

Articles of Association

Merchiston Castle School

The Companies Act 2006

Company Limited by Guarantee and not having a Share Capital

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Merchiston Castle School

Articles of Association

Company Limited by Guarantee and not having a Share Capital

	Name
Name	1 The name of the Company (Company) is Merchiston Castle School. The Board of Governors may change the name of the Company.
	Registered Office
Registered Office	2 The registered office of the Company shall be in Scotland.
	Objects
Objects	3 The objects (Objects) for which the Company is established are to advance education including, but not limited to, the provision of a day and/or boarding school(s) or college(s) in or near Edinburgh or at other such places as the Governors may think fit.
	Powers
Powers of the Company	4 The Company has the power to do anything within the law which may promote or may help to promote the Objects or any of them . This power includes, but is not limited to or by, the following powers: 4.1 to purchase, lease, exchange or otherwise acquire any property (including any associated rights or privileges); 4.2 to carry on the School in pursuance of the Objects under the name of Merchiston Castle School or such other name as the Board of Governors may decide from time to time and to promote education and training; 4.3 to establish, maintain, contribute to and administer: 4.3.1 scholarships, grants, awards, prizes and other benefactions tenable at the School; 4.3.2 bursaries for Pupils in financial need to enable them to attend the School or to enable them to participate in extra-curricular activities undertaken for educational purposes; and 4.3.3 leaving exhibitions to Pupils tenable at any university or other institution of higher or further education (including professional or technical education); 4.4 to construct, maintain, equip and alter buildings in order to provide a school or schools and other facilities including facilities for study, research, recreational sports and also performance of artistic and cultural activities of every

- description;
- 4.5 to let, improve or dispose of property of any kind (but only in accordance with the restrictions imposed by the Charities Acts);
 - 4.6 to establish, support or acquire Subsidiary Companies;
 - 4.7 to raise funds and to solicit and accept grants, donations, endowments, gifts, legacies and bequests of assets on any terms.
 - 4.8 to establish, support and administer charities and to act as trustee of any charitable funds, endowments or trusts;
 - 4.9 to establish, operate or support a charitable fundraising foundation (howsoever constituted) including by way of transfer of assets and funds (with or without valuable consideration) and by making donations to such a foundation;
 - 4.10 to promote or carry out research and to disseminate such research;
 - 4.11 to provide advice;
 - 4.12 to publish or distribute information in any form;
 - 4.13 to employ staff including the power to:
 - 4.13.1 employ a head and a bursar (by whatever title known) to carry on the day-to-day work of the School and to manage the Company's property or any part thereof subject always to the control and supervision of the Board of Governors;
 - 4.13.2 to decide and fix salaries as the Board of Governors may deem proper and to enter into any service agreements;
 - 4.13.3 to terminate any employment upon such terms as the Board of Governors may decide; and
 - 4.13.4 to make provision for the payment of pensions and superannuation to or on behalf of employees and their widows or widowers and other dependants;
 - 4.14 subject to such consents as may be required by law, to borrow money or property and in particular:
 - 4.14.1 to secure by mortgage, standard security, charge or lien upon the whole or any part of the Company's property or assets (whether present or future) the discharge by the Company or any other person of any obligation or liability;
 - 4.14.2 to enter into any derivative arrangement relating to borrowing; and

- 4.14.3 to raise money for the purposes of the Company;
- 4.15 to give security for loans, grants and other obligations over the assets of the Company (but only in accordance with the restrictions imposed by the Charities Acts);
- 4.16 to make loans of money and give credit and to give guarantees or security for the performance of any obligations by any person or company;
- 4.17 to subscribe for or guarantee money;
- 4.18 to make any charitable donation either in cash or assets;
- 4.19 to set aside funds for special purposes or as reserves against future expenditure;
- 4.20 to enter into any licence, sponsorship agreement, contract or agreement (including any finance lease);
- 4.21 to enter into contracts to provide services to or on behalf of other bodies;
- 4.22 to open and operate bank accounts and banking facilities;
- 4.23 to deposit or invest funds in any manner but only after taking such advice as the Board of Governors considers is reasonably necessary from such person as is reasonably believe is qualified to give it by his ability in and practical experience or financial and other relevant matters.
- 4.24 to delegate the management of investments to any person provided that:
 - 4.24.1 the delegate is authorised to carry out investment business under the Financial Services & Markets Act 2000;
 - 4.24.2 the investment policy is set out in writing by the Board of Governors;
 - 4.24.3 the performance of the investments is reviewed regularly by the Board of Governors;
 - 4.24.4 the investment policy and the delegation arrangement are reviewed at least once a year;
 - 4.24.5 all payments due to the delegate are on a scale or at a level which is agreed in advance and are notified promptly to the Board of Governors on receipt by the delegate; and
 - 4.24.6 the delegate must not do anything outside the powers of the Company;
- 4.25 to arrange for the investments or other property of the Company to be held in the name of a nominee under the control of the Board of Governors or of any person to whom the management

of investments is delegated and to pay any reasonable fee required;

- 4.26 to insure the property of the Company against any foreseeable risk and take out other insurance policies to protect the Company when required;
- 4.27 to provide indemnity insurance to cover the liability of the Governors, employees or officers of the Company (or any of them) in relation to any liability that would attach to them in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company or any subsidiary company provided that any such insurance shall not extend to:
 - 4.27.1 any liability resulting from conduct which was known, or must be assumed to have known, was not in the best interests of the Company or subsidiary company, or those in question did not care whether it was in the best interests or not of the Company or Subsidiary Company;
 - 4.27.2 any liability to pay the costs of unsuccessfully defending criminal prosecutions for offences arising out of the fraud or dishonesty or wilful or reckless misconduct; or
 - 4.27.3 any liability to pay a fine.
- 4.28 to enter into joint ventures, collaborations and partnerships with charitable and non-charitable bodies;
- 4.29 to support, amalgamate or co-operate with any charitable institutions, societies or companies formed for objects similar to those of the Company;
- 4.30 to transfer or make over (with or without valuable consideration) any part of the property or assets of the Company;
- 4.31 to make bye-laws, rules and regulations with regard to the affairs or the management of the Company; and
- 4.32 to do or undertake anything ancillary or incidental to the above.

Income and Property

Income and property to be applied to Objects

- 5 The income and property of the Company shall be applied solely towards the promotion of the Objects and no part thereof shall be paid or transferred by way of benefit to any Member or Governor (or any person connected to them) provided that the Company may make payment in good faith of:

Benefits to Members

- 5.1 the following Benefits to Members:
 - 5.1.1 reasonable and proper payments under a contract of employment or a contract for the supply and provision of goods or services to the Company provided that the

Member is not also a Governor;

5.1.2 interest at a reasonable and proper rate on money lent to the Company; and

5.1.3 reasonable and proper rent or hiring fee for property let or hired to the Company;

5.1.4 any Benefit in their capacity as a beneficiary of the Company (for example, any Benefits received as the Parent of a Pupil); and

5.1.5 any Benefit given in furtherance of the Objects to another charity of which a Member is a charity trustee or member provided that it does not confer any benefit on the Member;

General benefits to Governors

5.2 the following Benefits to Governors without further authorisation by the Governors:

5.2.1 reasonable and proper premiums in respect of indemnity insurance provided in accordance with these Articles;

5.2.2 reimbursement of reasonable out-of-pocket expenses (including hotel and travel costs) properly incurred in the management and administration of the Company;

5.2.3 an indemnity in accordance with these Articles;

5.2.4 payment to any company listed on a recognised stock exchange in which a Governor has no more than a three per cent shareholding; and

5.2.5 other payments or Benefits not otherwise provided for in these Articles that are permitted by law;

Specific benefits to Governors

5.3 the following Benefits to Governors provided that the Board of Governors has authorised the benefit in accordance with Articles 9 to 15:

5.3.1 interest at a reasonable and proper rate on money lent to the Company;

5.3.2 reasonable and proper rent or a hiring fee for property let or hired to the Company;

5.3.3 any Benefit provided to a Governor in his capacity as a beneficiary of the Company, including:

(a) the provision of education to any Pupil who is connected to a Governor on the same terms as any other Pupil who is not so connected; and

(b) any payment or remission under a scholarship, exhibition, bursary, grant, prize or assisted place awarded to any Pupil who is connected to a Governor provided that the award is based

upon a competitive examination or some other objective assessment of merit and/or financial resources;

5.3.4 any Benefit which is in furtherance of the Objects to another charity of which a Governor is a charity trustee or member provided that it does not confer any Benefit on the Governor; and

5.3.5 in respect of the provision of goods or services in accordance with Article 6;

provided that in all cases the Governors shall comply with the requirements of Article 8 in relation to any Benefit provided pursuant to this Article.

Contracts for goods or services

6 A Governor may enter into a written contract to supply goods or services to the Company but only if:

6.1 the goods or services are actually required by the Company;

6.2 the nature and level of the remuneration is no more than is reasonable in relation to the value of the goods or services supplied;

6.3 the Governor has declared his Interest in accordance with Article 8 and the Board of Governors has authorised the Conflict of Interest under Article 11;

6.4 no more than half of the Governors are subject to or affected by such a contract in any financial year (and this provision will apply to a Governor if this Article applies to a person who is connected to that Governor);

6.5 the services supplied are not services supplied by the Governor in his capacity as a Governor; and

6.6 the services supplied are not services supplied by the Governor under a contract of employment.

Subsidiary companies

7 A Governor or Member shall not receive a Benefit from any Subsidiary Company except in accordance with Article 5.1 for a Member or Articles 5.2 and 5.3 for a Governor (all of which apply as if references to the Company were references to the Subsidiary Company and references to the Articles were to the articles of the Subsidiary Company).

Declaration of interests

Procedures for the declaration of Interests

8 Every Governor has a duty to declare to the Board of Governors the nature and extent of any Interest which he (or any Connected Person) has in any proposed or existing transaction or arrangement with the Company or any situation or matter in relation to the Company that is, or possibly may be, a Conflict of Interest and in particular:

8.1 in the case of any proposed transaction or arrangement with the Company in which a Governor (or any Connected Person) is Interested, he must make the declaration to the Board of

Governors before the Company enters into the transaction or arrangement;

8.2 in the case of any existing transaction or arrangement that has been entered into by the Company or any situation or matter in relation to the Company in which a Governor (or any connected person) is Interested, he must make the declaration to the Board of Governors as soon as is reasonably practicable;

8.3 any declaration must be made in accordance with the provisions of the Companies Acts:

8.3.1 at a meeting of the Board of Governors; or

8.3.2 by notice in writing to the Board of Governors; or

8.3.3 by general notice to the Board of Governors;

8.4 a Governor is not required to declare an Interest:

8.4.1 where he is not aware of the Interest (but he is treated as being aware of matters of which he ought reasonably to be aware); or

8.4.2 where he is not aware of the transaction, arrangement, situation or matter (but he is treated as being aware of matters of which he ought reasonably to be aware); or

8.4.3 if, or to the extent that, the other Governors are already aware of the Interest (or ought reasonably to be aware of the interest); and

8.5 the Company shall maintain a register of all of the Interests declared by the Governors and the Governors shall implement (and from time to time review) a policy in relation to the declaration and management of conflicts of interest.

Conflicts of interest

Conflicts of interest

9 Subject to Articles 10 and 11, a Governor has a duty under the Companies Acts to avoid a situation or matter (including a transaction or arrangement with the Company) in which he has, or can have, a Conflict of Interest. This duty applies to the exploitation of any property, information or opportunity (and it is immaterial whether the Company could take advantage of the property, information or opportunity).

10 The duty referred to in Article 9 does not apply to a Conflict of Interest arising in relation to any situation, matter, transaction or arrangement between the Company and a Governor under Article 5.2.

Authorisation of conflicts of interests

Conditions on authorisation

11 The Board of Governors may authorise a Conflict of Interest (actual or potential) which a Governor (or any connected person) has in any transaction, arrangement, situation or matter, provided that:

Governor interested not to take part in decision

- 11.1 the Conflict of Interest will not confer a Benefit on the Governor or any Connected Person at the expense of the Company to an extent greater than that permitted by Article 5;
- 11.2 the Governors act in what they consider to be the best interests of the Company; and
- 11.3 the Governors comply with the procedures set out in Articles 11 to 15.

12 Whenever the Board of Governors must decide whether to give authorisation in accordance with Article 11, the Governor concerned shall:

- 12.1 declare the nature and extent of his or her Interest at the beginning of any meeting at which the authorisation is to be discussed (or, at the latest, before such discussion begins);
- 12.2 withdraw from that part of the meeting at which the authorisation is to be discussed unless expressly invited to remain in order to provide information;
- 12.3 not be counted in the quorum for that part of the meeting during which the authorisation is discussed;
- 12.4 withdraw during the vote and have no vote on the authorisation for that part of the meeting; and
- 12.5 not sign any written resolution in relation to the authorisation (except where required to do so to confirm a resolution of the other Governors)

Conflicts of interest involving benefits

13 Subject to Article 15, in relation to any transaction, arrangement, situation or matter in which a Governor (or a connected person):

- 13.1 has or may have a Conflict of Interest; and
- 13.2 which will or may confer a Benefit on that Governor (or Connected Person);

any authorisation in accordance with Article 11 shall provide that the Governor concerned shall:

- 13.3 declare the nature and extent of his or her Interest at the beginning of any meeting at which the relevant transaction, arrangement, situation or matter is to be discussed (or, at the latest, before such discussion begins);
- 13.4 withdraw from part of any meeting at which the relevant transaction, arrangement, situation or matter is to be discussed unless expressly invited to remain in order to provide information;
- 13.5 not be counted in the quorum for that part of any meeting during which the relevant transaction, arrangement, situation or matter is discussed;
- 13.6 withdraw during the vote and have no vote on the relevant

Conflicts of interest not involving benefits

transaction, arrangement, situation or matter at the relevant part of any meeting; and

13.7 not sign any written resolution in relation to the relevant transaction, arrangement, situation or matter (except where required to do so to confirm a resolution of the other Governors).

14 Subject to Article 15, in giving authorisation under Article 11 in relation to a transaction, arrangement, situation or matter in which a Governor (or a connected person):

14.1 has or may have a Conflict of Interest; and

14.2 which will not confer a Benefit on that Governor (or Connected Person);

the Board of Governors may (subject to such terms as it may impose from time to time and to its right to vary or terminate such authorisation) determine the manner in which the conflict may be dealt with, and in particular shall consider:

14.3 whether the nature and extent of the Interest in the relevant transaction, arrangement, situation or matter is reasonably likely to give rise to a Conflict of Interest;

14.4 whether or not the Governor should withdraw from part of any meeting at which the relevant transaction, arrangement, situation or matter is to be discussed unless expressly invited to remain in order to provide information;

14.5 whether or not the Governor should be counted in the quorum for that part of any meeting during which the relevant transaction, arrangement, situation or matter is discussed; and

14.6 whether or not the Governor should withdraw during the vote and have no vote on the relevant transaction, arrangement, situation or matter at the relevant part of any meeting.

Conflicts of interest involving Governors who are Parents

15 Notwithstanding Article 13, the Board of Governors may authorise a Conflict of Interest under Article 11 and apply the procedure in Article 14 to any transaction, arrangement, situation or matter where:

15.1 the Conflict of Interest arises solely as a consequence of any Pupil being Connected to a Governor; and

15.2 the transaction, arrangement, situation or matter will or may affect the provision of education to Pupils generally.

Liability of Members

Limited liability

16 The liability of the Members is limited.

Members' contribution on winding-up

17 Every Member undertakes to contribute:

17.1 to the assets of the Company, in the event of its being wound up while he is a Member, or within one year after he ceases to be a

Member;

17.2 to the payment of the debts and liabilities of the Company contracted before he ceased to be a Member, and of the costs, charges and expenses of winding-up; and

17.3 to the adjustment of the rights of the contributories among themselves;

such amount as may be required not exceeding one pound (£1).

Members

Number of Members

18 The number of Members is unlimited.

19 The Company must maintain a register of Members.

Becoming a Member

20 The members of the Company at the date of adoption of these Articles, the Governors from time to time and any other persons admitted to the membership of the Company shall be the Members.

21 No person, other than a Governor, shall be eligible to be admitted as a Member unless:

21.1 he is a former Pupil of the School or its predecessors and is, or becomes, a member of the Merchistonian Club; or

21.2 he is or has been a member of the teaching or senior management staff of the School; or

21.3 he has subscribed to the general funds of the School by donation in cash or in money's worth to an amount not less than ten pounds (£10).

22 Every prospective Member shall deliver to the Company their application and prior consent to become a Member to the Office. The application shall be submitted to the next ordinary meeting of the Board of Governors for approval. Upon approval and the payment of any subscription fee set by the Governors from time to time, the person shall be admitted as a Member and his name entered in the register of members.

Obligations of Members

23 Every Member shall be bound to further, to the best of his ability, the objects, interests and influence of the Company and the School and shall observe all Rules made by the Governors.

24 Membership is not transferable and is personal to each Member.

Ceasing to be a Member

25 A person shall cease to be a Member when he:

25.1 gives written notice of resignation to the Office;

25.2 dies; or

25.3 is removed under Article 26.

26 Any Member who, in the sole opinion of the Governors, has failed to observe any Rules or whose conduct has been derogatory to the

character or prejudicial to the interests of the Company or School may have his membership terminated upon a 75% majority vote of the Governors present and voting at a meeting of the Board of Governors (provided that the Member shall be given a proper opportunity to be heard at the meeting and to make representations to the Governors).

General Meetings of the Members

Kinds of General Meetings

27 All meetings of the Members shall be called Extraordinary General Meetings (save for an Annual General Meeting).

Business of the AGM

28 The business of an Annual General Meeting shall include:

28.1 consideration of the accounts and any documents annexed to them;

28.2 the appointment of Governors;

28.3 consideration of the reports of the Board of Governors and of the auditors; and

28.4 the appointment of auditors.

EGM

29 An Extraordinary General Meeting:

29.1 may be convened whenever the Board of Governors thinks fit;

29.2 shall be convened by the Board of Governors if Members holding not less than 10% of the total voting rights of all Members make a requisition to that effect which is delivered to the Office stating the general nature of business to be dealt with at the proposed meeting and, if appropriate, the text of any resolution intended to be moved at the meeting; or

29.3 may be convened by the requisitioners if the Board of Governors has not within 21 days from receipt of a requisition under Article 29.2 given notice to convene the meeting.

Notice of General Meetings

Notice of General Meetings

30 As to notice of General Meetings:

30.1 all General Meetings shall be called by at least 14 Clear Days' notice to all Members and the auditors but may be called by shorter notice if agreed by 90% or more of the Members holding the total voting rights and who are entitled to attend and vote;

30.2 the notice shall specify the time, the date and place of the meeting and the general nature of the business to be transacted and, in the case of an Annual General Meeting, shall specify the meeting as such;

30.3 the accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

Proceedings at General Meetings

Quorum for General Meetings

- 31 Seven Members shall constitute a quorum for a General Meeting.
- 32 A Member shall not be counted in the quorum on any matter on which he is not entitled to vote;
- 33 If a quorum is not present within 30 minutes from the time appointed for a meeting to start:
- 33.1 a meeting convened on the requisition of the Members shall be dissolved;
- 33.2 any other meeting shall be adjourned to such other time, date and place not less than seven days and not more than 28 days thence as the chairman shall appoint; and
- 33.3 if the adjourned meeting is inquorate 30 minutes after the time appointed for it to start, the Members present shall constitute a quorum.

Majority to pass a resolution

- 34 Resolutions, other than special resolutions, put to the vote at a General Meeting shall be decided on a simple majority and special resolutions shall be decided on a majority of at least 75% of those present and entitled to vote.

Conclusive evidence of proceedings

- 35 A declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of that fact.

Votes of Members at General Meetings

Proxies

- 36 A Member may appoint another person as his proxy to exercise all or any of his rights and to speak and vote at General Meetings.

Every Member shall have one vote

- 37 A resolution put to the vote at a General Meeting shall be decided on a show of hands and on a show of hands every Member present in person or by proxy shall have one vote.

Chairman's casting vote

- 38 In the case of an equality of votes at a meeting the chairman of the meeting shall be entitled to a second and casting vote.

Chairman of a General Meeting

Chairman of a General Meeting

- 39 The chairman of a General Meeting shall be:
- 39.1 the Chairman of the Board of Governors; or
- 39.2 if he is not present within 15 minutes after the time appointed for the meeting to start or is unwilling to preside or has an Interest in a matter to be decided, the Vice-Chairman of the Board of Governors; or
- 39.3 if he too is not present within 15 minutes after the time appointed for it to start or is unwilling to preside or has an Interest in a matter to be decided, a Member chosen by the

Members present to chair the meeting.

Adjournment of a General Meeting

Adjournment of a General Meeting

- 40 The procedures for adjournment of a General Meeting are:
- 40.1 the chairman of a meeting may, with the consent of the meeting, or when so directed by a quorate meeting, adjourn the meeting to such other time and place within the next 14 days as the chairman thinks fit;
 - 40.2 no business shall be transacted at an adjourned meeting except business which could have been transacted if that meeting had taken place; and
 - 40.3 if a meeting is adjourned for seven days or more, notice of the adjourned meeting shall be given specifying the time and place. Otherwise it shall not be necessary to give any such notice.

Written resolutions of Members

Written resolutions of Members

- 41 The Company may pass a resolution in writing provided the requisite number of Members have consented to the resolution and such resolution will be effective as if it was passed at a General Meeting duly convened and held where the Members would have been entitled to vote upon it.

Written ordinary and special resolutions

- 42 The requisite number of Members to pass a written resolution is:
- 42.1 in the case of an ordinary resolution, a simple majority of the total voting rights of Members; and
 - 42.2 in the case of a special resolution, a majority of not less than 75% of the total voting rights of Members.

Circulation and form of written resolutions

- 43 As to the circulation of written resolutions:
- 43.1 the Company must send a copy of the resolution to every Member in Hard Copy or Electronic Form in accordance with Articles 94 to 99 and a special resolution must state that it is a special resolution;
 - 43.2 a copy of the written resolution must be provided with a statement informing the Member:
 - 43.2.1 how to consent to the resolution; and
 - 43.2.2 the date by which the resolution must be passed so that it does not lapse (in accordance with Article 44).

Agreement to written resolution

- 44 A proposed written resolution will lapse if it is not passed before the deadline set out in the statement accompanying it and in the absence of such statement shall lapse 56 days after the Circulation Date.
- 45 A Member has agreed to a written resolution where the Secretary receives from him in hard copy or electronic form (or from someone acting on his behalf) an authenticated document that:

45.1 identifies the resolution to which it relates; and

45.2 indicates the Member's agreement to the resolution.

46 Once a Member's consent to the resolution has been obtained, it cannot be revoked.

Appointment of Governors

Number of Governors

47 The Board of Governors shall be composed of not less than five and not more than eighteen competent persons appointed by the Members at the AGM. At least one-third of the Governors for the time being shall be former Pupils and members of the Merchistonian Club.

Casual vacancies

48 The Board of Governors may appoint any person as it in its discretion considers suitable to be a Governor to fill a casual vacancy.

Pre-condition to taking office as a Governor

49 Every person wishing to become a Governor may be required to sign a declaration of acceptance and of willingness to act as a Governor, and also consent to become a Member, in the form prescribed by the Board of Governors from time to time, and shall make disclosures for the purposes of all safeguarding checks and registrations that may be required by law for governors, from time to time.

Rights of a Governor

50 Each new Governor shall become entitled to the rights of being a Governor, including, but not limited to, the right to such information and advice with regard to the activities of the Company as the Board of Governors may lawfully and reasonably require to be furnished to it.

Qualifications and disqualification of Governors

Qualification to be a Governor

51 No person shall take office as a Governor:

51.1 unless he is a natural person, and not a body corporate;

51.2 unless he is aged 18 or over;

51.3 if he is employed by the Company; or

51.4 in circumstances such that, had he already been a Governor, he would cease to hold office under the provisions of Article 53;

but a person may be a Governor notwithstanding that he is in receipt of a benefit granted in accordance with the provisions of the Articles.

Parent Governors

52 A Parent shall not be appointed as a Governor if, as a result of such appointment, the number of Governors who are Parents would exceed more than one-third of the total number of Governors for the time being.

Ceasing to hold office

53 A person shall cease to hold office as a Governor if:

53.1 he dies;

53.2 he resigns his office by notice to the Company (except that no Governor may resign if as a result the total number of Governors would fall below five);

- 53.3 his term of office comes to an end and it has not been renewed;
- 53.4 he is absent without leave of the Board of Governors from more than three consecutive meetings of the Governors and the Board of Governors resolves that his office be vacated;
- 53.5 he shall in the opinion of the Board of Governors be unable properly to fulfil his duties by reason of illness, disability or infirmity and the Board of Governors resolves that his office be vacated;
- 53.6 he is removed from office by an ordinary resolution of the Members passed pursuant Article 55 below;
- 53.7 he has been requested by every other Governor by notice in Hard Copy or Electronic Form to resign and he has failed to do so by the date and time stated by the Governors in such notice;
- 53.8 he becomes incapable by reason of mental disorder, illness or injury of managing or administering his own affairs;
- 53.9 he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged or the bankruptcy order has not been annulled or rescinded;
- 53.10 he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 53.11 he is subject to a disqualification order under the Company Directors Disqualification Act 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under a county court administration order);
- 53.12 he fails to declare the nature of any direct or indirect Interest in Company business as required by the Companies Acts or these Articles and the Board of Governors resolve that his office be vacated;
- 53.13 he is disqualified from acting as a director or charity trustee by any provision of the Companies Acts;
- 53.14 he is disqualified from acting as a trustee under the provisions of section 69 of the Charities Acts;
- 53.15 at any time his name is included in any list of persons considered to be unsuitable to have access to children, young persons or vulnerable adults and the Board of Governors resolve that his office be vacated; or
- 53.16 in any other circumstance prior to taking office as a Governor or since taking office considered by the Board of Governors to be material he is disqualified in accordance with Rules made for that purpose.

54 In exercising the right to remove a Governor in accordance with Article 53.15, the Board of Governors shall take suitable legal advice and have

		regard to any relevant statutory guidance issued from time to time.
Removal by ordinary resolution of Members	55	Upon giving of special notice of 28 Clear Days the Company may by passing an ordinary resolution (and complying with the procedures set out in sections 168 and 169 of the Companies Act 2006) remove any Governor before the end of his period of office notwithstanding anything in these Articles or any agreement between the Company and the Governor to the contrary.
	56	The removal of a Governor shall be without prejudice to and shall not affect any obligation or liability incurred by him or to which he was subject prior to his removal.
Notices to the Secretary	57	Where a Governor resigns his office or is removed from office, the Governor or, where he is removed from office those removing him, shall give notice thereof to the Secretary in Hard Copy or in Electronic Form.
Powers of Governors		
Governors' powers	58	Subject to the provisions of the Companies Acts, the Charities Acts, the Articles and to any directions given by special resolution, the business of the Company shall be managed and administered by the Board of Governors which may exercise all the powers of the Company and in particular: <ul style="list-style-type: none"> 58.1 no alteration of the Articles and no such direction shall invalidate any prior act of the Board of Governors which would have been valid if that alteration had not been made or that direction had not been given; and 58.2 a duly convened meeting of Board of Governors at which a quorum is present may exercise all powers exercisable by the Board of Governors.
Rules		
Rules made by the Board of Governors	59	The Board of Governors may from time to time make such rules as they may deem necessary or expedient or convenient for the proper conduct, management and administration of the Company and its affairs, but consistent always with the terms of these Articles.
	60	A copy of all Rules currently in force shall be kept with the minute books of the Company and shall be published in such manner as the Board of Governors consider appropriate having regard to the subject matter of the Rules.
Delegation of Governors' powers		
Attorneys and agents	61	The Board of Governors may, by power of attorney or otherwise, appoint any person to be the agent of the Company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.
Committees	62	The Board of Governors may establish any committee to exercise its powers and functions (subject to these Articles). The constitution, membership and proceedings of any committee shall be determined by the Board of Governors and shall be recorded in the minute books of the

Board of Governors.

- 63 The Board of Governors shall review the terms of reference, constitution and membership of all committees at least once every two years.
- 64 The chairman of each committee shall be a Governor and unless otherwise specified in the terms of reference, the quorum shall be two.
- 65 The members of any committee may include persons who are not Governors provided that:
- 65.1 the terms of reference shall state if a committee member who is not a Governor may vote; and
 - 65.2 a committee decision shall only be binding on the Board of Governors if
 - 65.2.1 the committee's terms of reference authorise it to do so; and
 - 65.2.2 the majority of the members of a committee are Governors; and
 - 65.2.3 a majority of the committee present and voting at the meeting are Governors.
- 66 The Board of Governors may delegate all financial and other matters, between its meetings to a committee including authority:
- 66.1.1 to resolve upon the operation of any bank account according to such mandate as it shall think fit;
 - 66.1.2 to preserve the assets of the Company, the maintenance of the School as a going concern and take other urgent actions as such committee considers necessary or desirable; and
 - 66.1.3 implement the policies adopted by the Board of Governors;
- and any delegation is revocable by the Board of Governors at any time.
- 67 Unless the terms of reference for a committee state otherwise, a committee may delegate any of its powers or the implementation of any of its resolutions to any sub-committee and the provisions of these Articles shall apply to such sub-committee as they apply to any committee with all such changes as the context may require.
- 68 The meetings and proceedings of any committee shall be governed by the provisions of these Articles for regulating the meetings and proceedings of the Board of Governors so far as applicable unless superseded by any terms of reference, Rules or subsequent decisions of the Board of Governors.

Term of office of Governors

Term of office of

- 69 At each Annual General Meeting one-third of the Governors shall retire

Governor

from office. The Governors to retire shall be those who have served longest in office since their last election or appointment, and as between Governors of equal seniority, the Governors to retire shall be selected by agreement amongst them or failing that by lot.

70 A Governor who has reached the age of 75 shall retire at the end of the meeting of the Board of Governors referred to in Article 69 held after his seventy-fifth birthday. This Article does not apply to those Governors who are 75 or over at the date of adoption of this Article.

71 A Governor shall not retire under Article 69 if as a result the number of Governors would be less than five.

Reappointment of Governors

72 A Governor may be reappointed following his retirement, unless he has served more than two continuous periods in office, in which case he may thereafter be reappointed for renewable terms of one year and Article 69 shall cease to apply to him. The number of Governors retiring under Article 69 each year shall be reduced by the number of Governors subject to annual reappointment under this Article.

73 Article 72 does not apply if a continuous period of two years has passed between the Governor retiring and his reappointment.

Proceedings of Governors

74 Subject to the Articles, the Board of Governors may regulate its proceedings as it thinks fit.

Number of Governors at Governors' meetings

75 As regards the number of Governors at meetings of the Board of Governors:

75.1 the quorum for a meeting of the Board of Governors, and any vote on any matter at such a meeting, shall be any five Governors;

75.2 the Board of Governors may act even though there is a vacancy in its body provided that if there are fewer than five Governors in office, they may act as the Board of Governors only to:

75.2.1 appoint, and confirm the appointment of, additional Governors, including accepting them also as Members;

75.2.2 convene a General Meeting and propose resolutions to be considered at such meeting; or

75.2.3 pending the appointment of additional Governors, act to preserve the assets of the Company and the maintenance of the School as a going concern or take other urgent action.

Holding of Governors' Meetings

76 As to the holding of meetings of the Board of Governors:

76.1 the Board of Governors shall hold at least three meetings in each academic year;

76.2 meetings of the Board of Governors shall be convened by the Secretary;

Notice of Meetings of the Board of Governors

- 76.3 in exercising his functions under this Article the Secretary shall comply with any direction:
 - 76.3.1 given by the Board of Governors; or
 - 76.3.2 given by the Chairman of the Board of Governors or, in his absence or where there is a vacancy in the office of Chairman, the Vice-Chairman of the Board of Governors, so far as such direction is not inconsistent with any direction given by the Board of Governors; and
- 76.4 any three Governors (or two Governors if the total number of Governors in office is ten or less) may by notice in Hard Copy or in Electronic Form) given to the Secretary requisition a meeting of the Board of Governors and it shall be the duty of the Secretary to convene such a meeting as soon as is reasonably practicable.

77 As to notice of meetings of the Board of Governors:

- 77.1 each Governor shall be given at least seven days before the date of a meeting:
 - 77.1.1 notice in Hard Copy or in Electronic Form of the meeting; and
 - 77.1.2 a copy of the agenda for the meeting together with, so far as is practicable, copies of relevant papers for consideration as envisaged in such agenda;

provided that where the Chairman, or in his absence or where there is a vacancy in the office of Chairman the Vice-Chairman, so determines on the ground that there are matters demanding urgent consideration, it shall be sufficient if the notice of a meeting in Hard Copy or in Electronic Form or the copies of the agenda or of the relevant papers are given within such shorter period as the Chairman or the Vice-Chairman (as the case may be) directs; and
- 77.2 the convening of a meeting and the proceedings conducted thereat shall not be invalidated by reason of any Governor not having received notice of the meeting or a copy of the agenda.

Persons who are not Governors may attend

- 78 The Board of Governors may invite persons who are not Governors (including but not limited to a member of a committee, the head, the bursar, any employee, any Pupil or Parent, any professional adviser, any experts of any kind or any person who may be disqualified from being a Governor under these Articles) to attend the whole or part of any meeting.

Voting at a Meeting of the Board of Governors

- 79 As to voting at a meeting of the Board of Governors:
 - 79.1 subject to these Articles, every question to be decided at a meeting of the Board of Governors shall be determined by a majority of the votes of the Governors present and voting on the question; and

		79.2	where there is an equal division of votes the chairman of the meeting shall have a second or casting vote.
Defect in the appointment of any Governor	80		All acts undertaken by the Board of Governors, its committees or by any person acting as a Governor shall, notwithstanding that it is later discovered that there was a defect in the appointment of any Governor (or any of them were disqualified from holding office or had vacated office or were not entitled to vote), be valid as if every such person had been duly appointed or had continued to be a Governor and been entitled to vote.
Written resolutions of the Board of Governors	81		The Board of Governors may pass a resolution in writing which shall be valid and effectual as if it had been passed at a duly convened and held meeting of the Board of Governors or (as the case may be) of a committee of the Board of Governors provided that:
		81.1	in the case of the Board of Governors, it is sent to all the Governors entitled to receive notice of a meeting of the Board of Governors and 75% of them have signified their agreement thereto; or
		81.2	in the case of a committee of the Board of Governors, it is sent to all members of the committee who are entitled to vote and 75% of them have signified their agreement thereto.
	82		A Governor has agreed to a written resolution when the Secretary receives from him in Hard Copy or Electronic Form (or from someone acting on his behalf) an authenticated document that:
		82.1	identifies the resolution to which it relates; and
		82.2	indicates the Governor's agreement to the resolution.
Terminating and reconvening a meeting of the Board of Governors	83		As to terminating and reconvening of a meeting of Board of Governors:
		83.1	a meeting of the Board of Governors shall be terminated forthwith if:
		83.1.1	the Board of Governors so resolves; or
		83.1.2	the number of Governors present ceases to constitute a quorum for a meeting of the Board of Governors in accordance with Article 75;
		83.2	where a meeting is terminated before all the matters specified as items of business on the agenda for the meeting have been disposed of, a further meeting shall be convened by the Secretary as soon as is reasonably practicable unless the Board of Governors otherwise decides; and
		83.3	where the Board of Governors resolves to adjourn a meeting before all the items of business on the agenda have been disposed of, the Board of Governors shall before doing so determine the time and date at which a further meeting is to be held for the purposes of completing the consideration of those items, and it shall direct the Secretary to convene a meeting accordingly unless it otherwise determines.

Telephone or other communication equipment

84 A Governor may participate and vote at meetings of the Board of Governors by means of any conference telephone or other communication equipment which allows all persons participating in the meeting to hear and speak to each other. Any Governor so participating in a meeting shall be deemed to be present in person and shall count towards the quorum. The meeting shall be deemed to be held in the location where the chairman is present.

Chairman and Vice-Chairman

Chairman of the Board of Governors

85 As to the Chairman of the Board of Governors:

85.1 the Chairman shall be the person appointed by a majority of the Governors to serve as Chairman;

85.2 the Chairman shall hold office for a term of five years (subject to annual confirmation by the Board of Governors) and thereafter for a renewable term of one year;

85.3 the Chairman may be removed as Chairman by the Board of Governors at any time by a majority of the Governors; and

85.4 the Chairman shall have all the powers and responsibilities of the Chairman as set out in these Articles, including the right (unless disqualified by reason of an Interest) to chair each meeting of the Company and each meeting of the Board of Governors.

Vice-Chairman of the Board of Governors

86 As to the Vice-Chairman of the Board of Governors:

86.1 the Vice-Chairman of the Board of Governors shall be the person appointed by a majority of the Governors to serve as Vice-Chairman;

86.2 the Vice-Chairman shall ordinarily hold office for a term of five years (subject to annual confirmation by the Board of Governors) and thereafter for a renewable term of one year; and

86.3 the Vice-Chairman may be removed from that office by the Board of Governors at any time by a simple majority of the Governors.

87 The Chairman or Vice-Chairman may at any time resign his office by giving notice in hard copy or in electronic form to the Secretary. The Chairman or Vice-Chairman shall cease to hold office if:

87.1 his term of office ends;

87.2 he ceases to be a Governor;

87.3 he is removed from office in accordance with these Articles; or

87.4 in the case of the Vice-Chairman, he is elected in accordance with these Articles to fill a vacancy in the office of Chairman.

88 As to the chairman of a meeting of the Board of Governors where the Chairman is absent from any meeting or there is at the time a vacancy in

the office of the Chairman:

88.1 the Vice-Chairman shall act as the chairman for the purposes of the meeting; and

88.2 if there is no Governor holding office as Chairman or Vice-Chairman, or if either is unwilling to preside or has an Interest in a matter to be decided or is not present within five minutes after the time appointed for the meeting, the Governors present may appoint one of their number to be chairman of the meeting.

Secretary

Secretary

89 The Board of Governors may appoint a Secretary.

90 If a Secretary is to be appointed:

90.1 subject to the provisions of the Companies Acts, the Secretary shall be appointed by the Board of Governors for such term, at such remuneration (provided he is not also a Governor) and upon such conditions as it may think fit;

90.2 notwithstanding this Article, the Board of Governors may, where the Secretary fails to attend a meeting, appoint a deputy or assistant Secretary, or any one of their number or any other person to act as Secretary for the purposes of that meeting; and

90.3 the Secretary shall attend meetings of the Board of Governors and General Meetings, except where the Board of Governors determines to the contrary in respect of any particular matter.

Honorary officers

Honorary officers

91 The Board of Governors may confer on any individual (with his or her prior written consent) any honorary title or role for such term as the Board of Governors may think fit.

Annual report and annual return

Annual report and annual return

92 The Board of Governors shall comply with its obligations to the preparation of an annual return and its transmission to the Office of the Scottish Charity Regulator.

93 The Board of Governors shall also comply with its obligations under the Companies Acts as to the preparation of an annual return and its transmission to the Registrar of Companies, together with all forms and resolutions as appropriate.

Circulation of notices, resolutions and documents

Notices and documents

94 The following Articles set out the provisions regarding the circulation of notices, resolutions and documents provided through Hard Copy and Electronic Form.

Providing notices and documents to Members

95 Notice of meetings and circulation of resolutions or documents shall be sent or supplied to Members and/or Governors by or through a combination of:

	95.1	Hard Copy (see Article 96); or
	95.2	in Electronic Form (see Article 97).
		Where a Member and/or Governor has received a notice, resolution or document from the Company otherwise than in Hard Copy form, he is entitled to require the Company to send him a version of the notice, resolution or document in Hard Copy .
Notices or documents sent in hard copy	96	A notice, resolution or document sent by Hard Copy may be given, either personally, by sending it in a prepaid envelope to, or by leaving it at the Member's and/or Governor's notified address.
Notices or documents sent in electronic form	97	Notices, resolutions or documents sent in Electronic Form shall: <ul style="list-style-type: none"> 97.1 only be sent to the Member and/or Governor if they have agreed to receive it in that form and have not, since the time of that agreement, indicated otherwise; and 97.2 be sent to a notified address either by electronic means (such as by email) or by post (such as on a disk) in accordance with Article 96.
Deemed receipt of notices or documents sent by the Company	98	As to the sending of notices, resolutions or documents: <ul style="list-style-type: none"> 98.1 where the notice, resolution or document is sent by post (whether in Hard Copy or Electronic Form) to an address in the United Kingdom, and the Company is able to show that it was properly addressed, prepaid and posted, it is deemed to have been received by the recipient 48 hours after it was posted; 98.2 where the notice, resolution or document is sent or supplied by electronic means, and the Company is able to show that it was properly addressed, it is deemed to have been received by the intended recipient 24 hours after it was sent; and 98.3 a Member or Governor present at any meeting shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.
Provision of email address by the Company	99	Where the Company has given an electronic address in notice calling a meeting, either of the Members or the Board of Governors, it is deemed to have agreed that any document relating to proceedings at the meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the notice).
Authentication of documents	100	As to the authentication of notices and documents: <ul style="list-style-type: none"> 100.1 a notice, resolution or document sent or supplied in Hard Copy is sufficiently authenticated if it is signed by the person sending or supplying it; and 100.2 a notice, resolution or document sent or supplied in Electronic Form is sufficiently authenticated if the identity of the sender is confirmed in a manner specified by the Company from time to time, and in the absence of such specification where the communication contains or is accompanied by a statement of the identity of the sender and the Company has no reason to

doubt the truth of that statement.

Indemnity and insurance

Indemnity and insurance

- 101 Every Governor, auditor, Secretary or other officer of the Company shall be entitled to be indemnified out of the assets of the Company against all costs and liabilities incurred by them in relation to any proceedings (whether criminal or civil) which relate to anything done or omitted or alleged to have been done or omitted by him acting in his role, save that no Governor, auditor, Secretary or other officer of the Company shall be entitled to be indemnified:
- 101.1 for any liability incurred by him to the Company or any Subsidiary Company;
 - 101.2 for any fine imposed in criminal proceedings or for any costs for which he has become liable in defending any criminal proceedings in which he is convicted and such conviction has become final;
 - 101.3 for any sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature howsoever arising;
 - 101.4 for any costs for which he has become liable in defending any civil proceedings brought by the Company or a subsidiary company in which a final judgment has been given against him; and
 - 101.5 for any costs for which he has become liable in connection with any application under section 661(3) or (4) and section 1157 of the Companies Act 2006 in which the court refuses to grant him relief and such refusal has become final.

Dissolution

- 102 If upon the winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, it shall not be paid to or distributed amongst the Members but shall be given or transferred to some other charitable institution or institutions having objects similar to the Objects of the Company, such institution or institutions to be determined by the Members at or before the time of dissolution, or in default thereof, by the Governors.

Interpretation

Definitions and interpretation

- 103 All relevant model articles (as defined by s 20(2) Companies Act 2006) are hereby expressly excluded from applying to the Company.
- 104 In these Articles, unless the context otherwise requires:
- Articles:** means the articles of association of the Company.
- Benefit:** means any payment of money or the provision or other application of any other direct or indirect benefit in money or money's

worth.

Board of Governors: means the directors of the Company who are also the charity trustees of the Company (and **Governor** means any one of them).

Charities Acts: means the Charities and Trustee Investment Act (Scotland) 2005

Circulation Date: means the circulation date of a written resolution being the date on which copies of it are sent or submitted to the Members or to at least one Member.

Clear Days: in relation to any period of notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect.

Companies Acts: means the Companies Act 1985 in so far as it may still apply and the Companies Act 2006 as implemented.

Company: means the company regulated by these Articles.

Conflict of Interest: means any interest of a Governor (or any person connected to a Governor) that conflicts, or may conflict, with the interests of the Company and includes a conflict of interest and duty and a conflict of duties.

Connected Person means any person falling within one of the following categories:

- (a) any spouse, civil partner, parent, child, brother, sister, grandparent or grandchild of a Governor;
- (b) the spouse or civil partner of any person in (a);
- (c) any other person in a relationship with a Governor which may reasonably be regarded as equivalent to that of a spouse or civil partner;
or
- (d) any company, LLP or partnership of which a Governor is a paid director, member, partner or employee or a holder of more than 3% of the share capital or capital;

and any person who is a connected person in relation to any Governor or Member is referred to in these Articles as "**Connected**" to that Governor or Member.

Electronic Form: means a document supplied by electronic means (such as by email or by fax) or by any other means which is in electronic form (such as a disk sent by post).

Hard Copy: means a document supplied in paper copy or similar form capable of being read.

Interest: means any direct or indirect interest (including any interest a Governor or a Connected Person may have as a consequence of any

duty he or she may owe to any other person) and where a Governor (or any person connected to a Governor) has any such interest in any matter or situation or transaction or arrangement the Governor is **interested** in it.

Member: means a member of the Company as determined by Article 20.

Office: means the registered office of the Company.

Parent: means the parent or, as the case may be, legal guardian of a Pupil.

Pupil: means a pupil at the School.

Rules: means rules, whether referred to as rules, regulations, a scheme or bye laws, as referred to in Article 59.

School: means Merchiston Castle School and any other school or schools from time to time carried on by the Company.

Secretary: means the secretary of the Company or if no secretary has been appointed the person appointed to carry out the duties of the secretary of the company.

Subsidiary Company: means any company in which the Company holds:

- (a) more than 50% of the shares; or
- (b) more than 50% of the voting rights attached to the shares; or
- (c) the right to appoint a majority of the directors.

United Kingdom: means the United Kingdom of Great Britain and Northern Ireland.

The following rules of interpretation shall also apply:

Modification or re-enactment: reference to any provisions of the Companies Acts or the Charities Acts or any other statute shall be a reference to such provisions as modified or re-enacted by any statute or regulations for the time being in force.

Meanings where there is no inconsistency: except as provided above, words or expressions defined in the Companies Acts or the Charities Acts (subject to any statutory modification or re-enactment) in force at the date on which these Articles become binding on the Company shall bear the same meanings in these Articles unless inconsistent with the subject or context.

Words in the masculine include the feminine gender and vice versa. Words in the singular include the plural and vice versa.

Headings, sub-headings, underlinings and format lines are for ease of reading and unless they form part of a phrase or sentence, do not form

part of these Articles.