

DATE

2016

(1) The trustees of the Sheffield Hospitals Charitable Trust and Related Charities (registered charity number 1059043)

(2) Sheffield Teaching Hospitals NHS Foundation Trust

(3) Sheffield Health and Social Care NHS Foundation Trust

(4) Sheffield Children's NHS Foundation Trust

(5) Sheffield Hospitals Charity (registered charity number [])

Deed

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PARTIES

- (1) **Phillip Taylor, Hilary Shenton, Michael Collins, Jeremy Wight, Sarah Anderson, Charlotte Turnbull, John O'Kane and Pam Stirling all care** of Fulwood House, 5 Old Fulwood Road, Sheffield S10 3TG, (together 'the **Trustees**') in their capacity as trustees of the Sheffield Hospitals Charitable Trust (registered charity number 1059043) (the '**Existing Charity**');
- (2) **Sheffield Teaching Hospitals NHS Foundation Trust** of 8 Beech Hill Road, Sheffield, South Yorkshire S10 2SB, **Sheffield Health and Social Care NHS Foundation Trust** of Fulwood House, 5 Old Fulwood Road, Sheffield S10 3TG and **Sheffield Children's NHS Foundation Trust** of the Mount, Glossop Road, Sheffield S10 3FL (together the '**Foundation Trusts**'); and
- (3) **Sheffield Hospitals Charity**, a company limited by guarantee (company number [] and registered charity number []) whose registered office is at [] (the '**New Charity**').

RECITALS

- (A) This Deed is supplemental to the Government Response dated 14 March 2014 which outlined the process by which the trustees of an NHS Charity may resolve to transfer the undertaking of an NHS Charity to an Independent Charity (an '**NHS Transfer**').
- (B) The Government Response provided that an NHS Transfer would be conditional upon the NHS Charity first procuring:
 - (i) the consent of its associated NHS Body, being in this case, the Foundation Trusts (the '**Consent**'); and
 - (ii) a commitment from the NHS Body to transfer from the date of the NHS Transfer any legacies, donations and gifts which the NHS Body may receive to the Independent Charity (the '**Commitment**').
- (C) The New Charity is an Independent Charity for the purposes of the Government Response.
- (D) The Charity Commission's Register of Charities currently indicates that the Existing Charity is linked by Charity Commission direction to 14 linked charities, details of which are listed in Schedule 1 (the '**Linked Charities**').
- (E) The charitable objects of the New Charity encompass the statutory functions prescribed in section 51 of the NHS Act 2006 and the current objects of the Existing Charity and the Linked Charities.
- (F) In accordance with the process set out in the Government Response, the Trustees wish to procure the Consent and Commitment of the Foundation Trusts to enable the Trustees to transfer the Existing Charity and Linked Charities to the New Charity, and the Foundation Trusts have indicated that they are willing to do so on the basis set out in this Deed.

OPERATIVE PROVISIONS

1. **Definitions**

In this Deed

'Articles of Association' means the articles of association from time to time of the New Charity;

'Assignment' means the assignment or other transfer (however effected and whether by the Trustees or by Charity Commission order) of all of the Trustees' rights, title and interest in the Charitable Fund to the New

Charity;

'Charitable Fund'	means all property including intellectual property, title, rights and other assets of the Existing Charity and the Linked Charities;
'Charity Commission'	means the Charity Commission for England and Wales;
'Excluded Charities'	means those charities listed in Schedule 2, being charities which have a fundraising presence on the site of one or more of the Foundation Trusts;
'Excluded Gifts'	means: <ol style="list-style-type: none">1. any direct charitable contribution received by the Foundation Trusts:<ol style="list-style-type: none">a. on behalf of, or in respect of the activities of, another charity; orb. from a third party for an identified aspect of the Foundation Trust's operations whether by way of grant or contract; and2. any monies received by the Foundation Trusts from the Excluded Charities;
	<p>If there shall be any question over whether a payment is an Excluded Gift, the New Charity and Foundation Trust or Trust in question may determine by agreement between them the correct characterisation of such payment, taking appropriate legal advice as necessary. In default of agreement by the Board of the New Charity, acting reasonably, that a gift constitutes an Excluded Gift, it shall be regarded as a Gift;</p>
'Fund Objects'	means the charitable objects of the Existing Charity and the Linked Charities;
'Gift'	means any bequests (including legacies and devises), donations and gifts received in future by the Foundation Trusts to provide or improve any services or any facilities or accommodation which is or are, or will be, provided as part of the Health Service, or which assist the Foundation Trusts in connection with their functions, save for the Excluded Gifts; and, for the avoidance of doubt, includes any assets or other rights or entitlement due or payable to the Foundation Trusts by virtue of section 218 NHS Act 2006;
'Government Response'	means the Government response to the consultation concerning the regulation and governance of NHS charities published on 14 March 2014;
'Health Service'	means the health service as defined in the NHS Act 2006, being the health service the Secretary of State for Health is under a duty to promote;
'Hospital'	means hospital as defined in the NHS Act 2006;
'Independent Charity'	means a charity which

- (a) is not linked to an NHS body and operates outside the NHS legislative framework; and
- (b) is subject to the exclusive supervisory, advisory and permission regulatory powers of the Charity Commission;

'NHS Act 2006' means the National Health Service Act 2006;

'NHS Body' has the same meaning as provided by the NHS Act 2006 and includes the Foundation Trusts; and

'NHS Charity' means a charity which is linked to an NHS Body and derives its remit from NHS legislation.

- 1.1 Unless the context otherwise requires the singular includes the plural and the masculine includes the feminine and vice versa.
- 1.2 Clause headings are for reference only and shall not be taken into consideration in their interpretation.
- 1.3 For the avoidance of doubt, references to the Foundation Trusts includes any of their successors, including in particular:
 - (a) an NHS foundation trust established pursuant to an application made by any or all of the Foundation Trusts under Part 2 of the NHS Act 2006; or
 - (b) any NHS foundation trust to which the assets and liabilities of any or all of the Foundation Trusts are transferred under Part 2 of the NHS Act 2006.

2. **Consent**

Provided the New Charity shall hold the Charitable Fund upon trust to apply the income and capital only in furtherance of the Fund Objects, the Foundation Trusts hereby consent to the Assignment.

3. **Commitment to transfer Gifts**

- 3.1 From the date of the Assignment and in exercise of the powers conferred on them by sections 47 and 222 of the NHS Act 2006 and of all other relevant powers, each of the Foundation Trusts shall, if and insofar as they are legally entitled so to do:
 - (a) promptly (and in any event within one month of the date of receipt by the Foundation Trust in question) transfer any Gift to the New Charity subject to any restrictions on the purpose for which such a Gift may be applied; and
 - (b) shall hold any Gift in trust and on a restricted basis for the New Charity until it is transferred or paid.

4. **Assignment and revocation**

- 4.1 The parties agree that the Assignment shall be completed as soon as reasonably practicable, on a date to be agreed by them with the Secretary of State for Health and the Charity Commission.
- 4.2 The Trustees shall liaise with the Secretary of State for Health to procure at the date of completion of the Assignment a revocation of the Secretary of State's order relating to their appointment under section 51 of the NHS Act 2006 which will have the effect of terminating their appointment as trustees of the Existing Charity and the Linked Charities.

5. **Independence of New Charity**

Each of the Foundation Trusts acknowledges and agrees that, following the Assignment, neither it nor the other Foundation Trusts will have any legal or other right in relation to either the New Charity or the Charitable Fund, including its operations or the application of charitable funds, save as provided for in the Articles of Association of the New Charity.

6. **Variation**

No variation of this Deed shall be effective unless it is in writing and signed by the relevant parties (which, following the anticipated revocation, referred to in clause 4.2 above, shall mean the Foundation Trusts and the New Charity and, where the context so admits, would enable variation of an obligation as between one of the Foundation Trusts and the New Charity, without, necessarily, the consent of the others).

7. **Costs**

Except as otherwise expressly agreed by the parties, the parties shall each bear their own costs and expenses relating to the negotiation, preparation, execution and performance of this Deed.

8. **Status**

Nothing in this Deed is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party as the agent of the other party, nor authorise either of the parties to make or enter into any commitments for or on behalf of the other party.

9. **Governing law and jurisdiction**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales unless and to the extent that the parties jointly agree to pursue an alternative dispute resolution process.

10. **Counterparts**

This Deed may be executed in any number of counterparts, each of which when executed and delivered constitutes an original of this Deed but all of the counterparts together shall constitute the same Deed.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Signed as a deed and delivered by _____ and _____)
on behalf of **Sheffield Hospitals Charity** _____)

Trustee

Trustee

Executed as a deed by affixing the common)
seal of **Sheffield Teaching NHS**)
Foundation Trust in the presence of:)

.....

Authorised Signatory

.....

Authorised Signatory

Executed as a deed by affixing the common)
seal of **Sheffield Health and Social Care**)
NHS Foundation Trust in the presence of:)

.....

Authorised Signatory

.....

Authorised Signatory

Executed as a deed by affixing the common)
seal of **Sheffield Children's NHS**)
Foundation Trust in the presence of:)

.....

Authorised Signatory

.....

Authorised Signatory

*[Execution blocks for each of the trustees of
Sheffield Hospitals Charitable Trust and
Related Charities to be included].*

Schedule 1

List of linked charities of Sheffield Hospitals Charitable Trust and related charities

Number	Name	Charity Number
1.	Sheffield Hospitals Charitable Trust	1059043-1
2.	Sheffield Teaching Hospitals Charity	1059043-2
3.	Sheffield Health and Social Care NHS Foundation Trust Charity	1059043-3
4.	Sheffield Children's National Health Service Trust Charity	1059043-4
5.	George Blomfield Fund	1059043-7
6.	Ryegate Charitable Fund	1059043-8
7.	Head Injuries Unit Charity	1059043-9
8.	Cancer Research Charity	1059043-11
9.	IDA Siddall Fund	1059043-14
10.	Ellen Webster Legacy	1059043-18
11.	Thomas Blow Patients' Amenities Fund	1059043-19
12.	J Sinclair White Trust	1059043-20
13.	Bequest of the Late Miss Jean Margaret Woodhead	1059043-28
14.	Sheffield Kidney Research Foundation	1059043-29

Schedule 2

List of the Excluded Charities

Number	Name	Charity Number
1.	The Children's Hospital Charity	505002
2.	Weston Park Hospital Cancer Charity	1039885
3.	Neurocare (1997) Charitable Trust	1067575