

# Utange Orphans Charity



**This declaration of Trust is made**

The 13 day of April 2014 by:

Deborah Scott of Flat 4, 105 Croyland Road, Wellingborough, NN8 2FE

and Paul Robinson of 3 Vantage Meadow, Ecton Brook, Northampton NN3 5EJ

and Judith Legg of Roundhill Farm, Turvey Lane, Stagsden, MK43 8TX

(the 'first trustees' who together with the future trustees or trustee of this deed are referred to as 'the trustees').

**whereas** the first trustees hold Ten pounds on the trusts declared in this deed and it is contemplated that further money or assets may be paid or transferred to the trustees upon 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 of the Charity**

The Charity shall be called:

**Utange Orphans Charity**

or by such other name as the trustees from time to time decide with the approval of the Charity Commissioners for England and Wales

**3. Object of the Charity**

The Object of the charity is:

to relieve the needs of and to improve the well-being of children and young people, particularly orphans, in Utange, Kenya, either individually or through other charities or organisations, by:

- (a) the provision of a safe and secure home, food, clean drinking water, clothing, medical care and education so as to improve their conditions of life;
- (b) the provision of educational facilities as a means of advancing their education
- (c) the provision of education in health matters with a view to improving their healthcare
- (d) the provision of recreational facilities with a view to improving their well-being

- (e) the provision of instruction in Christian values to provide a moral and ethical framework within which they can live
- (f) the provision of grants, goods, facilities and services for their general well-being and improvement in their conditions of life either generally or individually

#### **4. Application of income and capital**

The trustees must apply the income and, at their discretion all or part of the capital, of the charity in furthering the objects.

#### **5. Powers**

In furtherance of the Object of the Charity but not otherwise the trustees may exercise any of the following powers:

- (a) to raise funds and invite and receive contributions provided that in raising funds the trustees shall not undertake any substantial permanent trading activity and shall conform to any relevant statutory obligations;
- (b) to buy, take on lease or in exchange, hire or otherwise acquire any property necessary for the achievement of the Objects and to maintain and equip it for use;
- (c) Subject to any consents required by law to sell, lease or otherwise dispose of all or any part of the property comprised in the trust fund. In exercising this power, the trustees must comply as appropriate with sections 117 - 122 of the Charities Act 2011;
- (d) 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 124 - 126 of the Charities Act 2011 if they wish to mortgage land owned by the charity.
- (e) to cooperate with other charities, voluntary bodies and statutory authorities operating in furtherance of the Object or of similar charitable purposes and to exchange information and advice with them;
- (f) to appoint and constitute such advisory committees as they trustees may think fit;
- (g) to employ and remunerate such staff as are necessary for carrying out the work of the charity;
- (h) to do all such other lawful things as are necessary for the achievement of the Object.

#### **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**

- (a) 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.
- (b) The trustees must exercise their powers jointly at properly convened meetings except where they have:
  - i delegated the exercise of the powers (either under this provision or under any statutory provision), or made some other arrangements, by regulations under clause 22.
  - ii 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**

- (a) 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').
- (b) 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.

**9. Appointment of trustees**

- a) There shall be at least three trustees. Every trustee shall be appointed by a resolution of trustees passed at a special meeting called under clause 15
- b) In selecting persons to be appointed as trustees, the trustees shall take into account the benefits of appointing a person who is able by virtue of his or her personal or professional qualifications or experience to make a contribution to the pursuit of the Object of the management of the Charity.
- c) When any new trustee is appointed the trustees shall ensure that any land belonging to the Charity which is not vested in the Official Custodian for Charities or in a custodian trustee and all other property of the of the Charity which is not vested or about to be vested in the Official Custodian for Charities, a custodian trustee or a nominee is effectively vested in persons who are the trustees following such appointment
- d) If for any reason trustees cannot be appointed in accordance with the foregoing provisions the statutory power of appointing new or additional trustees shall be exercisable
- e) The trustees must make available to each new trustee, on his or her first appointment: a copy of this deed and any amendments made to it and a copy of the Charity's latest report and statement of accounts.

**10. Eligibility for trusteeship**

- (a) No person shall be appointed as a trustee:
  - (i) Unless he or she has attained the age of 18 years; or
  - (ii) In circumstances such that, had he or she already been a trustee, he or she would have been disqualified from office under the provisions of the following clause
  - (iii) No person shall be entitled to act as a trustee whether on a first or on any subsequent entry into office until after signing in the minute book of the trustees a declaration of acceptance and willingness to act in the trusts of the Charity.

**11. Termination of trusteeship**

A trustee shall cease to hold office if he or she:

- (a) is disqualified from acting as a trustee by virtue of section 45 of the Charities Act 1992 (or any statutory re-enactment or modification of that provision);
- (b) becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs;
- (c) 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;
- (d) notifies to the trustees a wish to resign (but only if at least two trustees will remain in office when the notice of resignation is to take effect).

**12. Vacancies**

If a vacancy occurs the trustees shall note the fact in their minute book at their next meeting. Any eligible trustee may be re-appointed. So long as there shall be fewer than two trustees none of the powers or discretions hereby or by law vested in the trustees shall be exercisable except for the purpose of appointing a new trustee or 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 first meeting of the trustees shall be called by the said Deborah Scott or if no meeting has been called within two months from the date of this deed by any two of the trustees. Subsequent meetings shall be arranged by the trustees at their meetings

or may be called at any time by the chairman or any two trustees upon not less than ten days' notice being given to other trustees.

**15. Special Meetings**

A special meeting may be called at any time by the chairman or any two trustees upon not less than four days' notice being given to the other trustees of the matters to be discussed, but if the matters include an appointment of a trustee or a proposal to amend any of the trusts of this deed then upon not less than 21 days' notice being so given. A special meeting may be called to take place immediately after or before an ordinary meeting.

**16. Chairing meetings**

The trustees at their first ordinary meeting in each year shall elect one of their number to chair their meetings until the commencement of the first ordinary meeting in the following year. The chair person shall always be eligible for re-election. If the chair person is not present within ten minutes after the time appointed for holding a meeting or there is no chair person the trustees present shall choose one of their number to chair the meeting.

**17. Quorum**

- (a) 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.
- (b) The trustees may make regulations specifying different quorums

**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. Conflicts of interest and conflicts of loyalties**

A trustee must:

- (a) declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the charity or in any transaction or arrangement entered into by the charity which has not been previously declared; and
- (b) 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).

Any trustee absenting himself or herself from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the trustees on the matter.

**20. Saving provisions**

- (a) Subject to sub-clause (b) of this clause, all decisions of the trustees, or of a committee of the trustees, shall be valid notwithstanding the participation in any vote of a trustee:
  - i who is disqualified from holding office;
  - ii who had previously retired or who had been obliged by this deed to vacate office;
  - iii who was not entitled to vote on the matter, whether by reason of a conflict of interests or otherwise if without the vote of that trustee and that trustee being counted in the quorum, the decision has been made by a majority of the trustees at a quorate meeting.
- (c) Sub-clause (a) of this clause does not permit a trustee to keep any benefit that may be conferred upon him or her by a resolution of the trustees or of a committee of trustees if, but for sub-clause (1), the resolution would have been void, or if the trustee has not complied with clause 18 (Conflicts of interests and conflicts of loyalties).

**21. 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 22 of this deed.

**22. General powers to make regulations**

- (a) 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.)
- (b) The trustees must not make regulations which are inconsistent with anything in this deed.

### **23. Disputes**

If a dispute arises between the trustees about the validity or propriety of anything done by the trustees under this deed, and the dispute cannot be resolved by agreement, the trustees party to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.

### **24. Accounts, Annual Report and Annual Return**

The trustees must comply with their obligations under the Charities Act 2011 with regard to:

- (a) the keeping of accounting records for the charity;
- (b) the preparation of annual statements of account for the charity;
- (c) the auditing or independent examination of the statements of account of the charity;
- (d) the transmission of the statements of account of the charity to the Commission;
- (f) the preparation of an Annual Report and its transmission to the Commission;
- (g) the preparation of an Annual Return and its transmission to the Commission.

### **25. Registered particulars**

The trustees must notify the Commission promptly of any changes to the charity's entry on the Central Register of Charities

### **26. 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.

### **27. Application of income and property**

- (a) The income and property of the charity must be applied solely towards the promotion of the objects.
  - (i) A trustee is entitled to be reimbursed out of the property of the charity or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the charity.
  - (ii) A trustee may benefit from trustee indemnity insurance cover purchased at the charity's expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.
- (b) Subject to clause 28, none of the income or property of the charity may be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise by way of profit to any trustee.



**28. Benefits and payments to trustees and connected persons**

(a) General provisions

No trustee or connected person may:

- (i) buy or receive any goods or services from the charity on terms preferential to those applicable to members of the public;
- (ii) sell goods, services or any interest in land to the charity;
- (iii) be employed by, or receive any remuneration from, the charity;
- (iv) receive any other financial benefit from the charity;

unless the payment or benefit is permitted by sub-clause (b) of this clause or authorised by the court or the Charity Commission ('the Commission'). In this clause a 'financial benefit' means a benefit, direct or indirect, which is either money or has a monetary value.

(b) Scope and powers permitting trustees' or connected persons' benefits

- (i) A trustee or connected person may receive a benefit from the charity in the capacity of a beneficiary of the charity provided that a majority of the trustees do not benefit in this way.
- (ii) A trustee or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the charity where that is permitted in accordance with, and subject to, the conditions in, section 185 of the Charities Act 2011.
- (iii) Subject to sub-clause (c) of this clause a trustee or connected person may provide the charity with goods that are not supplied in connection with services provided to the charity by trustee or connected person.
- (iv) A trustee or connected person may receive interest on money lent to the charity at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).
- (v) A trustee or connected person may receive rent for premises let by the trustee or connected person to the charity. The amount of the rent and the other terms of the lease must be reasonable and proper. The trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.
- (vi) A trustee or connected person may take part in the normal trading and fundraising activities of the charity on the same terms as members of the public.

(c) Payment for the supply of goods only – controls

The charity and its trustees may only rely upon the authority provided by sub-clause (b)(iii) of this clause if each of the following conditions is satisfied:

- (i) The amount or maximum amount of the payment for the goods is set out in an agreement in writing between the charity and the trustee or connected person supplying the goods ('the supplier') under which the supplier is to supply the goods in question to or on behalf of the charity.

- (ii) The amount or maximum of the payment for the goods in question does not exceed what is reasonable in the circumstances for the supply of the goods in question.
  - (iii) The other trustees are satisfied that it is in the best interests of the charity to contract with the supplier rather than someone who is not a trustee or connected person. In reaching that decision the trustees must balance the advantage of contracting with a trustee or connected person against the disadvantages of doing so.
  - (iv) The supplier is absent from the part of the meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the charity.
  - (v) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of trustees is present at the meeting.
  - (vi) The reason for their decision is recorded by the trustees in the minute book.
  - (vii) A majority of the trustees then in office are not in receipt of remuneration or payments authorised by clause 28.
- (d) In sub-clauses (b)-(c) of this clause:
- (i) '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 trustees to the board of the company.
  - (ii) In sub-clauses (b) and (c) of this clause 'connected person' includes any person within the definition set out in clause 33 (Interpretation).

### **29. 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 charity (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.

### **30. 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

### **31. Amendment of trust deed**

- (a) The trustees may amend the provisions of this deed, provided that:
- (i) no amendment may be made to clause 3 (Objects), clause 8 (Duty of care and extent of liability), clause 27 (Application of income and property) and clause 28 (Benefits and payments to trustees and connected persons) , clause 32 (Dissolution) or this clause without the prior consent in writing of

- the Commission; and (b) no amendment may be made that would have the effect of making the charity cease to be a charity at law.
  - (ii) no amendment may be made to alter the objects if the change would undermine or work against the previous objects of the charity.
- (b) Any amendment of this deed must be made by deed following a decision of the trustees made at a special meeting.
- (c) The trustees must send to the Commission a copy of the deed effecting any amendment made under this clause within three months of it being made.

### 32. Dissolution

- (a) 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 the same or similar to 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.
- (b) 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.

### 33. Interpretation

- (a) 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
- (b) a 'connected person' means:
  - (i) a child, parent, grandchild, grandparent, brother or sister of the trustee;
  - (ii) the spouse or civil partner of the trustee or of any person falling within sub-clause (a) above;
  - (iii) a person carrying on business in partnership with the trustee or with any person falling within sub-clause (i) or (ii) above;
  - (iv) an institution which is controlled by the trustee or any connected person falling within sub-clause (i), (ii), or (iii) above; or by two or more persons falling within sub-clause (iv), when taken together
  - (v) a body corporate in which the trustee or any connected person falling within sub-clauses (i) to (iii) has a substantial interest; or two or more persons falling within sub-clause (v) who, when taken together, have a substantial interest.
- (c) Sections 350 – 352 of the Charities Act 2011 apply for the purposes of interpreting the terms used in sub-clause (ii) above.

Utange Orphans Charity

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In witness whereof the parties hereto have hereunto set their respective hands the day and year first before written

Signed as a deed by the said

  
.....  
Deborah Scott

In the presence of

  
..... Occupation RETIRED TEACHER.....

Witness's name: Witness's address:

FRAN EYRE 9 DAYS LANE BIDDENHAM BEDFORD MK40 4AD

Signed as a deed by the said

  
.....  
Paul Robinson

In the presence of

S. Butler..... Occupation Retired - Secretary

Witness's name: Witness's address:

L. Butler FLAT 6, 103 Croyland Rd. W/Boro RU8 2FB

Signed as a deed by the said

  
.....  
Judith Legg

In the presence of

  
..... Occupation Electrician Eng.....

Witness's name: Witness's address:

R. A. MARLON 9 DOCKHOUSE CLOSE BROMHAM

B6D MK43 8PS