

## **HOLD SEPARATE TRUSTEE AGREEMENT**

This Hold Separate Trustee Agreement (this "Agreement") by and between Richard M. Klein (the "Hold Separate Trustee") and The Dow Chemical Company ("Dow" or "Respondent") provides as follows:

**WHEREAS**, Dow anticipates executing with the United States Federal Trade Commission (the "Commission") an Agreement Containing Consent Orders ("Consent Agreement") incorporating a Decision and Order and an Order to Hold Separate and Maintain Assets ("Hold Separate Order") (collectively, the "Orders"), which, among other things, (i) will require Dow to divest its Clear Lake acrylic monomers business, North American UES latex polymers business, and hollow sphere particle business, (ii) will require Dow to hold the Clear Lake acrylic monomers business and North American UES latex polymers business (the "Held Separate Business") separate and apart from Respondent's other businesses, and (iii) will provide for the appointment of a Hold Separate Trustee to monitor Dow's compliance with its obligations under the Hold Separate Order;

**WHEREAS**, the Commission and Dow have agreed that Richard M. Klein may serve as Hold Separate Trustee pursuant to the Hold Separate Order;

**WHEREAS**, the Hold Separate Order further provides that Dow shall execute an agreement that confers all the rights, authority, and powers necessary to permit the Hold Separate Trustee to monitor Respondent's compliance with the terms of the Hold Separate Order as described in more detail in this Agreement; and

**WHEREAS**, the parties to this Agreement intend to be legally bound, subject only to the Commission's approval of this Agreement.

**NOW, THEREFORE**, the parties agree as follows:

All capitalized terms used in this Agreement and not specifically defined herein shall have the respective definitions given to them in the Orders.

### **ARTICLE I**

**1.1 Hold Separate Trustee's Areas of Responsibilities.** The Hold Separate Trustee shall be responsible for monitoring Respondent's compliance with Paragraph II of the Hold Separate Order ("Hold Separate Trustee's Areas of Responsibilities"). The Hold Separate Trustee shall have the responsibility, consistent with the terms of the Hold Separate Order and the Decision and Order, for monitoring the organization of the Held Separate Business; for managing the Held Separate Business through the Managers; for maintaining the independence of the Held Separate Business; and for monitoring Respondent's compliance with its obligations pursuant to the Hold Separate Order and the Decision and Order. By the date required by the Hold Separate Order, Respondent shall transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his duties and

responsibilities pursuant to the Hold Separate Order and consistent with the purposes of the Hold Separate Order.

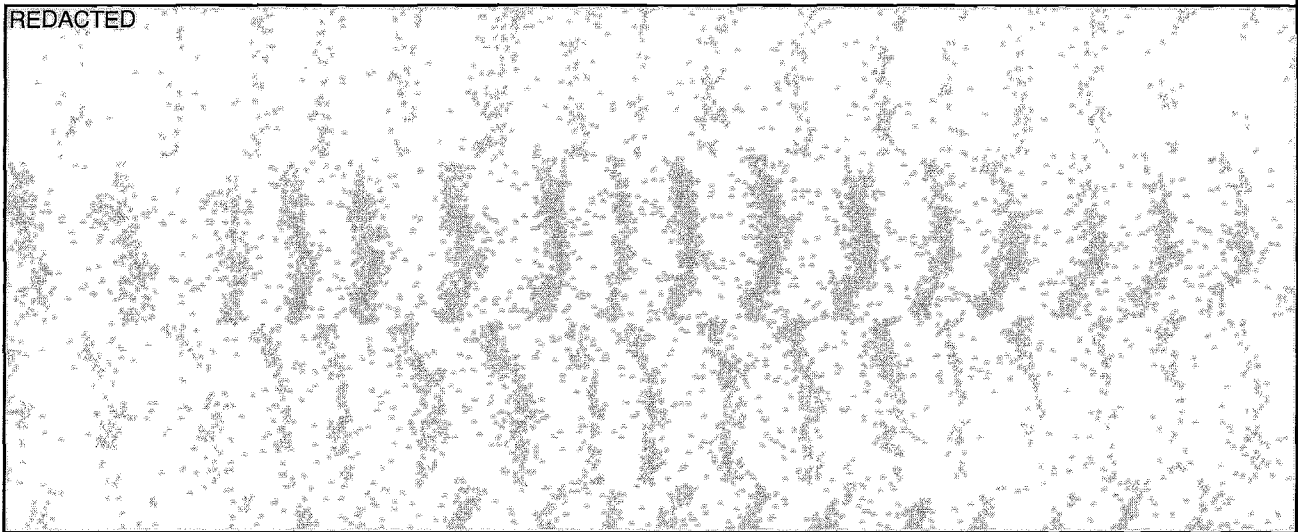
**1.2 Access to Relevant Information and Facilities.** The Hold Separate Trustee shall have full and complete access to the personnel, facilities, books, and records of Respondent related to the Held Separate Business or relating to Respondent's obligations under the Hold Separate Order, as the Hold Separate Trustee may reasonably request. Respondent shall develop such financial or other information as the Hold Separate Trustee may reasonably request and shall cooperate with any reasonable request of the Hold Separate Trustee. The Hold Separate Trustee shall give Respondent reasonable notice of any request for such access or such information. The Hold Separate Trustee shall attempt to schedule any access or requests for information in such a manner as will not unreasonably interfere with Respondent's operations. At the request of the Hold Separate Trustee, Respondent shall promptly arrange meetings and discussions, including tours of relevant facilities, at reasonable times and locations between the Hold Separate Trustee and employees of Respondent who have knowledge relevant to the proper discharge of his responsibilities under the Hold Separate Order.

**1.3 Hold Separate Trustee's Obligations.** The Hold Separate Trustee shall:

- a. carry out the Hold Separate Trustee's duties and responsibilities within the Hold Separate Trustee's Areas of Responsibilities, including submission of periodic reports to the Commission staff regarding Respondent's compliance with the Hold Separate Order;
- b. maintain the confidentiality of all confidential information, including Dow Confidential Information and Material Confidential Information, and any other information provided to the Hold Separate Trustee by Respondent, any Acquirer or Acquirers of the Held Separate Business or the Hollow Sphere Particle Business, any supplier or customer of the Respondent, or the Commission, and shall use such information only for the purpose of discharging his obligations as Hold Separate Trustee and not for any other purpose, including, without limitation, any other business, scientific, technological, or personal purpose. The Hold Separate Trustee may disclose Dow Confidential Information and Material Confidential Information only to:
  - i. persons employed by or working with the Hold Separate Trustee under this Agreement; and
  - ii. persons employed at the Commission.
- c. require any consultants, accountants, attorneys, and any other representatives and/or assistants retained by the Hold Separate Trustee to assist in carrying out the duties and responsibilities of the Hold Separate Trustee to execute a confidentiality agreement that requires such third parties to treat confidential information, including Dow Confidential Information and Material Confidential Information, with the same standards of care and obligations of

confidentiality to which the Hold Separate Trustee must adhere under this Agreement;

- d. maintain the confidentiality, for a period of five (5) years after the termination of this Agreement, of all other aspects of the performance of his duties under this Agreement and shall not disclose any confidential information, including Dow Confidential Information and Material Confidential Information, relating thereto;
- e. deliver to Respondent a copy of all written communications with and reports to the Commission; and
- f. upon the termination of the Hold Separate Trustee's duties under this Agreement, promptly deliver to the Assistant Director of the Compliance Division of the Federal Trade Commission all written and electronic materials (both originals and copies) that relate to the performance of the Hold Separate Trustee's responsibilities under this Agreement.



**1.5 Hold Separate Trustee's Indemnification.** Respondent shall be liable to indemnify and hold harmless the Hold Separate Trustee against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's duties hereunder, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Hold Separate Trustee.

**1.6 Disputes.** In the event of a disagreement or dispute between Respondent and the Hold Separate Trustee concerning Respondent's obligations under the Hold Separate Order, and, in the event that such disagreement or dispute cannot be resolved by the parties, either party may seek the assistance of the individual in charge of the Commission's Compliance Division.

**1.7 Conflicts of Interest.** If the Hold Separate Trustee becomes aware during the term of this Agreement that he has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Hold Separate Trustee of any of his duties under this Agreement, the Hold Separate Trustee shall promptly inform Respondent and the Commission of any such conflict.

## ARTICLE II

**2.1 Termination.** This Agreement shall terminate upon the earlier of: (a) the Effective Date of Divestiture of (i) the Acrylic Acid Business and the Latex Polymers Business, or (ii) the Hollow Sphere Particle Business, whichever of such dates is later; (b) Respondent's receipt of written notice from the Commission that the Commission has determined that Richard M. Klein has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Hold Separate Trustee; (c) with at least thirty (30) days advance notice to be provided by the Hold Separate Trustee to Respondent and to the Commission, upon resignation of the Hold Separate Trustee. If this Agreement is terminated for any reason, the confidentiality obligations set forth in Section 1.3 above will remain in force.

**2.2 Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by the substantive laws of Delaware, including all matters of construction, validity, and performance. The Hold Separate Order shall govern this Agreement and any provisions herein which conflict or are inconsistent with it may be declared null and void by the Commission and any provision not in conflict shall survive and remain a part of this Agreement.

**2.3 Disclosure of Information.** Nothing in this Agreement shall require Respondent to disclose any material information that is subject to a legally recognized privilege or that Respondent is prohibited from disclosing by reason of law or an agreement with a third party.

**2.4 Assignment.** This Agreement may not be assigned or otherwise transferred by Respondent or the Hold Separate Trustee without the consent of Respondent and the Hold Separate Trustee and the approval of the Commission. Any such assignment or transfer shall be consistent with the terms of the Hold Separate Order.

**2.5 Modification.** No amendment, modification, termination, or waiver of any provision of this Agreement shall be effective unless made in writing, signed by all parties, and approved by the Commission. Any such amendment, modification, termination, or waiver shall be consistent with the terms of the Hold Separate Order.

**2.6 Approval by the Commission.** This Agreement shall have no force or effect until approved by the Commission. Approval by the Commission will be deemed to have occurred five (5) days after the Hold Separate Order becomes final.

**2.7 Entire Agreement.** This Agreement, and those portions of the Hold Separate Order incorporated herein by reference, constitute the entire agreement of the parties and

supersede any and all prior agreements and understandings between the parties, written or oral, with respect to the subject matter hereof.

2.8. **Duplicate Originals.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

2.9. **Section Headings.** Any heading of the sections is for convenience only and is to be assigned no significance whatsoever as to its interpretation and intent.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement. The execution shall be effective as of the earlier of (i) the third business day after the date the Commission accepts the Agreement Containing Consent Orders, or (ii) December 31, 2008.

**HOLD SEPARATE TRUSTEE**

**RESPONDENT**

The Dow Chemical Company

  
Richard M. Klein

  
By: Scott R. Pernock  
Title: Managing Counsel