

WITN3075010

THE INCORPORATED TRUSTEES OF THE MACFARLANE TRUST

and

THE TERRENCE HIGGINS TRUST

DEED OF GIFT

Russell-Cooke LLP
2 Putney Hill
Putney
London SW15 6AB

Ref: JST/JAJ/165927.1

DEED OF GIFT

THIS DEED OF GIFT is made the 11th day of December 2018

BETWEEN

- (1) **The Incorporated Trustees of The Macfarlane Trust**, a charity with charity registration number 298863 and whose principal office is at Alliance House, 12 Caxton Street, London SW1H 0QS (the 'Donor'); and
- (2) **The Terrence Higgins Trust**, a charitable company limited by guarantee with registered charity number 288527 and registered company number 1778149 whose registered office is at 314-320 Grays Inn Road, London, WC1X 8DP (the 'Trust')

RECITALS

- (A) The Donor wishes to make a donation to the Trust.
- (B) The Trust works with and provides support to individuals living with HIV to enable them to lead healthy lives.
- (C) The intention of both the Donor and the Trust is that the donation will be used exclusively by the Trust in accordance with the Donor's charitable purposes.

OPERATIVE PROVISIONS

1. The Donation

- 1.1 Subject to clause 1.2, the Donor hereby gives £680,000 (the "Donation") to the Trust on the date hereof and such further sum as shall remain following the closure of the Donor and shall also assign to the Trust the benefit of the loans listed in Schedule 1 via a Deed of Assignment in the form annexed at schedule 2 and, where the loan in question is secured at the Land Registry, via a Land Registry form TR4.
- 1.2 Subject to clause 1.3, the Trust must use the Donation strictly in accordance with the objects of the Donor as set out in Clause 2 (the "Objects") and shall produce an annual audited statement evidencing, in full, expenditure of the Donation until the Donation has been fully expended.
- 1.3 The Trust may apply to the Charity Commission of England and Wales for consent to apply the Donation for purposes outside the Objects PROVIDED THAT any such alteration is in respect of charitable purposes which are similar to the Objects and may where such consent is obtained apply the Donation within such broader purposes as the consent permits.
- 1.4 The Trust agrees to indemnify the Trustees of the Donor in respect of all and any liabilities, expenses and claims against the Donor or the past or current trustees or staff of the Donor or costs incurred by it or them which may arise following the date hereof whether in respect of the Trust's actions or any acts or omissions of the Donor or its current or previous staff or trustees (and for the avoidance of doubt such liabilities, expenses and claims shall include those arising from or related to the Loans, as defined in the Deed of Assignment in Schedule 2 of this Deed) SAVE THAT the Trust's obligation to indemnify or make any other payment to any person

under this Deed shall exclude the Excluded Liabilities and Insured Liabilities and shall be limited to the value of the Donation to the Trust pursuant to this Deed. The value of the Donation shall for the purposes of this clause 1.4 be reduced by the value of any loans which have proved to be irrecoverable within two years of falling due.

For the purposes of this clause 1.4:

"Excluded Liabilities" means all liabilities of the Donor (if any) arising as a result of any act or omission of any of the past or current trustees or staff of the Donor, which such trustee(s) or staff knew to be unlawful, a breach of trust or breach of duty, or in respect of which such trustee(s) or staff recklessly disregarded whether such act or omission was unlawful, a breach of trust or breach of duty or not;

"Insured Liabilities" means all liabilities of the Donor to the extent they are indemnified under any insurance policy of the Donor.

- 1.5 Notwithstanding clause 1.4, the Trust shall indemnify those current and former trustees and/or staff of the Donor not themselves criminally, knowingly or recklessly responsible for any Excluded Liabilities against the Excluded Liabilities (that are not Insured Liabilities) together with any claims, costs and expenses arising therefrom.

2. The Objects

- 2.1 The Objects of the Donor are to provide financial assistance and other benefits to meet any charitable need of:

2.1.1 (i) individuals with haemophilia and bleeding disorders who have received blood, blood products or tissues from the National Health Service and in consequence are suffering from Acquired Immune Deficiency Syndrome or are infected with human immunodeficiency virus including individuals who have been co-infected with both human immunodeficiency virus and hepatitis C virus; and

(ii) an individual who has been so infected by a person in 2.1(i);

together called "Primary Beneficiaries"; and

2.1.2 the partners, parents, carers, children and dependants of a Primary Beneficiary and the partners, parents, carers, children and dependants of a Primary Beneficiary who has died.

- 2.2 For the purposes of this clause:

2.2.1 a "partner" is a husband or wife, a widow or widower, a civil partner or cohabitee of a Primary Beneficiary (including, where applicable, a partner from whom a Primary Beneficiary is or was divorced, separated or has an order for dissolution); and

2.2.2 a "carer" is a relation of the Primary Beneficiary who has provided nursing or similar care on terms otherwise than for full consideration in money or money's worth and in consequence has suffered financially and/or in their health; and

2.2.3 "children" includes step children.

3. Acknowledgment

- 3.1 Whenever the Trust shall acknowledge or refers to in any public document or other media the Donation it shall do so following the date hereof in the agreed form set out in Schedule 3.
- 3.2 The Trust shall not publish any material referring to the use of the funds other than as agreed in the form set out in Schedule 3 following the date hereof without the prior written agreement of the Donor.
- 3.3 Nothing in Clause 3 shall prevent either party from making any statement required by law or any governmental or regulatory authority, or by any court or other authority of competent jurisdiction provided that the party required to make the announcement consults with the other party and takes into account the reasonable requests of the other party in relation to the content of such announcement before it is made.

4. Confidentiality and Data Protection

The Trust shall preserve the confidentiality of any material transferred to it which is marked confidential or is clearly confidential and shall ensure that all personal information relating to individuals is processed strictly in accordance with the requirements of the Data Protection Act 2018 and the data protection principles contained therein.

5. Assignment

Neither party may assign the benefit or burden of this Deed.

THIS DEED is delivered and takes effect at on the date set out above.

Executed as a deed by)
ALASDAIR HURRAY on behalf of)

GRO-C

(signature of trustee)

THE MACFARLANE TRUST)

In the presence of:

GRO-C

Witness Signature:

Witness Name:

G. EDELMAN

Witness Address:

GRO-C

SURREY

GRO-C

Executed as a deed by)
PATRICIA SPELLMAN on behalf of)

GRO-C

(signature of trustee)

THE MACFARLANE TRUST)

In the presence of:

GRO-C

Witness Signature:

Witness Name:

RUSSELL CROFT

Witness Address:

GRO-C

SURREY

Executed as a deed by THE TERRENCE HIGGINS
TRUST acting by JONATHAN M. SMITH a
director and LAURA WINTER a director

GRO-C

Director

GRO-C

Director

Schedule 1 Loans

Loan 1 means a loan secured by a legal charge dated 29 August 2008 made between (1) GRO-A and (2) the Donor relating to and registered against GRO-A with registered title number GRO-A

Loan 2 means a loan secured by a legal charge dated 14 March 2008 made between (1) GRO-A and GRO-A and (2) the Donor relating to and registered against GRO-A with registered title number GRO-A

Loan 3 means a loan secured by a legal charge dated 1 February 2008 and a legal charge dated 10 June 2009 both made between (1) GRO-A and GRO-A GRO-A and (2) the Donor both relating to and registered against GRO-A GRO-A with registered title number GRO-A

Loan 4 means a loan secured by a legal charge dated 6 June 2007 made between (1) GRO-A and (2) William Gordon Clarke and Elizabeth Amber Cobden Boyd as trustees of the Macfarlane Trust relating to and registered against GRO-A with registered title number GRO-A

Loan 5 means a loan secured by a legal charge dated 16 September 2009 made between (1) GRO-A and GRO-A and (2) the Donor relating to and registered against GRO-A with registered title number GRO-A

Loan 6 means a loan secured by a legal charge dated 20 October 2009 and a legal charge dated 18 June 2010 made between (1) GRO-A and (2) the Donor relating to and registered against GRO-A GRO-A with registered title number GRO-A

Loan 7 means a loan secured by a legal charge dated 21 July 2006 made between (1) GRO-A and (2) Peter Roger Stevens, William Gordon Clarke and Elizabeth Amber Cobden Boyd as trustees of the Macfarlane Trust relating to and registered against GRO-A with registered title number GRO-A

Loan 8 means a loan secured by a legal charge dated 15 December 2000 and made between (1) GRO-A and GRO-A and (2) Christopher Hodgson, GRO-A, Patricia Latimer, Nicholas Lawson, Peter Stevens, Mark Winter, Patricia Winterton and Tony Yeaman as trustees of the Macfarlane Trust and a legal charge dated 14 May 2003 made between (1) GRO-A GRO-A and GRO-A and (2) Christopher Hodgson, Peter Stevens, Mark Winter, Anthony Yeaman, Elizabeth Boyd, George Clarke, Patrick Spellman, Roger Tyrell, Stuart Gregg and Tracey Morgan as trustees of the Macfarlane Trust both relating to and registered against GRO-A with registered title number GRO-A

Loan 9 means a loan evidenced by various letters acknowledging a debt of £8,300 owed by GRO-A to the Macfarlane Trust.

Schedule 2 Deed of Assignment

DATED 2018

BETWEEN:

THE INCORPORATED TRUSTEES OF THE MACFARLANE TRUST

AND

THE TERRENCE HIGGINS TRUST

DEED OF ASSIGNMENT OF LOANS

RUSSELL-COOKE LLP

2 Putney Hill

London

SW15 6AB

Tel: 020 8789 9111

Fax: 020 8394 6535

Clare.Garbett@

GRO-C

CP/CCG/165927.4

THIS DEED is made on the day of

2018

PARTIES

- (1) **THE INCORPORATED TRUSTEES OF THE MACFARLANE TRUST**, a charity with charity registration number 298863 whose principal office is at Alliance House, 12 Caxton Street, London SW1H 0QS (**Assignor**); and
- (2) **THE TERRENCE HIGGINS TRUST**, a charitable company limited by guarantee with registered charity number 288527 and registered company number 1778149 whose registered office is at 314-320 Grays Inn Road, London, WC1X 8DP (**Assignee**).

BACKGROUND

- (A) The Assignor is the lender the Loans.
- (B) The Assignor has advanced monies to the Borrowers under the Loans in the amount of the Debts (as defined below).
- (C) The Assignor has agreed to assign all its legal and beneficial right, title and interest in the Debts, the Loans and the Security to the Assignee on the terms and conditions set out below.

AGREED TERMS

1. Definitions and Interpretation

The definitions and rules of interpretation in this clause apply in this Deed.

Assigned Documents means the documents and Security relating to each of the Loans.

Assignment Date means the date of this Deed or any later date agreed in writing by the parties to this Deed.

Borrowers means the borrowers under each of the respective Loans.

Business Day means a day other than a Saturday, Sunday or a public holiday in England when banks in London are open for business.

Debts means any present or future liability (actual or contingent) payable or owing by each of the Borrowers to the Assignor under or in connection with each of the Loans.

Loans means Loan 1, Loan 2, Loan 3, Loan 4, Loan 5, Loan 6, Loan 7, Loan 8 and Loan 9.

Loan 1 means a loan secured by a legal charge dated 29 August 2008 made between (1) GRO-A and (2) the Assignor relating to and registered against GRO-A with registered title number GRO-A

Loan 2 means a loan secured by a legal charge dated 14 March 2008 made between (1) [GRO-A] and [GRO-A] and (2) the Assignor relating to and registered against [GRO-A] with registered title number [GRO-A]

Loan 3 means a loan secured by a legal charge dated 1 February 2008 and a legal charge dated 10 June 2009 both made between (1) [GRO-A] and [GRO-A] and (2) the Assignor both relating to and registered against [GRO-A] [GRO-A] with registered title number [GRO-A]

Loan 4 means a loan secured by a legal charge dated 6 June 2007 made between (1) [GRO-A] and (2) William Gordon Clarke and Elizabeth Amber Cobden Boyd as trustees of the Macfarlane Trust relating to and registered against [GRO-A] [GRO-A] with registered title number [GRO-A]

Loan 5 means a loan secured by a legal charge dated 16 September 2009 made between (1) [GRO-A] and [GRO-A] and (2) the Assignor relating to and registered against [GRO-A] [GRO-A] with registered title number [GRO-A]

Loan 6 means a loan secured by a legal charge dated 20 October 2009 and a legal charge dated 18 June 2010 made between (1) [GRO-A] [GRO-A] and (2) the Assignor relating to and registered against [GRO-A] [GRO-A] with registered title number [GRO-A]

Loan 7 means a loan secured by a legal charge dated 21 July 2006 made between (1) [GRO-A] and (2) Peter Roger Stevens, William Gordon Clarke and Elizabeth Amber Cobden Boyd as trustees of the Macfarlane Trust relating to and registered against [GRO-A] [GRO-A] with registered title number [GRO-A]

Loan 8 means a loan secured by a legal charge dated 15 December 2000 and made between (1) [GRO-A] and [GRO-A] and (2) Christopher Hodgson, [GRO-A] Patricia Latimer, Nicholas Lawson, Peter Stevens, Mark Winter, Patricia Winterton and Tony Yeaman as trustees of the Macfarlane Trust and a legal charge dated 14 May 2003 made between (1) [GRO-A] and [GRO-A] and (2) Christopher Hodgson, Peter Stevens, Mark Winter, Anthony Yeaman, Elizabeth Boyd, George Clarke, Patrick Spellman, Roger Tyrell, Stuart Gregg and Tracey Morgan as trustees of the Macfarlane Trust both relating to and registered against [GRO-A] with registered title number [GRO-A]

Loan 9 means a loan evidenced by various letters annexed to this Deed acknowledging a debt of £8,300 owed by [GRO-A] to the Macfarlane Trust.

Security means the security relating to each of the Loans and referred to within this Deed in the description of each of the Loans and any other document entered into by the Borrowers creating or expressed to create any Security Interest over all or any part of its assets in respect of the obligations of the Borrowers to the Assignor.

Security Interest means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

Clause and Schedule headings shall not affect the interpretation of this Deed.

A reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality).

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

This Deed shall be binding on, and enure to the benefit of, the parties to this Deed and their respective personal representatives, successors and permitted assigns, and references to a party shall include that party's successors, permitted assigns and permitted transferees.

- A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

A reference to **writing** or **written** includes fax but not email.

An obligation on a party not to do something includes an obligation not to allow that thing to be done.

A reference to **this Deed** (or any provision of it) or to any other agreement or document referred to in this Deed is a reference to this Deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Deed) from time to time.

Unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Deed.

Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

A reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly).

A reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description.

A reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution.

2. Assignment

2.1 Assignment of rights

Subject to the terms of this Deed, the Assignor unconditionally, irrevocably and absolutely assigns to the Assignee all the Assignor's rights, title, interest and benefits in and to:

2.1.1 the Debt; and

2.1.2 the Security

with effect from the Assignment Date.

2.2 Assignee's acceptance

The Assignee agrees that it shall accept the assignment referred to in clause 2.1.

3. Security

The Assignee shall not take any action in relation to the Borrowers or Security which would be inconsistent with the Assignor's entitlement to, and beneficial interest in, the Assigned Documents prior to the assignment referred to in clause 2.1.

4. Investigation and reliance

The Assignee confirms to the Assignor that it has received such information as it deems appropriate under the circumstances (however obtained), concerning for example the financial condition, creditworthiness, status or nature of the Borrower, to make an informed decision regarding the assignment referred to in clause 2.1.

The Assignee agrees that it has made its own independent analysis and decision to enter into the assignment referred to in clause 2.1, based on such information as it has deemed appropriate under the circumstances, and without reliance on the Assignor.

The Assignor does not make, and the Assignee does not rely upon, any representation, warranty or condition (express or implied) about, and the Assignor shall have no liability or responsibility to the Assignee for:

a) the effectiveness, validity or enforceability of the Assigned Documents or other documents delivered by the Assignor to the Assignee, or any of the terms or conditions contained in the Assigned Documents or other documents;

b) any non-performance by any party to the Assigned Documents or other documents; or

4.1.1 the financial condition, creditworthiness, status or nature of the Borrower.

5. Notice

The Assignor shall execute and deliver to the Borrower a notice of assignment in the form set out in schedule 1 within five Business Days of the date of this Deed

6. Release

The parties agree that from the Assignment Date the Assignor no longer has any rights in relation to the Debt and the Assigned Documents.

7. Costs

Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Deed (and any documents referred to in it).

The Assignee shall pay any stamp duty and other similar duties and taxes (if any) to which this Deed (and any documents referred to in it) may be subject or may give rise or which may otherwise be payable in connection with the assignment of the rights, title, interest and benefits in and to the Assigned Documents.

8. Further assurance

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Deed.

9. Third party rights

Except as expressly provided elsewhere in this Deed, a person who is not a party to this Deed (other than a permitted successor or assign) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

10. Governing law and jurisdiction

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation .

Notice of assignment

Part 1 Form of Notice of Assignment

[BORROWER]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear [NAME OF ADDRESSEE],

Notice of assignment

We refer to the Loan made between [INSERT DETAILS OF PARTIES TO LOAN]
[secured by a legal charge OR acknowledged by a letter] dated [DATE] (the Loan)

On and with effect from [DATE] the Macfarlane Trust assigned to Terrence Higgins
Trust (Assignee) all its rights, title, interest and benefits in and to the Loan.

All future correspondence, dealings, deliveries and payments in respect of the Loan
should be made to the Terrence Higgins Trust whose details are as follows:

[NAME]

[ADDRESS]

[TELEPHONE]

[FAX]

[ATTENTION]

[BANK DETAILS FOR PAYMENT OF DEBT].

Signed.....

For and on behalf of The Macfarlane Trust

Executed as a deed by)
.....on behalf of)
(signature of trustee)

THE MACFARLANE TRUST)

In the presence of:

Witness Signature:

Witness Name:

Witness Address:

.....

.....

Executed as a deed by)
.....on behalf of)
(signature of trustee)

THE MACFARLANE TRUST)

In the presence of:

Witness Signature:

Witness Name:

Witness Address:

.....

.....

Executed as a deed by **THE TERRENCE HIGGINS**
TRUST acting by....., a
director and..... a director

Director

.....
Director

Schedule 3 Acknowledgement

'The Macfarlane Trust was set up in 1988 by the British Government to support people with haemophilia who were infected with HIV as a result of contaminated NHS blood products, and their spouses, partners, carers and dependants. In March 2017 the Government announced that funding and responsibility for providing support would transfer to NHS Business Services Authority in England along with similar organisations in the devolved administrations. The transfer took place during 2017/18 and ongoing funding from the Department of Health to the Macfarlane Trust ceased from 1st November 2017.

In the absence of continued funding, the Trustees of the Macfarlane Trust have focussed on how best to use the Trust's residual funds to support its beneficiaries whilst making plans to close the charity. Two final one-off grants programmes were advertised and grants totalling approximately £450,000 were awarded in March 2018 and paid out by November 2018.

Following distribution of these final grants, Trustees are seeking to close the charity by the end of February 2019, and have decided to transfer any residual funds and assets to the Terrence Higgins Trust. There is a clear synergy between the Macfarlane Trust's purpose and the Terrence Higgins Trust's mission and strategy, and the Terrence Higgins Trust is well placed to provide ongoing support services to the Macfarlane Trust's beneficiaries.

The Trustees of the Macfarlane Trust have transferred funds to the Terrence Higgins Trust to be used in accordance with MFT's objects, namely to support Macfarlane Trust beneficiaries – haemophiliacs who were infected with HIV as a result of contaminated NHS blood products, and their spouses, partners, carers and dependants.

The Terrence Higgins Trust has plans to appoint an Engagement Officer specifically for Macfarlane Trust beneficiaries to better understand their needs, and to develop new services including a counselling service for Macfarlane Trust beneficiaries impacted by the Public Inquiry. The Terrence Higgins Trust will also develop its existing services to ensure that they remain accessible and relevant to Macfarlane Trust beneficiaries. These services include counselling services, welfare benefits advice, complementary therapy and a national telephone helpline.

The Trustees of the Macfarlane Trust are delighted that the Terrence Higgins Trust is willing and able to administer the remaining funds for the good of its beneficiary community. The Trustees of the Macfarlane Trust believe that the Terrence Higgins Trust will provide services for the charity's beneficiaries that complement and extend the financial support available from NHS Business Services and the other scheme administrators.'