**Model SCIO Constitution (two tier) for asset transfer**

**CONSTITUTION OF**

**[Enter SCIO name]**

**SCIO**

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| **Delete this box from the final version of your constitution**  Information which needs to be inserted is highlighted yellow.  Provisions which are optional are coloured red  Guidance notes relating to optional provisions are also coloured red.  **Notes on requirements of the Charities and Trustee Investment (Scotland) Act 2005 and associated regulations are coloured purple.**  **Notes on requirements of the Community Empowerment (Scotland) Act 2015 are coloured blue.** |

**CONSTITUTION OF**

**[Enter SCIO name]**

**SCIO**

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| Charities and Trustee Investment (Scotland) Act 2005  **Constitution**  **of**  **[enter SCIO name]** |

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| In this constitution, the following definitions apply throughout: | |
| * **“2005 Act”** means the Charities and Trustee Investment (Scotland) Act 2005 and every statutory modification and re-enactment thereof for the time being in force. * “**AGM**” means an Annual General Meeting. * “**Board**” means the Board of Charity Trustees. * **“Charity”** means a body entered in the Scottish Charity Register as defined under section 106 of Charities and Trustee Investment (Scotland) Act 2005. * **“Charity Trustees”** means the persons having the general control and management of the Organisation. * “**Clauses**” means any clause. * “**Clear days**”, in relation to notice of a meeting, means a period excluding the day when notice is given and the day of the meeting. * “**Community”** has the meaning given in clause 4. * “**GM**” means a General Meeting. * **“Group”** means those other organisations (incorporated or not) that are not this organisation . * **“Individual”** means a human/person. * **“Members”** means those individuals and groups who have joined this organisation. * “**Organisation**” means the SCIO whose constitution this is. * “**OSCR”** means the Office of the Scottish Charity Regulator” * “**Property**” means any property, assets or rights, heritable or moveable, wherever situated in the world. * “**SCIO”** means Scottish Charitable Incorporated Organisation. * “t**hem”** and **“their”** refer to individuals or groups (either he, she or they). | |
|  | Words in the singular include the plural and words in the plural include the singular. |
|  | These Clauses supersede any model clauses. Any words or expressions defined in the 2005 Act shall, if not inconsistent with the subject or context, bear the same meanings in the Clauses. |
|  | The Schedule to these Clauses is deemed to form an integral part of these Clauses. |

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|  | **NAME** | **Note - this column contains explanatory notes and should be deleted from the final version of your constitution.** |
| 1 | The name of the organisation is “[enter SCIO name]” [SCIO] (“**the Organisation**”). | **This is a requirement under Section 50(1) of the Charities and Trustee Investment (Scotland) Act 2005.**  The name does not have to contain the word ‘SCIO’ so you can delete ‘[SCIO]’ from this section and the front cover if you do not want this in the name.  This name must be the same as on the front cover. |
| 2 | The Organisation will, upon registration, be a Scottish Charitable Incorporated Organisation (SCIO). |  |
|  | **REGISTERED OFFICE** |  |
| 3 | The principal office of the organisation will be in Scotland (and must remain in Scotland). | **Do not** insert the actual Registered Office address. |
|  | **DEFINITION OF COMMUNITY AND PURPOSES** |  |
| 4 | The Organisation has been formed to benefit the community of [describe how the Community is defined] (the “Community”), with the following purposes (the “Purposes”): | **A definition of the community is a requirement of section 19(a) of the Community Empowerment (Scotland) Act 2015 (the “2015 Act").**  You should define your community, whether geographical or by interest, in enough detail that you can tell whether a person is a member of that community or not.  **Entering the SCIO’s purposes is a requirement under Section 50(1) of the Charities and Trustee Investment (Scotland) Act 2005**  **Section 19(e) of the 2015 Act requires that the constitution includes a statement of the body’s aims and purposes, including the promotion of a benefit for the community to which the body relates.** |
| 4.1 | <<enter your purposes>> | **Charitable purposes are detailed at section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005** (and in the associated guidance document accompanying this SCIO model). If the purposes are worded exactly as per the 2005 Act and guidance document, this will be acceptable to OSCR.  You can select one or more purposes which are likely to be relevant to your organisation’s aims and intended activities.  Once your organisation is registered, you can amend, add or remove purposes **but must apply** to OSCR for consent to do so.  You should enter your purposes in the following lines making sure each purpose is numbered (for example in 4.1 – The prevention of relief of poverty, then in the second row 4.2 – The saving of lives and so on).  We have supplied space for 5 purposes. If you need to add extra lines, right click the row below 4.6 and select “insert row below”. |
| 4.2 | <<enter your purposes>> |  |
| 4.3 | <<enter your purposes>> |  |
| 4.4 | <<enter your purposes>> |  |
| 4.5 | <<enter your purposes>> |  |
| 4.6 | <<enter your purposes>> |  |
|  | **POWERS** |  |
| 5 | The SCIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.  In particular, (but without limiting the range of powers available under the 2005 Act), the SCIO has power: | **This is a requirement under section 50(5) of the Charities and Trustee Investment (Scotland) Act 2005**  The Powers are relatively standard and are intended to cover most things you may wish to do to achieve the Purposes. However, just because there is a power to do something does not mean that you are obliged to do it. Nevertheless, you cannot do anything which you are not empowered to do and the Powers can be exercised only in furtherance of the Purposes. |
| 5.1 | to encourage and develop a spirit of voluntary or other commitment by, or co-operation with, individuals, unincorporated associations, societies, federations, partnerships, corporate bodies, agencies, undertakings, local authorities, unions, co-operatives, trusts and others and any groups or groupings thereof willing to assist the Organisation to achieve the Purposes; |  |
| 5.2 | to promote and carry out research, surveys and investigations and to promote, develop and manage initiatives, projects and programmes; |  |
| 5.3 | to provide advice, consultancy, training, tuition, expertise and assistance; |  |
| 5.4 | to prepare, organise, promote and implement training courses, exhibitions, lectures, seminars, conferences, events and workshops, to collect, collate, disseminate and exchange information and to prepare, produce, edit, publish, exhibit and distribute clauses, pamphlets, books and other publications, tapes, motion and still pictures, music and drama and other materials, all in any medium; |  |
| 5.5 | to purchase, take on lease, hire, or otherwise acquire any property suitable for the organisation; |  |
| 5.6 | to construct, convert, improve, develop, conserve, maintain, alter and demolish any buildings or erections whether of a permanent or temporary nature, and manage and operate (or arrange for the professional or other appropriate management and operation of) the organisation's property; |  |
| 5.7 | to sell, let, hire, license, give in exchange and otherwise dispose of all or any part of the property of the organisation; |  |
| 5.8 | to establish and administer a building fund or funds or guarantee fund or funds or endowment fund or funds; |  |
| 5.9 | to employ, contract with, train and pay such staff (whether employed or self-employed) as are considered appropriate for the proper conduct of the activities of the organisation; |  |
| 5.10 | to take such steps as may be deemed appropriate for the purpose of raising funds for the activities of the organisation; |  |
| 5.11 | to accept subscriptions, grants, donations, gifts, legacies and endowments of all kinds, either absolutely, conditionally or in trust; |  |
| 5.12 | to borrow or raise money for the Purposes and to give security in support of any such borrowings by the organisation and/or in support of any obligations undertaken by the organisation; |  |
| 5.13 | to set aside funds not immediately required as a reserve or for specific purposes; |  |
| 5.14 | to invest any funds which are not immediately required for the activities of the organisation in such investments as may be considered appropriate, which may be held in the name of a nominee organisation under the instructions of the Board of Trustees, and to dispose of, and vary, such investments; |  |
| 5.15 | to make grants or loans of money and to give guarantees; |  |
| 5.16 | to establish, manage and/or support any other charity, and to make donations for any charitable purpose falling within the purposes; |  |
| 5.17 | to establish, operate and administer and/or otherwise acquire any separate trading organisation or association, whether charitable or not; |  |
| 5.18 | to enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes of the activities of the organisation and to enter into any arrangement for co-operation, mutual assistance, or sharing profit with any charitable organisation; |  |
| 5.19 | to enter into contracts to provide services to or on behalf of others; |  |
| 5.20 | to effect insurance of all kinds (which may include indemnity insurance in respect of Trustees and employees); |  |
| 5.21 | to oppose, or object to, any application or proceedings which may prejudice the interests of the organisation; |  |
| 5.22 | to pay the costs of forming the organisation and its subsequent development; |  |
| 5.23 | to carry out the Purposes as principal, agent, contractor, trustee or in any other capacity. |  |
|  | **GENERAL STRUCTURE OF THE ORGANISATION** | **The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation 2(b))require details of the structure of the SCIO.** |
| 6 | The organisation is composed of: |  |
| 6.1 | **Members** (composed of Ordinary Members and Junior Members); | Depending on the definition of your community, including Junior Members may be optional. However, section 19(d) of the 2015 Act does not state an age limit for members of the Organisation. Persons under 16 cannot serve as a Charity Trustee.  Including those who are not members of your community but who wish to support your Organisation’s purposes (as Associates) is optional.  If your Organisation opts not to have Junior Members or Associates, you should ensure that any relevant provisions in relation to these members are removed or updated accordingly. |
| 6.2 | **Associates**; and |  |
| 6.3 | Charity Trustees (composed of Elected Charity Trustees, Appointed Charity Trustees; and Co-Opted Charity Trustees, following the first GM). | If your Organisation opts not to have Appointed or Co-Opted Charity Trustees you should ensure that any relevant provisions in relation to these are removed or amended. |
|  | **MEMBERSHIP** | **Section 50(2)(a) of the Charities and Trustee Investment (Scotland) Act 2005 requires provisions about who is eligible for membership and how a person becomes a member.** |
| 7 | The members of the organisation shall consist of those individuals who made the application for registration of the organisation and such other individuals and groups as are admitted to membership under the following clauses. |  |
| 8 | The organisation shall have not fewer than [enter number] members at any time; and | **The minimum number of members a SCIO can have is 2 (Section 49(2)(c) of the Charities and Trustee Investment (Scotland) Act 2005.)**  **Section 80(1)(b) of the 2015 Act provides that the minimum number of members is 20, if your organisation wants to make an asset transfer request for ownership.**  You may set a minimum of more than 20 members if your community is particularly large. If your community is very small and 20 members is not reasonable, you may apply to the Scottish Ministers for designation. |
| 8.1 | In the event that the number of members falls below [enter number] the Board may conduct only essential business other than taking steps to ensure the admission of sufficient Ordinary Members to achieve the minimum number. |  |
| 9 | Membership of the organisation is open to: | **These provisions meet the requirements of section 19(d) of the 2015 Act, which requires membership to be open to any member of the community.** |
| 9.1 | Individuals aged 16 or over who (and groups which) are members of the Community (“Ordinary Members”); and | Employees of the Organisation could be debarred from membership, but this seems inappropriate in a community Organisation (they are debarred from serving as Charity Trustees).  Depending on the definition of your community, organisations may be members. If this is the case, you should retain the words “(and groups which)” and you may wish to add the following:  “Each Member which is a group shall appoint one named authorised representative to represent and act for such Member at all GMs. Any change in the appointment of an authorised representative may be made at any time by the appointing Member, but only by written notice to the Organisation. Such notice will take effect upon its receipt by the Organisation.” |
| 9.2 | Individuals aged between 12 and 15 who are members of the Community (“Junior Members”) (such Members not being eligible to serve as Charity Trustees). | See note under clause 6.1. |
| 9.3 | If an Individual or group ceases to fulfil the criteria within clause 9.1 or 9.2, that Individual or group must inform the Organisation. The Organisation may choose to reclassify a Junior Member as an Ordinary Member. |  |
|  | **APPLICATION FOR MEMBERSHIP** | **Section 50(2)(a) of the Charities and Trustee Investment (Scotland) Act 2005 requires the constitution to make provision for how an individual or a group becomes a member** |
| 10 | No Individual or Group may become a Member unless that Individual or Group has submitted a written application for membership in the form prescribed by the Charity Trustees and the Charity Trustees have approved the application. An application submitted by an Group must be signed on behalf of that Group. | A written application for membership is recommended, which should be a simple form that is signed and dated by the applicant. |
| 10.1 | The Charity Trustees shall consider applications for membership promptly. The Charity Trustees shall assess each application to determine whether the applicant meets the criteria for becoming an Ordinary Member or Junior Member. |  |
| 11 | Membership of the organisation may not be transferred by a member. | **This is a requirement under The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation (7))** |
|  | **MEMBERSHIP SUBSCRIPTIONS** | Optional - It is a good idea to have a way of keeping the register of members up to date, either though annual subscription or re-registration. A subscription can be a nominal sum, such as £1. |
| 12 | Members shall be required to pay an annual membership subscription. | If including life membership, the fee should be equivalent to a substantial number of annual subscriptions. |
| 12.1 | Annual subscriptions (if any) shall be set by Members at the AGM. Different rates may be set for Ordinary Members and Junior Members. |  |
| 12.2 | Any Individual or Organisation who/which ceases to be a Member shall not be entitled to a refund of their/its membership subscription. |  |
|  | **RE-REGISTRATION OF MEMBERS** | **Optional** |
| 13 | The Board may, at any time, issue notices to the members requiring them to confirm that they wish to remain as members of the organisation, and allowing them a period of 28 days (running from the date of issue of the notice) to provide that confirmation to the Board. |  |
| 13.1 | If a member fails to provide confirmation to the Board (in writing or by e-mail) that they wish to remain as a member of the organisation before the expiry of the 28-day period referred to in clause 13, the Board may expel them from the membership. |  |
| 13.2 | A notice under clause 13 will not be valid unless it refers specifically to the consequences (under clause 13.1) of failing to provide confirmation within the 28-day period. |  |
|  | **LIABILITY OF MEMBERS** |  |
| 14 | The members of the organisation have no liability to pay any sums to help to meet the debts (or other liabilities) of the organisation if it is wound up; accordingly, if the organisation is unable to meet its debts, the members will not be held responsible. | **This is a requirement of section 49(4) of the Charities and Trustee Investment (Scotland) Act 2005** |
| 15 | The members and Charity Trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 14 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. | **Section 51 of the Charities and Trustee Investment (Scotland) Act 2005 applies some duties of Charity Trustees under section 66 to members of SCIOs.** |
|  | **CESSATION OF MEMBERSHIP** | **The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation 2(d)) require details of the process for withdrawal and removal of members** |
| 16 | A member shall cease to be a member if: |  |
| 16.1 | that Member sends a written notice of resignation to registered office of the Organisation; they will cease to be a member as from the time when the notice is received by the organisation; |  |
| 16.2 | that Member has failed to pay an annual membership subscription for over six months and has received at least one written reminder, and the Board has resolved to expel that Member; | Only appropriate where there is a membership subscription |
| 16.3 | that Member has failed to respond to any re-registration request under clause 13; | If provisions for re-registration have been included |
| 16.4 | a resolution that that Member be expelled (where that Member’s conduct, in their/its capacity as a Member, has been detrimental to the effective functioning of the Organisation) is passed by special resolution at a GM (notice of which shall state: (a) the full text of the resolution proposed; and (b) the grounds on which it is proposed) at which the Member is entitled to be heard; |  |
| 16.5 | in the case of an Individual, that Individual has died (membership of the Organisation not being transferable); |  |
| 16.6 | in the case of a group, that group goes into receivership or liquidation, or is dissolved or otherwise ceases to exist (membership of the Organisation not being transferable); |  |
| 16.7 | where the Member is a Charity Trustee of the Organisation, that Member has failed to comply with the code of conduct for Trustees in a manner which would result in them ceasing to be a Trustee and a member. |  |
|  | **REGISTER OF MEMBERS** | **These provisions comply with the requirements for a register of members under the Scottish Charitable Incorporated Organisation Regulations 2011 (regulation 5)**  If additional details are retained, the office of the Data Protection Act 1988 may require you to obtain written permission from each member to hold additional personal data. More information is available on the Information Commissioner’s website at [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk) |
| 17 | The Board must keep a register of members, setting out for each current member:   1. their full name; 2. their address; and 3. the date on which they were registered as a member of the organisation. |  |
| 17.1 | Where any member is not an individual, the register must also contain:   1. any other name by which the member is known; 2. the principal contact for the member; 3. any number assigned to it in the Scottish Charity Register, if it is a charity; and 4. any number with which it is registered as a company, if it is a company. |  |
| 17.2 | For each former member the register must set out, for at least six years from the date on they ceased to be a member:   1. their name; and 2. the date on which they ceased to be a member. |  |
| 17.3 | The Board must ensure that the register of members is updated within 28 days of receiving notice of any change. |  |
| 17.4 | If a member or Charity Trustee of the Organisation requests a copy of the register of members, the Board must ensure that a copy is supplied to them 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. | **This provision complies with the requirements of regulation 6 of the Scottish Charitable Incorporated Organisation Regulations 2011.** |
|  | **ASSOCIATES** |  |
| 18 | Individuals and Groups wishing to support the Purposes who are not members of the Community may become associates of the Organisation (“Associates”). Associates may attend and speak at GMs but may not participate in such meetings for voting or quorum purposes. | **Having Associates separate from Members helps to comply with the requirements of section 19(b) and (c) of the 2015 Act.**  **It is possible to have an alternative structure in which Associates are treated as “Associate Members” with rights to vote, provided that members of the community are always in the majority.** |
| 18.1 | No Individual or Group may become an Associate unless that Individual or Group has submitted a written application to become an Associate in the form prescribed by the Charity Trustees and the Charity Trustees have approved the application. An application submitted by a Group must be signed on behalf of that Group. |  |
| 18.2 | The Charity Trustees shall consider applications for associateship promptly. The Charity Trustees shall assess each application to determine whether the applicant meets the criteria for becoming an Associate. |  |
| 19 | The Charity Trustees shall cause a register of associates to be maintained containing:  (a) the name and address of each Associate;  (b) the date on which each Individual or Group was registered as an Associate; and  (c) the date at which any Individual or Organisation ceased to be an Associate. | It is recommended, in order to determine who is a current associate, that this register of associates is kept as accurate as possible.  If additional details are retained, the office of the Data Protection Act 1988 may require you to obtain written permission from each member to hold additional personal data. Further information is available on the Information Commissioner’s website at [www.informationcommisioner.gov.uk](http://www.informationcommisioner.gov.uk) . |
| 20 | An Associate shall cease to be an Associate if: |  |
| 20.1 | that Associate sends a written notice of resignation to the Organisation; |  |
| 20.2 | that Associate becomes a member of the Community; |  |
| 20.3 | a resolution that that Associate be expelled from being an Associate (where that Associate’s conduct, in their capacity as Associate, has been detrimental to the effective functioning of the Organisation) is passed by special resolution at a GM (notice of which shall state: (a) the full text of the resolution proposed; and (b) the grounds on which it is proposed) at which the Associate is entitled to be heard); |  |
| 20.4 | in the case of an Individual:  (a) that Individual becomes insolvent or apparently insolvent or makes any arrangement with their creditors; or  (b) that Individual has died; or |  |
| 20.5 | in the case of a Group, that Group goes into receivership or liquidation, or is dissolved or otherwise ceases to exist. |  |
|  | **GENERAL MEETINGS (Meetings of the Members)** |  |
| 21 | The Board may call a GM at any time and must call a GM within 28 days of a valid requisition. To be valid, such requisition must be signed by at least 5% of the Members, must clearly state the purposes of the meeting, and must be delivered to the registered office of the Organisation. The requisition may consist of several documents in like form each signed by one or more of the Members. |  |
|  | **Annual General Meeting** |  |
| 22 | The Board shall convene one GM a year as an AGM. An AGM need not be held during the calendar year during which the Organisation is incorporated, provided an AGM is held within 15 months of the date of incorporation. Thereafter, not more than 15 months shall elapse between one AGM and the next. | **The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation 8(1)) require a meeting to be held at least once every 15 months from the date of incorporation** |
| 22.1 | The business of each AGM shall include:   1. a report by the Chairperson on the activities of the Organisation; 2. the election of Elected Charity Trustees; 3. the fixing of annual subscriptions; 4. consideration of the accounts of the Organisation; 5. a report of the auditor if applicable; and 6. the appointment of the auditor if applicable. |  |
|  | **Notice of General Meetings** | **The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation (2)(c)(i)) require provisions for convening meetings.** |
| 23 | Subject to the terms of clause 67, notice of a GM shall be given as follows: |  |
| 23.1 | At least 14 Clear Days’ notice must be given of any GM. | **The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation (8)(2)) require 14 days’ notice of meetings** |
| 23.2 | The notice must specify the place, date and time of the GM, the general nature of business to be dealt with at the meeting; and   1. in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); and 2. in the case of any special resolution (as defined in clause 30) must set out the exact terms of the resolution. |  |
| 23.3 | Notice of every members' meeting must be given to all the members of the organisation, 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. |  |
|  | **CHAIRPERSON OF GENERAL MEETINGS** |  |
| 24 | (a) The Chairperson of the organisation shall act as Chairperson of each GM.  (b) If the Chairperson is not present or willing to do so the Vice-Chairperson of the organisation shall act as Chairperson of the GM.  (c) If neither the Chairperson nor the Vice-Chairperson is present or willing to act as Chairperson of the GM within 15 minutes after the time at which it was due to start, the Charity Trustees present shall elect from among themselves one of the Elected Charity Trustees who will act as Chairperson of that GM. | **This provision contributes to compliance with section 19(c) of the 2015 Act (control of a community body by members of the body who are members of the community).** |
|  | **QUORUM AT GENERAL MEETINGS** |  |
| 25 | The quorum for a GM shall be the greater of:  (a) eleven Members; or  (b) 10% of the Members,  present either in person or by proxy.  No business shall be dealt with at any GM unless a quorum is present. | **The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation (2)(c)(iii)) require rules for the quorum needed for any meeting**  **This provision contributes to compliance with section 19(c) of the 2015 Act (control of a community body by members of the body who are members of the community).**  You should ensure that the quorum requires a reasonable number of voting Members to attend, but not so many that it might be difficult to achieve. The quorum shown is the minimum suitable under the 2015 Act, if you opt to selected a minimum of 20 members at article 7.2. |
| 25.1 | If a quorum is not present within 15 minutes after the time at which the GM was due to start (or if, during a GM, a quorum ceases to be present) the GM shall be adjourned until such time, date and place as may be fixed by the Chairperson of the GM. |  |
| 25.2 | The Board may make arrangements in advance of a GM to allow members (or their proxies) to fully participate remotely, so long as all those participating in the meeting can communicate with each other; and all Members (or their proxies) may vote during the meeting. A Member or proxy participating remotely by such means shall be deemed to be present in person at the GM. |  |
|  | **VOTING AT GENERAL MEETINGS** | **The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation (2)(c)(iv) require provisions on the voting rights of members.**  **This provision contributes to compliance with section 19(c) of the 2015 Act (control of a community body by members of the body who are members of the community).** |
| 26 | The Chairperson of the meeting shall endeavour to achieve consensus wherever possible but, if necessary, questions arising shall be decided by being put to the vote. |  |
| 26.1 | Each Member shall have one vote, to be exercised in person or by proxy, by a show of hands |  |
| 26.2 | A secret ballot may be demanded by:  (a) the chairperson of the GM; or  (b) at least two Members present at the GM,  before a show of hands and must be taken immediately and in such manner as the chairperson of the GM directs. The result of a secret ballot shall be declared at that GM. |  |
| 27 | Whilst the attendance of Members at GMs is encouraged, a Member may appoint a proxy to attend a GM on behalf of that Member. A proxy appointed to attend and vote at a GM on behalf of a Member need not be a Member and shall have the same rights as the Member who appointed them to speak and vote at the GM. | **Proxy voting is optional, but is useful should members not be able to attend meetings. Only one proxy vote per member is allowed.**  **If you opt not to include proxy voting then this clause should be replaced with the wording “**there shall be no ability for proxy voting**”, and all references in other clauses to proxy voting should be deleted.** |
| 27.1 | The form appointing the Proxy shall be in the form set out in Schedule 1 annexed to these Clauses; | The template Form for appointing a proxy is in Schedule 1 at the end of the Clauses. |
| 27.2 | The form appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a certified copy thereof, shall be lodged at the Registered Office not less than 48 hours before the time of the GM at which the proxy is to be used; and |  |
| 27.3 | No form of proxy shall be valid more than 12 months from the date it was granted. |  |
| 28 | In the event of an equal number of votes for and against any resolution, the Chairperson of the meeting shall have a vote in their capacity as a member of the organisation. | **Optional -** to give the Chairperson a casting vote, but sensible to avoid deadlock. |
|  | **Resolutions** | **The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation (2)(c)(v)) require provisions for how resolutions may be passed.** |
| 29 | At any GM an Ordinary Resolution put to the vote of the meeting may be passed by a simple majority of the Members voting (in person or by proxy). |  |
| 30 | Certain resolutions must be passed as Special Resolutions, including resolutions:   1. to alter the name of the Organisation; or 2. to amend the Purposes; or 3. to amend these Clauses; or 4. to wind up the Organisation in terms of clause 72.   At any GM a Special Resolution put to the vote of the meeting may be passed by not less than two thirds of the Members voting (in person or by proxy). | **A two-thirds majority is required for these actions, to comply with Section 63 of the 2005 Act and the Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011, regulation 3(3).** |
| 31 | Ordinary and Special Resolutions may be passed in writing, rather than at a General Meeting, and shall have effect as if they had been passed at a GM, provided the terms of this Clause are followed. |  |
| 31.1 | An Ordinary Resolution may be passed in writing if signed by a simple majority of all the Members. |  |
| 31.2 | A Special Resolution to wind up the Organisation may be passed in writing if signed by all the Members. |  |
| 31.3 | Any other Special Resolution may be passed in writing if signed by not less than two thirds of all the Members. |  |
| 31.4 | Written resolutions must be sent to all Members at the same time (the “Circulation Date”) in hard copy (posted or hand-delivered) or electronic form (faxed or e-mailed), or by means of a website. |  |
| 31.5 | Written resolutions must be accompanied by a statement informing the Member:   1. how to signify agreement to the resolution; 2. how to return the signed resolution to the Organisation (in hard copy (posted or hand-delivered) or electronic form (faxed or e-mailed)); 3. the date by which the resolution must be passed if it is not to lapse (that is, the date which is 28 days after the Circulation Date); and 4. that they will not be deemed to have agreed to the resolution if they fail to reply. |  |
| 31.6 | A written resolution may consist of several documents in the same form, each signed by or on behalf of one or more Members. |  |
| 31.7 | Once a Member has signed and returned a written resolution in agreement thereto, that Members’ agreement is irrevocable. |  |
| 31.8 | The Members may require the Organisation to circulate a written resolution. |  |
| 31.8.1 | The resolution must be requested by at least 5% of the Members. Requests must be in hard copy (posted or hand-delivered) or electronic form (faxed or e-mailed), must identify the resolution and may be accompanied by a statement not exceeding 1,000 words which the Organisation will also be required to circulate. |  |
| 31.8.2 | The Board may reject the resolution but must provide reasons for doing so to the members requesting the resolution. |  |
| 31.8.3 | If accepted, the Organisation must circulate the resolution and any accompanying statement within 21 days, and may require the requesting Members to cover the expenses it incurs circulating the resolution. |  |
|  | **MEETING ADJOURNMENT** |  |
| 32 | The Chairperson of the GM may, with the consent of a majority of the Members voting (in person or by proxy), adjourn the General Meeting to such time, date and place as the Chairperson may determine. |  |
|  | **ORGANISATION MANAGEMENT** |  |
| 33 | The affairs, property and funds of the organisation shall be directed and managed by a Board of Charity Trustees. The Board: |  |
| 33.1 | shall set the strategy and policy of the Organisation; |  |
| 33.2 | shall, where no employees or managers are appointed, be responsible for the day-to-day management of the Organisation; |  |
| 33.3 | shall hold regular meetings between each AGM, meeting as often as necessary to despatch all business of the Organisation; |  |
| 33.4 | shall monitor the financial position of the Organisation; |  |
| 33.5 | shall direct and manage the affairs and Property of the Organisation; |  |
| 33.6 | shall generally control and supervise the activities of the Organisation; |  |
| 33.7 | may, on behalf of the Organisation, do all acts which may be performed by the Organisation (other than those required to be performed by the Members at a GM); |  |
| 33.8 | may exercise the powers of the Organisation; and | **This is required by section 50(6) of the Charities and Trustee Investment (Scotland) Act 2005** |
| 33.9 | may not also be paid employees of the Organisation. |  |
|  | **INTERIM BOARD** |  |
| 34 | Upon incorporation of the organisation, the individuals who signed the Charity Trustee declaration forms which accompanied the application for incorporation of the organisation shall be deemed to have been appointed by the members as Charity Trustees with effect from the date of incorporation of the Organisation. | It is intended that the Interim Board’s main function is to act in the brief interlude between incorporation and the fully-elected Board of Trustees |
| 34.1 | The Interim Board shall retire at the first GM, which shall be held as soon as practicable following incorporation, but shall remain eligible for re-election (the period of office between the date of incorporation and the date of the first GM not being regarded as a “term of office” for the purposes of clause 24.6). |  |
|  | **COMPOSITION OF THE BOARD OF CHARITY TRUSTEES** |  |
| 35 | The number of Charity Trustees shall be not less than three and the total number of Charity Trustees shall not be more than [insert number]. | **This is a requirement under Section 50(2)(b) of the Charities and Trustee Investment (Scotland) Act 2005, which states there must be no less than 3 Trustees**  A maximum number should be inserted (usually no more than twelve), which should tally with the total number of Charity Trustees in terms of Clause 40.1, 40.2 & 40.3. |
|  | **APPOINTMENT OF CHARITY TRUSTEES** | **It is a requirement under Section 50(2)(b) of the Charities and Trustee Investment (Scotland) Act 2005 that the constitution makes provision for how Charity Trustees are appointed – clauses 40 to 44 provide for this** |
| 36 | From and after the first General Meeting of the organisation, the Board shall comprise the following individual persons (a majority of whom shall always be Elected Charity Trustees): | **This provision contributes to compliance with section 19(c) of the 2015 Act (control of a community body by members of the body who are members of the community).**  However elected, appointed or co-opted, a Charity Trustee, once on the Board, owes their duty to the SCIO. |
| 36.1 | up to [insert number (minimum of 3)] individual persons elected as Charity Trustees by the Members in accordance with clause 37 (“the Elected Charity Trustees”), who must themselves be Ordinary Members; and |  |
| 36.2 | up to [insert number] individual persons appointed by [insert name of appointing body] in accordance with clause 38(“the Appointed Charity Trustees”); and | **Optional -** It is sometimes the case that the local Councillor, or a representative of the Community Council or other appropriate outside body, should have a close tie with the Organisation by having Board representation. This may be a provision to add at a later date.  If opting for appointed then the combined total of Appointed Charity Trustees and Co-opted Charity Trustees must not outnumber the total number of Elected Charity Trustees (e.g. if you have 6 elected Charity Trustees the max number of appointed & co-opted Charity Trustees added together can’t be greater than 5). |
| 36.3 | up to [insert number] individual persons co-opted in accordance with clause 39 (“the Co-opted Charity Trustees”), so as to ensure a spread of skills and experience within the Board. | **Optional** - Increasingly, this is recognised as an important feature to ensure that the Board has the skills it requires. It is also a route whereby a Chairperson may be recruited.  If opting for appointed then the combined total of Appointed Charity Trustees and Co-opted Charity Trustees must not outnumber the total number of Elected Charity Trustees (e.g. if you have 6 elected Charity Trustees the max number of appointed & co-opted Charity Trustees added together can’t be greater than 5). |
| 36.4 | Employees of the organisation may not be nominated as or become Charity Trustees. | This would need to be amended if the principal employee is to serve on the Board as co-opted Charity Trustee - see note to clause 36.3. |
|  | **ELECTED CHARITY TRUSTEES** |  |
| 37 | At the first General Meeting of the Organisation, the Members shall elect up to [insert maximum number (minimum of three)] individual Ordinary Members as Elected Charity Trustees. | **This provision contributes to compliance with section 19(c) of the 2015 Act (control of a community body by members of the body who are members of the community).** |
| 37.1 | Elected Charity Trustees must be nominated in writing by at least two Members. Such nominations must contain confirmation from the nominee that they are willing to act as an Elected Charity Trustee and must be delivered to the registered office of the Organisation at least seven days before the GM. |  |
| 37.2 | Each Member has one vote for each vacancy in the Elected Charity Trustees on the Board. |  |
| 37.3 | Provided the first GM is not also the first AGM, there shall be no changes in the Charity Trustees at the first AGM (except to fill any vacancies left following the first GM or caused by retirals since the first GM). | There is little point in having another set of elections in quick succession during the first year or so when the priority is for the Charity Trustees to settle effectively into the Organisation’s business. |
| 37.4 | At the second and subsequent AGMs, one-third of the Elected Charity Trustees (rounding upwards if this is not a whole number) shall retire from office at the close or adjournment of that meeting. | This retiral by rotation provides a mixture of continuity and new input. |
| 37.5 | A retiring Charity Trustee shall be eligible for re-election after one term of office. A retiring Charity Trustee shall not be eligible for re-election after two consecutive terms of office until a period of one year in which they have not been a Charity Trustee has passed. | The recommended number of terms is two (six years once full rotation has been established) (i.e. a term is three full years starting from first election until the fourth AGM) |
| 37.6 | The Elected Charity Trustee(s) to retire at an AGM shall be those who have been longest in office since their election/re-election (unless other Elected Charity Trustee(s) have agreed to retire at that AGM). As between Individuals who were appointed as Elected Charity Trustees on the same date, the Elected Charity Trustee(s) to retire shall be agreed between the Individuals appointed on the same date or determined by lot. |  |
|  | **APPOINTED CHARITY TRUSTEES** | **Optional - see note on clause 36.2** |
| 38 | Subject to clause 35**,** up to [insert number] [individual/individuals] may be appointed by [insert the name and address of the appointing group], or its successors, in respect of which the following shall apply: |  |
| 38.1 | Nominations, which must contain confirmation from the nominee that they are willing to act as an Appointed Charity Trustee, must be delivered to the registered office of the Organisation at least two days before the first GM or at least two days before an AGM. If no new nomination is delivered in accordance with this clause, any Charity Trustee previously appointed shall remain in office. | Appointed Charity Trustees are appointed by the group they represent, NOT the Organisation |
| 38.2 | For the avoidance of doubt, an Appointed Charity Trustee may attend and vote at Board meetings (subject to clause 63). |  |
| 38.3 | [Insert name of appointing body] (or its successors) may appoint or remove its Appointed Charity Trustee at any time, by written notice to that effect delivered to the Registered Office not less than 2 days before the change is to take effect. | Appointed Charity Trustees are appointed by the group they represent, NOT the Organisation |
|  | **CO-OPTED CHARITY TRUSTEES** | **Optional - see note on clause 36.3** |
| 39 | Subject to clause 35, the Charity Trustees may appoint Individuals as Charity Trustees to ensure a spread of skills and experience within the Board (“Co-opted Charity Trustees”) and may remove a Co-opted Charity Trustee at any time. |  |
| 39.1 | A Co-opted Charity Trustee shall retire at the AGM following their appointment unless re-appointed by the Charity Trustees. |  |
| 39.2 | A Co-opted Charity Trustee can be removed from office at any time by a simple majority of the Board. |  |
| 39.3 | For the avoidance of doubt, a Co-opted Charity Trustee may participate fully in at all Board meetings which they attend, and is eligible to vote at them. |  |
|  | **VACANCY** |  |
| 40 | The Board may from time to time fill any casual vacancy arising as a result of the retiral (or deemed retiral for any reason) of any Elected Charity Trustee from or after the date of such retiral or deemed retiral until the next AGM. | No provision has been made for Alternate Charity Trustees (to serve when one of the primary Charity Trustees is absent) - because, in a Community organisation, the Charity Trustees should only be those who have been elected or appointed to serve and are able to do so. |
|  | **CHARITY TRUSTEES – GENERAL DUTIES** |  |
| 41 | Each of the Charity Trustees has a duty, in exercising functions as a Charity Trustee, to act in the interests of the organisation; and, in particular, must: |  |
| 41.1 | seek, in good faith, to ensure that the organisation acts in a manner which is in accordance with its purposes; |  |
| 41.2 | act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person; |  |
| 41.3 | in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party, put the interests of the organisation before that of the other party; where any other duty prevents them from doing so, disclose the conflicting interest to the organisation and refrain from participating in any deliberation or decision of the other Charity Trustees with regard to the matter in question; |  |
| 41.4 | ensure that the organisation complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005. |  |
| 42 | In addition to the duties outlined in clause 41, all of the Charity Trustees must take such steps as are reasonably practicable for the purpose of ensuring: |  |
| 42.1 | that any breach of any of those duties by a Charity Trustee is corrected by the Charity Trustee concerned and not repeated; and |  |
| 42.2 | that any Charity Trustee who has been in serious and persistent breach of those duties is removed as a Charity Trustee. |  |
| 43 | Provided they have declared their interest - and have not voted on the question of whether or not the organisation should enter into the arrangement - a Charity Trustee will not be debarred from entering into an arrangement with the group in which they have a personal interest; and (subject to clause 61 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005), they may retain any personal benefit which arises from that arrangement. |  |
| 44 | No Charity Trustee may serve as an employee (full time or part time) of the organisation; and no Charity Trustee may be given any remuneration by the organisation for carrying out their duties as a Charity Trustee. | Please see section 67 of the Charities and Trustee Investment (Scotland) Act 2005 in regards to remuneration. |
| 45 | 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** |  |
| 46 | 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. | Providing a code of conduct is optional, but helpful to make sure all Trustees are clear about what is expected of them. |
| 46.1 | The code of conduct 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. |  |
|  | **REGISTER OF CHARITY TRUSTEES** | **The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation 3)) requires a register of Trustees to be held containing the information set out in these clauses.** |
| 47 | The Board must keep a register of Charity Trustees, setting out for each current Charity Trustee:   1. the name of the Charity Trustee; 2. the address of the Charity Trustee; 3. the date on which they were appointed as a Charity Trustee; and 4. any office held by them in the organisation. |  |
| 47.1 | Where a Charity Trustee is not an individual the register must also contain:   1. Any other name by which the Charity Trustee is known; 2. the principal contact for the Charity Trustee; 3. any number assigned to it in the Scottish Charity Register (if it is a charity); and 4. any number with which it is registered as a company, if it is a company. |  |
| 47.2 | Where the Charity Trustee is appointed by OSCR under section 70A of the 2005 Act it must be recorded in the register. |  |
| 47.3 | For each former Charity Trustee the register must set out, for at least 6 years from the date on which they ceased to be a Charity Trustee:   1. the name of the Charity Trustee; 2. any office held by the Charity Trustee in the Organisation; and 3. the date on which they ceased to be a Charity Trustee. |  |
| 47.4 | The Board must ensure that the register of Charity Trustees is updated within 28 days of receiving notice of any change. |  |
| 47.5 | If any person requests a copy of the register of Charity Trustees, the Board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a person who is not a Charity Trustee of the Organisation, the Board may provide a copy which has the name and address of any of the Charity Trustees blanked out. The name of a Charity Trustee may only be blanked out if the Organisation is satisfied that including that information is likely to jeopardise the safety or security of any person or premises. | **This clause complies with the requirements of the Scottish Charitable Incorporated Organisation Regulations 2011 (regulation 4)** |
|  | **TERMINATION OF CHARITY TRUSTEES OFFICE** | **The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation 3(2)(d)) require provision for the withdrawal or removal of Trustees** |
| 48 | A Charity Trustee will automatically cease to hold office if: - |  |
| 48.1 | they give the Organisation a notice of resignation, signed by them; |  |
| 48.2 | they become an employee of the Organisation; |  |
| 48.3 | in the case of a Charity Trustee elected under clause 37) they cease to be a member of the Organisation; |  |
| 48.4 | in the case of a Charity Trustee appointed under clause 38) they cease to be a member of the appointing group; |  |
| 48.5 | in the case of a Charity Trustee co-opted under clause 39) the Board under clause 39.2vote to end the appointment; |  |
| 48.6 | they become disqualified from being a Charity Trustee under the Charities and Trustee Investment (Scotland) Act 2005; |  |
| 48.7 | they are 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 them from office; |  |
| 48.8 | they become incapable for medical reasons of carrying out their duties as a Charity Trustee - but only if that has continued (or is expected to continue) for a period of more than six months; |  |
| 48.9 | they are removed from office by resolution of the Board on the grounds that they are considered to have committed a material breach of the code of conduct for Charity Trustees (as referred to in clauses 46); |  |
| 48.10 | they are removed from office by resolution of the Board on the grounds that they are considered to have been in serious or persistent breach of their duties under section 66(1) or (2) of the 2005 Act; |  |
| 48.11 | they become prohibited from being a Charity Trustee by virtue of section 69(2) of the 2005 Act |  |
| 48.12 | they commit any offence under section 53 of the 2005 Act. |  |
| 49 | Clauses 48.9 and 48.10 apply only if the following conditions are met: |  |
| 49.1 | the Charity Trustee who is subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for removal is to be proposed; |  |
| 49.2 | 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 a vote; and |  |
| 49.3 | at least two thirds of the Charity Trustees then in office vote in favour of the resolution. |  |
|  | **CHAIRPERSON AND VICE-CHAIRPERSON** |  |
| 50 | The Board shall meet as soon as practicable meeting immediately after each AGM or following the resignation of the existing Chairperson/Vice-Chairperson to appoint:  (a) an Elected Charity Trustee to chair Board meetings and GMs (the “Chairperson”), and  (b) an Elected Charity Trustee to chair Board meetings and GMs in the event that the Chairperson is not present and willing to do so (the “Vice Chairperson”). | **This provision contributes to compliance with section 19(c) of the 2015 Act.**  The Chairperson and Vice-Chairperson must be Ordinary Members so as to ensure a majority and control by your community where a casting vote at a meeting of the Board is relevant.  Having a Vice-Chairperson is optional. |
| 50.1 | In the event that:  (a) the Chairperson is not present and willing to act within 15 minutes of the time at which the GM/Board meeting is due to start, or no Chairperson is currently appointed; and  (b) the Vice-Chairperson is not present and willing to act within 15 minutes of the time at which the GM/Board meeting is due to start, or no Vice-Chairperson is currently appointed,  the Charity Trustees present must appoint an Elected Charity Trustee to chair the GM/Board meeting. | **This provision also contributes to compliance with section 19(c) of the 2015 Act, in terms of ensuring that the acting chair is always a member of the Community (by virtue of being an Elected Charity Trustee).** |
|  | **BOARD MEETINGS** | **The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation 2(c)(i) & (iii)) require provision for meetings and quorums. Clause 51 covers Board meetings** |
| 51 | The quorum for Board meetings shall be not less than 50% of all the Trustees, a majority of whom are Elected Charity Trustees. No business shall be dealt with at a Board meeting unless such a quorum is present. | **This provision contributes to compliance with section 19(c) of the 2015 Act.**  The level of the quorum should reflect that Trustees must undertake their obligation to manage the Organisation. The Elected Charity Trustees **must** always outnumber the other Charity Trustees at any meeting of the Board to ensure that the community is in control |
| 51.1 | A Charity Trustee shall not be counted in the quorum at a meeting (or at least the relevant part thereof) in relation to a resolution on which, whether because of personal interest or otherwise, they are not entitled to vote. |  |
| 51.2 | The Board may make any arrangements in advance of any Board meeting to allow members to fully participate in such meetings so long as all those participating in the meeting can clearly comprehend each other; a member participating in any such means other than in person shall be deemed to be present in person at the Board meeting. |  |
| 52 | 7 Clear Days’ notice in writing shall be given of any meeting of the Board at which a decision in relation to any of the matters referred to in clause 30 is to be made, which notice shall be accompanied by an agenda and any papers relevant to the matter to be decided. |  |
| 52.1 | All other Board meetings shall require not less than 7 days’ prior notice, unless all Charity Trustees agree unanimously in writing to dispense with such notice on any specific occasion. |  |
| 52.2 | On the request of a Charity Trustee the Chairperson shall summon a meeting of the Board by notice served upon all Charity Trustees, to take place at a reasonably convenient time and date. |  |
| 53 | No alteration of the Clauses and no direction given by Special Resolution shall invalidate any prior act of the Board which would have been valid if that alteration had not been made or that direction had not been given. |  |
| 54 | The Board may act notwithstanding any vacancy in it, but where the number of Charity Trustees falls below the minimum number specified in clause 35, it may not conduct any business other than to appoint sufficient Charity Trustees to match or exceed that minimum. |  |
| 55 | The Board may invite or allow any person to attend and speak, but not to vote, at any meeting of the Board or of its sub-committees. |  |
| 56 | The Board may from time to time promulgate, review and amend any Ancillary Regulations, Guidelines and/or Policies, subordinate at all times to these Clauses, as it deems necessary and appropriate to provide additional explanation, guidance and governance to members/Charity Trustees. |  |
|  | **VOTING AT BOARD MEETINGS** | **The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation 2(c)(iv)) require provision for voting rights of Trustees.** |
| 57 | The Chairperson of the Board meeting shall endeavour to achieve consensus wherever possible but, if necessary, questions arising shall be decided by being put to the vote, |  |
| 57.1 | Each Charity Trustee present (and who is eligible to vote) has one vote. In the event of an equal number of votes for and against any resolution at a Board meeting, the Chairperson of the meeting shall have a casting vote as well as a deliberative vote. |  |
| 57.2 | A resolution in writing shall be as valid and effectual as if it had been passed at a meeting of the Board or of a sub-committee. A resolution may consist of one or several documents in the same form each signed by one or more Charity Trustees or members of any relative sub-committee as appropriate. |  |
|  | **SUB-COMMITTEES** |  |
| 58 | The Board may delegate any of its powers to sub-committees, each consisting of not less than one Charity Trustee and such other person or persons as it thinks fit or which it delegates to the committee to appoint. |  |
| 58.1 | Any sub-committee so formed shall, in the exercise of the powers so delegated, conform to any remit and regulations imposed on it by the Board. The meetings and proceedings of any such sub-committee shall be governed by the provisions of these Clauses for regulating the meetings and proceedings of the Board so far as applicable and so far as they are not superseded by any regulations made by the Board. |  |
| 58.2 | Each sub-committee shall ensure the regular and prompt circulation of, the minutes of its meetings to all Charity Trustees. |  |
|  | **CONSTRAINTS ON PAYMENTS/BENEFITS TO MEMBERS AND CHARITY TRUSTEES** | **The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation 2(e)) require the constitution to outline any circumstances in which remuneration may not be paid to Charity Trustees, which go beyond the restrictions in section 67 of the 2005 Act** |
| 59 | The income and property of the Organisation shall be applied solely towards promoting the Purposes and do not belong to the members. Any surplus income or assets of the Organisation are to be applied for the benefit of the Community. | **This is a requirement of Section 19(f) of the 2015 Act, and of section 50(4) of the Charities and Trustee Investment (Scotland) Act 2005** |
| 60 | No part of the income or property of the Organisation shall be paid or transferred (directly or indirectly) to the members of the Organisation, or to any other individual, whether by way of dividend, bonus or otherwise, except in the circumstances provided for in clause 61. | **This provision contributes to compliance with section 19(f) of the 2015 Act and is also a requirement for any charity.** |
| 61 | No benefit (whether in money or in kind) shall be given by the Organisation to any member or Charity Trustee except the possibility of: | Even though there is the possibility, the Board would need to make a specific decision. |
| 61.1 | repayment of out-of-pocket expenses (subject to prior agreement by the Board); |  |
| 61.2 | reasonable remuneration in return for specific services actually rendered to the Organisation (in the case of a Charity Trustee such services must not be of a management nature normally carried out by a Trustee of an Organisation); | This enables a Charity Trustee to act for example as lawyer, surveyor or accountant to the Organisation, provided that no fee is charged for attending Organisation meetings or for acting as a Charity Trustee, but again must be compliant with the terms of section 67 of the Charities and Trustee Investment (Scotland) Act 2005. |
| 61.3 | payment of interest at a rate not exceeding the commercial rate on money lent to the Organisation; |  |
| 61.4 | payment of rent at a rate not exceeding the open market rent for property let to the Organisation; |  |
| 61.5 | the purchase of property from any member or Charity Trustee provided that such purchase is at or below market value; |  |
| 61.6 | the sale of property to any member or Charity Trustee provided that such sale is at or above market value; or |  |
| 61.7 | payment by way of any indemnity, where appropriate in accordance with clause 94. | See Clause 94 |
| 62 | Where any payment is made under clause 61, the terms of clause 63 must be observed. |  |
|  | **PERSONAL INTERESTS & CONFLICTS OF INTEREST** | **The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation 2(f)) require provisions for dealing with conflicts of interest** |
| 63 | Whenever a Charity Trustee finds that there is a personal interest, as defined in sub-clauses 63.3 and 63.4, they have a duty to declare this to the Board meeting in question. | These provision reflect best practice. |
| 63.1 | 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 they has a personal interest or duty which conflicts (or may conflict) with the interests of the SCIO. |  |
| 63.2 | It will be up to the Chairperson of the meeting in question to determine:  (a) whether the potential or real conflict simply be noted in the Minutes of any relevant meeting, or  (b) whether the Charity Trustee in question, whilst being permitted to remain in the meeting in question, must not partake in discussions or decisions relating to such matter, or  (c) whether the Charity Trustee in question should be required to be absent during that particular element of the meeting. Where a Charity Trustee leaves, or is required to leave, the meeting they no longer form part of the quorum for that meeting. |  |
| 63.3 | 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; |  |
| 63.4 | A Charity trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which they are an employee, director, member of the management committee, officer or elected representative has an interest in that matter. |  |
| 63.5 | The Board shall determine from time to time what interests shall be relevant interests and shall ensure that a Register of Notices of Relevant Interests is maintained, which shall be open for inspection by both the Board and members of the Organisation and, with the express prior written approval of the Charity Trustee or employee concerned, by members of the public. |  |
|  | **OFFICER BEARERS** |  |
| 64 | The Board may appoint office bearers for such term and upon such terms and conditions as they think fit. Any officer bearer may be removed by the Board at any time | **Optional** – If any office bearer is to be remunerated, the terms of Clauses 31 and 40.3 would both have to be amended and also a Remuneration Agreement entered into in terms of Section 67 of the Charities and Trustee Investment (Scotland) Act 2005. |
| 64.1 | The Board may appoint a treasurer for such term and upon such terms and conditions as they think fit. The treasurer may be removed by the Board at any time. The treasurer may be required to attend Board and sub-committee meetings but:   1. may not participate in such meetings for voting or quorum purposes unless they are also a Charity Trustee; 2. may not attend meetings (or parts of meetings) at which their remuneration or employment is to be discussed; and 3. (if the treasurer is not a Charity Trustee) may not attend meetings at which confidential matters are to be discussed. | **Optional** - This could be a Trustee (or perhaps the Convenor of a separate Finance Committee). If to be remunerated, the terms of Clauses 31 and 40.3 would both have to be amended and also a Remuneration Agreement entered into in terms of Section 67 of the Charities and Trustee Investment (Scotland) Act 2005. |
|  | **FINANCES & ACCOUNTS** |  |
| 65 | The Board shall determine: |  |
| 65.1 | which banks or building societies the bank accounts of the Organisation shall be opened with; |  |
| 65.2 | how bank accounts shall be maintained and operated; and |  |
| 65.3 | how cheques and other negotiable instruments, and receipts for monies paid to the Organisation, shall be signed, drawn, accepted, endorsed or otherwise executed. |  |
| 66 | The Board shall cause accounting records to be kept for the Organisation in accordance with the requirements of the 2005 Act and other relevant legislation. | **This is a requirement under Section 44(1) of the Charities and Trustee Investment (Scotland) Act 2005** |
| 66.1 | The accounting records shall be maintained by the Treasurer (if there is one) and overseen by the Principal Officer (if there is one), or otherwise by, or as determined by, the Board. Such records shall be kept at such place or places as the Board thinks fit and shall always be open to the inspection of the Trustees. |  |
| 66.2 | The Board must prepare annual accounts, complying with all relevant statutory requirements, and must ensure the accounts are examined or audited, as appropriate, by a qualified examiner or auditor. |  |
| 66.3 | At each AGM, the Board shall provide the members with a copy of the accounts for the period since the last preceding accounting reference date (or, in the case of the first account, since the incorporation of the Organisation). The accounts shall be accompanied by proper reports of the Board. | The ‘accounting reference date’ is the official name for the year end. |
| 66.4 | Copies of such accounts shall, not less than 21 clear days before the date of the General Meeting, be delivered or sent to all members, Charity Trustees, the Office Bearers and the auditor, or otherwise be available for inspection on the website or other location of the Organisation (with all members, Charity Trustees, the Organisation Secretary and the auditor being made aware that they are so available for inspection there). |  |
|  | **NOTICES** |  |
| 67 | The Organisation may serve a notice on a Member in hard copy (addressed to the address given for that Member in the register of members, and posted or hand-delivered) or electronic form (faxed or e-mailed). A notice is deemed to have been served on the day following the day on which it is hand-delivered, posted faxed or e-mailed. |  |
| 68 | The Organisation may communicate with a Member by electronic means (including fax and e-mail) unless the Member has requested that communications from the Organisation be sent in hard copy. The Organisation may publish notifications by means of a website provided the Organisation has advised Members of this and taken reasonable steps to notify Members who have informed the Organisation that they do not have internet access. |  |
|  | **RECORDS OF MEETINGS** | **The Scottish Charitable Incorporated Organisation Regulations 2011 (regulation 2(c)(ii)) require provisions for keeping records of meetings.** |
| 69 | The Board shall cause minutes to be made of all appointments of officers made by it and of the proceedings of all General Meetings and of all Board meetings and of sub-committees, including the names of those present, and all business transacted at such meetings and any such minutes of any meeting, if purporting to be signed after approval, either by the Chairperson of such meeting, or by the Chairperson of the next succeeding meeting, shall be sufficient evidence without any further proof of the facts therein stated. |  |
|  | **INDEMNITY** |  |
| 70 | Subject to the terms of the 2005 Act and without prejudice to any other indemnity, the Charity Trustees, or member of any sub-committee, the Organisation Office Bearers and all employees of the Organisation may be indemnified out of the funds of the Organisation against any loss or liability (including the costs of defending successfully any court proceedings) which he, she or they may incur or sustain, in connection with or on behalf of the Organisation. | In terms of section 68A of the 2005 Act charities are permitted to use charity funds to provide all their Charity Trustees with indemnity insurance. Section 68A(4)(b) provides that this section has effect despite any provision prohibiting the Charity Trustees receiving any personal benefit from the charity’s fund. |
|  | **ALTERATION TO THE CLAUSES** |  |
| 71 | Subject to the terms of this clause, this constitution may be altered by a Special Resolution of the members passed in accordance with clause 30 or 31.3 | **Section 63 of the Charities and Trustee Investment (Scotland) Act 2005 requires these resolutions to be passed by two thirds majority, or by all members for a written resolution.** |
| 71.1 | Any changes to the purposes set out in clause 4 are subject to written consent being obtained from OSCR (and its successors) in terms of section 16 of the Charities and Trustee Investment (Scotland) Act 2005 | **This is a requirement if changing purposes under section 16 of the Charities and Trustee Investment (Scotland) Act 2005, or changing the organisation’s name under section 11 of that Act.** |
| 71.2 | The Board must notify OSCR (and its successors) of any changes to the constitution not relating to the purposes, in terms of section 17 of The Charities and Trustee Investment (Scotland) Act 2005 | **This is a requirement of the Charities and Trustee Investment (Scotland) Act 2005 if making any changes to the constitution which are not related to the purposes** |
|  | **DISSOLUTION** |  |
| 72 | The Organisation may be wound up or dissolved only on the passing of a Special Resolution for that purpose in accordance with clauses 30 and 31.4, and subject to written consent being obtained from OSCR. | **This provision contributes to compliance with section 19(c) of the 2015 Act.**  **The Scottish Charitable Incorporated Organisation (Removal from Register and Dissolution) Regulations 2011 (regulation 3(3)) requires two thirds majority** |
| 72.1 | If, on the winding-up of the Organisation, any property or assets remains after satisfaction of all its debts and liabilities, such property shall be given or transferred to such other community body or bodies or charitable group, which has purposes which resemble closely the purposes of the Organisation, as may be:  (a) determined by not less than two thirds of the Ordinary Members of the Organisation voting (in person or by proxy) at a General Meeting called specifically (but not necessarily exclusively) for the purpose; and  (b) approved by OSCR (and its successors). | **The Scottish Charitable Incorporated Organisation Regulations 2011 require that any surplus assets are used for purposes which are the same as or which resemble closely the purposes of the Organisation.** |

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| **Schedule 1**  **Form of Proxy** |

[enter Organisation name]

I , ……………………………………………………………………………….…………………,

residing at ……………………………………………………………………………….……….,

being a Member of the above Organisation hereby appoint

…………………………………………………………………………………….…….…………,

of ……………………………………………………..…………..…………………………….…,

and, failing him or her, ……………………...…………………………………..………………,

of ………………………………………………………………..…………………………………,

as my proxy to vote on my behalf at the [Annual General Meeting / General Meeting] of the Organisation to be held on

………………………………………………………………………………………........................

and at any adjournment thereof.

I hereby instruct my proxy to vote in favour of/against the following resolution[s]:

[insert resolution(s)]

Signed the ............ day of ………………………………………………

Signature of member appointing proxy ………………………………………………