

DATED 9 APRIL 2010

THE SECRETARY OF STATE FOR HEALTH

AND

MFET LIMITED

AND

THE MACFARLANE TRUST

AND

THE EILEEN TRUST

MEMORANDUM OF AGREEMENT
in respect of the operation of
the HIV ex-gratia payment scheme and payments to the Trusts

THIS MEMORANDUM OF AGREEMENT is dated 9 April 2010

PARTIES

- (A) **THE SECRETARY OF STATE FOR HEALTH** (the **Secretary of State**).
- (B) **MFET LIMITED** of Alliance House, 12 Caxton Street, London, SW1H 0QS.
- (C) **THE MACFARLANE TRUST** of Alliance House, 12 Caxton Street, London SW1H 0QS.
- (D) **THE EILEEN TRUST** of Alliance House, 12 Caxton Street, London SW1H 0QS.

RECITALS

Pursuant to reports made to her and as announced to Parliament, the Secretary of State has established a scheme for the making of ex-gratia payments to Eligible Persons and wishes to appoint MFET to administer payments to be made under that scheme. MFET has been established for that purpose and to make payments to the Trusts.

AGREED TERMS

1 Interpretation and effect

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.
 - 1.1.1 **Agreement** means this memorandum of Agreement;
 - 1.1.2 The **Articles** means the articles of association of MFET for the time being in force;
 - 1.1.3 **Business Day** means a day (other than a Saturday, Sunday or public holiday) when banks in the City of London are open for business;
 - 1.1.4 **Direction** means a direction given by the Secretary of State pursuant to the Articles;
 - 1.1.5 **Eileen Trust** means the charitable trust known as the Eileen Trust, registered as charity number 1028027;
 - 1.1.6 **Eligible Person** means a living person who is:
 - (a) suffering from haemophilia or similar bleeding disorder who, as a result of receiving infected blood products in the United Kingdom, is suffering from Acquired Immune Deficiency Syndrome or is infected with human immunodeficiency virus and registered with the Macfarlane Trust; or
 - (b) any infected intimate of a person within (a) above, registered with the Macfarlane Trust; or

- (c) a "qualifying person", as defined in paragraph 1 of the declaration of trust dated 29 March 1993 made between the Reverend Prebendary Alan John Tanner, Alan Palmer CBE and Dr Elizabeth Mayne and known as the Eileen Trust, who was certified to the Trustees of the Eileen Trust by the Secretary of State.
- 1.1.7 **Financial Year** means a period of one year commencing on 1 April;
- 1.1.8 **First Financial Year** means the period from 1 April 2010 to 31 March 2011;
- 1.1.9 **Macfarlane Trust** means the charitable trust known as the Macfarlane Trust, registered as charity number 298863;
- 1.1.10 **MFET** means MFET Ltd, a company limited by guarantee, incorporated and registered in England and Wales with company number 7121661, whose registered office is at Alliance House, 12 Caxton Street, London, SW1H 0QS;
- 1.1.11 **Quarter** means the quarter of a financial year starting on the 1st April, 1st July, 1st October or 1st December, as the case may be;
- 1.1.12 **Relevant Trust** means the Macfarlane Trust, in the case of an Eligible Person falling within paragraphs (a) or (b) of the definition of "Eligible Person", and the Eileen Trust, in the case of an Eligible Person falling within paragraph (c) of the definition of "Eligible Person";
- 1.1.13 **Secretary of State** means the Secretary of State for Health or any person acting on the authority of the Secretary of State;
- 1.1.14 **Scheme** means the scheme by which payments are made to not only Eligible Persons, but also to the Trusts, as set out in the Articles, this Agreement and any Directions;
- 1.1.15 **Trusts** means the Eileen Trust and the Macfarlane Trust;
- 1.2 Clause headings do not affect the interpretation of this Agreement.
- 1.3 A **person** includes a corporate or unincorporated body.
- 1.4 **Writing** or **written** includes faxes and e-mail.
- 1.5 References to clauses are to the clauses of this Agreement.
- 1.6 References to this Agreement include this Agreement as amended or varied in accordance with its terms.
- 1.7 Save for the indemnification provisions set out in clause 11, which shall have full and continuing contractual effect, this Agreement is not a contract and there is no intention to create legally binding relations between the parties to it.
- 1.8 This Agreement constitutes an arrangement under the Articles.

2 Appointment and status of MFET

- 2.1 The Secretary of State appoints MFET to implement and administer the payment terms of the Scheme.
- 2.2 Whilst MFET will hold certain funds at certain times as the agent of or on trust for the Secretary of State, it shall not generally be the agent or trustee of the Secretary of State or of any other person and the Secretary of State shall have no responsibility for the acts or omissions of MFET or its officers, employees or agents.

3 Payments to MFET

- 3.1 The Secretary of State will make a determination of the total amounts to be paid out pursuant to the Scheme in each Financial Year and will make appropriate directions.
- 3.2 All such payments shall be made to such account or accounts in the name of MFET as MFET shall notify to the Secretary of State.

4 Status of Funds held by MFET

Pending payment to Eligible Persons and/or the Trusts, all funds held by MFET shall be held by it on trust for the Secretary of State. Neither Eligible Persons nor the Trusts shall have any entitlement to any of the funds except in so far as MFET makes a payment to them.

5 Interest

Interest earned on Funds whilst held by MFET shall initially be held on behalf of the Secretary of State, until the Secretary of State directs into whose ownership it shall be paid (after allowance for any tax that may be payable in respect of that interest and for defrayment of any administrative costs incurred by MFET).

6 Identification of Eligible Persons

- 6.1 For each Financial Year each Trust shall give to MFET a list of persons whom the Secretary of State has indicated to that Trust are to be registrants of that Trust and hence are Eligible Persons.
- 6.2 Such lists shall be delivered not less than one month before the commencement of each Financial Year, save for the First Financial Year, when the lists may be delivered at any time agreed between the parties.
- 6.3 Each list shall provide for each Eligible Person:
 - 6.3.1 their name;
 - 6.3.2 their address;
 - 6.3.3 their date of birth;
 - 6.3.4 their preferred form of address (if known); and
 - 6.3.5 their bank account details for payment.

- 6.4 By including a person on a list submitted to MFET each Trust shall be deemed to have confirmed that that person is, to the best of the knowledge and belief of the Trust, an Eligible Person. Both MFET and the Secretary of State may rely upon the accuracy of such information and neither of them shall be required to undertake any further investigation or verification of it.
- 6.5 The Trusts shall notify MFET of additions, deletions or other amendments to their lists of Eligible Persons for each Financial Year as soon as possible and, in particular, shall notify MFET and the Secretary of State of the death of any Eligible Person as soon as they are aware of such a death.
- 6.6 The list of Eligible Persons provided to MFET by each Trust for any Financial Year, as amended by any notification made within that Financial Year, shall be deemed to be the list of Eligible Persons so provided for each following Financial Year.
- 6.7 Except when informed of the death or change by the Trusts, MFET shall promptly notify the relevant Trust of the death of any person included on any such list and of any changes to any of the details of any such person of which it becomes aware.

7 Payment by MFET to Eligible Persons

- 7.1 In each Financial Year MFET shall make payments from the funds received from the Secretary of State to all Eligible Persons identified to it by the Trusts in accordance with directions made by the Secretary of State.
- 7.2 Payments may be made to persons whose details are added to the lists delivered under clause 7.1 during that Financial Year, if the Secretary of State so directs and to the extent he so directs.
- 7.3 Periodical payments are to be made to each Eligible Person either monthly or Quarterly. The frequency of payment shall be decided by MFET, unless the Secretary of State makes a direction to the contrary. The date of payment shall be determined by MFET, provided that the first payment to each identified Eligible Person who wishes to receive any payment shall be made not more than three months after the commencement of the First Financial Year and not more than one month after the commencement of each subsequent Financial Year.
- 7.4 Irrespective of the frequency of payment chosen, no Eligible Person shall have a beneficial interest in any of the funds held by MFET, other than in each periodic payment as it is made to them.
- 7.5 If any Eligible Person dies within a Financial Year -
- (a) any unpaid balance for the Quarter in which that Eligible Person died shall be paid to the deceased's estate on such dates and in such manner as may be agreed between MFET and the representatives of the deceased's estate; and
- (b) the sum for any remaining Quarter of the year shall be paid to the Relevant Trust.

- 7.6 If any Eligible Person at any time declines any payment to which they are entitled under the Scheme, then any sum held by MFET to meet such payment shall be paid to the Relevant Trust.
- 7.7 If any Eligible Person cannot be traced or properly identified at any time so that MFET is unable to pay to them any sum to which they are entitled under the Scheme, then any sum held by MFET to meet such payment shall be held on continuing trust for the benefit of the Secretary of State and shall be retained or paid in such manner as the Secretary of State may direct.

8 Payment by MFET to the Trusts

- 8.1 At the end of each Financial Year MFET shall pay the balance of the Funds received from the Secretary of State for that Financial Year to the Trusts in the proportions directed by the Secretary of State.
- 8.2 In addition and having regard to those proportions, MFET shall make an advance payment to each Trust before the end of April and before the end of October in each Financial Year, calculated on the amount that will be available to it after making payments to Eligible Persons and in respect of operating costs under clause 9.

9 Administration and reimbursement of operating costs

- 9.1 MFET appoints the Macfarlane Trust to provide all required administrative services to it to enable it to undertake its functions under this Agreement and the MacFarlane Trust accepts such appointment. Such services shall include the provision of communications services, premises, stationery, office equipment, IT systems and support, accounting and banking support (including the processing of payments and the production of accounts) and such other services as the parties may agree.
- 9.2 MFET shall pay the Macfarlane Trust for these services at a rate agreed between them out of the Funds received from the Secretary of State.

10 Inspection of records

- 10.1 MFET shall keep records of all sums received and paid pursuant to this Agreement. Within three months of the end of each Financial Year MFET shall provide to the Secretary of State a summary of all sums paid by it to Eligible Persons and to the Trusts during that Financial Year.
- 10.2 The Secretary of State may at any time request access to and copies of any of the books and records of MFET for the verification of payments, auditing or any other proper public purpose. MFET shall provide any requested access at all reasonable times and shall promptly provide copies of all requested documents, provided only that MFET shall not be obliged to disclose to the Secretary of State any identifiable sensitive personal information in respect of any Eligible Person without that person's prior consent.

11 Indemnification

- 11.1 The Secretary of State hereby undertakes with MFET on behalf its officers, employees and agents, and each of them, at all times fully and effectually to indemnify them and each of them (whether present or former) and the personal representatives of such officers and

employees in their personal capacities and as agent and trustee on behalf of the Recipients against all personal civil liabilities in respect of any action or claim which may be brought, or threatened to be brought, against them either individually or collectively by reason of or in connection with the acceptance administration and distribution of all or part of the Scheme and all other actions, omissions and responsibilities arising from the Scheme.

11.2 Any person falling within 1 above ("the affected person") shall as soon as reasonably practicable notify the Secretary of State if any action or claim is brought or threatened to be brought against them in respect of which indemnity may be sought pursuant to paragraph 11.1. If any action or claim is brought the Secretary of State shall be entitled to assume the defence. The Secretary of State shall notify the affected person as soon as practicable if the Secretary of State intends to assume the defence and the affected person shall then provide such information as the Secretary of State reasonably requests, subject to the Secretary of State reimbursing all out of pocket expenses properly and reasonably incurred by the affected person. The Secretary of State shall, where reasonable and practicable, consult with and keep the affected person informed of the progress of the action or claim. Where the Secretary of State does not assume the defence, the affected person shall keep the Secretary of State fully informed on its progress and any consequent legal proceedings and consult with the Secretary of State as and when reasonably required by him concerning the action or claim.

11.3 The indemnity contained in paragraph 11.1 shall not extend to losses, claims, damages, costs, charges or any other liabilities:

11.3.1 in respect of which the affected person is indemnified by or through any defence organisation or insurers; or

11.3.2 which may result from bad faith or wilful default on the part of the affected person; or

11.3.3 which may result from any of the following circumstances (without the prior written consent of the Secretary of State having been obtained, such consent not to be unreasonably withheld):

11.3.4 any settlement made or compromise effected of any action or claim brought, or threatened to be brought, against the affected person; or

11.3.5 any admission by the affected person of any liability or responsibility in respect of any action claim brought, or threatened to be brought, against the affected person; or

11.3.6 the affected person taking action that they were aware, or ought reasonably to have been aware, might prejudice the successful defence of any action or claim, once the affected person had become aware that such an action or claim had been brought or was likely to be brought.

12 Termination

12.1 Without prejudice to the continuing effect of the indemnification provisions of clause 11 in relation to any event or payments prior to the termination, this Agreement may be terminated by:

- 12.1.1 by written notice of termination given by the Secretary of State to MFET, or by MFET to the Secretary of State, in either case copied to the Trusts, at any time;
- 12.1.2 by the Macfarlane Trust, in respect of its appointment under clause 10.1 only, by giving written notice of termination to MFET, copied to the Secretary of State and the Eileen Trust, at any time up to three months before the end of any Financial Year, to expire at the end of that Financial Year.

13 **Assignment**

No party may assign, or grant any security interest over, any of its rights under this Agreement or any document referred to in it.

14 **Variation**

Except as the Secretary of State has power to direct, any variation of this Agreement shall be in writing and signed by or on behalf of the parties.

15 **Communications**

- 15.1 Any notice or other communication required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication as set out below:

- 15.1.1 The Secretary of State: Director of Health Protection, Room 513, Wellington House, 133-155 Waterloo Road, London SE1 8UG
- 15.1.2 MFET: Alliance House, 12 Caxton Street, London SW1H 0QS; marked for the attention of the Chairman.
- 15.1.3 The Macfarlane Trust: Alliance House, 12 Caxton Street, London SW1H 0QS; marked for the attention of the Chief Executive.
- 15.1.4 The Eileen Trust: Alliance House, 12 Caxton Street, London SW1H 0QS; marked for the attention of the Company Secretary.

or as otherwise specified by the relevant party by notice in writing to each other party.

- 15.2 Any notice or other communication shall be deemed to have been duly received:

- 15.2.1 if delivered personally, when left at the address and for the contact referred to in this clause; or
- 15.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
- 15.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

Signed by

...CFF **GRO-C**[name] On behalf of MFET

...MH **GRO-C**[name] On behalf of the Eileen Trust

...CFF **GRO-C**[name] On behalf of the Macfarlane Trust

...JS-R **GRO-C**[name, a member of the Senior Civil Service]
On behalf of the Secretary of State