

DATED 7th OCTOBER 2015

STRICTLY PRIVATE AND CONFIDENTIAL

(1) THE KILTWALK

(2) KILTWALK TRADING LIMITED

MEMORANDUM OF UNDERSTANDING



Pinsent Masons

BETWEEN:-

- (1) **THE KILTWALK** (registered charity number: SC042580), whose registered office is at 53 Mercantile Chambers, Glasgow (the "**Charity**"); and
- (2) **KILTWALK TRADING LIMITED** (company number: SC515326), whose registered office is at 53 Bothwell Street, Glasgow, Scotland, G2 6TS (the "**Company**").

1. BACKGROUND AND OBJECTIVE

- 1.1 The Company is a wholly-owned subsidiary of the Charity and the parties wish to manage and regulate their relationship, including but not limited to matters relating to use of surplus funds.
- 1.2 This Memorandum expresses the understanding and intentions of the Charity and the Company. The purpose is to establish and govern an efficient and effective working practice and clear lines of communication between the Charity and the Company, and to allow both parties to carry out their respective functions properly.

2. INTERPRETATION

- 2.1 In this Memorandum:-

"Chair" means the chairman of the Charity

"Trustees" means Trustees of Kiltwalk Charity

"Conflict of Interests Policy" means the conflict of interest policy dated [17 November 2015]

3. COMMENCEMENT AND TERM

- 3.1 This Memorandum shall take effect from the date of its signing and shall continue in force for [five]¹ years. Representatives of the Charity and the Company shall review the operation of this Memorandum not later than one year before the expiry of the Memorandum and may recommend its renewal for a further one year period. The renewal will occur if the Chair of the Charity and a Director of the Company formally minute an agreement for its continuation prior to the expiry of this Memorandum, failing which this Memorandum will terminate.
- 3.2 The authorised representatives of the parties may also review the operation of this Memorandum at any time during the term and suggest amendments to better regulate the relationship between the parties. Any amendments must be agreed jointly in writing (including email with an electronic signature) by the Chair of the Charity and a Director of the Company.

4. APPOINTMENT OF REPRESENTATIVE

- 4.1 Each party shall appoint a representative to be the main point of contact under this Memorandum, and shall duly inform the other party.
- 4.2 Any changes to the appointed representative shall be notified to the other party within 10 days.

5. THE ROLE AND RESPONSIBILITIES OF THE CHARITY

- 5.1 The Charity was established to support and improve the advancement of education and the relief of those in need by reason of age, ill health, disability, financial hardship or other disadvantage

5.2 The charity fulfils this responsibility through the raising and dispersing of funds by way of grants.

6. **THE ROLE AND RESPONSIBILITIES OF THE COMPANY**

6.1 The Company has been established with the purpose of supporting the charitable purposes of the Charity, to include trading activities, fundraising and the making of donations to the charity by way of a dividend.

6.2 The company seeks to manage the activities, administrative and financial affairs of the company in a manner which maximises charitable donations of the Company by way of a dividend.

7. **SURPLUS FUNDS**

7.1 The Company shall donate its distributable profits to the Charity, which the Charity will use to further its charitable purposes, subject to the maximum distributable profits which would qualify as a tax-efficient gift under the corporate Gift Aid rules (provided that those rules are then in force).

7.2 The Directors of the Company shall decide when and how much to donate to the Charity, however the donation to be made in any one year shall be made no later than 9 months after the end of the Company's accounting period.

8. **INVESTMENT POLICY**

8.1 For the avoidance of doubt, once the funds have been transferred to the Charity, the Company shall have no power to make decisions regarding the investment of the funds.

9. **MEETINGS**

9.1 The Charity's Trustees will meet a minimum of four times a year on dates to be determined by the Charity's Trustees.

9.2 A representative of the Company may be asked to attend a board meeting of the Charity to speak to matters where it would be helpful to have the Company's input. 7 days' notice will be given if and when the representative will be required to attend.

9.3 Similarly, the Company's directors will meet a minimum of four times a year on dates to be determined by the Company's directors.

9.4 A representative of the Charity may be asked to attend a board meeting of the Company to speak to matters where it would be helpful to have the Charity's input. 7 days' notice will be given if and when the representative will be required to attend.

10. **DISPUTE RESOLUTION**

10.1 Any dispute arising from the matters covered in this Memorandum which cannot be resolved by the appointed representatives of both parties may be referred by either party to the Chair of the board of trustees of the Charity and a Director of the Company by way of written notice for resolution.

10.2 If any dispute referred to the Chair and Director under clause 9.1 is not resolved within 14 days of referral, then the parties agree that the dispute will be dealt with as follows:

10.2.1 if the parties cannot resolve the dispute within that period, they must refer the dispute to a mediator if one of them requests.

10.2.2 if the parties to the dispute cannot agree on a mediator within 7 days after the request under clause 9.2.1, either party can approach the Centre for Effective Dispute Resolution ("CEDR") to appoint a mediator.

10.2.3 the role of a mediator is to assist in negotiating a resolution to the dispute. A mediator may not make a binding decision on a party to the dispute except if the party agrees in writing.

10.2.4 the costs of mediation shall be split equally between the parties unless agreed otherwise.

11. CONFLICT OF INTERESTS

11.1 In the event that Trustees of the Charity and/or Directors of the Company become potentially conflicted, in that they are both Trustees of the Charity and Directors of the Company, the parties will refer to the Conflict of Interests Policy to regulate matters between the Charity and the Company in relation to the decision making process.

12. COSTS

12.1 Each party shall pay their own costs in relation to the preparation (including amendments and termination) of this Memorandum and matters covered under it.

12.2 Subject to express agreement by the parties to the contrary, all joint costs arising under this Memorandum shall be split equally between the parties.

13. TERMINATION

13.1 Notwithstanding clause 2, either party to this Memorandum can, at any time, give 21 months' notice of termination of the Memorandum to the other.

WE HEREBY CONFIRM our agreement to the terms of the above letter.

SIGNED by
for and on behalf of
KILTWALK TRADING LIMITED
in the presence of:-

Signature of Witness:

Name of Witness:

Address:

Occupation:

EXECUTED by **THE KILTWALK SCIO** acting by
[NAME OF FIRST CHARITY TRUSTEE
SIGNING] and [NAME OF SECOND CHARITY
TRUSTEE SIGNING], two of its charity trustees.

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[SIGNATURE OF CHARITY TRUSTEE]

Charity trustee

.....

[SIGNATURE OF CHARITY TRUSTEE]

Charity trustee