

**RED RIVER TALC PERSONAL INJURY TRUST AGREEMENT**

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## **RED RIVER TALC PERSONAL INJURY TRUST AGREEMENT**

This Red River Talc Personal Injury Trust Agreement (this “**Trust Agreement**”), dated [•], and effective as of the first Business Day following the Confirmation Date, is entered into pursuant to the Prepackaged Chapter 11 Plan of Reorganization of the Debtor [Docket No. [•]] (as may be further amended or modified, the “**Plan**”),<sup>1</sup> by:

- (1) Red River Talc LLC (the “**Debtor**” and, on and after the Effective Date, the “**Reorganized Debtor**”), a Texas limited liability company and the debtor and debtor-in-possession whose Chapter 11 Case, known as *In re: Red River Talc LLC*, is administered in the United States Bankruptcy Court for the [•] District of Texas (“**Bankruptcy Court**”), Case No. [•]-[•] ([•]) (the “**Bankruptcy Case**”);
- (2) Johnson & Johnson, a New Jersey corporation (“**J&J**”);
- (3) Johnson & Johnson Holdco (NA) Inc., a New Jersey corporation that was formerly named [•] Inc. (“**Holdco**”);
- (4) the members (“**TAC Members**”) of the Talc Trust Advisory Committee (the “**TAC**”) identified on the signature pages hereto;
- (5) the FCR (the “**FCR**”);
- (6) the Talc Trustees (the “**Trustees**”) identified on the signature pages hereto; and
- (7) [•] (the “**Delaware Trustee**” and, together with the Debtor, J&J, Holdco, the TAC Members, the FCR, and the Trustees, the “**Parties**”).

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<sup>1</sup> All capitalized terms used but not defined herein shall have the definitions set forth in the Plan or the TDP (as defined below), as applicable, and such definitions are incorporated herein by reference. All terms used but not defined herein or in the Plan or the TDP, but defined in the Bankruptcy Code or Bankruptcy Rules, shall have the definitions set forth in the Bankruptcy Code and Bankruptcy Rules, and such definitions are incorporated herein by reference.

## RECITALS

**WHEREAS**, the Debtor expects to reorganize pursuant to the Plan; and

**WHEREAS**, the Confirmation Order confirming the Plan pursuant to section 1129 of the Bankruptcy Code has been entered by the District Court; and

**WHEREAS**, the Plan provides for, among other things, the creation of the Talc Personal Injury Trust (the “**Talc Trust**”) pursuant to this Trust Agreement; and

**WHEREAS**, pursuant to the Plan, from and after the Effective Date, the Talc Trust is to use its assets and income to resolve all Channeled Talc Personal Injury Claims (“**Talc Claims**”); and

**WHEREAS**, it is the intent of the Debtor, J&J, Holdco, the TAC Members, the FCR, and the Trustees that the Talc Trust will be administered, maintained and operated at all times through mechanisms that provide reasonable assurance that the Trust will value, and be in a financial position to pay, Talc Claims that involve similar Channeled Talc Personal Injury Claims in substantially the same manner and in accordance with the terms of the Plan, the Confirmation Order, this Trust Agreement, and the Trust Distribution Procedures in the form attached as Exhibit K to the Plan (the “**TDP**”); and

**WHEREAS**, all rights of the holders of Talc Claims arising under this Trust Agreement and the TDP shall vest upon the Effective Date; and

**WHEREAS**, pursuant to the Plan, the Talc Trust is intended to qualify as a “qualified settlement fund” (a “**Qualified Settlement Fund**”) within the meaning of section 1.468B-1 *et seq.* of the Treasury Regulations promulgated under section 468B of the Internal Revenue Code (the “**OSF Regulations**”); and

**WHEREAS**, the Bankruptcy Court (and the District Court as applicable) have determined that the Talc Trust and the Plan satisfy all the prerequisites for issuance of an injunction pursuant to sections 524(g), 1123(b)(6), and/or 105(a) of the Bankruptcy Code with respect to any and all Talc Claims, and such injunction has been entered in connection with the Confirmation Order.

## **AGREEMENT**

**NOW, THEREFORE**, the Parties hereby agree as follows:

### **ARTICLE I**

#### **AGREEMENT OF TRUST**

##### **1.1 Creation and Name.**

(a) The Debtor as settlor (“**Settlor**”) hereby creates the Talc Trust, which is to be known as the “Red River Talc Personal Injury Trust.”

(b) It is the intention of the Parties that the Talc Trust constitute a statutory trust under chapter 38 of title 12 of the Delaware Code, 12 Del. C. § 3801 *et seq.* (the “**Act**”) and that this Trust Agreement constitute the governing instrument of the Talc Trust.

(c) The Trustees and the Delaware Trustee are hereby authorized and directed to execute and file a Certificate of Trust with the Delaware Secretary of State in the form attached hereto as Exhibit 1.

##### **1.2 Purpose.**

(a) The purpose of the Talc Trust is to assume all liabilities, obligations, and responsibilities for all Talc Claims and, among other things, to: (i) preserve, hold, manage, and maximize the assets of the Talc Trust; and (ii) direct the processing, liquidation, and, if

appropriate, payment of all compensable Talc Claims in accordance with the Plan, the Confirmation Order, this Trust Agreement, and the TDP.

(b) The Talc Trust will resolve all Talc Claims in accordance with the Plan, the Confirmation Order, this Trust Agreement, and the TDP in such a way that holders of Talc Claims are treated fairly and equitably, and otherwise comply in all respects with the requirements of a trust set forth in section 524(g)(2)(B)(i) of the Bankruptcy Code.

### **1.3 Assumption of Talc Claims.**

(a) In consideration of the assets delivered, transferred, and assigned to the Talc Trust pursuant to, and in accordance with, Article IV of the Plan, and in furtherance of the purposes of the Plan, the Confirmation Order, and the Talc Trust, on the Effective Date, the Talc Trust shall assume all liabilities, obligations, and responsibilities, financial and otherwise, of the Reorganized Debtor, J&J, and the other Protected Parties for all Talc Claims (including Indirect Talc Personal Injury Claims and Talc Personal Injury Demands). To effectuate the foregoing, on the Effective Date, the Talc Trust shall execute and deliver an instrument of assignment and assumption in the form attached hereto as Exhibit 2 (the “**Effective Date Assignment and Assumption Instrument**”).

(b) From and after the Effective Date, other than with respect to obligations to fund the Trust as set forth in the Plan, the Reorganized Debtor, J&J, and the other Protected Parties shall have no liability, obligation, or responsibility, financial or otherwise, for any Talc Claim (including any Indirect Talc Personal Injury Claim and any Talc Personal Injury Demand).

### **1.4 Assignment of Defenses to Talc Claims.**

(a) Pursuant to, and in accordance with, Section 4.8.2 of the Plan, on the Effective Date, upon assumption by the Talc Trust of liabilities, obligations, and responsibilities



for Talc Claims as provided in Section 1.3(a) above, the Reorganized Debtor and J&J shall transfer and assign to the Talc Trust, and the Talc Trust shall accept, Talc Personal Injury Trust Defenses. To effectuate the foregoing, on the Effective Date, each of the Reorganized Debtor, J&J, and the Talc Trust shall execute and deliver the Effective Date Assignment and Assumption Instrument.

(b) Pursuant to, and in accordance with Section 4.8.3 of the Plan, from and after the Effective Date, the Talc Trust shall have control over, and the exclusive right to enforce, the Talc Personal Injury Trust Defenses.

**1.5 Cash Contributions.** Pursuant to, and in accordance with, Section 4.9.1 of the Plan:

- (a) on and after the Effective Date, the Reorganized Debtor shall deliver, or cause to be delivered, to the Talc Trust Talc Trust Cash Contributions in accordance with Exhibit C to the Plan, and the Talc Trust shall accept such Cash Contributions; and
- (b) on the Effective Date, J&J and Holdco shall execute and deliver to the Talc Trust, and the Talc Trust shall accept and agree to, the Cash Contributions Parent Guarantee in the form attached as Exhibit D to the Plan.

**1.6 Delivery of Talc PI Note and Related Talc PI Pledge.** Pursuant to, and in accordance with, Section 4.9.2 of the Plan, on the Effective Date:

- (a) the Reorganized Debtor shall execute and deliver to the Talc Trust, and the Talc Trust shall accept and agree to, the Talc PI Note in the form attached as Exhibit J to the Plan; and

- (b) Holdco shall execute and deliver to the Talc Trust, and the Talc Trust shall accept and agree to, the Talc PI Pledge Agreement in the form of Exhibit K to the Plan.

**1.7 Assignment of Imerys/Cyprus Related Rights.** If either (x) the Imerys/Cyprus Settlement Agreement has not been executed prior to or on the Effective Date or (y) if the Imerys/Cyprus Settlement Agreement has been executed prior to or on the Effective Date and the Imerys/Cyprus Settlement Termination Date occurs, whether prior to, on, or following the Effective Date:

(a) Pursuant to, and in accordance with, Section 4.9.3 of the Plan, on the Effective Date or, if later, the Imerys/Cyprus Settlement Termination Date, the Reorganized Debtor and J&J shall transfer and assign to the Talc Trust, and the Talc Trust shall accept, the Imerys/Cyprus Related Rights. To effectuate the foregoing, on the Effective Date, each of the Reorganized Debtor, J&J, and the Talc Trust shall execute and deliver the Effective Date Assignment and Assumption Instrument.

(b) Pursuant to, and in accordance with, Section 4.9.3 of the Plan, from and after the Effective Date or, if later, the Imerys/Cyprus Settlement Termination Date, the Talc Trust shall have control over, and the exclusive right to enforce, the Imerys/Cyprus Related Rights.

**1.8 Assignment of Talc Insurance Assets.**

(a) Pursuant to, and in accordance with, Section 4.9.4 of the Plan, on the Effective Date, the Reorganized Debtor shall transfer and assign to the Talc Trust, and the Talc Trust shall accept, the Talc Insurance Assets. To effectuate the foregoing, on the Effective Date,

each of the Reorganized Debtor and the Talc Trust shall execute and deliver the Effective Date Assignment and Assumption Instrument.

(b) Pursuant to, and in accordance with, Section 4.9.4 of the Plan, from and after the Effective Date, in consideration of the Reorganized Debtor's obligations under Section 4.9.1, Section 4.9.2, and, if applicable, Section 4.9.3 of the Plan, (i) the Reorganized Debtor, as the agent for and subrogee of the Talc Trust, shall have the exclusive right (A) to pursue and resolve any Talc In-Place Insurance Coverage, (B) to pursue and resolve any Talc Insurance Action, (C) to pursue and obtain any Talc Insurance Recoveries, and (D) to negotiate and enter into any Talc Insurance Settlement Agreement and (ii) any of the following received by the Talc Trust shall be delivered to, and retained by, the Reorganized Debtor, which may thereafter use the same as it may determine in its sole discretion: (A) all proceeds of Talc In-Place Insurance Coverage; (B) all proceeds or benefits of any Talc Insurance Action; and (C) all amounts payable pursuant to any Talc Insurance Settlement Agreement.

**1.9 Cooperation Agreement.** Pursuant to, and in accordance with, Section 4.15 of the Plan, on the Effective Date, each of the Reorganized Debtor, J&J, the Custodians, and the Talc Trust shall enter into the Cooperation Agreement substantially in the form of Exhibit E of the Plan.

**1.10 Indemnification and Reimbursement Obligations.** Pursuant to, and in accordance with, Section 4.16 of the Plan, from and after the Effective Date, the Talc Trust shall indemnify, defend, and hold harmless each of the Reorganized Debtor and the other Protected

Parties (other than, if Section 1.7 above is applicable, the Imerys/Cyprus Parties for claims based on, arising out of, or in any way relating to the Imery/Cyprus Related Rights).

**1.11 Construction.**

(a) The Trustees may transact the business and affairs of the Talc Trust in the name of the Talc Trust, and references herein to the Talc Trust shall include the Trustees acting on behalf of the Talc Trust.

(b) In the event of a conflict between the terms or provisions of the Plan and the Confirmation Order, on the one hand, and this Trust Agreement and the TDP, on the other hand, the terms or provisions of the Plan and the Confirmation Order shall control. In the event of a conflict between the terms or provisions of the Plan, on the one hand, and the Confirmation Order, on the other hand, the terms or provisions of the Confirmation Order shall control. In the event of a conflict between the terms or provisions of this Trust Agreement, on the one hand, and the TDP, on the other hand, the terms or provisions of this Trust Agreement shall control.

(c) Nothing in this Trust Agreement or in the TDP shall be construed or implemented in a manner that would cause the Talc Trust to fail to qualify as a Qualified Settlement Fund under the QSF Regulations. Any issue of interpretation of this Trust Agreement and the TDP shall be resolved in favor of an interpretation that conforms to the QSF Regulations.

(d) Nothing in this Trust Agreement or in the TDP shall be construed in any way to limit (i) the scope, enforceability, or effectiveness of the Injunctions or (ii) the Talc Trust's assumption of all liabilities, obligations, and responsibilities for all Talc Claims.

(e) For purposes of this Trust Agreement and the TDP, (i) the words "must," "will," and "shall" are intended to have the same mandatory force and effect, while the word

“may” is intended to be permissive rather than mandatory and (ii) the words “include” and “including” shall be deemed to be followed by the words “without limitation.”

(f) To the extent required by the Act, the beneficial owners (within the meaning of the Act) of the Talc Trust shall be deemed to be the holders of Talc Claims; *provided, however,* that (i) the holders of Talc Claims, as such beneficial owners, shall have only such rights with respect to the Talc Trust and its assets as are set forth in the TDP, (ii) such rights shall exist only from and after the Effective Date, and (iii) no greater or other rights, including upon dissolution, liquidation, or winding up of the Talc Trust, shall be deemed to apply to the holders of Talc Claims in their capacity as beneficial owners.

## ARTICLE II

### **POWERS AND TRUST ADMINISTRATION**

#### **2.1 Powers.**

(a) The Trustees are and shall act as fiduciaries to the Talc Trust in accordance with the terms and provisions of the Plan, the Confirmation Order, this Trust Agreement, and the TDP. The Trustees shall, at all times, administer the Talc Trust and its assets in accordance with the purposes set forth in Section 1.2 above. Subject to the limitations set forth in this Trust Agreement, the Trustees shall have:

(i) the power to take any and all actions that, in the reasonable judgment of the Trustees, are necessary or proper to fulfill the purpose of the Talc Trust, including each action required to be taken by the Trustees pursuant to the express terms and provisions of the Plan, the Confirmation Order, this Trust Agreement, and the TDP;

(ii) any power reasonably incidental thereto and not inconsistent with the Plan, the Confirmation Order, this Trust Agreement (including Section 2.2 below), or the TDP; and

(iii) any trust power now or hereafter permitted under the laws of the State of Delaware.

(b) Except as required by applicable law or otherwise specified herein or in the TDP, the Trustees need not obtain the order or approval of the Bankruptcy Court or any other court in the exercise of any power or discretion conferred hereunder.

(c) Without limiting the generality of Section 2.1(a) above, and except as limited by the Plan or the Confirmation Order or otherwise specified herein or in the TDP, the Trustees shall have the power to:

(i) receive and hold the Cash Contributions, accept and agree to the Cash Contributions Parent Guarantee, the Talc PI Note, and the Talc PI Pledge Agreement, accept the Imerys/Cyprus Related Rights (if Section 1.7 above is applicable) and the Talc Insurance Assets, and enter into the Cooperation Agreement, and perform all obligations and exercise all rights of the Talc Trust with respect to each of them and with respect to the Plan and any other Plan Documents;

(ii) invest the monies held from time to time by the Talc Trust;

(iii) enter into leasing and financing agreements with third parties to the extent such agreements are reasonably necessary to permit the Talc Trust to operate;

(iv) pay liabilities and expenses of the Talc Trust, including without limitation the indemnification and reimbursement obligations set forth in Section 4.16 of the Plan and Section 1.10 of this Trust Agreement;

(v) establish within the Talc Trust estate such accounts and reserves as the Trustees, in their reasonable judgment, deem necessary or proper in carrying out the purpose of the Talc Trust;

(vi) sue and be sued and participate, as a party or otherwise, in any judicial, administrative, arbitral, or other proceeding solely in their capacities as the Trustees of the Talc Trust;

(vii) establish, supervise, and administer the Talc Trust in accordance with the Plan, the Confirmation Order, this Trust Agreement, and the TDP, and the terms hereof and thereof;

(viii) (A) appoint the Talc Trust Claims Administrator and the Talc Trust Liens Resolution Administrator, (B) engage the Claims Processor, (C) appoint such officers and agents, hire such employees, and engage such Trust Professionals (as defined below) as the Trustees, in their reasonable judgment, deem necessary or proper, in conducting the business (including alternate dispute resolution activities) of the Talc Trust, and (D) delegate to such Persons such powers and authorities as the fiduciary duties of the Trustees permit and as the Trustees, in their reasonable judgment, deem necessary or proper in carrying out the purpose of the Talc Trust;

(ix) pay reasonable compensation to (A) the Talc Trust Claims Administrator, the Talc Trust Liens Resolution Administrator, and the Claims Processor and (B) the officers, agents, employees, and Trust Professionals appointed, hired, or engaged by the Trustees;

(x) as provided below, (a) compensate the Trustees and the FCR, (b) reimburse the Trustees, the TAC Members, and the FCR for all reasonable out-of-pocket

costs and expenses incurred by them in connection with the performance of their duties hereunder and (c) reimburse the TAC or the FCR (as applicable) for, or pay directly, the fees and costs of the TAC Professionals (as defined below) and the FCR Professionals (as defined below);

(xi) execute, deliver, and perform such other agreements and instruments as the Trustees, in their reasonable judgment, deem necessary or proper in administering the Talc Trust, so long as such agreements and instruments are not inconsistent with the Plan, the Confirmation Order, this Trust Agreement, or the TDP;

(xii) enter into such other arrangements with third parties as the Trustees, in their reasonable judgment, deem necessary or proper in carrying out the purpose of the Talc Trust, so long as such arrangements are not inconsistent with the Plan, the Confirmation Order, or any other provision of this Trust Agreement;

(xiii) in accordance with Sections 4.4 and 4.6 below, defend, indemnify, and hold harmless, and purchase insurance indemnifying, (A) the Trustees, (B) the TAC Members, (C) the FCR, (D) the Talc Trust Claims Administrator, the Talc Trust Liens Resolution Administrator, and the Claims Processor, (E) the officers, agents, employees, and Trust Professionals appointed, hired, or engaged by the Trustees, and (F) the TAC Professionals and the FCR Professionals (the Persons described in the foregoing clauses (D), (E), and (F) being referred to herein as the “**Additional Indemnitees**”), to the fullest extent that a statutory trust organized under the laws of the State of Delaware is from time to time entitled to defend, indemnify, hold harmless, and/or insure such Persons; *provided, however*, that no Person shall be indemnified in any way for any liability, expense, claim, damage, or loss for which such Person is liable under Section 4.4 below;



(xiv) consult with the TAC and the FCR at such times and with respect to such issues relating to the purpose, conduct, and affairs of the Talc Trust as the Trustees, in their reasonable judgment, deem necessary or proper in administering the Talc Trust;

(xv) after the Effective Date, make, pursue (by litigation or otherwise), collect, compromise, or settle, in the name of the Talc Trust, any claim, right, action, or cause of action included in the Talc Personal Injury Trust Defenses or the Imerys/Cyprus Related Rights (if Section 1.7 above is applicable) or which may otherwise accrue in favor of the Talc Trust, before any court of competent jurisdiction;

(xvi) subject to the written consent of the FCR and a supermajority of the TAC (consisting of not less than 66% of all TAC Members), take action with respect to the common benefit fund established pursuant to that certain Case Management Order No. 7(A) entered by the United States District Court for the District of New Jersey in the multidistrict litigation *In re: Johnson & Johnson Powder Products Marketing, Sales Practices and Products Liability Litigation*, Civil Action No. 3:16-md-02738 (the “**Common Benefit Fund**”); and

(xvii) exercise any and all other rights, and take any and all other actions as are required or permitted, of the Trustees in accordance with the terms and provisions of the Plan, the Confirmation Order, this Trust Agreement, and the TDP.

(d) The Trustees shall not have the power to guarantee any debt of other Persons.

(e) The Trustees shall take all actions required to be taken by the Talc Trustees, and shall cause the Talc Trust to take all actions required to be taken by it, pursuant to the terms and conditions of the Plan, the Confirmation Order, this Trust Agreement, and the TDP.

(f) The Trustees shall give the TAC and the FCR prompt notice of any act performed or taken pursuant to clause (i), (iii), (vi), or (xvi) of Section 2.1(c) above, and any act proposed to be performed or taken pursuant to Section 2.2(f) below.

## **2.2 General Administration.**

(a) The Trustees shall act in accordance with the Plan, the Confirmation Order, this Trust Agreement and the TDP.

(b) The Trustees shall (i) timely file such income tax and other returns and statements required to be filed and shall timely pay all taxes required to be paid by the Talc Trust, (ii) comply with all applicable reporting and withholding obligations, (iii) satisfy all requirements necessary to qualify and maintain qualification of the Talc Trust as a Qualified Settlement Fund within the meaning of the QSF Regulations, and (iv) take no action that could cause the Talc Trust to fail to qualify as a Qualified Settlement Fund within the meaning of the QSF Regulations. Without limiting the generality of the foregoing, one of the Trustees shall be designated as the “administrator” of the Talc Trust as such term is used in the QSF Regulations, and such Trustee shall take all actions required of him or her as “administrator” with respect to the Talc Trust pursuant to the QSF Regulations.

(c) Following the Effective Date, the Trustees shall timely account to the Bankruptcy Court as follows:

(i) The Trustees shall cause to be prepared and filed with the Bankruptcy Court, as soon as available, and in any event within one hundred and twenty (120) days, following the end of each fiscal year, an annual report (the “**Annual Report**”) containing financial statements of the Talc Trust (including a balance sheet of the Talc Trust as of the end of such fiscal year and a statement of operations for such fiscal year) audited by a firm of

independent certified public accountants selected by the Trustees and accompanied by an opinion of such firm as to the fairness of the financial statements' presentation of the cash and investments available for the payment of claims from the Talc Trust. The Trustees shall provide a copy of such Annual Report to the TAC, the FCR, the Reorganized Debtor, and J&J when such report is filed with the Bankruptcy Court.

(ii) The Trustees shall cause to be prepared and filed with the Bankruptcy Court simultaneously with the filing of the Annual Report a report (the “**Annual Claims Report**”) containing a summary regarding the number and type of claims resolved during the fiscal year covered by the financial statements contained in the Annual Report. Without limiting the generality of the foregoing, the Annual Claims Report shall contain reasonable detail regarding Direct Claims resolved during the applicable fiscal year, including breakdowns with respect to (A) the types of Direct Claims resolved, (B) the application of (I) the Expedited Review Process, (II) the Individual Review Process, (III) the Quickpay Review Process, (IV) the ADR Procedures, and (V) litigation as described in the TDP, and (C) the average Allowed Claim Amount by (I) type of Direct Claim resolved and (II) specific category of injury within the applicable Review Criteria. The Trustees shall provide a copy of such Annual Claims Report to the TAC, the FCR, the Reorganized Debtor, and J&J when such report is filed with the Bankruptcy Court.

(iii) Except as expressly set forth herein, materials filed with the Bankruptcy Court pursuant to this Section 2.2(c) need not be served on any parties in the Bankruptcy Case but shall be available for inspection by the public in accordance with procedures established by the Bankruptcy Court.

(d) Following the Effective Date, in addition to providing the TAC, the FCR, the Reorganized Debtor, and J&J with the Annual Report and the Annual Claims Report in accordance with Section 2.2(c) above, the Trustees shall prepare and deliver information to the TAC, the FCR, the Reorganized Debtor, and J&J as follows:

(i) The Trustees shall cause to be prepared and delivered to the TAC, the FCR, the Reorganized Debtor, and J&J together with each Annual Claims Report, a supplement to such Annual Claims Report containing additional detail regarding Direct Claims resolved during the applicable fiscal year, including breakdowns with respect to (A) Claimant's Jurisdiction and (B) counsel to Direct Claimants.

(ii) The Trustees shall cause to be prepared and delivered to the TAC, the FCR, the Reorganized Debtor, and J&J as soon as practicable, and in any event within forty-five (45) days, following the end of each of the first three fiscal quarters of each fiscal year, (A) a quarterly report (the "**Quarterly Report**") containing unaudited financial statements of the Talc Trust (including a balance sheet of the Talc Trust as of the end of such fiscal quarter and a statement of operations for such fiscal quarter) and (B) a report (the "**Quarterly Claims Report**") containing a summary of the number and type of claims resolved during the fiscal quarter covered by the financial statements contained in the Quarterly Report. Without limiting the generality of the foregoing, the Quarterly Claims Report shall contain reasonable detail regarding Direct Claims resolved during the applicable fiscal quarter, including breakdowns with respect to (A) the types of Direct Claims resolved, (B) the application of (I) the Expedited Review Process, (II) the Individual Review Process, (III) the Quickpay Review Process, (IV) the ADR Procedures, and (V) litigation as described in the TDP, (C) the average Allowed Claim

Amount by (I) type of Direct Claim resolved and (II) specific category of injury within the applicable Review Criteria, (D) Claimant's Jurisdiction, and (E) counsel to Direct Claimants.

(iii) The Trustees shall cause to be prepared and delivered to the TAC, the FCR, the Reorganized Debtor, and J&J a monthly report (the "**Monthly Status Report**") containing a summary of the status of claims submitted to the Talc Trust on or prior to the last day of the most recently ended month. Without limiting the generality of the foregoing, the Monthly Status Report shall contain reasonable detail regarding Direct Claims, including breakdowns with respect to (A) the types of Direct Claims and (B) specific category of injury within the applicable Review Criteria.

(iv) The Trustees shall cause to be prepared and delivered to the TAC, the FCR, the Reorganized Debtor, and J&J as soon as practicable, but in any event prior to the commencement of each fiscal year, a budget and cash flow projections covering such fiscal year.

(e) The Trustees shall consult with the TAC and the FCR on: (i) the general implementation and administration of the Talc Trust; (ii) the general implementation and administration of the TDP; and (iii) such matters as expressly require consultation with the TAC or the FCR under this Trust Agreement or the TDP.

(f) In addition to any other consent of the TAC and the FCR expressly required under this Trust Agreement or the TDP, except as otherwise provided in this Trust Agreement or the TDP, the Trustees shall be required to obtain the consent of the TAC and the FCR in order:

- (i) to reduce the number of Trustees as provided in Section 4.1 below;
- (ii) to change any of the following under the TDP:
  - (A) the treatment provided under Section 4.2 of the TDP for previously resolved Direct Claims;

- (B) the Claim Submission Procedures, including the Claim Submission Requirements;
  - (C) the Preliminary Evaluation Criteria;
  - (D) the Expedited Review Process, including the Expedited Review Criteria;
  - (E) the Individual Review Process, including the Individual Review Criteria;
  - (F) the Quickpay Review Process, including the Quickpay Review Criteria;
  - (G) the Maximum Value;
  - (H) the Cash Value of a Point; or
  - (I) the forms of Acceptance and Release;
  - (J) the first-in-first-out processing procedures; or
  - (K) the first-in-first-out payment procedures;
- (iii) to terminate the Talc Trust pursuant to Section 7.3 below;
  - (iv) if Section 1.7 above is applicable, to settle the liability of any

Imerys/Cyprus Party in respect of the Imerys/Cyprus Related Rights or any legal action related thereto;

- (v) to change the compensation or expense reimbursement of the TAC, the TAC Members, the FCR, or the Trustees, other than to reflect cost-of-living increases or to reflect changes approved by the Bankruptcy Court as otherwise expressly provided herein;

- (vi) to take actions to minimize any tax on the assets of the Talc Trust; *provided, however,* that no such action may be taken if it prevents the Talc Trust from qualifying as a Qualified Settlement Fund within the meaning of the QSF Regulations or requires an election for the Talc Trust to be treated as a grantor trust for tax purposes;

(vii) to amend any provision of this Trust Agreement or the TDP in accordance with the terms hereof or thereof; *provided, however*, that no such amendment shall conflict with the Plan or the Confirmation Order;

(viii) to acquire an interest in, or to merge any claims resolution organization formed by the Talc Trust with, another claims resolution organization that is not specifically created by this Trust Agreement or the TDP, or to contract with another claims resolution organization or other entity that is not specifically created by this Trust Agreement or the TDP, or permit any other party to join in any claims resolution organization that is formed by the Talc Trust pursuant to this Trust Agreement or the TDP; *provided, however*, that no such acquisition, merger, contract, or joinder shall (A) subject the Reorganized Debtor or any Protected Party to any risk of having any Talc Claim asserted against it, (B) otherwise jeopardize the validity or enforceability of the Injunctions or any other injunction or release issued or granted in connection with the Plan or the Confirmation Order, (C) permit the surviving organization to make decisions about the allowability and value of claims other than in accordance with the TDP, or (D) cause the Talc Trust to fail to qualify as a Qualified Settlement Fund within the meaning of the QSF Regulations; or

(ix) to delegate any or all of the authority herein conferred with respect to the investment of all or any portion of the Talc Trust's assets to any one or more investment advisors or investment managers, except as provided in Section 4.4 below.

(g) The Trustees shall meet with the TAC and the FCR no less often than quarterly. The Trustees shall meet with the TAC and the FCR between quarterly meetings when so requested by either. Meetings may be held in person, by video conference, by telephone conference, or by any combination thereof.

(h) The Trustees, upon notice from either the TAC or the FCR, shall at their next meeting with the TAC or the FCR consider issues submitted by the TAC or the FCR. The Trustees shall keep the TAC and the FCR reasonably informed regarding all aspects of the administration of the Talc Trust.

**2.3 Claims Administration.** Commencing on the Effective Date, the Trustees shall promptly proceed to implement the TDP in accordance with the terms thereof. In connection with the implementation of the TDP:

(a) the Trustees, with the consent of the TAC and the FCR, shall prepare and maintain a list of approved mediators that may be used in connection with the ADR Procedures; and

(b) the Trustees, with the consent of the TAC and the FCR, shall establish the Individual Review Claims Panel.

**2.4 Medicare Reporting Obligations.**

(a) The Talc Trust shall register as a Responsible Reporting Entity ("**RRE**") under the reporting provisions of section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. 110-173) ("**MMSEA**").

(b) The Talc Trust shall, at its sole expense, timely submit all reports that are required under MMSEA on account of any claims settled, resolved, paid, or otherwise liquidated by the Talc Trust or with respect to contributions to the Talc Trust. The Talc Trust, in its role as RRE, shall follow all applicable guidance published by the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services and/or any other agent or successor entity charged with responsibility for monitoring, assessing, or receiving reports



made under MMSEA (collectively, “**CMS**”) to determine whether or not, and, if so, how, to report to CMS pursuant to MMSEA.

(c) Before remitting funds to claimants’ counsel, or to the claimant if such claimant is acting *pro se*, in respect of any Talc Claim, the Trustees shall obtain a certification that such claimant (or such claimant’s authorized representative) has or will provide for the payment and/or resolution of any obligations owing or potentially owing under 42 U.S.C. § 1395y(b), or any related rules, regulations, or guidance, in connection with, or relating to, such Talc Claim.

**2.5 No Common Benefit Fund Payments Shall Be Made.** The Trustees are not authorized to pay, and shall not pay, any common benefit fees or expenses from the Trust, and shall take no action with respect to the Common Benefit Fund, in each case without the written consent of the FCR and a supermajority of the TAC (consisting of not less than 66% of all TAC Members).

### ARTICLE III

#### **ACCOUNTS, INVESTMENTS, AND PAYMENTS**

##### **3.1 Accounts.**

(a) The Trustees shall include in the reports to be filed with the Bankruptcy Court and provided to the TAC and the FCR, the Reorganized Debtor, and J&J pursuant to Section 2.2(c)(i) above a reasonably detailed description of the Talc Trust, including (i) the Cash Contributions and other deposits made thereto, (ii) the proceeds of and earnings on the assets held therein, and (iii) the payments made therefrom.

(b) The Trustees may, from time to time, create such accounts and reserves within the Talc Trust as they, in their reasonable judgment, deem necessary or proper in order to

provide for the payment of expenses and Talc Claims and may, with respect to any such account or reserve, restrict the use of monies therein, and the earnings thereon. The Trustees shall include in the reports to be filed with the Bankruptcy Court and provided to the TAC, the FCR, the Reorganized Debtor, and J&J pursuant to Section 2.2(c)(i) above a reasonably detailed description of (i) the creation of any such account or reserve in accordance with this Section 3.1 and (ii) with respect to each such account, (A) the transfers made to such account, (B) the proceeds of or earnings on the assets held in each such account, and (C) the payments made from each such account.

**3.2 Investments.** Investment of monies held in the Talc Trust shall be administered in a manner consistent with the standards set forth in the Uniform Prudent Investor Act, subject to the following limitations and provisions;

(a) With respect to equity investments, the Talc Trust may invest only in diversified equity portfolios whose benchmark is a broad equity market index such as, but not limited to, the S&P 500 Index, the Russell 1000 Index, the S&P ADR Index, and the MSCI EAFE Index. The Talc Trust shall not acquire, directly or indirectly, equity in any entity or business enterprise if, immediately following such acquisition, the Talc Trust would hold more than 5% of the equity in such entity or business enterprise. The Talc Trust shall not hold, directly or indirectly, more than 5% of the equity in any entity or business enterprise.

(b) The Talc Trust shall not acquire or hold any long-term debt securities unless (i) such securities are rated “Baa” or higher by Moody’s, “BBB” or higher by Standard & Poor’s (“**S&P**”), or have been given an equivalent investment grade rating by another nationally recognized statistical rating agency, or (ii) have been issued or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof. This

restriction does not apply to any pooled investment vehicles where pooled assets receive an investment grade rating (*i.e.*, “BBB” rating or above) by a nationally recognized rating agency.

(c) The Talc Trust shall not acquire or hold for longer than ninety (90) days any commercial paper unless such commercial paper is rated “Prime-1” or higher by Moody’s or “A-1” or higher by S&P or has been given an equivalent rating by another nationally recognized statistical rating agency.

(d) The Talc Trust shall not acquire any debt securities or other debt instruments issued by any entity if, following such acquisition, the aggregate market value of all such debt securities and/or other debt instruments issued by such entity held by the Talc Trust would exceed 5% of the then current aggregate value of the Talc Trust’s assets. There is no limitation on holding debt securities or other debt instruments issued or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof.

(e) The Talc Trust shall not acquire or hold any certificates of deposit in an amount exceeding any federal insurance on such certificates of deposit unless all publicly held, long-term debt securities, if any, of the financial institution issuing the certificate of deposit and the holding company, if any, of which such financial institution is a subsidiary, meet the standards set forth in Section 3.2(b) above.

(f) The Talc Trust may acquire and hold any securities or instruments (i) delivered to the Talc Trust pursuant to the Plan, (ii) obtained by the Talc Trust in accordance with the Talc PI Pledge Agreement, or (iii) obtained by the Talc Trust as proceeds of litigation or otherwise to resolve disputes, in each case without regard to the limitations set forth in Section 3.2 (a) through Section 3.2(e) above.

(g) The Talc Trust shall not acquire or hold any repurchase obligations unless, in the reasonable judgment of the Trustees, such obligations are adequately collateralized.

(h) The Talc Trust may allow its investment managers to acquire or hold derivative instruments, including options, futures, and swaps, in the normal course of portfolio management to help hedge, manage, or mitigate portfolio risk, including interest rate risk and equity market risk. However, using derivative instruments to speculate or to leverage a portfolio at a much greater risk to the portfolio is prohibited.

(i) The Talc Trust may lend securities on a short-term basis, subject to adequate, normal, and customary collateral arrangements.

(j) Notwithstanding Section 3.2(a) above, the Talc Trust may acquire and hold an equity interest in a claims resolution organization without limitation as to the size of the equity interest acquired and held if, prior to such acquisition, the Talc Trust obtains the consent of the TAC and the FCR and complies with the other provisions of clause (viii) of Section 2.2(f) above with respect to the acquisition.

### **3.3 Source of Payments.**

(a) Subject to Section 3.4 below and Section 4.9.4(b) of the Plan, all Talc Trust expenses and payments and all liabilities with respect to Talc Claims shall be payable solely by the Talc Trust out of the Talc Trust's assets. No other Person (including the Debtor, the Reorganized Debtor, or any Protected Party) shall be liable for the payment of any Talc Trust expense or any other liability of the Talc Trust, except to the extent expressly provided for in the Plan (including Section 4.6 and Section 4.9.4(b) of the Plan) or other Plan Document.

(b) The Trustees shall include in the reports to be filed with the Bankruptcy Court and provided to the TAC, the FCR, the Reorganized Debtor, and J&J pursuant to

Section 2.2(c)(i) above a reasonably detailed description of any payments made in accordance with this Section 3.3.

(c) The Trustees, with the consent of the TAC and the FCR, shall establish and implement billing guidelines applicable to the Trustees, the TAC, and the FCR, as well as (i) the Talc Trust Claims Administrator, the Talc Trust Liens Resolution Administrator, and the Claims Processor and (ii) the respective professionals of the Trustees, the TAC, and the FCR who seek compensation or reimbursement or payment of expenses from the Talc Trust.

#### ARTICLE IV

##### **TRUSTEES; DELAWARE TRUSTEE**

**4.1 Number.** In addition to the Delaware Trustee appointed pursuant to Section 4.11, there shall be two (2) Trustees, who initially shall be those individuals named as such on the signature pages hereto. Upon the joint written direction of the TAC and the FCR, the number of Trustees may be reduced to one (1) at such time as the TAC and the FCR, in their reasonable judgment, may determine. For the avoidance of doubt, the procedures provided in Section 7.1 shall not apply to the decision of the TAC and the FCR to reduce the number of Trustees; absent the joint written consent of the TAC and the FCR to reduce the number of Trustees, the number of Trustees shall remain as set forth herein.

**4.2 Term of Service.**

(a) The initial Trustees named pursuant to Section 4.1 above shall serve an initial term of service of four or five years as indicated on the signature pages hereto. Thereafter, each term of service shall be for five (5) years. The initial Trustees shall serve from the date first written above until the earliest of (i) the end of his or her term, (ii) his or her death, (iii) his or her mandatory retirement at the end of the year in which he or she reaches the age of 70 (unless, and

for so long as, this mandatory retirement requirement is waived with the consent of the TAC and the FCR), (iv) his or her resignation pursuant to Section 4.2(b) below, (v) his or her removal pursuant to Section 4.2(c) below, or (vi) the termination of the Talc Trust pursuant to Section 7.3 below.

(b) A Trustee may resign at any time by written notice to the TAC and the FCR. Such notice shall specify a date when such resignation shall take effect, which shall not be less than ninety (90) days after the date such notice is given, where practicable.

(c) A Trustee may be removed by the Bankruptcy Court, on the motion of the TAC or the FCR in the event that he or she becomes unable to discharge his or her duties hereunder due to accident, physical deterioration, mental incompetence, or for other good cause. Good cause shall be deemed to include any substantial failure to comply with the general administration provisions of Section 2.2 above, a consistent pattern of neglect and failure to perform or participate in performing the duties of a Trustee hereunder, or repeated non-attendance at scheduled meetings. Such removal shall take effect at such time as the Bankruptcy Court shall determine.

#### **4.3 Appointment of Successor Trustees.**

(a) In the event of a vacancy in a Trustee position, whether by term expiration, death, retirement, resignation, or removal, the vacancy shall be filled by the TAC and the FCR. In the event that the TAC and the FCR cannot agree on the appointment of a successor Trustee, the Bankruptcy Court shall select the successor Trustee.

(b) Immediately upon the appointment of any successor Trustee, all rights, titles, duties, powers, and authority of the predecessor Trustee hereunder shall be vested in, and undertaken by, the successor Trustee without any further act. No successor Trustee shall be

liable personally for any act or omission of his or her predecessor Trustee. No successor Trustee shall have any duty to investigate the acts or omissions of his or her predecessor Trustee.

(c) Each successor Trustee shall serve until the earliest of (i) the end of the term of five (5) years for which he or she was appointed if his or her immediate predecessor Trustee completed his or her term pursuant to Section 4.2(a) above, (ii) the end of the term of the Trustee whom he or she replaced if his or her predecessor Trustee did not complete such term, (iii) his or her death, (iv) his or her mandatory retirement at the end of the year in which the Trustee reaches the age of 70 (unless, and for so long as, this mandatory retirement requirement is waived with the consent of the TAC and the FCR), (v) his or her resignation pursuant to Section 4.2(b) above, (vi) his or her removal pursuant to Section 4.2(c) above, or (vii) the termination of the Talc Trust pursuant to Section 7.3 below.

(d) Nothing in this Trust Agreement shall prevent the reappointment of an individual serving as a Trustee for one or more additional terms.

**4.4 No Liability of Trustees, the TAC Members and the FCR.** None of the Trustees, the TAC Members, or the FCR shall be liable to the Talc Trust, to any holder of a Talc Claim, or to any other Person, except in respect of their own acts or omissions that constitute a bad faith violation of the implied contractual covenant of good faith and fair dealing within the meaning of 12 Del. C. § 3806(e).

**4.5 Compensation and Expenses of the Trustees.**

(a) Each Trustee shall receive a retainer from the Talc Trust for his or her service as a Trustee in the amount of \$[●] per annum, paid annually. Hourly time, as described below, shall first be billed and applied to the annual retainer. Hourly time in excess of the annual retainer shall be paid by the Talc Trust. For all time expended as Trustees, including attending

meetings, preparing for such meetings, and working on authorized special projects, the Trustees shall receive the sum of \$[•] per hour. For all non-working travel time in connection with Talc Trust business, the Trustees shall receive the sum of \$[•] per hour. All time shall be computed on a decimal (1/10<sup>th</sup>) hour basis. The Trustees shall record all hourly time to be charged to the Talc Trust on a daily basis. The hourly compensation payable to the Trustees hereunder shall be reviewed every year by the Trustees and, after consultation with the TAC and the FCR, appropriately adjusted for changes in the cost of living.

(b) The Talc Trust will promptly reimburse the Trustees for all reasonable out-of-pocket costs and expenses incurred by the Trustees in connection with the performance of their duties hereunder.

(c) The Talc Trust shall include in the reports to be filed with the Bankruptcy Court and provided to the TAC, the FCR, the Reorganized Debtor, and J&J pursuant to Section 2.2(c)(i) above a reasonably detailed description of the amounts paid under this Section 4.5.

#### **4.6 Indemnification of Trustees, the TAC Members, FCR and Others.**

(a) The Talc Trust shall indemnify and defend the Trustees, the TAC Members, and the FCR in connection with the performance of their duties, and/or actions undertaken by them, hereunder to the fullest extent that a statutory trust organized under the laws of the State of Delaware (after the application of Section 7.11) is from time to time entitled to indemnify and defend such Persons against any and all liabilities, expenses, claims, damages, or losses incurred by or on behalf of them in connection with the performance of their duties, and/or actions undertaken by them, hereunder and/or in connection with activities undertaken by them prior to the date first written above to form and establish the Talc Trust, except in respect of their



own acts or omissions that constitute a bad faith violation of the implied contractual covenant of good faith and fair dealing within the meaning of 12 Del. C. § 3806(e).

(b) The Talc Trust shall indemnify to the fullest extent permitted by applicable law any of the Additional Indemnitees against any and all liabilities, expenses, claims, damages, or losses incurred by them as a result of their activities in their capacities hereunder.

(c) Reasonable expenses, costs, and fees (including attorneys' fees and costs) incurred by or on behalf of the Trustees, a TAC Member, the FCR, or any Additional Indemnitee in connection with any action, suit, or proceeding, whether civil, administrative, or arbitrative, from which such Person is indemnified by the Talc Trust pursuant to Section 1.9 or this Section 4.6, shall be paid by the Talc Trust in advance of the final disposition thereof upon receipt of an undertaking, by or on behalf of such Person, to repay such amount in the event that it shall be determined ultimately by final order that such Person is not entitled to be indemnified by the Talc Trust.

(d) The Talc Trust must purchase and maintain reasonable amounts and types of insurance on behalf of each Person who is indemnified by the Talc Trust pursuant to Section 4.6(a) or Section 4.6(b) above, including against liability asserted against or incurred by such Person in connection with the performance of their duties, or actions undertaken by them, hereunder.

**4.7 Lien.** The Trustees, the TAC Members, the FCR, and the Additional Indemnitees shall have a first priority lien upon the Talc Trust's assets to secure the payment of any amounts payable to them pursuant to Section 4.6 above or any undisputed compensation.

#### 4.8 Trustees' Employment of Experts and Administrators.

(a) The Trustees may, but are not required to, retain and consult counsel, accountants, auditors, experts, financial and investment advisors, and such other parties deemed by the Trustees, in their reasonable judgment, to be qualified as experts on the matters submitted to them (the "**Trust Professionals**") regardless of whether any such party is affiliated with any of the Trustees in any manner. In the absence of a bad faith violation of the implied contractual covenant of good faith and fair dealing within the meaning of 12 Del. C. § 3806(e), the written opinion of or information provided by any Trust Professional deemed by the Trustees, in their reasonable judgment, to be an expert on the particular matter submitted to such Trust Professional shall be full and complete authorization and protection in respect of any action taken or not taken by the Trustees hereunder in good faith and in accordance with the written opinion of or information provided by such Trust Professional.

(b) The Trustees, with the consent of the TAC and the FCR, shall appoint a Talc Trust Claims Administrator in accordance with this Section 4.8(b). Any qualified party may be appointed as such regardless of whether such party is affiliated with any of the Trustees in any manner. The initial Talc Trust Claims Administrator shall be [ARCHER Systems, LLC],<sup>2</sup> which has been appointed with the consent of the TAC and the FCR. Any successor Talc Trust Claims Administrator shall be appointed by the Trustees, with the consent of the TAC and the FCR. In the event that the Trustees cannot agree on a successor Talc Trust Claims Administrator or the TAC and the FCR do not consent, the Bankruptcy Court shall select the successor Talc Trust Claims Administrator.

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<sup>2</sup> Subject to competitive pricing and due diligence.

(c) The Trustees, with the consent of the TAC and the FCR, shall appoint a Talc Trust Liens Resolution Administrator in accordance with this Section 4.8(c). Any qualified party may be appointed as such regardless of whether such party is affiliated with any of the Trustees in any manner. The initial Talc Trust Liens Resolution Administrator shall be [ARCHER Systems, LLC],<sup>3</sup> which has been appointed with the consent of the TAC and the FCR. Any successor Talc Trust Liens Resolution Administrator shall be appointed by the Trustees, with the consent of the TAC and the FCR. In the event that the Trustees cannot agree on a successor Talc Trust Liens Resolution Administrator or the TAC and the FCR do not consent, the Bankruptcy Court shall select the successor Talc Trust Liens Resolution Administrator.

(d) The Trustees, with the consent of the TAC and the FCR, shall engage a Claims Processor in accordance with this Section 4.8(d) to assist in the development of procedures and protocols to implement the TDP effectively and efficiently. Any qualified party may be engaged as such regardless of whether such party is affiliated with any of the Trustees in any manner. Any successor Claims Processor shall be engaged by the Trustees, with the consent of the TAC and the FCR. In the event that the Trustees cannot agree on a successor Claims Processor or the TAC and the FCR do not consent, the Bankruptcy Court shall select the successor Claims Processor.

**4.9 Trustee Independence.** The Trustees shall not, during the term of their service, hold a financial interest in, act as attorney or agent for, or serve as an officer or as any other professional for the Reorganized Debtor, J&J, or any of their respective Affiliates. Notwithstanding the foregoing, the Trustees may serve, without any additional compensation

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<sup>3</sup> Subject to competitive pricing and due diligence.

other than the compensation to be paid by the Talc Trust pursuant to Section 4.5(a) above, as a manager of the Reorganized Debtor. The Trustees shall not act as an attorney, agent, or other professional for any Person who holds a Talc Claim. For the avoidance of doubt, this Section 4.9 shall not be applicable to the Delaware Trustee.

**4.10 No Bond.** Neither the Trustees nor the Delaware Trustee shall be required to post any bond or other form of surety or security unless otherwise ordered by the Bankruptcy Court.

**4.11 Delaware Trustee.**

(a) There shall at all times be a Delaware Trustee to serve in accordance with the requirements of the Act. The Delaware Trustee shall either be (i) a natural person who is at least 21 years of age and a resident of the State of Delaware or (ii) a legal entity that (A) has its principal place of business in the State of Delaware in accordance with section 3807 of the Act, (B) otherwise meets the requirements of applicable Delaware law, and (C) shall act through one or more individuals authorized to bind such entity. If at any time the Delaware Trustee shall cease to be eligible in accordance with the provisions of this Section 4.11, it shall resign immediately in the manner and with the effect hereinafter specified in Section 4.11(c) below. For the avoidance of doubt, the Delaware Trustee will only have such rights and obligations as expressly provided by reference to the Delaware Trustee hereunder.

(b) The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Trustees set forth herein. The Delaware Trustee shall be one of the trustees of the Talc Trust for the sole and limited purpose of fulfilling the requirements of section 3807 of the Act and for taking such actions as are required to be taken by a Delaware Trustee under the Act. The duties (including fiduciary duties), liabilities, and obligations of the Delaware Trustee shall be limited to

(i) accepting legal process served on the Talc Trust in the State of Delaware and (ii) the execution of any certificates required to be filed with the Delaware Secretary of State that the Delaware Trustee is required to execute under section 3811 of the Act (acting solely at the written direction of the Trustees) and the Delaware Trust shall have no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Talc Trust, the other Parties hereto, or any beneficiary of the Talc Trust, it is hereby understood and agreed by the other Parties hereto that such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Trust Agreement.

(c) The Delaware Trustee shall serve until such time as the Trustees remove the Delaware Trustee or the Delaware Trustee resigns, and a successor Delaware Trustee is appointed by the Trustees in accordance with the terms of Section 4.11(d) below. The Delaware Trustee may resign at any time upon the giving of at least sixty (60) days' advance written notice to the Trustees; *provided, however*, that such resignation shall not become effective unless and until a successor Delaware Trustee shall have been appointed by the Trustees in accordance with Section 4.11(d) below. If the Trustees do not act within such 60-day period, the Delaware Trustee may apply to the Court of Chancery of the State of Delaware for the appointment of a successor Delaware Trustee.

(d) Upon the resignation or removal of the Delaware Trustee, the Trustees shall appoint a successor Delaware Trustee by delivering a written instrument to the outgoing Delaware Trustee. Any successor Delaware Trustee must satisfy the requirements of section 3807 of the Act. Any resignation or removal of the Delaware Trustee and appointment

of a successor Delaware Trustee shall not become effective until a written acceptance of appointment is delivered by the successor Delaware Trustee to the outgoing Delaware Trustee and the Trustees and any undisputed fees and expenses due to the outgoing Delaware Trustee are paid. Following compliance with the preceding sentence, the successor Delaware Trustee shall become fully vested with all of the rights, powers, duties, and obligations of the outgoing Delaware Trustee under this Trust Agreement, with like effect as if originally named as Delaware Trustee, and the outgoing Delaware Trustee shall be discharged of its duties and obligations under this Trust Agreement.

(e) The Delaware Trustee shall neither be required nor permitted to attend meetings relating to the Talc Trust.

(f) The Delaware Trustee shall be paid such compensation as agreed to pursuant to a separate fee agreement.

(g) The Talc Trust will promptly reimburse the Delaware Trustee for all reasonable out-of-pocket costs and expenses incurred by the Delaware Trustee in connection with the performance of their duties hereunder.

(h) The Delaware Trustee shall be permitted to retain counsel only in such circumstances as required in the exercise of its obligations hereunder, and compliance with the advice of such counsel shall be full and complete authorization and protection for actions taken or not taken by the Delaware Trustee in good faith in compliance with such advice.

## ARTICLE V

### **TRUST ADVISORY COMMITTEE**

**5.1 Members.** The TAC shall consist of eight (8) TAC Members if no official committee is appointed in the Bankruptcy Case and ten (10) TAC Members if an official

committee is appointed in the Bankruptcy Case. In either case, eight (8) TAC Members shall be appointed as follows: (a) one (1) TAC Member (the “**Andrews & Thornton Appointee**”) shall be appointed by Andrews & Thornton, Attorneys At Law, A Law Corporation (“**Andrews & Thornton**”); (b) one (1) TAC Member (the “**Pulaski Kherkher Appointee**”) shall be appointed by Pulaski Kherkher, PLLC (“**Pulaski Kherkher**”); (c) one (1) TAC Member (the “**Watts Appointee**”) shall be appointed by Watts Law Firm LLP (“**Watts**”); (d) one (1) TAC Member (the “**Onder Appointee**”) shall be appointed by OnderLaw, LLC (“**Onder**”); (e) one (1) TAC Member (the “**Nachawati Appointee**”) shall be appointed by Nachawati Law Group, PLLC (“**Nachawati**”); (f) one (1) TAC Member (the “**Aylstock Appointee**”) shall be appointed by Aylstock, Witkin, Kreis, & Overholtz PLLC (“**Aylstock**”); (g) one (1) TAC Member (the “**Schulman Appointee**”) shall be appointed by Slater Slater Schulman LLP (“**Schulman**”); and (h) one (1) TAC Member (the “**Miller Appointee**”) and, together with the Andrews & Thornton Appointee, the Pulaski Kherkher Appointee, the Watts Appointee, the Onder Appointee, the Nachawati Appointee, the Aylstock Appointee, and the Schulman Appointee, the “**AHC Appointees**”) shall be appointed by The Miller Firm LLC (“**Miller**” and, together with Andrews & Thornton, Pulaski Kherkher, Watts, Onder, Nachawati, Aylstock, and Schulman, the “**AHC Appointing Firms**”). If an official committee is appointed in the Bankruptcy Case, two (2) TAC Members (each, a “**TCC Appointee**”) shall be appointed by a majority vote of the members of such official committee. The initial TAC shall consist of the TAC Members named as such on the signature pages hereto. Except as expressly provided in this Trust Agreement or the TDP, any action required or permitted to be taken by the TAC shall be subject to approval by a simple majority of the then-current TAC Members.

**5.2 Duties.** The TAC Members shall serve in a fiduciary capacity, representing the interests of all holders of Existing Direct Claims. The TAC Members shall have no fiduciary obligations or duties to any Party or Person other than the holders of Existing Direct Claims. The Trustees must consult with the TAC on matters expressly identified in Section 2.2(e) above and in other provisions of this Trust Agreement and the TDP and must obtain the consent of the TAC on matters expressly identified in Section 2.2(f) above and in other provisions of this Trust Agreement and the TDP. Except for the duties and obligations expressed in this Trust Agreement and the documents referenced herein (including the TDP), the TAC and the TAC Members shall have no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity. To the extent that, at law or in equity, the TAC or the TAC Members have duties (including fiduciary duties) and liabilities relating thereto to the Talc Trust, the other Parties hereto, or any beneficiary of the Talc Trust, it is hereby understood and agreed by the other Parties hereto that such duties and liabilities are replaced by the duties and liabilities of the TAC and the TAC Members expressly set forth in this Trust Agreement and the documents referenced herein (including the Plan, the Confirmation Order, and the TDP).

**5.3 Term of Office.**

(a) The initial TAC Members appointed in accordance with Section 5.1 above shall serve the staggered three-, four-, or five-year terms as indicated on the signature pages hereto. Thereafter, each term of office shall be five (5) years. Each TAC Member shall serve until the earlier of (i) his or her death, (ii) his or her resignation pursuant to Section 5.3(b) below, (iii) his or her removal pursuant to Section 5.3(c) below, (iv) the end of his or her term as provided above, or (v) the termination of the Talc Trust pursuant to Section 7.3 below.



(b) A TAC Member may resign at any time by written notice to the Trustees, the other TAC Members, and the FCR. Such notice shall specify a date when such resignation shall take effect, which shall not be less than ninety (90) days after the date such notice is given, where practicable.

(c) A TAC Member may be removed in the event that he or she becomes unable to discharge his or her duties hereunder due to accident, physical deterioration, mental incompetence, or a consistent pattern of neglect and failure to perform or to participate in performing the duties of a TAC Member hereunder, such as repeated non-attendance at scheduled meetings, or for other good cause. Such removal may be made by the Bankruptcy Court on the motion of a majority of the other TAC Members.

#### **5.4 Appointment of Successors.**

(a) In the event of a TAC Member vacancy, (i) if the vacancy has occurred with respect to the Andrews & Thornton Appointee, Andrews & Thornton shall appoint a successor TAC Member, (ii) if the vacancy has occurred with respect to the Pulaski Kherkher Appointee, Pulaski Kherkher shall appoint a successor TAC Member, (iii) if the vacancy has occurred with respect to the Watts Appointee, Watts shall appoint a successor TAC Member, (iv) if the vacancy has occurred with respect to the Onder Appointee, Onder shall appoint a successor TAC Member, (v) if the vacancy has occurred with respect to the Nachawati Appointee, Nachawati shall appoint a successor TAC Member, (vi) if the vacancy has occurred with respect to the Aylstock Appointee, Aylstock shall appoint a successor TAC Member, (vii) if the vacancy has occurred with respect to the Schulman Appointee, Schulman shall appoint a successor TAC Member, (viii) if the vacancy has occurred with respect to the Miller Appointee, Miller shall appoint a successor TAC Member, and (ix) if the vacancy has occurred with respect to a TCC

Appointee, the remaining TCC Appointee shall appoint a successor TAC Member; *provided*, *however*, that, if a successor TAC Member is not appointed in accordance with the preceding provisions of this Section 5.4(a) within thirty (30) days following the occurrence of such vacancy, (A) if such vacancy relates to the Andrews & Thornton Appointee, Pulaski Kherkher, Watts, Onder, Nachawati, Aylstock, Schulman, and Miller shall appoint the successor TAC Member, (B) if such vacancy relates to the Pulaski Kherkher Appointee, Andrews & Thornton, Watts, Onder, Nachawati, Aylstock, Schulman, and Miller shall appoint the successor TAC Member, (C) if such vacancy relates to the Watts Appointee, Andrews & Thornton, Pulaski Kherkher, Onder, Nachawati, Aylstock, Schulman, and Miller shall appoint the successor TAC Member, (D) if such vacancy relates to the Onder Appointee, Andrews & Thornton, Pulaski Kherkher, Watts, Nachawati, Aylstock, Schulman, and Miller shall appoint the successor TAC Member, (E) if such vacancy relates to the Nachawati Appointee, Andrews & Thornton, Pulaski Kherkher, Watts, Onder, Aylstock, Schulman, and Miller shall appoint the successor TAC Member, (F) if such vacancy relates to the Aylstock Appointee, Andrews & Thornton, Pulaski Kherkher, Watts, Onder, Nachawati, Schulman, and Miller shall appoint the successor TAC Member, (G) if such vacancy relates to the Schulman Appointee, Andrews & Thornton, Pulaski Kherkher, Watts, Onder, Nachawati, Aylstock, and Miller shall appoint the successor TAC Member, (H) if such vacancy relates to the Miller Appointee, Andrews & Thornton, Pulaski Kherkher, Watts, Onder, Nachawati, Aylstock, and Schulman shall appoint the successor TAC Member, and (I) if such vacancy relates to a TCC Appointee, the Trustees shall appoint the successor TAC Member; *provided further*, *however*, that, if a successor TAC Member is not appointed in accordance with the preceding provisions of this Section 5.4(a) within sixty (60) days following the occurrence of such vacancy, the Bankruptcy Court may appoint the successor

TAC Member on motion of the Trustees. Any appointment of a successor TAC Member in accordance with the foregoing sentence (other than appointment by the Bankruptcy Court) shall be subject to the consent of at least fifty percent (50%) of the TAC Members in place following the occurrence of such vacancy; *provided, however*, that if such consent is withheld, the party seeking to appoint such successor TAC Member may seek a ruling from the Bankruptcy Court that the consent was unreasonably withheld and that the successor TAC Member is appointed.

(b) Nothing in this Trust Agreement shall prevent the reappointment of an individual serving as a TAC Member for an additional term, and there shall be no limit on the number of terms that a TAC Member may serve.

(c) Each successor TAC Member shall serve until the earlier of (i) the end of the full term for which he or she was appointed, (ii) the end of the term of the TAC Member whom he or she replaced if his or her predecessor TAC Member did not complete such term, (iii) his or her death, (iv) his or her resignation pursuant to Section 5.3(b) above, (v) his or her removal pursuant to Section 5.3(c) above, or (vi) the termination of the Talc Trust pursuant to Section 7.3 below.

(d) No successor TAC Member shall be liable personally for any act or omission of his or her predecessor TAC Member. No successor TAC Member shall have any duty to investigate the acts or omissions of his or her predecessor TAC Member. No TAC Member shall be required to post any bond or other form of surety or security unless otherwise ordered by the Bankruptcy Court.

#### **5.5 TAC's Employment of Professionals.**

(a) The TAC may, but is not required to, retain and consult counsel, accountants, auditors, experts, financial and investment advisors, and such other parties deemed

by the TAC to be qualified to assist the TAC in connection with its rights or duties as may be requested on the matters submitted to them (the “**TAC Professionals**”). The TAC and the TAC Professionals shall at all times have complete access to the Trustees’ and the Talc Trust’s officers, agents, and employees, as well as to any Trust Professionals, and shall also have complete access to all non-privileged information generated by them or otherwise available to the Talc Trust or the Trustees. In the absence of a bad faith violation of the implied contractual covenant of good faith and fair dealing within the meaning of 12 Del. C. § 3806(e), the written opinion of or information provided by any TAC Professional or Trust Professional deemed by the TAC to be an expert on the particular matter submitted to such TAC Professional or Trust Professional shall be full and complete authorization and protection in respect of any action taken or not taken by the TAC and the TAC Members in good faith and in accordance with the written opinion or other advice or information provided by such TAC Professional or Trust Professional.

(b) The Talc Trust shall promptly reimburse the TAC for, or if so instructed, pay directly for the benefit of the TAC, all reasonable fees and costs of the TAC Professionals retained and consulted by the TAC pursuant to this Section 5.5.

(c) In the event that the TAC retains counsel in connection with any matter, whether or not related to any claim that has been or might be asserted against the TAC or the TAC Members and irrespective of whether the Talc Trust pays such counsel’s fees and related expenses, any communications between the TAC and such counsel shall be deemed to be within the attorney-client privilege and protected by section 3333 of title 12 of the Delaware Code, regardless of whether such communications are related to any claim that has been or might be

asserted by or against the TAC or the TAC Members and regardless of whether the Talc Trust pays such counsel's fees and related expenses.

**5.6 Compensation and Expenses of the TAC.** The TAC Members shall not be entitled to compensation for their services, but the Talc Trust will promptly reimburse each TAC Member for, or, if so instructed, pay directly for the benefit of such TAC Member, all reasonable out-of-pocket costs or expenses incurred by such TAC Member in connection with the performance of his or her duties hereunder including without limitation the premiums of any liability insurance policy the TAC Members obtain to cover the TAC Members' duties and actions in connection with the Talc Trust. Such reimbursement or direct payment shall be deemed a Talc Trust Expense. The Talc Trust shall include a description of the amounts reimbursed or paid under this Section 5.6 in the Annual Report to be filed with the Bankruptcy Court and provided to the TAC, the FCR, the Reorganized Debtor, and J&J pursuant to Section 2.2(c)(i).

## **ARTICLE VI**

### **THE FCR**

**6.1 Duties.** The initial FCR shall be the individual identified as such on the signature pages hereto. He or she shall serve in a fiduciary capacity, representing the interests of the holders of future Talc Claims for the purpose of protecting the rights of such Persons. The FCR shall have no fiduciary obligations or duties to any Party or Person other than holders of future Talc Claims. The Trustees must consult with the FCR on matters expressly identified in Section 2.2(e) above and in other provisions of this Trust Agreement or the TDP and must obtain the consent of the FCR on matters expressly identified in Section 2.2(f) above and in other provisions of this Trust Agreement and the TDP. Except for the duties and obligations expressed

in this Trust Agreement and the documents referenced herein (including the TDP), the FCR shall have no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity. To the extent that, at law or in equity, it is determined that the FCR has duties (including fiduciary duties) and liabilities relating thereto to the Talc Trust, the other Parties hereto, or any beneficiary of the Talc Trust, it is hereby understood and agreed by the other Parties hereto that such duties and liabilities are replaced by the duties and liabilities of the FCR expressly set forth in this Trust Agreement and the documents referenced herein (including the Plan, and Confirmation Order, and the TDP).

**6.2 Term of Office.**

(a) The FCR shall serve until the earlier of (i) his or her death, (ii) his or her resignation pursuant to Section 6.2(b) below, (iii) his or her removal pursuant to Section 6.2(c) below, or (iv) the termination of the Talc Trust pursuant to Section 7.3 below.

(b) The FCR may resign at any time by written notice to the Trustees and the TAC. Such notice shall specify a date when such resignation shall take effect, which shall not be less than ninety (90) days after the date such notice is given, where practicable.

(c) The FCR may be removed in the event that he or she becomes unable to discharge his or her duties hereunder due to accident, physical deterioration, mental incompetence, or a consistent pattern of neglect and failure to perform or to participate in performing the duties hereunder, such as repeated non-attendance at scheduled meetings, or for other good cause. Such removal may be made by the Trustees with consent of the TAC, or by the Bankruptcy Court on the motion of the Trustees or the TAC.

### **6.3 Appointment of Successor.**

(a) A vacancy caused by resignation or death of the FCR shall be filled with an individual nominated by the FCR prior to the effective date of such resignation or death. A vacancy caused by removal of the FCR based on inability of the FCR to discharge his or her duties due to accident, physical deterioration, or mental incompetence shall be filled with an individual nominated by the FCR prior to such inability. In the event (i) a vacancy was caused as provided above and the FCR did not nominate his or her successor as provided above or (ii) a vacancy was caused by removal of the FCR for other reasons, the successor FCR shall be selected by the Trustees in consultation with the TAC.

(b) No successor FCR shall be liable personally for any act or omission of his or her predecessor. No successor FCR shall have any duty to investigate the acts or omissions of his or her predecessor. No FCR shall be required to post any bond or other form of surety or security unless otherwise ordered by the Bankruptcy Court.

### **6.4 FCR's Employment of Professionals.**

(a) The FCR may, but is not required to, retain and consult counsel, accountants, auditors, experts, financial and investment advisors, and such other parties deemed by the FCR to be qualified to assist the FCR in connection with his or her duties as may be requested on the matters submitted to them (the "**FCR Professionals**"). The FCR and the FCR Professionals shall at all times have complete access to the Trustees' and the Talc Trust's officers, agents, and employees, as well as to any Trust Professionals, and shall also have complete access to all non-privileged information generated by them or otherwise available to the Talc Trust or the Trustees. In the absence of a bad faith violation of the implied contractual covenant of good faith and fair dealing within the meaning of 12 Del. C. § 3806(e), the written

opinion of or information provided by any FCR Professional or Trust Professional deemed by the FCR to be an expert on the particular matter submitted to such FCR Professional or Trust Professional shall be full and complete authorization and protection in respect of any action taken or not taken by the FCR in good faith and in accordance with the written opinion or other advice or information provided by such FCR Professional or Trust Professional.

(b) The Talc Trust shall promptly reimburse the FCR for, or, if so instructed, pay directly for the benefit of the FCR, all reasonable fees and costs of the FCR Professionals retained and consulted by the FCR pursuant to this Section 6.4.

(c) In the event that the FCR retains counsel in connection with any matter, whether or not related to any claim that has been or might be asserted against the FCR and irrespective of whether the Talc Trust pays such counsel's fees and related expenses, any communications between the FCR and such counsel shall be deemed to be within the attorney-client privilege and protected by section 3333 of title 12 of the Delaware Code, regardless of whether such communications are related to any claim that has been or might be asserted by or against the FCR and regardless of whether the Talc Trust pays such counsel's fees and related expenses.

**6.5 Compensation and Expenses of the FCR.** The FCR shall receive compensation from the Talc Trust in the form of payment at the FCR's normal hourly rate for services performed, as such may be adjusted from time to time. The Talc Trust will promptly reimburse the FCR for, or, if so instructed, pay directly for the benefit of the FCR, all reasonable out-of-pocket costs and expenses incurred by the FCR in connection with the performance of his or her duties hereunder including without limitation the premiums of any liability insurance policy the FCR obtains to cover the FCR's duties and actions in connection with the Talc Trust. Such



reimbursement or direct payment shall be deemed a Talc Trust expense. The Talc Trust shall include a description of the amounts reimbursed or paid under this Section 6.5 in the Annual Report to be filed with the Bankruptcy Court and provided to the TAC, the FCR, the Reorganized Debtor, and J&J pursuant to Section 2.2(c)(i).

## ARTICLE VII

### GENERAL PROVISIONS

#### **7.1 Procedures for Consulting with or Obtaining Consent of the TAC, the FCR, the Reorganized Debtor, or J&J.**

(a) In the event the Trustees are expressly required to consult with the TAC, the FCR, the Reorganized Debtor, or J&J pursuant to any provision of this Trust Agreement (including without limitation Section 2.2(e) above) or the TDP, the following procedures shall apply:

(i) The Trustees shall provide the TAC, the FCR, the Reorganized Debtor, or J&J (as applicable) with written advance notice of the matter under consideration and the scope of the action the Trustees propose to take along with all relevant information concerning the matter as is reasonably practicable under the circumstances. The Trustees shall also provide the TAC, the FCR, the Reorganized Debtor, or J&J (as applicable) with such reasonable access to the Talc Trust's officers, agents, and employees, as well as any Trust Professionals, as the TAC, the FCR, the Reorganized Debtor, or J&J (as applicable) may reasonably request during the time that the Trustees are considering such matter, and shall also provide the TAC, the FCR, the Reorganized Debtor, or J&J (as applicable) the opportunity, at reasonable times and for reasonable periods of time, to discuss and comment on such matter with the Trustees.

(ii) In determining when to take definitive action on any matter subject to the consultation process set forth in this Section 7.1(a), the Trustees shall take into consideration the time required for the TAC, the FCR, the Reorganized Debtor, or J&J (as applicable), if they so wish, to retain and consult with their own advisors as to such matter. In any event, the Trustees shall not take definitive action on any such matter until at least ten (10) Business Days after providing the TAC, the FCR, the Reorganized Debtor, or J&J (as applicable) with the initial written notice that such matter is under consideration by the Trustees, unless such period is waived by the TAC, the FCR, the Reorganized Debtor, or J&J (as applicable).

(b) In the event the Trustees are expressly required to obtain the consent of the TAC, the FCR, the Reorganized Debtor, or J&J (as applicable) pursuant to any other provision of this Trust Agreement (including without limitation Section 2.2(f) above) or the TDP, the following procedures shall apply:

(i) The Trustees shall provide the TAC, the FCR, the Reorganized Debtor, or J&J (as applicable) with a written notice stating that their consent is being sought pursuant to that provision, describing in detail the nature and scope of the action the Trustees propose to take and explaining in detail the reasons why the Trustees desire to take such action. The Trustees shall provide the TAC, the FCR, the Reorganized Debtor, or J&J (as applicable) with as much relevant additional information concerning the proposed action as is reasonably practicable under the circumstances. The Trustees shall also provide the TAC, the FCR, the Reorganized Debtor, or J&J (as applicable) with such reasonable access to the Talc Trust's officers, agents, and employees, as well as any Trust Professionals, as the TAC, the FCR, the Reorganized Debtor, or J&J (as applicable) may reasonably request during the time that the Trustees are considering such action, and shall also provide the TAC, the FCR, the Reorganized

Debtor, or J&J (as applicable) the opportunity, at reasonable times and for reasonable periods of time, to discuss and comment on such action with the Trustees.

(ii) The TAC, the FCR, the Reorganized Debtor, or J&J (as applicable) must advise the Trustees in writing of their consent or objection to the proposed action within ten (10) Business Days of receiving the original request for consent from the Trustees, or within such additional time as the Trustees, the TAC, the FCR, the Reorganized Debtor, or J&J (as applicable) may agree. If the TAC, the FCR, the Reorganized Debtor, or J&J (as applicable) does not advise the Trustees in writing of its consent or objection to the proposed action within ten (10) Business Days of receiving notice regarding such request (or any additional time period agreed to as provided above), then consent of the TAC, the FCR, the Reorganized Debtor, or J&J (as applicable) to the proposed action shall be deemed to have been affirmatively granted.

(iii) The TAC and the FCR may not unreasonably withhold, delay, or condition their consent hereunder. If the TAC or the FCR decides to withhold consent, they must explain in reasonable detail their objection to the proposed action. If, after following the procedures specified in this Section 7.1(b), the TAC or the FCR continues to object to the proposed action and to withhold its consent to the proposed action, the Trustees and the TAC or the FCR (as applicable) shall resolve their dispute pursuant to Section 7.13. The TAC or the FCR (as applicable) shall have the burden of proving that it reasonably withheld its consent. If the TAC or the FCR (as applicable) meets that burden, the Talc Trust shall then have the burden of showing why it should be permitted to take the proposed action notwithstanding the reasonable objection of the TAC or the FCR (as applicable).

(iv) Each of the Reorganized Debtor and J&J may withhold its consent hereunder in its sole and absolute discretion.

**7.2 Irrevocability.** To the fullest extent permitted by applicable law, the Talc Trust is irrevocable.

**7.3 Term; Termination.**

(a) The term for which the Talc Trust is to exist shall commence on the date of the filing of the Certificate of Trust and shall terminate pursuant to the provisions of Section 7.3(b) through Section 7.3(d) below.

(b) The Talc Trust shall automatically dissolve on (i) the date on which the Confirmation Order is vacated by the Bankruptcy Court or (ii) if the Effective Date shall have occurred, the date ninety (90) days after the first occurrence of any of the following events (as applicable, the “**Dissolution Date**”):

(i) the date on which the Trustees decide, with the consent of the TAC and the FCR, to dissolve the Talc Trust because (A) the Trustees, in their reasonable judgment, deem it unlikely that new Talc Claims will be filed against the Talc Trust, (B) all Talc Claims duly filed with the Talc Trust have been liquidated and paid or otherwise resolved, and (C) twelve (12) consecutive months have elapsed during which no new Talc Claim has been filed with the Talc Trust;

(ii) if the Trustees, with the consent of the TAC and the FCR, have procured and have in place irrevocable insurance policies and have established claims handling agreements and other necessary arrangements with suitable third parties adequate to discharge all expected remaining obligations and expenses of the Talc Trust in a manner consistent with this Trust Agreement and the TDP, the date on which the Bankruptcy Court enters an order approving such insurance and other arrangements and such order becomes a Final Order; or

(iii) to the extent that any rule against perpetuities shall be deemed applicable to the Talc Trust, the date on which twenty-one (21) years less ninety-one (91) days pass after the death of the last survivor of all the descendants of the late Joseph P. Kennedy, Sr., father of the late President John F. Kennedy, living on the date hereof.

(c) If the Effective Date shall have occurred, on the Dissolution Date (or as soon thereafter as is reasonably practicable), after the wind-up of the Talc Trust's affairs by the Trustees and payment of all the Talc Trust's liabilities has been provided for as required by applicable law including Section 3808 of the Act, all monies remaining in the Talc Trust shall be given to charitable organization(s) exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, which tax-exempt organization(s) shall be selected by the Trustees in their reasonable discretion; *provided, however*, that (i) if practicable, the activities of the selected tax-exempt organization(s) shall be related to the treatment of, research on the cure of, or other relief for individuals suffering from, ovarian cancer, or other gynecological disease and (ii) the tax-exempt organization(s) shall not bear any relationship to the Reorganized Debtor within the meaning of section 468B(d)(3) of the Internal Revenue Code. Notwithstanding any contrary provision of any Plan Document, this Section 7.3(c) cannot be modified or amended.

(d) Following the dissolution and, if the Effective Date shall have occurred, distribution of the assets of the Talc Trust, the Talc Trust shall terminate and the Trustees and the Delaware Trustee (acting solely at the written direction of the Trustees) shall execute and cause a Certificate of Cancellation of the Certificate of Trust of the Talc Trust to be filed in accordance with the Act. Notwithstanding anything to the contrary contained in this Trust Agreement, the existence of the Talc Trust as a separate legal entity shall continue until the filing of such Certificate of Cancellation.

#### 7.4 Amendments.

(a) Prior to the Effective Date, this Trust Agreement may be modified or amended only by mutual agreement of the Parties. From and after the Effective Date, the Trustees, subject to the consent of the TAC and the FCR, may modify or amend this Trust Agreement (except with respect to Section 7.3(c), which by its own terms is expressly not subject to modification or amendment); *provided, however*, that with respect to any requirement in this Trust Agreement that consent of the TAC be made pursuant to a supermajority of the TAC, any modification or amendment of such supermajority requirement shall be subject to the consent of a supermajority of the TAC (consisting of not less than 66% of all TAC Members). From and after the Effective Date, the Trustees, subject to the consent of the TAC and the FCR, may modify or amend the TDP; *provided, however*, that no modification or amendment to the TDP shall be inconsistent with the provisions of the TDP limiting amendments or modifications to the TDP. Any modification or amendment made pursuant to this Section 7.4 must be in writing.

(b) Notwithstanding anything contained in this Trust Agreement or the TDP to the contrary:

(i) Neither this Trust Agreement, the TDP, nor any document annexed hereto or thereto shall be modified or amended in any way that could jeopardize, impair, or modify: (A) the applicability of section 524(g), section 1123(b)(6) and/or section 105 of the Bankruptcy Code to the Plan, the Confirmation Order, or the Talc Trust; (B) the enforceability, the scope, or the terms of the discharge, releases, injunctions, and exculpation included in Article XI of the Plan; or (C) the Talc Trust's status as a Qualified Settlement Fund within the meaning of the QSF Regulations.

(ii) Any modification or amendment of this Trust Agreement affecting the rights, duties, immunities, or liabilities of the Delaware Trustee shall require the Delaware Trustee's written consent.

(iii) Any modification or amendment of this Trust Agreement or the TDP affecting the rights of the Reorganized Debtor or J&J, including rights with respect to (A) the applicability of section 524(g), section 1123(b)(6) and/or section 105 of the Bankruptcy Code to the Plan, the Confirmation Order, or the Talc Trust; (B) the enforceability, the scope, or the terms of the discharge, releases, injunctions, and exculpation included in Article XI of the Plan; or (C) the Talc Trust's status as a Qualified Settlement Fund within the meaning of the QSF Regulations, shall require the written consent of the Reorganized Debtor or J&J (as applicable). For the avoidance of doubt, any modification or amendment to clause (i) or clause (iii) of this Section 7.4(b) shall require the written consent of the Reorganized Debtor and J&J.

**7.5 Severability.** Should any provision in this Trust Agreement be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any other provision of this Trust Agreement.

**7.6 Notices.**

(a) Notices to Persons asserting claims shall be given by first class mail, postage prepaid, at the address of such Person, or, where applicable, such Person's representative, in each case as provided on such Person's claim form submitted to the Talc Trust in accordance with the TDP with respect to his or her Talc Claim, or by such other means, including electronic notice, as may be implemented by the Trustees, with the consent of the TAC and the FCR.

(b) Any notices or other communications required or permitted hereunder to the following Parties shall be in writing and delivered to the addresses or email addresses designated below, or to such other addresses or email addresses as may hereafter be furnished in writing to each of the other Parties listed below in compliance with the terms hereof.

To the Talc Trust or the Trustees:

Red River Talc Personal Injury Trust  
c/o  
Scott Freeman  
1775 Saint James Place #200  
Houston, TX 77056

Fouad Kurdi  
30 Monument Square, Suite 245  
Concord, MA 01742

With a copy to:

[•]

To the TAC or the TAC Members:

Andrews & Thornton  
4701 Von Karman Ave. Suite 300  
Newport Beach, CA 92660  
Attn: Anne Andrews  
Email: aa@andrewsthornton.com

Pulaski Kherkher, PLLC  
2925 Richmond Avenue, Suite 1725  
Houston, TX 77098  
Attn: Adam Pulaski  
Email: adam@pulaskilawfirm.com

Watts Law Firm LLP  
811 Barton Springs Road #725  
Austin, TX 78704  
Attn: Mikal Watts  
Email: mikal@wattslp.com

OnderLaw, LLC  
110 E. Lockwood Ave  
St. Louis, MO 63119



Attn: James Onder  
Email: Onder@onderlaw.com

Nachawati Law Group  
5489 Blair Road  
Dallas, TX 75231  
Attn: Majed Nachawati  
Email: mn@ntrial.com

Aylstock, Witkin, Kreis, & Overholtz PLLC  
17 E. Main Street Suite 200  
Pensacola, FL 32502  
Attn: Daniel Thornburgh  
Email: DThornburgh@awkolaw.com

Slater Slater Schulman LLP  
488 Madison Ave., 20th Floor  
New York, New York 10022  
Attn: Jonathan E. Schulman  
Email: jschulman@sssfirm.com

The Miller Firm, LLC  
The Sherman Building  
108 Railroad Avenue  
Orange, VA 22960  
Attn: David Dickens  
Email: Ddickens@millerfirmllc.com

With a copy to:

[•]

To the FCR:

[•]

With a copy to:

[•]

To the Debtor or the Reorganized Debtor:

[•]

With a copy to:

Jones Day  
2727 N. Harwood Street  
Dallas, Texas 75201  
Attention: Dan Prieto  
Email: dbprieto@jonesday.com

To J&J or Holdco:

c/o Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, New Jersey 08933  
Attention: [•]  
Email: [•]

With copies to:

Barnes & Thornburg LLP  
2029 Century Park East  
Suite 300  
Los Angeles, California 90067  
Attention: Jim Murdica  
Email: jmurdica@btlaw.com

and

White & Case LLP  
1221 Avenue of Americas  
New York, New York 10020  
Attention: Jessica C. Lauria (Boelter)  
Email: jessica.boelter@whitecase.com

To the Delaware Trustee;

[•]

(c) All such notices and communications if mailed shall be effective when physically delivered at the designated addresses or, if electronically transmitted, when the communication is received at the designated addresses and confirmed by the recipient by return transmission.

**7.7 Successors and Assigns.** The provisions of this Trust Agreement shall be binding upon and inure to the benefit of the Trustees, the TAC Members, the FCR, the Debtor, the Reorganized Debtor, J&J, and Holdco and their respective successors and assigns, except that none of them may assign or delegate any of their rights or obligations under this Trust Agreement except: (a) in the case of the Trustees, in accordance with Section 4.3 above; (b) in the case of the TAC Members, in accordance with Section 5.4 above; and (c) in the case of the FCR, in accordance to Section 6.3 above.

**7.8 Limitation on Claim Interests for Securities Laws Purposes.** Talc Claims and any interests therein: (a) shall not be assigned, conveyed, hypothecated, pledged, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, except by will or under the laws of descent and distribution; (b) shall not be evidenced by a certificate or other instrument; (c) shall not possess any voting rights; and (d) shall not be entitled to receive any dividends or interest; *provided, however,* that the foregoing clause (a) shall not apply to subrogation resulting from payments made by a third party in respect of such Talc Claim.

**7.9 Entire Agreement; No Waiver.** The entire agreement of the Parties relating to the subject matter of this Trust Agreement is contained herein and in the documents referred to herein (including the Plan), and this Trust Agreement and such documents supersede any prior oral or written agreements concerning the subject matter hereof. No failure to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof or of any other right, power, or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

**7.10 Headings.** The headings used in this Trust Agreement are inserted for convenience only and do not constitute a portion of this Trust Agreement, nor in any manner affect the construction of the provisions of this Trust Agreement.

**7.11 Governing Law.** The validity and construction of this Trust Agreement and all amendments hereto and thereto shall be governed by the laws of the State of Delaware, and the rights of all Parties hereto and the effect of every provision hereof shall be subject to and construed according to the laws of the State of Delaware without regard to the conflicts of law provisions thereof that would purport to apply the law of any other jurisdiction; *provided, however,* that the Parties hereto intend that the provisions hereof shall control and there shall not be applicable to the Talc Trust, this Trust Agreement, or the Parties, any provision of the laws (statutory or common) of the State of Delaware pertaining to trusts that relate to or regulate in a manner inconsistent with the terms hereof: (a) the filing with any court or governmental body or agency of Trustees accounts or schedules of Trustees fees and charges; (b) affirmative requirements to post bonds for the Trustees, officers, agents, employees, or professionals of a trust; (c) the necessity for obtaining court or other governmental approval concerning the acquisition, holding, or disposition of real or personal property; (d) fees or other sums payable to the Trustees, officers, agents, employees, or professionals of a trust; (e) the allocation of receipts and expenditures to income or principal; (f) restrictions or limitations on the permissible nature, amount, or concentration of trust investments or requirements relating to the titling, storage, or other manner of holding of trust assets; (g) the existence of rights or interests (beneficial or otherwise) in trust assets; (h) the ability of beneficial owners or other Persons to terminate or dissolve a trust; or (i) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of the Trustees or beneficial owners that are inconsistent with

the limitations on liability or authorities and powers of Trustees, the Delaware Trustee, the TAC, the TAC Members, or the FCR set forth or referenced in this Trust Agreement. Section 3540 of the Act shall not apply to the Talc Trust.

**7.12 Settlors' Representative and Cooperation.** The Debtor is hereby irrevocably designated as the Settlor and is hereby authorized to take any action required of the Settlor by the Trustees in connection with the Trust Agreement. The Reorganized Debtor agrees to cooperate in implementing the goals and objectives of this Trust Agreement at the sole expense of the Talc Trust.

**7.13 Enforcement and Administration.** The provisions of this Trust Agreement and the TDP shall be enforced by the Bankruptcy Court pursuant to the Plan and the Confirmation Order. The Parties hereby acknowledge and agree that the Bankruptcy Court shall have continuing exclusive jurisdiction over the settlement of the accounts of the Trustees and over any disputes that arise under this Trust Agreement or the TDP.

**7.14 Effectiveness.** This Trust Agreement shall not become effective until the later of (a) the Confirmation Date and (b) the date on which this Trust Agreement has been executed and delivered by all the Parties hereto.

**7.15 Counterpart Signatures.** This Trust Agreement may be executed in any number of counterparts and by different Parties on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. Electronic signatures and original signatures delivered electronically, in PDF or otherwise, shall be deemed to be original signatures.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Trust Agreement as of the date first written above.

**SETTLOR:**

**RED RIVER TALC LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**JOHNSON & JOHNSON**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**JOHNSON & JOHNSON HOLDCO (NA) INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRUSTEES**

**DELAWARE TRUSTEE:**

[•]

\_\_\_\_\_  
Name: Scott Freeman  
Expiration Date of Initial Term:  
[•] anniversary of the date first written above

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Name: Fouad Kurdi  
Expiration Date of Initial Term:  
[•] anniversary of the date first written above

**INITIAL TALC TRUST ADVISORY  
COMMITTEE MEMBERS**

Andrews & Thornton Appointee:

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Name: Anne Andrews  
Expiration Date of Initial Term: [•]  
anniversary of the date first written above

Aylstock Appointee:

---

Name: Daniel Thornburgh  
Expiration Date of Initial Term: [•]  
anniversary of the date first written above

Pulaski Kherkher Appointee:

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Name: Adam Pulaski  
Expiration Date of Initial Term: [•]  
anniversary of the date first written above

Schulman Appointee:

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Name: Jonathan E. Schulman  
Expiration Date of Initial Term: [•]  
anniversary of the date first written above

Watts Appointee:

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Name: Mikal C. Watts  
Expiration Date of Initial Term: [•]  
anniversary of the date first written above

Miller Appointee:

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Name: David Dickens  
Expiration Date of Initial Term: [•]  
anniversary of the date first written above

Onder Appointee:

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Name: James G. Onder  
Expiration Date of Initial Term: [•]  
anniversary of the date first written above

First TCC Appointee:

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Name: [•]  
Expiration Date of Initial Term: [•]  
anniversary of the date first written above

Nachawati Appointee:

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Name: Majed Nachawati  
Expiration Date of Initial Term: [•]  
anniversary of the date first written above

Second TCC Appointee:

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Name: [•]  
Expiration Date of Initial Term: [•]  
anniversary of the date first written above



**FCR**

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Name: Randi S. Ellis

**Exhibit 1**

Certificate of Trust

See attached.

**CERTIFICATE OF TRUST**

**OF**

**RED RIVER TALC PERSONAL INJURY TRUST**

This Certificate of Trust of the Red River Talc Personal Injury Trust (this “**Trust**”) is being executed and filed by the undersigned, as the trustees of the Trust, to form a statutory trust under the Delaware Statutory Trust Act (12 Del. Code, § 3801 et. seq.) (the “**Act**”).

1. **Name.** The name of the statutory trust formed hereby is Red River Talc Personal Injury Trust.

2. **Delaware Trustee.** The name and business address of the trustee of the Trust in the State of Delaware are [●].

3. **Effective Date.** This Certificate of Trust shall be effective upon filing.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have duly executed this Certificate of Trust  
in accordance with section 3811(a) of the Act.

**RED RIVER TALC PERSONAL INJURY  
TRUST**

By: \_\_\_\_\_  
Name: Scott Freeman, solely as Trustee,  
and not in his/her individual capacity

By: \_\_\_\_\_  
Name: Fouad Kurdi, solely as Trustee,  
and not in his/her individual capacity

**Exhibit 2**

Effective Date Assignment and Assumption Instrument

See attached.

## INSTRUMENT OF ASSIGNMENT AND ASSUMPTION

This Instrument of Assignment and Assumption (this “**Instrument**”), dated [●], is entered into by (1) Red River Talc LLC, a Texas limited liability company (the “**Reorganized Debtor**”), (2) Johnson & Johnson, a New Jersey corporation (“**J&J**”), and (3) the Red River Talc Personal Injury Trust (the “**Talc Trust**” and, together with the Reorganized Debtor, J&J, and Holdco, the “**Parties**”) established pursuant to the Red River Talc Personal Injury Trust Agreement dated [●] (the “**Trust Agreement**”), as contemplated by Section 1.3(a), Section 1.4(a), Section 1.7(a) and Section 1.8(a) of the Trust Agreement. All capitalized terms used but not defined herein shall have the definitions set forth (or incorporated by reference) in the Trust Agreement.

1. **Effective Date.** Each of the Parties hereby acknowledges that the Effective Date has occurred.

2. **Talc Claims.** As contemplated by Section 1.3(a) of the Trust Agreement, pursuant to, and in accordance with, Section 4.8.1 of the Plan, the Talc Trust hereby assumes all liabilities, obligations, and responsibilities, financial and otherwise, of the Reorganized Debtor and the other Protected Parties for all Talc Claims (including Indirect Talc Personal Injury Claims and Talc Personal Injury Demands).

3. **Talc Personal Injury Trust Defenses.** As contemplated by Section 1.4(a) of the Trust Agreement, pursuant to, and in accordance with, Section 4.8.2 of the Plan, the Reorganized Debtor and J&J hereby transfer and assign to the Talc Trust, and the Talc Trust hereby accepts, the Talc Personal Injury Trust Defenses.

4. **Imerys/Cyprus Related Rights.** If Section 1.7(a) of the Trust Agreement is applicable, as contemplated by such Section 1.7(a), pursuant to, and in accordance with, Section 4.9.3 of the Plan, the Reorganized Debtor and J&J hereby transfer and assign to the Talc Trust,

and the Talc Trust hereby accepts, the Imerys/Cyprus Related Rights, effective as of the Effective Date or, if later, the Imerys/Cyprus Settlement Termination Date (without the need for any further action by the Reorganized Debtor, J&J, the Talc Trust, or any other Person).

5. **Talc Insurance Assets.** As contemplated by Section 1.8(a) of the Trust Agreement, pursuant to, and in accordance with, Section 4.9.4 of the Plan, the Reorganized Debtor hereby transfer and assigns to the Talc Trust, and the Talc Trust hereby accepts, the Talc Insurance Assets.

6. **Construction.** This Instrument is being executed solely to give effect to the transactions contemplated by the Plan, the Confirmation Order, and the Trust Agreement. Nothing in this Instrument, express or implied, is intended to, or will be construed to, modify, expand, or limit in any way the terms of the Plan, the Confirmation Order, and the Trust Agreement.

7. **Governing Law.** The validity and construction of this Instrument shall be governed by the laws of the State of Delaware, and the rights of all Parties and the effect of every provision hereof shall be subject to and construed according to the laws of the State of Delaware without regard to the conflicts of law provisions thereof that would purport to apply the law of any other jurisdiction.

8. **Counterparts.** This Instrument may be executed in any number of counterparts and by different Parties on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. Electronic signatures or original signatures delivered electronically, in PDF or otherwise, shall be deemed to be original signatures.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Instrument as of the date first written above.

**RED RIVER TALC LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**JOHNSON & JOHNSON**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**RED RIVER TALC PERSONAL INJURY TRUST**

By: \_\_\_\_\_  
Name: Scott Freeman, solely as Trustee, and  
not in his/her individual capacity

By: \_\_\_\_\_  
Name: Fouad Kurdi, solely as Trustee, and  
not in his/her individual capacity