

**GENETICALLY MODIFIED RICE MDL ELIGIBLE CLAIMANTS'
QUALIFIED SETTLEMENT FUND**

Prepared by

**Looper, Reed & McGraw
a Professional Corporation
Attorneys
4600 Thanksgiving Tower
1601 Elm Street
Dallas, TX 75201**

Telephone: (214) 954-4135

784427.1

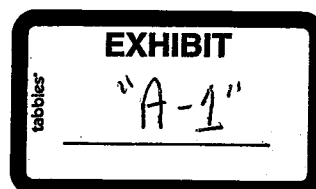


TABLE OF CONTENTS

| | |
|---|----|
| ARTICLE ONE: NAME AND PURPOSE OF THE TRUST | 1 |
| Section 1.1: Name | 1 |
| Section 1.2: Formation | 1 |
| Section 1.3: Purpose | 1 |
| Section 1.4: Qualified Settlement Fund | 1 |
| ARTICLE TWO: CONTRIBUTIONS TO THE QUALIFIED SETTLEMENT FUND | 2 |
| Section 2.1: Corpus | 2 |
| ARTICLE THREE: TRUSTEE | 2 |
| Section 3.1: Appointment of Trustee | 2 |
| Section 3.2: Successor Trustee | 2 |
| Section 3.3: Express Powers of the Trustee | 4 |
| Section 3.4: Management of the Trust | 6 |
| ARTICLE FOUR: INTERESTS IN THE TRUST | 8 |
| Section 4.1: Interests in the Trust | 8 |
| Section 4.2: Rights and Obligations of Bayer | 8 |
| ARTICLE FIVE: TRUSTEE COMENSATION | 8 |
| ARTICLE SIX: INDEMNITY | 8 |
| Section 6.1: Trustee Indemnification | 8 |
| Section 6.2: Oversight Committee Indemnification | 8 |
| ARTICLE SEVEN: TERMINATION OF THE TRUST | 9 |
| Section 7.1: Termination of the Trust | 9 |
| ARTICLE EIGHT: IRC SECTION 468B COMPLIANCE | 10 |
| Section 8.1: IRC Section 468B Qualified Settlement Fund | 10 |
| ARTICLE NINE: MISCELLANEOUS | 12 |
| Section 9.1: Interpretation | 12 |
| Section 9.2: Notices | 12 |
| Section 9.3: Choice of Law | 12 |
| Section 9.4: Invalidity and Unenforceability | 12 |
| Section 9.5: Severability | 12 |
| Section 9.6: Entirety of Agreement | 12 |
| Section 9.7: Binding Agreement | 12 |
| Section 9.8: Counterparts | 13 |
| Section 9.9: Independent Legal and Tax Counsel | 13 |
| Section 9.10 Continuing Jurisdiction/Registered Agent | 13 |

EXHIBIT A: MDL SETTLEMENT AGREEMENT
EXHIBIT B: COURT ORDER
EXHIBIT C: TRUSTEE AND ADMINISTRATOR
SCHEDULE C-1: SCHEDULE OF TRUSTEE FEES
EXHIBIT D: OVERSIGHT COMMITTEE MEMBERS

ARTICLE ONE
NAME AND PURPOSE OF THE TRUST

1.1 **Name.** This Trust shall be known as the Genetically Modified Rice MDL Eligible Claimants' Qualified Settlement Fund (hereinafter, "Fund" or "Trust") and the terms and provisions contained herein shall collectively be referred to as the "Trust Agreement."

1.2 **Formation.**

- A. **Transferor.** The Fund is established under the terms of the MDL Bayer Rice Settlement Agreement (the "MDL Settlement Agreement" attached hereto as Exhibit A) and shall be funded by Bayer (as that term is defined in the MDL Settlement Agreement as "Transferor"). The Fund (other than Exhibit A) has been approved by the _____ Order ("Order") of the United State District Court for the Eastern District of Missouri ("the Court") in *In Re Genetically Modified Rice Litigation*, Docket No. 4:06 1811 CDP and related cases ("the Litigation"), a copy of such Order being attached hereto as Exhibit B.
- B. **Beneficiaries.** This Trust is hereby established for the benefit of (i) the Eligible Claimants under the MDL Settlement Agreement whose Claims (as that term is defined in the MDL Settlement Agreement) are determined solely by the Claims Administrator (as that term is defined in the MDL Settlement Agreement) to be paid under the terms of the MDL Settlement Agreement and, (ii) solely to the limited extent expressly permitted by Section 2.17.4 of the MDL Settlement Agreement, as determined solely by the Claims Administrator, to the GMB QSF Administrator ("GMB QSF Administrator", as that term is defined as the QSF Administrator in the GMB Settlement Agreement, as that document is further identified in the MDL Settlement Agreement) (hereinafter, except as otherwise expressly limited, "Beneficiary" or "Beneficiaries"). Absent any subsequent written notice received by the Trustee, the Trustee may conclusively presume that the Claims Administrator is BrownGreer PLC, and that the GMB QSF Administrator is _____.
- C. This Trust shall be irrevocable. The Transferor shall not alter, amend, revoke, or terminate the Trust. The Transferor shall have no power or authority to direct the Trustee to return any of the corpus of the Trust to the Transferor.

1.3 **Purpose.** The purposes of the Trust shall be as follows ("Purposes"):

- A. To establish a trust for the Beneficiaries and to accept, hold and distribute settlement funds pursuant to the MDL Settlement Agreement;

- B. The Purposes of the Trust are limited to the matters set forth herein, and this Trust shall not be construed to confer on the Trustee any authority to carry on any business or activity.

1.4 Qualified Settlement Fund. The Fund is intended to qualify as a Qualified Settlement Fund within the meaning of Section 468B of the Internal Revenue Code and the Treasury Regulations thereunder.

ARTICLE TWO CONTRIBUTIONS TO THE QUALIFIED SETTLEMENT FUND

2.1 Corpus. The Corpus of the Trust (“Corpus”) shall include:

- A. All sums transferred to the Trust pursuant to either the MDL Settlement Agreement, the GMB Settlement Agreement or further order by the Court;
- B. All sums, rights, interests, claims, and similar things of every kind, nature, and description granted, transferred, or assigned to the Trust pursuant to the MDL Settlement Agreement, the GMB Settlement Agreement or further order of the Court;
- C. All income derived from any of the assets of the Trust.

ARTICLE THREE TRUSTEE AND ADMINISTRATOR

3.1 Appointment of Trustee. The party set forth in Exhibit C shall serve as the Trustee and Administrator of the Trust. The Trustee is independent of Bayer and independent of the Claims Administrator under the MDL Settlement Agreement. By execution of this Trust Agreement the Trustee does hereby agree and consent to act as Trustee and as the Administrator of the Trust hereunder.

3.2 Successor Trustee.

- A. Oversight Committee.
1. Generally. The parties set forth in Exhibit D shall serve as the two (2) member oversight committee (“Oversight Committee”). All decisions by the Oversight Committee shall be by unanimous consent. The purpose of the Oversight Committee shall be:
- (a) To periodically review the performance of the Trustee.
- (b) To remove the Trustee.

- (c) To review and approve the Trustee's determination of the proper party for any unallocated funds of the Trust as further set forth in Article Seven.
 - (d) To take such other action as might be contemplated under the terms of this Trust Agreement.
- 2. Power to Remove. The Oversight Committee may remove the Trustee on its own authority for any reason it deems appropriate or proper. The removal shall take effect upon the date specified by the Oversight Committee. Upon removal, the Trustee shall, by the earliest date possible, deliver to the Trustee's successor, another acting Trustee, or the Oversight Committee, all of the Trust assets, which were in the possession of the Trustee, along with a complete record and inventory of all such assets, all books and records of the Trust, and all other documents, files or information as it pertains to the Trust.
- 3. Substitute Oversight Committee Member. Any vacancy in the office of the Oversight Committee shall be filled by unanimous consent of any remaining Oversight Committee members. Should there be no remaining Oversight Committee members, the Negotiating Claimants' Counsel ("NCC") shall select new Oversight Committee members. In its selection process, the NCC may consider any competent, qualified, and appropriately experienced persons or entities to serve as successor Oversight Committee members.

B. *Vacancy Caused by Trustee Resignation or Removal.*

- 1. Trustee Resignation. The Trustee may resign at any time. The Trustee shall deliver its written notice of resignation to the Court. At least ten (10) business days before filing any notice of resignation with the Court, the Trustee shall deliver its written resignation to the NCC. The resignation shall take effect upon the date specified in the notice of resignation, or if such notice does not specify a date, then said resignation shall take effect no less than thirty (30) calendar days after the Court has received the notice of resignation. Notwithstanding the foregoing, the Court shall have the ability to specify a different effective date, which shall be controlling.
- 2. Suggested Successor Trustees. Prior to the effective date of the Trustee's resignation, the Oversight Committee shall, within fifteen (15) calendar days of the Trustee having delivered its written notice of resignation to the Court, prepare and deliver to the Court a list of competent, qualified, and appropriately experienced persons or entities to serve as successor to the Trustee. Additionally, the NCC on behalf of the Beneficiaries shall be entitled to request copies of the list of competent, qualified, and

appropriately experienced persons or entities to serve as successor to the Trustee and may propose a list of suggested Trustees to the Court.

3. Appointment of Successor Trustee. Any vacancy in the office of Trustee shall be filled by the Court. Where a Trustee has resigned under Section 3.2, the Court may, but is not required to, appoint a successor Trustee from the list provided by the Oversight Committee or NCC.
- C. Trustee Removal. In addition to the Oversight Committee's ability to remove the Trustee, the Court may also remove the Trustee on its own motion for any reason the Court deems appropriate or proper. The removal shall take effect upon the date the Court specifies. Upon removal, the Trustee shall, by the earliest date possible, deliver to the Trustee's successor, another acting Trustee, or the Oversight Committee, all of the Trust assets, which were in the possession of the Trustee, along with a complete record and inventory of all such assets, all books and records of the Trust, and all other documents, files or information as it pertains to the Trust.
 - D. Acceptance of Appointment of Successor Trustee. Any successor Trustee's acceptance of appointment as a successor Trustee shall be in writing and shall be filed with the Court. The acceptance shall become effective upon receipt by the Court. The Trustee shall thereupon be considered a Trustee of the Trust without the necessity of any conveyance or instrument. Each successor Trustee shall have all of the rights, powers, duties, authority, and privileges as if initially named as Trustee hereunder. Each successor Trustee shall be exempt from any liability related to the acts or omissions of the Trustee prior to the appointment of the successor Trustee.
- 3.3 Express Powers of the Trustee.** The Trustee shall be vested with all powers necessary to effectuate the Purposes of the Trust. However, any grant of power set forth in this Trust Agreement does not itself require or permit the exercise of that power, given that Trustee powers are subject to the Trustee's fiduciary duties. These powers shall include, but not be limited to, the following:
- A. Payment of Claims and Tax Reporting. The Trustee shall remit to each Beneficiary or Beneficiary's counsel (or another Qualified Settlement Fund designated to the Claims Administrator by the Beneficiary or Beneficiary's counsel ("QSF")) the amounts due to the Beneficiary under instructions received from time to time from the Claims Administrator and with funds paid to the Trustee from time to time by Bayer. The Trustee shall remit these funds as directed in writing by the Claims Administrator to the Beneficiaries, Beneficiary's counsel or any QSF so designated to the Claims Administrator either as promptly as commercially and practically reasonable, but consistent with the Oversight Committee's intent to minimize the fees and expenses to be borne by the Trust under Exhibit C-1 to the extent the amount of such fees and expenses are affected by the calculation of the average daily annualized balance for the funds received

by the Trustee from Bayer. The Trustee shall consult with, and take directions from, the Oversight Committee in the event any conflicts or choices arise with regard to the duration of the period during which such funds are held by the Trustee prior to their distribution in accordance with instructions received from the Claims Administrator. The Trustee shall have no liability to any Beneficiary or its counsel or any other party for taking any direction in these regards from the Oversight Committee. The Trustee shall be entitled to unconditionally and conclusively rely on the accuracy, completeness and propriety of payment instructions received by the Claims Administrator. If at any time there shall exist any dispute with respect to the disposition of all or any portion of the Fund or the obligations of the Trustee hereunder, or the Trustee is unable to determine the proper disposition of all or any portion of the Fund, then the Trustee may suspend the performance its disbursement obligations until such dispute or uncertainty shall be resolved to the satisfaction of the Trustee. Upon receipt of (i) the distribution instructions from the Claims Administrator, (ii) a properly completed and signed Form W-9 for each domestic distributee which is directly paid by the Trustee (whether it be a Beneficiary or Beneficiary's counsel or a QSF so designated to the Claims Administrator by either) or a properly completed and signed original Form W-8 for each foreign distributee which is directly paid by the Trustee (whether it be a Beneficiary or Beneficiary's counsel or a QSF so designated to the Claims Administrator by either), and (iii) the necessary funds for such distributions from Bayer, the Trustee shall, within a reasonable period of time, make said distributions to the Beneficiaries or Beneficiary's counsel (or a QSF so designated to the Claims Administrator by either) in accordance with payment instructions received from the Claims Administrator. If the Trustee has not received a proper Form W-9 or Form W-8 from a payee within six months of the Trustee's receipt of direction to pay such payee, then the Trustee is authorized for such payee not submitting a proper Form W-9 or Form W-8 to withhold at the maximum rate in effect for backup withholding taxes for deposit with the IRS and to pay the remaining funds to the payee. It is acknowledged and agreed that (i) with the exception of any payments made to the GMB QSF Administrator which corrects a misallocated payment and is not taxable income to the recipient, all payments made by the Trustee, whether to a Beneficiary or counsel to a Beneficiary (but not to a QSF so designated by either, and the Trustee shall treat each such QSF as a corporation for tax purposes), are considered to be taxable compensation, (ii) the Trustee will report the full amount of any and all distributions made directly to a Beneficiary's counsel as Gross Proceeds Paid to an Attorney (Box 14 of Form 1099-MISC) based upon the taxpayer identification number set forth in the Form W-9 provided by such Beneficiary's counsel, (iii) Beneficiary's counsel or a QSF so designated by a Beneficiary or Beneficiary's Counsel, as the final payor of funds to a Beneficiary, is solely responsible for issuing Form 1099-MISC or Form 1042-S to each Beneficiary that is paid directly by each Beneficiary's counsel or a QSF so designated, (iv) as prescribed by IRS regulations, each Beneficiary's counsel and QSF so designated is also responsible for filing with the IRS by the prescribed deadlines a copy (electronic or paper) of the 1099-MISC reporting that it sends to each Beneficiary and for responding for

all subsequent IRS Notices related to filings performed by Beneficiary's counsel, (v) for Beneficiaries that are paid directly by the Trustee, the Trustee will file Form 1099-MISC (for domestic payees) and Form 1042-S (for foreign payees) as required under the Internal Revenue Service regulations and will report such payments on Form 1099-MISC, Box 3 (other income) or on Form 1042. The Trustee shall have no obligation to respond to inquiries with respect to tax reporting to be performed by any Beneficiary's counsel or QSF as contemplated in this Section 3.3A, and to the extent that the Trustee does respond, although expressly not obligated to do so, such inquiries (i) may be redirected to Beneficiary's counsel and the Claims Administrator, and (ii) reasonable additional fees may be charged by the Trustee for the time and expense related to such response. Without limiting any other provision of the Agreement, but for the avoidance of doubt, the Trustee shall have no duty, obligation or liability with respect to the tax reporting obligations of any other party or to the qualification of a QSF within the meaning of the Internal Revenue Code and the Treasury Regulations thereunder.

- B. Payment of Expenses of the Trust. The Trustee shall be empowered to incur on behalf of the Trust, and pay from any income earned on the Corpus of the Trust, all reasonable and necessary expenses incurred by the Trustee in maintaining and administering the Trust including, without limitation, the fees and costs associated with investment advisors, accountants, agents, managers, attorneys, actuaries, auditors, or insurers, which are incurred to maintain and administer the Trust.
1. Order of payment. The Trustee shall pay the administrative costs and expenses in the following manner and from the following sources in the order specified:
 - a. Income earned on the Corpus of the Trust shall be applied first to pay any federal, state, and local tax liability of the Trust before any other expenses are paid.
 - b. To the extent there is income remaining after the payment of any tax liability, said income shall be used to pay the administrative costs and expenses.
 - c. Should there be insufficient funds to cover any remaining costs and expenses, the outstanding balance will be paid from the CBF Deposit (as that term is defined below).
 2. CBF Deposit. Should the funds available to the Trustee to pay administrative costs and expenses be insufficient to pay the liabilities of the Trust, a portion of the Common Benefit Fund (as further defined in Exhibit A) allocated to pay expenses ("3% Fund") shall be used to pay the remaining administrative costs and expenses including any Trustee compensation subject to Court approval. The members of the Oversight

Committee shall promptly request the Court to allow for the dispersal of funds from the Common Benefit Fund to the Trust to pay any expenses.

- a. The Oversight Committee, with the cooperation of the Trustee, shall conduct a quarterly review to determine to what extent (if any) the Trust's cash balance exceeds the Trust's current and anticipated needs, including for operating expenses, administrative costs, and reasonable reserves. To the extent the cash balance on hand is insufficient to meet the anticipated needs of the Trust, the trustee of the Common Benefit Fund and the Oversight Committee, with the cooperation of the Trustee, shall request the Court allow the trustee of the Common Benefit Fund to remit additional funds to the Trustee.
 - b. Upon termination of the Trust and after all expenses and liabilities have been paid, the Trustee shall use any remaining funds to repay any amount paid to the Trustee by the trustee of the Common Benefit Fund.
- C. Hiring and Retention of Consultants. The Trustee is empowered to select, hire, and retain independent counsel or other consultants deemed to be in the best interests of the Trust and its Beneficiaries. Any such counsel or consultant shall assist the Trustee to effectuate the Purposes of the Trust and maintain and administer the Trust. The Trustee may consult legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, and shall incur no liability in acting in good faith in accordance with the opinion, advice or instruction of such counsel.
- D. Execution of Documents. The Trustee is empowered to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted and the Purposes of the Trust.
- E. Litigation and Other proceedings. The Trustee is empowered, but not obligated, to institute, conduct, defend, settle, or compromise any litigation or other proceeding in any court (of law or equity) or any administrative or regulatory forum in the name of the Trust if, in its sole discretion, it deems it so advisable to do so. However, the Trustee, at the direction of the Oversight Committee, shall defend, contest or settle any litigation or other court proceeding brought against the Fund, provided that the Trustee shall not be required to expend its own funds unless it has been indemnified to its sole satisfaction.
- F. Discretion in Exercise of Powers. The Trustee is empowered to do any and all other things that a prudent person deems necessary or appropriate to effectuate the Purposes of the Trust or to maintain and administer the Trust. In no event shall

the Trustee be required to commence legal proceedings or expend its own funds unless it has been indemnified to its sole satisfaction.

- G. Grant of Powers Limited. For so long as the purposes of the Trust have not been accomplished in full and further distributions to the Trust are to be made, the Trustee shall not be empowered to dispose of the Corpus of the Trust except as expressly permitted by the MDL Settlement Agreement or expressly authorized by the Court following a duly noticed petition.
- H. Modification of the Trust. The Oversight Committee and/or the Trustee shall be empowered to petition the Court for modification of the terms of this Trust Agreement (excluding Exhibit A) if the Oversight Committee and/or the Trustee determines that such modifications are necessary to conform to legal, tax, or administrative requirements and to conform to the terms of the MDL Settlement Agreement.
- I. Other Powers. The Trustee shall have such other and further powers as may be determined by the Court after hearing upon notice to all parties.

3.4 Management of the Trust. The Trustee shall have the following duties and responsibilities:

- A. Financial Reports. The Trustee shall prepare on behalf of the Trust monthly statements describing the then remaining assets and the manner in which the assets of the Trust are then invested. The statements shall include an itemization of each transaction of the Fund, including deposits, disbursements, dividend or income postings and investment transactions, and corresponding amounts. The statements shall also include an estimate of the current market value of the assets of the Trust. The statements shall be prepared within ten (10) calendar days of the close of the previous month. Copies of the statements shall be mailed to the Oversight Committee within (10) calendar days of the close of the previous month, along with a copy provided to the NCC.
- B. Tax Preparation, Reporting, and Withholding Requirements. The Trustee shall cause federal and Missouri taxpayer identification numbers to be assigned to the Fund under the name of the “Genetically Modified Rice MDL Eligible Claimants’ Qualified Settlement Fund”. The Trustee shall cause to be filed, on behalf of the Trust, all required federal state, and local tax returns of the Fund in accordance with the provisions of Treasury Regulation Section 1.468B-2(k). Furthermore, in accordance with the provisions of Treasury Regulation Section 1.468B-2(l), the Trustee shall cause to be filed all required federal, state, and local information returns of the Fund and ensure compliance with withholding and reporting requirements of the Fund. The Trustee may retain an independent, certified public accountant to consult with and advise the Trustee with respect to the preparation of any and all appropriate income tax returns, information returns, or compliance with withholding requirements. The Transferor (or some other person

on behalf of the Transferor) shall supply to the Trustee the statement described in Treasury Regulation Section 1.468B-3(e)(2) no later than February 15th of the year following each calendar year in which the Transferor (or some other person on behalf of the Transferor) makes a transfer to the Trust. The Transferor (or some other person on behalf of the Transferor) shall also attach a copy of this statement to (and as part of) its timely filed United States federal income tax return (including extensions) for the taxable year in which the transfer is made.

- C. *Additional Reporting to the Court.* The Trustee shall report to the Court, orally or in writing, with respect to any matter arising from the administration of the Trust that the Oversight committee or the Trustee deems advisable to bring to the attention of the Court, or upon request of the Court. All such reports referenced in this subsection shall also be provided to the NCC. The Trustee may retain counsel in connection with any such reporting to the Court, and without limiting any other terms of this Trust Agreement, the fees and expenses of such counsel shall be deemed a reasonable expense of the Trust.
- D. *Records.* Aside from the reporting requirements set forth in Article Three herein, the Trustee shall create and maintain records of the Trustee's activities arising from this Trust Agreement and any orders of the Court. The records shall be created and maintained in a manner that is ordinary and customary for the obligations imposed by any Court Order(s) or this Trust Agreement. Copies of the records shall be provided to the Court, Oversight Committee, and to the NCC upon request, subject to any privileges or other protections.
- E. *Management of the Corpus.* The Trustee is authorized and directed to hold the Corpus of the Trust in a noninterest-bearing deposit account.

ARTICLE FOUR INTERESTS IN THE TRUST

- 4.1 **Interests in the Trust.** No interest in this Trust may be assigned or transferred in any manner, unless approved by the Court. In addition, such interests shall not be voluntarily or involuntarily subject to any type of encumbrance, to the maximum extent allowable by law. This shall include, but not be limited to, encumbrances associated with claims of any creditor (in or outside of bankruptcy or other insolvency statutory schemes) under any federal, state, or local laws. Any such interest, if any, shall be made available only upon termination of the Trust.
- 4.2 **Rights and Obligations of Bayer.** In furtherance of the MDL Settlement Agreement, Bayer shall pay to the Trustee when and as due the amounts required under the MDL Settlement Agreement, but in no event shall Bayer have any responsibility or obligation to pay any fees or expenses of the QSF Trustee or incurred in the administration of this Trust.

**ARTICLE FIVE
TRUSTEE COMPENSATION**

The Trustee shall receive reasonable compensation for services rendered to the Trust and shall be reimbursed for expenses incurred in connection with the provision of such services in accordance with Schedule C-1.

**ARTICLE SIX
INDEMNITY**

6.1 Trustee Indemnification and Duties. The Trustee acts as Trustee only and not personally. All persons shall therefore look solely to the Trust, and not to the Trustee personally, for compensation with respect to any contract, obligation, or liability made or incurred by the Trustee in good faith. The Trustee shall be liable only for its own acts or omissions resulting from its own gross negligence or willful misconduct. The Trustee may purchase and maintain insurance coverage for the Trustee against any such liability for gross negligence as an expense of the Trustee personally, and not as an expense of the Trust.

The Trust shall defend, indemnify, and hold the Trustee harmless from and against any and all claims, liabilities, costs, damages, penalties or expenses arising from any contract, obligation, or liability made or incurred by the Trustee in good faith. Nothing in this Article Six shall be construed or interpreted to limit in any way the protections and immunities, if any, afforded to the Trustee pursuant to federal or state statutory and common law. Notwithstanding the foregoing, this indemnification, obligation of defense, and covenant to hold harmless shall not apply to any liability: (i) arising from a criminal proceeding where the Trustee had reasonable cause to believe that its conduct in question was unlawful; or (ii) where the Trustee is held to have acted with gross negligence or willful misconduct.

The Trustee undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. The Trustee shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Trust Agreement, and Trustee shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein except when it has received actual notice of a fact or circumstance directly related to the Trustee's duties under this Trust Agreement. Trustee may rely upon any notice, instruction, request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which Trustee shall believe to be genuine and to have been signed or presented by the person or parties purporting to sign the same. In no event shall Trustee be liable for incidental, indirect, special, consequential or punitive damages (including, but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action. The Trustee shall not be shielded from liability arising from a criminal proceeding where the Trustee had

reasonable cause to believe that its conduct was unlawful, or where the Trustee is held to have acted with gross negligence or willful misconduct. Trustee may consult legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and shall incur no liability whatsoever in acting in good faith in accordance with the advice or instruction of such counsel. Whenever the time for Trustee's giving a notice or performing an act falls upon a Saturday, Sunday, or holiday, such time shall be extended to the next business day.

- 6.2 Oversight Committee Indemnification. The Oversight Committee Members act as committee members only and not personally. The Oversight Committee members shall be liable only for their own acts or omissions resulting from their own gross negligence or willful misconduct. The Oversight Committee members may purchase and maintain insurance coverage for the Oversight Committee members against any such liability for gross negligence as an expense of the Oversight Committee members personally, and not as an expense of the Trust.

The Trust shall defend, indemnify, and hold the Oversight Committee members harmless from and against any and all uninsured claims, liabilities, costs, damages, or expenses arising from any contract, obligation, or liability made or incurred by the Oversight Committee members in good faith. Nothing in this Article Six shall be construed or interpreted to limit in any way the protections and immunities, if any, afforded to the Oversight Committee members pursuant to federal or state statutory and common law. Notwithstanding the foregoing, this indemnification, obligation of defense, and covenant to hold harmless shall not apply to any liability: (i) arising from a criminal proceeding where the Oversight Committee members had reasonable cause to believe that the conduct in question was unlawful; or (ii) where the Oversight Committee members are held to have acted with gross negligence or willful misconduct.

ARTICLE SEVEN TERMINATION OF THE TRUST

7.1 Termination of the Trust.

- A. Term. The Trustee may administratively terminate and wind up the affairs of the Trust when the Trustee is informed in writing that the Oversight Committee has determined that the Purposes of the Trust have been substantially met, that the distributions required under the MDL Settlement Agreement have been made and that no further transfers to the Trust will be made. Upon the Oversight Committee making that determination, the Oversight Committee shall submit a petition to the Court seeking authority to terminate the Trust pursuant to this Article. After reviewing the petition, the Court may terminate the Trust or may order the Trustee to undertake such further reasonable actions as the Court deems necessary and appropriate.

- B. Distribution of Trust Upon Termination. After the Trust has been administratively terminated, the Trustee shall dispose of any excess funds remaining in the Trust in accordance with the remaining provisions of this Section 7.1.
1. Unallocated Funds. Any excess funds remaining in the Trust that are not allocated to a particular Beneficiary or related to the CBF Deposit may be disposed of in any manner determined to be appropriate and approved and directed in writing by the Oversight Committee including any administrative costs and expenses.
 2. Allocated Funds. Any excess funds remaining in the Trust that are allocated to a Beneficiary who cannot be located by the Claims Administrator shall be disposed of by the Trustee at the written direction of the Oversight Committee in accordance with the terms of the Settlement Agreement. If the Settlement Agreement does not set forth the required method of disposition, the Trustee may dispose of excess funds allocated to a Beneficiary who cannot be located using any one or more of the following methods, as determined by the Oversight Committee in its sole and absolute discretion: (a) in accordance with the requirements of any applicable state unclaimed property law, or (b) as directed by the Court. The Claims Administrator (as that term is defined in the MDL Settlement Agreement) may rely on evidence of due diligence in attempting to locate a missing Beneficiary provided by the Beneficiary's Counsel. The Trustee should have no obligation to attempt to locate any missing Beneficiary.
 3. Beneficiary's Counsel Instructions. Notwithstanding Section 7.1B.2 of the Trust Agreement, if the Trustee receives written instruction from Beneficiary's counsel regarding the disposition of excess allocated funds allocated to a Beneficiary who cannot be located, the Trustee shall follow the instructions of the Beneficiary's counsel, and the Trustee shall have no liability for any actions taken in accordance with the instructions received from Beneficiary's counsel, and the Trustee shall be indemnified and held harmless by the Beneficiary's counsel for any action taken in reliance on instructions of such Beneficiary's counsel. In applying this provision, the GMB QSF Administrator for the GMB Settlement Agreement shall not be deemed to be a "Beneficiary" and neither its counsel nor counsel for any party to the GMB Settlement Agreement shall be entitled to make such instructions.
 4. Disbursement Costs. When determining the appropriate disbursement of excess funds, the Oversight Committee may consider the costs associated with each disbursement method.

ARTICLE EIGHT
IRC SECTION 468B COMPLIANCE

8.1 IRC Section 468B Qualified Settlement Fund.

- A. *Generally.* It is the intent of the Trustee, the Oversight Committee, the Court, Bayer, the Beneficiaries acting by and through the NCC, and this Trust Agreement that all steps shall be taken by the Trustee to ensure that the Trust established by the Court will qualify as, and remain, a “Qualified Settlement Fund” within the meaning of Section 468B of the Internal Revenue Code and the Regulations promulgated pursuant thereto. Transferor shall be classified as a “transferor” within the meaning of Regulation Section 1.468B-1(d)(1).

It is further intended that all transfers to the Trust will satisfy the “all events test” and the “economic performance” requirement of Section 461(h)(1) of the Internal Revenue Code and Regulation Section 1.461-1(a)(2). As such, Bayer shall not be taxed on the income of the Trust. The Trust shall be taxed on its modified gross income, excluding the sums, or cash equivalents of things, transferred to it. In computing the Trust's modified gross income, deductions shall be allowed for, inter alia, administrative costs and other incidental deductible expenses incurred in connection with the operation of the Trust, including, without limitation, state and local taxes, and legal, accounting, and actuarial fees relating to the operation of the Trust. All such computations of the Trust's modified gross income, as well as any exclusions or deductions thereto, shall be compliant and consistent with Treasury Regulation Section 1.468B-2(b)(1)-(4), 26. C.F.R. Section 1.468B-2(b)(1)-(4).

- B. *Powers of the Trustee.* The Trustee and/or the Oversight Committee shall be empowered to take all such actions, including such actions as may be inconsistent with those expressly set forth above, as the party deems necessary to ensure that the Trust is treated as a “Qualified Settlement Fund” under Section 468B of the Internal Revenue Code and the Regulations promulgated pursuant thereto. Further, the Trustee and/or the Oversight Committee may request that the Trustee petition the Court to amend, either in whole or in part, any administrative Article of this Trust Agreement, which causes unanticipated tax consequences or liabilities inconsistent with the foregoing.
- C. *Savings Provision.* Notwithstanding anything herein to the contrary, in the event that any portion of this Trust shall at any time be considered not to be in compliance with Internal Revenue Code Section 468B, as amended, together with any and all Treasury Regulations and Internal Revenue Services Notices, Announcements and directives thereunder, such offending Article of this Trust Agreement shall be considered null, void, and of no effect, without any action by any court or by the Trustee. The overarching purpose of this Trust is to at all

times be in compliance with Internal Revenue Code Section 468B and all administrative authority and announcements thereunder. In the event that this Section applies to render an offending Article null, void, or of no effect, Section 9.4 of this Trust Agreement shall still apply with respect to the remaining non-offending Articles of this Trust Agreement.

ARTICLE NINE MISCELLANEOUS

- 9.1 Interpretation.** As used in this Trust Agreement, words in the singular include the plural and words in the plural include the singular, and the masculine and neuter genders shall be deemed to include the masculine, feminine, and neuter. The description heading for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.
- 9.2 Notices.** All notices or deliveries required or permitted hereunder shall be in writing and shall be deemed given: (i) when personally delivered; (ii) when actually received by means of facsimile transmission; (iii) when received by overnight express courier delivery; or (iv) when delivered and receipted for by certified mail, postage prepaid, return receipt requested (or in the event of attempted delivery and refusal of acceptance, then on the date of the first attempted delivery). Any notice sent by facsimile transmission must be confirmed by delivery of an original or hard copy within five (5) business days following transmission.
- 9.3 Choice of Law.** This Trust Agreement shall be administered, governed by, construed, and enforced according to the laws of the State of Missouri applicable to contracts and agreements made and to be performed therein, except that all matters of federal tax law and this Trust's compliance with Section 468B of the Internal Revenue Code and Treasury Regulations thereunder shall be governed by federal income tax law.
- 9.4 Invalidity and Unenforceability.** If any term or Article of this Trust Agreement shall be invalid or unenforceable, the remainder of this Trust Agreement shall not be affected thereby, and each remaining term and Article of this Trust Agreement shall be valid and enforced to the fullest extent permitted by law.
- 9.5 Severability.** If the fulfillment of any obligation imposed by this Trust Agreement will result in a violation of law, then ipso facto, the obligation to be fulfilled shall be reduced by the least amount necessary to allow compliance with the law.
- 9.6 Entirety of Agreement.** This Trust Agreement supersedes any and all prior or contemporaneous oral discussions and agreements with respect to the subject matter hereof that might add to, vary, or contract this Trust Agreement. This Trust Agreement, together with the Attachments hereto and the Court Order(s), contain the sole and entire agreement and understanding with respect to the matters addressed therein.

- 9.7 **Binding Agreement.** The persons executing this Trust Agreement and Attachments hereto hereby covenant, warrant, and represent that: (i) each person is duly authorized to execute this Trust Agreement; (ii) this Trust Agreement is binding; and (iii) the execution of this Trust Agreement will not result in any breach or constitute a default under any obligation, undertaking, contract, or agreement to which such individuals are a party or by which such individuals may be bound.
- 9.8 **Counterparts.** This Trust Agreement may be executed in two or more counterparts, with the same effect as if all signatures on such counterparts appeared on one document, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 9.9 **Independent Legal and Tax Counsel.** The persons executing this Trust Agreement and Attachments have been, or have had the opportunity to be, represented by counsel and advisors of his, her, or its own selection in this matter. Further, such persons represent that they have not relied upon any individual, nor have they relied upon the draftsmanship reflected in this Trust Agreement. Such persons represent that they have not acted under duress or compulsion, whether legal, economic, or otherwise. Consequently, they agree that the language in all parts of this Trust Agreement shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against anyone. **IT IS SPECIFICALLY ACKNOWLEDGED AND UNDERSTOOD THAT THIS TRUST AGREEMENT HAS NOT BEEN SUBMITTED TO, NOR REVIEWED OR APPROVED BY, THE INTERNAL REVENUE SERVICE OR THE TAXING AUTHORITIES OF ANY STATE OR TERRITORY OF THE UNITED STATES OF AMERICA.**
- 9.10 **Continuing Jurisdiction/Registered Agent.** As specified in the Court Order(s), the Court shall retain full jurisdiction over the Trust for purposes of ensuring its compliance with the Court Order(s), this Trust Agreement, and any future order of the Court. The Trustee shall be a registered agent for the Trust for the purpose of personal service of process upon the Trust.
- 9.11 **Patriot Act.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity Trustee will ask for documentation to verify its formation and existence as a legal entity. Trustee may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

[This section left intentionally blank]

WITNESS the execution hereof, the parties have executed this Trust Agreement on the dates indicated below.

TRUSTEE(S) FOR THE GENETICALLY MODIFIED RICE MDL ELIGIBLE CLAIMANTS' QUALIFIED SETTLEMENT FUND:

_____, Trustee
[Address]
[Address]
[Address]

APPROVAL BY THE COURT:

Approved by the Court of _____
It is so ordered:
This ____ day of _____, 2011
The Honorable _____

AGREED AND APPROVED:
OVERSIGHT COMMITTEE:

Don Downing, Member

Adam Levitt, Member

TRANSFEROR:
Bayer

By: _____
Name: _____
Title: _____

EXHIBIT A
SETTLEMENT AGREEMENT

EXHIBIT B
COURT ORDER

EXHIBIT C
TRUSTEE

By execution of this agreement, U.S. Bank National Association hereby agrees to serve as Trustee in accordance with the terms of this Agreement and the attached Schedule to this exhibit.

SCHEDULE C-1
SCHEDULE OF TRUSTEE FEES

EXHIBIT D
OVERSIGHT COMMITTEE MEMBERS

In accordance with Section 3.2 of the Trust Agreement, the initial members of the Oversight Committee shall be:

1. Don Downing
2. Adam Levitt