Notes

These explanatory notes are for advice and reference only and do not form part of the text of the constitution.

Inserting the date of the constitution is good practice, and helps to ensure everyone is working from the same document. The date to enter here is the date the constitution, or any amendment to it, has been registered by the Commission, as this is when it comes into effect. Leave this undated until the constitution has been registered.

Clause 1 - Name – You **must** include the name of the CIO in the constitution. In general, the Commission can accept any charity name unless it would be misleading, offensive or too similar to the name of an existing charity (unless the CIO is replacing that charity). The Commission has powers to require a charity to change its name if this happens. Further information on this is provided in our publication *Registering as a charity* (CC21) and in our Operational Guidance (OG330 - *Names of charities*), which are available on our website. There are also legal restrictions on using the same name as an existing company (unless it is a charitable company that is converting to a CIO) or as a former company or CIO that underwent insolvent liquidation – if in doubt seek professional advice.

Clause 2 - Principal office – The constitution **must** state whether the CIO's principal office is in England or Wales.

Clause 3 – Objects – The CIO **must** have exclusively charitable objects which you **must** set out in the constitution. Guidance on appropriate wording for objects is available on our website. The key elements to include are:

- the purpose or purposes for which the CIO is being established;
- the people who can benefit; and if appropriate
- any geographic limits defining the area of benefit. If you include an area of benefit, it is common to define it by reference to a local government area: this has the advantage of clarity and simplicity, but can create problems if the area is subsequently altered or abolished. If this happens in future, contact the Commission for advice on amending the objects.

NB. If you cannot fit your objects in the space provided, please include them on a separate piece of paper and submit this with the constitution

Constitution of a Charitable Incorporated Organisation with voting members other than its charity trustees

('Association' Model Constitution)

Date of constitution (last amended):

30 NOVEMBER 2015

1. Name

The name of the Charitable Incorporated Organisation ("the CIO") is

BONIFACE TRAIL ASSOCIATION

2. National location of principal office

The CIO must have a principal office in England or Wales. The principal office of the CIO is in [England][~~Wales~~].

3. Object[s]

The object[s] of the CIO [is][are]

[See Rider]

Nothing in this constitution shall authorise an application of the property of the CIO for the purposes which are not charitable in accordance with [section 7 of the Charities and Trustee Investment (Scotland) Act 2005] and [section 2 of the Charities Act (Northern Ireland) 2008]

4. Powers

The CIO has power to do anything which is calculated to further its object[s] or is conducive or incidental to doing so. In particular, the CIO's powers include power to:

(1) borrow money and to charge the whole or any part of its property as security for the repayment of the money borrowed. The CIO must comply as appropriate with sections 124 and 125 of the Charities Act 2011 if it wishes to mortgage land;

(2) buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;

(3) sell, lease or otherwise dispose of all or any part of the property belonging to the CIO. In exercising this power, the CIO must comply as appropriate with sections 117 and 119-123 of the Charities Act 2011;

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If the CIO needs to be recognised as a charity in Scotland and/or Northern Ireland you will need to include the relevant parts of the wording in square brackets to meet the requirements of charity law in those countries

Clause 4 - Powers – The Charities Act 2011 gives a CIO power to do 'anything which is calculated to further its purposes or is conducive or incidental to doing so'. Strictly speaking, this is the only power a CIO needs. It can, however, be helpful to state certain powers explicitly in the constitution. In particular, a stated power to borrow [(1)] may reassure potential lenders. For this reason we recommend that you include the example powers set out in the model (these include powers to buy, sell and lease property, employ staff and delegate investment management to a professional fund-manager). You **may** add other express powers here if you wish to.

You **may** include a constitutional provision restricting the general power in the 2011 Act. You **must only** include such a restriction if it is in the CIO's interests. You **must not** restrict the CIO's powers in a way that prevents it from disposing of its property. Restrictions on the powers are not provided for in this model and we recommend that you seek appropriate advice if you are considering this.

Clause 5 – Application of income and property – we recommend that you include this clause.

5(1) reflects the statutory provisions in the Charities Act 2011 about a CIO charity trustee's entitlement to reasonable expenses and that they may benefit from trustee indemnity insurance. We recommend that you include it in the constitution, to inform people involved with the charity.

5(2) reflects charity law requirements that the income and property of a CIO must be applied solely to further its objects and not to benefit the members or charity trustees (except as permitted by the governing document (see clause 6) or other express power). The trustees have a duty to ensure that the funds are correctly applied in accordance with this principle.

Clause 6 - Benefits and payments to charity trustees and connected persons – Charity trustees may only benefit from their charity if they have express legal authorisation to do so (such as a clause in the constitution). This restriction extends to people closely connected to a trustee ('connected persons' – this term is defined

(4) employ and remunerate such staff as are necessary for carrying out the work of the CIO. The CIO may employ or remunerate a charity trustee only to the extent that it is permitted to do so by clause 6 (Benefits and payments to charity trustees and connected persons) and provided it complies with the conditions of those clauses;

(5) deposit or invest funds, employ a professional fund-manager, and arrange for the investments or other property of the CIO to be held in the name of a nominee, in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000;

5. Application of income and property

(1) The income and property of the CIO must be applied solely towards the promotion of the objects.

(a) A charity trustee is entitled to be reimbursed from the property of the CIO or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the CIO.

(b) A charity trustee may benefit from trustee indemnity insurance cover purchased at the CIO's expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.

(2) None of the income or property of the CIO may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the CIO. This does not prevent a member who is not also a charity trustee receiving:

(a) a benefit from the CIO as a beneficiary of the CIO;

(b) reasonable and proper remuneration for any goods or services supplied to the CIO.

(3) Nothing in this clause shall prevent a charity trustee or connected person receiving any benefit or payment which is authorised by Clause 6.

6. Benefits and payments to charity trustees and connected persons

(1) General provisions

No charity trustee or connected person may:

(a) buy or receive any goods or services from the CIO on terms preferential to those applicable to members of the public;

(b) sell goods, services, or any interest in land to the CIO;

(c) be employed by, or receive any remuneration from, the CIO;

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in the interpretation clause). You **should** include this clause so that charity trustees are clear about the restrictions that apply to them; and unless you include it, the default legal position will apply. Even where trustees are allowed to benefit from the CIO, this must only happen where the benefit is in the interests of the CIO. Our guidance *Trustee expenses and payments* (CC11) provides more information about trustee benefits.

The model clause permits a minority of the charity trustees or connected persons to receive payments and other benefits in certain instances (such as for goods and services they supply to the CIO), subject to the stated controls. The option also allows other types of trustee benefit, subject to the Commission's prior consent.

You **may** restrict the benefits that the charity trustees will be allowed receive by altering these clauses, but if you later need to undo any of the restrictions it will require the Commission's consent to do so. Trustees do not have to use these powers just because they have them – we suggest you may find it simpler to keep to the model wording.

None of these options allows the trustees to receive payment for acting as a trustee.

(2)(a) If all of the trustees will benefit from the activities of the CIO (for example, by using facilities available to all inhabitants of the area, such as a community centre), you may wish to substitute the following wording: "A charity trustee or connected person may receive a benefit from the CIO as a beneficiary provided that it is available generally to the beneficiaries of the CIO.'

2(d) The CIO should document the amount of, and the terms of, the trustee's or connected person's loan.

(d) receive any other financial benefit from the CIO;

unless the payment or benefit is permitted by sub-clause (2) of this clause, or authorised by the court or the prior written consent of the Charity Commission ("the Commission") has been obtained. In this clause, a "financial benefit" means a benefit, direct or indirect, which is either money or has a monetary value.

(2) Scope and powers permitting trustees' or connected persons' benefits

(a) A charity trustee or connected person may receive a benefit from the CIO as a beneficiary of the CIO provided that ~~a majority of the trustees do not benefit in this way~~. it is available generally to the beneficiaries of the CIO

(b) A charity trustee or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the CIO where that is permitted in accordance with, and subject to the conditions in, section 185 to 188 of the Charities Act 2011.

(c) Subject to sub-clause (3) of this clause a charity trustee or connected person may provide the CIO with goods that are not supplied in connection with services provided to the CIO by the charity trustee or connected person.

(d) A charity trustee or connected person may receive interest on money lent to the CIO at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).

(e) A charity trustee or connected person may receive rent for premises let by the trustee or connected person to the CIO. The amount of the rent and the other terms of the lease must be reasonable and proper. The charity trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.

(f) A charity trustee or connected person may take part in the normal trading and fundraising activities of the CIO on the same terms as members of the public.

(3) Payment for supply of goods only – controls

The CIO and its charity trustees may only rely upon the authority provided by sub-clause (2)(c) of this clause if each of the following conditions is satisfied:

(a) The amount or maximum amount of the payment for the goods is set out in a written agreement between the CIO and the charity trustee or connected person supplying the goods ("the supplier").

Sam Robins
SS Parker
RW Turner

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(b) The amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods in question.

(c) The other charity trustees are satisfied that it is in the best interests of the CIO to contract with the supplier rather than with someone who is not a charity trustee or connected person. In reaching that decision the charity trustees must balance the advantage of contracting with a charity trustee or connected person against the disadvantages of doing so.

(d) The supplier is absent from the part of any meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the CIO.

(e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of charity trustees is present at the meeting.

(f) The reason for their decision is recorded by the charity trustees in the minute book.

(g) A majority of the charity trustees then in office are not in receipt of remuneration or payments authorised by clause 6.

(4) In sub-clauses (2) and (3) of this clause:

(a) "the CIO" includes any company in which the CIO:

(i) holds more than 50% of the shares; or

(ii) controls more than 50% of the voting rights attached to the shares; or

(iii) has the right to appoint one or more directors to the board of the company;

(b) "connected person" includes any person within the definition set out in clause [30] (Interpretation);

Clause 7 – Conflicts of interest and conflicts of loyalty – The General Regulations provide that a charity trustee of a CIO must not take part in any decision from which they would directly or indirectly benefit personally, unless they cannot reasonably be regarded as having a conflict of interest. This clause reminds the trustees of this requirement and also reflects wider good practice on managing conflicts of interest and conflicts of loyalty. We recommend that you include it.

7. Conflicts of interest and conflicts of loyalty

A charity trustee must:

(1) declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the CIO or in any transaction or arrangement entered into by the CIO which has not previously been declared; and

(2) absent himself or herself from any discussions of the charity trustees in which it is possible that a conflict of interest will arise between his or her duty to act solely in the interests of the CIO and any personal interest (including but not limited to any financial interest).

Any charity trustee absenting himself or herself from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the charity trustees on the matter.

8. Liability of members to contribute to the assets of the CIO if it is wound up

Option 1

If the CIO is wound up, the members of the CIO have no liability to contribute to its assets and no personal responsibility for settling its debts and liabilities.

Option 2

(1) If the CIO is wound up, each member of the CIO is liable to contribute to the assets of the CIO such amount (but not more than £[...]) as may be required for payment of the debts and liabilities of the CIO contracted before that person or organisation ceases to be a member, for payment of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributing members among themselves.

(2) In sub-clause (1) of this clause "member" includes any person or organisation that was a member of the CIO within 12 months before the commencement of the winding up.

(3) But subject to that, the members of the CIO have no liability to contribute to its assets if it is wound up, and accordingly have no personal responsibility for the settlement of its debts and liabilities beyond the amount that they are liable to contribute.

9. Membership of the CIO

(1) Admission of new members

(a) Eligibility

Membership of the CIO is open to anyone who is interested in furthering its purposes, and who, by applying for membership, has indicated his, her or its agreement to become a member and acceptance of the duty of members set out in sub-clause (3) of this clause.

A member may be an individual, a corporate body, or [an individual or corporate body representing] an organisation which is not incorporated.

[See rider]

Clause 8 – Liability of members - The constitution **must** state whether members of the CIO *either*:

(a) have no liability to contribute to the assets of the CIO if it is wound up [**option 1**] *or*:

(b) will be liable to contribute up to a maximum amount each if the CIO cannot meet its financial obligations when it is wound up [**option 2**].

Choose one option and delete the other. There is no preference or requirement in the legal framework for members to be liable to contribute anything.

If you choose option 2, you **must** insert the maximum amount (normally a nominal sum such as £1 or £10) for which members will be individually liable.

Clause 9 – Membership of the CIO – A CIO must have one or more members.

If all of the CIO's voting members will also be trustees and there will be no other voting members, you should use the **Foundation Model Constitution.**

(1)(a) and (b) You **must** state in the constitution who is eligible to be a member and how someone becomes a member.

It is possible to include more restrictive membership provisions (for example requiring members to be 'approved' by the charity trustees); in that case the membership refusal provisions (clause 9(1)(b)(iii)) would also need to be changed. Membership must not be unreasonably restricted if the members are also the beneficiaries of the CIO as that would affect public benefit.

(1)(a) Normally, the members of a charity are individuals, but corporate bodies (eg companies) can also be members. In a few cases, charities say they also have unincorporated bodies (eg local associations that are part of a national federation) as members. Legal experts disagree about this, but charities asked us not to prevent it by default. If a CIO

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will have unincorporated members, they **should either** be represented by a person they nominate (keep the words in square brackets) **or** act as members in their own right (delete the words in square brackets). The CIO will need to make rules to govern how any unincorporated members exercise their rights and duties as members, for example, attending meetings and voting, or meeting any liability to contribute funds in the event of the CIO winding up.

(2) We recommend you include this provision, otherwise the charity's membership records could become unworkable and the charity would lose control over membership. Include the words in square brackets if the membership includes representatives of unincorporated organisations (see clause 9(1)(a)); otherwise remove them.

(3) This is the legal duty of each member of the CIO as set out in the Charities Act 2011. You may find it helpful to set this out in the constitution. The constitution cannot change the members' legal duty.

(4) The General Regulations state that the constitution **must** contain provision for retirement and termination of membership. The suggestions here are based on experience and good practice.

(b) Admission procedure

The charity trustees:

(i) may require applications for membership to be made in any reasonable way that they decide;

(ii) [shall, if they approve an application for membership, notify the applicant of their decision within [21 days];]

(iii) may refuse an application for membership if they believe that it is in the best interests of the CIO for them to do so;

(iv) shall, if they decide to refuse an application for membership, give the applicant their reasons for doing so, within [21 days] of the decision being taken, and give the applicant the opportunity to appeal against the refusal; and

(v) shall give fair consideration to any such appeal, and shall inform the applicant of their decision, but any decision to confirm refusal of the application for membership shall be final.

(2) Transfer of membership

Membership of the CIO cannot be transferred to anyone else [except in the case of an individual or corporate body representing an organisation which is not incorporated, whose membership may be transferred by the unincorporated organisation to a new representative. Such transfer of membership does not take effect until the CIO has received written notification of the transfer].

(3) Duty of members

It is the duty of each member of the CIO to exercise his or her powers as a member of the CIO in the way he or she decides in good faith would be most likely to further the purposes of the CIO.

(4) Termination of membership

(a) Membership of the CIO comes to an end if:

(i) the member dies, or, in the case of an organisation (or the representative of an organisation) that organisation ceases to exist; or

(ii) the member sends a notice of resignation to the charity trustees; or

(iii) any sum of money owed by the member to the CIO is not paid in full within six months of its falling due; or

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in the case of members approved under clause 9(1)(a)(viii)

(iv) the charity trustees decide that it is in the best interests of the CIO that the member in question should be removed from membership, and pass a resolution to that effect.

(b) Before the charity trustees take any decision to remove someone from membership of the CIO they must:

(i) inform the member of the reasons why it is proposed to remove him, her or it from membership;

(ii) give the member at least 21 clear days notice in which to make representations to the charity trustees as to why he, she or it should not be removed from membership;

(iii) at a duly constituted meeting of the charity trustees, consider whether or not the member should be removed from membership;

(iv) consider at that meeting any representations which the member makes as to why the member should not be removed; and

(v) allow the member, or the member's representative, to make those representations in person at that meeting, if the member so chooses.

(5) Charities have discretion to set and charge membership fees, but it may be advisable to state this in the constitution to avoid any misunderstanding.

Classes of membership – Some charities have different categories or classes of members with different voting rights. ~~The General Regulations require that~~ If this applies to the CIO, the different categories of members and their voting rights must be set out in the constitution. We are unable to provide a model clause for this as it will need to be drafted to reflect the CIO's particular circumstances. You may need professional advice on a suitable wording.

We do not advise CIOs to have different classes of membership, but it is permissible where the trustees consider it to be in the interests of the CIO.

(6) Power to create **informal or associate membership** - We advise CIOs to include this power if they will have or may consider having an informal (associate) membership. Membership of this kind does not count as membership for legal purposes, for example in terms of voting rights, legal obligations to act in the interests of the charity or any liability to contribute to the assets of the CIO on dissolution.

Details of any informal members should not be included in the Register of Members.

(a) [See Rider]

(5) Membership fees

The CIO may require members to pay reasonable membership fees to the CIO.

[(6) Informal or associate (non-voting) membership

(a) The charity trustees may create associate or other classes of non-voting membership, and may determine the rights and obligations of any such members (including payment of membership fees), and the conditions for admission to, and termination of membership of any such class of members.

(b) Other references in this constitution to "members" and "membership" do not apply to non-voting members, and non-voting members do not qualify as members for any purpose under the Charities Acts, General Regulations or Dissolution Regulations.]

~~(a) [See Rider]~~

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Clause 10 – Members' decisions –

These provisions reflect provisions in the General Regulations that govern decision-making by members. We recommend they are included in the constitution for clarity.

(2) This clause describes the usual mechanism for making decisions at general meetings. We recommend that it is included in the constitution to reduce the possibility of disagreements about decision-making by members.

(3) This power (to take decisions other than by resolution at a general meeting) is optional, but if the CIO intends to use it, it **must** be included in the constitution.

(4) This clause highlights when special provisions apply to a decision, and we recommend you include it. Only include (a) if you are including the corresponding optional power to remove charity trustees.

A CIO **may** include further restrictions in its constitution controlling how particular decisions must be taken (this is called 'a provision for entrenchment'). CIOs considering this should seek professional advice.

10. Members' decisions

(1) General provisions

Except for those decisions that must be taken in a particular way as indicated in sub-clause (4) of this clause, decisions of the members of the CIO may be taken either by vote at a general meeting as provided in sub-clause (2) of this clause or by written resolution as provided in sub-clause (3) of this clause.

(2) Taking ordinary decisions by vote

Subject to sub-clause (4) of this clause, any decision of the members of the CIO may be taken by means of a resolution at a general meeting. Such a resolution may be passed by a simple majority of votes cast at the meeting [(including votes cast by postal or email ballot, and proxy votes)].

(3) Taking ordinary decisions by written resolution without a general meeting

(a) Subject to sub-clause (4) of this clause, a resolution in writing agreed by a simple majority of all the members who would have been entitled to vote upon it had it been proposed at a general meeting shall be effective, provided that:

(i) a copy of the proposed resolution has been sent to all the members eligible to vote; and

(ii) a simple majority of members has signified its agreement to the resolution in a document or documents which are received at the principal office within the period of 28 days beginning with the circulation date. The document signifying a member's agreement must be authenticated by their signature (or in the case of an organisation which is a member, by execution according to its usual procedure), by a statement of their identity accompanying the document, or in such other manner as the CIO has specified.

(b) The resolution in writing may comprise several copies to which one or more members has signified their agreement.

(c) Eligibility to vote on the resolution is limited to members who are members of the CIO on the date when the proposal is first circulated in accordance with paragraph (a) above.

(d) Not less than 10% of the members of the CIO may request the charity trustees to make a proposal for decision by the members.

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(e) The charity trustees must within 21 days of receiving such a request comply with it if:

(i) The proposal is not frivolous or vexatious, and does not involve the publication of defamatory material;

(ii) The proposal is stated with sufficient clarity to enable effect to be given to it if it is agreed by the members; and

(iii) Effect can lawfully be given to the proposal if it is so agreed.

(f) Sub-clauses (a) to (c) of this clause apply to a proposal made at the request of members.

(4) Decisions that must be taken in a particular way

[(a) Any decision to remove a trustee must be taken in accordance with clause [15(2)].]

(b) Any decision to amend this constitution must be taken in accordance with clause [28] of this constitution (Amendment of Constitution).

(c) Any decision to wind up or dissolve the CIO must be taken in accordance with clause [29] of this constitution (Voluntary winding up or dissolution). Any decision to amalgamate or transfer the undertaking of the CIO to one or more other CIOs must be taken in accordance with the provisions of the Charities Act 2011.

Clause 11 – General Meetings of members – The General Regulations state that the constitution **must** include provisions about the holding and calling of general meetings, including: procedure at general meetings; the appointment of a Chair; the minimum number of members who can form a quorum; whether members can demand a poll; and the procedure for conducting a poll. Whilst it is not a legal requirement, we strongly recommend that CIOs with a wider voting membership include provisions along these lines and do not include provisions allowing them to opt out of holding general meetings including an annual general meeting. Certain decisions (such as amendments to the constitution) must be made by the members rather than the trustees, and general meetings are the usual way that membership-based charities make such decisions. Members' meetings are also an important method both of communicating with members and being accountable to them.

Except where indicated as legal or regulatory requirements, the provisions in this clause are examples based on recommended good practice.

11. General meetings of members

(1) Types of general meeting

There must be an annual general meeting (AGM) of the members of the CIO. The first AGM must be held within 18 months of the registration of the CIO, and subsequent AGMs must be held at intervals of not more than 15 months. The AGM must receive the annual statement of accounts (duly audited or examined where applicable) and the trustees' annual report, and must elect trustees as required under clause [13].

Other general meetings of the members of the CIO may be held at any time.

All general meetings must be held in accordance with the following provisions.

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(2) Calling general meetings

(a) The charity trustees:

(i) must call the annual general meeting of the members of the CIO in accordance with sub-clause (1) of this clause, and identify it as such in the notice of the meeting; and

(ii) may call any other general meeting of the members at any time.

(b) The charity trustees must, within 21 days, call a general meeting of the members of the CIO if:

(i) they receive a request to do so from at least 10% of the members of the CIO; and

(ii) the request states the general nature of the business to be dealt with at the meeting, and is authenticated by the member(s) making the request.

(c) If, at the time of any such request, there has not been any general meeting of the members of the CIO for more than 12 months, then sub-clause (b)(i) of this clause shall have effect as if 5% were substituted for 10%.

(d) Any such request may include particulars of a resolution that may properly be proposed, and is intended to be proposed, at the meeting.

(e) A resolution may only properly be proposed if it is lawful, and is not defamatory, frivolous or vexatious.

(f) Any general meeting called by the charity trustees at the request of the members of the CIO must be held within 28 days from the date on which it is called.

(g) If the charity trustees fail to comply with this obligation to call a general meeting at the request of its members, then the members who requested the meeting may themselves call a general meeting.

(h) A general meeting called in this way must be held not more than 3 months after the date when the members first requested the meeting.

(i) The CIO must reimburse any reasonable expenses incurred by the members calling a general meeting by reason of the failure of the charity trustees to duly call the meeting, but the CIO shall be entitled to be indemnified by the charity trustees who were responsible for such failure.

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(3) Notice of general meetings

(a) The charity trustees, or, as the case may be, the relevant members of the CIO, must give at least 14 clear days notice of any general meeting to all of the members, and to any charity trustee of the CIO who is not a member.

(b) If it is agreed by not less than 90% of all members of the CIO, any resolution may be proposed and passed at the meeting even though the requirements of sub-clause (3)(a) of this clause have not been met. This sub-clause does not apply where a specified period of notice is strictly required by another clause in this constitution, by the Charities Act 2011 or by the General Regulations.

(c) The notice of any general meeting must:

(i) state the time and date of the meeting;

(ii) give the address at which the meeting is to take place;

(iii) give particulars of any resolution which is to be moved at the meeting, and of the general nature of any other business to be dealt with at the meeting; and

(iv) if a proposal to alter the constitution of the CIO is to be considered at the meeting, include the text of the proposed alteration;

(v) include, with the notice for the AGM, the annual statement of accounts and trustees' annual report, details of persons standing for election or re-election as trustee, or where allowed under clause [22] (Use of electronic communication), details of where the information may be found on the CIO's website.

(d) Proof that an envelope containing a notice was properly addressed, prepaid and posted; or that an electronic form of notice was properly addressed and sent, shall be conclusive evidence that the notice was given. Notice shall be deemed to be given 48 hours after it was posted or sent.

(e) The proceedings of a meeting shall not be invalidated because a member who was entitled to receive notice of the meeting did not receive it because of accidental omission by the CIO.

(5)(b) The General Regulations require that the Constitution **must** specify a quorum. We suggest that the quorum should be 5% (or three) of the members. You **may** choose a different figure. If it is set too high, any absences may make it difficult to hold a valid meeting; if it is too low, a small minority may be able to impose their views unreasonably.

(5)(d) This model constitution does not require formal notice to be repeated for an adjourned meeting, but provision for this **may** be made in the constitution by deleting the wording in square brackets. (This may help to ensure that there is a better attendance at the adjourned meeting.)

(4) Chairing of general meetings

The person nominated as chair by the charity trustees under clause [19](2) (Chairing of meetings), shall, if present at the general meeting and willing to act, preside as chair of the meeting. Subject to that, the members of the CIO who are present at a general meeting shall elect a chair to preside at the meeting.

(5) Quorum at general meetings

(a) No business may be transacted at any general meeting of the members of the CIO unless a quorum is present when the meeting starts.

(b) Subject to the following provisions, the quorum for general meetings shall be the greater of [5]% or [~~three~~] five members. An organisation represented by a person present at the meeting in accordance with sub-clause (7) of this clause, is counted as being present in person.

(c) If the meeting has been called by or at the request of the members and a quorum is not present within 15 minutes of the starting time specified in the notice of the meeting, the meeting is closed.

(d) If the meeting has been called in any other way and a quorum is not present within 15 minutes of the starting time specified in the notice of the meeting, the chair must adjourn the meeting. The date, time and place at which the meeting will resume must [either be announced by the chair or] be notified to the CIO's members at least seven clear days before the date on which it will resume.

(e) If a quorum is not present within 15 minutes of the start time of the adjourned meeting, the member or members present at the meeting constitute a quorum.

(f) If at any time during the meeting a quorum ceases to be present, the meeting may discuss issues and make recommendations to the trustees but may not make any decisions. If decisions are required which must be made by a meeting of the members, the meeting must be adjourned.

(6) Voting at general meetings

(a) Any decision other than one falling within clause [10(4)] (Decisions that must be taken in a particular way) shall be taken by a simple majority of votes cast at the meeting [(including proxy and postal votes)]. Every member has one vote [unless otherwise provided in the rights of a particular class of membership under this constitution].

Sam Robins
SS Parker RW Johnson

Notes

(6)(b)-(d) The General Regulations require that, if members are to have the right to demand a poll, this **must** be set out in the constitution, including provisions governing the manner in which it will be conducted. The provisions suggested here reflect good practice.

Proxy voting –The General Regulations stipulate that members can only vote by proxy if there is a specific provision in the constitution, which **must** set out:

(a) how a member appoints a proxy;

(b) the rights of the proxy; and

(c) how the appointment is terminated.

For recommended wording (which does not form part of the model), please see the Appendix to this constitution.

Postal voting – The General Regulations stipulate that members can only use postal votes if there is a specific provision in the constitution, which **must** make provision about the circumstances in which, and the way in which, such votes may be given.

For recommended wording (which does not form part of the model), please see the Appendix to this constitution.

(b) A resolution put to the vote of a meeting shall be decided on a show of hands, unless (before or on the declaration of the result of the show of hands) a poll is duly demanded. A poll may be demanded by the chair or by at least 10% of the members present in person or by proxy at the meeting.

(c) A poll demanded on the election of a person to chair the meeting or on a question of adjournment must be taken immediately. A poll on any other matter shall be taken, and the result of the poll shall be announced, in such manner as the chair of the meeting shall decide, provided that the poll must be taken, and the result of the poll announced, within 30 days of the demand for the poll.

(d) A poll may be taken:

(i) at the meeting at which it was demanded; or

(ii) at some other time and place specified by the chair; or

(iii) through the use of postal or electronic communications.

[(e) In the event of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting shall have a second, or casting vote.]

(f) Any objection to the qualification of any voter must be raised at the meeting at which the vote is cast and the decision of the chair of the meeting shall be final.

(7) If the CIO will have corporate members, the General Regulations require that the constitution **must** include provision explaining how they will be represented at general meetings.

If the CIO will have unincorporated members (see clause 9 – Membership of the CIO) you **should** include references to organisations in this clause. Otherwise you **should** delete the words in square brackets

(7) Representation of [organisations and] corporate members

A[n organisation or a]corporate body that is a member of the CIO may, in accordance with its usual decision-making process, authorise a person to act as its representative at any general meeting of the CIO.

The representative is entitled to exercise the same powers on behalf of the [organisation or] corporate body as the [organisation or] corporate body could exercise as an individual member of the CIO.

(8) Adjournment of meetings

The chair may with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting to another time and/or place. No business may be transacted at an adjourned meeting except business which could properly have been transacted at the original meeting.

Sam Robins

RWhymor

Notes

Clause 12 – Charity trustees

(1) This clause explains the charity trustees' legal function, legal duty to act in good faith, and statutory duty of care. We recommend that these should be set out in the constitution. The trustees cannot adopt a lower duty of care.

(2) You **should** include provisions setting out who is eligible to be a charity trustee of the CIO.

Sub-clause **(a)** requires all trustees to be individuals. It is legally permissible for a corporate body to be a charity trustee, but we would advise against a trustee body including both individuals and one or more corporate bodies. Where the CIO will have corporate members we recommend that they should not be elected as trustees; only individuals or nominees of these bodies should be eligible for election.

This clause and those that follow are drafted on the basis that the CIO will be governed by a trustee body made up of a number of individuals. If there is a good reason why the CIO will be administered by a single trustee (eg a corporation) or have any other trusteeship arrangement, you will need to amend clauses 12-16, and should seek your own professional advice.

The suggested provisions in **(b)** reflect the law and **(c)** is based on good practice. There are offences under the General Regulations concerning legally disqualified individuals acting as trustees.

If there are to be additional conditions for trustee eligibility (beyond the legal restrictions), these **must** be stated in the constitution. For example, some charities add requirements to ensure that trustees have particular knowledge (or experience eg of the locality in which the CIO operates or of issues relevant to the people that the CIO serves).

(2)(d) Contains an optional restriction on the proportion of charity trustees who are under 18. The Commission encourages charities to involve young people in their governance in whatever ways are appropriate in the circumstances, but advises against having a board made up entirely of people under 18. CIO trustees cannot be under 16

(3) The General Regulations require that the constitution **must** state the minimum number of charity trustees, **if** more than one.

12. Charity trustees

(1) Functions and duties of charity trustees

The charity trustees shall manage the affairs of the CIO and may for that purpose exercise all the powers of the CIO. It is the duty of each charity trustee:

(a) to exercise his or her powers and to perform his or her functions as a trustee of the CIO in the way he or she decides in good faith would be most likely to further the purposes of the CIO; and

(b) to exercise, in the performance of those functions, such care and skill as is reasonable in the circumstances having regard in particular to:

(i) any special knowledge or experience that he or she has or holds himself or herself out as having; and

(ii) if he or she acts as a charity trustee of the CIO in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

(2) Eligibility for trusteeship

(a) Every charity trustee must be a natural person.

(b) No one may be appointed as a charity trustee:

- if he or she is under the age of 16 years; or
- if he or she would automatically cease to hold office under the provisions of clause [15(1)(f)].

(c) No one is entitled to act as a charity trustee whether on appointment or on any re-appointment until he or she has expressly acknowledged, in whatever way the charity trustees decide, his or her acceptance of the office of charity trustee.

[(d) At least one of the trustees of the CIO must be 18 years of age or over. If there is no trustee aged at least 18 years, the remaining trustee or trustees may act only to call a meeting of the charity trustees, or appoint a new charity trustee.]

(3) Number of charity trustees

Option 1

(a) There must be at least ~~[three]~~ five charity trustees. If the number falls below this minimum, the remaining trustee or trustees may act only to call a meeting of the charity trustees, or appoint a new charity trustee.

Notes

We recommend setting and including minimum and maximum numbers of charity trustees.

A CIO can have a fixed number of trustees or a range between a maximum and minimum (which will give the CIO more flexibility). **Option 1a** provides for a specified maximum number. **Option 1b** provides for no maximum limit. **Option 2** provides for other trustee appointment arrangements in accordance with clause 13 (see below).

Choose Clause 12(3) Option 1 (and Option 1a *or* b) and Clause 13 Option 1 *or*
choose Clause 12(3) Option 2 and Clause 13 Option 2 (selecting the relevant parts of each section). Delete the options that you have not chosen.

For good practice, a CIO should have at least three charity trustees. If the number of trustees falls below the minimum specified in the constitution, the provisions in clause 12(3) will enable the remaining charity trustees to appoint new trustees and prevent the CIO from becoming inoperable.

A CIO should have enough charity trustees to effectively carry out their duties, but not too many so that it becomes impractical to hold effective trustee meetings where everyone can participate in decision making. We suggest a maximum of 12 trustees, but you **may** choose a higher or lower number depending on the CIO's needs.

(4) The General Regulations require that the constitution **must** include the names of the first charity trustees.

Clause 13 - Appointment of charity trustees – The constitution **must** make provision about the appointment of one or more persons to be charity trustees.

This clause contains two options. **Choose the corresponding options in Clause 12 (3) and Clause 13**

Option 1 provides for new trustees to be appointed by the membership ('elected') and retire by rotation. This is the simplest, and likely to be the usual, arrangement for most association CIOs.

Option 1a

(b) The maximum number of charity trustees is ~~[12]~~ ten. The charity trustees may not appoint any charity trustee if as a result the number of charity trustees would exceed the maximum.

Option 1b

(b) There is no maximum number of charity trustees that may be appointed to the CIO.

Option 2

(a) There should be:

[Not less than... nor more than]... elected trustees;

[... ex officio trustee[s]; and

[Not less than... nor more than]... nominated trustees].

(b) There must be at least [three] charity trustees. If the number falls below this minimum, the remaining trustee or trustees may act only to call a meeting of the charity trustees, or appoint a new charity trustee.

(c) The maximum number of charity trustees that can be appointed is as provided in sub-clause (a) of this clause. No trustee appointment may be made in excess of these provisions.

(4) First charity trustees

The first charity trustees of the CIO are –

PAUL TAYLOR
STEPHEN PARKER
CLIVE SMITH
BOB LUNNON
SAM ROBBINS

13. Appointment of charity trustees

Option 1

[(1) At the first annual general meeting of the members of the CIO all the charity trustees shall retire from office;]

Sam Robbins

Notes

The mechanism for election and retirement in this clause reflects good practice. You may wish to include provision for all trustees to retire at the first AGM **[(1)]** but this is not essential.

(5) allows the existing charity trustees or the members to appoint additional trustees to temporarily fill vacancies or to bring additional skills and experience onto the trustee board. We recommend that you include this power.

Option 2 provides for new trustees to be appointed in different ways including election by members, ex-officio (ie by virtue of holding a certain office, eg the local vicar) and nomination by another organisation. If you use option 2 you will need to amend it to meet the CIO's particular circumstances depending on the combination of different methods of appointment that will apply. These additional appointment methods are usually only appropriate for charities operating in particular local areas or with links to particular bodies, and where it is desired to involve members of local councils, local churches or other external organisations on the trustee body.

You may wish to include provision for all elected trustees to retire at the first AGM **[(1)(a)]** but this is not essential.

(1)(e) allows the existing charity trustees or the members to appoint additional trustees to temporarily fill vacancies or to bring additional skills and experience onto the trustee board. We recommend that you include this power.

(2) At every [subsequent] annual general meeting of the members of the CIO, one-third of the charity trustees shall retire from office. If the number of charity trustees is not three or a multiple of three, then the number nearest to one-third shall retire from office, but if there is only one charity trustee, he or she shall retire;

(3) The charity trustees to retire by rotation shall be those who have been longest in office since their last appointment or reappointment. If any trustees were last appointed or reappointed on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot;

(4) The vacancies so arising may be filled by the decision of the members at the annual general meeting; any vacancies not filled at the annual general meeting may be filled as provided in sub-clause (5) of this clause;

(5) The members or the charity trustees may at any time decide to appoint a new charity trustee, whether in place of a charity trustee who has retired or been removed in accordance with clause [15] (Retirement and removal of charity trustees), or as an additional charity trustee, provided that the limit specified in clause [12(3)] on the number of charity trustees would not as a result be exceeded;

(6) A person so appointed by the members of the CIO shall retire in accordance with the provisions of sub-clauses (2) and (3) of this clause. A person so appointed by the charity trustees shall retire at the conclusion of the next annual general meeting after the date of his or her appointment, and shall not be counted for the purpose of determining which of the charity trustees is to retire by rotation at that meeting.

Option 2

(1) Elected charity trustees

[(a) At the first annual general meeting of the members of the CIO all the elected charity trustees shall retire from office;]

(b) At every [subsequent] annual general meeting of the members of the CIO, one-third of the elected charity trustees shall retire from office. If the number of elected charity trustees is not three or a multiple of three, then the number nearest to one-third shall retire from office, but if there is only one charity trustee, he or she shall retire;

(c) The charity trustees to retire by rotation shall be those who have been longest in office since their last appointment or reappointment. If any trustees were last appointed or reappointed on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot;

(d) The vacancies so arising may be filled by the decision of the members at the annual general meeting; any vacancies not filled at the annual general meeting may be filled as provided in sub-clause (e) of this clause;

(e) The members or the charity trustees may at any time decide to appoint a new charity trustee, whether in place of a charity trustee who has retired or been removed in accordance with clause [15] (Retirement and removal of charity trustees), or as an additional charity trustee, provided that the limit specified in clause [12(3)] on the number of charity trustees would not as a result be exceeded;

(f) A person so appointed by the members of the CIO shall retire in accordance with the provisions of sub-clauses (b) and (c) of this clause. A person so appointed by the charity trustees shall retire at the conclusion of the annual general meeting next following the date of his appointment, and shall not be counted for the purpose of determining which of the charity trustees is to retire by rotation at that meeting.

[(2) Ex officio charity trustee[s]

The [insert role] for the time being ("the office holder") shall automatically, by virtue of holding that office ("ex officio"), be a charity trustee.

If unwilling to act as a charity trustee, the office holder may:

(a) before accepting appointment as a charity trustee, give notice in writing to the trustees of his or her unwillingness to act in that capacity; or

(b) after accepting appointment as a charity trustee, resign under the provisions contained in clause 15 (Retirement and removal of charity trustees).

The office of ex officio charity trustee will then remain vacant until the office holder ceases to hold office.]

[(3) Nominated Charity Trustee[s]

(a) [insert name of appointing body] ("the appointing body") may appoint [insert number] charity trustees.

(b) Any appointment must be made at a meeting held according to the ordinary practice of the appointing body.

(c) Each appointment must be for a term of [3] years.

(d) The appointment will be effective from the later of:

Notes

(i) the date of the vacancy; or

(ii) the date on which the CIO is informed of the appointment.

(e) The person appointed need not be a member of the appointing body.

(f) A trustee appointed by the appointing body has the same duty under Clause 12(1) as the other charity trustees to act in the way he or she decides in good faith would be most likely to further the purposes of the CIO.]

Clause 14 – Information for new charity trustees

This clause represents good practice; we recommend that you include it. It is vital for new trustees to have easy access to the information and training that they need to become effective members of the trustee body.

14. Information for new charity trustees

The charity trustees will make available to each new charity trustee, on or before his or her first appointment:

(a) a copy of this constitution and any amendments made to it; and

(b) a copy of the CIO's latest trustees' annual report and statement of accounts.

Clause 15 – Retirement and removal of charity trustees – (1) The General Regulations require that the constitution **must** contain provisions setting out how charity trustees may retire or otherwise cease to hold office. The provisions in the model follow recommended good practice.

(2) and (3) This is an optional power allowing the members to remove a charity trustee. The members may only remove trustees if a power to do so is included in the constitution. This power should be exercised only in the interests of the charity, and it is important that the process is fair and transparent (as provided in (3)).

15. Retirement and removal of charity trustees

(1) A charity trustee ceases to hold office if he or she:

(a) retires by notifying the CIO in writing (but only if enough charity trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings);

(b) is absent without the permission of the charity trustees from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated;

(c) dies;

(d) in the written opinion, given to the company, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a director and may remain so for more than three months;

(e) [is removed by the members of the CIO in accordance with sub-clause (2) of this clause;] or

(f) is disqualified from acting as a charity trustee by virtue of section 178-180 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision).

[(2) A charity trustee shall be removed from office if a resolution to remove that trustee is proposed at a general meeting of the members called for that purpose and properly convened in accordance with clause [11], and the resolution is passed by a [two-thirds] majority of votes cast at the meeting.

Notes

(3) A resolution to remove a charity trustee in accordance with this clause shall not take effect unless the individual concerned has been given at least 14 clear days' notice in writing that the resolution is to be proposed, specifying the circumstances alleged to justify removal from office, and has been given a reasonable opportunity of making oral and/or written representations to the members of the CIO.]

Clause 16 – Reappointment of charity trustees – This clause will help to ensure clarity about reappointing trustees who have retired. We recommend that you include it. There is an optional provision to limit the number of consecutive terms that a trustee can serve for, which may help to encourage regular turnover and change on the trustee board. (It is good practice to aim for a balance between continuity and change.)

16. Reappointment of charity trustees

Any person who retires as a charity trustee by rotation or by giving notice to the CIO is eligible for reappointment. [A charity trustee who has served for [three] consecutive terms may not be reappointed for a [fourth] consecutive term but may be reappointed after an interval of at least [three years].]

Clause 17 – Taking of decisions by charity trustees - The power to take decisions by resolution in writing or electronic form outside meetings is optional, but if the trustees intend to use it, it **must** be included in the constitution. Such a decision must be unanimous (ie all of the trustees must agree).

17. Taking of decisions by charity trustees

Any decision may be taken either:

- at a meeting of the charity trustees; or
- by resolution in writing or electronic form agreed by all of the charity trustees, which may comprise either a single document or several documents containing the text of the resolution in like form to each of which one or more charity trustees has signified their agreement.

Clause 18 – Delegation by charity trustees – This power is optional. We recommend you include it as a matter of good practice. The General Regulations give charity trustees of a CIO automatic power to delegate tasks to sub-committees, staff or agents; but without this additional constitutional power, the trustees will be unable to delegate any power to make decisions.

Sub-clauses (2)(a)-(c) reflect minimum good practice and are safeguards that **should not** be removed or diminished.

18. Delegation by charity trustees

(1) The charity trustees may delegate any of their powers or functions to a committee or committees, and, if they do, they must determine the terms and conditions on which the delegation is made. The charity trustees may at any time alter those terms and conditions, or revoke the delegation.

(2) This power is in addition to the power of delegation in the General Regulations and any other power of delegation available to the charity trustees, but is subject to the following requirements -

(a) a committee may consist of two or more persons, but at least one member of each committee must be a charity trustee;

(b) the acts and proceedings of any committee must be brought to the attention of the charity trustees as a whole as soon as is reasonably practicable; and

(c) the charity trustees shall from time to time review the arrangements which they have made for the delegation of their powers.

Notes

Clause 19 – Meetings of charity trustees – The General Regulations require that the Constitution **must** include provisions for the calling and running of meetings including the minimum number of trustees who shall form a quorum, appointment of a chair and, if trustees will be able to demand a poll (a counted vote, normally with voting papers), the procedure for conducting such a poll. The provisions in this model are good practice recommendations.

(We have not included provision for trustees to have a poll as feedback from our consultations suggested that most charities did not feel it was appropriate. If this power is required, please see clause 11(6)(b-e) for a suitable wording.)

(3)(a) We recommend that the quorum for trustee meetings should not be less than one third of the number of trustees.

(3)(c) It is common, but not obligatory, for the Chair to have a casting vote. You **may** include or delete this power.

(4) – This clause is optional, but will be required if one or more of the CIO's trustees may from time to time participate in meetings by telephone or similar means.

19. Meetings and proceedings of charity trustees

(1) Calling meetings

(a) Any charity trustee may call a meeting of the charity trustees.

(b) Subject to that, the charity trustees shall decide how their meetings are to be called, and what notice is required.

(2) Chairing of meetings

The charity trustees may appoint one of their number to chair their meetings and may at any time revoke such appointment. If no-one has been so appointed, or if the person appointed is unwilling to preside or is not present within 10 minutes after the time of the meeting, the charity trustees present may appoint one of their number to chair that meeting.

(3) Procedure at meetings

(a) No decision shall be taken at a meeting unless a quorum is present at the time when the decision is taken. The quorum is [two] charity trustees, or the number nearest to [one third] of the total number of charity trustees, whichever is greater, or such larger number as the charity trustees may decide from time to time. A charity trustee shall not be counted in the quorum present when any decision is made about a matter upon which he or she is not entitled to vote.

(b) Questions arising at a meeting shall be decided by a majority of those eligible to vote.

[(c) In the case of an equality of votes, the chair shall have a second or casting vote.]

(4) Participation in meetings by electronic means

(a) A meeting may be held by suitable electronic means agreed by the charity trustees in which each participant may communicate with all the other participants.

(b) Any charity trustee participating at a meeting by suitable electronic means agreed by the charity trustees in which a participant or participants may communicate with all the other participants shall qualify as being present at the meeting.

(c) Meetings held by electronic means must comply with rules for meetings, including chairing and the taking of minutes.

Notes

Clause 20 – Saving provisions – We recommend that you include this clause to reduce the risk of trustees' decisions being declared invalid for purely technical reasons. This is, however, also covered in the General Regulations.

20. Saving provisions

(1) Subject to sub-clause (2) of this clause, all decisions of the charity trustees, or of a committee of charity trustees, shall be valid notwithstanding the participation in any vote of a charity trustee:

- who was disqualified from holding office;
- who had previously retired or who had been obliged by the constitution to vacate office;
- who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise;

if, without the vote of that charity trustee and that charity trustee being counted in the quorum, the decision has been made by a majority of the charity trustees at a quorate meeting.

(2) Sub-clause (1) of this clause does not permit a charity trustee to keep any benefit that may be conferred upon him or her by a resolution of the charity trustees or of a committee of charity trustees if, but for clause (1), the resolution would have been void, or if the charity trustee has not complied with clause 7 (Conflicts of interest).

Clause 21 – Execution of documents – We recommend that you include this clause, for clarity about how documents may be validly executed on behalf of the CIO. It includes provision for use of a seal, which the General Regulations stipulate must be included if the CIO is to have a seal (but there is no requirement to have one). The General Regulations require the full name of the CIO to be clearly written on the seal, and failure to comply with this is an offence.

21. Execution of documents

(1) The CIO shall execute documents either by signature or by affixing its seal (if it has one).

(2) A document is validly executed by signature if it is signed by at least two of the charity trustees.

(3) If the CIO has a seal:

(a) it must comply with the provisions of the General Regulations; and

(b) it must only be used by the authority of the charity trustees or of a committee of charity trustees duly authorised by the charity trustees. The charity trustees may determine who shall sign any document to which the seal is affixed and unless otherwise determined it shall be signed by two charity trustees.

Clause 22 – Use of electronic communications – The General Regulations include provisions governing the use of electronic communication, and we recommend that CIO trustees familiarise themselves with the requirements. Failure to comply with the requirement to provide a hard copy would constitute an offence.

22. Use of electronic communications

[(1) General]

The CIO will comply with the requirements of the Communications Provisions in the General Regulations and in particular:

(a) the requirement to provide within 21 days to any member on request a hard copy of any document or information sent to the member otherwise than in hard copy form;

Notes

The General Regulations state that if the CIO intends to automatically use electronic communication or a website to send formal communications to members, this must be stated in the constitution, which must also set out the circumstances in which this will happen. For suggested wording, please see the appendix to this constitution.

Clause 23 – Keeping of registers – This clause reflects the requirements in the General Regulations that the CIO keeps registers of members and charity trustees and makes this information available for inspection by interested persons. This does not have to be stated in the constitution but is included to serve as a reminder.

Clause 24 – Minutes - This clause reflects the requirements of the General Regulations regarding record keeping. We recommend that this clause is included, to remind the trustees of their responsibilities.

Clause 25 – Accounting records (etc) - This clause reflects the trustees' duties under the Charities Act 2011. We recommend that this clause is included, to remind the trustees of their responsibilities.

Clause 26 - Rules – We recommend that this power should be included for clarity, but charities automatically have this power and an express power is not needed. It is important that members are made aware of, and can easily obtain, copies of any rules.

(b) any requirements to provide information to the Commission in a particular form or manner.

23. Keeping of Registers

The CIO must comply with its obligations under the General Regulations in relation to the keeping of, and provision of access to, registers of its members and charity trustees.

24. Minutes

The charity trustees must keep minutes of all:

(1) appointments of officers made by the charity trustees;

(2) proceedings at general meetings of the CIO;

(3) meetings of the charity trustees and committees of charity trustees including:

- the names of the trustees present at the meeting;
- the decisions made at the meetings; and
- where appropriate the reasons for the decisions;

(4) decisions made by the charity trustees otherwise than in meetings.

25. Accounting records, accounts, annual reports and returns, register maintenance

(1) The charity trustees must comply with the requirements of the Charities Act 2011 with regard to the keeping of accounting records, to the preparation and scrutiny of statements of accounts, and to the preparation of annual reports and returns. The statements of accounts, reports and returns must be sent to the Charity Commission, regardless of the income of the CIO, within 10 months of the financial year end.

(2) The charity trustees must comply with their obligation to inform the Commission within 28 days of any change in the particulars of the CIO entered on the Central Register of Charities.

26. Rules

The charity trustees may from time to time make such reasonable and proper rules or bye laws as they may deem necessary or expedient for the proper conduct and management of the CIO, but such rules or bye laws must not be inconsistent with any provision of this constitution. Copies of any such rules or bye laws currently in force must be made available to any member of the CIO on request.

Notes

Clause 27 – Disputes – It is good practice to include provisions for dealing with any disputes that arise between members of the CIO. Litigation can be expensive, and litigation about the internal affairs of a charity would almost certainly constitute "charity proceedings", which can be taken only with the Commission's authority. We would usually require the parties to a dispute to have tried mediation first.

Clause 28 – Amendment of constitution – This reflects the CIOs' statutory power of amendment in sections 224-227 of the Charities Act 2011. A CIO's constitution **should** include these provisions for ease of reference. The constitution of a CIO cannot override the statutory power of constitutional amendment, but the General Regulations provide that you **may** include additional restrictions in some or all cases, for example requiring a longer period of notice before the meeting, or a higher majority, for certain changes. Additional restrictions are not provided for in this model and if you are considering this, we recommend that you take appropriate advice. To request the Commission's consent to an amendment or to inform the Commission of an amendment, please complete our online form.

Clause 29 – Voluntary winding up or dissolution – This clause reflects the provisions of the Charities Act 2011, the General Regulations and Dissolution Regulations. We recommend that it is included in the constitution for ease of reference. It also highlights that there are other requirements in the Dissolution Regulations that the trustees must comply with, as there are offences for non-compliance. To inform the Commission of your CIO's dissolution, please complete our online form.

27. Disputes

If a dispute arises between members of the CIO about the validity or propriety of anything done by the members under this constitution, and the dispute cannot be resolved by agreement, the parties to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.

28. Amendment of constitution

As provided by clauses 224-227 of the Charities Act 2011:

(1) This constitution can only be amended:

(a) by resolution agreed in writing by all members of the CIO; or

(b) by a resolution passed by a 75% majority of votes cast at a general meeting of the members of the CIO.

(2) Any alteration of clause 3 (Objects), clause [29] (Voluntary winding up or dissolution), this clause, or of any provision where the alteration would provide authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them, requires the prior written consent of the Charity Commission.

(3) No amendment that is inconsistent with the provisions of the Charities Act 2011 or the General Regulations shall be valid.

(4) A copy of any resolution altering the constitution, together with a copy of the CIO's constitution as amended, must be sent to the Commission within 15 days from the date on which the resolution is passed. The amendment does not take effect until it has been recorded in the Register of Charities.

29. Voluntary winding up or dissolution

(1) As provided by the Dissolution Regulations, the CIO may be dissolved by resolution of its members. Any decision by the members to wind up or dissolve the CIO can only be made:

(a) at a general meeting of the members of the CIO called in accordance with clause [11] (Meetings of Members), of which not less than 14 days' notice has been given to those eligible to attend and vote:

(i) by a resolution passed by a 75% majority of those voting, or

(ii) by a resolution passed by decision taken without a vote and without any expression of dissent in response to the question put to the general meeting; or

Notes.

(b) by a resolution agreed in writing by all members of the CIO.

(2) The constitution **must** contain directions about how its property will be applied if it is wound up. Any assets remaining after the payment of debts **must** be applied for charitable purposes that are similar to those of the CIO.

(2) Subject to the payment of all the CIO's debts:

(a) Any resolution for the winding up of the CIO, or for the dissolution of the CIO without winding up, may contain a provision directing how any remaining assets of the CIO shall be applied.

(b) If the resolution does not contain such a provision, the charity trustees must decide how any remaining assets of the CIO shall be applied.

(c) In either case the remaining assets must be applied for charitable purposes the same as or similar to those of the CIO.

(3) The CIO must observe the requirements of the Dissolution Regulations in applying to the Commission for the CIO to be removed from the Register of Charities, and in particular:

(a) the charity trustees must send with their application to the Commission:

(i) a copy of the resolution passed by the members of the CIO;

(ii) a declaration by the charity trustees that any debts and other liabilities of the CIO have been settled or otherwise provided for in full; and

(iii) a statement by the charity trustees setting out the way in which any property of the CIO has been or is to be applied prior to its dissolution in accordance with this constitution;

(b) the charity trustees must ensure that a copy of the application is sent within seven days to every member and employee of the CIO, and to any charity trustee of the CIO who was not privy to the application.

(4) It is essential for trustees to be aware that if the CIO is unable to meet its financial obligations in full when it is wound up, the provisions in sub-clauses (1)-(3) do not apply, and the relevant provisions of the Dissolution Regulations must be followed. Failure to do so is not only an offence, but it could lead to personal liability for the trustees.

(4) If the CIO is to be wound up or dissolved in any other circumstances, the provisions of the Dissolution Regulations must be followed.

30. Interpretation

Clause 30 – Interpretation – this clause explains some terms used in the rest of the constitution.

In this constitution:

"connected person" means:

(a) a child, parent, grandchild, grandparent, brother or sister of the charity trustee;

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(b) the spouse or civil partner of the charity trustee or of any person falling within sub-clause (a) above;

(c) a person carrying on business in partnership with the charity trustee or with any person falling within sub-clause (a) or (b) above;

(d) an institution which is controlled –

(i) by the charity trustee or any connected person falling within sub-clause (a), (b), or (c) above; or

(ii) by two or more persons falling within sub-clause (d)(i), when taken together

(e) a body corporate in which –

(i) the charity trustee or any connected person falling within sub-clauses (a) to (c) has a substantial interest; or

(ii) two or more persons falling within sub-clause (e)(i) who, when taken together, have a substantial interest.

Section 118 of the Charities Act 2011 apply for the purposes of interpreting the terms used in this constitution.

"**General Regulations**" means the Charitable Incorporated Organisations (General) Regulations 2012.

"**Dissolution Regulations**" means the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012.

The "**Communications Provisions**" means the Communications Provisions in [Part 10, Chapter 4] of the General Regulations.

"**charity trustee**" means a charity trustee of the CIO.

A "**poll**" means a counted vote or ballot, usually (but not necessarily) in writing.

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Notes

Appendix

The following provisions do not form part of the 'Association' model constitution but are available as options under clauses 11 (General meetings of members) and 22 (Use of electronic communications). For CIOs intending to include these powers in their constitutions, we recommend that you use the following wording. Notes on these clauses are included with the explanatory notes accompanying the clauses in the model.

General meetings of members

(7) **Proxy voting**

(a) Any member of the CIO may appoint another person as a proxy to exercise all or any of that member's rights to attend, speak and vote at a general meeting of the CIO. Proxies must be appointed by a notice in writing (a "proxy notice") which:

(i) states the name and address of the member appointing the proxy;

(ii) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;

(iii) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the CIO may determine; and

(iv) is delivered to the CIO in accordance with the constitution and any instructions contained in the notice of the general meeting to which they relate.

(b) The CIO may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

(c) Proxy notices may (but do not have to) specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

(d) Unless a proxy notice indicates otherwise, it must be treated as:

(i) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and

(ii) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

(e) A member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the CIO by or on behalf of that member.

(f) An appointment under a proxy notice may be revoked by delivering to the CIO a notice in writing given by or on behalf of the member by whom or on whose behalf the proxy notice was given.

(g) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

(h) If a proxy notice is not signed or authenticated by the member appointing the proxy, it must be accompanied by written evidence that the person who signed or authenticated it on that member's behalf had authority to do so.

(8) Postal Voting

(a) The CIO may, if the charity trustees so decide, allow the members to vote by post or electronic mail ("email") to elect charity trustees or to make a decision on any matter that is being decided at a general meeting of the members.

(b) The charity trustees must appoint at least two persons independent of the CIO to serve as scrutineers to supervise the conduct of the postal/email ballot and the counting of votes.

(c) If postal and/or email voting is to be allowed on a matter, the CIO must send to members of the CIO not less than [21] days before the deadline for receipt of votes cast in this way:

(i) a notice by email, if the member has agreed to receive notices in this way under clause [22] (Use of electronic communications), including an explanation of the purpose of the vote and the voting procedure to be followed by the member, and a voting form capable of being returned by email or post to the CIO, containing details of the resolution being put to a vote, or of the candidates for election, as applicable;

(ii) a notice by post to all other members, including a written explanation of the purpose of the postal vote and the voting procedure to be followed by the member; and a postal voting form containing details of the resolution being put to a vote, or of the candidates for election, as applicable.

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(d) The voting procedure must require all forms returned by post to be in an envelope with the member's name and signature, and nothing else, on the outside, inside another envelope addressed to 'The Scrutineers for [name of CIO]', at the CIO's principal office or such other postal address as is specified in the voting procedure.

(e) The voting procedure for votes cast by email must require the member's name to be at the top of the email, and the email must be authenticated in the manner specified in the voting procedure.

(f) Email votes must be returned to an email address used only for this purpose and must be accessed only by a scrutineer.

(g) The voting procedure must specify the closing date and time for receipt of votes, and must state that any votes received after the closing date or not complying with the voting procedure will be invalid and not be counted.

(h) The scrutineers must make a list of names of members casting valid votes, and a separate list of members casting votes which were invalid. These lists must be provided to a charity trustee or other person overseeing admission to, and voting at, the general meeting. A member who has cast a valid postal or email vote must not vote at the meeting, and must not be counted in the quorum for any part of the meeting on which he, she or it has already cast a valid vote. A member who has cast an invalid vote by post or email is allowed to vote at the meeting and counts towards the quorum.

(i) For postal votes, the scrutineers must retain the internal envelopes (with the member's name and signature). For email votes, the scrutineers must cut off and retain any part of the email that includes the member's name. In each case, a scrutineer must record on this evidence of the member's name that the vote has been counted, or if the vote has been declared invalid, the reason for such declaration.

(j) Votes cast by post or email must be counted by all the scrutineers before the meeting at which the vote is to be taken. The scrutineers must provide to the person chairing the meeting written confirmation of the number of valid votes received by post and email and the number of votes received which were invalid.

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(k) The scrutineers must not disclose the result of the postal/email ballot until after votes taken by hand or by poll at the meeting, or by poll after the meeting, have been counted. Only at this point shall the scrutineers declare the result of the valid votes received, and these votes shall be included in the declaration of the result of the vote.

(l) Following the final declaration of the result of the vote, the scrutineers must provide to a charity trustee or other authorised person bundles containing the evidence of members submitting valid postal votes; evidence of members submitting valid email votes; evidence of invalid votes; the valid votes; and the invalid votes.

(m) Any dispute about the conduct of a postal or email ballot must be referred initially to a panel set up by the charity trustees, to consist of two trustees and two persons independent of the CIO. If the dispute cannot be satisfactorily resolved by the panel, it must be referred to the Electoral Reform Services.

Use of electronic communications

(2) To the CIO

Any member or charity trustee of the CIO may communicate electronically with the CIO to an address specified by the CIO for the purpose, so long as the communication is authenticated in a manner which is satisfactory to the CIO.

(3) By the CIO

(a) Any member or charity trustee of the CIO, by providing the CIO with his or her email address or similar, is taken to have agreed to receive communications from the CIO in electronic form at that address, unless the member has indicated to the CIO his or her unwillingness to receive such communications in that form.

(b) The charity trustees may, subject to compliance with any legal requirements, by means of publication on its website –

(i) provide the members with the notice referred to in clause 11(3) (Notice of general meetings);

(ii) give charity trustees notice of their meetings in accordance with clause 19(1) (Calling meetings); [and

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(iii) submit any proposal to the members or charity trustees for decision by written resolution or postal vote in accordance with the CIO's powers under clause 10 (Members' decisions), 10(3) (Decisions taken by resolution in writing), or [[the provisions for postal voting] (if you have included this optional provision, please insert the correct clause number here)].

(c) The charity trustees must:

(i) take reasonable steps to ensure that members and charity trustees are promptly notified of the publication of any such notice or proposal;

(ii) send any such notice or proposal in hard copy form to any member or charity trustee who has not consented to receive communications in electronic form.

BONIFACE TRAIL ASSOCIATION CIO

Rider to Model Constitution

Clause 3

The object of the CIO is

To promote, encourage, provide and maintain an all purpose, traffic free trail, for general use by ~~walkers~~ pedestrians, cyclists and wheelchair and mobility scooter users, in whole or in part between the town of Crediton, the village of Newton St Cyres and the city of Exeter, in the County of Devon.

Clause 9(1)(a)

Membership of the CIO shall comprise of any following persons mentioned in the following numbers, who agrees to become a member and accepts the duty of members set out in sub clause (3) of this Clause. The eligible members are as follows:

(i) 3 persons appointed as representatives of Newton St Cyres Parish Council

(ii) 1 person each appointed as representatives of the following Parish Councils
- (A) Crediton Town
- (B) Crediton Hamlets
- (C) Upton Pyne

(iii) 1 person appointed as representative of Exeter City Council

(iv) Each of the persons being the respective Mid Devon District Council ward Councilors for for the Parishes of Crediton Town, Crediton Hamlets and Newton St Cyres

(v) Each of the person being the respective Devon County Council Ward Councilors for the Parishes of Crediton Town, Crediton Hamlet, Upton Pyne, Newton St Cyres, and Exeter City

(vi) The respective East Devon District Council Ward Councillor for the Parish of Upton Pyne

(vii) 2 persons appointed as representatives of Sustainable Crediton

Sam Robbins
SJ Parker
RW Furmor

(viii) Any other person, being a person who agrees to become a member and accepts the duty of members set out in sub clause (3) of this Clause, and who is approved as a member of the CIO at any general meeting of the CIO, by a majority vote of 75% of members eligible to vote at the time of the appropriate meeting

Clause 9 (4) (c)

In the event that a member dies or sends a notice of resignation under clause 9(4)(a)(ii) then in the case of members appointed under sub clauses (i) to (vii) inclusive of clause 9(1)(a) the membership of such deceased person or person resigning aforesaid may be transferred to a new representative of the organisation formerly represented by the deceased or resigning member or by the person who carries on as the respective ward councillor (as the case may be). Such transfer of membership does not take effect until the CIO has received written notification of the said transfer.

~~Clause 9(6) (e)~~

~~Any person with an interest in land which may be affected by the objects of the CIO may attend general meetings of the CIO as non-voting members~~

Mrs Sara Robbins