

# THE THALIDOMIDE TRUST

## REVISED DEED OF TRUST

4<sup>TH</sup> JULY 2008

*Revised and amended at a meeting of the Trustees of the  
Thalidomide Trust registered charity no. 266220 held on  
4<sup>th</sup> July 2008 at 16 Old Bailey, London*

Stamped: 50p

THIS DECLARATION OF TRUST is made the Tenth Day of August 1973 by HENRY GORDON WILLMER, Knight, P.C., O.B.E., T.D., of Flat 1, 34 Arkwright Road, Hampstead, London, N.W.3. ARTHUR HALSALL WALTON F.C.A. of Epping Cottage, 4, Kennerleys Lane, Wilmslow, Cheshire and DONALD MACLEOD DOUGLAS, Knight, M.B.E., P.R.C.S.Ed. F.R.C.S. of the Royal College of Surgeons, Edinburgh (hereinafter called "the Original Trustees")

**THIS DECLARATION OF TRUST is revised and amended the Fourth Day of July 2008 by the Trustees under the powers conferred on them under the general power of amendment provided by the Order of the Charity Commissioners for England and Wales dated the 4<sup>th</sup> May 2004, the Scheme ordered by the Charity Commissioners for England and Wales dated the 10<sup>th</sup> October 2008, and the statutory powers provided by the Charities Act 2006 S42**

WHEREAS:-

(A) It is desired to establish a charitable trust for the purpose of giving relief and assistance to all those disabled persons whose disabilities were caused by the fact that during pregnancy their mothers had taken a preparation manufactured by The Distillers Company (Biochemicals) Limited in the United Kingdom containing the drug known as Thalidomide

(B) The Distillers Company (Biochemicals) Limited have paid the sum of ten pounds (£10) to the Original Trustees for the furtherance of the charitable objects hereinbefore mentioned

(C) The Original Trustees are desirous of declaring that the said money together with all other money and property which may hereafter be paid or transferred to the Original Trustees or to the trustees or trustee for the time being hereof so as to become subject to the trusts hereof shall be held upon the trusts and subject to the powers and provisions hereinafter declared and contained

**NOW THEREFORE THIS DEED WITNESSETH AND IT IS HEREBY DECLARED**  
as follows:-

1. In this deed and in the Rules contained in the Standing Orders for the governance of the Trust referred to in clause 15 hereof except where the context otherwise requires the following expressions shall have the following meanings:-

Definitions

(a) "the Trustees" means the Original Trustees or other trustees or trustee for the time being hereof

(b) "the Trust Fund" means the said sum of ten pounds (£10) and all sums of money and property (of any kind whatsoever) which may hereafter be paid or transferred (whether by way of gift bequest or otherwise howsoever) to the Trustees to be held by them on the trusts hereof And the moneys investments and property from time to time representing the foregoing

(c) "the preparation" means any preparation manufactured by The Distillers Company (Biochemicals) Limited in the United Kingdom containing the drug known as Thalidomide

(d) "Beneficiary" means any person (whether of full age or not) now living

(i) who was born in the United Kingdom **or**

(ii) whose mother took the preparation in the United Kingdom during pregnancy **or**

(iii) whose mother took the preparation during pregnancy and who was on 22<sup>nd</sup> February 1973 domiciled or resident within the United Kingdom or any countries specified in the First Schedule hereto

and who suffers from any congenital disability (whether physical or mental) caused in the opinion of the Trustees by reason of his mother having taken the preparation during pregnancy AND the expression “Beneficiaries” shall have the corresponding meaning

(e) “individual compensation” means monetary compensation which has been paid or is or may become payable from any source to or for any Beneficiary in consequence or by way of compromise or settlement reached or made whether before or after the date hereof of either

(i) any action for damages which such Beneficiary may have brought in any court in any country in respect of his suffering or having suffered from any congenital disability which is or was caused by or is claimed by such Beneficiary to have been caused by reasons of his mother having taken the preparation during pregnancy or

(ii) any action of damages which such Beneficiary may have brought in any court in any country for professional negligence or breach of duty in respect of the failure duly to institute or prosecute any such action as aforesaid

(f) “the United Kingdom” means the United Kingdom of Great Britain and Northern Ireland and any ship or ships which have any material time been registered in the United Kingdom of Great Britain and Northern Ireland

**Name of the trust** 2. The Charitable trust hereby established (hereinafter called “the Trust”) shall be known as “THE THALIDOMIDE TRUST”

**Trust for sale** 3. The Trustees shall stand possessed of the Trust Fund UPON TRUST to sell call in and convert into money such part or parts of the same as shall not already consist of money at such time or times as the Trustees shall think fit and so that the Trustees shall have the fullest power and discretion to postpone the sale calling in and conversion thereof or of any part thereof during such period as they shall think fit and to retain the same or any part thereof in the actual state of investment in which the same shall have been received by the Trustees without being in any way liable or responsible for any loss occasioned thereby AND shall invest the net moneys produced thereby and not required by the Trustees to be otherwise applied pursuant to Clause 7 in the names or under the control of the Trustees in or upon any investments of a nature hereby authorised with power for the Trustees in their discretion from time to time to vary or change any such investment into other investments of a nature hereby authorised

**Additions to the Trust fund** 4. The Trustees may at any time and from time to time accept any money investments or property of any nature hereafter given devised or bequeathed for or towards the furtherance of the objects of the Trust or any of such objects PROVIDED ALWAYS IT IS HEREBY DECLARED that subject to any contrary directions imposed by the donor of any such property:-

(a) the Trustees shall procure that any such property which shall not consist of money shall be conveyed or transferred to the Trustees or to a trust corporation or to any two or more persons (whether or not Trustees hereof) as their nominees to be held as part of the Trust Fund and

(b) the Trustees shall be at liberty either to invest or place to and keep on deposit or current account any such property which shall consist of money in manner provided by Clauses 5 and 6 or to apply the same in manner provided in Clause 7

**Investments**

5. The Trustees shall from time to time invest or procure to be invested in the names of the Trustees or in the name of a trust corporation or of any two or more persons (whether or not Trustees hereof) as their nominees in or upon such investments of a nature hereby authorised as the Trustees shall think fit all moneys from time to time coming into their hands or under control and forming part of the Trust Fund which the Trustees in their discretion shall consider to be not required to be applied pursuant to Clause 7 and all moneys so invested and the investments from time to time representing the same shall thenceforth form part of the Trust Fund PROVIDED ALWAYS that notwithstanding anything to the contrary herein contained the Trustees may keep uninvested and place and keep on deposit or current account in their own names with any bankers for so long as the Trustees in their discretion shall think fit of any of such moneys as are in this Clause hereinbefore mentioned

**Trust Investments**

6. Any moneys from time to time required to be invested hereunder may at the discretion of the Trustees be invested in or upon any investments for the time being authorised by law for the investment of trust moneys or (with the consent in writing of all Trustees) in the purchase of or at interest upon the security of such stocks funds shares securities or other investments or property of whatsoever nature and wheresoever situate and whether involved liability or not as the Trustees shall in their discretion (without being responsible for any loss thereby occasioned) think fit

**Principal Trusts**

7. The Trustees shall stand possessed of the Trust Fund UPON TRUST to apply the capital and income thereof as the Trustees may from time to time determine for the care welfare treatment and education of or otherwise in any way for the relief of the disabilities or to meet the needs of the Beneficiaries in such a manner as the trustees shall in their discretion from time to time think fit PROVIDED that the Trustees may at their discretion at any time during the period of 21 years commencing on the date hereof instead of applying the whole of the current income of the Trust Fund as aforesaid retain and accumulate (by way of an addition to the Trust Fund) all such part or parts of such a current income as they shall in their absolute discretion determine

**Powers to raise money**

8. For the purposes aforesaid the Trustees may raise moneys out of the Trust Fund in such manner as they shall think fit (including the creation of mortgages or charges upon the Trust Fund or upon any part thereof)

**Particular Powers**

9. Without prejudice to the generality of the discretion and powers by Clause 7 or otherwise conferred upon the Trustees the Trustees may in pursuance of any of the principal objects of the Trust mentioned in Clause 7 do all or any of the following things:

**Acquisition of Property**

(a) purchase take on lease or in exchange hire or otherwise acquire any real and personal property and rights and privileges which the Trustees may think proper for all or any of the purposes of the Trust and for such purposes may borrow moneys to enable such property rights and/or privileges to be purchased or otherwise acquired as aforesaid and may charge the same by way of mortgage or otherwise in respect of any sums so borrowed or otherwise;

**Construction of buildings**

(b) construct maintain and alter any buildings necessary or convenient for all or any purposes of the Trust;

**Disposal of property**

(c) sell lease dispose of or otherwise deal with any property whatever its nature for the time being subject to the trusts hereof which in the opinion of the Trustees is not required (or in the case of a lease or other temporary disposition not immediately required) for the purposes of the Trust;

**Payment or Application of money**

(d) pay and apply such sums of money to or for the care welfare treatment education or otherwise for the relief of the Beneficiaries in such a manner and upon such terms and conditions (if any) as the Trustees shall in their discretion think fit and without prejudice to the generality of the foregoing powers pay and transfer such sums of money to such appropriately authorised persons for the Beneficiaries as the Trustees shall in their discretion think proper and necessary for the relief of the Beneficiaries and so that after such payment and transfer as aforesaid the Trustees shall not be answerable for the proper application of the sums so paid and transferred;

**Employment and payment of staff**

(e) appoint employ and dismiss such managers office agents and staff servants and other persons as they may consider necessary or advisable to be employed in connection with the purposes of the Trust and fix and pay the remuneration of all or any such persons for their his or her services and pay for the instruction and training of such persons  
Incidental Powers  
(f) do all such other things as are incidental to the maintenance or advancement of any of the purposes of the Trust

**Ultimate trust**

10. The Trustees shall stand possessed of the Trust Fund primarily upon trust for the purposes specified in Clause 7 hereof and shall endeavour to ensure that the whole of the Trust Fund shall be applied for the said purposes but if and in so far as the Trustees shall not have succeeded in exhausting the Trust Fund before the death of the last of the Beneficiaries the Trustees shall stand possessed of the Trust Fund and the income thereof upon trust for such charity or charities or charitable purpose or charitable purposes connected with children who are handicapped or disabled (whether physically or mentally) as the Trustees may select

**Number of trustees**

11. The Trustees of this deed shall not be less than three nor more than twelve in number

**Responsibilities of Trustees**

12. The Trustees shall discharge their responsibilities in accordance with the Deed of Trust and Standing Orders

**Appointment of Trustees**

13. (a) The persons who are for the time being the Lord Chief Justice of England and the President of the Royal College of Surgeons of Edinburgh and the President of the Institute of Chartered Accountants in England and Wales shall each have the right to appoint one of the Trustees of this deed and to appoint a new Trustee to fill any vacancy created by any person so appointed ceasing to be a Trustee

(b) The power of appointing the remaining Trustees and of appointing new Trustees to fill any vacancy created by any person so appointed ceasing to be a Trustee shall be vested in the surviving or continuing Trustees or Trustee for the time being (excluding any retiring Trustee)

(c) If and whenever the number of Trustees shall be less than three then one or more new Trustees shall forthwith be appointed to bring the number of Trustees up to three at least

(d) For the purpose of sub-clause (a) of this clause of the Original Trustees Henry Gordon Willmer is to be regarded as having been appointed by the Lord Chief Justice of England Donald Macleod Douglas as having been appointed by the President of the Royal College of Surgeons of Edinburgh and Arthur Halsall Walton as having been appointed by the President of the Institute of Chartered Accountants in England and Wales

(e) Trustees are appointed for a four-year term in the first instance renewable for two further periods of four years giving a maximum term of service of twelve years.

14. Every new Trustee shall before acting in the trusts of this deed confirm in writing to the other Trustees their willingness to act in the trusts hereof

**Trustees meetings**

15 (a). The Trustees shall meet together at least twice in every calendar year (and more frequently if they deem it necessary) for the purposes of reviewing the resources and expenditure of the Trust and of determining and resolving upon the manner in which they shall exercise their discretion in relation to the application of the capital and income of the Trust Fund for the purposes hereof during the year next ensuing. Every such meeting shall be convened held and conducted in accordance with the provisions of the Standing Orders of the Thalidomide Trust in force, the first such Standing Orders to take effect from the date of this revised Declaration of Trust being annexed hereto and initialed by the trustees for the purpose of identification and the Trustees shall cause to be prepared maintained collected and collated all such lists accounts assessments reports and information as may be requisite for the proper exercise of their said discretion.

(b) Standing Orders may be agreed by two thirds of the Trustees at any meeting of the Trustees and meetings shall be conducted in accordance with those provisions.

**National Advisory Council and Committees**

16. (a) The Trustees shall be at full liberty to appoint or cause to be appointed a National Advisory Council to advise on the affairs of the Trust and the Trustees may in their discretion act on any advice given by such National Advisory Council and make regulations relating to the election and re-election and retirement and removal of members of the said National Advisory Council.

(b) The Trustees may from time to time appoint or may authorise the said Council to appoint any Committee or Committees consisting of such persons as the Trustees or the said Council may think fit.

**Charitable Trusts Only**

17. Notwithstanding anything herein contained the Trust Fund and the income thereof shall at all times be applicable and the powers hereby conferred shall at all times be exercisable for charitable purposes only

**Trustees' discretion and liability only for**

18. Save as otherwise herein expressly provided the Trustees shall as regards all powers and discretions hereby or by law vested in them have absolute and uncontrolled discretion as to the exercise thereof and it is hereby declared that no Trustee shall be chargeable or responsible for loss occasioned by any act or thing done or omitted to be done by him or any person except a breach of trust fraudulently committed by himself.

**Marginal headings**

19. The marginal headings herein shall not affect the construction of this deed IN WITNESS

whereof the Original Trustees have hereunto set their hands and seals the day and year first above written.

THE FIRST SCHEDULE

Channel Islands  
Kenya  
Republic of South Africa  
Canada  
Cyprus  
Jamaica  
Republic of Ireland

**Revised and amended at a meeting of the Trustees of the Thalidomide Trust registered charity no. 266220 held on 4<sup>th</sup> July 2008 at 16 Old Bailey, London under the powers conferred on the Trustees by the Order of the Charity Commissioners for England and Wales dated the 4<sup>th</sup> May 2004 and the Charities Act 2006 S42**

Signed:        *Sir John Michael Wright*                                **Chair of the Trustees**

Date:            4<sup>th</sup> July 2008

