

THE THALIDOMIDE TRUST

DEED OF TRUST

CONFORMED VERSION

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")

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 or distributed 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 any Rules and Regulations made under it except where the context otherwise requires the following expressions shall have the following meanings:-

Definitions

(a) "the Trustee" 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 Trustee 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 or distributed by The Distillers Company (Biochemicals) Limited in the United Kingdom containing the drug known as Thalidomide

(d) "Beneficiary" means any person now living (i) who has been recognized by the Trustee as a beneficiary prior to 31 January 2018; or (ii) who was born in the United Kingdom OR whose mother took the preparation prescribed by a UK Registered Medical Practitioner during pregnancy

and who suffers from any congenital disability (whether physical or mental) caused in the opinion of the Trustee 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 Trustee 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 Trustee shall think fit and so that the Trustee 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 Trustee 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 Trustee to be otherwise applied pursuant to Clause 7 in the names or under the control of the Trustee in or upon any investments of a nature hereby authorised with power for the Trustee in its 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 Trustee 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 Trustee shall procure that any such property which shall not consist of money shall be conveyed or transferred to the Trustee to be held as part of the Trust Fund and

(b) the Trustee 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 Trustee shall from time to time invest or procure to be invested in the name of the Trustee in or upon such investments of a nature hereby authorised as the Trustee shall think fit all moneys from time to time coming into the Trustee's hands or under control and forming part of the Trust Fund which the Trustee in its 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 Trustee may keep uninvested and place and keep on deposit or current account in its name with any bankers for so long as the Trustee in its discretion shall think fit of any such moneys as are in this Clause hereinbefore mentioned

#### **Investments**

6. Any moneys from time to time required to be invested hereunder may at the discretion of the Trustee be invested in or upon any investments for the time being authorised by law for the investment of trust moneys 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 involving liability or not as the Trustee shall in its discretion (without being responsible for any loss thereby occasioned) think fit

#### **Principal Trusts**

7. The Trustee shall stand possessed of the Trust Fund UPON TRUST to apply the capital and income thereof as the Trustee 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 Trustee shall in its discretion from time to time think fit PROVIDED that the Trustee may at its 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 its absolute discretion determine

**Powers to raise money**

8. For the purposes aforesaid the Trustee may raise moneys out of the Trust Fund in such manner as it 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 Trustee the Trustee 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 Trustee 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 Trustee 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 Trustee shall in its 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 Trustee shall in its discretion think proper and necessary for the relief of the Beneficiaries and so that after such payment and transfer as aforesaid the Trustee 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 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 Trustee 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 Trustee shall not have succeeded in exhausting the Trust Fund before the death of the last of the Beneficiaries the Trustee shall stand possessed of the Trust Fund and the income thereof upon trust for such charity or charities or charitable purpose connected with individuals who are disabled (whether physically or mentally) as the Trustee may select

**Number of Trustees**

11. As from 31 January 2018 there shall be a sole Trustee, being Thalidomide Trust Company.

**Responsibilities of Trustee**

12. The Trustee shall discharge its responsibilities in accordance with the Deed of Trust and such Rules and Regulations as it makes from time to time, and shall operate in accordance with its own administrative procedures.

**National Advisory Council and Committees**

13. (a) The Trustee 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 Trustee may in its 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. For the avoidance of doubt the role of the National Advisory Council in relation to the affairs of the Trust is advisory only; [unless specifically and expressly authorised by the Trustee,] no member of the National Advisory Council shall have authority under this deed to act on the Trustee's behalf (and in particular to bind the Trustee or the Trust); nor shall any member of the National Advisory Council be chargeable for any liability in relation to their role on the National Advisory Council

(b) The Trustee may from time to time:

- (i) appoint other committees or sub-committees consisting of such persons as the Trustee may think fit, and
- (ii) authorise the National Advisory Council to appoint a sub-committee consisting of such persons as the National Advisory Council may select and the Trustee may approve.

**Charitable Trusts**

14. 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

**Trustee's discretion and liability only for**

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

**Marginal headings**

16. 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.