

# **An Tobar & Mull Theatre**

**(REGISTERED AS COMAR)**

## **CONSTITUTION**

**Scottish Charitable Incorporated Association**

---

**As amended by written resolution of the Members passed  
unanimously on 27<sup>th</sup> July 2020**

---

## TABLE OF CONTENTS

<b>SECTION</b>	<b>PAGE</b>
<b>PART 1</b>	<b>3</b>
<b>DEFINITIONS, GENERAL &amp; PURPOSES</b>	<b>3</b>
GENERAL STRUCTURE & POWERS	4
<b>PURPOSES</b>	<b>5</b>
<b>PART 2</b>	
<b>MEMBERSHIP</b>	<b>6</b>
<b>BECOMING AND CEASING TO BE A MEMBER</b>	<b>6</b>
FULL MEMBERS MEETINGS	9
SUPPORTER MEMBERS MEETINGS	10
VOTING BY PROXY – SUPPORTER MEMBERS	12
<b>PART 3</b>	
<b>DIRECTORS</b>	<b>13</b>
APPOINTMENT & RE-ELECTION	13
POWERS AND RESPONSIBILITIES	15
MEETINGS AND DECISION MAKING	16
TERMINATION OF APPOINTMENT AS A DIRECTOR	18
<b>PART 4</b>	
<b>ACCOUNTS, ADMINISTRATIVE, DISSOLUTION AND ALTERATIONS TO THE CONSTITUTION</b>	<b>20</b>
ACCOUNTS	20
LIABILITIES	21
CHARITABLE DECLARATION AND CONFLICT OF INTEREST	22
DISSOLUTION/WINDING UP	23
ALTERATIONS TO THE CONSTITUTION	23

**PART 1  
DEFINITIONS, GENERAL AND PURPOSES**

**1. DEFINITIONS**

In the Constitution, unless the context requires otherwise: -

<b>“2005 Act”</b>	means the Charities and Trustee Investment (Scotland) Act 2005 including any statutory modification or re-enactment thereof for the time being in force;
<b>“Board”</b>	has the meaning given in clause 5;
<b>“chair of the SCIO”</b>	has the meaning given in clause 20.1;
<b>“chair of the meeting”</b>	has the meaning given in clauses 13, 15 and 22 respectively;
<b>“charitable”</b>	means charitable for the purposes of the Taxes Acts and the 2005 Act;
<b>“director”</b> the	means a director (as defined in the 2005 Act) of the  SCIO, includes both elected directors and appointed directors (as defined in the constitution) and includes any person occupying the position of director, by whatever name called;
<b>“chief executive”</b>	means the chief executive of the organisation (however described)
<b>“constitution”</b>	means the SCIO’s constitution;
<b>“document”</b> document	includes, unless otherwise specified, any  sent or supplied in electronic form;
<b>“Member”</b> Members	means both Full Members and Supporter
<b>“Scottish Charitable Incorporated Organisation”</b>	has the meaning given in section 49 of the 2005 Act;

<b>“the SCIO”</b>	means Comar, a registered Scottish charity;
<b>“the SCIO Regulations”</b>	means The Scottish Charitable Incorporated Organisations Regulations 2011 and The
Scottish	Charitable Incorporated Organisations (Removal From Register and Dissolution) Regulations
2011	(including any statutory modification or re-enactment thereof for the time being in force); and
<b>“writing”</b>	means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

## 2. TYPE OF LEGAL ENTITY

The SCIO will, upon registration, be a Scottish Charitable Incorporated Organisation.

## 3. SCOTTISH PRINCIPAL OFFICE

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

## 4. NAME

The name of the SCIO is “Comar”.

## 5. GENERAL STRUCTURE

The structure of the SCIO consists of: -

5.1 Directors – comprising both elected directors and appointed directors, who hold regular meetings, communicate with each other regularly and generally control the activities of the SCIO. The directors are referred to collectively as the “board”;

5.2 Full Members – who have the right to attend and vote at Full members’ meetings (including Annual General Meetings).

5.3 Supporter members – who have the right to attend and vote at Supporter Members’ meetings.

5.4 The people serving on the Board are referred to as Directors, but they are also Full Members of the organisation for the purposes of the 2005 Act.

## 6. POWERS

Subject to clauses 7, 29 and 30, the SCIO has the full range of powers available to a Scottish Charitable Incorporated Organisation in terms of section 50 (5) of the 2005 Act, which shall enable the all powers and actions to be exercised to further the SCIO's charitable purposes.

## 7. PURPOSES

### 7.1 The SCIO's objectives and vision are as follows: -

The **objectives** of the SCIO are to establish and develop a sustainable organisation on the Isle of Mull to maintain, promote and advance the provision, appreciation and public understanding of the arts.

The SCIO's **vision** is to operate as a creative hub in Argyll and Bute through the production and delivery, locally, regionally and nationally, of high quality work across a range of art forms including, but not limited to, professional theatre, music, dance and visual arts activities, and to sustain a wide ranging community participation and education programme.

### 7.2 In seeking to fulfil and work consistently with the objectives and vision, the SCIO will (and only will) promote, advance and further the following **charitable purposes**:

7.2.1. the advancement of education;

7.2.2. the advancement of citizenship or community development (in so far as (1) the SCIO will support and work with other charities and (2) the SCIO will have regard to social and economic issues when advancing and promoting its objectives and vision); and

7.2.3 the advancement of the arts, heritage and culture.

## PART 2

### MEMBERS

#### BECOMING AND CEASING TO BE A MEMBER

#### 8. ELIGIBILITY FOR MEMBERSHIP

- 8.1 Subject to the provisions of Clause 9, membership is open to any person (legal or natural) who/which, in the view of the directors, demonstrate(s) a genuine commitment to the SCIO furthering its purposes.
- 8.2 The directors shall have the power to create different categories of membership with different rights attaching thereto. Initially, there shall be two types of member:  
-
- 8.2.1. Full Member; and  
8.2.2. Supporter Member
- 8.3 Full Members shall have all rights afforded to Full members in this Constitution, the 2005 Act and the SCIO Regulations. The minimum number of Full members shall be as prescribed by law from time to time.
- 8.4 Supporter members shall have such rights as are set out in this Constitution, the 2005 Act and the SCIO Regulations. There shall be no minimum number of Supporter members.

#### 9. APPLICATIONS FOR MEMBERSHIP

- 9.1 No person shall become a Full member of the SCIO unless: -
- 9.1.1 that person has completed an application for full membership in a form approved by the directors;
- 9.1.2 the directors have approved the application, and
- 9.1.3 that person has paid the appropriate subscription charge.
- 9.2 The only employee of the SCIO eligible for consideration as a Full member shall be the Chief Executive.
- 9.3 Former members of staff and their immediate family are ineligible for consideration as an elected Full Member for a period of five years after termination of their employment.

9.4 No person shall become a Supporter member of the SCIO unless: -

9.4.1 that person has completed an application for supporter membership in a form approved by the directors.

9.4.2 the directors have approved the application; and

9.4.3 that person has paid the appropriate subscription charge.

## 10. **SUBSCRIPTIONS ETC**

10.1 Without prejudice to the generality of Clause 6, the SCIO shall have the power to accept subscriptions, grants, donations, gifts, legacies and endowments of all kinds, either absolutely or conditionally or in trust for any of the purposes of the SCIO and take such steps (by way of personal or written appeals, public meetings or otherwise, including for the avoidance of doubt the appointment of professional fundraisers) as may be deemed expedient for procuring contributions to the funds of the SCIO, whether by way of subscriptions (set having regard to section 8 (2) (b) of the 2005 Act), grants, loans, donations or otherwise.

## 11. **TERMINATION OF MEMBERSHIP**

11.1 A Full member or a Supporter member may withdraw from membership of the SCIO by giving 7 days' notice to the SCIO in writing. No subscription paid by such Member shall be repayable in whole or in part.

11.2 A Full Member who withdraws from Full Membership under 11.1 shall not be excluded from applying to become a Supporter Member.

11.3 Membership is not transferable.

11.4 A person's membership of the SCIO shall terminate automatically without notice if any subscription due from such person is not paid in full not more than 56 days after the date on which it fell due.

11.5 Membership of the SCIO shall terminate automatically without notice when that person dies or becomes bankrupt or compounds with his/her creditors or his/her estate is sequestrated.

11.6 A member who is not an individual shall cease to be a member of the SCIO upon: -

- 11.6.1 (if a partnership) the firm passing a resolution to wind up or otherwise being dissolved or becoming bankrupt or compounding with its creditors;
  - 11.6.2 (if a company) it passing a resolution to wind up or having a winding up petition presented against it (and not subsequently dismissed within twenty eight days) or a receiver or administrative receiver or liquidator or administrator or other statutory manager being appointed in respect of any of its assets; or
  - 11.6.3 (if a body corporate other than a partnership or company including without limitation bodies corporate established pursuant to Acts of Parliament or Royal Charter) the body corporate being wound up or dissolved or becoming bankrupt or compounding with its creditors.
- 11.7 A Full member shall cease to be a member of the SCIO if, at a directors' meeting at which a majority of the directors are present, a resolution is passed resolving that the Full member be expelled on the ground that his/her continued membership is harmful to, or is likely to become harmful to the interests of the SCIO.
- 11.8 A resolution under clause 11.7 shall be valid only if: -
- 11.8.1 The Full member has been given at least fourteen clear days' written notice that the resolution is to be proposed (specifying the circumstances alleged to justify expulsion); and
  - 11.8.2 The Full member has been afforded a reasonable opportunity of being heard by, or of making written representations, to the directors.
- 11.9 A Full member expelled by such a resolution shall nevertheless remain liable to pay to the SCIO any sum owed by him/her. An expelled Member may reapply to be a Supporter Member of the SCIO.

## **12. ORGANISING A FULL MEMBERS' GENERAL MEETING**

- 12.1 The directors must arrange an Annual General meeting of Full Members in each calendar year (an Annual General Meeting). This may take place online at the discretion of the chair. Proxy forms must be submitted (by post or online) 7 days prior to the meeting.



- 12.2 The gap between one Annual General Meeting and the next must not be longer than 15 months.
- 12.3 In addition the directors may (and shall if requisitioned to do so by notice in writing signed by or on behalf of at least two Full members) call a general meeting of Full Members at any time.
- 12.4 At least 14 days' written notice of each general meeting must be given to each Full Member provided that notice of a general meeting need not be given to Full Members who waive their entitlement to notice of that meeting, by giving notice to that effect to the SCIO not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.
- 12.5 The notice must specify the date, time and place of the general meeting and the general nature of the business to be transacted. If the general meeting is to be an Annual General meeting, the notice must say so.

**13. BUSINESS AT A FULL MEMBERS' GENERAL MEETING**

- 13.1 The chair of the SCIO shall chair a Full members' general meeting if present and willing to do so.
- 13.2 If the Chair is not present within 15 minutes after the time at which the general meeting was due to start (or is not willing to act as chair), the directors present at the meeting must elect (from amongst themselves) the person who will act as chair of that meeting ("chair of the meeting").
- 13.3 If the general meeting is an Annual General meeting then the business of that meeting must include: -
  - 13.3.1 a report by the chair of the meeting on the activities of the SCIO since the previous Annual General meeting;
  - 13.3.2 the laying before the meeting of the annual statutory accounts of the SCIO; and
  - 13.3.3 the election of appointed directors (as defined in clause 16.1.2 of the Constitution).
- 13.4 No valid decisions (other than the appointing of a chair of the meeting in terms of clause 13.2) can be taken at a general meeting unless a quorum is present; the quorum shall be one half (rounded up to the nearest whole number) of the Full Members entitled to attend and vote.

- 13.5 Every Full Member has one vote, which must be given personally or in the case of a corporate member, by a duly authorised person on behalf of the relevant corporate member.
- 13.6 No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chair of the meeting whose decision shall be final and conclusive.
- 13.7 Except where the constitution or the 2005 Act states that a higher threshold should apply, all decisions at Full Members' general meetings will be made by majority vote.
- 13.8 If there are an equal number of votes for an against any resolution, the chair of the meeting will be entitled to a second (casting) vote.
- 13.9 The directors must ensure that proper minutes are kept of all general meetings.

#### **14. ORGANISING A SUPPORTER MEMBERS' MEETING**

- 14.1 The directors must arrange an annual meeting of Supporter members in each calendar year (a Supporter Members' Annual Meeting). This may take place online at the discretion of the chair.
- 14.2 The gap between one Supporter Members' Annual Meeting and the next must not be longer than 15 months.
- 14.3 In addition the directors may (and shall if requisitioned to do so by notice in writing signed by or on behalf of at least thirty Supporter members) call a Supporter Members' meeting at any time.
- 14.4 At least 14 days' notice must be given of each Supporter Members' meeting
- 14.5 The notice must specify the date, time and place of the meeting and the general nature of the business to be transacted. If the meeting is to be a Supporter Members' Annual meeting, the notice must say so.
- 14.6 Notice of a Supporter Members' meeting may be given by email to those Supporter Members for whom the SCIO has an email address or in person or by any other reasonably practical means. The SCIO shall have no obligation to incur postal charges in order to give notice of a Supporter Members' meeting.
- 14.7 Failure to give notice of a Supporter Members' meeting to any one or more Supporter Members shall not invalidate the proceedings at that meeting.

**15. BUSINESS AT A SUPPORTER MEMBERS' MEETING**

- 15.1 The chair of the SCIO shall chair a Supporter Members' meeting if present and willing to do so.
- 15.2 If the chair is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chair), the directors present at the meeting must elect (from among themselves) the person who will act as chair of that meeting ("chair of the meeting").
- 15.3 If the general meeting is a Supporter Members' Annual Meeting then the business of that meeting must include: -
  - 15.3.1 a report by the chair of the meeting on the activities of the SCIO since the previous Annual General Meeting;
  - 15.3.2 the election of elected directors (as defined in Clause 16.1.1 of the Constitution).
- 15.4 No valid decisions (other than the appointing of a chair of the meeting in terms of clause 13.2) can be taken at a Supporter Members' meeting unless a quorum is present; the quorum shall be ten Supporter Members entitled to attend or vote, being present either in person or by proxy.
- 15.5 Every Supporter Member shall have one vote, which (whether on a show of hands or on a secret ballot) may be given either personally or by proxy. In the case of a corporate member that one vote shall be given by a duly authorised person on behalf of the relevant corporate member (which for the avoidance of doubt means that an individual member shall have one vote, and a corporate member shall have one vote (the exercise of such vote to be decided by the relevant corporate member)).
- 15.6 A Supporter Member who wishes to appoint a proxy to vote on his/her behalf at any Supporter Members' meeting:
  - 15.6.1 must give to the SCIO a proxy form (in such terms as the SCIO requires), signed by him/her, or
  - 15.6.2 must send by electronic means to the SCIO, at the email address notified to the Supporter Members for that purpose, a proxy form (in such terms as the SCIO requires).

Provided that (in each case) the proxy form must be received by the SCIO at the relevant address not less than 72 hours before the advertised start time of the meeting.

- 15.7 An instrument of proxy which does not comply with the provisions of Clause 15.6.1, or which is not lodged or given in accordance with such provisions shall be invalid.
- 15.8 A Supporter Member shall not be entitled to appoint more than one proxy to attend on the same occasion.
- 15.9 A proxy need not be a Supporter Member of the SCIO.
- 15.10 Subject to clause 15.11, in relation to each resolution proposed at a Supporter members' general meeting no one shall be entitled to cast more than 5 votes as a proxy (in addition to any vote to which he/she is entitled personally, if she/he is a Supporter Member).
- 15.11 Where Supporter members have appointed the chair of a Supporter Members' general meeting to vote as their proxy – and have directed the chair (through the wording in the proxy form) on whether he/she should vote on their behalf in favour of, or against, each resolution – the provisions of clause 15.10 shall not apply in relation to the chair, in acting as proxy for these Supporter Members.
- 15.12 A proxy appointed to attend and vote at a Supporter members' meeting on behalf of a member shall have the same right to speak at the meeting as the Supporter Member who appointed him/her.
- 15.13 Subject to Clause 25.1.8 which requires a two third majority, and except where the constitution or the 2005 Act states that a higher threshold should apply, all decisions at Supporter Members meetings will be made by majority vote.
- 15.14 If there are an equal number of votes for and against any resolution then the chair must declare the resolution not carried.
- 15.15 A resolution put to the vote at a Supporter Members' meeting will be decided on a show of hands – unless the chairperson (or at least two persons present at the meeting and entitled to vote, whether as Supporter Members or as proxies for members) ask for a secret ballot at any time before the chair declares the result of the show of hands.
- 15.16 The directors must ensure that proper minutes are kept of all meetings.

**PART 3****DIRECTORS****16. METHODS OF APPOINTING AND RE-ELECTING DIRECTORS**

- 16.1 The Board shall consist of not less than five and not more than eleven directors consisting of:
- 16.1.1 no more than five directors elected under Clause 16.7 (“elected directors”)
  - 16.1.2 no more than five directors appointed under clause 16.2 or Clause 16.4 (“appointed directors”)
  - 16.1.3 no more than one director appointed under the provisions of Clause 16.5
- 16.2 The directors may by way of a resolution passed by majority vote at a directors’ meeting appoint as a director any person who is either already a Full Member or who agrees to become one as a pre-condition of his appointment as a director.
- 16.3 A director appointed under the provisions of 16.2 above shall retire at the conclusion of the next Annual General meeting but if willing shall be eligible to seek re-election.
- 16.4 If at any time the number of appointed directors is less than five then the Full Members shall be entitled to requisition a general meeting of Full Members in accordance with the provisions of Clause 12.3 and to propose a resolution electing one or more persons as appointed directors.
- 16.5 The board shall, at the first Board meeting following the appointment of any individual as the Chief Executive of the SCIO appoint him/her as a director and for the avoidance of doubt he/she shall also become a Full Member in accordance with the provisions of Clauses 9.1 and 9.2
- 16.6 The Chief Executive shall continue to be a director unless and until he/she ceases (for any reason) to hold the post of senior executive officer of the SCIO.
- 16.7 Supporter Members may by way of resolution passed by majority vote at a Supporter Members’ meeting elect as a director any person (but subject to the proviso of Clause 16.8) who is either already a Full Member or who agrees to become one as a pre-condition of his appointment as a director.

- 16.8 All of the directors elected under Clause 16.7 shall retire at the conclusion of the next Supporter Members' Annual meeting but shall then be eligible for re-election under the provisions of Clause 16.7 provided that no person shall be eligible for re-election under the provisions of Clause 16.7 if he/she has served six consecutive annual terms as an elected director.
- 16.9 Subject to this Constitution, two of the appointed directors (but including, and not in addition to, any appointed director already obliged to retire under the provisions of Clause 16.3 above) shall retire at the conclusion of each Annual General Meeting. In addition to any director obliged to retire under the provisions of Clause 16.3 the directors to retire shall be those who have been longest in office since their last appointment or re-appointment, but as between persons who became or were last re-appointed directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- 16.10A director who is due to retire in accordance with Clause 16.9 ("a retiring director") shall be eligible for re-appointment as a director. A retiring director shall be deemed to have been re-appointed if his/her vacancy is not filled at the meeting at which they would, but for this provision, have retired and he/she is willing to act as a director unless it is resolved not to fill his/her vacancy or it is resolved that he/she should not be appointed or any resolution for his/her appointment is not carried or he/she is not successful in any election held provided that in no circumstances shall any appointed director be eligible for re-appointment as an appointed director if he/she has served six consecutive years as a director.
- 16.11 In any case where, as a result of death, the SCIO has no Full Members and no directors, the personal representatives of the last Full Member to have died have the right, by notice in writing, to appoint a person or person(s) to be a director(s). For the purposes of this Clause where two or more members die in circumstances rendering it uncertain who was the last to die, a younger director is deemed to have survived an older member.

## **POWERS AND RESPONSIBILITIES**

### **17. DIRECTORS' GENERAL AUTHORITY**

- 17.1 Subject to the Constitution, the directors are responsible for the governance management and control of the SCIO's activities to further its charitable purposes, for which purpose they may exercise all the powers of the SCIO.
- 17.2 All powers and actions by the directors shall be restricted by and subject to Clause 7, 29 and 30.

### **18. DIRECTORS MAY DELEGATE**

18.1 Subject to the Constitution, the directors may delegate any of the powers which are conferred on them under the Constitution: -

18.1.1 to such person, committee or sub-committee: -

18.1.2 by such means (including by power of attorney);

18.1.3 to such an extent;

18.1.4 in relation to such matters or territories; and

18.1.5 on such terms and conditions;

As they think fit.

18.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

18.3 The directors may revoke any delegation in whole or part or alter its terms and conditions.

18.4 When delegating powers under this clause, the directors must set out appropriate conditions (which must include an obligation to report regularly to the directors).

18.5 Any delegation of powers under this clause may be revoked or altered by the directors at any time.

18.6 Notwithstanding the power to delegate, the overall governance and legal responsibility rests with the directors.

## **19. COMMITTEES**

19.1 The directors may delegate any of their powers to sub-committees; a sub-committee must include at least one director, but other members of a sub-committee need not be directors.

19.2 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee shall be set by the Board.

## **20. OFFICE BEARERS**

20.1 The directors may elect (from among themselves and in terms consistent with Clause 22) a Chair ("the Chair of the SCIO") and other office bearers.

- 20.2 In addition to the office bearers, elected under Clause 20.1, the directors may elect (from among themselves) further office bearers, if they consider that appropriate>
- 20.3 All of the office bearers will cease to hold office with effect from the end of each financial year of the SCIO, but may then be re-elected under Clause 20.1
- 20.4 A person elected to any office will automatically cease to hold that office in the same manner that a director would have their office terminated under Clause 25.

## **DIRECTORS' MEETINGS AND DECISION MAKING**

### **21. CALLING A DIRECTORS' MEETING**

- 21.1. Any director may call a meeting of the Board.
- 21.2 At least 14 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 or it is inconvenient to provide 14 days' notice.
- 21.3 Notice for a directors' meeting must be given to each director but need not be in writing.
- 21.4 Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the SCIO not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

### **22. DECISION MAKING BY DIRECTORS**

- 22.1 No valid decisions (other than the appointing of a Chair in terms of Clause 22.4) can be taken at a directors' meeting unless a quorum is present; the quorum for directors' meetings is one half (rounded up the nearest whole number) of the directors.
- 22.2 If at any time the number of directors falls below the number stated as the quorum in Clause 22.1, the remaining director(s) will have power to fill the vacancies but will not be able to take any other valid decisions.
- 22.3 the Chair of the SCIO shall chair the meeting if present and willing to do so.
- 22.4 If the Chair of the SCIO is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as Chair), the directors present at



the meeting must elect (from among themselves) the person who will act as Chair of that meeting (“Chair of the meeting”).

- 22.5 Every director has one vote, which must be given personally. A director may participate in a meeting by means of conference telephone or similar communications equipment whereby all the directors participating in the meeting can communicate with each other and the directors participating in a meeting in this manner shall be deemed to be present in person at such meeting. For the avoidance of doubt a Board meeting can be constituted by, for example, an exchange of emails.
- 22.6 Except where the Constitution or the 2005 Act states that a higher threshold should apply, all decisions at directors’ meetings will be made by majority vote.
- 22.7 If there are an equal number of votes for and against any resolution, the Chair of the meeting will be entitled to a second (casting) vote.
- 22.8 The directors may, at their discretion, allow any person to attend and speak at a directors’ meeting notwithstanding that he or she is not a director, but on the basis that he or she must not participate in decision making.
- 22.9 The directors must ensure that proper minutes are kept in relation to all directors’ meetings, and meetings of sub-committees.
- 22.10 All minutes of meetings must include the names of those present, and (so far as possible) should be signed by the Chair of the meeting.

### **23. PARTICIPATION IN DIRECTORS’ MEETINGS**

- 23.1 Subject to the Constitution, directors participate in a directors’ meeting, or part of a directors’ meeting, when: -
- 23.1.1 the meeting has been called and takes place in accordance with the Constitution; and
  - 23.1.2 they can communicate to the others any information or opinions they have on any item of the business of the meeting.
- 23.2 In determining whether directors are participating in a Board meeting, it is irrelevant where any director is or how they communicate with each other.
- 23.3 If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

### **24. DIRECTORS’ DISCRETION TO MAKE FURTHER RULES**

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

## **25. TERMINATION OF APPOINTMENT AS A DIRECTOR**

25.1 A person ceases to be a director as soon as: -

- 25.1.1 he or she is prohibited by law from being a director within the meaning of the 2005 Act, a director within the meaning of the Companies Act 2006 or ceases to be a fit and proper person for the purposes of the Taxes Acts;
- 25.1.2 a sequestration order is made against that person;
- 25.1.3 A composition is made with that person's creditors generally in satisfaction of that person's debts;
- 25.1.4 a registered medical practitioner who is treating that person gives a written opinion to the SCIO stating that the person has become physically or mentally incapable of acting as a director and may remain so for more than three months;
- 25.1.5 by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;
- 25.1.6 notification is received by the SCIO from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms;
- 25.1.7 Is absent (without permission of the Board or good reason, in the reasonable opinion of the Board) from more than three consecutive meetings of the Board, but only if the Board resolves to remove him/her from office (by way of a resolution passed at a directors' meeting);
- 25.1.8 in the case of an elected director, by a resolution passed at a Supporter Members' general meeting duly convened and held in accordance with the provisions of Clause 14, on the grounds that he or she is considered to have been in serious or persistent breach of his or her duties under section 66 (1) or (2) of the 2005 Act;

- 25.1.9 in the case of an appointed director, by a resolution passed at a Full Members' general meeting duly convened and held in accordance with the provisions of Clause 12, on the grounds that he or she is considered to have been in serious or persistent breach of his or her duties under section 66 (1) or (2) of the 2005 Act;
- 25.1.10 in the case of a chief executive, he/she ceases (for whatever reason) to hold the post of chief executive; or
- 25.1.11 ceases to be a Full Member under the provisions of Clause 11.
- 25.2 A resolution under clauses 25.1.7, 25.1.8 or 25.1.9 shall be valid only if: -
- (a) The director who is the subject of the resolution is given reasonable prior written notice by the directors or Members of the grounds upon which the resolution for his or her removal is to be proposed;
  - (b) The director concerned is given the opportunity to address the meeting of directors or Members meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
  - (c) at least two thirds (to the nearest round number) of the directors or Members voting at the relevant meeting (excluding for this purpose the director who is the subject of the resolution) vote in favour of the resolution.
- 25.3 A Director who submits a resignation received under Clause 25.16 shall automatically cease to be a Full Member but is not excluded from applying to become a Supporter Member.

## **PART 4**

### **ACCOUNTS, ADMINISTRATIVE, DISSOLUTION AND ALTERATIONS TO THE CONSTITUTION**

#### **26. ACCOUNTS AND INDEPENDENT EXAMINATION/AUDIT**

- 26.1 Except as provided by law or authorised by the directors by a resolution, no person is entitled to inspect any of the SCIO's accounting or other records or documents merely by virtue of being a Member.
- 26.2 The directors shall comply with the provisions of the Charities Accounts (Scotland) Regulations 2006 (or any statutory modification or re-enactment of them). No Chartered Accountant (or firm) or Independent Examiner shall be considered ineligible for appointment as auditors or Independent Examiner of the SCIO by reason only of the fact that one of the directors may be a principal, partner, member

or director of the partnership, limited liability partnership or company as the case may be. The Chartered Accountant (or firm) or Independent Examiner shall have access to all papers, books, vouchers, accounts and documents relating to the SCIO.

**27. REGISTER OF DIRECTORS AND MEMBERS**

- 27.1 In terms of Regulations 3 and 5 of the SCIO Regulations the directors must keep a register of directors and Members, setting out: -
- 27.2 the full name and address of each person who is or was within the preceding five years a director or member.
- 27.3 the date on which each person became a director or member; and
- 27.4 the date on which any person ceased to be a director or member.

**28. LIABILITY OF DIRECTORS AND MEMBERS**

- 28.1 In terms of section 49 (4) of the 2005 Act or otherwise, the directors have no liability to pay any sums to help meet the debts (or other liabilities) of the SCIO if it is dissolved.
- 28.2 The directors have certain legal duties under the 2005 Act and Clause 28.1 does not apply to any personal liabilities they might incur if they are in breach of those duties, which would result in personal liability.
- 28.3 Supporter Members have no liability to pay any sums to help meet the debts (or other liabilities) of the SCIO if it is dissolved.

**29. LIMITATION ON PRIVATE BENEFITS**

- 29.1 The Income and property of the SCIO shall be applied solely towards the promotion of its purposes as set forth in the Constitution.
- 29.2 Subject to Clause 29.3 no part of the income and property of the SCIO shall be paid or transferred, directly or indirectly, by way of benefit to its members or directors.
- 29.3 Nothing herein shall prevent any payment in good faith by the SCIO: -
  - 29.3.1 of a reasonable and proper remuneration to any director, member, officer, employee or other person of the SCIO including a director in his capacity as a servant of the SCIO for any services rendered to the SCIO in accordance with sections 67 and 68 of the 2005 Act and any amendment or alteration thereto:
  - 29.3.2 of interest on money lent by any member of the SCIO or a director at a reasonable and proper rate per annum and not exceeding the base lending rate for the time being of the SCIO's bankers; or reasonable and proper rent for premises let by any member or director to the SCIO; and

29.3.3 to any director of out of pocket expenses

29.3.4 reasonable and proper remuneration to the Chief Executive of the SCIO, including all pension and/or other benefits, paid or provided to him/her in his/her capacity as an employee of the organisation, subject to Clause 30.4.

### **30. CHARITABLE DECLARATION AND CONFLICT OF INTEREST**

30.1 It is declared that the assets of the SCIO shall only be applied for charitable purposes and the directors shall: -

30.1.1. act in accordance with the 2005 Act; and

30.1.2 do nothing to prevent the SCIO qualifying and continuing to qualify as charitable.

30.2 Without prejudice to the foregoing, each of the directors shall, in exercising his or her powers and duties as a director, act in the interests of the SCIO. In doing so: -

30.2.1 the directors must seek in good faith, to ensure that the directors act in a manner which is in accordance with the purposes of the SCIO and act with the care and diligence which is reasonable to expect of a person who is managing the affairs of another person; and

30.2.2 in circumstances giving rise to the possibility of a conflict of interest between the SCIO and any other party, each director: -

(a) must put the interests of the SCIO before those of the other party; or

(b) where any other duty or interest prevents him/her from doing so, he or she must disclose the conflicting duty or interest to his or her fellow directors and refrain from participating in any discussions or decisions about the matter in question.

30.3 All of the directors must take such steps as are reasonably practicable for the purpose of ensuring: -

30.3.1. that any breach of any of those duties by a director is corrected by the director concerned and not repeated; and

30.3.2 that action is commenced in accordance with Clause 25 to remove any trustee who has been in serious and persistent breach of those duties.

30.4 For the avoidance of doubt, the Chief Executive shall not be entitled to vote in relation to any matter connected with his/her remuneration or other terms and conditions of employment.

- 30.5 Provided he or she has declared his or her interest (and has not voted on the question of whether or not the organisation should enter into the arrangement) a director will not be debarred from entering into an arrangement in which he or she has a personal interest; and (subject to Clause 29) he or she may retain any personal benefit which arises from that arrangement.
- 30.6 Each of the directors must ensure that (a) he or she complies and (b) the SCIO complies with any direction, requirement or notice imposed in terms of the 2005 Act.

### **31. DISSOLUTION/WINDING UP**

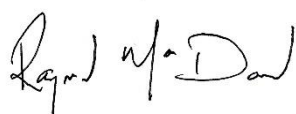
If The SCIO is to be wound up or dissolved or if at any time it appears to the directors that the property of the SCIO is of such size that there is no reasonable prospect of the SCIO property or some part of it being required, either as source of income or for payment or application as capital, in any future year or years for the purposes of the SCIO, or it appears to the directors that the SCIO cannot continue to serve a useful purpose or that its property could be more suitably and effectively applied, the directors may decide that the SCIO property or such part of it, shall be transferred or made over to such charitable institution(s), trust(s), fund(s) or other recipient(s) (in furtherance of the SCIO's purposes) as the directors shall decide, subject to the satisfaction of debts and liabilities and to the provisions of Clauses 29 and 30. For the avoidance of doubt, the directors' decision is subject to any requirement (s) under the SCIO Regulation and/or requirement to seek consent under the 2005 Act.

### **32. ALTERATIONS TO THE CONSTITUTION**

- 32.1 In terms of Section 63 of the 2005 Act the Constitution may be altered by a resolution passed by the Full Members at a general meeting, providing at least two thirds of the Full Members voted in favour of the resolution, or (otherwise than at a general meeting) by a written resolution passed unanimously by the Full Members (which may take the form of a number of copies of the resolution, each signed by one or more Full Members.
- 32.2 Any alteration to the Constitution shall be made in accordance with the requirement of the 2005 Act to obtain consent from and/or notify OSCR.

This amended Constitution was unanimously approved by the Members by written resolution passed unanimously on 29<sup>th</sup> October 2018.

Signed on behalf of the Directors



03/02/20