5 to raise and accepts funds and contributions from any source, and appeal and apply for funds and contributions;
- 4.6 to effect insurance against risks relating to the activities of the Company and insurance referred to in article 47;

##### **PERSONNEL**

- 4.7 to employ and remunerate such employees as are considered necessary from time to time for the furtherance of the Objects, and to make arrangements for the putting in place of pensions provision for such employees and their partners and dependants;
- 4.8 to engage such consultants and advisers as are considered appropriate from time to time;

##### **COLLABORATION**

- 4.9 to liaise with any other person, including European, UK, Scottish and local government authorities and agencies, local enterprise companies, local economic development companies, voluntary sector bodies and others, all with a view to maximising the effectiveness of the Company in pursuing its Objects;
- 4.10 to initiate, promote, conduct, participate in (whether via a wholly owned subsidiary, a joint venture company, limited liability partnership or otherwise), co-ordinate, monitor and/or assist (whether

- financially or otherwise), projects, initiatives and schemes of all kinds which further any of the Objects;
- 4.11 to promote companies and/or bodies whose activities may further one or more of the above Objects or may generate income to support the activities of the Company, acquire and hold shares, stocks, debentures and other interests in such companies, and carry out in relation to any such company which is a subsidiary of the company, all such functions as may be associated with a holding company;
  - 4.12 to enter into any arrangement with any person which may be advantageous for the purposes of the activities of the Company, and to enter into any arrangement for co-operation or mutual assistance with any charity;

#### PROPERTY

- 4.13 to purchase, take on lease or in exchange, hire or otherwise acquire any property and any rights or privileges and to construct, maintain and alter any buildings or erections which the Company may think necessary for the promotion of its Objects;
- 4.14 to sell, let, mortgage, dispose of or turn to account all or any of the property or assets of the Company with a view to the furtherance of the Objects;
- 4.15 to improve, manage, exploit, develop and otherwise deal with all or any part of the undertaking, property and rights of the Company;
- 4.16 to acquire and take over the whole or any part of the undertaking and liabilities of any person entitled to any property or rights suitable for any of the Objects;
- 4.17 to purchase, take on lease, hire, take in exchange, and otherwise acquire any property and rights which may be advantageous for the purposes of the activity of the Company;
- 4.18 to sell, let, hire, license, give in exchange and otherwise dispose of all or any part of the undertaking, property and rights of the Company;
- 4.19 to improve, manage, enhance, develop, turn to account and otherwise deal with all or any part of the undertaking, property and rights of the Company;
- 4.20 to oppose or object to any application or proceedings which may prejudice the Company's interests; and
- 4.21 to do any or all such other lawful things as are necessary for the attainment of, or which might reasonably be regarded as likely to further, or which might appropriately be carried out in connection with, any or all of the Objects.



## **5 Income and Property**

- 5.1 The income and property of the Company shall be applied solely towards the promotion of its Objects set out in article 2 and no portion shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to Members of the Company nor shall any payments be made to Trustees except as permitted by these Articles.

## **6 Liability of Members**

- 6.1 The liability of each Member is limited to £1, being the amount that each Member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a Member or within one year after he ceases to be a Member, for:
- 6.1.1 payment of the Company's debts and liabilities contracted before he ceases to be a Member;
  - 6.1.2 payment of the costs, charges and expenses of winding up; and
  - 6.1.3 adjustment of the rights of the contributories among themselves.

## **PART 2 - TRUSTEES**

## **7 Number of Trustees**

The maximum number of Trustees shall be 9 comprising:

- 7.1 a maximum of four Council Trustees;
- 7.2 a maximum of four Independent Trustees; and
- 7.3 a maximum of one Employee Representative Trustees.

## **APPOINTMENT AND REMOVAL OF TRUSTEES**

## **8 Appointment and removal of Council Trustees**

- 8.1 Subject to article 7 the Council, for so long as it remains a Member of the Company, may by notice in writing given to the Company:
- 8.1.1 appoint any elected member of the Council who is willing so to act be a Council Trustee; or
  - 8.1.2 remove any Council Trustee from the office of Trustee.
- 8.2 Any appointment or removal of a Trustee under this article 8 shall be effective from the date on which the relevant notice is given to the Company.

## **9 Appointment and removal of Independent Trustees**

- 9.1 Subject to articles 7, 9.3 and 10 the Council, for so long as it remains a Member of the Company, may by notice in writing, signed on its behalf by an appropriate officer and given to the Company:
- 9.1.1 appoint any person from among the candidates recommended to it by the Nominations Committee (other than an elected member, officer, or employee of the Council) who is willing so to act to be an Independent Trustee; or
  - 9.1.2 remove any Independent Trustee from the office of Trustee.
- 9.2 Any appointment or removal of a Trustee under this article 9 shall be effective from the date on which the relevant notice is given to the Company.
- 9.3 The Independent Trustees shall be appointed on the basis of their being representative of the East Renfrewshire area and/or together representing or possessing a comprehensive range of skills and interests relevant to the Objects of the Company, and of their having skills and experience which, in the opinion of the Member, would be of assistance to the board of Trustees.
- 9.4 Subject to article 9.3, and notwithstanding the provisions of article 9.1 and article 10, if, at any time, there is less than two appointed Independent Trustees, the Council shall have the power to appoint Independent Trustees (other than elected members, officers, or employees of the Council) who are willing so to act to be Independent Trustees in order to make up the number of appointed Independent Trustees to no more than two.

## **10 Nominations Committee**

- 10.1 The Trustees shall establish a committee (the "Nominations Committee") to make recommendations to the Council in relation to the selection of appropriate individuals for appointment as Independent Trustees.
- 10.2 The members of the Nominations Committee shall comprise:
- 10.2.1 two (2) Council Trustees;
  - 10.2.2 two (2) Independent Trustees; and
  - 10.2.3 one (1) individual (not being a Trustee) who shall have expertise in HR matters.
- 10.3 Subject to articles 10.2 to 10.4, the composition and proceedings of the Nominations Committee shall be governed by such standing orders as may be issued by the Trustees from time to time.
- 10.4 In carrying out its functions, the Nominations Committee shall give effect to the following principles:-

- 10.4.1 the Nominations Committee should set an appropriate skills matrix to guide it in selecting and evaluating appropriate candidates, and should review and adjust that skills matrix from time to time;
- 10.4.2 nominations for Independent Trustees falling within the remit of the Nominations Committee should be sought from representatives of the local community and/or other stakeholders and/or others having skills that could assist the Company in carrying out its objects including (but not limited to) community representatives, sports representatives, facility users/customers, academic representatives and members of the business community;
- 10.4.3 all expressions of interest submitted via a formal and prescribed selection and recruitment process which has been set by the Nominations Committee should be considered by the Nominations Committee; and
- 10.4.4 the Nominations Committee should maintain a register of suitable candidates for future reference.

## **11 Appointment and removal of Employee Representative Trustees**

- 11.1 Subject to article 7 the Council, for so long as it remains a Member of the Company, may by notice in writing, signed on its behalf by an appropriate officer and given to the Company:
  - 11.1.1 appoint an Eligible Employee Representative, who shall be agreed upon amongst Eligible Employee Representatives from time to time and is willing so to act as an Employee Representative Trustee; or
  - 11.1.2 remove any Employee Representative Trustee from the office of Trustee.
- 11.2 Any appointment or removal of a Trustee under this article 11 shall be effective from the date on which the relevant notice is given to the Company.
- 11.3 In this clause, an Eligible Employee Representative shall mean a representative of a trade union that represents employees of the Company from time to time.

## **12 Term and Termination of Trustee's appointment**

- 12.1 Each Trustee shall, once appointed, hold office for no more than four years from the date on which he is appointed ("Set Term"). At the end of a Set Term that Trustee may (subject to article 12.2) be reappointed or nominated for re-appointment (as the case may be) always in accordance with the provisions of these Articles.
- 12.2 Subject to article 12.3 a Trustee shall serve a maximum of two consecutive Set Terms.
- 12.3 Notwithstanding the provisions of article 12.2, a Trustee may serve one or more additional Set Term in addition to his second Set Term if the remaining Trustees determine at a meeting of the

Trustees that special circumstances exist which justify the appointment of that Trustee for each Set Term in addition to his second Set Term.

**12.4 A person ceases to be a Trustee if:**

- 12.4.1 that person ceases to be a Trustee by virtue of any provision of the Act or is prohibited from being a Trustee by law;
- 12.4.2 that person becomes prohibited by law from being a charity trustee;
- 12.4.3 a Bankruptcy order is made against that person;
- 12.4.4 a composition is made with that person's creditors generally in satisfaction of that person's debts;
- 12.4.5 notification is received by the Company from the Trustee that the Trustee is resigning from office, and such resignation has taken effect in accordance with its terms.

**13 Trustees' and secretary's expenses and remuneration**

- 13.1 The Company may pay any reasonable expenses which the Trustees and the company secretary (if any) properly incur in connection with their attendance at meetings of Trustees or committees of Trustees or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company.
- 13.2 No Trustee shall be appointed to any office under the Company in respect of which a salary or fee is payable.
- 13.3 No benefit (in money or money's worth) shall be given by the Company to any Trustee except for the repayment of reasonable out of pocket expenses.
- 13.4 The Employee Representative Trustee (if he/she is also an employee of the Company) shall, notwithstanding that he/she is a Trustee of the Company, be entitled to all remuneration, and all pensions and/or other benefits, paid or provided to him/her in his/her capacity as an employee of the Company.

**TRUSTEES' POWERS AND RESPONSIBILITIES**

**14 Trustees' general authority**

- 14.1 Subject to these Articles, the Trustees are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

**15 Members' reserve power**

- 15.1 The Members may, by Special Resolution, direct the Trustees to take, or refrain from taking, specified action.

- 15.2 No such Special Resolution invalidates anything which the Trustees have done before the passing of the resolution.

## **16 Trustees' interests**

- 16.1 Subject to the provisions of the Act, articles 2, 17.3 and 28.2 and provided that he/she has disclosed to the Trustees the nature and extent of any personal interest which he/she has (unless immaterial), a Trustee:

- 16.1.1 may be a party to, or have some other personal interest in, any transaction or arrangement with the Company or any associated company;
- 16.1.2 may be party to, or have some other personal interest in, any transaction or arrangement in which the Company or any associated company has an interest;
- 16.1.3 in the case of the Employee Representative Trustee, may be employed by the Company;
- 16.1.4 may be a trustee or secretary of, or employed by, or have some other personal interest in any associated company;
- 16.1.5 shall not, because of his/her office, be accountable to the Company for any benefit which he/she derives from any such office or employment or from any such transaction or arrangement or from any interest in any such company,
- 16.1.6 and no such transaction or arrangement shall be liable to be treated as void on the grounds of any such interest or benefit.

- 16.2 Without prejudice to 16.1 above, a Trustee may be an elected member, officer, or employee of the Council and the duty of Trustees under section 175 of the Act to avoid situations under which they have, or could have, a direct or indirect interest that conflicts, or possibly might conflict, with the interests of the Company shall not extend to any such relationship with the Council.

## **17 Conduct of Trustees**

- 17.1 Each of the Trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the Trustees or the Members from time to time; for the avoidance of doubt, the code of conduct shall be supplemental to the provisions relating to the conduct of directors contained in these Articles, and the relevant provisions of these Articles shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.
- 17.2 It is the duty of each Trustee to take decisions (and exercise his/her other powers and responsibilities as a Trustee) in such a way as he/she considers, in good faith, will be most likely to promote the success of the Company and will be in the interests of the Company, and irrespective

of office, post, engagement or other connection which he/she may have with any other body which may have an interest in the matter in question.

- 17.3 Without prejudice to 17.2 above, each of the Trustees shall have a duty, in exercising functions as a charity trustee, to act in the interests of the Company; and in particular, must:

17.3.1 seek, in good faith, to ensure that the Company acts in a manner which is in accordance with its purposes;

17.3.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;

17.3.3 in circumstances giving rise to the possibility of a conflict of interest between the Company and any party responsible for the appointment of a Trustee:

17.3.3.1 put the interests of the Company before the other party;

17.3.3.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the Company and refrain from participating in any deliberation or decision of the other Trustees with regard to the matter in question;

17.3.4 ensure that the Company complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities Act ; and

17.3.5 comply with the rules and/or bye laws prescribed by the board of Trustees from time to time, in accordance with article 17.1; for the avoidance of doubt, such rules and/or bye laws shall be supplemental to the provisions relating to the conduct of Trustees contained in these Articles, and the relevant provisions of these Articles shall be interpreted and applied in accordance with the provisions of the rules and/or bye laws in force from time to time.

## **18 Trustees may delegate**

- 18.1 Subject to these Articles, the Trustees may delegate any of the powers which are conferred on them under these Articles:

18.1.1 to such person or committee;

18.1.2 by such means (including by power of attorney);

18.1.3 to such an extent;

18.1.4 in relation to such matters or territories; and

18.1.5 on such terms and conditions;

as they think fit.

18.2 If the Trustees so specify, any such delegation may authorise further delegation of the Trustees' powers by any person to whom they are delegated.

18.3 The Trustees may revoke any delegation in whole or part, or alter its terms and conditions.

## **19 Committees**

19.1 Committees to which the Trustees delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of these Articles which govern the taking of decisions by Trustees.

19.2 The Trustees may make rules of procedure for all or any committees, which prevail over rules derived from these Articles if they are not consistent with them.

## **DECISION MAKING BY TRUSTEES**

### **20 Trustees to take decisions collectively**

20.1 The general rule about decision-making by Trustees is that any decision of the Trustees must be either a majority decision at a meeting or a decision taken in accordance with article 21.

20.2 If:

20.2.1 the Company only has one Trustee for the time being; and

20.2.2 no provision of these Articles requires it to have more than one Trustee,

the general rule does not apply, and the Trustee may (for so long as he remains the sole Trustee) take decisions without regard to the provisions of articles 20 to 30 inclusive.

### **21 Unanimous decisions**

21.1 A decision of the Trustees is taken in accordance with this article when all Eligible Trustees indicate to each other by any means that they share a common view on a matter.

21.2 Such a decision may take the form of a resolution in Writing where each Eligible Trustee has signed one or more copies of it or to which each Eligible Trustee has otherwise indicated agreement in Writing.

21.3 A decision may not be taken in accordance with this article if the Eligible Trustees would not have formed a quorum at such a meeting in accordance with article 25 below.

## **22 Calling a Trustees' meeting**

- 22.1 Any Trustee may call a Trustees' meeting by giving notice of the meeting to the Trustees or by authorising the company secretary (if any) to give such notice.
- 22.2 Notice of any Trustees' meeting must indicate:
- 22.2.1 its proposed date and time;
  - 22.2.2 where it is to take place; and
  - 22.2.3 if it is anticipated that Trustees Participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 22.3 Notice of a Trustees' meeting must be given to each Trustee, but need not be in Writing.
- 22.4 Notice of a Trustees' meeting need not be given to Trustees who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

## **23 Participation in Trustees' meetings**

- 23.1 Subject to these Articles, Trustees participate in a Trustees' meeting, or part of a Trustees' meeting ("**Participate**") when:
- 23.1.1 the meeting has been called and takes place in accordance with these Articles; and
  - 23.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 23.2 In determining whether Trustees are Participating in a Trustees' meeting, it is irrelevant where any Trustee is or how they communicate with each other.
- 23.3 If all the Trustees 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 of them is.

## **24 Council observers at meetings of the Trustees**

- 24.1 The Trustees shall allow individuals, nominated by the Council (for so long as it is a Member of the Company), to attend and speak (but not vote) at any meeting of the Trustees; any such person shall not be entitled to exercise any of the powers of a Trustee, and shall not be deemed to constitute a Trustee for the purposes of the Act, the Charities Act or any provision of these Articles.



**25 Quorum for Trustees' meetings**

- 25.1 At a Trustees' meeting, unless a quorum is Participating, no proposal is to be voted on, except a proposal to call another meeting.
- 25.2 The quorum for Trustees' meetings may be fixed from time to time by a decision of the Trustees, but where the Company has two or more Trustees it must never be less than two, and unless otherwise fixed it is five.
- 25.3 A quorum shall not be deemed to be present at any meeting of the Trustees unless there is at least one Council Trustee and one Independent Trustee present at that meeting (except if at any time there is no Council Trustee appointed to the Company, in which case the quorum shall be present only if all Independent Trustees and the Employee Representative Trustee are present).
- 25.4 If the total number of Trustees for the time being is less than the quorum required, the Trustees must not take any decision other than a decision to call a general meeting so as to enable the Members to appoint further Trustees.

**26 Chairing of Trustees' meetings**

- 26.1 The Trustees may appoint a Trustee to chair their meetings.
- 26.2 The person so appointed for the time being is known as the Chairperson.
- 26.3 The Trustees shall endeavour to select an Independent Trustee as Chairperson, provided an Independent Trustee is willing to act in such a role.
- 26.4 The Trustees may terminate the Chairperson's appointment at any time.
- 26.5 If the Chairperson is not Participating in a Trustees' meeting within ten minutes of the time at which it was to start, the Participating Trustees must appoint one of themselves to chair it.

**27 Casting vote**

- 27.1 If the numbers of votes for and against a proposal are equal, the Chairperson or other Trustee chairing the meeting has a casting vote.
- 27.2 Article 27.1 does not apply if, in accordance with these Articles, the Chairperson or other Trustee is not to be counted as Participating in the decision-making process for quorum or voting purposes.

**28 Trustees' conflicts of interest in transactions or arrangements**

- 28.1 If a proposed decision of the Trustees is concerned with an existing or proposed transaction or arrangement with the Company in which a Trustee is interested (whether directly or indirectly), that

Trustee shall disclose the nature and extent of that interest to the other Trustees in accordance with sections 177 or 182 of the Act and the Charities Act as applicable.

28.2 Subject to 28.4, 28.5 and 28.7, a Trustee shall not vote at a meeting of Trustees or at a meeting of a committee of Trustees on any resolution concerning a matter in which he/she has, directly or indirectly, a personal interest or duty (unless immaterial) which conflicts or may conflict with the interests of the Company.

28.3 For the purposes of 28.1 above:

28.3.1 an interest of a person who is taken to be connected with a Trustee for any purpose of the Act, shall be treated as a personal interest in the Trustee; and

28.3.2 a Trustee shall (subject to 28.4) be deemed to have a personal interest in relation to a particular matter if a body in relation to which he/she is an employee, Trustee, member of the management committee, officer or elected representative has an interest in that matter.

28.4 A Council Trustee shall, notwithstanding the provisions of 28.1 and 28.3.2, be entitled to vote in relation to a particular matter notwithstanding that the Council has an interest in that matter; but on the basis that in the exercising their voting rights in respect of any such matter, the Council Trustees shall comply with the provisions of article 17.

28.5 A Trustee shall, notwithstanding the provisions of 28.1 and 28.2, be entitled to vote in relation to a particular matter notwithstanding that he/she has an interest in that matter; but only on the basis that:

28.5.1 a majority of the Trustees present at the meeting who are not interested in the matter approve that he/she be entitled to vote; and

28.5.2 in the exercising their voting rights in respect of any such matter, he/she shall comply with the provisions of article 17.

28.6 A Trustee will not count towards the quorum of a meeting (or part of a meeting) at which he/she is not entitled to vote.

28.7 The Company may (subject to the Charities Act) by Ordinary Resolution suspend or relax to any extent, either generally or in relation to any particular matter, the provisions of this article 28.

## **29 Minutes of meetings**

29.1 The Trustees shall ensure that the Company records minutes of proceedings at any Trustees' meetings and that such records are kept for at least 10 years from the date of the relevant meeting.

### **30 Trustees' discretion to make further rules**

Subject to these Articles, and provided it does not conflict with these Articles, the Trustees may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to Trustees. **PART 3 – DECISION-MAKING BY MEMBERS**

## **ORGANISATION OF GENERAL MEETINGS**

### **31 Convening a general meeting**

- 31.1 The Trustees of the Company may call a general meeting of the Company.
- 31.2 In accordance with the provisions of the Act, the Members of the Company may require the Trustees to call a general meeting of the Company provided the request is made by Members representing at least 5% of the total voting rights of all the Members having a right to vote at general meetings.
- 31.3 A general meeting must be called by notice of at least 14 Clear Days. It may be called by shorter notice than this if agreed to by a majority in number of Members having a right to attend and vote at the meeting, being a majority who together hold not less than 90% of the total voting rights at that meeting of all the Members.
- 31.4 Notice of a general meeting must be sent to every Member, every Trustee and the Company's auditors (if any).
- 31.5 A notice of a general meeting must include:
- 31.5.1 the time, date and place of the meeting;
  - 31.5.2 the general nature of the business to be dealt with at the meeting; and
  - 31.5.3 notification of the Member's right to appoint one or more proxies to exercise all or any of his rights to attend, speak and vote at a meeting as set out in section 324 of the Act.

### **32 Attendance and speaking at general meetings**

- 32.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- 32.2 A person is able to exercise the right to vote at a general meeting when:
- 32.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

32.2.2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

32.3 The Trustees may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

32.4 In determining attendance at a general meeting, it is immaterial whether any two or more Members attending it are in the same place as each other.

32.5 Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

### **33 Quorum for general meetings**

33.1 No business other than the appointment of the Chairperson of the Meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

33.2 If and for so long as the Company has only one Member, the quorum is one qualifying person. In any other case, the quorum is two qualifying persons subject to section 318(2) of the Act. A "qualifying person" means an individual who is a Member of the Company, a corporate representative duly authorised under section 323 of the Act, or a person appointed as a proxy of a Member in relation to a meeting.

### **34 Chairing general meetings**

34.1 If the Trustees have appointed a Chairperson, the Chairperson shall chair general meetings if present and willing to do so.

34.2 If the Trustees have not appointed a Chairperson, or if the Chairperson is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:

34.2.1 the Trustees present; or

34.2.2 (if no Trustees are present), the meeting,

must appoint a Trustee or Member to chair the meeting, and the appointment of the Chairperson of the Meeting must be the first business of the meeting.

34.3 The person chairing a meeting in accordance with this article is referred to as "the Chairperson of the Meeting".

### **35 Attendance and speaking by Trustees and non-Members**

35.1 Trustees may attend and speak at general meetings, whether or not they are Members.

- 35.2 The Chairperson of the Meeting may permit other persons who are not Members of the Company to attend and speak at a general meeting.

### **36 Adjournment**

- 36.1 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the Chairperson of the Meeting must adjourn it.
- 36.2 The Chairperson of the Meeting may adjourn a general meeting at which a quorum is present if:
- 36.2.1 the meeting consents to an adjournment; or
  - 36.2.2 it appears to the Chairperson of the Meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- 36.3 The Chairperson of the Meeting must adjourn a general meeting if directed to do so by the meeting.
- 36.4 When adjourning a general meeting, the Chairperson of the Meeting must:
- 36.4.1 either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the Trustees; and
  - 36.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 36.5 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the Company must give at least 7 Clear Days' notice of it:
- 36.5.1 to the same persons to whom notice of the Company's general meetings is required to be given; and
  - 36.5.2 containing the same information which such notice is required to contain.
- 36.6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

## **VOTING AT GENERAL MEETINGS**

### **37 Voting: general**

- 37.1 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with these Articles.
- 37.2 On a vote on a resolution on a show of hands:

- 37.2.1 every Member who (being an individual) is present in person shall have one vote;
  - 37.2.2 every proxy present who has been duly appointed by one or more Members entitled to vote on the resolution shall have one vote unless article 37.2.4 or article 37.2.5 applies;
  - 37.2.3 every Member who (being a body corporate, including any local authority) is present by a duly authorised corporate representative shall have one vote;
  - 37.2.4 a proxy has one vote for and one vote against the resolution if he has been duly appointed by more than one Member entitled to vote on the resolution and he has been instructed by one or more of those Members to vote for the resolution and by one or more other of those Members to vote against it;
  - 37.2.5 where a proxy has been duly appointed by more than one Member entitled to vote on the resolution and has received concrete instructions to vote in the same way from one or more of those Members and been given a discretion as to how he votes by one or more other of those Members, he may, if he chooses, cast a second vote the other way under the discretionary authority.
- 37.3 On a vote on a resolution on a poll taken at a meeting, every Member has one vote. On a poll, votes may be given personally or by proxy.

### **38 Errors and disputes**

- 38.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- 38.2 Any such objection must be referred to the Chairperson of the Meeting whose decision is final.

### **39 Poll votes**

- 39.1 A poll on a resolution may be demanded:
  - 39.1.1 in advance of the general meeting where it is to be put to the vote; or
  - 39.1.2 at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- 39.2 A poll may be demanded by:
  - 39.2.1 the Chairperson of the Meeting;
  - 39.2.2 the Trustees;
  - 39.2.3 two or more persons having the right to vote on the resolution; or

- 39.2.4 a person or persons representing not less than one tenth of the total voting rights of all the Members having the right to vote on the resolution.

39.3 A demand for a poll may be withdrawn if:

- 39.3.1 the poll has not yet been taken; and

- 39.3.2 the Chairperson of the Meeting consents to the withdrawal.

39.4 Polls must be taken immediately and in such manner as the Chairperson of the Meeting directs.

#### **40 Content of Proxy Notices**

40.1 Proxies may only validly be appointed by a notice in Writing (a “**Proxy Notice**”) which:

- 40.1.1 states the name and address of the Member appointing the proxy;

- 40.1.2 identifies the person appointed to be that Member's proxy and the general meeting in relation to which that person is appointed;

- 40.1.3 is signed by or on behalf of the Member appointing the proxy, or is authenticated in such manner as the Trustees may determine; and

- 40.1.4 is either delivered to the Company in accordance with these Articles and any instructions contained in or accompanying the notice of the general meeting or the proxy form, or whose delivery is otherwise accepted by the Chairperson of the Meeting at his discretion.

40.2 The Company may require Proxy Notices to be delivered in a particular form, and may specify different forms for different purposes.

40.3 Proxy Notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

40.4 Unless a Proxy Notice indicates otherwise, it must be treated as:

- 40.4.1 allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and

- 40.4.2 appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

#### **41 Delivery of Proxy Notices**

41.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid Proxy Notice has been delivered to the Company by or on behalf of that person.

- 41.2 An appointment under a Proxy Notice may be revoked by delivering to the Company a notice in Writing given by or on behalf of the person by whom or on whose behalf the Proxy Notice was given.
- 41.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- 41.4 If a Proxy Notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

## **42 Amendments to resolutions**

- 42.1 An Ordinary Resolution to be proposed at a general meeting may be amended by Ordinary Resolution if:
  - 42.1.1 notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the Chairperson of the Meeting may determine; and
  - 42.1.2 the proposed amendment does not, in the reasonable opinion of the Chairperson of the Meeting, materially alter the scope of the resolution.
- 42.2 A Special Resolution to be proposed at a general meeting may be amended by Ordinary Resolution, if:
  - 42.2.1 the Chairperson of the Meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
  - 42.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 42.3 If the Chairperson of the Meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, his error does not invalidate the vote on that resolution.

## **WRITTEN RESOLUTIONS**

### **43 Written resolutions**

The Members may pass any resolution (other than a resolution to remove a Trustee or auditor before expiry of his term of office) as a written resolution in accordance with Chapter 2 of Part 13 of the Act.

## **Part 5 – ADMINISTRATIVE ARRANGEMENTS**



#### **44 Means of communication to be used**

- 44.1 Subject to these Articles, anything sent or supplied by or to the Company under these Articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of the Act to be sent or supplied by or to the Company.
- 44.2 Subject to these Articles, any notice or Document to be sent or supplied to a Trustee in connection with the taking of decisions by Trustees may also be sent or supplied by the means by which that Trustee has asked to be sent or supplied with such notices or Documents for the time being.
- 44.3 A Trustee may agree with the Company that notices or Documents sent to that Trustee in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

#### **45 Winding-up**

- 45.1 If on the winding-up of the Company any property remains after satisfaction of all the Company's debts and liabilities, such property shall be paid or transferred to, the Council to be applied solely for a Charitable Purpose or purposes.
- 45.2 To the extent that effect cannot be given to Article 45.1 above, the relevant property shall be transferred to another charity to be applied for a Charitable Purpose or purposes.

### **TRUSTEES' AND COMPANY SECRETARY'S INDEMNITY AND INSURANCE**

#### **46 Indemnity**

- 46.1 Subject to articles 46.2 and 46.3, but without prejudice to any indemnity to which a Trustee is otherwise entitled:

46.1.1 each Trustee may be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a Trustee:

46.1.1.1 in the actual or purported execution and/or discharge of his duties (including the duties of a charity trustee) or in relation to them; and

46.1.1.2 in relation to the activities of the Company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Act);

including (in each case) any liability incurred by him in defending any civil or criminal proceedings in which judgement is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence,

default, breach of duty or breach of trust in relation to the Company's or an associated company's affairs; and

46.1.2 the Company may provide any Trustee with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in article 46.1.1 and otherwise may take any action to enable any such Trustee to avoid incurring such expenditure.

46.2 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Act or by any other provision of law including any provision of the Charities Act.

46.3 This article does not authorise indemnification in respect of any liability incurred by the Trustee to make payment in respect of the matters set out in article 47.2.

46.4 In this article 46, companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

#### **47 Insurance**

47.1 The Trustees may arrange for the purchase, from the Company's funds, of insurance designed to indemnify the Trustees against personal liability in respect of any negligence, default or breach of duty committed by them in their capacity as:

47.1.1 a charity trustee of the Company, or

47.1.2 Trustees or officers carrying on any activities on behalf of the Company.

47.2 The terms of such insurance must, however, be framed to exclude the provision of any indemnity in respect of any liability incurred by the Trustee to pay:

47.2.1 a fine imposed in criminal proceedings;

47.2.2 a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature;

47.2.3 in respect of representation in any criminal proceedings in which the Trustee is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by the Trustee;

47.2.4 to the Company that arises out of any conduct which the Trustee knew (or must reasonably be assumed to have known) was not in the interests of the Company or in the case of which the Trustee did not care whether it was in the interests of the Company or not.

47.3 For the purposes of article 47.2, the reference to conviction does not include a conviction:

- 47.3.1 quashed by an order under section 118(1)(b) or 183(1)(c) of the Criminal Procedure (Scotland) Act 1995;
  - 47.3.2 quashed by an order under section 118(1)(c) of that Act and which order has the effect of an acquittal by virtue of section 119(9) of that Act or otherwise;
  - 47.3.3 in relation to which the verdict is set aside by an order under section 183(1)(d) of that Act and which order has the effect of an acquittal by virtue of section 185(9) of that Act or otherwise.
- 48 Accounts and independent examination / audit**
- 48.1 Except as provided by law or authorised by the Trustees by a resolution, no person is entitled to inspect any of the Company's accounting or other records or documents merely by virtue of being a Member.
  - 48.2 The Trustees shall comply with the provisions of the Charities Accounts (Scotland) Regulations 2006 (or any statutory modification or re-enactment thereof for the time being in force). The Chartered Accountant (or firm) or Independent Examiner shall have access to all papers, books, vouchers, accounts and documents relating to the Company.

