



THE COMPANIES ACTS 1985 AND 2006– COMPANY LIMITED BY GUARANTEE

ARTICLES OF ASSOCIATION OF THE FRIENDS OF OXFORD BOTANIC GARDEN & ARBORETUM

1 Interpretation

In these articles:

“the 1985 Act” means the Companies Act 1985;

“the 2006 Act” means the Companies Act 2006;

“address” means a postal address or, for the purposes of electronic communication, a fax number, an email address or a text message number in each case registered with the Charity;

“the Charity” means the company intended to be regulated by these articles;

“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;

“the Commission” means the Charity Commissioners for England and Wales;

“the memorandum” means the Memorandum of Association of the Charity;

“officers” includes the Directors and the Secretary;

“the seal” means the common seal of the Charity if it has one;

“secretary” means the secretary of the Charity or any other person appointed to perform the duties of the secretary of the Charity, including a joint, assistant or deputy secretary;

“the Directors” means the directors of the Charity. The directors are charity trustees as defined by section 97 of the Charities Act 1993;

“the United Kingdom” means Great Britain and Northern Ireland; and

words importing one gender shall include all genders, and the singular includes the plural and *vice versa*.

Unless the context otherwise requires, words or expressions contained in these articles have the same meaning as in the 1985 Act or the 2006 Act, but excluding any statutory modification not in force when this constitution becomes binding on the Charity.

Apart from the exception mentioned in the previous paragraph, a reference to an Act of Parliament includes any statutory modification or re-enactment of it for the time being in force.

Extraordinary meetings shall be deemed general meetings.

The provisions of the Memorandum to the extent that they could have been contained in the Articles shall take effect as though repeated here.

2 Members

2.1. The subscribers to the memorandum are the first members of the Charity.

2.2. Membership is open to other individuals or organisations who:

- a. Apply to the Charity in the form required by the Directors; and
- b. Are approved by the Directors

2.3. Refusal of an application for membership

- a. The Directors may only refuse an application for membership if, acting reasonably and properly, they consider it to be in the best interests of the Charity to refuse the application.
- b. The Directors must inform the applicant in writing of the reasons for refusal within 21 days of the decision.

- c. The Directors must consider any written representations the applicant may make about the decision. The Directors' decision following any written representations must be notified to the applicant in writing but shall be final.

2.4. Membership is not transferable to anyone else.

2.5. The Directors must keep a register of names and addresses of the members.

3 Classes of Membership

3.1. The Directors may establish classes of membership with different rights and obligations and shall record the rights and obligations in the register of members.

3.2. The Directors may not directly or indirectly alter the rights or obligations attached to a class of membership.

3.3. The rights attached to a class of membership may only be varied if:

- a. Three-quarters of the members of that class consent in writing to the variation; or
- b. A special resolution is passed at a separate general meeting of the members of that class agreeing to the variation.

3.4. The provisions in these articles about general meetings shall apply to any meeting relating to the rights of any class of members.

4 Termination of Membership

Membership is terminated if:

4.1. the member dies or, if it is an organisation, ceases to exist;

4.2. the member resigns by written notice to the Charity unless, after the resignation, there would be less than two members;

4.3. any sum due from the member to the Charity is not paid in full within six months of it falling due;

4.4. the member is removed from membership by a resolution of the Directors that it is in the best interests of the Charity that his or her membership is terminated. A resolution to remove a member from membership may only be passed if:

- a. the member has been given at least 21 days' notice in writing of the meeting of the Directors at which the resolution will be proposed and the reasons why it is to be proposed;
- b. the member, or at the option of the member, the member's representative (who need not be a member of the Charity) has been allowed to make representations to the meeting.

5 General Meetings

5.1. The Charity must hold its first Annual General Meeting within 18 months after the date of its incorporation.

5.2. An Annual General Meeting must be held in each subsequent year and not more than 15 months may elapse between successive Annual General Meetings.

5.3. All general meetings other than annual general meetings shall be called extraordinary general meetings.

5.4. The Directors may call an extraordinary general meeting at any time.

6 Notice of General Meetings

6.1. The minimum periods of notice required to hold a general meeting of the Charity are:

- 21 clear days for an Annual General Meeting and an Extraordinary General Meeting called for the passing of a special resolution;
- 14 clear days for all other extraordinary general meetings.

6.2. A general meeting may be called by shorter notice if it is so agreed:

- in the case of an Annual General Meeting, by all the members entitled to attend and vote; and
- in the case of an Extraordinary General Meeting, by a majority in number of members having a right to attend and vote at the meeting who together hold not less than **90%** of the total voting rights.

6.3. The notice must specify the date, time and place of the meeting and the general nature of the business to be transacted. If the meeting is to be an Annual General Meeting, the notice must say so. The notice must also contain a statement setting out the right of members to appoint a proxy under section 324 of the Companies Act 2006 and article 7.6 of these articles

6.4. The notice must be given to all the members and to the Directors and auditors.

6.5. The proceedings at a meeting shall not be invalidated because a person who was entitled to receive notice of the meeting did not receive it because of an accidental omission by the Charity.

7 Proceedings at General Meetings

7.1. Quorum

- a. No business shall be transacted at any general meeting unless a quorum is present
- b. A quorum is 5 members entitled to vote upon the business to be conducted at the meeting;
- c. the authorised representative of a member organisation shall be counted in the quorum.

7.2. Procedure in the absence of a quorum. If:

- a. a quorum is not present within half an hour from the time appointed for the meeting; or
- b. during a meeting a quorum ceases to be present;
the meeting shall be adjourned to such time and place as the Directors shall determine.
- c. The Directors must reconvene the meeting and must give at least seven clear days' notice of the reconvened meeting stating the date, time and place of the meeting.
- d. If no quorum is present at the reconvened meeting within fifteen minutes of the time specified for the start of the meeting, the members present at that time shall constitute the quorum for that meeting.

7.3. Chairman

- a. General meetings shall be chaired by the person who has been appointed to chair meetings of the Directors.
- b. If there is no such person or he or she is not present within 15 minutes of the time appointed for the meeting, a Director nominated by the Directors shall chair the meeting.
- c. If there is only one Director present and willing to act, he or she shall chair the meeting.
- d. If no Director is present and willing to chair the meeting within fifteen minutes after the time appointed for holding it, the members present and entitled to vote must choose one of their number to chair the meeting.

7.4. Adjournments

- a. The members present at a meeting may resolve by ordinary resolution that the meeting shall be adjourned.
- b. The person who is chairing the meeting must decide the date, time and place at which the meeting is to be reconvened unless those details are specified in the resolution.
- c. No business shall be conducted at a reconvened meeting unless it could properly have been conducted at the meeting had the adjournment not taken place.
- d. If a meeting is adjourned by a resolution of the members for more than seven days, at least seven clear days' notice shall be given of the reconvened meeting stating the date, time and place of the meeting.

7.5. Votes of Members

- a. Any vote at a meeting shall be decided by a show of hands.
- b. If there is an equality of votes, the person who is chairing the meeting shall have a casting vote in addition to any other vote he or she may have.
- c. A resolution in writing signed by each member (or in the case of a member that is an organisation, by its authorised representative) who would have been entitled to vote on it had it been proposed at a general meeting, shall be effective. It may comprise several copies each signed by or on behalf of one or more members.
- d. No member shall be entitled to vote at any general meeting or any adjourned meeting if he or she owes any money to the Charity.
- e. Subject to articles 7.5 b and d above, every member, whether an individual or an organisation, shall have one vote.
- f. Any objection to the qualification of any voter must be raised at the meeting at which the vote is tendered and the decision of the person who is chairing the meeting shall be final.

7.6. Proxies: appointment and voting

- a. Any member is entitled to appoint another person as a proxy to exercise all or any of the member's rights to attend and to speak and vote at the general meeting of the charity.
- b. The appointment of a proxy shall be executed by or on behalf of the appointor and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the directors may approve)

“charity name_____

I/We_____, of_____, being a member/members of the above named charity, hereby appoint _____of _____, or failing him/her,_____of_____, as my/our proxy to vote in my/our name(s) and on my/our behalf at the general meeting of the charity to be held on___ 20____, and at any adjournment thereof.

Signed on _____20_____.

- c. The appointment of a proxy and any authority under which it is executed (or a copy of such authority certified by a notary or in some other way approved by the Directors) may be lodged with the charity as follows:
- (i) in the case of an instrument in writing be deposited at the office not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (ii) in the case of an appointment contained in an electronic communication, where an address has been specified for the purpose of receiving electronic communications
 - (a) in the notice convening the meeting, or
 - (b) in any invitation contained in an electronic communication to appoint a proxy issued by the charity in relation to the meeting,

it must be received at such address not less than 48hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote.

- d. An appointment of proxy which is not deposited, delivered or received in a manner described in sub-clauses 7.6 (c) shall be invalid.

7.7. Written resolutions

A resolution in writing agreed by a simple majority (or in the case of a special resolution by a majority of not less than 75%) of the members who would have been entitled to vote upon it had it been proposed at the general meeting shall be effective provided that a copy of the proposed resolution has been sent to every eligible member and a simple majority (or in the case of a special resolution a majority of not less than 75%) of members has signified its agreement to the resolution in an authenticated document which has been received at the registered office within the period of 28days beginning with the circulation date. A resolution in writing may comprise several copies to which one or more members have signified their agreement. In the case of a member that is an organisation, its authorised representative may signify its agreement.

7.8. Representation of Member Organisations

- a. Any organisation that is a member of the Charity may nominate any person to act as its representative at any meeting of the Charity.
- b. The organisation must give written notice to the Charity of the name of its representative. The nominee shall not be entitled to represent the organisation at any meeting unless the notice has been received by the Charity. The nominee may continue to represent the organisation until written notice is received to the contrary by the Charity.
- c. Any notice given to the Charity will be conclusive evidence that the nominee is entitled to represent the organisation or that his or her authority has been revoked. The Charity shall not be required to consider whether the nominee has been properly appointed by the organisation.

8 Directors

- 8.1. A Director must be a natural person aged 18 years or older.
- 8.2. No one may be appointed a Director if he or she would be disqualified from acting under the provisions of Article 12
- 8.3. The number of Directors shall be not less than three but (unless otherwise determined by ordinary resolution) shall not be subject to any maximum.

- 8.4. There shall be a Director appointed by the Visitors of the Oxford Botanic Garden, University of Oxford and he or she should be a member of the Charity.
- 8.5. Unless decided otherwise by the existing Directors or the Members in General Meeting, the other Directors shall include the officers of the Charity, being the Chairman, the Secretary, the Treasurer and such other officers as may be appointed.
- 8.6. The first Directors shall be those persons notified to Companies House as the first directors of the Charity.
- 8.7. A Director may not appoint an alternate director or anyone to act on his or her behalf at meetings of the Directors.

9 Powers of Directors

- 9.1. The Directors shall manage the business of the Charity and may exercise all the powers of the Charity unless they are subject to any restrictions imposed by the *1985 Act* **or the 2006 Act**, the memorandum, these articles or any special resolution.
- 9.2. No alteration of the memorandum or these articles or any special resolution shall have retrospective effect to invalidate any prior act of the Directors.
- 9.3. Any meeting of the Directors at which a quorum is present at the time a relevant decision is made may exercise all the powers exercisable by the Directors.

10 Retirement of Directors

- 10.1. Directors are appointed for a term of three years with an option to renew for a further term of three years (or for a lesser period) by agreement with the Board and the Director, and subject to approval by the membership at the AGM. In exceptional cases, a term of office can be renewed for a final term of three years (or lesser period) by agreement with the Board and the Director, and subject to approval by the membership at the AGM. No Director may serve longer than 9 years.
- 10.2. For purposes of calculating the duration of a Director's term of office, the term will be deemed to commence at the close of the AGM at which such Director was elected and will be deemed to expire at the close of the AGM held in the last year of the Director's term.
- 10.3. The Director appointed by the Visitors of the Oxford Botanic Garden and Arboretum, University of Oxford, shall serve for three years and be eligible for reappointment.

11 Appointment of Directors

- 11.1. The Charity may by ordinary resolution:
 - appoint a person who is willing to act to be a Director; and
 - determine the rotation in which any additional Directors are to retire.
- 11.2. No person other than a Director retiring by rotation may be appointed a Director at any general meeting unless:
 - a. He or she is recommended for re-election by the Directors; or
 - b. Not less than fourteen and not more than thirty-five clear days before the date of the meeting, the Charity is given notice that:
 - i. Is signed by 5 members entitled to vote at the meeting;
 - ii. States the members' intention to propose the appointment of a person as a Director;
 - iii. Contains the details that, if the person were to be appointed, would have to be filed at Companies House; and
 - iv. Is signed by the person to be proposed to show his or her willingness to serve as a Director if appointed
- 11.3. All members who are entitled to receive notice of a general meeting must be given not less than seven nor more than twenty-eight clear days' notice of any resolution to be put to the meeting to appoint a Director other than a Director who is to retire by rotation.
- 11.4. The Directors may appoint a person who is willing to act to be a Director.
- 11.5. A Director appointed by a resolution of the other Directors must retire at the next annual general meeting and must not be taken into account in determining the Directors who are to retire by rotation.
- 11.6. The appointment of a Director, whether by the Charity in general meeting or by the other Directors, must not cause the number of Directors to exceed any number fixed as the maximum number of Directors.

12 Disqualification and Removal of Directors

A Director shall cease to hold office if he or she:

- 12.1. ceases to be a Director by virtue of any provision in the 1985 Act *or the 2006 Act* or is prohibited by law from being a director;
- 12.2. is disqualified from acting as a Trustee by virtue of section 72 of the Charities Act 1993 (or any statutory re-enactment or modification of that provision);
- 12.3. ceases to be a member of the Charity
- 12.4. becomes incapable by reason of mental disorder, illness or injury of managing or administering his or her own affairs;
- 12.5. resigns as a Director by notice to the Charity (but only if at least two Directors will remain in office when the notice or resignation is to take effect); or
- 12.6. is absent without permission of the Directors from all their meetings held within a period of six consecutive months and the Directors that his or her office be vacated.

13 Remuneration of Directors

The Directors must not be paid any remuneration unless it is authorised by clause 5 of the Memorandum.

14 Proceedings of Directors

- 14.1. The Directors may regulate their proceedings as they think fit, subject to the provisions of the articles.
- 14.2. Any Director can call a meeting of the Directors
- 14.3. The secretary must call a meeting of the Directors if requested to do so by a Director.
- 14.4. Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes, the person who chairs the meeting shall have a second or casting vote.
- 14.5. No decision may be made by a meeting of Directors unless a quorum is present at the time the decision is purported to be made.
- 14.6. The quorum shall be two or the number nearest to one-third of the total number of Directors, whichever is the greater, or such larger number as may be decided from time to time by the Directors.
- 14.7. A Director shall not be counted in the quorum present when any decision is made about a matter upon which that Director is not entitled to vote.
- 14.8. If the number of Directors is less than the number fixed as the quorum, the continuing Director or Directors may act only for the purpose of filling vacancies or for calling a general meeting.
- 14.9. The Directors shall appoint a Director to chair their meetings and may at any time revoke such appointment.
- 14.10. If no-one has been appointed to chair meetings of the Directors or if the person appointed is unwilling to preside or is not present within ten minutes after the time appointed for the meeting, the Directors present may appoint one of their number to chair that meeting.
- 14.11. The person appointed to chair meetings of Directors shall have no functions or powers except those conferred by these articles or delegated to him or her by the Directors.
- 14.12. A resolution in writing signed by all the Directors entitled to receive notice of a meeting of Directors or of a committee of Directors and to vote upon the resolution shall be as valid and effectual as if it had been passed at a meeting of the Directors or (as the case may be) a committee of Directors duly convened and held provided that:
 - a a copy of the resolution is sent or submitted to all Directors eligible to vote; and
 - b a simple majority of Directors has signified its agreement to the resolution in an authenticated document or documents which are received at the registered office within the period of 28 days beginning with the circulation date
 - c the resolution in writing may comprise several documents containing the text of the resolution in like form to each of which one or more Directors has signified their agreement.

15 Delegation

- 15.1. The Directors may delegate any of their powers or functions to a committee of the Charity irrespective of whether such committee contains any Directors for the time being and the terms of any delegation must be recorded in the minute book.
- 15.2. The Directors may impose conditions when delegating, including the conditions that:
 - the relevant powers are to be exercised exclusively by the committee to whom they delegate;
 - no expenditure may be incurred on behalf of the Charity except in accordance with a budget previously agreed with the Directors.
- 15.3. The Directors may revoke or alter a delegation.
- 15.4. All acts and proceedings of any committees must be fully and promptly reported to the Directors.

16 Conflict of Interest and Validity of Acts

- 16.1 A Director must declare the nature and extent of any interest, direct or indirect which s/he has in a proposed transaction or arrangement with the charity or in any transaction or arrangement entered into by the charity which has not previously been declared.
- 16.2 A Director must absent himself or herself from any discussions in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the charity and any personal (including but not limited to any personal financial interest).
- 16.3 Subject to paragraph 16.3, all acts done by a meeting of Directors, or of a committee of Directors, shall be valid notwithstanding the participation in any vote of a director:
- who was disqualified from holding office;
 - who had previously retired or who had been obliged by the constitution to vacate office;
 - who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise;
- if without:
- the vote of that Director; and
 - that Director being counted in the quorum
- the decision has been made by a majority of the Directors at a quorate meeting.
- 16.4 Paragraph 16.3 does not permit a Director to keep any benefit that may be conferred on him or her by a resolution of the Directors or of a committee of Directors if, but for paragraph 16.3, the resolution would have been void, or if the Director had not complied with article 16.2.

17 Seal

If the Charity has a seal it must only be used by the authority of the Directors or of a committee of Directors authorised by the Directors. The Directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise determined it shall be signed by a Director and by the secretary or by a second Director.

18 Minutes

The Directors must keep minutes of all:

- 18.1. appointments of officers made by the Directors;
- 18.2. proceedings of meetings of the Charity;
- 18.3. meetings of the Directors and committees of the Directors including:
 - the names of the Directors present at the meeting;
 - the decisions made at the meetings; and
 - where appropriate the reasons for the decisions.

19 Participation in meetings by electronic means

- 19.1. A meeting may be held by suitable electronic means agreed by the Directors in which each participant may communicate with all the other participants.
- 19.2. Any Director participating at a meeting by suitable electronic means agreed by the Directors in which a participant or participants may communicate with all the other participants shall qualify as being present at the meeting.
- 19.3. Meetings held by electronic means must comply with rules for meetings, including chairing and the taking of minutes.

20 Accounts

- 20.1. The Directors must prepare for each financial year accounts as required by **the 2006 Act**. The accounts must be prepared to show a true and fair view and follow accounting standards issued or adopted by the Accounting Standards Board or its successors and adhere to the recommendations of applicable Statements of Recommended Practice.
- 20.2. The Directors must keep accounting records as required by **the 2006 Act**.

21 Annual Report and Return and Register of Charities

- 21.1. The Directors must comply with the requirements of the Charities Act 1993 with regard to:
 - a. The transmission of the statements of account to the Charity;
 - b. The preparation of an annual report and its transmission to the Commission;
 - c. The preparation of an annual return and its transmission to the Commission.

21.2. The Directors must notify the Commission promptly of any changes to the Charity's entry on the Central Register of Charities.

22 Notice pursuant to the articles

Any notice to be given to or by any person pursuant to the articles:

- 22.1. must be in writing; or
- 22.2. must be given using electronic communications.

23 Giving Notice to Members

21.1 The Charity may give notice to any member either:

- a. Personally; or
- b. By sending it by post in a prepaid envelope addressed to the member at his or her address; or
- c. By giving it using electronic communications to the member's address.

23.2. A member who does not register an address with the Charity or who registers only a postal address that is not within the United Kingdom shall not be entitled to receive any notice from the Charity.

23.3. A member present in person at any meeting of the Charity shall be deemed to have received notice of the meeting and of the purposes for which it was called.

23.4. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given.

23.5. Proof that a notice contained in an electronic communication was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice was given.

23.6. A notice shall be deemed to be given:

- a. 48 hours after the envelope containing it was posted; or
- b. in the case of an electronic communication, 48 hours after it was sent.

24 Indemnity

The Charity shall indemnify every Director or other officer or auditor of the Charity against any liability incurred by him or her in that capacity in defending any proceedings, whether civil or criminal, in which judgement is given in favour of the Director or in which the Director is acquitted or in connection with any application in which relief is granted to the Director by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Charity.

25 Rules

25.1. The Directors may from time to time make such proper rules or bye-laws as they may deem necessary or expedient for the proper conduct and management of the Charity.

25.2. The bye laws may regulate the following matters but are not restricted to them:

- a. The admission of members to the Charity (including the admission of organisations to membership) and the rights and privileges of such members, and the entrance fees, subscriptions and other fees or payments to be made by members;
- b. The conduct of the members of the Charity in relation to one another, and to the Charity's employees and volunteers;
- c. The setting aside of the whole or any part or parts of the Charity's premises at any particular time or times or for any particular purpose or purposes;
- d. The procedure at general meetings and meetings of the Directors insofar as such procedure is not regulated by the Act or by these articles;
- e. Generally, all such matters as are commonly the subject matter of company rules.

25.3. The Charity in general meeting has the power to alter, add to or repeal the rules or bye-laws.

25.4. The Directors must adopt such means as they think sufficient to bring the rules and bye laws to the notice of members of the Charity.

25.5. The rules or bye-laws shall be binding on all members of the Charity. No rule or bye-laws shall be inconsistent with, or shall affect or repeal anything contained in, the memorandum or the articles.

Signature	Name in full
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Address	
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Dated	
Witness to the above signatures:	
Signature	Name in full
Address	
Occupation	