

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

Before Chief Master Marsh

Dated 28 September 2016

Claim No. HC-2016-001884



HC-2016-001884

THE T&N ASBESTOS TRUSTEE COMPANY LIMITED

Claimant

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ORDER

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**UPON** the application of the Claimant by Part 8 Claim Form dated 24 June 2016

**AND UPON HEARING** Peter Arden QC and Anna Scharnetzky for the Claimant

**AND UPON READING** the first witness statement of James Gleave dated 24 March 2016, the second witness statement of James Gleave dated 9 June 2016 and the third witness statement of James Gleave dated 22 September 2016

**IT IS ORDERED THAT:**

1. The Claimant, as sole trustee of a trust (the "**UK Asbestos Trust**") established by a trust deed dated 10 October 2006 between T&N Limited, the Companies (as defined therein) and the Claimant (the "**Trust Deed**") for the purpose of paying holders of asbestos-related personal injury claims against T&N Limited and its affiliates, be permitted:

- (a) to exercise its powers under clauses 6 and 7 of the Trust Deed to enter into an agreement with the Federal-Mogul Asbestos Personal Injury Trust in the form annexed to this Order and marked "Appendix 1"; and
- (b) to exercise its powers under clause 19 of the Trust Deed and clause 8 of the related trust distribution procedures (the "TDP") to amend the Trust Deed and TDP in the form or substantially the same form as shown in red in the versions of those documents annexed to this Order and marked as "Appendix 2" and "Appendix 3", respectively.
2. The Claimant's costs, as well as the Claimant's costs in relation to the related application made by Application Notice dated 24 March 2016, be paid as UK Asbestos Trust Costs pursuant to clause 17.3 of the Trust Deed.
3. Formal service of this Order on any person is not required, but the Claimant shall as soon as reasonably practicable upload a copy of this Order onto its publicly accessible website <https://tandnasbestos.org.uk>.

The court has provided a sealed copy of this order to:

**Solicitors for the Applicant**

Weil, Gotshal & Manges  
110 Fetter Lane  
London  
EC4A 1AY  
Tel: +44 (0)207 903 1000  
Fax: +44 (0)207 903 0990  
Ref: MJL/VB/77196.0003

**IN THE HIGH COURT OF JUSTICE**

**Claim No. HC-2016-001884**

**CHANCERY DIVISION**

**Before Chief Master Marsh**

**Dated 28 September 2016**

**THE T&N ASBESTOS TRUSTEE COMPANY LIMITED**

**Claimant**

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**APPENDIX 1 TO THE ORDER  
OF CHIEF MASTER MARSH DATED 28 SEPTEMBER 2016**

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**Weil, Gotshal & Manges**  
110 Fetter Lane  
London EC4A 1AY  
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weil.com



**EXECUTION VERSION**

**7 June 2016**

**ASSIGNMENT AGREEMENT**

**between**

**THE T&N ASBESTOS TRUSTEE COMPANY LIMITED**

**And**

**FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST**

**THIS AGREEMENT** (this “**Agreement**”) is made on 7 June 2016 between the following parties:

- (1) **THE T&N ASBESTOS TRUSTEE COMPANY LIMITED**, a company registered in England & Wales with company number 05548874 and having its registered office at 20 North Audley Street, London, W1K 6WE (the “**UK Asbestos Trustee**”), in its capacity as sole trustee of the UK Asbestos Trust (as defined below); and
- (2) **THE FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST**, a statutory trust organised under the laws of the State of Delaware, United States of America (the “**US Trust**”);

each a “**Party**” and together the “**Parties**”.

**WHEREAS**

- (A) In 1996, T&N Limited (“**T&N**”) purchased £500 million of insurance to cover asbestos-related disease claims against T&N and its UK incorporated subsidiary companies (the “**Hercules Policy**”).
- (B) On 1 October 2001, Federal-Mogul Corporation, T&N and certain of their corporate affiliates in the United States and the United Kingdom each commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “**US Bankruptcy Code**”) and/or were placed into administration in England.
- (C) Company voluntary arrangements under Part I of the Insolvency Act 1986 (“**CVAs**”) were proposed by the administrators of T&N and 48 of its English corporate affiliates (the “**Companies**”) on 23 June 2006, were approved by creditors on 7 September 2006 and became effective on 11 October 2006.
- (D) Pursuant to Paragraph 19.3 of the CVAs, holders of certain asbestos personal injury claims (CVA Asbestos Claims) against the Companies in the UK and certain other jurisdictions assigned their rights to conduct and receive the proceeds of those claims (and, with respect to claims potentially covered by insurance, certain additional rights) to the UK Asbestos Trustee.
- (E) As provided for in the CVAs and by a trust deed dated 10 October 2006 between T&N, the Companies and the UK Asbestos Trustee (the “**Trust Deed**”), the UK Asbestos Trustee agreed to act as trustee of a trust established for the purpose of paying holders of CVA Asbestos Claims against T&N and its affiliates (the “**UK Asbestos Trust**”).
- (F) The Trust Deed established, and provided for the future establishment of, a number of specific funds to be held and administered by the UK Asbestos Trustee. These funds include, amongst others:
  - (i) the T&N Fund, which was established pursuant to Paragraph 14.1(a) of the CVAs and Clause 2.4.1 of the Trust Deed for holders of CVA Asbestos Claims (other than Chester Street Claims) against T&N following the transfer of £33 million by the administrators of T&N on behalf of T&N to the UK Asbestos Trustee;
  - (ii) the T&N Hercules Fund, which will be established pursuant to Paragraph 14.1(a) of the CVAs and Clause 2.4.1 of the Trust Deed for holders of CVA Asbestos Claims (other than Chester Street Claims) when Hercules Recoveries are received by the UK Asbestos Trustee;
  - (iii) the Chester Street Fund, which was established pursuant to Paragraph 14.1(c) of the CVAs and Clause 2.4.3 of the Trust Deed for holders of Chester Street Claims following the transfer of £22 million by the administrators of T&N on behalf of T&N to the UK Asbestos Trustee; and

- (iv) the Chester Street Hercules Fund, which will be established pursuant to Paragraph 14.1(c) of the CVAs and Clause 2.4.3 of the Trust Deed for holders of Chester Street Claims when Hercules Recoveries are received by the UK Asbestos Trustee.
- (G) On 27 December 2007, the Fourth Amended Joint Plan of Reorganisation (the “Plan”) became effective in the chapter 11 cases of Federal-Mogul Corporation, T&N, and certain of their corporate affiliates under the US Bankruptcy Code. The Plan provided for, among other things, the creation and funding of the US Trust.
  - (H) Paragraph 19.8.4 of the CVAs and Section 4.5.12(c) of the Plan deal with how funds recovered in respect of the Hercules Policy (Hercules Recoveries) are to be distributed. The UK Asbestos Trustee and the US Trust share the benefit of the Hercules Policy after the payment of certain costs and expenses. Following an order of the English court dated 28 June 2007, net Hercules Recoveries are to be distributed as follows:
    - (i) 6.3% to the US Trust on behalf of Gasket Holdings, Inc. and Ferodo America, Inc.; and
    - (ii) the balance to the US Trust, T&N Hercules Funds and Chester Street Hercules Fund in the following proportions:
      - (A) 88.10% to the US Trust;
      - (B) 7.14% to the T&N Hercules Fund (the UK Asbestos Trust Percentage); and
      - (C) 4.76% to the Chester Street Hercules Fund (the Chester Street Percentage).
  - (I) The reversionary interests in the Chester Street Fund and Chester Street Hercules Fund described at Clauses 2.4.3(b) and 4.1.2(c) of the Trust Deed and Paragraph 15.1.3 of the CVAs (the “Reversionary Interests”) are stated to be payable to T&N or its affiliates. In 2009, T&N gave notice to the UK Asbestos Trustee that, by a deed of assignment dated 30 March 2009, the Reversionary Interests had been assigned to the US Trust.
  - (J) The Parties now wish to vary the UK Asbestos Trust Percentage and the Chester Street Percentage pursuant to the terms set out in this Agreement.
  - (K) The US Trust also wishes to assign all of its rights to and interests in the Reversionary Interests to UK Asbestos Trustee as trustee of the T&N Hercules Fund and the Chester Street Hercules Fund in exchange for the UK Asbestos Trustee’s entitlements to net Hercules Recoveries pursuant to the terms set out in this Agreement.
  - (L) The UK Asbestos Trustee intends to seek an order of the High Court of England and Wales approving entry by it into this Agreement and permitting it to make certain changes to the Trust Deed and the related Trust Distribution Procedures. The Parties intend that this Agreement will not become effective until the court order has been made and the relevant appeal period has expired.

**IT IS AGREED:**

**1 DEFINITIONS AND INTERPRETATION**

Clause 1 (*Definitions and Interpretation*) of the Trust Deed shall apply to this Agreement unless the contrary intention appears in this Agreement.

## 2 VARIATION OF PERCENTAGES

- 2.1 The US Trust and the UK Asbestos Trustee agree to the variation on and from the Effective Date of the UK Asbestos Trust Percentage to 9.916 % and the Chester Street Percentage to 1.984 %, pursuant to Paragraph 19.10 of the CVAs.
- 2.2 In order to comply with their obligations under Paragraph 19.10 of the CVAs, within 5 days of the Effective Date the Parties will give a joint notice to the Hercules Payment Agents in the form of the notice which appears at Schedule 1 of this Agreement.

## 3 ASSIGNMENT OF INTERESTS

- 3.1 The US Trust assigns and agrees to assign all of its rights to and interests in the Reversionary Interests to the UK Asbestos Trustee to be held for the benefit of the Chester Street Hercules Fund and the T&N Hercules Fund in such percentages as the UK Asbestos Trustee in its absolute discretion sees fit (save that the Reversionary Interest in the Chester Street Hercules Fund shall be held for the sole benefit of the T&N Hercules Fund) and the UK Asbestos Trustee accepts the assignment of the same.
- 3.2 In consideration for the assignments at Clause 3.1 above, the UK Asbestos Trustee as trustee of the T&N Hercules Fund and the Chester Street Hercules Fund assigns and agrees to assign all of its rights under Paragraph 19.8.4 of the CVAs and Section 4.5.12(c) of the Plan to Hercules Recoveries, as varied pursuant to Clause 2.1 above, to the US Trust and the US Trust accepts the assignment of the same.
- 3.3 The assignments referred to as Clauses 3.1 and 3.2 above shall take effect on the Effective Date.

## 4 EFFECTIVE DATE

- 4.1 The “**Effective Date**” means the first date following the expiry without any notice of appeal being filed of:

- (a) 21 days; or
- (b) such longer period as the High Court of England and Wales permits, at the time of granting permission to enter into this Agreement, for the filing of notices of appeal,

from the making of an order by the High Court of England and Wales which, to the UK Asbestos Trustee’s satisfaction, gives permission for entry by the UK Asbestos Trustee into this Agreement and permits such amendments to the Trust Deed and the Trust Distribution Procedures as the UK Asbestos Trustee, in its discretion, deems necessary to make in connection with this Agreement.

- 4.2 If a notice of appeal is filed during the periods referred to at Clauses 4.1 (a) and (b) above, the Effective Date will occur only if and when the appeal has been dismissed or resolved in favour of the UK Asbestos Trustee by the Court of Appeal of England and Wales.
- 4.3 If the Effective Date has not occurred on or before 5pm London time on 31 December 2016 (the “**Longstop Date**”), this Agreement shall automatically terminate unless the Parties agree in writing prior to that time that the Longstop Date will be postponed to a future date.

## 5 NOTICES

Any notice or demand to any Party to this Agreement to be given, made or served for any purposes under this Agreement shall be given, made or served by sending the same by pre-paid post (first class if inland, first class airmail if overseas), by fax or by delivering it by hand as follows:

To the UK Asbestos Trustee:           The T&N Asbestos Trustee Company Limited  
c/o AlixPartners UK LLP  
The Zenith Building, 26 Spring Gardens  
Manchester M2 1AB  
United Kingdom  
Fax: +44 (0) 161 838 4501

Attention: Anne O'Keefe

With a copy to:

Weil, Gotshal & Manges  
110 Fetter Lane  
London EC4A 1AY  
Fax: +44 (0) 20 7903 0990

Attention: Mark Lawford

To the US Trust:                       The Federal-Mogul Asbestos Personal Injury Trust  
c/o ARPC, Executive Director  
1220 19th Street, NW, Suite 700  
Washington, DC 20036  
United States of America  
Fax: +1 (202) 797 3619

Attention: John Brophy

With a copy to:

Campbell & Levine, LLC  
310 Grant Street, Suite 1700  
Pittsburgh, Pennsylvania 15219  
United States of America  
Fax: +1 (412) 261 5066

Attention: Stanley E. Levine

or to such other address as shall have been notified to the other Parties. Any notice or demand shall be deemed to have been given:

- (a) in the case of delivery by post, three days after despatch in the case of inland post or seven days after despatch in the case of overseas post;
- (b) in the case of delivery by hand, when delivered, provided that where delivery occurs after 6.00pm on a Business Day (as defined in the CVAs) or on a day which is not a Business Day, service shall be deemed to occur at 9.00am on the next following Business Day; and
- (c) in the case of fax, at the time of transmission, provided that where transmission occurs after 6.00pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9.00am on the next following Business Day.



## **6 ENTIRE AGREEMENT; AMENDMENTS**

- 6.1** This Agreement contains the entire agreement and understanding among the Parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter of this Agreement.
- 6.2** This Agreement may not be modified or amended other than by an agreement in writing signed by the Parties.

## **7 GOVERNING LAW AND JURISDICTION**

- 7.1** This Agreement and all matters (including, without limitation, any contractual or non-contractual obligation) arising from or connected with it are governed by, and will be construed in accordance with, English law.
- 7.2** The courts of England and Wales have exclusive jurisdiction in respect of any dispute which may arise in connection with the validity, effect, interpretation or performance of, or the legal relationships established by, this Agreement or otherwise arising in connection with this Agreement.

## **8 COUNTERPARTS**

This Agreement may be signed in any number of counterparts by facsimile or other written form of communication, each of which shall be deemed to be an original as against any Party whose signature appears on it, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts of this Agreement, individually or taken together, shall bear the signatures of all of the Parties reflected in this Agreement as the signatories.

## **9 THIRD PARTY RIGHTS**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

**SIGNED BY** the Parties or their duly authorised representatives on the date appearing on the first page of this Agreement.

**SCHEDULE 1**

**NOTICE OF VARIATION AND ASSIGNMENT**

To:

Jeremy Willmont  
Moore Stephens LLP  
150 Aldersgate Street  
London EC1A 4AB

Phillip Sykes  
RSM Restructuring Advisory LLP  
25 Farringdon Street  
London EC4A 4AB

[Date]

Dear Sirs

We refer to the company voluntary arrangements under Part I of the Insolvency Act 1986 ("CVAs") proposed by the administrators of T&N Limited and 48 of its English affiliates which were approved by creditors on 7 September 2006 and became effective on 11 October 2006. Terms not otherwise defined in this letter have the meaning given to them in the CVAs.

This letter is notice under Paragraph 19.10 of the CVAs that by an agreement dated [●] between The Federal-Mogul Asbestos Personal Injury Trust (the "US Trust") and the UK Asbestos Trustee, the UK Asbestos Trust Percentage was varied to 9.916 % and the Chester Street Percentage was varied to 1.984 %.

This letter is also notice that the UK Asbestos Trustee has assigned to the US Trust all of its rights under Paragraph 19.8.4 of the CVAs and Section 4.5.12(c) of the Fourth Amended Joint Plan of Reorganisation of Federal-Mogul Corporation, T&N Limited, and certain of their corporate affiliates (the "Plan") to Hercules Recoveries, and accordingly that the UK Asbestos Trustee is no longer entitled to receive any payments pursuant to Paragraph 19.8.4 of the CVAs or Section 4.5.12(c) of the Plan.

Please would you acknowledge receipt of this notice by signing and returning the acknowledgment set out below?

Yours sincerely

.....  
The T&N Asbestos Trustee Company Limited

.....  
The Federal-Mogul Asbestos  
Personal Injury Trust

**ACKNOWLEDGMENT**

To:  
The T&N Asbestos Trustee Company Limited  
The Federal-Mogul Asbestos Personal Injury Trust

We hereby acknowledge that we have received the notice above.

.....  
Jeremy Willmont

Dated:

.....  
Phillip Sykes

Dated:

SIGNATORIES

Signed by James GLEAVE )  
for The T&N Asbestos Trustee Company Limited )  
)



Signed by \_\_\_\_\_ )  
for The Federal-Mogul Asbestos )  
Personal Injury Trust )

SIGNATORIES

Signed by \_\_\_\_\_ )  
for The T&N Asbestos Trustee Company Limited )

Signed by Kirk Watson, )  
for The Federal-Mogul Asbestos Managing )  
Personal Injury Trust Trust )

Kirk Watson

**IN THE HIGH COURT OF JUSTICE**

**Claim No. HC-2016-001884**

**CHANCERY DIVISION**

**Before Chief Master Marsh.**

**Dated 28 September 2016**

**THE T&N ASBESTOS TRUSTEE COMPANY LIMITED**

**Claimant**

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**APPENDIX 2 TO THE ORDER  
OF CHIEF MASTER MARSH DATED 28 SEPTEMBER 2016**

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## **Trust Deed**

### **Distribution of monies under the UK Asbestos Trust**

**Dated 10 October 2006**

As amended by the 2016 Amending Deed dated [x] 2016

**T&N Limited, acting by the Administrators**

**The Companies, acting by the Administrators**

**The T&N Asbestos Trustee Company Limited**

## Contents

1	Definitions and Interpretation	4
2	Establishment of the Trust and the Trustees	5
	Assignment of rights	5
	Trust Claims	5
	Appointment of Trustees as agent	6
	Power of attorney granted by T&N to the Trustees	6
3	Added Property	9
4	Ultimate default trusts	9
5	Deduction of Tax from Payments	11
6	Trustees' Powers	11
7	Powers of Investment	14
8	T&N and the Companies' obligation to co-operate with the Trustees in the consideration of Trust Claims	15
9	The Trust Committee	16
10	Appointment of an Investment Manager	18
11	Liability of Trustees	18
12	Payments to Incapacitated Trust Claimants	19
13	Payments in respect of Deceased Trust Claimants	20
14	Appointment, Removal and Resignation of Trustees	20
15	Trustees' Meetings and Resolutions	21
16	Administration and Accounts	22
17	UK Asbestos Trust Costs	23
	T&N Fund Costs and T&N Hercules Fund Costs	24
	Chester Street Fund Costs and Chester Street Hercules Fund Costs	24
	Costs not attributable to any one particular Fund	24
	Hercules Recovery Costs	25
	EL Asbestos Insurance Fund Costs	25



<b>18</b>	<b>Remuneration and Expenses of Trustees</b>	<b>26</b>
<b>19</b>	<b>Amendment of the TDP and Trust Deed</b>	<b>27</b>
<b>20</b>	<b>Service of notices</b>	<b>28</b>
<b>21</b>	<b>Exclusion of apportionment</b>	<b>28</b>
<b>22</b>	<b>Exclusion of powers of maintenance and advancement</b>	<b>28</b>
<b>23</b>	<b>Duration of the Trust</b>	<b>28</b>
<b>24</b>	<b>Governing Law and disputes</b>	<b>28</b>

## Trust Deed

**This Declaration of Trust is made on the 10th day of October 2006 by**

- (1) **T&N Limited**, whose company number is 00163992, of Manchester International Office Centre, Styal Road, Manchester, M22 5TN, acting by the Administrators;
- (2) **The Companies** listed in Schedule A hereto, acting by the Administrators; and
- (3) **The T&N Asbestos Trustee Company Limited ("the Trustees")**, registered in England with company number 05548874 whose registered office is at 190 The Strand, London, WC2R 1JN.

### Recitals

- A On 1 October 2001 Administration Orders were made in relation to T&N and the Companies.
- B CVAs have been approved by the Creditors in relation to T&N and the Companies listed in Schedule A to this Deed.
- C T&N and several of the Companies were engaged in the manufacture, distribution, sale and installation of asbestos-containing products and the mining of asbestos over many years. Employees of T&N and the Companies and other persons were or may have been exposed to asbestos, and have suffered or may in the future suffer from Asbestos Disease.
- D The Trust Claimants have brought or could bring now or in the future in the United Kingdom or other jurisdictions CVA Asbestos Claims against T&N or any of the Companies alleging (a) Asbestos Exposure, and (b) that T&N or any of the Companies is liable in respect of Asbestos Disease caused by that exposure.
- E The CVAs provide that the Trust shall be established pursuant to the CVAs and this Trust Deed upon the Effective Date.
- F The Trustees have agreed to act as the Trustees of this Trust.

**Now this Deed witnesses as follows:**

### **1 Definitions and Interpretation**

- 1.1 In this Trust Deed, unless the context otherwise requires or expressly provides:
- 1.1.1 defined terms shall bear the meanings given in the Definitions and Interpretation Schedule;

- 1.1.2 the interpretation provisions set out in the Definitions and Interpretation Schedule shall apply to the interpretation of this Trust Deed.

## **2 Establishment of the Trust and the Trustees**

### **2.1 Payments on the Effective Date**

#### 2.1.1 On the Effective Date:

- (a) T&N, acting by the Administrators, shall pay the reserve of £33 million referred to in paragraph 14.2 (a) of the CVAs to the Trustees.
- (b) T&N, acting by the Administrators, shall pay the reserve of £22 million referred to in paragraph 14.2 (b) of the CVAs to the Trustees.

### **2.2 Assignment of rights and Trust Claims**

#### **Assignment of rights**

#### 2.2.1 With effect from the Effective Date:

- (a) Pursuant to paragraph 19.3.1 of the CVAs, each holder of a CVA Asbestos Claim assigns or agrees to assign to the Trust his rights to the proceeds of his CVA Asbestos Claim (whenever such rights may arise).
- (b) Pursuant to paragraph 19.3.2 of the CVAs, each holder of a CVA Asbestos Claim assigns or agrees to assign (i) to T&N all 1930 Act Rights (whenever arising) in respect of or in connection with the Hercules Policy, and (ii) to the Trust all 1930 Act Rights (whenever arising) in respect of or in connection with the EL Asbestos Insurance (other than EL Asbestos Insurance which is the subject of the EL Settlement).

#### **Trust Claims**

2.2.2 In consideration of the assignments made or agreed to be made by the holders of CVA Asbestos Claims pursuant to paragraphs 19.3.1 and 19.3.2 of the CVAs, and the appointment and undertaking contained in paragraphs 19.4.1 and 19.4.2 of the CVAs, each holder shall be entitled to a Trust Claim against the Trust, which shall be separate and distinct from the CVA Asbestos Claim itself (which is a claim against T&N or the relevant Company).

2.2.3 A Trust Claim shall confer and be limited to conferring on the holder the right to receive such payment, if any, as is offered or payable by the Trustees in accordance with and subject to the terms of this Trust Deed and the TDP, and the right to pursue any remedies that the holder may have under this Trust Deed and the TDP against the Trustees in respect of his Trust

Claim. For the avoidance of doubt, in the event that for any reason the Trustees have no funds enabling them to make any or any further payment(s) to the holder of any Trust Claim or fail to make any or any further payment(s) to the holder of any Trust Claim which should have been made in accordance with the terms of this Trust Deed and the TDP:

- (a) the right of the holder of the Trust Claim remains strictly limited to asserting the Trust Claim; and
- (b) the terms and provisions of the CVAs do not oblige, require or render liable T&N or any of the Companies in any circumstances to make any payment to the holder of any Trust Claim or the Trustees in respect of any sum due to the holder of a Trust Claim from this Trust.

#### **Appointment of Trustees as agent**

- 2.2.4 Each holder of a CVA Asbestos Claim against a CVA Hercules-Protected Entity shall irrevocably appoint the Trustees as his/ her agent in the name of such holder or otherwise, to assert his/ her CVA Asbestos Claim against that CVA Hercules-Protected Entity in any appropriate forum, and the holder shall not be entitled to assert the CVA Asbestos Claim except through the agency of the Trustees.

#### **Power of attorney granted by T&N to the Trustees**

- 2.2.5 Pursuant to paragraph 19.7.1 of the T&N CVA, T&N shall provide the Trustees with a power of attorney in the form at Annex 13 to the CVA to enable the Trustees to take all necessary and/ or appropriate steps (subject to the provision of the indemnity referred to in paragraph 16.2 (e) of the CVA) to pursue Hercules Recoveries in respect of CVA Asbestos Claims (but not to receive any payments thereof, except as may be permitted by paragraph 19.8 of the CVA), including the giving of any instructions to the Hercules Payment Agent (being instructions which are not inconsistent with the terms of the CVAs), provided always that the provisions of paragraph 14.4 of the CVA shall apply to the exercise of the power of attorney by the Trustees prior to the establishment of the US Asbestos Trust.

### **2.3 Remuneration Fund**

- 2.3.1 Pursuant to paragraph 32.3 of the CVAs, at the termination of the last CVA, the Supervisors may pay to the Trustees any funds remaining in the Remuneration Reserve to be held on trust and to form the Remuneration Fund. The Remuneration Fund will be applied in accordance with paragraphs 18 and 32 of the CVAs and Clause 17 of this Deed.

## 2.4 The Trusts

2.4 Subject to the prior discharge of all proper costs and expenses of administering and managing the Trust (including those provided for under Clauses 17 and 18 of this Deed), the Trustees shall hold the Fund Assets upon the following trusts:

2.4.1 In the case of the T&N Fund Assets forming the T&N Fund and the T&N Hercules Fund, for:

- (a) first, the holders of T&N Trust Claims; and
- (b) secondly, in the circumstances anticipated by paragraphs 5.7.3 (d) (ii) and/or 5.8.4 (b) of the CVAs, the holders of Chester Street Trust Claims.

2.4.2 In the case of the Non-T&N Fund Assets forming the Non-T&N Funds in respect of each of the Companies other than T&N, for:

- (a) first, the holders of Non-T&N Trust Claims in respect of that Company;
- (b) secondly, in the circumstances anticipated by paragraph 5.7.3 (d) (i) of the CVAs, the holders of Non-T&N Trust Claims in respect of each other Company except T&N; and
- (c) thirdly, in the circumstances anticipated by paragraphs 5.7.3 (d) (ii) and 5.8.4 (b) of the CVAs, the holders of T&N Trust Claims and Chester Street Trust Claims.

2.4.3 In the case of the Chester Street Fund Assets forming the Chester Street Fund and the Chester Street Hercules Fund, for:

- (a) first, the holders of Chester Street Trust Claims in respect of T&N and the Companies; and
- (b) secondly, (i) in the case of the Chester Street Fund Assets forming the Chester Street Fund, for the T&N Hercules Fund and the Chester Street Hercules Fund in proportion to the respective requirements of those Funds, as determined by the Trustees in accordance with Clause 4.10 of the TDP; and (ii) in the case of the Chester Street Fund Assets forming the Chester Street Hercules Fund, for the benefit of the T&N Hercules Fund subject to and in accordance with paragraph 15.1.3 of the CVAs, T&N or such other member or members of the UK Group as FMUK may direct.

2.4.4 In the case of the EL Asbestos Insurance Fund in respect of those Companies in relation to which EL Asbestos Insurance Coverage is available, for the holders of EL Asbestos Insured Trust Claims.

2.4.5 In the case of the Remuneration Fund, for the payment of the UK Asbestos Trust Costs in accordance with paragraph 18 of the CVAs.

## **2.5 Rateable Abatement**

2.5.1 Subject to the provisions of the TDP, in so far as the T&N Fund and the T&N Hercules Fund are insufficient to pay the Trust Claims against those Funds pursuant to Clause 2.4.1, the payments to be made from each Fund shall abate rateably with each other.

2.5.2 Subject to the provisions of the TDP, in so far as any Non-T&N Fund is insufficient to pay the Trust Claims against that Fund pursuant to Clause 2.4.2, the payments to be made shall abate rateably with each other.

2.5.3 Subject to the provisions of the TDP, in so far as the Chester Street Fund and the Chester Street Hercules Fund are insufficient to pay the Trust Claims against those Funds pursuant to Clause 2.4.3, the payments to be made from each Fund shall abate rateably with each other.

## **2.6 Trustees are first Trustees**

2.6.1 The Trustees are appointed and confirmed as the first trustees of the Trust and no discretion, power or duty given to or imposed on any other person who is not a trustee duly appointed under Clause 14.2 entitles that person to act as a trustee of the Trust.

## **2.7 Administration and management**

2.7.1 The administration and management of the Trust is vested in the Trustees.

## **2.8 Matters of doubt**

2.8.1 The Trustees shall decide matters of doubt arising in connection with the Trust and the decision of the Trustees on any matter to be decided by them shall (save for manifest error) be conclusive.

## **2.9 Procedure for the resolution of conflicts of interest**

2.9.1 The Trustees may enter into such arrangements as they consider appropriate to deal with any conflicts of interest that arise during the course of the Trust, which arrangements may include the delegation in relation to a particular conflict of the Trustees' functions, powers, rights, authorities and discretion pursuant to Clause 6.2.6 to a suitable independent professional person.

### **3 Added Property**

- 3.1 The Trustees shall hold the Fund Assets subject to the terms of this Deed and they may accept any additional money, investments or other property paid or transferred to them by any person in respect of any of the Funds, to be held by them on the same terms.

### **4 Ultimate default trusts**

- 4.1 Subject to the provisions of this Trust and if and in so far as the Fund Assets are not wholly disposed of at the expiry of this Trust as specified in Clause 23, or in the event of failure or determination of the Trusts set out above, or in circumstances where a Fund is not exhausted by Established Claims admitted by the Trustees or, in the case of the Chester Street Fund and the Chester Street Hercules Fund, the Trustees project that the Fund(s) will not be exhausted by Established Claims admitted by the Trustees, the capital and income of the Funds shall be paid:

4.1.1 As to the T&N Fund and the T&N Hercules Fund:

- (a) in the Trustees' absolute discretion, to those Trust Claimants with Established Claims against such Funds, to the respective amounts of their Established Claims;
- (b) or where all Trust Claimants with Established Claims have received 100% of their Established Claims from the Trust, to whatever charity (or charities) the Trustees in their absolute discretion consider appropriate, such charity to be a medical charity undertaking research into industrial disease.

4.1.2 As to the Chester Street Fund and the Chester Street Hercules Fund:

- (a) in circumstances where the Trustees make payments to Trust Claimants with Established Claims against the T&N Fund and the T&N Hercules Fund pursuant to Clause 4.1.1 (a) of this Deed, they shall make payments to Trust Claimants with Established Claims against the Chester Street Fund and the Chester Street Hercules Fund from those Funds, where the Chester Street Payment Percentage and Chester Street Hercules Payment Percentage were calculated in accordance with Clauses 4.3.1 (a), 4.3.1 (c) (i), 4.3.1 (d) (i) or 4.9.2 of the TDP, at a rate which gives a return equivalent to that which would have been received by T&N Trust Claimants if there had been no Costs Payments to T&N Trust Claimants under Clauses 3.4.4 to 3.4.7 of the TDP;
- (b) in circumstances where the Trustees make payments to Trust Claimants with Established Claims against any of the Non-T&N Funds pursuant to Clause 4.1.3 (a) of this Deed, they shall make payments to Trust Claimants with Established Claims against the Chester Street Fund from that Fund, where the Chester Street Payment

Percentage was calculated in accordance with Clauses 4.3.1 (b) and 4.3.1 (c) (ii), at a rate which gives a return equivalent to that which would have been received by Non-T&N Trust Claimants if there had been no Costs Payments to Non-T&N Trust Claimants under Clauses 5.2.1 to 5.2.4 of the TDP; and

- (c) if and when the Trustees, in accordance with Clause 4.10 of the TDP, project a surplus of Chester Street Fund Assets in either the Chester Street Fund or the Chester Street Hercules Fund beyond those that they project will be required for the payment of the holders of Chester Street Trust Claims pursuant to Clauses 2.4.3(a) or 4.1.2(a) or (b) above or for the payment of any costs payable from the Chester Street Fund or Chester Street Hercules Fund pursuant to Clauses 17 or 18 below (or otherwise) as applicable, they shall make payments from that projected surplus in accordance with the TDP:

(i) in the case of a projected surplus in the Chester Street Fund, to the T&N Hercules Fund and the Chester Street Hercules Fund in proportion to the respective needs of those Funds (as determined by the Trustees); and

(ii) in the case of a projected surplus in the Chester Street Hercules Fund, to the T&N Hercules Fund.

~~after the Trustees are satisfied that no further Chester Street Trust Claims will be notified to them, and all payments which are payable pursuant to the Trust Documents in respect of all such Established Claims and Chester Street Fund Costs have been made, to T&N or such other member or members of the UK Group as FMUK may direct.~~

#### 4.1.3 As to the Non-T&N Funds:

- (a) in the Trustee's absolute discretion, to those Trust Claimants with Established Claims against each such Fund, up to the respective amounts of their Established Claims.
- (b) as to any surplus funds held in each such Non-T&N Fund, in payment of Non-T&N Trust Claims in respect of other Companies; and
- (c) to the extent not applied in accordance with the preceding sub-paragraph (b), to the T&N Fund, provided that up to 22/55 of any sum received by the T&N Fund may be transferred to the Chester Street Fund in the event (and only in the event) that the Chester Street Fund Assets (including previous payments under paragraphs 5.7.3 (d) (ii) and/or 5.8 of the CVAs) become exhausted and to the extent such payments are



required to fund Chester Street Fund Costs and/ or payments to holders of Chester Street Trust Claims.

- 4.1.4 As to the Remuneration Fund, after the payment of UK Asbestos Trust Costs in accordance with paragraph 18 of the CVAs and Clause 17 of this Deed, to T&N or such other member or members of the UK Group as FMUK directs.

## **5 Deduction of Tax from Payments**

- 5.1 The Trustees may deduct from any payment to be made by them any tax, duty or other fiscal imposition in respect of that payment for which the Trustees are liable or accountable.

## **6 Trustees' Powers**

### **6.1 General**

- 6.1.1 The Trustees shall have all the powers necessary for the implementation of this Trust and, unless otherwise provided by this Deed, they may exercise such powers as they think fit.

### **6.2 Specific powers of the Trustees**

- 6.2 Without prejudice to the generality of Clause 6.1, the Trustees shall have the following powers:

#### **6.2.1 Bank accounts**

to open and operate or give any person written authority to open and operate bank accounts in the name of the Trustees for the purposes of this Trust, and to retain monies on current or deposit account as they consider necessary. For the avoidance of doubt, the Trustees shall have power to permit the Hercules Payment Agents to hold funds in the Hercules Waterfall Account in the name of the Trustees and to apply those funds in accordance with the Hercules Payment Agency Agreement;

#### **6.2.2 Cheques**

to give written authority to any person to draw cheques on any bank account opened and operated in the name of the Trustees in which case neither the bank nor any other person concerned with the payment of money under the authority of any cheque or order so signed shall be concerned to enquire whether the consent of the Trustees has been obtained in respect of such payment;

#### **6.2.3 Borrowing money**

to borrow money on such terms as to interest repayment and otherwise as the Trustees may think fit and where they think fit upon security of the whole or any part of the Fund Assets;

#### 6.2.4 Lending money

to lend money forming part of the Fund Assets upon such terms relating to interest and to repayment either with or without security as the Trustees may think fit;

#### 6.2.5 Indemnities and undertakings

to give indemnities and/or undertakings upon such terms and to such persons as the Trustees may think fit, including those indemnities and undertakings referred to in the CVAs;

#### 6.2.6 Delegation

to delegate on such terms as they think fit to any person (including in cases where there is more than one Trustee to any other or others of the Trustees) the exercise of all or any powers conferred on the Trustees notwithstanding the fiduciary nature of such powers;

#### 6.2.7 Employment of agents and staff

to employ and pay such persons as they think fit in the transaction of any business of the Trust or in the administration of the Trust upon such terms as they consider appropriate and to enter into any service agreements which they may consider desirable;

#### 6.2.8 Advisers

to appoint and obtain advice whether directly or indirectly from any professional advisers on such terms as they think fit;

#### 6.2.9 Receipts and discharges by agents

to give written authority to any person to give or receive receipts and discharges on their behalf in which case a receipt or discharge so given or received will be as effective as if given or received by the Trustees;

#### 6.2.10 Insurance

to insure all or part of the Fund Assets against any risks and for any amounts and to pay the premiums out of the Fund Assets to which any such insurance relates and to pay or apply the whole or a part of the proceeds of any insurance in the repair, replacement or preservation of the assets insured;

#### 6.2.11 Committees

Subject to Clause 9, to appoint and constitute such committees (whether advisory or not) as the Trustees may consider desirable for the better management and administration of the Trust provided that no committee shall incur expense at the cost of or on behalf of the Trust without the prior consent of the Trustees;

6.2.12 Extension of time limits

to extend any time limit in the TDP for the exercise of any right or option or giving of notice by a Trust Claimant to the Trustees on such terms as they think fit and notwithstanding that the time limit has already expired;

6.2.13 Changing and varying investments

to change or vary any property or investments for the time being forming part of the Fund Assets;

6.2.14 Gifts

to accept or renounce gifts and to apply gifts accepted as they think fit for the purposes of the Trust;

6.2.15 Chester Street Trust Claims - consultation

to the extent consistent with the Hercules Policy, power to consult with and accept the assistance of FMC and the US Asbestos Trust in the processing of Chester Street Trust Claims;

6.2.16 Compounding liabilities

to settle, compromise or abandon any Trust Claim, debt, Claim or other thing whatever relating to the Trust;

6.2.17 Legal proceedings

to commence or defend legal proceedings relating to the Trust and to commence and pursue legal proceedings relating to any CVA Asbestos Claim in the name of the holder of such claim or otherwise and to take such action to enforce any judgment or award as may be permitted by the CVAs;

6.2.18 Legal proceedings relating to the Hercules Policy

to commence and pursue legal proceedings relating to the Hercules Policy, and to enforce any judgment or award obtained in such proceedings;

#### 6.2.19 CRU Trust Claims

to allow the CRU to assert CRU Trust Claims against the Trust Funds in accordance with the CVAs and the TDP, to treat such CRU Trust Claims in accordance with the CVAs, and to make payment in respect of them in accordance with the Trust Deed and the TDP;

#### 6.2.20 Commutation or settlement of insurance

to negotiate and/or commute or otherwise agree to a settlement in relation to EL Asbestos Insurance, and to negotiate and/or to concur or join in any commutation or settlement of the Hercules Policy;

#### 6.2.21 Variations of the CVAs

to attend any meeting and to vote as they think fit on any proposed variation of the CVAs on behalf of the holders of CVA Asbestos Claims, and to receive notification of any variations made to the CVAs on behalf of the holders of CVA Asbestos Claims;

#### 6.2.22 Notices of Termination in respect of CVAs

to receive any Notice of Termination in respect of a CVA on behalf of the holders of CVA Asbestos Claims.

## **7 Powers of Investment**

### **7.1 General power of investment**

7.1.1 Subject to Clause 7.2, the Trustees may invest or apply the Fund Assets as if they were absolutely and beneficially entitled to them including, but not restricted to, investing or applying them in any manner or in any place in the world including in anything which would not be regarded as an authorised trustee investment by law.

### **7.2 Specific powers of investment**

7.2 The manner in which the Trustees may invest or apply the Fund Assets under Clause 7.1 includes but is not restricted to the following:

7.2.1 acquiring any interest in real or personal property;

7.2.2 acquiring units, unit trusts or mutual funds or other common investment funds or securitised issues;

- 7.2.3 purchasing, subscribing for or underwriting, sub-underwriting or guaranteeing the subscription of stocks, shares, debenture stocks, bearer securities or other investments;
- 7.2.4 entering into obligations or contracts or dealings including but not restricted to dealings in currencies (whether at the official rate of exchange or any other rate and either for present or forward settlement), traded options, financial futures, commodities or commodity futures;
- 7.2.5 placing monies on deposit with a bank, insurance company, building society, finance company or local authority;
- 7.2.6 participating in a scheme of deposit administration or a managed fund administered by an insurance company;
- 7.2.7 making loans (whether secured or unsecured) to any person;
- 7.2.8 participating in an investment (whether income producing or not) or in the acquisition or development of an interest in land jointly with any other party whether as partners or as trustees including in circumstances where the Trustees have a minority interest in the venture;
- 7.2.9 acquiring assets whether income producing or not, and whether or not of a terminable or wasting or reversionary nature;
- 7.2.10 giving guarantees, indemnities or undertakings; and
- 7.2.11 stocklending, lending or entering into a sale, repurchase or exchange of assets in the Fund Assets whether overnight or for any longer or shorter period of time.

## **8 T&N and the Companies' obligation to co-operate with the Trustees in the consideration of Trust Claims**

- 8.1 T&N and the Companies shall co-operate with the Trustees in the Trustees' consideration of Trust Claims in the following manner:
  - 8.1.1 T&N and the Companies shall promptly provide the Trustees with such information and documents as the Trustees may reasonably request. For the avoidance of doubt, T&N and the Companies shall not in any circumstances provide or be required to provide any legally privileged information or documents to the Trustees, or take any step which constitutes or gives rise to a breach of the Hercules Policy. The Trustees will return and refrain from using or relying upon any legally privileged document which they are informed post-disclosure was disclosed by mistake.
  - 8.1.2 The Trustees shall reimburse any costs, fees and expenses (other than salaries, management time and overhead costs) reasonably incurred by T&N or any of the Companies in providing information or documents pursuant to a request made under Clause 8.1.1. The Trustees shall

not, however, reimburse T&N or any of the Companies for any costs incurred in maintaining their books, records, documents and control systems. T&N and the Companies shall not have any obligation to maintain or incur the cost of maintaining any microfiche reader, photocopier, or personnel to retrieve documents.

- 8.2 On or after the Hercules Policy Expiry Date, at the joint cost of the Trustees and the US Asbestos Trust, T&N may (but shall not be obliged to) transfer and assign, or cause to be transferred and assigned, jointly to the Trustees and the US Asbestos Trust the books, records, documents and control systems of T&N or any of the Companies that pertain directly to Asbestos Personal Injury Claims that have been asserted against T&N or any Company. From the date of any such transfer or assignment, neither T&N nor any of the Companies will be liable or responsible for the maintenance or cost of maintaining the books, records, documents and control systems so transferred or assigned. If so requested by the EL Scheme Trustees, T&N and the Companies shall request that the Trustees provide such information and documents as the EL Scheme Trustees may reasonably request, and the Trustees shall promptly comply with such request.
- 8.3 If any books, records, documents and control systems are transferred or assigned to the Trustees and the US Asbestos Trust pursuant to Clause 8.2, T&N and the Companies shall, at their own cost, be entitled to access to such books, records, documents and control systems, and the Trustees and the US Asbestos Trust shall (to the extent that it is within their power) promptly allow T&N or the Companies such access.

## **9 The Trust Committee**

- 9.1 The Trustees shall establish the Trust Committee.
- 9.2 The Trust Committee shall comprise not less than two and not more than 7 Trust Claimants (including at least one holder of a Chester Street Trust Claim) or their Nominated Representatives (being in each case an individual appointed in writing by a Trust Claimant to represent him on the Trust Committee).
- 9.3 Any such Nominated Representative may appoint any person as his alternate to attend and vote at any meetings of the Trust Committee in his place and may remove such appointee by written notice to him and to the Trustees. Any such alternate shall have the same powers and be subject to the same duties and limitations as the Nominated Representative.
- 9.4 The Trustees shall consult the Trust Committee on:
- 9.4.1 any variation or amendment of this Deed, the TDP or the CVAs (in so far as any proposed variation or amendment of the CVAs would affect the holders of Trust Claims), any alteration of the UK Asbestos Trust Percentage or the Chester Street Percentage, and the setting and

any subsequent revision of the T&N Payment Percentage and the Chester Street Payment Percentage; and

- 9.4.2 such other matters as the Trustees may determine at their sole discretion.
- 9.5 The Trust Committee shall determine the remuneration of the Trustees, save that the Trust Committee shall not determine any remuneration to be paid from the Remuneration Reserve or the Remuneration Fund.
- 9.6 In the event of a dispute between the Trustees and the Trust Committee regarding the remuneration of the Trustees in accordance with Clause 9.5, the dispute shall be referred to an IP who is a member of R3 and whose identity has been agreed by the Trustees and the Trust Committee, or in the absence of any such agreement, who has been nominated by the President of R3 as suitable to act as an expert in the matter having regard to the circumstances at issue. The IP shall:
- 9.6.1 act as an expert not as an arbitrator; and
- 9.6.2 consider all the relevant information and documentation in relation to the dispute (including the written representations of the parties) in order to determine the dispute.
- The determination of the IP shall be final and binding on the Trustees and the Trust Committee. The fees of the IP shall be paid from the Trust Funds.
- 9.7 The Trust Committee shall act in what it perceives to be the best interests of the general body of Trust Claimants.
- 9.8 Not less than every twelve months the Trustees shall send a written report to every member of the Trust Committee showing receipts and payments to and from the Trust Funds in the relevant period, and other relevant information.
- 9.9 The Trustees shall pay from the Trust Funds the reasonable travelling expenses of the Trust Committee members in respect of their attendance at Trust Committee meetings, and in the Trustees' discretion, an attendance allowance as they see fit.
- 9.10 Meetings of the Trust Committee shall be held when and where determined by the Trustees. The Chairman of any meeting of the Trust Committee shall be one of the Trustees, or if the Trustee is a corporate Trustee, one of its directors. A meeting of the Trust Committee shall be duly constituted if due notice of it has been given to all the Members, and at least two Members are present.
- 9.11 At any meeting of the Trust Committee, each Member has one vote, and a resolution shall be passed when a majority of Members has voted in favour of it.

- 9.12 Meetings of the Trust Committee may be held by telephone or other electronic medium. Resolutions of the Trust Committee may be made by post, email or other similar means.

## **10 Appointment of an Investment Manager**

### **10.1 Discretion to appoint an investment manager**

- 10.1.1 The Trustees may appoint in writing an investment manager of the Fund Assets on such terms as they think fit and delegate to him decisions about the investment of the Fund Assets. The Trustees may remove an investment manager at any time and/or replace him with another investment manager as they think fit.

### **10.2 Liability for acts of investment manager**

- 10.2.1 The Trustees or directors or employees of a corporate Trustee are not personally liable for losses in respect of the Fund Assets arising from the acts or defaults of an investment manager appointed under Clause 10.1 so long as they have taken reasonable steps to satisfy themselves that the investment manager has the appropriate knowledge and experience for managing investments of the type held by the Trust.

### **10.3 Brokerage and commission**

- 10.3.1 Subject to the consent of the Trustees, a person appointed as investment manager under this Clause may levy and retain reasonable brokerage and commission charges.

## **11 Liability of Trustees**

### **11.1 Exoneration of the Trustees**

- 11.1.1 No individual Trustee or corporate Trustee or director, officer or employee of a corporate Trustee shall (subject to Clause 10.2.1) be liable for any loss of, depreciation in or default upon any of the investments, securities, stocks or policies in which all or any part of the Fund Assets may at any time be invested or applied, or for any delay in the investment or application of all or any part of the Fund Assets, or for the safety of any securities or documents of title deposited by the Trustees for safe custody, or for the exercise of any power vested in the Trustees (and without prejudice to the generality of the foregoing for any waiver of the rights to any dividends attributable to any shares forming part of the Fund Assets or the negligence or fraud of any agent employed by him or by any other Trustee), or by reason of any other matter or thing; except that a Trustee or a director, officer or employee of a corporate Trustee shall be liable for any losses arising from:

- (a) his fraudulent or other dishonest conduct;



- (b) his knowingly or recklessly acting or omitting to act in a manner which he knew or ought to have known was in breach of trust;
- (c) negligence in the case of a person providing his or its services for a fee.

## **11.2 Trustees' indemnity out of Fund Assets**

11.2.1 Without prejudice to the right to indemnity by law given, the Trustees (including for these purposes a director, officer or employee of a corporate Trustee) shall be jointly and severally indemnified out of the T&N Fund, the Non-T&N Fund, the EL Asbestos Insurance Fund and the Chester Street Fund as appropriate in respect of:

- (a) all liabilities and expenses properly incurred by them in the execution or purported execution of this Trust or of any powers vested in them; and
- (b) all actions, proceedings, costs, expenses, Claims, demands, losses, charges, damages, taxes, duties and other liabilities in respect of any matter or thing done or omitted to be done in any way relating to the Trust;

other than liabilities arising as a consequence of fraud or other dishonest conduct, or knowingly or recklessly acting or omitting to act in a manner they knew or ought to have known was in breach of trust or negligence in the case of a Trustee providing his or its services for a fee.

11.2.2 The Trustees may retain and pay out of the relevant Trust Fund all sums necessary to give effect to such indemnities.

## **11.3 Trustee Insurance**

11.3.1 The Trustees may arrange insurance to protect themselves against liability for breach of trust, or to protect the Fund Assets from any costs, Claims, actions and expenses which result from the indemnity and exoneration provided for the Trustees by this Clause. The cost of any insurance or other cover shall be treated as an expense under Clause 18.4.

## **12 Payments to Incapacitated Trust Claimants**

12.1 If a Trust Claimant appears to the Trustees to be suffering from any mental or physical incapacity rendering him unable to manage his affairs or to give a proper receipt for any payment to be made to him out of the Trust Funds (for example, because he is a minor), the Trustees may pay the whole or part of the payment due to him to any one or more of the following for the benefit of the Trust Claimant or any of his dependants:

12.1.1 any person nominated by the Trust Claimant before his incapacity; or

- 12.1.2 any person appointed by the Court; or
- 12.1.3 any relative or dependant of the Trust Claimant; or
- 12.1.4 any person selected by the Trustees;

and the receipt of the person to whom the payment is made shall be a complete discharge for the amount paid and the Trustees shall not have any further responsibility in relation to the payment.

- 12.2 The Trustees may, as an alternative to making a payment under Clause 12.1, retain all or part of the payment for such period as they think fit and at a later date pay the amount retained to the Trust Claimant or to any person referred to in Clauses 12.1.1 to 12.1.4.

### **13 Payments in respect of Deceased Trust Claimants**

- 13.1 Where any amount is due under the TDP in respect of a deceased Trust Claimant the Trustees may pay it:

- 13.1.1 to the Personal Representative of the Trust Claimant; or

- 13.1.2 to the spouse or dependant of the Trust Claimant; or

- 13.1.3 to any person appearing to the Trustees to be lawfully authorised to receive the payment on behalf of the deceased Trust Claimant,

even where a grant of probate or letters of administration has not been granted.

- 13.2 Clause 13.1 shall apply only if the payment due is not more than £10,000 (or any other amount decided by the Trustees either generally or in any particular case).

- 13.3 A receipt given by the person to whom the payment is made shall be as effective as if it had been given by the Personal Representative of the deceased Trust Claimant.

### **14 Appointment, Removal and Resignation of Trustees**

#### **14.1 Number of Trustees**

- 14.1.1 The number of Trustees shall not be less than three individuals or a corporate Trustee (whether or not the corporate Trustee is a trust corporation as defined by the Trustee Act 1925), and a corporate Trustee may act as the sole trustee of the Fund Assets.

## **14.2 Appointment and removal of Trustees**

- 14.2.1 Subject to Clause 14.1.1, a Trustee may be removed (with or without appointing a replacement) by a resolution of the Trustees supported by a majority of all the other Trustees and they may by resolution supported by a majority of all the Trustees appoint a new Trustee in place of any Trustee or appoint additional Trustees.
- 14.2.2 Where the Trustee is a sole corporate trustee, it shall have power to resign as trustee, appoint additional trustees, and appoint a new trustee in its own place.

## **14.3 Resignation of Trustees**

- 14.3.1 Subject to Clause 14.1.1, a Trustee may resign by giving one month's written notice to the other Trustees. The Trustees may execute a deed confirming a Trustee's resignation but the deed need not be executed by the resigning Trustee.
- 14.3.2 Where the Trustee is a sole corporate trustee, it shall not have power to resign as trustee until it has appointed a new trustee to take its place in accordance with Clause 14.2.2.

## **15 Trustees' Meetings and Resolutions**

### **15.1 Position of corporate Trustee**

- 15.1.1 A corporate Trustee may exercise its powers and discretions and discharge its duties under the Trust by its board of directors or by any of its duly authorised officers, employees or agents in accordance with its constitution.

### **15.2 Meetings of individual Trustees**

- 15.2 If one or more of the Trustees are individuals they may conduct business at a meeting or by telephone conference, video-link, internet or any other form of electronic or digital media as they consider appropriate and the use of one or more of these methods of communication between the Trustees shall constitute a Trustees' meeting at the place where the majority of Trustees are personally present or otherwise as determined by the Trustees except that:
- 15.2.1 unless a decision of the Trustees is required as a matter of urgency, each Trustee shall be given at least ten business days' notice of a Trustees' meeting sent to his last known address and specifying the date, time and place of the meeting;
- 15.2.2 the chairman of a Trustees' meeting shall be appointed by agreement between the Trustees present or (in default of agreement) by lot from among the Trustees present;
- 15.2.3 all business brought before a Trustees' meeting shall be decided by a majority of the Trustees at the meeting;

15.2.4 if there is an equality of votes on a matter arising at a Trustees' meeting, the chairman of the meeting shall have a casting vote; and

15.2.5 if one or more of the Trustees is a corporate trustee, it may attend a Trustees' meeting by one or more of its directors or duly authorised officers, employees or agents, and it shall have only one vote on business to be decided at the meeting.

### **15.3 Written trustee resolutions**

15.3.1 A resolution in writing signed by a majority of the Trustees of which due notice has been given to each Trustee shall be as valid as if it had been passed at a Trustees' meeting, and the resolution may consist of one or more documents in similar form each signed by one or more of the Trustees.

### **15.4 Minutes of Trustees' meetings**

15.4 The Trustees and the directors of a sole corporate Trustee shall keep minutes of all their meetings and the minutes shall be retained for at least six years from the end of the year to which they relate and shall state:

15.4.1 the date, time and place of the meeting;

15.4.2 the names of the Trustees or directors invited to the meeting;

15.4.3 the names of the Trustees or directors who attended the meeting and those who did not attend;

15.4.4 the names of any professional advisers who attended the meeting;

15.4.5 the decisions made at the meeting; and

15.4.6 if any Trustee decision was made since a previous Trustees' meeting, the time, place and date of the decision, and the names of the Trustees who participated in it,

and minutes signed by the person who presided over the meeting which they record, or who presided over the next following meeting, shall be sufficient evidence of the matters to which the minutes relate.

## **16 Administration and Accounts**

### **16.1 Records of receipts and payments**

16.1.1 The Trustees shall keep books and records relating to the administration of the Trust including:

- (a) records of the date and the amount of payments made to each Trust Claimant including the Proof of Claim and the method used to determine his payment and how it was discharged;
- (b) records of the date and amount of any Non-T&N Fund Claim submitted in the CVA of a relevant Company pursuant to the CVAs and the TDP;
- (c) records of the date and amount of any EL Asbestos Insured Claim submitted by the Trust pursuant to the CVAs and the TDP, together with a copy of the EL Asbestos Insured Claim;
- (d) records of the date and the amount of any other payments to or withdrawals from the Trust Funds, including the name and address of the person to whom payment was made or from whom it was received,

and such books and records shall be retained for at least six years from the end of the year to which they relate, subject to Clause 2.13.7 of the TDP.

## **16.2 Audited accounts**

- 16.2.1 The Trustees shall ensure that accounts are prepared for each year and that they are audited, and that an auditor's statement is obtained from the auditor appointed by them under Clause 6.2.8 not later than seven months after the end of the financial year to which they relate.

## **17 UK Asbestos Trust Costs**

### **17.1 Introduction**

- 17.1.1 To the extent that they do not constitute Hercules Recovery Costs which can on the Review Date specified in the Hercules Payment Agency Agreement immediately following the time at which they are incurred be recovered under paragraphs 19.8.4 Thirdly or 19.8.4 Fourthly of the CVAs, and subject to paragraph 32.8 of the CVAs, the UK Asbestos Trust Costs shall be paid as follows.

### **17.2 Non-T&N Fund Costs**

- 17.2.1 Until such time (if any) as the balance of the Remuneration Reserve is transferred to the Trust pursuant to paragraph 32.3 of the CVAs and for so long as personnel or nominees of Kroll Limited comprise the majority of the board of directors of The T&N Asbestos Trustee Company Limited, the Supervisors shall pay the Non-T&N Fund Costs from the Remuneration Reserve. In circumstances where personnel or nominees of Kroll Limited do not comprise the majority of the board of directors of The T&N Asbestos Trustee Company Limited, the Non-

T&N Fund Costs shall be paid out of the relevant Company's Non-T&N Fund in priority to payments to relevant holders of Non-T&N Trust Claims.

**17.3 Other UK Asbestos Trust Costs**

17.3 Subject to paragraph 18.1.2 of the CVAs and Clause 17.2.1 of this Deed, all UK Asbestos Trust Costs may, at the Supervisors' sole discretion, be paid from the Remuneration Reserve. If the Supervisors choose not to or cannot pay all or any such costs from the Remuneration Reserve, they shall be paid as follows.

**T&N Fund Costs and T&N Hercules Fund Costs**

17.3.1 The T&N Fund Costs shall be paid out of the T&N Fund, in priority to payments to the holders of T&N Trust Claims.

17.3.2 The T&N Hercules Fund Costs shall, subject to paragraphs 19.8.4 Thirdly and 19.8.4 Fourthly of the CVAs, be paid out of the T&N Hercules Fund. If the T&N Hercules Fund does not contain sufficient funds, the balance of such costs shall be paid out of the T&N Fund, and the T&N Fund shall be reimbursed for such costs from any Hercules Recoveries that are subsequently received by the Trust pursuant to paragraph 19.8.4 of the CVAs, which shall constitute T&N Hercules Fund Assets.

**Chester Street Fund Costs and Chester Street Hercules Fund Costs**

17.3.3 The Chester Street Fund Costs shall be paid out of the Chester Street Fund in priority to payments to the relevant holders of Chester Street Trust Claims.

17.3.4 The Chester Street Hercules Fund Costs shall, subject to paragraphs 19.8.4 Thirdly and 19.8.4 Fourthly of the CVAs, be paid out of the Chester Street Hercules Fund. If the Chester Street Hercules Fund does not contain sufficient funds, the balance of such costs shall be paid out of the Chester Street Fund, and the Chester Street Fund shall be reimbursed for such costs from any Hercules Recoveries that are subsequently received by the Trust pursuant to paragraph 19.8.4 of the CVAs, which shall constitute Chester Street Hercules Fund Assets.

**Costs not attributable to any one particular Fund**

17.3.5 The remuneration, costs and expenses (if any) of the Trustees which are incurred in the administration of the Trust and which are not attributable to any one particular Fund shall, to the extent that they are not paid from the Remuneration Reserve, be apportioned between the T&N Fund, the Chester Street Fund and each Non-T&N Fund by reference to the number of Trust Claims which are asserted or which are projected to be asserted against the Trust and which are attributable to such Funds. The reasonable costs and expenses:

(a) which are allocated to the T&N Fund shall be met out of the T&N Fund Assets;

- (b) which are allocated to the Chester Street Fund shall be met out of the Chester Street Fund Assets; and
- (c) which are allocated to each Non-T&N Fund shall subject to paragraph 18.1.2 of the CVAs be met out of the relevant Non-T&N Fund Assets.

**Hercules Recovery Costs**

17.3.6 To the extent that any costs paid pursuant to this Clause properly constitute Hercules Recovery Costs, but are nevertheless paid from the sources referred to in Clauses 17.2 and 17.3.1 to 17.3.5, the Trust shall be entitled to recover an amount equal to such Hercules Recovery Costs pursuant to the application set out in paragraph 19.8.4 Fourthly of the CVAs as if such amount were Hercules Recovery Costs which remained outstanding.

**EL Asbestos Insurance Fund Costs**

17.3.7 Subject to paragraph 28.2 of the CVAs, the EL Asbestos Insurance Fund Costs shall be paid out of the EL Asbestos Insurance Fund in priority to payments to the holders of EL Asbestos Insured Trust Claims in accordance with and subject to the terms of this Trust Deed and the TDP. If the EL Asbestos Insurance Fund does not contain sufficient funds to permit payment of EL Asbestos Insurance Fund Costs in full, the balance of such costs shall be apportioned between the T&N Fund and each Non-T&N Fund by reference to the number of Trust Claims which are or which are projected to be asserted against the Trust and which are attributable to such funds. The costs and expenses which are allocated to the T&N Fund shall be met out of the T&N Fund Assets and the costs and expenses which are allocated to each Non-T&N Fund shall, subject to paragraph 18.1.2 of the CVAs, be met out of the relevant Non-T&N Fund Assets.

**17.4 Remuneration Fund**

17.4.1 Pursuant to paragraph 32.3 of the CVAs, at the termination of the last CVA, the Supervisors shall pay to the Trust any funds remaining in the Remuneration Reserve to be held on trust and to form the Remuneration Fund. The Trustees shall apply the Remuneration Fund in accordance with paragraphs 18 and 32 of the CVAs, and Clause 17.4.2 of this Deed.

17.4.2 After the establishment of the Remuneration Fund, the Trustees may pay the UK Asbestos Trust Costs from the sums standing to the credit of the Remuneration Fund. If it is insufficient to meet such costs, the arrangements set out in Clauses 17.2 and 17.3 shall apply.

## **18 Remuneration and Expenses of Trustees**

### **18.1 Professional Trustee Remuneration**

18.1.1 Subject to Clause 17, an individual Trustee or a director of a corporate Trustee who is engaged in any profession or business may charge and be paid out of the Trust Funds all usual professional and other charges for business transacted, time spent, and acts done by him or any employee or partner of his in connection with the Trust, including acts which a trustee not being in any profession, business or trade could have done personally.

### **18.2 Corporate Trustee Remuneration**

18.2.1 Subject to Clause 17, a corporate Trustee may receive out of the Trust Funds such remuneration as is agreed with the Trust Committee under Clause 9.5 or determined under Clause 9.6. A corporate Trustee may direct that any remuneration payable to it should be paid instead to another individual or body including, without limitation, any director of the corporate Trustee, any firm in which a director of the corporate Trustee is a partner, or any associated company of the corporate Trustee, or of a director of the corporate Trustee (including a company of which that director is a director or employee).

### **18.3 Retention of Commissions etc.**

18.3.1 A Trustee or a director of a corporate Trustee (a "director"), a firm in which a Trustee or director is a partner, any subsidiary or associated company of a Trustee or director, or any subsidiary or associated company in which a Trustee or director is interested (whether as an officer or shareholder), may retain any profit, brokerage, commission, fee, remuneration or dividend payable directly or indirectly to the Trustee, director or company concerned, other than a dividend payable to the Trust.

18.3.2 A Trustee may receive and retain remuneration from a company in which the Trust has an interest.

18.3.3 A Trustee or a director of a corporate Trustee may act as an officer or employee of any company in which all or any part of the Fund Assets may be invested, or as an officer or employee of any subsidiary of any such company. He may retain for himself any remuneration or other benefits which he may receive by virtue of his position as such an officer or employee, notwithstanding that any votes or other rights attached to any such investment may have been instrumental either by themselves or in combination with other votes or rights whether or not of a similar nature or by reason of the non-exercise of any such votes or rights in procuring or maintaining for him his position as such an officer or employee.



#### **18.4 Reimbursing Trustees' Expenses**

18.4.1 Subject to Clause 17, a Trustee or a director of a corporate Trustee shall be reimbursed out of the Trust Funds for all expenses properly incurred by him in or about the execution of the Trust.

#### **19 Amendment of the TDP and Trust Deed**

19.1 Subject to ensuring that the Core Objective stated in Clause 1.3 of the TDP is maintained, the Trustees may by deed or written resolution amend the TDP and/or this Deed in order to:

19.1.1 make such amendments as may from time to time appear to be in the best interests of the beneficiaries of the Trust including but not limited to amendments necessary to obtain charitable status for all or part of the Trust; or

19.1.2 take account of advances in scientific or medical knowledge, or other changes in circumstances or in the law; or

19.1.3 comply with any directions or orders of the Court.

19.2 Notwithstanding the foregoing, no amendment to the TDP or Trust Deed may be made which has or may have the effect of:

19.2.1 creating a liability for, increasing the liability of, or reducing the amount receivable by, any company in the Federal-Mogul Group to or from any person, or

19.2.2 materially adversely affecting the position of FMC or of any other company in the Federal-Mogul Group,

without the prior written consent of:

(a) until such time as the Administration Order in respect of T&N is discharged, FMC (such consent not to be unreasonably withheld); or

(b) following the discharge of the Administration Order in respect of T&N and if T&N at the relevant time remains a Subsidiary of FMC, T&N (such consent not to be unreasonably withheld); or

(c) following the discharge of the Administration Order in respect of T&N and if T&N at the relevant time does not remain a Subsidiary of FMC, FMC (such consent not to be unreasonably withheld).

**20 Service of notices**

- 20.1 Any notice to be given to the Trustees under this Deed must be in writing and be delivered or posted to them at their address as stated at the beginning of this Deed or any other address notified by the Trustees to Trust Claimants for the service of notices. A notice is deemed to have been given, if delivered, at the time of delivery or, if posted, on the third day following posting.

**21 Exclusion of apportionment**

- 21.1 The statutory and equitable rules of apportionment shall not apply to this Deed and the Trustees shall be permitted to treat all dividends and other payments in the nature of income received by them as income at the date of receipt, irrespective of the period for which the dividend or other income is payable.

**22 Exclusion of powers of maintenance and advancement**

- 22.1 The statutory powers of maintenance and advancement under sections 31 and 32 of the Trustee Act 1925 shall not apply to this Deed.

**23 Duration of the Trust**

- 23.1 This Trust shall continue until the earlier of the following events:
- 23.1.1 the date on which the Trustees by deed declare that they have discharged or provided for the discharge of all liability under this Deed and the TDP to all Trust Claimants; or
- 23.1.2 the last day of the period of eighty years from the date of this Deed, which period, and no other, shall be the applicable perpetuity period.

**24 Governing Law and disputes**

- 24.1 This Deed is governed by and shall be interpreted in accordance with the laws of England and Wales.
- 24.2 Any disputes arising out of or in connection with this Trust Deed, the TDP or the operations of the Trust shall be subject to the exclusive jurisdiction of the High Court of Justice of England and Wales, save that where provision is made for an alternative form of dispute resolution in this Trust Deed or the TDP, such alternative form of dispute resolution shall prevail.



Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Bridgwater Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Camshaft Castings Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Camshafts Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Engineering Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Eurofriction Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Friction Products Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Ignition (UK) Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Powertrain Systems International Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Sealing Systems (Cardiff) Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Sealing Systems (Rochdale) Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Sealing Systems (Slough) Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Sealing Systems Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Shoreham Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Sintered Products Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Systems Protection Group Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....



Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul Technology Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**TBA Industrial Products Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**AE Dayton Services Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**AE Holdings Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Aeroplane & Motor Aluminium Castings Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Ashburton Road Services Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Brake Linings Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Cranhold Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Duron Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Edmunds Walker & Co Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Federal-Mogul UK Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Ferodo Caernarfon Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Ferodo Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Fleetside Investments Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Friction Materials Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Halls Gaskets Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Instantwonder Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**J.W. Roberts Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Lanoth Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Newalls Insulation Company Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**T&N Shelf Seven Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**T&N Shelf Twenty Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**T&N Shelf Twenty-One Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**T&N Shelf Twenty-Six Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....



Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**TAF International Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**TBA Belting Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Telford Technology Supplies Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**The Washington Chemical Company Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Turner & Newall Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Turner Brothers Asbestos Company Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by  
**Wellworthy Limited** (in administration) acting by  
JAMES JOHN GLEAVE, one of its administrators,  
under the powers conferred on the administrators  
by the Insolvency Act 1986  
in the presence of the witness set out below

.....

JAMES JOHN GLEAVE

Signature of witness: .....

Name of witness: .....

Address: The Observatory, Chapel Walks, Manchester M2 1HL

Executed as a deed by the  
**T&N Asbestos Trustee Company Limited**  
acting by two directors

.....

DIRECTOR

.....

DIRECTOR

## SCHEDULE A

Federal-Mogul Aftermarket UK Limited  
Federal-Mogul Bradford Limited  
Federal-Mogul Bridgwater Limited  
Federal-Mogul Camshaft Castings Limited  
Federal-Mogul Camshafts Limited  
Federal-Mogul Engineering Limited  
Federal-Mogul Eurofriction Limited  
Federal-Mogul Friction Products Limited  
Federal-Mogul Ignition (UK) Limited  
Federal-Mogul Powertrain Systems International Limited  
Federal-Mogul Sealing Systems (Cardiff) Limited  
Federal-Mogul Sealing Systems (Rochdale) Limited  
Federal-Mogul Sealing Systems (Slough) Limited  
Federal-Mogul Sealing Systems Limited  
Federal-Mogul Shoreham Limited  
Federal-Mogul Sintered Products Limited  
Federal-Mogul Systems Protection Group Limited  
Federal-Mogul Technology Limited  
TBA Industrial Products Limited  
AE Dayton Services Limited  
AE Holdings Limited  
Aeroplane & Motor Aluminium Castings Limited  
Ashburton Road Services Limited  
Brake Linings Limited  
Cranhold Limited  
Duron Limited  
Edmunds Walker & Co  
Federal-Mogul UK Limited

Ferodo Caernarfon Limited  
Ferodo Limited  
Fleetside Investments Limited  
Friction Materials Limited  
Halls Gaskets Limited  
Instantwonder Limited  
JW Roberts Limited  
Lanoth Limited  
Newalls Insulation Company Limited  
T&N Shelf Seven Limited  
T&N Shelf Twenty Limited  
T&N Shelf Twenty-One Limited  
T&N Shelf Twenty-Six Limited  
TAF International Limited  
TBA Belting Limited  
Telford Technology Supplies Limited  
The Washington Chemical Company Limited  
Turner & Newall Limited  
Turner Brothers Asbestos Company Limited  
Wellworthy Limited

**IN THE HIGH COURT OF JUSTICE**

**Claim No. HC-2016-001884**

**CHANCERY DIVISION**

**Before Chief Master Marsh**

**Dated 28 September 2016**

**THE T&N ASBESTOS TRUSTEE COMPANY LIMITED**

**Claimant**

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**APPENDIX 3 TO THE ORDER  
OF CHIEF MASTER MARSH DATED 28 SEPTEMBER 2016**

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## **T&N LIMITED AND THE OTHER CVA COMPANIES**

### **TRUST DISTRIBUTION PROCEDURES FOR THE UK ASBESTOS TRUST**

**As amended by:**

- (i) the 2007 Amending Deed dated 1 May 2008**
- (ii) the 2008 Amending Deed dated 21 May 2009**
- (iii) the 2009 Amending Deed dated 10 December 2010**
- (iv) (there was no 2010 Amending Deed)**
- (v) the 2011 (Fifth Anniversary) Amending Deed dated 19 May 2011 (product liability changes took effect on 17 March 2011 and all other changes to take effect on 11 October 2011)**
- (vi) the rounding of the revised Schedule 3 values to take effect on 11 October 2011 was corrected by the Trustees pursuant to clause 6.1 in July 2011**
- (vii) the 2012 Amending Deed dated 19 December 2012**
- (viii) the 2016(i) Amending Deed dated 23 June 2016**
- (ix) the 2016(ii) Amending Deed dated [x] 2016**

## Contents

<b>1</b>	<b>Introduction</b>	<b>7</b>
<b>1.1</b>	<b>Definitions and Interpretation</b>	<b>7</b>
<b>1.2</b>	<b>Scope of the TDP</b>	<b>7</b>
<b>1.3</b>	<b>Core Objective</b>	<b>9</b>
<b>1.4</b>	<b>Payments</b>	<b>9</b>
	<b>T&amp;N Funds</b>	<b>9</b>
	<b>Chester Street Funds</b>	<b>9</b>
	<b>Non-T&amp;N Funds</b>	<b>9</b>
	<b>Agency Companies</b>	<b>10</b>
	<b>Additional Dividend</b>	<b>10</b>
	<b>EL Asbestos Insurance Fund</b>	<b>10</b>
<b>1.5</b>	<b>Trust Claimants and the Hercules Policy</b>	<b>11</b>
<b>1.6</b>	<b>Structure of the TDP</b>	<b>11</b>
<b>2</b>	<b>Establishment of Trust Claims</b>	<b>12</b>
<b>2.1</b>	<b>Advertising for Trust Claims</b>	<b>12</b>
<b>2.2</b>	<b>Time Limits on Trust Claims</b>	<b>12</b>
<b>2.3</b>	<b>Proofs of Claim</b>	<b>13</b>
	<b>General</b>	<b>13</b>
	<b>Asbestos Exposure by more than one party</b>	<b>13</b>
	<b>Deceased Injured Persons</b>	<b>13</b>
	<b>Disease Level V cases</b>	<b>14</b>
<b>2.4</b>	<b>Election by Trust Claimant for Expedited Review Process or Individual Review Process</b>	<b>14</b>
	<b>Trust Claims eligible for Expedited Review</b>	<b>14</b>
	<b>Election</b>	<b>14</b>
	<b>Individual Review only</b>	<b>14</b>
	<b>Possible consequence of choosing Individual Review where Expedited Review available</b>	<b>15</b>
<b>2.5</b>	<b>Expedited Review Process</b>	<b>15</b>



	<b>Consideration of Trust Claims</b>	<b>15</b>
	<b>Valuation of Established Claims: general</b>	<b>17</b>
	<del><b>Valuation of Established Claims: clothing and neighbourhood claims [DELETED]</b></del>	<del><b>18</b></del>
	<b>Valuation of Established Claims: product liability claims</b>	<b>18</b>
	<b>Valuation of Established Claims: Cape Trust Claims</b>	<b>19</b>
	<b>Admission of Established Claims: T&amp;N</b>	<b>19</b>
	<b>Admission of Established Claims: other Companies</b>	<b>19</b>
	<b>Admission of Established Claims: Agency Companies</b>	<b>20</b>
	<b>Admission of Established Claims: certain Agency Companies</b>	<b>21</b>
	<b>Rejection of Trust Claims</b>	<b>22</b>
	<b>Referral of the Trustees' determination to the Expert</b>	<b>22</b>
	<b>EL Scheme Trust Claims</b>	<b>22</b>
<b>2.6</b>	<b>Individual Review Process</b>	<b>23</b>
	<b>Introduction</b>	<b>23</b>
	<b>Consideration of Trust Claims</b>	<b>23</b>
	<b>Valuation of Established Claims: Pre-Administration Liquidated Claims</b>	<b>24</b>
	<b>Valuation of Established Claims: Indirect Asbestos Trust Claims</b>	<b>24</b>
	<b>Valuation of Established Claims: other categories of Trust Claim</b>	<b>24</b>
	<b>Valuation of Established Claims: product liability claims</b>	<b>26</b>
	<b>Valuation of Established Claims: Cape Trust Claims</b>	<b>26</b>
	<b>Admission of Established Claims: T&amp;N</b>	<b>26</b>
	<b>Admission of Established Claims: other Companies</b>	<b>28</b>
	<b>Admission of Established Claims: Agency Companies</b>	<b>28</b>
	<b>Admission of Established Claims: certain Agency Companies</b>	<b>29</b>
	<b>Rejection of Trust Claims</b>	<b>30</b>
	<b>Referral of the Trustees' determination to the Expert</b>	<b>30</b>
	<b>EL Scheme Trust Claims</b>	<b>31</b>
	<b>EL Asbestos Insured Trust Claimants</b>	<b>32</b>
<b>2.7</b>	<b>Trust Claims must be for the most severe Disease Level</b>	<b>33</b>
<b>2.8</b>	<b>Subsequent Trust Claims</b>	<b>33</b>

<b>2.9</b>	<b>Special Provisions applicable to deceased Injured Persons and certain living Injured Persons</b>	<b>34</b>
<b>2.10</b>	<b>CRU Trust Claims [DELETED]</b>	<b>35</b>
<b>2.11</b>	<b>Special Provisions applicable to joint liability Trust Claims</b>	<b>35</b>
<b>2.12</b>	<b>Trust Claims: co-operation of T&amp;N and the Companies</b>	<b>35</b>
<b>2.13</b>	<b>Trustees' powers and procedures</b>	<b>36</b>
<b>2.14</b>	<b>Expert Determination of Disputes</b>	<b>37</b>
<b>3</b>	<b>Payments to Trust Claimants from the T&amp;N Fund and the T&amp;N Hercules Fund</b>	<b>39</b>
<b>3.1</b>	<b>Computation of the T&amp;N Payment Percentage; Reviews</b>	<b>40</b>
<b>3.2</b>	<b>Suspension of Payments from the T&amp;N Fund</b>	<b>40</b>
<b>3.3</b>	<b>Additional Dividend</b>	<b>40</b>
	<b>Value of Established Claims for the purpose of Additional Dividend</b>	<b>40</b>
	<b>Setting the level of Additional Dividend</b>	<b>41</b>
	<b>Suspension</b>	<b>41</b>
<b>3.4</b>	<b>Payments in respect of Established Claims from the T&amp;N Fund</b>	<b>41</b>
	<b>First Payment</b>	<b>41</b>
	<b>Additional Dividend</b>	<b>42</b>
	<b>Costs Payments</b>	<b>42</b>
	<b>TDP Determines Payments</b>	<b>43</b>
<b>3.5</b>	<b>Payment Mechanics</b>	<b>43</b>
<b>3.6</b>	<b>Deductions from Payments and Repayments</b>	<b>44</b>
	<b>First payments in respect of Established Claims</b>	<b>44</b>
	<b>Repayment: no clawback except in cases of fraud</b>	<b>44</b>
	<b>Revising the value of the Established Claim</b>	<b>44</b>
	<b>Overpayments and Additional Dividend</b>	<b>44</b>
<b>3.7</b>	<b>The T&amp;N Hercules Fund</b>	<b>45</b>
<b>4</b>	<b>Chester Street Trust Claims</b>	<b>47</b>
<b>4.1</b>	<b>Assertion of Chester Street Trust Claims</b>	<b>47</b>
	<b>Introduction</b>	<b>47</b>
	<b>Exceptions for Chester Street Trust Claims</b>	<b>47</b>

<b>Specific application of Section 2</b>	<b>48</b>
<b>4.2 Payments to Chester Street Trust Claimants from the Chester Street Fund and the Chester Street Hercules Fund</b>	<b>49</b>
<b>4.3 Computation of the Chester Street Payment Percentage; Reviews</b>	<b>49</b>
<b>4.4 Suspension of Payments from the Chester Street Fund and compromise of Trust Claims 50</b>	
<b>4.5 Additional Dividend</b>	<b>51</b>
<b>4.6 Payments in respect of Established Claims</b>	<b>52</b>
<b>First Payment</b>	<b>52</b>
<b>Additional Dividend</b>	<b>52</b>
<b>Payment(s) in accordance with Clause 4.6 and from the Chester Street Funds</b>	<b>52</b>
<b>4.7 Payment Mechanics</b>	<b>52</b>
<b>4.8 Deductions from Payments and Repayments</b>	<b>52</b>
<b>4.9 The Chester Street Hercules Fund</b>	<b>52</b>
<b>4.10 Payments to the T&amp;N Hercules Fund and Chester Street Hercules Fund pursuant to Clauses 2.4.3(b) and 4.1.2(c) of the Trust Deed</b>	<b>54</b>
<b>5 Payments in relation to Established Claims against the Non-T&amp;N Funds</b>	<b>55</b>
<b>5.1 Non-T&amp;N Fund Claims</b>	<b>55</b>
<b>5.2 Medical and legal costs</b>	<b>56</b>
<b>5.3 Payment Mechanics</b>	<b>57</b>
<b>5.4 Deductions from Payments and Repayments</b>	<b>57</b>
<b>5.5 The operation of Non-T&amp;N Funds after the completion of the relevant CVA</b>	<b>58</b>
<b>Transfers under paragraphs 5.7.1 to 5.7.3 of the CVAs</b>	<b>58</b>
<b>Setting Payment Percentages for the Non-T&amp;N Funds</b>	<b>58</b>
<b>Suspension of Payments from the Non-T&amp;N Funds</b>	<b>59</b>
<b>Additional Dividend</b>	<b>59</b>
<b>Payments in respect of Established Claims from the Non-T&amp;N Funds</b>	<b>60</b>
<b>6 Revision of Values, maximum figures for pain and suffering, Payment Percentages, costs cap, levels of Additional Dividend and medical costs.</b>	<b>60</b>
<b>6.1 General Provisions</b>	<b>60</b>
<b>6.2 Special provision for Values in Schedule 3</b>	<b>61</b>

<b>6.3</b>	<b>Special Provisions for the T&amp;N Payment Percentage and the T&amp;N Hercules Payment Percentage</b>	<b>62</b>
<b>6.4</b>	<b>Special Provisions for the Chester Street Payment Percentage and the Chester Street Hercules Payment Percentage</b>	<b>62</b>
<b>6.5</b>	<b>Special Provisions for the Payment Percentages for Non-T&amp;N Funds after the completion of the relevant CVA</b>	<b>63</b>
<b>7</b>	<b>UK Asbestos Trust Costs</b>	<b>64</b>
<b>7.1</b>	<b>Introduction</b>	<b>64</b>
<b>7.2</b>	<b>Non-T&amp;N Fund Costs</b>	<b>64</b>
<b>7.3</b>	<b>Other UK Asbestos Trust Costs</b>	<b>64</b>
	<b>T&amp;N Fund Costs and T&amp;N Hercules Fund Costs</b>	<b>64</b>
	<b>Chester Street Fund Costs and Chester Street Hercules Fund Costs</b>	<b>65</b>
	<b>Costs not attributable to any one particular Fund</b>	<b>65</b>
	<b>Hercules Recovery Costs</b>	<b>65</b>
	<b>EL Asbestos Insurance Fund Costs</b>	<b>65</b>
<b>7.4</b>	<b>Remuneration Fund</b>	<b>66</b>
<b>8</b>	<b>Trustees' Powers of Amendment</b>	<b>66</b>
<b>9</b>	<b>Governing law and disputes</b>	<b>67</b>
	<b>Schedule 1</b>	<b>68</b>
	<b>Schedule 2</b>	<b>70</b>
	<b>Schedule 3</b>	<b>71</b>
	<b>[Schedule 4 not shown]</b>	

## SECTION ONE

### 1 Introduction

#### 1.1 Definitions and Interpretation

1.1.1 In this TDP, unless the context otherwise requires or expressly provides:

- (a) defined terms shall bear the meaning given to them in the Definitions and Interpretation Schedule; and
- (b) the interpretation provisions set out in the Definitions and Interpretation Schedule shall apply to the interpretation of this TDP.

1.1.2 The term "litigation risk" is used in several of the amendments that have been made to this TDP since the Trust was established. The purpose of this Clause 1.1.2 is to explain the reason for this and the meaning of the term in this context. The consideration of Trust Claims by the Trustees is a two stage process on both Expedited Review and Individual Review. First, the Trustees determine whether a Trust Claim is valid and, if it is, the Trustees admit it as an Established Claim (Clauses 2.5.1 to 2.5.4A for Expedited Review and Clauses 2.6.1 to 2.6.4 for Individual Review). Secondly, if a Trust Claim is admitted as an Established Claim, the Trustees assess the value of the Established Claim (Clauses 2.5.5 to 2.5.7 for Expedited Review and Clauses 2.6.5 to 2.6.7D for Individual Review). While this approach is appropriate in most cases, it does not allow the Trustees adequately to reflect the uncertainty as to the validity of certain types of claim. If such claims were to go through a court process, there would be a significant risk that they would fail following (among other things) disclosure, cross examination and/or the resolution of a legal uncertainty. This is what is meant by "litigation risk" in this TDP. Discounts for litigation risk have been introduced with respect to certain types of claim on both Expedited Review and Individual Review with a view to ensuring that the Core Objective is met.

#### 1.2 Scope of the TDP

1.2.1 This TDP sets out the procedures that must be followed by any Trust Claimant claiming a payment in respect of a Trust Claim from the Trust Funds. The categories of Trust Claims are:

- (a) UK Asbestos PI Trust Claims;
- (b) EL Scheme Trust Claims;
- (c) Australian Asbestos PI Trust Claims;
- (d) Cape Trust Claims;

- (e) Agency (CVA Asbestos) Trust Claims;
- (f) Indirect Asbestos Trust Claims;
- (g) Chester Street Trust Claims; and
- (h) EL Asbestos Insured Trust Claims.

1.2.2 This TDP also sets out the procedures the Trustees will follow in determining whether or not they should make a payment out of the Trust Funds and in determining the amount of the payment. No Trust Claimant has a right to receive a payment in respect of his Trust Claim unless it is made by the Trustees in accordance with the terms of this TDP.

1.2.3 A Trust Claim shall confer and be limited to conferring on the holder the right to receive such payment, if any, as is offered or payable by the Trustees in accordance with and subject to the terms of the Trust Deed and this TDP, and the right to pursue any remedies that the holder may have under the Trust Deed and this TDP against the Trustees in respect of his Trust Claim. For the avoidance of doubt, in the event that for any reason the Trustees have no funds enabling them to make any or any further payment(s) to the holder of any Trust Claim or fail to make any or any further payment(s) to the holder of any Trust Claim which should have been made in accordance with the terms of the Trust Deed and this TDP:

- (a) the right of the holder of the Trust Claim remains strictly limited to asserting the Trust Claim; and
- (b) the terms and provisions of the CVAs do not oblige, require or render liable T&N or any of the Companies in any circumstances to make any payment to the holder of any Trust Claim or the Trustees in respect of any sum due to the holder of a Trust Claim from the Trust.

1.2.4 The Trust Funds comprise the separate funds set out below (each one, a "Fund") created for the purpose of making payments in accordance with the terms of this TDP to each of the corresponding categories of Trust Claimant in so far as their Trust Claims are Established:

- (a) In relation to T&N Trust Claimants:
  - (i) The T&N Fund; and
  - (ii) The T&N Hercules Fund,together the "T&N Funds".
- (b) In relation to Chester Street Trust Claimants:
  - (i) The Chester Street Fund; and

(ii) The Chester Street Hercules Fund,

together the "Chester Street Funds".

(c) In relation to Non-T&N Trust Claimants, separate Non-T&N Funds for each of the Companies.

(d) In relation to EL Asbestos Insured Trust Claimants, the EL Asbestos Insurance Fund.

### **1.3 Core Objective**

1.3.1 The Core Objective is to enable Trust Claimants with Established Claims to receive a payment (or payments) from the appropriate Fund or Funds which:

(a) reflects the value of the underlying CVA Asbestos Claim, the proceeds of which are assigned to the Trust by the Trust Claimant;

(b) is fair and proportionate, having regard to the interests of other Trust Claimants with similar Trust Claims claiming out of the same Fund or Funds; and

(c) is calculated and paid in an efficient and cost-effective manner, following an efficient and cost-effective assessment of the Trust Claim.

### **1.4 Payments**

#### **T&N Funds**

1.4.1 The Trustees shall apply a Payment Percentage for the T&N Fund and, when recoveries are made under the Hercules Policy, a Payment Percentage for the T&N Hercules Fund, to all Established Claims in respect of T&N in accordance with Section 3 of this TDP.

#### **Chester Street Funds**

1.4.2 The Trustees shall apply a Payment Percentage for the Chester Street Fund and, when recoveries are made under the Hercules Policy, a Payment Percentage for the Chester Street Hercules Fund, to the Established Claims of Chester Street Trust Claimants in accordance with Section 4 of this TDP.

#### **Non-T&N Funds**

1.4.3 As to the Non-T&N Funds, until any transfer is made pursuant to paragraphs 5.7.1 to 5.7.3 of the CVAs of any cash remaining in the relevant Non-T&N Subreserve to the Trust, the Trustees shall submit Non-T&N Fund Claims in the CVA of the relevant Company. The dividend in respect of Non-T&N Fund Claims will be determined by the Supervisors of the CVA of the relevant Company, and paid by them to the Trustees, who will, subject to Clause 17 of the Trust Deed, pass it on in full to the Trust Claimant. After any transfer is made

pursuant to paragraphs 5.7.1 to 5.7.3 of the CVAs, the Trustees will make payments for Established Claims concerning Companies other than T&N as provided in Clause 5.5.

#### **Agency Companies**

1.4.4 Where the Trust Claim relates to an Agency Company, a Trust Claimant has two Trust Claims:

(a) A Trust Claim against the relevant Non-T&N Fund, giving rise to a Non-T&N Fund Claim, which the Trustees will assert in the CVA of the Company concerned prior to any transfer being made to the Trust pursuant to paragraphs 5.7.1 to 5.7.3 of the CVAs. After such a transfer has been made, the Trustees will pay Trust Claims from monies held in the Non-T&N Fund. This process is more fully explained in Clause 5.5 of this TDP.

(b) An Agency (CVA Asbestos) Trust Claim against the T&N Fund, arising from the agency relationship between the relevant Agency Company and T&N.

Where the Supervisors of the Agency Company are able to pay a 100% dividend on the Non-T&N Fund Claims, Trust Claimants will have no recourse to the T&N Fund or the T&N Hercules Fund for their Agency (CVA Asbestos) Trust Claims. Where the Supervisors of the Agency Company are unable to pay a 100% dividend on the relevant Non-T&N Fund Claims, Trust Claimants will be entitled to recover simultaneously from the Non-T&N Fund and the T&N Fund, save that they cannot recover in aggregate more than 100% of their Established Claims. Their Non-T&N Fund Claims and Agency (CVA Asbestos) Trust Claims shall abate rateably to the extent that they would otherwise recover more than 100%.

#### **Additional Dividend**

1.4.5 Any Additional Dividend shall be paid by the Trustees to Trust Claimants in accordance with Sections 3, 4, 5 and 6 of this TDP.

#### **EL Asbestos Insurance Fund**

1.4.6 As to the EL Asbestos Insurance Fund, Trust Claimants will be entitled to make a Trust Claim against the T&N Fund and/ or the Non-T&N Funds. They will also be entitled to make EL Asbestos Insured Trust Claims against the Trust. As to EL Asbestos Insured Trust Claims, the Trustees may, if they consider it appropriate in all the circumstances, make a claim against the relevant EL Insurer pursuant to the 1930 Act Rights assigned by the Trust Claimant to the Trust. The Trustees will pay to the Trust Claimant an amount equal to payments received from the relevant EL Insurer, less any EL Asbestos Insured Fund Costs and, pursuant to paragraph 28.2 of the CVAs, any EL Claims Handling Costs, that the Trustees consider are fairly attributable to that EL Asbestos Insured Trust Claim. These arrangements are explained fully in Clause 2.6.15.



## **1.5 Trust Claimants and the Hercules Policy**

- 1.5.1 The Trust Claimants shall co-operate with the Trustees in the assertion of CVA Asbestos Claims against T&N or any of the other Companies for the purpose of generating Hercules Recoveries under the Hercules Policy.

## **1.6 Structure of the TDP**

- 1.6.1 Section 2 of this TDP explains how to establish a Trust Claim against the T&N Funds and the Non-T&N Fund.
- 1.6.2 Section 3 of this TDP explains how payments will be made by the Trustees out of the T&N Funds.
- 1.6.3 Section 4 of this TDP explains how to establish a Chester Street Claim against the Chester Street Funds, and how payments will be made out of those Funds.
- 1.6.4 Section 5 of this TDP explains how the Trustees will in the first instance establish and lodge Non-T&N Fund Claims in the CVAs of relevant Companies, and how payments will be made in the implementation of the CVA in question. It also explains that in the circumstances set out in paragraphs 5.7.1 to 5.7.3 of the CVAs, cash remaining in the relevant Non-T&N Subreserve will be transferred to the Trust, and the Trustees will make payments from the relevant Non-T&N Fund for Established Claims in respect of Companies other than T&N.
- 1.6.5 Section 6 of this TDP explains how the Trustees will, on successive fifth anniversaries of the Effective Date and in some cases more frequently, review and if appropriate revise certain Values, maximum figures for pain and suffering, Payment Percentages, costs caps, levels of Additional Dividend and medical costs.
- 1.6.6 Section 7 of this TDP explains how the UK Asbestos Trust Costs will be paid.
- 1.6.7 Section 8 of this TDP explains in what circumstances the Trust Deed or TDP may be amended.
- 1.6.8 Section 9 of this TDP provides for the governing law of the TDP and the resolution of disputes arising out of or in connection with the Trust Deed, the TDP or the operations of the Trust.

## SECTION TWO

### 2 Establishment of Trust Claims

#### 2.1 Advertising for Trust Claims

The Trustees shall notify and/or advertise for Trust Claimants in the following manner:

2.1.1 As soon as reasonably practicable after the Effective Date, the Trustees shall write to all Trust Claimants of whom they are aware to give them notice of the establishment of the Trust and to invite them to submit a Proof of Claim in accordance with Clause 2.3 of this TDP.

2.1.2 The Trustees shall, as soon as reasonably practicable after the Effective Date, place advertisements in the Law Society Gazette, together with two national newspapers of their choice, giving notice that any person who considers that he has a Trust Claim should take steps to assert it and indicating how such person may obtain details of the Trust and this TDP and a Proof of Claim. Thereafter, the Trustees shall place advertisements in materially the same terms in the Law Society Gazette every year, and in two national newspapers of their choice on the fifth anniversary of the Effective Date, ~~and every five years thereafter.~~

2.1.3 The Trustees shall not be obliged further to advertise for, or otherwise invite the submission of Trust Claims.

#### 2.2 Time Limits on Trust Claims

2.2.1 The Trustees shall not admit as Established Claims Trust Claims relating to CVA Asbestos Claims which would have been statute-barred if made in proceedings commenced against T&N or the relevant Company when the Proof of Claim was lodged, unless:

- (a) such proceedings were in fact issued before the expiry of the relevant limitation period for the CVA Asbestos Claim; or
- (b) there is a standstill agreement in respect of the CVA Asbestos Claim with T&N or the relevant Company, and the limitation period for the CVA Asbestos Claim had not expired before the standstill agreement was entered.

2.2.2 Notwithstanding the above, the Trustees may in their absolute discretion admit a Trust Claim as an Established Claim if having regard to the provisions of section 33 of the Limitation Act 1980, section 19A of the Presumption and Limitation (Scotland) Act 1973, Article 50 of the Limitation (Northern Ireland) Order 1989, or where appropriate, provisions of other jurisdictions to similar effect, they consider it equitable to do so.

2.2.3 Should a Trust Claimant disagree with the Trustees' decision under Clause 2.2.2, the Trust Claimant shall within 28 days give the Trustees written notice that he wishes to refer the

matter to the Expert pursuant to Clause 2.14. The Expert's decision shall be final and binding.

## **2.3 Proofs of Claim**

### **General**

2.3.1 A Trust Claimant who wishes to make a Trust Claim for a payment out of the Trust Funds must lodge a Proof of Claim with the Trustees. Subject only to the rights of reimbursement of costs provided for in Clauses 3.4.4 to 3.4.7 and 5.2.1 to 5.2.4, he shall be responsible for the cost of completing and lodging the Proof of Claim, and providing such documentary or other evidence as the Trustees may require in accordance with Clause 2.13.1 below. To the extent practically possible, the Trustees will accept a single Proof of Claim from a Trust Claimant who wishes to submit Trust Claims in the EL Scheme Trust and this Trust.

2.3.2 Trust claimants are required to provide the information set out in the Proof of Claim appended at Schedule 4 to this TDP.

### **Asbestos Exposure by more than one party**

2.3.3 Trust Claimants may make separate Trust Claims based on Asbestos Exposure by more than one party. All such Trust Claims must be made in one Proof of Claim. In the case of Agency (CVA Asbestos) Trust Claims, the Trust Claimant shall complete one Proof of Claim for the Non-T&N Trust Claim in respect of the relevant Company and the Agency (CVA Asbestos) Trust Claim in respect of T&N.

### **Deceased Injured Persons**

2.3.4 Trust Claims in relation to deceased Injured Persons pursuant to the Statutes must be made in one Proof of Claim.

2.3.5 To avoid costs being incurred unnecessarily where Proofs of Claim are lodged in relation to deceased Injured Persons:

- (a) where the payment in respect of a Trust Claim will not exceed £10,000, Clause 13 of the Trust Deed will apply, and the Proof of Claim may be lodged by the Personal Representative of the deceased Injured Person, or any person appearing to the Trustees to be a spouse or dependant of the deceased Injured Person, or any person appearing to the Trustees to be lawfully authorised to receive the payment on behalf of the deceased Trust Claimant;
- (b) where the payment in respect of a Trust Claim will exceed £10,000, the Proof of Claim must be lodged by a Personal Representative, and where there is no Personal Representative, one must be appointed in order for the Trust Claim to be processed by the Trust.

### **Disease Level V cases**

- 2.3.6 In Disease Level V cases, Proofs of Claim may be lodged. Payment in respect of Established Claims concerning Disease Level V will not be made unless there is a change in the law resulting in such claims being compensable. If such a change in the law occurs, the provisions of this TDP will apply.

## **2.4 Election by Trust Claimant for Expedited Review Process or Individual Review Process**

### **Trust Claims eligible for Expedited Review**

- 2.4.1 The following Trust Claims are eligible for Expedited Review:

- (a) UK Asbestos PI Trust Claims;
- (b) Cape Trust Claims notified to the Trustees before the first anniversary of the Effective Date;
- (c) subject to the written consent of the Trustees (to be granted or withheld at the Trustees' absolute discretion), Cape Trust Claims notified to the Trustees on or after the first anniversary of the Effective Date;
- (d) Agency (CVA Asbestos) Trust Claims; and
- (e) EL Scheme Trust Claims.

~~are eligible for Expedited Review.~~

### **Election**

- 2.4.2 A Trust Claimant whose Trust Claim is eligible for Expedited Review shall elect in his Proof of Claim whether he wishes the Trustees to adopt the Expedited Review Process described in Clause 2.5 or the Individual Review Process described in Clause 2.6 of this TDP. If he fails so to elect, he will be deemed to have elected to adopt the Expedited Review Process.

### **Individual Review only**

- 2.4.3 The following claims can only proceed by way of Individual Review:

- (a) Australian Asbestos PI Trust Claims,
- (b) Cape Trust Claims notified to the Trustees on or after the first anniversary of the Effective Date (save for where the Trustees have given written consent pursuant to Clause 2.4.1(c) above for a Cape Trust Claim to proceed by way of Expedited Review),
- (c) EL Asbestos Insured Trust Claims,
- (d) Indirect Asbestos Trust Claims, and
- (e) Chester Street Trust Claims (as to which see Section 4).

- (f) together with neighbourhood and clothing claims as defined in Clause 2.5.4A where the Asbestos Exposure took place entirely before 1 October 1965. and
- (g) ~~product liability claims as defined in Clause 2.5.6 where:~~
  - (i) ~~the product liability claim is for Disease Levels I or II and the Asbestos Exposure took place entirely on or after 1 January 1976, or~~
  - (ii) ~~the product liability claim is for Disease Levels III, IV or V and more than 20 percent of the period of Asbestos Exposure took place on or after 1 January 1976.~~

can only proceed by way of Individual Review.

**Possible consequence of choosing Individual Review where Expedited Review available**

2.4.4 If a Trust Claimant whose Trust Claim is eligible for Expedited Review chooses to proceed by way of Individual Review, he will not be entitled to recover Actual Legal Costs in accordance with Clauses 3.4.4 and 3.4.6, and Clauses 5.2.1, 5.2.3 and 5.5.8 (c), unless the Trustees or the Expert determine that the value of his Established Claim is at least 10% higher than the Expedited Review Value for the relevant Disease Level in the Expedited Review Process.

**2.5 Expedited Review Process**

**Consideration of Trust Claims**

2.5.1 Where the Trust Claimant elects to have his Trust Claim assessed under the Expedited Review Process, the Trustees shall consider whether the Trust Claim meets one or more of the Presumptive Medical and Exposure Criteria applicable to any of the Disease Level(s) set out in Schedule 1. The diagnosis of the medical criteria in Schedule 1 shall be undertaken by a Medical Expert, who must be an accredited respiratory specialist or a retired consultant in respiratory medicine in cases of Disease Levels I to IV, and must be a qualified doctor in cases of Disease Level V. Special provisions apply to EL Scheme Trust Claims, as to which see Clause 2.5.14 below.

2.5.2 The Trustees shall not be bound to accept the findings of the Medical Expert provided by the Trust Claimant and may obtain and rely on such further medical evidence as they think fit, including but not limited to the obtaining of a report from another Medical Expert in the event of uncertainty concerning the Injured Person's condition or where they consider the medical evidence provided to them by the Trust Claimant to be unsatisfactory.

2.5.3 The Trustees shall not be bound by the exposure evidence provided by the Trust Claimant and may obtain evidence from a consultant engineer or such other evidence as they see fit to assist them in determining the extent and relevance of any Asbestos Exposure alleged by a Trust Claimant.

2.5.4 If the Trustees determine that the Trust Claim meets all the relevant Presumptive Medical and Exposure Criteria for the relevant Disease Level they shall admit the Trust Claim as an Established Claim.

2.5.4A As to UK Asbestos PI Trust Claims brought by or in respect of (i) a person who suffered exposure to asbestos caused by the activities of T&N or any relevant Company where the asbestos dust was contained in an employee's clothes ("**clothing claims**"), or (ii) a person who resided or worked close to a manufacturing site of T&N or any relevant Company and suffered exposure to asbestos caused by the activities of the same ("**neighbourhood claims**"):

(a) For all Disease Levels, clothing and neighbourhood claims where the Asbestos Exposure in question occurred entirely before 1 October 1965 shall proceed by way of Individual Review, as made clear by Clause 2.4.3.

(b) For Disease Level I and II cases, where the Asbestos Exposure occurred partly before and partly on or after 1 October 1965, the Trustees shall consider the Trust Claims in the normal way provided by Clauses 2.5.1 to 2.5.4.

(c) For Disease Level II, III, IV and V cases, where the Asbestos Exposure occurred partly before and partly on or after 1 October 1965:

(i) The Trustees shall apply percentage figures to each period of Asbestos Exposure reflecting the extent of Asbestos Exposure before 1 October 1965 and the extent of Asbestos Exposure on or after 1 October 1965.

(ii) If the Trustees consider it appropriate to admit the Trust Claim as an Established Claim they shall only do so in respect of the period of Asbestos Exposure that occurred on or after 1 October 1965, applying the percentage figure for that period to the Expedited Review Value for the relevant Disease Level.

2.5.4B As to product liability claims (as defined in Clause 2.5.6):

(a) For all Disease Levels, product liability claims where the Asbestos Exposure in question occurred entirely on or after 1 January 1976 shall proceed by way of Individual Review, in accordance with Clause 2.4.3.

~~(b) For Disease Level I and II cases where the Asbestos Exposure occurred entirely before 1 January 1976, or partly before and partly on or after 1 January 1976, the Trustees shall consider the Trust Claims in the normal way provided by Clauses 2.5.1 to 2.5.4.~~

~~(c) For Disease Level III, IV and V cases where the period of Asbestos Exposure began before 1 January 1976, if:~~

~~(i) it ended before 1 January 1976 or 20 per cent or less of the period of Asbestos Exposure took place on or after 1 January 1976, the Trustees shall consider the Trust Claims in the normal way provided by Clauses 2.5.1 to 2.5.4.~~

~~(ii) more than 20 per cent of the period of Asbestos Exposure took place on or after 1 January 1976, the Trust Claims shall proceed by way of Individual Review, as stated in Clause 2.4.3.~~

#### **Valuation of Established Claims: general**

2.5.5 Where the Trustees determine that a UK Asbestos PI Trust Claim should be admitted as an Established Claim under the Expedited Review Process, they shall value the Established Claim as follows:

(a) In Disease Level I, and II and V cases, the Trustees shall apply the Expedited Review Value for the relevant Disease Level set out in table 1 of Schedule 3. ~~If it appears to the Trustees that the Asbestos Disease is attributable to any material extent to Asbestos exposure caused by the activities of any party other than T&N or the relevant Company, the Trustees shall apply the Apportionment Formula to the value of the Established Claim. If there is no sufficient evidence of material Asbestos Exposure by any other party, the Apportionment Formula shall not be applied.~~

(b) In Disease Level II cases, where the Trust Claimant was a smoker the Trustees shall apply a discount of 10% to the Expedited Review Value to reflect contributory negligence. If it appears to the Trustees that the Asbestos Disease is attributable to any material extent to Asbestos Exposure caused by the activities of any party other than T&N or the relevant Company, the Trustees shall apply the Apportionment Formula to the value of the Established Claim (as already reduced to reflect contributory negligence if applicable). If there is no sufficient evidence of material Asbestos Exposure by any other party, the Apportionment Formula shall not be applied.

(c) In Disease Level III and IV cases, the Trustees shall first consider the severity of the Asbestos Disease in respect of which the Trust Claim is made by reference to the

Disability Rating Scale set out in Schedule 2. They shall calculate the value of the Established Claim by applying the Expedited Review Value for mild, moderate or severe cases of the Asbestos Disease in table 1 of Schedule 3. If it appears to the Trustees that the Asbestos Disease is attributable to any material extent to Asbestos Exposure caused by the activities of any party other than T&N or the relevant Company, the Trustees shall apply the Apportionment Formula to the value of the Established Claim. If there is no sufficient evidence of material Asbestos Exposure by any other party, the Apportionment Formula shall not be applied.

- (d) In Disease Level V cases, the Trustees shall apply the Expedited Review Value for the relevant Disease Level set out in table 1 of Schedule 3. If it appears to the Trustees that the Asbestos Disease is attributable to any material extent to Asbestos Exposure by any party other than T&N or the relevant Company, the Trustees shall apply the Apportionment Formula to the value of the Established Claim. If there is no sufficient evidence of material Asbestos Exposure by any other party, the Apportionment Formula shall not be applied.
- (e) In cases where the Injured Person is deceased, the value of the Established Claim shall be set at the relevant Expedited Review Value for the relevant Disease Level set out in tables 2 and 3 of Schedule 3.
- (f) In all cases, if a Trust Claimant has received a payment from or on behalf of any other party in respect of his Asbestos Disease, he must disclose the amount of the payment to the Trustees. The Trustees may take the whole or part of the payment into account when valuing the Established Claim, if they consider it appropriate to do so.

~~**Valuation of Established Claims: clothing and neighbourhood claims [DELETED]**~~

**Valuation of Established Claims: product liability claims**

2.5.6 Where the Trustees determine that a UK Asbestos PI Trust Claim brought by or in respect of a person who suffered exposure to asbestos contained in product(s) manufactured by T&N or any relevant Company ("**product liability claims**") should be admitted as an Established Claim under the Expedited Review Process, the Trustees shall value the Established Claim as set out in Clause 2.5.5, and they shall then discount that value by ~~one-third~~ 50% to reflect litigation risk.

~~Where the Trustees determine that a UK Asbestos PI Trust Claim brought by or in respect of (i) a person who suffered exposure to asbestos caused by the activities of T&N or any relevant Company, where the asbestos dust was contained in an employee's clothes ("clothing claims"), or (ii) a person who resided or worked close to a manufacturing site of T&N or any relevant Company and suffered exposure to asbestos caused by the activities of the same ("neighbourhood claims"), should be admitted as an Established Claim under the Expedited Review Process, the Trustees shall value the~~



~~Established Claim as set out in Clause 2.5.5, and they shall then discount that value by 20% to reflect litigation risk.~~

**Valuation of Established Claims: Cape Trust Claims**

2.5.7 Where the Trustees determine that a Cape Trust Claim should be admitted as an Established Claim under the Expedited Review Process, the Trustees shall value the Established Claim as set out in Clause 2.5.5, and they shall then discount that value by ~~70%~~ 50% (provided that they may adjust that figure if they consider it appropriate to do so), to reflect litigation risk.

**Admission of Established Claims: T&N**

2.5.8 If the Established Claim is a Trust Claim in respect of T&N, the Trustees shall send the Trust Claimant an Expedited Review Admission Notice setting out in summary form the payment to be made to the Trust Claimant, showing:

- (a) the value of the Established Claim which they have determined under the Expedited Review Process ~~(in accordance with Clause 3.6.1 (b), there shall be no set-off of any amounts due in respect of a CRU Trust Claim against any amount due to the Trust Claimant);~~
- (b) the net sum payable or estimated to be payable to the Trust Claimant after application of the then current T&N Payment Percentage or T&N Hercules Payment Percentage, out of the T&N Fund and/or the T&N Hercules Fund in accordance with Section 3; and
- (c) any Costs Payments which the Trustees have determined should be paid pursuant to Clauses 3.4.4 to 3.4.7.

**Admission of Established Claims: other Companies**

2.5.9 If the Established Claim is a Trust Claim in respect of a Company other than T&N (except Agency Companies, as to which see Clause 2.5.10):

- (a) The Trustees shall send an Expedited Review Admission Notice setting out in summary form the amount of the Established Claim showing the information required by Clause 2.5.8 (a) and the amount of any Costs Payments which the Trustees have determined should be paid pursuant to Clauses 5.2.1 to 5.2.4.
- (b) The Trustees shall, subject to the completion of the expert process provided by Clauses 2.5.13 and 2.14, give notice of the Established Claim to the Supervisors of the relevant Company and submit a corresponding Non-T&N Fund Claim in the CVA for that Company. The Non-T&N Fund Claim shall be for a sum equal to the value of the Established Claim, including any Costs Payments that the Trustees determine should be paid pursuant to Clauses 5.2.1 to 5.2.4, with the intention that in

accordance with the terms of the CVA, the Non-T&N Fund Claim shall be Allowed for dividend on the value of the Established Claim in the relevant Company's CVA, together with the appropriate Costs Payments.

- (c) Subject to clause 17 of the Trust Deed, the Trustees will pass on in full to the Trust Claimant all payments in respect of the Non-T&N Fund Claim that they receive from the relevant Company's Supervisors.

**Admission of Established Claims: Agency Companies**

2.5.10 If the Established Claim is a Trust Claim in respect of an Agency Company (except Newalls Insulation Company Limited, TBA Belting Limited, T&N Shelf Twenty-Six Limited, The Washington Chemical Company Limited, or JW Roberts Limited, as to which see Clause 2.5.11):

- (a) The Trustees shall send an Expedited Review Admission Notice setting out in summary form the amount of the Established Claim showing the information required by Clause 2.5.8 (a) and the amount of any Costs Payments which the Trustees have determined should be paid pursuant to Clauses 5.2.1 to 5.2.4.
- (b) The Trustees shall, subject to the completion of the expert process provided by Clauses 2.5.13 and 2.14, give notice of the Established Claim to the Supervisors of the relevant Agency Company and submit a corresponding Non-T&N Fund Claim in the CVA for that Agency Company. The Non-T&N Fund Claim shall be for a sum equal to the value of the Established Claim, plus:
  - (i) where the relevant Agency Company's Supervisors are able to pay the Non-T&N Fund Claim in full, the full amount of any Costs Payments that the Trustees determine should be paid in accordance with Clauses 5.2.1 to 5.2.4;
  - (ii) where the relevant Agency Company's Supervisors are unable to pay the Non-T&N Fund Claim in full, 50% of any Costs Payments that the Trustees determine should be paid in accordance with Clauses 5.2.1 to 5.2.4,

in both cases with the intention that in accordance with the terms of the CVAs the Non-T&N Fund Claim shall be allowed for dividend on the value of the Established Claim in the relevant Agency Company's CVA, together with the appropriate Costs Payments.

- (c) Subject to clause 17 of the Trust Deed, the Trustees will pass on in full to the Trust Claimant all payments in respect of the Non-T&N Fund Claim that they receive from the relevant Agency Company's Supervisors.

- (d) Where the relevant Agency Company's Supervisors are able to pay a 100% dividend on the relevant Non-T&N Fund Claim, the Trust Claimant will have no recourse to the T&N Fund or the T&N Hercules Fund in respect of his Agency (CVA Asbestos) Trust Claim.
- (e) For the avoidance of doubt, where the relevant Agency Company's Supervisors are unable to pay a 100% dividend on the relevant Non-T&N Fund Claim, the Trust Claimant will be entitled to recover simultaneously from the Non-T&N Fund and the T&N Fund, save that he cannot recover in aggregate more than 100% of his Established Claim. The Non-T&N Fund Claim and Agency (CVA Asbestos) Trust Claim shall abate rateably to the extent that he would otherwise recover more than 100%.

**Admission of Established Claims: certain Agency Companies**

2.5.11 If the Established Claim is a Trust Claim in respect of Newalls Insulation Company Limited, TBA Belting Limited, T&N Shelf Twenty-Six Limited, The Washington Chemical Company Limited, or JW Roberts Limited:

- (a) The Trustees shall send an Expedited Review Admission Notice setting out in summary form the amount of the Established Claim showing the information required by Clause 2.5.8 (a) and the amounts of any Costs Payments which the Trustees have determined should be paid in accordance with Clauses 3.4.4 to 3.4.7.
- (b) The Trustees shall, subject to the completion of the expert process provided by Clauses 2.5.13 and 2.14, give notice of the Established Claim to the Supervisors of the relevant Agency Company and submit a corresponding Non-T&N Fund Claim in the CVA for that Agency Company. The holder of each such Non-T&N Fund Claim shall receive a fixed sum payment of (as the case may be):
  - (i) £5 for Newalls Insulation Company Limited and TBA Belting Limited;
  - (ii) £60 for T&N Shelf Twenty-Six Limited;
  - (iii) £30 for The Washington Chemical Company Limited;
  - (iv) £20 for JW Roberts Limited,

The Trustees shall not include any Costs Payments in the Non-T&N Fund Claim submitted in the CVA of the relevant Agency Company.

- (c) Subject to Clause 17 of the Trust Deed, the Trustees will pass on in full to the Trust Claimant all payments in respect of the Non-T&N Fund Claim that they receive from the relevant Agency Company's Supervisors.

- (d) The Trust Claimant will be entitled to recover against the T&N Fund for his Agency (CVA Asbestos) Trust Claim, including any Costs Payments that the Trustees have determined should be paid.

#### **Rejection of Trust Claims**

- 2.5.12 If the Trustees determine that a Trust Claim should be rejected under the Expedited Review Process, they shall send the Trust Claimant an Expedited Review Rejection Notice setting out detailed reasons for their decision.

#### **Referral of the Trustees' determination to the Expert**

- 2.5.13 Any Trust Claimant who is dissatisfied with his Expedited Review Admission Notice or an Expedited Review Rejection Notice may elect to have his Trust Claim considered by the Expert pursuant to Clause 2.14 provided that he gives notice in writing to the Trustees of such election in the form set out in the Expedited Review Admission Notice or Expedited Review Rejection Notice (as the case may be) within 28 days of receipt of such notice. Upon giving notice of such election the Trust Claimant shall not be entitled to receive payment from the Trust Funds under the Expedited Review Process until the Expert has made his determination. In the case of Established Claims in respect of Companies other than T&N, the Trustees shall not submit any corresponding Non-T&N Fund Claim in the CVA of the relevant Company until the Expert has made his determination. If a Trust Claimant fails to give notice in accordance with this Clause he shall be bound by the determination of his Trust Claim by the Trustees under the Expedited Review Process and shall have no further right of appeal or review.

#### **EL Scheme Trust Claims**

- 2.5.14 As to EL Scheme Trust Claims assessed by Expedited Review:
  - (a) If the underlying EL Scheme Claim was wholly admitted as an Established Claim by the EL Scheme Trustees:
    - (i) The Trustees shall treat the EL Scheme Trust Claim as an Established Claim against this Trust in the amount determined by the EL Scheme Trustees.
    - (ii) The Trustees shall deduct the total amount paid or payable by the EL Scheme Trustees to the EL Scheme Trust Claimant from the value of the Established Claim against this Trust.
    - (iii) The Trustees shall apply the relevant Payment Percentage(s) to the amount of the Established Claim less the sum deducted under sub-clause (a) (ii).
    - (iv) The Trustees shall send the Trust Claimant an Expedited Review Admission Notice setting out in summary form the information arising from sub-clauses

- (a) (i) to (iii), and the net sum payable or estimated to be payable to the Trust Claimant from this Trust.
  - (v) The Trust Claimant shall not be entitled to any Costs Payments from this Trust.
- (b) If the underlying EL Scheme Claim was wholly rejected by the EL Scheme Trustees:
  - (i) The Trust Claimant shall have an EL Scheme Trust Claim against this Trust in the amount that the EL Scheme Trustees rejected.
  - (ii) The Trustees of this Trust shall be entitled to consider afresh whether the EL Scheme Trust Claim meets the Presumptive Medical and Exposure Criteria set out in Schedule 1 in accordance with Clauses 2.5.1 to 2.5.3. They shall either admit and value the EL Scheme Trust Claim as an Established Claim in accordance with Clauses 2.5.4 to 2.5.11, or reject it in accordance with Clause 2.5.12. The EL Scheme Trust Claimant may refer the Trustees' decision to the Expert in accordance with Clause 2.5.13.
- (c) If the underlying EL Scheme Claim was partly accepted and partly rejected by the EL Scheme Trustees:
  - (i) The Trustees shall apply the procedure set out in sub-clause (a) to that part of the EL Scheme Claim that the EL Scheme Trustees admitted.
  - (ii) The Trustees shall apply the procedure set out in sub-clause (b) to that part of the EL Scheme Claim that the EL Scheme Trustees rejected.

## **2.6 Individual Review Process**

### **Introduction**

- 2.6.1 Where a Trust Claimant elects or is required to have his Trust Claim assessed under the Individual Review Process the Trustees shall determine whether the Trust Claim should be admitted as an Established Claim in accordance with this Clause 2.6.
- 2.6.2 Special provisions apply in the case of EL Scheme Trust Claims and EL Asbestos Insured Trust Claims as set out in Clauses 2.6.14 and 2.6.15. In all other cases Clauses 2.6.3 to 2.6.13 inclusive apply.

### **Consideration of Trust Claims**

- 2.6.3 Subject to Clause 2.6.2, the Trustees shall consider the Trust Claim by reference to the relevant common law and statutory provisions applicable to the jurisdiction in which the CVA

Asbestos Claim could have been brought, and shall have regard to the information given in the Proof of Claim, and all relevant circumstances, including but not limited to:

- (a) awards or settlement values of similar claims for the same Disease Level against T&N or any relevant Company or other comparable companies in the relevant jurisdiction;
- (b) any unsatisfied or part-satisfied actual award, judgment or settlement made or agreed pre-administration whether in respect of damages and/or legal costs and disbursements;
- (c) the strengths and weaknesses of the available evidence relating to the applicable Disease Level and medical and exposure criteria, including but not limited to the Presumptive Medical and Exposure Criteria set out in the table in Schedule 1 and the Disability Rating Scale set out in Schedule 2;
- (d) the age, symptoms and disability of the Injured Person;
- (e) where appropriate, the extent to which the relevant disease is attributable to Asbestos Exposure for which T&N or the relevant Company, or any direct or indirect subsidiary of T&N, is not liable;
- (f) the extent to which injury and disability are attributable to some comorbid condition unrelated to Asbestos Disease.

2.6.4 The Trustees may obtain and rely on such legal, medical or other advice as they see fit for the purpose of the consideration of Trust Claims under Clause 2.6.3.

**Valuation of Established Claims: Pre-Administration Liquidated Claims**

2.6.5 The Trustees may value an Established Claim by reference to a Pre-Administration Liquidated Claim held by the Trust Claimant (save in the case of manifest error), but not so as to exceed the Maximum Value for the relevant Disease Level listed in Schedule 3.

**Valuation of Established Claims: Indirect Asbestos Trust Claims**

2.6.6 In the case of Indirect Asbestos Trust Claims, the Trustees shall value the Established Claim in such amount as they consider appropriate, taking into account all relevant facts and matters, but not exceeding the Maximum Value for the relevant Asbestos Disease suffered by the Injured Person.

**Valuation of Established Claims: other categories of Trust Claim**

2.6.7 In all other cases, where the Trustees determine that a Trust Claim should be admitted as an Established Claim under the Individual Review Process, they shall calculate the value of the Established Claim as follows:

- (a) ~~In Disease Level I and, II and V cases, the value of the Established Claim shall be set at such amount as the Trustees shall determine but not exceeding the Maximum Value for the relevant Disease Level set out in table 1 of Schedule 3. If it appears to the Trustees that the Asbestos Disease is attributable to any material extent to Asbestos Exposure caused by the activities of any other party other than T&N or the relevant Company, the Trustees shall apply the Apportionment Formula to the value of the Established Claim. If there is no sufficient evidence of material Asbestos Exposure by any other party, the Apportionment Formula shall not be applied.~~
- (b) In Disease Level II cases, where the Trust Claimant was a smoker the Trustees may, if they consider it appropriate, apply a discount of up to 20% to the value that otherwise would have been fixed for Established Claims, to reflect contributory negligence. If it appears to the Trustees that the Asbestos Disease is attributable to any material extent to Asbestos Exposure caused by the activities of any party other than T&N or the relevant Company, the Trustees shall apply the Apportionment Formula to the value of the Established Claim (as already reduced to reflect contributory negligence if applicable). If there is no sufficient evidence of material Asbestos Exposure by any other party, the Apportionment Formula shall not be applied.
- (c) ~~In Disease Level III and IV cases, the Trustees shall first consider the severity of the Asbestos Disease in respect of which the Trust Claim is made by reference to the Disability Rating Scale set out in Schedule 2. They shall calculate the value of the Established Claim by applying the Maximum Value for mild, moderate or severe cases of the Asbestos Disease in table 1 of Schedule 3. They shall set the value of the Established Claim at such amount as they shall determine, but not exceeding the Maximum Value for mild, moderate or severe cases of the Asbestos Disease in table 1 of Schedule 3. If it appears to the Trustees that the Asbestos Disease is attributable to any material extent to Asbestos Exposure caused by the activities of any party other than T&N or the relevant Company, the Trustees shall apply the Apportionment Formula to the value of the Established Claim. If there is no sufficient evidence of material Asbestos Exposure by any other party, the Apportionment Formula shall not be applied.~~
- (d) In Disease Level V cases, the value of the Established Claim shall be set at such amount as the Trustees shall determine but not exceeding the Maximum Value for Disease Level V set out in table 1 of Schedule 3. If it appears to the Trustees that the Asbestos Disease is attributable to any material extent to Asbestos Exposure by any party other than T&N or the relevant Company, the Trustees shall apply the Apportionment Formula to the value of the Established Claim. If there is no sufficient evidence of material Asbestos Exposure by any other party, the Apportionment Formula shall not be applied.

- (e) In cases where the Injured Person is deceased, the Trustees shall determine the value of the Established Claim at an amount which shall not exceed the Maximum Value for the relevant Disease Level set out in tables 2 and 3 of Schedule 3.
- (f) In all cases, if a Trust Claimant has received a payment from or on behalf of any other party in respect of his Asbestos Disease, he must disclose the amount of the payment to the Trustees. The Trustees may take the whole or part of the payment into account when valuing the Established Claim, if they consider it appropriate to do so.

2.6.7A In determining the value of Established Claims under Clause 2.6.7 above, the Trustees shall assume that the Injured Person will not develop any disease or suffer any deterioration in his condition that would entitle the Trust Claimant to make a subsequent claim under Clause 2.8 below. The Trustees shall only consider any such disease or deterioration if and when they receive a further Proof of Claim pursuant to Clause 2.8 below.

2.6.7B The Trustees may, however, take into account evidence of a chance that at some definite or indefinite time in the future the Injured Person will, as a result of the act or omission which gave rise to the Trust Claim, develop a disease or suffer a deterioration in his condition that would not entitle the Trust Claimant to make a subsequent claim under Clause 2.8 below. For example (without limitation) this means that the Trustees may take into account the risk of the Injured Person's percentage disability from Disease Levels III or IV worsening.

**Valuation of Established Claims: product liability claims**

2.6.7C Where the Trustees determine that a product liability claim (as defined in Clause 2.5.6 above) should be admitted as an Established Claim under the Individual Review Process, the Trustees shall value the Established Claim as set out in Clauses 2.6.5 to 2.6.7B (as appropriate). If the Trustees value the Established Claim pursuant to any of Clauses 2.6.6 to 2.6.7B, they shall then discount that value by 50% to reflect litigation risk. The discount shall not be applied where the Established Claim is valued pursuant to Clause 2.6.5.

**Valuation of Established Claims: Cape Trust Claims**

2.6.7D Where the Trustees determine that a Cape Trust Claim should be admitted as an Established Claim under the Individual Review Process, the Trustees shall value the Established Claim as set out in Clauses 2.6.5 to 2.6.7B (as appropriate). If the Trustees value the Established Claim pursuant to any of Clauses 2.6.6 to 2.6.7B, they may then in their discretion discount that value by 25%, 50% or 75% to reflect litigation risk. A discount shall not be applied where the Established Claim is valued pursuant to Clause 2.6.5.

**Admission of Established Claims: T&N**

2.6.8 If the Trustees determine that a Trust Claim in respect of T&N should be admitted under the Individual Review Process, they shall send the Trust Claimant an Individual Review



Admission Notice setting out in summary form the payment to be made to the Trust Claimant, showing:

- (a) the value of the Established Claim which they have determined under the Individual Review Process, broken down by heads of recovery;
- (b) ~~any amounts due in respect of a GRU Trust Claim which may lawfully be set-off against any amount due to the Trust Claimant, in accordance with Clause 3.6.1 (b);~~
- (c) the net sum payable or estimated to be payable to the Trust Claimant after application of the then current T&N Payment Percentage/ T&N Hercules Payment Percentage in accordance with Section 3; and
- (d) any Costs Payments which the Trustees have determined should be paid, pursuant to Clauses 3.4.4 to 3.4.7.

**Admission of Established Claims: other Companies**

- 2.6.9 If the Established Claim is a Trust Claim in respect of a Company other than T&N (except Agency Companies, as to which see Clause 2.6.10):
- (a) The Trustees shall send an Individual Review Admission Notice setting out in summary form the amount of the Established Claim showing the information required by Clause 2.6.8 (a) and (b), and the amount of any Costs Payments which the Trustees have determined should be paid pursuant to Clauses 5.2.1 to 5.2.4.
  - (b) The Trustees shall, subject to the completion of the expert process provided by Clauses 2.6.13 and 2.14, give notice of the Established Claim to the Supervisors of the relevant Company and submit a corresponding Non-T&N Fund Claim in the CVA for that Company. The Non-T&N Fund Claim shall be for a sum equal to the value of the Established Claim including any Costs Payments that the Trustees determine should be paid pursuant to Clauses 5.2.1 to 5.2.4, with the intention that in accordance with the terms of the CVA, the Non-T&N Fund Claim shall be Allowed for dividend on the value of the Established Claim in the relevant Company's CVA together with the appropriate Costs Payments.
  - (c) Subject to Clause 17 of the Trust Deed, the Trustees will pass on in full to the Trust Claimant all payments in respect of the Non-T&N Fund Claim that they receive from the relevant Company's Supervisors.

**Admission of Established Claims: Agency Companies**

- 2.6.10 If the Established Claim is a Trust Claim in respect of an Agency Company (except Newalls Insulation Company Limited, TBA Belting Limited, T&N Shelf Twenty-Six Limited, The Washington Chemical Company Limited or JW Roberts Limited, as to which see Clause 2.6.11):
- (a) The Trustees shall send an Individual Review Admission Notice setting out in summary form the amount of the Established Claim showing the information required by Clause 2.6.8 (a) and (b), and the amount of any Costs Payments which the Trustees have determined should be paid pursuant to Clauses 5.2.1 to 5.2.4.
  - (b) The Trustees shall, subject to the completion of the expert process provided by Clauses 2.6.13 and 2.14, give notice of the Established Claim to the Supervisors of the relevant Agency Company and submit a corresponding Non-T&N Fund Claim in the CVA for that Agency Company. The Non-T&N Fund Claim shall be for a sum equal to the value of the Established Claim, plus:

- (i) where the relevant Agency Company's Supervisors are able to pay a dividend of 100% on the relevant Non-T&N Fund Claim, the full amount of any Costs Payments that the Trustees determine should be paid in accordance with Clauses 5.2.1 to 5.2.4;
- (ii) where the relevant Agency Company's Supervisors are unable to pay a dividend of 100% on the Non-T&N Fund Claim, 50% of any Costs Payments that the Trustees determine should be paid in accordance with Clauses 5.2.1 to 5.2.4;

in both cases with the intention that in accordance with the terms of the CVA the Non-T&N Fund Claim shall be Allowed for dividend on the value of the Established Claim in the relevant Agency Company's CVA, together with the appropriate Costs Payments.

- (c) Subject to Clause 17 of the Trust Deed, the Trustees will pass on in full to the Trust Claimant all payments in respect of the Non-T&N Fund Claim that they receive from the relevant Agency Company's Supervisors.
- (d) Where the relevant Agency Company's Supervisors are able to pay a dividend of 100% on the relevant Non-T&N Fund Claim, the Trust Claimant will have no recourse to the T&N Fund or the T&N Hercules Fund in respect of his Agency (CVA Asbestos) Trust Claim.
- (e) For the avoidance of doubt, where the relevant Agency Company's Supervisors are unable to pay a 100% dividend on the relevant Non-T&N Fund Claim, the Trust Claimant will be entitled to recover simultaneously from the Non-T&N Fund and the T&N Fund, save that he cannot recover in aggregate more than 100% of his Established Claim. The Non-T&N Fund Claim and Agency (CVA Asbestos) Claim shall abate rateably to the extent that he would otherwise recover more than 100%.

**Admission of Established Claims: certain Agency Companies**

2.6.11 If the Established Claim is a Trust Claim in respect of Newalls Insulation Company Limited, TBA Belting Limited, T&N Shelf Twenty-Six Limited, The Washington Chemical Company Limited or JW Roberts Limited:

- (a) The Trustees shall send an Individual Review Admission Notice setting out in summary form the amount of the Established Claim showing the information required by Clause 2.6.8 (a) and (b), and the amount of any Costs Payments which the Trustees have determined should be paid in accordance with Clauses 3.4.4 to 3.4.7.
- (b) The Trustees shall, subject to the completion of the expert process provided by Clauses 2.6.13 and 2.14, give notice of the Established Claim to the Supervisors of

the relevant Agency Company and submit a corresponding Non-T&N Fund Claim in the CVA for that Agency Company. The holder of each such Non-T&N Fund Claim shall receive a fixed sum payment of (as the case may be):

- (i) £5 for Newalls Insulation Company Limited and TBA Belting Limited;
- (ii) £60 for T&N Shelf Twenty-Six Limited;
- (iii) £30 for The Washington Chemical Company Limited;
- (iv) £20 for JW Roberts Limited,

The Trustees shall not include any Costs Payments in the Non-T&N Fund Claim submitted in the CVA of the relevant Agency Company.

- (c) Subject to Clause 17 of the Trust Deed, the Trustees will pass on in full to the Trust Claimant all payments in respect of the Non-T&N Fund Claim that they receive from the relevant Agency Company's Supervisors.
- (d) The Trust Claimant will be entitled to recover against the T&N Fund for his Agency (CVA Asbestos) Trust Claim, including any Costs Payments that the Trustees have determined should be paid.

#### **Rejection of Trust Claims**

2.6.12 If the Trustees determine that a Trust Claim shall be rejected under the Individual Review Process, they shall send the Trust Claimant an Individual Review Rejection Notice setting out detailed reasons for their decision.

#### **Referral of the Trustees' determination to the Expert**

2.6.13 Any Trust Claimant who is dissatisfied with an Individual Review Admission Notice or an Individual Review Rejection Notice may elect to have his Trust Claim determined by the Expert under the provisions of Clause 2.14 provided that he gives notice in writing to the Trustees of such election in the form set out in the Individual Review Admission Notice or Individual Review Rejection Notice (as the case may be) within 28 days of such receipt. Upon giving notice of such election the Trust Claimant shall lose any right to receive payment from the Trust Funds in accordance with the Individual Review Process, and in the case of Established Claims in respect of Companies other than T&N, the Trustees shall not submit any corresponding Non-T&N Fund Claim in the CVA of the relevant Company, until the Expert has made his determination. If the Trust Claimant fails to give notice in accordance with this Clause he shall be bound by the determination of his Trust Claim by the Trustees under the Individual Review Process and shall have no further right of appeal or review.

### **EL Scheme Trust Claims**

#### 2.6.14 As to EL Scheme Trust Claims assessed by Individual Review:

- (a) If the underlying EL Scheme Claim was wholly admitted as an Established Claim by the EL Scheme Trustees:
  - (i) The Trustees shall treat the EL Scheme Trust Claim as an Established Claim against this Trust in the amount determined by the EL Scheme Trustees, subject to sub-clause (ii).
  - (ii) The Trustees may value the Established Claim by reference to a Pre-Administration Liquidated Claim held by the EL Scheme Trust Claimant (save in the case of manifest error), but not so as to exceed the Maximum Value for the relevant Disease Level listed in Schedule 3.
  - (iii) The Trustees shall deduct the total amount paid or payable by the EL Scheme Trustees to the EL Scheme Trust Claimant from the value of the Established Claim against this Trust.
  - (iv) The Trustees shall apply the relevant Payment Percentage(s) to the amount of the Established Claim less the sum deducted under sub-clause (iii).
  - (v) The Trustees shall send the Trust Claimant an Individual Review Admission Notice setting out in summary form the information arising from sub-clauses (i) to (iv), and the net sum payable or estimated to be payable to the Trust Claimant from this Trust.
  - (vi) The Trust Claimant shall not be entitled to any Costs Payments from this Trust.
- (b) If the underlying EL Scheme Claim was wholly rejected by the EL Scheme Trustees:
  - (i) The Trust Claimant shall have an EL Scheme Trust Claim in the amount that the EL Scheme Trustees rejected.
  - (ii) The Trustees of this Trust shall be entitled to consider the EL Scheme Trust Claim afresh in accordance with Clauses 2.6.3 to 2.6.5. They shall either admit and value the EL Scheme Trust Claim as an Established Claim in accordance with Clauses 2.6.6 to 2.6.11, or reject it in accordance with Clause 2.6.12. The EL Scheme Trust Claimant may refer the Trustees' decision to the Expert in accordance with Clause 2.6.13.
- (c) If the underlying EL Scheme Claim was partly accepted and partly rejected by the EL Scheme Trustees:

- (i) The Trustees shall apply the procedure set out in sub-clause (a) to that part of the EL Scheme Claim that the EL Scheme Trustees admitted.
- (ii) The Trustees shall apply the procedure set out in sub-clause (b) to that part of the EL Scheme Claim that the EL Scheme Trustees rejected.

**EL Asbestos Insured Trust Claimants**

2.6.15 As to EL Asbestos Insured Trust Claimants:

- (a) EL Asbestos Insured Trust Claimants will be entitled to make a Trust Claim against the T&N Fund and/ or the Non-T&N Funds. They will also be entitled to make EL Asbestos Insured Trust Claims against the EL Asbestos Insurance Fund.
- (b) The Trustees shall assess Trust Claims against the T&N Fund and/ or the Non-T&N Funds in accordance with Clauses 2.6.3 to 2.6.5. They may admit and value such Trust Claims as Established Claims in accordance with Clauses 2.6.6 to 2.6.11 (subject to Clause 2.6.15 (c)), or reject them in accordance with Clause 2.6.12. Trust Claimants may refer the Trustees' decision to the Expert in accordance with Clause 2.6.13.
- (c) The Trustees shall deduct from the amount of any Established Claim against the T&N Fund or Non-T&N Fund a sum equal to the amount paid or payable to the Trust Claimant under sub-clause (e) in respect of the EL Asbestos Insured Trust Claim held by the Trust Claimant.
- (d) As to the EL Asbestos Insured Trust Claim, the Trustees may, if they consider it appropriate in all the circumstances, make a claim against the relevant EL Insurer pursuant to the 1930 Act Rights assigned by the Trust Claimant to the Trust.
- (e) The Trustees will pay to the Trust Claimant an amount equal to payments received from the relevant EL Insurer, less (i) any EL Asbestos Insured Fund Costs that the Trustees consider are fairly attributable to that EL Asbestos Insured Trust Claim, and (ii) any EL Claims Handling Costs payable in relation to that EL Asbestos Insured Trust Claim pursuant to paragraph 28.2 of the CVAs.
- (f) Notwithstanding the preceding sub-clauses, the Trustees shall have an absolute discretion to make payments to Trust Claimants in respect of their Established Claims against the T&N Fund and/ or the Non-T&N Funds prior to receiving any monies from the relevant EL Insurer. In these circumstances:
  - (i) the Trustees shall not be required to make a payment under sub-clause (e) save to the extent that the sum received from the relevant EL Insurer which is payable to the Trust Claimant exceeds any sums which have already been

paid to the Trust Claimant out of the T&N Fund and/ or the Non-T&N Fund concerned;

- (ii) the Trustees will be entitled to reimburse the T&N Fund and/ or the relevant Non-T&N Fund (as they consider appropriate) for the value of payment(s) made out of such Funds from any monies which may subsequently be received by them from the relevant EL Insurer in respect of the EL Asbestos Insured Trust Claim; and
- (iii) in reimbursing the T&N Fund and/ or the relevant Non-T&N Fund, the Trustees shall, in so far as reasonably practicable, restore the position to what it would have been if sub-clause (c) had been strictly applied.

## **2.7 Trust Claims must be for the most severe Disease Level**

2.7.1 A Trust Claimant who makes a Trust Claim must claim for the most severe Disease Level for which he considers he qualifies at the time of lodging his Proof of Claim with the Trustees. For this purpose Disease Level I shall be the most severe and Disease Level V shall be the least severe. Irrespective of the Disease Level alleged on the Proof of Claim, each Trust Claim shall be treated as if it were a Trust Claim for the most severe Disease Level for which the Trust Claimant is determined by the Trustees to qualify at the time of lodging the Proof of Claim with the Trustees.

## **2.8 Subsequent Trust Claims**

- 2.8.1 Where relevant, a Trust Claimant who lodges a Proof of Claim in respect of a Trust Claim involving a non-malignant Asbestos Disease (Disease Levels III to V) may subsequently lodge a further Proof of Claim in respect of a Trust Claim involving a malignant Asbestos Disease (Disease Levels I or II) provided that the Trust Claimant did not know of the diagnosis of the malignant Asbestos Disease until after the Proof of Claim in respect of the non-malignant Asbestos Disease was lodged.
- 2.8.2 A Trust Claimant who lodges a Proof of Claim in respect of a Trust Claim involving Disease Levels IV or V may subsequently lodge a further Proof of Claim in respect of a Trust Claim involving asbestosis (Disease Level III) provided that the Trust Claimant did not know of the diagnosis of asbestosis until after the Proof of Claim in respect of Disease Levels IV or V was lodged.
- 2.8.3 Any subsequent Trust Claims made under this Clause must proceed by the Individual Review Process.

**2.9 Special Provisions applicable to deceased Injured Persons and certain living Injured Persons**

2.9.1 Subject to Clause 2.9.3 below, where a Trust Claim is lodged in respect of a living Injured Person, the first table at Schedule 3 to the TDP shall apply in determining the value of the Established Claim.

2.9.2 Where a Trust Claim is lodged in relation to a deceased Injured Person, the second and third tables at Schedule 3 to the TDP shall apply in determining the value of the Established Claim.

2.9.3 Where a Trust Claim is lodged by a living Injured Person in respect of Disease Levels I and II, who confirms in writing that he has no Dependants or Relatives or any person who is akin to a Dependant or Relative under equivalent legislation, or his Dependants or Relatives or any such persons confirm in writing that they will not bring any Claims pursuant to the Statutes on the death of the Injured Person, the first table at Schedule 3 to this TDP shall apply in determining the value of the Established Claim. Where there is no such confirmation, the amount of the pain and suffering element of the Trust Claim will be valued (subject to fixed sum valuations of £70,000 in Disease Level I cases and £60,000 in Disease Level II cases assessed by Expedited Review and subject to a maximum of £70,000 in Disease Level I cases and a maximum of £60,000 in Disease Level II cases assessed by Individual Review, provided that such valuations shall be reduced by applying the Apportionment Formula if the Apportionment Formula would otherwise apply to such living Injured Person's Established Claim pursuant to Clause 2.5.5(b) or Clause 2.6.7(b)), and the remainder of the Trust Claim (the value of which will be determined in accordance with the second and third tables at Schedule 3 to the TDP and which shall be similarly reduced by applying the Apportionment Formula if it would otherwise be applicable pursuant to Clause 2.5.5(b) or Clause 2.6.7(b)) may be claimed by the individual who, on the death of the Injured Person, lodges a Trust Claim pursuant to Clause 2.3.5 of the TDP.

2.9.4 The aggregate of the values attributed to the Established Claim in respect of the Asbestos Disease of any one Injured Person will not exceed:

- (a) the relevant Expedited Review Value set out in Schedule 3 to this TDP, where the Trust Claims proceed by the Expedited Review Process; or
- (b) the relevant Maximum Value set out in Schedule 3 to this TDP, where the Trust Claims proceed by the Individual Review Process,

so that where the living Injured Person or his Dependants or Relatives or persons akin to his Dependants or Relatives under any equivalent legislation provide the confirmation referred to in Clause 2.9.3, the Trust Claim is admitted by the Trustees, and the Established Claim is valued according to the second or third table of Schedule 3 to the TDP, no additional Trust Claims will be accepted in respect of that Injured Person's Asbestos Disease.



2.9.5 ~~[DELETED] Where the Trustee determine that a Trust Claim made by a deceased Injured Person's Personal Representative should be admitted as an Established Claim, and the Personal Representative requests that the Trustees apportion the value of the Established Claim between the Injured Person's Dependents or Relatives and the Injured Person's estate, the Trustees will set out this apportionment in the Expedited Review Admission Notice or the Individual Review Admission Notice. Where a Trust Claimant is dissatisfied with this apportionment, Clauses 2.5.13 and 2.6.13 apply.~~

## **2.10 CRU Trust Claims ~~[DELETED]~~**

2.10.1 ~~As to Trust Claims admitted as Established Claims to be paid out of the T&N Fund and the T&N Hercules Fund, the Trustees shall admit any CRU Trust Claim which is made and which in their absolute discretion they consider properly arises out of the relevant Established Claim. Any such CRU Trust Claim shall be admitted as an Established Claim in the amount determined by the Trustees but subject to the T&N Payment Percentage.~~

2.10.2 ~~As to Trust Claims admitted as Established Claims in respect of Companies other than T&N, the CRU may make a CRU Trust Claim arising out of the Established Claim in relation to the relevant Company in the amount determined by the Trustees but subject to the Payment Percentage applicable to the relevant Non-T&N Fund. If the Company is an Agency Company, the CRU will also have an Agency (CVA Asbestos) Trust Claim in relation to T&N but subject to the T&N Payment Percentage. In such cases, the CRU will be entitled to recover simultaneously from the Non-T&N Fund and the T&N Fund, save that it cannot recover in aggregate more than 100% of its Established Claim. The Non-T&N Fund Claim and Agency (CVA Asbestos) Trust Claim shall abate rateably to the extent that it would otherwise recover more than 100%.~~

2.10.3 ~~Subject to Clauses 2.10.1 and 2.10.2, the CRU shall be treated as a Trust Claimant. CRU Trust Claims must all be made under the Individual Review Process described in Clause 2.6.~~

## **2.11 Special Provisions applicable to joint liability Trust Claims**

2.11.1 If a Trust Claimant submits a Trust Claim to this Trust, and, prior to the Trust Claim being determined by the Trustees, a Trust Claimant has received a payment from or on behalf of any other party in respect of his Asbestos Disease caused by the same Asbestos Exposure, he must disclose the amount of the payment to the Trustees, and the amount allowable as an Established Claim shall be reduced by the amount of the payment.

## **2.12 Trust Claims: co-operation of T&N and the Companies**

2.12.1 Pursuant to Clause 8 of the Trust Deed, T&N and the Companies shall co-operate with the Trustees in the Trustees' consideration of Trust Claims in the following manner:

- (a) T&N and the Companies shall promptly provide the Trustees with such information and documents as the Trustees may reasonably request. For the avoidance of doubt, T&N and the Companies shall not in any circumstances provide or be required to provide any legally privileged information or documents to the Trustees, or take any step which constitutes or gives rise to a breach of the Hercules Policy. The Trustees will return and refrain from using or relying upon any legally privileged document which they are informed post-disclosure was disclosed by mistake.
- (b) The Trustees shall reimburse any costs, fees and expenses (other than salaries, management time and overhead costs) reasonably incurred by T&N or any of the Companies in providing information or documents pursuant to a request made under Clause 2.12.1 (a). The Trustees shall not, however, reimburse T&N or any of the Companies for any costs incurred in maintaining their books, records, documents and control systems. T&N and the Companies shall not have any obligation to maintain or incur the cost of maintaining any microfiche reader, photocopier, or personnel to retrieve documents.

2.12.2 On or after the Hercules Policy Expiry Date, at the joint cost of the Trustees and the US Asbestos Trust, T&N may (but shall not be obliged to) transfer and assign, or cause to be transferred and assigned, jointly to the Trustees and the US Asbestos Trust the books, records, documents and control systems of T&N or any of the Companies that pertain directly to Asbestos Personal Injury Claims that have been asserted against T&N or any Company. From the date of any such transfer or assignment, neither T&N nor any of the Companies will be liable or responsible for the maintenance or cost of maintaining the books, records, documents and control systems so transferred or assigned. If so requested by the EL Scheme Trustees, T&N and the Companies shall request that the Trustees provide such information and documents as the EL Scheme Trustees may reasonably request, and the Trustees shall promptly comply with such request.

2.12.3 If any books, records, documents and control systems are transferred or assigned to the Trustees and the US Asbestos Trust pursuant to clause 2.12.2, T&N and the Companies shall, at their own cost, be entitled to access to such books, records, documents and control systems, and the Trustees and the US Asbestos Trust shall (to the extent that it is within their power) promptly allow T&N or the Companies such access.

### **2.13 Trustees' powers and procedures**

2.13.1 The Trust Claimant shall co-operate with the Trustees in the Trustees' consideration of Trust Claims. In particular, the Trust Claimant shall provide the Trustees with details of any matter required to be specified in the Proof of Claim, including further medical evidence or exposure evidence, if the Trustees request it.

- 2.13.2 If a Trust Claimant or any legal advisers identified by him in the Proof of Claim do not respond to a reasonable request for information by the Trustees under Clause 2.13.1, the Trustees shall be entitled to serve a notice giving the Trust Claimant or his legal advisers a further period of 28 days to respond, failing which the Trust Claim will be rejected.
- 2.13.3 A Trust Claim may be admitted by the Trustees either for the whole amount claimed by the Trust Claimant or for part of that amount, subject to the Expedited Review Values and Maximum Values provided by Schedule 3.
- 2.13.4 A Proof of Claim may at any time, by agreement between a Trust Claimant and the Trustees, be withdrawn or varied.
- 2.13.5 The Trustees may, if they consider it to be in the best interests of Trust Claimants generally, enter into any compromise or arrangement with any Trust Claimant or any person claiming to be a Trust Claimant.
- 2.13.6 Acceptance of a CVA Asbestos Claim for the purposes of voting at any CVA Meeting shall not bind the Trustees to accept either the existence or the amount of the corresponding Trust Claim.
- 2.13.7 The Trustees shall keep all documentation submitted to them for a period of 6 years after receipt, although they may if they so decide keep it in electronic form only.

#### **2.14 Expert Determination of Disputes**

- 2.14.1 Where a Trust Claimant elects to have his Trust Claim referred to the Expert under Clauses 2.5.13 or 2.6.13, or refers the Trustees' decision under Clause 2.2.2 to the Expert, this Clause shall apply.
- 2.14.2 The Expert shall act as an expert and not as an arbitrator.
- 2.14.3 The Expert shall assess the Trust Claim referred to him de novo, rather than limiting himself to a review of the Trustees' determination.
- 2.14.3A For the avoidance of doubt, the Expert's assessment of the Trust Claim shall be subject to the same provisions of this TDP as the Trustees' assessment (and, for this purpose, the word "Trustees" in those provisions shall be read as "Expert"), such that:
- (a) he shall consider Trust Claims referred to him under Clause 2.2.3 by reference to Clauses 2.2.1 and 2.2.2;
  - (b) he shall consider Trust Claims referred to him from the Expedited Review process by reference to Clauses 2.5.1 to 2.5.4A and he shall value Established Claims by reference to Clauses 2.5.5 to 2.5.7, 2.9 and 2.11, as appropriate (including where any

of those Clauses is applied by virtue of other Clauses including but not limited to Clause 2.5.14); and

- (c) he shall consider Trust Claims referred to him from the Individual Review process by reference to Clauses 2.6.1 to 2.6.4 and he shall value Established Claims by reference to Clauses 2.6.5 to 2.6.7D, 2.6.14(a)(ii), 2.9 and 2.11, as appropriate (including where any of those Clauses is applied by virtue of other Clauses including but not limited to Clauses 2.6.14, 2.6.15 and 4.1).

2.14.4 Each party to the dispute shall, within 28 days of notification by the Trust Claimant to the Trustees of his wish to refer the matter to the Expert, provide the Expert with his written representations and any evidence on which he wishes to rely regarding the matter. The Expert shall have the power to extend the period in which such representations can be made.

2.14.5 Where the Trustees assessed the Trust Claim by way of Expedited Review, the Expert shall consider, in particular, whether the Trust Claimant satisfied the Presumptive Medical and Exposure Criteria set out in Schedule 1 on the basis of the information submitted by him to the Trustees, and any written representations or evidence provided to the Expert under Clause 2.14.4. Where the Trustees assessed the Trust Claim by way of Individual Review, the Expert shall consider, in particular, whether the Trust Claimant established his Trust Claim on the basis of the information submitted by him to the Trustees, and any written representations or evidence provided to the Expert under Clause 2.14.4. In both cases, the Expert may rely on evidence supplied by one party in the absence of evidence to the contrary from any other party, provided always that such matters or evidence are relevant to the criteria or factors, as appropriate, which are laid down in Schedule 1 or Clause 2.6.3 as the case may be.

2.14.6 Each party to the dispute shall respond promptly (and at their own expense) to all reasonable requests for information and other assistance that the Expert makes in connection with his determination.

2.14.7 If a Trust Claimant or any legal advisers identified by him in the Proof of Claim do not respond to a reasonable request for information by the Expert under Clause 2.14.6, the Trustees shall be entitled to serve a notice giving the Trust Claimant a further period of 28 days to respond, failing which the Trust Claim will be rejected.

2.14.8 The decision of the Expert shall be final and binding on the parties and there shall be no right of review or appeal.

2.14.9 The Expert shall not be entitled to make a determination of a Trust Claim in excess of:

- (a) in Expedited Review cases, the Expedited Review Value for the relevant Disease Level;

(b) in Individual Review cases, the Maximum Value for the relevant Disease Level.

2.14.10 So far as the law permits, no Trust Claimant shall be entitled to challenge the validity of any act done or omitted to be done in good faith by the Expert in pursuance of his functions or duties, nor the exercise by the Expert in good faith of any power or discretion conferred upon him, and the Expert shall not be liable for any loss whatsoever and howsoever arising unless such loss is attributable to his own negligence, fraud or dishonesty.

2.14.11 The costs of the Expert shall be borne:

- (a) Where the Trustees have rejected a Trust Claim and the Expert determines that the Trust Claim shall be admitted as an Established Claim, by the Trustees as an expense of the Trust.
- (b) Where the Trustees have admitted a Trust Claim and the Expert determines that the Trust Claim shall be admitted as an Established Claim in an amount at least 20% higher than the amount determined by the Trustees, by the Trustees as an expense of the Trust.
- (c) Where the Trustees have rejected a Trust Claim and the Expert determines that the Trust Claim shall be rejected, by the Trustees, who will be entitled to recover the amount of those costs from the Trust Claimant.
- (d) Where the Trustees have admitted a Trust Claim as an Established Claim and the Expert determines that the Trust Claim shall be admitted, but not for an amount at least 20% higher than the amount determined by the Trustees, by the Trustees, who will be entitled to deduct the costs from the amount due to the Trust Claimant up to the amount determined by the Expert, and any balance shall be an expense of the Trust.

2.14.12 The Trustees and the Trust Claimant shall each bear their own costs and disbursements of the referral of the matter to the Expert. In the case of the Trustees such costs and disbursements shall be expenses of the Trust.

### **SECTION THREE**

#### **3 Payments to Trust Claimants from the T&N Fund and the T&N Hercules Fund**

The Trustees shall make payments to Trust Claimants from the T&N Fund and the T&N Hercules Fund in accordance with this Section 3. Clauses 3.1 to 3.6 deal with payments from the T&N Fund. Clause 3.7 deals with payments from the T&N Hercules Fund.

### **3.1 Computation of the T&N Payment Percentage; Reviews**

- 3.1.1 The Trustees shall set the T&N Payment Percentage at such rate as they consider appropriate on the basis of the information and advice referred to in Clause 3.1.2, and after such reserves have been created by them for future claims as they consider to be prudent (for which purpose the Trustees shall be entitled in their absolute discretion to rely on actuarial projections based on a prudent best estimate), to enable them to comply with the provisions of this TDP in accordance with the Core Objective.
- 3.1.2 In determining the rate at which the T&N Payment Percentage is set, the Trustees shall consider and rely upon such legal, medical, fiscal, actuarial or other advice as they consider appropriate.
- 3.1.3 On the fifth anniversary of the Effective Date and every five years thereafter, and at such other times as they consider necessary, the Trustees shall review and if appropriate revise the T&N Payment Percentage as provided by Clauses 6.1 and 6.3.

### **3.2 Suspension of Payments from the T&N Fund**

- 3.2.1 The Trustees shall suspend payments from the T&N Fund for such period (not exceeding three months) as they consider appropriate if information becomes available to them at any time as a result of which they determine that they should consider whether or not to set a revised T&N Payment Percentage outside the five year cycle provided by Clauses 6.1 and 6.3. As soon as practicable during, and in any event at the end of the suspension period, the Trustees shall review the T&N Payment Percentage and either set a revised T&N Payment Percentage or conclude that the T&N Payment Percentage need not be revised, and thereupon the suspension of payments shall be lifted. A Payment Percentage set in accordance with this Clause shall be reviewed in accordance with the five year review cycle provided by Clauses 6.1 and 6.3.

### **3.3 Additional Dividend**

- 3.3.1 Five years after making a payment to a Trust Claimant in respect of an Established Claim or as soon as reasonably practicable thereafter, the Trustees shall consider, in their absolute discretion, whether to pay the Trust Claimant an Additional Dividend. For the avoidance of doubt, if the Trustees determine that they shall pay an Additional Dividend on an Established Claim, there shall be only one such payment.

#### **Value of Established Claims for the purpose of Additional Dividend**

- 3.3.2 When considering the amount to be paid as an Additional Dividend, the Trustees may revise the value of any Established Claim they previously determined to take account of developments in the law and medical science in respect of the CVA Asbestos Claim the

proceeds of which are assigned by the Trust Claimant to the Trust. The Trustees shall have an absolute discretion to revise the value of any Established Claim on these grounds.

#### **Setting the level of Additional Dividend**

3.3.3 The Trustees shall set the level of the Additional Dividend payable on Established Claims, first, within twelve months of the fifth anniversary of the Effective Date. Thereafter, the Trustees may review and if appropriate revise the level of the Additional Dividend every five years after the fifth anniversary of the Effective Date, as provided by Clauses 6.1 and 6.3, and at such other times as they consider necessary. The level of the Additional Dividend applied to the Established Claim shall be the level in force at the time the Additional Dividend is paid.

3.3.4 The Trustees shall not pay any Additional Dividend unless they consider, on the basis of the information and advice referred to in Clause 3.3.5, and by reference to the Additional Dividend, that after:

- (a) they have otherwise complied with the provisions of Clause 3.4 in relation to all Established Claims against the T&N Fund as at the date on which they consider the matter; and
- (b) such reserves have been created by them for future claims as they consider to be prudent (for which purpose the Trustees shall be entitled in their absolute discretion to rely on actuarial projections based on a best estimate);

the T&N Fund will be sufficient to enable them to comply with the provisions of this TDP in accordance with the Core Objective.

3.3.5 In considering whether to pay an Additional Dividend the Trustees shall consider and rely upon such legal, medical, fiscal, actuarial or other advice as they consider appropriate.

#### **Suspension**

3.3.6 The Trustees shall be entitled to suspend payments of the Additional Dividend from the T&N Fund in accordance with Clause 3.2.1. For this purpose, references in Clause 3.2.1 to "payments" shall be replaced with "payments of the Additional Dividend", and references to "the T&N Payment Percentage" and "Payment Percentage" shall be replaced with "the level of the Additional Dividend".

### **3.4 Payments in respect of Established Claims from the T&N Fund**

3.4.1 The Trustees shall calculate the amount to be paid by the Trustees out of the T&N Fund in respect of any Trust Claim which is admitted as an Established Claim in accordance with this Clause 3.4.

#### **First Payment**

- 3.4.2 The T&N Payment Percentage current at the date of payment shall be applied to the value of the Established Claim after giving credit for the actual payment of the T&N Hercules Payment Percentage out of the T&N Hercules Fund or the anticipated payment out of that Fund as estimated by the Trustees.

#### **Additional Dividend**

- 3.4.3 Where applicable, in accordance with Clause 3.3, the Additional Dividend shall be applied to the value of the Established Claim as determined by the Trustees.

#### **Costs Payments**

- 3.4.4 In addition to payments in respect of Established Claims from the T&N Fund or the T&N Hercules Fund (whichever makes payment first) the Trustees shall pay, on the occasion of the first such payment only, Costs Payments in respect of medical and legal costs in accordance with Clauses 3.4.5 and 3.4.6. Costs Payments shall be paid subject to Clause 2.4.4. As to medical and legal costs incurred by EL Scheme Trust Claimants, see Clause 3.4.9.

- 3.4.5 Subject to Clause 3.4.4, the Trustees shall pay from the T&N Fund to a Trust Claimant with an Established Claim against the T&N Fund as a Costs Payment such amount as the Trustees see fit to cover the provision of medical evidence up to a maximum of:

- (a) £600 ~~300~~ in cases of Disease Levels I and II;
- (b) £800 ~~400~~ in cases of Disease Levels III and IV;
- (c) £50 in cases of Disease Level V.

- 3.4.6 Subject to Clause 3.4.4 above, the Trustees shall pay to a Trust Claimant with an Established Claim against the T&N Fund as a Costs Payment such amount as the Trustees see fit to cover the Trust Claimant's Actual Legal Costs up to a maximum of:

- (a) £575 ~~£500~~ in relation to the first £5,000 of the Established Claim; plus
- (b) 5% of the amount by which the Established Claim exceeds £5,000 but does not exceed £20,000; plus
- (c) 2.5% of the amount by which the Established Claim exceeds £20,000; plus
- (d) where the Trust Claimant has reasonably (in the view of the Trustees in their absolute discretion) issued proceedings in respect of the Trust Claim, the issue fee paid by the Trust Claimant in such proceedings;

subject to an overall maximum of £5,750 ~~£5,000~~.



- 3.4.7 In order to determine the Actual Legal Costs the Trustees shall be entitled to require the Trust Claimant to provide a certificate signed by a partner or principal in the firm or firms of solicitors instructed by him setting out the costs and disbursements actually incurred on his behalf.
- 3.4.8 Any payment which is to be made in respect of Actual Legal Costs under Clauses 3.4.6 and 3.4.7 shall be paid by separate cheque directly in favour of the Trust Claimant's solicitors as nominated or identified by him in the Proof of Claim provided the name and other contact details including postal addresses of the solicitors so nominated are clearly stated.
- 3.4.9 EL Scheme Trust Claimants whose underlying EL Scheme Claims were admitted by the EL Scheme Trustees shall not be entitled to any payment for medical or legal costs incurred in respect of Established Claims against the T&N Fund.

#### **TDP Determines Payments**

- 3.4.10 Trust Claimants shall not be entitled to any payments from the Trust other than those provided for by this TDP.

#### **3.5 Payment Mechanics**

- 3.5.1 Subject to Clause 3.4.8, all sums payable to a Trust Claimant may be paid:
- (a) by cheque in the name of the Trust Claimant or as he may direct in writing and may be sent by post to the Trust Claimant's last known address or such other address as is notified in writing by the Trust Claimant to the Trustees, or
  - (b) by telegraphic transfer to such bank account as the Trust Claimant may notify in writing to the Trustees.

3.5.1A Subject to clauses 3.5.2 and 3.5.3 below if, at the time of seeking to make a payment to a Trust Claimant, the Trustees are unsure as to whether they have the Trust Claimant's current address, the Trustees may in their absolute discretion employ agents on such terms as they consider appropriate to locate the Trust Claimant. The Trustees shall deduct the cost of employing any such agents from the payment to the Trust Claimant.

- 3.5.2 The sending of a cheque by the Trustees to the last known address of the Trust Claimant or his nominated solicitors, in accordance with Clause 3.5.1 (a) or Clause 3.4.8 as the case may be, shall be a good discharge of the Trustees and the Trustees shall not be liable to the Trust Claimant for any loss in transmission of a cheque drawn and sent in accordance with this Clause or Clause 3.4.8. Receipt of the amount of a telegraphic transfer into the Trust Claimant's bank account notified to the Trustees in accordance with Clause 3.5.1 (b) shall be a good discharge of the Trustees.
- 3.5.3 Where a telegraphic payment to a Trust Claimant or an unbanked cheque is returned to the Trustees unclaimed, or a cheque is unbanked for six months after its date, the Trustees shall

transfer the amount of the unclaimed payment to a separate interest bearing account for unclaimed payments until 14 days before the date when the Trustees propose to terminate the Trust or one year after the payment was sent, whichever is the sooner, at which time, if the payment is still unclaimed, the Trustees shall transfer the unclaimed payment together with any interest earned to the Trust Fund concerned and the monies so transferred shall form part of that Trust Fund and the Trust Claimant shall have no remaining right to them or to any payment in respect of his Established Claim.

### **3.6 Deductions from Payments and Repayments**

#### **First payments in respect of Established Claims**

3.6.1 The first payment to a Trust Claimant in respect of his Established Claim shall be made in full without any deduction, set-off, lien or withholding whatsoever save that:

- (a) The Trustees may deduct any costs incurred by the Expert from payments to Trust Claimants, as provided in Clause 2.14.11.
- (b) ~~In the case of Established Claims assessed by Individual Review, the Trustees may set-off any amounts due in respect of a CRU Trust Claim which may lawfully be set-off against any amount due to the Trust Claimant. There shall be no such set-off in the case of Established Claims assessed by Expedited Review.~~
- (c) The Trustees may make such deduction on account of withholding or other tax as they may consider is required by law.

#### **Repayment: no clawback except in cases of fraud**

3.6.2 A Trust Claimant shall not be required to repay any sum that he received in respect of an Established Claim (whether a first payment or an Additional Dividend) unless the Trustees are satisfied that a fraud (including any fraudulent misrepresentation or non-disclosure) was committed by or on behalf of the Trust Claimant in respect of the Trust Claim. For the avoidance of doubt, a Trust Claimant shall not be required to repay any sum that he received in respect of an Established Claim (whether a first payment or an Additional Dividend) by virtue only of a reduction of the Payment Percentage applicable to his Established Claim.

#### **Revising the value of the Established Claim**

3.6.3 When considering the amount to be paid as an Additional Dividend, the Trustees may revise the value of any Established Claim they previously determined to take account of developments in the law and medical science which affect the CVA Asbestos Claim the proceeds of which are assigned by the Trust Claimant to the Trust. The Trustees shall have an absolute discretion to revise the value of any Established Claim on these grounds.

#### **Overpayments and Additional Dividend**

- 3.6.4 The Trustees shall be entitled to deduct any overpayment made to a Trust Claimant from any Additional Dividend due to such Trust Claimant out of the T&N Fund if:
- (a) after a Trust Claim has been admitted and paid as an Established Claim, the Proof of Claim is withdrawn or varied as provided for in Clause 2.13.4; or
  - (b) after a Trust Claim has been admitted and paid as an Established Claim, it is shown to the satisfaction of the Trustees that an overpayment was made in respect of the Trust Claim by reason of any error, material misrepresentation or non-disclosure by or on behalf of the Trust Claimant.
- 3.6.5 The Trustees may also make such deduction from any Additional Dividend on account of withholding or other tax as they may consider is required by law.

### **3.7 The T&N Hercules Fund**

3.7.1 The rights to payment from the Chester Street Fund and the Chester Street Hercules Fund pursuant to Clauses 2.4.3(b) and 4.1.2(c) of the Trust Deed and Clause 4.10 of this TDP shall constitute the T&N Hercules Fund, which shall be established on the date when the [2016] amendments to those Clauses come into effect.

~~The UK Asbestos Trust Percentage of Hercules Recoveries received by the Trustees shall constitute the T&N Hercules Fund, which shall be established on the date when the Trustees receive the first payment in respect of Hercules Recoveries.~~

3.7.2 The Trustees shall pay a dividend from the T&N Hercules Fund to Trust Claimants with Established Claims against the T&N Fund at the T&N Hercules Payment Percentage, ~~by reference to the quantum of Trust Claims that are made or are projected to be made.~~

3.7.2A Trust Claimants who have received a first dividend (but not any Additional Dividend) from the T&N Fund prior to the constitution of the T&N Hercules Fund shall be paid a first dividend from the T&N Hercules Fund at the T&N Hercules Payment Percentage once the T&N Hercules Fund has funds to distribute. Such Trust Claimants shall then be entitled to any Additional Dividend payable from the T&N Hercules Fund at the same time as any Additional Dividend is payable to them from the T&N Fund (or would be payable if there were sufficient funds available in the T&N Fund to pay an Additional Dividend).

3.7.2B Trust Claimants who have received a first dividend and an Additional Dividend from the T&N Fund prior to the constitution of the T&N Hercules Fund shall be paid a single dividend from the T&N Hercules Fund once the T&N Hercules Fund has funds to distribute. Such dividend shall be the sum of: (i) the T&N Hercules Payment Percentage applied to their Established Claim, and (ii) any Additional Dividend that the Trustees set pursuant to Clause 3.3 (as applied pursuant to this Clause 3.7) applied to their Established Claim.

3.7.3 Clauses 3.1, 3.2, 3.3, 3.4.3, 3.5, and 3.6 shall apply to payments from the T&N Hercules Fund with the following modifications:

- (a) "T&N Hercules Fund" shall be substituted for "T&N Fund";
- (b) "T&N Hercules Payment Percentage" shall be substituted for "T&N Payment Percentage".
- (c) As for Clause 3.1.1, for so long as the Trustees consider that the T&N Hercules Fund has sufficient value to permit it, the Trustees shall set the T&N Hercules Payment Percentage at such rate as they consider they would have set it if: (i) the US Asbestos Trust had not assigned its rights pursuant to Clauses 2.4.3(b) and 4.1.2(c) of the Trust Deed; (ii) the US Asbestos Trust had agreed pursuant to Paragraph 19.10 of the CVAs to change the UK Asbestos Trust Percentage and the Chester Street Percentage (between themselves) to such amounts as the Trustees considered necessary in order to promote a fair division of Hercules Recoveries as between the T&N Hercules Fund and the Chester Street Hercules Fund; (iii) the T&N Hercules Fund had been constituted by the UK Asbestos Trust Percentage (as varied) of the Hercules Recoveries payable pursuant Paragraph 19.8 of the CVAs following the commutation of the Hercules Policy on 28 October 2015; and (iv) there was to be no Additional Dividend payable from the T&N Hercules Fund.
- (d) As for Clause 3.1.3, the first review of the T&N Hercules Payment Percentage shall take place at the next Review Date in accordance with the five year cycle. Thereafter, the T&N Hercules Payment Percentage shall be reviewed every five years on the anniversary of the Effective Date, as provided by Clauses 6.1 and 6.3.
- (e) As for Clause 3.3.3, the Trustees shall first set the level of Additional Dividend payable on Established Claims from the T&N Hercules Fund within twelve months of the establishment of the T&N Hercules Fund. Thereafter, the Trustees may review and if appropriate revise the level of Additional Dividend in accordance with the five year cycle provided by Clauses 6.1 and 6.3.
- (f) As for Clause 3.3 generally, in determining the rate of any Additional Dividend the Trustees shall assume that the T&N Hercules Fund is constituted by the net present value of the whole of the share of the projected surplus in the Chester Street Fund and Chester Street Hercules Fund to which it is (or is projected to be) entitled pursuant to Clauses 2.4.3(b) and 4.1.2(c) of the Trust Deed and Clause 4.10 of this TDP.

## SECTION FOUR

### 4 Chester Street Trust Claims

#### 4.1 Assertion of Chester Street Trust Claims

##### Introduction

4.1.1 Chester Street Trust Claimants may assert their Trust Claims in the manner provided in Section 2, save for the exceptions in Clauses 4.1.2 to 4.1.6, which arise because this Section 4 makes special provision for Chester Street Trust Claims.

##### Exceptions for Chester Street Trust Claims

4.1.2 Chester Street Trust Claims may only proceed by way of Individual Review under Clause 2.6, and accordingly Clause 2.5 shall not apply.

4.1.3 Clauses 2.6.2, 2.6.3 (a), 2.6.6, 2.6.8 ~~(b)~~ and (d), 2.6.9, 2.6.10, 2.6.11, 2.6.14, 2.6.15 and 2.10.2 shall not apply to Chester Street Trust Claims.

4.1.4 If the Trustees determine that a Chester Street Trust Claim should be admitted as an Established Claim, they shall value the Established Claim as follows:

(a) Where the Established Claim concerns a right to a contribution or indemnity, the Trustees may apply the Apportionment Formula, or such percentage as they consider appropriate or agree with the Chester Street Trust Claimant to:

- (i) the amount paid by the Chester Street Trust Claimant to the Injured Person, where this amount does not exceed the Maximum Value for the relevant Disease Level listed in Schedule 3; or
- (ii) the Maximum Value for the relevant Disease Level listed in Schedule 3, where the amount paid by the Chester Street Trust Claimant to the Injured Person does exceed such Value.

(For the avoidance of doubt, Clauses 2.6.5, 2.6.6 and 2.6.7 shall not apply to the valuation of such Established Claims.)

(b) Where the Established Claim is held by an Injured Person, the Trustees shall value it:

- (i) in the manner provided by Clause 2.6.5 if the Injured Person holds a Pre-Administration Liquidated Claim; or
- (ii) in all other cases in the manner provided by Clause 2.6.7.

(c) Chester Street Trust Claimants shall not be entitled to any Costs Payments.

- 4.1.5 If the Trustees determine that a Chester Street Trust Claim should be admitted as an Established Claim, they shall send the Trust Claimant an Individual Review Admission Notice setting out in summary form the payment to be made to the Trust Claimant, showing the information required by Clause 2.6.8 (a) and (c). For this purpose references in Clause 2.6.8 (c) to the "T&N Payment Percentage" and the "T&N Hercules Payment Percentage" shall be replaced by references to the "Chester Street Payment Percentage" and the "Chester Street Hercules Payment Percentage".
- 4.1.6 If a Chester Street Trust Claimant refers the Trustees' decision as to the value of his Established Claim to the Expert in accordance with Clause 2.14, the Expert shall calculate the amount at which any Trust Claim is to be admitted as an Established Claim in accordance with Clause 4.1.4.

**Specific application of Section 2**

- 4.1.7 In the light of Clauses 4.1.1 to 4.1.6, the following provisions of Section 2 of this TDP shall apply with all necessary modifications to Chester Street Trust Claims:
- (a) Clause 2.1 (advertising for Trust Claims).
  - (b) Clause 2.2 (time limits on Trust Claims).
  - (c) Clause 2.3 (Proofs of Claim).
  - (d) Clauses 2.6.1, 2.6.3 (b) to (f), 2.6.4, 2.6.5 (as provided by Clause 4.1.4 (b) (i)), 2.6.7 (as provided by Clause 4.1.4 (b) (ii)), 2.6.8 (a) and (c) (as provided by Clause 4.1.5), 2.6.12 and 2.6.13 (Individual Review Process).
  - (e) Clause 2.7 (Trust Claims must be for the most severe Disease Level).
  - (f) Clause 2.8 (Subsequent Trust Claims).
  - (g) Clause 2.9 (special provisions applicable to deceased Injured Persons and certain living Injured Persons).
  - (h) ~~Clauses 2.10.1 and 2.10.3 (CRU Trust Claims), save that references in Clause 2.10.1 to the "T&N Fund", the "T&N Hercules Fund" and the "T&N Payment Percentage" shall be replaced by references to the "Chester Street Fund", the "Chester Street Hercules Fund", and the "Chester Street Payment Percentage".~~
  - (i) Clause 2.11 (special provisions applicable to joint liability Trust Claims).
  - (j) Clauses 2.12 (Trust Claims: co-operation of T&N and the Companies) and 2.13 (Trustees' powers and procedures).
  - (k) Clause 2.14 (expert determination of disputes, subject to Clause 4.1.6).

**4.2 Payments to Chester Street Trust Claimants from the Chester Street Fund and the Chester Street Hercules Fund**

4.2.1 The Trustees shall make payments to Trust Claimants from the Chester Street Fund and the Chester Street Hercules Fund in accordance with this Section 4. Clauses 4.3 to 4.8 deal with payments from the Chester Street Fund. Clause 4.9 deals with payments from the Chester Street Hercules Fund. For the avoidance of doubt, Chester Street Trust Claimants with Established Claims shall not be entitled to any payments from any of the other Trust Funds.

**4.3 Computation of the Chester Street Payment Percentage; Reviews**

4.3.1 The Trustees shall pay Chester Street Trust Claimants with Established Claims at a percentage rate called the Chester Street Payment Percentage. This shall be set:

- (a) For Chester Street Trust Claimants who held CVA Asbestos Claims against T&N, at a rate which gives a return equivalent to that which would have been received by T&N Trust Claimants if there had been no Costs Payments to T&N Trust Claimants under Clauses 3.4.4 to 3.4.7.
- (b) For Chester Street Trust Claimants who held CVA Asbestos Claims against any Company other than T&N (except Agency Companies), at a rate which gives a return equivalent to that which would have been received by Non-T&N Trust Claimants if there had been no Costs Payments to Non-T&N Trust Claimants under Clauses 5.2.1 to 5.2.4. This rate shall be calculated by reference to either:
  - (i) the dividend paid on Non-T&N Fund Claims by the Supervisor of the relevant Company's CVA; or
  - (ii) after a transfer has been made pursuant to paragraphs 5.7.1 to 5.7.3 of the CVAs, by reference to the Payment Percentage of the Non-T&N Fund concerned.
- (c) For Chester Street Trust Claimants who held CVA Asbestos Claims against Agency Companies (except Newalls Insulation Company Limited, TBA Belting Limited, T&N Shelf Twenty-Six Limited, The Washington Chemical Company Limited, or JW Roberts Limited), at a rate which gives a return equivalent to the aggregate of:
  - (i) the rate which would have been received by T&N Trust Claimants if there had been no Costs Payments to T&N Trust Claimants under Clauses 3.4.4 to 3.4.7; and
  - (ii) the rate which would have been received by Non-T&N Trust Claimants if there had been no Costs Payments to Non-T&N Trust Claimants under Clauses 5.2.1 to 5.2.4. This rate shall be calculated by reference to either:

- (aa) the dividend paid on Non-T&N Fund Claims by the Supervisor of the relevant Company's CVA; or
- (bb) after a transfer has been made pursuant to paragraphs 5.7.1 to 5.7.3 of the CVAs, by reference to the Payment Percentage of the Non-T&N Fund concerned,

provided that such Chester Street Trust Claimants will not be entitled in any circumstances to recover more than 100% of the value of their Established Claims.

- (d) For Chester Street Trust Claimants who held CVA Asbestos Claims against Newalls Insulation Company Limited, TBA Belting Limited, T&N Shelf Twenty-Six Limited, The Washington Chemical Company Limited, or JW Roberts Limited, at a rate which gives a return equivalent to the aggregate of:
  - (i) the rate which would have been received by T&N Trust Claimants if there had been no Costs Payments to T&N Trust Claimants under Clauses 3.4.4 to 3.4.7; and
  - (ii) a fixed sum payment (as the case may be) of:
    - (aa) £5 for Newalls Insulation Company Limited and TBA Belting Limited;
    - (bb) £60 for T&N Shelf Twenty-Six Limited;
    - (cc) £30 for The Washington Chemical Company Limited;
    - (dd) £20 for JW Roberts Limited.

4.3.2 In circumstances where the Trustees revise the T&N Payment Percentage in accordance with Clause 3.1.3, they shall revise the Chester Street Payment Percentage to the extent necessary to achieve the equivalence required by Clauses 4.3.1 (a), 4.3.1 (c) (i), and 4.3.1 (d) (i).

4.3.3 In circumstances where the Trustees revise the Non-T&N Payment Percentage which they set after a transfer has been made pursuant to Clauses 5.7.1 to 5.7.3 of the CVAs, they shall revise the Chester Street Payment Percentage to the extent necessary to achieve the equivalence required by Clauses 4.3.1 (b) (ii) and 4.3.1 (c) (ii) (bb).

#### **4.4 Suspension of Payments from the Chester Street Fund and compromise of Trust Claims**

4.4.1 If the Trustees suspend payments from the T&N Fund in the circumstances set out in Clause 3.2.1, they shall suspend payments from the Chester Street Fund where the Chester Street Payment Percentage is calculated in accordance with Clauses 4.3.1 (a), 4.3.1 (c) (i) or 4.3.1



(d) (i). When the Trustees lift the suspension of payments from the T&N Fund (having either set a revised T&N Payment Percentage or concluded that the T&N Payment Percentage need not be revised in accordance with Clause 3.2.1), they shall revise the Chester Street Payment Percentage if necessary and they shall lift any suspension of payments from the Chester Street Fund. A Chester Street Payment Percentage revised in accordance with this Clause shall be reviewed in accordance with the five year review cycle as provided by Clauses 6.1 and 6.4.

4.4.2 If the Trustees suspend payments from a Non-T&N Fund after a transfer has been made pursuant to paragraphs 5.7.1 to 5.7.3 of the CVAs, they shall suspend payments from the Chester Street Fund where the Chester Street Payment Percentage is calculated in accordance with Clauses 4.3.1 (b) (ii) or 4.3.1 (c) (ii) (bb). When the Trustees lift the suspension of payments from the Non-T&N Fund concerned (having either set a revised Payment Percentage or concluded that the Payment Percentage need not be revised in accordance with Clause 5.5.6), they shall revise the Chester Street Payment Percentage if necessary and they shall lift any suspension of payments from the Chester Street Fund. A Chester Street Payment Percentage revised in accordance with this Clause shall be reviewed in accordance with the five year review cycle as provided by Clauses 6.1 and 6.4.

4.4.3 For the avoidance of doubt, the Trustees may compromise Chester Street Trust Claims if they consider it appropriate by agreement with the relevant Chester Street Trust Claimant.

#### **4.5 Additional Dividend**

4.5.1 If the Trustees pay an Additional Dividend in respect of Established Claims against the T&N Fund in accordance with Clause 3.3, they shall pay a corresponding Additional Dividend in relation to Established Claims against the Chester Street Fund, where the Chester Street Payment Percentage is calculated in accordance with Clauses 4.3.1 (a), 4.3.1 (c) (i), or 4.3.1 (d) (i).

4.5.2 If the Trustees pay an Additional Dividend in respect of Established Claims against any of the Non-T&N Funds after a transfer has been made under paragraphs 5.7.1 to 5.7.3 of the CVAs, they shall pay a corresponding Additional Dividend in relation to Established Claims against the Chester Street Fund, where the Chester Street Payment Percentage is calculated in accordance with Clauses 4.3.1 (b) (ii) or 4.3.1 (c) (ii) (bb).

4.5.3 When considering the amount to be paid as an Additional Dividend under Clauses 4.5.1 or 4.5.2, the Trustees may revise the value of any Established Claim they previously determined to take account of developments in the law or medical science which affect the CVA Asbestos Claim the proceeds of which are assigned by the Trust Claimant to the Trust. The Trustees shall have an absolute discretion to revise the value of any Established Claim on these grounds.

4.5.4 Where the Trustees pay an Additional Dividend, every five years from the fifth anniversary of the Effective Date and at such other times as they consider necessary, they shall review and if appropriate revise the level of Additional Dividend, as provided by Clauses 6.1 and 6.4 below.

#### **4.6 Payments in respect of Established Claims**

4.6.1 The Trustees shall calculate the amount to be paid by the Trustees out of the Chester Street Fund in respect of any Chester Street Trust Claim which is admitted as an Established Claim in accordance with this Clause 4.6.

##### **First Payment**

4.6.2 The Chester Street Payment Percentage current at the date of payment shall be applied to the value of the Established Claim as determined by the Trustees after giving credit for the actual payment of the Chester Street Hercules Payment Percentage out of the Chester Street Hercules Fund, or the anticipated payment out of that Fund as estimated by the Trustees.

##### **Additional Dividend**

4.6.3 Where applicable in accordance with Clause 4.5, the Additional Dividend shall be applied to the value of the Established Claim as determined by the Trustees.

##### **Payment(s) in accordance with Clause 4.6 and from the Chester Street Funds**

4.6.4 Chester Street Trust Claimants shall not receive any payments from the Trust other than those provided for by this Clause 4.6, and shall not in any event be entitled to receive any payment from any of the other Trust Funds.

#### **4.7 Payment Mechanics**

4.7.1 Clause 3.5 shall apply to payments to be made to Chester Street Trust Claimants with Established Claims.

#### **4.8 Deductions from Payments and Repayments**

4.8.1 Clause 3.6 applies to payments to Chester Street Claimants, ~~save that there shall be no set-off in respect of any amounts due in relation to a CRU Trust Claim as provided by Clause 3.6.1(b).~~

#### **4.9 The Chester Street Hercules Fund**

4.9.1 The rights to payment from the Chester Street Fund pursuant to Clauses 2.4.3(b) and 4.1.2(c) of the Trust Deed and Clause 4.10 of this TDP shall constitute the Chester Street Hercules Fund, which shall be established on the date when the [2016] amendments to those Clauses come into effect.

~~The Chester Street Percentage of Hercules Recoveries received by the Trustees shall constitute the Chester Street Hercules Fund, which shall be established on the date when the Trustees receive the first payment in respect of Hercules Recoveries.~~

4.9.2 The Trustees shall pay a dividend from the Chester Street Hercules Fund to Chester Street Trust Claimants with Established Claims, save that Chester Street Trust Claimants who held CVA Asbestos Claims against Companies other than T&N which are not Agency Companies will not be entitled to any such dividend. The dividend shall be equivalent to the dividend paid from the T&N Hercules Fund to Trust Claimants with Established Claims against the T&N Fund and will be **"the Chester Street Hercules Payment Percentage"**.

4.9.2A Trust Claimants who have received a first dividend (but not any Additional Dividend) from the Chester Street Fund prior to the constitution of the Chester Street Hercules Fund shall be paid a first dividend from the Chester Street Hercules Fund at the Chester Street Hercules Payment Percentage once the Chester Street Hercules Fund has funds to distribute. Such Trust Claimants shall then be entitled to any Additional Dividend payable from the Chester Street Hercules Fund at the same time as any Additional Dividend is payable to them from the Chester Street Fund (or would be payable if there were sufficient funds available in the Chester Street Fund to pay an Additional Dividend).

4.9.2B Trust Claimants who have received a first dividend and an Additional Dividend from the Chester Street Fund prior to the constitution of the Chester Street Hercules Fund shall be paid a single dividend from the Chester Street Hercules Fund once the Chester Street Hercules Fund has funds to distribute. Such dividend shall be the sum of: (i) the Chester Street Hercules Payment Percentage applied to their Established Claim, and (ii) any Additional Dividend that the Trustees set pursuant to Clause 4.5 (as applied pursuant to this Clause 4.9) applied to their Established Claim.

4.9.3 Clauses 4.4, 4.5, 4.6.3, 4.7, and 4.8 shall apply to payments from the Chester Street Hercules Fund with the following modifications:

- (a) "Chester Street Hercules Fund" shall be substituted for "Chester Street Fund".
- (b) "T&N Hercules Fund" shall be substituted for "T&N Fund".
- (c) "Chester Street Hercules Payment Percentage" shall be substituted for "Chester Street Payment Percentage".
- (d) "T&N Hercules Payment Percentage" shall be substituted for "T&N Payment Percentage".
- (e) In Clause 4.4.1 the Chester Street Hercules Payment Percentage will have been calculated in accordance with Clause 4.9.2 only.

- (f) Clause 4.4.2 shall not apply.
- (g) In Clause 4.5.1 the Chester Street Hercules Payment Percentage will have been calculated in accordance with Clause 4.9.2 only.
- (h) Clause 4.5.2 shall not apply.

**4.10 Payments to the T&N Hercules Fund and Chester Street Hercules Fund pursuant to Clauses 2.4.3(b) and 4.1.2(c) of the Trust Deed**

- 4.10.1 Upon the constitution of the T&N Hercules Fund and the Chester Street Hercules Fund, the Trustees shall determine whether there is a surplus of Chester Street Fund Assets in either the Chester Street Fund or the Chester Street Hercules Fund beyond those that they project will be required for the payment of the holders of Chester Street Trust Claims pursuant to Clauses 2.4.3(a) or 4.1.2(a) or (b) of the Trust Deed or for the payment of any costs payable from the Chester Street Fund or Chester Street Hercules Fund pursuant to Clauses 17 or 18 of the Trust Deed (or otherwise), as applicable,
- 4.10.2 For the purposes of determining whether there is a surplus pursuant to Clause 4.10.1 above, the Trustees may in their absolute discretion rely on actuarial projections based on a prudent best estimate and upon such legal, medical, fiscal, actuarial or other advice as they consider appropriate.
- 4.10.3 The Trustees shall review and if appropriate revise their determination of the surplus on every fifth anniversary of the Effective Date and at such other times as they consider necessary.
- 4.10.4 For so long as the Trustees project a surplus in accordance with Clause 4.1.2(c) of the Trust Deed and this Clause 4.10, the Trustees shall on a monthly basis (and subject at all times to a cap of the net present value of the projected surplus) pay to the T&N Hercules Fund and the Chester Street Hercules Fund, according to their rights under Clause 2.4.3(b) of the Trust Deed:
  - (a) such amounts as are required that month by the T&N Hercules Fund and the Chester Street Hercules Fund to pay the T&N Hercules Payment Percentage or Chester Street Hercules Payment Percentage (as applicable) on the value of Established Claims;
  - (b) such amounts as are required that month by the T&N Hercules Fund and the Chester Street Hercules Fund to pay any applicable Additional Dividends on the value of Established Claims; and
  - (c) such amounts as are required that month by the T&N Hercules Fund and the Chester Street Hercules Fund to pay any costs that are payable pursuant to the Trust Deed or this TDP.

## **SECTION FIVE**

### **5 Payments in relation to Established Claims against the Non-T&N Funds**

The Trustees shall follow the procedure set out below for payments in relation to Established Claims against the Non-T&N Funds.

#### **5.1 Non-T&N Fund Claims**

- 5.1.1 Having determined the value of an Established Claim in respect of a Company other than T&N, the Trustees shall submit a Non-T&N Fund Claim in the CVA of the relevant Company in accordance with Clauses 2.5.9 (b), 2.5.10 (b), 2.5.11 (b), 2.6.9 (b), 2.6.10 (b) and 2.6.11 (b), as the case may be.

## 5.2 Medical and legal costs

5.2.1 As part of a Non-T&N Fund Claim for the value of the Established Claim determined by the Trustees, the Trustees shall be entitled to claim in the CVA of the relevant Company medical and legal costs to the extent provided by Clauses 2.5.9 (b), 2.5.10 (b), 2.6.9 (b) and 2.6.10 (b), subject to Clause 2.4.4, and calculated in accordance with Clauses 5.2.2 and 5.2.3. As stated in Clauses 2.5.11 (b) and 2.6.11 (b), no Costs Payments shall be claimed as part of Non-T&N Fund Claims in the CVAs of Newalls Insulation Company Limited, TBA Belting Limited, T&N Shelf Twenty-Six Limited, The Washington Chemical Company Limited, or JW Roberts Limited. As to medical and legal costs incurred in respect of Established Claims concerning Companies other than T&N held by EL Scheme Trust Claimants, Clause 5.2.6 shall apply.

5.2.2 Subject to Clause 5.2.1 above, the Trustees shall claim in the CVA of the relevant Company such amount as the Trustees in their discretion see fit to cover the provision of medical evidence up to a maximum of:

- (a) £600 ~~300~~ in cases of Disease Levels I and II;
- (b) £800 ~~400~~ in cases of Disease Levels III and IV;
- (c) £50 in cases of Disease Level V.

5.2.3 Subject to Clause 5.2.1 above, the Trustees shall claim in the CVA of the relevant Company such amount as the Trustees in their discretion see fit to cover the Trust Claimant's Actual Legal Costs up to a maximum of:

- (a) £575 ~~£500~~ in relation to the first £5,000 of the Established Claim; plus
- (b) 5% of the amount by which the Established Claim exceeds £5,000 but does not exceed £20,000; plus
- (c) 2.5% of the amount by which the Established Claim exceeds £20,000; plus
- (d) where the Trust Claimant has reasonably (in the view of the Trustees in their absolute discretion) issued proceedings in respect of that Trust Claim, the issue fee paid by the Trust Claimant in such proceedings;

subject to an overall maximum of £5,750 ~~£5,000~~.

5.2.4 In order to determine the Actual Legal Costs the Trustees shall be entitled to require the Trust Claimant to provide a certificate signed by a partner or principal in the firm or firms of solicitors instructed by him setting out the costs and disbursements actually incurred on his behalf.

5.2.5 Notwithstanding the provisions of Clause 5.3.1, that part of any Costs Payment which is to be made in respect of Actual Legal Costs under Clauses 5.2.3 and 5.2.4, shall be paid by separate cheque directly in favour of the Trust Claimant's solicitors as nominated or identified by him in the Proof of Claim provided that the name and other contact details including postal addresses of the solicitors so nominated are clearly stated.

5.2.6 EL Scheme Trust Claimants whose underlying EL Scheme Claims were admitted by the EL Scheme Trustees shall not be entitled to any payments for medical or legal costs incurred in respect of Established Claims concerning Companies other than T&N.

### **5.3 Payment Mechanics**

5.3.1 For the avoidance of doubt, Clause 3.5 shall apply in the case of Established Claims concerning Companies other than T&N.

### **5.4 Deductions from Payments and Repayments**

5.4.1 Clauses 3.6.1 to 3.6.3 shall apply in the case of Established Claims concerning Companies other than T&N.

5.4.2 Without prejudice to any of their other rights to inform the relevant CVA Supervisor of any overpayment made to a Trust Claimant holding an Established Claim in respect of a Company other than T&N following the submission of a Non-T&N Fund Claim by the Trustees under Clauses 2.5.9 (b), 2.5.10 (b), 2.5.11 (b), 2.6.9 (b), 2.6.10 (b), or 2.6.11 (b), the Trustees shall be entitled to deduct any overpayment from any further sum or sums due from time to time to such Trust Claimant (including any Additional Dividend, in circumstances where a transfer has been made to the relevant Non-T&N Fund under paragraphs 5.7.1 to 5.7.3 of the CVAs) if:

(a) after a Trust Claim has been admitted as an Established Claim, and a Non-T&N Fund Claim has been submitted in the CVA of the relevant Company, the Proof of Claim is withdrawn or varied as provided for in Clause 2.13.4; or

(b) after a Trust Claim has been admitted as an Established Claim, and a Non-T&N Fund Claim has been submitted in the CVA of the relevant Company, it is shown to the satisfaction of the Trustees that the Trust Claim was admitted or the Non-T&N Claim was submitted in too high a sum by reason of any error, material misrepresentation or non-disclosure by or on behalf of the Trust Claimant.

5.4.3 The Trustees may also make such deduction from any further sum or sums due from time to time to such Trust Claimant (including any Additional Dividend, in circumstances where a transfer has been made to the relevant Non-T&N Fund under paragraphs 5.7.1 to 5.7.3 of the CVAs) on account of withholding or other tax as they may consider is required by law.

## **5.5 The operation of Non-T&N Funds after the completion of the relevant CVA**

### **Transfers under paragraphs 5.7.1 to 5.7.3 of the CVAs**

5.5.1 In the event that the Supervisors of any of the Companies pay any monies to the Trustees pursuant to paragraph 5.7.1 to 5.7.3 of the CVAs, the monies so paid shall form part of the Non-T&N Fund Assets in relation to the relevant Company, and shall be used to make such payments as are due under the Trust Deed and this TDP to holders of Non-T&N Trust Claims in respect of the Company.

5.5.2 Furthermore, in the event of any such payment:

- (a) the monies shall be accepted by the Trustees in full and final settlement of all further Non-T&N Fund Claims which would or may otherwise have been made against the relevant Non-T&N Subreserve in the Company's CVA, such that no further Non-T&N Fund Claims shall be made in the CVA whether pursuant to paragraph 14.3 of the CVAs or otherwise;
- (b) in the event that the sum paid to the Trustees (when aggregated with all other funds standing to the credit of the relevant Non-T&N Fund) is in excess of the value of all Non-T&N Trust Claims in respect of the relevant Company, the Trustees, upon concluding that it is unlikely that any further Non-T&N Trust Claims against the relevant Company will be made:
  - (i) shall apply any surplus funds held in the Non-T&N Fund in payment of Non-T&N Trust Claims against other Companies; and
  - (ii) to the extent not applied in accordance with the preceding sub-paragraph, shall pay any balance to the T&N Fund, provided that up to 22/55 of any sum received by the T&N Fund may be paid by the Trustees to the Chester Street Fund in the event (and only in the event) that the Chester Street Fund Assets (including any payments under this Clause and paragraphs 5.7.3) (d) and 5.8 of the CVAs) become exhausted and to the extent such payments are required to fund Chester Street Fund Costs and/or Established Claims against the Chester Street Fund.

### **Setting Payment Percentages for the Non-T&N Funds**

5.5.3 Upon the payment to the Trust of any such monies, the Trustees shall set a Payment Percentage for the Non-T&N Fund concerned at such rate as they consider appropriate on the basis of the information and advice referred to in Clause 5.5.4, and after such reserves for future claims have been created by them out of the Non-T&N Fund concerned as they consider to be prudent (for which purpose the Trustees shall be entitled in their absolute discretion to rely on actuarial projections based on a prudent best estimate) to enable them to comply with the provisions of this TDP in accordance with the Core Objective.



5.5.4 In determining the rate at which such a Payment Percentage is set, the Trustees shall consider and rely upon such legal, medical, fiscal, actuarial or other advice as they consider appropriate.

5.5.5 The Trustees shall review and if appropriate revise the Payment Percentage for a Non-T&N Fund in respect of any of the Companies at the next review of the T&N Payment Percentage pursuant to Clauses 6.1 and 6.3, and every five years thereafter as provided by Clause 6.5, and at such other times as they consider necessary.

**Suspension of Payments from the Non-T&N Funds**

5.5.6 The Trustees may suspend payments from a Non-T&N Fund in respect of any of the Companies for such period (not exceeding three months) as they consider appropriate if information becomes available to them at any time as a result of which they determine that they should consider whether or not to set a revised Payment Percentage outside the five year cycle provided by Clause 6.5. As soon as practicable during, and in any event at the end of any suspension period, the Trustees shall review the Payment Percentage and either set a revised Payment Percentage or conclude that the Payment Percentage need not be revised and thereupon the suspension of payments shall be lifted. A Payment Percentage set in accordance with this Clause shall be reviewed in accordance with the five year review cycle provided by Clauses 6.1 and 6.5.

**Additional Dividend**

5.5.7 The Trustees shall be entitled to pay an Additional Dividend from a Non-T&N Fund as follows:

- (a) The process described in Clauses 3.3.1 to 3.3.5 shall apply save that:
  - (i) As for Clause 3.3.3, the Trustees shall first set the level of Additional Dividend payable on Established Claims within twelve months of the fifth anniversary of the Effective Date following the transfer of monies to the Trustees under paragraphs 5.7.1 to 5.7.3 of the CVAs; and
  - (ii) the reference in Clause 3.3.4 to "the T&N Fund" shall be replaced by a reference to the Non-T&N Fund concerned.
- (b) The Trustees shall be entitled to suspend payments of the Additional Dividend in accordance with Clause 5.5.6. For this purpose, references in Clause 5.5.6 to "payments" shall be replaced with "payments of the Additional Dividend", and references to "the Payment Percentage" shall be replaced with "the level of the Additional Dividend".

### **Payments in respect of Established Claims from the Non-T&N Funds**

- 5.5.8 Where the Trustees hold monies in a Non-T&N Fund after a transfer pursuant to paragraphs 5.7.1 to 5.7.3 of the CVAs, they shall make payments for Established Claims in relation to the Company concerned as follows:
- (a) Where appropriate, the Payment Percentage current at the date of payment shall be applied to the value of the Established Claim after giving credit for any actual payment of the T&N Hercules Payment Percentage out of the T&N Hercules Fund or any anticipated payment out of that Fund as estimated by the Trustees.
  - (b) Where applicable in accordance with Clause 5.5.7, the Additional Dividend shall be applied to the value of the Established Claim as determined by the Trustees.
  - (c) Payments may be made in respect of medical and legal costs in accordance with Clauses 3.4.4 to 3.4.7, and references therein to "the T&N Fund" shall be replaced by references to the Non-T&N Fund concerned.
  - (d) The following further provisions of Section 3 shall apply, with references to "the T&N Fund" replaced by references to the Non-T&N Fund concerned:
    - (i) Clause 3.5 (Payment Mechanics).
    - (ii) Clause 3.6 (Deductions from Payments and Repayments).

## **SECTION SIX**

### **6 Revision of Values, maximum figures for pain and suffering, Payment Percentages, costs cap, levels of Additional Dividend and medical costs.**

#### **6.1 General Provisions**

- 6.1.1 In order to comply with the requirements of the TDP and the Core Objective, on the fifth anniversary of the Effective Date and every five years thereafter, and at such other times as they consider necessary, the Trustees shall review and if appropriate revise either upwards or downwards, or keep at the same level:
- (a) The Expedited Review Values and the Maximum Values in Schedule 3.
  - (b) The maximum figures representing the pain and suffering element of a Trust Claim payable in accordance with Clause 2.9.3.
  - (c) The T&N Payment Percentage in Clause 3.1 and the T&N Hercules Payment Percentage in Clause 3.7, together with the level of any Additional Dividend.

- (d) The Chester Street Payment Percentage where it is calculated in accordance with Clauses 4.3.1 (a), 4.3.1 (b) (ii), 4.3.1 (c) (i), 4.3.1 (c) (ii) (bb) and 4.3.1 (d) (i), and the Chester Street Hercules Payment Percentage in Clause 4.9.2, together with the level of any Additional Dividend.
  - (e) Any Payment Percentage for a Non-T&N Fund established for any of the Companies other than T&N under Clause 5.5, together with the level of any Additional Dividend.
  - (f) The cap of £5,000 imposed on Actual Legal Costs in Clauses 3.4.6 and 5.2.3.
- 6.1.2 At any time the Trustees may in their absolute discretion review and if appropriate revise either upwards or downwards, or keep at the same level the payments for medical costs in Clauses 3.4.5 and 5.2.2.
- 6.1.3 In conducting their review, the Trustees shall in their absolute discretion consider all such matters as appear to them to be relevant to their review, and may rely upon such legal, medical, fiscal, actuarial or other advice as they consider appropriate.
- 6.1.4 The Trustees may in their absolute discretion postpone their 5-yearly review for no longer than 12 months.
- 6.1.5 If the Trustees postpone a review, the Expedited Review Values, Maximum Values, maximum figures for pain and suffering, Payment Percentages, cap on Actual Legal Costs, levels of Additional Dividend and medical costs (as the case may be) from the previous 5 year period will continue to apply until the review takes place. Any increases resulting from the review can be backdated for Trust Claims submitted during the period that the review was postponed, but decreases shall not be relied upon to claw back any sum already paid to a Trust Claimant.

## **6.2 Special provision for Values in Schedule 3**

- 6.2.1 Where a Trust Claim is submitted to the Trust and allowed by the Trustees as an Established Claim either (i) before the first five yearly revision of the Expedited Review Values and Maximum Values, or (ii) after a revision has taken place, but before the next revision is carried out, Established Claims shall be valued as follows:
- (a) Where the Established Claim is assessed by Expedited Review, the Trustees shall value it by the application of the Expedited Review Value for that five year period, subject to any discounts made pursuant to Clauses 2.5.6 and 2.5.7.
  - (b) Where the Established Claim is assessed by Individual Review:
    - (i) As to any recovery for pain and suffering, the Trustees shall calculate the value of any such recovery by reference to the amount that could have been recovered as at the Effective Date or the most recent review date, as the case may be.

- (ii) As to any recovery for other heads of loss, the Trustees may in their absolute discretion discount any such recovery by an amount for inflation calculated by reference to the cumulative rates contained in the Retail Price Index from the date on which the Maximum Values were last set to the date on which the Trust Claim was submitted to the Trust.

### **6.3 Special Provisions for the T&N Payment Percentage and the T&N Hercules Payment Percentage**

6.3.1 The Trustees shall only set an increased T&N Payment Percentage or an increased T&N Hercules Payment Percentage pursuant to clause 6.1 if they consider, on the basis of the information and advice referred to in Clause 6.3.2, that after:

- (a) they have complied with the provisions of Clause 3.3 in relation to all Established Claims against the T&N Fund as at the Review Date concerned; and
- (b) such reserves have been created by them for future claims as they consider to be prudent (for which purpose the Trustees shall be entitled in their absolute discretion to rely on actuarial projections based on a best estimate);

the T&N Fund and the T&N Hercules Fund will be sufficient to enable them to comply with the provisions of this TDP in accordance with the Core Objective.

6.3.2 In reviewing the rate at which the T&N Payment Percentage and the T&N Hercules Payment Percentage are set, the Trustees shall consider and rely upon such legal, medical, fiscal, actuarial or other advice as they consider appropriate.

6.3.3 Clauses 6.3.1 and 6.3.2 apply to the level of any Additional Dividend that the Trustees determine should be paid in accordance with Clause 3.3.

6.3.4 This Clause 6.3 shall be without prejudice to the Trustees' powers under Clause 3.2.1 to suspend payments from the T&N Fund and review and if appropriate revise the T&N Payment Percentage, and Clause 3.7.3 which provides the same powers in relation to the T&N Hercules Fund and the T&N Hercules Payment Percentage.

### **6.4 Special Provisions for the Chester Street Payment Percentage and the Chester Street Hercules Payment Percentage**

6.4.1 Where the Trustees revise the T&N Payment Percentage and the T&N Hercules Payment Percentage pursuant to Clauses 6.1 and 6.3, they shall revise the Chester Street Payment Percentage and the Chester Street Hercules Payment Percentage in so far as they are calculated in accordance with Clauses 4.3.1 (a), 4.3.1 (c) (i) or 4.3.1 (d) (i), and to the extent necessary to set a rate which gives a return equivalent to that which would have been

received by T&N Trust Claimants if there had been no Costs Payments to T&N Trust Claimants under Clauses 3.4.4 to 3.4.7.

- 6.4.2 Where the Trustees revise the Payment Percentage for a Non-T&N Fund pursuant to Clauses 5.5.5 and 6.5, they shall revise the Chester Street Payment Percentage (but not the Chester Street Hercules Payment Percentage) in so far as it was calculated in accordance with Clauses 4.3.1 (b) (ii) or 4.3.1 (c) (ii) (bb), and to the extent necessary to set a rate which gives a return equivalent to that which would have been received by Non-T&N Trust Claimants if there had been no Costs Payments to Non-T&N Trust Claimants under Clauses 5.2.1 to 5.2.4.
- 6.4.3 Clauses 6.4.1 and 6.4.2 apply to the level of any Additional Dividend that the Trustees determine should be paid in accordance with Clause 4.5 above.
- 6.4.4 This Clause 6.4 shall be without prejudice to the Trustees' powers under Clauses 4.4.1 and 4.4.2 to suspend payments from the Chester Street Fund and to review and if appropriate revise the Chester Street Payment Percentage as there set out, and Clause 4.9.3, which provides the same powers in relation to the Chester Street Hercules Fund and the Chester Street Hercules Payment Percentage.

**6.5 Special Provisions for the Payment Percentages for Non-T&N Funds after the completion of the relevant CVA**

- 6.5.1 The Trustees shall only set an increased Payment Percentage pursuant to Clause 6.1 if they consider, on the basis of the information and advice referred to in Clause 6.5.2, that after such reserves have been created by them for future claims as they consider to be prudent (for which purpose the Trustees shall be entitled in their absolute discretion to rely on actuarial projections based on a best estimate), the Fund will be sufficient to enable them to comply with the provisions of this TDP in accordance with the Core Objective.
- 6.5.2 In reviewing the rate at which any such Payment Percentage is set, the Trustees shall consider and rely upon such legal, medical, fiscal, actuarial or other advice as they consider appropriate.
- 6.5.3 Clauses 6.5.1 and 6.5.2 shall apply to the level of any Additional Dividend that the Trustees determine should be paid in accordance with Clause 5.5.7.
- 6.5.4 This Clause 6.5 shall be without prejudice to the Trustees' powers under Clause 5.5.6 to suspend payments from the Fund and review and if appropriate revise the Payment Percentage.

## **SECTION SEVEN**

### **7 UK Asbestos Trust Costs**

#### **7.1 Introduction**

7.1.1 To the extent that they do not constitute Hercules Recovery Costs which can on the Review Date specified in the Hercules Payment Agency Agreement immediately following the time at which they are incurred be recovered under paragraphs 19.8.4 Thirdly or 19.8.4 Fourthly of the CVAs, and subject to paragraph 32.8 of the CVAs, the UK Asbestos Trust Costs shall be paid as follows.

#### **7.2 Non-T&N Fund Costs**

7.2.1 Until such time (if any) as the balance of the Remuneration Reserve is transferred to the Trust pursuant to paragraph 32.3 of the CVAs and for so long as personnel or nominees of Kroll Limited comprise the majority of the board of directors of The T&N Asbestos Trustee Company Limited, the Supervisors shall pay the Non-T&N Fund Costs from the Remuneration Reserve. In circumstances where personnel or nominees of Kroll Limited do not comprise the majority of the board of directors of The T&N Asbestos Trustee Company Limited, the Non-T&N Fund Costs shall be paid out of the relevant Company's Non-T&N Fund in priority to payments to relevant holders of Non-T&N Trust Claims.

#### **7.3 Other UK Asbestos Trust Costs**

7.3.1 Subject to paragraph 18.1.2 of the CVAs, all UK Asbestos Trust Costs may, at the Supervisors' sole discretion, be paid from the Remuneration Reserve. If the Supervisors are unable or choose not to pay all or any such costs from the Remuneration Reserve, they shall be paid as follows.

#### **T&N Fund Costs and T&N Hercules Fund Costs**

7.3.2 The T&N Fund Costs shall be paid out of the T&N Fund, in priority to payments to the holders of T&N Trust Claims.

7.3.3 The T&N Hercules Fund Costs shall, subject to paragraphs 19.8.4 Thirdly and 19.8.4 Fourthly of the CVAs, be paid out of the T&N Hercules Fund. If the T&N Hercules Fund does not contain sufficient funds, the balance of such costs shall be paid out of the T&N Fund, and the T&N Fund shall be reimbursed for such costs from any Hercules Recoveries that are subsequently received by the Trust pursuant to paragraph 19.8.4 of the CVAs, which shall constitute T&N Hercules Fund Assets.

### **Chester Street Fund Costs and Chester Street Hercules Fund Costs**

7.3.4 The Chester Street Fund Costs shall be paid out of the Chester Street Fund in priority to payments to the relevant holders of Chester Street Trust Claims.

7.3.5 The Chester Street Hercules Fund Costs shall, subject to paragraphs 19.8.4 Thirdly and 19.8.4 Fourthly of the CVAs, be paid out of the Chester Street Hercules Fund. If the Chester Street Hercules Fund does not contain sufficient funds, the balance of such costs shall be paid out of the Chester Street Fund, and the Chester Street Fund shall be reimbursed for such costs from any Hercules Recoveries that are subsequently received by the Trust pursuant to paragraph 19.8.4 of the CVAs, which shall constitute Chester Street Hercules Fund Assets.

### **Costs not attributable to any one particular Fund**

7.3.6 The remuneration, costs and expenses (if any) of the Trustees which are incurred in the administration of the Trust and which are not attributable to any one particular Fund shall, to the extent that they are not paid from the Remuneration Reserve, be apportioned between the T&N Fund, the Chester Street Fund and each Non-T&N Fund by reference to the number of Trust Claims which are asserted or which are projected to be asserted against the Trust and which are attributable to such Funds. The reasonable costs and expenses:

- (a) which are allocated to the T&N Fund shall be met out of the T&N Fund Assets;
- (b) which are allocated to the Chester Street Fund shall be met out of the Chester Street Fund Assets; and
- (c) which are allocated to each Non-T&N Fund shall subject to paragraph 18.1.2 of the CVAs be met out of the relevant Non-T&N Fund Assets.

### **Hercules Recovery Costs**

7.3.7 To the extent that any costs paid pursuant to this Clause properly constitute Hercules Recovery Costs, but are nevertheless paid from the sources referred to in Clauses 7.2 and 7.3, the Trustees shall be entitled to recover an amount equal to such Hercules Recovery Costs pursuant to the application set out in paragraph 19.8.4 Fourthly of the CVAs as if such amount were Hercules Recovery Costs which remained outstanding.

### **EL Asbestos Insurance Fund Costs**

7.3.8 Subject to paragraph 28.2 of the CVAs, the EL Asbestos Insurance Fund Costs shall be paid out of the EL Asbestos Insurance Fund in priority to payments to the holders of EL Asbestos Insured Trust Claims in accordance with and subject to the terms of this Trust Deed and the TDP. If the EL Asbestos Insurance Fund does not contain sufficient funds to permit payment of EL Asbestos Insurance Fund Costs in full, the balance of such costs shall be apportioned

between the T&N Fund and each Non-T&N Fund by reference to the number of Trust Claims which are or which are projected to be asserted against the Trust and which are attributable to such funds. The costs and expenses which are allocated to the T&N Fund shall be met out of the T&N Fund Assets and the costs and expenses which are allocated to each Non-T&N Fund shall, subject to paragraph 18.1.2 of the CVAs, be met out of the relevant Non-T&N Fund Assets.

#### **7.4 Remuneration Fund**

- 7.4.1 Pursuant to paragraph 32.3 of the CVAs, at the termination of the last CVA, the Supervisors shall pay to the Trust any funds remaining in the Remuneration Reserve to be held on trust and to form the Remuneration Fund. The Trustees shall apply the Remuneration Fund in accordance with paragraphs 18 and 32 of the CVAs, Clause 17 of the Deed, and Clause 7.4.2 of this TDP.
- 7.4.2 After the establishment of the Remuneration Fund, the Trustees may pay the UK Asbestos Trust Costs from the sums standing to the credit of the Remuneration Fund. If it is insufficient to meet such costs, the arrangements set out in Clauses 7.2 and 7.3 shall apply.

### **SECTION EIGHT**

#### **8 Trustees' Powers of Amendment**

- 8.1.1 Subject to ensuring that the Core Objective stated in Clause 1.3 of the TDP is maintained, the Trustees may by deed or written resolution amend this TDP and/or the Deed in order to:
- (a) make such amendments as may from time to time appear to be in the best interests of the beneficiaries of the Trust, including but not limited to amendments necessary to obtain charitable status for all or part of the Trust; or
  - (b) take account of advances in scientific or medical knowledge, or other changes in circumstances or in the law; or
  - (c) comply with any directions or orders of the Court.
- 8.1.2 Notwithstanding the foregoing, no amendment to the TDP or Trust Deed may be made which has or may have the effect of:
- (a) creating a liability for, increasing the liability of, or reducing the amount receivable by, any company in the Federal-Mogul Group to or from any person, or
  - (b) materially adversely affecting the position of FMC or of any other company in the Federal-Mogul Group,



without the prior written consent of:

- (i) until such time as the Administration Order in respect of T&N is discharged, FMC (such consent not to be unreasonably withheld); or
- (ii) following the discharge of the Administration Order in respect of T&N and if T&N at the relevant time remains a Subsidiary of FMC, T&N (such consent not to be unreasonably withheld); or
- (iii) following the discharge of the Administration Order in respect of T&N and if T&N at the relevant time does not remain a Subsidiary of FMC, FMC (such consent not to be unreasonably withheld).

## **SECTION NINE**

### **9 Governing law and disputes**

- 9.1 This TDP is governed by and shall be interpreted in accordance with the laws of England and Wales.
- 9.2 Any disputes arising out of or in connection with the Trust Deed, this TDP or the operations of the Trust shall be subject to the exclusive jurisdiction of the High Court of Justice of England and Wales, save that where provision is made for an alternative form of dispute resolution in the Trust Deed or this TDP, such alternative form of dispute resolution shall prevail.

## Schedule 1

<u>Disease Level</u>	<u>Presumptive Medical and Exposure Criteria</u>
i. Mesothelioma	<p>(1) <u>Diagnosis by an accredited respiratory specialist<sup>1</sup> or for Trust Claims in respect of deceased Injured Persons assessed by Expedited Review, a medical certificate issued by the appropriate authority for the relevant jurisdiction certifying the cause of death as mesothelioma.</u></p> <p>(2) As to employees: Credible evidence of <u>material</u> Asbestos Exposure in the course of employment by T&amp;N or any relevant Company and such Asbestos Exposure commencing at least 10 years before first diagnosis.</p> <p>(3) In other cases: Credible evidence of <u>material</u> Asbestos Exposure caused by the activities of T&amp;N or any relevant company and such Asbestos Exposure commencing at least 10 years before first diagnosis.</p>
ii. Lung Cancer	<p>(1) Diagnosis by an accredited respiratory specialist of (a) a primary lung cancer, and (b) asbestosis or credible evidence of Asbestos Exposure sufficient to have caused asbestosis according to the Helsinki Criteria, and</p> <p>(2) As to employees: Credible evidence of Asbestos Exposure in the course of employment by T&amp;N or any relevant Company for a minimum period of 6 months and such Asbestos Exposure commencing at least 10 years before first diagnosis.</p> <p>(3) In other cases: Credible evidence of Asbestos Exposure caused by the activities of T&amp;N or any relevant Company for a minimum period of 6 months and such Asbestos Exposure commencing at least 10 years before first diagnosis.</p>
iii. Asbestosis	<p>(1) Diagnosis by an accredited respiratory specialist and assessment of disability as mild, moderate or severe according to the Scale in Schedule 2.</p> <p>(2) As to employees: Credible evidence of Asbestos Exposure in the course of employment by T&amp;N or any relevant Company for a minimum period of 6 months and such Asbestos Exposure commencing at least 15 years before first diagnosis.</p> <p>(3) In other cases: Credible evidence of Asbestos Exposure caused by the activities of T&amp;N or any relevant Company for a minimum period of 6 months and such Asbestos Exposure commencing at least 15 years before first diagnosis.</p>
iv. Diffuse Pleural Thickening	<p>(1) Diagnosis by an accredited respiratory specialist and assessment of disability as mild, moderate and severe according to the Scale in Schedule 2.</p> <p>(2) As to employees: Credible evidence of Asbestos Exposure in the</p>

<sup>1</sup> All references to an accredited respiratory specialist include a retired Consultant in respiratory medicine.

<u>Disease Level</u>	<u>Presumptive Medical and Exposure Criteria</u>
	<p>course of employment by T&amp;N or any relevant Company and such Asbestos Exposure commencing at least 15 years before first diagnosis.</p> <p>(3) In other cases: Credible evidence of Asbestos Exposure caused by the activities of T&amp;N or any relevant Company and such Asbestos Exposure commencing at least 15 years before first diagnosis.</p>
<p>v. Pleural Disease Not Causing Disability</p>	<p>(1) Diagnosis by a qualified doctor based on radiological evidence, and</p> <p>(2) As to employees: Credible evidence of material Asbestos Exposure in the course of employment by T&amp;N or any relevant Company and such Asbestos Exposure commencing at least 15 years before first diagnosis.</p> <p>(3) In other cases: Credible evidence of Asbestos Exposure caused by the activities of T&amp;N or any relevant Company and such Asbestos Exposure commencing at least 15 years before first diagnosis.</p>

## Schedule 2

The Disability Rating Scale For Disease Levels III and IV

Disability Percentage	Symptoms	Lung Function Impairment
0%	Not breathless on exercise	None
10%	Breathless on prolonged or heavy exertion	Mild
20%	Breathless on walking uphill or climbing stairs or on hurrying on level ground	Mild
30%	Breathless at normal pace for age walking on level ground	Moderate
40%	Breathless on walking 100 yards or climbing one flight of stairs at a normal pace	Moderate
50%	Breathless on walking 100 yards at a slow pace or climbing one flight of stairs at a slow pace	Moderate
60%	Breathlessness prevents walking 100 yards at a slow pace without stopping or climbing one flight of stairs without stopping	Severe
70%	Breathlessness prevents activity outside the home without assistance or supervision	Severe
80%	Breathlessness limits activities to within the home	Severe
90%	Able to walk only a few steps because of breathlessness	Severe
100%	Bed and chair bound, totally dependent on carers because of breathlessness	Severe

All assessments must be based upon comparison with a healthy person of the same sex and of a similar age.

### Schedule 3

**1. Trust Claims made under the laws of England, Wales, Northern Ireland and Scotland (save for Trust Claims concerning deceased Injured Persons where Asbestos Disease (Levels I, II or III) was causative of death)**

<u>Disease Level</u>	<u>Expedited Review Value</u>	<u>Maximum Value</u>
I Mesothelioma	<u>£120,000</u> <del>£100,000</del>	<u>£288,000</u> <del>£287,500</del> <del>£250,000</del>
II Lung Cancer	<u>£100,000</u> <del>£80,000</del>	<u>£230,000</u> <del>£200,000</del>
III Asbestosis		
Mild	<u>£29,000</u> <del>£28,750</del> <del>£25,000</del>	<u>£58,000</u> <del>£57,500</del> <del>£50,000</del>
Moderate	<u>£58,000</u> <del>£57,500</del> <del>£50,000</del>	<u>£115,000</u> <del>£100,000</del>
Severe	<u>£92,000</u> <del>£80,000</del>	<u>£230,000</u> <del>£200,000</del>
IV Diffuse Pleural Thickening		
Mild	<u>£20,000</u> <del>£17,500</del>	<u>£46,000</u> <del>£40,000</del>
Moderate	<u>£40,000</u> <del>£35,000</del>	<u>£92,000</u> <del>£80,000</del>
Severe	<u>£70,000</u> <del>£60,000</del>	<u>£173,000</u> <del>£172,500</del> <del>£150,000</del>
V Pleural Disease Not Causing Disability	<u>£4,000</u> <del>£3,500</del> <del>£3,000</del>	<u>£46,000</u> <del>£40,000</del>

**2. Trust Claims concerning deceased Injured Persons which are made under the laws of England, Wales and Northern Ireland where Asbestos Disease (Levels I, II or III) was causative of death**

<u>Disease Level</u>	<u>Expedited Review Value</u>	<u>Maximum Value</u>
I Mesothelioma	<u>£130,000</u> <del>£110,000</del>	<u>£315,000</u> <del>£275,000</del>
II Lung Cancer	<u>£110,000</u> <del>£90,000</del>	<u>£260,000</u> <del>£225,000</del>
III Severe Asbestosis	<u>£104,000</u> <del>£103,500</del> <del>£90,000</del>	<u>£260,000</u> <del>£225,000</del>

**3. Trust Claims concerning deceased Injured Persons which are made under the laws of Scotland where Asbestos Disease (Levels I, II or III) was causative of death**

<u>Disease Level</u>	<u>Expedited Review Value</u>	<u>Maximum Value</u>
I Mesothelioma	<u>£160,000</u> <del>£150,000</del> <del>£140,000</del>	<u>£358,000</u> <del>£335,000</del> <del>£325,000</del>
II Lung Cancer	<u>£128,000</u> <del>£120,000</del> <del>£110,000</del>	<u>£304,000</u> <del>£285,000</del> <del>£275,000</del>
III Severe Asbestosis	<u>£128,000</u> <del>£120,000</del> <del>£110,000</del>	<u>£304,000</u> <del>£285,000</del> <del>£275,000</del>

For the avoidance of doubt, in Schedule 3 Trust Claims "made under the laws of England and Wales, Scotland and Northern Ireland" means Trust Claims where the Asbestos Exposure of the Injured Person occurred, respectively, in England and Wales, Scotland or Northern Ireland.