

## **Appendix A**

### **MANAGEMENT AGREEMENT**

#### **BETWEEN**

**ABERDEEN CITY COUNCIL**, the Local Authority for Aberdeen City in terms of the Local Government etc (Scotland) Act 1994 and having its principal office at the Town House, Broad Street, Aberdeen AB10 1AQ (hereinafter referred to as “the Council”)

and

and their successors in office as Chairperson, Secretary and Treasurer respectively of THE MANAGEMENT COMMITTEE OF [ ] COMMUNITY CENTRE ASSOCIATION, [ ], ABERDEEN, as Trustees ex officio for the said ASSOCIATION(hereinafter referred to as “the Association”)

#### **PURPOSE OF THE MANAGEMENT AGREEMENT**

This Agreement outlines the terms and conditions under which the Association will operate the Premises for the benefit of the community in partnership with the Council as detailed herein.

The Council recognises the burden of responsibilities it is requiring of the Associations in carrying out on its behalf the management and operation of the Council’s community centres. The Council recognises the limitations of time, expertise, financial and other resources available to the Association and will take cognisance of these matters in all their dealings with the Association.

#### **SHARED VISION**

The Association and the Council both enter into this agreement in the spirit of partnership working to ensure that opportunities and outcomes as determined by the communities, can be fully realised, and recognise the importance of joint working and support to achieve these aims.

#### **DURATION OF AGREEMENT**

This Agreement will run for [7] years from [ ]2016.

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### **CORE ELEMENTS OF THE MANAGEMENT AGREEMENT**

#### **REQUIREMENTS OF THE COUNCIL**

- 1.1 (a) In return for operating the Premises for the benefit of the community and in compliance with the terms of the Management Agreement, the Council shall pay the Development Grant to the Association. [Subject to 1.2 below, the Development Grant shall be ELEVEN THOUSAND AND SIXTY FIVE POUNDS STERLING (£11,065) STERLING per annum. Payment of the Development Grant shall be made quarterly in advance.
- (b) In addition to the Development Grant, for the duration of the Management Agreement, the Council shall pay the Association up to FIVE HUNDRED POUNDS (£500.00) STERLING per annum towards the cost of personal/legal liability insurance and up to TWO HUNDRED AND SIXTY POUNDS (£260.00) STERLING per annum towards the combined cost of Public Liability and Employers Liability insurance. The amounts due shall be payable by the Council within 60 days of receipt of a valid invoice together with copies of the relevant Certificates of Insurance and premium receipts. The Council reserves the right to vary the amount of the Development Grant. In the event that the Council is required to exercise this right and as a consequence the Association is unable to operate the Premises for the benefit of the community or otherwise comply with the Management Agreement then the Council and the Association shall agree any necessary amendment to the Management Agreement. In the event that amendments cannot be agreed, then the Association shall be entitled to terminate the Management Agreement subject to providing the Council with not less than 2 months' notice in writing.
- 1.2 The Council will pay directly the following bills and charges incurred in respect of the Premises i.e. all gas, electricity, water and sewerage bills, basic broadband service, rental charges for the provision of a maximum of a single voice telephone line and a single alarm line refuse and recycling (excluding food waste) collection charges. Alternatively the Association may enter into contracts for all or any of the foregoing services directly with service providers and if they do so the Council and the Association will agree an appropriate budget amount for such services which will be paid by the Council to the Association. All other bills and charges incurred by the Association will be payable by the Association. [
- 1.3 The Council shall appoint a Community Centre Liaison Officer (CCLO) to meet with and receive updates from the Association on a regular basis. in order support and monitor the implementation of the Management Agreement and any other requirements. The CCLO will arrange an annual meeting with the Association (the Annual Support Visit). The Annual Support Visit will be arranged by the CCLO at a date and time convenient to the Association and the CCLO and will aim to:
- a) identify and discuss any training and support requirements of the Association;
- ensure compliance with the provisions of the Management Agreementb)
- 1.4 The visits will enable Aberdeen City Council to effectively target resource to Centres that may need the support. The Council will provide a range of relevant training opportunities, including the provision (for the purposes of guidance) of a Management Handbook together with additional support as reasonably requested by the Association. For the avoidance of doubt, the Management Handbook is for guidance

only. The Council shall not be liable to the Association for the contents of the Management Handbook nor any guidance contained therein.

- 1.5 The Council may publicise or otherwise promote its workings with the Association as it considers appropriate, and the Association will make available to the Council reasonable access to information and documentation held by the Association which the Council may require to pursue this objective.
- 1.6 The Council will endeavour to notify the Association of the potential implications and impact of any new or changes to legislation which in the view of the Council may impact on the Association.

#### **REQUIREMENTS OF THE ASSOCIATION**

- 1.7 The Association will comply with the Law in operating the premises and providing the Programme of Activities under the terms of the Management Agreement including, but not limited to the Legislative Requirements set out in Schedule 2.
- 1.8 The Association will comply with all requirements preset out in the Council's Local Code of Practice, Funding External Bodies and Following the Public Pound policy. The Council will notify the Association of any material changes to this policy and will provide a copy of the amended policy to the Association on request.
- 1.9 The Association shall effect and maintain Public Liability insurance cover with a limit of no less than FIVE MILLION POUNDS (£5,000,000.00) STERLING and Employers Liability insurance cover with a limit of no less than TEN MILLION POUNDS (£10,000,000.00) STERLING. The Association shall not do nor omit to do anything which may or shall result in the said policy or policies of insurance being invalidated or the insurance thereunder prejudiced or which results in the Insurers refusing payment in whole or in part.

The cost of maintenance of all Moveable Equipment supplied to the Association by the Council, including any renewals required, shall be the responsibility of the Association.

- 1.10 The Association will organise a Programme of Activities in the Premises for the benefit of the local community, with or without levying an admission charge. The Programme of Activities will be operated with due skill and care, and in accordance with the Law from time to time in force (including the law relating to employment and equalities). The management and funding of the Programme of Activities shall be the responsibility of the Association. The Association may determine appropriate rates of hire for the Premises, and retain the monies accruing from hires or other trading activity, for the benefit of the running and operation of the Programme of Activities, both within the Premises and elsewhere in the community, for the benefit of the local community and in line with the constitution of the Association and local community need.

1.11

Aberdeen City Council recognises the important role of Associations providing a Programme of Activities, each Centre is unique in its offering in the community and is part of a wider network of community activity being undertaken locally. In order to understand the very valuable impact of the Associations and assist in wider planning of partners including Aberdeen City Council.

The Association will provide the following basic information to the Council by submission to the CCLO at 31<sup>st</sup> January and 31<sup>st</sup> July in each year. The information required is not a statistical analysis and we only require estimations, Aberdeen City Council Staff will support this process

- a. the number of volunteers assisting the Association in the operation of the Premises and/or the Programme of Activities in the preceding 6 month period
- b. the number of full time and part time staff assisting the Association in the operation of the Premises and/or the Programme of Activities in the preceding 6 month period
- c. the Programme of Activities during the preceding 6 month period
- d. copies of the minutes of all meetings of the Association held in the preceding 6 month period

A proforma for gathering the above information will be provided however the information may be submitted in the preferred format of the Association. Council officers will also support this process. The Association shall comply with the requirements of the Following the Public Pound policy and the information required may be amended from time to time.

1.14 Where the Association does not utilise all of the available hours during which the Premises are open for delivery of the Programme of Activities, then the Association may make the Premises available for the use of other groups and organisations upon such terms and conditions of letting as the Association may decide, subject always to the terms of the Management Agreement In the spirit of partnership the Association will make consideration to favourable or zero rates for groups and partnerships who are operating to deliver positive outcomes against local community need. 1.15 The Association will permit the Council and the relevant local Community Council to hold meetings and conduct other activities in the Premises subject to any booking procedure as may be operated by the Association. The Association will make the Premises available for polling station and emergency response use, as required by the Council. In the event that the Council requires the Premises for use as a polling station then:-

(a) the Council shall provide the Association with as much notice as is practical, having regard to the circumstances including (but not limited to) the availability of alternative accommodation and the date upon which the election is announced and

(b) the Association shall be entitled to submit a claim for reimbursement of any costs incurred as a result of the Premises being used as a polling station in accordance with the Council's procedure which is applicable at that time.

1.16 The Association may levy a membership fee and retain this income for the benefit of the running of the Programme of Activities and the operation of the Premises by the Association and for the benefit of the local community. Membership will be open to all sections of the community irrespective of their age, ethnic origin, religion, disability, sexual orientation or gender. The Association will demonstrate their commitment to anti-discrimination practices by publicising their fit for purpose Equal Opportunities policy.

1.17 All staff, including volunteers, appointed to work in the Premises will be directly accountable to the Association and the Association shall be responsible for ensuring that all staff and volunteers, as appropriate to their role, are sufficiently qualified, suitably trained and experienced, competent and

capable, and be responsible for their welfare, health and safety, and for complying with all relevant legislation and good practice guidance, including having appropriate robust policies in place (these to include procedures relating to recruitment and selection, induction, supervision, training and appraisal equalities, disclosure checks and protection of vulnerable groups).

- 1.18 The Association and the Council acknowledge that performance of the Management Agreement may require some Association Personnel (which for the purposes of this Clause shall be deemed to include volunteers) to work with children, vulnerable adults or other members of the public to whom the Council owes a special duty of care (“Vulnerable Groups”). The Association must therefore ensure that it has appropriate policies in place in relation to Vulnerable Groups. The Association will ensure that Association Personnel are appropriately trained and checked to enable the discharge of responsibilities for statutory requirements including the protection of children and vulnerable adult, health and safety and Inspection bodies. In particular, the Association shall ensure that all Association Personnel, who are carrying out regulated work, shall be a member of the appropriate Protection of Vulnerable Groups (“PVG”) scheme or seek to join such a scheme as a condition of recruitment . Any Association Personnel who are not members of an appropriate PVG scheme should not undertake regulated work as part of their normal duties. The Association may wish to request Basic Disclosure on Association Personal who may come into contact with Vulnerable Groups but do not carry out regulated work . The Association must also require third parties hiring the premises for purposes which would require a PVG check to confirm that all required PVG checks have been carried out.1.19 The Association shall provide a means of identification for staff and individual Management Committee members of the Association.
- 1.20 The Association will be responsible for ensuring that all necessary licences in connection with all activities and events in the Premises are in place, and that all the conditions contained in the said licences are complied with.
- 1.21 The Association may provide a catering service for the benefit of the users of the Premises. The Association will be responsible for ensuring that all relevant legal requirements and good practice guidelines are adhered to. Tobacco products are not permitted to be sold within the Premises.
- 1.22 The Association will provide the Council with a list of names, addresses and telephone numbers of all keyholders for the Premises and will notify the Council of any changes to the said list as soon as practical. There will be a minimum of two keyholders for the Premises at all times. In the event of the Association requiring to change the locks, then a set of new keys will be supplied to the Council in order to support emergency response.
- 1.23 The Association shall maintain proper accounts for the organisation which shall be independently examined and copies submitted annually to the Council for inspection by no later than 30<sup>th</sup> September in each year. Such accounts shall include all income and expenditure accrued by the Association and a balance sheet.
- 1.24 The Association shall adopt a Constitution in line with recognised good practice clearly stating, inter alia, the Association’s aims and objectives; qualifications for membership; method of appointing officers; voting procedures; accounting arrangements and arrangements for annual meetings and dissolution of the Association. A copy of the Constitution and any subsequent alterations must be provided to the Council for approval. The Council reserves the right to terminate the Management Agreement, if, in its opinion, the Constitution or any alterations would result in the organisation being run undemocratically or against the best interests of the community.

- 1.25 The Association will ensure that its meeting agendas and minutes are made available to the members of the Association or all other relevant persons or governing bodies in terms of the Association's Constitution and the CCLO in a timeous manner. The CCLO will be notified of, provided papers for, and invited to attend all Association meetings. The Council may nominate a substitute to attend these meetings on behalf of the CCLO.
- 1.26 Whilst there is no prohibition on Association Committee Members or Office Bearers being employees of the Association, the Association and the Council recognise that it is good practice for these roles to be held by different persons. There shall be provision in the Association's Constitution for appropriate safeguards, which address a situation where this is not practicable. Youth members (under 16 year olds) are prohibited from holding Committee Office Bearer posts<sup>1.27</sup> The Association shall be entitled to have a place on the local Learning Partnership.
- 1.28 The Association will allow the Council or its representatives reasonable access to carry out monitoring and audits as required. This shall include providing reasonable access to the Accounts Commission for Scotland, Audit Scotland, the Scottish Public Services Ombudsman. The Association wishes to participate in learning inspections or equivalent by all inspection agencies and Aberdeen City Council will ensure that the scheduling of such participation is in line with the Associations availability and will keep the time burden to a minimum and provide assistance to participate.
- 1.29 The Association will manage themselves with due skill and care, and in line with recognised good practice. .
- 1.30 The Association shall not do anything, and shall inform the Council immediately it becomes aware of anything, connected with the performance of its obligations under the Management Agreement, which shall or is likely to bring the name of the Association or the Council into disrepute.
- 1.31 The Association will put in place a suitable complaints procedure.
- 1.32 The Association shall allow the Council to install and maintain at the Premises such signs, and commemorative material, and will include in promotional material an indication of the involvement of the Council as the Council may require. If any particular requirements of the Council cause additional expenditure which could not reasonably be anticipated by the Association or expected by the Council, then the Association shall provide a detailed breakdown of these costs to the Council and the Council shall pay to the Association such costs as it deems to be appropriate in the circumstances.
- 1.33 Where the Association actively seeks external funding including sponsorship and advertising then in doing so, the Association must not accept sponsorship or funding from any industry, individual or organisation that could potentially compromise the Management Agreement, or the ethos, principles, reputation and legal obligations of the Council. If there is any doubt as to whether the acceptance of sponsorship or advertising income could potentially compromise the Management Agreement or the ethos, principles and legal obligations of the Council, then the Association should seek formal agreement from the Council in writing prior to finalising any arrangement.
- 1.34 If the Association wishes to close all or part of the Premises to the public for any period(s) of time then the Council will be notified at the earliest possible opportunity and in any event the Council will receive at least four weeks notice of any planned closure. In this event, the Council will have the right to provide an alternative Programme of Activities.

1.36 The Association will ensure that all monies held by the Association are managed in a prudent manner in accordance with the terms of the Association's Constitution and for no other purpose whatsoever.

## **2. OTHER REQUIREMENTS OF THE MANAGEMENT AGREEMENT**

### **2.1 Competitive Tendering/ State Aid**

The Association will submit its competitive tendering procedure to the Council for approval and ensure that it follows the approved procedure in relation to all purchasing.

The Association will provide such information as is requested by the Council to enable the Council to meet its obligations in regards to State Aid Assessment and Notification as appropriate.

### **2.2 Warranties**

The Association hereby further warrants to the Council that:-

- a. it has power to enter into the Management Agreement and has taken all necessary action to authorise its execution, completion and performance;
- b. the Management Agreement shall constitute legally binding obligations on the Association enforceable in accordance with its terms;
- c. it has entered into the Management Agreement in good faith
- d. the execution, delivery and performance of the Management Agreement does not nor shall not contravene any of the provisions incorporated within the Association's Constitution, nor of any contract or other instrument to which the Association is a Party or which is binding upon its assets;
- e. it has accepted the condition of all the Moveable Equipment supplied by the Council under the Management Agreement as is and satisfied itself that the equipment is suitable for the operation of the Programme of Activities for the duration of the Management Agreement
- f. it shall comply as appropriate with all best practice and Law affecting the operation of the Premises and Programme of Activities,
- g. it shall exercise its business in good faith to enable the Association to have sufficient funds to meet its commitments when operating the Management Agreement at all times.

In the event of any of the matters included in any of the foregoing warranties being untrue or proving to be unfounded, the Council will be entitled to terminate the Management Agreement forthwith and may take the appropriate legal action, subject to the agreement of the appropriate Committee of the Council or the Council itself

### **2.3 Subject to the following provisions of this Clause, the Council hereby warrants to the Association that:-**

- a. it has power to enter into the Management Agreement and has taken all necessary action to authorise its execution, completion and performance; and
- b. the Management Agreement shall constitute legally binding obligations on the Council enforceable in accordance with its terms.
- c. it has entered into the Management Agreement in good faith

### **2.4 In the event that the Association makes a claim (which must be received in writing by the Council within six months of the Commencement Date) under any of the warranties which is admitted by the Council or otherwise determined in favour of the Association, the Association's remedy shall be either (a) the right to terminate the Management Agreement or (b) a payment by the Council to the Association of an amount equal to the loss or damage which the Association has suffered.**



## 2.5 Variation and Dispute Resolution

The terms of the Management Agreement shall not be amended or altered except by mutual agreement in writing and signed by the duly authorised representatives of the Council and the Association. Any dispute or difference arising between the Parties in relation to the provisions of the Management Agreement shall first be referred to the Council's Director of Communities, Housing and Infrastructure and an appropriate nominee of the Association Management Committee who shall attempt to reach an acceptable resolution. Should such a resolution fail to be reached the dispute will be determined by an expert to be agreed between the Parties. Failing agreement on an expert, either Party may apply to the Sheriff Principal of Grampian, Highlands and Islands for the appointment of such an expert.

Notwithstanding the method of appointment of the expert, it shall be an express condition of appointment that any decisions will be issued within 14 days of a joint statement by both Parties, such Parties being obliged to act reasonably and expeditiously in the preparation of such statement. Any decision issued by such an expert shall be binding on both Parties except in the event of a manifest error in fact or in law. The appointed expert shall determine the party liable for the costs of the appointment (including how those costs may be apportioned).

## 3. BREAK OUT/ STEP IN RIGHTS/ TERMINATION OF AGREEMENT ARRANGEMENTS

### 3.1 Termination: In the event of the occurrence of any one or more of the following:-

- a. the Association is in breach of any of the provisions of the Management Agreement
- b. the Association has failed to pay any sum due under the terms of the Management Agreement (which sum is undisputed by the Association) and any such sum remains unpaid for 60 Days from the date of service of a notice by the Council advising of non-payment and demanding payment of the sums due,
- c. an order is made or an effective resolution is passed for the dissolution of or winding-up of the Association or if an administration order is granted in respect of the Association;
- d. subsequent to any Court Action, any diligence, execution or sequestration or other process be issued upon or against any of the property of the Association and is not paid or discharged within seven days;
- e. any security created by any heritable security or charge executed by the Association or any subsidiary of the Association shall become enforceable and the Holder shall take any steps to enforce the same.
- f. the Association is deemed to have operated at any time outside the terms of the Association's Constitution, Articles of Incorporation or other related document which defines the nature of and governance structures of the Association.
- g. the Association fails to meet or there are insufficient members of the Association to constitute a quorum at meetings for a minimum period of 6 months; or
- h. any period of closure of the Premises to the public lasts for longer than one month (unless the closure has been approved by the Council); then

the Council shall be entitled to terminate the Management Agreement

### 3.2 Notwithstanding the foregoing if the event entitling the Council to terminate the Management

Agreement is capable of being remedied the Council shall first give notice to the Association specifying the breach in question and identifying the appropriate remedy, and giving the Association [20 working days]days to remedy the breach. If the Association has failed to remedy the breach at the expiry of the [20 working ] day period the Council shall be entitled to withhold payment of the Development Grant. Should the breach not be remedied within a further period of[ 20 working days] days the Council shall be entitled to thereafter immediately terminate the Management Agreement by written notice.

- 3.3 In the event that the Lease of the Premises is terminated for whatever reason, then the Management Agreement shall immediately terminate as at the same date, without the need for any further action on the part of either party.
- 3.4 On termination of the Management Agreement, the Council shall be entitled to put in place alternative arrangements for the delivery of activities within the Premises.
- 3.5 In addition, the Council may by giving not less than twelve months' notice in writing to the Association (or such shorter period of notice as is necessary in any case to ensure the Council's continuing compliance with the Law), terminate the Management Agreement where it determines that:-
  - a. changes in Council policy; and/or
  - b. changes in budgetary considerations on the part of the Council; and/or
  - c. changes in Law; and/or
  - d. acts or omissions on the part of the Scottish Government may make this necessary or desirable.
- 3.6 The Association may terminate the Management Agreement immediately by written notice to the Council if the Council commits a material breach of the Management Agreement, and fails to remedy that breach within 20 Working Days of the Council's receipt of written notice from the Association specifying the breach, and asking the Council to remedy it.
- 3.7 The Association may terminate the Management Agreement by giving 3 months written notice to the Council.
- 3.8 In the case of termination, the Council and the Association shall take all action (so far as is possible) to put the Parties in the same position as they would have been in had they not entered into the Management Agreement. The Council undertakes to ensure as far as possible that the arrangements contemplated by the Management Agreement are brought to an end in such a way that the Association is not rendered insolvent at the date of termination of the Management Agreement, as a direct result of the termination of the Management Agreement pursuant to this Clause.
- 3.9 On termination of the Management Agreement for any reason whatsoever:-
  - a. the Association shall transfer to the Council the benefit, of any event bookings as the Council may direct, and the Association shall use all reasonable endeavours to ensure that all necessary consents are obtained to the transfer to the Council of each of the event bookings requested by the Council
  - b. the Association shall, as far as practicable, co-operate fully with the Council and any person who shall in future operate the Programme of Activities or provide services the same as or similar to those provided under the Management Agreement or any of them or any part of them in order to

achieve a smooth transition from the then arrangements for the operation of the Premises to the new arrangements, and to avoid any inconvenience to, or any risk to the health and safety of, the Council, employees and agents, and members of the public;

- c. the Association shall on or prior to the date of termination of the Management Agreement vacate the Premises, leaving it in a clean and orderly condition and deliver to the Council all keys to the Premises, and within twenty Working Days remove from the Premises all of its own property.

3.10 Step In Rights: Without prejudice to any other right or remedy of the Council under the Management Agreement, if the Council reasonably considers that a breach by the Association of an obligation under the Management Agreement may or will:

- a. create (or has already created) an immediate and serious threat to health, safety or the environment; or
- b. fail to comply with the Law; or
- c. result (or has already resulted) in an interruption to or disruption of the operation of the Premises and/or the Services (including the Programme of Activity) to be provided under the Management Agreement or;
- d. cause (or has already caused) a material breach by the Council of its obligations under Law, or to other contractual parties or;
- e. cause (or has already caused) a serious nuisance: or
- f. constitute an emergency;

then, if the Council considers that there is sufficient time and that it is likely that the Association will be willing and able to provide assistance, the Council may serve a Notice on the Association requiring it forthwith to take such steps as the Council, acting reasonably, considers necessary or expedient to mitigate or preclude such state of affairs including any necessary deadlines within which such steps must be taken.

In this instance, the Association shall use all reasonable endeavours to comply with any Notice received. This shall include full co-operation and all reasonable assistance, including reimbursing the Council for all reasonable costs incurred by the Council in taking such action. Failure to comply will result in immediate suspension or termination of the Management Agreement. In the event of termination, the Association may be given not less than five working days notice to vacate the Premises.

3.11 The Council shall have no liability to the Association for any damage which has occurred prior to the exercise by the Council of its step-in rights under this Clause , or which results from breach by the Association of any of its obligations under the Management Agreement, but shall be liable for any damage or liability caused by or attributable to the negligent acts or omissions of it or its employees, agents or contractors during any period during which it exercises such step-in rights.

3.12 Where an "Emergency" arises, and that Emergency consists of an event or events which could not reasonably have been foreseen by the Association, if the Council has not served a Notice on the Association or exercised its step-in rights, and the Association has used all reasonable endeavours to deal with the Emergency (and demonstrated to the Council's reasonable satisfaction that it has done so) but has nevertheless failed to satisfactorily bring the emergency to an end; or the Council has served a Notice on the Association and the Association has used all reasonable endeavours to comply with such Notice, but has nevertheless failed to so comply to the reasonable satisfaction of the Council; then the Association shall have the right to require the Council to exercise its step-in rights to deal with the

emergency.

- 3.13 The Council shall be entitled to close down the Premises without notice, in the event of an Emergency or any other unforeseen circumstance. For the avoidance of doubt, this includes where the Council is directed to close the Premises on the advice or instruction of its contractor. In these circumstances, the Council shall not incur any liability to the Association.
- 3.14 In the event that the Premises are closed to the public through no act or omission on the part of the Association and remain closed for a period of time, the Council shall provide such support to the Association as is reasonable in the circumstances, in order to assist the Association in securing suitable alternative premises or otherwise making arrangements for the delivery of the Programme of Activity. In addition the Council shall assist the Association in identifying possible mechanisms or arrangements which mitigate the financial impact of any unforeseen closure of the Premises in accordance with this Clause.

## **4.**

### **4.1 General**

The Association will co-operate fully with any legal proceedings, enquiry, arbitration or investigation (including an investigation by the Scottish Public Services Ombudsman) arising out of the operation of the Premises by the Association or the arrangements set out in the Management Agreement generally, and the Association shall give evidence in such enquiries, arbitrations, proceedings and hearings without cost to the Council. Notwithstanding the above, in the event that the Scottish Public Services Ombudsman makes a finding of maladministration or injustice against the Council as a result of fault on the part of the Association, the Council reserves the right to recover from the Association any payments made by the Council to the complainant.

In performing the Management Agreement, the Association shall accept full responsibility for and shall save, indemnify, defend and hold harmless the Council and any of the Council's contractors and its and their staff from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities in respect of the Association and its Connected Persons, Association Party and Association Personnel's non-compliance with the Law; or which arise out of the personal injury to or the death of Association Personnel; or which arise out of loss of or damage to the Association's property and the property of any Connected Person, Association Party or Association Personnel whether owned, hired, leased or otherwise provided by the Association arising from or related to the purposes of the Management Agreement; or which may at any time be made arising as a result of the wilful or negligent acts of the Association, any Connected Person, the Association Personnel or any Association Party in connection with the operation of the Programme of Activities; or in respect of personal injury to or death of any Third Party as a result of the operation of the Programme of Activities by the Association; or any claims, losses, damages, costs (including legal costs), expenses and liabilities loss or damage caused to any land, structure, building or moveable property in the ownership, occupation or possession of or partial occupation or possession of the Council by the wilful misconduct or negligence of the Association, any Association Party or Association Personnel; and any payment made by the Council to a complainant following a finding of misadministration causing injustice by the Scottish Public Services Ombudsman where such finding results from any act or omission of the Association or any Association Party or Association Personnel.

In performing the Management Agreement, the Council shall be responsible for and shall save,

indemnify, defend and hold harmless the Association from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of personal injury including death or disease to Association Personnel which is caused by the wilful or negligent acts of the Council or its staff during the course of their employment but not in any other way whatsoever, or loss or damage to the Association's property which is caused by the wilful or negligent acts of the Council or its staff during the course of their employment but not in any other way whatsoever.

Any information provided to the Association by the Council by way of guide quantities, plans, drawings, reports, databases, files or similar information at any time (including for the avoidance of doubt any guidance and the Management Handbook), is provided only as a guide. The Association agrees that it has ascertained for itself the accuracy of the information and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Association's decision to enter into the Management Agreement. No claim against the Council shall be allowed whether in contract, in delict or otherwise on the grounds of any inaccuracy.

The Council accepts no liability or responsibility for any loss arising as a result of failure of the Association to follow the requirements of the Management Agreement, or for any loss, damage, injury howsoever occasioned incurred as a result of the Association delivering the Programme of Activities by way of the methods detailed in any documentation submitted by or to the Council as required or otherwise authorised by the Management Agreement. No liability will be held against the Council for any loss, damage, injury howsoever occasioned incurred as a result of the Council curtailing any activity in terms of Step In Rights or Termination of the Management Agreement.

Where consent or approval is referred to this is taken to be prior written consent and no claim shall lie against the Council in respect of any delay in processing or refusal to grant such consent. The Council will respond to a request for consent within a reasonable timescale. Further no claims shall be against the Council in respect of any actions taken by the Association as a consequence of the grant of such consent or approval.

#### 4.2 **Assignment/Sub-Contracting**

The Council shall at its own discretion, be entitled to assign the Management Agreement or any part of it or any benefit or interest in it to any of its statutory successors. Further the Council shall be entitled to assign at its own discretion the Management Agreement or any part of it or any benefit or interest in it to any other legal body or organisation, whether or not wholly owned or partially owned by the Council, which the Council may come into an arrangement with pertaining to the management or otherwise the operation of the Management Agreement, subject to consulting with the Association on any potential impacts of such a transfer or assignment.

- a. Should the Council be affected by re-organisation by legislation resulting in a structural change or amendment to its functions the Parties hereto agree that this will result in a formal assignment of the Management Agreement having taken place by operation of Law. In this event, the Association shall use all reasonable endeavours to assist in the smooth transfer of arrangements to facilitate this assignment.
- b. The Association shall in no circumstances assign or purport to assign the Management Agreement or any part of it or benefit to or interest in it to any person whomsoever without the prior written approval of the Council.
- c. The Association shall not sub-contract any part of the Management Agreement without the

Council's prior written consent. Notwithstanding such consent, the Association shall not be relieved from any liabilities or obligations under the Management Agreement and shall be responsible for the acts, omissions and breaches of any of its sub-contractors as fully as if they were the Association's own and shall save, defend, indemnify and hold harmless the Council from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities in respect of such, acts, omissions and breaches of its sub-contractors.

- d. Where consent to sub-contracting is granted, the Association shall provide each of its sub-contractors with a copy of the Management Agreement. Prior to its sub-contractor commencing work, the Association shall obtain a written undertaking from its subcontractor that its sub-contractor is familiar with the documentation and will act fully in conformity with the terms and Conditions contained therein insofar as relevant to the Association.

#### **4.3 Notices**

Where any notice or other communication is to be made under the Management Agreement, it must be in writing to the chairperson of the Association. Notices or communications will be sent by recorded or special delivery to, the address of the Party as stated in the Management Agreement or any other address they may nominate in writing from time to time in accordance with this Clause.

Any notice or communication shall be treated as having been received by the person to whom it is addressed two Working Days following the date of dispatch of the notice by post. However, where in any case, these rules would result in a notice or communication being treated as having been received on a day that is not a Working Day, it shall be treated as having been received on the next Working Day afterwards. To prove the giving of the notice it shall be sufficient to show it was properly dispatched.

#### **4.4 Force Majeure**

In the event of an Act of God or Force Majeure (which shall include acts of government, fire, tempest, acts of war and related matters, which are both beyond the control of the Association and are such that the Association with the application of all due diligence and foresight could not prevent) which causes the cessation of or substantial interference with the performance of the Services, the duty of the Association to perform the Services shall be suspended until such circumstances have ceased. The Council shall not be liable to make any payment to the Association in respect of such suspension. Any Development Grant already paid to the Association will not be reclaimed by the Council in the event of Force Majeure or an Act of God.

For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties and failure to provide adequate premises, equipment, materials, consumables and/or staff or similar matters are not to be considered as events of Force Majeure or Acts of God.

### **5. GOVERNING LAW AND JURISDICTION**

5.1 The Management Agreement shall be governed by, and interpreted in accordance with Scots Law. IN WITNESS WHEREOF these presents typewritten on this and the [] preceding pages, together with the Schedule annexed are executed as follows

They are signed for and on behalf of Aberdeen City Council at Aberdeen by: -

Signed  
(Proper Officer)  
Print Name

Signed  
(Witness)  
Print Name

Date

Address

Position

For and on behalf of ##### COMMUNITY CENTRE at

by

Signed  
(Chairperson)  
Print Name:

Signed  
(Witness)  
Print Name

Date

Date

Signed  
(Treasurer)  
Print Name:

Signed  
(Witness)  
Print Name

Date

Date

Signed  
(Secretary)  
Print Name:

Signed  
(Witness)  
Print Name

Date

Date

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING MANAGEMENT AGREEMENT BETWEEN  
ABERDEEN CITY COUNCIL AND THE ASSOCIATION OF ##### COMMUNITY CENTRE**

**SCHEDULE PART 1– DEFINITIONS AND INTERPRETATIONS**

- 1.1. In this Agreement the following words and expressions shall have the following meanings (unless a specific clause states otherwise):-
- 1.1.1 "Management Agreement" means this agreement between the Council and the Association;
- 1.1.2 "Community Centre Liaison Officer" or "CCLO" means that member of the Council's staff with responsibility for monitoring the performance of and communicating or otherwise liaising with the Association;
- 1.1.3 "Commencement Date" means [] notwithstanding the date or dates of signature of this Agreement;
- 1.1.4 "Connected Person" means any legal person (including a company, individual or association, corporate or unincorporated) which has a substantial interest in the Association or which is owned or controlled by the Association;
- 1.1.5 "DPA" means the Data Protection Act 1998;
- 1.1.6 "EIR" means the Environmental Information (Scotland) Regulations 2004;
- 1.1.7 "Equalities Law" includes the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Rights Act 1996, the Employment Act 2002, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Work and Families Act 2006, the Equality Act 2006, the Equality Act (Sexual Orientation) Regulations 2007 and the Equalities Act 2010, whether now or hereafter in effect.
- 1.1.8 "Premises" means the premises known as and comprising ##### Community Centre, #####, Aberdeen as detailed within the Lease.
- 1.1.9 "Financial Year" means the term of twelve months commencing on 1st April and ending on 31st March;
- 1.1.10 "FOISA" means the Freedom of Information (Scotland) Act 2002 together with any guidance and/or codes of practice issued by the Scottish Information Commissioner in relation to such legislation;
- 1.1.11 "Information" has the meaning given to that term under section 73 of FOISA and, for the avoidance of doubt, includes this Agreement and any information (including the Association's Confidential Information) disclosed hereunder;
- 1.1.12 "Law" means any applicable law, enactment, statute, proclamation, bye-law, directive, decision, court decree, regulation, rule, order, notice, rule of court or delegated or subordinate legislation, whether now or hereafter in effect;
- 1.1.13 "Association Party" means the Association's sub-contractors, agents, contractors, or any other party for whom the Association is liable at law;



- 1.1.14 "Association Personnel" means all employees of the Association and/or any Association Party or Connected Person under the control or direction of the Association.
- 1.1.15 "Parties to the Agreement" means the Council and the Association, with each individually being referred to as a "Party".
- 1.1.16 "Development Grant" means the funding to be provided by the Council to the Association as a contribution towards the delivery of the Services.
- 1.1.17 "Personal Data", "Data Controller" and "Process" bear the meanings given to them in the DPA;
- 1.1.18 "Programme of Activities" means the overall programme of activities delivered in the Premises in accordance with the terms of the Management Agreement;
- 1.1.19 "PVG" means the Protection of Vulnerable Groups (Scotland) Act 2007 and the Protection of Vulnerable Groups Scheme
- 1.1.20 "Request for Information" means a request for information or an apparent request under FOISA or EIR;
- 1.1.21 "Services" means all of the services to be provided from time to time by the Association to the general public pursuant to the Management Agreement, including the Programme of Activity
- 1.1.22 "Termination Date" means [28<sup>th</sup> January, 2023] or such earlier date in the event that either Party invokes its rights to terminate the Management Agreement.
- 1.1.23 "Vulnerable Groups" bears the meaning given to it in Clause 1.19;
- 1.1.24 "Working Days" means Monday to Friday excluding bank holidays in the United Kingdom and public holidays in Aberdeen.
- 1.1.25 "Charges" means the list of fees or charges which may be levied by the Association to users of the Services in return for participation in defined activities.
- 1.1.26 "Lease" means the lease agreement to be entered into between the Council and the Association which governs the Association's occupation and use of the Premises and which comprises Part 3 of the Schedule.
- 1.1.27 "Emergency - " means any event unforeseen by the Council affecting the Programme of Activities or Premises, whether directly or indirectly, which causes or has the potential to cause an immediate and imminent threat to the long term integrity of any part of the Programme of Activities or Premises or to land adjacent to, or likely to be affected by events on, any part of the Premises.
- 1.1.28 "Moveable Equipment" – means all equipment which is neither fixed nor heritable.
- 1.2. In this Agreement:
- a. any reference to a provision of a statute includes references to that provision as amended, extended or applied by any other provision regardless of whether the other provision became law before or after the Management Agreement, any re-enactment of that provision (with or without change); and any regulation, order, code of practice or similar thing having the force of law made

(before or after the Management Agreement) under that provision or any provision falling within Clause 1.2(a) above

- b. the singular shall include the plural and vice versa and reference to one gender shall include any other gender;
  - c. "including" shall mean "including but not limited to"; and
  - d. reference to a Clause or a Sub-Clause is to the relevant clause or sub-clause of the Management Agreement, unless otherwise stated.
- 1.3. In the event of any ambiguity or contradiction between the conditions of any documents forming part of the Management Agreement, then the documents shall be given precedence in the order listed below:
- a. The Management Agreement
  - b. Any other documents forming part of the Schedule, including the Lease.

## **SCHEDULE PART 2 - LEGISLATIVE REQUIREMENTS**

### **1.1 Corrupt/ Illegal Practices/ Bribery Act 2010**

The Association is responsible for ensuring that the requirements of the Bribery Act 2010 are met. The Council shall be entitled to cancel the Management Agreement and to recover from the Association the amount of any loss or damage resulting from such cancellation if: -

- a. the Association shall have offered, or given, or received, or agreed to give to any person any gift, consideration, inducement or award of any kind for doing or not doing any action in relation to the Management Agreement or any other agreement with the Council; or
- b. like acts shall have been done by any Association Personnel, Association Party or Connected Person or acting on behalf of the Association (whether with or without the knowledge of the Association); or
- c. in relation to any agreement with the Council, the Association or persons employed by the Association or acting on behalf of the Association shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 or have given any fee or reward, the receipt of which is an offence under any legislation pertaining to Local Authorities; or
- d. the Association or its representative (whether with or without the knowledge of the Association) shall have practised collusion in relation to the Management Agreement or any tendering for any other contract with the Council or shall have employed illegal practices either in obtaining or executing the Management Agreement or any other contract with the Council.

### **1.2 Data Protection/ Confidentiality**

The Council and the Association hereby agree to ensure that they will at all times comply with the provisions and obligations imposed by DPA and the data protection principles contained in Schedule 1 of DPA in Processing Personal Data. In Processing Personal Data on behalf of the Council, the Association shall comply with the said data protection principles, act at all times in accordance with the instructions of the Council as Data Controller and generally do nothing to compromise the Council's compliance with its obligations as Data Controller.

Similarly, in Processing Personal Data on behalf of the Association, the Council shall comply with the said data protection principles, act at all times in accordance with the instructions of the Association as Data Controller and generally do nothing to compromise the Association's compliance with its obligations as Data Controller.

In the event that the Association operates CCTV at the Premises, then the Association must in all

respects comply with the Information Commissioner's Office CCTV Code of Practice.

Both parties agree to save, indemnify, defend and hold harmless each other in respect of any unauthorised disclosure or other Processing of Personal Data.

The Association recognises that under the Management Agreement it may receive confidential or proprietary information of the Council. The Association agrees not to divulge such information to any person, except to Association Personnel and then only to those Association Personnel who need to know the same for the performance of the Services, without the Council's prior written consent. Further, the Association shall prevent disclosure or access by any third party other than in accordance with the provisions of the Management Agreement. The Association shall ensure that Association Personnel are aware of and are complying with the provisions of this Clause. This obligation will survive the termination of the Management Agreement.

### 1.3 **Freedom of Information Scotland Act (FOISA) and Environmental Information Regulations (EIR)**

The Association acknowledges that the Council is subject to the requirements of FOISA and EIR and shall assist and co-operate with the Council at no additional charge, in meeting any reasonable requests for information in relation to the Management Agreement, or the Services to be provided thereunder, which are made to the Council in connection with FOISA or EIR. The Council may, from time to time, serve on the Association an information notice requiring the Association within such time and in such form as specified in the information notice to furnish to the Council such information as the Council may reasonably require relating to such requests for information. The Association acknowledges that in responding to such requests for information, the Council shall be entitled to provide information relating to the Management Agreement or the Services to be provided hereunder.

The Association shall not respond directly to any requests for Information made under FOISA or EIR but shall instead pass these to the Council within two Working Days of receipt of the same and advise the applicant accordingly.

The Council shall be responsible for determining in its absolute discretion:- whether any Information is exempt from disclosure in accordance with the provisions of FOISA or EIR; and/or whether the disclosure of any of the Information is otherwise in the public interest (whether or not such information would otherwise be exempt from disclosure under FOISA or EIR);

The Association acknowledges that the Council may, acting in accordance with the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under FOISA, disclose, or publish through its publication scheme, any Information without consulting or obtaining consent from the Association, or having taken the Association's views into account.

### 1.4 **Equal Opportunities**

The Association shall provide a copy of its Equal Opportunities Policy, which upon execution of the Management Agreement shall be deemed to be part hereof. The Association warrants that this policy complies with the statutory obligations set down in the Equality Act 2010 and that it shall not treat one group of people less favourably than others because of their colour, race, nationality or ethnic origin, gender, disability, religion or belief, age or sexual orientation in relation to the decisions to recruit, train or promote Association Personnel, volunteers nor in the provision of the Services.

The Association shall observe as far as possible the Commission for Racial Equality's Code of Practice for

Employment as approved by Parliament in 2006, or any other guidance which supersedes the Code of Practice, which gives practical guidance to employers and other in the elimination of racial discrimination and the promotion of equality of opportunity in employment, including the steps that can be taken to encourage members of the ethnic minorities to apply for jobs or take up training opportunities. If any court or tribunal, or the Equality and Human Rights Commission, should make any finding of unlawful discrimination against the Association, then the Association shall take all necessary steps to prevent recurrence of such unlawful discrimination.

**SCHEDULE PART 3 – LEASE**

**SCHEDULE PART 4 – PLAN OF BUILDING**