

## **HIGHLAND COUNCIL**

**Committee:** The Highland Council

**Date:** 1 June 2017

**Report Title:** Eden Court Highlands: Amendment to Memorandum and Articles of Association and Appointment of Directors

**Report By:** Depute Chief Executive/Director of Corporate Development

### **Summary**

The Highland Council, as a Member of Eden Court Highlands (a company limited by guarantee) is asked to consider a request from the Eden Court Highlands Board of Directors to make a number of amendments to the Company's Memorandum and Articles of Association including reducing the number of Council appointed Directors from four to two with a consequential increase in the number of independent directors from five to seven together with a number of other amendments and to appoint two Members to serve as Directors.

### **Recommendations**

Members are asked to:

- Agree that the Highland Council, as a member of Eden Court Highlands, approve the amendments to the Company's Memorandum and Articles of Association
- Agree that the Chief Executive or their nominee approve the text of the required Special Resolution and sign it on the Council's behalf
- Appoint two members to the Board of Directors of Eden Court Highlands

## **1. Introduction**

1.1 The Memorandum and Articles of Association of Eden Court Highlands date back to the formation of the company in 1977 and have been subject to limited review or amendment in the intervening years.

1.2 At the instance of the Eden Court Board of Directors a review of the Memorandum and Articles was initiated. The Board has considered a report from the Company Secretary which proposed a number of amendments and these are set out in Appendix One. Principal amongst those proposals is one to amend the composition of the Board.

1.3 There are currently twelve places on the Board which consists of :

Four (Elected) Members of the Highland Council appointed by the Council

- One appointee on the recommendation of the Friends of Eden Court
- One appointee on the recommendation of the Federation of Theatre Unions Scottish Committee
- The Theatre Chief Executive
- Five appointees of the Board chosen at the Board's discretion

1.4 The Board considered the level of the Council's representation on the Board and agreed to request that the Council be asked to reduce the number of Elected Members appointed as Directors from four to two. The change is considered to reflect the Company's continuing development, greater reliance on commercial activity and the increased significance of national funding bodies such as Creative Scotland.

1.5 Separately the opportunity was taken to review and consider amendment to other aspects of the Company's Articles of Association. The proposed amendments agreed by the Board are set out in Appendix One.

1.6 To effect the proposed amendments to the Memorandum and Articles of Association, a Special Resolution will be required to be prepared for signature by all Members of the existing Board (in their capacity as members of the Company) and also by the Highland Council as a Member of the Company.

## **2. Board Appointment**

2.1 In the event that the amendments to the Memorandum and Articles of Association are agreed, Council is invited to appoint two members to serve as Directors of Eden Court Highlands.

## **3. Implications**

3.1 There are no Resource, Legal, Community (Equality, Poverty and Rural), Climate Change/Carbon Clever, Risk or Gaelic implications to be highlighted.

Designation: Depute Chief Executive/Director of Corporate Development

Date: 23 May 2017

Author: Head of Corporate Governance

Background Papers:

Appendix One – Proposed Amendments to Eden Court Highlands Memorandum and Articles of Association

Appendix Two – Memorandum and Articles of Association of Eden Court Highlands

Appendix Three – Job Description- Director Eden Court Highlands

## APPENDIX ONE

### PROPOSED AMENDMENTS TO EDEN COURT HIGHLANDS MEMORANDUM AND ARTICLES OF ASSOCIATION

	Schedule
Current Provision Reference	Proposal
<b>Preamble</b>	Remove reference to ' <i>Companies Acts 1948 to 1985</i> ' and replace with ' <i>Companies Act 2006</i> '
<b>Memorandum</b>	
III (e)	Amend to include ' <i>digital media</i> '
III (f)	Amend to include reference to ' <i>visual art and works</i> '
III (w)	<p>Insert a new III (w) in the following terms:-</p> <p><i>To advance such similar charitable purposes as the directors may consider appropriate from time to time, through the provision of services (including those entrusted to it by The Highland Council), which contribute to advancing wellbeing (primarily the wellbeing of residents of the area served by The Highland Council) including the operation, management, development and (where appropriate) delivery of the following facilities and services:-</i></p> <ul style="list-style-type: none"> <li><i>(a) services which meet the needs of young people;</i></li> <li><i>(b) adult learning services;</i></li> <li><i>(c) arts and cultural activities and events, artistic programmes, research programmes and educational projects;</i></li> <li><i>(d) outdoor educational facilities;</i></li> <li><i>(e) art galleries, archives, museums and other facilities which provide public access to collections of works of art, antiquities and objects of scientific interest; and</i></li> <li><i>(f) services which promote health and well-being</i></li> </ul> <p>Followed by the current III(w) renumbered to III(z)</p>
IV (b)	Delete and renumber accordingly
V	Delete ' <i>The Inland Revenue Claims Branch, Charity Division</i> ' and replace with ' <i>Office of the Scottish Charity Regulator</i> '
<b>Articles</b>	

Throughout	Remove reference to 'Governor' and 'Board of Governors' wherever they appear and replace with 'Director' and 'Board of Directors'
	Remove reference to 'Theatre Director' wherever it appears and replace with 'Theatre Chief Executive'
	Remove reference to 'Chairman' wherever it appears and replace with 'Chair'
12 Proceedings at Meetings	Delete the words 'the quorum shall be five members personally present' and replace with  'the quorum will be one third of the directors currently appointed plus one, rounded up the nearest whole number; (a) A director may participate in a meeting of the directors or a meeting of a committee of directors by means of a conference telephone, video conferencing facility or similar communications equipment whereby all the directors participating in the meeting can hear each other; a director participating in a meeting in this manner shall be deemed, for the purposes of calculating the quorum, to be present in person at the meeting'
14	In line 1 replace 'a' with 'as'
21 Approval of Budget	Delete the words <b>'Approval of Budget'</b>  <i>Prior to the commencement of each of its financial years the Company shall produce for the approval of the Council an annual budget, which shall not be finally approved, adopted or implemented by the Company until the approval of the Council is obtained. Apart from such power of approval of the Company's annual budget...</i>
24(a) Board of Governors	In line four delete 'Four' and replace with 'Two' ; insert ( 'Council Director') after the word Council
	In line 10 delete 'Five' and replace with 'Seven'
24(b)	Delete
26	Delete and replace with the following  ' One assessor as may from time to time be nominated to the

	<i>Company Secretary by Creative Scotland ( and its successors) and such assessor, so nominated ,shall be entitled to attend meetings of the Company and Board but without power to vote and they shall accordingly be notified of such meetings in the same way as if they were members of the Company and the Board'</i>
30 Powers and Duties of the Board	<p>Delete and replace with</p> <p><i>A director shall vacate office if:-</i></p> <p><i>30.1 he/she ceases to be a director by virtue of any provision of the Act or becomes prohibited by law from being a director or a charity trustee (within the meaning of the Charities and Trustee Investment (Scotland) Act 2005);</i></p> <p><i>30.2 he/she is sequestrated;</i></p> <p><i>30.3 the body which appointed him/her ceases to be a member of the company;</i></p> <p><i>30.4 in the case of a Council Director, he/she ceases to be an elected member of The Highland Council;</i></p> <p><i>30.5 he/she becomes an employee of the company;</i></p> <p><i>30.6 he/she resigns office by notice to the company;</i></p> <p><i>30.7 he/she is absent (without permission of the directors) from more than three consecutive meetings of directors and the directors resolve to remove him/her from office;</i></p> <p><i>30.8 he/she is removed from office by resolution of the directors on the grounds that he/she is considered to have committed a material breach of the code of conduct for directors in force from time to time</i></p> <p><i>30.9 he/she is removed from office by resolution of the directors on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or</i></p> <p><i>30.10 he/she is removed from office by ordinary resolution (special notice having been given) in pursuance of section 168 of the Act.</i></p> <p><i>30.11 A resolution under paragraph 30.9 or 30.10 shall be valid only if:-</i></p> <p><i>30.12 the director who is the subject of the resolution is given reasonable prior written notice by the directors of the grounds upon which the resolution for his/her removal is to be proposed;</i></p> <p><i>30.13 the director concerned is given the opportunity to address the meeting of directors at which the resolution is proposed, prior to the resolution being put to the vote; and</i></p> <p><i>30.14 at least two thirds (to the nearest round number) of the directors then in office vote in favour of the resolution.</i></p>
31 (ii) Rotation of	Delete and renumber accordingly

Governors	
40 Disqualification of Directors	<p>After Article 40 insert new Article 40A and following</p> <p><i>40A It is the duty of each director of the company to take decisions (and exercise his/her other powers and responsibilities as a director) in such a way as he/she considers, in good faith, will be most likely to promote the success of the company in achieving its objects and will be in the interests of the company, and irrespective of any office, post, engagement or other connection which he/she may have with any other body which may have an interest in the matter in question.</i></p> <p><i>40B Without prejudice to the principle set out in article 40A, each of the directors shall have a duty, in exercising functions as a charity trustee, to act in the interests of the company; and, in particular, must:-</i></p> <ul style="list-style-type: none"> <li><i>i) seek, in good faith, to ensure that the company acts in a manner which is in accordance with its purposes;</i></li> <li><i>ii) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;</i></li> <li><i>iii) in circumstances giving rise to the possibility of a conflict of interest between the company and any party responsible for the appointment of that director</i> <ul style="list-style-type: none"> <li><i>a. put the interests of the company before that of the other party;</i></li> <li><i>b. where any other duty prevents him/her from doing so, disclose the conflicting interest to the company and refrain from participating in any deliberation or decision of the other directors with regard to the matter in question;</i></li> </ul> </li> <li><i>iv) ensure that the company complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.</i></li> </ul> <p><i>40C. Each of the directors shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board of directors from time to time; for the avoidance of doubt, the code of conduct shall be supplemental to the provisions relating to the conduct of directors contained in these articles of association, and the relevant provisions of these articles shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.</i></p> <p><i>40D Subject to article 40F, a director shall not vote at a meeting of directors or at a meeting of a committee of directors on any resolution concerning a matter in which he/she has, directly or indirectly, a personal interest or duty (unless immaterial) which conflicts or may conflict with the interests of the company.</i></p> <p><i>40E For the purposes of the preceding article:-</i></p> <ul style="list-style-type: none"> <li><i>a. an interest of a person who is taken to be connected with a</i></li> </ul>

	<p><i>director for any purpose of the Act, shall be treated as a personal interest of the director; and</i></p> <p><i>b. a director shall (subject to article 40F) be deemed to have a personal interest in relation to a particular matter if a body in relation to which he/she is an employee, director, member of the management committee, officer or elected representative has an interest in that matter.</i></p> <p><i>40F A Council Director shall, notwithstanding the provisions of article 40D and paragraph b of article 40E be entitled to vote in relation to a particular matter notwithstanding that The Highland Council has an interest in that matter; but on the basis that in exercising their voting rights in respect of any such matter, the Council Directors shall comply with the provisions of articles 40A-C.</i></p>
41 & 44 Secretary and Treasurer	<p>Delete the words <i>' at such remuneration and upon such conditions as the board may think fit'</i> and replace with <i>'on payment by agreement for Services'</i></p>
45-48 Accounts	<p>Deleted and replaced with</p> <p><i>45. Accounting records shall be kept in accordance with all applicable statutory requirements and such accounting records shall, in particular, contain entries from day to day of all sums of money received and expended by the company and the matters in respect of which such receipt and expenditure take place and a record of the assets and liabilities of the company; such accounting records shall be open to inspection at all times by any director of the company.</i></p> <p><i>46. The directors shall ensure that proper accounting records are maintained in accordance with all applicable statutory requirements.</i></p> <p><i>47. The directors shall prepare annual accounts, complying with all relevant statutory requirements.</i></p> <p><i>48. No member shall (as such) have any right of inspecting any accounting records or other book or document of the company except as conferred by statute or as authorised by the directors or by ordinary resolution of the company.</i></p>
49 Audit	<p>Delete the words <i>'Sections 159 to 161 of the Act and section 14 of the Companies Act 1967'</i> and replace with <i>'Part 16 of the Companies Act 2006'</i></p>
50 Notices	<p>Insert the words <i>' or by electronic means'</i> before the word <i>'or'</i> in line one</p>



**The Companies Acts 1948 to 1985**

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**COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL**

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**MEMORANDUM**

**and**

**ARTICLES OF ASSOCIATION**

**of**

**EDEN COURT HIGHLANDS  
(formerly Governors of Eden Court)**

(as amended by Special Resolutions May 1996, June 1999, May 2004, 2007, 2008)

THE COMPANIES ACTS 1948 to 1985

COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION OF  
EDEN COURT HIGHLANDS

1. The name of the Company is “EDEN COURT HIGHLANDS”
2. The Registered Office of the Company will be situated in Scotland.
3. The objects for which the Company is established are to promote, maintain, improve and advance public education, particularly by the encouragement of public interest in the Arts, provided that all the objects of the Company shall be exclusively charitable, and in furtherance of these objects but not otherwise:-
  - (a) To maintain, manage and control the Eden Court Theatre complex in Inverness.
  - (b) To present, promote, organise, provide, manage and produce such dramas, plays, comedies, concerts, operas, ballets, puppet shows, pantomimes, lectures, recitals, films, exhibitions, entertainments and other presentations, and performances as are conducive to the promotion, maintenance, improvement and encouragement of education or to the encouragement of the Arts.
  - (c) To establish, acquire, control, manage and carry on in Inverness and elsewhere theatres, opera houses, concert halls, lecture rooms, cinemas, libraries, reading rooms, schools, agencies, offices, dwelling houses and similar institutions and ancillary car and bus parks and ancillary services and facilities in furtherance of the objects of the Company.
  - (d) To purchase or otherwise acquire plant, machinery, furniture, fixtures, fittings, scenery, costumes, properties, musical instruments and all other effects of every description necessary or convenient or usually or normally used in connection with or for the purposes of all or any of the objects of the Company.
  - (e) To make use of cinema, radio, television, gramophone and any other device or invention relating to production or reproduction of sound and vision.
  - (f) To educate the public in an informed and critical appreciation of the Arts and for that purpose to make available to the public, drama, films, music, art, literature as will advance education and criticism thereof, theatre programmes and exhibition catalogues and to publish, distribute and sell books, periodicals, magazines, pamphlets, posters, sound and visual recording, films and communications in any form.
  - (g) To purchase, acquire and obtain interest in or sell or otherwise deal in the copyright of, or the right to perform or show any opera, play, mime, comedy, drama, film, stage piece, television or radio broadcast or musical composition which can be used or adapted for the objects of the Company.

- (h) In furtherance of the objects of the Company to engage and employ and enter into agreements with authors, actors, dancers, composers, musicians, producers, script-writers, designers, technicians and all other persons
- (i) To enter into and carry out agreements with national and local authorities and bodies throughout the Highlands and elsewhere for the furtherance of the Company's objects and in particular whereby stage presentations, films, concerts, recitals and other dramatic, literary, educational, musical and cultural presentations as are conducive to the promotion, maintenance, improvement and advancement of education or to the encouragement of the Arts, may be staged or presented.
- (j) To establish, subsidise, promote, co-operate, amalgamate or federate with or become affiliated to, act as trustees or agents for, or manage or lend money or other assistance to any charitable association, society or other body, corporate or unincorporate, established for charitable purposes only and having primary objects wholly or partly similar to those of the Company, and for the purpose of promoting the objects of the Company to co-operate with manufacturers dealers or other traders and with the Press and other sources of publicity.
- (k) To enter into and carry out agreements and arrangements with the proprietors, lessees and managers of any theatre, concert hall, cinema or other property or premises for the presentation of such stage presentations, films concerts, recitals, dramatic literary, musical and cultural presentations and events as are conducive to the promotion and advancement of education or to the encouragement of the Arts.
- (l) In connection with any theatre owned, leased to, or managed by the Company to establish and provide restaurants, refreshment rooms, lounges, bars and other similar facilities, licensed or unlicensed and car and bus parks for the use of patrons.
- (m) To sell, feu, let, hire, mortgage, dispose of or otherwise deal with or turn to account all or any of the property owned by, leased to or hired by the Company.
- (n) To provide and arrange facilities for travel, accommodation and catering for members of stage companies, artistes, musicians and officials engaged by the Company in the furtherance of its objects.
- (o) To foster and encourage the appreciation, furtherance and practice of the Arts by scholarships, studentships, prizes, competitions, awards or any similar means.
- (p) To organise, manage and provide or assist in the organisation, management or provision of any school of the theatre, cinema, drama school or similar institution or organisation for the teaching of dramatic art or otherwise in furtherance of the objects of the Company.
- (q) To establish and maintain or assist in establishing and maintaining any Pension Fund, Pension Scheme, Superannuation Fund or Superannuation Scheme for the benefit of employees of the Company or their dependents, to contribute to, co-operate with other persons, societies, organisations and bodies in establishing and maintaining any such fund or scheme.

- (r) To establish and administer a Building Fund or Funds or Guarantee Fund or Funds in furtherance of the objects of the Company.
- (s) To purchase, take on lease or in exchange, hire or otherwise acquire and hold any property, heritable or moveable, real or personal, and any rights or privileges which may be necessary or convenient for the promotion of the objects of the Company and to construct, maintain and alter any such property in furtherance of those objects.
- (t) To undertake and execute any charitable Trust having primary objects wholly or partly similar to these of the Company and which may lawfully be undertaken by the Company.
- (u) To raise money for the purposes of the Company by borrowing on such terms and on such security as may be thought fit and by guarantees, gifts or donations in response to public appeals or otherwise and in relation to such guarantees, gifts or donations to accept the same either unconditionally or subject to such conditions as may be agreed, provided those conditions are consistent with the terms of this Memorandum of Association.
- (v) To invest the monies of the Company not immediately required for its purposes in or upon such investments, securities or property as may be thought fit, subject nevertheless to such conditions (if any) and to such consents (if any) as may for the time being be imposed or required by law and subject also as hereinafter provided.
- (w) To do all such other things as will properly further the objects of the Company,

PROVIDED THAT:

- (i) the Company's objects shall not extend to the regulation of relations between workers and employers or organisations of workers and organisations of employers;
- (ii) in case the Company shall take or hold any property which may be subject to any trust (whether established by any trust deed or scheme settled by the Court of Session, or make in pursuance of any enactment relating to educational endowments or charities or otherwise) the Company shall only deal therewith or invest the same in accordance with the terms of such trust and with any law relevant thereto, and the incorporation of the Company shall not affect the liability as an individual of any member or officer of the Company who may be party to such dealing; and
- (iii) in case the Company shall take or hold any property subject to the jurisdiction of any educational or charitable authority the Company shall not sell, feu, grant a heritable security over, burden or lease the same without such authority, approval or consent as may be required by law, and the Board of Governors or other governing body of the Company shall be chargeable for any such property and be answerable and accountable for their own acts, receipts, neglects and defaults, and for the due administration of such property in the same manner and to the same extent as they would have been in their capacity as such Board of Governors or other governing body if no incorporation of the

Company had been effected; and such incorporation shall not diminish or impair any control or authority exercisable by any Court or authority having jurisdiction in relation to such property over the Board of Governors or other governing body who shall as regards any such property be subject to such control or authority as if the Company were not incorporated.

- IV. The income and property of the Company shall be applied solely towards the promotion of its objects as set forth in the Memorandum of Association and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to members of the Company and with the exception of the member of the Board of Governors who holds the post specified in Article 24(c) of the Articles of Association, no member of its Board of Governors or other governing body shall be appointed to any office of the Company paid by salary or fees or receive any remuneration or other benefit in money or money's worth from the Company.

Provided that nothing herein shall prevent any payment in good faith by the Company

- (a) of reasonable and proper remuneration to any member, officer or servant of the Company not being a member of its Board of Governors or other governing body for any services rendered to the Company;
- (b) of interest on money lent by any member of the Company or of its Board of Governors or other governing body at a rate per annum not exceeding 2 per cent less than the minimum lending rate prescribed for the time being by the Bank of England, or 3 per cent, whichever is the greater;
- (c) of reasonable and proper rent for premises demised or let by any member of the Company or of its Board of Governors or other governing body;
- (d) of fees, remuneration or other benefit in money or money's worth to a company of which a member of the Board of Governors or other governing body may be a member holding not more than 1/100th part of the capital of that company;
- (e) to any member of its Board of Governors or other governing body of out-of-pocket expenses;
- (f) of salary and other remuneration to the holder of the post specified in Article 24(c) of the Articles of Association in accordance with his contract of employment with the Company.

The Company shall be authorised on behalf of members to purchase appropriate indemnity insurance in respect of their duties as trustees of Eden Court Highlands

- V. The Inland Revenue Claims Branch, Charity Division, shall be notified of any change to this Memorandum and Articles of Association.

- VI. The liability of the members is limited.

- VII. Every member of the Company undertakes to contribute to the assets of the Company

in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding up the same, and for the adjustment of the rights of contributories amongst themselves, such amount as may be required, not exceeding £1.

- VIII. If upon the winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Company but shall be given or transferred to some other charitable institution or institutions having objects similar to the objects of the Company and which shall prohibit the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Company under or by virtue of Clause IV hereof, such charitable institution or institutions to be determined by the members of the Company at or before the time of the dissolution, and if and so far as effect cannot be given to the foregoing provisions, then to some charitable object.

# **THE COMPANIES ACTS 1948 to 1985**

## **COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL**

### **ARTICLES OF ASSOCIATION OF**

#### **EDEN COURT HIGHLANDS**

##### **INTERPRETATION**

1. In these Articles:-

“the Company” means the above-named Company;

“the Act” means the Companies Act, 1948;

“the Statutes” means the Act, the Companies Act 1967 and every other Act for the time being in force concerning companies and affecting the Company;

“the Council” means The Highland Council;

“the Board” means the Board of Governors for the time being of the Company;

“the seal” means the common seal of the Company;

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

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in visible form.

Unless the context otherwise requires, words or expressions contained in these Articles shall bear the same meaning as in the Statutes in force at the date at which these Articles become binding on the Company. References by name anywhere in these Articles to any body corporate or unincorporate shall mean and include the successors in title to such body.

##### **MEMBERS**

2. The number of members with which the Company proposes to be registered is twenty, but the Board may from time to time register an increase of members within the limit of fifty laid down by Section 28(1)(b) of the Act.

3. The Council and such individual persons as are from time to time in accordance with these Articles appointed Members of the Board, but with the exception of the holder of the post specified in Article 24(c), shall subject as hereinafter follows, be members of the Company.

4. (a) The rights of members as such shall not be transferable and shall cease upon the death of the member or upon his ceasing to be a member of the Board.

- (b) Any member may at any time withdraw from the Company by notice in writing addressed and delivered to the Secretary, and upon delivery of such notice he shall cease to be a member.
5. The company is a private company and in accordance with the requirements of Section 28(1)(c) of the Act hereby prohibits any invitation to the public to subscribe for any of its shares or debentures.

## **GENERAL MEETINGS**

6. The Company shall in each year hold a General Meeting as its Annual General Meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one Annual General Meeting of the Company and that of the next. Provided that so long as the Company holds its first Annual General Meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The Annual General Meeting shall be held at such time and place as the Board shall appoint.
7. All General Meetings other than Annual General Meetings shall be called Extraordinary General Meetings.
8. The Board may, whenever they think fit, convene an Extraordinary General Meeting, and Extraordinary General Meetings shall also be convened on such requisition, or in default may be convened by such requisitions, as provided by Section 132 of the Act.

## **NOTICE OF GENERAL MEETINGS**

9. An Annual General Meeting and a meeting called for the passing of a Special Resolution shall be called by twenty-one days' notice in writing at the least, and a meeting of the company other than an Annual General Meeting or a meeting for the passing of a Special Resolution shall be called by fourteen days' notice in writing at the least. The notice shall be exclusive of the day on which it is served and deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business and shall be given in manner hereinafter mentioned to such persons (including the Auditors) as are, under the provisions of these presents or under the Act, entitled to receive notices from the Company.

Provided that a meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in this Article, be deemed to have been duly called if it is so agreed:-

- (a) in the case of a meeting called as the Annual General Meeting, by all the members entitled to attend and vote thereat; and
  - (b) in the case of any other meeting by a majority in number of the members having a right to attend and vote at the meeting being a majority together representing not less than ninety-five per cent of the total voting rights at that meeting of all the members.
10. 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.



## PROCEEDINGS AT GENERAL MEETINGS

11. All business shall be deemed special that is transacted at an Extraordinary General Meeting and all that is transacted at an Annual General Meeting shall also be deemed special, with the exception of the consideration of the Accounts and Balance Sheet, and the reports of the board and of the auditors, and the appointment of and the fixing of the remuneration of the Auditors.
12. No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds to business. Save as herein otherwise provided the quorum shall be five members personally present.
13. If within half an hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting if convened on the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Board shall determine and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.
14. The Chairman of the Board shall preside a Chairman of every General Meeting of the Company, or if there is no such Chairman, or if he shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the members present shall elect one of their number to be Chairman of the meeting.
15. The Chairman may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place as the meeting shall determine, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
16. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:-
  - (a) by the Chairman; or
  - (b) by the at least three members present in person; or
  - (c) by any member or members present in person and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

Unless a poll be so demanded a declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

The demand for a poll may be withdrawn.

17. If a poll is duly demanded it shall be taken at such time and place and in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
18. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the poll is demanded, shall be entitled to a second or casting vote.
19. No poll shall be demanded on the election of a Chairman of a meeting, or on a question of adjournment. The demand for a poll shall not prevent the continuance of a meeting and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.
20. Subject to the provisions of the Statutes a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held. Such resolution may consist of several documents to the like effect each signed by a duly authorised agent or one or more members of the Company.

#### **APPROVAL OF BUDGET**

21. Prior to the commencement of each of its financial years the Company shall produce for the approval of the Council an annual budget, which shall not be finally approved, adopted or implemented by the Company until the approval of the Council is obtained. Apart from such power of approval of the Company's annual budget the Council shall have no vote except on a resolution to wind up the Company, when they may vote by their duly authorised representative as provided by Section 139 of the Act.

#### **VOTES OF MEMBERS**

22. Save as provided in Article 21 hereof, every member shall have one vote. No votes may be given by proxy.
23. Save as herein expressly provided, no person other than a member duly registered shall be entitled to be present or to vote on any question at any General Meeting.

#### **BOARD OF GOVERNORS**

24. (a) The Company shall have a Board of Directors which unless and until otherwise determined by a General Meeting of the Company shall comprise not more than:-
  - Four Members of the Council appointed by that Council;
  - One appointee of the Board chosen from the Eden Courts Friends, following an open recruitment process amongst Eden Court Friends;
  - One appointee of the Board on the recommendation of the Federation of Theatre Unions Scottish Committee;
  - and
  - Five appointees of the Board chosen at the Board's discretion;The employee of the Company who from time to time holds the post specified in sub-clause(c) of this Article 24. .

- (b) Each and every one of the bodies named in the last preceding sub-paragraph of this Article may from time to time and at any time appoint, or as the case may be, recommend for appointment as a Governor any duly qualified person who is willing to accept such appointment, either to fill a casual vacancy or by way of addition to the Board, provided that the prescribed number of their appointees or nominees for the time being be not thereby exceeded. Any Governor appointed in accordance with this procedure shall retain his office only until the next ordinary date for him to retire from membership of the Board under Article 31 hereof.
  - (c) The post referred to in clause IV of the Memorandum of Association, in sub-clause (a) of this Article 24 and in Articles 30 and 34, is that of Theatre Director or such other post in substitution therefor as the Governors may specify from time to time.
25. The first Governors shall be the subscribers to the Memorandum of Association and such other members of and appointees of the Board on the recommendation of the bodies specified in Article 24 hereof as are respectively appointed in writing.
26. Two assessors as may from time to time be nominated in writing to the Secretary of the Company by the Scottish Arts Council and such assessors as may from time to time be so nominated by the Council shall be entitled to attend meetings of the Company, of the Board and (if and so far as may be directed by the Board) of any committee of the Board, but without power to vote, and they shall accordingly be notified of such meetings in the same way as if they were members of the Company and the Board (where appropriate) committees of the Board.

## **POWERS AND DUTIES OF BOARD**

27. (a) The business of the Company shall be managed by the Board, who may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as are not, by the Statutes or by these Articles, required to be exercised by the Company in General Meeting, subject nevertheless to any regulations of these Articles, to the provisions of the Statutes for the time being in force and affecting the Company, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in General Meeting, but no regulation made by the Company in General Meeting shall invalidate any prior act of the Board which would have been valid if such regulation had not been made.
- (b) The Governors for the time being may act notwithstanding any vacancy in their body; provided always that in case the members of the Board shall at any time be or be reduced in number to less than the number fixed as the quorum for the transaction of business, it shall be lawful for them to act as the Board for the purpose of filling up vacancies in their body of summoning a General Meeting but not for any other purpose.
28. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the Company shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Board shall from time to time by resolution determine.
29. The Board shall cause minutes to be made in books provided for the purpose:-

- (a) of all appointments of officers made by the Board;
- (b) of the names of the Governors present at each meeting of the Board and of any committee of the Board;
- (c) of all resolutions and proceedings at all meetings of the Company, and of the Board, and of committees of the Board;

And any such minutes of any meeting, if purporting to be signed by the Chairman of such meeting, or by the Chairman of the next succeeding meeting, shall be conclusive evidence without any further proof of the facts therein stated.

## **DISQUALIFICATION OF GOVERNORS**

30. The office of Governor shall be vacated if the Governor:-

- (a) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (b) accepts any remuneration or other benefits in contravention of Clause IV of the Memorandum of Association; or.
- (c) becomes prohibited from being a Governor by reason of any order under Section 188 of the Act; or
- (d) becomes of unsound mind; or
- (e) ceases to be a member of the Company; or
- (f) is removed from office by a resolution duly passed pursuant to Section 184 of the Act; or
- (g) resigns his office by notice in writing to the Company; or
- (h) having been appointed as a Governor in his capacity as a member of the Council ceases to be such a member; or.
- (i) having been appointed by the Board on the recommendation of one of the bodies specified in Article 24 hereof, ceases to be so recommended; or
- (j) is directly or indirectly interested in any contract with the Company and fails to disclose his interest in the manner required by Section 199 of the Act.
- (k) being the holder of a post specified in Article 24(c), ceases to hold that post.

A Governor shall not vote in respect of any contract in which he is interested, or any matter arising thereout; and if he does so his vote shall not be counted. In particular, a Governor who holds a post specified in Article 24(c) shall not participate in, and shall not be present during discussion of, nor shall he be counted as forming part of the quorum of the meeting in respect of, nor shall he be entitled to vote on, any matter which relates directly or indirectly to his

contract of employment with the Company, his remuneration, or his performance of that contract, his conduct, or any disciplinary matter arising therefrom.

The provisions of Section 185 of the Act shall not apply to Governors.

- (l) fails to attend three consecutive meetings of the Board and/or three meetings per calendar year unless the failure was due to some reason approved by the Board

## **ROTATION OF GOVERNORS**

31.
  - (i) Those Governors appointed from time to time in their capacity as members of the Council will retire from office on the date of the ordinary election of Councillors for the Council to be held in 1999 and on the dates of such elections in those subsequent years in which the Council elections take place;
  - (ii) Those Governors appointed from time to time by the Board on the recommendation of the other bodies specified in Article 24 hereof will retire from office on 1 April 1997 and on the dates twelve months after the dates of the Council elections in subsequent years.
  - (iii) Those Governors appointed from time to time by the Board at the Board's discretion will retire from office on dates to be determined by the Board at the time the appointments are made.
32. Upon a vacancy so occurring on the Board, either:-
  - (a) the Council if they appointed the vacating Governor; or
  - (b) the Board on the recommendation of the same body as recommended the appointment of the vacating Governor; or
  - (c) in any other case the Board at their discretion; shall without delay appoint a Governor to fill such vacancy, unless it has previously been resolved by the members of the Company in General Meeting to abolish it, or for the time being to leave it vacant.

## **PROCEEDINGS OF THE BOARD**

33. The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the Chairman shall have a second or casting vote. The Chairman may, and the Secretary on the requisition of not less than five Governors shall, at any time summon a meeting of the Board. It shall not be necessary to give notice of a meeting of the Board to any Governor for the time being absent from the United Kingdom.
34. Subject to the provisions of Article 30 (in relation to a Governor who holds a post specified in Article 24(c) and who shall not be counted as forming part of the quorum in certain circumstances), the quorum necessary for the transaction of the business of the Board may be fixed by the Board and unless so fixed shall be five.

35. The Governors shall elect a Chairman of their meetings and may determine the period for which he is to hold office; but if no such Chairman is elected or if at any meeting the Chairman is not present within five minutes after the time appointed for holding the same the Governors may choose one of their number to be Chairman of the meeting.
36. The Board may delegate any of their powers to committees consisting of such member or members of their Board as they think fit and the Board may grant to any such Committee power to co-opt additional members whether or not members of the Company; any Committee so formed shall be in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Board.
37. A Committee may elect a Chairman of its meetings; if no such Chairman is elected, or if at any meeting the Chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be Chairman of the meeting.
38. A Committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the Chairman shall have a second or casting vote.
39. All acts bona fide done by any meeting of the Board or of a Committee of the Board or by any person acting as a Governor shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Governor or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Governor.
40. A resolution in writing, signed by all the Governors for the time being entitled to receive notice of a meeting of the Board, shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents to the like effect each signed by one or more of the Governors.

## **SECRETARY**

41. The Secretary shall be appointed by the Board on the recommendation of the Council for such term and, subject to the provisions of Clause IV of the Memorandum of Association, at such remuneration and upon such conditions as the Board may think fit; and any Secretary so appointed may be removed by the Board.
42. A provision of the Act or these Articles requiring or authorising a thing to be done by or to a Governor and the Secretary shall not be satisfied by its being done by or to the same person acting as Governor and as, or in place of, the Secretary.
43. The Board shall provide for the safe custody of the seal, which shall only be used by the Authority of the Board or of a Committee of the Board authorised by the Board in that behalf, and every instrument to which the seal shall be affixed shall be signed by a Governor and shall be countersigned by the Secretary or by a second Governor or by some other person appointed by the Board for that purpose.

## **TREASURER**

44. A Treasurer shall be appointed by the Board on the recommendation of the Council for such term and, subject to the provisions of Clause IV of the Memorandum of

Association, at such remuneration and upon such conditions as the Board may think fit; and any such Treasurer so appointed may be removed by the Board.

## **ACCOUNTS**

45. The Board shall cause proper books of account to be kept with respect to:-
- (a) The assets and liabilities of the Company;
  - (b) The sums of money received and expended by the Company and the matters in respect of which such receipts and expenditure take place; and
  - (c) All other transactions carried out by the Company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the affairs of the Company and to explain its transactions.

46. The books of account shall be kept at the registered office of the Company, or, subject to Section 147(3) of the Act, at such other place or places as the Board think fit and shall always be open to the inspection of the members of the Company, or any of them, and their duly authorised representatives.
47. The Board shall from time to time in accordance with Sections 148, 150 and 157 of the Act, cause to be prepared and to be laid before the Company in General Meeting such income and expenditure accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections. The Auditors' report shall be open to inspection and be read before the meeting as required by Section 14 of the Companies Act, 1967.
48. A copy of every balance sheet (including every document required by law, to be annexed thereto) which is to be laid before the Company in General Meeting, together with a copy of the auditors' report shall not less than twenty-one days before the date of the meeting, subject nevertheless to Section 158(1)(c) of the Act, be sent to every member of the Company and to every other person (including the Auditors) as are under these presents or under the Act entitled to receive notices of General Meetings.

## **AUDIT**

49. Properly qualified Auditors shall be appointed to examine and ascertain the correctness of the annual income and expenditure account and balance sheet of the Company and shall have their duties regulated in accordance with Sections 159 to 161 of the Act and Section 14 of the Companies Act 1967, or such re-enactment or statutory modification thereof as may for the time being be in force, the members of the Board being treated as the Directors mentioned in those Sections.

## **NOTICES**

50. A notice may be given by the Company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any within the United Kingdom supplied by him to the Company for the giving of notice to him but save as aforesaid no member other than a member described in the Register of Members by an address within the United Kingdom shall be entitled to receive any notice from the Company.

Where a notice is sent by post service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected at the expiration of 24 hours after the letter containing the same is posted.

## **INDEMNITY**

51. Every Governor or other officer of the Company (including the Auditors) shall be entitled to be indemnified out of the assets of the Company against all such losses or liabilities as are mentioned in paragraph (b) of the proviso to Section 205 of the Act which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, and no Governor or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the proper execution of the duties of his office or in relation thereto. But this Article shall only have effect in so far as its provisions are not avoided by the Statutes for the time being in force.

## **DISSOLUTION**

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



## **Eden Court Highlands**

### **Board Director**

#### **Job Description**

##### **Title: Board Director**

Eden Court Highlands is a company limited by guarantee and a charity registered with the Office of the Scottish Charity Regulator (OSCR). The Directors of the company are also Trustees of the charity.

Reports to: Chair of Board

Term: Up to four years with a maximum of two terms.

Remuneration: None. Directors may occasionally be invited to performances and they will be expected to host other guests at these performance.

##### **Purpose**

Responsible (with fellow Directors) for the strategic leadership and governance of Eden Court, its financial stability and the safeguarding of its assets, as well as providing advice and support to its senior management team.

##### **Key Responsibilities**

1. Attend Board meetings (approximately five per year), the annual general meeting and any sub committees that they are appointed to
2. Appraising, along with fellow Directors, the effectiveness of Board meetings
3. Dealing with disciplinary matters, appeals and grievances (those relating to the Chief Executive and senior managers) and ensuring there is a suitable policy and guidance for doing so
4. Ensure the financial probity of the company including ensuring there is an effective Audit and Finance Committee
5. Ensure that the company complies with Health and Safety legislation and that the board is adequately represented at Health and Safety Committee meetings
6. To act as an ambassador for Eden Court Highlands Limited by Promoting the organisation's role within the community along with its activities and its needs to the private, public and voluntary sectors so as to enhance the profile and assist with fundraising

##### **In conjunction with the Chief Executive:**

1. Establishing the vision, aims and objectives of Eden Court in keeping with its charitable objects and artistic policy.
2. Oversee the development of the business planning process to achieve the aims and objectives.

3. Ensure that the company has an up to date and realistic risk register that helps it to manage material risks in a sensible way
4. Develop, monitor and revise company policies, including employment policies, and ensure their implementation by the company's senior management team
5. Ensuring positive relationships are maintained with major stakeholders including Creative Scotland and Highland Council.

### **Some duties defined by legislation**

1. "The Companies Act 2006 sets out seven general Directors' duties which form a code of conduct setting out how Directors are expected to behave. The duties, which are owed by the Directors to the company, are as follows:

- i) To act within the company's powers;
- ii) To promote the success of the company;
- iii) To exercise independent judgement;
- iv) To exercise reasonable care, skill and diligence;
- v) To avoid conflicts of interest;
- vi) Not to accept benefits from third parties;
- vii) To declare interests in proposed transactions or arrangements.

2. Additional duties and responsibilities of Directors:-

- i) Directors have a personal responsibility to ensure that accounting records are maintained so that at any time they are able to demonstrate and explain the financial position of the company;
- ii) Companies must deliver annual accounts and reports to Companies House and the duty to ensure that the accounts are submitted on time lies with the Directors.

3. Where the company is a charity the Directors are "charity trustees" and their principal duty is to maintain overall control of the charity. They need to ensure that the charity is administered effectively and is able to account for its activities and outcomes both to the Office of the Scottish Charity Regulator ("OSCR") and to the public. The Charities and Trustee Investment (Scotland) Act 2005 describes four general duties that charity trustees are required to comply with, namely, a charity trustee must:

- i) Act in the interests of the charity;
- ii) Seek, in good faith, to ensure that the charity operates in a manner consistent with its objects and purposes;

- iii) Act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person;
- iv) Ensure that the charity complies with the provisions of this Act, and other relevant legislation.

4. The 2005 Act also puts additional specific duties on charities which charity trustees must ensure are met. These duties relate to such areas as providing charity details on the Scottish Charity Register, reporting to OSCR, financial record keeping and reporting and providing information to the public.

### **Person specification**

**It is unlikely that anyone will have all the experience listed below but all board members should have experience in a number of areas**

1. Strong interest in the performing arts, film and creative education
2. Ability to think strategically
3. Excellent communication skills
4. Collegiality
5. Previous board experience – particularly in the charitable or voluntary sector
6. Willingness to promote Eden Court in the wider community
7. A high profile within the local business or arts community
8. Expertise in business, finance, property, marketing, fundraising, retail, catering or the performing arts and a willingness to contribute relevant professional experience to the work of the board
9. Experience of working at a senior level in both the private and public sector
10. A track record of attracting funds to organisations with which they are associated
11. An understanding of the Highlands, its socio-economic environment and the issues associated with the dispersed nature of its communities