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# *Deed of Amendment Amended and Restated Final Funding Agreement*

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**James Hardie Industries plc** (ARBN 097 829 895)  
("JHI plc")

**James Hardie 117 Pty Limited** (ABN 30 116 110 948)  
("JH117")

**The State of New South Wales**  
("NSW Government")

**Asbestos Injuries Compensation Fund Limited in its capacity as trustee  
for each of the Compensation Funds** (ACN 117 363 461)  
("Fund Trustee")

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**Date**19 DECEMBER 2017**Parties**

Name	<b>James Hardie Industries plc</b> a public limited company incorporated in Ireland
ARBN	<b>097 829 895</b>
Description	<b>JHI plc</b>
Notice details	2 <sup>nd</sup> Floor, Europa House Harcourt Centre, Harcourt Street Dublin 2, Ireland Facsimile: +353 (0) 1 479 1128 Attention: General Counsel and Chief Compliance Officer

Name	<b>James Hardie 117 Pty Limited</b>
ABN	<b>30 116 110 948</b>
Description	<b>JH117</b>
Notice details	Level 3, 22 Pitt Street Sydney NSW 2000 Facsimile: +61 (0) 2 9251 9805 Attention: General Counsel and Chief Compliance Officer

Name	<b>The State of New South Wales</b>
Description	<b>NSW Government</b>
Notice details	c/- The Department of Premier and Cabinet Level 12, 52 Martin Place Sydney NSW 2000 Facsimile: :+61 (0) 2 8574 7401 Attention: General Counsel, Department of Premier & Cabinet

Name	<b>Asbestos Injuries Compensation Fund Limited</b> in its capacity as trustee for each of the Compensation Funds established under the Amended and Restated Trust Deed dated 14 December 2006 between it as trustee and James Hardie Industries N.V. as settlor
ACN	<b>117 363 461</b>
Description	<b>Fund Trustee</b>
Notice details	Level 6, 56 Clarence Street Sydney NSW 2000 Facsimile: +61 (0) 2 9277 6699 Attention: General Manager

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## ***Background***

- A. JHI plc, JH117, the NSW Government and the Fund Trustee are parties to the AFFA.
- B. The promulgation of the *Wrongs (Part VB) (Dust and Tobacco-Related Claims) Regulation 2016* by the State of Victoria has triggered clause 13.4 of the AFFA.
- C. The parties wish to amend the AFFA by the introduction of a new clause 13.4A to address the matter.

## ***This Deed Witnesses***

### ***1. Interpretation***

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#### **1.1 Definitions**

These meanings apply unless the contrary intention appears:

**AFFA** means the document entitled “Amended & Restated Final Funding Agreement in respect of the provision of long term funding for compensation arrangements for certain victims of Asbestos-related diseases in Australia” dated 21 November 2006 between James Hardie Industries N.V., JH117, the NSW Government and the Fund Trustee, as amended.

**Corporations Act** means *Corporations Act 2001* (Cth).

#### **1.2 Interpretation**

Clause 1.2 of the AFFA applies to the interpretation of this deed.

### ***2. AFFA amendments***

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On and from the date of this deed, the AFFA is amended as set out in the Schedule.

### ***3. General***

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#### **3.1 Conflict**

If there is a conflict between the AFFA and this deed, the terms of this deed prevail.

#### **3.2 Consideration**

This deed is entered into in consideration of the parties' exchange of promises under this deed and the receipt of valuable consideration which is hereby acknowledged.

#### **3.3 Counterparts**

This deed may be executed in any number of counterparts, each of which, when executed, is an original. Those counterparts together make one instrument.

**3.4 Costs, expenses and duties**

Each party is responsible for its own costs, charges and expenses in connection with the preparation, negotiation and execution of this deed.

**3.5 Governing law and jurisdiction**

This deed is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, and waives any right to claim that those courts are an inconvenient forum.

**3.6 Further assurances**

Except as expressly provided in this deed, each party must, at its own expense, do all things reasonably necessary to give full effect to this deed and the matters contemplated by it.

**3.7 Notices**

- (a) A notice or other communication under this deed is only effective if it is given in a manner provided for in the AFFA as amended by this deed.
- (b) For the purposes of this clause, a party's address details are those set out in the AFFA, unless the party has notified a changed address, in which case the notice, consent, approval or other communication must be to that address.

## ***Schedule – AFFA Amendments***

The AFFA is amended by adding a new clause 13.4A as follows:

**“13.4A Impact of the *Wrongs (Part VB) (Dust and Tobacco-Related Claims) Regulation 2016***

- (a) The Parties acknowledge that the promulgation of the *Wrongs (Part VB) (Dust and Tobacco-Related Claims) Regulation 2016* by the State of Victoria has triggered clause 13.4.
- (b) Despite any other provision of this deed, the Related Agreements, the Transaction Legislation and the Release Legislation, to the extent that a Proven Claim which is the subject of a final judgment given, or binding settlement made, on or after 1 January 2018 includes an amount of damages in excess of the amount that a Claimant would have been otherwise entitled to due to a change in the basis of assessment of damages brought about by the *Wrongs (Part VB) (Dust and Tobacco-Related Claims) Regulation 2016* (or any other Victorian law that may replace that law but, in effect, restate those parts of it which change the basis of the assessment of damages), that excess amount must not be paid (whether in whole or in part and whether by a member of the JHISE Group, a Liable Entity or the Trustee) during the winding up period for the Liable Entities.
- (c) Having regard to the provisions of sub-clauses 13.4A(a) and (b), clause 13.4(c) shall be modified in its application to matters arising out of the *Wrongs (Part VB) (Dust and Tobacco-Related Claims) Regulation 2016 (Victoria)* (or any other Victorian law that may replace that law but, in effect, restate those parts of it which change the basis of the assessment of damages) so as to provide that clause 13.4(c)(i) shall continue to apply if, and to the extent that, an amount of additional damages of the kind referred to in clause 13.4A(b) is actually required to be paid by or on behalf of a member of the JHISE Group, a Liable Entity or the Trustee after 22 October 2016.