

**CONSTITUTION**

of

**THE MARYCULTER WOODLANDS TRUST**

**A SCOTTISH CHARITABLE INCORPORATED ORGANISATION (SC044224)**

**ADOPTED ON 31<sup>st</sup> October 2017**

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## PART 1

### DEFINITIONS, GENERAL AND PURPOSES

#### 1 Definitions

1.1 In the Constitution, unless the context requires otherwise: -

<b>“2005 Act”</b>	means the Charities and Director Investment (Scotland) Act 2005 including any statutory modification or re-enactment thereof for the time being in force;
<b>“Annual General Meeting”</b>	is the Member’s Meeting referred to in clause 28.1;
<b>“Board”</b>	has the meaning given in clause 5;
<b>“Board Meeting”</b>	is a meeting of the Directors held in accordance with the Constitution;
<b>“Chair of the SCIO”</b>	has the meaning given in clause 16.1;
<b>“Chair of the Meeting”</b>	has the meaning given in clauses 18 and 29 respectively;
<b>“Charitable”</b>	means charitable for the purposes of the Taxes Acts and also the 2005 Act;
<b>“Community”</b>	means Maryculter, Aberdeenshire (defined by electoral ward SW1701);
<b>“Constitution”</b>	means the SCIO’s Constitution;
<b>“Co-opted Director”</b>	means a Director appointed or re-appointed in terms of clause 22.1
<b>“Director”</b>	means a charity trustee (as defined in the 2005 Act) of the SCIO, and includes any person occupying the position of Director, by whatever name called;
<b>“document”</b>	includes, unless otherwise specified, any document sent or supplied in electronic form;
<b>“Elected Director”</b>	means a Director appointed or re-appointed in terms of clause 21.1;
<b>“Full Member”</b>	has the meaning given to it in clause 24;

<b>“Member(s)”</b>	is a collective term for Full Members and any other category(ies) of Member as shall be determined in accordance with clause 24;
<b>“Membership”</b>	shall be construed accordingly in the context to which it appears and (as appropriate) in relation to a category of Members;
<b>“Scottish Charitable Incorporated Organisation”</b>	has the meaning given in section 49 of the 2005 Act;
<b>“the SCIO”</b>	means The Maryculter Woodlands Trust, a Scottish Charitable Incorporated Organisation (SC044224);
<b>“the SCIO Regulations”</b>	means The Scottish Charitable Incorporated Organisations Regulations 2011 and The Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011 (including any statutory modification or re-enactment thereof for the time being in force); and
<b>“writing”</b>	means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

1.2 In this Constitution, unless the context otherwise requires: -

- 1.2.1 words or expressions importing the singular number only shall include the plural number and *vice versa*;
- 1.2.2 words or expressions importing the masculine gender only shall include the feminine gender and *vice versa*;
- 1.2.3 words or expressions importing persons shall include partnerships, companies and unincorporated associations; and
- 1.2.4 the provisions of the Interpretation Act 1978 with respect to interpretation and construction shall apply *mutatis mutandis*.

## 2 Type of Legal Entity

The Maryculter Woodlands Trust is a Scottish Charitable Incorporated Organisation.

### **3 Principal Office**

The principal office of the SCIO will be in Scotland (and must remain in Scotland).

### **4 Name**

The name of the SCIO is "The Maryculter Woodlands Trust".

### **5 General Structure**

The SCIO shall operate as a "two tier" entity with both Members and a smaller group of Directors. The legal structure of the SCIO consists of: -

- 5.1 the Directors - who hold regular meetings, communicate with each other regularly and generally control the activities of the SCIO. The Directors are referred to collectively as the "Board"; and
- 5.2 the Members - who have the right to attend Members' Meetings (including Annual General Meetings), encourage the success of the SCIO (and generally act to hold the Directors appropriately to account).

### **6 Powers**

The SCIO has the full range of powers available to a Scottish Charitable Incorporated Organisation in terms of section 50(5) of the 2005 Act (that is to say the power to do anything which is calculated to further the purposes of the SCIO or is conducive or incidental to doing so), subject to clauses 7, 9 and 11 together with the powers set out in clause 13 of this Constitution.

### **7 Purposes**

- 7.1 The SCIO will promote, advance and further the following charitable purposes in the Community: -
  - 7.1.1 the advancement of environmental protection or improvement;
  - 7.1.2 the advancement of citizenship or community development;
  - 7.1.3 the advancement of the arts, heritage, culture or science; and
  - 7.1.4 the provision of recreational facilities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended so as to make such activities available to members of the public at large.
- 7.2 The charitable purposes for which the SCIO is established are to be furthered by the SCIO operating: -
  - 7.2.1 to advance environmental protection including preservation, sustainable development, native habitat restoration and conservation of the natural environment (across fauna,

flora and biota) in the community woodlands at Maryculter, Aberdeenshire (“the Maryculter woodlands”);

- 7.2.2 to manage Community land and associated assets in a sustainable manner. Such management will follow the principles of sustainable development (where sustainable development means development which meets the needs of the present without compromising the ability of future generations to meet their own needs);
- 7.2.3 to advance the education of the wider community (including those attending local schools, universities, local clubs and organisations) about the natural history, environment, archaeological and cultural heritage of the Maryculter woodlands. Such purpose shall be met by activities including, but not limited to arranging and conducting research, preparation and organisation of lectures, exhibitions, seminars and guided tours; and
- 7.2.4 to promote, develop and manage projects and initiatives for recreation and leisure in the Maryculter woodlands.

## **8 Liability of Directors and Members**

- 8.1 In terms of section 49(4) of the 2005 Act or otherwise, the Directors and Members have no liability to pay any sums to help to meet the debts (or other liabilities) of the SCIO if it is dissolved.
- 8.2 The Directors have certain legal duties under the 2005 Act and clause 8 does not apply to any personal liabilities they might incur if they are in breach of those duties, which would result in personal liability.

## **9 Limitation on private benefits**

- 9.1 The income and property of the SCIO shall be applied solely towards the promotion of its purposes as set forth in the Constitution.
- 9.2 Subject to clause 9.3, no part of the income and property of the SCIO shall be paid or transferred, directly or indirectly, by way of benefit to its Members or Directors (even if such payment or transfer is in accordance with section 67 and 68 of the 2005 Act).
- 9.3 Notwithstanding section 9.2 above, Directors shall be entitled to receive repayment of reasonable personal costs expended in relation to the SCIO.

## PART 2

### DIRECTORS

#### 10 Eligibility

- 10.1 The affairs of the SCIO shall be managed by the Directors. Directors are appointed in terms of clause 21 of the Constitution.
- 10.2 A person will not be eligible for election or appointment as an Elected Director [or a Co-opted Director] unless he/she is a Full Member.
- 10.3 A person shall not be eligible for election/appointment as an Elected Director or a Co-opted Director if he/she is an employee of the company.
- 10.4 The minimum number of Elected Directors shall be three and the maximum number of Directors shall be seven and shall include a Chair of the SCIO and any Co-opted Directors.

#### 11 Charitable declaration and conflict of interest

- 11.1 It is declared that the assets of the SCIO shall only be applied for Charitable purposes and the Directors shall: -
- 11.1.1 act in accordance with the 2005 Act; and
- 11.1.2 do nothing to prevent the SCIO qualifying and continuing to qualify as Charitable.
- 11.2 Without prejudice to the foregoing, each of the Directors shall, in exercising his powers and duties as a Director, act in the interests of the SCIO. In doing so: -
- 11.2.1 the Directors must seek, in good faith, to ensure that the Directors act in a manner which is in accordance with the purposes of the SCIO and act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person; and
- 11.2.2 in circumstances giving rise to the possibility of a conflict of interest between the SCIO and any other party, each Director: -
- 11.2.2.1 must put the interests of the SCIO before those of the other party; or
- 11.2.2.2 where any other duty or interest prevents him/her from doing so, he/she must disclose the conflicting duty or interest to his fellow Directors and refrain from participating in any discussions or decisions with regard to the matter in question.
- 11.3 All of the Directors must take such steps as are reasonably practicable for the purpose of ensuring: -

- 11.3.1 that any breach of any duties under the 2005 Act by a Director is corrected by the Director concerned and not repeated; and
- 11.3.2 that action is commenced in accordance with clause 23 to remove any Director who has been in serious and persistent breach of duties under the 2005 Act.
- 11.4 Each of the Directors must ensure that (a) he/she complies, and (b) the SCIO complies with any direction, requirement or notice imposed in terms of the 2005 Act.

## **POWERS AND RESPONSIBILITIES**

### **12 Directors' general authority**

- 12.1 Subject to the Constitution, the Directors are responsible for the management and control of the SCIO's activities to further its Charitable purposes, for which purpose they may exercise all the powers of the SCIO.
- 12.2 All powers and actings by the Directors shall be restricted by and subject to clauses 7, 9 and 11.

### **13 Powers**

Notwithstanding the terms of section 50(5) of the 2005 Act the charity will have the following specific powers to promote the SCIO's purposes but not for any other purpose: -

- 13.1 accept subscriptions, fees, payments grants, donations, gifts, legacies and endowments of all kinds, either absolutely or conditionally or in trust for any of the purposes of the SCIO and take such steps (by way of personal or written appeals, public meetings or otherwise, including for the avoidance of doubt the appointment of professional fundraisers or employment of an individual to undertake such activities) as may be deemed expedient for procuring contributions to the funds of the SCIO, whether by way of subscriptions, fees, payments, grants, loans, donations or otherwise including the provisions of services and selling of goods and other products produced or acquired in connection with or ancillary to the purposes of the SCIO (such subscriptions, fees, payments etc set having regard to section 8(2)(b) of the 2005 Act);
- 13.2 establish, subsidise, promote, co-operate or federate with, affiliate or become affiliated to, act as Directors or agents for or manage or lend money or other assistance to any person, company, association, society, institution or other body, corporate or unincorporated bodies (wherever established in the world), established for charitable purposes only, or having primary purposes wholly or partly similar to those of the SCIO, or non-charitable entities in such manner which is consistent with the furthering of the SCIO's charitable purposes or for the purpose of promoting the primary purposes of the SCIO to co-operate with manufacturers, dealers, and other traders and organisations, and with the press and other sources of publicity;
- 13.3 undertake, execute, establish, promote, or assist any charitable trusts, companies or others with charitable purposes all or any of which are similar to the purposes of the SCIO for the purpose of

acquiring all or any of the property, rights and liabilities of or for the purpose of carrying on any activity which the SCIO is authorised to carry on or for any other charitable purpose directly or indirectly calculated to benefit in the furtherance of its purposes;

- 13.4 establish or promote companies and other bodies (whether or not charitable or with charitable purposes) insofar as such action is consistent with the SCIO's purposes;
- 13.5 print, publish and distribute or procure to be printed, published or distributed (whether gratuitously or not) any newspaper, newsletter, periodical, magazine, book, pamphlet, circular, leaflet or other publication including audio and visual recordings and internet based communication which the SCIO may consider desirable for the promotion of its purposes;
- 13.6 hold, sponsor, arrange or organise meetings, conferences, lectures, seminars, film shows, appeals and educational classes and talks in furtherance of the purposes of the SCIO;
- 13.7 organise, manage, present, produce and support exhibitions, workshops, press conferences, trade fairs, festivals, advertising campaigns, promotions, displays and assist and advise any person, corporation or organisation in relation thereto;
- 13.8 advertise the SCIO, its purposes and activities whether through radio, television or other similar media or through printed advertisement, poster, periodical, article, feature, internet based communication or otherwise in writing;
- 13.9 purchase, take on lease or in exchange, hire or otherwise acquire and hold, sell, lease or otherwise dispose of any real or personal property and any rights or privileges which may be necessary or convenient for the promotion of the purposes of the SCIO and construct, maintain and alter any buildings or erections necessary or convenient for the work of the SCIO;
- 13.10 purchase or otherwise acquire plant, machinery, furniture, fixtures, fittings, equipment and all other effects of every description necessary or convenient or usually or normally used in connection with or for the purpose of all or any of the purposes of the SCIO;
- 13.11 take any gift of property, whether subject to any trust or not, for any one or more of the purposes of the SCIO;
- 13.12 subject to such consents as may be required by law sell, let, mortgage, dispose of or turn to account all or any of the property or assets of the SCIO as may be expedient in the promotion of its purposes;
- 13.13 insure the SCIO, its property and assets against such risks as the Directors shall consider it prudent and necessary to insure against;
- 13.14 retain or employ staff, professional or technical advisers in connection with the purposes of the SCIO and pay reasonable and proper salaries, wages and fees for their services;



- 13.15 establish and support pension and superannuation schemes for the benefit of persons employed by the SCIO, and make reasonable and necessary provision for payment of pensions, life assurances and/or superannuation and grant pensions or retiring allowances to persons who have been employed by the SCIO or to their dependants. Enter into any arrangement with any governments or authorities (supreme, municipal, local or otherwise) or any corporations, companies or persons that may seem conducive to the attainment of the SCIO's purposes or any of them;
- 13.16 purchase and maintain insurance (including Director indemnity insurance for the purposes of section 68A of the 2005 Act) for or for the benefit of any persons who are or were at any time Directors, charity directors, officers or employees of the SCIO or who are or were at any time Directors of any pension or retirement benefit scheme for the benefit of any employees or ex- employees of the SCIO including (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution or discharge of their duties or in the exercise of their powers or otherwise in connection with their duties, powers or offices in relation to the SCIO or pension or retirement benefit scheme;
- 13.17 act as agents in the channelling of funds, grants and any other monies available from any source;
- 13.18 subject to such consents as may be required by law, borrow or raise money for the purposes of the SCIO on such terms and on such security as may be thought fit, and whether by the creation and issue of debentures or debenture stock or otherwise.
- 13.19 guarantee and/or give security (either by way of mortgage or charge on all or any part of the property of the SCIO or otherwise) for the payment of money by or in the performance of obligations of any company being a charitable company;
- 13.20 draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments and to operate banking accounts (including online, telephone and other forms of account);
- 13.21 make any charitable donation either in cash or assets in furtherance of the primary purposes of the SCIO;
- 13.22 to hold and invest (including by way of discretionary fund management) the SCIO property in any form of investment (whether involving liability or not and whether or not authorised by law for the investment of trust monies) which the Directors could make if they were absolutely and beneficially entitled to the SCIO property. In doing so, the Directors shall act in accordance with Part 3 of the 2005 Act as if they were Directors in terms of Part 3 of the 2005 Act. Namely: -
- 13.22.1 before exercising any power of investment, the Directors shall: -
- 13.22.1.1 have regard to the suitability to the SCIO of the proposed investment;

- 13.22.1.2 have regard to the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the SCIO;
  - 13.22.1.3 before exercising that power of investment, obtain and consider proper advice about the way in which the power should be exercised; and
  - 13.22.1.4 when reviewing the investments of the trust, obtain and consider proper advice about whether the investments should be varied.
- 13.22.2 In particular but without limitation, the Directors may invest all or any part of the SCIO property: -
- 13.22.2.1 in stocks, shares, debenture stocks or other investments (whether quoted on a stock exchange or not);
  - 13.22.2.2 in any interest in land or property and/or in the development or redevelopment of land or property; and
  - 13.22.2.3 by placing the same on deposit or current account with any bank, insurance company, building society, finance company or local authority at such rate of interest (if any) and upon such terms as the Directors may think fit;
- 13.23 lend any such monies to any other companies (charitable or otherwise), institutions, societies, foundations or associations formed for the said purposes having objects altogether or in part similar to or compatible with those of the SCIO or to any individuals or firms for any purpose similar to such objects and that on such terms as to security or otherwise as the SCIO thinks fit, subject nevertheless to such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law and subject also as hereinafter provided;
- 13.24 purchase or otherwise acquire and undertake all or any of the property, assets, liabilities and engagements of any one or more of the charitable associations, foundations, institutions, companies, societies or bodies with which the SCIO is authorised to co- operate or federate;
- 13.25 pay out of the funds of the SCIO the costs, charges and expenses of and incidental to the formation and registration of the SCIO;
- 13.26 do all such other things as are necessary or incidental to the attainment of the purposes of the SCIO or any of them; and
- 13.27 undertake any activity which directly or indirectly promotes any of the purposes of the SCIO.

#### **14 Directors may delegate**

- 14.1 Subject to the Constitution, the Directors may delegate any of the powers which are conferred on them under the Constitution (including the role of secretary) to such person, committee or sub-

committee, by such means (including by power of attorney), to such an extent, in relation to such matters and on such terms and conditions as they think fit.

- 14.2 The Directors may revoke any delegation in whole or part, or alter its terms and conditions, at any time.
- 14.3 When delegating powers under clause 14, the Directors must set out appropriate conditions (which must include an obligation to report regularly to the Directors).
- 14.4 Notwithstanding the power to delegate, the overall governance and legal responsibility rests with the Directors.

## **15 Committees and working groups**

- 15.1 The Directors may delegate any of their powers to sub-committees or working groups. A sub-committee or working group will include at least one Director. Other Members of a sub-committee or working group need not be Directors.
- 15.2 The rules of procedure for each sub-committee or working group, and the provisions relating to Membership of each sub-committee or working group, shall be set by the board.

## **16 Office bearers**

- 16.1 The Directors may elect (from among themselves and in terms consistent with clause 18) office-bearers (including the Chair of the SCIO), if they consider that appropriate.
- 16.2 All of the office-bearers will cease to hold office with effect from the end of each Annual General Meeting of the SCIO, but may then be re-elected under clause 16.1.

## **BOARD MEETINGS AND DECISION MAKING**

### **17 Calling a Board Meeting**

- 17.1 At least 14 days' notice must be given by the chair of the SCIO or by two Directors of each Board Meeting (so as to comply with regulation 8 of the SCIO Regulations), unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.
- 17.2 Notice of a Board Meeting must be given to each Director, but need not be in writing.
- 17.3 Notice of a Board Meeting need not be given to Directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the SCIO not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

**18 Decision-making by Directors**

- 18.1 No valid decisions (other than the appointing of a chair in terms of clause 18.4) can be taken at a Directors' meeting unless a quorum is present; the quorum for a Board Meeting is one-half (rounded up to the nearest whole number) of the Directors with a majority of those present being Elected Directors for the meeting to be quorate.
- 18.2 If at any time the number of Directors falls below the number stated as the quorum in clause 18.1, the remaining Director(s) will have power to fill the vacancies, but will not be able to take any other valid decisions.
- 18.3 The Chair of the SCIO, if present and willing to do so, will be the Chair of the meeting.
- 18.4 If the Chair of the SCIO is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chair), the Directors present at the meeting must elect (from among themselves) the person who will be in these circumstances the Chair of the Meeting.
- 18.5 Every Director has one vote, which must be given personally. A Director may participate in a meeting by means of telephone or similar conference communications equipment whereby all the Directors participating in the meeting can communicate with each other and the Directors participating in a meeting in this manner shall be deemed to be present in person at such meeting. For the avoidance of doubt a decision (in terms of clauses 18.6 and 18.7) can be constituted by, for example, an exchange of emails. No alternate Directors may vote on behalf of a Director at a Board Meeting.
- 18.6 Except where the Constitution or the 2005 Act states that a higher threshold should apply, all decisions at Board Meetings will be made by majority vote.
- 18.7 If there are an equal number of votes for and against any resolution, the Chair of the Meeting will be entitled to a second (casting) vote.
- 18.8 The Directors must ensure that proper minutes are kept in relation to all Board Meetings, Members' Meetings and meetings of sub-committees.
- 18.9 All minutes of meetings must include the names of those present, and (so far as possible) should be signed by the Chair of the Meeting.

**19 Participation in Board Meetings**

- 19.1 Subject to the Constitution, Directors participate in a Board Meeting, or part of a Board Meeting, when: -

- 19.1.1 the meeting has been called and takes place in accordance with the Constitution; and
- 19.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 19.2 In determining whether or not Directors are participating in a Board Meeting, it is irrelevant where any Director is or how they communicate with each other.
- 19.3 If all the Directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.
- 19.4 The Directors may, at their discretion, invite any other person(s) to observe and participate at a Board Meeting, but such persons shall not vote on any decisions to be made by the Directors at that Board Meeting.

## **20 Directors' discretion to make further rules**

- 20.1 Subject to the Constitution, the Directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to Directors.

## **APPOINTMENT AND REMOVAL OF DIRECTORS**

### **21 Methods of appointing Elected Directors**

- 21.1 At each Annual General Meeting, the Full Members may (subject to clause 10) elect any Full Member as a Director, providing he/she is willing so to act. Such Directors are Elected Directors.
- 21.2 At each Annual General Meeting, one third of the Elected Directors (rounded down to the nearest whole number) shall retire from office.
- 21.3 After taking any voluntary retirees into account, the Directors to retire under clause 21.2 shall be those who have been in office the longest; as to between individuals who were appointed on the same date, the question of which of them is to retire shall be determined by drawing lots or mutual agreement. Under all circumstances if a Director has served for three years, he/she must retire from the Board. For the purposes of this clause a year in office is defined as the interval between one AGM and the next.
- 21.4 A Director who retires from office under clause 21.2 or clause 21.3 shall (subject to clause 10) be eligible for re- appointment under clause 21.1.
- 21.5 In voting for new Directors, Full Members can register votes for or against any candidate but cannot vote for more candidates than the number of Board positions vacant.
- 21.6 The Directors shall endeavour to recruit to the Board individuals with appropriate and relevant experience and skills.

21.7 In any case where, as a result of death, the SCIO has no Members and no Directors, the personal representatives of the last Full Member to have died have the right, by notice in writing, to appoint a person(s) to be a Director(s).

21.7.1 For the purposes of clause 21.7, where two or more Full Members die in circumstances rendering it uncertain who was the last to die, the younger Full Member is deemed to have survived an older Full Member.

## **22 Appointment/vacating of office/re-appointment of Co-opted Directors**

22.1 Subject to clause 10, the Elected Directors may at any time, by majority vote of the Elected Directors, appoint up to two individuals (other than an employee of the SCIO) to be a Director(s) providing he/she is willing so to act, on the basis that he/she has particular skills/experience which would be of assistance to the board. Such Directors are Co-opted Directors.

22.2 At the conclusion of each Annual General Meeting, all of the Co-opted Directors shall vacate office.

22.3 Immediately following each Annual General Meeting, the Directors may (subject to clause 10.4) re-appoint any person who, as a Co-opted Director, vacated office under clause 22.2. The Directors may alternatively appoint someone in his/her place or resolve not to fill the vacancy.

## **23 Termination of appointment as a Director**

23.1 A person ceases to be a Director as soon as: -

23.1.1 he is prohibited by law from being a charity trustee within the meaning of the 2005 Act, a director within the meaning of the Companies Act 2006 or ceases to be a fit and proper person for the purposes of the Taxes Acts;

23.1.2 a sequestration order is made against that person;

23.1.3 a composition is made with that person's creditors generally in satisfaction of that person's debts;

23.1.4 a registered medical practitioner who is treating that person gives a written opinion to the SCIO stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than three months;

23.1.5 by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;

23.1.6 notification is received by the SCIO from the Director that he/she is resigning from office, and such resignation has taken effect in accordance with its terms;

- 23.1.7 is absent (without permission of the Board or good reason, in the reasonable opinion of the Board,) from more than three consecutive meetings of the Board, but only if the board resolves to remove him/her from office (by way of a resolution passed by majority vote at a Board Meeting); or
- 23.1.8 is removed from office by resolution of the Directors or Full Members on the grounds that he is considered to have been in serious or persistent breach of his duties under section 66(1) or (2) of the 2005 Act.
- 23.1.9 A resolution under clauses 23.1.7 and 23.1.8 shall be valid only if: -
- 23.1.9.1 the Director who is the subject of the resolution is given reasonable prior written notice by the Directors or Full Members of the grounds upon which the resolution for his removal is to be proposed;
  - 23.1.9.2 the Director concerned is given the opportunity to address the meeting of Directors or Members' Meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
  - 23.1.9.3 at least two thirds (to the nearest round number) of the Directors or Full Members (excluding for this purpose the Director who is the subject matter of the resolution) vote in favour of the resolution at a Directors Meeting or Members' Meeting.

## **PART 3**

### **MEMBERS ONLY**

#### **BECOMING AND CEASING TO BE A MEMBER**

#### **24 Eligibility for Membership**

- 24.1 Full Membership is open to any person (legal or natural), who is resident in the Community.
- 24.2 Employees of the SCIO shall not be eligible for Membership and Membership shall automatically cease if a Member becomes an employee.
- 24.3 The Full Members shall have the power to create different categories of Membership with different rights attaching thereto. Initially, there shall be three categories of Membership: -
- 24.3.1 Full Membership;
  - 24.3.2 Supporter Membership.; and
  - 24.3.3 Junior Membership (for those under 18 years of age).
- 24.4 Full Members shall have all rights afforded to Full Members in this Constitution, and to “members” under the 2005 Act and the SCIO Regulations. Unless otherwise determined in accordance with clause 24.5, Full Member is the only category of Membership entitled to vote at a Members’ Meeting.
- 24.5 Supporter Members and Junior Members shall have such rights as the Full Members shall determine from time-to-time and are not “members” in terms of the 2005 Act and the SCIO regulations.
- 24.6 Junior Members will not automatically become Full Members upon their 18<sup>th</sup> birthday but must re-apply for Full Membership.

#### **25 Applications for membership**

- 25.1 No person shall become a Member of the SCIO unless: -
- 25.1.1 that person has completed an application for Membership using a form approved by the Directors;
  - 25.1.2 the Directors or Full Members have approved the application; and
  - 25.1.3 that person has paid the appropriate subscription charge (if any).

#### **26 Subscriptions etc**

Without prejudice to the generality of clauses 6 and 13, the SCIO shall have the power to accept subscriptions, grants, donations, gifts, legacies and endowments of all kinds, either absolutely or

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conditionally or in trust for any of the purposes of the company and take such steps (by way of



personal or written appeals, public meetings or otherwise, including for the avoidance of doubt the appointment of professional fundraisers) as may be deemed expedient for procuring contributions to the funds of the company, whether by way of subscriptions (set having regard to section 8(2)(b) of the 2005 Act), grants, loans, donations or otherwise.

## **27 Termination of Membership**

- 27.1 A Member may withdraw from Membership of the SCIO by giving 7 days' notice to the SCIO in writing.
- 27.2 Membership is not transferable.
- 27.3 A person's Membership terminates when that person dies or becomes bankrupt or compounds with his creditors or his estate is sequestrated.
- 27.4 Full Members who are no longer resident in the Community will cease to be Full Members but can reapply for Supporter Membership.
- 27.5 A Member shall cease to be a Member if, at a Full Members' meeting a resolution is passed by two-thirds majority that the Member be expelled on the ground that his continued Membership is harmful to, or is likely to become harmful to, the interests of the SCIO.
- 27.6 A resolution under clause 27.5 shall be valid only if: -
- 27.6.1 the Member has been given at least fourteen clear days' written notice that the resolution is to be proposed (specifying the circumstances alleged to justify expulsion); and
  - 27.6.2 the Member has been afforded a reasonable opportunity of being heard by, or of making written representations, to the Full Members.
- 27.7 A Member expelled by such a resolution shall nevertheless remain liable to pay to the SCIO any sum owed by him/her. An expelled Member may reapply to be a Member of the SCIO.

## **ORGANISATION OF MEMBERS' MEETINGS**

### **28 Organising a Members' Meeting**

- 28.1 The Directors must arrange at least one Members' Meeting [in each financial year of the SCIO] (that one meeting or one designated Members' Meeting each year is the "Annual General Meeting").
- 28.2 The Directors must convene within 21 days a Members' Meeting if there is a requisition by no less than ten Full Members or ten per cent of the Full Membership, whichever is the larger.
- 28.3 The gap between one Members' Meeting and the next must not be longer than 15 months.
- 28.4 At least 14 days' notice must be given of each Members' Meeting.
- 28.5 Notice of a Members' Meeting must be given to each Member, but need not be in writing.
- 28.6 Notice of a Members' Meeting need not be given to Members who waive their entitlement to notice of that meeting, by giving notice to that effect to the SCIO not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

### **29 Business at a Members' Meeting**

- 29.1 The Chair of the SCIO, if present and willing to do so, shall chair the Members' Meeting.
- 29.2 If the Chair of the SCIO is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chair), the Full Members present at the meeting must elect (from among themselves) the person who will be in these circumstances the Chair of the Meeting.
- 29.3 The business of each Members' Meeting must include: -
- 29.3.1 a report by the Chair of the Meeting on the activities of the organisation; and
- 29.3.2 at the Annual General Meeting will also include: -
- 29.3.2.1 consideration of the annual accounts of the SCIO; and
- 29.3.2.2 the election/re-election of Directors.
- 29.4 No valid decisions (other than the appointing of a Chair of the Meeting in terms of clause 29.2) can be taken at a Members' Meeting unless a quorum is present; the quorum for Members' Meetings is twenty Full Members or twenty per cent of the Full Membership, whichever is the smaller.
- 29.5 Every Full Member has one vote which may be given in person (whether on a show of hands or on secret ballot) or by a proxy for a Full Member. No other category of Member is entitled to vote unless determined under clause 24.5.

- 29.5.1 No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the Chair of the Meeting whose decision shall be final and conclusive.
- 29.5.2 A Full Member who wishes to appoint a proxy to vote on his/her behalf at any Members' Meeting: -
- 29.5.2.1 must give to the SCIO a proxy form (in such terms as the board requires), signed by him/her; or
- 29.5.2.2 must send by electronic means to the SCIO at the email address notified to the Members for that purpose, a proxy form (in such terms as the board requires)
- providing (in either case) the proxy form is received by the SCIO at the relevant address not less than 48 hours before the time for holding the Members' Meeting.
- 29.5.3 An instrument of proxy which does not comply with the provisions of clause 29.5.2, or which is not lodged or given in accordance with such provisions, shall be invalid.
- 29.5.4 A Full Member shall not be entitled to appoint more than one proxy to attend on the same occasion.
- 29.5.5 Subject to clause 29.5.6, in relation to each resolution proposed at a Members' Meeting, an individual shall not be entitled to cast more than one vote on a resolution or other item of business as a proxy (in addition to any vote to which he/she is entitled personally, if he/she is a Full Member).
- 29.5.6 Where Full Members have appointed the Chair of the Meeting to vote as their proxy – and have directed the Chair of the Meeting (through wording in the proxy form) on whether he/she should vote on their behalf in favour of, or against, each resolution – the provisions of clause 29.5.5 shall not apply in relation to the Chair of the Meeting, in acting as proxy for those Members.
- 29.5.7 A proxy appointed to attend and vote at any Members' Meeting instead of a Full Member shall have the same right as the Full Member who appointed him/her to speak at the meeting.
- 29.6 Except where the Constitution or the 2005 Act states that a higher threshold should apply, all decisions at Members' Meetings will be made by majority vote.
- 29.7 If there are an equal number of votes for and against any resolution, the Chair of the Meeting will be entitled to a second (casting) vote.
- 29.8 The Directors must ensure that proper minutes are kept in relation to all Members' Meetings.

**PART 4****ACCOUNTS, ADMINISTRATIVE, DISSOLUTION AND ALTERATIONS TO THE CONSTITUTION****30 Accounts and independent examination/audit**

- 30.1 Except as provided by law or authorised by the Directors by a resolution, no person is entitled to inspect any of the SCIO's accounting or other records or documents merely by virtue of being a Member.
- 30.2 The Directors shall comply with the provisions of the Charities Accounts (Scotland) Regulations 2006 (or any statutory modification or re-enactment of them). The Chartered Accountant (or firm) or Independent Examiner shall have access to all papers, books, vouchers, accounts and documents relating to the SCIO.

**31 Register of Directors and Members**

- 31.1 In terms of Regulations 3 and 5 of the SCIO Regulations the Directors must keep a register of Directors and Members, setting out: -
- 31.2 The full name and address of each person who is or was within the preceding five years a Director or Member;
- 31.3 the date on which each person became a Director or Member; and
- 31.4 the date on which any person ceased to be a Director or Member.

**32 Dissolution/ winding up**

If the SCIO is to be wound up or dissolved or if at any time it appears to the Full Members that the property of the SCIO is of such size that there is no reasonable prospect of the SCIO property or some part of it being required, either as source of income or for payment or application as capital, in any future year or years for the purposes of the SCIO, or it appears to the Full Members that the SCIO cannot continue to serve a useful purpose or that its property could be more suitably and effectively applied, the Full Members may decide that the SCIO property or such part of it, shall be transferred or made over to such charitable institution(s), trust(s), fund(s) or other recipient(s) (in furtherance of the SCIO's purposes) as the Full Members shall decide, subject to the satisfaction of debts and liabilities and to the provisions of clauses 7, 9 and 11. For the avoidance of doubt, the Full Members' decision is subject to any requirement(s) under the SCIO Regulations and/or requirement to seek consent under the 2005 Act.

**33 Alterations to the Constitution**

- 33.1 In terms of section 63 of the 2005 Act the Constitution may be altered by a resolution passed by the Full Members, providing at least two thirds of the Full Members voted in favour of the resolution.

- 33.2 Any alteration to the Constitution shall be made in accordance with the requirement of the 2005 Act to obtain consent from and/or notify OSCR.