

COMPANIES ACTS 1985 TO 2006

COMPANY LIMITED BY GUARANTEE

ARTICLES OF ASSOCIATION

OF

**THE BIRMINGHAM ROYAL INSTITUTE FOR
THE BLIND**

1 Objects

The **Objects** of the **Charity** are:.

- 1.1 To advance the education of, and to relieve the poverty, sickness, hardship and distress of the blind (such term including persons who though not totally blind are significantly handicapped by defective vision or are threatened with blindness), either generally or individually, by securing the provision of assistance and support to the blind in the community and by such other charitable means as the Charity shall from time to time determine;
- 1.2 To promote the education of people with special needs;
- 1.3 To promote the relief of people with special needs; and
- 1.4 To provide facilities for recreation and leisure time activities for the benefit of people with special needs.
- 1.5 This provision may be amended by **special resolution** but only with the prior written consent of the **Commission**.

2 Powers

- 2.1 The Charity has the following powers, which may be exercised only in promoting the Objects:
 - 2.1.1 to provide advice or information;
 - 2.1.2 to carry out research;
 - 2.1.3 to co-operate with other bodies;

- 2.1.4 to support, administer or set up other charities;
- 2.1.5 to accept gifts and to raise funds (but not by means of **taxable trading**);
- 2.1.6 to borrow money;
- 2.1.7 to give security for loans or other obligations (but only in accordance with the restrictions imposed by the **Charities Act**);
- 2.1.8 to acquire or hire property of any kind;
- 2.1.9 to let or dispose of property of any kind (but only in accordance with the restrictions imposed by the Charities Act);
- 2.1.10 to set aside funds for special purposes or as reserves against future expenditure;
- 2.1.11 to deposit or invest its funds in any manner (but to invest only after obtaining such advice from a **financial expert** as the **Governors** consider necessary and having regard to the suitability of investments and the need for diversification);
- 2.1.12 to 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 Governors;
 - (ii) timely reports of all transactions are provided to the Governors;
 - (iii) the performance of the investments is reviewed regularly with the Governors;
 - (iv) the Governors 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 Governors on receipt; and
 - (vii) the financial expert must not do anything outside the powers of the Charity;
- 2.1.13 to 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 Governors or controlled by a financial expert acting under their instructions, and to pay any reasonable fee required;
- 2.1.14 to deposit documents and physical assets with any company registered or having a place of business in England or Wales as **custodian**, and to pay any reasonable fee required;

- 2.1.15 to insure the property of the Charity against any foreseeable risk and take out other insurance policies to protect the Charity when required;
- 2.1.16 subject to **Article 6.3**, to employ paid or unpaid agents, staff or advisers;
- 2.1.17 to enter into contracts to provide services to or on behalf of other bodies;
- 2.1.18 to establish or acquire subsidiary companies;
- 2.1.19 to do anything else within the law which promotes or helps to promote the Objects.

3 The Governors

- 3.1 The Governors as **Charity Trustees** have control of the Charity and its property and funds.
- 3.2 The subscribers to the **Memorandum** (being the first **Members**) are also the first Governors. Subsequent Governors are elected by the Members or co-opted by the Governors.
- 3.3 The Governors when complete shall consist of 9 persons who being individuals are over the age of 18, all of whom must support the Objects.
- 3.4 At any one time, the Governors shall consist of;
 - 3.4.1 three Governors appointed by the board of directors of Focus (Company number 3353444) ("**Focus**");
 - 3.4.2 three Governors appointed by the board of directors of Queen Alexandra College (Company number 3387540) ("**QAC**"); and
 - 3.4.3 three Governors not being the Directors of Focus or QAC, appointed in accordance with Articles 3.2 and 3.13 (the "**Independent Governors**").
- 3.5 Focus shall have the right to appoint and maintain in office three Governors and to remove or replace any Governor appointed by it and QAC have the right to appoint and maintain in office three Governors and to remove or replace any Governor appointed by it.
- 3.6 The Focus and QAC Governors shall be appointed, removed and replaced at Board meetings convened and held according to the ordinary practice of the appointing body provided that no such appointment, removal or replacement shall be effective until notice in writing signed by a director of the appointing body has been given to the secretary of the Charity or at a meeting of the Governors.
- 3.7 The Independent Governors shall be subject to retirement by rotation so that each year one of the Independent Governors shall retire from office and the Independent Governor to retire by rotation shall be he who has been longest in office since his last appointment or re-appointment, but as between persons who became or were last re-appointed on the same day, the Independent Governor to retire shall be determined by lot.
- 3.8 If at a meeting at which an Independent Governor retires by rotation the vacancy is not filled, the retiring Governor shall, if willing to act, be deemed to have been re-

appointed unless at the meeting a resolution for the re-appointment of the Governor is put to the meeting and lost.

3.9 No Independent Governor other than one retiring by rotation shall be appointed at a meeting unless:

3.9.1 he is recommended by the Governors; or

3.9.2 not less than fourteen nor more than thirty five clear days before the date appointed for the meeting, notice executed by a member qualified to vote at the meeting has been given to the Charity of the intention to propose that person for appointment stating the particulars which would, if he was so appointed, be required to be included in the Charity's register of directors.

3.10 A Governor may not act as a Governor unless he/she

3.10.1 is a Member; and

3.10.2 has signed a written declaration of willingness to act as a charity trustee of the Charity.

3.11 A retiring Governor who is eligible under Article 3.3 may be reappointed.

3.12 A Governor's term of office as such automatically terminates if he/she:

3.12.1 is disqualified under the Charities Act from acting as a charity trustee;

3.12.2 is incapable, whether mentally or physically, of managing his/her own affairs;

3.12.3 is absent without permission from 3 consecutive meetings of the Governors and is asked by a majority of the other Governors to resign;

3.12.4 resigns by written notice to the Governors (but only if at least two Governors will remain in office); or

3.12.5 is removed by the Members at a general meeting under the Companies Act.

3.13 The Governors may at any time co-opt any individual who is eligible under Article 3.3 as a Governor to fill a vacancy in their number or (subject to the maximum number permitted by Article 3.3) as an additional Governor, but a co-opted Governor holds office only for one year.

3.14 A technical defect in the appointment of a Governor of which the Governors are unaware at the time does not invalidate decisions taken at a meeting.

4 Governors proceedings

4.1 The Governors must hold at least three meetings each year.

4.2 A quorum at a meeting of the Governors is at least three of the Governors consisting of one Governor from Focus, one from QAC and one Independent Governor.

- 4.3 A meeting of the Governors may be held either in person or by suitable **electronic means** agreed by the Governors in which all participants may communicate with all the other participants but at least one meeting in each year must be held in person.
- 4.4 The **Chairman** or (if the Chairman is unable or unwilling to do so) some other Governor chosen by the Governors present presides at each meeting.
- 4.5 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 Governors (other than any Conflicted Governor 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.
- 4.6 Every Governor has one vote on each issue but, in case of equality of votes, the Chairman of the meeting has a second or casting vote.
- 4.7 A procedural defect of which the Governors are unaware at the time does not invalidate decisions taken at a meeting.

5 Governors' powers

- 5.1 The Governors have the following powers in the administration of the Charity in their capacity as Governors:
- 5.1.1 to appoint (and remove) any person (who may be a Governor) to act as **Secretary** in accordance with the **Companies Act**;
- 5.1.2 to appoint a Treasurer and other honorary officers but the power to appoint a Chairman shall be reserved specifically for the Independent Governors;
- 5.1.3 to confer on any individual (with his/her consent) the honorary title of Patron, President or Vice President of the Charity;
- 5.1.4 to delegate any of their functions to committees consisting of two or more individuals appointed by them. At least one member of every committee must be a Governor and all proceedings of committees must be reported promptly to the Governors;
- 5.1.5 to make standing orders consistent with the Memorandum, the Articles and the Companies Act to govern proceedings at general meetings;
- 5.1.6 to make rules consistent with the Memorandum, the Articles and the Companies Act to govern their proceedings and proceedings of committees;
- 5.1.7 to make regulations consistent with the Memorandum, the Articles and the Companies Act to govern the administration of the Charity and the use of its seal (if any);
- 5.1.8 to establish procedures to assist the resolution of disputes or differences within the Charity;
- 5.1.9 to exercise in their capacity as Governors any powers of the Charity which are not reserved to the Members.

6 Benefits and Conflicts

- 6.1 The property and funds of the Charity must be used only for promoting the Objects and do not belong to the Members but:
- 6.1.1 Members who are not Governors or **Connected Persons** may be employed by or enter into contracts with the Charity and receive reasonable payment for goods or services supplied; and,
- Subject to compliance with Article 6.4:
- 6.1.2 Members, Governors and Connected Persons may be paid interest at a reasonable rate on money lent to the Charity;
- 6.1.3 Members, Governors and Connected Persons may be paid a reasonable rent or hiring fee for property let or hired to the Charity; and
- 6.1.4 Members, Governors and Connected Persons may receive charitable benefits on the same terms as any other members of the beneficial class.
- 6.2 A Governor must not receive any payment of money or other **material benefit** (whether directly or indirectly) from the Charity except:
- 6.2.1 as mentioned in Articles 6.1 or 6.3;
- 6.2.2 reimbursement of reasonable out-of-pocket expenses (including hotel and travel costs) actually incurred in running the Charity;
- 6.2.3 the benefit of **indemnity insurance** as permitted by the Charities Act;
- 6.2.4 an indemnity in respect of any liabilities properly incurred in running the Charity (including the costs of a successful defence to criminal proceedings);
- 6.2.5 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).
- 6.3 No Governor or Connected Person may be employed by the Charity except in accordance with Article 6.2.5, but any Governor or Connected Person may enter into a written contract with the Charity, as permitted by the Charities Act, to supply goods or services in return for a payment or other material benefit but only if:
- 6.3.1 the goods or services are actually required by the Charity, and the Governors decide that it is in the best interests of the Charity to enter into such a contract;
- 6.3.2 the nature and level of the remuneration is no more than is reasonable in relation to the value of the goods or services and is set in accordance with the procedure in Article 6.4; and
- 6.3.3 no more than half of the Governors are subject to such a contract in any financial year.
- 6.4 Subject to Clause 6.5, any Governor who becomes a **Conflicted Governor** in relation to any matter must:

- 6.4.1 declare the nature and extent of his or her interest before discussion begins on the matter;
 - 6.4.2 withdraw if so requested by the remaining Governors from the meeting for that item after providing any information requested by the Governors;
 - 6.4.3 not be counted in the quorum for that part of the meeting; and
 - 6.4.4 have no vote on the matter.
- 6.5 When any Governor is a Conflicted Governor, the Governors who are not Conflicted Governors, if they form a quorum without counting the Conflicted Governor 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 Governor authorise the Conflicted Governor, notwithstanding any conflict of interest or duty which has arisen or may arise for the Conflicted Governor, to:
- 6.5.1 continue to participate in discussions leading to the making of a decision and/or to vote; or
 - 6.5.2 disclose to a third party information confidential to the Charity; or
 - 6.5.3 take any other action not otherwise authorised which does not involve the receipt by the Conflicted Governor or a Connected Person of any payment or material benefit from the Charity; or
 - 6.5.4 refrain from taking any step required to remove the conflict.
- 6.6 This provision may be amended by special resolution but, where the result would be to permit any material benefit to a Governor or Connected Person, only with the prior written consent of the Commission.

7 Records and Accounts

- 7.1 The Governors 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:
- 7.1.1 annual returns;
 - 7.1.2 annual reports; and
 - 7.1.3 annual statements of account.
- 7.2 The Governors must also keep records of:
- 7.2.1 all proceedings at meetings of the Governors;
 - 7.2.2 all resolutions in writing;
 - 7.2.3 all reports of committees; and
 - 7.2.4 all professional advice obtained.

- 7.3 Accounting records relating to the Charity must be made available for inspection by any Governor at any time during normal office hours and may be made available for inspection by Members who are not Governors if the Governors so decide.
- 7.4 A copy of the Charity's **constitution** and latest available statement of account must be supplied on request to any Governor. Copies of the latest accounts must also be supplied in accordance with the Charities Act to any other person who makes a written request and pays the Charity's reasonable costs.

8 Membership

- 8.1 The Charity must maintain a register of Members.
- 8.2 The subscribers to the Memorandum are the first Members.
- 8.3 **Membership** is open to any person interested in furthering the objects and approved by the Governors.
- 8.4 The form and the procedure for applying for Membership is to be prescribed by the Governors.
- 8.5 Membership is not transferable.
- 8.6 Membership is terminated if:
- 8.6.1 The member dies or, if it is an organisation, ceases to exist;
 - 8.6.2 the member resigns by written notice to the Charity unless, after the resignation, there would be less than two members;
 - 8.6.3 any sum due from the member to the Charity is not paid in full within six months of it falling due;
 - 8.6.4 The member is removed from membership by resolution of the Governors that it is in the best interests of the Charity that his or her or its membership is terminated. A resolution to remove a member from membership may only be passed if:
 - (i) the member has been given at least 21 days notice in writing of the meeting of the Governors at which the resolution will be proposed and the reasons why it is to be proposed.
 - (ii) the member or, 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.

9 General Meetings

- 9.1 Members are entitled to attend general 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).
- 9.2 General meetings are called on at least 14 and not more than 28 **clear days'** written notice indicating the business to be discussed and (if a **special resolution** is to be proposed) at least 28 clear days' written notice setting out the terms of the proposed special resolution.

- 9.3 There is a quorum at a general meeting if the number of Members present in person or by proxy is at least five.
- 9.4 The chairman at a general meeting is elected by the Members present in person or by proxy in his/her capacity as a Member and not as proxy for another Member.
- 9.5 Except where otherwise provided by the Articles or the Companies Act, every issue is decided by **ordinary resolution**.
- 9.6 Every Member present in person or by proxy has one vote on each issue.
- 9.7 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 general meeting. For this purpose the written resolution may be set out in more than one document.
- 9.8 The Charity may (but need not) hold an **AGM** in any year.
- 9.9 Members must annually:
- 9.9.1 receive the accounts of the Charity for the previous **financial year**;
 - 9.9.2 receive a written report on the Charity's activities;
 - 9.9.3 be informed of the retirement of those Governors who wish to retire or who are retiring by rotation;
 - 9.9.4 elect Governors to fill the vacancies arising;
 - 9.9.5 appoint reporting accountants or auditors for the Charity.
- 9.10 Members may also from time to time discuss and determine any issues of policy or deal with any other business put before them by the Governors.
- 9.11 A general meeting may be called by the Governors at any time and must be called within 21 days of receipt of a written request from one or more Governors (being Members), at least 10% of the Membership or (where no general meeting has been held within the last year) at least 5% of the Membership.
- 9.12 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 general meeting or a Written Resolution.

10 Limited Liability

- 10.1 The liability of Members is limited.

11 Guarantee

- 11.1 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:
- 11.1.1 payment of those debts and liabilities of the Charity incurred before he/she ceased to be a Member;
 - 11.1.2 payment of the costs, charges and expenses of winding up; and

11.1.3 the adjustment of rights of contributors among themselves.

12 Communications

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

12.1.1 by hand;

12.1.2 by post;

12.1.3 by suitable electronic means; or

through publication in the Charity's newsletter or on the Charity's website.

12.2 The only address at which a Member is entitled to receive notices sent by post is an address in the U.K. shown in the register of Members.

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

12.3.1 24 hours after being sent by electronic means, posted on the Charity's website or delivered by hand to the relevant address;

12.3.2 two clear days after being sent by first class post to that address;

12.3.3 three clear days after being sent by second class or overseas post to that address;

12.3.4 immediately on being handed to the recipient personally; or, if earlier,

12.3.5 as soon as the recipient acknowledges actual receipt.

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

13 Dissolution

13.1 If the Charity is dissolved, the assets (if any) remaining after providing for all its liabilities must be applied in one or more of the following ways:

13.1.1 by transfer to one or more other bodies established for exclusively charitable purposes within, the same as or similar to the Objects;

13.1.2 directly for the Objects or for charitable purposes which are within or similar to the Objects;

13.1.3 in such other manner consistent with charitable status as the Commission approves in writing in advance.

13.2 A final report and statement of account must be sent to the Commission.

13.3 This provision may be amended by special resolution but only with the prior written consent of the Commission.

14 Interpretation

14.1 The Articles are to be interpreted without reference to the model articles under the Companies Act, which do not apply to the Charity.

14.2 In the Articles, unless the context indicates another meaning:

“**AGM**” means an annual general meeting of the Charity;

“**Articles**” means the Charity’s Articles of Association and Article refers to a particular Article;

“**Chairman**” means the chairman of the Governors;

“**Charity**” means the company governed by the Articles;

“**Charities Act**” means the Charities Acts 1992 to 2006;

“**Charity trustee**” has the meaning prescribed by the Charities Act;

“**clear day**” does not include the day on which notice is given or the day of the meeting or other event;

“**Commission**” means the Charity Commission for England and Wales or any body which replaces it;

“**Companies Act**” means the Companies Acts 1985 to 2006;

“**Conflicted Governor**” means a Governor in respect of whom a conflict of interest arises or may reasonably arise because the Conflicted Governor 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, or in relation to information which is confidential to the Charity;

“**Connected Person**” means, in relation to a Governor, a person with whom the Governor shares a common interest such that he/she may reasonably be regarded as benefiting directly or indirectly from any material benefit received by that person, being either a member of the Governors family or household or a person or body who is a business associate of the Governor, and (for the avoidance of doubt) does not include a company with which the Governor’s only connection is an interest consisting of no more than 1% of the voting rights;

“**constitution**” means the Memorandum and the Articles and any special resolutions relating to them;

“**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;

“**indemnity insurance**” means insurance against personal liability incurred by any Governor 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 Governor 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;

“**Member**” and “**Membership**” refer to company Membership of the Charity;

“**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;

“**ordinary resolution**” means a resolution agreed by a simple majority of the Members present and voting at a general meeting or in the case of a written resolution by Members who together hold a simple majority of the voting power. Where applicable, “Members” in this definition means a class of Members;

“**Objects**” means the Objects of the Charity as defined in Article 1;

“**Resolution in writing**” means a written resolution of the Governors;

“**Secretary**” means a company secretary;

“**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 voting at a general meeting or in the case of a written resolution by Members who together hold 75% of the voting power. Where applicable, “Members” in this definition means a class of Members;

“**taxable trading**” means 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;

“**Governor**” means a director of the Charity and “**Governors**” means the directors

“**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;

“**year**” means calendar year.

14.3 Expressions not otherwise defined which are defined in the Companies Act have the same meaning.

14.4 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.