

# Constitution of a Charitable Incorporated Organisation whose only voting members are its trustees

Date of constitution (last amended): *Draft of 14 July 2020*

## 1. Name

The name of this Charitable Incorporated Organisation is Helmdon Community Foundation ('the Foundation').

## 2. National location of principal office

The principal office of the Foundation is in England.

## 3. Objects

The object of the Charity shall be the provision and maintenance of a village hall and related land and facilities for the use of the inhabitants of the Parish of Helmdon without distinction of political, religious or other opinions, including its use for meetings, lectures, classes and activities, and for other forms of recreation and leisure-time occupation, with the object of improving the conditions of life for the said inhabitants.

## 4. Powers

The Foundation has power to do anything which is calculated to further its objects or is conducive or incidental to doing so. In particular, the Foundation has power to:

- (1) subject to sections 124 to 126 of the Charities Act 2011, borrow money and charge the whole or any part of its property as security for the repayment of the money borrowed;
- (2) buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
- (3) subject to sections 117 and 119 to 123 of the Charities Act 2011, sell, lease or otherwise dispose of all or any part of the property belonging to the Foundation;
- (4) employ and remunerate such staff as are necessary for carrying out the work of the Foundation;
- (5) deposit or invest funds, employ a professional fund-manager, and arrange for the investments or other property of the Foundation 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;
- (6) raise funds for the fulfilment of its objectives;
- (7) encourage whether with a financial contribution or otherwise the introduction of new leisure time and recreational activities which may be pursued either within the village hall or the parish of Helmdon;

- (8) co-operate with other organisations, whether in Helmdon or elsewhere, including entering into joint agreements.

## **5. Application of income and property**

- (1) The income and property of the Foundation must be applied solely towards the promotion of the objects.
- (2) A trustee is entitled to be reimbursed from the property of the Foundation or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the Foundation.
- (3) Subject to section 189 of the Charities Act 2011, a trustee may benefit from trustee indemnity insurance cover purchased at the Foundation's expense.
- (4) None of the income or property of the Foundation may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the Foundation.
- (5) Nothing in this clause shall prevent a trustee or connected person receiving any benefit or payment which is authorised by Clause 6.

## **6. Benefits and payments to trustees and connected persons**

### **(1) General provisions**

No trustee or connected person may:

- (a) buy or receive any goods or services from the Foundation on terms preferential to those applicable to members of the public;
- (b) sell goods, services, or any interest in land to the Foundation;
- (c) be employed by, or receive any remuneration from, the Foundation;
- (d) receive any other financial benefit from the Foundation;

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 trustee or connected person may receive a benefit from the Foundation as a beneficiary of the Foundation provided that it is available generally to the beneficiaries of the Foundation.
- (b) Subject to sections 185 to 188 of the Charities Act 2011, a 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 Foundation.

- (c) Subject to sub-clause (3) of this clause, a trustee or connected person may provide the Foundation with goods that are not supplied in connection with services provided to the Foundation by the trustee or connected person.
- (d) A trustee or connected person may receive interest on money lent to the Foundation at a reasonable and proper rate which must be not more than the Bank of England bank rate.
- (e) A trustee or connected person may receive rent for premises let by the trustee or connected person to the Foundation. The amount of the rent and the other terms of the lease must be reasonable and proper. The 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 trustee or connected person may take part in the normal trading and fundraising activities of the Foundation on the same terms as members of the public.

**(3) Payment for supply of goods only – controls**

The Foundation and its 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 Foundation and the trustee or connected person supplying the goods (“the supplier”).
- (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 trustees are satisfied that it is in the best interests of the Foundation to contract with the supplier rather than with someone who is not a trustee or connected person.
- (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 Foundation.
- (e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of trustees is present at the meeting.
- (f) The reason for their decision is recorded by the trustees in the minute book.
- (g) A majority of the 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 Foundation” includes any company in which the Foundation:
  - (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” is defined in clause 29.

## **7. Conflicts of interest and conflicts of loyalty**

A 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 Foundation or in any transaction or arrangement entered into by the Foundation which has not previously been declared; and
- (2) absent himself or herself from any discussions of the 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 Foundation and any personal interest (including but not limited to any financial interest).

Any 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 trustees on the matter.

## **8. Liability of members to contribute to the assets of the Foundation if it is wound up**

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

## **9. Trustees**

### **(1) Functions and duties of trustees**

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

- (a) to exercise his or her powers and to perform his or her functions as a trustee in the way he or she decides in good faith would be most likely to further the purposes of the Foundation;
- (b) to exercise, in the performance of those functions, such care and skill as is reasonable in the circumstances having regard in particular:
  - (i) to 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 trustee of the Foundation 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;
  - (iii) to the environmental and social sustainability of their decisions.
- (c) to conduct the affairs of the Foundation in accordance with all relevant laws and regulations, in particular those relating to discrimination, health and safety and the safeguarding of children.

**(2) Eligibility for trusteeship**

- (a) Every trustee must be a natural person.
- (b) No individual may be appointed as a trustee of the Foundation:
  - (i) if he or she is under the age of 16 years; or
  - (ii) if he or she would automatically cease to hold office under the provisions of clause 12(1)(f).
- (c) No one is entitled to act as a trustee whether on appointment or on any re-appointment until he or she has expressly acknowledged, in whatever way the trustees decide, his or her acceptance of the office of trustee.

**(3) Number of trustees**

- (a) The maximum number of trustees is nine.
- (b) There must be at least five trustees. If the number falls below this minimum, the remaining trustee or trustees may act only to call a meeting of the trustees, or appoint a new trustee.
- (c) The trustees shall designate two of their number as the Chair and the Treasurer of the Foundation.

**(4) First trustees**

The first trustees are as follows, and are appointed for the following terms:–

Lorna Clarke.....	[for 3 years]
Angela Goodall.....	[for 3 years]
Phillip Ward.....	[for 2 years]
Morag Underwood .....	[for 1 year]
Paul Underwood.....	[for 1 year]

**10. Appointment of trustees**

- (1) Apart from the first trustees, every trustee must be appointed for a term of three years by a resolution passed at a properly convened meeting of the trustees.
- (2) In selecting individuals for appointment as trustees, the trustees must have regard to the skills, knowledge and experience needed for the effective administration and fulfilment of the objects of the Foundation and record the basis of their selection in the minutes of the relevant meeting.
- (3) Any intention to appoint a trustee should be advertised in Helmdon which may include posting on Helmdon Parish Council’s website

([www.helmdonparishcouncil.gov.uk](http://www.helmdonparishcouncil.gov.uk)) or by such other means as the trustees may consider appropriate not less than thirty days before the relevant meeting and the trustees should include in their consideration of that appointment any resident of Helmdon who indicates a willingness to be appointed, using the criteria in clause 10(2) above.

## **11. Information for new trustees**

The trustees will make available to each new trustee, on or before his or her first appointment, a copy of the current version of this constitution and a copy of the Foundation's latest Trustees' Annual Report and statement of accounts.

## **12. Retirement and removal of trustees**

- (1) A trustee ceases to hold office if he or she:
  - (a) reaches the end of their term of appointment and is not reappointed;
  - (b) retires by notifying the Foundation in writing (but only if enough trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings);
  - (c) is absent without the permission of the trustees from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated;
  - (d) dies;
  - (e) in the reasonable opinion of the trustees, has become physically or mentally incapable of acting as a trustee and may remain so for more than three months and the majority of the other trustees resolve that he or she should be removed; or
  - (f) is disqualified from acting as a trustee by virtue of sections 178-180 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision).
- (2) Subject to clause 12(3), any person ceasing to be a trustee at the end of a term of appointment or retiring under clause 12(1)(b) above is eligible for reappointment.
- (3) A trustee who has served for two consecutive terms may not be reappointed for a third consecutive term but may be reappointed after an interval of at least two years.

## **13. Taking of decisions by trustees**

Any decision may be taken either:

- (1) at a meeting of the trustees; or

- (2) by agreement in writing or electronic form of a majority of all of the trustees, which may comprise either a single document or several documents containing the text of the resolution in like form to which the majority of all of the trustees has signified their agreement. Such a resolution shall be effective provided that:
  - (a) a copy of the proposed resolution has been sent, at or as near as reasonably practicable at the same time, to all of the trustees; and
  - (b) the majority of all of the trustees has signified agreement to the resolution in a document or documents which has or have been authenticated in such manner as the trustees have previously resolved.

#### **14. Delegation by trustees**

- (1) The trustees may delegate any of their powers or functions to a committee or committees, and, if they do, they shall determine the terms and conditions on which the delegation is made. The 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 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 trustee;
  - (b) the acts and proceedings of any committee must be brought to the attention of the trustees as a whole as soon as is reasonably practicable; and
  - (c) the trustees shall from time to time review the arrangements which they have made for the delegation of their powers.

#### **15. Meetings of trustees**

##### **(1) Calling meetings**

- (a) Any trustee may call a meeting of the trustees.
- (b) Subject to that, the trustees shall decide how their meetings are to be called, and what notice is required.

##### **(2) Chairing of meetings**

The trustees shall 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 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 of three trustees is present at the time when the decision is taken. A 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 person who chairs the meeting 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 trustees in which each participant may communicate with all the other participants.
- (b) Any trustee participating at such a meeting 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.

### **16. Membership of the Foundation**

- (1) The members of the Foundation shall be its trustees for the time being. The only persons eligible to be members of the Foundation are its trustees. Membership of the Foundation cannot be transferred to anyone else.
- (2) Any member and trustee who ceases to be a trustee automatically ceases to be a member of the Foundation.

### **17. Decisions which must be made by the members of the Foundation**

- (1) Decisions of the members may be made either:
  - (a) by resolution at a general meeting; or
  - (b) by resolution in writing, in accordance with sub-clause (2) of this clause.
- (2) A resolution in writing:
  - (a) may comprise several copies to which one or more members has signified their agreement;
  - (b) may only be voted upon by members who are members of the Foundation on the date when the proposal is first circulated; and
  - (c) except where such a resolution must be agreed by all the members, may be agreed by a simple majority of the members who are entitled to vote on it, provided that a copy of the proposed resolution has been sent to all such members and the required majority of members has signified its agreement to the

resolution in such manner as the Foundation has specified.

(3) Any decision to:

- (c) amend the constitution of the Foundation;
- (d) amalgamate the Foundation with, or transfer its undertaking to, one or more other CIOs, in accordance with the Charities Act 2011; or
- (e) wind up or dissolve the Foundation (including transferring its business to any other charity)

must be made by a resolution of the members of the Foundation (rather than a resolution of the trustees).

(4) Any decision specified in sub-clause (3) of this clause must be made in accordance with the provisions of clause 27 (Amendment of constitution) or clause 28 (Voluntary winding up or dissolution) as applicable or the provisions of the Charities Act 2011, the General Regulations or the Dissolution Regulations as applicable. Those provisions require the resolution to be agreed by a 75% majority of those members voting at a general meeting or agreed by all members in writing.

## **18. General meetings of members**

### **(1) Calling of general meetings of members**

The trustees may designate any of their meetings as a general meeting of the members of the Foundation. The purpose of such a meeting is to discharge any business which must by law be discharged by a resolution of the members of the Foundation as specified in clause 17.

### **(2) Annual General Meeting**

- (a) The trustees shall call at least one meeting of the members each year, which shall be open to all the residents of Helmdon, at which they will present a report of their activities, a statement of accounts, and hear the views of such residents on the current and future activities of the Foundation.
- (b) Only members of the Foundation may vote on resolutions proposed at such a meeting.
- (c) The members may invite those present to express a collective view on any issue, including by a show of hands. The members shall not be bound by such a view but may take it into account in making their subsequent decisions.

### **(3) Notice of general meetings of members**

- (a) The minimum period of notice required to hold a general meeting of the members of the Foundation is 14 days.
- (b) Except 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, a general meeting may be called by shorter notice if it is so agreed by a majority of the members of the Foundation.

#### **(4) Procedure at general meetings of members**

The provisions in clause 15 (2)-(4) governing the chairing of meetings, procedure at meetings and participation in meetings by electronic means apply to any general meeting of the members, with all references to trustees to be taken as references to members.

### **19. Saving Provisions**

- (1) Subject to sub-clause (2) of this clause, all decisions of the trustees, or of a committee of trustees, shall be valid notwithstanding the participation in any vote of a trustee:
- a) who was disqualified from holding office;
  - b) who had previously retired or who had been obliged by the constitution to vacate office;
  - c) 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 trustee and that trustee being counted in the quorum, the decision has been made by a majority of the trustees at a quorate meeting.

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

### **20. Execution of documents**

- (1) The Foundation shall execute documents by signature.
- (2) A document is validly executed by signature if it is signed by at least two of the trustees.

### **21. Use of electronic communications**

- (1) The Foundation 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;
  - (b) any requirements to provide information to the Commission in a particular form or manner.
- (2) Any member or trustee of the Foundation, by providing the Foundation with his or her

email address or similar, is taken to have agreed to receive communications from the Foundation in electronic form at that address, unless the member has indicated to the Foundation his or her unwillingness to receive such communications in that form.

## **22. Keeping of Registers**

The Foundation must comply with its obligations under the General Regulations in relation to the keeping of, and provision of access to, a register of its members and trustees.

## **23. Minutes**

The trustees must keep minutes of all:

- (1) appointments of officers made by the trustees;
- (2) proceedings at general meetings of the Foundation;
- (3) meetings of the trustees and committees of 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 trustees otherwise than in meetings.

## **24. Accounting records, accounts, annual reports and returns, register maintenance**

- (1) The trustees must comply with the requirements of the Charities Act 2011 with regard to the keeping of accounting records, the preparation and scrutiny of statements of account, and the preparation of annual reports and returns. The statements of account, reports and returns must be sent to the Commission, regardless of the income of the Foundation, within 10 months of the financial year end.
- (2) The trustees must comply with their obligation to inform the Commission within 28 days of any change in the particulars of the Foundation entered on the Central Register of Charities.

## **25. Rules**

The trustees may from time to time make such reasonable and proper rules or byelaws as they may deem necessary or expedient for the proper conduct and management of the Foundation, 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 Foundation on request.

## **26. Disputes**

If a dispute arises between members of the Foundation 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.

## **27. Amendment of constitution**

As provided by sections 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 Foundation; or
  - (b) by a resolution passed by a 75% majority of those voting at a general meeting of the members of the Foundation.
- (2) Any alteration of clause 3 (Objects), clause 28 (Voluntary winding up or dissolution), this clause, or of any provision where the alteration would provide authorisation for any benefit to be obtained by trustees or members of the Foundation 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 every resolution amending the constitution, together with a copy of the Foundation's constitution as amended must be sent to the Commission by the end of the period of 15 days beginning with the date of passing of the resolution, and the amendment does not take effect until it has been recorded in the Register of Charities.

## **28. Voluntary winding up or dissolution**

- (1) As provided by the Dissolution Regulations, the Foundation may be dissolved by resolution of its members. Any decision by the members to wind up or dissolve the Foundation can only be made:
  - (a) at a general meeting of the members of the Foundation called in accordance with clause 18 (General 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
  - (b) by a resolution agreed in writing by all members of the Foundation.
- (2) Subject to the payment of all the Foundation's debts:
  - (a) Any resolution for the winding up of the Foundation, or for the dissolution of the Foundation without winding up, may contain a provision directing how any remaining assets of the Foundation shall be applied.
  - (b) If the resolution does not contain such a provision, the trustees must decide how any remaining assets of the Foundation 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 Foundation.
- (3) The Foundation must observe the requirements of the Dissolution Regulations in applying to the Commission for the Foundation to be removed from the Register of Charities, and in particular:
- (a) the trustees must send with their application to the Commission:
    - (i) a copy of the resolution passed by the members of the Foundation;
    - (ii) a declaration by the trustees that any debts and other liabilities of the Foundation have been settled or otherwise provided for in full; and
    - (iii) a statement by the trustees setting out the way in which any property of the Foundation has been or is to be applied prior to its dissolution in accordance with this constitution;
  - (b) the trustees must ensure that a copy of the application is sent within seven days to every member and employee of the Foundation, and to any trustee of the Foundation who was not privy to the application.
- (4) If the Foundation is to be wound up or dissolved in any other circumstances, the provisions of the Dissolution Regulations must be followed.

## 29. Interpretation

In this constitution:

“**connected person**” means:

- (a) a child, parent, grandchild, grandparent, brother or sister of the trustee;
- (b) the spouse or civil partner of the trustee or of any person falling within sub-clause (a) above;
- (c) a person carrying on business in partnership with the trustee or with any person falling within sub-clause (a) or (b) above;
- (d) an institution which is controlled: –
  - (i) by the 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 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 applies for the purposes of interpreting the terms used in this constitution.

**“Helmdon”** means the Civil Parish of Helmdon in Northamptonshire.

**“trustee”** means a charity trustee of the Foundation.

**“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 9 of the General Regulations.