**MINUTE OF AGREEMENT**

between

**THE ABERDEENSHIRE COUNCIL,**

incorporated by and acting under the Local Government, etc, (Scotland) Act 1994 (hereinafter referred to as "the Local Authority")

and

**BIRSE COMMUNITY TRUST,**

incorporated under the Companies Acts (Company Number SC 188799) having its registered office at 51 Atholl Road, Pitlochry and being Scottish Charity Number SC028220

(hereinafter referred to as "the Proprietor")

WHEREIN, considering Firstly that the Proprietor is registered proprietor of ALL and WHOLE the subjects known as Slewdrum Forest, by Aboyne in the County of Aberdeen and being the subjects registered in the Land Register of Scotland under Title Number ABN90018 which subjects are hereinafter referred to as "the wider subjects"; Secondly that the Local Authority wishes to enter an agreement with the Proprietor in terms of the Land Reform (Scotland) Act 2003, (hereinafter referred to as "the Act") section 21 and the Proprietor is willing to enter such an agreement for the delineation, creation and maintenance of a public path within land in respect of which access rights are exercisable; and Thirdly, that nothing in this Agreement shall diminish or displace the rights, responsibilities, duties or powers under the Act or under the Code, made under section 10 of the Act and approved by the Scottish Parliament on 1 July 2004 (hereinafter referred to as "the Code"), of either party, nor of any third party nor of the public. IT IS THEREFORE CONTRACTED AND AGREED AS FOLLOWS:-

**1. Duration of Agreement –**

Notwithstanding the date or dates of the signing of this Agreement by the Parties, the Agreement shall be deemed to have commenced on 11/05/2013 (hereinafter referred to as "the date of entry") and shall continue until 11/05/2043 (hereinafter referred to as "the termination date"). The Agreement may be continued beyond this date with the written consent of both parties, which consent shall not be unreasonably withheld.

**2. Delineation -**

The public path that is the subject of this Agreement is indicated by a red line on the plan numbered 1 attached and signed as relative to this Agreement. The term "public path" shall mean a shared use footpath, cycle way and bridleway; for the avoidance of doubt no motor vehicles shall be permitted to use the route except those in terms of Clause 9 hereof.

**3. Creation of the Path -**

The Proprietor acknowledges that the Local Authority have created at its own expense the public path through the installation of surfaced pathway, gates, fences, signposts, waymarkers, information boards, structures and drainage all as specified in Schedule One annexed and signed as relative hereto.

**4. Management and Maintenance of the Path -**

The Local Authority, or its approved agent (as set out in Clause 15 hereof) shall manage and maintain the public path and any associated infrastructure at their own expense for the duration of the Agreement as detailed in Clause 1 hereof. The said associated infrastructure is as specified in the said Schedule One. Access for such management and maintenance work shall be taken under the terms and conditions of Section 26 of the Act, and under such agreed additional terms as may be set out herein; for the avoidance of doubt the Proprietor may at its option carry out required works relating to the maintenance of the public path at charges to be agreed with the Local Authority and

reviewed within every second year of the duration of this Agreement from the date of entry.

**5. Promotion**

The Local Authority shall be allowed to promote and encourage public use of the public path. The Local Authority will encourage, by reasonable means, users of the public path to behave responsibly in keeping with the Code and in particular the Local Authority shall have the power to erect, at its discretion and with the prior written approval of the Proprietor which approval shall not be unreasonably withheld, signposts, waymark posts, information boards and other facilities such as seats, picnic places and viewpoint stances at or on the public path.

**6. Public Right of Way**

Nothing in this Agreement shall create or extinguish any public right of way.

**7. Reimbursement for Quantifiable Losses -**

The Local Authority will pay and indemnify the Proprietor for all actual and quantifiable losses resulting from this Agreement. Actual losses include, without prejudice to that generality, loss of productive land and reductions in income from leases.

**8. Management of the Property -**

The Proprietor shall be free to manage their adjacent property but shall take care that public access to the said path is not unreasonably impeded or deterred and that the public is not put at danger or prevented from using any facilities along the said path, subject to the following provisos:-

The public will have free and unrestricted pedestrian cycling and horse riding access along the public path every day throughout the terms of this Agreement, except in the event that (a) the Proprietor wishes to undertake agricultural, forestry, sporting or other land use activities on or adjacent to the public path or (b) the Local Authority propose undertaking maintenance works to the access route, in which events the party

concerned may divert or temporarily close the public path subject to the following conditions: -

a) The parties are expressly prohibited from diverting or temporarily closing the public path on a public or local holiday;

b) The public path may only be diverted or temporarily closed for a maximum cumulative period of ten days in any year; except when some or all of the temporary diversions or closures are for the purpose of forestry operations.

c) The party effecting the diversion or closure must, except in case of emergency, (i) give the other party two weeks' prior written notice of their intention to do so and (ii) erect a notice at or adjacent to the public path clearly stating the reasons why the public path is diverted or temporarily closed.

**9. Vehicular Access, etc.**

(a) The Local Authority, their agents and contractors shall have the power to take vehicular access across the public path for the purpose of maintaining the public path. In addition, and subject to the prior approval of the Proprietor, which approval shall not be unreasonably withheld, the Local Authority, their agents and contractors may take vehicular and pedestrian access across the wider subjects in order to assist in the maintenance of the public path, but only over such route or routes and subject to such conditions as may be agreed in advance between the Local Authority and the Proprietor, which agreement shall not be unreasonably withheld. The Local Authority shall be required to re-instate or repair any damage caused by the Local Authority, their agents and contractors and should such re-instatement or repair not be possible, the Local Authority shall pay compensation for all loss, damage and expenses as may be agreed between the parties or as determined by arbitration in terms of Clause 16 hereof.

(b) The Proprietor and its tenants and those acting under its or their authority shall have the power to take vehicular access to the wider subjects across the public path for all land use purposes and on the public path for the said purposes, subject to the re-instatement or repair of any damage caused by such use.

(c) The emergency services shall have the power to take vehicular access across the public path and the wider subjects for the purpose of reaching any point along the public path.

(d) With the exception of the purposes described herein, the parties to this Agreement shall be prohibited from parking vehicles on public path. The Proprietor and the Local Authority for themselves and their representative tenants, agents or contractors undertake to ensure that any vehicles or machinery parked adjacent to the public path are adequately secured to the safety of the general public using the public path.

(e) The Proprietor and its successors as proprietors of any part of the wider subject shall have the power to access any services running under the public path and to lay new services under the public path if needed for any future requirement and will re-instate the surface of the path to its original condition where appropriate

**10. Liability -**

The Local Authority shall be responsible for meeting all actions, claims, costs and expenses which may be made against the Proprietor by reason of the construction, improvement, management, maintenance including lack of maintenance, or use of the path.

The Proprietor, or its agents or any interested party listed in paragraph 10, shall remain liable for any damage, injury or death which may be caused directly or indirectly through their respective fault or negligence and for the avoidance of doubt the Local Authority holds appropriate insurance against their own negligent actions and the negligent actions of their employees, servants or agents and shall exhibit to the Proprietor on

request satisfactory evidence that such cover has been effected and has been maintained.

The Proprietor shall remain liable for any damage, injury or death which may be caused directly or indirectly through the fault or negligence of the Proprietor, its successors or those authorised by the Proprietor and shall insure against such liability. In this connection, the Proprietor shall not knowingly permit any bull or other animal either known to be dangerous or of a species likely to be dangerous to persons to be at large on the public path. The Proprietor may only allow a dangerous animal to be at large on ground contiguous to the public path if the ground concerned is separated from the public path by stock-proof fencing of an appropriate standard, which stock proof fencing shall be adequately maintained by the Local Authority. For the avoidance of doubt, the Local Authority shall not be responsible for repairs to stock proof fencing or other infrastructure or installations pertaining to the path if damage done to the said stock proof fencing or other infrastructure or installations is caused by the acts or omissions of the Proprietor, its agents or employees or its animals.

**11. Other Interested Parties –**

The Proprietor agrees to notify and obtain the relevant compliance from those parties as listed below who have an interest in the land over which the path passes to the terms of this agreement:

Birse Trading Company (Scottish Company Number SC327196).

**12. Review –**

The Local Authority must review the operation of this Agreement with the Proprietor at least once in every two year period from the date of entry, when the terms of the Agreement, with the exception of Clause 13 hereof, may be adjusted by mutual consent, which must not be unreasonably withheld. The Agreement shall also be reviewed when the Local Authority is preparing its core paths plan under section 17 of the Act, in order that the potential for the public path to which this Agreement relates to be listed as a core

path may be considered at that time and the Agreement adjusted accordingly, subject to mutual consent as aforesaid.

**13. Termination** –

This Agreement may not be terminated before the termination date stated in the Clause 1 hereof except, given a written notice by one party to the other of at least six months or such shorter period as may be mutually agreed between the parties, for the following reasons:

a. by agreement between the parties for clear and justifiable reasons; or

b. failure by either party to comply with the terms of the Agreement, following Notice to remedy issued by the other party.

**14. Professional Costs** –

The Local Authority shall meet all usual and reasonable legal, professional and related fees and outlays incurred by the Proprietor relating directly to the negotiation and conclusion of this Agreement and to the implementation, review and maintenance of this Agreement for the duration of the Agreement.

**15. Transfer of Proprietorship or Responsibilities** –

If at any time after this Agreement has been signed the Proprietor proposes to dispose of, assign or otherwise grant any interest in the land, the Proprietor must disclose the fact that this Agreement exists and require the person(s) acquiring such interest to be bound by the terms of the Agreement. The Local Authority, with the Proprietor's written consent (which will not be unreasonably withheld), may transfer its responsibilities for creating, maintaining, improving or managing the public path to an agent.

**16. Arbitration –**

In the event of an unresolved dispute over the interpretation of this Agreement, an Arbiter shall be appointed on the application of either party to the Chairman the Royal Institution of Chartered Surveyors in Scotland. The apportionment of the costs of arbitration shall be decided by the Arbiter. The Arbiter's decision shall be final and binding on both parties: IN WITNESS WHEREOF these presents typewritten on this and the seven preceding pages together with Schedule 1 and Schedule 2 and the plan annexed hereto are executed as follows:- they are sealed with the Common Seal of Aberdeenshire Council and signed on their behalf by Patricia Jericevich one of their Proper Officers at Aberdeen on the Fourteenth day of May in the year Two Thousand and Twenty-six and they are signed on behalf of Birse Community Trust by Nancy Davidson, Trustee before this witness Toni Watt residing at Seven Mrytle Terrace, Portlethen, Aberdeen, AB12 4SZ at Birse, Aberdeenshire on the Eighteenth day of the month and year last mentioned.

PROPER OFFICER

Nancy E. Davidson
B.C.T. Trustee

Toni Watt
Witness

## SCHEDULE ONE

**Aberdeenshire Council**
**Path Development Schedule**

Works to be undertaken and funded by the Authority were-

- Constructed path width 2m with 300mm type 1 sub-base and 25mm quarry dust surfacing
- Installed stock proof fencing where applicable
- Removed vegetation/trees and overhanging branches from line of route
- Installed drainage
- Provided safety barriers where required
- Installed signage, interpretation and path furniture where agreed
- Installed bridge crossings
- Provided access control points
- Provided vehicle access points and car park areas where agreed

Nancy E Davidson

## SCHEDULE 2

### Aberdeenshire Council – Draft Path Maintenance Schedule

**Name of Path**: Deeside Way **Council Area**: Marr
**Location:** The path runs from 1550m or thereabouts through Slewdrum Forest between the Shooting Greens car park (Grid.Ref.No 632944) and Grennock Burn (Grid.Ref.No 621954.

**Brief Description of the Project/Path**: A new aggregate path was constructed to specification, averaging 2.5m width, and included drainage and 1no. timber bridge.

| | Maintenance Tasks | Frequency | Detail | Responsibility |
|---|---|---|---|---|
| 1. | Path inspection | Reporting to Aberdeenshire Council from members of the public. | Receive feedback on implementation of routine maintenance schedule and identification of any un-programmed work due to unforeseen circumstances e.g. weather impacts, vandalism etc | Follow up Aberdeenshire Council |
| 2. | Path edges | 2/year | 1m strip either side of path edge cut by strimmer/flail June and September. | Aberdeenshire Council |
| 3. | Path Surface | 1/year | Spray with approved herbicide to maintain 2.5m path width, June | Aberdeenshire Council |
| 4. | Trees | Reporting to Aberdeenshire Council from members of the public. | Receive feedback on tree condition/windblow issues. | Follow up Aberdeenshire Council |
| 5. | Litter and dog fouling | Reporting to Aberdeenshire Council from members of the public. | Receive feedback on issue. | Follow up Aberdeenshire Council |
| 6. | Bridges | 1/2yr | Bridge inspection. | Aberdeenshire Council |
| 7. | Drains and Culverts | Reporting to Aberdeenshire Council from members of the public. | Receive feedback on issue and undertake clearing and repairs where required. | Follow up Aberdeenshire Council |
| 8. | Boundary Structures (fences/walls/gates) | Reporting to Aberdeenshire Council from members of the public. | Receive feedback on issue and undertake appropriate action where required. | Folow up Aberdeenshire Council |

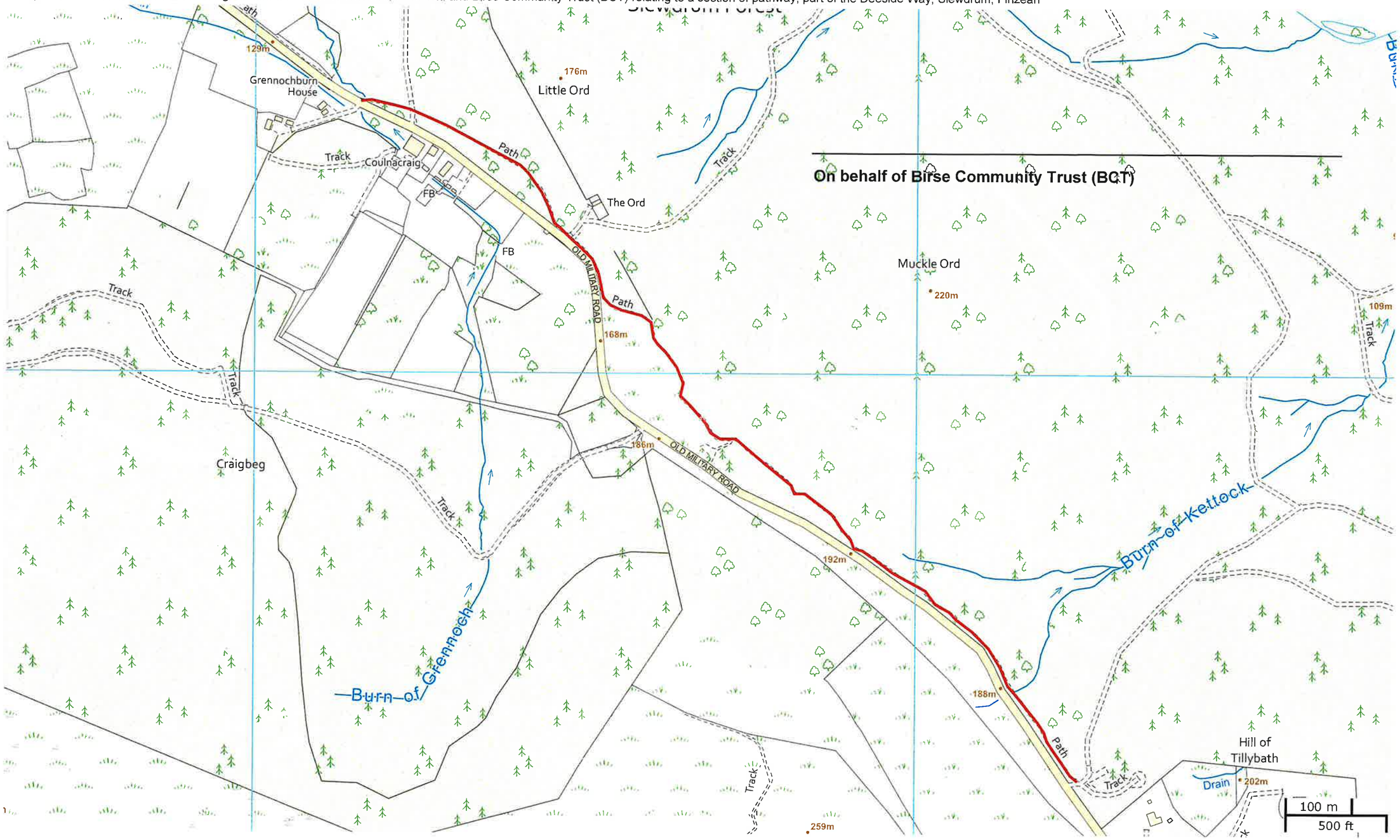
Nancy E Davidson

| | Periodic Maintenance Tasks | Frequency | Detail | Responsibility |
|---|---|---|---|---|
| 1. | Site furniture | Reporting to Aberdeenshire Council from members of the public. | Receive feedback on maintenance of signs/stiles/barriers/etc. Replacement as and when required. | Follow up Aberdeenshire Council |
| 2. | Pathside bushes and shrubs | Reporting to Aberdeenshire Council from members of the public. | Receive feedback on trimming to maintain 4.5m wide path corridor. | Follow up Aberdeenshire Council |
| 3. | Trees | Reporting to Aberdeenshire Council from members of the public. | Receive feedback on pruning of overhanging branches to maintain 4.5m wide x 4m high path corridor. Take action, as and when required. | Follow up Aberdeenshire Council |

Nancy E. Davidson

# Environment and Infrastructure Services

This plan is referred to in the Minute of Agreement between Aberdeenshire Council and Birse Community Trust (BCT) relating to a section of pathway, part of the Deeside Way, Slewdrum, Finzean




On behalf of Birse Community Trust (BCT)

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Aberdeenshire COUNCIL

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11 May 2013
Deeside Way Agreement Plan
Birse Community Trust

Nancy E. Davidson