Charitable Trusts  Model Trust Deed (GD2)

A trust is likely to be appropriate where the Charity will not have a membership and is unlikely to employ a significant number of staff or carry on any kind of business.

You may find it helpful to begin by reading our publications Registering as a Charity (CC21) and Choosing and Preparing a Governing Document (CC22) The checklist of questions referred to in Registering as a Charity will help you to decide how best to set up the Charity Choosing and Preparing a Governing Document gives advice on the practicalities of completing the Charity’s governing document and on the different provisions which may be needed. If you then propose to use the model declaration of trust please read it through carefully including the guidance notes. The Application to register a charity pack contains guidance and forms (CC5a, CC5b and CC5c) to enable you to apply to us for registration of the Charity.

The model provides some alternative clauses. Which clauses you choose will depend on how you wish the Charity to be structured and to operate. Although the model is intended to be sufficiently flexible to deal with most eventualities you may want to include special or complex provisions which are not contained in it. In that event you should consider asking a solicitor to help you. When you have completed this document please check that you have filled in all the gaps, deleted any clauses which are not appropriate and numbered all the remaining clauses in sequence.

The next steps after completing the model Trust Deed will be to:

execute the deed. This involves signing and dating it in the presence of a witness. The notes give more detail about this,

check whether the deed needs to be stamped by HM Revenue and Customs (see below),

make one copy of the deed (endorsing each with a certificate to the effect that it is a true copy of the original) – we will need copies of the stamped deed if it requires stamping, and

send one copy of the (stamped) deed along with the completed CC5a and CC5c to the Charity Commission at the address given below.

Charity Commission Direct
PO Box 1227
Liverpool
L69 3UG

General Enquiries 0845 300 0218
Website www.charitycommission.gov.uk
Does the deed need to be stamped?

For deeds executed after 1 December 2003 it will depend on the assets being held on trust. If the deed declares trust over stocks and shares it should be sent to HM Revenue and Customs Edinburgh Stamp Office in case it attracts stamp duty.

An interest in land (ie the freehold or leasehold) it does not require stamping – a separate certification procedure is now in place for Stamp Duty Land Tax.

Cash it will not require stamping.

Deeds executed before 1 December 2003 will require stamping.

Further information can be found on the HM Revenue and Customs website (www.hmrc.gov.uk) or by ringing the Stamp Duty helpline 0845 603 0135.
THIS DECLARATION OF TRUST IS MADE

the 7th day of March 2008 by
MARTIN RUSSELL BROMLEY, 6 DUDLEY
CLOSE, NORTH MARSTON, BUCKS MK18 3RA
JULIE GEORGEANA CRESSWELL,
THE OLD BAKERY, 22 HIGH STREET, NORTH
MARSTON, BUCKS MK18 3PD
MANDY
PUTMAN, BELENG HSE, 33A GREEN END,
GRANBURY, BUCKS, MK18 3NT

( the first Trustees”)

The first Trustees hold the sum of
£1

on the trusts declared in this deed and they expect that more money or
assets will be acquired by them on the same trusts

NOW THIS DEED WITNESSES AS FOLLOWS

1 Administration

The charitable trust created by this deed (“the Charity”) shall be
administered by the Trustees (in this deed, the expression “the
Trustees” refers to the individuals who are the Trustees of the Charity at
any given time. It includes the first Trustees and their successors. The
word “Trustee” is used to refer to any one of the Trustees)

2 Name

The Charity shall be called

CLINICAL HUMAN FACTORS GROUP

but the Trustees may by resolution change the Charity’s name from
time to time. Before doing so they must obtain the written approval of
the Charity Commission for England and Wales (“the Commission”) for
the new name.
3 Application of income

The Trustees must apply the income of the Charity in furthering the following objects (the objects) (*Cambo* 2007):

- The *Cufa* will work for the advancement of education among healthcare staff (clinicians, managers, policy makers and allied hospital staff) of clinical human factors so as to directly preserve and protect public health

(*Clinical human factors are the non-technical skills and human attributes and failings that impact on technical performance in a clinician*)

4 Application of capital

At their discretion the Trustees may spend all or part of the capital of the Charity in furthering the objects...
Notes

Clause 5 Incude any of the powers from the following sub clauses which you consider necessary numbered in sequence Some powers are implicit in a Charity's objects (for example if the object is to provide a school the Trustees have an implicit power to acquire premises) Other powers are given by statute often only if specific conditions are met For example the Trustee Act 2000 gives Trustees power to acquire and dispose of land to borrow money in many circumstances to delegate much of the running of the Charity and to invest However there are some things that can be done only if the Charity's governing document provides express power to do them It is sensible to set out all the powers that the Charity is likely to need for the avoidance of doubt and to remind Trustees of the conditions that have to be met when they exercise these powers

Clause 5(i) This sub clause provides a general power to raise funds through a wide variety of methods including inviting and receiving donations and legacies The only restriction here is that it does not allow the Charity to engage in substantial permanent trading for the purpose of raising funds (Although trading on a small scale is allowed HM Revenue and Customs provides guidance on the tax treatment of different sorts of trading) If your Charity is likely to raise funds from trading our booklet Charities and Trading (CC35) provides detailed advice This subclause does not prevent trading in order to carry out the Charity's object for example an educational Charity can charge fees for the educational services it provides

Clause 5(ii) This power is helpful if the Trustees wish to acquire property either for use as office premises or functionally (such as a playground or school site) Our booklet Acquiring Land (CC33) contains further guidance on the issue When the Trustees acquire land for the Charity the ownership of the land cannot rest with the Charity directly as it has no separate legal identity The Trustees will therefore need to ensure that title to the Charity's land is held in the name of individuals or a company in trust on behalf of the Charity Typically this can be some or all of the Trustees the Official Custodian for Charities (see The Official Custodian for Charities Land Holding Service CC13) or a nominee see clause 6 notes

Clause 5(iii) This power enables the Charity to dispose of its property Sections 36 and 37 of the Charities Act 1993 as amended by the Charities Act 2006 apply to most charities and require Trustees to comply with certain conditions to ensure that they dispose of the property for the best price reasonably obtainable Our booklet Disposing of Charity Land (CC28) provides more information about this

5 Powers

In addition to any other powers they have, the Trustees may exercise any of the following powers in order to further the objects (but not for any other purpose)

(i) to raise funds In exercising this power the Trustees must not undertake any substantial permanent trading activity and must comply with any relevant statutory regulations

(ii) to buy, take on lease or in exchange hire or otherwise acquire property and to maintain and equip it for use,

(iii) to sell, lease or otherwise dispose of all or any part of the property belonging to the Charity In exercising this power the Trustees must comply as appropriate with sections 36 and 37 of the Charities Act 1993 as amended by the Charities Act 2006,

(iv) to borrow money and to charge the whole or any part of the property belonging to the Charity as security for repayment of the money borrowed The Trustees must comply as appropriate with sections 38 and 39 of the Charities Act 1993 as amended by the Charities Act 2006 if they wish to mortgage land owned by the Charity

(v) to co operate with other charities voluntary bodies and statutory authorities and to exchange information and advice with them,

(vi) to establish or support any charitable trusts associations or institutions formed for any of the charitable purposes included in the objects,

(vii) to acquire, merge with or enter into any partnership or joint venture arrangement with any other Charity formed for any of the objects,

(viii) to create such advisory committees as the Trustees think fit

(ix) to employ and remunerate such staff as are necessary for carrying out the work of the Charity,

(x) to do any other lawful thing that is necessary or desirable for the achievement of the objects

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Clause 5(iv) This provides the Trustees with an explicit power to borrow it also makes clear that if this power to borrow involves securing the loan on assets of the Charity the Trustees must comply with the requirements of the Charities Act 1993 as amended by the Charities Act 2006. Briefly the Act requires that the Trustees take advice and provide certain certificates/statements when they are borrowing money by way of mortgage. Our Operational Guidance OG22 on our website provides detailed information on this.

Clause 5(ix) This power cannot be used to employ Trustees as staff. See clause 25.

Clause 6 The Trustees will have the wide powers conferred by the Trustee Act 2000 whether or not they are expressly included in this document. The statutory power of investment requires the Trustees to take advice and to consider the need to invest in a range of different investments. Our booklet Investment of Charitable Funds Basic Principles (CC14) provides more information about Charity investments. The powers to employ agents, nominees and custodians is of particular use where a Charity wishes to use an investment manager where it owns land and needs a nominee to hold land on its behalf. See note to clause 5(i).

Clause 7 The Trustees are responsible for supervising the activities of their delegates.

6 Statutory powers

Nothing in this deed restricts or excludes the exercise by the Trustees of the powers given by the Trustee Act 2000 as regards investment, the acquisition or disposal of land and the employment of agents, nominees and custodians.

7 Delegation

(i) In addition to their statutory powers, the Trustees may delegate any of their powers or functions to a committee of two or more Trustees. A committee must act in accordance with any directions given by the Trustees. It must report its decisions and activities fully and promptly to the Trustees. It must not incur expenditure on behalf of the Charity except in accordance with a budget previously agreed by the Trustees.

(ii) The Trustees must exercise their powers jointly at properly convened meetings except where they have:

(a) Delegated the exercise of the powers (either under this provision or under any statutory provision) or

(b) Made some other arrangements, by regulations under clause 21.

(iii) The Trustees must consider from time to time whether the powers or functions which they have delegated should continue to be delegated.

8 Duty of care and extent of liability

When exercising any power (whether given to them by this deed or by statute or by any rule of law) in administering or managing the Charity each of the Trustees must use the level of care and skill that is reasonable in the circumstances taking into account any special knowledge or experience that he or she has or claims to have ("the duty of care").

No Trustee and no one exercising powers or responsibilities that have been delegated by the Trustees shall be liable for any act or failure to act unless in acting or in failing to act, he or she has failed to discharge the duty of care.

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9 Appointment of Trustees

(i) There must be at least [three] Trustees. Apart from the first Trustees every Trustee must be appointed [for a term of 3 years] by a resolution of the Trustees passed at a special meeting called under clause 15 of this deed.

(ii) In selecting individuals for appointment as Trustees, the Trustees must have regard to the skills, knowledge and experience needed for the effective administration of the Charity.

(iii) The Trustees must keep a record of the name and address and the dates of appointment, re-appointment and retirement of each Trustee.

(iv) The Trustees must make available to each new Trustee, on his or her first appointment,

(a) a copy of this deed and any amendments made to it,

(b) a copy of the Charity’s latest report and statement of accounts.

(v) The first Trustees shall hold office for the following periods respectively:

10 Eligibility for trusteeship

(i) No one shall be appointed as a Trustee

(a) if he or she is under the age of 18 years, or

(b) if he or she would at once be disqualified from office under the provisions of clause [11] of this deed.

(ii) No one shall be entitled to act as a Trustee whether on appointment or on any re-appointment as Trustee until he or she has expressly acknowledged, in whatever way the Trustees decide, his or her acceptance of the office of Trustee of the Charity.
11 Termination of trusteeship

A Trustee shall cease to hold office if he or she

(i) is disqualified for acting as a Trustee by virtue of section 72 of the Charities Act 1993 or any statutory re enactment or modification of that provision,

(ii) becomes incapable by reason of mental disorder illness or injury of managing his or her own affairs,

(iii) 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, or

(iv) notifies to the Trustees a wish to resign (but only if enough Trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings)

12 Vacancies

If a vacancy occurs the Trustees must note the fact in the minutes of their next meeting Any eligible Trustee may be re appointed So long as there are fewer than three Trustees, none of the powers or discretions conferred by this deed or by law on the Trustees shall be exercisable by the remaining Trustees except the power to appoint new Trustees

13 Ordinary meetings

The Trustees must hold at least two ordinary meetings each year One such meeting in each year must involve the physical presence of those Trustees who attend the meeting Other meetings may take such form including videoconferencing as the Trustees decide provided that the form chosen enables the Trustees both to see and to hear each other

14 Calling meetings

The Trustees must arrange at each of their meetings the date, time and place of their next meeting, unless such arrangements have already been made Ordinary meetings may also be called at any time by the person elected to chair meetings of the Trustees or by any two Trustees in that case not less than ten days' clear notice must be given to the other Trustees The first meeting of the Trustees must be called by

Martin Russell Bromley

or, if no meeting has been called within three months after the date of this deed by any two of the Trustees
15 Special meetings

A special meeting may be called at any time by the person elected to chair meetings of the Trustees or by any two Trustees. Not less than four days’ clear notice must be given to the other Trustees of the matters to be discussed at the meeting. However, if those matters include the appointment of a Trustee or a proposal to amend any of the trusts of this deed, not less than 21 days’ notice must be given. A special meeting may be called to take place immediately after or before an ordinary meeting.

16 Chairing of meetings

The Trustees at their first ordinary meeting in each year must elect one of their number to chair their meetings. The person elected shall always be eligible for re-election. If that person is not present within ten minutes after the time appointed for holding a meeting, or if no one has been elected, or if the person elected has ceased to be a Trustee, the Trustees present must choose one of their number to chair the meeting.

The person elected to chair meetings of the Trustees shall have no other additional functions or powers except those conferred by this deed or delegated to him or her by the Trustees.

17 Quorum

(i) Subject to the following provision of this clause, no business shall be conducted at a meeting of the Trustees unless at least one third of the total number of Trustees at the time or two Trustees (whichever is the greater) are present throughout the meeting.

(ii) The Trustees may make regulations specifying different quorums for meetings dealing with different types of business.

18 Voting

At meetings decisions must be made by a majority of the Trustees present and voting on the question. The person chairing the meeting shall have a casting vote whether or not he or she has voted previously on the same question but no Trustee in any other circumstances shall have more than one vote.

19 Conflict of interest

A Trustee must absent himself or herself from any discussions of the Trustees in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the Charity and any personal interest (including but not limited to any personal financial interest).
20 Minutes

The Trustees must keep minutes in books kept for the purpose or by such other means as the Trustees decide of the proceedings at their meetings. In the minutes the Trustees must record their decisions and where appropriate the reasons for those decisions. The Trustees must approve the minutes in accordance with the procedures, laid down in regulations made under clause 21 of this deed.

21 General power to make regulations

The Trustees may from time to time make regulations for the management of the Charity and for the conduct of their business, including:

(i) the calling of meetings,
(ii) methods of making decisions in order to deal with cases or urgency when a meeting is impractical,
(iii) the deposit of money at a bank,
(iv) the custody of documents and
(v) the keeping and authenticating of records. (If regulations made under this clause permit records of the Charity to be kept in electronic form and requires a Trustee to sign the record, the regulations must specify a method of recording the signature that enables it to be properly authenticated.)

The Trustees must not make regulations which are inconsistent with anything in this deed.

22 Accounts, Annual Report and Annual Return

The Trustees must comply with their obligations under the Charities Act 1993 as amended by the Charities Act 2006 with regard to:

(i) the keeping of accounting records for the Charity,
(ii) the preparation of annual statements of account for the Charity,
(iii) the auditing or independent examination of the statements of account of the Charity,
(iv) the transmission of the statements of account of the Charity to the Commission,
(v) the preparation of an annual report and its transmission to the Commission,
(vi) the preparation of an annual return and its transmission to the Commission.
23 Registered particulars

The Trustees must notify the Commission promptly of any changes to the Charity's entry on the Central Register of Charities.

24 Bank account

Any bank or building society account in which any of the funds of the Charity are deposited must be operated by the Trustees and held in the name of the Charity. Unless the regulations of the Trustees make other provision, all cheques and orders for the payment of money from such an account shall be signed by at least two Trustees.

25 Trustees not to benefit financially from their Trusteeship

Option 1

(i) Unless expressly authorised in writing in advance by the Commission to do so, no Trustee may buy goods or services from the Charity, or sell goods or services to the Charity or receive remuneration, or receive any other financial benefit from the Charity or from any trading company owned by the Charity.

Option 2

(i) (a) Subject to paragraph (b) of sub clause (i) of this clause, no Trustee may receive remuneration for any service provided to the Charity and no Trustee may acquire any interest in property belonging to the Charity or be interested in any contract entered into by the Trustee otherwise than as a Trustee of the Charity, unless expressly authorised in writing in advance by the Commission to do so.

(b) Any Trustee who is a solicitor, accountant or engaged in any profession may charge and be paid all the usual professional charges for business done by him or her or his or her firm when instructed by the other Trustees to act in a professional capacity on behalf of the Charity. However, at no time may a majority of the Trustees benefit under this provision and a Trustee must withdraw from any meeting of the Trustees at which his or her own instruction or remuneration or performance, or that of his or her firm, is under discussion.

Option 3

(i) (a) No Trustee may buy goods or services from the Charity or sell goods or services to the Charity or receive remuneration or receive any other financial benefit from the Charity or from any trading company owned by the Charity, except in accordance with this deed or with the prior written approval of the Commission and any conditions it prescribes.
(b) The Trustees may employ or enter into a contract for the supply of goods or services with one of their number. Before doing so, the Trustees must be satisfied that it is in the best interests of the Charity to employ or contract with that Trustee rather than someone who has no connection with the Charity. In reaching that decision, they must balance the advantage of employing a Trustee against the disadvantages of doing so (especially the loss of the Trustee’s services as a result of dealing with the Trustee’s conflict of interest as required by the next sub clause). The remuneration or other sums paid to the Trustee must not exceed an amount that is reasonable in all the circumstances. The Trustees must record the reason for their decision in their minute book.

(c) A Trustee must be absent from the part of any meeting at which his or her employment or remuneration, or any matter concerning the contract are discussed. He or she must also be absent from the part of any meeting at which his or her performance in that employment or his or her performance of the contract is considered. He or she must not vote on any matter relating to his employment or the contract and must not be counted when calculating whether a quorum of Trustees is present at the meeting.

(d) At no time may a majority of the Trustees benefit under this provision.

(ii) This clause applies to a firm or company of which a Trustee is

(a) a partner,

(b) an employee,

(c) a consultant

(d) a director, or

(e) a shareholder unless the shares of the company are listed on a recognised stock exchange and the Trustee holds less than 1% of the issued capital, as it applies to a Trustee personally.

(iii) In this clause

(a) ‘Charity’ shall include any company in which the Charity holds more than 50% of the shares, or controls more than 50% of the voting rights attached to the shares, or has the right to appoint one or more directors to the Board of the company.

(b) ‘Trustee’ shall include any child, parent, grandchild, grandparent, brother, sister, or spouse of the Trustee or any person living with the Trustee as his or her partner.
Notes

Clause 26 These are the minimum requirements and Trustees should consider if any other forms of insurance are needed.

26 Repair and insurance

The Trustees must keep in repair and insure to their full value against fire and other usual risks all the buildings of the Charitable Trust (except those buildings that are required to be kept in repair and insured by a tenant). They must also insure suitably in respect of public liability and employer’s liability.

27 Expenses

The Trustees may use the Charity’s funds to meet any necessary and reasonable expenses which they incur in the course of carrying out their responsibilities as Trustees of the Charity.

28 Amendment of Trust Deed

(i) The Trustees may amend the provisions of this deed provided that

(a) no amendment may be made to clause 3 (Application of Income), clause 8 (Duty of care), clause 25 (Trustees not to benefit financially from their trusteeship), clause 29 (Dissolution) or this clause without the prior consent in writing of the Commission, and

(b) no amendment may be made whose effect is that the Charity ceases to be a Charity at law.

(ii) Any amendment of this deed must be made by deed following a decision of the Trustees made at a special meeting.

(iii) The Trustees must send to the Commission a certified copy of the deed effecting any amendment made under this clause within three months of it being made.

29 Dissolution

The Trustees may dissolve the Charity if they decide that it is necessary or desirable to do so. To be effective a proposal to dissolve the Charity must be passed at a special meeting by a two thirds majority of the Trustees. Any assets of the Charity that are left after the Charity’s debts have been paid (“the net assets”) must be given

(i) to another Charity (or other Charities) with objects that are no wider than the Charity’s own, for the general purposes of the recipient Charity (or Charities), or

(ii) to any Charity for use for particular purposes which fall within the Charity’s objects.

The Commission must be notified promptly that the Charity has been dissolved and if the Trustees were obliged to send the Charity’s accounts to the Commission for the accounting period which ended before its dissolution, they must send the Commission the Charity’s final accounts.
30 Interpretation

In this deed, all references to particular legislation are to be understood as references to legislation in force at the date of this deed and also to any subsequent legislation that adds to, modifies or replaces that legislation.
IN WITNESS of this deed the parties to it have signed below

1 Signed as a deed by
1(a) Martin Russell Rowland
on this 7th (day) of March (month) 2008 (year)
in the presence of
1(b) [Signature]
Witness’s name
Ana-Maria Bowden
Witness’s address
Fox Hollow, U9c Quanton Rd
North Marston, Bucks MK18 3PR

2 Signed as a deed by
2(a) Julie Georgina Cresswell
on this 7th (day) of March (month) 2008 (year)
in the presence of
2(b) [Signature]
Witness’s name
Ana-Maria Bowden
Witness’s address
Fox Hollow, U9c Quanton Rd
North Marston, Bucks MK18 3PR

3 Signed as a deed by
3(a) Mandy Putman
on this 7th (day) of March (month) 2008 (year)
in the presence of
3(b) [Signature]
Witness’s name
Ana-Maria Bowden
Witness’s address
Fox Hollow, U9c Quanton Rd
North Marston, Bucks MK18 3PR

November 2007
Signed as a deed by

on this (day) of (month) (year)
in the presence of

Witness's name

Witness's address

Signed as a deed by

on this (day) of (month) (year)
in the presence of

Witness's name

Witness's address

Signed as a deed by

on this (day) of (month) (year)
in the presence of

Witness's name

Witness's address