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**CONSTITUTION**  
**of**  
**SOUTH LANARKSHIRE LEISURE AND CULTURE**

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## **GENERAL**

### **Type of organisation**

- 1 The organisation (“the SCIO”) will, upon registration, be a Scottish Charitable Incorporated Organisation.

### **Scottish principal office**

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

### **Name**

- 3 The name of the SCIO is “South Lanarkshire Leisure and Culture”.

### **Purposes**

- 4 The SCIO’s purposes are:
  - 4.1 To advance the arts, heritage, culture and science;
  - 4.2 To advance public participation in sport;
  - 4.3 To provide recreational facilities, and organise recreational activities with such facilities/activities being made available to members of the public at large with the object of improving their conditions of life;
  - 4.4 To advance education;
  - 4.5 To advance health;
  - 4.6 To advance citizenship and/or community development (which may include the promotion of civic responsibility, volunteering, the voluntary sector and/or the effectiveness or efficiency of charities);
  - 4.7 To relieve those in need by reason of age, ill health, disability, financial hardship or other disadvantage;
  - 4.8 To promote, establish, operate and/or support other similar schemes and projects which further charitable purposes;

through the provision of services (including those entrusted to it by South Lanarkshire Council), which contribute to advancing well-being (primarily the wellbeing of residents of South Lanarkshire) including (i) the operation, management and development of galleries, museums and other facilities which provide public access to collections of works of art, antiquities and objects of scientific interest; (ii) the development and delivery of arts and cultural activities and events, artistic programmes, and educational projects; (iii) the operation, management and development of libraries and provision of library and archive services; (iv) the operation, management and development of indoor and outdoor sports facilities (including arrangements to facilitate access to such facilities by those on lower incomes or having special needs and to encourage wider participation in healthy exercise); (v) the development and delivery of sports activities and events directed towards wider participation in sport; (vi) the development and delivery of community learning and adult learning initiatives; and

(vii) the delivery of services focused on social renewal and the needs of young people.

### **Powers**

- 5 The SCIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.
- 6 No part of the income or assets of the SCIO may be paid or transferred (directly or indirectly) to the members - either in the course of the SCIO's existence or on dissolution - except where this is done in direct furtherance of the SCIO's purposes.

### **Liability of members**

- 7 The members of the SCIO have no liability to pay any sums to help to meet the debts (or other liabilities) of the SCIO if it is wound up; accordingly, if the SCIO is unable to meet its debts, the members will not be held responsible.
- 8 The members and charity trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 7 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

### **General structure**

- 9 The structure of the SCIO consists of:-
  - 9.1 the MEMBERS - who have the right to attend members' meetings (including any annual members' meeting) and have important powers under the constitution; in particular, the members appoint people to serve on the board and take decisions on changes to the constitution itself;
  - 9.2 the BOARD - who hold regular meetings, and generally control the activities of the SCIO; for example, the board is responsible for monitoring and controlling the financial position of the SCIO.
- 10 The people serving on the board are referred to in this constitution as CHARITY TRUSTEES.

## **MEMBERS**

### **Qualifications for membership**

- 11 Membership is open to the following:
  - 11.1 South Lanarkshire Council (“**the Council**”);
  - 11.2 [[ 1 ] Nominees Limited].
- 12 Employees of the SCIO are not eligible for membership.
- 13 The individuals who applied for registration of the SCIO shall automatically cease to be members with effect from the time at which the bodies named in clause 11 are admitted to membership.

### **Application for membership**

- 14 Any body named in clause 11 which wishes to become a member must submit a written application for membership, signed by an appropriate officer of that body; the body will automatically become a member of the SCIO with effect from the time when the application is received by the SCIO.

### **Membership subscription**

- 15 No membership subscription will be payable.

### **Register of members**

- 16 The board must keep a register of members, setting out
  - 16.1 for each current member:
    - 16.1.1 its full name and address; and
    - 16.1.2 the date on which it was registered as a member of the SCIO;
  - 16.2 for each former member - for at least six years from the date on which it ceased to be a member:
    - 16.2.1 its name; and
    - 16.2.2 the date on which it ceased to be a member.
- 17 The board must ensure that the register of members is updated within 28 days of any change:
  - 17.1 which arises from a resolution of the board or a resolution passed by the members of the SCIO; or
  - 17.2 which is notified to the SCIO.
- 18 If a member or charity trustee of the SCIO requests a copy of the register of members, the board must ensure that a copy is supplied to him/her/it within 28 days, providing the request is reasonable; if the request is made by a member (rather than

a charity trustee), the board may provide a copy which has the addresses blanked out.

#### **Withdrawal from membership**

- 19 Any body which wants to withdraw from membership must give a written notice of withdrawal to the SCIO, signed on its behalf by an appropriate officer; it will cease to be a member as from the time when the notice is received by the SCIO.

#### **Transfer of membership**

- 20 Membership of the SCIO may not be transferred by a member.

## **DECISION-MAKING BY THE MEMBERS**

### **Members' meetings**

- 21 The board must convene a meeting of members (an annual general meeting or "AGM") in each calendar year.
- 22 The gap between one AGM and the next must not be longer than 15 months.
- 23 Notwithstanding clause 21, an AGM does not need to be held during the calendar year in which the SCIO is formed; but the first AGM must still be held within 15 months of the date on which the SCIO is formed.
- 24 The business of each AGM must include:-
  - 24.1 a report by the chair of the SCIO on the activities of the SCIO; and
  - 24.2 consideration of the annual accounts of the SCIO.
- 25 The board may convene a special members' meeting at any time.

### **Notice of members' meetings**

- 26 At least 14 clear days' notice must be given of any AGM or any special members' meeting.
- 27 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and
  - 27.1 in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or
  - 27.2 in the case of any other resolution falling within clause 56 (requirement for two-thirds majority) must set out the exact terms of the resolution.
- 28 The reference to "clear days" in clause 26 shall be taken to mean that, in calculating the period of notice,
  - 28.1 the day after the notices are posted (or sent by e-mail) should be excluded; and
  - 28.2 the day of the meeting itself should also be excluded.
- 29 Notice of every members' meeting must be given to all the members of the SCIO, and to all the charity trustees; but the accidental omission to give notice to one or more members will not invalidate the proceedings at the meeting.
- 30 Any notice which requires to be given to a member under this constitution must be: -
  - 30.1 sent by post to the member, at the address last notified by it to the SCIO; *or*
  - 30.2 sent by e-mail to the member, at the e-mail address last intimated by it to the SCIO.

- 31 If members and charity trustees are to be permitted to participate in a members' meeting by way of an audio and/or audio-visual link or links (see clause 34), the notice (or notes accompanying the notice) must:
- 31.1 set out details of how to connect and participate via that link or links; and
- 31.2 (particularly for the benefit of those members who may have difficulties in using a computer or laptop for this purpose) draw members' attention to the following options:
- 31.2.1 participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements);
- 31.2.2 appointing the chairperson of the meeting as proxy, and directing the chairperson of the meeting on how they should use that proxy vote in relation to each resolution to be proposed at the meeting;
- 31.2.3 (where attendance in person is to be permitted, either on an open basis or with a restriction on the total number who will be permitted to attend) attending and voting in person at the meeting; and
- 31.2.4 (where clause 32 applies) submitting questions and/or comments in advance of the meeting.
- 32 Where a members' meeting is to involve participation solely via audio and/or audio-visual links, the notice (or notes accompanying the notice) must include a statement inviting members to submit questions and/or comments in advance of the meeting, which (subject to clause 33) the chairperson of the meeting will be expected to read out, and address, in the course of the meeting.
- 33 Where clause 32 applies, the chairperson of a members' meeting will not require to read out or address any questions or comments submitted by members in advance of the meeting if and to the extent that the questions or comments are of an unreasonable length (individually or taken together), or contain material which is defamatory, racist or otherwise offensive.

### **Procedure at members' meetings**

- 34 The board may, if they consider appropriate (and must if they are required under clause 35) make arrangements for members and charity trustees to participate in members' meetings by way of audio and/or audio-visual links, providing:
- 34.1 the means by which members and charity trustees can participate in this manner are not subject to technical complexities, significant costs or other factors which are likely to represent - for all or a significant proportion of the membership - a barrier to participation:
- 34.2 the notice calling the meeting contains the information required under clause 31; and
- 34.3 the manner in which the meeting is conducted ensures, so far as reasonably possible, that those members and charity trustees who participate via the audio or audio-visual links are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those members and charity trustees (if any) who are attending in person (and vice versa).



- 35 If restrictions arising from public health legislation or guidance are likely to mean that attendance in person at a proposed members' meeting would not be possible or advisable for all or a significant proportion of the membership, the board must make arrangements for members and charity trustees to participate in that members' meeting by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting; and on the basis that the requirements set out in paragraphs 34.1 to 34.3 of clause 34 will apply
- 36 A members' meeting may involve two or more members or charity trustees participating via attendance in person while other members and/or charity trustees participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.
- 37 For the avoidance of doubt, an individual participating in a members' meeting via an audio or audio-visual link will be deemed to be present in person (or, if they are not a member, will be deemed to be in attendance) at the meeting.
- 38 Reference in clauses 31 to 37 to members should be taken to include proxies for members and authorised representatives of members which are corporate bodies.
- 39 No valid decisions can be taken at any members' meeting unless a quorum is present.
- 40 The quorum for a members' meeting is two members, present in person (in the case of a member which is a corporate body, present via its duly authorised representative) or represented by proxy.
- 41 An individual participating in a members' meeting via an audio or audio-visual link which allows them to hear and contribute to discussions at the meeting will be deemed to be present in person (or, if they are not a member or the authorised representative of a member which is a corporate body), will be deemed to be in attendance) at the meeting.
- 42 If a quorum is not present within 15 minutes after the time at which a members' meeting was due to start - or if a quorum ceases to be present during a members' meeting - the meeting cannot proceed; and fresh notices of meeting will require to be sent out, to deal with the business (or remaining business) which was intended to be conducted.
- 43 The chair of the SCIO should act as chairperson of each members' meeting.
- 44 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 chairperson of the meeting), the vice chair of the SCIO should act as chairperson of that meeting.
- 45 If neither the chair of the SCIO nor the vice chair of the SCIO is present within 15 minutes after the time at which the meeting was due to start - or if neither of them is willing to act as chairperson of the meeting - the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.

### **Voting at members' meetings**

- 46 In relation to each members' resolution:

- 46.1 the Council shall have 99 votes;
- 46.2 [[ 1 ] Nominees Limited shall have 1 vote.]
- 47 A member's vote(s) may be given *either* personally (in the case of a member which is a corporate body, via its authorised representative present at the meeting) *or* by proxy (subject to clause 59).
- 48 A member which wishes to appoint a proxy to vote on its behalf at any members' meeting:-
- 48.1 must give to the SCIO a proxy form (in such terms as the board requires), signed by an appropriate officer of the member; or
- 48.2 must send by electronic means to the SCIO at such electronic address as may have been 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 meeting (or, as the case may be, adjourned meeting).
- 49 In calculating the 48-hour period referred to in clause 48, no account shall be taken of any part of a day that is not a working day
- 50 An instrument of proxy which does not comply with the provisions of clause 48, or which is not lodged or given in accordance with such provisions, shall be invalid.
- 51 A member shall not be entitled to appoint more than one proxy to attend on the same occasion.
- 52 A proxy appointed to attend and vote at any members' meeting instead of a member shall have the same right as the member which appointed him/her to speak at the meeting; and need not be a member of the SCIO.
- 53 A member which is a corporate body may authorise an individual to act as its representative at any members' meeting, providing particulars of the individual so authorised and of the body which he/she is to represent are received by the SCIO prior to the commencement of the members' meeting.
- 54 An individual authorised under clause 53 as the representative of a corporate body shall be entitled to exercise the same powers on behalf of the member which he/she represents as that corporate body could exercise if it were an individual member.
- 55 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 56.
- 56 The following resolutions will be valid only if passed by not less than two thirds of those voting on the resolution at a members' meeting (or if passed by way of a written resolution under clause 64):
- 56.1 a resolution amending the constitution;

- 56.2 a resolution approving the amalgamation of the SCIO with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);
- 56.3 a resolution to the effect that all of the SCIO's property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities);
- 56.4 a resolution for the winding up or dissolution of the SCIO.
- 57 If there is an equal number of votes for and against any resolution at a members' meeting, the chairperson of the meeting will not be entitled to a second (casting) vote.
- 58 A resolution put to the vote at a members' meeting will be decided on a show of hands - unless the chair of the SCIO (or at least two other members present at the meeting) ask for a secret ballot.
- 59 Where members are participating in a meeting via an audio or audio-visual link, they may cast their votes on any resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically - and providing the board have no reasonable grounds for suspicion as regards authenticity, any such action shall be deemed to be a vote cast personally via a show of hands.
- 60 The chair of the SCIO will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting.
- 61 Where members are participating in a meeting via audio and/or audio-visual links, the chairperson of the SCIO's directions regarding how a secret ballot is to be conducted may allow those members to cast their votes on the secret ballot via any or all of the methods referred to in clause 59, providing reasonable steps are taken to preserve anonymity (while at the same time, addressing any risk of irregularities in the process).
- 62 The principles set out in clauses 59 and 61 shall also apply in relation to the casting of votes by an individual in their capacity as proxy for a member or as the authorised representative of a member which is a corporate body.

#### **Technical objections to remote participation in members' meetings**

- 63 This constitution imposes certain requirements regarding the use of audio and/or audio-visual links as a means of participation and voting at members' meetings; providing the arrangements made by the board in relation to a given members' meeting (and the manner in which the meeting is conducted) are consistent with those requirements:
  - 63.1 a member cannot insist on participating in the members' meeting, or voting at the members' meeting, by any particular means;
  - 63.2 the members' meeting need not be held in any particular place;
  - 63.3 the members' meeting may be held without any particular number of those participating in the meeting being present in person at the same place (but,

notwithstanding that, the quorum requirements - taking account of those participating via audio and/or audio-visual links - must still be met);

- 63.4 the members' meeting may be held by any means which permits those participating in the meeting to hear and contribute to discussions at the meeting;
- 63.5 a member will be able to exercise the right to vote at the members' meeting (including where a secret ballot is to be held) by such means as is determined by the chairperson of the meeting (consistent with the arrangements made by the board) and which permits that member's vote to be taken into account in determining whether or not a resolution is passed.

#### **Written resolutions by members**

- 64 A resolution agreed to in writing (or by e-mail) by all the members will be as valid as if it had been passed at a members' meeting; the date of the resolution will be taken to be the date on which the last member agreed to it.
- 65 A resolution under clause 101 agreed to in writing (or by e-mail) by a member or members holding a majority of the votes of all members shall be as valid as if it had been passed at a members' meeting.

#### **Minutes**

- 66 The board must ensure that proper minutes are kept in relation to all members' meetings.
- 67 Minutes of members' meetings must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.

## **BOARD**

### **Number of charity trustees**

68 The maximum number of charity trustees shall be 14.

69 The minimum number of charity trustees is [3].

### **Composition of the board**

70 Subject to any vacancies which may exist from time to time, the board shall consist of:

70.1 5 charity trustees who are elected members or officers of the Council;

70.2 1 charity trustee who is appointed by and who represents the Trade Unions; and

70.3 8 charity trustees who are neither elected members nor officers of the Council.

### **Initial charity trustees**

71 The individuals who signed the charity trustee declaration forms which accompanied the application for incorporation of the SCIO shall be deemed to have been appointed by the members as charity trustees with effect from the date of incorporation of the SCIO.

### **Eligibility**

72 A person will not be eligible for appointment to the board if he/she is: -

72.1 disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; or

72.2 an employee of the SCIO, save in the case if a person appointed in terms of clause 70.2.

### **Appointment of charity trustees**

73 Subject to clauses 70 and 72, the Council may by notice in writing given to the SCIO:-

73.1 appoint any individual (providing he/she is willing so to act) to be a charity trustee; or

73.2 remove any individual previously appointed by it, from office as a charity trustee.

74 Any appointment or removal of a charity trustee under clause 73 shall have effect from

74.1 the date on which the relevant notice is given to the SCIO; or

74.2 any later date stated in the notice.

- 75 A notice under clause 73 shall be valid only if signed by an appropriate officer of the Council.
- 76 The Council shall exercise its powers of appointment and removal under clause 73 in such a way as to reflect the intended composition of the board, as set out in clause 70.
- 77 The Council shall be guided by the Nominations Committee (as defined in clause 146) in relation to the selection of appropriate individuals for appointment as charity trustees under paragraph 70.3.
- 78 The board shall endeavour to establish the Nominations Committee within a reasonable period after the incorporation of the SCIO; until such time as it is established, the reference in clause 77 to the Council being guided by the Nominations Committee shall be disregarded.

### **Retiral of charity trustees**

- 79 At each AGM, those charity trustees who have held office for a period of three years since they were appointed (or re-appointed) shall retire from office, but shall(subject to clause 80) then be eligible for re-appointment under clause 70 for a further three-year term.
- 80 A charity trustee who, as at the AGM when he/she retires from office under clause 79, has held office for a period of six years or more shall not be eligible for re-appointment at that AGM; he/she may however be eligible for appointment at the next AGM.
- 81 The provisions of clause 83 shall apply in relation to the interpretation of clauses 79 and 80.
- 82 The board may, by way of a resolution passed by majority vote at a board meeting, waive the provisions of clause 80 in relation to a particular charity trustee if they consider that exceptional considerations make that appropriate.
- 83 For the purposes of clauses 79 and 80:
- 83.1 the period between the date on which an individual was appointed as a charity trustee and the annual general meeting which next follows shall be deemed to be a period of one year, unless it is of less than six months' duration (in which case it shall be disregarded);
  - 83.2 the period between one annual general meeting and the next shall be deemed to be a period of one year;
  - 83.3 if an individual ceases to hold office as a charity trustee and is re-appointed as a charity trustee within a period of six months, he/she shall be deemed to have held office as a charity trustee continuously.

### **Termination of office**

- 84 A charity trustee will automatically cease to hold office if: -

- 84.1 he/she becomes disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
  - 84.2 he/she becomes incapable for medical reasons of carrying out his/her duties as a charity trustee - but only if that has continued (or is expected to continue) for a period of more than six months;
  - 84.3 in the case of a charity trustee appointed under paragraph 70.1, he/she ceases to be an elected member or officer of the Council;
  - 84.4 (other than in respect of the charity trustee appointed in terms of clause 70.2) he/she becomes an employee of the SCIO;
  - 84.5 he/she gives the SCIO a notice of resignation, signed by him/her;
  - 84.6 he/she is absent (without good reason, in the 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;
  - 84.7 he/she is removed from office by resolution of the board on the grounds that he/she is considered to have committed a material breach of the code of conduct for charity trustees (as referred to in clause 108);
  - 84.8 he/she is removed from office by resolution of the board on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
  - 84.9 he/she is removed from office by a resolution of the members passed at a members' meeting.
- 85 A resolution under paragraph 84.7, 84.8 or 84.9 shall be valid only if: -
- 85.1 the charity trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for his/her removal is to be proposed;
  - 85.2 the charity trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
  - 85.3 (in the case of a resolution under paragraph 84.7 or 84.8) at least two thirds (to the nearest round number) of the charity trustees then in office vote in favour of the resolution.

### **Register of charity trustees**

- 86 The board must keep a register of charity trustees, setting out
- 86.1 for each current charity trustee:
    - 86.1.1 his/her full name and address;
    - 86.1.2 the date on which he/she was appointed as a charity trustee;

- 86.1.3 the category into which he/she falls (ie by identifying the paragraph of clause 70 under which he/she was appointed); and
- 86.1.4 any office held by him/her in the SCIO;
- 86.2 for each former charity trustee - for at least 6 years from the date on which he/she ceased to be a charity trustee:
  - 86.2.1 the name of the charity trustee;
  - 86.2.2 the category into which he/she fell (as interpreted for the purposes of paragraph 86.1.3);
  - 86.2.3 any office (under clauses 89 to 98) held by him/her in the SCIO; and
  - 86.2.4 the date on which he/she ceased to be a charity trustee.
- 87 The board must ensure that the register of charity trustees is updated within 28 days of any change:
  - 87.1 which arises from a resolution of the board or a resolution passed by the members of the SCIO; or
  - 87.2 which is notified to the SCIO.
- 88 If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to him/her within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the SCIO, the board may provide a copy which has the addresses blanked out - if the SCIO is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

#### **Office-bearers**

- 89 The charity trustees must elect (on the recommendation of the Nominations Committee) a chair of the SCIO and a vice chair of the SCIO.
- 90 A charity trustee shall not be eligible for election as the chair of the SCIO unless he/she is a charity trustee appointed under paragraph 70.3 (independent charity trustees).
- 91 A charity trustee shall not be eligible for election as the vice chair of the SCIO unless he/she is a charity trustee appointed under paragraph 70.1 and unless he/she is also an elected member of the Council.
- 92 In addition to the office-bearers required under clause 89, the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate.
- 93 At each AGM, those office bearers who have held office for a period of three years since they were appointed (or re-appointed) shall retire from office, but shall (subject to clause 94) then be eligible for re-appointment under clause 89 for a further three-year term.



- 94 A charity trustee who, as at the AGM when he/she retires from office under clause 93, has held office for a period of six years or more shall not be eligible for re-appointment at that AGM; he/she may however be eligible for appointment at the next AGM.
- 95 The provisions of clause 97 shall apply in relation to the interpretation of clauses 93 and 94.
- 96 The board may, by way of a resolution passed by majority vote at a board meeting, waive the provisions of clause 80 in relation to a particular charity trustee if they consider that exceptional considerations make that appropriate.
- 97 For the purposes of clauses 93 and 94:
- 97.1 the period between the date on which an individual was appointed as an office bearer and the annual general meeting which next follows shall be deemed to be a period of one year, unless it is of less than six months' duration (in which case it shall be disregarded);
- 97.2 the period between one annual general meeting and the next shall be deemed to be a period of one year;
- 97.3 if an individual ceases to hold office as an office bearer and is re-appointed as an office bearer within a period of six months, he/she shall be deemed to have held office as an office bearer continuously.
- 98 A person elected to any office will automatically cease to hold that office: -
- 98.1 if he/she ceases to be a charity trustee; *or*
- 98.2 if he/she gives to the SCIO a notice of resignation from that office, signed by him/her.

#### **Powers of board**

- 99 Except where this constitution states otherwise, the SCIO (and its assets and operations) will be managed by the board; and the board may exercise all the powers of the SCIO.
- 100 A meeting of the board at which a quorum is present may exercise all powers exercisable by the board.
- 101 The members may, by way of a resolution passed by majority vote (either at a members' meeting or via a written resolution), direct the board to take any particular step or direct the board not to take any particular step; and the board shall give effect to any such direction accordingly.
- 102 The members shall, in exercising their powers under clause 101, comply with the duties imposed on members of a SCIO by section 51 of the Charities and Trustee Investment (Scotland) Act 2005.

## **Charity trustees - general duties**

- 103 Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the SCIO; and, in particular, must:-
- 103.1 seek, in good faith, to ensure that the SCIO acts in a manner which is in accordance with its purposes;
  - 103.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
  - 103.3 in circumstances giving rise to the possibility of a conflict of interest between the SCIO and any other party:
    - 103.3.1 put the interests of the SCIO before that of the other party;
    - 103.3.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the SCIO and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;
  - 103.4 ensure that the SCIO complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
- 104 In addition to the duties outlined in clause 103, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring: -
- 104.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and
  - 104.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.
- 105 Provided he/she has declared his/her interest - and has not voted on the question of whether or not the SCIO should enter into the arrangement - a charity trustee will not be debarred from entering into an arrangement with the SCIO in which he/she has a personal interest; and (subject to clause 106 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005) he/she may retain any personal benefit which arises from that arrangement.
- 106 No charity trustee may serve as an employee (full time or part time) of the SCIO, save in respect of the charity trustee appointed under clause 70.2; and no charity trustee may be given any remuneration by the SCIO for carrying out his/her duties as a charity trustee.
- 107 The charity trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.

## **Code of conduct for charity trustees**

- 108 Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board from time to time.

- 109 The code of conduct referred to in clause 108 shall be supplemental to the provisions relating to the conduct of charity trustees contained in this constitution and the duties imposed on charity trustees under the Charities and Trustee Investment (Scotland) Act 2005; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time

## **DECISION-MAKING BY THE CHARITY TRUSTEES**

### **Notice of board meetings**

- 110 Any charity trustee may call a meeting of the board *or* ask the secretary to call a meeting of the board.
- 111 At least 7 days' notice must be given of each board meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.
- 112 If charity trustees are to be permitted to participate in a board meeting by way of audio and/or audio-visual link(s), the charity trustees must, in advance of the meeting, be provided with details of how to connect and participate via that link or links; and (particularly for the benefit of those charity trustees who may have difficulties in using a computer or laptop for this purpose) the charity trustees' attention should be drawn to the following options:
  - 112.1 participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements):
  - 112.2 (where attendance in person is to be permitted, either on an open basis or subject to a restriction on the total number who will be permitted to attend) the ability to attend the meeting in person.

### **Procedure at board meetings**

- 113 No valid decisions can be taken at a board meeting unless a quorum is present; subject to clause 116, the quorum for board meetings shall (subject to clause 115) be 5 charity trustees, present in person.
- 114 An individual participating in a board meeting via an audio or audio-visual link which allows them to hear and contribute to discussions at the meeting will be deemed to be present in person (or, if they are not a charity trustee, will be deemed to be in attendance) at the meeting.
- 115 A quorum shall not be deemed to be constituted at any board meeting unless there is at least one charity trustee falling under paragraph 70.1 (elected members) and at least three charity trustees falling under paragraph (independent charity trustees) present at the meeting.
- 116 During the period from the date of incorporation of the SCIO until the date occurring 12 weeks after incorporation of the SCIO,
  - 116.1 the quorum for board meetings shall be 3 charity trustees, present in person; and
  - 116.2 the provisions of clause 115 shall not apply.
- 117 If at any time the number of charity trustees in office falls below the number required at the time to form a quorum, the remaining charity trustee(s) will have power to fill the vacancies or call a members' meeting - but will not be able to take any other valid decisions.

- 118 A charity trustee may participate in a board meeting (or a meeting of a committee of charity trustees) by means of a conference telephone, video conferencing facility or similar communications equipment whereby all the charity trustees participating in the meeting can hear each other; a charity trustee participating in a meeting in this manner shall be deemed to be present in person at the meeting
- 119 The chair of the SCIO should (subject to clauses 120 and 121) act as chairperson of each board meeting.
- 120 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 chairperson of the meeting), the vice chair of the SCIO should act as chairperson of that meeting.
- 121 If the chair of the SCIO considers that he/she has a significant conflict of interest in relation to a particular item to be discussed at a board meeting, he/she shall allow the vice chair of the SCIO to take over from him/her as chairperson of the meeting while that item is being dealt with.
- 122 If neither the chair of the SCIO nor the vice chair of the SCIO is present within 15 minutes after the time at which the meeting was due to start - or if neither of them is willing to act as chairperson of the meeting - the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.
- 123 Every charity trustee has one vote, which must be given personally (subject to clause 129).
- 124 All decisions at board meetings will be made by majority vote.
- 125 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 126 The board may if they consider appropriate (and must, if this is required under article 127), allow charity trustees to participate in board meetings by way of an audio and/or audio-visual link or links which allow them to hear and contribute to discussions at the meeting, providing:
- 126.1 the means by which charity trustees can participate via that link or links are not subject to technical complexities, significant costs or other factors which are likely to represent - for all, or a significant proportion, of the charity trustees - a barrier to participation: and
- 126.2 the manner in which the meeting is conducted ensures, so far as reasonably possible, that those charity trustees who participate via an audio or audio-visual link are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those charity trustees (if any) who are attending in person (and vice versa).
- 127 If restrictions arising from public health legislation, directions or guidance are likely to mean that attendance in person at a proposed board meeting would not be possible or advisable for one or more of the charity trustees, the board must make arrangements for charity trustees to participate in that board meeting by way of audio and/or audio-visual link(s); and on the basis that:
- 127.1 the requirements set out in paragraphs 126.1 and 126.2 of clause 126 will apply: and

- 127.2 the board must use all reasonable endeavours to ensure that all charity trustees have access to one or more means by which they may hear and contribute to discussions at the meeting.
- 128 A board meeting may involve two or more charity trustees participating via attendance in person while other charity trustees participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.
- 129 Where a charity trustee or charity trustees are participating in a board meeting via an audio or audio-visual link, they may cast their vote on any resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically.
- 130 The board may, at its discretion, allow any person to attend (whether in person or by way of an audio or audio-visual link) and speak at a board meeting notwithstanding that he/she is not a charity trustee - but on the basis that he/she must not participate in decision-making.
- 131 A charity trustee must not vote at a board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which he/she has a personal interest or duty which conflicts (or may conflict) with the interests of the SCIO; he/she must withdraw from the meeting while an item of that nature is being dealt with.
- 132 For the purposes of clause 131:-
- 132.1 an interest held by an individual who is “connected” with the charity trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that charity trustee;
- 132.2 a charity trustee will (subject to clause 133) be deemed to have a personal interest in relation to a particular matter if a body in relation to which he/she is an employee, director, member of the management committee, officer or elected representative has an interest in that matter.
- 133 A charity trustee appointed under paragraph 70.1 or 56.2 shall, notwithstanding the provisions of clause 131 and paragraph 132.2, be entitled to vote in relation to a particular matter notwithstanding that the Council has an interest in that matter; but on the basis that in exercising his/her voting rights in respect of any such matter, the charity trustee shall comply with the provisions of clauses 103 and 108 and in particular (but without limitation) must give priority to the interests of the SCIO.
- 134 For the avoidance of doubt, charity trustees shall not be entitled to vote at a board meeting unless they are personally present, or are participating in the meeting in a manner permitted under clause 118; charity trustees are not entitled to appoint substitutes to vote in their place at board meetings.
- 135 The principles set out in clause 63 (technical objections to remote participation) shall apply in relation to remote participation and voting at board meetings, as if each reference in that clause to a member were a reference to a charity trustee and each reference in that clause to a members’ meeting were a reference to a board meeting.

- 136 A resolution agreed to in writing (or by e-mail) by a majority of the charity trustees then in office shall (subject to clauses 137 and 138) be as valid as if duly passed at a board meeting.
- 137 A resolution under clause 136 shall not be valid unless a copy of the resolution was circulated to all of the charity trustees, along with a cut-off time (which must be reasonable in the circumstances) for notifications under clause 138.
- 138 If a resolution is circulated to the charity trustees under clause 137, any one or more charity trustees may, following receipt of a copy of the resolution, notify the board or the secretary that they consider that a board meeting should be held to discuss the matter which is the subject of the resolution; and if any such notification is received by the board or the secretary prior to the cut-off time:
- 138.1 the board or the secretary must convene a board meeting accordingly, and on the basis that it will take place as soon as reasonably possible;
- 138.2 the resolution cannot be treated as valid under clause 136 unless and until that board meeting has taken place;
- 138.3 the board may (if they consider appropriate, on the basis of the discussions at the meeting) resolve at that board meeting that the resolution should be treated as invalid, notwithstanding that it had previously been agreed to in writing (or by e-mail) by a majority of the charity trustees then in office.

## **Minutes**

- 139 The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.
- 140 The minutes to be kept under clause 139 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.

## **ADMINISTRATION**

### **Delegation to sub-committees**

- 141 The board may delegate any of their powers to sub-committees; a sub-committee must include at least one charity trustee, but other members of a sub-committee need not be charity trustees.
- 142 The board may also delegate to the chair of the SCIO (or the holder of any other post) such of their powers as they may consider appropriate.
- 143 When delegating powers under clause 141 or 142, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).
- 144 Any delegation of powers under clause 141 or 142 may be revoked or altered by the board at any time.
- 145 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the board.

### **Nominations Committee**

- 146 In relation to the charity trustees to be appointed under paragraph 70.2 (independent charity trustees):
  - 146.1 the board shall establish a committee (referred to in this constitution as “the Nominations Committee”); and
  - 146.2 the Nominations Committee shall make recommendations to the Council in relation to the selection of appropriate individuals for appointment as charity trustees under paragraph 70.2.
- 147 The members of the Nominations Committee shall comprise:
  - 147.1 the chair of the SCIO;
  - 147.2 a minimum of three further charity trustees, two of whom must be a charity trustee appointed under paragraph 70.1.
- 148 Subject to clause 147, the composition and proceedings of the Nominations Committee shall be governed by such standing orders as may be issued by the board from time to time.
- 149 In carrying out its functions, the Nominations Committee shall give effect to the following principles:
  - 149.1 the Nominations Committee should set an appropriate skills matrix to guide it in selecting and evaluating appropriate candidates, and should review and adjust that skills matrix from time to time;
  - 149.2 nominations for charity trustees falling within the remit of the Nominations Committee should be sought from a range of appropriate sources;
  - 149.3 all expressions of interest should be considered by the Nominations Committee; and



149.4 the Nominations Committee should maintain a register of suitable candidates for future reference

**Operation of accounts**

- 150 Subject to clause 151, the signatures of two out of three signatories appointed by the board will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the SCIO; at least one out of the two signatures must be the signature of a charity trustee.
- 151 Where the SCIO uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 150.

**Accounting records and annual accounts**

- 152 The board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 153 The board must prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions (or if the board consider that an audit would be appropriate for some other reason), the board should ensure that an audit of the accounts is carried out by a qualified auditor.

## **MISCELLANEOUS**

### **Winding-up**

- 154 If the SCIO is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the Charities and Trustee Investment (Scotland) Act 2005.
- 155 Any surplus assets available to the SCIO immediately preceding its winding up or dissolution must be used for purposes which are the same as - or which closely resemble - the purposes of the SCIO, as set out in this constitution.

### **Alterations to the constitution**

- 156 This constitution may (subject to clause 157) be altered by resolution of the members passed at a members' meeting (subject to achieving the two thirds majority referred to in clause 56) or by way of a written resolution of the members.
- 157 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

### **Interpretation**

- 158 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -
- 158.1 any statutory provision which adds to, modifies or replaces that Act; and
  - 158.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 158.1 above.
- 159 In this constitution: -
- 159.1 "charity" means a body which is either a "Scottish charity" within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a "charity" within the meaning of section 1 of the Charities Act 2006, providing (in either case) that its objects are limited to charitable purposes;
  - 159.2 "charitable purpose" means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts.

This is the proposed constitution referred to in the accompanying form, applying for a SCIO to be constituted with the name set out in clause 3 above.