

**Company Number: SC188799**

# The Companies Acts 1985-1989

*Company limited by Guarantee  
and not having a share capital*

## Memorandum and Articles of Association

of

# ***Birse Community Trust***

Incorporated on 26th August 1998  
and as amended on 18th April 2001, 23rd June 2004,  
11th May 2005, 19th May 2010, 4th June 2014 and 12th May 2015

***Scottish Charity Number: SC028220***

J. & H. Mitchell, W.S.  
Pitlochry & Aberfeldy

## **The Companies Acts 1985-1989**

*Company Limited by Guarantee  
and not having a share capital*

# **Memorandum of Association of *Birse Community Trust***

1. The name of the Company is Birse Community Trust (hereinafter referred to as “the Trust”).
2. The registered office of the Trust is situated in Scotland.
3. The Trust has been formed to benefit the community within the Parish of Birse, Aberdeenshire (“the said Parish”) with the following objects:
  - (i) to relieve poverty;
  - (ii) to advance education;
  - (iii) to protect, conserve, regenerate and promote, for the benefit of the public, the restoration of the native woodlands, including their flora and fauna, and other assets in the Parish of Birse, Aberdeenshire, as an important part of Scotland’s natural environment; and
  - (iv) to promote the benefit of the inhabitants of the said Parish and its environs and members of the public generally, without distinction of political, religious or other opinions by associating with the local authorities, voluntary organisations and said inhabitants in a common effort to provide, or assist in the provision of, facilities in the interests of social welfare for recreation and leisure-time occupation with the object of improving the conditions of life for the said inhabitants by:
    - (a) introducing, developing and managing interpretative sites and field centres, establishing, developing, managing, preserving and safeguarding historic sites and buildings, museums and/or research libraries, arranging and conducting research, preparation and organisation for and the promotion and implementation of training courses, exhibitions, lectures, seminars, conferences, other meetings and other activities conducive to the promotion of the objects of the Trust and the preparation, production, editing, publication, exhibition and distribution of articles, pamphlets, books and other publications, tapes, motion and still pictures of any medium, music and drama of any medium and other materials conducive to the promotion of the objects of the Trust;
    - (b) promoting and undertaking the maintenance and improvement of village halls, churches and other community facilities in the said Parish and fostering and developing community participation in the said Parish; and
    - (c) promoting, developing and managing projects and initiatives for recreation and leisure.

4. In furtherance of these objects, but not otherwise, the Trust shall have the following powers:

4.1 In respect of Clause 3 (iv) hereof:

- (a) to bring together, hold, house adequately, conserve and document a collection of artefacts and material evidence (“**the Collection**”) being of historical, artistic and/or scientific importance, in respect of which there will be a strong presumption against the subsequent disposal of any part thereof other than in terms of the agreed Disposal Policy;
- (b) to stimulate public interest in the Collection as a focal point of education and of historical, artistic and/or scientific interest, thereby improving the facilities available for general public amenity and education;
- (c) to display and publicise the Collection for the public benefit, permitting access to research workers and school children, always provided that the safety, security and integrity of the Collection are not endangered thereby and permitting, with similar reservation and appropriate safeguards, the loan of any part or parts of the Collection for exhibition or research;
- (d) to promote and assist in the collating and recording of historical, ethnological, social, historical, biological, biographical, genealogical or other related information appropriate to the Collection;
- (e) to preserve, restore and maintain buildings and others relating to the Collection;
- (f) to adopt in writing both a Collecting Policy and a Disposal Policy and to review these at least every five years, which Policies will in effect define the type or types of Collection which the Trust will concentrate upon and the geographical area or areas which the Collection is intended to represent and from which it is to be drawn;
- (g) to maintain an accurate and current Register of the Collection, of all items borrowed in and of all items loaned out; and
- (h) to appoint a named person as Curator of the Collection, responsible for its care and development in accordance with the provisions hereof and, if such person is not an appropriately qualified and experienced Museum Curator at the time of appointment, to provide fulsome training of such person to an appropriate standard and, in addition, to appoint a Curatorial Advisor to provide such skilled curatorial and conservation advice in respect of the Collection as necessary from time to time.

4.2 In respect of Clause 3 (iii) hereof, to initiate and support local and national initiatives which aim to extend native woodlands significantly within Scotland by improving the cultural, educational and recreational aspects of native woodlands and by rebuilding the social relationship between the communities of Scotland and their local woodlands; to develop afforestation and woodland regeneration projects and the long-term stewardship of projects in the said Parish; to foster and develop community participation in woodlands, their management and use and to reintroduce trees, plants and wildlife appropriate to the native woodlands of Scotland.

4.3 To purchase, take on lease, hire, take in exchange, and otherwise acquire any property and rights which may be advantageous for the purposes of the activities of the Trust.

- 4.4 To construct, convert, alter, demolish, improve, manage, exploit, develop, turn to account and otherwise deal with all or any part of the undertaking, property and rights of the Trust.
- 4.5 To sell, let, hire, license, give in exchange and otherwise dispose of all or any part of the undertaking, property and rights of the Trust, wheresoever situated.
- 4.6 To manage and operate or arrange for the professional management and operation of properties, lands and estates whether owned by the Trust or not and the entering into and carrying out of agreements in relation thereto with statutory and other bodies, individuals, unincorporated associations, firms, corporate bodies and others and any groups thereof in furtherance of the objects of the Trust.
- 4.7 To manufacture, retail, sell, hire and supply equipment, items and goods generally conducive to the objects of the Trust.
- 4.8 To borrow money and give security for the payment of money by, or the performance of other obligations of, the Trust or any other person.
- 4.9 To draw, make, accept, endorse, discount, negotiate, execute and issue cheques, promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable or transferable instruments.
- 4.10 To establish and administer a building fund or funds or guarantee fund or funds or endowment fund or funds in furtherance of the objects of the Trust.
- 4.11 To employ and train personnel in all aspects of the objects of the Trust and to remunerate any individual in the employment of the Trust and to establish, maintain and contribute to, or co-operate with others in establishing, maintaining and contributing to, any pension or superannuation fund or scheme for the benefit of, and to give or procure the giving of any donation, pension allowance or remuneration to, and to make any payment for or towards the insurance of, any individual, who is or was at any time in the employment of the Trust and the wife, widow, relatives and dependants of any such individual; and to establish, subsidise and subscribe to any institution, association, club and fund which may benefit any such person.
- 4.12 To promote any private Act of Parliament, Provisional Order and other authority to enable the Trust to carry out its objectives, alter its constitution, and achieve any other purpose which may promote the Trust's interests, and to oppose or object to any Parliamentary Bill, Local Authority Notice or Order, or any planning proposal, designation, application, notice or order, regulations or policies, whether issued by or on behalf of or by the authority of Parliament, any Government or statutory agency or any organisation, whether incorporated or unincorporated, any association, other bodies, individuals or generally any application or proceedings which may prejudice the Trust's interests.
- 4.13 To establish, subsidise, promote, co-operate or federate with or become affiliated to, act as trustees or agents for, or manage or lend money or provide other assistance to, or subscribe and make contributions to or otherwise support any association, trust, society or other body corporate or unincorporated and having primary objects wholly or partly similar to those of the Trust, or otherwise connected with the activities of the Trust or with the furtherance of any of the Objects.
- 4.14 To establish, operate and administer and/or otherwise acquire separate trading companies or associations, whether charitable or not.

- 4.15 To enter into any arrangement with any organisation, government, authority or other body which may be advantageous for the purposes of the activities of the Trust and to obtain from any such organisation, government, authority or other body any charter, right, privilege or concession.
- 4.16 To enter into partnership or any other arrangement for sharing profit, co-operation or mutual assistance with any charitable body, whether incorporated or unincorporated.
- 4.17 To give any debentures or securities and accept any shares, debentures or securities as consideration for any business, property and rights acquired or disposed of.
- 4.18 To effect insurance against risks of all kinds (which may include indemnity insurance in respect of Trustees and employees).
- 4.19 To invest monies of the Trust not immediately required for the purposes of its activities in such investments and securities (including land in any part of the world) and that in such a manner as may from time to time be considered advantageous (subject to compliance with any applicable legal requirements) and to dispose of and vary such investments and securities and, additionally, to employ as a professional investment manager any person who is entitled to carry on investment business under the supervision of the Financial Services Authority (or its successors) and to delegate to any such manager the exercise of all or any of its powers or investment or such terms and at such reasonable remuneration as the Board of Trustees thinks fit, and to enable investments to be held for the Trust in nominee names, but subject always to the provisions of the Charities Act.
- 4.20 To subscribe for, take, purchase or otherwise acquire and hold shares, stocks, debentures and other interests in any company with which the Trust is authorised to amalgamate and to acquire and take over the whole or any part of the undertaking, assets and liabilities of any company, association or other body with which the Trust is authorised to amalgamate.
- 4.21 To accept subscriptions, grants, donations, gifts, legacies and endowments of all kinds, either absolutely or conditionally or in trust for any of the Objects.
- 4.22 To take such steps (by way of personal or written appeals, public meetings or otherwise) as may be deemed expedient for the purpose of procuring contributions to the funds of the Trust, whether by way of subscriptions, grants, loans, donations or otherwise.
- 4.23 To carry out any of the Objects in any part of the world as principal, agent, contractor, trustee or in any other capacity and through an agent, contractor, sub-contractor, trustee or any person acting in any other capacity and either alone or in conjunction with others.
- 4.24 To do anything which will further the attainment of any of the Objects.

And it is declared that in this clause where the context so admits, “**property**” means any property, assets or rights, heritable or moveable, real or personal, wherever situated in the world.

5. 5.1 Subject to clause 5.2,
  - (a) the income and property of the Trust shall be applied solely towards the promotion of the Objects;

- (b) no part of the income and property of the Trust shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to the members of the Trust;
- (c) no member of the Board of Trustees of the Trust shall be appointed to any office under the Trust in respect of which a salary or fee is payable; and
- (d) no benefit in money or money's worth shall be given by the Trust to any member of the Board of Trustees for their services as a Trustee, except repayment of out-of-pocket expenses.

5.2 The Trust shall, notwithstanding the provisions of clause 5.1, be entitled

- (a) to pay reasonable and proper remuneration to any member of the Trust or of its Board of Trustees in return for services actually rendered to the Trust (other than those carried out normally or habitually by any Trustee, officer or employee of the Trust) and to reimburse any out-of-pocket expenses incurred by any such person on behalf of the Trust in furtherance of the Objects;
- (b) to pay interest at a rate not exceeding the commercial rate on money lent to the Trust by any member of the Trust or its Board of Trustees;
- (c) to pay rent at a rate not exceeding the open market rent for premises let to the Trust by any member of the Trust or its Board of Trustees; and
- (d) to purchase assets from any member of the Trust or its Board of Trustees providing such purchase is at or below market value and to sell assets to any member of the Trust or its Board of Trustees providing such sale is at or above market value.
- (e) payment by way of any indemnity where appropriate.

6. The liability of members is limited.

7. Every member of the Trust undertakes to contribute such amount as may be required (not exceeding £1) to the Trust's assets if it should be wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of the Trust's debts and liabilities contracted before he or she ceases to be a member, and of the costs, charges and expenses of winding up.

8. 8.1 The winding-up of the Trust may take place only on the decision of not less than three-fourths of the members of the Trust who are present in person or by proxy at an Extraordinary General Meeting called specifically (but not necessarily exclusively) for the purpose.

8.2 If on the winding-up of the Trust any property remains after satisfaction of all the Trust's debts and liabilities, such property shall be given or transferred to some charitable body or bodies (whether incorporated or unincorporated) whose objects are altogether or in part similar to the objects of the Trust and whose constitution restricts the distribution of income and assets among members to an extent at least as great as does clause 5 of this Memorandum of Association.

8.3 The body or bodies to which property is transferred under clause 8.2, who may include one or more of the members of the Trust provided that they themselves are charitable, shall be determined on the decision of not less than three-fourths of the members of the Trust who are present in person or by proxy at or before the time of dissolution or, failing such determination, by a decision of not less than three-fourths

of the Board of Trustees or, failing such determination by them, by the Sheriff Principal of Grampian, Highlands and Islands.

- 8.4 To the extent that effect cannot be given to the provisions of clauses 8.2 and 8.3, the relevant property shall be applied to some other charitable object or objects as shall be determined by ordinary resolution of the members of the Trust at or before the time of dissolution or, failing such determination, by the Board of Trustees or, failing such determination by them, by the Sheriff Principal of Grampian, Highlands and Islands.
  - 8.5 If the Trust is charitable at the time that its winding-up is decided upon in terms of this Clause, the prior consent of the Office of the Scottish Charity Regulator must be obtained in terms of Section 16 of the Charities Act.
9. The definitions included in Article 1 of the Trust's Articles of Association are incorporated into this Memorandum.

The Companies Acts 1985-1989

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**Articles of Association  
of  
*Birse Community Trust***

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GENERAL

1. The regulations contained in Table C in the Companies (Tables A to F) Regulations 1985, or any statutory successor thereto, shall not apply to the Trust. In these presents the words standing in the first column of the Table next hereinafter contained shall bear the meaning set opposite to them respectively in the second column thereof, if not inconsistent with the subject or context:

<b>WORDS</b>	<b>MEANINGS</b>
The Act	– The Companies Act 1985 as amended and every statutory modification and re-enactment thereof for the time being in force.
These Articles	– These Articles of Association, and the regulations of the Trust from time to time in force.
charitable	– a body on the Scottish Charity Register which is also regarded as a charity in relation to the application of the Taxes Acts.
Charities Act	– the Charities and Trustee Investment (Scotland) Act 2005 and every statutory modification and re-enactment thereof for the time being in force.
The Trust	– Birse Community Trust.
The Board of Trustees	– The Board of Directors for the time being of the Trust.
Trustee(s)	– Director(s) for the time being of the Trust.
Members	– The Members of the Trust.
The Subscribers	– Those persons and/or bodies who have subscribed both these Memorandum and Articles of Association of the Trust.
The United Kingdom	– Great Britain and Northern Ireland.
Month	– Calendar month.

- In writing – Written, printed or lithographed, or partly one and partly another, and other modes of representing or producing words in a visible and non-transitory form.
- Clear days – In relation to a period of notice means that 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.

Words importing the singular number only shall include the plural number, and *vice versa*; and

Words importing the masculine gender only shall include the feminine gender.

Subject as aforesaid, any words or expressions defined in the Act shall, if not inconsistent with the subject or context, bear the same meanings in the Articles.

2. The Trust is established for the purposes expressed in the Memorandum of Association.

## MEMBERSHIP

### **Types of Member**

- 3 The membership of the Trust shall, from the time at which these current Articles come into effect, be as follows:

- 3.1 **Ordinary Members:** any adult living within the civil parish of Birse as determined by the Electoral Register from time to time who applies in terms of Article 5 to become an Ordinary Member of the Trust and who is admitted by the Board of Trustees as an Ordinary Member of the Trust in terms of Article 6. Ordinary Members may attend any General Meeting of the Trust. Ordinary Members pay no subscription but each has one vote.

- 3.2 **Associate Members:** any other individual, organisation or other body interested in the Objects of the Trust, whom the Board of Trustees shall admit to be an Associate Member of the Trust in terms of Article 9. Associate Members may attend any General Meeting of the Trust. Associate Members pay a subscription but do not have a vote.

- 4 In the event of any decision being required as to the eligibility for any type of member, this is a matter which shall be determined solely by the Board. Membership of any type of member is neither transferable or assignable to any other individual or organisation.

### **Membership Applications**

- 5 Any individual who wishes to become an Ordinary Member of the Trust in terms of Article 3.1 must complete and sign a written application form as prescribed by the Board from time to time, and lodge it with the Trust. The Board shall consider such applications promptly and inform each applicant whether he or she has been successful in becoming an Ordinary Member of the Trust. If the Board refuses an application to be an Ordinary Member, it shall provide the applicant with a written statement of the reasons for the refusal, but it may not refuse any applicant by reason of gender, sexuality, race, religion or politics.

- 6 Any individual, organisation or other body interested in the Objects of the Trust who wishes to become an Associate Member of the Trust must complete and sign a written application form as prescribed by the Board from time to time. A successful application for Associate Membership shall not become effective until payment of the appropriate annual membership subscription has been received. The rate of annual subscription shall be determined by the Ordinary Members at each or any Annual General Meeting. An Associate Member who

ceases (for whatever reason) to be a member shall not be entitled to any refund of membership subscription.

### **Registers of Members**

7. The Board shall maintain the following Registers of Members:
  - 7.1 for the Ordinary Members, the Board shall maintain a Register of Ordinary Members of the Trust, setting out all relevant details of each member; and
  - 7.2 for the Associate Members, the Trust will maintain a Register of Associate Members listing each Member's name, address and the date of payment of their subscription. Associate membership ceases one year from the date of payment, unless the annual subscription has been renewed. An Associate Member which is a corporation, association or other body may appoint one or more persons as it thinks fit as its authorised representatives, only one of whom may act for or represent any such Member at any General Meeting of the Trust.
8. The Registers of Members are open to all Members of the Trust. Subject to Article 9, the Registers of Members are also open to non-members of the Trust, provided the applicant informs the Trust of:
  - 8.1 the applicant's name and address;
  - 8.2 the purpose for which the information is to be used; and
  - 8.3 whether the information will be disclosed to any other person and, if so, the name and address of that other person and the purpose for which the information is to be used.
9. The Trust shall within seven working days of a request for information from the Registers of Members either supply the information, subject to the data protection rights of its members, or apply to the Court for an order that the application is not for a proper purpose and intimate this to the applicant. Where the information is provided to the applicant, the Trust may charge a fee for supplying the information.

### **Cessation of Membership**

10. Any Ordinary Member or Associate Member may resign as a Member of the Trust by giving notice to this effect to the Trust at any time.
11. Any Ordinary or Associate Member may be suspended from the Trust by a resolution of the Board passed by a majority of not less than three-fourths of the Trustees present and voting at a meeting of the Trustees of which not less than fourteen days' previous notice shall have been sent to all Trustees and to the Member whose suspension is in question. The notice shall specify the intention to propose such a resolution. Notice of the general nature of the grounds on which the resolution is proposed shall be sent to the Member whose suspension is in question at least seven days prior to the meeting, and the Member in question shall be entitled to be heard by the Board at their meeting. On a Member being suspended under this Article, all privileges of membership will be forfeited for the period of the suspension determined by the Board.

## **GENERAL MEETINGS (Meetings of Members)**

12. The Trust shall hold a General Meeting in every calendar year as its Annual General Meeting at such time and place as may be determined by the Board of Trustees and shall specify the meeting as such in the notices calling it, provided that every Annual General Meeting except the first shall be held not more than fifteen months after the holding of the last preceding Annual General Meeting, and that so long as the Trust holds its first Annual General Meeting within eighteen months after its incorporation it need not hold it in the year of its incorporation nor in the following year.

13. All General Meetings, other than Annual General Meetings, shall be called Extraordinary General Meetings.
14. The Board of Trustees may whenever it thinks fit convene an Extraordinary General Meeting, and must convene one within twenty-eight days of receipt at the Registered Office of a valid requisition. To be valid, such requisition must be signed by not less than twenty Ordinary Members, must clearly state the objects of the meeting and must be deposited at the Registered Office. The requisition may consist of several documents in like form each signed by one or more requisitionists. If any of the objects stated by the requisitionists requires to be determined by Special Resolution, the Board of Trustees must give not less than twenty-one clear days' notice of the meeting in writing.
15.
  - (a) Twenty-one clear days' notice at the least shall be given of every General Meeting.
  - (b) The notice shall specify the place, the day and the hour of meeting and, in the case of special business, the specific nature of that business.
  - (c) The notice of any General Meeting shall be sent, in the manner specified in Article 63, to all members and to such persons or organisations as are under these Articles or under the Companies Act entitled to receive such notices, including, without prejudice to the foregoing all Ordinary and Associate Members and the Company Secretary.
  - (d) In addition, notice of each Annual General Meeting shall be sent to the independent financial examiner and to every household in the civil parish of Birse, as determined by the Electoral Register from time to time, on the basis that, albeit not members, all those on the Electoral Register are entitled to attend (but not to vote at) each Annual General Meeting.
  - (e) With the consent of not less than 90% of the Ordinary Members having the right to attend and vote thereat, a General Meeting may be convened by such shorter notice as they may think fit in the circumstances.
16. The accidental omission to give notice of a meeting to, or the non-receipt of such notice by, any Members, persons or bodies entitled to receive notice thereof shall not invalidate any resolution passed at or proceedings of any meeting.

### **PROCEEDINGS AT GENERAL MEETINGS**

17. The business of each Annual General Meeting shall include:
  - (a) the report by the Chairman on the activities of the Trust;
  - (b) the election of Trustees;
  - (c) the fixing of annual subscriptions;
  - (d) the report of the independent financial examiner;
  - (e) approval of the annual accounts of the Trust; and
  - (f) appointment (or reappointment) of the independent financial examiner.
18. No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds to business. Save as herein otherwise provided, **twenty** Ordinary Members entitled to vote upon the business to be transacted, each being an Ordinary Member or a proxy for a Ordinary Member, shall be a quorum.
19. If within half an hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting, if convened on the requisition of Ordinary Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, or at such other day, time or place as the Board of Trustees may determine.

20. The Chairman of the Trust shall preside as Chairman of all meetings, but in his or her absence Ordinary Members of the Trust present shall choose one Ordinary Member of the Trust shall be present to preside as Chairman of the meeting in question.
21. The Chairman of the meeting may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given in the same manner as for an original meeting. Save as aforesaid, the members shall not be entitled to any notice of an adjournment, or of the business to be transacted at an adjourned meeting.

#### **VOTES OF MEMBERS**

22.
  - (a) The Chairman of the meeting shall endeavour to achieve consensus wherever possible but, if necessary, questions arising shall be decided by being put to the vote.
  - (b) Each Ordinary Member of the Trust is entitled to attend and speak at any General Meeting and shall have one vote, to be exercised in person or by proxy.
  - (c) Each Associate Member is entitled to attend and speak at any General Meeting but shall have no vote.
  - (d) In the case of an equality of votes, the Chairman of the meeting shall be entitled to a casting vote in addition to a deliberative vote.
23. No objection shall be raised to the qualification of any voter except 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 objection made in due time shall be referred to the Chairman of the meeting whose decision shall be final and conclusive.
24. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, with the exception of the election of Trustees in terms of Article 35(e) and decisions upon any other specific resolutions which the Board considers appropriate from time to time, which would instead be conducted by way of paper ballot of the Ordinary Members who may be present in person or by proxy at the relevant General Meeting. Ordinary business and ordinary resolutions shall be determined by simple majority, whilst Special Resolutions (see Article 25) shall be determined by a special majority of not less than three-fourths of the Ordinary Members attending and voting in person or by proxy at the meeting to which the resolution is put.
25. Special Resolutions, requiring a special majority vote shall include resolutions:
  - (a) to alter the name of the Trust; or
  - (b) to amend its Objects; or
  - (c) to amend these Articles; or
  - (d) to wind up the Trust in terms of Clause 8 of the Memorandum of Association.
26. Whilst personal attendance at a General Meeting is encouraged, an Ordinary Member shall be entitled to appoint a proxy. An Ordinary Member shall not be entitled to appoint more than one proxy to attend on the same occasion. A proxy need not be an Ordinary Member. A proxy appointed to attend and vote at any meeting instead of an Ordinary Member shall have the same right as the Ordinary Member who appointed him or her to speak at the meeting and to vote thereat.
27. The instrument appointing a proxy shall be in writing under the hand of the appointing Ordinary Member or his or her attorney duly authorised in writing.

28. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a certified copy thereof shall be deposited at the Registered Office not less than forty-eight hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution, unless it expressly states to the contrary, in which event it shall be treated as valid until rescinded by the granter in writing at the Registered Office.
29. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of the death, insanity or revocation as aforesaid shall have been received at the Registered Office before the commencement of the meeting or adjourned meeting at which the proxy is used (not having been deliberately withheld).
30. Any instrument appointing a proxy shall be in the following form or as near thereto as circumstances will admit:

<p>I.....,</p> <p>of.....,</p> <p>an Ordinary Member of Birse Community Trust hereby .....</p> <p>.....,</p> <p>of.....,</p> <p>(and failing him/her,.....),</p> <p>of.....),</p> <p>as my proxy to vote for me on my behalf at the (Annual/Extraordinary) General Meeting of the Trust to be held on.....</p> <p>and at any adjournment thereof.</p> <p style="text-align: center;">* This form is to be used ** in favour of/against the resolution.</p> <p style="text-align: center;"><i>[* To be used only if applicable. ** Strike out whichever is not desired.]</i></p> <p style="text-align: center;">Signed on .....day of .....</p> <p style="text-align: right;">.....<i>[insert signature here]</i></p>
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31.
  - (a) Ordinary and Special Resolutions may be passed in writing, rather than at a General Meeting, provided that the provisions of this Article are followed.
  - (b) An ordinary resolution in writing signed by or on behalf of a simple majority of all the Ordinary Members shall be as valid and effective as if the same had been passed at a General Meeting of the Trust duly convened and held, provided that the provisions of this Article are followed.
  - (c) A Special Resolution in writing signed by or on behalf of not less than 75% of all the Ordinary Members shall be as valid and effective as if the same had been passed at a General Meeting of the Trust duly convened and held, provided that the provisions of this Article are followed.
  - (d) Written resolutions may not be used either for the removal of a Trustee prior to the expiration of his or her term of office, or for the removal of an independent financial examiner prior to the expiration of his or her term of office.

- (e) Any written resolution must be issued in hard copy (by hand or by post) or in electronic form (by fax or e-mail), or by means of a website at the same time, to all Ordinary Members on the Circulation Date (that is, the date on which copies of the written resolution are sent to the Ordinary Members).
- (f) Where such a written resolution is proposed by the Board, it must include the following express statements:
  - (i) an explanation to the eligible members how to signify their agreement to the resolution;
  - (ii) how it can be sent back by them, and whether in hard copy (by hand or by post) and/or in electronic form (by fax or by e-mail)
  - (iii) clarification that a failure to reply will be deemed to be a vote against the resolution in question; and
  - (iv) the date by which the resolution must be passed if it is not to lapse (that is, the date which is 28 days after the Circulation Date).
- (g) Where such a written resolution is proposed by members, the following shall apply:
  - (i) The resolution must be requested by not less than 5% of the Ordinary Members (“the members’ request”).
  - (ii) The members’ request may be made in hard copy (by hand or by post) or in electronic form (by fax or by e-mail).
  - (iii) The members’ request must identify the resolution to be put to members. The Board can reject this if it is, in its opinion, either frivolous, vexatious, defamatory of any person or would be ineffective (whether by reason of inconsistency with any enactment or these Articles or otherwise).
  - (iv) The members’ request can include an accompanying statement (not exceeding 1,000 words) which they can require the Trust to issue with the written resolution to all Ordinary Members.
  - (v) Within 21 days, the Trust must circulate the resolution and any accompanying statement with the express statements referred to in Article 31(f).
  - (vi) The Trust may charge a reasonable fee to the requesting members to cover its costs of circulation of the members’ request.
- (h) Any such written resolution may consist of several documents in the same form, each signed by or on behalf of one or more Ordinary Members.
- (i) Once an Ordinary Member has signed and returned a written resolution in agreement thereto, his or her agreement is irrevocable.

### **BOARD OF TRUSTEES**

- 32. The affairs of the Trust shall be managed by a Board of Trustees appointed in manner hereinafter provided.
- 33. Unless otherwise determined by ordinary resolution at a General Meeting, the number of members of the Board of Trustees shall not be fewer than **three** nor more than **nine**.
- 34. The composition of the Board of Trustees shall be as follows:
  - (a) the Ordinary Members of the Trust may elect up to seven Ordinary Members of the Trust as Elected Trustees in terms of Article 35; and
  - (b) the Board may co-opt up to two Co-opted Trustees in terms of Article 36.
- 35. In respect of the election of Elected Trustees in terms of Article 34(a), the following shall apply:
  - (a) Unless there is an existing vacancy in the Board immediately prior to the Annual General Meeting then, at each Annual General Meeting, at least one of the Elected

Trustees shall retire from office. An Elected Trustee retiring shall retain office until the close or adjournment of the Meeting.

- (b) A retiring Elected Trustee shall be eligible for re-election after one term of office, but:
    - (i) no Elected Trustee shall serve a term of office of longer than five years without retiring by rotation; and
    - (ii) no Elected Trustee can serve more than two consecutive terms of office, without at least one year out of office before being eligible again (during which time, if previously an elected Trustee, such Ordinary Member cannot be co-opted in terms of Article 36).
  - (c) If no other Elected Trustee is required to retire by virtue of having served five years in one term of office and if no other Elected Trustees have decided or agreed to retire, the Elected Trustee to retire at each Annual General Meeting shall be the one who has been longest in office since his or her last election but, as between persons who became or were last re-elected Elected Trustees on the same day, the one to retire shall (unless they otherwise agree amongst themselves) be determined by lot.
  - (d) Nomination of any Elected Trustee to be elected by the Ordinary Members shall be by not less than any two Ordinary Members of the Trust. All nominations must be in writing and delivered to the Registered Office of the Trust not less than fourteen days before the Annual General Meeting at which the election of such Trustee shall take place, which nomination must contain the written acceptance of such nominee. Valid nominations will be available for inspection by Ordinary Members of the Trust on application to the Secretary.
  - (e) Election shall be by vote, where required, conducted by way of paper ballot of the Ordinary Members who may be present in person or by proxy at the Annual General Meeting. Each Ordinary Member shall have one vote for each vacancy on the Board of Trustees. Candidates shall be elected to the vacancy or vacancies on the Board of Trustees in order of the number of votes cast and, in the event of any equality, the Chairman of the meeting shall have a second or casting vote.
36. Subject to the terms of Article 35 (b) (ii), the Board of Trustees may from time to time co-opt up to two additional Co-opted Trustees to serve on the Board, to serve until the next Annual General Meeting of the Trust. Such Co-opted Trustee can be re-co-opted at such next Annual General Meeting. Such Co-opted Trustee can be removed from office at any time by a simple majority of the Board of Trustees. Such Co-opted (or re-co-opted) Trustee or Trustees may participate fully in and vote at all Board meetings which he, she or they attend.
37. The office of Trustee shall *ipso facto* be vacated:
- (a) if he or she without the consent of the Trust in General Meeting holds any office of profit under the Trust (except as permitted in terms of Clause 5.2 of the Memorandum); or
  - (b) if he or she becomes a bankrupt person, or insolvent or apparently insolvent or makes any arrangement or composition with his or her creditors generally; or
  - (c) if he or she is prohibited from being a charity trustee by virtue of section 69(2) of the Charities Act; or
  - (d) if, in terms of section 66(5) of the Charities Act, he or she is considered by the Board to have been in serious or persistent breach of either or both of the duties listed in

sections 66(1) and 66(2) of the Charities Act, such Trustee being entitled to be heard prior to the Board taking a decision; or

- (e) if he or she becomes incapable for medical reasons of fulfilling the duties of his or her office and such incapacity as certified by two medical practitioners is expected to continue for a period of more than six months from the date or later date of such certification; or
  - (f) if he or she absents himself or herself from the meetings of the Board of Trustees during a period of twelve months without special leave of absence from the Board of Trustees and the Board of Trustees resolves that he or she vacate office; or
  - (g) if by notice in writing to the Trust he or she resigns his or her office; or
  - (h) if he or she has a significant conflict of interest which the Board considers has and is likely to continue to undermine his or her ability to act impartially as a Trustee; or
  - (i) if he or she ceases to be ordinarily resident in the United Kingdom.
38. A Trustee shall not vote in respect of any contract in which he or she has an interest or any matter arising therefrom and if he or she does so vote his or her vote shall not be counted.
39. The Ordinary Members of the Trust may by Special Resolution remove any Trustee before the expiration of his or her period of office. The vacancy created thereby may be filled as a casual vacancy by the Ordinary Members by ordinary resolution. A person so elected to take the place of a Trustee so removed is treated, for the purpose of determining the time at which he, she or any other Trustee is to retire, as if he or she had become a Trustee on the day on which the person in whose place he or she is elected was last elected a Trustee.

#### **PERSONAL INTERESTS**

40. (a) Any Trustee and/or employee who has a personal interest (as defined in sub-clause (b) hereof) in any prospective or actual contract or other arrangement with the Trust must declare that interest either generally to the Board or specifically at any relevant meeting of the Trust. Where such an interest arises, the provisions within sub-clause (c) hereof shall apply.
- (b) A personal interest includes the following interests:
- (i) those of the Trustee or employee in question; and
  - (ii) those of his or her partner or close relative; and
  - (iii) those of any business associate; and
  - (iv) those of any firm of which he or she is a partner or employee; and
  - (v) those of any limited company of which he or she is a director, employee or shareholder of more than 5% of the equity; and
  - (vi) the ownership of any heritable property in the Parish of Birse.
- (c) (i) Whenever a Trustee finds that there is a personal interest, as defined in sub-clause (b) hereof, he or she has a duty to declare this to the Board meeting in question. In that event, the Trustee in question cannot partake in discussions or decisions relating to such matter.
- (ii) It shall be for the chairman of the meeting in question to determine whether the Trustee in question should be required to be absent during that particular element of the meeting. In terms of Article 38, where a Trustee leaves, or is required to leave, the meeting in question, he or she no longer forms part of the quorum thereat.
- (iii) The Board may at any time resolve, by taking a specific vote on the matter, to authorise any Trustee to continue acting where a real or potential conflict of

interest exists in relation to a personal interest of that Trustee, but where it considers that the interests of the Trust have not been nor are likely to be prejudiced as a result. The Trustee in question cannot be considered as part of the quorum for that part of any Board meeting giving consideration to this authorisation.

- (d) (i) The Board may resolve at any time to require all Trustees and employees to deliver a Notice of Relevant Interests to the Registered Office (or elsewhere as it may determine), as they arise and at least annually. In that event, the Board shall determine from time to time what additional interests to those listed in sub-clause (b) hereof, if any, shall be relevant interests and shall ensure that a Register of Notices of Relevant Interests is maintained.
- (ii) If existing, the Register of Interests shall be open for inspection by both the Board and members of the Trust and, with the express prior written approval of the Trustee or employee concerned, by members of the public.

### **POWERS OF THE BOARD OF TRUSTEES**

- 41. The business of the Trust shall be managed by the Board of Trustees who may pay all such expenses of, and preliminary and incidental to, the promotion, formation, establishment and registration of the Trust as it thinks fit, and may exercise all such powers of the Trust, and do on behalf of the Trust all such acts as may be exercised and done by the Trust, and as are not by the Act or by these Articles required to be exercised or done by the Trust in General Meeting, subject nevertheless to any regulation of these Articles, to the provisions of the Act and to such regulations (being not inconsistent with the said regulations and/or provisions) as may be made by the Trust in General Meeting provided that no such regulation or provision made by the Trust in General Meeting shall invalidate any prior act of the Board of Trustees which would have been valid if such regulation had not been made.
- 42. The Trustees for the time being may act notwithstanding any vacancy in their body.
- 43. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for monies paid to the Trust, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Board of Trustees shall from time to time by resolution determine. The banking account or accounts of the Trust shall be kept in such bank or building society and/or banks or building societies as the Board of Trustees shall from time to time by resolution determine.

### **CHAIRMAN**

- 44. The Board of Trustees shall from time to time elect a Chairman of the Trust who shall, unless the Board of Trustees at any time resolves otherwise, hold office for a period of three years, provided that he or she remains a Trustee for that whole period. At the end of his or her period of office, the Chairman shall be eligible for re-election.

### **PROCEEDINGS OF THE BOARD OF TRUSTEES**

- 45. (a) The Board of Trustees may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit, and determine the quorum necessary for the transaction of business. Meetings of the Board may take place in person or by telephone conference call, video conference call or by any other collective electronic means approved from time to time by the Board.
- (b) Unless otherwise determined, **three** Trustees shall be a quorum. A Trustee shall not be counted in the quorum present at a meeting in relation to a resolution on which, whether because of personal interest or otherwise, he or she is not entitled to vote.
- (c) The chairman of the Board meeting shall endeavour to achieve consensus wherever possible but, if necessary, questions arising at any meeting shall be decided by being

put to the vote, on a show of hands only, each Trustee present having one vote. Except for decisions in terms of Article 46, decisions will be taken by a simple majority. In case of an equality of votes the Chairman of the meeting shall have a second or casting vote.

46. The following matters may be decided only by the decision of not less than three-fourths of the Trustees present at any Board meeting, namely:
- (a) the formation, acquisition or disposal of any subsidiary;
  - (b) the acquisition or disposal by the Trust or by any of its subsidiaries of any shares of any other company or the participation or cessation of participation by the Trust or by any of its subsidiaries in any formal partnership or joint venture;
  - (c) the creation or issue or allowing to come into being of any mortgage, security, charge or other encumbrance upon any part or parts of the property or assets of the Trust or the obtaining of any advance or credit in any form other than normal trade credit, or the creation or issue by any subsidiary of any debenture or loan stock;
  - (d) any dealings with heritable property or any interest therein generally and, without prejudice to the foregoing generality, the sale of or the granting of a lease over any heritable property owned by or leased to the Trust or any of its subsidiaries and the purchase of or taking the tenant's part in any lease or sub-lease of heritable property wherever situated.
47. A Trustee may, and on the request of a Trustee the Secretary shall, at any time, summon a meeting of the Board of Trustees by notice served upon all Trustees, to take place at a reasonably convenient time, date and location within the Parish of Birse. A Trustee who is absent from the United Kingdom shall not be entitled to notice of a meeting. Not less than fourteen clear days' notice in writing shall be given of any meeting of the Board of Trustees at which a decision in relation to any of the matters referred to in Article 46 is to be made, which notice shall be accompanied by an agenda and any papers relevant to the matter to be decided.
48. The Chairman shall be entitled to preside at all meetings of the Board of Trustees at which he or she shall be present, but if no such Chairman be elected, or if at any meeting the Chairman be not present within fifteen minutes after the time appointed for holding the meeting and willing to preside, the Trustees present may choose one of their number to be Chairman of the meeting.
49. The Board of Trustees may delegate any of their powers (other than those listed in Article 46 hereof) to committees consisting of such member or members of the Board of Trustees and other persons (who must be Ordinary Members of the Trust) as it thinks fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any remit and regulations imposed on it by the Board. The meetings and proceedings of any such committee shall be governed by the provisions of these Articles for regulating the meetings and proceedings of the Board so far as applicable and so far as the same shall not be amended or superseded by any specific regulations made by the Board for all or any committees. A committee may invite or allow any person to attend and speak, but not to vote, at any of its meetings. Such committee shall regularly and promptly circulate, or ensure the regular and prompt circulation of, the minutes of its meetings to all Trustees.
50. All acts *bona fide* done by any meeting of the Trust or of any committee of the Board of Trustees, or by any person acting as a Trustee shall, notwithstanding it be afterwards discovered that there was some defect in the appointment or continuance in office of any such Trustee or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Trustee.

51. The Board of Trustees shall cause proper minutes to be made of all appointments of officers made by the Board of Trustees and of the proceedings of all meetings of the Trust and of the Board of Trustees and of committees of the Board of Trustees, including the names of those present, and all business transacted at such meetings and any such minutes of any meeting, if purporting to be signed by the Chairman of such meeting, or by the Chairman of the next succeeding meeting, shall be sufficient evidence without any further proof of the facts therein stated.
52. A resolution in writing (whether one single document signed by all Trustees or all the members of any committee of the Board of Trustees who are entitled to receive notice of a meeting of the Board of Trustees or of such committee or whether several documents in the same form each signed by one or more Trustees or members of any relative committee as appropriate so that all have signed together or separately) shall be as valid and effectual as if it had been passed at a meeting of the Board of Trustees or of such committee duly convened and constituted.
53. No alteration of the Memorandum or Articles of Association of the Trust and no direction given by Special Resolution shall invalidate any prior act of the Board of Trustees which would have been valid if that alteration had not been made or that direction had not been given.
54. The Board of Trustees may invite or allow any person to attend and speak, but not to vote, at any meeting or meetings of the Board of Trustees or of their committees. The principal employee (if any) of the Trust shall attend each meeting of the Board of Trustees (except any part or parts thereof dealing with his or her employment or remuneration, or any other matter which the Board of Trustees wish to keep confidential to themselves), but shall have no vote.

#### **SECRETARY**

55. The Secretary shall be appointed by resolution of the Board of Trustees for such time at such remuneration and upon such conditions as it may think fit, and any Secretary so appointed may be removed by them. The Trust may from time to time by resolution appoint an assistant or deputy Secretary, and any person or body so appointed may act in place of the Secretary if there be no Secretary or no Secretary capable of acting. If there be no assistant or deputy Secretary at the time when there is no Secretary or no Secretary capable of acting, the Board of Trustees may authorise one of their own number or any other person or body to act temporarily as Secretary until a new Secretary be appointed in terms hereof. The Board of Trustees may from time to time appoint a Minute Secretary or Secretaries for the purposes of Article 51 hereof.

#### **ACCOUNTS**

56. The Board of Trustees shall cause accounting records to be kept in accordance with the requirements of the Act and relevant Statements of Practice and Regulations.
57. The accounting records shall be kept at the Registered Office, or, subject to the provisions of the Act, at such other place or places as the Board of Trustees shall think fit, and shall always be open to the inspection of the officers of the Trust.
58. The Board of Trustees shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Trust or any of them shall be open to the inspection of the Members not being officers of the Trust, and no Member (not being an officer) shall have any right of inspecting any accounting records or other book or document of the Trust except as conferred by statute or authorised by the Board of Trustees or by the Trust in General Meeting.

59. (a) At each AGM, the Board shall provide the members with a copy of the accounts for the period since the last preceding accounting reference date.
- (b) The accounts shall be accompanied by proper reports of the Board and the independent financial examiner.
- (c) Copies of such accounts shall, not less than 21 clear days before the date of the General Meeting at which they fall to be approved, be delivered or sent to all members, Trustees, the Company Secretary and the independent financial examiner, or otherwise be available for inspection on the website of the Trust (with all members, Trustees, the Company Secretary and the independent financial examiner being made aware that they are so available for inspection there).

#### **INDEPENDENT FINANCIAL EXAMINATION**

60. In accordance with the provisions of the Act once at least in every year the accounts of the Trust shall be examined and the correctness of the income and expenditure account and balance sheet ascertained by a properly qualified Independent Financial Examiner.
61. The Independent Financial Examiner shall be appointed and their duties regulated in accordance with the provisions of the Act and relevant Statements of Practice and Regulations.

#### **PATRONS**

62. The Ordinary Members in General Meeting may, on a proposal from the Board of Trustees, agree to the appointment of one or more Honorary Patrons of the Trust, who would be appointed either for such fixed period as the Ordinary Members determine or for an unspecified period until such appointment be terminated by them. The Honorary Patron or Patrons would be entitled to notice of all General Meetings and to attend and contribute to discussion but not vote thereat.

#### **NOTICES**

63. A notice may be served by the Trust upon any Member, either personally or by sending it by post, fax, e-mail or other appropriate electronic means, addressed to such Member at his or her registered address as appearing in the Electoral Register for Ordinary Members and the Register of Members for Associate Members or to his or her fax, e-mail or other electronic address as intimated to the Trust.
64. Any Associate Member described in either the Electoral Register or the Register of Members by an address not within the United Kingdom, who shall from time to time give the Trust an address within the United Kingdom at which notices may be served upon him or her, shall be entitled to have notices served upon him or her at such address, but, save as aforesaid and as provided by the Act, only those Associate Members who are described in the Electoral Register or the Register of Members by an address within the United Kingdom shall be entitled to receive notices from the Trust.
65. Any notice, whether served by post or otherwise, shall be deemed to have been served on the day following that on which the letter containing the same is put into the post or is otherwise despatched.
66. A Member present at any meeting of the Trust shall be deemed to have received notice of the meeting and, where requisite, of the purpose for which it was called.

67. The business of the Trust and all its correspondence with and notification to or from members may be conducted equally validly and effectively if transmitted by fax or e-mail or other appropriate electronic means (except where a member specifically requests all such correspondence and notification by post) or otherwise if publicised on the website of the Trust where the Trust has advised each member of this and has taken due steps to notify by other reasonable means all other members who state that they do not have access to the Internet.

#### **INDEMNITY**

68. Subject to the terms of the Act and without prejudice to any other indemnity, the Trustees, or member of any committee, the Company Secretary, Treasurer and all employees of the Trust shall be indemnified out of the funds of the Trust against any loss or liability (including the costs of defending successfully any court proceedings) which he, she or they may respectively incur or sustain, in connection with or on behalf of the Trust and each of them shall be chargeable only for so much money as he or she may actually receive and they shall not be answerable for the acts, receipts, neglects or defaults of each other, but each of them for his or her own acts, receipts, neglects or defaults only.

#### **ALTERATION OF MEMORANDUM & ARTICLES OF ASSOCIATION**

69. No alteration in these Memorandum and Articles of Association may at any time be made unless by the decision of not less than three-fourths of the Ordinary Members of the Trust present in person or by proxy at a General Meeting called specifically (but not necessarily exclusively) for the purpose.

#### **DISSOLUTION**

70. Clause 8 of the Memorandum of Association of the Trust relating to the winding up and dissolution of the Trust shall have effect as if the provisions thereof were repeated in these Articles.