

To be used with an application for a new policy only

Draft Share Protection Trust

For Shareholders in a limited company



Draft Share Protection Trust for Shareholders in a limited company

The Settlor and Trustees should read the Important Notes below before completing the Declaration of Trust. “You” in the Notes below means the Settlor and the Trustees.

Checklist

Before sending the Trust to LV=, have you...

- Dated the Declaration?
- Completed the Settlor's details?
- Completed the Additional Trustees' details?
- Inserted the name of the Company?
- Completed the details of the application?
- Chosen the applicable law of the trust?
- Signed the Declaration and had those signatures witnessed?
- Crossed through mistakes (rather than using correction fluid) and have all parties initialled any changes?

Important notes

Before completing the Share Protection Trust, please read the following notes.

- 1** This documentation has been produced for consideration by you and your legal advisers. The suitability of the Trust will depend on your individual circumstances and LV= (as defined in clause 12.3 of Part B of the Trust) and its advisers accordingly accept no responsibility for ensuring that the Trust meets your requirements, its tax and legal effects and any loss occasioned as a result of any use or otherwise of the Trust.
- 2** You must ensure that you fully understand the terms of the Trust and how it works. It is your responsibility to seek legal or tax advice as appropriate to determine its suitability for your circumstances.
- 3** If you live in Scotland and want the trust to be governed by the law of Scotland you must indicate so in the box provided in the Trust. Otherwise the law of England will apply.
- 4** You should also ensure you have read and understood all the literature relating to your chosen policy for this Trust.
- 5** This Trust is designed for use with LV='s Business Protection life insurance or combined life and critical illness insurance for share protection arrangements. It is not designed to be used for Partnership Protection, Key Person Cover, Relevant Life Cover or family protection. Please contact LV= for other draft trusts we offer.
- 6** This Trust can be used only with applications for new single life LV= protection policies. It cannot be used with an existing policy.
- 7** The Settlor is the person who is creating the Trust. The Trustees will be the legal owners of the policy and their authority is required for any dealings with the policy. It is the Trustees who would make a claim for any policy proceeds.

- 8** It is generally a good idea to have at least two Trustees at any one time. Care should be taken when choosing Trustees. The people appointed must be over 18 years of age and of sound mind. The Trustees should be people who the Settlor believes will act in the best interests of the Beneficiaries. With Share Protection Trusts it is usual for all the Shareholders to be Trustees of all the Trusts effected for the benefit of each other.
- 9** The Trustees have wide powers to determine the shares in which the policy proceeds are distributed to the Beneficiaries. Although in practice the Trustees would normally distribute proceeds to enable the co-Shareholders to exercise their options or comply with obligations under a cross option agreement or alternative agreement, note that the Trustees are not compelled to distribute proceeds for this purpose. It is also a good idea for them to be resident in the United Kingdom for tax reasons. Solicitors and accountants can act as Trustees but they may charge for their services.
- 10** For the other Shareholders to benefit from this Trust they must also effect and maintain similar policies on similar trusts. It is anticipated that all the shareholders enter into a suitable cross option agreement or other similar arrangement. LV= offer a draft Cross Option Agreement for consideration by the Shareholders and their legal advisers.
- 11** Please note that LV= will only accept instructions from Trustees who have had their identity verified. We may also need to confirm the identity of other individuals relating to the Trust. We may do this by using reference agencies to search sources of information; this will not affect credit ratings. If this identity search fails, we may ask the parties for documents to confirm their identity. By signing this Declaration, all parties to this Declaration have agreed that we can verify their identity and that, if required by LV=, the Trustees will take all reasonable steps to obtain for LV= evidence of identification for any of the Beneficiaries of the Trust.
- 12** LV= present this draft Trust to reflect the law as at 1 October 2015. LV= and its advisers cannot accept any responsibility for loss, damage or other claim that may arise from the use of this draft Trust or the way in which you complete the Declaration. We therefore strongly recommend that you consult your own legal or tax adviser before proceeding.
- 13** Bear in mind if you are completing this trust using the LV= Online trust tool, the tool doesn't provide advice as to whether this trust is appropriate for your particular requirements. We therefore strongly recommend that you consult with your legal or tax advisers before proceeding.
- 14** If you are completing this form on paper (rather than using the LV= Online Trusts tool) use CAPITALS and black or blue ink throughout. If you make a mistake while completing the Declaration, please correct the error by crossing out (do not use correction fluid) and the Settlor and the Trustees should initial the change.
- 15** A completed Declaration should be given to your financial adviser at the same time as applying for the policy. If the policy is not made subject to trust from the commencement of the policy, this draft Trust will not be appropriate. In any event, adverse tax consequences can arise if a policy to provide the funds for share purchase between Shareholders is conveyed into trust after the policy has commenced.

Draft share protection trust for Shareholders in a limited company

Part A. Date of trust

The date inserted for Part A must be a date on or after the last person signs on page 11 and must be a date before the new policy comes into force.

This declaration of trust is made on the _____ day of _____ 20[]

By the Settlor and the Trustees. _____

Part B. Definitions

1 The 'Settlor'

Please insert the full name, address and the date of birth of the Settlor. The Settlor will automatically be a Trustee.

Name _____

Address _____

Postcode _____

Date of Birth _____ / _____ / _____ (DD/MM/YYYY)

2 The 'Additional Trustees'

Insert the full names, addresses and dates of birth of the Additional Trustees.

Additional Trustee 1

Name _____

Address _____

Postcode _____

Date of Birth _____ / _____ / _____ (DD/MM/YYYY)

Additional Trustee 2

Name _____

Address _____

Postcode _____

Date of Birth _____ / _____ / _____ (DD/MM/YYYY)



Additional Trustee 3

Name _____

Address _____

Postcode _____

Date of Birth _____ / _____ / _____ (DD/MM/YYYY)

Additional Trustee 4

Name _____

Address _____

Postcode _____

Date of Birth _____ / _____ / _____ (DD/MM/YYYY)

3 The 'Trustees'

The 'Trustees' shall mean the Settlor and the Additional Trustees and any other trustees for the time being of this Trust.

4 The 'Beneficiaries'

The 'Beneficiaries' shall mean the individuals beneficially owning shares in the Company but so that no Excluded Person shall be capable of benefiting.

5 The 'Default Beneficiaries'

The 'Default Beneficiaries' shall mean the individuals for the time being beneficially owning shares in the Company but excluding the Settlor and anybody who has acquired shares in the Company as a result of the death of the Settlor.

6 The Company

Please insert the name of the Company here.

The 'Company' means _____
and any successor company, Partnership or limited liability Partnership carrying on the operations of the said Company.

7 Name of Trust

Please insert name of Trust here.

This Trust shall be called _____ Share Protection Trust.

8 Governing Law

The law of England governs the validity of this Trust, and its construction, effects and administration unless the Settlor has initialled the below in which case this Trust, its validity, construction, effects and administration will be governed by the law of Scotland.

If you are domiciled (normally live in) Scotland you should initial the below. If you are domiciled in England, Wales or Northern Ireland you should leave the below blank.

Initials

Proper law - Scotland

9 Excluded Persons

An Excluded Person is a person excluded from benefit by the Trustees exercising their power to exclude in accordance with clause 4 of Part C. In addition but subject to sub clause 3.5 of Part C the Settlor shall be an Excluded Person and this exclusion shall not be revocable.

10 The 'Trust Fund'

10.1 - The Trust Fund means the Policy set out in the Schedule to this Declaration together with any and all other property at any time added to this Trust by way of a settlement, capital accretion, accumulation of income or otherwise and all assets from time to time representing the same.

10.2 - The Trust Fund shall include any accidental death benefit cover that LV= may give pursuant to the application to LV= for the new policy as set out in the Schedule to this Declaration.

11 The 'Trust Period'

The Trust Period means the period ending on the last day of the period of 125 years from the date of this Declaration (which is the applicable perpetuity period) or such earlier date as the Trustees shall at any time specify by deed not being a date earlier than the date of execution of such deed or later than a date previously specified.

12 Construction

12.1 - In this Declaration words importing the singular shall include the plural and vice versa. Words importing a gender include every gender.

12.2 - The notes in the margin are for the purposes of information only and shall not be used in the construction of the Trust or any part of it.

12.3 - LV= shall mean Liverpool Victoria Friendly Society Limited.

12.4 - 'Policy' shall mean the policy or policies effected pursuant to the application to LV=, as set out in the Schedule to this Declaration, and shall include any variation or amendment to the same.

12.5 - "Capacity" shall mean mental capacity within the provisions of the Mental Capacity Act 2005 where this Trust is governed by the law of England; and within the provisions of the Adults with Incapacity (Scotland) Act 2000 where this Trust is governed by the law of Scotland; or any Act which supersedes either Act as appropriate.

Part C. Key provisions

1 Appointing the Trustees

In signing this Declaration the Settlor appoints the Trustees to act as the trustees of this Trust and the Trustees agree to act as the trustees of the Trust (as evidenced by them signing this Declaration) in accordance with the Trust's powers and provisions set out below.

2 Trust Request

The Settlor hereby requests and declares that the Policy be issued by LV= to the Settlor to hold on trust with the Additional Trustees subject to the powers and provisions of the Trust as set out in this Declaration.

3 Trust Provisions

3.1 - Subject to sub clause 3.5 the Trustees shall hold the Trust Fund and the income thereof for the benefit of any one or more of the Beneficiaries upon such trusts (including discretionary and protective trusts) and in such shares and with and subject to such trusts powers and provisions (exercisable by any person) as the Trustees shall at any time or times appoint by deed or deeds executed during the Trust Period which may be revocable during the Trust Period or irrevocable.

3.2 - Subject to and in default of any such appointment and subject to sub clauses 3.4 and 3.5 the Trustees shall hold the Trust Fund and the income thereof absolutely for the Default Beneficiaries and if more than one in the same proportions as each such Beneficiary's shareholding in the Company bears for the time being to the aggregate of all such Beneficiaries' shareholdings in the Company excluding the shareholding of the Settlor and of any Shareholder(s) precluded from benefiting by sub clause 3.4.

3.3 - The trusts hereof shall carry the intermediate income and where this Trust is subject to the law of England section 31 of the Trustee Act 1925 shall not apply.

3.4 - Notwithstanding the foregoing, no person shall be capable of benefiting under sub clauses 3.1 and 3.2 unless he has settled and maintained a similar contract of life insurance, critical illness and/or terminal illness on his own life on trusts similar to those contained herein for the Beneficiaries not excluded from benefiting by this sub clause 3.4 and the benefit to which any such person would but for this sub clause 3.4 be entitled shall accrue to and form part of the entitlement of the person or persons not so excluded by this sub clause 3.4 from benefiting and if more than one in proportion to the entitlement inter se that they have in the absence of this sub clause 3.4.

3.5 - Notwithstanding the provisions in sub clauses 3.1 and 3.2 if:

- (a) the Settlor should cease to be a beneficial holder of any shares in the Company before the occurrence of the event upon which the Policy proceeds become payable or
- (b) the Company should be dissolved other than as a result of the death of the Settlor before the occurrence of the event upon which the Policy proceeds become payable then the Trust Fund and the income thereof shall be held for the benefit of the Settlor absolutely.

4 Power to exclude

4.1 - The Trustees may at any time or times during the Trust Period, declare by deed or deeds that the objects or persons or classes of objects or persons named or specified (whether or not ascertained) in such deed or deeds who are, would or might, but for this clause, be or become Beneficiaries or otherwise able to benefit, as the case may be, shall, in relation to the whole or any part of the Trust Fund, be excluded from benefit (both direct and indirect) and shall be known as 'Excluded Persons'.

4.2 - The power conferred by sub clause 4.1 shall not be capable of being exercised so as to take away any interest to which any of the Beneficiaries has previously become indefeasibly entitled.

4.3 - Any declaration made pursuant to sub clause 4.1 may be revocable, during the Trust Period, or irrevocable to take effect before the end of the Trust Period and shall have effect from the date (not being a date earlier than the date of such instrument) specified in the deed.

5 Trustees' Powers

In addition to the powers given to them by law, the Trustees shall have the following powers.

5.1 - The Trustees shall have power to invest the Trust Fund in such manner as if they were absolute owners beneficially entitled.

5.2 - The Trustees are under no obligation to diversify the Trust Fund.

5.3 - The Trustees shall have power to effect any life insurance policy on the life of any person or persons, accept assignments of a policy to the Trust and exercise any option under any policy held by the Trustees and to sell, charge, assign or surrender the whole or any part of such policy. For the avoidance of doubt any new policy or increase or decrease of benefits secured by any policy or by any new policy which is effected under any options which are contained in any policy shall be subject to the same Trust as set out in this Declaration.

5.4 - The Trustees shall have power to borrow money on such terms and security as they think fit.

5.5 - The Trustees shall have power to lend money to any of the Beneficiaries on such terms and security as they think fit.

5.6 - The Trustees shall have power revocably or irrevocably to delegate any power or powers in making, managing, realising or otherwise dealing with any property comprised in the Trust Fund to any person or persons other than the Settlor upon such terms as to remuneration or otherwise as the Trustees may think fit and no Trustee shall be responsible for the default of any such agent if the Trustee in question employed or incurred expense in employing him in good faith.

6 Administrative Provisions

6.1 - Payments to Trustees

Any Trustee for the time being (other than the Settlor) shall:

- (i) be entitled to recover all reasonable expenses; and
- (ii) being a solicitor or other person or corporate body engaged in any profession or business be entitled to be paid all usual professional or other charges for business done in relation to the Trust.

6.2 - Appointment of Trustees

Unless the Settlor has lost Capacity there shall be vested in the Settlor the power of appointment of a new Trustee and/or additional Trustee(s).

Subject thereto the power to appoint new or additional Trustees shall be vested in the Trustees.

6.3 - Removal of Trustees

- (a) As long as there are at least two other Trustees, if a Trustee cannot be found after reasonable efforts have been made to find him, the remaining Trustees can discharge the missing Trustee. It is up to the remaining Trustees to decide whether reasonable efforts have been made to find the missing Trustee and no other person shall be under any duty to ensure that it was proper for the Trustees to have exercised their power to discharge the missing Trustee.



(b) A majority of the Trustees shall have power by deed to remove a Trustee who has lost Capacity provided that:

(i) at least two Trustees remain after such removal, and

(ii) the loss of Capacity has been confirmed by a written report from the General Practitioner of the Trustee being dismissed,

And for the avoidance of doubt a removal under this provision may take effect even if the Trustee being removed is the Settlor or a Beneficiary under this Trust.

Provided that where there are only two individuals acting as Trustees and one of them has lost Capacity, the power to remove under paragraph (b). of this clause 6.3 will vest in the other Trustee provided a new Trustee is appointed simultaneously with the removal of the incapable Trustee.

(c) If a Trustee other than the Settlor becomes incapable of benefiting under this Trust because he has ceased to hold beneficially any shares in the Company the remaining Trustees shall have power by deed to remove such a Trustee provided at least two Trustees remain after such removal at least one of whom is not the Settlor.

6.4 - Power to vary administrative provisions

When in the management or administration of the Trust Fund any transaction is, in the opinion of the Trustees, expedient but cannot be effected by reason of the absence of any power for that purpose, the Trustees may by deed confer on themselves either generally, or in the particular instance, the necessary power for the purpose and on the execution of such a deed the Trustees will have such power as if it had been expressly conferred on them by this Declaration.

7 Exercise of Powers

7.1 - Subject to sub clause 3.5, none of the Trust powers or provisions shall operate or be exercised so as to allow any part of the Trust Fund or the income arising from it to be paid, transferred or applied directly or indirectly to or for the benefit of the Settlor in any circumstances whatsoever.

7.2 - The Trustees shall have power by deed or deeds revocable (whether by the person making such deed or some other person) during the Trust Period or irrevocable wholly or partially to release or restrict the future exercise of any power hereby conferred on them (including this power) whether or not of a fiduciary nature and so as to bind their successors.

8 Protection of the Trustees

No Trustee (other than a professional Trustee) will be liable for any loss to the Trust Fund or part of the Trust Fund at any time unless that loss resulted from personal dishonesty or knowing breach of trust or, in the case of a paid Trustee, negligence.

Schedule

The Policy

Name of Company: LV=

Description of Policy

Date of Application / / (DD/MM/YYYY)

Life Insured (the Applicant)

Part D. Signatures

Please ensure that all signatures are witnessed by an independent person. The same person can witness all signatures. Witnesses must be adult and not someone already named in the Trust nor their spouse or civil partner. If the Settlor lives in Scotland the location and the date of signing must also be stated. Every person must sign in the presence of a witness, who also signs and adds his/her full name and address. Your witness must be physically present in the same place as you at the time you sign. This applies even if you are completing this document using our online service.

IN WITNESS whereof the parties have signed this Declaration on the date stated above as follows
Once all the parties have signed, please insert the date of the Declaration in Part A on page 3.

The Settlor

Please insert full name of Settlor.

Name of Settlor: _____

Signed by the said Settlor: _____

Please insert full name of Witness.

In the presence of Witness: _____

at (place of signing) _____ (law of Scotland only)

on (date of signing) _____ / _____ / _____ (law of Scotland only)

Signature of Witness: _____

Address of Witness _____

Postcode _____

Date of Birth _____ / _____ / _____ (DD/MM/YYYY)

Additional Trustee 1

Please insert full name of the first additional Trustee.

Name of the Trustee: _____

Signed by the said Trustee: _____

Please insert full name of Witness.

In the presence of Witness: _____

at (place of signing) _____ (law of Scotland only)

on (date of signing) _____ / _____ / _____ (law of Scotland only)

Signature of Witness: _____

Address of Witness _____

Postcode _____

Date of Birth _____ / _____ / _____ (DD/MM/YYYY)



Additional Trustee 2

Please insert full name of the second additional Trustee.

Name of the Trustee: _____

Signed by the said Trustee: _____

Please insert full name of Witness.

In the presence of Witness: _____

at (place of signing) _____ (law of Scotland only)

on (date of signing) _____ / _____ / _____ (law of Scotland only)

Signature of Witness: _____

Address of Witness _____

Postcode _____

Date of Birth _____ / _____ / _____ (DD/MM/YYYY)

Additional Trustee 3

Please insert full name of the third additional Trustee.

Name of the Trustee: _____

Signed by the said Trustee: _____

Please insert full name of Witness.

In the presence of Witness: _____

at (place of signing) _____ (law of Scotland only)

on (date of signing) _____ / _____ / _____ (law of Scotland only)

Signature of Witness: _____

Address of Witness _____

Postcode _____

Date of Birth _____ / _____ / _____ (DD/MM/YYYY)

Additional Trustee 4

Please insert full name of the fourth additional Trustee.

Name of the Trustee: _____

Signed by the said Trustee: _____

Please insert full name of Witness.

In the presence of Witness: _____

at (place of signing) _____ (law of Scotland only)

on (date of signing) _____ / _____ / _____ (law of Scotland only)

Signature of Witness: _____

Address of Witness _____

Postcode _____

Date of Birth _____ / _____ / _____ (DD/MM/YYYY)

You can get this and other documents from us in Braille or large print by contacting us.



Liverpool Victoria Friendly Society Limited: County Gates Bournemouth BH1 2NF.

LV= and Liverpool Victoria are registered trademarks of Liverpool Victoria Friendly Society Limited (LVFS) and LV= and LV= Liverpool Victoria are trading styles of the Liverpool Victoria group of companies. LVFS is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority, register number 110035. Registered address: County Gates, Bournemouth BH1 2NF. Phone: 01202 292333.

0026937-2019 04/19