

## OPTION SIPP AND FULL SIPP SPOUSAL BYPASS TRUST FORM

This form is primarily intended for use by members of the Option SIPP and the Full SIPP, both of which are products of The Options SIPP (the "Scheme").

Under the Scheme, lump sum death benefits are normally payable in the event of Scheme members' death. Members of the Scheme can write a 'letter of wishes' to the trustees of the Scheme asking them to consider paying such benefits to the trustees of the Spousal Bypass Trust (SBT). This can also be done on the application form in the nominated beneficiaries section or on the pre prepared Nomination of Beneficiary form. The SBT trustees can then consider to whom and when the death benefits are passed to dependants and other potential beneficiaries.

Embark Pensions cannot accept responsibility for the use of this draft form as its suitability depends upon each investor's own individual, separate circumstances. Before considering the use of any part of this form, the Scheme member should discuss matters with their professional legal adviser(s).

Information and references to law, legislation and tax treatment in this document and any accompanying brochure or other literature are based on Embark Pensions' understanding of current law and legislation and HM Revenue & Customs practice as at March 2014. All of these are liable to change without notice and are likely to change in future. Any tax reliefs referred to are those currently available and may be subject to change and can depend on individual circumstances.

Every care has been taken as to accuracy, but it must be appreciated that Embark Pensions and its representatives cannot accept responsibility for loss, however caused, suffered by any person who has acted or refrained from acting as a result of any accompanying material published in or in conjunction with this draft trust instrument or from the use of the trust instrument itself.

### 1 THE TRUST

#### 1. The Trust Fund

- (1) The Trustees shall hold the Trust Fund upon the Trusts and with and subject to the powers and provisions declared and contained in the Trust
- (2) The Trust Provisions are hereby expressly incorporated in this Deed.

#### 2. Proper Law

The proper law of this Trust shall be that indicated in the Third Schedule.

### 2 THE SCHEDULES

#### The First Schedule: The "initial gift"

The sum of £10.

You should keep the £10 and original trust document together. Do not send either to us.

Embark Pensions only require contact details for the trustees who they may contact on your death.

#### The Second Schedule: Beneficiaries

The sum of £10.

This Schedule should only be completed if you want to extend the standard list of Beneficiaries contained in Part 1 of the Trust Provisions. If you are adding beneficiaries please make sure you identify them in a way that makes clear who they are.

Do not add or include the Settlor's name as a beneficiary. No person who is a Settlor may be a beneficiary.

**2 THE SCHEDULES (CONTINUED)**

**Additional Discretionary Beneficiaries**

Full Names or Description:

Address:

Postcode:

Date of Birth: | D | D | M | M | Y | Y | Y | Y |

**The Third Schedule: The Proper Law Governing This Trust**

If none of the boxes is ticked the Law of England and Wales will apply:

The Law of England and Wales       The Law of Northern Ireland       Scots Law

**3 SIGNATURE & DATE**

To be completed and signed by the Settlor, additional Trustees and Witnesses.

Please note:

- There must be at least One Additional Trustee.
- You should ensure that this document is executed in accordance with the legal requirements in the place where it is executed and the law governing the Trust. If a company is a Trustee, the signature of an Officer of Officers of the Trustee Company will be required.
- All witnesses must be over the age of 18 and independent of the trust – not a settlor, additional trustee or beneficiary.

In Witness Whereof the parties have executed this document as a Deed on:

**1. The Settlor (the person(s) who is creating this Trust)**

Signed as a Deed by the Settlor named below:

Signature: 

Name:

Address:

Postcode:

In the presence of the witness named below:

Signature: 

Name:


Address:

Postcode:

**3 SIGNATURE & DATE (CONTINUED)**

**2. The Additional Trustee(s)** (the person(s) who will be the Initial Trustee(s) of the Trust with the Settlor)

(a) Signed as a Deed by the Additional Trustee named below:

Signature: 

Name:

Address:

Postcode:

In the presence of the witness named below:

Signature: 


Name:

Address:

Postcode:

Leave 2(b) below blank if there is only one Additional Trustee.

(b) Signed as a Deed by the Additional Trustee named below (if there are two Additional Trustees):

Signature: 

Name:

Address:

Postcode:

In the presence of the witness named below:

Signature: 

Name:

Address:

Postcode:

## 4 PROVISIONS

### Part 1: Definitions and Interpretation

#### 1. Introduction

In these Trust Provisions unless the context otherwise requires:

- (1) the singular shall include the plural (and vice versa) and the masculine shall include the feminine and neuter (and vice versa);
- (2) references to statutory provisions shall be taken as references to statutory provisions enacted in the United Kingdom;
- (3) references to "the Declaration of Trust" shall be taken as references to a Declaration of Trust which incorporates the Trusts Powers and Provisions set out in these Trust Provisions so that they form an essential part of the Trust created by that Declaration of Trust.

#### 2. Definitions

"Civil Partner" has the same meaning as in section 1 of the Civil Partnership Act 2004.

"the Initial Trustees" means the settlor and additional Trustees.

"person" includes a person anywhere in the world and includes a Trustee.

"the Settlement" and "this Settlement" mean the Trust created by the Declaration of Trust.

"the Settlor" means the person shown under the heading "The Settlor" at (1).

"Spouse" includes a Civil Partner.

"the Trust Fund" means the initial gift referred to in the First Schedule to the Declaration of Trust and the property from time to time representing the same (and also includes any other property which may become Trust Property as a result of any loan to the Trustees or any addition by way of gift, transfer or any accumulation of income).

"the Trust Period" and "the Accumulation Period" mean the period starting on the date of the Declaration of Trust and ending on the Vesting Day.

"Trust Property" means any property comprised in the Trust Fund.

"the Trust Provisions" means the "Discretionary Gift Trust Provisions" (appended to this Declaration).

"the Vesting Day" means the 125th anniversary of the date of the Declaration of Trust.

"Widow/Widower" of a person includes the individual who was the Civil Partner of that person immediately before that person's death.

#### 3. The Beneficiaries

"The Beneficiaries" means:

- (a) The children and remoter descendants of the Settlor and includes adopted or illegitimate children and remoter descendants.
- (b) The children and remoter descendants of any spouse or widow(er) of the Settlor.
- (c) Any persons or class of persons or object shown in the Schedule of Additional Beneficiaries in the Declaration of Trust.
- (d) The spouses and widow(er) of the beneficiaries at (a) and (b) above.
- (e) Any spouse of the Settlor unless the box in Section 2, schedule 2 has been signed.
- (f) Any widow(er) of the settlor.

### Part 2: Trust Provisions

#### 1. Trust income

Subject to the Overriding Powers below:

- 1.1 The Trustees may accumulate the whole or part of the income of the Trust Fund (if any) during the Accumulation Period. That income shall be added to the Trust Fund.
- 1.2 The Trustees shall pay or apply the remainder of the income to or for the benefit of any Beneficiaries, as the Trustees think fit, during the Trust Period.

#### 2. Overriding Powers

The Trustees shall have the following overriding powers which they may exercise at any time or times during the Trust Period:

- (1) **Power to pay out capital to Beneficiaries.**
  - (a) The Trustees may pay or apply and Trust Property to or for the advancement or benefit of the Beneficiary.
- (2) **Power to vary the Trusts (power of appointment)**
  - (a) The Trustees may appoint that they shall hold the Trust Fund or any part or parts-of the Trust Fund and its income for the benefit of any of the Beneficiaries, on such terms as the Trustees think fit.
  - (b) An appointment may create any provisions and in particular it may create:
    - (i) discretionary trusts.
    - (ii) dispositive or administrative powers exercisable by the Trustees or any other person or persons.
  - (c) Any appointment shall be made by Deed and may be revocable during the Trust Period or irrevocable.
- (3) **Power to exclude a Beneficiary**
  - (a) The Trustees may exclude a person from being or becoming a Beneficiary in relation to the Trust Fund or in relation to any specified part of the Trust Fund.
  - (b) The Trustees may exclude a class of persons from being or becoming Beneficiaries in relation to the Trust Fund or in relation to any specified part of the Trust Fund.
  - (c) Any exercise of this exclusionary power shall be made by Deed and may be revocable during the Trust Period or irrevocable.

#### 3. Default trusts

Subject to the trusts in clause 1 and the Overriding Powers, the Trust Fund and income thereof shall be held on trust for the benefit of any one or more of the Beneficiaries and in such shares (or wholly to one) and for such interests as the Trustees may during the Trust Period appoint. Subject to and in default of any appointment at the end of the trust period the remaining trust fund shall be distributed absolutely between the children, and remoter descendants of the Settlor(s) that are still living in equal shares per stripes subject to that if no such persons are living to any company, body or trust established for charitable purposes only at the trustees absolute discretion.

#### 4. Appointment, Retirement and Dismissal of Trustees

- (1) The power of appointing Trustees shall be exercisable by:
  - (a) the Settlor while living and of full mental capacity (and if there are two Settlers this shall mean both Settlers jointly while they are both alive, and then the Survivor).

## 4 PROVISIONS (CONTINUED)

- (b) the Trustees (after the death of the Settlor or the Survivor).
- (2) Any Appointment of New Trustees or retirement of existing Trustees shall be by Deed.
- (3) Part II of the Trusts of Land and Appointment of Trustees Act 1996 shall not apply to this Settlement.
- (4) The Settlor, while living and of full mental capacity, may dismiss by deed any Trustee provided there remains at least one Trustee who is not the Settlor or the Settlor's spouse
- (5) (a) Where the Settlor is alive and of full mental capacity, any Trustee may retire provided there remains at least one Trustee who is not the Settlor or the Settlor's spouse.
- (b) Where the Settlor has died or is not of full mental capacity and provided there is not a single Trustee, any Trustee may retire.
- (ii) to borrow money on such terms as to interest repayment and otherwise as they may think fit and whether upon the security of the whole or any parts of the Trust Fund or upon personal security only.
- (iii) to delegate any power or powers in making, managing, realising or otherwise dealing with any property included in the Trust Fund to any person or persons (but excluding the Settlor or Settlor's spouse) 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 Trustees in question employed or incurred expense in employing him in good faith.
- (iv) to pay or transfer any capital or income to be paid to or applied for the benefit of a Beneficiary who is under a legal disability to any parent or guardian of that Beneficiary or to such a person on behalf of such Beneficiary as the Trustees shall think fit and the receipt of such person shall be a complete discharge to the Trustees who shall be under no obligation to see to the proper application thereof.


### 5. Settlor exclusion clause


- (1) The Trust Fund shall be possessed and enjoyed to the entire exclusion of the Settlor and of any benefit to him by contract or otherwise and no provision of this Settlement and no discretion or power shall operate so as to allow any of the capital or income of the Trust Fund to become payable to or applicable for the benefit of the Settlor in any circumstances whatsoever.
- (3) The Trustees shall have the power by deed or deeds revocable during the Trust Period or irrevocable wholly or partly to release or restrict the future exercise of any power hereby conferred on them as if the same were not conferred on them in fiduciary capacity and so as to bind their successors.

### Administrative Provisions

- (1) The Trustees may administer the Trust Fund for the benefit of the Beneficiaries in whatever manner they may determine and to that end shall have the widest possible powers (which they may exercise or omit to exercise from time to time at their absolute discretion) of managing and dealing with the Trust Fund and of carrying out any transaction in connection therewith in all respects as if the Trustees were the absolute beneficial owners thereof.
- (2) Without prejudice to the generality of paragraph 1, the Trustees shall have the power:
  - (i) to invest any money requiring investment in any property of whatever nature (including any policies of assurance or capital redemption contracts) and wherever situated whether income or not and upon such security (if any) as the Trustees shall in their absolute discretion think fit.
  - (4) The Trustees shall have power to deal with any policy of assurance or insurance as if they were the absolute owners of it and in particular may surrender, convert or exchange the same in whole or in part and exercise any power of election or option under a policy and borrow on its security and the receipt by the Trustees for any money payable under the said policy shall be a full and sufficient discharge.
  - (5) **Trustees Remuneration**  
A Trustee (other than the Settlor or Settlor's spouse) carrying on a business which consists of or includes the management of Trusts or advising Trustees may charge for work done by him or his firm in connection with the trust.
  - (6) **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.



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