



EDINBURGH HACKLAB SCIO

CONSTITUTION

18th January 2012

## **General**

### **Type of organisation**

- 1 The organisation shall, upon registration, be a Scottish Charitable Incorporated Organisation (SCIO)

### **Name**

- 2 The name of the organisation shall be “Edinburgh Hacklab SCIO”, hereafter referred to as “the Hacklab”.

### **Location**

- 3 The principal office of the Hacklab shall be in Scotland (and must remain in Scotland).
- 4 The Hacklab shall hold its regular activities in Edinburgh.

### **Purposes**

- 5 The Hacklab’s purposes are:
  - to promote and encourage technical, scientific and artistic skills and innovation through individual projects, collaboration and education;
  - to provide open events to allow the wider community to meet and socialise together;
  - to promote and support the use and development of free and open technologies, standards, ideas, hardware and software for the benefit of all;
  - to provide a shared physical workspace, tools, storage and other resources for its members;
  - to work with other bodies with similar or complementary objectives.

## **Powers**

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

## **Liability of Members**

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

## **Use of Resources**

- 10 The Hacklab shall make no claim and take no responsibility for the projects created by users of the Hacklab resources.
- 11 Use of Hacklab facilities and equipment shall be at the user's own risk.
- 12 The Hacklab shall not be held responsible nor liable for any actions or behaviour of individuals or groups, whether members or guests.

## **General Structure**

- 13 The structure of the Hacklab consists of
  - 13.1 the MEMBERS - who have the right to attend members' meetings (including any annual general meeting) and have important powers un-

der the constitution; in particular, the members appoint people to serve on the board and take decisions on changes to the constitution itself;

13.2 the BOARD - who hold regular meetings, and generally control the activities of the Hacklab; for example; the board is responsible for monitoring and controlling the financial position of the Hacklab

14 The people serving on the board are referred to in this constitution as CHARITY TRUSTEES.

## **MEMBERS**

### **General**

15 A member shall be permitted to attend any physical workspaces at any time, to make use of all Hacklab resources and to accompany guests.

### **Qualifications for membership**

16 Membership is open to any individual aged 18 or over who lives, works or studies in the east of Scotland, and who has an interest in technology and/or the arts.<sup>1</sup>.

17 Employees of the Hacklab are not eligible for membership.

### **Application for membership**

18 Any person who wishes to become a member must submit a written application for membership, along with a remittance to meet the first month's subscription; the application will then be considered by the board at its next board meeting.

19 The board may, at its discretion, refuse to admit any person to membership. If membership is refused, the first month's subscription will be returned.

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<sup>1</sup>GDE: Updated based on my email of 24th November 2011. Al, I couldn't get your wording in your patch to fit well, but I'm still not convinced by that. I think we should park the issue of "country membership" until after we get SCIO status.

- 20 The board must notify each applicant promptly (in writing or by e-mail) of its decision on whether or not to admit him/her to membership.

### **Membership subscription**

- 21 Members shall be required to pay a monthly membership subscription; unless and until otherwise determined by the members, the amount of the monthly membership subscription shall be £30.
- 22 The monthly membership subscriptions shall be payable on or before the day of the month on which the member originally joined.
- 23 The members may vary the amount of the monthly membership fee by way of a resolution to that effect passed at a General Meeting.
- 24 If the membership subscription payable by any member remains outstanding more than 3 months after the date on which it fell due - and providing he/she has been given at least one reminder (either in writing or by e-mail) - the board may, by resolution to that effect, expel him/her from membership.
- 25 A person who ceases (for whatever reason) to be a member shall not be entitled to any refund of the membership subscription.

### **Register of members**

- 26 The board must keep a register of members, setting out:
- 26.1 for each current member:
- 26.1.1 his/her full name and address; and
- 26.1.2 the date on which he/she was registered as a member of the Hacklab
- 26.2 for each former member - for at least 6 years from the date on he/she ceased to be a member:
- 26.2.1 his/her name; and
- 26.2.2 the date on which he/she ceased to be a member.

- 27 The board must ensure that the register of members is updated within 28 days of any change:
- 27.1 which arises from a resolution of the board or a resolution passed by the members of the Hacklab; or
  - 27.2 which is notified to the Hacklab.
- 28 Each member is responsible for supplying his/her contact details to the board to be added to the register of members. Each member is responsible for ensuring her/his contact details are current by informing the board of changes when required.
- 29 If a member or charity trustee of the Hacklab requests a copy of the register of members, the board must ensure that a copy is supplied to him/her within 28 days, providing the request is reasonable; if the request is made by a member (rather than a charity trustee), the board may provide a copy which has the addresses blanked out.

### **Withdrawal from membership**

- 30 Any person who wants to withdraw from membership must give written notice of withdrawal to the Hacklab, signed by him or her, or as an e-mail to one or more of the charity trustees; he or she will cease to be a member as from the time when the notice is received by the Hacklab.
- 31 Upon ceasing to be a member, all keys, access tokens and Hacklab property must be returned to the Hacklab.

### **Transfer of membership**

- 32 Membership of the Hacklab may not be transferred by a member.

### **Expulsion from membership**

- 33 Any person may be expelled from membership by way of a resolution passed by not less than two thirds of those present and voting at a general meeting, providing the following procedures have been observed:

- 33.1 at least 21 days notice of the intention to propose the resolution must be given to the member concerned, specifying the grounds for the proposed expulsion<sup>2</sup>;
- 33.2 the member concerned will be entitled to be heard on the resolution at the general meeting at which the resolution is proposed.

## **DECISION MAKING BY THE MEMBERS**

### **General Meetings**

- 34 The board must arrange a meeting of members (an annual general meeting or “AGM”) in the month of April each calendar year.
- 35 The business of each AGM must include:
  - 35.1 a report by the chair on the activities of the Hacklab;
  - 35.2 consideration of the annual accounts of the Hacklab; and
  - 35.3 the election/re-election of charity trustees, as referred to in clauses 63 to 67.
- 36 The board may arrange an extraordinary general meeting at any time.

### **Power to request the board to arrange a extraordinary general meeting (EGM)**

- 37 The board must arrange an extraordinary general meeting (EGM) if they are requested to do so by a notice (which may take the form of two or more documents in the same terms, each signed by one or more members) by members who amount to 5% or more of the total membership of the Hacklab at the time, providing:
  - 37.1 the notice states the purposes for which the meeting is to be held; and

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<sup>2</sup>MJL: This seems like a long time. Do we need a suspension power too, that can be used immediately by the board? Imagine someone starts stealing or something, we should be able to lock them out of the physical space immediately, but the current draft wouldn't permit this as far as I can see.

- 37.2 those purposes are not inconsistent with the terms of this constitution, the Charities and Trustee Investment (Scotland) Act 2005 or any other statutory provision.
- 38 If the board receives a notice under clause 37, the date for the meeting which they arrange in accordance with the notice must not be later than 28 days from the date on which they received the notice.

### **Notice of general meetings**

- 39 At least 14 clear days notice must be given of any AGM or any EGM.
- 40 The reference to “clear days” in clause 39 shall be taken to mean that, in calculating the days of notice,
- 40.1 the day after the notices are posted (or sent by e-mail) should be excluded; and
- 40.2 the day of the meeting itself should also be excluded.
- 41 The notice calling the meeting must specify in general terms what business is to be dealt with at the meeting; and
- 41.1 in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or
- 41.2 in the case of any other resolution falling within clause 50 (requirement for a two-thirds majority) must set out the exact terms of the resolution.
- 42 Notice of every AGM and EGM must be given to all the members of the Hacklab, and to all the charity trustees; but the accidental omission to give notice to one or more members will not invalidate the proceedings at the meeting.
- 43 Any notice which requires to be given to a member under this constitution must be sent by e-mail to the member, at the e-mail address kept on the register of members.



## **Procedure at AGMs and EGMs**

- 44 No valid decisions can be taken at any AGM or EGM unless a quorum is present.
- 45 The quorum for a general meeting is one half the membership at the time of the meeting, present in person.
- 46 If quorum is not present within 15 minutes after the time at which a general meeting was due to start - or if a quorum ceases to be present during a general meeting - the meeting cannot proceed; and fresh notices of a new general meeting must be sent out, to deal with the business (or remaining business) which was intended to be conducted.
- 47 A charity trustee should act as the chairperson of each general meeting.

## **Voting at general meetings**

- 48 Every member has one vote, which must be given personally.
- 49 All decisions at general meetings will be made by majority vote - with the exception of the types of resolution listed in clause 50.
- 50 The following resolutions will be valid only if passed by not less than two-thirds of those voting on the resolution at an AGM or EGM (or if passed by way of a written resolution under clause 54):
  - 50.1 a resolution amending the constitution;
  - 50.2 a resolution expelling a person from membership under clause 33;
  - 50.3 a resolution directing the board to take any particular step (or directing the board not to take any particular step);
  - 50.4 a resolution approving the amalgamation of the Hacklab with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);
  - 50.5 a resolution to the effect that all of the Hacklab's property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities);
  - 50.6 a resolution for the winding up or dissolution of the Hacklab.

- 51 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 52 A resolution put to the vote at a general meeting will be decided on a show of hands - unless the chair (or at least two other members present at the meeting) ask for a secret ballot.
- 53 The chairperson will decide how any secret ballot is to be conducted, and he/she will declare the result of the ballot at the meeting<sup>3</sup>.

### **Written resolutions by members**

- 54 A resolution agreed to in writing (or by e-mail) by all the members will be as valid as if it had been passed at a general meeting; the date of the resolution will be taken to be the date on which the last member agreed to it.

### **Minutes**

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

## **Board**

### **Number of charity trustees**

- 57 There shall be 3 charity trustees.<sup>4</sup>

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<sup>3</sup>GDE: this allows us, in particular, to elect trustees without having to state explicitly, how the election is going to happen

<sup>4</sup>GDE: I'm starting to think that we need 5 trustees (with a quorum of 3) to make sure we are legal at all times. Thoughts?

## **Treasurer**

58 One of the trustees shall be the treasurer<sup>5</sup>.

59 A person elected to be treasurer will automatically cease to hold that office:

59.1 if he/she ceases to be a charity trustee; or

59.2 if he/she gives to the Hacklab a notice of resignation from that office, signed by him/her.

## **Eligibility**

60 A person will not be eligible for election to the board unless he/she is a member of the Hacklab.

61 A person will not be eligible for election to the board if he/she is:

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

61.2 an employee of the Hacklab.

## **Initial charity trustees**

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

## **Election, retiral, re-election**

63 At each AGM, the members may elect any member (unless he/she is debarred from membership under clause 61) to be the treasurer or one of the other two charity trustees.

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<sup>5</sup>GDE: The SVCO model constitution has a chair, secretary and treasurer from the board. I know that secretary is not a legal SCIO requirement but I'm not sure about the position of chair - given our desire to remain a "flat" organisation this is one I think we submit and modify if it doesn't fly with OSCR.

- 64 At each AGM, all of the charity trustees must retire from office - but shall then (subject to clause 65) be eligible for re-election under clause 63.
- 65 A person who has served on the board for a period of 3 years shall automatically vacate office on expiry of that 3 year period and shall not be eligible for re-election until a further year has elapsed.
- 66 For the purposes of clause 65:
- 66.1 the period from the date of formation of the Hacklab to the first AGM shall be deemed to be a period of one year, unless it is of less than 6 months duration (in which case it shall be disregarded);
  - 66.2 the period between the date of election of a charity trustee and the AGM which next follows shall be deemed to be a period of one year, unless it is of less than six months duration in which case it shall be disregarded;
  - 66.3 the period between one AGM and the next shall be deemed to be a period of one year;
  - 66.4 if a charity trustee ceases to hold office but is reelected to that office within a period of six months, he/she shall be deemed to have held office as a charity trustee continuously.
- 67 A charity trustee retiring at an AGM will be deemed to have been re-elected unless:
- 67.1 he/she advises the board prior to the conclusion of the AGM that he/she does not wish to be reappointed as a charity trustee; or
  - 67.2 an election process was held at the AGM and he/she was not among those elected/re-elected through that process.

## **Termination of office**

- 68 A charity trustee will automatically cease to hold office if:
- 68.1 he/she becomes disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
  - 68.2 he/she becomes incapable for medical reasons of carrying out his/her duties as a charity trustee - but only if that has continued (or is expected to continue) for a period of more than six months;

- 68.3 he/she ceases to be a member of the Hacklab;
  - 68.4 he/she becomes an employee of the Hacklab;
  - 68.5 he/she gives the Hacklab a notice of resignation, signed by him/her;
  - 68.6 he/she is absent (without good reason, in the opinion of the board) from more than three consecutive meetings of the board - but only if the board resolves to remove him/her from office.
  - 68.7 he/she is removed from office by resolution of the board on the grounds that he/she is considered to have committed a material breach of the code of conduct for charity trustees (as referred to in clause 80).
  - 68.8 he/she is removed from office by resolution of the board on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
  - 68.9 he/she is removed from office by a resolution of the members passed at a general meeting.
- 69 A resolution under paragraph 68.7, 68.8, or 68.9 shall be valid only if:
- 69.1 the charity trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for his/her removal is to be proposed;
  - 69.2 the charity trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
  - 69.3 (in case of a resolution under clause 68.7 or 68.8) at least two thirds (to the nearest round number) of the charity trustees then in office vote in favour of the resolution

## **Register of charity trustees**

- 70 The board must keep a register of charity trustees, setting out:
- 70.1 for each current charity trustee;
    - 70.1.1 his/her full name and address;

- 70.1.2 the date on which he/she was appointed as a charity trustee; and
- 70.1.3 whether he/she is the treasurer.
- 70.2 for each former charity trustee - for at least 6 years from the date on which he/she ceased to be a charity trustee:
  - 70.2.1 the name of the charity trustee;
  - 70.2.2 whether he/she was the treasurer; and
  - 70.2.3 the date on which he/she ceased to be a charity trustee.
- 71 The board must ensure that the register of charity trustees is updated within 28 days of any change:
  - 71.1 which arises from a resolution of the board or a resolution passed by members of the Hacklab; or
  - 71.2 which is notified to the Hacklab.
- 72 If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to him/her within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the Hacklab, the board may provide a copy which has the addresses blanked out - if the SCIO is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

## **Powers of board**

- 73 Except where this constitution states otherwise, the Hacklab (and its assets and operations) will be managed by the board; and the board may exercise all the powers of the Hacklab.
- 74 A meeting of the board at which a quorum is present may exercise all powers exercisable by the board.
- 75 The members may, by way of a resolution passed in compliance with clause 50 (requirement for two-thirds majority), direct the board to take any particular step or direct the board not to take any particular step; and the board shall give effect to any such direction accordingly.

## Charity trustees - general duties

- 76 Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the Hacklab; and in particular, must:
- 76.1 seek, in good faith, to ensure that the Hacklab acts in a manner which is in accordance with its purposes;
  - 76.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
  - 76.3 in circumstances giving rise to the possibility of a conflict of interest between the Hacklab and any other party:
    - 76.3.1 put the interests of the Hacklab before that of the other party;
    - 76.3.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the Hacklab and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;
  - 76.4 ensure that the Hacklab complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
- 77 In addition to the duties outlined in clause 76, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring:
- 77.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and
  - 77.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.
- 78 Provided he/she has declared his/her interest - and has not voted on the question of whether or not the Hacklab should enter into the arrangement - a charity trustee will not be debarred from entering into an arrangement with the Hacklab in which he/she has a personal interest; and (subject to clause 79 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005), he/she may retain any personal benefit which arises from that arrangement.
- 79 No charity trustee may serve as an employee (full time or part time) of the

Hacklab; and no charity trustee may be given any remuneration by the Hacklab for carrying out his/her duties as a charity trustee.

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

- 80 Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board from time to time<sup>6</sup>.
- 81 The code of conduct referred to in clause 80 shall be supplemental to the conduct of charity trustees contained in the constitution and the duties imposed on charity trustees under the Charities and Trustee Investment (Scotland) Act 2005; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

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

### **Notice of board meetings**

- 82 Any charity trustee may call a meeting of the board.
- 83 At least 7 days' notice must be given of each board meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.

### **Procedure at board meetings**

- 84 No valid decisions can be taken at a board meeting unless a quorum is present; the quorum for board meetings is 2 charity trustees, present in person.
- 85 If at any time the number of charity trustees in office falls below the number stated as the quorum in clause 84, the remaining charity trustees will

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<sup>6</sup>GDE: no, I don't have a code of conduct written. The commentary on this clause says "The reference to a code of conduct is in line with principles of best practice in governance." If anyone can decode that into what the code of conduct should actually look like, please jump in.



have power to call an EGM - but will not be able to take any other valid decisions.

- 86 At each board meeting, the charity trustees present must elect (from amongst themselves) the person who will act as chairperson of that meeting.
- 87 Each charity trustee has one vote, which must be given in person.
- 88 All decisions at board meetings will be made by majority vote.
- 89 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 90 The board may, at its discretion, allow any person to attend and speak at a board meeting notwithstanding that he/she is not a charity trustee - but on the basis that he/she must not participate in decision-making.
- 91 A charity trustee must not vote at a board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which he/she has a personal interest or duty which conflicts (or may conflict) with the interests of the Hacklab; he/she must withdraw from the meeting while an item of that nature is being dealt with.
- 92 For the purposes of clause 91:
  - 92.1 an interest held by an individual who is “connected” with the charity trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that charity trustee.
  - 92.2 a charity trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which he/she is an employee, director, member of the management committee, officer or elected representative has an interest in that matter.

## **Minutes**

- 93 The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.
- 94 The minutes to be kept under clause 93 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting. They must be circulated to all members by email within 30 days of the board meeting.

## **Administration**

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

- 95 The board may delegate any of their powers to sub-committees; a sub-committee must include at least one charity trustee, but other members of a sub-committee need not be charity trustees.
- 96 When delegating powers under clause 95, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).
- 97 Any delegation of powers under clause 95 may be revoked or altered by the board at any time.
- 98 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the board.

### **Operation of accounts**

- 99 Three account signatories will be appointed by the board; these must themselves all be charity trustees.
- 100 Subject to clause 101, the signatures of two out of three signatories will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the Hacklab.
- 101 Where the Hacklab uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 100<sup>7</sup>.

### **Accounting records and annual accounts**

- 102 The board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 103 The board must prepare annual accounts, complying with all relevant

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<sup>7</sup>GDE: it will be interesting to see if we can set this up on the bank account.

statutory requirements; if an audit is required under any statutory provisions (or if the board consider that an audit would be appropriate for some other reason), the board should ensure that an audit of the accounts is carried out by a qualified auditor<sup>8</sup>.

104 The financial year shall run from 1st April to 31st March.

## **Miscellaneous**

### **Winding-up**

105 If the Hacklab is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the Charities and Trustee Investment (Scotland) Act 2005.

106 Any surplus assets available to the Hacklab immediately preceding its winding up or dissolution must be used for purposes which are the same as - or which closely resemble - the purposes of the Hacklab as set out in this constitution.

### **Alterations to the constitution**

107 This constitution may (subject to clause 108) be altered by resolution of the members passed at an AGM or EGM (subject to achieving the two-thirds majority referred to in clause 50) or by way of a written resolution of the members.

108 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (e.g. change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

### **Interpretation**

109 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include:

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<sup>8</sup>GDE: I don't know if we need to be audited or not, I've not read the guidance yet.

109.1 any statutory provision which adds to, modifies or replaces that Act;  
and

109.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under clause 109.1 above.

110 In this constitution:

110.1 “Charity” means a body which is either a “Scottish charity” within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a “charity” within the meaning of section 1 of the Charities Act 2006, providing (in either case) that its objects are limited to charitable purposes;

110.2 “charitable purpose” means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes act<sup>9</sup>.

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<sup>9</sup>MJL: should this refer more clearly to a particular Taxes Act?