



Fitzroy Place

Establishment of Chapel Trust

30 November 2012

exemplar

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1. Introduction

a. Purpose

This document is prepared in accordance with Schedule 6 of the Section 106 Agreement dated 30 March 2012 (the S106). It sets out the mechanism for establishing the charitable entity to be known as the Fitzroy Place Chapel Trust (“the Trust”) which will take the lease on the Chapel and be responsible for the property.

b. Background

Planning consent for the former Middlesex Hospital Site, now known as Fitzroy Place, was granted on 30 March 2012. The consent permitted for the development of 237 private apartments, 54 affordable units, 220,000 sq ft net area of office accommodation in two buildings, a primary care trust and an education facility. In addition, as part of that consent, the Owner is to refurbish the Chapel and to offer to lease it to a newly appointed body, referred to as “the Trust” in the S106.

The Trust is then to operate and manage the property in accordance with the provisions set out in the S106, which will be more fully detailed in the Memorandum and Articles.

A copy of Schedule 6 of the S106 is attached at Appendix A.

c. Parties

The parties to the process thus far are as follows:

- Owner – represented by Mark Younger of Exemplar, developer on behalf of the Owner.
- Trust – represented by Councillor Harvey Marshall (who has subsequently resigned).
- Owner’s lawyers – Berwin Leighton Paisner, represented by Janet Turner QC.

This document is submitted having benefited from discussion with and agreement between the above parties.

2. History

a. Brief history of the Chapel

The Chapel was added to the Middlesex Hospital complex in 1890-1 as a memorial to Major Alexander Henry Ross, MP, who was chairman of the board of governors for 21 years before his death in 1888. The building was funded by the gift of £1,500 from another governor, Mary Ann Leicester, and was designed by the renowned ecclesiastical architect, John Loughborough Pearson (1817-97). After Pearson's death the chapel was enlarged and the decoration completed by his son Frank (1864-1947).

To make the best use of a cramped site hemmed in by existing hospital buildings, Pearson designed a simple rectangular nave with an apsidal east end and a small ante-chapel at the west end. He offered the governors a choice of two decorative schemes: one with a mosaic-covered ceiling throughout, and a cheaper alternative that had mosaic to the chancel ceiling only, with a timber ceiling over the nave. The governors chose the latter, and the first phase of building -- the basic red-brick structure, and marble floor -- was completed in 1891. The first services were held at Christmas that year, although the official opening by the Bishop of London did not take place until June 1892.

The decorative details designed by F L Pearson include the marble and alabaster lower walls, the chancel ceiling mosaic, the low screen incorporating a lectern-pulpit, and the altar rail (his choir stalls and nave seats have been removed, and his altar table replaced). He also designed the lancet windows in the apse, in collaboration with the stained-glass artists, Clayton & Bell. By 1893 the cladding to the lower walls of the nave and chancel was finished, and the Cosmati-style chancel pavement floor had been laid. The decoration was inspired by Pearson's close study of medieval Italian architecture, and was carried out by Italian craftsmen using marbles imported from Italy.

In the year of Pearson's death, the governors adopted his design for lining the ante-chapel with memorial tablets of white marble with incised inscriptions; the charge per inscription was 20 guineas.

Between 1897 and 1901, Frank Pearson supervised the completion of the mosaic decoration to the chancel and the soffit of the chancel arch, in the Italian style established by his father. The alabaster cladding to the upper walls was also completed in stages, as funds became available.

Frank continued to work on the chapel, providing designs for a new altar (1904-5), font (1909), and aumbry, credence table and piscina (1910). In 1926-7, the hospital embarked on a rebuilding programme. Demolition of the adjoining building gave him the opportunity to extend the ante-chapel and add a south transept to contain the font. Frank's work can be distinguished from that of his father

by its more Byzantine character: his font has a Greek inscription from Hagia Sophia, and his baptistery dome is clad in lapis lazuli mosaic with figures of angels carrying scrolls.

In 1929 Frank supervised the replacement of the open timber roof in the nave with groined vaulting and mosaic to match that in the chancel, and added the marble facing to the screen supporting the organ loft. The mosaic ceiling was completed in 1939, and the last of the windows was not inserted until after WWII.

b. Redevelopment history

During 2006/2007 there were previous plans in place to redevelop the site. During that time, the incumbent developer established contact with various members of the community, most notably Councillor Harvey Marshall, who became the self-appointed proposed chair of the Trust. That contact has been maintained and this document is being submitted with his input and agreement.

3. Mechanism to establish the Trust

a. Mem & Arts

Despite its name, the proposed legal entity is a charitable company. The company will provide the protection of limited liability for its members and directors. It will be limited 'by guarantee' and will not have a shareholding. It will exist purely to fulfil its proposed company Objects i.e. its stated charitable purposes. These purposes will be focussed on the areas identified in the S.106 and will be expressed so as to be charitable within the meaning of the Charities Act 2011 and for the public benefit.

The corporate entity has the critical advantage over a charitable trust of a separate legal personality.

The constitutional document is therefore a Memorandum and Articles of Association ("the Articles").

b. Summary Articles

The most important part of the Articles is the Objects – which describe its charitable purposes. These set the parameters of what the entity exists to do: in essence, conservation and preservation of the Chapel for the long term and community development and environmental improvement in their broadest sense.

The Articles will permit the charity to carry out the widest possible range of activities to fulfil its purposes. This means that apart from being able to operate in a similar manner to any other business in terms of employment of people, contracting, taking out insurance etc., it can use the premises for events, hire out space, collaborate with others, encourage and promote volunteering, and generally promote the Chapel as a community hub.

c. Management & Structure

The charity has two key structural elements: the company members and the board of trustee directors.

All of the power and responsibility for the success and continued solvency of the charity rests with the trustee directors – so-called because they are both company directors and charity trustees within the meaning of the Charities Act 2011.

However the trustee directors are typically all non-executive (and unpaid except for the reimbursement of expenses): they set the vision and strategy for the organisation but the day to day delivery is carried out by 'executives' i.e. employees (paid) and front line volunteers.

The trustee directors would usually instigate the creation of a governance framework for the regulation of the operation of the charity. Typically this would provide for example for delegations of authority to the management team, a list of matters about which only the board can take decisions, a list of matters for which each of the executives take responsibility, terms of reference for relevant committees, a risk register, compliance policies etc.

This type of entity also has company members – who would often be the same people as the trustee directors. The role of the member in a company limited by guarantee is a slightly odd one. There is no need to discuss that in this submission as in this instance – at least initially – membership only arises as a result of becoming a trustee director. In the future, however, it would be possible to use the offer of corporate membership to bind local enterprises and other interested corporate stakeholders into proactive support for the work of the charity.

This structure is tried and tested and, if properly established, is a recipe for successful operation.

d. Initial Trustees

The S106 calls for the identification of the initial trustees/directors of the Trust at this stage. It also refers to the composition of the Trust being agreed with WCC and that it should include representatives from the following groups (to the extent they wish to be involved):

- The Owner.
- Ward Councillors from the West End.
- Local Resident Groups.
- Local Trader Groups.
- Residents of the scheme.

Having discussed at length with BLP (who has significant experience in establishing charitable bodies) and previously with Councillor Harvey Marshall, it is inappropriate to establish a set of initial trustees/directors until both this document has been approved and greater progress has been made i.e. the establishment of the vehicle. In particular, the success of the venture will depend upon finding the right people for the charity's requirements. It is therefore proposed that this part of the process is delayed until the end of 2013/beginning of 2014.

4. Programme

Works for the entire project commenced on site at the end of July 2012 and are anticipated to complete in Q4 2014. Refurbishment works to the chapel are scheduled to commence at the start of 2013.

The S106 sets out the the following timetable:

- Within 6 months of the commencement of the Development - details of the mechanism to establish the Trust to be submitted to WCC.
- Within 6 months of occupation of 90% of the residential units, the developer shall offer to lease the Chapel to the Trust.

Once WCC has approved this document, work will commence in earnest to establish the Trust as set out in section 3 above.

5. Conclusion

The Chapel at Fitzroy Place plays an important part in the overall development. However it is the operation of it that will establish it as a valuable asset for the local community. The mechanism to establish the Trust is the first step to achieve that and it is hoped that given the work completed to date, as evidenced by this document, WCC will approve this first critical step.

Appendix A

Extract from Section 106 Agreement

Schedule 6
Community Facilities

Part 1
Chapel

- 1 The Owner shall undertake and complete the Chapel Works as a part of the Development.
- 2 Within 6 months of Commencement of Development the Owner shall submit to the Corporation and the Corporation shall agree in writing the details of the mechanism for establishing the Trust and its constitution objects management structure and initial trustees/directors consistent with the Chapel Trust's Terms of Reference.
- 3 No later than 6 months prior to the anticipated completion of the Development the Owner shall have established the Trust in accordance with the details approved by the Corporation pursuant to paragraph 2 above.
- 4 Within 6 months of Occupation of 90% of the residential units on the Site the Owner shall offer to lease the Chapel to the Trust at a peppercorn rent for a term of not less than 125 years.
- 5 A certified copy of the agreement for lease relating to the Chapel shall be sent to the Corporation within 21 days of it being entered into.
- 6 In accordance with the objects of the Trust (and subject to the terms of the agreement for lease) the public shall be provided such access to the Chapel through the Site as agreed between the Owner and the Trust.
- 7 The Owner's prior written consent is required in respect of any alterations of the structure/external appearance of the Chapel or any proposed alienation of the Chapel by the Trust at any time.
- 8 On the date on which the Chapel is transferred to the Trust, the Owner shall pay the Chapel Trust Dowry to the Corporation.
- 9 The Corporation shall hold the Chapel Trust Dowry on the following terms:
 - (a) The Corporation shall hold the Chapel Trust Dowry in a separately identifiable interest bearing account;
 - (b) The Corporation shall not expend any part of the Chapel Trust Dowry other than in response to a valid funds request from the Trust;
 - (c) The Trust shall be entitled to make a written request for funds from the Chapel Trust Dowry at any time;
 - (d) A request for funds shall only be valid if accompanied by a detailed estimate of the costs to which the funds will be applied, which costs shall relate to the objectives of the Trust.
- 10 From the time at which the Chapel is transferred to the Trust and the Chapel Trust Dowry is paid, the Owner shall not for so long as the Chapel is leased to the Trust be required to contribute to the management, maintenance, preservation and upkeep of the Chapel nor in any way be responsible for it (save in its capacity as lessor).

- 11 In the event that the Trust is dissolved under the terms of its constitution the Owner shall (only to the extent and for so long that any amount of the Chapel Trust Dowry remains unspent) take over and perform the Trust's responsibilities and identified in the objects of the Trust at that time.

Part 2
The Chapel Trust's Terms of Reference

1 Objects

- (a) The Trust will be a not for profit organisation set up by the Owner and will have the following objectives:
- (i) To encourage and secure access for Community Uses to the Chapel through liaison between the local community, the Owner and the Trust;
 - (ii) To publicise and market the Chapel's facilities for Community Uses; and
 - (iii) To ensure the future maintenance and upkeep of the Chapel.

2 Composition

- (a) To be agreed with the Corporation but including representatives (to the extent that they wish to participate) from:
- (i) The Owner
 - (ii) Ward councillors from West End Ward
 - (iii) Local residents groups
 - (iv) Local traders groups
 - (v) (from completion of the Development only) residents of the Development

Appendix B
Mem and Arts

**THE COMPANIES ACT 2006
COMPANY LIMITED BY GUARANTEE
MEMORANDUM AND ARTICLES
OF
[FITZROY PLACE CHAPEL TRUST]**

Adopted on incorporation

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COMPANY LIMITED BY GUARANTEE
MEMORANDUM OF ASSOCIATION
OF
[FITZROY PLACE CHAPEL TRUST]

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

Name of each subscriber

[•]

[•]

[•]

[•]

[•]

Dated: [•] 2012

PART 1 - PRELIMINARY

1 NAME AND STATUS

- 1.1 The name of the Charity is "[Fitzroy Place Chapel Trust]".
- 1.2 The Charity is registered under the Companies Act as a company limited by guarantee in England and Wales.

2 DISAPPLICATION OF MODEL ARTICLES

The Articles alone shall constitute the regulations of the Charity. The regulations contained in The Model Articles for Private Companies Limited by Guarantee (contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 2009/3229) shall not apply to the Charity.

3 DEFINITIONS AND INTERPRETATION

- 3.1 In these Articles, the following expressions have the following meanings and interpretations unless the context indicates another meaning:

"**AGM**" means an annual general meeting of the Charity.

"**the Articles**" means the Charity's Articles of Association, and Article refers to a particular Article.

"**Board**" means the Board of Trustees.

"**Chairman**" means the chairman of the Trustees.

"**Chapel**" means the chapel located on the site of the former Middlesex Hospital.

"**the Charities Act**" means the Charities Act 2011 including any statutory modification or re-enactment thereof for the time being in force.

"**the Charity**" means the company governed by these Articles.

"**Clear Day**" means does not include the day on which notice is served or deemed to be served or the day for which it is given or on which it is due to take effect.

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

"**Connected Person**" means in relation to a Trustee, either: a member of the Trustee's family or household; a person or body who is a business associate of the Trustee or the Trustee's family; an institution that is controlled by the Trustee, his family or his business associate; or any body corporate where the Trustee, the Trustee's family or business associate has an interest that consists of more than 20% of the share capital of the body or controls more than 20% of the voting rights at a general meeting of the body.

"the Commission" means the Charity Commission for England and Wales or any body which replaces it.

"the Companies Act" means the Companies Act 2006 including any statutory modification or re-enactment thereof for the time being in force.

"Custodian" means a person or body who undertakes safe custody of assets or of documents or records relating to them.

"Electronic Means" refers to communications addressed to specified individuals by telephone, fax or email or, in relation to meetings, by telephone conference call or video conference.

"Financial Expert" means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000.

"Financial Year" means the Charity's financial year.

"Firm" includes a limited liability partnership.

"General Meeting" means any meeting of the Members of the Charity other than an Annual General Meeting.

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

"Material Benefit" means a benefit, direct or indirect, which may not be financial but has a monetary value.

"Meeting" means any General Meeting or Annual General Meeting.

"Member/Membership" means an individual or organisation who has been appointed as a Trustee and thereby has become a member of the Company - membership of the charitable company shall be construed accordingly.

"Memorandum" means the Charity's Memorandum of Association.

"Month" means calendar month.

"Nominee Company" means a corporate body registered or having an established place of business in England and Wales which holds title to property for another.

"the Objects" means the Objects of the Charity as defined in Article 4.

"Ordinary Resolution" means a resolution agreed by a simple majority of the Members present and eligible to vote at a Meeting or in the case of a Written Resolution by Members who together hold a simple majority of the voting power.

"Special Resolution" means a resolution of which at least 14 days' notice has been given agreed by a 75% majority of the Members present and eligible to vote at a Meeting or in the case of a Written Resolution by Members who together hold 75% of the voting power.

"Taxable Trading" carrying on a trade or business in such manner or on such a scale that some or all of the profits are subject to corporation tax.

"Trustee" a charity trustee within the meaning of the Charities Act from time to time and a director of the Charity.

"the Articles" means the Charity's Articles of Association, and Article refers to a particular Article.

"Written or in Writing" refers to a legible document on paper or a document sent by electronic means which is capable of being printed out on paper.

"Written Resolution" refers to an ordinary or a special resolution which is in Writing.

"person" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, government or state agencies, local authorities, public bodies, foundations and trusts (in each case whether or not having separate legal personality).

- 3.2 Expressions not otherwise defined which are defined in the Companies Act have the same meaning.
- 3.3 References to an Act of Parliament are to that Act as amended or re-enacted from time to time and to any subordinate legislation made under it.
- 3.4 The singular includes the plural and vice versa and the masculine includes the feminine and the neuter genders and vice versa.

PART 2 — OBJECTS AND POWERS OF THE CHARITY

4 OBJECTS

- 4.1 The Charity's objects (the **"Objects"**) for the public benefit are:
 - 4.1.1 The relief of those in need by reason of youth, age, infirmity or disability and/ or financial hardship through the provision of social welfare both within and within the vicinity of the Chapel and elsewhere;
 - 4.1.2 The advancement of community development and environmental improvement in particular through the provision of public access to and use of the Chapel by, and for the benefit of, the residents, businesses, communities, visitors and the wider public in the area surrounding the Chapel, the neighbourhood of the Chapel, and elsewhere;
 - 4.1.3 The promotion of volunteering and of voluntary and other organisations for the benefit of the communities local to the Chapel and the wider public;
 - 4.1.4 The conservation, protection and improvement of the physical and natural environment in the area surrounding the Chapel;
 - 4.1.5 The conservation, restoration, maintenance and preservation of the fabric and contents of the Chapel and its grounds.
 - 4.1.6 The advancement of such other charitable purposes beneficial to the public, so far as consistent with the Objects stated in 4.1.1 to 4.1.5 above, as the Trustees shall in their absolute discretion determine.

- 4.2 This Article 4 may be amended subject to obtaining the prior consent of the Charity Commission as required by section 198 of the Charities Act.

5 **POWERS**

The Charity has the power to do anything which is calculated to further its Objects or is conducive or incidental to so doing. In particular, the Charity has power to:

- (a) provide, promote and sponsor conferences, lectures, discussions, exhibitions and other like events;
- (b) co-operate with other bodies in any way, including the exchange of information and advice, joint working arrangements and joint ventures;
- (c) support, administer, participate in or set up other charities, associations or institutions;
- (d) [promote, sponsor, commission or carry out research anywhere in the world through any suitable means;]
- (e) [provide, promote and/or in any legitimate manner support infrastructure developments of whatever scale;]
- (f) make any kind of donation, grant or loan, and provide sponsorship or otherwise support projects or initiatives;
- (g) invite and receive donations, legacies, grants, property and other gifts, save that the Charity shall be free to disclaim any gift, legacy or bequest in whole or part in such circumstances as the Charity may think fit, subject to such consents as may be required by law;
- (h) assist in the development, organisation and implementation of programmes and activities;
- (i) provide advice or information;
- (j) provide or procure the provision of counselling and guidance;
- (k) prepare, edit, print, publish, issue, acquire and distribute information in any media format (or commission other bodies or individuals to do so) including information for the purpose of informing contributors and others of the needs of the Charity;
- (l) draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments, and to operate bank accounts in the name of the Charity;
- (m) give guarantees;
- (n) give security for loans or other obligations (but only in accordance with the restrictions imposed by the Charities Act);
- (o) purchase, take on lease or in exchange, hire or otherwise acquire real or personal property and rights or privileges and construct, maintain and alter buildings or structures;

- (p) pay outgoings and expenses and execute documents and do all things required in connection with the use, maintenance, upkeep, expansion, alteration or improvement of any such property;
- (q) sell, manage, let or mortgage, charge, dispose of or turn to account all or any of the property or assets of the Charity, subject to such consents as may be required by law;
- (r) raise funds (but in doing so, the Charity must not undertake any Taxable Trading and must comply with any relevant statutory regulations);
- (s) borrow funds;
- (t) deposit or invest its funds in any manner (but to invest only after obtaining such advice from a Financial Expert as the Trustees consider necessary and having regard to the suitability of investments and the need for diversification);
- (u) operate bank accounts in name of the Charity;
- (v) delegate the management of investments to a Financial Expert, but only on terms that:
 - (i) the investment policy is set down in Writing for the Financial Expert by the Trustees;
 - (ii) timely reports of all transactions are provided to the Trustees;
 - (iii) the performance of the investments is reviewed regularly with the Trustees;
 - (iv) the Trustees are entitled to cancel the delegation arrangement at any time;
 - (v) the investment policy and the delegation arrangement are reviewed at least once a year;
 - (vi) all payments due to the Financial Expert are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt; and
- (w) arrange for investments or other property of the Charity to be held in the name of a Nominee Company acting under the direction of the Trustees or controlled by a Financial Expert acting under their instructions, and pay any reasonable fee required;
- (x) deposit documents and physical assets with any company registered or having a place of business in England or Wales as Custodian, and pay any reasonable fee required;
- (y) insure the property of the Charity against any foreseeable risk and take out other insurance policies to protect the Charity, its officers, staff and voluntary workers and visitors to the Chapel and participants in activities run by the Charity or at the Chapel by third parties when required;

- (z) subject to Article 6, employ or engage paid or unpaid agents, staff or advisers and to make all reasonable and necessary provisions towards the payment of pensions and superannuation to staff;
- (aa) enter into contracts to provide services to or on behalf of other bodies or, otherwise, as necessary to further the business of the Charity;
- (bb) establish or acquire subsidiary companies;
- (cc) pay out of the funds of the Charity the costs, charges and expenses incurred in relation to the formation and registration of the Charity;
- (dd) provide indemnity insurance to cover the liability of any Member or Trustee, in accordance with these Articles; and
- (ee) do anything else within the law which promotes or helps to promote the Objects.

6 APPLICATION OF INCOME AND PROPERTY

6.1 The income and property of the Charity shall be applied solely towards the promotion of its Objects. No portion of that income or property shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to Members. Subject to the provisions set out in Articles 6.2(a) - 6.2(h), without the express consent of the Charity Commission or a Court of competent jurisdiction, no Trustee of the Charity shall be appointed to any office of the Charity paid by salary or fees, or receive any remuneration or other benefit in money or monies worth from the Charity.

6.2 The Charity shall be permitted in good faith to make any payment:

- (a) [of reasonable and proper remuneration to any Member of the Charity (not being a Trustee) for any services rendered to the Charity and of travelling expenses necessarily incurred in carrying out duties properly arising in connection with Membership of the Charity;]
- (b) of interest on money lent by a Member or Trustee of the Charity at a reasonable and proper rate per annum;
- (c) to any Member or Trustee of reasonable out-of-pocket expenses (including travel and hotel expenses) actually incurred in the exercise of their duties as a Member or Trustee;
- (d) in respect of Trustee indemnity insurance cover for the benefit of the Trustees which is purchased at the Charity's expense in accordance with, and subject to the conditions in, section 189 of the Charities Act and save that a Trustee may receive an indemnity from the Charity in the circumstances specified in Article 22;
- (e) of fees, remuneration or other benefit in money or money's worth to a company partnership or limited liability partnership of which a Trustee may be a member so long as:
 - (i) the Trustee discloses his or her interest in any such arrangement; and

- (ii) where professional services are supplied to the Charity by a partnership or limited liability partnership in which the Trustee is a partner or member the Trustee does not personally provide those services;
 - (f) of reasonable and proper rent for premises demised or let by any Member or any Trustee;
 - (g) of reasonable and proper remuneration by the Charity to any Trustee or Connected Person for the purchase or supply of goods for value; and
 - (h) of reasonable and proper remuneration by the Charity to any Trustee or Connected Person for performing services actually rendered, subject to the requirements of section 185 of the Charities Act.
- 6.3 Nothing in Article 6.1 above shall prevent any Member, Trustee or Connected Person from receiving charitable services from the Charity, provided that the relevant Trustee does not take part in or vote on decisions to provide benefits specifically to them or to a Connected Person.
- 6.4 The Trustees shall comply with the requirements of the Companies Act in respect of any Conflicted Trustee and the remaining Trustees may, in accordance with Article 18 below, authorise any matter proposed to them which would, if not so authorised, involve a Trustee breaching his duty under the Companies Act to avoid conflicts of interest.

7 **WINDING UP OR DISSOLUTION**

If, upon the winding up or dissolution of the Charity, there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the Members, but shall be given or transferred to some other charitable body or bodies having objects similar to the Objects of the Charity and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Charity under or by virtue of Article 6 hereof, such body or bodies to be determined by the Members of the Charity at or before the time of dissolution, and, in the event that effect cannot be given to such provision, then to some other body which is charitable under the law of England and Wales.

PART 3 - MEMBERS

8 **MEMBERSHIP**

- 8.1 The Charity must maintain a register of Members.
- 8.2 The initial subscribers to the Memorandum of Association shall be the first Members of the Charity.
- 8.3 Membership is open only to the Trustees.
- 8.4 Membership is not transferable.
- 8.5 Membership is terminated if the Member concerned ceases to be a Trustee for whatever reason.

9 **LIABILITY OF MEMBERS**

9.1 The liability of Members is limited.

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

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

10 **MEETINGS OF MEMBERS**

10.1 The Charity may (but need not) hold an AGM in any year.

10.2 Members are entitled to:

- (a) receive the accounts of the Charity for the previous financial year;
- (b) receive an annual written report on the Charity's activities; and
- (c) appoint reporting accountants or auditors for the Charity (unless such accountants or auditors are automatically deemed reappointed under the Companies Act).

11 **NOTICE OF AND PROCEEDINGS AT MEETINGS OF MEMBERS**

11.1 Members are entitled to attend Meetings in person or by proxy (but only if the appointment of a proxy is in Writing and notified to the Charity before the commencement of the Meeting).

11.2 Meetings are called on at least 14 and not more than 28 Clear Days' written notice, unless the Members consent to a shorter period of notice in accordance with the Companies Act.

11.3 A notice of a Meeting shall set out the business to be discussed and the right of a Member to appoint a proxy, in accordance with the requirements of the Companies Act.

11.4 There is a quorum at a Meeting if the number of Members present in person or by proxy is at least 2.

11.5 The person chairing a Meeting is elected by the Members present in person or by proxy in his/her personal capacity as a Member and not as proxy for another Member.

11.6 If no Trustee is willing to act as chair of the Meeting, or if no Trustee is present within fifteen minutes of the time appointed for holding the Meeting, the Members present and entitled to vote shall choose one of their number to chair the Meeting.

11.7 The person chairing the Meeting may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at the adjourned Meeting other than business that might properly have been

transacted at the Meeting had the adjournment not taken place. It shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting unless a meeting is adjourned for fourteen days or more, in which case at least seven days' notice of the adjourned Meeting shall be given.

- 11.8 Except where otherwise provided by the Articles or the Companies Act, every matter proposed at a Meeting is decided by Ordinary Resolution.
- 11.9 No Member shall be entitled to vote at any Meeting unless all monies then payable by him/her to the Charity have been paid. Otherwise, every Member present in person or by proxy has one vote on each matter.
- 11.10 Except where otherwise provided by the Articles or the Companies Act, a Written Resolution (whether an ordinary or a special resolution) is as valid as an equivalent resolution passed at a Meeting. For this purpose the Written Resolution may be set out in more than one document.

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

PART 4 - TRUSTEES

12 THE TRUSTEES

Subject to the provisions of the Act, these Articles and to any directions given by Special Resolution of the Members, the Trustees shall be responsible for the management and administration of the business of the Charity. However no resolution passed by the Charity in Meeting shall invalidate any prior act of the Trustees which would have been valid if that resolution had not been passed.

13 NUMBER OF TRUSTEES

The minimum number of Trustees shall be three and the maximum number shall be [?nine].

14 APPOINTMENT AND RETIREMENT OF TRUSTEES

- 14.1 Without prejudice to Article 14.3, a Trustee may not act as a Trustee unless he/she has signed a written declaration of willingness to act as a Charity Trustee of the Charity. The form of such declaration shall be prescribed by the Trustees.
- 14.2 No person may be appointed as a Trustee unless he/she has attained the age of 16 years.
- 14.3 The Board shall appoint any individual who is eligible as a Trustee to fill a vacancy in their number or (subject to the maximum number permitted by Article 13.1) as an additional Trustee.
- 14.4 A Trustee may retire by giving written notice to the Charity, and such resignation has taken effect in accordance with its terms.
- 14.5 As at the date of adoption of these Articles there are five Trustees (who for the purposes of this Article 14.5 shall be "**the Founder Trustees**"), whose retirement and replacement shall be conducted as follows:

- (a) the first and second retiring Founder Trustees shall be selected by the Founder Trustees drawing lots and the selected Founder Trustees shall retire either at the AGM in 2015 or, if an AGM is not called or to be called within 2015, at a General Meeting of the Charity called for the purpose in 2015;
- (b) the third retiring Founder Trustee shall be selected by the three remaining Founder Trustees drawing lots and the selected Founder Trustee shall retire either at the AGM in 2016 or, if an AGM is not called or to be called within 2016, at a General Meeting of the Charity called for the purpose in 2016; and
- (c) the fourth and fifth retiring Founder Trustees shall retire either at the AGM in 2017 or, if an AGM is not called or to be called within 2017, at a General Meeting of the Charity called for the purpose in 2017.

14.6 All Trustees appointed after the date upon which these Articles are adopted shall retire by rotation in the year within which the anniversary of their third year in office occurs (on the basis that the retiree(s) shall be the Trustee(s) who has (or have) been longest in office) at the AGM of the Charity held in the relevant year, or if an AGM is not called or to be called within the relevant year, at a General Meeting of the Charity called for the purpose in that year.

14.7 If a Trustee is required to retire in accordance with Article 14.5 or Article 14.6, the retirement shall take effect upon the conclusion of the relevant Meeting.

14.8 Without prejudice to Article 14.5, any Trustee who retires in accordance with this Article 14 shall be eligible for re-appointment for one further term of no more than three years.

14.9 In exceptional circumstances, the Trustee(s) shall have the power to extend the maximum period of office as set out in Article 14.8 above.

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

15 **DISQUALIFICATION AND REMOVAL OF TRUSTEES**

A Trustee's term of office shall automatically terminate if he/she:

- (a) is disqualified under the Charities Act from acting as a charity trustee;
- (b) is disqualified under the Companies Act from acting as a director of the Charity;
- (c) is incapable, whether mentally or physically, of managing his/her own affairs;
- (d) has a bankruptcy order made against him/her;
- (e) is absent without notice from two consecutive meetings of the Trustees where proper notice has been given and is asked by a majority of the other Trustees to resign;
- (f) is removed by the Members at a General Meeting under the Companies Act;

- (g) is removed by resolution passed by the Members on the grounds that he/she is guilty of conduct detrimental to, or of acting in any way that may undermine, the Objects or reputation of the Charity, save that he/she may exercise any statutory rights which he/she may have to protest against his/her removal;
- (h) dies; or
- (i) gives written notice of resignation, to expire no earlier than 3 months' following the date of receipt by the Charity (provided that at least the minimum number of Trustees as set out in Article 13 will remain in office when the resignation is to take effect).

16 **TRUSTEES' PROCEEDINGS**

- 16.1 The Trustees must hold sufficient meetings to ensure the proper management and administration of the Charity and in any event should hold at least six meetings per calendar year.
- 16.2 A quorum at a meeting of the Board is two Trustees or one third in number of the Trustees, whichever is greater.
- 16.3 A meeting of the Trustees may be held either in person or by suitable Electronic Means agreed in advance by the Trustees in which all participants may communicate with all the other participants.
- 16.4 The Chairman or (if the Chairman is unable or unwilling to do so) some other Trustee chosen by the Trustees present presides at each meeting of the Board.
- 16.5 Any issue may be determined by a simple majority of the votes cast at a meeting, but a resolution in Writing agreed by all the Trustees (other than any Conflicted Trustee who has not been authorised to vote) is as valid as a resolution passed at a meeting. For this purpose the resolution may be contained in more than one document.
- 16.6 Every Trustee has one vote on each issue but, in case of equality of votes, the chairman of the meeting has a second or casting vote.
- 16.7 A procedural defect of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.
- 16.8 If the number of Trustees is less than the number fixed as the minimum number set out at Article 13, the continuing Trustees or Trustee may act only for the purpose of filling vacancies or of calling a Meeting.
- 16.9 The Trustees may invite any Member or third party to attend a meeting of the Board as an observer or advisor and may give permission to any such third party to speak at that meeting, provided that the third party shall take no part in any vote or decision taken by the Trustees and agrees to be bound by obligations of confidentiality reasonably acceptable to the Charity and the Chairman of the Board.

17 **DELEGATION OF TRUSTEES' POWERS**

- 17.1 The Trustees may create or instigate the creation of governance frameworks, policies or regulations as they deem necessary or expedient for the proper conduct of the management and administration of the Charity and may delegate the day to

day management of the Charity to any other person or persons, as they see fit (subject to any conditions the Trustees may impose).

- 17.2 In particular but without limitation the Trustees shall have power to delegate any of their functions to committees (whether or not the committee shall have a Trustee represented on it), provided that:
- (a) all proceedings and decisions of such committees must be reported promptly to the Board;
 - (b) no expenditure may be committed to or incurred by such a committee on behalf of the Charity except in accordance with a budget or expenditure limits previously agreed by the Board; and
 - (c) any representatives appointed to any such committee may be delegated such powers as the Trustees see fit in order to carry out their duties, whether by contract, power of attorney or otherwise.
- 17.3 Where the Trustees create committees, or sub-committees, [whose membership shall include not less than one Trustee] in order to provide advice and to support the Board, then the Trustees will be responsible for the title of, and creation of Terms of Reference for the regulation and operation of any such committees.
- 17.4 The meetings and proceedings of committees or sub-committees created by the Trustees shall be governed by the provisions of these Articles for regulating the meetings and proceedings of the Board (including in relation to conflicts of interest), so far as applicable and so far as consistent with the Terms of Reference of any such committee from time to time, but not otherwise.
- 17.5 For the avoidance of doubt, except as expressly authorised from time to time in relation to specific matters, any such committees or sub-committees shall not have delegated power from the Board to bind the Charity or to represent themselves as having the capacity to do so.
- 18 CONFLICTS OF INTEREST**
- 18.1 The property and funds of the Charity must be used only for promoting the Objects and do not belong to the Members but, subject to Article 18.3:
- 18.2 A Trustee must not receive any payment of money or other material benefit (whether directly or indirectly) from the Charity except:
- (a) as described in Articles 6 or 22; or
 - (b) in exceptional cases, other payments or benefits (but only with the written consent of the Commission in advance and, where required by the Companies Act, the approval or affirmation of the Members).
- 18.3 Subject to Article 18.4, any Trustee who becomes a Conflicted Trustee in relation to any matter must:
- (a) declare the nature and extent of his or her interest before discussion begins on the matter;
 - (b) withdraw from the meeting for that item after providing any information requested by the Trustees;

- (c) not be counted in the quorum for that part of the meeting; and
- (d) be absent during the vote and have no vote on the matter.

18.4 When any Trustee is a Conflicted Trustee and where the Conflicted Trustee does not stand to realise a Material Benefit, the Trustees who are not Conflicted Trustees, if they form a quorum without counting the Conflicted Trustee and are satisfied that it is in the best interests of the Charity to do so, may by resolution passed in the absence of the Conflicted Trustee authorise the Conflicted Trustee, notwithstanding any conflict of interest or duty which has arisen or may arise for the Conflicted Trustee, to:

- (a) continue to participate in discussions leading to the making of a decision and/or to vote; or
- (b) disclose to a third party information confidential to the Charity; or
- (c) take any other action not otherwise authorised which does not involve the receipt by the Conflicted Trustee or a Connected Person of any payment or material benefit from the Charity; or
- (d) refrain from taking any step required to remove the conflict.

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

PART 5 - ADMINISTRATIVE ARRANGEMENTS AND ANNUAL REPORT

19 MINUTES

The Trustees shall cause minutes to be made in books kept for the purposes:

- (a) of recording the names and addresses of all Members; and
- (b) of all appointments and retirements of Trustees;
- (c) of the appointment of officers by the Trustees; and
- (d) of all proceedings at meetings of the Charity and of the Trustees and of committees constituted pursuant to Article 17 including the names of Trustees and Members (as appropriate) present at each such meeting.

20 RECORDS AND ACCOUNTS

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

- (a) annual returns;
- (b) annual reports; and
- (c) annual statements of account.

20.2 The Trustees must also keep records of:

- (a) all resolutions passed by the Trustees in Writing;
- (b) all reports of committees; and
- (c) all professional advice obtained by the Board in its capacity as such.

20.3 Accounting records relating to the Charity must be made available for inspection by any Trustee at any time during normal office hours.

20.4 Copies of the latest accounts must be supplied in accordance with the Charities Act to any other person who makes a Written request and pays the Charity's reasonable costs.

21 **COMMUNICATIONS**

21.1 All notices (except notices of meetings given to the Trustees) shall be in Writing.

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

- (a) by hand;
- (b) by post;
- (c) by suitable Electronic Means;

provided the Charity has complied with the requirements of the Companies Act in relation to the service of such notices.

21.3 The only address at which a Member is entitled to receive notices sent by post is an address in the United Kingdom shown in the register of Members.

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

- (a) 24 hours after being sent by Electronic Means, posted on the Charity's website or delivered by hand to the relevant address;
- (b) two Clear Days after being sent by first class post to that address;
- (c) three Clear Days after being sent by second class to that address;
- (d) immediately on being handed to the recipient personally; or, if earlier,
- (e) as soon as the recipient acknowledges actual receipt.

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

21.6 Subject to any requirement of the Companies Act, documents and notices may be sent to the Charity by Electronic Means to the address specified by the Charity for that purpose and such documents and notices sent to the Charity are sufficiently authenticated if the identity of the sender is confirmed in the way the Charity has specified.

22 INDEMNITY

Subject, in all cases, to the Charities Act:

- (a) without prejudice to any indemnity to which he may otherwise be entitled, every person who is or was at any time a Trustee of the Charity shall be indemnified and kept indemnified out of the Charity's assets against all liability incurred by him as such or as a Trustee:
 - (i) in defending any proceedings, whether civil or criminal, in respect of alleged negligence, default, breach of duty, breach of trust or otherwise in relation to the Charity or its affairs, in which judgement is given in his favour or in which he is acquitted or in defending or settling any such proceedings which are otherwise disposed of on terms previously agreed with the Trustees or on terms otherwise approved by the Trustees without a finding or admission of negligence, default, breach of duty or breach of trust on this part; or
 - (ii) in connection with any application under the Companies Act in which relief is granted to him by the court;
 - (iii) provided that this Article 22 shall not grant, or entitle any such person to, indemnification to the extent that it would cause this Article, or any part of it, to be void under the Companies Act.
- (b) without prejudice to any indemnity to which he may otherwise be entitled (including, for the avoidance of doubt, any indemnity under or pursuant to these Articles) and to the extent permitted by the Companies Act, the Trustees shall have power in the name and on behalf of the Charity to:
 - (i) grant on such terms as it sees fit to any person who is or was a Trustee of the Charity an indemnity or indemnities out of the assets of the Charity in respect of any liability incurred by him in his capacity as Trustee and to amend, vary or extend the terms of any such indemnity so granted, again on such terms as the board sees fit; and/or
 - (ii) enter into and amend, vary or extend such arrangements as it sees fit to provide any person who is or was a Trustee of the Charity with funds to meet expenditure incurred or to be incurred by him in defending any criminal or civil proceedings brought against him as such or in connection with any application for relief under the Companies Act or the Charities Act or to enable any such person to avoid incurring any such expenditure.