

PRIVATE COMPANY LIMITED BY GUARANTEE

Memorandum of Association of

HULL CULTURE AND LEISURE LIMITED

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

Name of each subscriber

Authentication by each subscriber

Marjorie Brabazon

Robert Dunston

John Logan Fareham

Leanne Fudge

Tracy Neal

Rosemary Pantelakis

John Robinson

Denise Thompson

Dated: 21 May 2021

Articles of Association for a Private Company Limited by Guarantee

Articles of Association of

HULL CULTURE AND LEISURE LIMITED

1. The Company's name is
HULL CULTURE AND LEISURE LIMITED
(and in the document it is called the 'company')

INTERPRETATION

2. In these Articles, unless the context otherwise requires:

'Act' means the Companies Act 2006

'Address' means a postal address or, for the purposes of electronic communication, a fax number, an e-mail or postal address or a telephone number for receiving text messages in each case registered with the company;

'Articles' means the Company's Articles of association for the time being in force;

'Business Day' means any day (other than a Saturday or Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business;

'Clear Days' in relation to the period of a notice means a period excluding:

- the day when the notice is given or deemed to be given; and
- the day for which it is given or on which it is to take effect;

'Conflict' means a situation in which a director has or can have, a direct or indirect interest that conflicts or possibly may conflict, with the interests of the Company;

'Council' means Kingston upon Hull City Council;

'Document' includes, unless otherwise specified, any document sent or supplied in electronic form;

'Electronic form' has the meaning given in section 1168 of the Companies Act 2006;

'Eligible Directors' means a director who would be entitled to vote on the matter at a meeting of directors (but excluding in relation to the authorisation of a Conflict pursuant to Article 12, any director whose vote is not to be counted in respect of the particular matter);

'Member' means a member of the Company, the sole member at the date of adoption of these Articles being the Council;

'the Memorandum' means the Company's Memorandum of Association;

'Model Articles' means the model Articles for private companies limited by guarantee contained in Schedule 2 of the Companies (Model Articles) Regulations 2008 as amended prior to the date of adoption of the Articles and reference to a numbered 'Model Article' is a reference to that Article of the Model;

‘Objects’ means the objects of the Company set out at Article 4;

‘Officers’ includes the directors and the secretary (if any);

‘Reserved Matters’ means the matters listed in the Schedule and reserved for Member approval;

‘the Seal’ means the common seal of the Company if it has one;

‘Secretary’ means any person appointed to perform the duties of the secretary of the Company;

‘the United Kingdom’ means Great Britain and Northern Ireland; and

Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles.

Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.

Unless expressly provided otherwise, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of:

- (a) any subordinate legislation from time to time made under it; and
- (b) any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.

Any phrase introduced by the terms ‘**including**’, ‘**include**’, ‘**in particular**’ or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

The Model Articles shall apply to the Company except insofar as they are modified or excluded by these Articles.

Model Articles 2, 8, 9(1) and (3), 11(2) and (3), 13, 14(1), (2), (3) and (4), 17(2), 18(e), 22(2), (3), 30(2) and 35 shall not apply to the Company.

Model Article 7 shall be amended by:

- (a) the insertion of the words ‘for the time being’ at the end of Article 7(2)(a); and
- (b) the insertion in Article 7(2) of the words ‘(for so long as he remains the sole director)’ after the words ‘and the director may’.

Model Article 18 shall be amended by:

- (a) the insertion of a new 18(e)

All directors appointed or removed from office shall be appointed or removed by the Member. Any such appointment or removal shall be made by notice in writing to the Company signed by the Member and shall take effect upon lodgement of such notice at the registered office of the Company.

MEMBER

3. The sole Member of the Company is the Council. No other person or organisation shall be admitted to membership without Member approval.

OBJECTS

4. The Company's Objects are specifically restricted to the following:
- (i) the provision of facilities for recreation or other leisure time occupation for the public at large in the interests of social welfare with the object of improving their condition of life;
 - (ii) the provision of or assistance in the provision of facilities in the interest of social welfare or recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmity or disability, financial hardship or social circumstances with the object of improving their condition of life;
 - (iii) the advancement of the education of the public in all subject areas including literature, the marine environment and seafaring, history, heritage of the city and region, natural sciences, decorative and fine arts, antiquities, sculpture, painting and handicrafts and all other associated arts, and generally by:
 - the establishment and maintenance of museums and art galleries in the city of Kingston upon Hull;
 - the establishment and maintenance of public libraries;
 - the development and good stewardship of the Library collections;
 - promoting and supporting the libraries in the city of Kingston upon Hull as centres for learning, the lending of resources, reference, study, research and bibliographical and other information services;
 - supporting the efficient management of other libraries, library facilities and information services the support of which would be conducive or complementary to the work of the libraries;
 - promoting and encouraging scientific research by the managing and disseminating of information and knowledge; and
 - promoting the preservation, access to and display of the items, groupings, displays and collections for the benefit of the Public in the city of Kingston upon Hull and elsewhere;
 - such other purposes beneficial to the community consistent with the objects as the directors in their discretion determine;
 - (iv) the promotion of community participation in healthy recreation in particular by the provision of facilities for the playing of particular sports[; and
 - (v) any other activities specified by the Member]

POWERS

5. The Company has power to do anything which is calculated to further its Objects or is conducive or incidental to doing so. In particular, the company has power:
- 5.1 to co-operate with charities, voluntary bodies and statutory authorities and to

- exchange information and advice with them;
- 5.2 to establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the Objects;
 - 5.3 to set aside income as a reserve against future expenditure but only in accordance with a written policy about reserves [adopted by [the directors]];
 - 5.4 to employ and remunerate such staff as are necessary for carrying out the work of the Company. The Company may employ or remunerate a director only to the extent it is permitted to do so by article 6 and provided it complies with the conditions in that article;
 - 5.5 to provide indemnity insurance for the directors;
 - 5.6 to pay out of the funds of the Company the costs of forming and registering the Company as a company.
 - 5.7 lobby, advertise, publish, educate, examine, research and survey in respect of all matters of law, regulation, economics, accounting, governance, politics and/or other issues and to hold meetings, events and other procedures and cooperate with or assist any other body or organisation in each case in such way or by such means as may, in the opinion of the directors, affect or advance the principal object in any way;
 - 5.8 enter into contracts to provide services to or on behalf of other bodies subject to the restrictions imposed within the Reserved Matters;
 - 5.9 do all such other lawful things as are incidental or conducive to the pursuit or to the attainment of any of the object set out in Article 4.
 - 5.10 The Reserved Matters listed in The Schedule cannot be carried out without the prior written approval of the Council as sole Member.

6. **Not for Distribution**

- 6.1 The income and property of the Company shall be applied solely in promoting the Objects of the Company as set out in Article 3.
- 6.2 No dividends or bonus may be paid or capital otherwise returned to the Member, provided that nothing in these Articles shall prevent any payment in good faith by the Company of:
 - (a) Reasonable and proper remuneration to any officer or servant of the Company for any services rendered to the Company;
 - (b) Any interest on money lent by the Member or any director at a reasonable and proper rate;
 - (c) Reasonable and proper rent for premises demised or let by the Member or any director; or
 - (d) Reasonable out-of-pocket expenses properly incurred by any director.

WINDING UP

7. On the winding up or dissolution of the Company, any assets or property that remains available shall not be paid or distributed to the Member but shall be transferred to [the

Trustee Committee of the Council] who shall apply such assets or property in furtherance of the Objects [or shall transfer such assets to another body (charitable or otherwise) with objects similar to those of the Company and which shall prohibit the distribution of its income to its members, such body to be determined by the Member at the time of winding-up or dissolution.]

GUARANTEE

8. The liability of the Member is limited to £1, being the amount that the Member undertakes to contribute to the assets of the Company in the event of its being wound up while it is a Member or within one year after it ceases to be a Member, for
- 8.1 payment of the Company's debts and liabilities contracted before it ceases to be a Member, and
- 8.2 payment of the costs, charges and expenses of the winding up.

In this Article a 'financial benefit' means a benefit, direct or indirect, which is either money or has a monetary value.

DIRECTORS

9. UNANIMOUS DECISIONS

- 9.1 A decision of the directors is taken in accordance with this Article when all Eligible Directors indicate to each other by any means that they share a common view on a matter.
- 9.2 Such a decision may take the form of a resolution in writing, where each Eligible Director has signed one or more copies of it, or to which each Eligible Director has otherwise indicated agreement in writing.
- 9.3 A decision may not be taken in accordance with this Article if the Eligible Directors would not have formed a quorum at such a meeting.

10. CALLING A DIRECTORS' MEETING

- 10.1 Any director may call a directors' meeting by giving not less than 14 (fourteen) Business Days' notice of the meeting (or such lesser notice as all the directors may agree) to the directors or by authorising the company secretary (if any) to give such notice.
- 10.2 Notice of a directors' meeting shall be given to each director in writing.
- 10.3 A director who is absent from the UK and who has no registered address in the UK shall not be entitled to notice of the directors' meeting.

11. QUORUM FOR DIRECTORS' MEETINGS

- 11.1 The quorum for the transaction of business at a meeting of directors is any 3 (three) Eligible Directors.
- 11.2 For the purposes of any meeting (or part of a meeting) held pursuant to Article 12 to authorise a Conflict, if there is only one Eligible Director in office other than the Interested Director(s) (defined in Article 11.1), the quorum for such meeting (or part of a meeting) shall be one Eligible Director.

11.3 If the total number of directors in office for the time being is less than the quorum required, the directors must not take any decision other than a decision:

- (a) to appoint further directors; or
- (b) to call a general meeting so as to enable the Member to appoint further directors.

12. **CASTING VOTE**

12.1 If the numbers of votes for and against a proposal at a meeting of directors are equal, the chairman or other director chairing the meeting shall have a casting vote.

12.2 Article 12.1 shall not apply in respect of a particular meeting (or part of a meeting) if, in accordance with the Articles, the chairman or other director is not an Eligible Director for the purposes of that meeting (or part of a meeting).

13. **DIRECTORS' CONFLICTS OF INTEREST**

13.1 The directors may, in accordance with the requirements set out in this Article, authorise any Conflict proposed to them by any director which would, if not authorised, involve a director (an **Interested Director**) breaching his duty under section 175 of the Act to avoid conflicts of interest.

13.2 Any authorisation under this Article 12 shall be effective only if:

- (a) to the extent permitted by the Act, the matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the directors under the provisions of these Articles;
- (b) any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director; and
- (c) the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's vote had not been counted.

12.3 Any authorisation of a Conflict under this Article 12 may (whether at the time of giving the authorisation or subsequently):

- (a) extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
- (b) provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the directors or otherwise) related to the Conflict;
- (c) provide that the Interested Director shall or shall not be an Eligible Director in respect of any future decision of the directors in relation to any resolution related to the Conflict;
- (d) impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit;
- (e) provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a director of the Company) information that is confidential to a third party, he shall not be obliged to disclose that information to the Company, or to use it in relation to the Company's affairs where to do so would amount to a breach of that confidence; and
- (f) permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the directors and be excused from

reviewing papers prepared by, or for, the directors to the extent they relate to such matters.

- 12.4 Where the directors authorise a Conflict, the Interested Director shall be obliged to conduct himself in accordance with any terms and conditions imposed by the directors in relation to the Conflict.
- 12.5 The directors may revoke or vary such authorisation at any time, but this shall not affect anything done by the Interested Director prior to such revocation or variation in accordance with the terms of such authorisation.
- 12.6 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors in accordance with these Articles or by the Company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.
- 12.7 Subject to sections 177(5) and 177(6) and sections 182(5) and 182(6) of the Act, and provided he has declared the nature and extent of his interest in accordance with the requirements of the Act, a director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company:
- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;
 - (b) shall be an Eligible Director for the purposes of any proposed decision of the directors (or committee of directors) in respect of such existing or proposed transaction or arrangement in which he is interested;
 - (c) shall be entitled to vote at a meeting of directors (or of a committee of the directors) or participate in any unanimous decision, in respect of such existing or proposed transaction or arrangement in which he is interested;
 - (d) may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director;
 - (e) may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested; and
 - (f) shall not, save as he may otherwise agree, be accountable to the Company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act.

13. RECORDS OF DECISIONS TO BE KEPT

Where decisions of the directors are taken by electronic means, such decisions shall be recorded by the directors in permanent form, so that they may be read with the naked eye.

14. NUMBER OF DIRECTORS

Unless otherwise determined by ordinary resolution, the number of directors shall not be subject to any maximum but shall not be less than 7 (seven).

15. SECRETARY

The directors may appoint any person who is willing to act as the secretary for such term, at such remuneration and upon such conditions as they may think fit and from time to time remove such person and, if the directors so decide, appoint a replacement, in each case by a decision of the directors.

16. DECISION MAKING BY MEMBERS

17. VOTES OF MEMBERS

Subject to the Act, at any general meeting every Member who is present in person (or by proxy) shall have one vote.

18. PROXIES

18.1 Article 31(1)(d) of the Model Articles shall be deleted and replaced with the words "is delivered to the company in accordance with the Articles not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in accordance with any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate".

18.2 Article 31(1) of the Model Articles shall be amended by the insertion of the words "and a proxy notice which is not delivered in such manner shall be invalid [unless the directors, in their discretion, accept the notice at any time before the meeting]" as a new paragraph at the end of that Article.

ADMINISTRATIVE ARRANGEMENTS

19. MEANS OF COMMUNICATION TO BE USED

19.1 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:

- (a) if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted;
- (b) if properly addressed and delivered by hand, when it was given or left at the appropriate address;
- (c) if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
- (d) if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this Article, no account shall be taken of any part of a day that is not a Business Day.

19.2 In proving that any notice, document or other information was properly addressed, it shall suffice to show that the notice, document or other information was addressed to an address permitted for the purpose by the Act.

20. RULES

The directors may establish rules governing matters relating to Company administration that are required from time to time for the effective operation of the Company (for example,

the provisions relating to classes of members, membership fees and subscriptions and the admission criteria for members). If there is a conflict between the terms of these Articles and any rules established under this Article, the terms of these Articles shall prevail.

21. INDEMNITY AND INSURANCE

21.1 Subject to Article 28.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:

- (a) each relevant officer shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer:
 - (i) in the actual or purported execution and/or discharge of his duties, or in relation to them[; and]
 - (ii) [in relation to the Company's (or any associated company's) activities as trustee of an occupational pension scheme (as defined in section 235(6) of the Act),]

including [(in each case)] any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's (or any associated company's) affairs; and

- (b) the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in Article 28(1)(a) and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.

21.2 This Article does not authorise any indemnity to the extent that such indemnity would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law and any such indemnity is limited accordingly.

21.3 The directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.

21.4 In this Article:

- (a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and
- (b) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company; and
- (c) a "relevant officer" means any director or other officer or former director or other officer of the Company but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor).

THE SCHEDULE

[The following definitions apply to this Schedule:

'Annual Budget' []

'Business Plan' []

'Library' []

'Scheme' means the Kingston upon Hull City Council Members' Allowance Scheme made under the powers conferred by the Local Authority (Members' Allowances) (England) Regulations 2003 as contained within the Council's Constitution at Part D2 as may be amended from time to time.

The Company will not, without the [prior written] consent of the Council, as sole Member:

1. Make any change to the business of the Company, except as provided for in the Annual Business Plan and Annual Budget];
2. Make charges to the public for the use of any building or facility owned or controlled by the Company, except as provided for in the Annual Business Plan;
3. [pass any resolution for the winding up of the Company or present any petition for its administration];
4. Admit any further members of the company or do any other thing which may compromise the company's status as an in-house company under Article 12, of EU Procurement Directive 2014/24/EU;
5. Change the agreed branding or identity of the Company;
6. Determine any matters required under a trust instrument which are required to be determined by the Council as trustee;
7. Make changes to Library provision which conflict with the Council's duty under Section 7 of the Public Libraries and Museums Act 1964 to ensure that the Council continues to provide a comprehensive and efficient library service for all persons whose residence or place of work is within the City of Hull;
8. Enter into any partnership or profit sharing agreement with any person without the consent of the Council;
9. Borrow any sum other than temporary overdraft facilities in the normal course of business;
10. Make any loan or advance or give any credit (other than normal trade credit) to any person, except for the purpose of making deposits with bankers which shall be repayable upon the giving of no more than seven days notice;
11. Sell, transfer, lease, assign or otherwise dispose of a material part of the undertaking, property and/or assets of the Company (or any interest in any material part of the undertaking, property and/or assets of the Company and/or any of its subsidiaries) or contract to do so;
12. Enter into any contract, arrangement or commitment involving expenditure or capital account or the realisation of capital assets in excess of £1m otherwise than as provided for in the

[Annual Budget];

13. Appoint or dismiss any director;
14. Change the Company's Articles of Association;
15. Make any payments to directors other than in accordance with a [Scheme] approved by Council following a report from the Independent Remuneration Panel.