

DATED 28 March 2011

THE SECRETARY OF STATE FOR HEALTH (1)

AND

**PETER STEVENS (2)
ROGER EVANS
CHARLES GORE**

**CONFORMED COPY
OF**

**TRUST DEED
establishing a charity called the
CAXTON FOUNDATION**

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Background to the Establishment of the Caxton Foundation

THIS TRUST DEED is made the 28 day of March 2011

BETWEEN

The Founder **THE SECRETARY OF STATE FOR HEALTH** acting through Health Protection Division of the Department of Health situated, at the date of this deed, at 5th Floor, Wellington House, 133-155 Waterloo Road, London SE1 8UG

The First Trustees **PETER STEVENS, ROGER EVANS and CHARLES GORE** of Alliance House, 12 Caxton Street, London SW1H 0QS

BACKGROUND

The Founder has given the Initial Property to the First Trustees to hold on the terms set out in the Trust Deed. It is intended that further sums will be given to the Trustees by the Founder and by the governments of one or more of the devolved administrations for Scotland, Northern Ireland and Wales to be held upon the same terms.

The background to the creation of the charity by the Founder is described in Schedule 5 of the Trust Deed.

OPERATIVE PROVISIONS

NOW THIS DEED WITNESSES as follows:

1 Interpretation

In this deed:

- 1.1. the definitions in Part 1 of Schedule 1; and
- 1.2. the rules of interpretation in Part 2 of Schedule 1

shall apply.

2 Name of Charity

The name of the Charity shall be “the Caxton Foundation” or such other name as the Trustees from time to time decide.

3 Trustees

The provisions of Schedule 2 shall apply in relation to qualification for trusteeship and the appointment, retirement and removal of Trustees.

4 Trust Fund and Income

- 4.1. The Trustees shall hold the Trust Fund upon trust and subject to clause 4(3) apply the income towards the Objects.
- 4.2. The Trustees may at their discretion apply all or part of the Trust Fund as if it were income.
- 4.3. During the Accumulation Period the Trustees may accumulate the income of the Trust Fund and shall hold any accumulation as an accretion to the Trust

Fund, but the Trustees may in any later year during the Accumulation Period apply the accumulations as if they were income arising in the then current year.

5 **Objects of the Charity**

- 5.1. The Objects are to provide financial assistance and other benefits to meet any charitable need of:
- 5.1.1. (i) individuals who have received blood, blood products or tissues from the National Health Service and in consequence have been infected with the hepatitis C virus; and
 - (ii) an individual who has been so infected by a person in 5.1.1(i);
each of whom has received a Stage 1 Payment other than Excluded Persons (together called "Primary Beneficiaries"); and
 - 5.1.2. the partners, parents, carers, children and dependants of Primary Beneficiaries and the partners, parents, carers, children and dependants of Primary Beneficiaries who have died; and
 - 5.1.3. the partners, parents, carers, children and dependants of any other individuals who died before 29 August 2003 and whose estates have, for the reasons given in Schedule 5, received a payment under the Skipton Fund Agreement (2).
- 5.2. For the purposes of this clause:
- 5.2.1. a "partner" is a husband or wife, a widow or widower, a civil partner or a co-habitee 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
 - 5.2.2. a "carer" is a relation of a 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.
 - 5.2.3. "children" includes step-children.
- 5.3. The Trustees shall have the power, with the consent of the Founder, to add individuals to the class of Primary Beneficiaries and to alter the definition of "Excluded Persons".

6 **Powers of Trustees**

In furtherance of the Objects, the Trustees may exercise the powers in Schedule 3.

7 **Investment**

The Trust Fund and any income which is not for the time being required for application shall be invested in any type of property (including Land) as if the Trustees were absolutely entitled to the Trust Fund, whether the investment produces income or not.

8 **Delegation**

The Trustees may delegate the performance or discharge of any of their functions to any person or persons (including one or more of the Trustees) that the Trustees reasonably believe to be qualified by his, her, its or their expertise to perform or discharge such function, provided that:

- 8.1. any such delegation is subject to such conditions as the Trustees may from time to time impose; and
- 8.2. all acts of any delegate must be reported promptly to the Trustees.

9 **Reimbursement of Trustees**

The Trustees may reimburse themselves out of the Trust Fund or the income in respect of any amount required:

- 9.1. to maintain such indemnity and other insurance policies as may be reasonable in order to protect the Charity and the Trustees provided that no such policy may protect any Trustee from personal liability in respect of any act or omission which amounts to a breach of trust or breach of duty to the extent that such Trustee knew or ought to have known that such act or omission was such a breach; and/or
- 9.2. to discharge expenses properly incurred by them when acting on behalf of the Charity.

10 **Trustee Liability**

No Trustee shall be liable for any loss to the Trust Fund arising by reason of:

- 10.1. any improper investment made or retained in good faith; or
- 10.2. the negligence or fraud of any employee or agent appointed to act on behalf of the Trustees; or
- 10.3. any mistake or omission made in good faith by him or any other Trustee; or
- 10.4. any other matter except wilful or individual fraud or dishonesty or wrongful omission on the part of the Trustee who is sought to be made liable.

11 **Conflicts of Interest and Remuneration**

- 11.1. The Trustees may not acquire any interest in property forming part of the Trust Fund or the income of the Charity otherwise than as Trustees, or receive remuneration or other financial benefit from the Charity or any trading company controlled by the Trustees or be interested in any contract entered into by the Trustees at the expense of the Charity except in accordance with the Trust Deed or pursuant to any authority contained in the Act.
- 11.2. A Trustee engaged in a profession or business may charge and be paid all the usual charges for business done or goods supplied by such Trustee or his company or firm when instructed by the other Trustees to act on behalf of the Trustees: but only if a majority of the Trustees at the time of such instructions are not benefiting from this provision and the Trustee who benefits is not

present at any meeting of the Trustees whilst the proposals are being discussed or reviewed and the decision made.

11.3. A Trustee need not account for any benefit received (whether as a director, shareholder or in any other capacity) from any business or company in which any part of the Trust Fund is invested provided that:

11.3.1. the Trustee concerned did not take part in the exercise of any voting rights that the Trustees may have in relation to such business or company in order to secure any such benefit; and

11.3.2. a majority of the Trustees do not benefit under this provision.

11.4. A Trustee need not account for any benefit received as a director or employee of any charity or other organisation which is engaged by the Trustees to conduct any activity in furtherance of the Objects of the Charity for which purposes it receives payment out of the Trust Fund or the income.

12 **Administration of Charity**

The Trustees shall comply with the provisions of Schedule 4 in relation to the administration of the Charity.

13 **Amendment of Trust Deed**

13.1. Subject to the provisions of this clause, the Trustees may by deed amend any of the provisions of the Trust Deed.

13.2. The Trustees may not make any amendment that would:

13.2.1. vary clause 5 (Objects of the Charity) without the consent of the Founder but in any case not if the effect of the amendment would cause the Charity to cease to be a charity at law;

13.2.2. vary the meaning of any defined term or word in clause 5 of the Trust Deed without the consent of the Founder; or

13.2.3. vary this clause 13.

13.3. The Trustees must keep any deed of amendment with the Trust Deed.

14 **Dissolution**

14.1. The Trustees may dissolve the Charity if at any time they unanimously decide that it is expedient to do so.

14.2. In the event of dissolution, any part of the Trust Fund remaining after the satisfaction of the Charity's debts and liabilities shall not be paid or distributed among the Trustees but shall be applied for Charitable Purposes with the consent of the Founder.

SCHEDULE 1

PART 1: DEFINITIONS

In this Trust Deed the following words have the following meanings:

Accumulation Period	the period of twenty-one years beginning on the date of the Trust Deed;
The Act	the Charities Act 1993;
Charitable Purposes	purposes which are charitable in accordance with the law of England and Wales;
Charity	the Caxton Foundation, being the charity constituted by the Trust Deed;
Charity Commission	the Charity Commission for England and Wales;
Corporate Trustee	a company which has the power to act as a trustee of the Charity or a Trust Corporation;
Devolved Administrations	the Scottish Executive, Welsh Ministers and the Department of Health, Social Services and Public Safety (Northern Ireland);
Eileen Trust	a charitable trust established by the Founder by a trust deed dated 29 March 1993 (with registered charity number 1028027);
Employees	any employee of, secondee to, or other individual who shall provide services under a contract of personal service to, the Trustees;
Excluded Persons	<p>1. individuals who have either:-</p> <p>(a) received blood, blood products or tissues who in consequence are suffering from Acquired Immune Deficiency Syndrome or are infected with human immunodeficiency virus and hepatitis C; or</p> <p>(b) have been so infected by such a person by reason of an intimate relationship</p> <p>and in either case who are members of the class of beneficiaries of the Macfarlane Trust or the Eileen Trust; and</p> <p>2. individuals who fall within clause 5.1.1.(i) but who received infected blood, blood products or tissues from the National Health Service in countries or places other than England including, without limitation, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man or whilst serving overseas with Her Majesty's Armed Forces;</p>

Initial Property	the sum of £100;
Land	land in any part of the world;
The Macfarlane Trust	a charitable trust established by the Founder by a trust deed dated 10 March 1988 (with registered charity number 298863);
Objects	the objects of the Charity set out in clause 5;
Person	an individual or body whether corporate or unincorporated;
Rights	intellectual property rights including copyright, design rights, patents and know how;
The Skipton Fund	Skipton Fund Limited;
Skipton Fund Agreement	an agreement between the Founder and the Skipton Fund dated 22 May 2007;
Skipton Fund Agreement (2)	an agreement between the Founder and the Skipton Fund dated 24 March 2011;
Stage 1 Payments	Payments made to Primary Beneficiaries by The Skipton Fund on behalf of the Founder in accordance with the Skipton Fund Agreement for the reasons given in Schedule 5;
Trust Corporation	a trust corporation within the meaning of the statutes referred to in section 35 of the Act as interpreted in that section;
Trust Deed	this deed including the schedules;
Trust Fund	<ul style="list-style-type: none"> a) the Initial Property; b) any additional property given to and accepted by the Trustees to be held on the terms of the Trust Deed; c) property held by the Trustees from time to time representing the above; and d) accretions in value to the above;
Trustee Act	the Trustee Act 2000; and
Trustees	the Trustees for the time being of the Charity.

SCHEDULE 1

PART 2: INTERPRETATION

In this Trust Deed any reference to:

- 1 a statute or statutory provision includes a reference to the statute or statutory provision as modified or re-enacted or both from time to time, and to any subordinate legislation made under it;
- 2 a notice to any person means notice in writing by post, fax transmission or e-mail;
- 3 the singular includes the plural and vice versa and the masculine includes the feminine and the neuter genders and vice versa;
- 4 “writing” means writing in any form and includes a fax transmission, e-mail and similar means of communication; and
- 5 a reference to the consent of any person is a reference to consent in writing.

SCHEDULE 2

QUALIFICATION FOR TRUSTEESHIP, APPOINTMENT, RETIREMENT AND REMOVAL OF TRUSTEES

- 1 There shall be at least three individual Trustees unless a Corporate Trustee is appointed. A Corporate Trustee may act as a sole Trustee or jointly with individual Trustees. There shall be no limit on the number of Trustees who may act at any one time.
- 2 No more than one individual who is also a trustee of the Macfarlane Trust and no more than one individual who is also a trustee of the Eileen Trust may serve as Trustees of the Charity at any time.
- 3 Subject to paragraph 1 of Schedule 2, the First Trustees shall serve until the following anniversaries of the date of the Trust Deed:

Charles Gore – the first anniversary

Peter Stevens – the second anniversary

Roger Evans – the third anniversary

At the date of the Trust Deed Peter Stevens is also a trustee of the Eileen Trust and Roger Evans is also a trustee of the Macfarlane Trust.
- 4 If a Corporate Trustee is appointed, its articles of association shall apply in relation to the administration of the Charity in substitution for Clause 8, relevant paragraphs of this Schedule and Schedule 4 of the Trust Deed. The restrictions applicable to individual trustees in paragraph 2 of Schedule 2 must also apply to the directors of a Corporate Trustee and must be contained in like form in its articles of association.
- 5 Trustees shall be appointed by a resolution of the Trustees after following the procedure in paragraph 6.
- 6 Details of a candidate for appointment as a Trustee which has been agreed by the Trustees shall be sent to the Founder with a request for consent to his appointment. The request for consent shall be in writing and shall be dated.

The Founder may refuse to give consent to such appointment in writing within 8 weeks of the date of the request. If the Founder has not given consent to the request, but has not refused to give consent within that period, the Trustees may by a resolution give effect to the appointment of the candidate as a Trustee.
- 7 Trustees who are individuals shall be appointed for a term of up to three years and may be re-appointed for a further term. A Trustee shall not then be eligible for re-appointment as a Trustee unless either:
 - at least 75% of the Trustees vote in favour of his re-appointment for a further term;
or
 - he has ceased to be a Trustee for a period of at least one year after the end of his last term of office.

- 8 A Person may not be a Trustee:
 - 8.1. (in the case of individuals) until he has attained the age of 18 years; and
 - 8.2. until he has signed a declaration of acceptance and willingness to act as a Trustee.
- 9 A Trustee may retire by notice to the Trustees only if, following such retirement, at least three individual Trustees or a Corporate Trustee will remain in office.
- 10 A Trustee may be removed from office by a resolution passed by all of the Trustees (other than the Trustee to be removed) at a meeting of all of the Trustees if, following the exercise of this power, at least three individual Trustees or a Corporate Trustee will remain in office.

SCHEDULE 3

POWERS OF THE TRUSTEES

- 1 To pay out of the Trust Fund and the income all costs connected with the establishment of the Charity;
- 2 To make grants and give other forms of assistance (including loans) and to make, and alter from time to time, regulations (which must be consistent with this Trust Deed) as to the criteria to be applied in making such grants, their value and frequency, the methods of ascertainment and selection of candidates in each case and such other matters whether or not related to the making of grants as the Trustees shall consider necessary;
- 3 To set aside income as a reserve against future expenditure;
- 4 To accept donations and gifts free from or subject to special trusts or conditions;
- 5 To promote, arrange, organise or conduct (either alone or with others) seminars, conferences, lectures, courses and meetings relating to any activity within or of relevance to the Objects;
- 6 To enter into and carry into effect deeds and written agreements;
- 7 To acquire, retain or protect ownership of any Rights belonging to the Charity; to grant licences and other rights of access to and use of any Rights; and to assign or otherwise dispose of any Rights;
- 8 To acquire, dispose of, deal in or exploit any research (whether or not research funded out of the income or capital of the Trust Fund), or the results of any other activity undertaken in pursuing the Objects, or any Rights arising from such research or other activity;
- 9 To purchase, lease, hire or otherwise acquire Land or any interest in Land; to develop Land, construct any buildings or refurbish any existing buildings; to sell, lease or otherwise dispose of Land or any interest in Land of any tenure by way of donation or otherwise subject to the restrictions (if any) imposed by the Act;
- 10 To purchase, lease, hire or otherwise acquire, and to sell, lease, lend or otherwise dispose of, equipment, goods and other items of personal property, in each case upon such terms as the Trustees shall determine;
- 11 To carry out research in furtherance of the Objects;
- 12 Subject to the restrictions imposed by the Act, to borrow money and grant any security over the Trust Fund;
- 13 To give undertakings, guarantees (whether gratuitous or not), warranties and indemnities;
- 14 To provide advice on such terms as the Trustees consider appropriate;
- 15 To engage Employees as the Trustees shall consider desirable; to pay and provide benefits to Employees (not being Trustees) and to enter into service agreements with them on such terms as the Trustees may consider desirable, including power to

terminate any contract of employment; and to enter into and defray the cost or any part of the cost of any pension or superannuation scheme as the Trustees shall think proper for the benefit of Employees;

- 16 To insure the property of the Charity against such risks as the Trustees shall consider prudent and to take out such other insurance policies from time to time as the Trustees shall consider necessary or desirable to protect the Trust Fund and the income;
- 17 To appoint a Person as nominee or custodian of any property of the Charity on such terms as the Trustees think fit and to take such steps as are necessary to secure that any property of the Charity is vested in a Person so appointed, or that the interests of the Charity in the property are otherwise properly protected through the arrangements with the nominee or custodian. The Trustees may review appointments made under this paragraph in such manner as they see fit;
- 18 To raise funds for the Charity in such manner as may be expedient provided that neither the Trust Fund or the income may be applied in or towards any substantial permanent trading activity for the purpose of raising funds;
- 19 To carry out any trade insofar as the trade is temporary and ancillary to the pursuit of the Objects;
- 20 To incorporate the Charity as a private company limited by guarantee and not having a share capital (or any other corporate form suitable for charities) and to pay out of the Trust Fund and the income all costs of forming and registering such company.
- 21 To procure, publish and distribute material in any form that may be deemed desirable for the promotion of the Objects or for informing the public about the work of the Charity;
- 22 To establish and support charities formed for the Objects or any of them;
- 23 To operate bank accounts in the name of the Charity;
- 24 To co-operate with other charities, Persons or statutory authorities and to exchange information and advice with them;
- 25 To merge with another charity formed for purposes the same as or similar to the Objects of the Charity;
- 26 To apply the income of the Trust Fund towards any purposes which:
 - 26.1. promote the interests and protect the reputation of the Charity;
 - 26.2. are for the benefit of the Charity; and/or
 - 26.3. further or are reasonably incidental to the furtherance of the Objects.

SCHEDULE 4

ADMINISTRATION OF CHARITY

- 1 The Trustees shall hold at least three meetings in each year.
- 2 Except where otherwise expressly provided in the Trust Deed a quorum at any meeting of the Trustees shall be two Trustees or the nearest whole number to one third of the number of the Trustees for the time being, whichever is the greater.
- 3 Except where otherwise expressly provided in the Trust Deed, every matter shall be determined by a simple majority vote of the Trustees present and voting on the question.
- 4 A resolution in writing in one or more documents signed by all of the Trustees or with which each of the Trustees concurs by means of electronic mail, shall be as valid and effectual as if it had been passed at a meeting of the Trustees.
- 5 Any two Trustees may sign a document on behalf of the Trustees to give effect to a decision made by the Trustees.
- 6 When a new Trustee is appointed, the Trustees shall ensure so far as reasonably practicable that any Land belonging to the Charity which is not vested or about to be vested in the Official Custodian for Charities or a nominee is effectively vested in, or under the control of the persons who are the Trustees following such appointment.
- 7 The Trustees shall keep written records of all their decisions for a reasonable period of time.
- 8 Any bank account in which any part of the Trust Fund or its income is held or deposited shall be held in the name of the Charity. The Trustees may make such arrangements as they think fit for the operation of such accounts, including but not limited to arrangements as to the number of authorised signatories required to operate the bank accounts and as to any maximum sum which may be withdrawn at any one time on such signatures.
- 9 Trustees and members of any committee may participate in or hold a meeting of the Trustees or any committee by means of telephone conference or similar communications equipment so that all persons participating in the meeting can hear each other. Participation by such means shall be deemed to constitute presence in person.
- 10 The Trustees may from time to time make regulations for the management of the charity and for the conduct of their business, including:
 - 10.1. the calling of meetings;
 - 10.2. methods of making decisions in order to deal with cases of urgency when a meeting is impractical;
 - 10.3. the election of a chairman;
 - 10.4. the custody of documents; and
 - 10.5. the establishment and operational function of committees.

SCHEDULE 5

BACKGROUND TO THE ESTABLISHMENT OF THE CAXTON FOUNDATION

- 1 On 29 August 2003 The Secretary of State for Health and Health Ministers of the Devolved Administrations simultaneously announced that a United Kingdom wide scheme would be established to make payments to individuals who had been treated in the United Kingdom under the National Health Service by way of the receipt of blood, blood products and tissues and as a result of that treatment had contracted the hepatitis C virus.
- 2 The Founder with the agreement of the Devolved Administrations appointed the Skipton Fund to act on behalf of the Department of Health to implement and administer the scheme pursuant to The Skipton Fund Agreement.
- 3 Under the Skipton Fund Agreement the Skipton Fund is required, amongst other things, to make a Stage 1 Payment to any person who, on the balance of probabilities, has been infected with the hepatitis C virus and has contracted a chronic infection and also to persons who they have infected. The Directors of the Skipton Fund are authorised to determine whether an individual is entitled to a Stage 1 Payment, such determination being subject to confirmation in appropriate cases following an appeal process established by the Founder and the Directors. Persons who receive Stage 1 Payments are called Primary Beneficiaries.
- 4 Following a review of the scheme the government of the United Kingdom decided to create a new scheme as provided in the Skipton Fund Agreement (2) so that, amongst other things, the estates of individuals who were infected in England with hepatitis C and died before 29 August 2003 will receive a payment equivalent to the amount of a Stage 1 Payment.
- 5 The Secretary of State has determined to make additional provision by establishing the Charity for Primary Beneficiaries and other persons as set out in Clause 5 of the Trust Deed. At the date of the Trust Deed Primary Beneficiaries are individuals who were treated by the National Health Service in England. Persons who were treated in the jurisdiction of one of the Devolved Administrations or elsewhere (including those who were treated prior to 29 August 2003) will not be Primary Beneficiaries. However, the Trustees may, with the consent of the Founder, exercise their power to add to the class of Primary Beneficiaries as provided in clause 5 of the Trust Deed and/or alter the definition of "Excluded Persons" in order to add persons to the class of Primary Beneficiaries who were similarly infected with hepatitis C as a result of National Health Service treatment in the jurisdiction of one or more of the Devolved Administrations. At the date of the Trust Deed the Founder is also considering the position of members of the Armed Forces and individuals in other jurisdictions who are currently excluded from benefit.
- 6 The Skipton Fund has made Stage 1 Payments, and at the date of the Trust Deed continues to make Stage 1 Payments pursuant to the Skipton Fund Agreement on behalf of the Founder in accordance with the Scheme.
- 7 Under the Skipton Fund Agreement (2) and at the request of the Trustees, the Skipton Fund is (subject to compliance with data protection laws) required to notify the Trustees of the identity of the Primary Beneficiaries.

IN WITNESS whereof the parties to the Trust Deed have hereunto set their respective hands the day and year first before written.

SIGNED and DELIVERED as a deed JONATHAN STOPES-ROE)
by a member of the Senior Civil Service)
for **THE SECRETARY OF STATE FOR HEALTH**)
in the presence of:)

Signature of witness

Name NANNERL HERRIOTT

Address DH - 5TH FLOOR WELLINGTON HOUSE
133 - 155 WATERLOO ROAD, LONDON SE1 8UG

Occupation CIVIL SERVANT

SIGNED and DELIVERED as a deed by **PETER STEVENS**)
in the presence of:)

Signature of witness

Name CATHERINE WILLIAMS

Address 13 BELVEDRE AVENUE, LONDON SW19 7PP

Occupation CHARTERED ACCOUNTANT

SIGNED and DELIVERED as a deed by **ROGER EVANS**)
in the presence of:)

Signature of witness

Name K ELLIOTT

Address 19 PEPYS ROAD, LONDON, SW20 8HP

Occupation CHARTERED ACCOUNTANT

SIGNED and **DELIVERED** as a deed by **CHARLES GORE**)
in the presence of:)

Signature of witness

Name SUSAN MCRAE

Address 21 BERESFORD AVENUE, TWICKENHAM TW1 2PY

Occupation COMPANY DIRECTOR