



## Dundee HSFP RFC

This year's AGM is to be on **Thursday 24 May 2018 at 7.30pm**. Please make every effort to attend and make sure you are part of the discussions and decisions that are made regarding the future of the Club.

### Agenda for Annual General Meeting

**to be held on May 24 2018 at 7.30 pm at Mayfield**

1. Apologies
2. Minutes of 2017 AGM and Matters Arising. (copies available on request – see below)\*
3. President's Report
4. Captain's Report
5. Treasurer's Report
6. To consider Resolution 1 below, namely to amend the Constitution of the Club, the intention being (without prejudice to the provisions of Resolution 1) to authorise the Club to agree terms for the transfer of the business and assets of the Club to the limited company known as Dundee High Former Pupils Rugby Football Club Limited ("the Transfer").
7. To consider Resolution 2 below, namely the details of the Transfer.
8. Subscriptions for 2018-2019

(currently):

Season Ticket Member (full)	£150
Full Member (full)	£120
Playing Member (full)	£90
Student and U-21 member (full)	£60
Affiliate Member (affiliate)	£70
Lady Member/Spouse (affiliate)	£40

9. Honorary Life Memberships and Honorary Vice-Presidents

10. Election of Office Bearers & Post Holders (currently):

<u>Position</u>	<u>Currently</u>
President	Gerry Tosh
Vice President	Sandy McDonald
Secretary	Robin Lunn
Treasurer	Matt Scott
Rugby Convener	Ken Andrew
Eagles Section Convener	Iain Landsburgh
Dundee Rugby Section Convener	Ben Dunn
Committee Member	Derek Lawson
Committee Member	Fraser Clarkson
Committee Member	Gavin Robertson

#### Post Holders

Club Captain	Duncan Leese
Club Vice-Captain	George Arnott
2nd XV Captain	Andy Clarkson

11. Appointment of Hon Auditor
12. Super 6 & Agenda 3
13. Director of Rugby
14. Other Competent Business
15. Open Discussion

## **RESOLUTION 1**

THAT the Constitution of the Club be amended as follows:

Clause VIII. 4) be amended to read:

"Any surplus or gains made by the Club must be retained by the Club and shall not be distributed to members. In the event of the Club being wound up, or otherwise ceasing to actively operate, any surplus assets will be: (i) donated to a local or national organisation involved in the promotion of Rugby Football and in a way which qualifies as being for an approved charitable purpose in terms of the Community Amateur Sports Clubs regulations for the time being in force; or (ii) paid to a successor body of the Club, formed under a new 'Constitution' and taking over the Club's role, provided that the terms of the constitution of the successor club are sufficiently similar in its purposes."

## **RESOLUTION 2**

THAT the proposed transfer by the Club of the entire business and assets of the Club to Dundee High School Former Pupils Rugby Football Club Limited (the "Company") in terms of the Minute of Agreement annexed hereto is APPROVED, subject to the Company accepting all of the current members of the Club as members of the Company (other than for any members who indicate they do not wish to become members of the Company) at its AGM to be held on 24 May 2018 after the Club's AGM, in the same categories of membership as they currently have with the Club, including the Honorary President and all Honorary Vice Presidents and Life Members.

\* Copies of 2017 AGM minutes available from Robin Lunn; email: [rob15.lunn@blueyonder.co.uk](mailto:rob15.lunn@blueyonder.co.uk)

**MINUTE OF AGREEMENT**

**between**

**DUNDEE HIGH SCHOOL FORMER  
PUPILS RUGBY FOOTBALL CLUB**

**and**

**DUNDEE HIGH SCHOOL FORMER  
PUPILS RUGBY FOOTBALL CLUB LIMITED**

**Thorntons** 

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Ref: MR/CE/DU23261.0001

Whitehall House  
33 Yeaman Shore  
Dundee  
DD1 4BJ

Tel: 01382 229111  
Fax: 01382 202288

## MINUTE OF AGREEMENT

between

**GERALD GOWRIE TOSH, ALEXANDER FRANCIS McDONALD, ROBIN JOHN LUNN, MATTHEW SCOTT, KENNETH ANDREW, DEREK THOMAS ROBERT LAWSON, IAIN LANDSBURGH, BEN DUNN, FRASER CLARKSON and GAVIN ROBERTSON**, all of Mayfield Clubhouse, 193 Arbroath Road, Dundee, DD4 7HS comprising the current Committee of, and for and on behalf of, **DUNDEE HIGH SCHOOL FORMER PUPILS RUGBY FOOTBALL CLUB**, an unincorporated association constituted in terms of its updated Constitution adopted 30 May 2017 and having a place of business at Mayfield Clubhouse, 193 Arbroath Road, Dundee, DD4 7HS (hereinafter referred to as "**the Transferor**")

and

**DUNDEE HIGH SCHOOL FORMER PUPILS RUGBY FOOTBALL CLUB LIMITED**, a company incorporated in Scotland with registered number SC578031 and having its Registered Office at Mayfield Clubhouse, 193 Arbroath Road, Dundee, DD4 7HS (hereinafter referred to as "**the Transferee**")

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WHEREAS:

- (A) The Transferor is a rugby football club operating under the name "Dundee High School Former Pupils Rugby Football Club";
- (B) It has been agreed that, subject to approval by the members of the Transferor at the Annual General Meeting of the Transferor to be held on 24 May 2018 the Transferee would acquire the Undertaking (as hereinafter defined) from the Transferor, and such acquisition will place on the Transfer Date (as hereinafter defined); and
- (C) The parties wish to record, in writing, the terms of the said acquisition.

NOW THEREFORE THE PARTIES DO HEREBY AGREE AS FOLLOWS:

### 1. **Definitions and Interpretation**

1.1 In this Agreement the following expressions shall have the following meanings:-

- |                      |  |
|----------------------|--|
| <b>"Club Name"</b>   | means the name and trading style of "Dundee High School Former Pupils Rugby Football Club" or "Dundee High Rugby", "Dundee Rugby" or "Dundee Eagles";  |
| <b>"Completion"</b>  | means completion of the transfer of the Undertaking by the performance of the parties of their respective obligations under Clause 4 hereof;   |
| <b>"Contracts"</b>   | means the benefit of all contracts, orders and engagements to which the Transferor is entitled in connection with the Undertaking;   |
| <b>"Employees"</b>   | means all employees engaged by the Transferor in the Undertaking on the Transfer Date;   |
| <b>"Encumbrance"</b> | any mortgage, charge (fixed or floating), pledge, lien, option, hypothecation, guarantee, trust, right of set-off or any other encumbrance or security interest of any kind, and any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;          |
| <b>"Goodwill"</b>    | means the goodwill, custom and connection of the Transferor in relation to the Undertaking, together with the exclusive right for the Transferee and its successors and assigns to carry on the Undertaking under the Club Name and respectively to represent themselves as carrying on the Undertaking in succession to the Transferor; |
|                      | means patents, rights to inventions, copyright and   |

<b>“Intellectual Property”</b>	related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
	means all Intellectual Property used or required to be used in connection with the Undertaking;
<b>“Intellectual Property Rights”</b>	
<b>“Leased Assets”</b>	means any assets used in the Undertaking which are subject to leasing or hire purchase arrangements;
<b>“Liabilities”</b>	means all debts, liabilities and obligations of any nature of the Transferor which arise out of or relate to the Undertaking;
<b>“SRU Rights”</b>	means the rights of the Transferor to play Rugby Football in Scotland as a member, and to be a member, of the Scottish Rugby Union and all rights associated thereto, and the registration of all players with the Transferor;
<b>“Transfer Date”</b>	means 24 May 2018
<b>“Undertaking”</b>	means the whole assets and undertaking of the Transferor represented by and including (without prejudice to the generality), the following:- <ul style="list-style-type: none"> <li>(i) the stand at Mayfield, and all the Transferor’s equipment and fittings, furniture and furnishings, and other moveable items, including all sums held in Bank Accounts, debts due to them and the like;</li> <li>(ii) the Contracts;</li> <li>(iii) the Club Name;</li> <li>(iv) the Goodwill;</li> <li>(v) the Intellectual Property Rights;</li> <li>(vi) the SRU Rights;</li> <li>(vii) the Leased Assets;</li> <li>(viii) all licences, permissions and consents relating to the Undertaking or the assets employed therein; and</li> <li>(ix) the Liabilities.</li> </ul>

## **2. Transfer of the Undertaking**

As at and with effect from the close of business on the Transfer Date, the Transferor shall, provided the members of the Club so approve such transfer at the Annual General Meeting to be held on 24 May 2018, transfer the Undertaking, together with all Encumbrances attaching thereto, to the Transferee as a going concern.

## **3. Consideration**

The consideration for the transfer shall be fully satisfied by the assumption of the Liabilities by the Transferee.

#### **4. Completion**

- 4.1 Completion of the transfer hereunder shall take place on the Transfer Date when ownership of and property in the Undertaking shall pass to the Transferee and will be deemed to be delivered and transferred to and placed in the possession and custody of the Transferee.
- 4.2 In any case where the consent of any person, firm or corporate body not being a party to this Agreement is required to the transfer from the Transferor of any asset hereby agreed to be transferred, the transfer of such asset shall be conditional upon such consent being obtained, and the Transferor shall use its reasonable endeavours to obtain such consent as soon as is practicable after the Transfer Date.
- 4.3 The Transferor will use its reasonable endeavours to assist the Transferee in obtaining transfers or assignments of any Leased Assets used in the Undertaking and, for a period of 30 days after the Transfer Date, the Transferor will use its reasonable endeavours to maintain and fulfil all obligations under such leases subject to the Transferee reimbursing all rentals and charges thereby incurred by the Transferor.

#### **5. Title to Assets**

- 5.1 The Transferee shall accept without investigation, requisition or objection the title of the Transferor to the assets hereby agreed to be transferred.
- 5.2 Insofar as it may be necessary effectually to vest the Transferee in any of the assets comprised within the Undertaking, the Transferor hereby assigns to the Transferee, as at and with effect from the Transfer Date, the Transferor's whole right, title and interest in those assets comprising and employed in the Undertaking together with all rights of action past, present, and future in relation thereto.
- 5.3 The Transferor shall, at the request and expense of the Transferee, execute any other documents as may be required to vest or prove title to any of the assets of the Undertaking in the ownership of the Transferee.

#### **6. Liabilities**

With effect from the Transfer Date, the Transferee shall:

- (i) duly and properly perform, assume, pay and discharge when due all the Liabilities; and
- (ii) indemnify the Transferor in full against any loss or any liability (which liability shall include all losses or costs, claims, expenses and damages including legal and other professional fees and expenses) which the Transferor may suffer or incur directly or indirectly as a result of a breach by the Transferee of this Clause 6.

#### **7. Employees**

- 7.1 The parties acknowledge and agree that the transfer of the Undertaking pursuant to this agreement is a transfer to which TUPE applies and the contracts of employment of the Employees shall transfer to the Transferee pursuant to TUPE with effect from the Transfer Date.
- 7.2 For the avoidance of doubt, the Employees will continue to be engaged in the Undertaking, and the Transferee undertakes to offer continued employment to each such Employee on the same terms and conditions as the terms and conditions of employment of such Employee on the Transfer Date, and the Transferee shall free and relieve and indemnify the Transferor against all claims and other Liabilities in respect of such employees.

#### **8. The Contracts**

- 8.1 The Transferor shall, with effect from the Transfer Date, assign to the order of the Transferee, or procure the assignment to the order of the Transferee, all the Contracts which are capable of assignment without the consent of a third party.
- 8.2 Insofar as any of the Contracts cannot be assigned or novated to the Transferee without the consent of a third party and such consent is refused or otherwise not obtained or where any of the Contracts are incapable of transfer to the Transferee by assignment, novation or other means:
- (a) unless and until any such Contract shall be assigned or novated, the Transferor shall continue its corporate existence and shall hold such Contract and any monies, goods or other



.....  
Full Name

.....  
Alexander Francis McDonald

.....  
Address

SIGNED for and on behalf of DUNDEE HIGH SCHOOL FORMER PUPILS RUGBY FOOTBALL CLUB LIMITED

by GERALD GOWRIE TOSH, Director,

at                      on                                      2018 in the presence of the following witness:-

.....  
Witness

.....  
Full Name

.....  
Gerald Gowrie Tosh

.....  
Address

.....  
Director