

THE THALIDOMIDE CHILDREN'S
TRUST

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 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 Second Schedule hereto except where the context otherwise requires the following expressions shall have the following meanings:-

- (a) "the Trustees" means the Original Trustees or other the 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 in the United Kingdom containing the drug known as Thalidomide
- (d) "Child" 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 22nd 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 “Children” 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 Child 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 Child 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 Child to have been caused by reasons of his mother having taken the preparation during pregnancy or (ii) any action of damages which such Child 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 CHILDREN’S 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

Principle 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 Children 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 principle 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 of otherwise for the relief of the Children 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 parents or guardians of or private trustees for the Children as the Trustee shall in the discretion think proper and necessary for the relief of the Children 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 Children 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 nine in number

Appointment of Trustees

12. (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

New Trustees to sign minute book

13. Every new Trustee shall before acting in the trusts of this deed sign in the minute book for which provision is hereinafter made a declaration of acceptance and of willingness to act in the trusts hereof

Retirement of trustees

14. Any trustee who is absent from four consecutive meetings of the trustees without having obtained leave of absence or who is adjudged bankrupt or makes a composition or arrangement with his creditors or is incapacitated from acting or who communicates in writing to all the other Trustees for the time being a wish to resign shall thereupon cease to be a Trustee

Trustees meetings

15. The Trustees shall meet together at least once 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 Clause 16 hereof and of the Rules contained in the Second Schedule hereto 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

Regulations

16. The following regulations shall govern the procedure of the Trustees:-

- (a) the Trustees shall hold meetings at such times and in such places as they shall from time to time decide and any Trustee may at any time convene a special meeting of the Trustees upon not less than seven days' nor more than eight weeks notice in writing before being given to all the other Trustees for the time being specifying the place and the time for holding the meeting and the nature of the business to be transacted
- (b) there shall be a quorum when at least two Trustees are present at any meeting
- (c) the Trustees shall at each of their meetings appoint one of their number to be chairman and as such he shall in the event of an equality of votes have a second or casting vote
- (d) every matter (except any matter expressly requiring hereunder the consent or concurrence of all the Trustees for the time being) shall be determined by the majority of votes of the Trustees present and voting on any question
- (e) any resolution of the Trustees may be rescinded or varied from time to time by the Trustees
- (f) the Trustees shall provide and keep a minute book in which shall be entered the proceedings of the Trustees and which shall be signed by the chairman at the conclusion of each meeting or at some future meeting if the minutes shall have been duly confirmed
- (g) the Trustees shall provide books of account in which shall be kept all proper accounts of all money received and paid respectively by or on behalf of the Trustees for the purposes of this deed
- (h) the Trustees shall arrange for the accounts to be audited yearly by a chartered accountant and the expenses of such a yearly audit shall be paid out of the income of the Trust Fund
- (i) cheques or orders for the payment of money standing in any bank account in the Trustees' names shall be signed by such number of Trustees (not being less than two) as shall from time to time be decided by the Trustees

Council and Committees

17. (a) The Trustees shall be at full liberty to appoint or cause to be appointed a Council (whose members need not be Trustees) to advise on the management or the application of the capital or income of the Trust Fund and to advise on the affairs of the Trust in accordance with the trusts and provisions hereof and the Trustees may act on any advice given by such Council from time to time and the Trustees may from time to time make such regulations relating to the election and re-election and retirement and removal of members of the said Council as may be thought fit

(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 (who need not be Trustees) as the Trustees or the said Council may think fit to appoint and may delegate to any such Committee or to such Council as aforesaid such of the powers of the Trustees as the Trustees may think fit and such Council or Committee shall have all such powers and perform all such duties as may either expressly or by implication be delegated to such Council or such Committee by the Trustees or the said Council

(c) The Trustees shall not be responsible for or liable with respect to the acts proceedings omissions neglects or defaults of any such Council or Committee or of any member thereof

Charitable
Trusts only

18. 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

19. 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

20. 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	

THE SECOND SCHEDULE

Rules governing the conduct of meetings convened to consider applications of capital and income pursuant to Clauses 7 and 15

(1) There shall be produced to the meeting the following documents or information:-

- (a) A list containing the names and addresses of all persons known to the Trustees who from time to time claim to be or are accepted by the Trustees as being qualified to benefit together with particulars of the age and sex of each such person;
- (b) A summary statement of the capital of the Trust Fund and of the estimated amount of the net income anticipated to arise and to be available for application in the ensuing year after payment of any administrative expenses;

- (c) A schedule containing in the case of each person known and accepted as a Child qualified to benefit short particulars of the nature of his or her disability and of the degree of such disability (where appropriate) assessed in respect of him or her by any competent Court or panel
- (d) Particulars of any individual compensation received or receivable or at that time currently being claimed by any Child and of any sum previously applied by the Trustees for the benefit of any Child;
- (e) Any information relating to any Child indicating any alteration in the medical condition or the physical environmental or educational circumstances of any Child since the last meeting of the Trustees to which these Rules are applicable (including any medical report relating to such Child);
- (f) Any information communicated to the Trustees or any of them indicating the death or disability of the parent or guardian of any Child who is for the time being under a disability;
- (g) Any written representations received from any Child or the parent or guardian of a Child who is for the time being under a disability.

(2) The Trustees shall:-

- (a) review the amount of projected expenditure required for the proper administration of the trusts in the forthcoming year and the resources of the Trust likely to be available for application in meeting the needs of the Children;
- (b) consider in the case of each individual Child what expenditure is requisite or desirable and the extent thereof and the source from which the same should be raised;
- (c) review the manner in which the capital and income of the Trust Fund has been applied in the period which has elapsed since the last annual or other meeting of the Trustees;
- (d) determine and resolve what (if any) changes should be made in such application and generally in what matter to what extent and in what proportions the resources of the Trust should be applied to meet the needs of individual Children during the ensuing year or during such shorter period as the Trustees shall determine.

(3) In determining and resolving upon any application of capital or income in accordance with the foregoing provisions the Trustees:-

- (a) shall (but without in any way limiting or fettering their discretion or creating any obligation to adopt or adhere to any particular method or scheme of application) pay due and proper regard to the matters mentioned in Rule (1) and in particular the matters mentioned in Rule (1) (c) and (d);
- (b) shall not pay any regard to the means of or resources available to a Child or his parent or guardian except as regards the matters mentioned in Rule (1) (d).

SIGNED SEALED AND DELIVERED
By the said HENRY GORDON WILLMER
In the presence of:

J. F. WILLMER,
Queen's Counsel, 7 King's Bench Walk, Temple, EC47 7DS.

H. GORDON WILLMER

L.S.

SIGNED SEALED AND DELIVERED
By the said ARTHUR HALSALL WALTON
In the presence of:

JOHN HARRIS,
4 Clareville Grove, London, S.W.7. Solicitors' Managing Clerk.

A. H. WALTON

L.S.

SIGNED SEALED AND DELIVERED
By the said DONALD MACLEOD DOUGLAS
In the presence of:

L. E. Burrows,
35 Basinghall Street, London, E.C.2. Secretary

D. M. DOUGLAS

L.S.

DATED the 10th day of August, 1973

THE THALIDOMIDE CHILDREN'S TRUST

DECLARATION OF TRUST

BY

SIR HENRY GORDON WILLMER

ARTHUR HALSALL WALTON, Esq.

And

SIR DONALD MACLEOD DOUGLAS