

## AGREEMENT OF TRANSFER OF TRUST

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### THE AMERICAN CHEMICAL SOCIETY PETROLEUM RESEARCH FUND

This Agreement made this 25<sup>th</sup> day of October, 2000, between MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Trustee-Transferor, and the AMERICAN CHEMICAL SOCIETY, of Washington, D.C., as Transferee,

#### W I T N E S S E T H :

**WHEREAS**, the Trustee-Transferor has decided to make this transfer to further the charitable, scientific and educational purposes as hereinafter set forth; and

**WHEREAS**, the Transferee, AMERICAN CHEMICAL SOCIETY, was chartered by Public Act 358 of the 75<sup>th</sup> Congress of the United States and is currently headquartered in Washington, D.C., and is subject to the oversight of the Office of the Corporation Counsel of the District of Columbia and the United States Congress; and

**WHEREAS**, the American Chemical Society is a publicly supported, federal income tax exempt organization pursuant to Sections 501(c)(3) and 509 of the Internal Revenue Code of 1986, as amended; and

**WHEREAS**, the Trustee-Transferor intends to fund this transfer with the entire assets of that separate trust known as the Petroleum Research Fund (the "1944 Fund"), created by Agreement dated October 26, 1944 (the "Trust Agreement"), and of which the Trustee-Transferor now serves as sole Trustee and the Transferee serves as the designated Qualified Recipient thereunder (as such term is defined under Article THIRD of the Trust Agreement); and

**WHEREAS**, the transfer of the entire assets of the 1944 Fund by the Trustee-Transferor to the designated Qualified Recipient hereunder in accordance with certain terms and conditions is expressly authorized by Article FOURTH, Paragraph (2) of the Trust Agreement.

**NOW, THEREFORE**, the Trustee-Transferor hereby assigns, transfers and sets over unto the Transferee the entire assets of the 1944 Fund, the receipt of which assets is hereby acknowledged by the Transferee:

**TO HAVE AND TO HOLD** said assets and such additional property, if any, as may hereafter be added thereto by any person or entity (said assets and

any such additional property and the proceeds, investments and reinvestments thereof being hereinafter collectively called the "Fund Account"),

**IN A SEPARATE ACCOUNT**, within the Transferee, but separate and apart from any other accounts of the Transferee, to be known as **The American Chemical Society Petroleum Research Fund** (the "Fund") and it shall be held exclusively for the charitable, scientific and educational uses and purposes hereinafter set forth.

**FIRST: A.** The Transferee shall hold, manage, and, subject to the provisions of Article FOURTH, invest and reinvest the Fund Account and shall collect and receive the income thereof, and shall pay over each year from the Fund Account the Annual Amount, as hereinafter defined to one or more recipients (each a "Recipient") as hereinafter defined. For the purposes of this Agreement, the terms 'income' and 'principal' shall have the same meaning as in New York Estates, Powers and Trusts Law Section 11-2.1, as if the Fund were a trust).

B. The term "Recipient" shall mean a corporation, foundation or other entity:

(1) Organized and operated exclusively for charitable, scientific, or educational purposes (such as, but not limited to universities), no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(2) which shall at any time have filed with the Transferee a written instrument by which it shall have agreed that any funds which may at any time be paid or distributed to it by the Transferee will be received by it subject to all the conditions, and will be used by it exclusively for the purposes, specified in Article SECOND; and

(3) which shall not have filed with the Transferee a written instrument disclaiming any interest in or right to receive any distributions thereafter to be made by the Transferee.

**SECOND:** The purposes for which the Annual Amount (as hereinafter defined), or any part thereof, shall be used by any Recipient thereof, and the conditions subject to which any such payment or

distribution is made, are as follows:

(a) The Recipient shall use all funds so paid or distributed to it exclusively for advanced scientific education and fundamental research in the "petroleum field," which may include any field of pure science which in the judgment of the Transferee may afford a basis for subsequent research directly connected with the petroleum field. Without limiting the generality of the foregoing, such education and research may include the exchange of scientists and university scientific students between American and foreign non-profit scientific or educational institutions, such as universities, and services incidental to fundamental research such as the translation of scientific literature relating to the petroleum field. The term "petroleum field" as used herein embraces (1) exploration for, and the production, transportation and refining of, petroleum, petroleum products and natural gas, and (2) the production and refining of substitutes for petroleum and petroleum products from natural gas, coal, shale, tar sands and like materials.

(b) Such advanced scientific education shall be carried on by or under the direction of the Transferee or may be delegated by the Transferee to other non-profit scientific or educational institutions, such as universities, to be selected by the Transferee.

(c) Such research shall be conducted by or under the direction of the Transferee or the conduct of particular research projects may be delegated by the Transferee to other non-profit scientific or educational institutions, such as universities, to be selected by the Transferee, but none of the results of any such research shall be turned into profit by the Transferee or any Recipient or any such institution to which the conduct of any project shall be so delegated.

(d) Comprehensive reports of such research shall be made available by the Transferee periodically, at least once in each year, to the public at large.

(e) All publications of the results of such research shall give credit to the original Donors who created the 1944 Fund.

(f) Every patent, United States or foreign, that shall be taken out by or on behalf of the Transferee, any Recipient or by or on behalf of any individual or institution acting at the direction of or on behalf of the Transferee or any Recipient in carrying out such research shall be immediately dedicated to the public, royalty free.

(g) The Transferee may invite proposals for research projects, or for educational or scientific work connected therewith, including proposals for fellowships.

(h) All direct or indirect expenses in connection with the above mentioned scientific

education and research may be paid or reimbursed to the Transferee or Recipient out of any funds distributed or becoming distributable by the Transferee, but the Transferee or Recipient shall not devote any such funds to its ordinary expenses or any other purpose not expressly authorized by this Agreement.

The object of this Agreement is to create a fund to advance the public welfare in accordance with the laws of the District of Columbia relating to endowment funds, and no part of the principal or income of the Fund Account shall at any time inure to the benefit of any private shareholder or individual nor shall it be used to carry on propaganda or otherwise attempt to influence legislation. The detailed purposes hereinabove stated shall be construed and given effect accordingly.

Nothing herein shall be deemed to prevent the Transferee, in its discretion, from investing any part of the Annual Amount (as hereinafter defined) pending determination by it of the best application to be made of such funds.

**THIRD:** So long as the Transferee, or any successor corporation which shall undertake to carry on substantially all its activities in the field of scientific research and education, shall continue to meet the qualifications of a Recipient, as hereinabove defined, the Transferee shall manage the Fund Account and shall annually pay out to one or more Recipients (including without limitation the Transferee, for advanced scientific education and fundamental research, which it may itself conduct consistent with Article SECOND hereof), which the Transferee shall select in the exercise of absolute discretion, a total amount (the "Annual Amount") defined as follows.

The Annual Amount shall be such amount determined each year by the Transferee, exercising sole discretion, provided, however, that the Annual Amount shall, unless limited by the following clause, not be less than the net income earned by the Fund Account in the preceding year, but in all events the Annual Amount shall never exceed five percent (5%) of the average of the net fair market value of the Fund Account for each of the three (3) immediately preceding calendar years, with such market value to be determined at the close of business on the last business day of each such year, and further provided that no principal of the Fund Account may be paid out if, at the time of payment, the principal balance of the Fund Account is (or would be as a result of the proposed payment) less than the historic dollar value of the Fund Account, which for the purposes of this Agreement, shall be Four Hundred Million Dollars (\$400,000,000). This historic dollar value has been determined in good faith after examining several calculation possibilities and it reflects the consensus of

the Trustee-Transferor, the Transferee and the Attorney General of the State of New York.

In distributing the Annual Amount as hereinabove defined, the Transferee shall first pay out income of the Fund Account and, to the extent income is not sufficient, then principal. To the extent that annual net income exceeds the Annual Amount, such excess income shall be added to principal and administered and disposed of as a part thereof.

**FOURTH:** Nothing in this Agreement shall be deemed to prevent the Transferee from taking, and the Transferee is hereby expressly authorized to take at any time or from time to time with the approval of Superior Court of the District of Columbia on notice to the Office of the Corporation Counsel of the District of Columbia and/or the Attorney General of the United States, any action which it may deem advisable in the nature of, or for the purpose of effecting, the transfer of the entire Fund Account to a corporation, foundation or other entity which meets the requirements of Paragraph B of Article FIRST (which may be at the time a Recipient hereunder), provided that in such case the transferee shall receive all property so transferred under the terms of an agreement which, in the judgment of the Transferee and the Superior Court of the District of Columbia, will reasonably ensure the continued accomplishment of the purposes of this Agreement and, in particular, the continued use and application each year of the Annual Amount in accordance with the provisions of Articles FIRST, SECOND and THIRD and the carrying on of research and development work in the petroleum field.

Upon completion of any transfer pursuant to the preceding paragraph, this Agreement may terminate, and in any case the Transferee shall have no further responsibility hereunder or in connection herewith.

**FIFTH:** The Transferee, in its absolute discretion, may receive and hold hereunder, as an addition to the securities or other property at the time comprising the Fund Account and as a part thereof, any securities or other property which shall be acceptable to the Transferee and which shall be transferred, assigned, delivered, devised or bequeathed to it by any person or entity.

**SIXTH:** If the Transferee shall become unable, unwilling or disqualified to act as Transferee hereunder in accordance with the terms and conditions hereof, when it shall not have made arrangements pursuant to Article FOURTH to transfer the Fund Account to a successor Transferee, a successor Transferee or successor Transferees shall be appointed

by the Superior Court of the District of Columbia in such manner as shall then be authorized by the laws of the District of Columbia as that Court may deem advisable. Any successor Transferee hereunder may be a corporation, foundation, other entity or a natural person.

Wherever used in this Agreement, except where the context may otherwise require, the term "Transferee" or "Transferees" shall mean the Transferee or Transferees from time to time in office hereunder; and in any provisions relative to the Transferee, words in the singular form shall, so long as there shall be more than one Transferee hereunder, include the plural and words in the neuter form shall include the masculine and the feminine.

**SEVENTH:** No Transferee serving hereunder shall be entitled to any compensation for serving in that capacity other than reasonable reimbursement for its direct or indirect expenses related to its services hereunder.

**EIGHTH:** Unless required by local law, no bond or other security shall be required of any Transferee, including any successor or successors to the Transferee named herein, in any jurisdiction.

No Transferee shall be liable for any loss or damage to the Fund Account or any part thereof or the income thereof at any time from any cause whatsoever unless such loss or damage is caused by the Transferee's own fraud, negligence, willful misconduct or material breach of the Agreement.

**NINTH:** The Trustee-Transferor, by the execution and delivery of this Agreement, completely surrenders all interest in any rights of supervision of any kind whatsoever over the Fund Account, shall not be deemed to have any rights by way of reverter or otherwise or rights which it might otherwise have to enforce the trust created by this Agreement, it being stipulated that jurisdiction over the enforcement of the trust created by this Agreement shall be vested in the Superior Court for the District of Columbia, and the Trustee-Transferor shall have no responsibility or liability for the Transferee or for the Fund Account subsequent to the transfer to the Transferee hereunder.

**TENTH:** The Transferee, on notice to the Office of the Corporation Counsel of the District of Columbia and/or the Attorney General of the United States, or the responsible officers of the District of Columbia or of the United States, may, at any time or from time to time, apply to the Superior Court of the District,

(a) as contemplated by Article FOURTH;

or

(b) for the purpose of obtaining a construction of this Agreement or the resolution of any questions which may arise under or in connection herewith; or

(c) for the purpose of the settlement of the accounts of the Transferee; or

(d) for the purpose of, or in connection with, any resignation by the Transferee and the appointment of a successor or successors; or

(e) for any other purpose permitted by law in connection herewith; but, except as hereinabove specifically required, the Transferee shall not be under any duty to institute, at any time, any judicial proceeding of the nature contemplated by this Article or to appeal from any order which may be made in any such proceeding and the Transferee shall not be liable in any event for failure to institute any such proceeding or for any action which it may take in good faith in reliance upon any order made in any such proceeding regardless of whether or not the time to appeal from any such order shall have expired.

To the extent that the parties hereto may validly so provide, it is hereby agreed that in any action or proceeding brought in any court the only necessary parties shall be the Transferee and the Office of the Corporation Counsel of the District of Columbia and/or the Attorney General of the United States; and that any order, judgment or decree which shall be entered in any such action or proceeding shall be valid and binding on all persons having or claiming any rights or interests under or in connection with this Agreement or the administration of the Fund Account created hereby, without the necessity of joining or giving any notice to any other persons or entities whatsoever.

**ELEVENTH:** The Transferee shall prepare an annual report of the administration of the Fund Account and shall file such report each year with the Office of the Corporation Counsel of the District of Columbia and with any similar or other office as it shall deem necessary or appropriate.

**TWELFTH:** A. In connection with the Fund Account, the Transferee may:

(1) delegate to committees, officers or employees of the Transferee, or agents, including investment counsel, the authority to act in place of the Transferee in the investment and reinvestment of the Fund Account;

(2) contract with independent investment advisers, and investment counsel or managers, banks or trust companies, so to act; and

(3) authorize the payment of compensation for investment advisory or management

services.

B. The Transferee may apply to the Superior Court of the District of Columbia for the release of a restriction imposed by this Agreement on the use or investment of the Fund Account in accordance with D. C. Code Section 32-407(1981 ed., as amended). The Office of the Corporation Counsel of the District of Columbia and/or the Attorney General of the United States shall be notified of the application and shall be given an opportunity to be heard. If the Court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part.

C. A release under this Article may not allow the Fund Account to be used for purposes other than the charitable, scientific and educational purposes stipulated in this Agreement.

**THIRTEENTH:** A. The Transferee by joining in the execution of this Agreement signifies its acceptance of the terms herein set forth.

B. This Agreement can be signed in counterparts, which together will constitute a single whole.

**IN WITNESS WHEREOF,** the Trustee-Transferor and the Transferee have executed this Agreement as of the day and year first written above.

**Transferor** Morgan Guaranty Trust Company of New York

**by:** Laura Powers

**Transferee** American Chemical Society

**by:** Brian A. Bernstein