

## **APPENDIX G**

### **CITY OF ABERDEEN COUNCIL GUILDRY & MORTIFICATION FUNDS**

#### **TRUST DEED**

Aberdeen City Council, the local authority for the city of Aberdeen in terms of the Local Government etc. (Scotland) Act 1994, and having its principal office at Town House, Broad Street, Aberdeen, is the sole trustee of the City of Aberdeen Council Guildry & Mortification Funds (the "Trust").

The Trust (constituted by the Acts in Council dated 1 March 1609 and 9 March 1631 as narrated in the Extract Decree of Declarator granted by the Lords of Council and Session dated 9 March and 22 May 1838 and extracted on 21 June 1838; an Extract Decree of Declarator and Reduction granted by the Lords of Council and Session on 7 February 1871 and extracted on 10 April 1871; and an interlocutor from the Court of Session dated 18 December 1996) is registered with the Office of the Scottish Charity Regulator (OSCR) under the charity number SC011857.

This Trust Deed is a replacement and restatement deed by which the Trust is reorganised in terms of section 39 of the Charities and Trustee Investment (Scotland) Act 2005 following upon an application to OSCR for the variation of the constitution of the Trust.

Aberdeen City Council and its successors are herein 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 for:-
  - (a) the prevention or relief of poverty; and
  - (b) the advancement of education.
  
2. The Trustee directs that the free annual revenue of the Trust shall be applied for the following purposes:-
  - (a) relieving financial hardship among the Burgesses of Guild of Aberdeen present and future and their widows or 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 Trustee in their absolute discretion may determine; and
  - (b) assisting by means of grants or scholarships of such number and amounts as the Trustee in their absolute discretion (following consultation with the Lord Dean of Guild and her/his Assessors) may determine;
    - (i) persons born or habitually resident in the city of Aberdeen who are prevented or inhibited from pursuing their educational or career goals due to financial circumstances or who are intending to undertake educational or vocational training courses or otherwise to further their proposed careers; or

- (ii) organisations or collective groups which are operating in the city of Aberdeen and undertaking, or intending to undertake, educational initiatives,

subject to clauses 3, 4 and 5.

3. The Trustee will means-test and consider applications under clause 2(a) in or around April and October each year and pay annuities to successful applicants half-yearly in or around May and November each year. The rates of annuities will be reviewed by the Trustee annually. The Trustee may require supporting evidence from applicants.
4. The Trustee will consider applications under clause 2(b)(i) only from individuals who intend to pursue their educational or career goals or undertake educational or vocational training courses or otherwise further their proposed careers at workplaces, facilities, establishments or academic or training institutions within the city of Aberdeen. The Trustee will consider such applications on a case-by-case basis and will consider circumstances including (but not limited to) household incomes, disabilities, long term illnesses of main household earners, care-experienced backgrounds and single parent families. The Trustee may require supporting evidence from applicants.
5. The expenses of administering the Trust, and any tax payable in relation to the Trust, shall be met or paid in priority to all other payments and transfers of assets out of the Trust Property.

## **Powers**

6. In the administration of the Trust, the Trustee shall, in addition to the powers and rights which are conferred by law upon the trustee who is acting without remuneration, have the fullest powers with regard to investment, sale, administration and management of the Trust Property as if they were the owner; in particular (but without limiting the scope of the powers which they 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 they may deem 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 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 or otherwise appoint or engage 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 remuneration of such staff and 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 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 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 appropriate;
- (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 grant proxies in favour of the Trustee (or any other person) to attend, act and vote for the Trustee at any meetings (whether of the nature of general meetings, class meetings, creditors' meetings or otherwise) relating to any investment held by the Trustee or relating to any claim (or prospective claim) by the Trustee in any liquidation or sequestration proceedings;
- (s) To compromise or settle, including by means of arbitration, all claims by or against the Trust or in relation to the Trust Property; and
- (t) To do anything which may be incidental or conducive to the furtherance of any of the Trust Purposes.

### **Trustee Meetings**

7. Subject to the provisions of the following clauses, the Trustee may regulate their proceedings as they think fit.
8. A Trustee meeting shall be held at least once in each year.

9. The Trustee may call a meeting or request the secretary to the Trust to call a meeting.

### **Delegation**

10. The Trustee may delegate any of its powers to any committee, sub-committee or officer of Aberdeen City Council; and any such delegation of powers may be made subject to such conditions as the Trustee may impose and may be revoked or altered.

### **Secretary**

11. 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 the Trustee.

12. The Trustee shall ensure that the secretary:

- (a) keeps proper minutes of all proceedings at Trustee meetings and meetings of committees of the Trustee; and
- (b) keeps proper records and documents in relation to all other matters connected with the administration and management of the Trust.

### **Accounts**

13. The Trustee shall ensure that proper accounting records are maintained, in accordance with all applicable statutory requirements.

14. The Trustee shall prepare annual accounts, complying with all relevant statutory requirements; and the accounts shall be subject to external scrutiny in line with the relevant requirements of legislation.

15. 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.

### **Trustee Conduct**

16. The Trustee shall, in exercising their functions as 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 between the Trust and any other party, put the interests of the Trust before that of the other party, in taking decisions as Trustee.
- (d) ensure that the Trust complies with any direction, requirement, notice or duty issued to it or imposed on it in terms of the Charities and Trustee Investment (Scotland) Act 2005 or other applicable legislation.

### **Limitations on liability**

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

### **Amendment of Trust Deed**

18. If, in the opinion of the Trustee;
  - (a) 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
  - (b) the administration of the Trust could be improved or the Trust Purposes be advanced in a more appropriate manner,

the Trustee may, in their discretion, 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 Trust Purposes is consistent with the spirit of the Trust Deed.

19. In no circumstances is the Trust Property to be held or applied for any purpose which is not an exclusively charitable purpose.

**Interpretation**

20. In this Trust Deed:-

- “charity” means a body on the Scottish Charity Register;
- “charitable purpose” means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005;
- “Trust Deed” means this trust deed (including any supplement or amendment);
- “Trust Property” means any funds and assets as may from time to time be held or received by the Trustee as trustee under the Trust Deed, and the assets in which any such funds may from time to time be invested.
- “Trust Purposes” means the purposes specified in clauses 1, 2, 3, 4 and 5.

21. 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.

This Trust Deed, consisting of this and the 5 preceding pages, is executed as follows:-

SIGNED for and on behalf of the said Aberdeen City Council

Signature: .....

Name: .....

Title/Role: .....

At Aberdeen

on ..... (date)

in the presence of

Signature: ..... Witness

Name: .....

Address: .....

.....