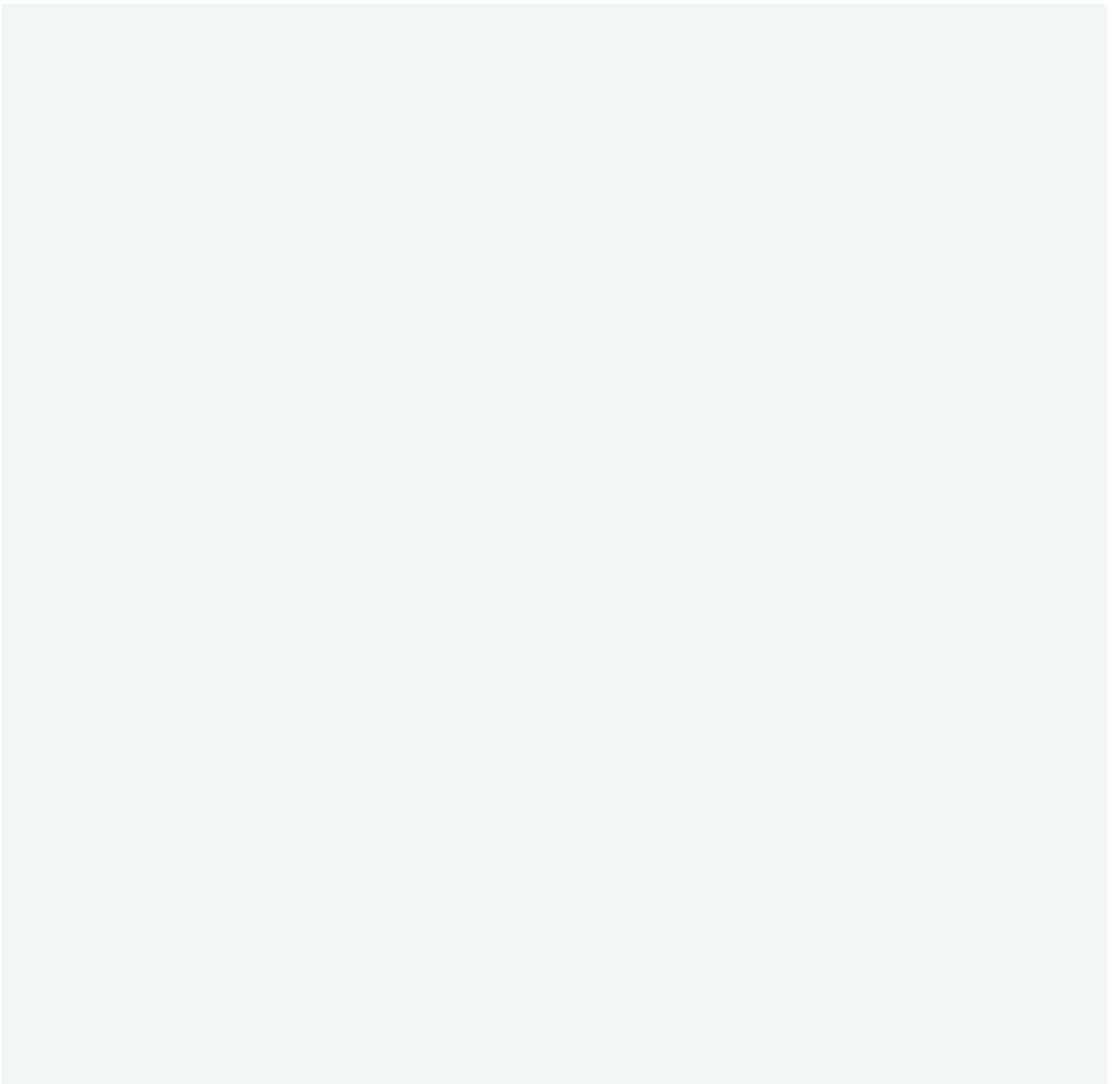


Flexible Business Trust Deed



The documentation for the Flexible Business Trust is provided in draft format for the approval of your legal advisers. The appropriateness of this trust will depend on the circumstances of each case. Advice is essential.

What is it?

A flexible trust for business protection designed for use with life assurance policies with or without critical illness cover. It can only be used by business owners (whether trading through a partnership, a limited liability partnership ('LLP') or a limited company) who are applying for a new policy. It is expected that each business owner will take out a policy subject to a similar trust.

This trust deed is for a single settlor only and not for joint settlors.

Aims of the trust

To ensure that (regardless of whether your business is a company, LLP or partnership), where you and your co-business owners are entering into an arrangement under which, if you die or suffer from a critical illness, funds will be available for the others to buy your interest in the business.

To ensure that funds are available if you are a partner to provide cover for loss of profits (or other financial loss) arising from your death or critical illness. This method of providing key person cover (sometimes also called business continuation insurance) could also be suitable for members of an LLP. For most shareholders though it is more likely that key person cover will be effected by the company without the use of a trust. The appropriate route in each case will depend on your circumstances. You should discuss your options with your adviser.

To ensure that, if the benefits of the life assurance policy are paid on your death, they are paid into the trust without the delay that would arise from the need to obtain a grant of probate/letters of administration on your estate thus making funds available to your co-owners quickly to enable them to purchase your business interest from your estate. There will need to be at least one surviving trustee at the date of your death to avoid probate delay. Payment of any benefits following critical illness will be made to the trustees on acceptance of the claim.

When should this trust not be used?

- If you are taking out a policy for your own personal needs or for the benefit of persons you are not in business with.
- If the cover is being effected by a company.
- If your policy is to be assigned as security for a loan.
- If your policy is already in force.

How does it work?

A trust is a legal method of holding a life assurance policy for the benefit of the person or persons (called the 'beneficiaries') you wish to benefit under the policy. In the case of the Flexible Business Trust this will be your co-owners. Of course, you will be a beneficiary under your co-owners' policies.

A policy made subject to the Flexible Business Trust belongs, legally, to the trustees. You are automatically a trustee and you will normally appoint your co-owners to act as trustees with you.

Under the Flexible Business Trust, the trustees have power to appoint the benefits to any of the people who are owners of the business and who are taking part in the purchase arrangements. The trustees must act unanimously. If an irrevocable appointment is not made within two years of your death or critical illness, as appropriate, the policy benefits will be held for the absolute benefit of the beneficiary or beneficiaries identified in Box 'B' and, if there is more than one beneficiary, in the shares specified. If no beneficiaries are named in Box 'B', your co-business owners will benefit in the proportions in which they own the business, excluding your share.

For example, if you had three partners and all four of you owned the business equally, the surviving three would each be entitled to one-third of the policy proceeds. In return, you will be a beneficiary of the trusts of the policies effected by your co-owners on the same basis. If you leave the business or sell your business interest, the policy's benefits will revert back to you.

If benefits are paid on your critical illness, the trustees (including you) will have two years to decide how to distribute the benefits. It will usually be up to you to decide if you wish to sell your business interest to your co-owners. This right would usually be reflected in an appropriate agreement – Zurich provide a draft on this basis. If you suffer a critical illness covered by the policy the trustees will receive the policy proceeds and if your business interest is to be sold, they will pay the proceeds to your co-owners to enable them to make the purchase. If your business interest is not to be sold at that time then the trustees would usually retain the proceeds (possibly investing them) until a purchase takes place following your death.

When the policy proceeds are paid to the beneficiaries (i.e. the life assured's co-owners) via the trustees, they will usually be free of inheritance tax, although there may be some comparatively rare circumstances when a tax liability may arise, as explained below. As long as there is an appropriate purchase agreement in place, the remaining co-owners can purchase the deceased, or critically ill owner's business interest. This means that the business owners' desire to maintain control over the business will be satisfied while the family of the deceased owner (or other beneficiaries under the deceased's will) or the critically ill owner will receive financial compensation through the receipt of the consideration for their business interest.

To ensure there are no adverse tax implications, only the owners who are involved in the business arrangements may benefit under the trust.

How is the trust set up?

Completion of the form is very straightforward – see the notes about boxes 'A', 'B' and 'C'. Your full name must be written in the space provided (as the 'Settlor').

Box 'A' – you must write the name of the business (i.e. the company, partnership or LLP) in the box provided.

Box 'B' – you should only complete this box if you wish your current co-partners, co-members or co-shareholders to benefit on your death or critical illness in proportions that are **different** from the proportions of the partnership capital or company shares (excluding your interest in the business) that they own or if not all your co-owners are to benefit (e.g. because not all are taking part in the arrangement).

You must not include yourself here.

If you do need to complete Box 'B' you should write in the names of your current co-partners, co-members or co-shareholders who are to benefit from the policy and the percentage share of the policy proceeds that you wish each of them to receive. This share should reflect the percentage of your holding that you want them to be able to acquire. **Please ensure that the shares add up to 100%.**

If you do not complete Box 'B', then the currently entitled beneficiaries will be your co-business owners in the proportions in which they own the business, excluding your share.

In the boxes underneath the box marked 'B', you should sign and date the deed and your signature must be witnessed by an individual who is neither a trustee nor a beneficiary under the trust, nor your spouse or civil partner.

Box 'C' – you should write in the full name and address of each additional trustee and each trustee should sign in the box. In business arrangements it is usual for all the business owners taking part in the arrangement to be the trustees of all the relevant policies that have been effected in trust. This means that you should normally appoint your co-owners as trustees and you will be a trustee of your co-owners' policies. You can appoint up to four additional trustees in the boxes provided. If you need to appoint more than four, you can provide their details on a sheet of paper, marked with the policy number, which you should sign. You, the settlor, are automatically a trustee of your trust and so you should not be included in this box.

Frequently asked questions

Can I remove a trustee?

No, this trust does not allow you, as the settlor, to remove a trustee. As this trust is designed to be used in commercial arrangements between business owners, all the business owners taking part in the arrangements should, as trustees, be involved in any decisions. However, the trustees may remove a trustee who is missing and cannot be found.

Can I change the trust provisions once the trust has been set up?

No. The trust is irrevocable and generally any changes can only be made with the agreement of the Court. Remember that this trust is effected specifically for the purpose of the purchase of a business interest or, where appropriate, business continuation cover, and it's usual for any action with regard to the policy or the distribution of the benefits to be taken together by all the business owners. If you leave the business, or if all of the business owners decide to end the arrangement, then the trustees can assign the policy back to you under the terms of the trust and the trust will be terminated. After that you can deal with the policy as you wish.

Can any member of my family be a beneficiary, for example so that they could benefit if the proceeds of the policy are more than is needed for the purchase of my business interest?

Although such a provision may sound useful, the inclusion of any person who is not also a co-owner and a party to the purchase arrangement as a beneficiary under the trust would have adverse inheritance tax consequences and therefore this is not allowed under the terms of the Flexible Business Trust. Family members who are co-owners can be included but special care needs to be exercised in these circumstances to ensure that the arrangement is fully commercial.

Is the Flexible Business Trust sufficient to ensure that the purchase of my business interest takes place after my death and/or on critical illness?

The Flexible Business Trust only ensures that the policy proceeds are paid to the trustees for the benefit of the intended beneficiaries. These would normally be your co-owners who are effecting the purchase of your business interest. However, to ensure that the purchase takes place, all the owners need to enter into an appropriate purchase agreement. Zurich can provide a separate draft agreement for this purpose for consideration by your legal advisers.

Why do the trustees only have two years to decide how to distribute the policy proceeds?

Two years should be sufficient to decide whether any purchase of a business interest is going ahead and who, depending on the circumstances, should receive the funds. In the case of the purchase of a business interest after your critical illness, this also ensures that your co-owners who will be buying your business interest will become entitled to the funds even if all of you cannot get together to make a decision on the distribution of the funds because, for example, you (being one of the trustees) are too ill to attend.

Can I and my co-business owners make a similar arrangement using a trust which has less flexibility?

A 'fixed' or 'absolute' trust would not permit any change of beneficiaries. Most would consider this to be inappropriate for businesses where the owners could change. For such a trust, however, the entry, periodic and exit charge for inheritance tax (see below) would not have to be considered. These charges are explained in the following section of these notes, headed 'Inheritance tax'.

Is a separate trustee bank account needed?

As Zurich will make any payment to all the trustees you should consider setting up a trustee bank account before the proceeds are paid.

Inheritance tax

Inheritance tax (IHT) is a complex subject. These notes are not comprehensive and are intended only to give a broad outline of our understanding of the tax position on 1 July 2018.

What are the IHT consequences of setting up the trust?

Provided you have entered into an arrangement with your co-owner(s) for the sale and purchase of your interest in your business on a commercial, arm's length basis there should be no IHT implications on effecting the policy under trust. Normally, when the settlor of a trust can benefit under the trust, the IHT gift with reservation rules can apply which have the effect of placing the value of the trust property (the policy) in the settlor's taxable estate. However, if the arrangement is commercial (as it will be in most cases for business owners dealing on an arm's length basis), the payment of the policy premiums by the co-owners will not amount to gifts. Therefore, the IHT gift with reservation rules will not apply.

Although, in a fully commercial arrangement, the payment of the policy premiums will not be gifts for IHT purposes, there may be IHT implications later on. This is because, for IHT purposes, the trust is a settlement which means that special IHT charging rules apply, even though the arrangement is made on a commercial basis. In most cases though there will be no problem.

Let's look at IHT in a little more detail.

First, it is important to remember that the policy premiums (as stated above) are unlikely to be transfers of value (gifts) and that the sum assured will be paid to the trustees free of tax. However, under the special IHT charging rules there may be IHT charges on every 10-year anniversary of the trust (the 'periodic charge') or whenever property leaves the trust (e.g. when the policy proceeds are paid out by the trustees to the beneficiaries) – the 'exit charge'. It is important to stress that, in most cases, no IHT charge will arise – see below for more detail. However, especially where large sums assured are involved, it is important to be at least aware of the possible IHT consequences.

Exit charge in first 10 years and the 10-year periodic charge

First, let's consider payments made by the trustees to the beneficiaries during the first 10 years of the trust's existence.

As long as you have not made chargeable transfers in excess of the available nil rate band (£325,000 in the tax year 2018/19) in the 7 years leading up to the establishment of the trust there will be no exit charges in the first 10 years. It is also unlikely that a periodic charge will arise at the 10-year anniversary unless the trust fund is then of considerable value. This may be the case in the unlikely event that the sum assured has been paid and the proceeds have been retained by the trustees and are still held by the trustees at the time of the 10-year anniversary, or where the life assured is in serious ill-health at the time of the periodic charge. However, where the policy is still in force at a 10-year anniversary and you (the life assured) are in good health, the value of the policy will be small or negligible unless the policy is a whole of life policy when the value, for this purpose, would be not less than the payments made to the policy to date.

Exit charge after the first 10 years

Because exit charges between the 10-year anniversaries are calculated by reference to the tax charge at the previous 10-year anniversary, then as long as there was no tax at the previous 10-year anniversary there will be no potential tax charges on any payments out of the trust before the next 10-year anniversary.

If it is likely that your own circumstances may result in a potential liability you should ask your adviser to explain the full tax implications and whether any periodic or exit charges are likely to arise in your circumstances.

Income tax

While the only trust asset is a life assurance policy there will be no trust income and no income tax implications. If the policy proceeds are not paid out by the trustees immediately then any income produced would, broadly speaking, be assessed on the beneficiaries. You should take professional advice on trust taxation should this become relevant.

Will this trust be affected by the taxation of pre-owned assets legislation?

Since 2005 there may be a potential income tax charge on you as the settlor if the value of the policy exceeds a certain amount. This is because you are one of the trust beneficiaries but the trust is not caught by the gift with reservation provisions for IHT purposes (see above). Therefore, in theory, the charge could arise. However, because the taxable benefit is very likely to be less than the de minimis amount (£5,000 per annum) a tax charge is most unlikely.

Capital gains tax

As long as the Flexible Business Trust is effected at the same time as the policy and not later, there should be no capital gains tax implications. If trust funds are not paid out immediately by the trustees, but invested, then you should take professional advice in connection with any capital gains realised by the trustees.

Important note

We will send correspondence and notices relating to the policy to the first named trustee only. This will normally be the settlor of the trust.

The trust is provided in draft form for consideration by your legal advisers. They are responsible for ensuring that it takes into account your individual circumstances and requirements and the terms of any documents and agreements relating to your business.

Creating a trust is an important matter and has lasting legal and tax consequences. Accordingly, the trust should not be completed without the confirmation of your advisers that it is appropriate to your circumstances and objectives.

These notes are for your general information only and cannot cover every situation. The trust, once created, is irrevocable and the policy and its benefits must be held according to the terms of the trust. The trustees will be in control of the operation of the trust which means that they may need to set up a trustee bank account. Any options available under the policy and any further policies that are issued as a result of the exercise of any options will also be held subject to the trust.

The draft trust and these notes are based on our understanding of current law and Her Majesty's Revenue and Customs' practice (July 2018). Although every care has been taken in the preparation of these notes and the draft trust, neither Zurich Assurance Ltd nor any of its officers, employees or agents accept responsibility for the operation of the trust which must be referred to your own legal advisers to ensure it meets your requirements.

Flexible Business Trust Deed

- Only for business protection purposes. Not to be used for family protection policies.
- Not to be used with policies that are already in force when this trust is signed.

~~Policy number~~

Policy number to go
in box to match
below and align
text,

Person declaring this trust (full name in BLOCK CAPITALS please):

(the 'Settlor')

The terms of the trust are set out below

A. Potential Beneficiaries – Box 'A'

Any person who is at present, or shall be at any time after the date of this trust, a partner in or member of the Business or an individual who beneficially owns ordinary shares in the Business (as appropriate) including the Settlor.

The 'Business' means

(Please insert name of company, limited liability partnership or partnership)

any successor partnership, limited liability partnership or limited company carrying on the entire operation of the Business and any other partnership, limited liability partnership or limited company specified in a memorandum signed before the end of the Appointment Period by all the owners of the Business for the time being.

B. Current Beneficiaries – Box 'B'

See 'How is the trust set up?' on page 3 for information on whether you should complete this box or whether you should leave it blank.

Full name (BLOCK CAPITALS)	Share %	Full name (BLOCK CAPITALS)	Share %	Full name (BLOCK CAPITALS)	Share %

To create a trust you need to sign here. Your signature must be witnessed.

Signed and delivered as a Deed by the Settlor:

In the presence of:

[Signature area for Settlor]

Signature of witness

Date

Full name of witness

Address of witness

C. Additional Trustees – Box 'C'

If there are more than four Trustees, please provide their details and signatures on a sheet of paper marked with the Policy number, and sign it.

Title	Surname
Full forenames	
Address	
Postcode	

Title	Surname
Full forenames	
Address	
Postcode	

Date of birth

Date of birth

Signature in acceptance of appointment as Trustee

Signature in acceptance of appointment as Trustee

Title	Surname	Title	Surname
Full forenames		Full forenames	
Address		Address	
Postcode		Postcode	
Date of birth	D D M M Y Y Y Y	Date of birth	D D M M Y Y Y Y
Signature in acceptance of appointment as Trustee		Signature in acceptance of appointment as Trustee	

Trust provisions

1. Definitions

'Appointment Period' means the period beginning with the coming into force of this trust and ending two years after the Policy proceeds have been paid to the Trustees.

'Beneficiary' and 'Beneficiaries' means any Current or Potential Beneficiary.

'Company' means Zurich Assurance Ltd.

'Current Beneficiary' and 'Current Beneficiaries' means the individual(s) named as Current Beneficiaries in Box 'B' and if no such individual(s) is/are named then the partners in the Business, or the members of the Business or the individuals who are beneficial owners of ordinary shares in the Business (as appropriate), immediately before the event which results in the payment of the benefit under the Policy. The Settlor and anybody who has received, or become entitled to, shares or to an interest in the Business through the Will or intestacy of the Settlor following the Settlor's death are excluded.

'Policy' means the policy of assurance identified above and any other life assurance policy included in the Trust Fund. It also includes any other policies set up in the exercise of rights under that policy and any property derived from that policy.

'Potential Beneficiary' and 'Potential Beneficiaries' means the person(s) described in Box 'A'.

'Respective Share' means, in respect of each of the Beneficiaries in Box 'B', the share specified therein. If no share(s) is/are specified or no one is named in Box 'B', it means the percentage share that equates to that person's proportionate entitlement to the partnership capital, interest in a limited liability partnership or the percentage of the issued ordinary shares of the company to which that person is beneficially entitled, as appropriate. In arriving at the said proportionate entitlement the share to which the Settlor is, or would be immediately before his death or other event giving rise to the payment of benefit under the Policy, beneficially entitled, shall be excluded.

'Settlor' means the person declaring this trust.

'Trustees' means the Settlor and the Additional Trustee(s) named in Box 'C' or the Trustees for the time being of this trust.

'Trust Fund' means

- (a) the Policy
- (b) any policies of assurance that are held by the Trustees subject to this trust
- (c) any policies effected in accordance with any option in any policy subject to this trust
- (d) all monies, investments and property paid to or transferred to the Trustees as additions to the Trust Fund
- (e) any property representing the above.

'Trust Period' means the period of 125 years from the trust's commencement. This is the perpetuity period of the trust.

Unless the context indicates otherwise, words in the singular will be deemed to include the plural and the masculine to include the feminine and vice versa.

2. Creation of the Trust

The trust will commence on the date the above numbered Policy comes into force. The Settlor states that, in submitting the application for the above numbered Policy to the Company, he is acting with the intention of making himself and the Additional Trustees specified above Trustees for the Beneficiaries referred to above upon the trusts and subject to the powers set out below. The Settlor directs the Company to issue the above numbered Policy to the Trustees to hold on the terms of the trust and requests that the Policy should be endorsed to this effect.

3. Beneficiaries

- (1) The Trustees shall hold the capital and income of the Trust Fund upon the trusts and with and subject to the powers and provisions set out below for whoever the 'Appointor' (defined in 4(1) below) in his absolute discretion chooses from amongst the persons in Box 'A' on such terms as the Appointor thinks fit and in the shares and subject to such terms, trusts, powers, restrictions, limitations and conditions as the Appointor appoints. The conditions for 'appointments' are set out in 4(2) below.

- (2) Subject as above and in default of and in the absence of any appointment under 3(1) above and subject to 3(3) and 3(4) below the Trustees shall hold the capital and income of the Trust Fund on trust for the Current Beneficiaries in their Respective Shares absolutely.
- (3) Provided always that should the Business be dissolved or if the Settlor should resign or retire from the Business or otherwise cease to own a financial interest in the Business or (where the Business is a limited company) the Settlor ceases to be the beneficial holder of any ordinary shares in the Business and in any case otherwise than by reason of, or in anticipation of, an event giving rise to the payment of the benefit under the Policy, then the Trust Fund and its income shall be held absolutely for the benefit of the Settlor.
- (4) Notwithstanding 3(1) to 3(3) above, no person (other than the Settlor) shall be capable of benefiting under this trust unless he has settled a policy of life assurance on his life on trusts similar to the trusts contained in these trust provisions for the Beneficiaries in Box 'A' and he remains a Beneficiary in Box 'A'.

4. Power of Appointment

- (1) The Appointor is the Trustees. If the appointment is in favour of the Settlor then, unless the only Trustee is a trust corporation, to make the appointment there must be at least two Trustees apart from the Settlor.
- (2) Appointments have to be made by deed. The Appointor can make them irrevocable, but otherwise they can be changed during the Appointment Period. If the terms of any revocable appointment have not been revoked at the end of the Appointment Period, the appointment will become irrevocable at that time. Appointments can be subject to conditions and give powers and discretions.

5. Appointment and Removal of Trustees

- (1) The Settlor has the power to appoint new Trustees. After the death of the Settlor the Trustees for the time being may appoint new Trustees.
- (2) 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.

6. Powers and Rights under the Policy

- (1) The Settlor can exercise any rights or powers under the Policy except where 7(2) below says specifically that the Trustees have the relevant power. However, the Settlor must exercise these powers under the Policy in his capacity as, and subject to the duties of, a Trustee.
- (2) The Settlor's power under 6(1) above ends if he ceases to be a Trustee, dies, or releases that power by deed.
- (3) The Trustees will be bound by the Terms and Conditions of the Policy as policyholder.

7. General Powers

- (1) The Trustees have all powers conferred by the law. In addition they have the powers in 7(2) below. The Company cannot be held accountable for, and is under no duty to investigate, the exercise of any of their powers by the Trustees, or how they apply any part of the Trust Fund.
- (2) The Trustees can:
 - (a) borrow for the purposes of the trust on whatever terms they think appropriate. They can use the Policy as security;
 - (b) make the Policy paid-up even if the sum assured is reduced as a result;
 - (c) surrender, or partially surrender the Policy;
 - (d) sell any part of the Trust Fund (including the Policy);

- (e) subject to 8(1) below exercise rights under the Policy which can reduce the benefits payable under it or, with the Company's consent, reduce the sum assured or premiums payable under the Policy;
- (f) subject to 8 below release any powers or discretions which can be exercised by the Trustees (including this power). The Trustees can do this wholly or partly and impose whatever conditions they think are appropriate;
- (g) invest the Trust Fund as though they owned it beneficially and absolutely. The Trustees can invest in income producing or non-income producing assets (including life assurance policies);
- (h) subject to 8(2) below lend to any Beneficiary on whatever terms about interest and repayment as they think fit. To avoid any doubt, it is made clear that this includes the power to make interest-free loans;
- (i) delegate the exercise of any of their investment or management powers, in relation to the Trust Fund, to any person they think fit, even if the delegate is resident or situated abroad. The Trustees can transfer the ownership of any property in the Trust Fund for these purposes;
- (j) pay or transfer any capital or income to be paid transferred to or applied for the benefit of a Beneficiary who is under a legal disability to any person on behalf of that Beneficiary as they think fit and the receipt of that person shall be a valid discharge to the Trustees. The Trustees do not have any duty to ensure that the payment is paid to, or applied for the benefit of, the relevant Beneficiary.
- (k) subject to 8(1) below advance all of a Beneficiary's prospective share of capital.

8. Limiting Exercise of Powers

- (1) If the Settlor is alive, the powers in 7(2)(e), (f) and (k) can only be exercised with his agreement.
- (2) Unless the Trustee is a trust corporation the powers in 7(2)(f) and (h) can only be exercised if there are at least two Trustees, one of whom is not the Settlor nor his spouse nor civil partner for the time being.

9. Administration of Trust outside the UK

All or part of the administration of this trust can be transferred outside the United Kingdom and persons resident outside the United Kingdom can be Trustees.

10. Settlor's Incapacity

If any Settlor becomes mentally incapable as defined by the Mental Capacity Act 2005 or any Act of Parliament which supersedes that Act, his rights and powers under this trust will be exercisable as if he is dead at that time.

11. Charging by Trustees

Apart from the Settlor and his spouse or civil partner for the time being, any Trustee who is in a profession, business, or trade can charge his usual fees and charges for work done on behalf of the trust. This applies even where a Trustee who is not in the relevant profession, business or trade, could have done the work personally.

12. Liability of Trustees

A Trustee shall not be liable for a loss to the Trust Fund unless that loss was caused by his own fraud or negligence. The duty of reasonable care set out in section 1, Trustee Act 2000, or any Act of Parliament which supersedes that Act and which sets out a Trustee's duty of care, applies to all the functions of the Trustees.

13. No Duty to Investigate Exercise of Power

Where the agreement or consent of any person is needed for the exercising of a power by the Trustees, no person dealing with the Trustees needs to be concerned whether that agreement or consent has been obtained.

14. Choice of Law and Jurisdiction

This trust is subject to the law of England. The parties are subject to the jurisdiction of the English Courts.

Please let us know if you would like a copy of this in large print or Braille, or on audio tape.

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