

**Companies Act 2006**

**Company limited by guarantee**

**ARTICLES OF ASSOCIATION OF**

**THE DARK SKY OBSERVATORY**

**Company Number: SC399758**

**Part 1 - Interpretation, general, charitable purposes, powers of the Company and limitation of liability**

**Defined terms**

**1. In these articles:**

**1.1 Unless the context requires otherwise:**

"articles" means the company's articles of association;

"bankruptcy" includes individual insolvency proceedings in a jurisdiction other than Scotland, England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

"Chairman" means the Chairman of the Trustees;

"chairman of the meeting" means the person in the chair at the meeting in question;

"charitable purposes" means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts;

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

"Trustee" means a director of the Company, who shall be a director of the Company for the purposes of the Companies Act 2006 and a charity trustee of the Company for the purposes of the 2005 Act;

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

"electronic form" has the meaning given in section 1168 of the Companies Act 2006;

"member" has the meaning given in section 112 of the Companies Act 2006;

"ordinary resolution" has the meaning given in section 282 of the Companies Act 2006;

"OSCR" means the Office of the Scottish Charity Regulator

"special resolution" has the meaning given in section 283 of the Companies Act 2006;

"subsidiary" has the meaning given in section 1159 of the Companies Act 2006; and

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

1.2 Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act 2006 as in force on the date when these articles become binding on the Company.

1.3 References in these articles to any other Act of the Scottish Parliament or the UK Parliament are references to that Act as amended or re-enacted from time to time and to any relevant subordinate legislation made under it.

1.4 The model articles for private companies limited by guarantee in schedule 2 to The Companies (Model Articles) Regulations 2008 (SI 2008 No. 3229) are excluded from applying to this Company.

#### **Charitable purposes**

2. The charitable purposes of the Company are:

2.1 The advancement of science, education, the arts and environmental protection by the construction of an astronomical observatory to complement the Galloway Forest Dark Sky Park and other Dark Sky locations throughout Scotland.

2.2 The provision of recreational facilities and the organization of recreational activities to advance interest amongst, and the education of, the general public in the science of astronomy and other related subjects.

2.3 To foster, promote and advance awareness of the importance of environmental protection and regeneration.

2.4 Any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.

These are its charitable purposes for the purposes of section 7 of the 2005 Act. For as long as the company is entered on the Scottish Charity Register, its purposes may only be altered with the prior consent of OSCR and in accordance with any conditions attached to such consent.

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#### **Powers of the Company**

3. The Company has power to do anything lawful in pursuit of its charitable purposes, subject to any applicable requirement of the 2005 Act.

#### **Liability of members**

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

4.1 Payment of the Company's debts and liabilities contracted before he ceases to be a member;

4.2 Payment of the costs, charges and expenses of winding up; and

4.3 Adjustment of the rights of the contributories among themselves.

## **Part 2 – Trustees and officers**

### **Numbers, appointment and cessation of office of Trustees**

5. There shall be at least three Trustees or such other higher minimum as the members authorise by ordinary resolution. There shall not be a maximum number unless the members authorise a maximum by ordinary resolution. The first Trustees shall be those persons appointed as the first directors of the Company on incorporation. Subsequent appointments shall be made in accordance with the articles below.

6. A candidate for appointment as a Trustee must be an individual and aged at least 16 and not disqualified from directorship or otherwise disqualified from trusteeship under section 69 of the 2005 Act.

7. Trustees shall be appointed by ordinary resolution of the members or by resolution of the Trustees. They shall not be required to serve fixed terms or to retire by rotation.

8. A Trustee shall cease to hold office if he:

8.1 Resigns;

8.2 Dies;

8.3 Is adjudicated bankrupt;

8.4 Is disqualified from directorship or otherwise disqualified from trusteeship under section 69 of the 2005 Act.

### **Trustees' general authority**

9. Subject to the articles and any special resolutions of the members, the Trustees have control over the Company and its funds and assets and are responsible for the management of the Company's activities, for which purpose they may exercise all the powers of the Company.

### **Trustees may delegate**

10. Subject to the articles, the Trustees may delegate any functions and any of the powers which are conferred on them under these articles or otherwise (but not the office of Trustee) to committees provided that:

10.1 Committee members may be such persons as the Trustees wish but there must be at least two Trustees on each committee at all times;

10.2 A committee must be chaired by a Trustee;

10.3 A committee shall not have any expenditure authority unless authorised by the Trustees;

10.4 A committee must adhere to any budget set for it by the Trustees and observe any financial controls and procedures the Trustees think fit.

11. The Trustees shall authorise the terms of reference of committees and may alter them from time to time.

12. The Trustees may specify procedures for committees, otherwise the procedures for the Board shall be followed by committees.

13. Committees shall report to the Trustees in such manner as the Trustees may require.

#### **Trustees' decisions**

14. Trustees may make decisions by majority vote at a Trustees' meeting or by unanimous written resolution, copies of which have been signed by each Trustee who would have been eligible to vote on the matter at a meeting.

#### **Trustees' meetings**

15. The Trustees may determine how often, when and where Trustees' meetings may be held. They may also determine the rules for the conduct of such meetings to the extent that these articles do not otherwise provide.

16. Notice of a Trustees' meeting shall be given to every Trustee in such form and with such content as the Trustees may decide.

17. The quorum for Trustees' meetings shall be two or such higher figure as the Trustees may determine.

18. A Trustee may participate in a Trustees' meeting by electronic communication provided that:

18.1 The Trustees have agreed (for a specific meeting or for meetings of the Trustees in general); and

18.2 All Trustees participating in the meeting can communicate to the others any information or opinions they have on any items of business and can vote and their vote be known and recorded; and

18.3 Any other rules for such participation made by the Trustees are observed.

#### **Chairing of trustees' meetings**

19. The Chairman shall chair any meeting of the Trustees at which he is present. If he is absent the Trustees present shall determine which of them shall take the chair.

#### **Chairman of the meeting – casting vote**

20. The chairman of a Trustees' meeting shall have a casting vote if voting on any matter is equal. This shall not apply if he is not eligible to count in the quorum or to vote on that matter for any reason.

#### **Conflicts of interest**

21. The Trustees shall declare matters of material personal interest of which they are aware that are relevant to the business of any Trustees' meeting at or before the start of the meeting. Any interested Trustee shall be counted in the quorum and may vote unless the interest gives rise to a conflict between his personal interest and the interests of the Company, in which case he must withdraw from the discussion and any decision. In the event of any doubt as to whether a Trustee should withdraw he must do so and the chairman of the meeting shall require that he does so.

22. A Trustee shall not be regarded as having a conflict of interest solely because that Trustee is also a member of the Company or that Trustee or anyone connected to that Trustee is a beneficiary of the charitable activities of the Company. Such membership or beneficiary status shall not prevent a Trustee from taking part in any Trustees' meeting unless a matter specific to him or a person connected to him is being discussed or decided, in which case he must withdraw from the discussion and any decision. In the event of any doubt as to whether a Trustee should withdraw, he must do so and the chairman of the meeting shall require that he does so.

#### **Records of decisions**

23. The Trustees shall ensure records are made of their decisions and kept for at least 10 years in accordance with the Companies Act 2006.

#### **Trustees' expenses**

24. Trustees may be paid reasonable out of pocket expenses incurred in relation to attending Trustees' meetings or otherwise performing their duties and carrying out their responsibilities.

#### **Permitted payments to Trustees**

25. No trustee may receive any fees or remuneration for any services provided to the Company (for the avoidance of doubt, including services as a Trustee or as an employee) save as expressly permitted by these Articles.

26. A Trustee may be remunerated for providing services to the Company otherwise than as a Trustee or an Officer if, but only if, the following conditions are met:

26.1 Before any agreement is entered into, the Trustees are satisfied that it is in the interests of the Company for the services in question to be provided by that Trustee and that the maximum remuneration proposed is reasonable in all the circumstances;

26.2 The maximum amount of the remuneration is set out in a written agreement between that Trustee and the Company, such agreement to specify the services to be provided;

26.3 Less than half the Trustees are at any time entitled to remuneration for services pursuant to any agreement or agreements made in accordance with the provisions of this Article.

#### **Officers**

27. The Trustees shall appoint one of the Trustees as Chairman. The appointment may be for an annual or other fixed term or for an indefinite period. A current appointment may be ended by the Trustees and they may fill any vacancy that arises. A serving Chairman may resign from that office, whether or not he is also resigning as a Trustee but if the serving Chairman ceases to be a Trustee he shall automatically cease to hold the office of Chairman.

28. The Trustees may, but do not have to, appoint any person they think fit as Secretary and/or as Treasurer of the Company. The duties and responsibilities of anyone appointed to such offices shall be determined by the Trustees from time to time. A person appointed to such office

may but does not have to be a Trustee, provided that if a Trustee is appointed he may not be remunerated in any way for holding the office.

### **Part 3 - Members**

#### **Admission of members**

29. The first members of the Company shall be the subscribers at its incorporation, who shall automatically become members as the Company is incorporated. Subsequent members shall be admitted in accordance with the following articles.

30. Any person who wishes to become a member must:

30.1 Support the charitable purposes of the Company;

30.2 Apply for membership on such application form as the Trustees may from time to time prescribe; and

30.3 Pay any admission fee or first annual subscription as may apply.

31. The Trustees, or any persons to whom they may delegate the matter, shall review and determine whether to grant membership to applicants. The decision shall be notified to the applicant as soon as reasonably practical. If the application is approved details of the successful applicant shall be entered into the Register of Members. Upon such registration the applicant becomes a member of the Company.

32. Membership is personal and cannot be transferred.

#### **Cessation of membership**

33. A cessation of membership and the date and reason for cessation shall be recorded in the Register of Members in the record of the relevant former member. Membership shall cease if the member:

33.1 Resigns;

33.2 Dies or, in the case of a body or organisation, ceases to exist;

33.3 Fails to pay any applicable annual subscription by the due date.

### **Part 4 - General meetings**

#### **General meetings subject to the articles**

34. All general meetings of the members, including any Annual General Meeting, are subject to these articles.

#### **Optional Annual General Meeting**

35. The Trustees may, but do not have to, call an Annual General Meeting of the members in each calendar year. If they decide to do so the business of that meeting shall be determined by the Trustees and set out on the notice of the meeting.

#### **Attendance and speaking at general meetings**

36. A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

37. A person is able to exercise the right to vote at a general meeting when:

37.1 That person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

37.2 That person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

38. The Trustees may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

39. In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

40. Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that they can exercise their rights to speak and vote at that meeting.

#### **Quorum for general meetings**

41. The quorum for general meetings is three members or ten percent (10%) of the total number of members of the Company (if that is a higher number). Only persons entitled to vote on the business of the meeting (whether they are members, proxies for members or authorised representatives of organisations that are members) shall be counted in the quorum. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon 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 Trustees may determine.

#### **Chairing of general meetings**

42. The Chairman shall chair any General Meeting at which he is present. If he is not present within ten minutes from the time at which the meeting is due to start, the Trustees present shall decide who shall take the chair. If no Trustees are present, the members shall decide.

#### **Attendance and speaking by Trustees who are not members**

43. Trustees may attend and speak at general meetings, whether or not they are members.

#### **Adjournment**

44. If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.

45. The chairman of a general meeting may adjourn a general meeting at which a quorum is present if:

45.1 The meeting consents to an adjournment; or

45.2 It appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

46. The chairman of a general meeting must adjourn that meeting if directed to do so by the meeting.

47. When adjourning, the chairman of the meeting must either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the Trustees.

48. If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):

48.1 To the same persons to whom notice of general meetings is required to be given; and

48.2 Containing the same information which such notice is required to contain.

49. No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

#### **Voting at general meetings**

##### **Voting – general**

50. Every member shall have one vote on any resolution, which may be exercised in person or by proxy or, for a corporate member, by its proxy or its authorised representative provided that:

50.1 A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in mental health, may vote, whatever the voting method, by his committee, receiver, curator bonis or other person in the nature of a committee, receiver, or curator bonis appointed by that court; and

50.2 No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the Company have been paid.

##### **Errors and disputes**

51. 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.

52. Any such objection must be referred to the chairman of the meeting whose decision is final.

##### **Poll votes**

53. A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with these articles. A poll on a resolution may be demanded:

53.1 In advance of the general meeting where it is to be put to the vote; or

53.2 At a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

54. A poll may be demanded by:



54.1 The chairman of the meeting; or

54.2 Two or more persons having the right to vote on the resolution; or

54.3 A person or persons representing not less than one tenth of the total voting rights of all the members having the right to vote on the resolution.

55. A demand for a poll may be withdrawn if:

55.1 The poll has not yet been taken; and

55.2 The chairman of the meeting consents to the withdrawal.

56. Polls must be taken in such manner as the chairman of the meeting directs.

#### **Members' rights to appoint proxies**

57. A member may appoint any other person of his choice as a proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the Company or any adjournment of it.

58. A member who chooses to make such an appointment remains entitled to attend, speak and vote at the meeting if he decides to do so.

#### **Proxy notices – contents, delivery, revocation**

59. Proxies may only validly be appointed by a notice in writing (a "proxy notice") which:

59.1 States the name and address of the member appointing the proxy;

59.2 Identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;

59.3 Is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the Trustees may determine; and

59.4 Is delivered to the Company in accordance with these articles and any instructions contained in the notice of the general meeting to which the proxy notice relates.

60. The Company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

61. Proxy notices may, but do not have to, specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

62. Unless a proxy notice indicates otherwise, it must be treated as:

62.1 Allowing the person appointed under it as a proxy discretion as to how to vote on any resolutions put to the meeting; and

62.2 Appointing that person as a proxy in relation to any adjournment of the meeting to which it relates as well as the meeting itself.

63. A proxy notice shall be delivered by such date as the Company may have specified in the notice of the meeting (provided that the date may not be more than 48 hours before the date of the meeting).

64. A proxy appointment under a proxy notice may be revoked by delivering to the Company a notice in writing given by or on behalf of the member on whose behalf the proxy was appointed. The revocation is effective if delivered before the start of the meeting or any adjourned meeting to which it relates.

65. A proxy notice or revocation not executed by the member appointing the proxy must be accompanied by written evidence of the authority of the person who executed it to do so on behalf of the appointing member.

#### **Proxy votes**

66. A proxy may vote on any resolution on behalf of the appointing member, regardless of the voting method, and the vote shall be counted unless the member who appointed the proxy attends the meeting and votes, in which case the proxy may not vote.

#### **Amendments to resolutions**

67. No amendment may be made to any resolution (ordinary or special) except if the amendment is:

67.1 Necessary to correct a grammatical or other non-substantive error, and

67.2 Proposed by the chairman of the meeting; and

67.3 Approved by ordinary resolution at the meeting.

#### **Written resolutions of members**

68. Written resolutions of members may be passed in accordance with the provisions of the Companies Act 2006.

#### **Records of meetings and resolutions**

69. Records of general meetings and of all resolutions of the members, whether passed at meetings or as written resolutions, shall be made and kept for at least ten years in accordance with the applicable provisions of the Companies Act 2006.

### **Part 5 - Administrative arrangements**

#### **Annual returns, accounts and reports**

70. The Company shall make a company annual return to the Registrar of Companies each year as required by the Companies Acts and applicable associated regulations.

71. The Company shall make a charity annual return to the OSCR each year as required by the 2005 Act and applicable associated regulations.

72. The Company shall keep day to day accounting records as required for a charitable company by the Companies Act 2006, the 2005 Act and applicable associated regulations.

73. Auditors or independent examiners must be appointed and the annual accounts audited or independently examined if required by applicable provisions of the Companies Act 2006, the 2005 Act and relevant associated regulations.

74. Annual accounts and reports shall be prepared, approved by the Trustees and, if required to be by law, the annual accounts shall be audited or independently examined.

75. Copies of the annual accounts and reports shall be circulated to the members of the Company and any other persons entitled to receive copies under the provisions of the Companies Act 2006.

76. The annual accounts and reports shall be filed with both the Registrar of Companies and OSCR within nine months of the end of the financial year.

#### **Restrictions on application of property**

77. The Company shall not apply any of its income or other property (on being wound up or at any other time) for purposes which are not charitable in accordance with section 7 of the 2005 Act. The provisions of this article shall take precedence over any other provisions of these articles.

78. In the event of any winding up or other dissolution of the Company, any funds and assets remaining after satisfaction of its debts and liabilities and the costs of any winding up or other dissolution:

78.1 May not be paid or distributed to the members of the Company; and

78.2 Must be transferred to any one or more charities that:

78.2.1 Have similar charitable purposes to the Company and which are charitable in accordance with section 7 of the 2005 Act;

78.2.2 Have restrictions on the application of their property at least equivalent to the restrictions applicable in these Articles.

#### **Means of communication to be used**

79. Subject to the provisions of these articles, anything sent or supplied by or to the Company under these articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company. Subject to the provisions of the Companies Act 2006, a document or information may be sent or supplied by the Company to a person by being made available on a website.

80. Subject to the provisions of these articles, any notice or document to be sent or supplied to a Trustee in connection with the taking of decisions by Trustees may also be sent or supplied by the means by which that Trustee has asked to be sent or supplied with such notices or documents for the time being.

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

#### **Company seal**

82. The Trustees shall decide whether the Company adopts a seal. If it does adopt a seal it may only be used by the authority of the Trustees. Unless otherwise decided by the Trustees, when such a seal is affixed to a document, the document must also be signed by at least two authorised persons in the presence of a witness who attests the signature. For the purposes of this article, an authorised person is:

82.1 Any Trustee of the Company; or

82.2 The Secretary of the Company (if any); or

82.3 Any person authorised by the Trustees for the purpose of signing either a specific document, or documents in general, to which the seal is applied.

**No right to inspect accounts and other records**

83. Except as provided by law or authorised by the trustees or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a member.

**Trustees' indemnity and insurance**

**Indemnity**

84. Subject to the next following article, a relevant Trustee of the Company or an associated company may be indemnified out of the company's assets against:

84.1 Any liability incurred by that Trustee in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or an associated company;

84.2 Any liability incurred by that Trustee in connection with the activities of the Company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006);

84.3 Any other liability incurred by that Trustee as an officer of the Company or an associated company.

85. These articles do not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Act 2006 or by any other provision of law.

86. For the purposes of articles 85 to 87 (inclusive):

86.1 Companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

86.2 A "relevant Trustee" means any Trustee or former Trustee of the Company or an associated company.

**Insurance**

87. The Trustees may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant Trustee in respect of any relevant loss. In this article:

87.1 A "relevant Trustee" means any Trustee or former Trustee of the company or an associated company;

87.2 A "relevant loss" means any loss or liability which has been or may be incurred by a relevant Trustee in connection with that Trustee's duties or powers in relation to the Company, any associated company or any pension fund of the Company or associated company; and

87.3 Companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

## **Rules and byelaws**

88. Any rules or byelaws must be in accordance with any provisions of the Companies Act 2006 applicable to the Company and shall be supplementary but subsidiary to the provisions of these articles. Any compulsory requirements of that Act and the provisions of these articles shall always take precedence over any provision in any rules or byelaws that in any way conflicts or is inconsistent with those requirements or provisions.

89. Subject to the preceding article, the Trustees may make such rules and byelaws to deal with any matters they consider appropriate in relation to the Company. Any rules or byelaws of the Company and any alterations or revocations of them shall be notified to the members by such means as the Trustees decide. All Trustees and all members of the Company shall be bound by and observe the provisions and requirements of any such rules or byelaws as are in force from time to time.

90. Without prejudice to the generality of the Trustees' powers under the preceding article, any rules or byelaws may deal with all or any of these matters:

90.1 Membership admission fees and annual membership subscriptions (if there are any) and the terms of payment and due dates for payment, as well as the procedures in the event of non-payment;

90.2 Procedures relating to Trustees' meetings, meetings of committees and general meetings of the members of the Company;

90.3 The rights and responsibilities of members and their conduct, to the extent that those are not dealt with in these articles, provided that:

90.3.1 No differences between classes of members in relation to rights to attend, vote and speak at general meetings may be made other than by provisions in the articles;

90.3.2 The limited liability of members and their guarantee to contribute to the assets of the Company in the event of its being wound up shall be as set out in these articles and cannot be altered or varied by any rule or byelaw.

91. Any rules or byelaws may be altered or revoked by decision of the Trustees or by ordinary resolution at a general meeting of the Company.