**UPDATED MODEL (May 2022)**

We endeavour to ensure that our model constitutions are the best available. The Office of the Scottish Charity Regulator (OSCR) has reviewed our models and, while OSCR is not in a position to formally endorse them, OSCR has indicated that, generally speaking, constitutions based on these models would be acceptable in terms of charity law. However, SCVO cannot be responsible for the approach taken by OSCR to any individual constitution and you should be prepared for the possibility that OSCR may require alterations to a constitution based on one of our models.

When applying to OSCR for charitable status you need, as a minimum, to have filled in the blanks in certain sections of this model, so that the constitution is complete. For example, OSCR have to know what are your charitable objectives are – this section cannot be left blank. We have highlighted these particular sections in yellow – but, beyond that, it is important that you review the model constitution as a whole, and make adjustments as appropriate, to ensure that it reflects the governance features that you feel are most appropriate for your organisation.

To help with that process, we have included our guidance on the high-level issues that should be considered when tailoring a constitution. In addition, there are optional bolt-on clauses covering the most common “optional extras”.

Your constitution is an important document – it is worth taking the time to work through the various points systematically, and to discuss and agree what is best for your organisation.

DISCLAIMER: These model constitutions (and the accompanying bolt-on clauses and guidance) have been prepared by Burness Paull LLP (working with Stephen Phillips, a former partner of the firm) on a nil-fee basis, for SCVO as a free resource to support the Scottish charity sector, and those wishing to set up new charities in Scotland. It is the responsibility of those using the model constitutions to determine what type of legal entity – and what key features of the governance arrangements - are most appropriate for them; and to tailor the relevant model constitution (and bolt-on clauses, where applicable) accordingly. Should you require any guidance we recommend that you seek legal advice. Burness Paull, Stephen Phillips, and SCVO do not owe any duty of care to users of the materials; and in particular (but without limiting that general exclusion of liability) they will not be liable for any adverse consequences arising from any error, omission or other defect in the model constitutions, bolt-on clauses or guidance.

**SCVO Model Trust Deed**

**TRUST DEED**

We, [insert full name] residing at [insert home address], [insert full name] residing at [insert home address], and [insert full name] residing at [insert home address], in order to create a trust to be known as [insert name of trust] (the “Trust”):

(One) appoint as trustees ourselves and [insert full name] residing at [insert home address] and [insert full name] residing at [insert home address] (who and whose successors are referred to as “the Trustees”); and

(Two) pay the sum of £1 to the Trustees; And we direct as follows:

#### Trust purposes

1. The Trustees shall hold and apply the sum of £1 paid by us to them, and such other funds and assets as may from time to time be comprised in the Trust Property, in trust for the following purposes:-

 [insert objects, listed as (a), (b), (c) etc if appropriate]

2. The expenses of creating and administering the Trust, and any tax payable in relation to the Trust, shall be met in priority to all other payments and transfers of assets out of the Trust Property.

##### Powers

3. In the administration of the Trust, the Trustees shall, in addition to the powers and rights which are conferred by law upon trustees who are acting without remuneration, have the fullest powers with regard to investment, sale, administration and management of the Trust Property as if they were owners; in particular (but without limiting the scope of the powers which they may exercise under the preceding provision), the Trustees shall have the following powers:

(a) [insert reference to main activities]

(b) To carry on any other activities which further any of the Trust Purposes.

(c) To take such steps as may be deemed appropriate for the purpose of raising funds.

(d) To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them).

(e) To establish and/or support any other charity, and to make donations for any charitable purpose falling within the Trust’s Purposes.

(f) To purchase, take on lease, hire, or otherwise acquire, any property or rights.

(g) To improve, manage, develop, or otherwise deal with, all or any part of the Trust Property.

(h) To sell, let, hire out, license, or otherwise dispose of, all or any part of the Trust Property.

(i) To borrow money, and to give security in support of any such borrowings by the Trust.

(j) To employ such staff as are considered appropriate for the administration of the Trust or for the conduct of the Trust’s activities, and to make reasonable provision for the payment of pension and/or other benefits for members of staff, ex-members of staff and their dependants.

(k) To engage such consultants and advisers as are considered appropriate from time to time.

(l) To effect insurance of all kinds (which may include officers’ liability insurance).

(m) To invest any funds which are not immediately required for the administration of the Trust or for the Trust’s activities, in such investments as may be considered appropriate (and to dispose of, and vary, such investments).

(n) To liaise with other voluntary sector bodies, local authorities, UK or Scottish government departments and agencies, and other bodies, all with a view to furthering the Trust Purposes.

 (o) To form any company which is a charity or any Scottish charitable incorporated organisation (SCIO) (providing, in either case, its purposes are similar (wholly or in part) to the Trust) Purposes, and, if considered appropriate, to transfer to any such company or SCIO (without any payment being required from the company or SCIO) the whole or any part of the Trust Property.

(p) To retain any property comprised in the Trust Property for such time as the Trustees think proper.

(q) To have any part of the Trust Property registered in the name of a nominee and to pay reasonable fees to such nominee.

(r) To grant proxies in favour of any of the Trustees (or any other person) to attend, act and vote for the Trustees at any meetings (whether of the nature of general meetings, class meetings, creditors’ meetings or otherwise) relating to any investment held by the Trustees or relating to any claim by the Trustees in any liquidation or other insolvency proceedings.

(s) To compromise or settle by arbitration all disputed claims by or against the Trust or the Trust Property.

(t) To appoint one or more of the Trustees (or any firm of which any of the Trustees is a partner) to be solicitors to the Trust or agent for the Trustees in any other capacity, and to pay to such solicitors or other agent their usual charges.

(u) To reimburse any of the Trustees out of the Trust Property, in relation to all expenses reasonably incurred by them in the administration of the Trust.

(v) To do anything which may be incidental or conducive to the furtherance of any of the Trust Purposes.

##### Number of Trustees

4. The number of Trustees shall not be less than 3 nor more than [ ].

# Appointment/removal/resignation

5. The Trustees shall be entitled, by way of a resolution passed by majority vote at a trustees’ meeting, to appoint any individual as a Trustee.

6. The Trustees shall have power to remove any individual as a Trustee, by way of a resolution passed at a trustees’ meeting, providing two thirds or more of the Trustees then in office vote in favour of the resolution.

7. An individual holding office as a Trustee may retire by giving notice to that effect (either in writing or by email) to the secretary to the Trust.

##### Procedure at Trustees’ meetings

8. Subject to the provisions of the following clauses, the Trustees may regulate their proceedings as they think fit.

9. A trustees’ meeting shall be held at least once in each year.

10. Any Trustee may call a trustees’ meeting, or may request the secretary to the Trust to call a trustees’ meeting.

11. If Trustees are to be permitted to participate in a trustees’ meeting by way of audio and/or audio-visual link(s), the Trustees must, in advance of the meeting, be provided with details of how to connect and participate via that link or links; and (particularly for the benefit of those Trustees who may have difficulties in using a computer or laptop for this purpose) the Trustees' attention should be drawn to the following options:

* 1. participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements);
	2. (where attendance in person is to be permitted, either on an open basis or subject to a restriction on the total number who will be permitted to attend) the ability to attend the meeting in person.

12. Questions arising at a trustees’ meeting shall be decided by a majority of votes.

13. If there is an equal number of votes for and against a resolution, the chairperson of the meeting shall have a second (casting) vote.

14 The Trustees may if they consider appropriate (and must, if that is required under clause 15) allow Trustees to participate in trustees’ meetings by way of an audio and/or audio-visual link or links which allows them to hear and contribute to discussions at the meeting, providing:

(a) the means by which Trustees can participate via that link or links are not subject to technical complexities, significant costs or other factors which are likely to represent - for all, or a significant proportion, of the Trustees - a barrier to participation; and

(b) the manner in which the meeting is conducted ensures, so far as reasonably possible, that those Trustees who participate via an audio or audio-visual link are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those Trustees (if any) who are attending in person (and vice versa).

15 If restrictions arising from public health legislation or guidance are likely to mean that attendance in person at a proposed trustees’ meeting would not be possible or advisable for one or more of the Trustees, the Trustees must make arrangements for Trustees to participate in that trustees’ meeting by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting; and on the basis that:

(a) the requirements set out in paragraphs (a) and (b) of clause 14 will apply; and

(b) the Trustees must use all reasonable endeavours to ensure that all Trustees have access to one or more means by which they may hear and contribute to discussions at the meeting.

16 A trustees’ meeting may involve two or more Trustees participating via attendance in person while other Trustees participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.

17 Where a Trustee is participating in a trustees’ meeting via an audio or audio-visual link, they may cast their vote on any resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically.

18. No valid decisions can be taken at a trustees’ meeting unless a quorum is present; the quorum for meetings of the Trustees shall be [insert number] Trustees, present in person.

19. An individual participating in a trustees’ meeting via an audio or audio-visual link which allows them to hear and contribute to discussions at the meeting will be deemed to be present in person (or, if they are not a Trustee, will be deemed to be in attendance) at the meeting.

20. If at any time the number of Trustees in office falls below the number fixed as the quorum, the remaining Trustee or Trustees may act only for the purpose of appointing an additional Trustee or Trustees.

21. The Trustees shall appoint one of the Trustees to be chair, and may at any time remove the person so appointed from that office.

22. Unless they are unwilling to do so, the Trustee serving as chair shall act as chairperson at every trustees’ meeting at which they are present; if the chair is unwilling to act as chairperson or is not present within 15 minutes after the time when the meeting was due to commence, the Trustees present may elect from among themselves the person who will act as chairperson of the meeting.

23. All acts *bona fide* done by any trustees’ meeting, by a committee of the Trustees or by a person acting as a Trustee, shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment of any Trustee or that any of them had ceased to hold office or was not entitled to vote, be as valid as if every such person had been duly appointed and had continued to be a Trustee and had been entitled to vote.

**Technical objections to remote participation in trustees’ meetings**

24 This trust deed imposes certain requirements regarding the use of audio and/or audio-visual links as a means of participation and voting at trustees’ meetings; providing the arrangements made by the Trustees in relation to a given trustees’ meeting (and the manner in which the meeting is conducted) are consistent with those requirements:

(a) a Trustee cannot insist on participating in the trustees’ meeting, or voting at the trustees’ meeting, by any particular means;

(b) the trustees’ meeting need not be held in any particular place;

(c) the trustees’ meeting may be held without any particular number of those participating in the meeting being present in person at the same place (but, notwithstanding that, the quorum requirements - taking account of those participating via audio and/or audio-visual links - must still be met);

(d) the trustees’ meeting may be held by any means which permits those participating in the meeting to hear and contribute to discussions at the meeting;

(e) a Trustee will be able to exercise the right to vote at the trustees’ meeting by such means as is determined by the chairperson of the meeting (consistent with the arrangements made by the Trustees) and which permits that Trustee’s vote to be taken into account in determining whether or not a resolution is passed.

**Resolutions agreed by the Trustees in writing or by e-mail**

25 A resolution agreed to in writing (or by e-mail) by a majority of the Trustees then in office shall (subject to clauses 26 and 27) be as valid as if duly passed at a trustees’ meeting.

26 A resolution under clause 25 shall not be valid unless a copy of the resolution was circulated to all of the Trustees, along with a cut-off time (which must be reasonable in the circumstances) for notifications under clause 27.

27 If a resolution is circulated to the Trustees under clause 26, any one or more Trustees may, following receipt of a copy of the resolution, notify the secretary that they consider that a trustees’ meeting should be held to discuss the matter which is the subject of the resolution; and if any such notification is received by the secretary prior to the cut-off time:

(a) the secretary must convene a trustees’ meeting accordingly, and on the basis that it will take place as soon as reasonably possible;

(b) the resolution cannot be treated as valid under clause 25 unless and until that trustees’ meeting has taken place;

(c) the Trustees may (if they consider appropriate, on the basis of the discussions at the meeting) resolve at that trustees’ meeting that the resolution should be treated as invalid, notwithstanding that it had previously been agreed to in writing (or by e-mail) by a majority of the Trustees then in office.

##### Delegation

28. The Trustees may delegate any of their powers to any committee consisting of one or more Trustees; any such delegation of powers may be made subject to such conditions as the Trustees may impose, and may be revoked or altered.

29. Subject to any condition imposed in pursuance of the preceding clause, the proceedings of a committee consisting of two or more Trustees shall be governed by the provisions of clauses 8 to 27 so far as they are capable of applying.

##### Remuneration

30. No Trustee may serve as an employee (full-time or part-time) of the Trust, and no Trustee may be given any remuneration by the Trust for carrying out their duties as a trustee.

##### Secretary

31. The Trustees shall appoint a secretary to the Trust for such term, at such remuneration (if any), and on such conditions, as the Trustees may think fit; and any secretary so appointed may be removed by them.

32. The Trustees shall ensure that the secretary:

(a) keeps proper minutes of all proceedings at meetings of the Trustees (and at meetings of committees of the Trustees) including the names of the Trustees present at each such meeting;

(b) keeps a proper record of all resolutions agreed to in writing or by email under clause 25;

(c) keeps proper records and documents in relation to all other matters connected with the administration and management of the Trust.

##### Accounts

33. The Trustees shall ensure that proper accounting records are maintained, in accordance with all applicable statutory requirements.

34. The Trustees shall prepare annual accounts, complying with all relevant statutory requirements; and:

 (a) if an audit is required under any statutory provisions or if the Trustees otherwise think fit, the Trustees shall ensure that an audit of such accounts is carried out by a qualified auditor;

 (b) if an audit is not carried out, the Trustees must ensure that an independent examination of the accounts is carried out by a qualified independent examiner.

35. An accountant engaged in an audit of the Trust’s accounts shall be entitled to have access to all accounting records and other documents relating to the Trust.

##### Operation of bank accounts

36. The Trustees should ensure that the systems of financial control adopted by the Trust in relation to the operation of the Trust’s bank accounts (including online banking) reflect the recommendations made from time to time by the Trust's auditors (or independent examiners) or other external accountants.

##### Payments to charities etc

37. The receipt of the treasurer or other appropriate officer for any funds or other assets paid or transferred by the Trustees to any charity shall represent sufficient discharge to the Trustees.

##### Limitations on liability

38. The Trustees shall not be liable for loss or depreciation of the value of investments retained or made by them, nor for omissions, nor for neglect in management, nor for insolvency of debtors, nor for the acts, omissions, neglect or default of one another or of any banker, solicitor, factor or other agent employed by them.

**Conduct of Trustees**

39. Each of the Trustees shall, in exercising their functions as a trustee of the Trust, act in the interests of the Trust; and, in particular, must:

(a) seek, in good faith, to ensure that the Trust acts in a manner which is in accordance with its objects (as set out in this trust deed);

(b) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;

(c) in circumstances giving rise to the possibility of a conflict of interest of interest between the Trust and any other party:

(i) put the interests of the Trust before that of the other party, in taking decisions as a Trustee; or

(ii) where any other duty prevents them from doing so, disclose the conflicting interest to the Trust and refrain from participating in any discussions or decisions involving the other Trustees with regard to the matter in question;

(d) ensure that the Trust complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005.

##### Amendment of Trust Deed/winding-up

40. If in the opinion of the Trustees any change in circumstances or alteration in the law has made or is likely to make execution of the Trust Purposes impossible or impracticable, or if in the opinion of the Trustees the administration of the Trust could be improved, or the Trust Purposes be advanced in a more appropriate manner, the Trustees may (subject to clause 41) in their discretion:

(a) supplement or amend the provisions of this trust deed or any deed supplemental to this trust deed; or

(b) wind up the Trust and transfer the Trust Property (after settlement of all debts and liabilities) to some other charity or charities having similar objects to those of the Trust.

41. In no circumstances is the Trust Property to be held or applied for any purpose which is not an exclusively charitable purpose.

**Interpretation**

42. In this trust deed:

 “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 2011, providing (in either case) that its objects are limited to charitable purposes;

 “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 Acts;

“Trust Deed” means this trust deed (including any supplementation or amendment effected in accordance with the provisions of clauses 40 and 41);

“Trust Property” means the sum of £1 paid by us to the Trustees, and such other funds and assets as may from time to time be received by the Trustees as trustees under the Trust Deed (from us or any other person), and the assets in which any funds so received may from time to time be invested.

“Trust Purposes” means the purposes specified in clause 1.

43. Any reference in this trust deed to a provision of any legislation shall include any statutory modification or re-enactment of that provision in force from time to time.

We declare that the Trust Deed shall be irrevocable.

This trust deed, consisting of this and the [ ] preceding pages, is executed as follows:-

SIGNED by the said [insert full name]

[insert full name] and [insert full name]

at

on

in the presence of