

## Appendix B

Aberdeen City Council, the Local Authority for Aberdeen in terms of the Local Government, etc. (Scotland) Act 1994, and having its principal office at Marischal College, Broad Street, Aberdeen AB10 1AB is the trustee of the City of Aberdeen Council Guildry & Mortification Funds (the "Trust").

The Trust (constituted and defined by an Extract Decree of Declarator dated 9 March and 22 May 1838 and extracted on 21 June 1838 and an Extract Decree of Declarator and Reduction dated 7 February 1871 and extracted on 18 April 1871 and varied by a scheme under and in terms of s9 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 and approved by the Court of Session by interlocutor dated 7 January 1997) is registered with OSCR with charity reference number SC011857.

This Trust Deed is a replacement and restatement deed, in order that the trust be reorganised in line with Section 39 of the Charities and Trustee Investment (Scotland) Act 2005, by an application to OSCR for a variation to the constitution.

(One) appoint as trustee ourselves (who and whose successors are referred to as "the Trustee")

### Trust purposes

1. The Trustee shall hold and apply any such funds and assets as may from time to time be comprised in the Trust Property, in trust (i) to relieve financial hardship among the Burgesses of Guild of Aberdeen present and future and their widows and widowers and families (including without prejudice to the foregoing generality children of deceased Burgesses of Guild at Aberdeen) by the payment of annuities of such amounts as the trustees in their absolute discretion may determine;  
  
(ii) to assist persons born or habitually resident in the City of Aberdeen and intending to pursue careers that if pursued would qualify them for admission as Burgesses of Guild of Aberdeen to pursue educational or vocational training courses or otherwise to further their proposed careers, and that by means of grants or scholarships of such number and amounts as the trustees in their absolute discretion (but after consultation with the Lord Dean of Guild and his Assessors as the trustees in their absolute discretion may determine) may determine;  
  
(iii) for the prevention or relief of poverty in the City of Aberdeen;  
  
(iv) for the advancement of education in the City of Aberdeen;  
  
(v) for the relief of those in need by reason of old age, ill health, disability, financial hardship or other disadvantage in the City of Aberdeen;
2. The expenses of creating and administering the Trust, and any tax payable in relation to the Trust, shall be met in priority to all other payments and transfers of assets out of the Trust Property.

## **Powers**

3. In the administration of the Trust, the Trustee shall, in addition to the powers and rights which are conferred by law upon trustees who are acting without remuneration, have the fullest powers with regard to investment, sale, administration and management of the Trust Property as if it was owner; in particular (but without limiting the scope of the powers which it may exercise under the preceding provision), the Trustee shall have the following powers:-
- (a) To expend the whole assets of the Trust for the Trust Purposes.
  - (b) To carry on any other activities which further any of the Trust Purposes.
  - (c) To take such steps as may be deemed appropriate for the purpose of raising funds.
  - (d) To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them).
  - (e) To establish and/or support any other charity, and to make donations for any charitable purpose falling within the Trust's Purposes.
  - (f) To purchase, take on lease, hire, or otherwise acquire, any property or rights.
  - (g) To improve, manage, develop, or otherwise deal with, all or any part of the Trust Property.
  - (h) To sell, let, hire out, license, or otherwise dispose of, all or any part of the Trust Property.
  - (i) To borrow money, and to give security in support of any such borrowings by the Trust.
  - (j) To employ such staff as are considered appropriate for the proper administration of the Trust or for the proper conduct of the Trust's activities, and to make reasonable provision for the payment of pension and/or other benefits for members of staff, ex-members of staff and their dependants.
  - (k) To engage such consultants and advisers as are considered appropriate from time to time.
  - (l) To effect insurance of all kinds (which may include officers' liability insurance).
  - (m) To invest any funds which are not immediately required for the administration of the Trust or for the Trust's activities, in such investments as may be considered appropriate (and to dispose of, and vary, such investments).
  - (n) To liaise with other voluntary sector bodies, local authorities, UK or Scottish government departments and agencies, and other bodies, all with a view to furthering the Trust Purposes.

(o) To form any company which is a charity with objects which are similar (wholly or in part) to those of the Trust, and, if considered appropriate, to transfer to any such company (without any payment being required from the company) the whole or any part of the Trust Property.

(p) To retain any property comprised in the Trust Property for such time as the Trustee thinks proper.

(q) To have any part of the Trust Property registered in the name of a nominee and to pay reasonable fees to such nominee.

(r) To compromise or settle by arbitration all disputed claims by or against the Trust or the Trust Property.

(s) To appoint solicitors to the Trust or agent for the Trustee in any other capacity, and to pay to such solicitors or other agent his/her/their usual charges.

(t) To reimburse the Trustee out of the Trust Property, in relation to all expenses reasonably incurred by him/her in the administration of the Trust.

(u) To wind up the Trust.

(v) To do anything which may be incidental or conducive to the furtherance of any of the Trust Purposes.

#### **Procedure at Trustee's meetings**

4. Subject to the provisions of the following paragraphs, the Trustee may regulate the proceedings as it thinks fit.

#### **Delegation**

5. The Trustee may delegate any of its powers to any committee consisting of one or more representatives of the Trustee; any such delegation of powers may be made subject to such conditions as the Trustee may impose, and may be revoked or altered.

#### **Remuneration**

6. No Trustee may serve as an employee (full-time or part-time) of the Trust, and the Trustee shall not be given any remuneration by the Trust for carrying out its duties as a trustee.

#### **Secretary**

7. The Trustee shall appoint a secretary to the Trust for such term, at such remuneration (if any), and on such conditions, as the Trustee may think fit; and any secretary so appointed may be removed by them.

8. The Trustee shall ensure that the secretary:
- (a) keeps proper minutes of all proceedings at any meetings of the Trustee (and at meetings of committees of the Trustee) including the names of the committee members present at each such meeting
  - (b) keeps proper records and documents in relation to all other matters connected with the administration and management of the Trust.

#### **Accounts**

9. The Trustee shall appoint a treasurer to the Trust for such term, at such remuneration (if any), and on such conditions, as the Trustee may think fit; and any treasurer so appointed may be removed by them.
10. The Trustee shall ensure that the treasurer:
- (a) maintains proper accounting records, in accordance with all applicable statutory requirements.
  - (b) shall prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions or if the Trustee otherwise think fit, the treasurer shall ensure that an audit of such accounts is carried out by a qualified auditor.
11. An accountant engaged in an audit of the Trust's accounts shall be entitled to have access to all accounting records and other documents relating to the Trust.

#### **Operation of bank accounts**

12. The signature of an authorised signatory of the Treasurer is required in relation to all cheques issued by the Trust and all other operations (excluding lodgement of funds) on the bank and building society accounts held by the Trust.

#### **Payments to charities etc**

13. The receipt of the treasurer or other appropriate officer for any funds or other assets paid or transferred by the Trustee to any charity shall represent sufficient discharge to the Trustee.

#### **Limitations on liability**

14. The Trustee shall not be liable for loss or depreciation of the value of investments retained or made by it, nor for omissions, nor for neglect in management, nor for insolvency of debtors, nor for the acts, omissions, neglect or default of one another or of any banker, solicitor, factor or other agent employed by them.

### **Conduct of Trustee**

15. The Trustee shall, in exercising its functions as a trustee of the Trust, act in the interests of the Trust; and, in particular, must
- (a) seek, in good faith, to ensure that the Trust acts in a manner which is in accordance with its objects (as set out in this Trust Deed)
  - (b) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person
  - (c) in circumstances giving rise to the possibility of a conflict of interest of interest between the Trust and any other party
    - (i) put the interests of the Trust before that of the other party, in taking decisions as a Trustee
    - (ii) where any other duty prevents it from doing so, disclose the conflicting interest to the Trust and refrain from participating in any discussions or decisions involving any other Trustees with regard to the matter in question
  - (d) ensure that the Trust complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005.

### **Amendment of Trust Deed/winding-up**

16. If in the opinion of the Trustee any change in circumstances or alteration in the law has made or is likely to make execution of the Trust Purposes impossible or impracticable, or if in the opinion of the Trustee the administration of the Trust could be improved, or the Trust Purposes be advanced in a more appropriate manner, or the Trust purposes have been fulfilled, the Trustee may (subject to clauses 17 and 19) in their discretion,
- (a) supplement or amend the provisions of this Trust Deed or any deed supplemental to this trust deed provided always that such supplement or amendment to the purposes is consistent with the spirit of Trust Deed ; or
  - (b) wind up the Trust and (if applicable) transfer the Trust Property (after settlement of all debts and liabilities) to some other charity or charities having similar objects to those of the Trust.
17. In no circumstances is the Trust Property to be held or applied for any purpose which is not an exclusively charitable purpose.

### **Interpretation**

18. In this Trust Deed

“charity” shall mean a body on the Scottish Charity Register which is also regarded as a charity in relation to the application of the Taxes Acts;

“charitable purpose” shall mean 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 Trust Deed" means this trust deed (including any supplementation or amendment effected in accordance with the provisions of clause 16);

"the Trust Property" means any such funds and assets as may from time to time be received by the Trustee as trustee under the Trust Deed (from us or any other person), and the assets in which any funds so received may from time to time be invested.

"the Trust Purposes" means the purposes specified in clause 1.

19. Any reference in this Trust Deed to a provision of any legislation shall include any statutory modification or re-enactment of that provision in force from time to time.

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We declare that the Trust shall be irrevocable.

This Trust Deed, consisting of this and the 4 preceding pages, is executed as follows:-

SIGNED by the said Aberdeen City Council

At Aberdeen on

in the presence of

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