

FINAL DRAFT

***A Scottish Charitable Incorporated Organisation
in terms of the
Charities and Trustee Investment (Scotland) Act 2005***

CONSTITUTION

of

GENERATOR

*Registered as a Scottish Charitable Incorporated Organisation
on 6th February 2015
and amended on 11th April 2022*

Scottish Charity Number SC025493



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A Scottish Charitable Incorporated Organisation

Constitution of Generator

1 NAME AND PRINCIPAL OFFICE

- 1.1 The name of the Scottish Charitable Incorporated Organisation is “Generator” (“the SCIO”).
- 1.2 The Principal Office of the SCIO is situated in Scotland.

2 DEFINITIONS

- 2.1 Certain definitions and meanings, which apply throughout this Constitution and the Schedules hereto, are listed in Schedule 1 annexed to this Constitution.
- 2.2 Words importing the singular number only shall include the plural number, and *vice versa*.
- 2.3 Any words or expressions defined in the Charities Act shall, if not inconsistent with the subject or context, bear the same meanings in the Constitution.
- 2.4 Any Schedule to this Constitution is deemed to form an integral part hereof.

3 CHARITABLE PURPOSES and POWERS

- 3.1 The Charitable Purposes of the SCIO (“the Charitable Purposes”) are:
 - 1. the advancement of contemporary visual art and culture.
 - 3.1.2 to advance sustainable support to the development of art/s (in its widest possible meaning) for any person/s generally and in particular the inhabitants of Dundee.
 - 3.1.3 to encourage peer-lead education and support.
- 3.2 In terms of section 50(5) of the Charities Act, the SCIO shall have power to do anything which is calculated to further the Charitable Purposes or is conducive or incidental to doing so. Without prejudice to the foregoing generality, the SCIO shall also have the powers, only in furtherance of its Charitable Purposes, as expressed in the Schedule annexed to the Constitution.

4 GENERAL STRUCTURE OF THE SCIO

The structure of the SCIO comprises:

- 4.1 **members** - who have the right to attend the AGM (and any General Meeting) and have important powers under this Constitution and the Charities Act, particularly in electing people to serve as Trustees and taking decisions in relation to any changes to this Constitution; and
- 4.2 **Trustees** - who hold regular meetings between each AGM, set the strategy and policy of the SCIO, generally control and supervise the activities of the SCIO and, in particular, are responsible for monitoring its financial position and, where there are no employees or managers appointed, are responsible also for the day-to-day management of the SCIO.

5 MEMBERSHIP

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5.1 **members**

- 5.1.1 The members of the SCIO shall consist of the Applicants and such other persons and organisations as are admitted to membership in terms of this Clause.
- 5.1.2 Membership of the SCIO is open to any individual, aged 16 or over, who supports the Charitable Purposes, who applies to become a member in terms of Clause 5.2 and who pays the appropriate membership subscription, in terms of Clause 5.5.

5.2 **Application for Membership**

- 5.2.1 Any individual who wishes to become a member of the SCIO must sign a written application for membership in the form prescribed, if any, by the Board from time to time and lodge it with the SCIO.
- 5.2.2 The Board shall consider such applications for membership promptly and shall inform each applicant whether they have been successful and, where relevant, in which category of membership they shall belong, the decision of the Board in these respects being final.
- 5.2.3 The Board may, at its discretion, decline to accept any application for membership, except for any of the protected characteristics within the Equality Act 2010, namely: age, disability, sex, sexual orientation, gender reassignment, race, religion or belief, marriage and civil partnership, or pregnancy and maternity, and need not give its reasons for doing so.
- 5.2.4 A successful application for membership will not become effective until payment of the appropriate annual membership subscription, if any, has been received.

5.3 **Employees**

Employees of the SCIO shall not be eligible for membership. A person who becomes an employee of the SCIO after admission to membership shall automatically cease to be a member.

5.4 **Register of Members**

- 5.4.1 The Board shall maintain a Register of Members, setting out the following details of each current member; name, residential address and date of registration as a member.
- 5.4.2 The Register of Members will also provide the following details of each former member for at least six years after cessation of membership; name and date of cessation of membership.
- 5.4.3 If a member or Trustee requests the SCIO to provide a copy of its Register of Members and the request is reasonable, the requester is entitled to be given a copy within twenty-eight days. The SCIO may not charge for doing so. If the request is made by a member (rather than a Trustee), the SCIO can provide a copy with the addresses removed.

5.5 **Membership Subscriptions**

- 5.5.1 Members shall be required to pay the appropriate annual membership subscription, if any.
- 5.5.2 The members may at each or any AGM fix any annual subscriptions (and, if relevant, different rates thereof for different categories) as well as any concessionary rates to apply (together with any conditions of and/or timescale for any such concessions).
- 5.5.3 Only those members who have paid their current subscription (where these are fixed) are entitled to take part in and vote at any General Meeting.
- 5.5.4 If the membership subscription payable by any member remains outstanding for more than three calendar months after the date on which it fell due (and providing the member in question has been given at least one written reminder), the Board may remove that member from membership.
- 5.5.5 An individual who ceases (for whatever reason) to be a member shall not be entitled to any refund of membership subscription.

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5.6 Cessation of Membership

Any member, may no longer serve as such in any one or more of the following events:

- 5.6.1 if by not less than 7 days' prior notice in writing to the SCIO they resign their membership; or
- 5.6.2 if the terms of Clause 5.5.4 or Clause 5.8.2 are invoked by the Board; or
- 5.6.3 if, being an individual, they die; or
- 5.6.4 if they become an employee of the SCIO.
- 5.6.5 if the member is removed from membership by a resolution of the Trustees that it is in the best interests of the SCIO that the membership is terminated where that member's conduct, in their capacity as a member, has been detrimental to the SCIO, providing that:-
 - (a) such resolution is passed by not less than two-thirds of the Trustees present and voting at a Board Meeting, of which not less than 14 days' previous notice specifying the intention to propose such resolution and the grounds on which it is proposed shall have been sent to all Trustees, and also to the member whose removal is in question;
 - (b) the member is entitled to make representations at the Board Meeting either in person or writing; and
 - (c) the Board must consider any representations made by the member and inform the member of its decision following such consideration, with there being no right of appeal from a decision of the Board to terminate the membership of the member; or

5.7 Membership is neither transferable nor assignable to any other individual or organisation.

5.8 Re-registration of members

- 5.8.1 The Board may, at any time, issue notices to the members requiring them to confirm that they wish to remain as members of the SCIO, and allowing them a period of 28 days (running from the date of issue of the notice) to provide that confirmation to the Board.
- 5.8.2 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 SCIO before the expiry of the 28-day period referred to in Clause 5.8.1, the Board may remove them from the membership.
- 5.8.3 A notice under Clause 5.8.1 will not be valid unless it refers specifically to the consequences (under clause 5.8.2) of failing to provide confirmation within the 28-day period.

5.9 The liability of members of the SCIO is limited and, upon the winding-up of the SCIO, the terms of Clause 19.4 apply.

6 GENERAL MEETINGS

6.1 Convening a General Meeting

- 6.1.1 The Board, or any three or more Trustees, may convene a General Meeting, whenever it or they think fit.
- 6.1.2 The Board must convene a General Meeting within 28 days of a valid requisition by the members. To be valid, such requisition must:
 - (a) be signed by not less than 10 of the members;
 - (b) clearly state the objects of the meeting, which shall not be inconsistent with the terms of this Constitution, the Charities Act or any other statutory provision; and
 - (c) be deposited with the SCIO.Such requisition may consist of several documents in like form each signed by one or more members.
- 6.1.3 A General Meeting does not need to be held exclusively in one place, provided that, where two or more members are not in the same place as each other, they are all able to communicate together and vote thereat.
- 6.1.4 The Board may resolve to enable members and other persons entitled to attend a General Meeting to do so by simultaneous attendance and

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participation at an electronic platform by electronic means (such as by means of a conference telephone, video conferencing facility or similar communications equipment), such meeting being an “**electronic General Meeting**”, with no member necessarily in physical attendance at the electronic General Meeting. A person participating in such a meeting by such means shall be deemed to be attending electronically. The members attending, or their proxy, shall be counted in the quorum for, and entitled to speak and vote at, the electronic General Meeting in question, and the proceedings shall be valid if the person chairing the meeting is satisfied that adequate facilities are available throughout the electronic General Meeting to ensure members attending who are not together in the same place may, by electronic means, attend, hear, speak and vote at it.

6.1.5 If it appears to the person chairing the meeting that the electronic platform, facilities or security at the electronic General Meeting have become inadequate to allow members to attend, communicate together, hear, speak and vote at it then the person chairing the meeting may adjourn the General Meeting to such time and place (or electronic platform) as may be fixed by the person chairing the meeting. All business conducted at the General Meeting up to that time of the adjournment shall be valid.

6.1.6 If, after the sending of notice of a General Meeting, in terms of Clause 6.4, but before the meeting is held, or after the adjournment of a General Meeting but before the adjourned meeting is held (whether or not notice of the adjourned meeting is required), the Board decides that it is impracticable or unreasonable, for a reason beyond its control, to hold the physical General Meeting at the declared place or the electronic General Meeting on the electronic platform specified in the notice, it may change the place or electronic platform and/or postpone the date and time at which the General Meeting is to be held. In which case notice of the change or postponement will be communicated to the members no less than 7 days’ prior to the date of the original General Meeting.

6.2 **Convening an AGM**

The Board shall convene one General Meeting as an annual General Meeting (AGM) usually in each calendar year. The gap between one AGM and the next must not be longer than fifteen months.

6.3 **AGM Agenda**

The business of each AGM shall include:

- 6.3.1 the report by the Chair on the activities of the SCIO;
- 6.3.2 the report by the operation committee (where relevant);
- 6.3.2 the election or re-election of Trustees (where relevant);
- 6.3.3 the fixing of annual subscriptions, if any;
- 6.3.4 receiving the annual accounts of the SCIO;

6.4 **Notice of General Meetings**

6.4.1 14 clear days’ notice at the least shall be given of every General Meeting including the AGM.

6.4.2 The notice shall specify:

- (a) the date, time and place (and/or electronic platform) of the meeting and ,if applicable, the arrangements for accessing the meeting electronically;
- (b) the general nature of the business to be dealt with at the meeting; and
- (c) if a Special Resolution (see Clause 6.9) is to be proposed, the notice shall state the fact giving the exact terms of the resolution..

6.4.3 The notice shall be sent, in the manner specified in Clause 16, to all members and Trustees and to such persons or organisations as are under the Constitution entitled to receive such notices.

6.4.4 The accidental omission to give notice of a General Meeting to, or the non-receipt of such notice by, any members, persons or organisations entitled to receive notice thereof shall not invalidate any resolution passed at or proceedings of any General Meeting.

6.5 Chair of General Meetings

The Chair of the SCIO, whom failing the Vice-Chair of the SCIO (if any), shall act as the person chairing each General Meeting. If neither the Chair nor the Vice-Chair is present and willing to act as the person chairing the meeting within 15 minutes after the time at which the General Meeting in question was due to commence, the Trustees present shall elect from among themselves the Trustee who will act as the person chairing that meeting.

6.6 Quorum at General Meetings

6.6.1 The quorum for a General Meeting shall be 10 members (who are not also Trustees), present in person or by proxy. No business shall be dealt with at any General Meeting, other than the appointment of the person chairing the meeting in terms of Clause 6.5, unless a quorum is present.

6.6.2 If a quorum is not present within 15 minutes after the time at which the General Meeting was due to commence - or if, during a General Meeting, a quorum ceases to be present - the General Meeting shall stand adjourned to such time and place as may be fixed by the person chairing the meeting.

6.7 Voting at General Meetings – General Provisions

6.7.1 Each member of the SCIO is able to attend and speak at any General Meeting and shall have one vote, to be exercised in person or by proxy in terms of Clause 6.8.

6.7.2 The person chairing the meeting (see Clause 6.5) shall endeavour to achieve consensus wherever possible but, if necessary, questions arising shall be decided by being put to the vote.

6.7.3 All resolutions put to the vote at any General Meeting shall be decided verbally or on a show of hands, as appropriate, unless before, or upon the declaration of the result a Secret Ballot is demanded (see Clause 6.10).

6.7.4 Where members are participating in an electronic General Meeting, members may cast their vote on any resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, as the Board in its sole discretion deems appropriate for the purposes of the electronic General Meeting, and providing the Board have no reasonable grounds for suspicion as regards authenticity, any such action shall be deemed to be a vote cast personally via a show of hands.

6.7.5 In the event of an equal number of votes for and against any resolution, the person chairing the meeting shall be entitled to a casting vote as well as any deliberative vote.

6.7.6 Where a Trustee does not have to be, or cannot be, a member of the SCIO, they may attend and speak at any General Meeting, but in those circumstances may not vote thereat.

6.7.7 The person chairing the meeting may permit any other person or persons to attend a General Meeting who otherwise has no right to do so, as an observer or observers. In that event, it shall be at the discretion of the person chairing the meeting whether any such observer may be invited to speak thereat.

6.8 Voting at General Meetings – Proxy Voting

Whilst personal attendance at a General Meeting is encouraged, a member shall be entitled to complete an instrument of proxy in order to appoint a proxy to attend a General Meeting on their behalf, in respect of which the following apply:

6.8.1 a proxy need not be a member of the SCIO;

6.8.2 a proxy appointed to attend and vote at any meeting instead of a member shall have the same right as the appointing member to speak at the meeting and to vote thereat;

6.8.3 the instrument appointing the proxy, which may specify how the proxy is to vote (or to abstain from voting) on one or more resolutions, shall be in the general terms (to be varied as required to fit the circumstances) of the form shown in the Schedule 3 annexed to this Constitution, and shall be authenticated in such a manner as the Board may determine;

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- 6.8.5 the form appointing a proxy and the power of attorney or other authority (if any) under which it is authenticated, or a certified copy thereof, shall be lodged with the SCIO not less than 48 hours before the time of the start of the meeting or adjourned meeting at which the person named in the form proposes to vote, and in default the instrument of proxy shall not be treated as valid; and
- 6.8.9 any reference in this Constitution to voting being “in person” shall include voting by proxy.
- 6.9 Voting at General Meetings – Decision making**
- 6.9.1 All decisions at General Meetings shall be made by majority vote, with the exception of the following decisions which will be valid only if passed by a Special Resolution of not less than two-thirds of the members present, who have the right to vote and who are voting thereon (for the avoidance of doubt, the reference to a two-thirds majority only relates to the number of votes cast in favour of the resolution as compared with the number of votes cast against the resolution and no account therefore being taken of members who abstain from voting or who are absent from the meeting without a proxy), namely:
- (a) to alter the name of the SCIO; or
 - (b) to amend the Charitable Purposes; or
 - (c) to amend this Constitution in terms of Clause 18; or
 - (d) to limit the Board’s actions in terms of Clause 7.2; or
 - (e) to wind up the SCIO in terms of Clause 19; or
 - (f) to approve the amalgamation of the SCIO with another SCIO (or approving the constitution of a new SCIO to be constituted as the successor pursuant to that amalgamation; or
 - (g) that all of the SCIO’s property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all its property, rights and liabilities)
- 6.10 Voting at General Meetings – Secret Ballot**
- A resolution put to the vote at any General Meeting shall be decided verbally or on a show of hands, as appropriate, unless a Secret Ballot is demanded in the following terms:
- 6.10.1 such demand must be made either by the person chairing the meeting, or by not less than two of the members present (in person or by proxy) and having the right to vote on the resolution;
- 6.10.2 a demand for a Secret Ballot may be made at any time during the meeting, including immediately after the declaration of the result of a show of hands on that resolution; and
- 6.10.3 the Secret Ballot shall be conducted during the same meeting only, in such a manner as the person chairing the meeting may direct, and the person chairing the meeting shall appoint and instruct tellers, who may cast their own personal votes if members (and the result shall be declared by the person chairing the meeting at the same meeting at which the Secret Ballot is taken.
- 6.11 Voting – Written Resolutions**
- 6.11.1 Resolutions may be passed in writing, rather than at a General Meeting, provided that the terms of this Clause are followed.
- 6.11.2 An ordinary resolution in writing signed by or on behalf of a simple majority of all the members shall be as valid and effective as if the same had been passed at a General Meeting of the SCIO duly convened and held.
- 6.11.3 A Special Resolution in writing signed by or on behalf of not less than two-thirds of all the members shall be as valid and effective as if the same had been passed at a General Meeting of the SCIO duly convened and held, unless it is a Special Resolution in writing to amend this Constitution, which is dealt with at Clause 6.11.4.
- 6.11.4 A Special resolution to amend this Constitution signed by all the members shall be as valid and effective as if the same has been held passed at a General Meeting of the SCIO duly convened and held.

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- 6.11.5 Written resolutions may not be used either for the removal of a Trustee prior to the expiration of their term of office.
- 6.11.6 Any written resolution must be issued in hard copy (by hand or by post) or in electronic form (by e-mail or other electronic means), or by means of a website at the same time, to all members on the Circulation Date (that is, the date on which copies of the written resolution are sent to the members).
- 6.11.7 A written resolution proposed by the Board must include the following express statements:
 - (a) an explanation to the eligible members how to signify their agreement to the resolution;
 - (b) how it can be sent back by them, and whether in hard copy (by hand or by post) and/or in electronic form (such as by e-mail); and
 - (c) the date by which the resolution must be passed if it is not to lapse (that is, the date which is 28 days beginning with the Circulation Date).
- 6.11.8 Any such written resolution may consist of several documents in the same form, each signed by or on behalf of one or more members.
- 6.11.9 A member signifies their agreement to a proposed written resolution when the SCIO receives from them a signed document identifying the resolution to which it relates and indicating the member's agreement to the resolution. A member's agreement to a proposed written resolution, once signified, cannot be revoked.

7 THE BOARD OF TRUSTEES

- 7.1 The strategy and affairs of the SCIO shall be directed and managed by a Board of Trustees elected in terms of Clause 8. The Board may exercise all such powers of the SCIO, and do on behalf of the SCIO all acts as may be exercised and done by the SCIO, other than those required to be exercised or done by the members in General Meeting, and subject always to this Constitution.
- 7.2 **Limitation**

The members may, by Special Resolution, direct the Board to take, or to refrain from taking, specified action, but no such Special Resolution shall invalidate anything which the Board may have done prior to the passing of such Special Resolution, nor shall it require them to act or refrain from acting in a manner which would be incompatible with their duties under the Charities Act.
- 7.3 **Delegation**
 - 7.3.1 The Board may delegate any of its powers to any sub-committee or persons or person, by such means, to such an extent and on such terms and conditions as it thinks fit, and may at any time revoke such delegation, in whole or in part, or alter such terms and conditions. If the Board so specifies, any such delegation may authorise further delegation of the Board's powers by any sub-committee or persons or person to whom they are delegated.
 - 7.3.2 Any sub-committee so formed or persons or person to whom delegation of powers is made in terms of Clause 7.3.1 shall, in the exercise of the powers so delegated, conform to any remit and regulations imposed on it by the Board.
 - 7.3.3 In the case of delegation to any one or more sub-committees, each shall consist of not less than one Trustee and such other person or persons as the Board thinks fit or which it delegates to the committee to appoint. The meetings and proceedings of any such sub-committee shall be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as applicable (and, without prejudice to that generality including Clauses 12.4.5 and 12.6) and so far as the same shall not be amended or superseded by any specific regulations made by the Board for all or any sub-committees. A sub-committee may invite or allow any person to attend and speak, but not to vote, at any of its meetings. Such sub-committee shall regularly and promptly circulate, or ensure the regular and prompt circulation of, the minutes of its meetings to all Trustees.

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- 7.3.4 Unless expressly part of such delegation, no decision of any such sub-committee or persons or person shall bind the Board.

7.4 **Operational Committee**

- 7.4.1 The Board may create an operational committee if they consider that to be appropriate from time to time.
- 7.4.2 The remit of the operational committee shall be such as the Board of Trustees may prescribe from time to time.
- 7.4.3 The operational committee shall consist of not less than one Trustee and such other person or persons as the Board thinks fit or which it delegates to the operational committee to appoint.
- 7.4.4 The Chair of the SCIO shall be an ex officio member of the operational committee.
- 7.4.5 Only a member of the SCIO is entitled to be a member of the operational committee.
- 7.4.6 The operational committee may prepare reports and recommendations for consideration by the Board of Trustees, but shall not be entitled to issue directions or instructions to the Board of Trustees, final decision making authority always vesting with the Board of Trustees.
- 7.4.7 Unless expressly part of such delegation, no decision of the operational committee shall bind the Board.
- 7.4.8 Rules of procedure for the operational committee shall conform to any remit, regulations or terms of reference imposed on it by the Board.
- 7.4.9 The meetings and proceedings of the operational committee shall be governed by the provisions of this Constitution for regulating meetings and proceeding of the Board so far as applicable (and, without prejudice to that generality including Clauses 12.4.5 and 12.6) and so far as the same shall not be amended or superseded by any specific regulations made by the Board for the operational committee or sub-committees in general.
- 7.4.10 The operational committee shall ensure the regular and prompt circulation of the Minutes of its meetings to all Trustees.

7.5 **Number of Trustees**

- 7.5.1 The number of Trustees shall not be fewer than three and, unless otherwise determined by special resolution at a General Meeting (but not retrospectively), not more than eight.
- 7.5.2 The Board may act notwithstanding any vacancy in it, but where the number of Trustees falls below the minimum number specified in this Clause, it may only do so for the purpose of appointing sufficient Trustees to match or exceed that minimum.

8 **TRUSTEES**

8.1 **Composition of Board**

The Board shall comprise:

- 8.1.1 up to six individual persons elected as Trustees by the members in terms of Clause 8.2 ("the Elected Trustees"); and
- 8.1.2 up to two individual persons co-opted as Trustees in terms of Clause 8.3 ("the Co-opted Trustees").

8.2 **Elected Trustees**

- 8.2.1 Each Elected Trustee shall serve for a term of up to three years.
- 8.2.2 At each AGM, each Elected Trustee who has served a term of three years shall retire from office. A retiring Elected Trustee shall retain office until the close or adjournment of the meeting. A retiring Elected Trustee shall be eligible for re-election for a further terms of up to three years, but no Elected Trustee can serve more than six consecutive years, without at least one year out of office before being eligible again.
- 8.2.3 Nomination of any Elected Trustee shall be in writing by not less than any two members. The nominee, who must be a member, shall confirm their

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willingness to act as an Elected Trustee if elected and if required shall provide a statement to explain the nominee's suitability. All nominations to be valid must be delivered to the SCIO (or to such other physical or electronic address for the SCIO as specified in the nomination form) not less than seven days prior to the date of the AGM in question.

- 8.2.4 Election of any Elected Trustee shall be by vote of the members, each member having one vote for each vacancy in the Elected Trustees on the Board.
- 8.3 Co-opted Trustees**
Up to two individuals may be co-opted from time to time by the Board of Trustees itself, as follows:
- 8.3.1 Subject to Clause 8.3.3, a Co-opted Trustee shall serve until the next AGM after their co-option.
- 8.3.2 A Co-opted Trustee can be re-co-opted by the Board immediately after such next AGM.
- 8.3.3 A Co-opted Trustee can be removed from office at any time by a simple majority of the Board.
- 8.3.4 For the avoidance of doubt, a Co-opted Trustee may participate fully in and vote at all Board meetings at which they attend.
- 8.3.5 A Co-opted Trustee does not need to be a member of the SCIO.
- 8.4 Casual Vacancies**
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 Trustee from the existing membership, from or after the date of such retiral or deemed retiral until the next AGM.
- 8.5 Retiral and Deemed Retiral of Trustees**
Any Trustee must cease to be a Trustee if, respect to any of these events, they:
- 8.5.1 are an Elected Trustee and cease to be a member in terms of Clause 5.6; or
- 8.5.2 are prohibited from being a charity trustee by virtue of section 69(2) of the Charities Act; or
- 8.5.3 hold any office of profit at the SCIO or are employed by the SCIO (except where the provisions of Clause 10.4 shall apply); or
- 8.5.4 become incapable for medical reasons of fulfilling the duties of their office and such incapacity, as certified if necessary by two medical practitioners, is expected to continue for a period of more than six months from the date or later date of such certification; or
- 8.5.5 are absent (without permission) from more than three consecutive meetings of the Board, and the Board resolves to remove them from office; or
- 8.5.6 being a Co-opted Trustee, are removed from office by the Trustees in accordance with Clause 8.3.3; or
- 8.5.7 are considered by the Board to have been in serious or persistent breach of: (i) any of the duties listed in sections 66(1) and 66(2) of the Charities Act; or (ii) any Code of Conduct, Board Charter, or Board Policy of the SCIO; or (iii) Clause 8.8.5; such Trustee being entitled to be heard prior to the Board taking a decision in respect of the above (i) – (iii); or
- 8.5.8 resign as a Trustee by notice in writing to the SCIO; or
- 8.5.9 they die.
- 8.6 Conduct of Trustees**
- 8.6.1 Each Trustee is obliged to act in accordance with the duties listed in section 66 of the Charities Act (see Clause 8.6.2) so as to take decisions in such a way as is considered, in good faith, most likely to be in the interests of the SCIO, and to promote its success in achieving the Charitable Purposes.
- 8.6.2 The duties listed in section 66 of the Charities Act to which each Trustee must adhere are:
- (a) to act in the interests of the SCIO;
- (b) to seek, in good faith, to ensure that the SCIO acts in a manner which is consistent with its Charitable Purposes;

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- (c) to act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person; and
 - (d) in circumstances giving rise to the possibility of a conflict of interest between the SCIO and any party responsible for the appointment of that Trustee:
 - (i) to put the interests of the SCIO before those of the other party; and
 - (ii) where any other duty prevent the Trustee from doing so, to disclose the conflicting interest to the SCIO and to refrain from participating in any deliberation or decision of the Board with regard to the matter in question; and
 - (e) to ensure that the SCIO complies with any direction, requirement, notice or duty imposed upon under or by virtue of the Charities Act.
- 8.6.3 The provisions of Clauses 10 and 11 are also pertinent to the provisions within this Clause, and each Trustee must comply with these.
- 8.6.4 Each Trustee must additionally comply with any Code of Conduct, Board Charter, or Board Policy for Trustees as introduced and prescribed by the Board from time to time.
- 8.6.5 Additionally, each Trustee must be mindful of the requirement to preserve confidentiality where appropriate or requested in relation to the SCIO or its business and in order to act always in the interest of the SCIO.

8.7 Register of Trustees

- 8.7.1 The Board shall maintain a Register of Trustees, setting out the following details of each Trustee; name, address, date of appointment and any offices held, all in accordance with the Charities Act.
- 8.7.2 The Register must provide the following details of each former Trustee for at least six years after cessation of trusteeship; name, any offices held and date of cessation of trusteeship.
- 8.7.3 The Register of Trustees is open to all members and Trustees of the SCIO, but Trustees' addresses (or any of them) can be kept confidential by the SCIO.
- 8.7.4 Changes to the Register must be made within twenty-eight days of the SCIO receiving notice of any change.
- 8.7.5 If an individual requests the SCIO to provide a copy of its Register of Trustees, that individual, if the request is reasonable, entitled to be given a copy within twenty-eight days. The SCIO may not charge for doing so. The SCIO can omit all or any of its Trustees' addresses in its response to a request.

9 CHAIR AND VICE-CHAIR

The Board shall meet as soon as practicable immediately after each AGM to appoint both a Chair and, if desired, a Vice-Chair of the SCIO from the Board (either or both of whom can be Co-opted Trustees).

10 CONSTRAINTS ON PAYMENTS/BENEFITS TO MEMBERS AND TRUSTEES

- 10.1 The income and property of the SCIO shall be applied solely towards promoting the Charitable Purposes.
- 10.2 No part of the income or property of the SCIO shall be paid or transferred (directly or indirectly) to the members or Trustees of the SCIO, whether by way of dividend, bonus or otherwise, except in accordance with Clause 10.4 or where such members or Trustees are in receipt of income or property of the SCIO as a beneficiary of the SCIO in terms of the Charitable Purposes.
- 10.3 No Trustee shall be appointed as a paid employee of the SCIO.
- 10.4 No benefit (whether in money or in kind) shall be given by the SCIO to any member or Trustee except the possibility of:
 - 10.4.1 repayment of out-of-pocket expenses to Trustees (subject to prior agreement by the Board); or

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- 10.4.2 reasonable remuneration to a member or any Trustee, subject to Section 67 of the Charities Act, in return for specific services actually rendered to the SCIO (in the case of a Trustee such service must not be of a management nature normally carried out by a director of a company); or
- 10.4.3 payment of interest at a rate not exceeding the commercial rate on money lent to the SCIO by any member or Trustee; or
- 10.4.4 payment of rent at a rate not exceeding the open market rent for property let to the SCIO by any member or Trustee; or
- 10.4.5 the purchase of property from any member or Trustee provided that such purchase is at or below market value or the sale of property to any member or Trustee provided that such sale is at or above market value; or
- 10.4.6 payment to one or more Trustees by way of any indemnity where appropriate.

11 CONFLICTS OF INTERESTS

- 11.1 Any Trustee who has a personal interest (as defined in Clause 11.2) in any prospective or actual contract or other arrangement with the SCIO must declare that interest either generally to the Board or specifically at any relevant meeting of the SCIO. Where such an interest arises, the provisions within Clause 11.3 shall apply.
- 11.2 A personal interest includes the following interests:
 - 11.2.1 those of the Trustee or employee in question;
 - 11.2.2 those of their partner or close relative;
 - 11.2.3 those of any business associate;
 - 11.2.4 those of any firm of which they are a partner or employee;
 - 11.2.5 those of any limited company of which they are a director, employee or shareholder of more than 5% of the equity;
 - 11.2.6 those of any charity of which they are a trustee or employee; and
 - 11.2.7 those of any person or organisation responsible for their appointment as a Trustee.
- 11.3.1 Whenever a Trustee finds that there is a personal interest, as defined in Clause 11.2, they have a duty to declare this to the Board meeting in question. In that event, in order to avoid a material conflict of interest arising, the Trustee in question cannot partake in discussions or decisions relating to such matter.
- 11.3.2 It shall be for the person chairing the meeting in question (or if it be the person chairing the meeting who is potentially or actually conflicted, it shall be for the other Trustees present) to determine whether the Trustee in question should at the least be required to be absent during that particular element of the meeting. Where a Trustee leaves, or is required to leave, the meeting in question, they will no longer form part of the quorum thereat.
- 11.3.3 The Board may at any time resolve to authorise any Trustee to continue acting where a real or potential conflict of interest exists in relation to a personal interest of that Trustee, but where it considers that the interests of the SCIO have not been nor are likely to be prejudiced as a result. The Trustee in question cannot be considered as part of the quorum for that part of any Board meeting giving consideration to this authorisation.
- 11.3.4 The Board may resolve at any time to require all Trustees, volunteers and employees to deliver a Notice of Relevant Interests to the Principal Office (or elsewhere as it may determine), as they arise and at least annually. In that event, the Board shall determine from time to time what additional interests to those listed in Clause 11.2, if any, shall be relevant interests and shall ensure that a Register of Notices of Relevant Interests is maintained.
- 11.3.5 If existing, the Register of Interests shall be open for inspection by both the Board and members of the SCIO and, with the express prior written approval of the Trustee or employee concerned, by members of the public.

12 BOARD MEETINGS

12.1 Quorum

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12.1.1 The quorum for Board meetings shall be not less than three of the Elected Trustees. No business shall be dealt with at a Board meeting unless a quorum is present.

12.1.2 A 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.

12.2 **Convening Board Meetings**

12.2.1 Meetings of the Board may take place in person or by telephone conference call, video conference call or by any other collective electronic means approved from time to time by the Board.

12.2.2 Board meetings shall require not less than 7 days' prior notice, unless all Trustees agree unanimously in writing to dispense with such notice on any specific occasion.

12.2.3 A Trustee may at any time, summon a meeting of the Board by notice served upon all Trustees, to take place at a reasonably convenient time and date.

12.3 **Chair of Board Meeting**

The Chair, whom failing the Vice-Chair (if any), shall be entitled to preside as the person chairing all Board meetings at which they are present. If at any meeting neither the Chair nor the Vice-Chair is present and willing to act as the person chairing the meeting within 15 minutes after the time appointed for holding the meeting, the remaining Trustees may appoint one of the Trustees to be the person chairing the Board meeting, which failing the meeting shall be adjourned until a time when the Chair or Vice-Chair will be available.

12.4 **Voting at Board Meetings**

12.4.1 The person chairing the Board meeting shall endeavour to achieve consensus wherever possible but, if necessary, questions arising shall be decided by being put to the vote, on a show of hands only, each Trustee present having one vote.

12.4.2 All decisions of the Board shall be by a simple majority at any meeting which is quorate at the time the decision is taken.

12.4.3 The decisions requiring a Special Resolution (listed in Clause 6.9) cannot be taken by the Trustees alone, but must be taken also by the members in a General Meeting and only thereafter acted upon by the Board as directed by the members.

12.4.4 In the event of an equal number of votes for and against any resolution at a Board meeting, the person chairing the meeting shall have a casting vote as well as a deliberative vote.

12.4.5 A resolution in writing (whether one single document signed by all or a sufficient majority of the Trustees or all or a sufficient majority of the members of any sub-committee), whether in one or several documents in the same form each signed by one or more Trustees or members of any relative sub-committee as appropriate, shall be as valid and effectual as if it had been passed at a meeting of the Board or of such sub-committee duly convened and constituted.

12.5 **Observers**

The Board may invite or allow any person to attend and speak, but not to vote, at any meeting of the Board.

12.6 **Minutes**

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, without distinction between those who attended in person and those who attended electronically, and all business transacted at such meetings and any such minutes of any meeting, if purporting to be signed after approval, either by the person chairing such meeting, or by the person chairing the next succeeding meeting, shall be sufficient evidence without any further proof of the facts therein stated. The minutes shall be retained for at least 10 years.

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12.7 Validation

12.7.1 All acts *bona fide* done by any Board meeting, or of any sub-committee, or by any person acting as a Trustee shall, notwithstanding it be afterwards discovered that there was some defect in the appointment or continuance in office of any such Trustee or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Trustee.

12.7.2 No alteration of this Constitution 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.

12.8 Ancillary Regulations

The Board may from time to time promulgate, review and amend any Ancillary Regulations, Guidelines and/or Policies, subordinate at all times to this Constitution, as it deems necessary and appropriate to provide additional explanation, guidance and governance to themselves, members, employees, stakeholders and/or others.

13 MINUTE SECRETARY, TREASURER & PRINCIPAL OFFICER

13.1 Minute Secretary

The Board may appoint a Minute Secretary, for the purposes of Clause 12.6, for such term and upon such conditions as it may think fit. The Minute Secretary may be removed by the Board at any time, subject to the terms of any prevailing contract. The Board may award an annual salary, honorarium or other appropriate fee to the Minute Secretary at its discretion, but can only do so if the Minute Secretary is not a Trustee.

13.2 Treasurer

- (a) The Board may appoint a Treasurer for such term and upon such conditions as it may think fit.
- (b) If the Treasurer is unpaid, they may also be a Trustee, and if so they will have a vote as a Trustee at any Board meeting which they attend.
- (c) If the Treasurer is to be paid an annual salary, honorarium or other appropriate fee at the Board's discretion, they cannot also be a Trustee.
- (d) If the Treasurer is not a Trustee, they may be required by the Board to attend (but shall have no vote at) Board meetings during their tenure as Treasurer, except any part or parts thereof dealing with their employment or remuneration, or any other matter which the Board wish to keep confidential to itself.
- (e) The Treasurer may be removed by the Board at any time, subject to the terms of any prevailing contract.

13.3 Principal Officer

The Board may appoint a Principal Officer of the SCIO on such terms (including a decision on the most appropriate job title) and conditions as it may think fit, who shall attend Board and Sub-Committee meetings as appropriate or required, but who shall not be a Trustee and, for the avoidance of doubt, will have no vote thereat.

14 HONORARY PATRON(S)

The members in a General Meeting may, on a proposal from the Board, agree to the appointment of one or more Honorary Patrons of the SCIO, to be appointed either for such fixed period (usually of five years) as those members determine or for an unspecified period until such appointment be terminated by them. The Honorary Patron or Patrons would be entitled to notice of all General Meetings and to attend and contribute to discussion but not vote thereat.

15 FINANCES AND ACCOUNTS

15.1 Bank Accounts

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The banking account or accounts of the SCIO shall be kept in such bank or building society and/or banks or building societies as the Board shall from time to time determine.

15.2 **Payments and Receipts**

All payments (including cheques and other negotiable instruments) and all financial and banking instructions, and all receipts for monies paid to the SCIO, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Board shall from time to time determine.

15.3 The Board shall ensure that all funds and assets of the SCIO are applied towards achieving the Charitable Purposes.

15.4. **Accounting Records and Annual Accounts**

The Board shall cause accounting records to be kept in accordance with the requirements of the Charities Act and relevant regulations.

15.5 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 shall think fit and shall always be open to the inspection of the Trustees. The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the SCIO or any of them shall be open to the inspection of the members of the SCIO.

15.6 The Board shall ensure that the accounts of the SCIO are prepared and independently examined and/or audited in accordance with all relevant statutory requirements.

15.7 At or before each AGM, or otherwise after the Accounts have been approved by the Board, the Board shall provide or make available to the members 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 SCIO). The accounts shall be accompanied by proper reports of the Board and the independent financial examiner, (or auditor where required). As an alternative, the Accounts may be available for inspection on the website of the SCIO (with all members and Trustees being made aware that they are so available for inspection there).

16 **NOTICES**

16.1. A notice may be served by the SCIO upon any member, either personally or by sending it by post, e-mail or other appropriate electronic means, addressed to such member at their address as appearing in the Register of Members.

16.2 Any notice, whether served by post or otherwise, shall be deemed to have been served on the day following that on which the letter containing the same is put into the post or is otherwise dispatched.

16.3 A member present at any meeting of the SCIO shall be deemed to have received notice of the meeting and, where requisite, of the purpose for which it was called.

16.4 The business of the SCIO and all its correspondence with and notification to or from members may be conducted equally validly and effectively if transmitted by e-mail or other appropriate electronic means (except where a member specifically requests all such correspondence and notification by post) or otherwise if publicised on the website of the SCIO where the SCIO has advised each member of this and has taken due steps to notify by other reasonable means all other members who state that they do not have access to the Internet.

17 **INDEMNITY**

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Subject to the terms of the Charities Act and without prejudice to any other indemnity, the Trustees, or member of any sub-committee, the Treasurer and all employees of the SCIO shall be indemnified out of the funds of the SCIO against any loss or liability (including the costs of defending successfully any court proceedings) which they may respectively incur or sustain, in connection with or on behalf of the SCIO.

18 ALTERATION OF CONSTITUTION

Subject to any prior consent required in terms of section 16 of the Charities Act, no alteration to this Constitution may at any time be made unless on the decision of the members by Special Resolution at a General Meeting called specifically (but not necessarily exclusively) for that purpose.

19 WINDING UP

19.1 The winding-up of the SCIO may take place only:

19.1.1 on the decision of not less than two-thirds of the members who are present and voting at a General Meeting called specifically (but not necessarily exclusively) for that purpose; and

19.1.2 in accordance with the procedures set out in the Charities Act and relative Regulations (currently the Scottish Charitable Incorporated Organisation (Removal from Register and Dissolution) Regulations 2011).

19.2 If, on the winding-up of the SCIO, any property remains, after satisfaction of all its debts and liabilities, such property shall be given or transferred to any one or more charities having the same or a similar objects to the Charitable Purposes.

19.3 The charity or charities to which the property is to be transferred in terms of Clause 19.2 shall be determined on the decision of not less than two-thirds of the members of the SCIO who are present and voting at a General Meeting called specifically (but not necessarily exclusively) for the purpose or, failing that, by a decision of not less than two-thirds of the Board or, failing that, as determined by an arbiter to be chosen amicably by the Board or, failing such amicable choice, as determined by Sheriff of Tayside, Central and Fife at Dundee (or any successor thereto), whose decision shall be final and binding upon the SCIO.

19.4 The members of the SCIO are not liable to contribute to the assets of the SCIO upon its winding up.

Annexation

Schedule 1 Definitions

Schedule 2 Powers

Definitions

Further to Clause 2.1 the definitions and meanings to apply throughout this Constitution and the Schedules hereto, are as follows:

| WORDS | MEANINGS |
|-----------------------------------|---|
| AGM | – the annual General Meeting of the members. |
| Applicants | – those first members of the SCIO who are the individuals who make the Application to OSCR under section 54(1) of the Charities Act. |
| Board | – the Board of Trustees. |
| Charitable Purposes | – as described in Clause 3 on the basis that these fall within section 7 of the Charities Act and are also regarded as charitable in relation to the application of the Taxes Acts. |
| Charities Act | – the Charities and Trustee Investment (Scotland) Act 2005 and every statutory modification and re-enactment thereof for the time being in force. |
| charity | – a body on the Scottish Charity Register which is also regarded as a charity in relation to the application of the Taxes Acts. |
| Clause(s) | – Clause(s) of this Constitution |
| Constitution | – this Constitution, and any ancillary regulations thereunder, in force from time to time. |
| electronic General Meeting | – means a General Meeting hosted at an electronic platform |
| electronic platform | – includes, but is not limited to, website addresses and conference call systems |
| General Meeting | – Any General Meeting of the members which is not an AGM. |
| in person | – means present in person or by proxy at a physical general meeting or present by electronic means at an electronic platform at an electronic General Meeting, as the case may be. |

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- in writing** – Representation of 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.

- members** – all members of the SCIO.

- month** – calendar month.

- organisation** – any body corporate, unincorporated association, society, federation, authority, agency, union, co-operative, trust, partnership or other organisation (not being an individual person).

- OSCR** – the Office of the Scottish Charity Regulator.

- property** – any property, assets or rights, heritable or moveable, wherever situated in the world.

- SCIO** – Generator

- signed** – where a document or information sent or supplied (a) in hard copy form is signed by bearing the signature of the person sending or supplying it, or (b) in electronic form is signed if the identity of the sender is confirmed in a manner specified by the SCIO or, where no such manner has been specified by the SCIO, if it is accompanied by a statement of the identity of the sender and the SCIO has not reason to doubt the truth of that statement.

- Trustee(s)** – the Charity Trustees for the time being of the SCIO.

Schedule 2

Powers available to the SCIO

Further to Clause 3.2, notwithstanding the terms of section 50(5) of the Charities Act (which states that the SCIO shall have power to do anything which is calculated to further the Charitable Purposes or is conducive or incidental to doing so) and without prejudice to the foregoing generality, the SCIO shall also have the following powers (but only in furtherance of the Charitable Purposes) and declaring that the order in which these Powers are listed or the terms of the sub-headings above are of no significance in terms of their respective priority which shall be deemed to be equal, namely:

2 General

- 2.1 to encourage and develop a spirit of voluntary or other commitment by 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 SCIO to achieve the Charitable Purposes;
- 2.2 to provide advice, consultancy, training, tuition, expertise and assistance;
- 2.3 to promote and carry out research, surveys and investigations and develop initiatives, projects and programmes;
- 2.4 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 articles, pamphlets, books and other publications, tapes, motion and still pictures, music and drama and other materials, all in any medium;

3 Property

- 3.1 to purchase, take on lease, hire, or otherwise acquire any property suitable for the SCIO and to construct, convert, improve, develop, 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 SCIO's property;
- 3.2 to sell, let, hire, license, give in exchange and otherwise dispose of all or any part of the property of the SCIO;
- 3.3 to establish and administer a building fund or funds or guarantee fund or funds or endowment fund or funds;

4 Employment

- 4.1 to employ, contract with, train and pay such staff (whether employed or self-employed or external contractors) as are considered appropriate for the proper conduct of the activities of the SCIO, and to make reasonable provision for the payment of pension and/or other benefits for members of staff, ex-members of staff and their dependants;

5 Funding and Financial

- 5.1 to take such steps as may be deemed appropriate for the purpose of raising funds for the activities of the SCIO;
- 5.2 to accept or decline subscriptions, grants, donations, gifts, legacies and endowments of all kinds, either absolutely or conditionally or in trust;
- 5.3 to borrow or raise money for the Charitable Purposes and to give security in support of any such borrowings by the SCIO and/or in support of any obligations undertaken by the SCIO;
- 5.4 to set aside funds not immediately required as a reserve or for specific purposes;
- 5.5 to open, operate and manage bank and other accounts and to invest any funds which are not immediately required for the activities of the SCIO in such investments as may be considered appropriate and to dispose of, and vary, such investments;
- 5.6 to make grants or loans of money and to give guarantees;
- 5.7 to employ as a professional investment manager any person who is entitled to carry on investment business under the supervision of the Financial Conduct

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Authority (or its successors) and to delegate to any such manager the exercise of all or any of its powers of investment on such terms and at such reasonable remuneration as the Board of Trustees thinks fit, and to enable investments to be held for the SCIO in nominee names, but subject always to the provisions of the Charities Act;

6 Development

- 6.1 to establish, manage and/or support any other charity, and to make donations for any charitable purpose falling within the Charitable Purposes;
- 6.2 to establish, operate and administer and/or otherwise acquire any separate trading company or association, whether charitable or not;
- 6.3 to enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes of the activities of the SCIO and to enter into any arrangement for co-operation, mutual assistance, or sharing profit with any charity;
- 6.4 to enter into contracts to provide services to or on behalf of others;

7 Insurance and Protection

- 7.1 to effect insurance of all kinds (which may include indemnity insurance in respect of Trustees and employees);
- 7.2 to oppose, or object to, any application or proceedings which may prejudice the interests of the SCIO;

8 Ancillary

- 8.1 to pay the costs of forming the SCIO and its subsequent development;
- 8.2 to carry out the Charitable Purposes in any part of the world as principal, agent, contractor, trustee or in any other capacity; and
- 8.3 to do anything which is calculated to further its Charitable Purposes or is conducive or incidental to doing so.

Schedule 3

Form of Proxy

Further to Clause 6.8.3, the Form of Proxy shall be in the following general terms (to be varied as required to fit the circumstances):

**Generator
("the SCIO")**

I,
of.....,
being a member of the SCIO hereby appoint the person chairing the General Meeting/or*,
of,
as my proxy to vote for me on my behalf at the General Meeting of the SCIO to be held on..... and at any adjournment thereof.

[This form to be used in favour of/against the resolution(s)*]

[Insert wording of each resolution]

** to be deleted if not required, or amended if it is required*

Unless otherwise instructed, the Proxy will vote as they think fit

Signature of member appointing proxy.....

dated.....

To be valid, this Form of Proxy, once signed and dated, must be lodged at least 48 hours before the start of the General Meeting referred to above