

**The Companies Act 2006**

**Company Limited by Guarantee and not having a Share Capital**

**Articles of Association**

**of**

**London LGBTQ+ Community Centre**

**[Company No: 12252776 ]**



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## **The Companies Act 2006**

### **Company Limited by Guarantee and not having a Share Capital**

#### **Articles of Association of London LGBTQ+ Community Centre**

**[Company No:       ]**

#### **INTERPRETATION**

##### **1. Defined terms**

The interpretation of these Articles is governed by the provisions set out in the Schedule at the end of the Articles.

#### **OBJECTS AND POWERS**

##### **2. Objects**

2.1 The objects of the Charity are, for the public benefit:

(a) The promotion of social inclusion among LGBTQ+ individuals and their community, including (but not limited to) by way of providing a community centre primarily for LGBTQ+ individuals and their community;

(b) The promotion of equality and diversity, and in particular:

i) the promotion of equality and the elimination of discrimination on the grounds of gender identity, gender expression and sexual orientation;

ii) promoting activities that contribute to the protection and preservation of the physical and mental health and well-being of LGBTQ+ individuals and their community;

iii) promoting activities to foster understanding between individuals from diverse backgrounds including (but without limitation) LGBTQ+ individuals and their community; and

iv) cultivating a sentiment in favour of equality and diversity including by raising awareness and sharing knowledge with the general public.

For the purpose of this Article 2, "LGBTQ+ individuals" shall mean individuals who identify as lesbian, gay, bi, trans, queer and / or questioning and those who are socially excluded on the grounds of their gender identity, gender expression and sexual orientation.

##### **3. Powers**

3.1 In furtherance of the above objects, but not otherwise, the Charity has the following powers—

3.1.1 (a) to establish or secure the establishment of a community centre and to maintain or manage or co-operate with any statutory authority in the maintenance and management of such a centre for activities promoted by the Charity in furtherance of its objects.

- (b) to buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
  - (c) to sell, lease or otherwise dispose of all or any part of the property belonging to the Charity, provided that in exercising this power the Charity must comply as appropriate with sections 117 and 122 of the Charities Act 2011;
  - (d) to raise funds and to trade in direct furtherance of its objects, and to carry on trade which is temporary or ancillary to the objects of the Charity, provided that otherwise the Charity shall not undertake any taxable permanent trading activities in raising funds for the objects of the Charity;
  - (e) to borrow money and to charge the whole or any part of the property belonging to the Charity as security for repayment of the money borrowed, provided that the Charity must comply as appropriate with sections 124-126 of the Charities Act 2011 if it wishes to mortgage land;
  - (f) to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
  - (g) to establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the objects;
  - (h) to acquire, merge with or to enter into any partnership or joint venture arrangement with any other charity formed for any of the objects;
  - (i) to set aside income as a reserve against future expenditure but only in accordance with a written policy about reserves;
  - (j) to employ and remunerate such staff (not being Trustees) as are necessary for carrying out the work of the Charity;
  - (k) to—
    - i) deposit or invest funds;
    - ii) employ a professional fund-manager; and
    - iii) arrange for the investments or other property of the Charity to be held in the name of a nominee;
- in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000;
- (l) to provide indemnity insurance for the Trustees of the Charity in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011;
  - (m) to acquire copyrights, trademarks and other rights and privileges for the purposes of the Charity whether subject to a royalty or not and whether exclusive or non-exclusive or subject to other limitations;

(n) to pay out of the funds of the Charity the costs of forming and registering the Charity both as a company and as a charity;

(o) to do all such other lawful things as are necessary for the achievement of its objects.”

#### **LIMITATION ON PRIVATE BENEFITS**

##### **4. Limitation on private benefits**

4.1 The income and property of the Charity shall be applied solely towards the promotion of its objects.

##### ***Permitted benefits to members, Trustees and Connected persons***

4.2 No part of the income and property of the Charity may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the Charity unless the payment is permitted by Articles 4.4 or 4.5.

4.3 No Trustee may:

4.3.1 sell goods, services or any interest in land to the Charity;

4.3.2 be employed by, or receive any remuneration from, the Charity; or

4.3.3 receive any other financial benefit from the Charity;

unless the payment is permitted by Articles 4.4 or 4.5 or authorised by the court or the Charity Commission. In this Article 4 a "financial benefit" means a benefit, direct or indirect, which is either money or has a monetary value.

4.4 A Trustee may receive the following benefits from the Charity:

4.4.1 a Trustee or a person who is Connected with a Trustee may receive a benefit from the Charity in his, her or its capacity as a beneficiary of the Charity;

4.4.2 a Trustee or a person who is Connected with a Trustee may be reimbursed by the Charity for, or may pay out of the Charity's property, reasonable expenses properly incurred by him, her or it when acting on behalf of the Charity;

4.4.3 a Trustee or a person who is Connected with a Trustee may be paid reasonable and proper remuneration by the Charity for any goods or services supplied to the Charity on the instructions of the Trustees (excluding, in the case of a Trustee, the service of acting as Trustee and services performed under a contract of employment with the Charity) provided that this provision and Article 4.5.3 may not apply to more than half of the Trustees in any financial year (and for these purposes this provision shall be treated as applying to a Trustee if it applies to a person who is Connected with that Trustee);

4.4.4 a Trustee or a person who is Connected with a Trustee may receive interest at a reasonable and proper rate on money lent to the Charity;

- 4.4.5 a Trustee or a person who is Connected with a Trustee may receive reasonable and proper rent for premises let to the Charity;
- 4.4.6 the Charity may pay reasonable and proper premiums in respect of indemnity insurance effected in accordance with Article 3.1.30; and
- 4.4.7 a Trustee or other officer of the Charity may receive payment under an indemnity from the Charity in accordance with the indemnity provisions set out at Article 6;

provided that where benefits are conferred under Article 4.4, Article 21 (Conflicts of Interest) must be complied with by the relevant Trustee in relation to any decisions regarding the benefit.

#### ***Subsidiary Companies***

- 4.5 A Trustee may receive the following benefits from any Subsidiary Company:
  - 4.5.1 a Trustee or a person who is Connected with a Trustee may receive a benefit from any Subsidiary Company in his, her or its capacity as a beneficiary of the Charity or of any Subsidiary Company;
  - 4.5.2 a Trustee or a person who is Connected with a Trustee may be reimbursed by any Subsidiary Company for, or may pay out of any Subsidiary Company's property, reasonable expenses properly incurred by him, her or it when acting on behalf of any Subsidiary Company;
  - 4.5.3 a Trustee or a person who is Connected with a Trustee may be paid reasonable and proper remuneration by any Subsidiary Company for any goods or services supplied to any Subsidiary Company, with the approval of the Trustees, (including services performed under a contract of employment with any Subsidiary Company or otherwise) provided that this provision and Article 4.4.3 may not apply to more than half of the Trustees in any financial year (and for these purposes this provision shall be treated as applying to a Trustee if it applies to a person who is Connected with that Trustee);
  - 4.5.4 a Trustee or a person who is Connected with a Trustee may, with the approval of the Trustees, receive interest at a reasonable and proper rate on money lent to any Subsidiary Company;
  - 4.5.5 a Trustee or a person who is Connected with a Trustee may, with the approval of the Trustees, receive reasonable and proper rent for premises let to any Subsidiary Company;
  - 4.5.6 any Subsidiary Company may pay reasonable and proper premiums in respect of indemnity insurance for its directors and officers; and
  - 4.5.7 a Trustee or a person who is Connected with a Trustee may receive payment under an indemnity from any Subsidiary Company in accordance with the constitution of the relevant Subsidiary Company;

provided that the affected Trustee may not take part in any decision of the Trustees to approve a specific benefit to that Trustee or a person Connected to them under Articles 4.5.3, 4.5.4 or 4.5.5.

## **LIMITATION OF LIABILITY AND INDEMNITY**

### **5. Liability of members**

5.1 The liability of each member is limited to £1, being the amount that each member undertakes to contribute to the assets of the Charity in the event of its being wound up while he or she is a member or within one year after he or she ceases to be a member, for:

5.1.1 payment of the Charity's debts and liabilities contracted before he or she ceases to be a member;

5.1.2 payment of the costs, charges and expenses of winding up; and

5.1.3 adjustment of the rights of the contributories among themselves.

### **6. Indemnity**

Without prejudice to any indemnity to which a Trustee may otherwise be entitled, every Trustee of the Charity shall be indemnified out of the assets of the Charity in relation to any liability incurred by him or her in that capacity but only to the extent permitted by the Companies Acts; and every other officer of the Charity may be indemnified out of the assets of the Charity in relation to any liability incurred by him or her in that capacity, but only to the extent permitted by the Companies Acts.

## ***TRUSTEES***

### ***TRUSTEES' POWERS AND RESPONSIBILITIES***

### **7. Trustees' general authority**

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

### **8. Chair**

The Trustees may appoint one of their number to be the Chair of the Trustees for such term of office as they determine and may at any time remove him or her from that office.

### **9. Trustees may delegate**

9.1 Subject to the Articles, the Trustees may delegate any of their powers or functions to any committee.

9.2 Subject to the Articles, the Trustees may delegate the implementation of their decisions or day to day management of the affairs of the Charity to any person or committee.

9.3 Any delegation by the Trustees may be:

9.3.1 by such means;

9.3.2 to such an extent;

9.3.3 in relation to such matters or territories; and



9.3.4 on such terms and conditions;

as they think fit.

9.4 The Trustees may authorise further delegation of the relevant powers, functions, implementation of decisions or day to day management by any person or committee to whom they are delegated.

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

9.6 The Trustees may by power of attorney or otherwise appoint any person to be the agent of the Charity for such purposes and on such conditions as they determine.

## **10. Committees**

10.1 In the case of delegation to committees:

10.1.1 the resolution making the delegation must specify those who shall serve or be asked to serve on the committee (although the resolution may allow the committee to make co-options up to a specified number);

10.1.2 the composition of any committee shall be entirely in the discretion of the Trustees and may include such of their number (if any) as the resolution may specify;

10.1.3 the deliberations of any committee must be reported regularly to the Trustees and any resolution passed or decision taken by any committee must be reported promptly to the Trustees and every committee must appoint a secretary for that purpose;

10.1.4 the Trustees may make such regulations and impose such terms and conditions and give such mandates to any committee as they may from time to time think fit; and

10.1.5 no committee shall knowingly incur expenditure or liability on behalf of the Charity except where authorised by the Trustees or in accordance with a budget which has been approved by the Trustees.

10.2 The meetings and proceedings of any committee shall be governed by the Articles regulating the meetings and proceedings of the Trustees so far as they apply and are not superseded by any regulations made by the Trustees.

## **11. Delegation of day to day management powers**

11.1 In the case of delegation of the day to day management of the Charity to a chief executive or other manager or managers:

11.1.1 the delegated power shall be to manage the Charity by implementing the policy and strategy adopted by and within a budget approved by the Trustees and (if applicable) to advise the Trustees in relation to such policy, strategy and budget;

11.1.2 the Trustees shall provide any manager with a description of his or her role and the extent of his or her authority; and

- 11.1.3 any manager must report regularly to the Trustees on the activities undertaken in managing the Charity and provide them regularly with management accounts which are sufficient to explain the financial position of the Charity.

## **12. Delegation of investment management**

- 12.1 The Trustees may delegate the management of investments to a Financial Expert or Financial Experts provided that:

- 12.1.1 the investment policy is set down in Writing for the Financial Expert or Financial Experts by the Trustees;

- 12.1.2 timely reports of all transactions are provided to the Trustees;

- 12.1.3 the performance of the investments is reviewed regularly with the Trustees;

- 12.1.4 the Trustees are entitled to cancel the delegation arrangement at any time;

- 12.1.5 the investment policy and the delegation arrangements are reviewed regularly;

- 12.1.6 all payments due to the Financial Expert or Financial Experts are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt; and

- 12.1.7 the Financial Expert or Financial Experts must not do anything outside the powers of the Trustees.

## **13. Power to change name of Charity**

- 13.1 The Trustees may change the name of the Charity at any time by:

- 13.1.1 majority decision of at least three-quarters of the Trustees present and voting at a meeting; or

- 13.1.2 a unanimous decision of all the Trustees taken following the procedure in Article 20.

## ***DECISION-MAKING BY TRUSTEES***

## **14. Trustees to take decisions collectively**

- 14.1 Subject to Article 13 any decision of the Trustees must be either:

- 14.1.1 by decision of a majority of the Trustees present and voting at a quorate Trustees' meeting (subject to Article 19); or

- 14.1.2 a unanimous decision taken in accordance with Article 20.

## **15. Calling a Trustees' meeting**

- 15.1 Two Trustees may (and the Secretary, if any, must at the request of two Trustees) call a Trustees' meeting.

- 15.2 A Trustees' meeting must be called by at least seven Clear Days' notice unless either:
  - 15.2.1 all the Trustees agree; or
  - 15.2.2 urgent circumstances require shorter notice.
- 15.3 In deciding on the date and time of any Trustees' meeting, the Trustees calling or requesting the Secretary to call the meeting must try to ensure, subject to the urgency of any matter to be discussed at the meeting, that as many Trustees as practicable are likely to be available to participate.
- 15.4 Notice of Trustees' meetings must be given to each Trustee.
- 15.5 Every notice calling a Trustees' meeting must specify:
  - 15.5.1 the place, day and time of the meeting;
  - 15.5.2 the general nature of the business to be considered at such meeting; and
  - 15.5.3 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.
- 15.6 Notice of Trustees' meetings need not be in Writing.
- 15.7 Article 34 shall apply, and notice of Trustees' meetings may be sent by Electronic Means to an Address provided by the Trustee for the purpose.
- 16. **Participation in Trustees' meetings**
  - 16.1 Subject to the Articles, Trustees participate in a Trustees' meeting, or part of a Trustees' meeting, when:
    - 16.1.1 the meeting has been called and takes place in accordance with the Articles; and
    - 16.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting (for example via telephone or video conferencing).
  - 16.2 In determining whether Trustees are participating in a Trustees' meeting, it is irrelevant where any Trustee is or how they communicate with each other.
  - 16.3 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.
- 17. **Quorum for Trustees' meetings**
  - 17.1 At a Trustees' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
  - 17.2 The quorum for Trustees' meetings may be fixed from time to time by a decision of the Trustees, but it must never be less than two, and unless otherwise fixed it is two or one-third of the total number of Trustees, whichever is the greater.

17.3 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 appoint further Trustees.

**18. Chairing of Trustees' meetings**

The Chair, if any, or in his or her absence another Trustee nominated by the Trustees present shall preside as chair of each Trustees' meeting.

**19. Casting vote**

19.1 If the numbers of votes for and against a proposal at a Trustees' meeting are equal, the chair of the meeting has a casting vote in addition to any other vote he or she may have.

19.2 Article 19.1 does not apply if, in accordance with the Articles, the chair of the meeting is not to be counted as participating in the decision-making process for quorum or voting purposes.

**20. Unanimous decisions without a meeting**

20.1 A decision is taken in accordance with this Article when all of the Trustees indicate to each other by any means (including without limitation by Electronic Means, such as by email or by telephone) that they share a common view on a matter. The Trustees cannot rely on this Article to make a decision if one or more of the Trustees has a conflict of interest or duty which, under Article 21, results in them not being entitled to vote.

20.2 Such a decision may, but need not, take the form of a resolution in Writing, copies of which have been signed by each Trustee or to which each Trustee has otherwise indicated agreement in Writing.

20.3 A decision which is made in accordance with this Article 20 shall be as valid and effectual as if it had been passed at a meeting duly convened and held, provided the following conditions are complied with:

20.3.1 approval from each Trustee must be received by one person being either such person as all the Trustees have nominated in advance for that purpose or such other person as volunteers if necessary ("the Recipient"), which person may, for the avoidance of doubt, be one of the Trustees;

20.3.2 following receipt of responses from all of the Trustees, the Recipient must communicate to all of the Trustees (by any means) whether the resolution has been formally approved by the Trustees in accordance with this Article 20.3;

20.3.3 the date of the decision shall be the date of the communication from the Recipient confirming formal approval; and

20.3.4 the Recipient must prepare a minute of the decision in accordance with Article 38.

## **21. Conflicts of interest**

### ***Declaration of interests***

21.1 Unless Article 21.2 applies, a Trustee must declare the nature and extent of:

21.1.1 any direct or indirect interest which he or she has in a proposed transaction or arrangement with the Charity; and

21.1.2 any duty or any direct or indirect interest which he or she has which conflicts or may conflict with the interests of the Charity or his or her duties to the Charity.

21.2 There is no need to declare any interest or duty of which the other Trustees are, or ought reasonably to be, already aware.

### ***Participation in decision-making***

21.3 If a Trustee's interest or duty cannot reasonably be regarded as likely to give rise to a conflict of interest or a conflict of duties with or in respect of the Charity, he or she is entitled to participate in the decision-making process, to be counted in the quorum and to vote in relation to the matter. Any uncertainty about whether a Trustee's interest or duty is likely to give rise to a conflict shall be determined by a majority decision of the other Trustees taking part in the decision-making process.

21.4 If a Trustee's interest or duty gives rise (or could reasonably be regarded as likely to give rise) to a conflict of interest or a conflict of duties with or in respect of the Charity, he or she may participate in the decision-making process and may be counted in the quorum and vote unless:

21.4.1 the decision could result in the Trustee or any person who is Connected with him or her receiving a benefit other than:

(a) any benefit received in his, her or its capacity as a beneficiary of the Charity (as permitted under Article 4.4.1) and which is available generally to the beneficiaries of the Charity;

(b) the payment of premiums in respect of indemnity insurance effected in accordance with Article 3.1.30;

(c) payment under the indemnity set out at Article 6; and

(d) reimbursement of expenses in accordance with Article 4.4.2; or

21.4.2 a majority of the other Trustees participating in the decision-making process decide to the contrary;

in which case he or she must comply with Article 21.5.

21.5 If a Trustee with a conflict of interest or conflict of duties is required to comply with this Article 21.5, he or she must:

21.5.1 take part in the decision-making process only to such extent as in the view of the other Trustees is necessary to inform the debate;

21.5.2 not be counted in the quorum for that part of the process; and

21.5.3 withdraw during the vote and have no vote on the matter.

***Continuing duties to the Charity***

21.6 Where a Trustee has a conflict of interest or conflict of duties and the Trustee has complied with his or her obligations under these Articles in respect of that conflict:

21.6.1 the Trustee shall not be in breach of his or her duties to the Charity by withholding confidential information from the Charity if to disclose it would result in a breach of any other duty or obligation of confidence owed by him or her; and

21.6.2 the Trustee shall not be accountable to the Charity for any benefit expressly permitted under these Articles which he or she or any person Connected with him or her derives from any matter or from any office, employment or position.

**22. Register of Trustees' interests**

The Trustees must ensure a register of Trustees' interests is kept.

**23. Validity of Trustee actions**

All acts done by a person acting as a Trustee shall, even if afterwards discovered that there was a defect in his or her appointment or that he or she was disqualified from holding office or had vacated office, be as valid as if such person had been duly appointed and was qualified and had continued to be a Trustee.

**24. Trustee's discretion to make further rules**

Subject to the 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.

***APPOINTMENT AND RETIREMENT OF TRUSTEES***

**25. Number of Trustees**

There shall be at least three Trustees.

**26. Appointment of Trustees and retirement of Trustees by rotation**

26.1 Those persons notified to the Registrar of Companies as the first directors of the Charity shall be the first Trustees.

***Appointment of Trustees***

26.2 Any person who is willing to act as a Trustee, and who would not be disqualified from acting under the provisions of Article 27, may be appointed to be a Trustee by a decision of the Trustees.

### ***Automatic retirement***

- 26.3 Each Trustee shall retire from office at the third Annual Retirement Meeting following the commencement of his or her term of office.
- 26.4 The Annual Retirement Meeting shall be the meeting of the Trustees at which the accounts of the Charity are adopted.

### ***Maximum term***

- 26.5 Retiring Trustees may be reappointed.
- 26.6 If the retirement of a Trustee under Article 26.3 causes the number of Trustees to fall below that set out in Article 25 then the retiring Trustee shall remain in office until a new appointment is made.

### ***Minimum age***

- 26.7 No person may be appointed as a Trustee unless he or she has reached the age of 16 years.

### ***General***

- 26.8 A Trustee may not appoint an alternate director or anyone to act on his or her behalf at meetings of the Trustees.

### **27. Disqualification and removal of Trustees**

- 27.1 A Trustee shall cease to hold office if:
- 27.1.1 he or she ceases to be a director by virtue of any provision of the Companies Act 2006, or is prohibited from being a director by law;
  - 27.1.2 he or she is disqualified under the Charities Act 2011 from acting as a trustee of a charity;
  - 27.1.3 the Trustees reasonably believe he or she has become physically or mentally incapable of managing his or her own affairs and they resolve that he or she be removed from office;
  - 27.1.4 notification is received by the Charity from him or her that he or she is resigning from office, and such resignation has taken effect in accordance with its terms (but only if at least three Trustees will remain in office when such resignation has taken effect);
  - 27.1.5 he or she fails to attend three consecutive meetings of the Trustees and the Trustees resolve that he or she be removed for this reason;
  - 27.1.6 at a meeting of the Trustees at which at least half of the Trustees are present, a resolution is passed that he or she be removed from office. Such a resolution shall not be passed unless he or she has been given at least 14 Clear Days' notice that the resolution is to be proposed, specifying the circumstances alleged to justify removal from office, and has been afforded a reasonable opportunity of either (at his or her option) being heard by or of making written representations to the Trustees; or
  - 27.1.7 he or she ceases to be a member of the Charity.

## **PATRONS**

### **28. Patrons**

The Trustees may appoint and remove any individual(s) as patron(s) of the Charity on such terms as they shall think fit. A patron (if not a member) shall have the right to be given notice of, to attend and speak (but not vote) at any general meeting of the Charity and shall also have the right to receive accounts of the Charity when available to members.

## **MEMBERS**

### ***BECOMING AND CEASING TO BE A MEMBER***

#### **29. Trustees as members**

29.1 The Trustees from time to time shall be the only members of the Charity.

29.2 A Trustee shall become a member on becoming a Trustee. All new Trustees are treated as having agreed to become members of the Charity.

29.3 The names of the members of the Charity must be entered in the register of members.

#### **30. Termination of membership**

30.1 A member shall cease to be a member if he or she ceases to be a Trustee.

30.2 Membership is not transferable and shall cease on death.

#### **31. Associate members**

The Trustees may establish such classes of associate membership with such description and with such rights and obligations (including without limitation the obligation to pay a subscription) as they think fit and may admit and remove such associate members in accordance with the Associate Member Rules, provided that no such associate members shall be members of the Charity for the purposes of the Articles or the Companies Acts.

### ***DECISION-MAKING BY MEMBERS***

#### **32. Members' Meetings**

32.1 The Trustees may call a general meeting of the members at any time.

32.2 Such meetings must be held in accordance with the provisions regarding such meetings in the Companies Acts.



### **33. Written resolutions**

#### ***General***

33.1 Subject to this Article 33 a written resolution agreed by:

33.1.1 members representing a simple majority; or

33.1.2 (in the case of a special resolution) members representing not less than 75%;

of the total voting rights of eligible members shall be effective.

33.2 On a written resolution each member shall have one vote.

33.3 A written resolution is not a special resolution unless it stated that it was proposed as a special resolution.

33.4 A members' resolution under the Companies Acts removing a Trustee or auditor before the expiry of his or her term of office may not be passed as a written resolution.

#### ***Circulation***

33.5 A copy of the proposed written resolution must be sent to every eligible member together with a statement informing the member how to signify his or her agreement and the date by which the resolution must be passed if it is not to lapse.

33.6 In relation to a resolution proposed as a written resolution of the Charity the eligible members are the members who would have been entitled to vote on the resolution on the Circulation Date of the resolution.

33.7 The required majority of eligible members must signify their agreement to the written resolution within the period of 28 days beginning with the Circulation Date.

33.8 Communications in relation to written resolutions must be sent to the Charity's auditors in accordance with the Companies Acts.

#### ***Signifying agreement***

33.9 A member signifies his or her agreement to a proposed written resolution when the Charity receives from him or her (or from someone acting on his or her behalf) an authenticated Document:

33.9.1 identifying the resolution to which it relates; and

33.9.2 indicating the member's agreement to the resolution.

33.10 For the purposes of Article 33.9:

33.10.1 a Document sent or supplied in Hard Copy Form is sufficiently authenticated if it is signed by the person sending or supplying it; and

- 33.10.2 a Document sent or supplied in Electronic Form is sufficiently authenticated if:
- (a) the identity of the sender is confirmed in a manner specified by the Charity; or
  - (b) where no such manner has been specified by the Charity, if the communication contains or is accompanied by a statement of the identity of the sender and the Charity has no reason to doubt the truth of that statement.
- 33.11 If the Charity gives an electronic Address in any Document containing or accompanying a written resolution, it will be deemed to have agreed that any Document or information relating to that resolution may be sent by Electronic Means to that Address (subject to any conditions or limitations specified in the Document).

#### **ADMINISTRATIVE ARRANGEMENTS AND MISCELLANEOUS**

##### **34. Communications by the Charity**

###### ***Methods of communication***

- 34.1 Subject to the Articles and the Companies Acts, any Document or information (including any notice, report or accounts) sent or supplied by the Charity under the Articles or the Companies Acts may be sent or supplied in any way in which the Companies Act 2006 provides for Documents or information which are authorised or required by any provision of that Act to be sent or supplied by the Charity, including without limitation:
- 34.1.1 in Hard Copy Form;
  - 34.1.2 in Electronic Form; or
  - 34.1.3 by making it available on a website.
- 34.2 Where a Document or information which is required or authorised to be sent or supplied by the Charity under the Companies Acts is sent or supplied in Electronic Form or by making it available on a website, the recipient must have agreed that it may be sent or supplied in that form or manner or be deemed to have so agreed under the Companies Acts (and not revoked that agreement). Where any other Document or information is sent or supplied in Electronic Form or made available on a website the Trustees may decide what agreement (if any) is required from the recipient.
- 34.3 Subject to the 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 which that Trustee has asked to be sent or supplied with such notices or Documents for the time being.

###### ***Deemed delivery***

- 34.4 A member present in person or by proxy at a meeting of the Charity shall be deemed to have received notice of the meeting and the purposes for which it was called.

- 34.5 Where any Document or information is sent or supplied by the Charity to the members:
- 34.5.1 where it is sent by post it is deemed to have been received 48 hours (including Saturdays, Sundays, and Public Holidays) after it was posted;
- 34.5.2 where it is sent or supplied by Electronic Means, it is deemed to have been received on the same day that it was sent;
- 34.5.3 where it is sent or supplied by means of a website, it is deemed to have been received:
- (a) when the material was first made available on the website; or
  - (b) if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website.
- 34.6 Subject to the Companies Acts, a Trustee or any other person (other than in their capacity as a member) may agree with the Charity that notices or Documents sent to that person in a particular way are deemed to have been received within a specified time, and for the specified time to be less than 48 hours.

***Failed delivery***

- 34.7 Where any Document or information has been sent or supplied by the Charity by Electronic Means and the Charity receives notice that the message is undeliverable:
- 34.7.1 if the Document or information has been sent to a member and is notice of a general meeting of the Charity, the Charity is under no obligation to send a Hard Copy of the Document or information to the member's postal address as shown in the Charity's register of members, but may in its discretion choose to do so;
- 34.7.2 in all other cases, the Charity shall send a Hard Copy of the Document or information to the member's postal address as shown in the Charity's register of members (if any), or in the case of a recipient who is not a member, to the last known postal address for that person (if any); and
- 34.7.3 the date of service or delivery of the Documents or information shall be the date on which the original electronic communication was sent, notwithstanding the subsequent sending of Hard Copies.

***Exceptions***

- 34.8 Copies of the Charity's annual accounts and reports need not be sent to a person for whom the Charity does not have a current Address.
- 34.9 Notices of general meetings need not be sent to a member who does not register an Address with the Charity, or who registers only a postal address outside the United Kingdom, or to a member for whom the Charity does not have a current Address.]

**35. Communications to the Charity**

The provisions of the Companies Acts shall apply to communications to the Charity.

**36. Secretary**

36.1 A Secretary may be appointed by the Trustees for such term, at such remuneration and upon such conditions as they may think fit, and may be removed by them. If there is no Secretary:

36.1.1 anything authorised or required to be given or sent to, or served on, the Charity by being sent to its Secretary may be given or sent to, or served on, the Charity itself, and if addressed to the Secretary shall be treated as addressed to the Charity; and

36.1.2 anything else required or authorised to be done by or to the Secretary of the Charity may be done by or to a Trustee, or a person authorised generally or specifically in that behalf by the Trustees.

**37. Irregularities**

The proceedings at any meeting or on the taking of any poll or the passing of a written resolution or the making of any decision shall not be invalidated by reason of any accidental informality or irregularity (including any accidental omission to give or any non-receipt of notice) or any want of qualification in any of the persons present or voting or by reason of any business being considered which is not specified in the notice.

**38. Minutes**

38.1 The Trustees must ensure minutes are made:

38.1.1 of all appointments of officers made by the Trustees;

38.1.2 of all resolutions of the Charity and of the Trustees (including, without limitation, decisions of the Trustees made without a meeting); and

38.1.3 of all proceedings at meetings of the Charity and of the Trustees, and of committees of Trustees, including the names of the Trustees present at each such meeting;

and any such minute, if purported to be signed (or in the case of minutes of Trustees' meetings signed or authenticated) by the chair of the meeting at which the proceedings were had, or by the chair of the next succeeding meeting, shall, as against any member or Trustee of the Charity, be sufficient evidence of the proceedings.

**39. Records and accounts**

39.1 The Trustees shall comply with the requirements of the Companies Acts and of the Charities Act 2011 as to maintaining a members' register, keeping financial records, the audit or examination of accounts and the preparation and transmission to the Registrar of Companies and the Charity Commission of:

39.1.1 annual reports;

39.1.2 annual statements of account; and

39.1.3 annual returns or confirmation statements.

#### 40. Exclusion of model articles

The relevant model articles for a company limited by guarantee are hereby expressly excluded.

### WINDING UP

#### 41. Winding up

41.1 At any time before, and in expectation of, the winding up or dissolution of the Charity, the Trustees may resolve that any net assets of the Charity after all its debts and liabilities have been paid, or provision made for them, shall on the dissolution or winding up of the Charity be applied or transferred in any of the following ways:

41.1.1 directly for the objects of the Charity; or

41.1.2 to any institution or institutions which is or are regarded as charitable under the law of every part of the United Kingdom:

(a) for purposes similar to the objects of the Charity; or

(b) for use for particular purposes that fall within the objects of the Charity.

41.2 In no circumstances shall the net assets of the Charity be paid to or distributed among the members of the Charity under this Article 41.

41.3 If no resolution is passed in accordance with Article 41.1 the net assets of the Charity shall be applied for such purposes regarded as charitable under the law of every part of the United Kingdom as are directed by the Charity Commission.

### SCHEDULE

#### INTERPRETATION – DEFINED TERMS

1. In the Articles, unless the context requires otherwise, the following terms shall have the following meanings:

Term	Meaning
1.1 "Address"	includes a postal or physical address and a number or address used for the purposes of sending or receiving Documents or information by Electronic Means;
1.2 "Annual Retirement Meeting"	has the meaning given in Article 26.4;

1.3	<b>"Articles"</b>	the Charity's articles of association;
1.4	<b>"Associate Member Rules"</b>	Such rules as the trustees may adopt from time to time to govern associate membership
1.5	<b>"Chair"</b>	has the meaning given in Article 8;
1.6	<b>"Charity"</b>	London LGBTQ+ Community Centre ;
1.7	<b>"Circulation Date"</b>	in relation to a written resolution, has the meaning given to it in the Companies Acts;
1.8	<b>"Clear Days"</b>	in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;
1.9	<b>"Companies Acts"</b>	the Companies Acts (as defined in Section 2 of the Companies Act 2006), in so far as they apply to the Charity;
1.10	<b>"Connected"</b>	<p>in relation to a Trustee means any person falling within any of the following categories:</p> <ul style="list-style-type: none"> <li>(a) any spouse, civil partner, parent, child, brother, sister, grandparent or grandchild of the Trustee; or</li> <li>(b) the spouse or civil partner of any person in (a); or</li> <li>(c) any other person in a relationship with the Trustee which may reasonably be regarded as equivalent to such a relationship as is mentioned at (a) or (b); or</li> <li>(d) any company, partnership or firm of which the Trustee is a paid director, member, partner or employee, or shareholder holding more than 1% of the capital;</li> </ul>
1.11	<b>"Document"</b>	includes summons, notice, order or other legal process and includes, unless otherwise specified, any document sent or supplied in Electronic Form;
1.12	<b>"Electronic Form" and "Electronic Means"</b>	has the meanings respectively given to them in Section 1168 of the Companies Act 2006;
1.13	<b>"Financial Expert"</b>	an individual, company or firm who, or which, is authorised to give investment advice under the Financial Services and Markets Act 2000;
1.14	<b>"Hard Copy" and "Hard Copy Form"</b>	have the meanings respectively given to them in the Companies Act 2006;

- |      |                             |  |
|------|-----------------------------|--|
| 1.15 | <b>"Public Holiday"</b>     | means Christmas Day, Good Friday and any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom where the company is registered;                   |
| 1.16 | <b>"Secretary"</b>          | the secretary of the Charity (if any);   |
| 1.17 | <b>"Subsidiary Company"</b> | any company in which the Charity holds more than 50% of the shares, controls more than 50% of the voting rights attached to the shares or has the right to appoint a majority of the board of the company; |
| 1.18 | <b>"Trustee"</b>            | a director of the Charity, and includes any person occupying the position of director, by whatever name called; and  |
| 1.19 | <b>"Writing"</b>            | 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.             |
2. Subject to paragraph [3] of this Schedule, any reference in the Articles to an enactment includes a reference to that enactment as re-enacted or amended from time to time and to any subordinate legislation made under it.
3. Unless the context otherwise requires, words or expressions contained in the Articles which are not defined in paragraph [1] above bear the same meaning as in the Companies Act 2006 as in force on the date when the Articles became binding on the Charity.

## SUMMARY OF ARTICLES OF ASSOCIATION

You will see that this summary highlights (in bold type) a number of queries and areas which you might wish to discuss further, including parts of the Articles which could be shortened if you prefer. These questions are repeated in a table at the end of the document for ease of reference.

The Articles of Association are the rules which deal with the charity's status, and regulate its internal management.

### Interpretation

1. Article 1 cross refers to the Schedule which contains the definitions which are used throughout the document.

### Objects and Powers

2. The objects of the charity are set out in Article 2. **Would you like to suggest any amendments?** Everything the charity does must be in pursuance of its objects, so it is important that they are accurate, and encompass everything which you anticipate that the charity will be doing during its lifetime. Note that it can be difficult to change the objects once a charity has been registered with the Charity Commission, so it is important that they are as flexible as possible.

We will ensure that the version submitted to the Charity Commission complies with the requirements of charity law although you should be aware that this is an area where the Charity Commission may well engage us in further correspondence.

3. Article 3 sets out the powers which the charity may exercise in order to achieve its objects. We have provided a fairly full list, and in Article 3.1.31 there is a "sweep-up" power to do anything which is lawful and promotes the charity's objects. **Are there any particular proposed activities of the charity which do not appear to be covered by this list?**
  - 3.1 Articles 3.1.19 and 3.1.20 contain powers to trade and to incorporate subsidiary companies to carry on trade. The powers are stated fairly simply, but the law relating to the ability of charities to trade is quite complex, so you should take legal advice before carrying out any form of trading activity.
  - 3.2 Article 3.1.25 is an express power allowing the trustees to impose future binding restrictions on the use of the charity's property if they wish. Use of this power should not be undertaken lightly.
  - 3.3 Article 3.1.30 allows the charity to pay premiums in respect of indemnity insurance on behalf of the trustees and other officers of the charity. Such insurance can protect trustees against the possibility of personal liability arising as a result of acts of negligence or default, where they have been acting in good faith. This Article contains a cross-reference to the Charities Act 2011: this keeps the wording relatively short, but we could include more comprehensive wording and delete the cross-reference if you prefer. **Would you like to consider this?**

### Limitation on Private Benefits

4. Article 4 contains important provisions about the application of the charity's funds. **(If it is possible that the charity may wish to claim under a VAT sporting or education exemption, please let us know as it may be prudent to adjust this part of the constitution to help ensure eligibility.)**



There is a general principle of charity law that payments to trustees or certain persons connected to trustees are prohibited unless either there is a statutory power to make the payments, the Charity Commission or the court authorises the payment, or the Articles provide for the payment to be made.

In Article 4.4, we have set out a full list of the types of payments we would expect you to want to make to trustees.

4.1 Articles 4.2 and 4.3 impose a prohibition on payments and other financial benefits to members and trustees, except where the payment is authorised by the court or the Charity Commission or in the circumstances set out in Article 4.4. Note that Article 4.4 also includes a reference to persons "Connected" with a trustee (the term Connected is defined in the Schedule), since the Charity Commission's view is that those with connections to trustees, such as spouses, children and businesses in which a trustee has an interest, are also prohibited, unless specifically allowed in the Articles. The benefits which trustees and persons connected with a Trustee can receive from the charity are:

4.1.1 benefits conferred on them as beneficiaries;

4.1.2 reasonable expenses (this would cover, for example, travel expenses and childcare cover for trustees while attending trustees' meetings, but would not cover any form of payment for a trustee's time in attending the meeting);

remuneration for goods and services supplied to the charity. This would allow, for instance, payments to a trustee who was a fund raising expert for fund raising services rendered to the charity. It does not, however, cover payments to anyone for acting as a trustee, nor services performed by a trustee under a contract of employment with the charity. **If you would like a trustee to be paid in those circumstances, please let us know**, as we would need to negotiate this specifically with the Charity Commission. The Charity Commission is generally resistant to the suggestion that trustees should be paid for acting as trustees, or should be allowed to be employed by the charity, so a detailed case would need to be made. Note that under this provision no more than half of the trustees can benefit in any year (and a trustee is treated as benefitting for these purposes if a person connected with them receives a benefit);

4.1.3 interest on money lent to the charity;

4.1.4 rent on premises let to the charity;

4.1.5 premiums for trustee indemnity insurance as referred to above; and

4.1.6 payments under the indemnity provisions in Article 6.

4.2 In relation to any benefit conferred under Article 4.4, the trustee concerned must comply with the conflicts of interest provisions (see paragraph 10.9 to 10.20 below).

4.3 In addition to setting out benefits the trustees and members are permitted to receive from the charity, it is also important the constitution allows for any payments that a trading subsidiary of a charity may want to make to a trustee (for example, payment to provide services to the trading subsidiary). Article 4.5 therefore sets out in detail what payments from a charity's trading subsidiary are permitted. For some payments (including payment for services, payment of rent or interest), a

trustee (or a person connected to them) is only permitted to receive payment from the subsidiary if the other charity trustees have approved the payment. We have built in this safeguard so that the rest of the board are at least aware of any such payments being made.

### **Liability of members and indemnity**

5. Article 5 establishes the limited liability for individual members of the company. The maximum liability of any member is to pay £1 towards the charity's debts and liabilities on winding up.
6. Article 6 provides a general indemnity to the trustees and officers out of the assets of the charity against certain costs they might incur in fulfilling their functions.

### **Trustees**

#### ***Trustees' powers and responsibilities***

7. Article 7 formally entrusts the management of the charity to the trustees acting in their capacity as trustees.
8. Article 8 allows the trustees to appoint a chair, and to set his or her term of office. They can also remove the chair. **If you would like to appoint a vice-chair, we can include a provision to this effect here: please let us know if you would like to discuss this.**
9. Articles 9 to 12 contain provisions concerning delegation of the trustees' powers. It is a general principle that trustees must manage their charity personally and may only delegate their functions in accordance with the provisions of the constitution. These Articles give fairly wide powers to delegate, but in exercising these powers (as with all their powers), the trustees must act reasonably and prudently. Article 9.4 contains a power to allow committees and individuals to whom matters are delegated to delegate further: this power must be exercised particularly carefully.
  - 9.1 Article 10 provides for the establishment of committees, and covers the functions and reporting requirements of those committees. We think that it is helpful to include a reasonable degree of detail, but it is not essential. **Please let us know if you would prefer this Article to be shortened.**
  - 9.2 Article 11 deals with delegation to staff. It provides clarity, but could be deleted if you would like a shorter constitution. **Please let us know if you would prefer this.**
  - 9.3 Article 12 deals with delegation of investment management: it is in line with Charity Commission guidance on investment.
  - 9.4 Article 13 allows the trustees to change the name of the charity. **We could, if you wish, provide that a resolution to this effect must be passed by more than a simple majority (eg by 75% majority): please let us know if you would like to discuss this.** (Note that with their members' hats on (see paragraph 13 below), 75% of the trustees have a right under company law to change the name of the charity. The Charity Commission does not need to consent to a change of name, but it can force a charity to change its name in some circumstances, for example if a charity's name is the same as, or too like, the name of another charity.

### ***Decision-making by Trustees***

10. Articles 14 to 24 regulate the decision-making of the Trustees.
- 10.1 Article 14 provides that decisions must be made by way of majority vote at a meeting or outside a meeting in accordance with Article 20 (see below).
- 10.2 Article 15 deals with the calling of trustees meetings. These provisions are fairly self-explanatory. We have provided for maximum flexibility by allowing notice of trustees' meetings to be given orally, and electronically. We would suggest that new trustees be asked to confirm in writing that they are happy to receive notice of trustees' meetings by email and/or telephone and to provide appropriate email addresses and telephone numbers for this purpose. Notice of trustees' meetings can also be given by other means, for example, via text message, if the trustee has agreed to this (see the communications provisions at Article 48.3). This Article could be made even more flexible, for instance by removing the requirement to give notice of the business of the meeting and/or allowing the trustees more discretion about how to call meetings. **Please let us know if you would like to discuss this.**
- 10.3 Article 16 provides that trustees participate in a trustees' meeting when they can all communicate with each other: they do not necessarily need to be in the same place. This would allow for a trustees' meeting to be set up by telephone or video conferencing or via an online arrangement such as Skype. **If you feel that this gives too great a degree of flexibility, please let us know and we can suggest appropriate restrictions.**
- 10.4 Article 17 deals with the quorum for trustees' meetings. We have suggested that this should be two, or one-third of the total number of trustees, whichever is greater (although the trustees may set a different quorum, as long as it is always higher than two).
- 10.5 Article 18 deals with the chairing of trustees' meetings.
- 10.6 Article 19 provides that in the event of a tied vote the chair of the meeting will have a casting vote.
- 10.7 Article 20 allows the trustees to make a unanimous decision without holding a meeting if they all indicate to each other by any means that they share a common view on a matter. This mechanism may be useful where a decision needs to be made between meetings. A decision would be valid if, for example, some of the trustees indicated their agreement by email, while others were consulted on the telephone. However, it is important that appropriate records are kept of trustees' decisions: Article 52 (which deals with minutes generally) makes it clear that decisions made in this way must be minuted.
- I have included Article 20.3 which provides a framework for making decisions outside meetings. It is important that appropriate methods are agreed for authenticating email communications between trustees, but you may feel that Article 20.3 is too inflexible: note, for instance, that the decision is not made until the person co-ordinating the decision has confirmed that it's been approved. **Please let us know if you would like to amend or delete this provision.**
- 10.8 It is technically also possible to include a mechanism for taking majority decisions without a trustees' meeting. This may be useful for taking urgent decisions, but equally you may not feel it is not appropriate to allow majority decisions to be made without a meeting, because such a decision may

not involve the same level of discussion and sharing of views as would take place at a meeting. **I have, therefore, not allowed for this in the current draft, but please let us know if you would like to discuss it further.**

- 10.9 Article 21 deals with conflicts of interest. Under both charity law and company law, trustees of charitable companies must take careful steps to disclose interests and to manage conflicts of interest. In particular, the Companies Act 2006 includes statutorily defined duties to disclose interests and avoid conflicts of interest. **Please let us know if you would like more details about this.** It is particularly important to include provisions for managing conflicts of interests in the Articles, not least because a trustee complying with the provisions in the Articles is automatically (under the Companies Act) not in breach of his or her duties to avoid a conflict of interest.
- 10.10 In our experience, the simpler the procedure, the more likely it is that it will be followed correctly, thereby triggering protection for the trustees. Article 21 has therefore been drafted to set out a fairly simple procedure. The Companies Act does allow charitable companies to include more complex provisions in their Articles which give additional protections to trustees in relation to conflicts, for example by giving the trustees a power to authorise conflicts. **Please let us know if you would like to discuss the pros and cons of including some of these additional protections.**
- 10.11 The most important thing however is that the conflicts provisions in the Articles address any particular types of conflicts likely to arise for the trustees of the charity, and that the provisions will be workable in practice. **If there are particular conflicts that you can foresee arising, or problems you envisage with the procedure proposed in our draft, please let us know.** It is very important at this stage to make sure that what we include will deal with any likely conflicts and will work in practice.
- 10.12 Article 21.1 makes it clear that trustees should disclose any interest (direct or indirect) which they have in a proposed transaction or arrangement with the charity. They must also disclose any duty or interest which conflicts or may conflict with the interests of the charity or the trustees' duties to the charity. There is no definition of "interest" or "conflict of interest" – trustees should take a common-sense approach to whether a situation gives rise to an interest and a conflict. A conflict of interest would include a situation where a trustee had a conflict of duties or a conflict of loyalties.
- 10.13 Article 21.2 reflects provisions in the Companies Act and should be self-explanatory. It is however open to the trustees to decide that in practice all interests should always be disclosed and we recommend this could best be done by including this in a conflicts of interest policy.
- 10.14 Article 21.3 deals with the situation where a trustee's interest or duty does not or is not reasonably likely to give rise to a conflict of interest and it allows the trustee with the interest/duty to take part in the decision-making process as normal. If there is any doubt over whether or not a conflict exists, the unconflicted trustees will decide the matter.
- 10.15 Articles 21.4 and 21.5 set out a procedure for the trustees to follow if there is reasonably likely to be a conflict of interest or there is in fact a conflict of interest. Article 21.4 allows a trustee to participate in the decision-making process even where he or she has a conflict except:
- 10.15.1 in any situation (other than those listed in Articles 21.4.1(a) to 21.4.1(d)) where the trustee could receive a benefit; and

- 10.15.2 in any situation where the unconflicted trustees decide that the trustee's conflict is such that he or she should not participate in the decision-making process.

In the situations in paragraphs 10.15.1 and 10.15.2 above, the conflicted trustee must comply with Article 21.5 which allows the trustee to remain for any discussion if invited to do so, but otherwise the trustee cannot be counted as part of the quorum for that part of the meeting, must withdraw during the vote and have no vote on the matter.

- 10.16 Article 21 also builds in a few permitted safeguards for protecting trustees from liability for breach of their statutory duties. For instance, Article 21.6.1 confirms there is no breach of duty if a trustee in a position of conflict withholds confidential information from the charity.

- 10.17 When considering whether these provisions for managing conflicts will be appropriate for your organisation, you should note the following practical consequences:

- 10.17.1 These procedures apply to all decisions made by trustees, whether at a meeting or outside a meeting. The effect of the procedures is that a decision outside a meeting is not possible if one or more trustees have a conflict which prevents them from voting. This is because the conflicted trustee has no vote and, therefore, the decision cannot be unanimous.

- 10.17.2 The wording provides a mechanism for dealing with the situation where all the trustees have the same conflict because they are all beneficiaries of the charity and may all benefit for example from a change in charity policy. Article 21.4.1(a) allows all the trustees to vote in this situation. Are there any other situations where all the trustees might receive the same benefit or have the same conflict? **Please let us know and we can include wording to prescribe how conflicts should be managed in such a situation.**

- 10.18 As a matter of good governance, the charity should have a conflicts of interest policy which goes into more detail about how conflicts should be dealt with. The policy can include model forms for trustees to declare their interests and also a model register of trustee interests. **If you would like us to help you draw one up, please let us know and we can give you an indication of the likely cost of this additional work.**

- 10.19 Article 22 imposes a requirement to keep a register of trustees' interests. This is not a legal requirement, but in our view it is best practice.

- 10.20 The conflicts provisions have been specially drafted by Bates Wells – while the Charity Commission has accepted them without comment on a number of occasions, the Commission does occasionally raise queries on this part of the Articles.

#### ***Validity of trustees' actions***

- 10.21 Article 23 is a saving provision, in the event that there are problems with the appointment of trustees. We think that it is helpful to include this wording for clarity, but the position is covered by the Companies Act 2006 in any event, so it could be removed. **Please let us know if you would prefer to delete it.**

- 10.22 Article 24 allows the trustees to make further rules about the conduct of their decision-making.

### ***Appointment and retirement of Trustees***

11. Articles 25 to 27 deal with the appointment and retirement of trustees.
- 11.1 Article 25 provides for a minimum of three trustees. Any maximum may be set as a matter of policy or we could, if you wish, include a reference to a maximum in the Articles. **Please let us know if you would like to do this.**
- 11.2 Article 26 deals with how individuals become trustees. Charities typically adopt a variety of methods of appointing trustees: the method suggested in this draft is commonly used but is by no means set in stone, and there are several alternatives which we would be happy to discuss with you. **Please let us know if you would like a word about this.**
- 11.3 Under Article 26.1, the first trustees will be those individuals who are notified to Companies House as the first company directors. Thereafter, new trustees are appointed by the trustees themselves, under Article 26.2. Trustees who would be disqualified from acting under Article 27 (see below) may not be appointed.
- 11.4 Under Article 26.3, each trustee must retire at the third annual retirement meeting following their appointment. The annual retirement meeting is the trustees' meeting at which the annual accounts are adopted. This means that there is a regular opportunity to change the trustees if desired.
- 11.5 Trustees who retire automatically may be reappointed.
- 11.6 Article 26.7 provides that trustees cannot be under 16. **We could increase the age to 18 if you prefer. Please let us know if you would like to do this.** If you are happy with 16, then it would be possible to delete this provision, as it simply reflects the general law, although it is a useful reminder.
- 11.7 Article 26.8 makes it clear that trustees must make decisions themselves, and cannot appoint anyone else to do so. This provision is not strictly necessary, but it does provide clarity.
- 11.8 Article 27 sets out when trustees will cease to act. Under Article 27.1.5, a trustee who does not attend three meetings in a row can be removed. **Are you happy with this?** Article 27.1.6 contains a general power for the trustees to remove fellow trustees, but gives the trustee being removed a right to be heard.

### **Patrons**

12. Article 28 allows the trustees to appoint patrons. **Is this appropriate?** We can remove this provision if it is not required.

### **Members**

#### ***Becoming and ceasing to be a Member***

13. Articles 29 to 31 deal with members. A company is required to have directors (in the case of a charitable company these are called the trustees) and members. In this case they will be the same people. Under Article 29 all trustees will be members. We recommend that when new trustees take office they should be asked to confirm in writing that they agree to become a member as well as a

trustee. Anyone who ceases to be a trustee will automatically cease to be a member under Article 30.

- 13.1 Although the members and trustees are, in practice, the same people, it is important at all times to maintain what appears to be an artificial distinction between membership and trusteeship. This is because company law entrusts certain powers to the trustees and certain powers to the members (see the [attached/enclosed] summary of company and charity law for more detail on this). To ensure the validity of their decisions, the trustees need to know in what capacity they are taking such decisions.
- 13.2 Company law requires the names of the members to be entered into a members' register, even though in this case they are the same people as the trustees. Although it does not need to be repeated in the Articles, we think that it is helpful so we have included a specific requirement at Article 29.3 (it is also referred to in Article 39).
- 13.3 Article 31 allows the trustees to create classes of associate members, who will not be regarded as members in the eyes of company law, and who will not have a vote at members' meetings. This will allow the trustees the flexibility to give individuals or organisations some degree of involvement with the charity without necessarily giving them any formal control.

#### ***Members' Meetings***

14. Article 32 makes provision for members' meetings. In practice, it is likely that meetings of the members will be held rarely, as the general management of the charity is entrusted to the trustees acting in their capacity as trustees and not to the trustees acting in their capacity as members. We have, therefore, simply cross-referred to the provisions in company legislation regarding members' meetings: these will need to be followed if a meeting of the members is ever held. **We could include more comprehensive wording regarding members' meetings here if you prefer. Please let us know if you would like to discuss this.**

#### ***Written Resolutions***

15. We have set out a framework for written resolutions in Article 33. This reflects, for the most part, provisions contained in company legislation. We think that it is helpful to set out the procedure for written resolutions in some detail in the Articles but this Article could be made shorter if you wish. **Please let us know if you would prefer this.**

Note that under Article 33.7, the proposed written resolution will lapse if it has been circulated but not passed within a number of days. We have provided for a period of 28 days, but we could provide for a longer or shorter period: the key is to choose a period which you think will work in the circumstances. **Please let us know if you would like to discuss including a different period.**

#### ***Appointment of auditors***

16. If the charity is to have auditors, they can be appointed either by the trustees or by the members (ie by the trustees acting in their capacity as members). It is generally more appropriate for the appointment to be made by the members, as the auditors are then deemed reappointed for each successive year (unless the members intervene, or the trustees decide that audited accounts are not

needed). This can be dealt with by a members' resolution once the company has been established, passed either at a meeting or by written resolution.

#### **Administrative Arrangements and Miscellaneous**

17. Articles 34 and 35 deal with communications. Note, in particular, that notices and other documents may be sent by email or by making them available on a website. Consent may be required from the recipient: this will depend on the nature of the communication. **Please let us know if you would like more information on this.** Article 34 contains some provisions dealing with when documents sent by email are deemed to be served, and what should happen if documents sent electronically are returned undelivered.
18. Article 36 deals with the company secretary. There is no longer a legal requirement for a company secretary, so the Articles give the trustees discretion about whether to appoint a secretary or not. Please let us know, however, if **you would like to include a requirement that a secretary be appointed.**
19. Article 37 is a saving provision which prevents proceedings or resolutions from being invalidated by accidental technical failures.
20. Article 38 deals with record keeping. Although this Article is not strictly necessary, we think that it is helpful to include it by way of reminder of the importance of record keeping.
21. Article 39 is a reminder of the requirements to keep records and to file reports and accounts with Companies House and the Charity Commission.
22. Article 40 ensures that these Articles will prevail over the model regulations which would otherwise apply under company law.

#### **Winding up**

23. Article 41 provides that should the charity be wound up, its assets must be used for the objects or transferred to a charity or charities with similar objects, or ultimately used for charitable purposes selected by the Charity Commission. We have drafted this Article so that the recipient organisation(s) must be charitable under the laws of any part of the United Kingdom. This avoids potential problems should the charity ever wish to register in Scotland. However, it means that a distribution on a winding up could not be made, say, to a charity that was regarded as charitable under English law but not under Scottish law. **We could change this in the draft if you wish: Please let us know if you would like to discuss this.**

**29 January 2020**

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