

Company number: SC402171

THE COMPANIES ACT 2006

*Company limited by guarantee
and not having a share capital*

ARTICLES of ASSOCIATION

of

Birnam Arts

Incorporated on 22 June 2011

J. & H. Mitchell, W.S.
Pitlochry and Aberfeldy

THE COMPANIES ACT 2006

Company limited by guarantee and not having a share capital

ARTICLES of ASSOCIATION

of

Birnam Arts

1 NAME AND REGISTERED OFFICE

1.1 The name of the company is "Birnam Arts ("Birnam Arts").

1.2 The Registered Office of Birnam Arts is situated in Scotland.

2 DEFINITIONS

2.1 The definitions and meanings specified in this Article shall apply throughout these Articles of Association and the two Schedules hereto, as follows:

WORDS

MEANINGS

Advisory
Group(s)

- one or more sub-committees of the Board set up in terms of Article 7.2.

AGM

- the Annual General Meeting.

Articles

- these Articles of Association, and any ancillary regulations thereunder, in force from time to time.

Board

- the Board of Trustees.

Board of Trustees - the Board of Directors of Birnam Arts.

Charitable
Purposes

- as described in Article 3 on the basis that these fall within section 7 of the Charities Act and are also regarded as charitable in relation to the application of the Taxes Acts.

Charities Act

- the Charities and Trustee Investment (Scotland) Act 2005 and every statutory modification and re-enactment thereof for the time being in force.

charity

- a body on the Scottish Charity Register which is also regarded as a charity in relation to the application of the Taxes Acts.

Companies Act

- the Companies Act 2006 as amended and every statutory modification and re-enactment thereof for the time being in force.

EGM	- an Extraordinary General Meeting, and any General Meeting which is not an AGM.
in writing	- written, printed or lithographed, or partly one and partly another, and other modes of representing or producing words in a visible and non-transitory (albeit electronically-based) form.
members	- all members of Birnam Arts.
month	- calendar month.
property	- any property, assets or rights, heritable or moveable, wherever situated in the world.
Subscribers	- those persons and/or organisations who have subscribed these Articles.
Trustee(s)	- Director(s) for the time being of Birnam Arts.

2.2 These Articles supersede any model Articles contained within the Companies Act or any regulations pertaining thereto.

2.3 Words importing the singular number only shall include the plural number, and *vice versa*.

2.4 Words importing the masculine gender only shall include the feminine gender.

2.5 Subject as aforesaid, any words or expressions defined in the Companies Act shall, if not inconsistent with the subject or context, bear the same meanings in the Articles.

2.6 The two Schedules to these Articles are deemed to form an integral part of these Articles.

3 CHARITABLE PURPOSES

3.1 The Charitable Purposes of Birnam Arts ("the Charitable Purposes") are:

3.1.1 to provide community and recreational facilities with the object of improving the life of the members of the community in the Parish of Dunkeld and the public generally;

3.1.2 to encourage and promote the arts, science, heritage and culture; and

3.1.3 to provide training and education in the arts, science, heritage and culture and for social and personal development.

3.2 Birnam Arts shall have powers, but only in furtherance of its Charitable Purposes, as expressed in Schedule 1 annexed to these Articles.

4 GENERAL STRUCTURE OF BIRNAM ARTS

The structure of Birnam Arts comprises:

4.1 **Trustees** - who hold regular meetings between each AGM, set the strategy and policy of Birnam Arts, generally control and supervise the activities of

Birnam Arts and, in particular, are responsible for monitoring its financial position and, where there are no employees or managers appointed, are responsible also for the day-to-day management of Birnam Arts; and

- 4.2 **Members** - who are the Trustees for the time being, in their capacity as members of Birnam Arts, who in that capacity have the right to attend the AGM (and any General Meeting) and have important powers under these Articles and the Companies Act, particularly in taking decisions in relation to any changes to these Articles and in resolving to pass any other Special Resolutions.

5 MEMBERSHIP

5.1 Members

The first members of Birnam Arts shall be the Subscribers. The members of Birnam Arts shall be the current Trustees, on the basis that a new Trustee shall automatically become a member on becoming a Trustee and shall automatically cease to be one on ceasing to be a Trustee for whatever reason.

5.2 Employees

Employees of Birnam Arts shall not be eligible to become members or Trustees. A person who becomes an employee of Birnam Arts after admission to membership shall automatically cease to be a member (and a Trustee).

5.3 Subscription

Members shall not be required to pay any membership subscription.

5.4 Cessation of Membership

5.4.1 Any member may no longer serve as such if he or she ceases to be a Trustee in terms of Article 8.2.

5.4.2 Membership is neither transferable nor assignable to any other individual or organisation.

5.5 Register of Members

5.5.1 The Board shall maintain a Register of Members.

5.5.2 The Register of Members is open to all members of Birnam Arts.

5.5.3 The Register of Members is open to non-members of Birnam Arts, provided that the applicant provides:

- (a) the applicant's name and address;
- (b) the purpose for which the information is to be used; and
- (c) whether the information will be disclosed to any other person and, if so, the name and address of that other person and the purpose for which the information is to be used by that other person.

Birnam Arts must within 5 working days either supply the information, subject to the data protection rights of its members, or apply to the Court for an order that the application is not for a proper purpose (and intimate this to the applicant). Where the information is provided, Birnam Arts may charge a fee for providing the information.

6 GENERAL MEETINGS

6.1 Convening an AGM

6.1.1 The Board may convene one General Meeting as an Annual General Meeting in each year, at such time as it may determine, although the first AGM need

not be held in the first year provided that, if it is to be held, it be held within 18 months after the date of incorporation of Birnam Arts.

6.1.2 Thereafter, if an AGM is to be held, not more than 15 months shall elapse between the holding of one AGM and the next.

6.1.3 The AGM does not need to be held exclusively in one place, provided that, where two or more members are not in the same place as each other, they are all able to communicate together and vote thereat.

6.2 **AGM Agenda**

The business of any AGM shall include:

6.2.1 the report by the Chairman on the activities of Birnam Arts;

6.2.2 the report of the independent financial examiner;

6.2.3 approval of the annual accounts of Birnam Arts; and

6.2.4 the appointment of the independent financial examiner.

6.3 **Convening an EGM**

6.3.1 The Board, or any Trustee, may convene an EGM whenever it, he or she thinks fit.

6.3.2 Any such meeting convened in terms of this Article shall not be an AGM.

6.4 **Notice of General Meetings**

6.4.1 14 clear days' notice at the least shall be given of every AGM and EGM.

6.4.2 The notice shall specify the place, the day and the hour of meeting and, in the case of special business, the specific nature of that business.

6.4.3 The notice shall be sent, in the manner specified in Article 16, to all members and to such persons or organisations as are under these Articles or under the Companies Act entitled to receive such notices.

6.4.5 With the consent of not less than 90% of the members having the right to attend and vote thereat, a General Meeting may be convened by such shorter notice as they may think fit in the circumstances.

6.4.6 The accidental omission to give notice of a General Meeting to, or the non-receipt of such notice by, any members, persons or organisations entitled to receive notice thereof shall not invalidate any resolution passed at or proceedings of any AGM or EGM.

6.5 **Chairman of General Meetings**

The Chairman of Birnam Arts, whom failing the Vice-Chairman of Birnam Arts (if any), shall act as chairman of each General Meeting. If neither the Chairman nor the Vice-Chairman is present and willing to act as chairman of the meeting within 15 minutes after the time at which the General Meeting in question was due to commence, the Trustees present shall elect from among themselves the Trustee who will act as chairman of that meeting.

6.6 **Quorum at General Meetings**

6.6.1 The quorum for a General Meeting shall be 50% of the members, present in person or by proxy in terms of Article 6.8. No business shall be dealt with at any General Meeting, other than the appointment of the chairman of the meeting in terms of Article 6.5, unless a quorum is present.

6.6.2 If a quorum is not present within 15 minutes after the time at which the General Meeting was due to commence - or if, during a General Meeting, a quorum ceases to be present - the General Meeting shall stand adjourned to such time and place as may be fixed by the chairman of the meeting.

6.7 **Voting at General Meetings – General Provisions**

- 6.7.1 The chairman of the meeting shall endeavour to achieve consensus wherever possible but, if necessary, questions arising shall be decided by being put to the vote.
- 6.7.2 Each Trustee as a member of Birnam Arts is able to attend and speak at any General Meeting and shall have one vote, to be exercised in person in or by proxy in terms of Article 6.8.
- 6.7.3 In the event of an equal number of votes for and against any resolution, the chairman of the meeting shall have a casting vote as well as any deliberative vote.
- 6.7.4 The chairman of the meeting may permit any other person or persons to attend a General Meeting who otherwise has no right to do so, as an observer or observers. In that event, it shall be at the discretion of the chairman of the meeting whether any such observer may be invited to speak thereat.
- 6.7.5 No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive.

6.8 **Voting at General Meetings – Proxy Voting**

Whilst personal attendance at a General Meeting is encouraged, a Trustee as member shall be entitled to complete one form of proxy in order to appoint a proxy to attend a General Meeting on his or her behalf (but never a Board meeting), in respect of which the following apply:

- 6.8.1 a proxy need not be a member;
- 6.8.2 a proxy appointed to attend and vote at any meeting instead of a member shall have the same right as the appointing member to speak at the meeting and to vote thereat;
- 6.8.3 the form appointing the Proxy, which may specify how the proxy is to vote (or to abstain from voting) on one or more resolutions, shall be in the general terms (to be varied as required to fit the circumstances) of the form shown in the Schedule 2 annexed to these Articles;
- 6.8.4 the form appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a certified copy thereof, shall be lodged with Birnam Arts not less than 48 hours before the time of the start of the meeting or adjourned meeting at which the person named in the form proposes to vote, and in default the instrument of proxy shall not be treated as valid;
- 6.8.5 no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution, unless it expressly states to the contrary, in which event it shall be treated as valid until rescinded by the granter in writing to Birnam Arts;
- 6.8.6 a vote given in accordance with the terms of a form of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of the death, insanity or revocation as aforesaid shall have been received by Birnam Arts before the commencement of the meeting or adjourned meeting at which the proxy is used (not having been deliberately withheld);
- 6.8.7 appointment of a proxy may be revoked by the granter by written notice received by Birnam Arts not less than 24 hours before the time of the start of the General Meeting (or adjourned meeting) to which it relates; and

6.8.8 any reference in these Articles to voting being “in person” shall include voting by proxy.

6.9 Voting at General Meetings – Secret Ballot

A resolution put to the vote at any General Meeting shall be decided verbally or on a show of hands, as appropriate, unless a secret ballot is demanded in the following terms:

- 6.9.1 such demand must be made either by the chairman of the meeting, or by two or more members having the right to vote on the resolution;
- 6.9.2 such demand may be made at any time prior to a show of hands on that resolution, or immediately after the result of a show of hands on that resolution is declared;
- 6.9.3 a demand for a secret ballot may be withdrawn by its proposers prior to the secret ballot taking place, provided that the chairman of the meeting consents to the withdrawal; and
- 6.9.4 the secret ballot shall be conducted in such a manner as the chairman of the meeting may direct, and the chairman of the meeting shall appoint and instruct tellers, who may cast their own personal votes if members and the result shall be declared by the chairman of the meeting at the same meeting at which the ballot is taken.

6.10 Voting at General Meetings – Special Resolutions

6.10.1 At any General Meeting a resolution put to the vote of the meeting shall be voted upon by a simple majority of the members who are present and voting thereon, except for decisions relating to any of the following Special Resolutions, which shall require to be decided upon by not less than 75% of the members present and voting thereon (no account therefore being taken of members who abstain from voting or who are absent from the meeting), namely:

- (a) to alter the name of Birnam Arts; or
- (b) to amend the Charitable Purposes; or
- (c) to amend these Articles; or
- (d) to wind up Birnam Arts in terms of Article 20; or
- (e) all other Special Resolutions.

6.10.2 An ordinary resolution to be proposed at a General Meeting may be amended if:

- (a) written notice of the proposed amendment is received by Birnam Arts from a member entitled to vote thereat not less than 48 hours before the time appointed for the holding of the meeting or adjourned meeting; and
- (b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

6.10.3 A Special Resolution to be proposed at a General Meeting may be amended if:

- (a) the chairman of the meeting proposes the amendment at the General Meeting at which the Special Resolution is to be proposed; and
- (b) the amendment does not go beyond what is necessary to correct a grammatical, interpretative or other non-substantive error in the Special Resolution.

6.10.4 If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman’s error does not invalidate the vote on that resolution.

6.11 Voting - Written Resolutions

- 6.11.1 Ordinary and Special Resolutions may be passed in writing, rather than at a General Meeting, provided that the terms of this Article are followed.
- 6.11.2 An ordinary resolution in writing signed by or on behalf of a simple majority of all the members shall be as valid and effective as if the same had been passed at a General Meeting of Birnam Arts duly convened and held, provided that the terms of this Article are followed.
- 6.11.3 A Special Resolution in writing signed by or on behalf of not less than 75% of all the members shall be as valid and effective as if the same had been passed at a General Meeting of Birnam Arts duly convened and held, provided that the terms of this Article are followed.
- 6.11.4 Written resolutions may not be used either for the removal of a Trustee prior to the expiration of his or her term of office, or for the removal of an independent financial examiner prior to the expiration of his or her term of office.
- 6.11.5 Any written resolution must be issued in hard copy (by hand or by post) or in electronic form (by fax or e-mail), or by means of a website at the same time, to all members on the Circulation Date (that is, the date on which copies of the written resolution are sent to the members).
- 6.11.6 Where such a written resolution is proposed by the Board, it must include the following express statements:
 - (a) an explanation to the eligible members how to signify their agreement to the resolution;
 - (b) how it can be sent back by them, and whether in hard copy (by hand or by post) and/or in electronic form (by fax or by e-mail);
 - (c) clarification that a failure to reply will be deemed to be a vote against the resolution in question; and
 - (d) the date by which the resolution must be passed if it is not to lapse (that is, the date which is 28 days after the Circulation Date).
- 6.11.7 Where such a written resolution is proposed by members, the following shall apply:
 - (a) the resolution must be requested by not less than 5% of the members ("the members' request");
 - (b) the members' request may be made in hard copy (by hand or by post) or in electronic form (by fax or by e-mail);
 - (c) the members' request must identify the resolution to be put to members. The Board can reject this if it is, in its opinion, either frivolous, vexatious, defamatory of any person or would be ineffective (whether by reason of inconsistency with any enactment or these Articles or otherwise);
 - (d) the members' request can include an accompanying statement (not exceeding 1,000 words) which they can require Birnam Arts to issue with the written resolution to all the members;
 - (e) within 21 days, Birnam Arts must circulate the resolution and any accompanying statement with the express statements referred to in sub-clause (f) hereof; and
 - (f) Birnam Arts may charge a reasonable fee to the requesting members to cover its costs of circulation of the members' request.
- 6.11.8 Any such written resolution may consist of several documents in the same form, each signed by or on behalf of one or more members.
- 6.11.9 Once a member has signed and returned a written resolution in agreement thereto, his or her agreement is irrevocable.

7 THE BOARD OF TRUSTEES

7.1 The strategy and affairs of Birnam Arts shall be directed and managed by a Board of Trustees elected in terms of Article 8. The Board may exercise all such powers of Birnam Arts, and do on behalf of Birnam Arts all acts as may be exercised and done by Birnam Arts, other than those required to be exercised or done by the members in General Meeting, and subject always to these Articles and to the provisions of the Companies Act.

7.2 Delegation

7.2.1 The Board may delegate any of its powers to any Advisory Group or persons or person, by such means, to such an extent and on such terms and conditions as it thinks fit, and may at any time revoke such delegation, in whole or in part, or alter such terms and conditions. If the Board so specifies, any such delegation may authorise further delegation of the Board's powers by any Advisory Group or persons or person to whom they are delegated.

7.2.2 Any Advisory Group so formed or persons or person to whom delegation of powers is made in terms of Article 7.2.1 shall, in the exercise of the powers so delegated, conform to any remit and regulations imposed on it by the Board.

7.2.3 In the case of delegation to any one or more Advisory Groups, each shall consist of not less than one Trustee and such other person or persons as the Board thinks fit or which it delegates to the Advisory Group to appoint. The meetings and proceedings of any such Advisory Group shall be governed by the provisions of these Articles for regulating the meetings and proceedings of the Board so far as applicable (and, without prejudice to that generality including Articles 12.4.5 and 12.6) and so far as the same shall not be amended or superseded by any specific regulations made by the Board for all or any Advisory Groups. An Advisory Group may invite or allow any person to attend and speak, but not to vote, at any of its meetings. Such Advisory Group shall regularly and promptly circulate, or ensure the regular and prompt circulation of, the minutes of its meetings to all Trustees.

7.3 Number of Trustees

7.3.1 The number of Trustees shall be not less than three and not more than fifteen.

7.3.2 The Board may act notwithstanding any vacancy in it, but where the number of Trustees falls below the minimum number specified in this Article, it may only do so for the purpose of appointing sufficient Trustees to match or exceed that minimum.

8 TRUSTEES

8.1 Composition of the Board

8.1.1 At the incorporation of Birnam Arts, the Subscribers shall form the Board of Trustees, all of whom shall be Trustees of the Birnam Institute, constituted by Deed of Trust dated 15th April 1959 and registered as a Scottish charity under Scottish Charity Number SC024975.

8.1.2 The Board shall at any time thereafter elect new or additional Trustees as required from time to time, provided that the maximum number expressed in Article 7.3 is not exceeded.

8.2 Retiral and Deemed Retiral of Trustees

Any Trustee must cease to be a Trustee in any one or more of the following events:

- 8.2.1 if he or she is prohibited from being a member, as an employee, in terms of Article 5.2; or
- 8.2.2 if he or she holds any office of profit or is employed by Birnam Arts (except where the provisions of Article 10.4 shall apply); or
- 8.2.3 if he or she is prohibited from being a charity trustee by virtue of section 69(2) of the Charities Act; or
- 8.2.4 if, in terms of section 66(5) of the Charities Act, he or she is considered by the Board to have been in serious or persistent breach of either or both of the duties listed in sections 66(1) and 66(2) of the Charities Act, such Trustee being entitled to be heard prior to the Board taking a decision; or
- 8.2.5 if he or she has a significant conflict of interest which the Board considers has and is likely to continue to undermine his or her ability to act impartially as a Trustee; or
- 8.2.6 if he or she becomes incapable for medical reasons of fulfilling the duties of his or her office and such incapacity, as certified if necessary by two medical practitioners, is expected to continue for a period of more than six months from the date or later date of such certification; or
- 8.2.7 if he or she is absent (without permission) from more than three consecutive meetings of the Board, and the Board resolves to remove him or her from office; or
- 8.2.8 if by notice in writing to the Registered Office he or she resigns his or her office as a Trustee;
- 8.2.9 he or she dies.

9 CHAIRMAN AND VICE-CHAIRMAN

The Board shall meet as soon as practicable immediately after each AGM (if there is one, or otherwise it shall meet annually) to appoint both a Chairman and, if desired, a Vice-Chairman of Birnam Arts from the Board.

10 CONSTRAINTS ON PAYMENTS/BENEFITS TO TRUSTEES

- 10.1 The income and property of Birnam Arts shall be applied solely towards promoting the Charitable Purposes.
- 10.2 No part of the income or property of Birnam Arts shall be paid or transferred (directly or indirectly) to the Trustees of Birnam Arts, whether by way of dividend, bonus or otherwise, except where such Trustees are in receipt of income or property of Birnam Arts as a beneficiary of Birnam Arts in terms of the Charitable Purposes.
- 10.3 No Trustee shall be appointed as a paid employee of Birnam Arts.
- 10.4 No benefit (whether in money or in kind) shall be given by Birnam Arts to any Trustee except the possibility of:
 - 10.4.1 repayment of out-of-pocket expenses to Trustees (subject to prior agreement by the Board); or
 - 10.4.2 reasonable remuneration to a Trustees in return for specific services actually rendered to Birnam Arts (not being of a management nature normally carried out by a director of a company); or
 - 10.4.3 payment of interest at a rate not exceeding the commercial rate on money lent to Birnam Arts by any Trustee; or
 - 10.4.4 payment of rent at a rate not exceeding the open market rent for property let to Birnam Arts by any Trustee; or

- 10.4.5 the purchase of property from any Trustee provided that such purchase is at or below market value or the sale of property to any Trustee provided that such sale is at or above market value; or
- 10.4.6 payment to one or more Trustees by way of any indemnity where appropriate

11 CONFLICTS OF INTERESTS

- 11.1 Any Trustee and/or employee who has a personal interest (as defined in Article 11.2) in any prospective or actual contract or other arrangement with Birnam Arts must declare that interest either generally to the Board or specifically at any relevant meeting of Birnam Arts. Where such an interest arises, the provisions within Article 11.3 shall apply.
- 11.2 A personal interest includes the following interests:
 - 11.2.1 those of the Trustee or employee in question; and
 - 11.2.2 those of his or her partner or close relative; and
 - 11.2.3 those of any business associate; and
 - 11.2.4 those of any firm of which he or she is a partner or employee; and
 - 11.2.5 those of any limited company of which he or she is a director, employee or shareholder of more than 5% of the equity; and
 - 11.2.6 those of any person or organisation responsible for his or her appointment as a Trustee.
- 11.3.1 Whenever a Trustee finds that there is a personal interest, as defined in Article 11.2, he or she has a duty to declare this to the Board meeting in question. In that event, in order to avoid a material conflict of interest arising, the Trustee in question cannot partake in discussions or decisions relating to such matter.
- 11.3.2 It shall be for the chairman of the meeting in question to determine whether the Trustee in question should at the least be required to be absent during that particular element of the meeting. In terms of Article 12.1, where a Trustee leaves, or is required to leave, the meeting in question, he or she no longer forms part of the quorum thereat.
- 11.3.3 The Board may at any time resolve, but without taking a specific vote on the matter, to authorise any Trustee to continue acting where a real or potential conflict of interest exists in relation to a personal interest of that Trustee, but where it considers that the interests of Birnam Arts have not been nor are likely to be prejudiced as a result. The Trustee in question cannot be considered as part of the quorum for that part of any Board meeting giving consideration to this authorisation.
- 11.3.4 The Board may resolve at any time to require all Trustees and employees to deliver a Notice of Relevant Interests to the Registered Office (or elsewhere as it may determine), as they arise and at least annually. In that event, the Board shall determine from time to time what additional interests to those listed in Article 11.2, if any, shall be relevant interests and shall ensure that a Register of Notices of Relevant Interests is maintained.
- 11.3.5 If existing, the Register of Interests shall be open for inspection by both the Board and members of Birnam Arts and, with the express prior written approval of the Trustee or employee concerned, by members of the public.

12 BOARD MEETINGS

12.1 Quorum

12.1.1 The quorum for Board meetings shall be not less than 50% of all the Trustees. No business shall be dealt with at a Board meeting unless a quorum is present.

12.1.2 A Trustee shall not be counted in the quorum at a meeting (or at least the relevant part thereof) in relation to a resolution on which, whether because of personal interest or otherwise, he or she is not entitled to vote.

12.2 Convening Board Meetings

12.2.1 Meetings of the Board may take place in person or by telephone conference call, video conference call or by any other collective electronic means approved from time to time by the Board.

12.2.2 Not less than 7 clear days' notice in writing shall be given of any meeting of the Board, unless all Trustees agree unanimously in writing to dispense with such notice on any specific occasion.

12.2.3 A Trustee may, and on the request of a Trustee the Company Secretary shall, at any time, summon a meeting of the Board by notice served upon all Trustees, to take place at a reasonably convenient time and date.

12.3 Chairman of Board Meeting

The Chairman, whom failing the Vice-Chairman (if any), shall be entitled to preside as chairman of all Board meetings at which he or she shall be present. If at any meeting neither the Chairman nor the Vice-Chairman is present and willing to act as chairman of the meeting within 15 minutes after the time appointed for holding the meeting, the remaining Trustees may appoint one of the Trustees to be chairman of the Board meeting, which failing the meeting shall be adjourned until a time when the Chairman or Vice-Chairman will be available.

12.4 Voting at Board Meetings

12.4.1 The chairman of the Board meeting shall endeavour to achieve consensus wherever possible but, if necessary, questions arising shall be decided by being put to the vote, on a show of hands only, each Trustee present having one vote.

12.4.2 All decisions of the Board shall be by a simple majority at any meeting which is quorate at the time the decision is taken, except for those decisions listed in Article 12.4.3.

12.4.3 In the event of an equal number of votes for and against any resolution at a Board meeting, the chairman of the meeting shall have a casting vote as well as a deliberative vote.

12.4.4 A resolution in writing (whether one single document signed by all or a sufficient majority of the Trustees or all or a sufficient majority of the members of any Advisory Group), whether in one or several documents in the same form each signed by one or more Trustees or members of any relative Advisory Group as appropriate, shall be as valid and effectual as if it had been passed at a meeting of the Board or of such Advisory Group duly convened and constituted.

12.5 Observers

The Board may invite or allow any person to attend and speak, but not to vote, at any meeting of the Board.

12.6 **Minutes**

The Board shall cause minutes to be made of all appointments of officers made by it and of the proceedings of all General Meetings and of all Board meetings and of Advisory Groups including the names of those present, and all business transacted at such meetings and any such minutes of any meeting, if purporting to be signed after approval, either by the chairman of such meeting, or by the chairman of the next succeeding meeting, shall be sufficient evidence without any further proof of the facts therein stated. The minutes shall be retained for at least 10 years.

12.7 **Validation**

12.7.1 All acts *bona fide* done by any Board meeting, or of any Advisory Group, or by any person acting as a Trustee shall, notwithstanding it be afterwards discovered that there was some defect in the appointment or continuance in office of any such Trustee or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Trustee.

12.7.2 No alteration of these Articles and no direction given by Special Resolution shall invalidate any prior act of the Board which would have been valid if that alteration had not been made or that direction had not been given.

13 **COMPANY SECRETARY, MINUTE SECRETARY, TREASURER & PRINCIPAL OFFICER**

13.1 **Company Secretary**

The Board may appoint a Company Secretary for such term and upon such conditions as it may think fit. The Company Secretary may be removed by the Board at any time, subject to the terms of any prevailing contract.

13.2 **Minute Secretary**

The Board may appoint a Minute Secretary, for the purposes of Article 12.6, for such term and upon such conditions as it may think fit. The Minute Secretary may be removed by the Board at any time, subject to the terms of any prevailing contract. The Board may award an annual salary, honorarium or other appropriate fee to the Minute Secretary at its discretion, but can only do so if the Minute Secretary is not a Trustee.

13.3 **Treasurer**

The Board may appoint a Treasurer for such term and upon such conditions as it may think fit. The Treasurer may be removed by the Board at any time, subject to the terms of any prevailing contract. The Board may award an annual salary, honorarium or other appropriate fee to the Treasurer at its discretion, but can only do so if the Treasurer is not a Trustee. Whilst in post, the Treasurer may be required to attend (but shall have no vote at) Board meetings during his or her tenure as Treasurer, except any part or parts thereof dealing with his or her employment or remuneration, or any other matter which the Board wish to keep confidential to itself.

13.4 **Principal Officer**

The Board may appoint a Principal Officer of Birnam Arts on such terms (including a decision on the most appropriate job title) and conditions as it may think fit, who shall attend Board and Advisory Group meetings as appropriate or required, but who shall not be a Trustee and, for the avoidance of doubt, will have no vote thereat.

14 HONORARY PATRON(S)

The Board may agree to the appointment of one or more Honorary Patrons of Birnam Arts, to be appointed either for such fixed period (usually of five years) as it determine or for an unspecified period until such appointment be terminated by it. The Honorary Patron or Patrons would be entitled to notice of all General Meetings and to attend and contribute to discussion but not vote thereat.

15 FINANCES AND ACCOUNTS

15.1 Bank Accounts

The banking account or accounts of Birnam Arts shall be kept in such bank or building society and/or banks or building societies as the Board shall from time to time determine.

15.2 Cheques etc.

All cheques and other negotiable instruments, and all receipts for monies paid to Birnam Arts, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Board shall from time to time by resolution determine.

15.3 The Board shall ensure that all funds and assets of Birnam Arts are applied towards achieving the Charitable Purposes.

15.4 Accounting Records

The Board shall cause accounting records to be kept in accordance with the requirements of the Companies Act and other relevant regulations.

15.5 The accounting records shall be maintained by the Treasurer (if there is one) and overseen by the Principal Officer (if there is one), or otherwise by, or as determined by, the Board. Such records shall be kept at such place or places as the Board shall think fit and shall always be open to the inspection of the Trustees. The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of Birnam Arts or any of them shall be open to the inspection of the members of Birnam Arts.

15.6 Independent Financial Examiner

Once at least in every year, or as otherwise provided for by the Companies Act, the accounts of Birnam Arts shall be examined by an independent financial examiner, who shall be appointed by the Board on the direction of members in General Meeting.

15.7 Accounts

At each AGM, the Board shall provide the members with a copy of the accounts for the period since the last preceding accounting reference date or (in the case of the first account since the incorporation of Birnam Arts). The accounts shall be accompanied by proper reports of the Board and the independent financial examiner.

15.8 Copies of such accounts shall, not less than 14 clear days before the date of the General Meeting at which they fall to be approved, be delivered or sent to all members, Trustees, the Company Secretary and the independent financial examiner, or otherwise be available for inspection on the website of Birnam Arts (with all

members, Trustees, the Company Secretary and the independent financial examiner being made aware that they are so available for inspection there).

16 NOTICES

- 16.1. A notice may be served by Birnam Arts upon any member, either personally or by sending it by post, fax, e-mail or other appropriate electronic means, addressed to such member at his or her or its registered address as appearing in the Register of Members.
- 16.2 Any notice, whether served by post or otherwise, shall be deemed to have been served on the day following that on which the letter containing the same is put into the post or is otherwise dispatched.
- 16.3 A member present at any meeting of Birnam Arts shall be deemed to have received notice of the meeting and, where requisite, of the purpose for which it was called.
- 16.4 The business of Birnam Arts and all its correspondence with and notification to or from members may be conducted equally validly and effectively if transmitted by fax or e-mail or other appropriate electronic means (except where a member specifically requests all such correspondence and notification by post) or otherwise if publicised on the website of Birnam Arts where Birnam Arts has advised each member of this and has taken due steps to notify by other reasonable means all other members who state that they do not have access to the Internet.

17 INDEMNITY

Subject to the terms of the Companies Act and without prejudice to any other indemnity, the Trustees, or member of any Advisory Group, the Company Secretary, Treasurer and all employees of Birnam Arts shall be indemnified out of the funds of Birnam Arts against any loss or liability (including the costs of defending successfully any court proceedings) which he, she or they may respectively incur or sustain, in connection with or on behalf of Birnam Arts and each of them shall be chargeable only for so much money as he or she may actually receive and they shall not be answerable for the acts, receipts, neglects or defaults of each other, but each of them for his or her own acts, receipts, neglects or defaults only.

18 ALTERATION OF ARTICLES OF ASSOCIATION

Subject to the terms of Article 6.10, no alteration in these Articles may at any time be made unless by the decision of 75% of the members present and voting at a General Meeting called specifically (but not necessarily exclusively) for the purpose.

19 LIMIT OF LIABILITY

- 19.1 The liability of the members is limited.
- 19.2 Every member of Birnam Arts undertakes to contribute such amount as may be required (not exceeding £1) to the property of Birnam Arts if it should be wound up whilst he, she or it is a member or within one year after he, she or it ceases to be a member (for whatever reason), for payment of its debts and liabilities contracted before he, she or it ceases to be a member, and of the costs, charges and expenses of winding up.

20 DISSOLUTION

- 20.1 The winding-up of Birnam Arts may take place only on the decision of not less than 75% of its members who are present and voting at a General Meeting called specifically (but not necessarily exclusively) for the purpose.
- 20.2 If, on the winding-up of Birnam Arts, any property remains, after satisfaction of all its debts and liabilities, such property shall be given or transferred to any one or more charities having the same or a similar object to the Charitable Purposes.
- 20.3 The charity or charities to which the property is to be transferred in terms of Article 20.2 shall be determined on the decision of not less than 75% of the members of Birnam Arts who are present and voting at a General Meeting called specifically (but not necessarily exclusively) for the purpose or, failing that, by a decision of not less than 50% of the Board or, failing that, as determined by an arbiter to be chosen amicably by the Board or, failing such amicable choice, as determined by the Office of the Scottish Charity Regulator (or any successor thereto), whose decision shall be final and binding upon Birnam Arts.
- 20.4 If Birnam Arts is a charity at the time that its winding-up is decided upon in terms of this Article, the prior consent of the Office of the Scottish Charity Regulator (or any successor thereto) must be obtained in terms of Section 16 of the Charities Act.

Annexation

Schedule 1 Powers

Schedule 2 Form of Proxy

Schedule 1

Powers available to Birnam Arts

Further to Article 3.2, Birnam Arts shall have the following powers (but only in furtherance of the Charitable Purposes) and declaring that the order in which these Powers are listed or the terms of the sub-headings above are of no significance in terms of their respective priority which shall be deemed to be equal, namely:

1 Specific

1.1 [insert tailor-made powers]

1.2

2 General

2.1 to encourage and develop a spirit of voluntary or other commitment by individuals, unincorporated associations, societies, federations, partnerships, corporate bodies, agencies, undertakings, local authorities, unions, co-operatives, trusts and others and any groups or groupings thereof willing to assist Birnam Arts to achieve the Charitable Purposes;

2.2 to provide advice, consultancy, training, tuition, expertise and assistance;

2.3 to promote and carry out research, surveys and investigations and develop initiatives, projects and programmes;

2.4 to prepare, organise, promote and implement training courses, exhibitions, lectures, seminars, conferences, events and workshops, to collect, collate, disseminate and exchange information and to prepare, produce, edit, publish, exhibit and distribute articles, pamphlets, books and other publications, tapes, motion and still pictures, music and drama and other materials, all in any medium;

3 Property

3.1 to purchase, take on lease, hire, or otherwise acquire any property suitable for Birnam Arts and to construct, convert, improve, develop, maintain, alter and demolish any buildings or erections whether of a permanent or temporary nature, and manage and operate or arrange for the professional or other appropriate management and operation of Birnam Arts's property;

3.2 to sell, let, hire, license, give in exchange and otherwise dispose of all or any part of the property of Birnam Arts;

3.3 to establish and administer a building fund or funds or guarantee fund or funds or endowment fund or funds;

4 Employment

4.1 to employ, contract with, train and pay such staff (whether employed or self-employed) as are considered appropriate for the proper conduct of the activities of Birnam Arts;

5 Funding and Financial

5.1 to take such steps as may be deemed appropriate for the purpose of raising funds for the activities of Birnam Arts;

5.2 to accept subscriptions, grants, donations, gifts, legacies and endowments of all kinds, either absolutely or conditionally or in trust;

5.3 to borrow or raise money for the Charitable Purposes and to give security in support of any such borrowings by Birnam Arts and/or in support of any obligations undertaken by Birnam Arts;

5.4 to set aside funds not immediately required as a reserve or for specific purposes;

5.5 to open, operate and manage bank and other accounts and to invest any funds which are not immediately required for the activities of Birnam Arts in such investments as may be considered appropriate and to dispose of, and vary, such investments;

- 5.6 to make grants or loans of money and to give guarantees;
- 5.7 to employ as a professional investment manager any person who is entitled to carry on investment business under the supervision of the Financial Services Authority (or its successors) and to delegate to any such manager the exercise of all or any of its powers or investment or such terms and at such reasonable remuneration as the Board of Trustees thinks fit, and to enable investments to be held for Birnam Arts in nominee names, but subject always to the provisions of the Charities Act;

6 Development

- 6.1 to establish, manage and/or support any other charity, and to make donations for any charitable purpose falling within the Charitable Purposes;
- 6.2 to establish, operate and administer and/or otherwise acquire any separate trading company or association, whether charitable or not;
- 6.3 to enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes of the activities of Birnam Arts and to enter into any arrangement for co-operation, mutual assistance, or sharing profit with any charity;
- 6.4 to enter into contracts to provide services to or on behalf of others;

7 Insurance and Protection

- 7.1 to effect insurance of all kinds (which may include indemnity insurance in respect of Trustees and employees);
- 7.2 to oppose, or object to, any application or proceedings which may prejudice the interests of Birnam Arts;

8 Ancillary

- 8.1 to pay the costs of forming Birnam Arts and its subsequent development;
- 8.2 to carry out the Charitable Purposes in any part of the world as principal, agent, contractor, trustee or in any other capacity; and
- 8.3 to do anything which may be incidental or conducive to the Charitable Purposes so long as these are charitable.

Schedule 2

Form of Proxy

Further to Article 6.8.3, the Form of Proxy shall be in the following general terms (to be varied as required to fit the circumstances):

<p style="text-align: center;">Birnam Arts</p> <p>I, of....., being a member of Birnam Arts hereby appoint the chairman of the General Meeting/or*, of, as my proxy to vote for me on my behalf at the General Meeting of Birnam Arts to be held on..... and at any adjournment thereof.</p> <p style="text-align: center;">This form to be used in favour of/against the resolution(s)*</p> <p style="text-align: center;"><i>* to be deleted if not required, or amended if it is required</i></p> <p style="text-align: center;"><i>Signature of member appointing proxy.....</i></p> <p style="text-align: center;"><i>dated.....</i></p> <p>To be valid, this Form of Proxy, once signed and dated, must be lodged at least 48 hours before the start of the General Meeting referred to above</p>
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