



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Cabinet

**Tuesday, 18 March 2014
6.00 pm
Pittville Room - Municipal Offices**

Membership	
Councillors:	Steve Jordan, John Rawson, Rowena Hay, Peter Jeffries, Andrew McKinlay, Jon Walklett and Roger Whyborn

Agenda

9.	CHELTENHAM LEISURE & CULTURE TRUST COMPANY REGISTRATION Report of the Cabinet Member Sport and Culture	(Pages 1 - 38)

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Cheltenham Borough Council

Cabinet – 18 March 2014

Leisure and Culture Trust – Memorandum and Articles of Association and Company Registration

Accountable member	Councillor Rowena Hay, Cabinet Member for Sport and Culture
Accountable officer	Pat Pratley, Deputy Chief Executive
Ward(s) affected	All
Key Decision	No
Executive summary	<p>In December 2012 Cabinet received a report on the progress being made with the commissioning options for the future delivery of the leisure and culture services currently provided by the Council. Cabinet endorsed the recommendations contained within the report, ie, to create a charitable trust. Cabinet also recommended that the trust should have broad objects to advance health, arts, sports and education.</p> <p>Since the last report the commissioning project has progressed such that shadow trustees were appointed in December 2013. The shadow trust board has now commenced its formal meeting schedule and is preparing to undertake work to progress all matters necessary to create the new charitable trust.</p> <p>One of the early actions that the shadow board of trustees will need to take is to register the company. The reason for this is that a number of matters which need to be progressed require the company to be registered, eg, application for charity registration, setting up of bank accounts and, ultimately, agreement of contracts and leases. In order to register the company the shadow trustees need to have agreed the company Memorandum and Articles of Association (M&A). The shadow trust will be supported during the set up period by its own legal advisers who will support the shadow trustees with advice to ensure their constitution is relevant and any liabilities arising from decisions taken are covered.</p> <p>The shadow trust board has now met to consider the M&A. The document attached at Appendix 2 is the format now agreed by the shadow board. It contains a number of amendments from an earlier draft which was considered by group leaders and therefore the recommendation made here is that the Cabinet Member for Sport and Culture finalise the M&A to be used for company incorporation in consultation with the group leaders. It is hoped however that that such consultation may have been concluded in time for this meeting.</p> <p>A final matter for Cabinet to be aware of at this time is that Gloucestershire County Council Pensions Committee will be meeting in May and will be asked to grant admitted body status to the new charitable trust. The county</p>

council, as the administering authority, will require Cheltenham Borough Council to act as the guarantor to the LGPS scheme that the trust will provide for staff who TUPE (Transfer of Undertakings (Protection of Employment)) to the new trust.

Recommendations

- 1. Cabinet recommends that the Cabinet Member for Sport and Culture, in consultation with the Group Leaders, finalise the wording of the Memorandum and Articles of Association;**
- 2. Cabinet notes the Shadow trust's intention to register the company using the company name Cheltenham Leisure and Culture Trust**

Financial implications

Employees pay contributions to the LGPS, with the employer making contributions to pay the balance of the cost of providing employee benefits after taking into account investment returns. Every three years, an independent actuary calculates how much the employer should contribute to the scheme. The amount will vary and the proposal to address the funding of future 'potential' liabilities will be set out in the contract between the Trust and the Council.

At the point of TUPE transfer, an actuarial assessment will be made to ensure that the proposed contribution rates are enough to pay for benefits accrued which should mitigate, as far as is practicable, future liabilities.

The administering authority (Gloucestershire County Council) will require the Council to act as guarantor for any pension fund deficit which might accrue over the contract period. It should be noted that this is also the case for any deficits that are held by Cheltenham Borough Council as an employer within the LGPS.

**Contact officer: Paul Jones,
Paul.jones@cheltenham.gov.uk, 01242 775154**

<p>Legal implications</p>	<p>The Articles and Memorandum of Association are drafted in a standard format, identifying a widely drawn set of objects and powers of the Company, all in line with the charitable purposes of it. The widely drawn powers do not mean that the Company will exercise them only that they can if so needed without the need to change the Article and Memorandum of Association later.</p> <p>The suggestions put forward by the Shadow Board allow some flexibility for them to appoint a Chair who is coming near the end of their normal six year maximum tenure and allow another three years (up to a maximum in total of nine years) for them to act so as not to lose their skills. Articles 3.8 and 3.9 deal with this.</p> <p>The other changes do not detrimentally affect the Trust or the Council and do emphasise, in some instances, the independence of the Trust from the Council (Article 4.5)</p> <p>The issues regarding the LGPS are explained in this report in particular that Gloucestershire County Council is very likely to require a guarantee from this Council on any deficits that may accrue. This is an integral part of the Admissions Agreement.</p> <p>Contact officer: Gary Spencer Gary.spencer@tewkesbury.gov.uk, 01684 272691</p>
<p>HR implications (including learning and organisational development)</p>	<p>The HR implications are set out in the body of this report.</p> <p>Contact officer: Julie McCarthy julie.McCarthy@cheltenham.gov.uk, 01242 264355</p>
<p>Key risks</p>	<ol style="list-style-type: none"> 1. If the M&A are not agreed upon then the company registration cannot take place 2. If the company registration does not take place early enough then key administrative matters, eg, setting up of bank accounts may not be achieved for the go live date 3. If the Council does not act as pension guarantor then the trust will not be granted admitted body status to the LGPS
<p>Corporate and community plan Implications</p>	<p>The creation of a new trust for leisure and culture services supports the following Council's strategic objectives:</p> <p>Enhancing the provision of arts and culture – building on the strengths of the current services by reaching out to communities and encouraging participation in the arts</p> <p>People are able to lead healthy lifestyles – providing services which not only help people keep physically and mentally active but also maintain and strengthen already good working partnerships with the health and education sector.</p>

Environmental and climate change implications	The M&A do not, in themselves, have environmental or climate change implications, but the way in which the Trust delivers its charitable objectives will have. Consequently, the contract that the Council will enter into with the Trust will require the Trust to develop and deliver an environmental management strategy to ensure environmental and climate change impacts are considered in service delivery and in business planning.
Property/Asset Implications	This report does not have any property implications but the subsequent transfer and management of the properties will be subject to formal leases. Contact officer: David Roberts David.Roberts@cheltenham.gov.uk 01242 264151

1. Background

- 1.1 Cabinet will recall that in December 2012 they received a report, and endorsed a proposal, to create a new charitable trust for the provision of leisure and culture services. The commissioning review is being managed through the Cheltenham Leisure and Culture Trust Programme (Cheltenham LCT) which has responsibility for co-ordinating and managing the various projects that are necessary to create the new trust by the autumn. The Cabinet Member for Sport and Culture is a member of the programme board.
- 1.2 A significant milestone was achieved in December 2013 when, following an extensive recruitment campaign, and a selection process involving both senior members and officers of the Council, the shadow board of trustees was selected.
- 1.3 The shadow board has now commenced its formal meeting schedule and is preparing to undertake matters necessary to create the new charitable trust. The registration of the charitable company together with the agreement of the company M&As are matters which require early completion for reasons explained in this report.
- 1.4 In addition, the Council is required under TUPE (Transfer Undertaking (Protection of Employment)) to transfer staff on the terms and conditions of employment they enjoy prior to the transfer. Section 5 explains in more detail the requirement for the new trust to be granted Admitted Body status to the Local Government Pension Scheme (LGPS) and the requirement for the Council to act as guarantor.

2. Legal Form – Charitable Company Limited by Guarantee (CCLG)

- 2.1 In accordance with the December 2012 Cabinet report, the new trust will be created as a charitable company limited by guarantee (CCLG). This is a legal model recommended for initiatives of this nature and the one most commonly used. It is up to date and fit for purpose.
- 2.2 As previously reported, the creation of a company creates a separate legal entity. A charitable company is regulated by both Companies House and the Charity Commission. The directors of a charitable company are both directors and trustees and hence have duties and responsibilities under both the Companies Acts and Charities Acts.
- 2.3 Furthermore, a company structure is extremely flexible allowing for the creation of subsidiary companies. It is apparent that the new trust will require at least one trading subsidiary and this can therefore be accommodated within the company structure.
- 2.4 One of the early actions that the shadow board of trustees will need to take is to register the company. The reason for this is that there are certain administrative matters, for example, the setting up of bank accounts etc, which have long lead-in periods making early registration crucial in order to achieve the implementation timetable. In order to register the company the shadow trustees need to have agreed the company M&A and in particular the charitable objects contained in them. Section 4 of this report provides more detail.
- 2.5 One of the other requirements of company registration is that the company name must be registered. The shadow board have considered this matter and intend to register the company name as Cheltenham Leisure and Culture Trust.
- 2.6 **Cabinet is recommended to note the shadow trust's intention to register the company using the company name Cheltenham Leisure and Culture Trust. (Recommendation 2)**

3. Memorandum and Articles of Association

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- 3.1 The December 2012 Cabinet report identified a number of other matters for future reporting, the M&A of the new company was one of those matters. The later approval was necessary so that the shadow board of trustees could be actively engaged in the process of creating the new trust. Other matters for future reporting were also identified and these will be the subject of a further report to Cabinet.
- 3.2 In corporate governance, a company's articles of association is a document which, along with the memorandum of association form the company's constitution and define the responsibilities of the directors, the kind of business to be undertaken, and the means by which the shareholders, where appropriate, exert control over the board of directors. The M&A are required in order for the company registration to be commenced.
- 3.3 One of the most important parts of the constitution is the type of charity and its objects. The objects are the list of aims and objectives and set out among other things what the charity is setting out to do, who or what will be the beneficiaries of its work and how the charity is going to achieve what it wants to do.
- 3.4 The objects of the charity are outlined in section 1 of the M&A (**Appendix 2**) and in broad terms advance education, culture arts, heritage, recreation and leisure pursuits, community and public participation.
- 3.5 The Council has worked closely with the shadow board to create the M&A. The Cabinet Member has been involved in discussions relating to amendments to the articles as the matter has progressed. The shadow board considered the M&A at its board meeting on 7 March 2014. At that meeting a further number of more important amendments were proposed with regard to the duration of trustee term and chairing of trustee board meetings.
- 3.6 In addition, and subsequent to the shadow board meeting, a suggestion has been made regarding a minor change to object 1.1.3 where the deletion of the words "*healthy recreation and*" is being suggested. The legal adviser to the shadow board has advised the shadow trust that this matter needs to be consulted on with trustees as it was outside what the shadow board specifically agreed. However, the shadow trust would like the flexibility, if the shadow trustees agree, to remove the words above, in italic, from the M&A prior to incorporation.
- 3.7 Whilst on the face of it this may seem a very minor request, however, as it relates to the charitable objects, the Cabinet Member has considered the matter very carefully. The removal of the suggested words does not in essence change the object which is "*the promotion and preservation of good health and wellbeing*". Furthermore the delivery of the objects will be tested when the shadow trust submits its proposal for delivery of the leisure and culture services and therefore before any contract is entered into with the shadow trust.
- 3.8 The Cabinet Member has kept group leaders closely advised of the development of the M&A and amendments to it as matters have progressed. Group leaders have received verbal and written updates explaining the changes made so far. Group leaders have now been provided with a further written update appraising them of the changes outlined in para 3.5 to 3.7 above. It was hoped that final consultation with Group Leaders could have been concluded prior to this report being considered by Cabinet, however, this has not been possible. Therefore, the recommendation is that the Cabinet Member consult with the group leaders in order to finalise the M&A so that shadow trust may seek company registration by 1 April 2014. Failure to register the company by that date will impact on the programme timeline and the achievability of the go-live date of 1 October 2014.
- 3.9 **Cabinet recommends that the Cabinet Member for Sport and Culture, in consultation with the Group Leaders, finalise the wording of the Memorandum and Articles of Association (Recommendation 1)**

4. Local Government Pension Scheme (LGPS)

- 4.1 Staff who transfer under TUPE to the new trust will do so on the terms and conditions of employment that they enjoyed at the point of transfer. This includes all pension rights and, therefore, transferring employees will be entitled to remain in the Local Government Pension Scheme (LGPS) or be given access to a pension scheme which is broadly comparable.
- 4.2 In order to enable staff to remain in the LGPS post transfer, the trust will need to apply to become an "Admitted Body", ie, a participating employer in the LGPS. The trust will do this by entering into an Admission Agreement with the administering authority, ie, Gloucestershire County Council. The Admission Agreement sets out the terms on which the trust may participate in the LGPS and which employees may become members of it.
- 4.3 The administering authority will require the Council to act as guarantor for any pension fund deficit which might accrue over the contract period. The approach to funding pension liabilities over the course of the contract will be set out in the contract between the trust and the Council. The contract will require the trust to comply with the provisions of the admission agreement.
- 4.4 Gloucestershire County Council pension committee will, following an actuarial review, consider a report at their May 2014 meeting to consider admitting the new trust to the LGPS. Cabinet is, therefore, not being asked to formally note the pension guarantor issue at this time as this will be the subject of a further report and recommendation to Cabinet.
- 4.5 The trust will also be setting up a pension scheme for new employees outside the LGPS, so new employees will join that scheme. It should also be noted however that, under the new rules of pension auto-enrolment, staff who at the time of transfer, but who are not in the LGPS, will also retain the right to join the LGPS at some time in the future providing they meet the criteria for auto-enrolment.

5. Reasons for recommendations

- 5.1 As per the body of the main report.

6. Alternative options considered

- 6.1 As per the body of the main report.

7. Consultation and feedback

- 7.1 The shadow board have received reports and received advice from their own legal advisers on the creation and content of the M&A. Group leaders have been briefed on the content of the M&A as per para 3.8 above.

8. Performance management –monitoring and review

- 8.1 With specific regard to the pension matters, the trust will be required to operate within the terms of its contract with the Council in particular with regard to matters relating to the LGPS and any admitted body status granted. The trust, as a charitable company will be regulated by both Companies House and the Charity Commission.

Report author	Contact officer: Pat.Pratley@Cheltenham.gov.uk; Deputy Chief Executive 01242 775175
Appendices	<ol style="list-style-type: none">1. Risk Assessment2. Memorandum and Articles of Association
Background information	<ol style="list-style-type: none">1. Cabinet Report 11 December 2012

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
1.	If the M&A are not agreed upon then the company registration cannot take place	Pat Pratley	18.3.14	3	3	9	Reduce	Cabinet recommend that the Cabinet Member for Sport and Culture consult with the Group Leaders to finalise the M&A	18.3.14	Pat Pratley	
2.	If the company registration does not take place early enough then key actions cannot be progressed, eg, charity registration, administrative matters, eg, setting up of bank accounts, concluding contract arrangements	Pat Pratley	18.3.14	3	3	9	Reduce	Following cabinet agreeing to note the intention to register the company this action is progressed by the shadow board	30.4.14	Ken Dale	
3.	If the Council does not act as pension guarantor then the trust will not be granted admitted body status to the LGPS	Pat Pratley	18.3.14	3	4	12	Reduce	1. Clarity on respective liabilities, ie, trust and Council is necessary 2. Contractual terms need to be agreed between both parties so that liabilities are known and understood 3. Further report to Cabinet on pension guarantor issue	1.10.14	Pat Pratley	
Explanatory notes											
Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)											

Likelihood – how likely is it that the risk will occur on a scale of 1-6

(1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

Control - Either: Reduce / Accept / Transfer to 3rd party / Close

Cheltenham Council - M & A - Draft 11

Companies Act 2006

Company Limited by Guarantee

MEMORANDUM OF ASSOCIATION

of

CHELTENHAM LEISURE AND CULTURE TRUST

Each subscriber to this Memorandum of Association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company.

Name of each subscriber

Authentication by each subscriber

Date:

Companies Act 2006
Company Limited by Guarantee

ARTICLES OF ASSOCIATION

of

CHELTENHAM LEISURE AND CULTURE TRUST

1. OBJECTS

1.1 The Objects of the Charity are:

- 1.1.1 the advancement and support of education, culture, arts, and heritage including the provision of libraries, museums, galleries, learning and information centres, archives, activities, events, programmes and other related services; and/or
- 1.1.2 the provision or assistance in the provision of facilities for recreation or other leisure time occupation in the interest of social welfare such facilities being provided to the public at large save that special facilities may be provided to persons who by reason of their youth, age, infirmity or disability, poverty or social or economic circumstances may have need of special facilities and services; and/or
- 1.1.3 the promotion and preservation of good health and wellbeing through community and public participation in healthy recreation and activities

undertaken pursuant to objectives set out paragraph 1.1.1 and 1.1.2; and/or

1.1.4 such other charitable purposes beneficial to the public consistent with the objects above as the Director Trustees shall in their absolute discretion determine

within England and Wales (the “Objects”).

1.2 This provision may be amended by special resolution but only with the prior written consent of the Commission.

2. POWERS

The Charity has the following powers, which may be exercised only in promoting and furthering the Objects or anything which is conducive or incidental thereto:

2.1 to provide, manage, operate, build, extend and establish theatres, education and research institutions, organisations providing vocational training, arts, libraries, museums, community and cultural activities centres and leisure services and facilities of all kinds including single and multi-purpose buildings, complexes, outdoor areas and public open spaces for the playing and teaching of sports and games of all kinds and the enjoyment and advancement of the arts, education, leisure and recreation of all kinds for the benefit of the public;

2.2 to provide, manage, operate, own, build and establish ancillary catering and refreshment services and facilities of all kinds at any arts, sports, library, educational, leisure or community, other location or other facilities provided or operated by the Charity;

2.3 to take such steps by personal or written appeals, public meetings or

otherwise as may from time to time be deemed expedient for the purpose of procuring or receiving contributions to the funds of the Charity in the shape of donations, bequests, endowments, legacies and gifts of any nature together with subscriptions, sponsorship and any other lawful means whereby the funds and assets of the Charity may be augmented, but provided that, in raising funds, the Charity shall not undertake any substantial or permanent trading activities and shall conform to any relevant statutory regulations;

- 2.4 to promote, encourage, assist, participate in, give advice on the formation, operation, management fundraising or obtaining grants and other funds and provide all other services for other charitable associations established or proposed to be established for purposes similar to the objects of the Charity;
- 2.5 to establish and support or aid in the establishment and support of any charitable trusts, companies, associations or institutions and to subscribe or guarantee money for any purposes in any way connected with the Objects or calculated to further the same;
- 2.6 to acquire, purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property and any rights or privileges which the Charity may think necessary or convenient for the promotion of the Objects, and to construct, maintain, improve and alter any buildings or erections necessary or convenient for the work of the Charity;
- 2.7 to borrow or raise money for the purposes of the Charity on such terms and on such security (subject to such consents as may be required by law) as shall be deemed to be necessary or appropriate;

- 2.8 subject to such consents as may be required by law, to compromise, settle, conduct, enforce or resist either in a court of law or by arbitration any suit, debt, liability or claim by or against the Charity;
- 2.9 to lend any items, groupings, displays or collections on such terms as the Trustees shall in their absolute discretion determine provided that such loans shall not contravene any conditions attaching to such terms, groupings, displays or collections;
- 2.10 to sell, let, lend, develop, exchange, lease and accept surrenders of leases, mortgage (subject to such consents as shall be required by law), dispose of or turn to account and manage all or any of the property or assets of the Charity as may be thought necessary with a view to the promotion of the Objects;
- 2.11 to deposit or invest its funds in any manner (but to invest only after obtaining such advice from a financial expert as the Trustees consider necessary and having regard to the suitability of investments and the need for diversification) and in any case in which the Charity shall hold or receive any property which may be the subject of a trust, the Charity shall only deal with or invest the same in such manner as is permitted by law having regard to such trusts;
- 2.12 to delegate the management of investments to a financial expert, but only on terms that:
- (1) the investment policy is set down in writing for the financial expert by the Trustees;
 - (2) timely reports of all transactions are provided to the

Trustees;

- (3) the performance of the investments is reviewed regularly with the Trustees;
- (4) the Trustees are entitled to cancel the delegation arrangement at any time;
- (5) the investment policy and the delegation arrangement are reviewed at least once a year;
- (6) all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt; and
- (7) the financial expert must not do anything outside the powers of the Charity;

2.13 to arrange for investments or other property of the Charity to be held in the name of a nominee company acting under the direction of the Trustees or controlled by a financial expert acting under their instructions, and to pay any reasonable fee required;

2.14 to deposit documents and physical assets with any company registered or having a place of business in England or Wales as custodian, and to pay any reasonable fee required;

2.15 to employ (on a full-time or part-time basis), contract with or otherwise commission or engage (whether as employees, officers, advisors, entrepreneurs or the like) such persons as shall be neither Members nor

Trustees of the Charity and to make such reasonable and necessary arrangements as to conditions of service or contract and provision for superannuation, pensions and the like (for staff and their dependants) as are thought expedient for the promotion and attainment of the Objects;

- 2.16 to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments and to operate bank accounts in the name of the Charity;
- 2.17 to set aside funds for special purposes or as reserves against future expenditure;
- 2.18 to insure the property of the Charity against any foreseeable risk and take out other insurance policies to protect the Charity when required;
- 2.19 to pay out of the funds of the Charity the costs, charges and expenses of and incidental to the formation and registration of the Charity;
- 2.20 to enter into any arrangements with any government or authority (supreme, municipal, local or otherwise) which may seem conducive to the attainment of the Objects or any of them, and to obtain from any such government or authority any charters, decrees, rights, privileges or concessions which the Charity may think desirable and to carry out, exercise and comply with any such charters, decrees, rights, privileges and concessions;
- 2.21 to co-operate with other persons, charities, voluntary bodies, firms, companies, organisations, central or local government authorities and statutory bodies and to exchange information and advice with them;

- 2.22 to provide, manage, operate, organise and promote conferences, seminars, workshops, competitions, exhibitions, shows and other events of all kinds at any location;
- 2.23 to enter into contracts to provide services to or on behalf of other bodies;
- 2.24 to establish or acquire subsidiary companies;
- 2.25 to trade with the public through subsidiaries of the Charity to raise funds for the benefit of the Charity
- 2.26 to publicise and promote the Objects by the publication and dissemination (whether gratuitously or for payment) of written, audible or audiovisual material of any kind; and
- 2.27 to do all such other lawful things as shall further the Objects or any of them or shall be considered likely so to do.

3. THE TRUSTEES

- 3.1 The Trustees as charity trustees have control of the Charity and its property and funds.
- 3.2 The subscribers to the Memorandum (being the first Members) are also the first Trustees. Subject to Article 3.3, subsequent Trustees shall be elected by the Members or co-opted by the Trustees in accordance with this Article 3.
- 3.3 The Local Authority shall be entitled to appoint and remove any two of its Councillors as Trustees by giving written notice to the Secretary, but provided that at no time shall the number of Trustees of the Charity who are Local

Authority Persons be such so as to cause the Charity to become a Regulated Company.

- 3.4 The number of Trustees shall consist of at least seven and not more than twelve individuals over the age of 18, all of whom must support the Objects.
- 3.5 An individual may not be appointed as a Trustee unless:
- (1) he/she is a Member;
 - (2) he/she has signed a written declaration of willingness to act as a charity trustee of the Charity; and
 - (3) in the case of Local Authority Persons, he/she is appointed as a Local Authority Trustee
- 3.6 One third (or the number nearest one third) of the Trustees (other than the Local Authority Trustees) must retire at the second (and thereafter each) AGM or, if the Charity has not or does not intend to hold an AGM, at the end of the second (and thereafter each) financial year, those longest in office retiring first and the choice between any of equal length of service being made by agreement between them or, failing agreement, by drawing lots.
- 3.7 Subject to Article 3.8, a retiring Trustee who is eligible under Article 3.5 may be reappointed provided such appointment would not result in the trustee serving more than six consecutive years if he/she served a further full three years. Subject to Article 3.8, no Trustee may hold office for more than six years without ceasing to be a Trustee for at least one year.
- 3.8 Providing a Trustee does not, in total, hold office as Trustee (whether acting as

Trustee alone or Trustee and Chair) for more than nine years, a Trustee appointed as Chair under Article 4.4 shall be entitled to hold office as Chair for a maximum of six years and shall not be required to cease holding office as a Trustee in accordance with Article 3.7.

3.9 If a Trustee appointed as Chair under Article 3.8 ceases to hold office as Chair and the amount of time that he/she has held office as Trustee in total (whether acting as Trustee alone or Trustee and Chair) is:

- (a) less than six years, such Chair shall be entitled to continue to hold office as Trustee until he/she has acted as Trustee for a total of six years, at which point he/she shall be obliged to cease acting as Trustee in accordance with Article 3.7; or
- (b) more than six years, such Chair shall be immediately obliged to cease acting as Trustee for at least one year in accordance with Article 3.7.

3.10 A Trustee's term of office as such automatically terminates if he/she:

- (1) is disqualified under the Charities Act from acting as a charity trustee;
- (2) is incapable, whether mentally or physically, of managing his/her own affairs;
- (3) is absent without permission from three consecutive meetings of the Trustees and is asked by a majority of the other Trustees to resign;
- (4) resigns by written notice to the Trustees (but only if at least two Trustees other than Local Authority Trustees) will remain in office);
- (5) ceases to be a Member for any reason;

- (6) is removed by the Members at a general meeting under the Companies Act;
 - (7) is a Local Authority Trustee and is removed by the Local Authority by written notice to the Secretary in accordance with Article 3.3;
 - (8) in the case of Trustees who are not Local Authority Trustees, is removed by the Trustees at a meeting of the Trustees;
 - (9) is a Local Authority Trustee and is removed to prevent the Charity becoming a Regulated Company; or
 - (10) is a Local Authority Trustee and ceases to be a Councillor of the Local Authority.
- 3.11 A technical defect in the appointment of a Trustee of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

4. TRUSTEES' PROCEEDINGS

- 4.1 The Trustees must hold at least six meetings in each year.
- 4.2 A quorum at a meeting of the Trustees is at least three or one third of the Trustees (if greater).
- 4.3 A meeting of the Trustees may be held either in person or by suitable electronic means agreed by the Trustees in which all participants may communicate with all the other participants but at least one meeting in each year must be held in person.
- 4.4 Subject to Article 4.5, the Trustees shall appoint a Trustee from among their

- number to act as Chair at meetings of the Trustees. If the Chair is unable or unwilling to act as Chair at a meeting, the Trustees shall, subject to Article 4.5, appoint another Trustee present at the meeting who shall preside as Chair at the meeting.
- 4.5 No Local Authority Person may be appointed as Chair of meetings of the Trustees or chair of a general meeting.
- 4.6 Any issue may be determined by a simple majority of the votes cast at a meeting, but a resolution in writing agreed by all the Trustees (other than any Conflicted Trustee who has not been authorised to vote) is as valid as a resolution passed at a meeting. For this purpose the resolution may be contained in more than one document.
- 4.7 Subject to Article 4.8, every Trustee has one vote on each issue but, in case of equality of votes, the Chair of the meeting does not have a second or casting vote.
- 4.8 If at any meeting of the Trustees (or a committee) the number of votes that could be cast by Local Authority Persons amounts to 20% or more of the total number of votes which could be cast by all Trustees present at the meeting, sufficient of the Local Authority Trustees to ensure that their aggregate number of votes shall be less than 20% of the total shall not be entitled to vote. The Local Authority Trustees shall decide between themselves which of them shall or shall not vote but, if they have not so decided within 10 minutes of the issue arising, none of them shall be entitled to vote.
- 4.9 A procedural defect of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.
- 4.10 All proceedings of a meeting shall be minuted and kept in books specifically for

that purpose. The minutes shall record the Trustees present, declarations of interest and conflict, decisions taken and the reasons for them.

5. TRUSTEES' POWERS

The Trustees have the following powers in the administration of the Charity in their capacity as Trustees:

- 5.1 To appoint (and remove) any person (who may be a Trustee) to act as Secretary in accordance with the Companies Act.
- 5.2 To appoint and remove a Chair, a Treasurer and other honorary officers from among their number.
- 5.3 To delegate any of their functions to committees consisting of two or more individuals appointed by them. At least one member of every committee must be a Trustee and all proceedings of committees must be reported promptly to the Trustees.
- 5.4 To make standing orders consistent with the Memorandum, the Articles and the Companies Act to govern proceedings at general meetings.
- 5.5 To make rules consistent with the Memorandum, the Articles and the Companies Act to govern their proceedings and proceedings of committees.
- 5.6 To make regulations consistent with the Memorandum, the Articles and the Companies Act to govern the administration of the Charity and the use of its seal (if any).
- 5.7 To establish procedures to assist the resolution of disputes or differences within

the Charity.

5.8 To exercise in their capacity as Trustees any powers of the Charity which are not reserved to them in their capacity as Members.

6. BENEFITS AND CONFLICTS

6.1 The property and funds of the Charity must be used only for promoting the Objects and do not belong to the Members but, subject to compliance with Article 6.4:

- (1) Members (being Trustees) and Connected Persons may be paid interest at a reasonable rate on money lent to the Charity;
- (2) Members (being Trustees) and Connected Persons may be paid a reasonable rent or hiring fee for property let or hired to the Charity; and
- (3) Individual Members (being Trustees) and Connected Persons may receive charitable benefits on the same terms as any other members of the beneficial class.

6.2 A Trustee or a Connected Person must not receive any payment of money or other material benefit or preferential treatment (whether directly or indirectly) from the Charity except:

- (1) as mentioned in Articles 6.1 or 6.3;
- (2) reimbursement of reasonable out-of-pocket expenses (including hotel and travel costs) actually incurred in running the Charity;
- (3) the benefit of indemnity insurance as permitted by the Charities Act;

- (4) an indemnity in respect of any liabilities properly incurred in running the Charity (including the costs of a successful defence to criminal proceedings);
 - (5) in exceptional cases, other payments or benefits (but only with the written consent of the Commission in advance and where required by the Companies Act the approval or affirmation of the Members).
- 6.3 No Trustee or Connected Person may be employed by the Charity except in accordance with Article 6.2 (5), but any Trustee or Connected Person may enter into a written contract with the Charity, as permitted by the Charities Act, to supply goods or services in return for a payment or other material benefit but only if:
 - (1) the goods or services are actually required by the Charity, and the Trustees decide that it is in the best interests of the Charity to enter into such a contract;
 - (2) the nature and level of the remuneration is no more than is reasonable in relation to the value of the goods or services and is set in accordance with the procedure in Article 6.4; and
 - (3) fewer than one quarter of the Trustees are subject to such a contract in any financial year.
- 6.4 Subject to Article 6.5, any Trustee who is or becomes a Conflicted Trustee in relation to any matter must:
 - (1) declare the nature and extent of his or her interest before discussion begins

on the matter;

- (2) withdraw from the meeting for that item after providing any information requested by the Trustees;
- (3) not be counted in the quorum for that part of the meeting; and
- (4) be absent during the vote and have no vote on the matter.

6.5 When any Trustee is a Conflicted Trustee, the Trustees who are not Conflicted Trustees, if they form a quorum without counting the Conflicted Trustee and are satisfied that it is in the best interests of the Charity to do so, may by resolution passed in the absence of the Conflicted Trustee authorise the Conflicted Trustee, notwithstanding any conflict of interest or duty which has arisen or may arise for the Conflicted Trustee and subject to the reasons therefor being specifically noted in the minutes of the meeting, to:

- (1) disclose to a third party information confidential to the Charity; or
- (2) take any other action not otherwise authorised which does not involve the receipt by the Conflicted Trustee or a Connected Person of any payment or material benefit from the Charity; or
- (3) refrain from taking any step required to remove the conflict.

6.6 This provision may be amended by special resolution but, where the result would be to permit any material benefit to a Trustee or Connected Person, only with the prior written consent of the Commission.

7. RECORDS AND ACCOUNTS

7.1 The Trustees must comply with the requirements of the Companies Act and of the Charities Act as to keeping records, the audit or independent examination of accounts and the preparation and transmission to the Registrar of Companies and the Commission of information required by law including:

- (1) annual returns;
- (2) annual reports; and
- (3) annual statements of account.

7.2 The Trustees must also keep records of:

- (1) all proceedings at meetings of the Trustees;
- (2) all resolutions in writing;
- (3) all reports of committees; and
- (4) all professional advice obtained.

7.3 Accounting records relating to the Charity must be made available for inspection by any Trustee at any time during normal office hours. A copy of the Charity's constitution and latest available statement of account must be supplied on request to any Trustee. Copies of the latest accounts must also be supplied in accordance with the Charities Act to any other person who makes a written request and pays the Charity's reasonable costs.

8. MEMBERSHIP

- 8.1 The Charity must maintain a register of Members.
- 8.2 The Charity Members for the time being shall be its Trustees, subject to each new Member completing a written consent for Membership in such form (and containing such information) as the Trustee may require. The subscribers to the Memorandum shall be the first Trustees.
- 8.5 Other than a Member appointed by the Local Authority, no Local Authority Person shall be eligible to be a Member of the Charity.
- 8.6 The form and the procedure for applying for Membership is to be prescribed by the Trustees.
- 8.7 Any person applying to become a member of the Charity must state on the application for membership whether or not they are a Local Authority Person and the Secretary shall enter such information on the register of Members. All Members shall inform the Secretary immediately should they become or cease to be (as appropriate) a Local Authority Person while a Member and the Secretary shall update the register of members accordingly.
- 8.8 Membership is not transferable.

9. GENERAL MEETINGS

- 9.1 Trustees in their capacity as Members are entitled to attend general meetings in person or by proxy (but only if the appointment of a proxy is in writing and notified to the Secretary before the commencement of the meeting).
- 9.2 General meetings are called on at least 14 and not more than 28 clear days' written notice indicating the business to be discussed and (if a special resolution is

- to be proposed) at least 28 clear days' written notice setting out the terms of the proposed special resolution.
- 9.3 There is a quorum at a general meeting if the number of Members present in person or by proxy is at least seven.
- 9.4 The chair at a general meeting is elected by the Members present in person or by proxy in his/her capacity as a Member and not as proxy for another Member.
- 9.5 Except where otherwise provided by the Articles or the Companies Act, every issue is decided by ordinary resolution.
- 9.6 Subject to Article 9.7, every Member present in person or by proxy has one vote on each issue.
- 9.7 If at any general meeting the number of votes that could be cast by Local Authority Persons (present in person or by proxy) amounts to 20% or more of the total number of votes which could be cast by all Members (present in person or by proxy), sufficient of the Local Authority Persons to ensure that their aggregate number of votes shall be less than 20% of the total shall not be entitled to vote. The Local Authority Persons shall decide between themselves which of them shall or shall not vote but, if they have not so decided within 10 minutes of the issue arising, none of them shall be entitled to vote.
- 9.8 Except where otherwise provided by the Articles or the Companies Act, a written resolution (whether an ordinary or a special resolution) is as valid as an equivalent resolution passed at a general meeting. For this purpose the written resolution may be set out in more than one document.
- 9.9 The Charity may (but need not) hold an AGM in any year.

9.10 Members being Trustees must annually (at the AGM, if one is held):

- (1) receive the accounts of the Charity for the previous financial year;
- (2) receive a written report on the Charity's activities;
- (3) be informed of the retirement of those Trustees who wish to retire or who are retiring by rotation;
- (4) select Trustees to fill the vacancies arising;
- (5) appoint reporting accountants or auditors for the Charity;

9.11 Members may also from time to time

- (1) confer on any individual (with his/her consent) the honorary title of Patron, President or Vice-President of the Charity; and
- (2) discuss and determine any issues of policy or deal with any other business put before them by the Trustees.

9.12 A general meeting may be called by the Trustees at any time and must be called within 21 days of a written request from one or more Trustees (being Members), at least 10% of the Membership or (where no general meeting has been held within the last year) at least 5% of the Membership.

9.13 A technical defect in the appointment of a Member of which the Members are unaware at the time does not invalidate a decision taken at a general meeting or a Written Resolution.

10. LIMITED LIABILITY

The liability of Members is limited to £1.

11. GUARANTEE

Every Member promises, if the Charity is dissolved while he/she remains a Member or within one year after he/she ceases to be a member, to pay up to £1 towards:

- 11.1 payment of those debts and liabilities of the Charity incurred before he/she ceased to be a Member;
- 11.2 payment of the costs, charges and expenses of winding up; and
- 11.3 the adjustment of rights of contributors among themselves.

12. COMMUNICATIONS

12.1 Notices and other documents to be served on Members or Trustees under the Articles or the Companies Act may be served:

- (1) by hand;
- (2) by post;
- (3) by suitable electronic means; or
- (4) through publication in the Charity's newsletter.

12.2 The only address at which a Member is entitled to receive notices sent by post is an address in the U.K. shown in the register of Members.

12.3 Any notice given in accordance with these Articles is to be treated for all purposes as having been received:

- (1) 24 hours after being sent by electronic or delivered by hand to the relevant address;
- (2) two clear days after being sent by first class post to that address;
- (3) three clear days after being sent by second class or overseas post to that address;
- (4) immediately on being handed to the recipient personally; or, if earlier,
- (5) as soon as the recipient acknowledges actual receipt.

12.4 A technical defect in service of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

13. DISSOLUTION

13.1 If the Charity is dissolved, the assets (if any) remaining after providing for all its liabilities must be applied in one or more of the following ways:

- (1) by transfer to one or more other bodies established for exclusively charitable purposes within, the same as or similar to the Objects and operating within the area of operations of the Charity;

- (2) directly for the Objects or for charitable purposes which are within or similar to the Objects;
 - (3) in such other manner consistent with charitable status as the Commission approves in writing in advance.
- 13.2 A final report and statement of account must be sent to the Commission each year.
- 13.3 This provision may be amended by special resolution but only with the prior written consent of the Commission.

14. INTERPRETATION

- 14.1 The Articles are to be interpreted without reference to the model articles under the Companies Act, which do not apply to the Charity.
- 14.2 In the Articles, unless the context specifies another meaning:
- ‘AGM’ means an annual general meeting of the Charity;
- ‘the Articles’ means the Charity’s Articles of Association and ‘Article’ refers to a particular Article;
- ‘Chair’ means the chair of the Trustees;
- ‘the Charity’ means the company governed by the Articles;
- ‘the Charities Act’ means the Charities Acts 1992 to 2011;

‘charity trustee’ has the meaning prescribed by the Charities Act;

‘clear day’ does not include the day on which notice is given or the day of the meeting or other event;

‘the Commission’ means the Charity Commission for England and Wales or any body which replaces it;

‘the Companies Act’ means the Companies 2006;

‘Conflicted Trustee’ means a Trustee in respect of whom a conflict of interest arises or may reasonably arise because the Conflicted Trustee or a Connected Person is receiving or stands to receive a benefit (other than payment of a premium for indemnity insurance) from the Charity, or has some separate interest or duty in a matter to be decided, or in relation to information which is confidential to the Charity;

‘Connected Person’ means, in relation to a Trustee, a person with whom the Trustee shares a common interest such that he/she may reasonably be regarded as benefiting directly or indirectly from any material benefit received by that person, being either a member of the Trustee’s family or household or a person or body who is a business associate of the Trustee, and (for the avoidance of doubt) does not include a company with which the Trustee’s only connection is an interest consisting of no more than 1% of the voting rights;

‘constitution’ means the Memorandum and the Articles and any special resolutions relating to them;

‘custodian’ means a person or body who undertakes safe custody of assets or of documents or records relating to them;

‘electronic means’ refers to communications addressed to specified individuals by telephone, fax or email or, in relation to meetings, by telephone conference call or video conference;

‘financial expert’ means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;

‘financial year’ means the Charity’s financial year;

‘firm’ includes a limited liability partnership;

‘indemnity insurance’ means insurance against personal liability incurred by any Trustee for an act or omission which is or is alleged to be a breach of trust or breach of duty, unless the act or omission amounts to a criminal offence or the Trustee concerned knew that, or was reckless whether, the act or omission was a breach of trust or breach of duty;

‘Local Authority’ means Cheltenham Borough Council or its successor body;

‘Local Authority Person’ means a person who is associated with a local authority within the meaning of Section 69(5) of the Local Government and Housing Act 1989;

‘Local Authority Trustee’ means a person who is appointed by the Local Authority for appointment to the Board in accordance with Article 3.3;

‘material benefit’ means a benefit, direct or indirect, which may not be financial but has a monetary value;

‘Member’ and ‘Membership’ refer to company Membership of the Charity;

‘Memorandum’ means the Charity’s Memorandum of Association;

‘month’ means calendar month;

‘nominee company’ means a corporate body registered or having an established place of business in England and Wales which holds title to property for another;

‘ordinary resolution’ means a resolution agreed by a simple majority of the Members present and voting at a general meeting or in the case of a written resolution by Members who together hold a simple majority of the voting power;

‘the Objects’ means the Objects of the Charity as defined in Article 1;

‘Regulated Company’ means a company deemed to be regulated for the purposes of the Local Government and Housing Act 1989 and Local Authorities (Companies) Order 1995 and any subsequent amendments thereto;

‘resolution in writing’ means a written resolution of the Trustees;

‘Secretary’ means a company secretary;

‘special resolution’ means a resolution of which at least 14 days’ notice has been given agreed by a 75% majority of the Members present and voting at a general meeting or in the case of a written resolution by Members who together hold 75% of the voting power;

‘Trustee’ means a director of the Charity and ‘Trustees’ means the directors;

‘written’ or ‘in writing’ refers to a legible document on paper or a document sent by electronic means which is capable of being printed out on paper;

‘written resolution’ refers to an ordinary or a special resolution which is in writing;

‘year’ means calendar year.

14.3 Expressions not otherwise defined which are defined in the Companies Act have the same meaning.

14.4 References to an Act of Parliament are to that Act as amended or re-enacted from time to time and to any subordinate legislation made under it.

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