

**BRISTOL CITY COUNCIL
CABINET**

3 March 2011

Report of: Strategic Director - City Development

Title: Bristol Music Trust

Ward: all

Officer Presenting Report: Paul Barnett
City Development

Contact Telephone Number: (0117) 922 3582

RECOMMENDATION

That BCC enter into a grant funding agreement and lease of Colston Hall with Bristol Music Trust pursuant to which the Trust will provide cultural, educational and heritage conservation services.

That the preparation and signing of this lease and funding agreement be done by the Service Director, Finance and the Strategic Director of City Development, under delegated powers.

That BCC confirms that it will act as a guarantor to the Bristol Music Trust's admission agreement with the Avon Pension Fund.

Summary

This report outlines the approach taken to resolving the issues raised by Cabinet in 2010, including the appointment process for Trustees of the Bristol Music Trust, and contains updated detail on the transfer of the Colston Hall, including proposals for a lease taking into account a recent condition survey.

The significant issues in the report are:

4.3 Proposals for the lease of Colston Hall to the Bristol Music Trust

4.4 Further details of the proposed funding agreement for BMT

5.0 Background to the proposal on acting as guarantor on the pensions arrangements

1. Policy

Cabinet agreed in July 2010 to establish an arms length Trust with broad aims and objectives to develop music across the city, and that this organisation should manage Colston Hall from April 2011.

2. Consultation

Internal: All council services currently involved in supporting Colston Hall, including Legal, HR, Finance, Property, Energy Management, Insurance, Education and Communications.

Trade Unions and all staff working for Colston Hall.

External: An external advisory group has supported this project for the past year and the recruitment process for Trustees enabled a very broad advertising campaign, including the sharing of the agreed aims and objectives of the Trust, leading to a very high level of interest in becoming Trustees.

Both Arts Council England and Youth Music have supported the establishment of the Trust, and attended the Trustee interviews as advisors.

3. Context

Cabinet asked for a report in early 2009 into the options for externalising the management of Colston Hall. A detailed report was considered by Cabinet in July 2010, and it was agreed to establish a Trust to improve the development of music provision in Bristol, with a view to the new organisation managing Colston Hall from April 2011.

This report outlined a number of risks that required further consideration, so it was also agreed that an application be made to the Avon Pension Fund, and a further report to Cabinet to include draft heads of terms for a lease of the building, and full details of future funding allocations. Since then, in order to examine these risks in detail, external professional legal, financial, and property advice has been sought from Veale Wasbrough, PwC and Atkins, and their reports form the basis of the proposals in this report, setting out ways of resolving these issues in order to ensure that the Bristol Music Trust can successfully manage the Colston Hall in the future.

4. Proposal

4.1 Establishing the Bristol Music Trust:

Following national and local advertising for Trustees for the Bristol Music Trust, 70 applications were received from a wide variety of people with music, business, legal, financial and education experience. Having agreed that in order to facilitate a timetable that allows the new Board to be in a position to assess the council's proposals in time to take on the management of Colston Hall from April, the appointments would be delegated to the Strategic Director, City Development, a BCC panel, supported by an independent external music specialist, interviewed 16 candidates in early December. Officers from Arts Council England and Youth Music, the Colston Hall's main external funders, were present as observers.

Eight have been appointed, with a wealth of commercial, financial, legal and music experience between them. They have met as a Shadow Board to incorporate the new company, limited by guarantee, and have agreed to apply for registration as a charity. (see Appendix A for details of Board membership)

4.2 Constitution of the Bristol Music Trust:

The new company has to have an agreed set of Memorandum and Articles; these have been drafted by experts in charitable law at Veale Wasbrough, and have been considered by the Shadow Board. Under these Memorandum and Articles, the Trust will be incorporated as a charitable company limited by guarantee. The objects of the Trust will include promoting the arts, advancing education in the arts, and running a concert hall.

The Trust may have up to 12 trustees. The trustees will also be the members and the directors of the Trust. The Council can nominate up to two trustees. If the Council was able to nominate more than two trustees, the Trust could become a local authority controlled company under the Local Authority (Companies) Order 1995, and subject to certain requirements.

The Council will instead have the ability to influence the Trust through its funding agreements and ensure the Trust provides the required cultural, educational and heritage conservation services but will otherwise accept through this structure the full independence of the trust, having less than 20% membership of the Board.

To prevent the trustees (as members of the Trust) being able to amend the Articles to take away the Council's right to nominate two trustees, the Articles have been detailed to provide that the Council is a member of the Trust, with a right to veto any such amendments.

Eight external 'shadow' trustees have been appointed at this stage. This enables the Trust to consider other areas of expertise they wish to prioritise, and to then identify suitable candidates themselves. The

Shadow Board takes the view that they will adopt these Memorandum and Articles if the council is satisfied with them. (see Appendix B for details of the Memorandum and Articles)

4.3 Transfer of the Building:

Cabinet agreed in July the principles of a lease for Colston Hall, with BCC retaining the freehold, and a peppercorn rent for 25 years. Further discussion with Property services has confirmed that 25 years is the minimum length of lease needed to enable the Trust to generate additional investment in the building.

BCC as a freeholder will continue, as of present, to have an obligation to maintain the structure and main services of the building, but the Trust can generate additional sources of income for day to day maintenance.

Property services have now drafted Heads of Terms based on these, and other standard principles. An independent condition survey of Colston Hall was commissioned from Atkins. The detailed findings have suggested that £2.3m needs to be spent on repairs to the building over the next five years, and that £700,000 of this needs to be completed urgently (within 2 years). A balance has been found between providing an incentive for the Trust to maintain the building day to day and raise funding from new sources for refurbishment and redevelopment work, and the council accepting the landlord's responsibility for major repairs. This includes a commitment that the urgent repairs will be completed within two years, with resources for this (up to £700k) within the City Development R&M budget. Veale Wasbrough will complete the full lease when Heads of Terms have been approved by both the Cabinet and the Shadow Board. The Shadow Board agreed to these Heads of Terms at their meeting on January 31st.

The lease will be granted in exchange for the Trust providing certain cultural, educational and heritage conservation services, ensuring the Council meets its obligations to obtain best value.

(see Appendix C for draft Heads of Terms)

4.4 Funding agreement:

A funding agreement has been reached with the Trust that the following amounts will be allocated over the next 3 years. These figures include £206,000 in respect of central support services, most of which the Trust will continue to purchase from the Council during the first 6 months. Additionally the overall allocation will be adjusted for the employers pension contribution relating to past employees.

It was also agreed that the Trust will repay £100,000 to BCC at the end of 2012/13 and £200,000 in 2013/14. Therefore, net allocation in each year is as follows:

2011/12	£1,106,000
2012/13	£1,006,000
2013/14	£906,000

PwC have tested the business plan from the July Cabinet report, including benchmarking the financial projections against other similar concert halls nationally.

They recommend that plans should be in place for the Trust to strengthen marketing, management and investment in the building and that key strategies for change management over a realistic period of time need developing, with the new trustees providing a significant range of expertise and contacts to support this.

Realistically, most potential sources of funding will take time in the current climate to become a reality, and therefore focusing on the current commercial and physical operation of Colston Hall, and in particular the holistic visitor experience, is likely to be the priority for the Trust.

These specific areas of concern are to be addressed in the detailed contract between BCC and the Trust. A funding agreement will be completed to ensure that both BCC and BMT are clear and in agreement. Under the funding agreement, the Trust will be entrusted with providing certain cultural, educational and heritage conservation services in exchange for the grant funding it will receive. The funding agreement will include the agreed lease, Memorandum and Articles, Service Level Agreement containing monitoring arrangements, Capital Investment Plan, Pensions strategy, and TUPE agreement. This Act of Entrustment will be finalised following agreement of this report to reflect the decisions made on the lease and on financial arrangements.

In order to allow time for the Shadow Board to take advice on these proposals, the recommendations include agreeing that the final Act of Entrustment be drawn up and signed by the Service Director, Finance and the Strategic Director of City Development under delegated powers.

One of the key considerations is over the VAT arrangements and specialist advice from PwC on this suggests that the Trust will, as a charity, be 'culturally exempt' from VAT, and should then create one or more subsidiaries to run the Colston Hall. These subsidiaries can be registered for VAT, as the Hall is currently.

5. Transfer of undertakings

The transfer of undertakings from BCC to the BMT can be separated into four categories, in addition to the building and equipment details contained in the lease proposals in 4.3.

- 5.1** Most of the staff who currently work at Colston Hall will transfer to the BMT under the national TUPE legislation. The Avon Pension Fund have been supplied with a list of those employees who will transfer to BMT. However the application for admitted body status could not be made until the constitution of the BMT was agreed, and therefore the Avon Pension Fund committee will consider the application for admitted body status at their next meeting on the 18th March 2011. The Avon Pension Fund has stated that they will require BCC to act as guarantor in order for them to grant admitted body status. It is anticipated that this application will then be agreed.

Of the allocation for the cost of pensions, only the employer's contribution in respect of current employees is to be passed over to BMT. The balance of pension contributions, that for funding the pension deficit, will be retained by BCC and netted off against the Council's funding allocation. This figure is being calculated by the Pensions Fund actuaries.

Formal negotiations on this transfer have begun with the relevant Trade Unions and all staff are kept informed on progress through regular briefings. The Trade Unions are pleased with progress on providing continuity regarding pensions and have agreed to meet the Trust to discuss the retention of current terms and conditions for staff.

The Trustees of the Bristol Music Trust include an employment lawyer, who is involved in the detailed discussion about the staff transfer. BMT will continue to use BCC payroll services during 2011/12, to ensure that staff experience a smooth and reliable handover period.

- 5.2** Colston Hall currently has contracts with 45 suppliers, from inside and outside of the Council. A schedule of these has been considered by the Shadow Board (on 5th January) and administrative arrangements are in place to ensure an orderly transfer where appropriate from BCC to BMT, or for alternative procurement arrangements, if needed, to be in place before the existing contracts finish.

- 5.3** Colston Hall also has 80 contracts in place for hire of one of the concert halls with external promoters and organisations between April 2011 and March 2012. The Shadow Board has agreed on 5th January to honour these so that a smooth handover can be achieved in April 2011 with no disruption to the planning of the artistic or commercial programme.

- 5.4** A wide range of services are provided for the Colston Hall by various departments of BCC. It was agreed by Cabinet in July that the existing budget provision for this (£228,000 in 2010/11) would be ringfenced for

the next three years and a detailed analysis of this has now been completed.

It is proposed that BCC retains the costs pertaining to its ongoing client function, including the provision of financial advice and support (£22,000) with the balance transferred to BMT. Discussions are ongoing with Council services (e.g. HR, Legal, ICT) to determine the appropriate extent and cost of services to be delivered to BMT in 2011/12. It is intended that this next year will be a transitional one, with the Council continuing to provide most services until BMT has established appropriate and cost effective alternatives.

6. Other Options Considered

Cabinet agreed in July 2010 that this transfer to a Trust is the preferred option.

7. Risk Assessment

An updated risk assessment has been completed for this project (see appendix D)

8. Equalities Impact Assessment

An updated EQIA has been completed (see appendix E)

9. Environmental Impact Assessment

The revised Environmental Impact Assessment is detailed in Appendix F

10. Legal and Resource Implications

Legal	The Council wishes the Trust to provide cultural, heritage conservation and education services. Veale Wasbrough Vizards, the Council's external solicitors, have advised that the way to achieve this is to structure the funding agreement and lease as acts of entrustment. Under the funding agreement and the lease, the Trust will be 'entrusted' with providing cultural, heritage conservation and education services in exchange for subsidies from the Council. This will increase the Council's ability to obtain value for money for the duration of the funding agreement.
-------	--

The draft Heads of Terms includes provision that the lease of Colston Hall can be revoked should these defined services not be provided satisfactorily by BMT.

Legal advice given by: Sinead Willis, Contracts Solicitor

Financial

Revenue The funding agreement is set out in paragraph 4.4. above and is contained within the existing budget. As part of this agreement the Trust will repay to the Council £100k at the end of 2012/13 and £200k in 2013/14.

Potential financial risks arising from this agreement are detailed within Appendix D – Risk Assessment

Capital The agreement between BCC and the Trust also includes a commitment that the urgent repairs up to £700k will be completed within 2 years and will be funded from the City Development Repairs and Maintenance Budget

Financial Advice given by Peter Robinson, Service Director - Finance

Land BCC owns the freehold interest in the Colston Hall (the land and buildings comprised within the curtilage of the concert hall, foyer and ancillary premises).

BCC will grant BMT a lease of the Colston Hall for a term of 25 years. BMT will have the option to extend the lease for a further 25 years.

The rent payable under the lease will be a peppercorn. In order to comply with the provisions of Section 123 of the Local Government Act 1972, BCC has commissioned a valuation of the Colston Hall in order to assess its unrestricted value. This will enable BCC to establish whether it will need to seek the specific consent of the Secretary of State to the grant of the lease at a peppercorn rent.

BCC will be responsible for all repairs to the exterior and main structure of the premises, and for the replacement of all services, where necessary. The lease will include a Schedule of Repairs to be carried out by BCC within the first 5 years of the term of the lease.

Land advice given by: Bob Woodberry, Principle Portfolio officer

Personnel The employees transferring to the Bristol Music Trust under TUPE are entitled to be eligible to join a pension scheme which is broadly comparable or better than the scheme provided by Bristol City Council when they transfer to the Bristol Music Trust. If the Trust gains admitted body status to the Local Government Pension Scheme (LGPS) then the employees who are currently eligible to join this pension scheme will continue to have access to the same pension scheme as they currently enjoy as employees of Bristol City Council.

The pension fund has informed us that, as a general principle, applications for admitted body status are only granted if supported by a financial sound guarantor. The transfer of staff cannot take place unless the relevant pension provisions are in place for the staff concerned.

Personnel advice given by: Tom Wallen, Pensions and Pay policy officer

Appendices:

Appendix A - Board Members of the Bristol Music Trust

Appendix B - Draft Memorandum and Articles

Appendix C - Draft Heads of Terms for the lease of Colston Hall

Appendix D - Risk Assessment

Appendix E - Equalities Impact Assessment

Appendix F - Environmental Impact Assessment

Appendix G - Draft Act of Entrustment

ACCESS TO INFORMATION

Background Papers:

Bristol Music Trust files

c/o Cultural Change Office

Colston Hall

0117 9223582

Bristol Music Trust Shadow Board

Interviews for Trustees for the Bristol Music Trust were held recently. Seventy applications were received from a wide cross section of local, regional and national people with a background in business, music, law, finance and education. As a result eight Trustees have been appointed to a Shadow Board and Henry Kenyon has been asked to be Chair for the transition period leading up to the likely transfer of responsibility for Colston Hall to the Trust in April.

The appointed members are:

- **Henry Kenyon** - former partner for 20 years of PriceWaterhouseCoopers, Vice Chair and Treasurer of CLICSargent Cancer Care for Children. Led the successful transformation of Speedwell Technology College to Bristol Brunel Academy.
- **Stuart Avery** - Managing Director, e3 (UK digital agency of the year).
- **Michele Balfe** - specialist employment, equality and discrimination solicitor with Beachcroft.
- **Marti Burgess** - Solicitor at Metcalfes, Board member of African & Caribbean Chamber of Commerce, and director of an events and marketing consultancy.
- **Paul Fordham** - General manager, Punch Records (Birmingham urban music development agency). Ran own promotions business for many years in Bristol and worked in Colston Hall developing the world music programme.
- **Marie McCluskey** - Director, Swindon Dance. National role in developing youth dance, and awarded MBE for services to dance.
- **Poppy Stephenson** - CEO, Bristol Festival Community Group and organiser of BrisFest, involving over 300 volunteers, for three years.
- **Simon Taylor** - CEO, Bournemouth Symphony Orchestra, and Chair, Association of British Orchestras.

In addition, Cllr. Simon Cook, Deputy Leader of Bristol City Council, will represent BCC on the Board until formal appointments are made by the External Bodies Committee in May.

Bristol Music Trust

Articles of Association

Company number •

Charity number •

The Companies Act 2006

Company limited by guarantee and not having a share capital

Articles of Association

of

Bristol Music Trust

1 Name

The name of the company is Bristol Music Trust (the "**Charity**").

2 Registered office

The registered office of the Charity is in England and Wales.

3 Objects

The objects of the Charity (the "**Objects**") are:

- 3.1 To promote the arts (and in particular, but not limited to, music) for the benefit of the public (and in particular, but not limited to, the people of Bristol and the South West of England).
- 3.2 To advance education in, and the appreciation of, the arts (and in particular, but not limited to, music) among members of the public (and in particular, but not limited to, the people of Bristol and the South West of England).
- 3.3 To provide and operate a concert hall at Bristol BS1 5AR in furtherance of all or any of the charitable objects or purposes specified above for the benefit of the public (and in particular, but not limited to, the people of Bristol and the South West of England).
- 3.4 To advance such other objects or purposes which are exclusively charitable according to the law of England and Wales in such manner as the Trustees may in their absolute discretion think fit.

4 Powers

The Charity has the power to do anything within the law which may promote or may help to promote the Objects or any of them including (but without limitation) the power:

- 4.1 To hold, put on, organise and manage (and to assist in holding, putting on, organising and managing) concerts, performances, festivals, film screenings, seminars, conferences, lectures, tours and courses.
- 4.2 To provide, operate and develop concert halls and such other venues and facilities for the promotion of the Objects as the Trustees may think fit.
- 4.3 To raise funds for the Charity by providing services, entering into contracts and licences and carrying out such other non-taxable trading or other activities as the Trustees may think fit.
- 4.4 To establish, support and acquire subsidiary companies to carry out taxable trading or such other activities as the Trustees may think fit.

- 4.5 To co-operate with and to enter into joint ventures, collaborations and partnerships with charitable and non-charitable bodies.
- 4.6 To support, administer or set up charities and to act as trustee of any charitable funds, endowments or trusts.
- 4.7 To affiliate with and where appropriate merge with any charity having similar objects to the Objects.
- 4.8 To acquire or take on assets (and liabilities) from other organisations in furtherance of the Objects.
- 4.9 To borrow money, including entering into any derivative arrangement relating to that borrowing provided that the derivative arrangement is an integral part of managing the Charity's debt and not a speculative venture.
- 4.10 To give security for loans, grants and other obligations over the assets of the Charity (but only in accordance with the restrictions imposed by the Charities Act 1993).
- 4.11 To acquire, rent or hire property of any kind including interests in the copyright of, or the right to perform or show any musical composition, opera, operetta, play, mime, comedy, drama, film or other work which can be used or adapted for the Objects.
- 4.12 To sell, let, licence, mortgage or dispose of property of any kind (but only in accordance with the restrictions imposed by the Charities Act 1993).
- 4.13 To make grants, awards, prizes or donations.
- 4.14 To make loans of money and give credit and to give guarantees or security for the performance of any obligations by any person or company.
- 4.15 To set aside funds for special purposes or as reserves against future expenditure, but only in accordance with a written policy on reserves.
- 4.16 To deposit or invest funds in any manner (but to invest only after taking such advice as the Trustees consider is reasonably necessary from such person as is reasonably believed by the Trustee to be qualified to give it by his ability in and practical experience of financial and other relevant matters).
- 4.17 To enter into any derivative arrangement in connection with any investment provided that the derivative arrangement is ancillary to the investment (being entered into in order to manage the risk and/or transaction costs associated with the investment) and is not a speculative venture.
- 4.18 To delegate the management of investments to any person provided that:
 - 4.18.1 the delegate is authorised to carry on investment business under the provisions of the Financial Services and Markets Act 2000;
 - 4.18.2 the investment policy is set out in writing by the Trustees;
 - 4.18.3 the performance of the investments is reviewed regularly with the Trustees;
 - 4.18.4 the investment policy and the delegation arrangements are reviewed at least once a year;
 - 4.18.5 all payments due to the delegate are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt by the delegate; and

4.18.6 the delegate must not do anything outside the powers of the Trustees.

- 4.19 To arrange for the investments or other property of the Charity to be held in the name of a nominee (being a corporate body registered or having an established place of business in England and Wales) under the control of the Trustees or of any person to whom the management of investments is delegated and to pay any reasonable fee required.
- 4.20 To insure the property of the Charity against any foreseeable risk and take out other insurance policies to protect the Charity when required.
- 4.21 To take out indemnity insurance to insure the Trustees against the costs of a successful defence to criminal proceedings brought against them as charity trustees or against personal liability incurred in respect of any act or omission which is or is alleged to be in breach of trust or breach of duty, unless the Trustee concerned knew that, or was reckless whether, the act or omission was a breach of trust or breach of duty.
- 4.22 Subject to Articles and to employ paid or unpaid agents, staff or advisers.
- 4.23 To enter into contracts to provide services to or on behalf of other bodies.
- 4.24 To pay the costs of forming the Charity.
- 4.25 To open and operate bank accounts and banking facilities.
- 4.26 To solicit and accept grants, donations, endowments, gifts, legacies and bequests of assets on any terms.
- 4.27 To enter into any contract, agreement (including any finance lease or sponsorship agreement) or licence.
- 4.28 To promote or carry out research and to disseminate such research.
- 4.29 To provide advice.
- 4.30 To publish or distribute information in any form.
- 4.31 To do all such other things as are incidental or conducive to the attainment of the Objects or any of them.

5 Limited liability

- 5.1 The liability of the Members is limited to £1, being the amount each Member undertakes to contribute to the Charity's assets if the Charity shall be wound up while he she or it is a Member, or within one year after he she or it ceases to be a Member, for payment of the Charity's debts and liabilities contracted before he she or it ceases to be a Member and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves.

6 Membership

- 6.1 The number of Members with which the Charity is registered is unlimited.
- 6.2 The Charity must maintain a register of Members.
- 6.3 The Membership of the Charity shall (subject to Article 6.4) be divided into 2 classes:

- 6.3.1 the subscribers to the Memorandum and the Trustees from time to time (who shall have all of the voting and other rights conferred on Members of the Charity by these Articles and the Act); and
- 6.3.2 the Council (whose only rights as Member shall be to receive notice of and attend, but not to vote at, general meetings of the Charity, to give or withhold its consent at separate class meetings or on a written resolution in accordance with Article and to exercise the power to appoint and remove the Nominated Trustees conferred by Article 8.4) (the "**Council Member**").
- 6.4 No person shall be admitted as, or continue to be, a Member if such membership would cause the Charity to be a Regulated Company.
- 6.5 Every Member shall sign a written consent to become a Member.
- 6.6 In the case of a Member who is an individual, Membership is terminated if the Member concerned:
 - 6.6.1 gives written notice of resignation to the Charity; or
 - 6.6.2 dies; or
 - 6.6.3 makes an arrangement or composition with his or her creditors; or
 - 6.6.4 ceases to be a Trustee; or
 - 6.6.5 becomes a Local Authority Associated Person and, as a result, the percentage of voting rights held by Members who are Local Authority Associated Persons equals or exceeds 20%.
- 6.7 In the case of the Council Member, Membership is terminated if:
 - 6.7.1 such Membership causes the Charity to be a Regulated Company; or
 - 6.7.2 the Council Member gives written notice of its resignation to the Charity.
- 6.8 Membership of the Charity is not transferable.
- 6.9 The Trustees may admit such persons as they see fit as associate members in accordance with any criteria or rules set out by the Trustees from time to time, provided that associate members shall not be Members of the Charity for the purposes of the Act and accordingly such membership shall not confer upon any associate member the right to attend or vote on any matter at any general meeting of the Charity.

7 General meetings

- 7.1 Members are entitled to attend general meetings either personally or by proxy. General meetings are called on at least 14 clear days' written notice specifying the business to be discussed. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.
- 7.2 A general meeting may be called at any time by the Trustees and must be called in accordance with the terms of the Act within 21 days of a written request from the Members made in accordance with the provisions of the Act.
- 7.3 The Board may, in accordance with this Article, make arrangements for Members and proxies who are entitled to attend and participate in a general meeting, to do so at places other than

the place specified in the notice of the meeting (the "**Principal Place**"). For the purpose of all other provisions of these Articles any such meeting (a "**multi-venue meeting**") shall be treated as being held and taking place at the Principal Place.

- 7.4 In order to organise and administer a multi-venue meeting, the Board may, from time to time, make, vary, or replace such arrangements and the entitlement of any Member or proxy to attend a general meeting at the Principal Place shall be subject to such arrangements as may be for the time being in force whether stated in the notice of the meeting to apply to that meeting or notified to the Members concerned after notice of the meeting is given.

Quorum

- 7.5 There is a quorum at a general meeting if three of the Members, who are also Co-opted Trustees (a "**Co-opted Member**"), entitled to attend and vote at that meeting are present in person or through their authorised representatives or by proxy, or all Co-opted Members then in office if there are fewer than three Co-opted Members. If there are no Co-opted Members in office, the Member(s) who are also Nominated Trustee(s) may only act for the purpose of appointing new Co-opted Members or of calling a general meeting.
- 7.6 If within 15 minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting will be adjourned to such other day and at such time as the Board may determine. If at such adjourned meeting a quorum is not present within 15 minutes from the time appointed for holding the meeting the Members present in person or through their authorised representatives or by proxy shall be a quorum.

Chair

- 7.7 The Chairman or (if the Chairman is unable or unwilling to do so) some other Trustee elected by those present (who may not be a Local Authority Associated Person) shall preside as chair at a general meeting. The chair may, with the consent of a meeting at which a quorum is present, and shall if so directed by the meeting, adjourn any meeting from time to time and from place to place as the chair shall determine.

Voting

- 7.8 Subject to Article 6.3, a resolution put to the vote of a meeting will be decided on a show of hands unless before or upon the declaration of the result of the show of hands a poll is demanded by the chair, by at least two Members present in person or through their authorised representatives or by proxy or by the Trustees.
- 7.9 Unless a poll is duly demanded a declaration by the chair that a resolution has been carried unanimously or by a particular majority or lost or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 7.10 The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chair and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.
- 7.11 A poll shall be taken as the chair directs. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 7.12 A poll demanded on the election of a chair or on a question of adjournment will be taken forthwith. A poll demanded on any other question will be taken either forthwith or at such time and place as the chair directs not being more than 30 days after the poll is demanded. The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded

before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting will continue as if the demand had never been made.

- 7.13 No notice need be given of a poll not taken forthwith if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.
- 7.14 Subject to Article 6.3, on a show of hands or a poll every Member present in person or through its authorised representative or by proxy shall have one vote.
- 7.15 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid. Any such objection must be referred to the chairman of the meeting whose decision is final.
- 7.16 Notwithstanding the number of Members from time to time, the proportion of voting rights exercisable by Local Authority Associated Persons shall not equal or exceed 20% of the total voting rights exercisable by the Members. If the proportion of voting rights exercisable by Local Authority Associated Persons would otherwise equal or exceed 20%, the votes of the other Members having a right to vote at the meeting shall each be increased on a pro-rata basis to the extent necessary to ensure that the proportion of voting rights exercisable by Local Authority Associated Persons is less than 20%.
- 7.17 Whenever the Charity has the two different classes of Membership provided for by Article 6.3.2, the special rights exercisable by the Council Member under Article 8.4 may only be varied or abrogated, either whilst the Charity is a going concern or during or in contemplation of a winding up, with the consent of the Council Member given at a separate class meeting of the Council Member or on a written resolution of the Council Member passed in accordance with Article provided that such consent shall not be required if the giving of, or requirement for, such consent shall cause the Charity to be a Regulated Company. Without prejudice to the generality of this Article, the special rights exercisable by the Council Member under Article 8.4 shall be deemed to be varied by the Charity altering Articles 6.3.2 or 8.4 or this Article or otherwise altering these Articles in any way which adversely affects the special rights exercisable by the Council Member under Article 8.4.

Proxy notices

- 7.18 Proxies may only validly be appointed by a notice in writing (a "**proxy notice**") which:
 - 7.18.1 states the name and address of the Member appointing the proxy;
 - 7.18.2 identifies the person appointed to be that Member's proxy and the general meeting in relation to which that person is appointed;
 - 7.18.3 is signed by or on behalf of the Member appointing the proxy or is authenticated in such manner as the directors may determine; and
 - 7.18.4 is delivered to the Charity in accordance with these Articles and any instructions contained in the notice of the general meeting to which they relate.
- 7.19 The Charity may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- 7.20 Proxy notices may specify how the proxy appointed under them is to vote (or that proxy is to abstain from voting) on one or more resolutions.
- 7.21 Unless a proxy notice indicates otherwise, it must be treated as:

- 7.21.1 allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
- 7.21.2 by appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates, as well as to the meeting itself.
- 7.22 A person who is entitled to speak, attend or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the Charity by or on behalf of that person.
- 7.23 An appointment under a proxy notice may be revoked by delivering to the Charity a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- 7.24 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- 7.25 If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

Written resolutions

- 7.26 A written resolution passed in accordance with the Act is as valid as a resolution actually passed at a general meeting (and for this purpose the written resolution may be set out in more than one document). A written resolution passed under this Article will lapse if not passed before the end of six calendar months beginning with the circulation date (as defined in section 290 of the Act).
- 7.27 Article applies to written resolutions of the Members in the same way as it applies to voting by the Members in a general meeting.

Authorised representatives

- 7.28 Any person other than an individual which is a Member of the Charity may by resolution of its directors, trustees or other governing body authorise such person as it thinks fit to act as its authorised representative at any meeting of the Charity and the person so authorised shall be entitled to exercise the same powers on behalf of the person which he represents as that person would exercise if it were an individual Member of the Charity.

8 The Trustees

- 8.1 The Trustees are the charity trustees of the Charity and have control of the Charity and its property and funds.
- 8.2 The first Trustees shall be the persons whose names are notified to Companies House on incorporation. Additional Trustees shall be appointed in accordance with clause 8.3.
- 8.3 Subject to Articles 8.6 and 8.7, the Board shall be composed of no fewer than 5 Trustees and no more than 12 Trustees, or such other maximum number of Trustees as the Board may from time to time determine, of whom:
 - 8.3.1 no more than 2 may be Nominated Trustees appointed in accordance with Article 8.4; and
 - 8.3.2 the remainder shall be Co-opted Trustees appointed in accordance with Article 8.5.

8.4 The Council Member may appoint and remove a maximum of 2 Trustees (each a "**Nominated Trustee**") but shall not appoint more than 1 Nominated Trustee unless there are a total of at least 10 Co-opted Trustees holding office as at the date of appointment. An appointment or removal of a Nominated Trustee shall be made by the Council Member giving notice in writing to the Charity and to the relevant Nominated Trustee. The Nominated Trustees shall be:

8.4.1 the Executive Member for Culture; and

8.4.2 the Senior Officer or Member;

provided that, while the Council Member may only appoint 1 Nominated Trustee in accordance with this Article 8.4, the Executive Member for Culture shall be appointed as such Nominated Trustee in priority to the Senior Officer or Member.

8.5 There shall be no fewer than 5, and no more than 10, Trustees appointed by the Board (each a "**Co-opted Trustee**") provided that if the maximum number of Trustees has been increased in accordance with Article 8.3, the maximum number of Co-opted Trustees the Board may appoint shall be increased accordingly. The Trustees may from time to time at their discretion determine any criteria for appointment as a Co-opted Trustee, provided that a Local Authority Associated Person shall not be appointed as a Co-opted Trustee if, as a result, the percentage of Local Authority Associated Persons on the Board would be more than 19%.

8.6 No person shall be appointed as a Trustee if the appointment would result in the Charity being a Regulated Company.

8.7 If by reason of a reduction in the number of Trustees or a vacancy on the Board, the number of Trustees who are Local Authority Associated Persons would be more than 19% of the total number of Trustees, such number of Local Authority Associated Persons shall cease to be Trustees as is necessary to ensure that the number of Local Authority Associated Persons on the Board will not equal or exceed 20% of the total number of Trustees (such Trustees to be selected by agreement amongst themselves or, in the absence of agreement, by lot).

8.8 Upon appointment as a Trustee, a person shall automatically become a Member of the Charity subject to that person indicating in writing their willingness to become a Member of the Charity.

8.9 Every Trustee shall sign a written consent to become a Trustee.

8.10 The term of office for all Co-opted and Nominated Trustees shall be four years. A Co-opted Trustee shall be eligible for re-election by the Trustees, and a Nominated Trustee shall be eligible for re-appointment by the Council Member, for one further term of four years.

8.11 After a Trustee has served two consecutive terms in office, he or she shall be eligible for re-election or re-appointment only after a year has elapsed since he or she retired as Trustee.

8.12 Every Trustee will hold office until he or she vacates office in accordance with Article 8.13.

8.13 A Trustee's term of office automatically terminates if he or she:

8.13.1 is disqualified under the Charities Act 1993 from acting as a charity trustee;

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

8.13.3 is absent from three consecutive meetings of the Trustees without the consent of the Trustees and the Trustees resolve that his or her appointment shall be terminated;

- 8.13.4 is removed as a Trustee by the Members pursuant to the Act or by unanimous resolution of the other Trustees;
 - 8.13.5 is a Nominated Trustee and is removed as a Trustee by the Council Member in accordance with Article 8.4;
 - 8.13.6 resigns by written notice to the Trustees;
 - 8.13.7 becomes bankrupt, has an interim receiving order made against him or her, makes any arrangement or compounds with his or her creditors generally or applies to the Court for an interim order in respect of a voluntary arrangement;
 - 8.13.8 is convicted of an offence and the Trustees shall resolve that it is undesirable in the interests of the Charity that he or she remains a Trustee of the Charity;
 - 8.13.9 ceases to be a Member of the Charity; or
 - 8.13.10 becomes a Local Authority Associated Person and, as a result, the percentage of Local Authority Associated Persons on the Board equals or exceeds 20%.
- 8.14 A technical defect in the appointment of a Trustee of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting of the Board.

9 Proceedings of the Board

- 9.1 The Trustees must hold at least four meetings of the Board each year. Any Trustee may call a meeting of the Board by giving notice of the meeting to the Trustees or by authorising the Secretary (if any) to give such notice provided that:
 - 9.1.1 such notice must indicate the proposed date, time and location of the meeting and, if it is anticipated that Trustees 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;
 - 9.1.2 such notice must be given to each Trustee, but need not be in writing; and
 - 9.1.3 such notice need not be given to Trustees who waive their entitlement to notice of that meeting by giving notice to that effect to the Charity not more than seven days after the date on which the meeting is held (and where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it).
- 9.2 The quorum necessary at a meeting of the Board shall be determined by the Board and unless and until otherwise determined shall be three Co-opted Trustees, or all the Co-opted Trustees then in office if there are fewer than three Co-opted Trustees. If there are no Co-opted Trustees in office, the Nominated Trustee or Trustees may only act for the purpose of appointing new Co-opted Trustees or of calling a general meeting.
- 9.3 A meeting of the Board may be held either in person or by suitable electronic means agreed by the Trustees in which all Trustees may communicate with all the other Trustees. If all the Trustees participating in a 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.
- 9.4 The Chairman or (if the Chairman is unable or unwilling to do so) some other Trustee chosen by the Trustees present (who may not be a Local Authority Associated Person) will preside as chair at each meeting.

- 9.5 Every decision of the Trustees shall be by a simple majority of the votes cast at a meeting but a written resolution signed (or agreed to in writing) by all of the Trustees who would have been entitled to vote on the matter had it been proposed as a resolution at a Trustees' meeting and would have formed a quorum at such a meeting is as valid as a resolution passed at a meeting (and for this purpose the resolution or agreement in writing may be contained in more than one document).
- 9.6 Every Trustee has one vote on each issue except for the chair of the meeting, who in the event of an equality of votes has a second or casting vote (unless the chair of the meeting is in accordance with these Articles not to be counted as participating in the decision-making process for quorum or voting purposes).
- 9.7 Upon any resolution of the Trustees (including any written resolution passed in accordance with Article), the aggregate number of votes exercisable by any Trustees who are Local Authority Associated Persons shall be less than 20% of the total number of votes cast. If the proportion of votes exercisable by Local Authority Associated Persons would equal or exceed 20%, the votes of the other Trustees having a right to vote at the meeting shall be increased on a pro-rata basis to the extent necessary to ensure that the proportion of votes exercisable by Local Authority Associated Persons is less than 20%.
- 9.8 A procedural defect of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

10 Powers of Trustees

- 10.1 The Trustees have the following powers in the administration of the Charity:
- 10.1.1 at their absolute discretion, to appoint (and remove) any person or corporate entity (who may also be a Trustee) to act as Secretary to the Charity in accordance with the Act;
 - 10.1.2 to appoint a Chairman from among their number (except that the Chairman may not be a Local Authority Associated Person);
 - 10.1.3 to appoint a Treasurer, Patron and other honorary officers;
 - 10.1.4 to make standing orders consistent with these Articles and the Act to govern proceedings at general meetings;
 - 10.1.5 to allow one or more individuals selected by the Trustees to attend Board meetings as observers (provided that such observers may only attend meetings at the discretion of the Board and shall have no rights to attend or speak, count in the quorum or vote at any such meeting);
 - 10.1.6 to make rules consistent with these Articles and the Act to govern proceedings at their meetings and at meetings of committees;
 - 10.1.7 to make regulations consistent with these Articles and the Act to govern the administration of the Charity; and
 - 10.1.8 to exercise any powers of the Charity which are not reserved to a general meeting.
- 10.2 The Trustees may by resolution change the name of the Charity.

11 Delegation

- 11.1 Subject to these Articles, the Board may delegate any of the powers conferred on it by these Articles to such person, by such means, to such an extent, in relation to such matters and on

such terms of reference as the Trustees think fit and, if the Board so specifies, any such delegation may authorise future delegation of the Trustees' powers by any person to whom they are delegated.

- 11.2 The Board may also delegate to any committee consisting of two or more individuals appointed by the Board any of its functions (including any powers or discretions) for such time and on such terms of reference as it thinks fit (including any requirement that a resolution of the committee shall not be effective unless a majority of those present when it is passed are Trustees or it is ratified by the Board) provided that:
- 11.2.1 a minority of members of any committee shall be Local Authority Associated Persons;
 - 11.2.2 all proceedings of every committee must be reported promptly to the Trustees; and
 - 11.2.3 every committee must act in accordance with the terms of reference on which any function is delegated to it (but, subject to that, the proceedings of the committee will be governed by such of these Articles as regulate the proceedings of the Board so far as they are capable of applying).
- 11.3 If at any committee meeting the number of committee members attending the meeting who are Local Authority Associated Persons is such that, if all the committee members in attendance voted on a resolution of the committee members, the number of votes cast by Local Authority Associated Persons would equal or exceed 20% of the votes cast by the committee members present, then the number of votes cast by those Local Authority Associated Persons shall be reduced pro rata to the extent necessary to ensure that the proportion of votes cast by Local Authority Associated Persons is less than 20% of the votes cast by the committee members.
- 11.4 The Board may at any time revoke any delegation in whole or part or alter its terms.

12 Advisory Board

- 12.1 The Board may establish an advisory board comprising individuals who, in the opinion of the Board, have relevant experience in dealing with issues affecting the Charity. An advisory board shall have none of the rights or powers exercisable by a committee of the Board other than a power to advise the Board on any matters which have been referred to it by the Board. The members of an advisory board shall not, unless they are also Trustees, have the duties and responsibilities of company directors or charity trustees. Subject to any terms and conditions expressly imposed by the Board, the proceedings of any advisory boards shall be governed by such of these Articles as regulate the proceedings of the Board so far as they are capable of applying.

13 Benefits to Members

- 13.1 The income and property of the Charity must only be applied to promote the Objects and no part of that income or property may be paid, transferred or applied by way of Benefit to any Member but:
- 13.1.1 a Member who is not also a Trustee may be employed by or enter into contracts with the Charity and receive reasonable payment for goods or services supplied;
 - 13.1.2 a Member (including a Member who is also a Trustee) may be paid interest at a reasonable rate on money lent to the Charity;
 - 13.1.3 a Member (including a Member who is also a Trustee) may be paid a reasonable rent or hiring fee for property let or hired to the Charity;

- 13.1.4 a Member (including a Member who is also a Trustee) may receive any Benefit in their capacity as a beneficiary of the Charity; and
 - 13.1.5 another charity of which a Member (including a Member who is also a Trustee) is a charity trustee or member may receive any benefit which is in furtherance of the Objects and does not confer any Benefit on the Member.
- 13.2 In this Article, references to a Member or Trustee include references to any person who is connected to that Member or Trustee.

14 Benefits to Trustees

- 14.1 The income and property of the Charity must only be applied to promote the Objects and no part of that income or property may be paid, transferred or applied by way of Benefit to any Trustee except:
- 14.1.1 reasonable and proper premiums in respect of indemnity insurance provided in accordance with these Articles;
 - 14.1.2 reimbursement of reasonable out-of-pocket expenses (including hotel and travel costs) properly incurred in the management and administration of the Charity;
 - 14.1.3 an indemnity in accordance with these Articles;
 - 14.1.4 payment to any company in which a Trustee has no more than a 2% shareholding; and
 - 14.1.5 other payments or benefits permitted by law or with the prior consent of the Commission;
- provided that the Trustees must comply with the provisions of Articles , and (declaration of Interests and authorisation of Conflicts of Interest) in relation to any Benefit provided by the Charity to any Trustee pursuant to this Article.
- 14.2 The income and property of the Charity must only be applied to promote the Objects and no part of that income or property may be paid, transferred or applied by way of Benefit to any Trustee except:
- 14.2.1 interest at a reasonable rate on money lent to the Charity;
 - 14.2.2 a reasonable rent or hiring fee for property let or hired to the Charity;
 - 14.2.3 any Benefit provided to a Trustee in his or her capacity as a beneficiary of the Charity;
 - 14.2.4 any Benefit which is in furtherance of the Objects to another charity of which a Trustee is a charity trustee or member and which does not confer any Benefit on that Trustee; and
 - 14.2.5 in respect of the provision of goods or services in accordance with Articles or 14.4;
- provided that the Trustees must comply with the provisions of Articles , and (declaration of Interests and authorisation of Conflicts of Interest) in relation to any Benefit provided by the Charity to any Trustee pursuant to this Article.
- 14.3 Any Trustee may enter into a written contract with the Charity to supply goods or services to the Charity in return for a Benefit but only if:

- 14.3.1 the goods or services are actually required by the Charity;
- 14.3.2 the nature and level of the remuneration is no more than is reasonable in relation to the value of the goods or services supplied;
- 14.3.3 the Trustee has declared his or her Interest in accordance with Article and the Trustees have complied with the procedure in Article ;
- 14.3.4 no more than half of the Trustees are subject to or affected by such a contract in any financial year (and this provision will apply to a Trustee if this Article applies to a person who is Connected to that Trustee); and
- 14.3.5 the services supplied are not services supplied by the Trustee in his capacity as a Trustee or by the Trustee under a contract of employment (except for the services described in Article 14.4); and

provided that the Trustees must comply with the provisions of Articles , and (declaration of Interests and authorisation of Conflicts of Interest) in relation to any Benefit provided by the Charity to any Trustee pursuant to this Article.

- 14.4 The Charity may enter into a written contract with no more than one Trustee for that Trustee to supply services to the Charity under a contract of employment in return for a Benefit (provided that the other Trustees comply with the provisions of Article 14.3 in relation to any such contract).
- 14.5 A Trustee or Member shall not receive a Benefit from any Subsidiary Company (whether as a director, officer or employee of the Subsidiary Company or under any contract for goods or services with the Subsidiary Company) except in accordance with Article for a Member or Articles , 14.2 and 14.3 for a Trustee (all of which apply as if references to the Charity were references to the Subsidiary Company and references to the Articles were to the articles of association of the Subsidiary Company).
- 14.6 In this Article, references to a Member or Trustee include references to any person who is Connected to that Member or Trustee.
- 14.7 This Article may not be amended without prior written consent of the Commission.

15 Declaration of interests

- 15.1 Every Trustee has a duty to declare to the Trustees the nature and extent of any Interest which he or she (or any Connected Person) has in any proposed or existing transaction or arrangement with the Charity or any situation or matter in relation to the Charity that is, or possibly may be, a Conflict of Interest.
- 15.2 In the case of any proposed transaction or arrangement with the Charity in which a Trustee (or any Connected Person) is Interested, he or she must declare the nature and extent of the Interest to the Trustees before the Charity enters into the transaction or arrangement.
- 15.3 In the case of any existing transaction or arrangement that has been entered into by the Charity or any situation or matter in relation to the Charity in which a Trustee (or any Connected Person) is Interested, he or she must declare the nature and extent of the Interest to the Trustees as soon as is reasonably practicable.
- 15.4 Any declaration must be made in accordance with the provisions of the Act:
 - 15.4.1 at a meeting of the Trustees; or

- 15.4.2 by notice in writing to the Trustees; or
- 15.4.3 by general notice to the Trustees.
- 15.5 A Trustee is not required to declare an Interest:
 - 15.5.1 where the Trustee is not aware of the Interest (but the Trustee is treated as being aware of matters of which he ought reasonably to be aware); or
 - 15.5.2 where the Trustee is not aware of the transaction or arrangement or situation or matter (but the Trustee is treated as being aware of matters of which he ought reasonably to be aware); or
 - 15.5.3 if, or to the extent that, the other Trustees are already aware of the Interest (or ought reasonably to be aware of the Interest).
- 15.6 The Charity may maintain a register of all of the Interests declared by the Trustees in accordance with this Article. The Trustees may prepare (and from time to time review) a policy in relation to the declaration and management of Conflicts of Interest.

16 Conflicts of Interest

- 16.1 Subject to Articles and , a Trustee has a duty under the Act to avoid a situation or matter (including a transaction or arrangement with the Charity) in which he has, or can have, a Conflict of Interest. This duty applies to the exploitation of any property, information or opportunity (and it is immaterial whether the Charity could take advantage of the property, information or opportunity).
- 16.2 Pursuant to section 181(3) of the Companies Act 2006, the duty referred to in Article does not apply to a Conflict of Interest arising in relation to any situation or matter or any transaction or arrangement between the Charity and any Trustee which is mentioned in Article of these Articles.

17 Authorisation of Conflicts of Interest

- 17.1 The Trustees may authorise a Conflict of Interest in relation to a transaction or arrangement or situation or matter provided that:
 - 17.1.1 the Conflict of Interest will not confer a Benefit on the Trustee or any Connected Person at the expense of the Charity to an extent greater than that permitted by Article of these Articles;
 - 17.1.2 the Trustees act in what they consider to be the best interests of the Charity; and
 - 17.1.3 the Trustees comply with the procedures set out in this Article .
- 17.2 Whenever the Trustees must decide whether to give the authorisation in accordance with Article the Trustee concerned must:
 - 17.2.1 declare the nature and extent of his or her Interest at the beginning of any meeting at which the authorisation is to be discussed (or, at the latest, before such discussion begins);
 - 17.2.2 withdraw from that part of the meeting at which the authorisation is to be discussed unless expressly invited to remain in order to provide information;
 - 17.2.3 not be counted in the quorum for that part of the meeting during which the authorisation is discussed;

- 17.2.4 withdraw during the vote and have no vote on the authorisation for that part of the meeting; and
 - 17.2.5 not sign any written resolution in relation to the authorisation (except where required to do so to confirm a resolution of the other Trustees).
- 17.3 Any authorisation in accordance with Article in relation to any transaction or arrangement or situation or matter in which a Trustee (or any person Connected to that Trustee) has, or may have, a Conflict of Interest and which will or may confer a Benefit on that Trustee (or Connected Person), the Trustees must provide that the Trustee concerned will:
- 17.3.1 declare the nature and extent of his or her Interest at the beginning of any meeting at which the relevant transaction or arrangement or situation or matter is to be discussed (or, at the latest, before such discussion begins);
 - 17.3.2 withdraw from that part of any meeting at which the relevant transaction or arrangement or situation or matter is to be discussed unless expressly invited to remain in order to provide information;
 - 17.3.3 not be counted in the quorum for that part of any meeting during which the relevant transaction or arrangement or situation or matter is discussed;
 - 17.3.4 withdraw during the vote and have no vote on the relevant transaction or arrangement or situation or matter at the relevant part of any meeting; and
 - 17.3.5 not sign any written resolution in relation to the relevant transaction or arrangement or situation or matter (except where required to do so to confirm a resolution of the other Trustees).
- 17.4 In giving the authorisation under Article in relation to a transaction or arrangement or situation or matter in which a Trustee (or any person Connected to a Trustee) has, or may have, a Conflict of Interest which will not confer a Benefit on that Trustee (or Connected Person), the Trustees may (subject to such terms as they may impose from time to time and to their right to vary or terminate such authorisation) determine the manner in which they may be dealt with and, in doing so, the Trustees must consider:
- 17.4.1 whether the nature and extent of the interest in the relevant transaction or arrangement or situation or matter is reasonably likely to give rise to a Conflict of Interest;
 - 17.4.2 whether or not the Trustee should withdraw from that part of any meeting at which the relevant transaction or arrangement or situation or matter is to be discussed unless expressly invited to remain in order to provide information;
 - 17.4.3 whether or not the Trustee should be counted in the quorum for that part of any meeting during which the relevant transaction or arrangement or situation or matter is discussed; and
 - 17.4.4 whether or not the Trustee should withdraw during the vote and have no vote on the relevant transaction or arrangement or situation or matter at the relevant part of any meeting.

18 Records & Accounts

- 18.1 The Trustees must comply with the requirements of the Act and of the Charities Act 1993 as to keeping financial records, the audit of accounts and the preparation and transmission to the Registrar of Companies and the Commission of:

- 18.1.1 annual reports;
 - 18.1.2 annual returns; and
 - 18.1.3 annual statements of account.
- 18.2 The Trustees must keep proper records of:
 - 18.2.1 all proceedings at general meetings;
 - 18.2.2 all proceedings at meetings of the Trustees;
 - 18.2.3 all reports of committees; and
 - 18.2.4 all professional advice obtained.
- 18.3 Accounting records relating to the Charity must be made available for inspection by any Trustee at any reasonable time during normal office hours.
- 18.4 A copy of the Charity's latest available statement of account must be supplied on request to any Trustee or Member, or to any other person who makes a written request and pays the Charity's reasonable costs, within two months of such request.

19 Notices

- 19.1 Notices, documents, resolutions or information under these Articles may be sent or supplied to Trustees by hand, or by post or by suitable electronic means.
- 19.2 The Charity may deliver a notice or other document to a Member by:
 - 19.2.1 delivering it personally to the Member;
 - 19.2.2 post or hand delivery to the Member's address shown in the register of Members;
 - 19.2.3 electronic mail to an address notified by the Member in writing; or
 - 19.2.4 by means of a website in accordance with Articles and .
- 19.3 Notices, resolutions, documents or information may be sent or supplied to Members by means of a website provided that a Member has consented to receive notices, resolutions, documents or information in that way. A Member will be deemed to have agreed to receive notices, resolutions, documents and information in this way where they have been asked individually by the Charity to agree to receive notices, resolutions, documents and information through a website and the Charity has not received a response within the period of 28 days beginning with the date on which the Charity's request was sent. A Member is not taken to have so agreed if the Charity's request did not state clearly what the effect of a failure to respond would be, or was sent less than 12 months after a previous request was made.
- 19.4 Where any notice, resolution, document or other information is to be sent or supplied by means of a website, a Member shall be notified in accordance with Articles , or of:
 - 19.4.1 its presence on the website;
 - 19.4.2 the address of the website;
 - 19.4.3 the place on the website where it may be accessed; and
 - 19.4.4 how to access it.

- 19.5 Any notice, resolution, document or other information sent or supplied by means of a website shall be deemed to have been received by the Member when the notice, resolution, document or other information is first made available on the website or, if later, when the Member is deemed to have received the notification given under Article in accordance with the relevant provisions of .
- 19.6 Subject to Article , any notice given in accordance with these Articles is to be treated for all purposes as having been received:
- 19.6.1 24 hours after being sent by electronic means or delivered by hand to the relevant address;
 - 19.6.2 two clear days after being sent by first class post to that address;
 - 19.6.3 three clear days after being sent by second class or overseas post to that address;
 - 19.6.4 on being handed to the Member (or, in the case of a member organisation, its authorised representative) personally; or, if earlier
 - 19.6.5 as soon as the Member acknowledges actual receipt.
- 19.7 A technical defect in the giving of notice of a meeting of which the Trustees are unaware at the time does not invalidate decisions taken at that meeting.

20 Indemnity

The Charity shall indemnify any Trustee against any liability incurred by him or her in that capacity, to the extent permitted by the Act.

21 Dissolution

- 21.1 If the Charity is dissolved the assets (if any) remaining after provision has been made for all its liabilities must be applied by the Trustees in the following ways:
- 21.1.1 by transfer to one or more other bodies established for exclusively charitable purposes which are within, the same as or similar to the Objects; and (subject thereto)
 - 21.1.2 directly for the Objects or charitable purposes within or similar to the Objects; and (subject thereto)
 - 21.1.3 in such other manner consistent with charitable status as the Commission may approve in writing in advance.
- 21.2 A final report and statement of account must be sent to the Commission.

22 Model Articles

The model articles for private companies limited by guarantee contained in Schedule 2 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) shall not apply to the Charity.

23 Interpretation

- 23.1 In these Articles:

"the Act" means the Companies Act 2006 and any provisions of the Companies Act 1985 for the time being in force.

"these Articles" means these articles of association.

"authorised representative" means an individual who is authorised in writing by a member organisation to act on its behalf at meetings of the Charity and whose name is given to the Secretary.

"Benefit" means any payment of money or the provision or other application of any other direct or indirect benefit in money or money's worth.

"Board" means the board of trustees of the Charity.

"Chairman" means the chair of the Board appointed in accordance with Article .

"Charity" means the company governed by these Articles.

"charity trustee" has the meaning prescribed by section 97(1) of the Charities Act 1993.

"Chief Executive" means the person acting as chief executive of the Council from time to time.

"clear day" means 24 hours from midnight following the relevant event.

"Commission" means the Charity Commission for England and Wales.

"Conflict of Interest" means any Interest of a Trustee (or any person Connected to a Trustee) that conflicts, or may conflict, with the interests of the Charity and includes a conflict of interest and duty and a conflict of duties.

"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 Trustee or Member;
- (b) the spouse or civil partner of any person in (a);
- (c) any other person in a relationship with a Trustee or Member which may reasonably be regarded as equivalent to that of a spouse or civil partner; or
- (d) any company, LLP or partnership of which a Trustee or Member is a paid director, member, partner or employee or a holder of more than 2% of the share capital or capital; and

any person who is a Connected Person in relation to any Trustee or Member is referred to in these Articles as **"Connected"** to that Trustee or Member.

"Co-opted Trustee" has the meaning given in Article 8.5.

"Council" means the City Council of Bristol or any successor body.

"Council Member" has the meaning given in Article 6.3.2.

"Executive Member for Culture" means the person from time to time holding office as the Executive Member for Culture of the Council (or, if such office ceases to exist, such other office of the Council as the Council shall determine is carried on in succession to the office of Executive Member for Culture)

"Interest" means any direct or indirect interest (and includes any interest a Trustee or any person Connected to a Trustee may have as a consequence of any duty he or she may owe to any other person) and where a Trustee (or any person Connected to a Trustee) has any such interest in any matter or situation or transaction or arrangement the Trustee is **"Interested"** in it.

"Local Authority" means the Council and/or any other county, county borough, district, parish or community council with which the Charity has a business relationship within the meaning of section 69 of the Local Government and Housing Act 1989.

"Local Authority Associated Person" means any person associated with any local authority within the meaning given in section 69 of the Local Government and Housing Act 1989.

"Member" and **"Membership"** refer to the members of the Charity for the purposes of (and as defined by) the Act and these Articles and their membership of the Charity.

"Memorandum" means the Charity's memorandum of association.

"month" means calendar month.

"Nominated Trustee" has the meaning given in Article 8.4.

"Regulated Company" means a company deemed to be regulated for the purposes of the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995 and any subsequent amendments, extension or re-enactments thereto.

"Secretary" means the secretary of the Charity.

"Senior Officer or Member" means the person from time to time holding (whether as an officer or member of the Council) such senior office of the Council as the Council shall determine

"Subsidiary Company" means any company in which the Charity holds:

- (a) more than 50% of the shares; or
- (b) more than 50% of the voting rights attached to the shares; or
- (c) the right to appoint one or more of the directors.

"taxable trading" means carrying on a trade or business in such manner or on such a scale that some or all of the profits are subject to corporation tax.

"Trustee" means each of the directors of the Charity under the Act (and **"Trustees"** means all of the directors).

"written" or **"in writing"** refers to a legible document on paper including a printed email or a fax message

"year" means calendar year.

23.2 Expressions defined in the Act have the same meaning.

23.3 References to an Act of Parliament are to the relevant Act as amended or re-enacted from time to time and to any subordinate legislation made under it.

COLSTON HALL BRISTOL

PROPOSED LEASE TO BRISTOL MUSIC TRUST

HEADS OF TERMS

SUBJECT TO CONTRACT

1. Demise

The land and buildings known as the Colston Hall and currently comprised within the curtilage of the concert hall, foyer, and ancillary premises.

2. Term

25 years from 1 April 2011. The lease will give the tenant the option to extend the lease by a further 25 years from the expiry date of the lease.

3. Rent

The rent will be a Peppercorn

4. Alienation

(i) The tenant will not be permitted to assign the lease, other than to a subsidiary body.

(ii) The tenant will be permitted to sub-let part of the demised premises for a period not exceeding 3 months.

(iii) The tenant will be permitted to sub-let part of the demised premises for a period in excess of 3 months or more, subject to landlord's consent, not to be unreasonably withheld.

(iv) Any disposal (other than a sub-lease for a term not exceeding 5 years) of the Foyer must be made subject to a Deed of Covenant restricting the uses to those set out in the Deed of Covenant between the City Council and the Arts Council of England executed in 2008.

5. Insurance

(i) The landlord will be responsible for insuring the buildings in respect of the usual perils. The insurance premiums will be re-charged to the tenant.

(ii) The tenant will be responsible for the insurance of the contents against accidental damage, theft etc. in addition to public liability cover.

6. Building Repairs & Maintenance

The landlord will be responsible for all repairs to the exterior and main structure of the premises, and for the replacement of all services, when necessary. The tenant will ensure that the premises remain fit-for-purpose by undertaking the necessary day-to-day repairs and maintenance.

7. Fixtures and Fittings

The lease will be subject to an inventory. Certain high-value items (to be agreed) will be returned at the end of the lease on their original condition.

8. Alterations

The tenant will be permitted to make alterations to the premises, with landlord's consent, not to be unreasonably withheld.

9. Use of premises.

The use of the premises will be restricted to the uses set out in the Deed of Covenant mentioned in item No. 4 above.

10. Schedule of Repairs

The lease will include a Schedule of repairs to be carried out by the landlord within the first 5 years of the term of the lease. These repairs will correspond to certain items identified as Priority Ratings Nos. 1 and 2 in the Condition Survey Report prepared by Messrs. Atkins.

11. Service Agreement

In the event that the Agreement with the Trust in relation to the provision of services is terminated, the lease will be determined.

PROJ NAME:	Bristol Music Trust	PROJECT ID:	PROJ/10/383
PROJ MGR:	Paul Barnett	DATE LAST AMENDED:	27th January 2011

Category: 'E/F' Economic/Financial; 'E' Environmental; 'L' Legal/Regulatory; 'O/M' Organisational/management; 'P' Political; 'S/C' Strategic/Commercial; 'T/O' Technical/Operational

Type: R = Risk; O = Opportunity

Probability/Impact: 4 = Very high; 3 = High; 2 = Medium; 1 = Low

Priority score: Red (12-16); Red/Amber (6-9); Amber/Green (3-4); Green (1-2)

Status: O = Open; C = Closed; R = Referred

ID	Category	Type	Description (inc. consequence & impact on project)	Likelihood	Impact	Priority	Date identified	Countermeasure / Risk response (inc. contingency)	Residual			Risk owner / Risk actioner	Date of last update	Status
									Likelihood	Impact	Priority			
1	O/M		<u>Unable to attract sufficiently high quality of Trustees</u> - Poor quality of strategic leadership & loss of credibility	2	4	8	01-Jun-10	70 applications received and 8 high calibre Trustees now appointed.	1	2	2	Paul Barnett	20-Dec-10	
2	O/M		<u>Inability to recruit a chief executive of the right calibre</u> - Trust lacks the right level of operational direction and control	2	4	8	01-Jun-10	Establish skills requirements ahead of recruitment; ensure advert is brought to the attention of suitably qualified individuals. Post advertised nationally 24th January.	1	2	2	Kate Davenport	27-Jan-11	
3	E/F		<u>Inability to deliver a more diversified music programme in line with the vision, both now & in the future in collaboration with partners, without the need to increase the level of subsidy</u> - Pressure on BCC to increase levels of subsidy and the possibility that partners lose interest and establish rival organisations	2	4	8	01-Jun-10	Sufficient calibre of Trustees & management team to ensure that the programme is delivered within the funding available - Trustees appointed bring extensive knowledge and experience of many genres of music and arts	1	2	2	Chief Exec of Trust	20-Dec-10	
4	E/F		<u>Failure to secure sponsorship, grants from Arts Council, private business and individuals</u> - Pressures on the working capital requirements & programme vision of the Trust.	3	4	12	01-Jun-10	Sufficient calibre of Trustees & management team to ensure that they can respond to these pressures - Trustees identified to lead on discussions with Arts Council, and with experience in securing private sector sponsorship.	2	3	6	Chief Exec of Trust	20-Dec-10	
5	E/F		<u>Trust is unable to respond to the financial and operational risks identified or able to raise any working capital that may be required especially in the case of a further economic downturn.</u> - BCC having to take back the operation of the hall - Potential situation whereby BCC has to take on the liabilities of the Trust (creditors, staff any contracts taken on by the Trust) Need to rebuild the Council's Arts credibility with regard to the reputation of the Hall with the public, Artists and Arts grant providers	3	4	12	01-Jun-10	BCC & Trust to ensure sufficiently high levels of governance established. Requirement for the trust to provide BCC with sufficient & detailed finance & operational information on a regular basis to ensure their financial position and delivery of the agreed programme can be monitored. Protection of BCC funding position through grant being paid on a quarterly basis rather than an annual grant payment, and provision for BCC to cancel lease if performance is consistently poor.	1	2	2	Trust Board	27-Jan-11	
6	L		<u>Arrangements with the Trust are open to challenge under procurement or state aid regulation.</u> Any successful challenge could lead to repayment of Trust funding to BCC, leaving BCC to take back future operations	2	4	8		BCC will include an Act of Entrustment as part of the financial arrangements, demonstrating that the level of financial support is appropriate to the scale of public benefit provided and therefore reducing the risks of a successful challenge.	1	4	4	Paul Barnett	20-Dec-10	
7	O/M		<u>The application for admitted status to the Avon Pension Fund is refused.</u> This will prevent the transfer of staff under TUPE	2	4	8		BCC are being asked to act as guarantors to this application, making it less likely that it will be refused. A discussion is anticipated on March 18th	1	4	4	Paul Barnett	27-Jan-11	

Equalities Impact Assessment

	Key Questions	Notes / Answers	Any actions needed? By whom?
1.1	Is this a new policy, project, service, contract or strategy or a review of an existing one?	Options appraisal has been completed. Cabinet approved transference of Colston Hall from Council to Trust Governance.	No
1.2	What is the main purpose of the policy, project, service, contract or strategy?	Cabinet has agreed to a Trust Governance model. Currently in Transition phase of project, from one Governance model to another.	No
1.3	What are the main activities of the policy, project, service, contract or strategy?	Transition from one Governance model to another.	No
1.4	Who are the main beneficiaries? Whose needs is it designed to meet?	New and existing customers, Bristol citizens.	No
1.5	Which staff carry out the policy, project, service, contract or strategy?	Paul Barnett, Interim Change Manager, City Development	No
1.6	Are there areas of the policy or function that could be governed by an officer's judgement? eg. home visits "where appropriate". If so, is there guidance on how to exercise this to prevent any possible bias/prejudice creeping in?	No	No
1.7	Is the Council working in Partnership with other organisations to implement this policy or function? Should this be taken into consideration? eg. Agree equalities monitoring categories Should the partnership arrangements have an EqIA?	Arts Council England, are a key stakeholder, having part-funded the first phase of capital development and being the major revenue funder of music organisations. Youth Music currently fund Music education work nationally (will continue to support Colston Hall in 2011/2012) and insist on good equalities data.	No

1.8	<p>Taking the six strands of equalities, do you have any initial thoughts that any of the six equalities strands have particular needs relevant to the policy or function?</p> <p>Or is there anything in the policy, project, service, contract or strategy that you can think of at this stage that could discriminate or disadvantage any groups of people? ie.</p> <p>Gender (include Transgender)</p> <p>Disability</p> <p>Age</p> <p>Race</p> <p>Sexual Orientation</p> <p>Faith/Belief</p> <p>Do any other specific groups have particular needs relevant to the policy, project, service, contract or strategy?</p>	<p>Yes, any change in governance will need to ensure that the differing cultural needs of all six equalities strands are fully met by the Bristol Music Trust including a key issue will be to improve the range and nature of activities so that audiences reflect the diversity of Bristol, including the needs of people living in areas of deprivation. N.B Colston Hall recently won the South West Tourism Access Award.</p>	<p>Yes, appropriate action on equalities must be incorporated into the governance structure of any new Trust and specified in any SLA between BCC and the Trust. The Equalities Act 2010 amplifies the necessity to adhere to the six equalities strands.</p> <p>8 of the 12 Trust Board members have been appointed. 4 women, 4 men. 2 people over 60, one under 30 (one African Caribbean).</p> <p>Candidates did not all submit answers on disability, faith&belief/sexual orientation.</p> <p>Action is needed to complete the modernisation of the building to ensure disabled access to all parts of Colston Hall</p>
1.9	<p>Did you use any data to inform your initial thoughts above?</p> <p>What data do you already have?</p>	<p>Attendance and usage data for Colston Hall is incomplete.</p> <p>Records are complete for the education programme (and show a high take-up by BME young people). Annual audience surveys indicate a significant improvement in customer's satisfaction since the new building opened, but the specific views of equalities groups are not available.</p>	<p>Colston Hall compile monthly equalities audit face-to-face questionnaires, conducted by an external research company. The recent report indicates no improvement in attendance by BME or disabled people over last year.</p>

1.10	<p>Are there gaps in the data that require you to do further work?</p> <p>What are these gaps?</p>	<p>Equalities groups especially BME and disabled people should be consulted about their reasons for not attending Colston Hall concerts.</p> <p>Previous data collection methods for the Colston do not fully capture useful equalities data.</p>	<p>To be included in the 2011/2012 SLA with the Bristol Music Trust.</p> <p>A new robust equalities data collection method should be used by the Bristol Music Trust, also to be included in the 2011/2012 SLA with the Bristol Music Trust.</p>
------	--	---	--

Environment Impact Assessment

Title of report: Bristol Music trust				
Report author: Paul Barnett				
Anticipated date of key decision: March 3rd 2011				
Summary of proposals: To create a strategic music trust to run Colston Hall				
Will the proposal impact on...	Yes/ No	+ive or -ive	If yes...	
			Briefly describe impact	Briefly describe Mitigation measures
Emission of Climate Changing Gases?	Yes	- ive	It is anticipated the increased use of Colston Hall in the future will result in more visitors travelling to the city centre contributing to the release of climate changing gases.	The trust shall develop a travel plan for each venue they run that promotes use of public transport.
Bristol's vulnerability to the effects of climate change?	No			
Consumption of non-renewable resources?	Yes	- ive - ive	It is anticipated the Hall will require more heating & electricity use as it becomes busier in the future under the new trust management scheme. The capital strategy for the building will use non - renewable resources and will affect energy consumption in the future.	Renewable energy provision such as wind power & solar thermal energy has already been built in to the new Colston Hall Foyer, however future increases will be managed through the Council's Environmental Management System (EMAS). All future capital works shall include consultation on the use of materials for refurbishment & any opportunities for energy efficiency improvements.
Production, recycling or disposal of waste	Yes	+ive	The expected increased use of Colston Hall will	Any management contract shall include the existing environmental commitments

			result in higher rates of waste production, disposal & recycling on site.	on site to recycling & waste disposal, and improvements as required by the corporate environmental management system (EMAS).
The appearance of the city?	Yes	+ive	High quality design	The future capital programme will maintain the quality of design.
Pollution to land, water, or air?	No			
Wildlife and habitats?	No			

Consulted with:

Tanya Saker, Sustainable City Group

Steve Ransom, Sustainable City Group

The significant impacts of this proposal relate to the increased use of Colston Hall in the future and therefore the subsequent increase in visitor numbers, energy use & waste production associated with higher levels of use.

The environmental impacts of Colston Hall will continue to be managed through the Council's Eco Management & Audit Scheme (EMAS) until the time comes when Bristol City Council no longer holds the management contract for the site.

Additional mitigation measures shall include:

1. The development of a travel plan for Colston Hall
2. Consultation on the sustainability of materials & energy efficiency improvements as part of the revised phase 2 capital works programme.
3. A commitment to existing recycling & waste disposal on site and any improvements as required by EMAS.

The net effects of the proposals are neutral.

Checklist completed by:

Name:	Paul Barnett
Dept.:	City Development
Extension:	23582
Date:	20.12.10
Verified by: Environment and Sustainability Unit	Sustainable City Group 20.12.10

Dated 2011

Draft

Entrustment Agreement

relating to

Provision of cultural and education services

between

The City Council of Bristol (1)

and

Bristol Music Trust (2)

THIS DEED is made the day of 2011

BETWEEN:

- (1) **THE CITY COUNCIL OF BRISTOL** of the Council House College Green Bristol BS1 5TR ("the Council")
- (2) **BRISTOL MUSIC TRUST** (Company No: Registered Charity No:) of xxxx Bristol BSx xxx ("the Trust")

Background

- (A) The Council is the local authority with responsibility for culture and education services in the City of Bristol.
- (B) The Trust is a strategic organisation with a mission to promote music through performance, composition, education and participation.

NOW IT IS AGREED as follows:

1 Definitions

- 1.1 In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"a Holding or Subsidiary company of the Trust "	means the ultimate Holding Company (if any) of Bristol Music Trust from time to time, any company which is a Subsidiary of that Holding Company and any company which is, from time to time, a Subsidiary of Bristol Music Trust.
--	---

"The Trust's obligations of transparency"	means the obligations of objectivity and transparency on the part of the Trust under Clause 8.1
--	---

"CEDR"	means The Centre for Effective Dispute Resolution at The International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU
---------------	---

"Chief Officer"	means the Chief Officer of the Council from time to time holding the office of
------------------------	--

	Strategic Director of City Development or the successor in function of such person from time to time who shall be responsible for the cultural services of the Council ("the Chief Officer City Development")
"City of Bristol"	means the area for which the Council is the local and unitary authority and the principal council for the purposes of the law relating to local government
"Compensation"	means the public service compensation payable by the Council to the Trust under the terms of this Agreement for the provision of the Entrusted Public Cultural and Education Services and the performance accordingly of the public service obligations entrusted to the Trust by this Agreement, the amount to be agreed annually or for a longer period by mutual consent
"Council Members"	means any individuals who have been duly elected to serve as Councillors in the Bristol City administrative area
"Entrusted Public Cultural and Education Services"	means the public cultural services and public cultural education service obligations entrusted to the Trust under and by virtue of this Agreement
"Financial Regulations"	means the set of regulations governing the Council's control of financial matters
"Force Majeure"	means act of God, war, strike, lockout, industrial action, terrorism, fire, flood, drought, tempest or any other event beyond the control of either party
"Holding Company"	shall have the meaning given to it by

	section 1159 of the Companies Act 2006
"the Joint Group"	means the joint planning and review group established by the parties in accordance with Clause 9.1
"Lease"	means the agreement between the Council and the Trust in relation to the concert hall at BS1 5AR
"National Curriculum"	means the framework developed by Government to govern teaching and learning for children aged 5 to 16 years and/or such other framework or curriculum or policy replacing substitution for or supplementing the same from time to time
"parties"	means the parties to this Agreement and "party" shall be construed accordingly
"the Programme"	means the programme of activities by which the Trust will deliver the Entrusted Public Cultural and Education Services
"Service Level Agreement"	means the formal agreement through which the Parties define the Compensation and the monitoring arrangements to ensure compliance with the Programme
"Subsidiary"	shall have the meaning given to it by section 1159 of the Companies Act 2006
"the Term of this Agreement"	means the period x April 2011 until 31 March 2036 (<i>but funding agreement is for 3 years, subject to separate SLA</i>)
"Trustees"	means any individuals who have been duly elected as Trustees of Bristol Music Trust according to the Memorandum and

"Year"

means each year commencing on x April 2011 and on 1 April in each calendar year thereafter

2 Interpretation

Unless there is something in the subject or context inconsistent therewith:-

- 2.1 Words importing the neuter gender only shall include the masculine or feminine gender (as the case may be) and words importing the singular shall include the plural number
- 2.2 Words importing persons shall include firms companies and corporations and vice versa
- 2.3 Any reference to a clause or a schedule shall mean a clause or a schedule of this Agreement
- 2.4 The clause and paragraph titles or headings appearing in this Agreement are for reference only and shall not affect its construction or interpretation

3 Obligation of the Trust to discharge public cultural and education service obligations

- 3.1 The Council entrusts the Trust with responsibility for the provision of the Entrusted Public Cultural and Education Services and the Trust accepts and undertakes the obligation to provide the Entrusted Public Cultural and Education Services pursuant to this Agreement.
- 3.2 In consideration of the agreement on the part of the Council herein to pay compensation to the Trust as provided for in this Agreement the Trust agrees and undertakes with the Council to perform and observe the obligations on the part of the Trust contained in this Agreement and to discharge the responsibility for the provision of the Entrusted Public Cultural and Education Services.

4 Nature of the Entrusted Public Cultural and Education Services

- 4.1 The Entrusted Public Cultural and Education Services shall take the form of cultural and education activities jointly shared by the Council and the Trust as set out in the aims and objectives of the Trust:

To facilitate all communities of Bristol to engage with music on many levels as performers, composers and audiences;

To ensure that music is at the heart of education throughout the city;

To enable partnerships that support Bristol musicians and the music industry to flourish locally, nationally and internationally;

To enable the development of sustainable and ambitious music venues and networks that collectively offer a world class programme of performance, participation and support in all genres of music in Bristol and the region;

To realise the potential of music to help deliver the health, economic, education and community cohesion priorities for Bristol;

To nurture partnerships with local, regional, national and international organisations to deliver all aspects of the mission;

To underpin all of these aims with a robust commitment to inclusion and diversity, involving all people of Bristol in shaping, leading and delivering the above.

- 4.2 During the term of this Agreement the parties contemplate that the character scope and/or description of the Entrusted Public Cultural and Education Services may change in order to reflect changes in practice or the requirements of the National Curriculum or in cultural education or in the training of music teachers.

5 Programme of Entrusted Public Cultural and Education Services

- 5.1 The Trust's obligations for the provision of the Entrusted Public Cultural and Education Services shall apply from Year to Year (as referred to in Clauses 9 and 10) during the term of this Agreement.
- 5.2 On or before 31 March of each Year authorised representatives of the Council and the Trust shall negotiate a programme ("the Programme") for the Entrusted Public Cultural and Education Services.
- 5.3 Once the Council and the Trust have agreed the Programme, the Programme shall be the basis on which the Trust shall provide the Entrusted Public Cultural and Education Services for that Year. Details of the Compensation and the monitoring arrangements for the Programme will be set out in a Service Level Agreement which will be reviewed annually as part of the negotiation of the Programme for the following Year.
- 5.4 Without prejudice to the provisions of Clause 18 of this Agreement any submission, communication or notice sent by the Trust under the provisions of this Clause 5 shall be addressed to the Strategic Director City Development (by name and by title) at the address of

the Council at the head of this Deed or to such other person and/or to such other address as shall from time to time be notified in writing by the Strategic Director City Development (or his or her duly authorised representative) to the Trust.

- 5.5 The term of this Agreement shall determine or may be terminated as provided in Clause 13.

6 Undertaking and territory concerned

- 6.1 The Entrusted Public Cultural and Education Services shall be provided for the benefit of people within the City of Bristol.

- 6.2 Clause 6.1 is without prejudice to the Council's expectation as set out in the aims of the Trust that the Trust will play a pivotal role in the development of music regionally nationally and internationally.

7 Personal nature of obligations and exclusion of rights of assignment

- 7.1 This Agreement and the benefit of this Agreement are personal to the Trust and the Trust shall personally perform the public service obligations entrusted to it hereunder.

- 7.2 The Trust shall not either temporarily or permanently in any way assign dispose of or transfer, sell, sublet or subcontract this Agreement or any part of this Agreement or any rights arising under this Agreement or give grant or create or allow to arise or subsist any mortgage or charge, whether fixed or floating, pledge, lien, hypothecation, factoring arrangement, security interest, or other security arrangement of any kind over or in relation to this Agreement or any part of this Agreement or any rights arising under this Agreement.

- 7.3 The identity and composition of the Trust is of paramount importance to the Council in entering into this Agreement and entrusting the provision of the Entrusted Public Cultural and Education Services to the Trust. Accordingly the Trust shall not suffer or permit or allow any change in control or in its constitution to take place in the Trust without the prior written consent of the Council.

- 7.4 **PROVIDED THAT** the Trust may with the prior written consent of the Council assign the benefit of this Agreement to a Holding or Subsidiary company of the Trust which shall carry on the principal activities of the Trust including its cultural and education activities and the Trust shall provide any information with regard to the status or standing of such Holding or Subsidiary company of the Trust including in relation to its accounts, financial position and/or business and/or strategic plans..

8 Obligations of transparency and objectivity and best value

The Trust undertakes with the Council to comply with and discharge the following obligations and to do so in a transparent and objective manner throughout the term of this Agreement and this Agreement is entered into by the Council with the Trust on the basis of this undertaking:

- 8.1 to disclose and account for all costs and expenses which shall be incurred in discharging the public service obligations entrusted to the Trust by virtue of this Agreement;
- 8.2 to take into account all or any related or relevant receipts of the Trust or funding received by it or available to it in connection with the performance or delivery of the Entrusted Public Cultural and Education Services;
- 8.3 to provide to the Council as necessary or as requested by the Council from time to time the parameters for and calculations of claims made or proposed or submitted by the Trust for Compensation and which it shall be the obligation of the Trust to ensure shall have been established or undertaken;
- 8.4 to allow in such parameters and calculations for a reasonable profit for discharging the public service obligations entrusted to the Trust by virtue of this Agreement and disclose the same;
- 8.5 in such parameters and calculations aforesaid to take into consideration only those costs associated with the Entrusted Public Cultural and Education Services including all variable costs incurred in providing the same and a proportionate contribution to fixed costs common to both the Entrusted Public Cultural and Education Services and the other activities of the Trust;
- 8.6 without prejudice to the ability of the Trust to earn a reasonable profit from the delivery of the Entrusted Public Cultural and Education Services to apply Compensation only in the operation and provision of the Entrusted Public Cultural and Education Services;
- 8.7 to submit the accounts and records of the Trust to such audit and inspection as the Council shall reasonably require from time to time or as may otherwise be required under the provisions of this Agreement; and
- 8.8 that the Council in line with its Financial Regulations undertake to maintain at all times clarity of separation between officers acting for the Council in the negotiation

of the Programme and the Compensation and any officers and/or Council Members who are serving at the time as Trustees of the Trust.

9 Annual Planning and Monitoring Arrangements

9.1 The parties shall establish a joint planning and review group consisting of two or more persons representing respectively the Chief Officer and the Trust for the purposes of determining and establishing:

9.1.1 a plan for the delivery in accordance with the experience capacity and skills of the Trust staff (the Trust acting reasonably in terms of the Trust's employment and recruitment policies) (within the budget referred to in the next sub-clause) of the Entrusted Public Cultural and Education Services in each Year; and

9.1.2 a budget for the cost of the delivery of the Entrusted Public Cultural and Education Services in that Year to be met by the Compensation

prior to the date of the commencement of such Year.

10 Compensation

10.1 The Council shall pay Compensation to the Trust for or in respect of the Entrusted Public Cultural and Education Services delivered in any Year.

10.2 The Compensation shall be made up of two parts, being a cash sum to be agreed tri-annually and the market rental value of the peppercorn rent granted under the Lease.

Compensation shall be calculated pursuant to Clause 9 on a quantum meruit basis (meaning on the basis of reasonable remuneration or a reasonable price for what has been done or for the services which have been delivered) and in accordance with (and the Trust complying with) the Trust's obligations of transparency.

11 Accounting and settlement

11.1 The Trust shall keep true, fair, accurate and complete accounting and other financial records in respect of the delivery of the Entrusted Public Cultural and Education Services and shall permit the Council and its authorised representatives to have access to such records at all reasonable times to examine and to take copies of such records.

11.2 The Trust shall produce accounts in respect of the incurred expenditure in complying with the public service obligations entrusted to the Trust by virtue of this Agreement in accordance with an open book policy such accounts to be approved by the Council (such approval not to be unreasonably withheld).

- 11.3 Without prejudice to the generality of Clause 11.1 and 11.2 and at the end of each Year the Trust shall produce in accordance with the principles of and the provisions set out in this Agreement an account of:
- 11.3.1 the cost and expenditure incurred by the Trust in the performance and delivery of the Entrusted Public Cultural and Education Services in that Year including a reasonable profit for discharging the obligations in respect of the same;
- 11.3.2 Compensation due in respect of that Year in relation to the provision of the Entrusted Public Cultural and Education Services
- and such account shall be delivered to the Chief Officer or the nominated representative of the Chief Officer within two months of the end of the Year.
- 11.4 The account referred to in Clause 11.3 shall be reviewed and approved or adjusted by the Joint Group and thereafter the requisite invoice or invoices shall be issued by the Trust to the Council and the relevant settlement shall be made between the parties by payment. The schedule of payments in any Year is set out in the Service Level Agreement.

12 Control and review of Compensation and arrangements for avoiding and repaying any overcompensation

- 12.1 The following arrangements shall apply and be implemented by and between the parties for controlling and reviewing Compensation and avoiding and repaying any overcompensation. in both cases as required by EU Commission Decision (225/842/EC) dated 28 November 2005 on the application of Article 86 (2) of the EC Treaty to State aid in the form of public service compensation etc:
- 12.1.1 The Trust shall cooperate fully and conscientiously in the implementation of the provisions of clause 11.
- 12.1.2 The Trust shall cooperate fully and conscientiously with the Council in monitoring and reviewing annually the delivery of the Entrusted Public Cultural and Education Services and of the performance and outputs thereof.
- 12.1.3 Open book principles shall apply for the purpose of ensuring that overcompensation shall be avoided and the systems or procedures for annual accounting by the Trust shall also have as their purpose control and safeguard against overcompensation.
- 12.1.4 Provision for accounting adjustments and reimbursement of overcompensation by the Trust shall be made in accordance with the relevant terms of clause 11.

13 Termination

- 13.1 Either party may terminate this Agreement upon giving thirty (30) days notice in writing to the other if:
- 13.1.1 the other is in material breach of its obligations hereunder and where the breach is capable of being remedied fails to remedy such breach within thirty (30) days after written receipt of a request by the party not in breach so to do; or
 - 13.1.2 any event of force majeure continues for more than thirty (30) days and in respect of which the party serving notice is incurring on-going expenses.
- 13.2 The Council may terminate this Agreement by notice in writing to the Trust if the Trust:
- 13.2.1 fails to be or become entitled to Compensation under Clause 10.1 for two Years in succession; or
 - 13.2.2 is or is deemed to be unable to pay its debts as they fall due (whether under Section 123 of the Insolvency Act 1986 or any other applicable law) or admits such inability or is deemed insolvent; or
 - 13.2.3 suspends making payments of its obligations (present or future, actual or contingent) for the payment or repayment of monies whether as principal or surety or announces an intention so to do; or
 - 13.2.4 begins (because of financial difficulties) negotiations with one or more of its creditors with a view to the readjusting or rescheduling of any of its obligations present or future, actual or contingent for the payment or repayments of monies whether as principal or surety; or
 - 13.2.5 requests or suffers the appointment of any receiver, receiver and manager, administrative receiver or like official over any of its assets; or
 - 13.2.6 gives notice of any meeting of the company, such meeting to be held to consider a resolution to present an application for an administration order and such resolution is passed or such application is presented over the Trust; or
 - 13.2.7 goes into liquidation within the meaning of Section 247 of the Insolvency Act 1986 or any step (including without limitation, presenting any petition, passing any resolution or convening any meeting) with a view to the liquidation, winding up or dissolution of the Trust save for any winding up petition which is in the reasonable opinion of the Trust frivolous or vexatious and being contested in good faith; or

13.2.8 suffers any attachment, sequestration, distress, execution or diligence to affect any of the company's assets and is not discharged within 14 days or any creditor exercises any power of right of sale, transfer or to go into possession over any of the Trust's assets where such power or right was given by way of security save for any such action which is in the reasonable opinion of the Trust unlawful frivolous or vexatious and being contested in good faith.

13.3 In the event of the expiry or determination for any reason of any the following:

D at e	Document	Parties
x A pri l 20 11	Lease of site Colston Street Bristol BS1 5AR	(1) The Council (2) the Trust
x A pri l 20 11	Service Level Agreement for the provision of Entrusted Public Cultural and Education Services	(1) The Council (2) the Trust

this Agreement shall determine on the same day as any such document or instrument aforesaid.

14 Dispute Resolution

14.1 The parties shall refer all matters in dispute arising out of or in connection with this Agreement for consideration and decision by designated senior managers or senior members of staff of each party, who shall, acting in good faith towards the other, use their reasonable endeavours to reach a solution to any such dispute within a period of twenty one (21) days, and failing which, unless the parties agree another period of time, any such dispute shall be dealt with if both parties so agree provided for in Clause 14.2 or, failing which, by referral to mediation as set out in Clauses 14.3 and 14.4.

14.2 If both parties shall so agree any dispute arising in connection with this Agreement and

remaining unresolved as referred to in Clause 14.1 may be referred for resolution by a review group consisting of two Trustees of the Trust who shall not be Members of the Council and two elected Members of the Council who shall not be Trustees of the Trust (one representing Culture and one representing Finance) and such review group shall be chaired by the current chairman of the Bristol Partnership.

- 14.3 If (in the absence of agreement between the parties) any dispute arises in connection with this Agreement and remains unresolved as referred to in Clause 14.1, the parties shall attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. The mediation shall commence by either party serving on the other written notice setting out, in summary form, the issues in dispute. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR.
- 14.4 Both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of the CEDR Model Mediation Agreement for the time being in force.
- 14.5 Subject to Clause 14.6 neither party may commence any court proceedings or arbitration in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 14.6 If and to the extent that the parties do not resolve any dispute or any issue in the course of any mediation, either party may commence any court proceedings or arbitration in respect of such unresolved dispute or issue.
- 14.7 Nothing in this Clause 14 shall prevent either party from instigating legal proceedings where an order for an injunction or disclosure or summary judgment pursuant to CPR Part 24 for a liquidated sum is required.
- 14.8 Notwithstanding (and regardless of the nature of) any dispute or any referral of it for resolution under this Clause 14, each party shall continue to comply with, observe and perform all its obligations under this Agreement unless this Agreement has already been terminated.

15 Governing Law

- 15.1 This Deed shall be governed by and construed in accordance with English Law and the parties

irrevocably submit to the exclusive jurisdiction of the English Courts in respect of any dispute or matter arising out of or connected with this Deed.

16 General

- 16.1 Nothing herein contained or implied shall prejudice or affect the Council's rights and powers duties and obligations in the exercise of its functions as a Local Authority and/or in any other statutory capacity.
- 16.2 Any notice required or permitted to be given under this Agreement by either of the parties to the other shall be in writing and addressed to the addressee at its principal or registered office.

17 Rights of Third Parties

- 17.1 Nothing in this Deed shall or shall purport to confer on any third party a right to enforce any terms of this Deed for the purposes of the Contracts (Rights of Third Parties) Act 1999.

18 Notices and communications

- 18.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing, addressed to that party at its address at the head of this Deed or such other registered or principal office or address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by recorded delivery or commercial courier.
- 18.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 18.1; if sent by recorded delivery, at 10.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 18.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

IN WITNESS whereof this Agreement has been executed as a deed by the parties the day and year first before written

THE COMMON SEAL of)
THE CITY COUNCIL OF BRISTOL)
was hereto affixed in)
the presence of:)

Authorised Signatory:

Executed as a Deed by
BRISTOL MUSIC TRUST
by the signature of

Director : name
signature

[Director][Secretary] : name
signature