

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY GUARANTEE

ARTICLES OF ASSOCIATION

OF

CUMBERNAUL THEATRE TRUST LIMITED

Company No SC066490

Registered Charity No SC005050

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PRIVATE COMPANY LIMITED BY GUARANTEE
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OF
CUMBERNAULD THEATRE TRUST LIMITED
(Adopted by special resolution passed on 25th of November 2020)

1. Interpretation

1.1 In these Articles, unless the context otherwise requires:

Act: means the Companies Act 2006;

Articles: means the Charity's articles of association for the time being in force;

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

Charities Act: means the Charities and Trustee Investment (Scotland) Act 2005;

Charity: means Cumbernauld Theatre Trust Limited, which is a charitable company regulated by the Articles;

Circulation Date: in relation to a written resolution, has the meaning given to it in the Act;

Clear Days: in relation to a period of notice means a period of days not including the day on which notice was given or deemed to be given and the day for which it is given or on which it is to take effect;

Connected Person: means any person falling within one of the following categories:

- a) any spouse, civil partner, parent, child, brother, sister, grandparent or grandchild of a Director; or
- b) the spouse or civil partner of any person in (a); or
- c) any person who carries on business in partnership with a Director or with any person in (a) or (b); or
- d) an institution which is controlled by either a Director, any person in (a), (b) or (c), or a Director and any person in (a), (b) or (c), taken together;
- e) a corporate body in which a Director or any person in (a), (b) or (c) has a substantial interest, or two or more such persons, taken together, have a substantial interest.

Director: means a director of the Charity. The Directors are charity trustees as defined in the Charities Act;

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

electronic form and electronic means: have the meaning given to such terms in section 1168 of the Act;

Financial Expert: means a person who is reasonably believed by the Directors to be qualified to give advice on investments by reason of his ability in and practical experience of financial and other matters relating to investments;

Member: means a person who is a subscriber to the Memorandum or who is admitted to membership in accordance with the Articles;

Objects: means the objects of the Charity as stated in article 2;

OSCR: means the Office of the Scottish Charity Regulator;

Special Resolution: has the meaning given in section 283 of the Act;

United Kingdom: means Great Britain and Northern Ireland; and

writing: means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

- 1.2 Unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles.
- 1.3 Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.
- 1.4 A reference in these Articles to an **article** is a reference to the relevant article of these Articles unless expressly provided otherwise.
- 1.5 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.
- 1.6 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.

2. Objects

2.1 This clause shall be interpreted as if it incorporates an over-riding qualification limiting the powers of the Charity so that any activity which would otherwise be permitted by the terms of this clause may be carried on only if that activity furthers an object which is regarded as charitable; the expression “charitable” shall mean a charitable purpose under Section 7 of the Charities Act. Subject to this over-riding qualification, the Charity’s objects are:

- (a) To develop the conditions and skills for culture to thrive in Cumbernauld, to nurture, produce and present all forms of performing and visual arts, film and media arts, moving image visual arts, live arts streaming and recognised arts genres with critical content, exhibitions and such other similar events for the appreciation and enrichment of the communities of Cumbernauld and North Lanarkshire and visitors to the area.
- (b) To work with our creative community to deliver artistic activities that promote artistic skills acquisition, creative confidence, creative participation and belonging and which in the long term, empowers our community through creativity.
- (c) To advocate and support arts programming, arts creative learning and community engagement in partnership with public bodies, other charities and community organisations who use art to support policy areas for health and wellbeing through art therapy, education, reducing inequality, encouraging diversity and realising an environmentally sustainable future.
- (d) To produce and present a performing arts programme that celebrates cultural excellence, the innovative, critically challenging, the original, ever-changing and dynamic forms of Scottish Culture.
- (e) To engage with our local community on our arts program decision making in an open and inclusive way to ensure that it reflects and meets the needs of our community.

2.2 Nothing in these Articles shall authorise an application of the property of the Charity for purposes which are not charitable in accordance with section 7 of the Charities Act.

3. Powers

In pursuance of the Objects, but not further or otherwise, the Charity has the power to do anything lawful which is calculated to further the Objects or is conducive or incidental to doing so.

4. Application of income and property

4.1 The income and property of the Charity shall only be applied to promote the Objects.

- 4.2 Except as provided below, no part of the income or property of the Charity may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any Member of the Charity. This shall not prevent any payment in good faith by the Charity of:
- (a) a benefit to any Member in the capacity of a beneficiary of the Charity;
 - (b) reasonable and proper remuneration to any Member for any goods or services supplied to the Charity, provided that article 5 applies if such a Member is a Director;
 - (c) interest on money lent by a Member to the Charity at a reasonable and proper rate;
 - (d) reasonable and proper rent for premises demised or let by a Member to the Charity; and
 - (e) any payment to a Member who is also a Director which is permitted under article 5.

5. Benefits and payments to Directors and Connected Persons

5.1 A Director:

- (a) is entitled to be reimbursed reasonable out-of-pocket expenses properly incurred when acting on behalf of the Charity;
- (b) may receive payment under an indemnity from the Charity in the circumstances set out in article 29;
- (c) may not receive any other benefit or payment from the Charity unless it is authorised by this article 5.

5.2 Unless the benefit or payment is permitted under article 5.3, no Director (including a Member who is also a Director) or Connected Person may:

- (a) buy any goods or services from the Charity on terms preferential to those applicable to members of the public;
- (b) sell goods, services, or any interest in land to the Charity;
- (c) be employed by, or receive any remuneration from the Charity; or
- (d) receive any other financial benefit from the Charity.

5.3 A Director or a Connected Person may:

- (a) receive a benefit from the Charity in the capacity of a beneficiary of the Charity provided that a majority of the Directors do not benefit in this way;
- (b) enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the Charity where that is permitted in accordance with, and subject to the conditions in, sections 67 and 68 of the Charities Act;
- (c) subject to article 5.4, enter into a contract for the supply of goods to the Charity that are not supplied in connection with services provided to the Charity by the Director or Connected Person;

- (d) receive reasonable and proper rent for premises let to the Charity;
- (e) receive interest at a reasonable and proper rate on money lent to the Charity;
- (f) take part in the normal trading and fund-raising activities of the Charity on the same terms as members of the public; and
- (g) receive or retain any payment or benefit for which prior written authorisation has been obtained from OSCR.

5.4 The Charity and its Directors may only rely on the authority provided by article 5.3(c) if each of the following conditions is satisfied:

- (a) the amount or maximum amount of the payment for the goods:
 - (i) is set out in an agreement in writing between the Charity and the Director or Connected Person supplying the goods (the **Supplier**) under which the Supplier is to supply the goods in question to the Charity;
 - (ii) does not exceed what is reasonable in the circumstances for the supply of the goods in question;
- (b) the other Directors are satisfied that it is in the best interests of the Charity to contract with the Supplier rather than someone who is not a Director or Connected Person. In reaching that decision, which must be recorded in the minutes of the meeting, the Directors must balance the advantages of contracting with a Director against the disadvantages of doing so;
- (c) the Supplier:
 - (i) is absent from the part of the meeting at which there is discussion of the proposal to enter into a contract or arrangement with regard to the supply of goods to the Charity by them;
 - (ii) does not vote on any such matter and is not counted when calculating whether a quorum of Directors is present at the meeting; and
- (d) a majority of the Directors then in office are not in receipt of remuneration or payments authorised by article 5.

5.5 In article 5.3 and article 5.4, the "Charity" includes any company in which the Charity:

- (a) holds more than 50% of the shares; or
- (b) controls more than 50 % of the voting rights attached to the shares; or
- (c) has the right to appoint one or more Directors to the company.

5.6 A Director's duty under the Act to avoid a conflict of interest with the Charity does not apply to any transaction authorised by this article 5.

6. Winding up

- 6.1 On the winding up or dissolution of the Charity, after provision has been made for all its debts and liabilities, any assets or property that remain (the **Charity's remaining assets**) shall not be paid or distributed to the Members but shall be applied or transferred:
- (a) directly for one or more of the Objects;
 - (b) to any charity or charities for purposes similar to the Objects; or
 - (c) to any charity or charities for particular purposes falling within the Objects.
- 6.2 The decision on who is to benefit from the Charity's remaining assets, pursuant to article 6.1, may be made by resolution of the Members at or before the time of winding up or dissolution and, subject to any such resolution of the Members, may be made by resolution of the Directors at or before the time of winding up or dissolution.
- 6.3 In the event that no resolution is passed by the Members or by the Directors in accordance with this Article, the Charity's remaining assets shall be applied for charitable purposes as directed by the court or by OSCR.

7. Liability of members

The liability of each Member is limited to £1, being the amount that each Member undertakes to contribute to the assets of the Charity in the event of its being wound up while he is a Member or within one year after he ceases to be a Member, for:

- (a) payment of the Charity's debts and liabilities contracted before he ceases to be a Member,
- (b) payment of the costs, charges and expenses of the winding up, and
- (c) adjustment of the rights of the contributories among themselves.

8. Members

- 8.1 The Directors from time to time shall be the only Members. A Director shall become a Member on becoming a Director.
- 8.2 The Charity shall maintain a register of Members and any person ceasing to be a Member shall be removed from the Register.
- 8.3 Membership is not transferable.

9. Termination of membership

A Member shall cease to be a Member if they:

- (a) cease to be a Director; or

(b) die.

10. General meetings of members

- 10.1 The Directors may call a general meeting of the Members at any time and such a meeting shall be held in accordance with the Act.
- 10.2 General meetings shall be called on no less than 14 days' notice and proceedings at a general meeting shall not be invalidated because a person entitled to receive notice of the meeting did not receive it due to an accidental omission by the Charity.
- 10.3 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- 10.4 A person is able to exercise the right to vote at a general meeting when—
- (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
 - (b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- 10.5 No business shall be transacted at any general meeting unless a quorum is present. A quorum is three Members who are present in person or by proxy or through their duly authorised representatives and who are entitled to vote on the business to be conducted at the meeting.
- 10.6 A Member is entitled to appoint another person as his proxy, in accordance with the Act, to exercise all or any of his rights to attend and to speak and vote at a meeting of the Charity.
- 10.7 The chair of Directors shall chair general meetings of the Charity or, if they are absent, the vice-chair of Directors shall act as chair. If neither the chair nor the vice-chair of Directors is present within 15 minutes of the time appointed for the meeting, a Director elected by the Directors present shall chair the meeting.
- 10.8 A vote on a resolution proposed at a meeting shall be decided by a show of hands unless before, or on the declaration of the result of, the show of hands a poll is demanded.
- 10.9 On a show of hands or on a poll, every Member, whether an individual or an organisation, shall have one vote.
- 10.10 Any objection to the qualification of any voter must be raised at the meeting or adjourned meeting at which the vote objected to is tendered and every vote not disallowed at the meeting

shall be valid. Any such objection must be referred to the chair of the meeting whose decision is final.

- 10.11 Unless a poll is demanded, the declaration of the chair of the result of the vote and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact and the number or proportion of votes cast in favour or against need not be recorded.

11. Written resolutions

- 11.1 Subject to article 11.4, a written resolution of the Members passed in accordance with this article 11 shall have effect as if passed by the Members in a general meeting. A written resolution is passed:

- (a) as an ordinary resolution if it is passed by a simple majority of the eligible Members; or
- (b) as a Special Resolution if it is passed by Members representing not less than 75% of the eligible Members. A written resolution is not a Special Resolution unless it states that it was proposed as a Special Resolution.

- 11.2 Where a resolution is proposed as a written resolution of the Charity, the eligible Members are the Members who would have been entitled to vote on the resolution on the Circulation Date of the resolution.

- 11.3 Any resolution of the Members for which the Act does not specify whether it is to be passed as an ordinary resolution or as a Special Resolution, shall be passed as an ordinary resolution.

- 11.4 A Members' resolution under the Act removing a Director or an auditor before the expiration of his term of office may not be passed as a written resolution.

- 11.5 A copy of the written resolution must be sent to every Member together with a statement informing the Member how to signify their agreement to the resolution and the date by which the resolution must be passed if it is not to lapse.

- 11.6 A Member signifies their agreement to a proposed written resolution when the Charity receives from them (or from someone acting on their behalf) an authenticated document identifying the resolution to which it relates and indicating the Member's agreement to the resolution. A Member's agreement to a proposed written resolution, once signified, cannot be revoked. For these purposes:

- (a) if the document is sent to the Charity in hard copy form, it is authenticated if it bears the signature of the person sending it;
- (b) if the document is sent to the Charity in electronic form, it is authenticated if the identity of the sender is confirmed in a manner specified by the Charity or, where no such manner has been specified by the Charity, if it is accompanied by a statement of the identity of the sender and the Charity has no reason to doubt the truth of that statement.

- 11.7 A written resolution is passed when the required majority of eligible Members have signified their agreement to it.
- 11.8 A proposed written resolution shall lapse if it is not passed within [28] days beginning with the Circulation Date.
- 11.9 Communications in relation to written resolutions shall be sent to the Charity's auditors in accordance with the Act.
- 11.10 The Members may require the Charity to circulate a resolution that may properly be moved and is proposed to be moved as a written resolution in accordance with sections 292 and 293 of the Act.

12. Directors

- 12.1 The number of Directors shall not be less than three and shall be subject to a maximum of nine.
- 12.2 A Director may not appoint an alternate director or anyone to act on their behalf at meetings of the Directors.

13. Powers of Directors

- 13.1 Subject to the provisions of the Act, the Articles and any Special Resolution, the Directors shall be responsible for the management of the Charity's business and may exercise all the powers of the Charity for that purpose.
- 13.2 No alteration of the Articles or any Special Resolution shall invalidate any prior act of the Directors.
- 13.3 A meeting of the Directors at which a quorum is present may exercise all the powers exercisable by the Directors.

14. Appointment of Directors

- 14.1 Appointments to the board of Directors shall be by invitation only and shall be approved by a resolution of the Directors.
- 14.2 Where a maximum number of Directors has been fixed, the appointment of a Director must not cause that number to be exceeded.

15. Retirement of Directors

- 15.1 The usual term of office for a Director shall be three years, at the end of which they shall retire. Subject to article 15.2, a Director shall be eligible for reappointment by the Directors for one further term of three years.
- 15.2 No Director shall serve for more than six consecutive years, unless the Directors consider it would be in the best interests of the Charity for a particular Director to continue to serve beyond that period and that Director is reappointed in accordance with the Articles.

16. Disqualification and removal of Directors

A Director shall cease to hold office if they:

- (a) are removed by ordinary resolution of the Charity pursuant to the Act;
- (b) cease to be a Director by virtue of any provision in the Act or are prohibited by law from being a Director;
- (c) are disqualified from acting as a charity trustee by virtue of the Charities Act;
- (d) cease to be a Member of the Charity;
- (e) have a bankruptcy order made against them or a composition is made with their creditors generally in satisfaction of their debts;
- (f) in the written opinion of a registered medical practitioner who is treating the Director, have become physically or mentally incapable of acting as a director and may remain so for more than three months;
- (g) resign by written notice to the Charity, provided that at least three Directors will remain in office once the resignation takes effect; or
- (h) are removed from office by a resolution of the Directors that it is in the best interests of the Charity that their office be vacated passed at a meeting at which at least half of the Directors are present. Such a resolution must not be passed unless:
 - (i) the Director has been given at least 14 Clear Days' notice in writing of the meeting of the Directors at which the resolution will be proposed and the reasons why it will be proposed; and
 - (ii) the Director has been given a reasonable opportunity to make representations to the meeting either in person or in writing. The other Directors must consider any representations made by the Director (or the Director's representative) and inform the Director of their decision following such consideration. There shall be no right of appeal from a decision of the Directors to terminate the Directorship of a Director.

17. Proceedings of Directors

- 17.1 Subject to the provisions of the Articles, the Directors may regulate their proceedings as they think fit.
- 17.2 The Directors shall meet at least four times a year.
- 17.3 Acts done by a meeting of the Directors or of a committee or by a person acting as a Director shall not be invalidated by the subsequent realisation that:
- (a) the appointment of any such Director or person acting as a Director was defective; or
 - (b) any or all of them were disqualified; or
 - (c) any or all of them were not entitled to vote on the matter.

18. Calling a directors' meeting

- 18.1 Any Director may call a meeting of the Directors by giving notice of the meeting to the Directors.
- 18.2 Notice of a meeting of the Directors must be given to each Director, but need not be in writing. The notice must specify:
- (a) the time, date and place of the meeting;
 - (b) the general particulars of the business to be considered at the meeting; and
 - (c) if it is anticipated that the Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

19. Participation in Directors' meetings

- 19.1 Any Director may participate in a meeting of the Directors in person or by means of video conference, telephone or any suitable electronic means agreed by the Directors and by which all those participating in the meeting are able to communicate with all other participants.
- 19.2 If all the Directors participating in the meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

20. Quorum for Directors' meetings

- 20.1 The quorum for Directors' meetings may be fixed from time to time by a decision of the Directors, provided it shall not be less than three and, unless otherwise fixed, it is three.
- 20.2 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

20.3 If the total number of Directors for the time being is less than the quorum required for decision-making by the Directors, the Directors shall not take any decision other than a decision to appoint further Directors.

21. Chairing Directors' meetings

21.1 The Directors shall appoint one of their number as chair of Directors and may determine the length of term for which the chair of Directors is to serve in that office, although that term may be renewed or extended. On the same basis, the Directors may also appoint one of their number as vice-chair of Directors.

21.2 If at any meeting of the Directors neither the chair nor vice-chair of Directors, if any, is participating in the meeting within ten minutes of the time at which it was to start, the participating Directors must appoint one of themselves to chair the meeting.

22. Decision-making by Directors

22.1 The general rule about decision-making by Directors is that any decision of the Directors must be a majority decision at a meeting.

22.2 Each Director has one vote on each matter to be decided. In the event of an equality of votes, the chair of the meeting shall not have a second or casting vote.

23. Delegation by Directors

23.1 The Directors may delegate, on such terms of reference as they think fit, any of their powers or functions to any committee comprising two or more Directors.

23.2 The Directors may delegate the implementation of their decisions or day-to-day management of the affairs of the Charity to any person or committee.

23.3 The terms of reference of a committee may include conditions imposed by the Directors, including that:

- (a) the relevant powers are to be exercised exclusively by the committee to whom the Directors delegate; and
- (b) no expenditure or liability may be incurred on behalf of the Charity except where approved by the Directors or in accordance with a budget previously agreed by the Directors.

23.4 Persons who are not Directors may be appointed as members of a committee, subject to the approval of the Directors.

23.5 Every committee shall act in accordance with the terms of reference on which powers or functions are delegated to it and, subject to that, committees shall follow procedures which are

based as far as they are applicable on those provisions of the Articles which govern the taking of decisions by Directors.

23.6 The Directors may revoke or alter a delegation.

23.7 All acts and proceedings of any committee shall be fully and promptly reported to the Directors.

24. Conflicts of interest

24.1 A Director must declare the nature and extent of any interest, direct or indirect, which 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.

24.2 A Director must absent themselves from any discussions of the Directors in which it is possible that a conflict will arise between their duty to act solely in the interests of the Charity and any personal interest (including but not limited to any personal financial interest).

24.3 If a conflict of interests arises for a Director because of a duty of loyalty owed to another organisation or person and the conflict is not authorised by virtue of any other provision in the Articles, the unconflicted directors may authorise such a conflict of interests where the following conditions apply:

- (a) the conflicted director is absent from the part of the meeting at which there is discussion of any arrangement or transaction affecting that other organisation or person;
- (b) the conflicted director does not vote on any such matter and is not to be counted when considering whether a quorum of directors is present at the meeting; and
- (c) the unconflicted directors consider it is in the interests of the charity to authorise the conflict of interests in the circumstances applying.

In this article 24.3 a conflict of interests arising because of a duty of loyalty owed to another organisation or person only refers to such a conflict which does not involve a direct or indirect benefit of any nature to a director or to a connected person.

25. Minutes

The Directors shall cause the Charity to keep the following records in writing and in permanent form:

- (a) minutes of proceedings at general meetings;
- (b) minutes of meetings of the Directors and of committees of the Directors, including the names of the Directors present at each such meeting;
- (c) copies of resolutions of the Charity and of the Directors, including those passed otherwise than at general meetings or at meetings of the Directors; and

- (d) particulars of appointments of officers made by the Directors.

26. Records and accounts

26.1 The Directors shall comply with the requirements of the Act and the Charities Act as to maintaining a Members' register, keeping financial records, the audit or examination of accounts and the preparation and transmission to the Registrar of Companies and the Charity Commission of:

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

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

26.3 A copy of the Charity's latest available statement of account shall be supplied on request to any Director or Member, or to any other person who makes a written request and pays the Charity's reasonable costs of fulfilling the request, within two months of such request.

27. Communications

27.1 Subject to the Articles, anything sent or supplied by or to the Charity under the Articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of the Act to be sent or supplied by or to the Charity.

27.2 Subject to the Articles, any notice or document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or documents for the time being.

27.3 A Director may agree with the Charity that notices or documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

28. Irregularities

The proceedings of any meeting or the taking of any poll or the passing of a written resolution or the making of any decision shall not be invalidated by reason of any accidental informality or irregularity (including by accidental omission to give or any non-receipt of notice) or want of qualification in any of the persons present or voting or by reason of any business being considered which is not specified in the notice.

29. Indemnity

29.1 Subject to article 29.2, but without prejudice to any indemnity to which they may otherwise be entitled:

- (a) every Director or former director of the Charity shall be indemnified out of the assets of the Charity in relation to any liability they incur in that capacity; and
- (b) every other officer or former officer of the Charity may be indemnified out of the assets of the Charity in relation to any liability they incur in that capacity.

29.2 This article does not authorise any indemnity to the extent that such indemnity would be prohibited or rendered void by any provision of the Act or by any other provision of law and any such indemnity is limited accordingly.