

# Flexible Trust

## Important notes

**Before completing the Flexible Trust Deed, please read the following notes:**

1. This documentation has been produced for consideration by you and your legal advisers. The legal and tax effects of the **Trust** will depend on your individual circumstances and Smart Insurance and its staff accept no responsibility for ensuring that the **Trust** meets your requirements.
2. Ensure that you fully understand the terms of the **Trust** and how it works. If you are in any doubt about the terms, it is your responsibility to seek legal or tax advice as appropriate.
3. Ensure you have read and understood all the literature relating to your chosen policy for this **Trust**.
4. This **Trust** is designed for use with Smart Insurance's life assurance policies for family protection and Inheritance Tax planning. It is not designed to be used for business protection arrangements (for example, key person assurance or shareholder protection).
5. This is a split **Trust** which means that death benefits will be held for the **Beneficiaries** (known as the **Gifted Benefits**). While critical illness or terminal illness benefits as defined in the policy schedule will be held for you (known as the **Retained Benefits**). You can choose to give away these critical illness or terminal illness benefits by signing the box in **Part V section Bii** of the trust deed so these benefits are also for the benefit of the **Beneficiaries**.
6. This **Trust** can be used for new or existing Smart Insurance protection policies.
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. The **Settlor** will be one of the **Trustees** during his/her lifetime.
8. Care should be taken when choosing **Trustees**. The people appointed must be over 18 years of age and of sound mind (16 in Scotland). The **Trustees** should be people who the **Settlor** believes will act in the best interests of the **Beneficiaries**. 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 will charge for their services.
9. This **Trust** can be supplemented with a letter of wishes to provide further guidance to the **Trustees**.
10. In creating this **Trust** or by paying premiums you may be making exempt transfers or chargeable lifetime transfers for Inheritance Tax purposes, if you make chargeable transfers which exceed your available nil rate band, tax may be payable. Other Inheritance Tax charges can arise during the life of the **Trust**. For example, tax may be payable on each 10th anniversary of the **Trust** and when capital is paid to a **Beneficiary**. Any concerns should be referred to your legal adviser or tax specialist.

11. Please note that Smart Insurance will only accept instructions from **Trustees** who have had their identities 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 identities. By signing this deed, all parties to this deed have consented that we can verify their identity.
12. Smart Insurance has drafted this **Trust** to reflect the law as at March 2016. Smart Insurance and its staff cannot accept any responsibility for loss, damage or other claim that may arise from the use of this **Trust** or the way in which you complete it. We therefore strongly recommend that you consult your own legal or tax adviser before proceeding.
13. Use CAPITALS and black or blue ink throughout. If you make a mistake while completing the **Trust**, please correct the error by crossing out (do not use correction fluid) and the **Settlor** and the **Trustees** should initial the change.
14. Completed **Trust Deeds** should be sent to:  
Customer Services  
Smart Insurance  
PO Box 6063  
Windsor, SL4 9GL  
  
Once the original document has been verified and recorded it will be returned to the policyholder by recorded delivery.
15. Before sending the Trust Deed to Smart Insurance please ask yourself these questions:  
Have I...
  - dated the Trust Deed?
  - completed 'Part III – Plans or Policies (already in force)' with your Policy details?
  - completed the 'Default Beneficiaries' section with the names of at least one of the 'Potential Beneficiaries' and their share?
  - signed the 'Settlor Details' section and had this signature independently witnessed by someone not associated with this Trust?
  - ensured that the additional Trustee/s have signed the 'Additional Trustee' section and had the signature/s independently witnessed by someone not associated with this Trust?
  - crossed through any errors and had all parties initial any corrections (do not use correction fluid)?

## Explanation – Smart Insurance Flexible Trust

**Explanation of who could benefit under the following trust** (this is just to explain how the trust works and is not part of the trust deed):

The **Potential Beneficiaries** are those individuals who could benefit from the **Plans** after you die. Already included in this term are all those you are most likely to wish to include e.g. your spouse and children. There is also a space for you to name additional people.

The **Trustees** decide, after your death, who actually to benefit from this group and in what shares. The **Trustees** will usually pay the benefits to those **Potential Beneficiaries** that you have also listed as being the **Default Beneficiaries**, but they do have the power to pay the benefits to any of the other **Potential Beneficiaries** instead, such as when the **Default Beneficiaries** have already died, or when they have some other good reason to do so. If you have particular guidance for the **Trustees** over who to pay in what circumstances, it can be helpful to write them a letter of wishes which you can update at any time.

The **Default Beneficiaries** only benefit if, for whatever reason, the **Trustees** don't choose someone from the list of **Potential Beneficiaries**.

# Flexible Trust

## (Settlor as Trustee)

This declaration of Trust is made on (date must be the same as or after all persons have signed this Trust document):

Date: ..... Month: ..... Year: .....

### Life Assured (Settlor)

Full name (Life Assured): .....

of (address of Life Assured): .....

.....

..... Post code: .....

### Additional Trustees

Full name (first additional Trustee): .....

of (address of Trustee): .....

.....

..... Post code: .....

Full name (second additional Trustee): .....

of (address of Trustee): .....

.....

..... Post code: .....

Full name (third additional Trustee): .....

of address of Trustee): .....

.....

..... Post code: .....

Full name (fourth additional **Trustee**): .....

**of address of Trustee**): .....

.....

..... Post code: .....

## Definitions

**Beneficiaries** means together the **Potential Beneficiaries** and the **Default Beneficiaries**.

**The Gifted Benefits** means any benefit arising under the **Plans** other than the **Retained Benefits**.

**The Retained Benefits** means any **Critical Illness Benefit** and **Terminal Illness Benefit** included in the **Plans** and as defined in the **Plans**.

**Trust** means the trust set out in this deed.

**Trust Fund** means the **Gifted Benefits** and all the property for the time being representing the **Gifted Benefits** and where the **Settlor** has signed Part V section Bii, it also means the **Retained Benefits** and all the property for the time being representing the **Retained Benefits**.

**Trustees** means the **Settlor** and the additional **Trustees** (or any future **Trustees** if there are changes). The word **Trustee** means any one of them.

## Part I – Potential Beneficiaries

Persons who could potentially benefit from the **Trust Fund**.

1. Any widow or widower of the **Settlor** (but not if she or he is a **Settlor** of this deed too).
2. Any civil partner of the **Settlor** immediately prior to death (but not if she or he is a **Settlor** of this deed too).
3. Any child or grandchild of the **Settlor**.
4. Any brother or sister of the **Settlor**.
5. Any person listed in Part II who is not already mentioned in this Part I.
6. Any other person listed: .....

.....

.....

.....

(together called the '**Potential Beneficiaries**')

(Add the full name of any person that you may want to benefit from the **Trust Fund** now or in the future, who isn't included in 1, 2, 3 or 4 above).

## Part II – Default Beneficiaries

This part must be completed and include at least one **Beneficiary**, which can be from Part I, and must total 100%.

**Full names**

**Share entitlement (%)**

1. ....
2. ....
3. ....
4. ....

**(‘Default Beneficiaries’)**

(Add the full names of the people you would want to benefit from the **Trust Fund** unless the **Trustees** choose other beneficiaries from Part I, spelling out their shares clearly. If share entitlement isn’t confirmed here, the **Trustees** shall assume equal shares for each **Default Beneficiary**).

## Part III – Plans or Policies (already in force)

**Plan Type**

**Policy Number**

**Insurer**

.....	.....	.....
.....	.....	.....
.....	.....	.....

**(‘Plans’)**

(Add details of each plan which will be held in **Trust**)

## Part IV – Law of Scotland

Settlor to sign here if the Law of Scotland is to apply to this trust

.....

## Part V – Trust Provisions

### A. Declaration of Trust

The **Settlor** owns the **Plans** (as listed in Part III above) and wishes to transfer the **Plans** to the **Trustees** to hold in accordance with the trusts set out below.

### B. Retained Benefits

- i. Unless section Bii below applies, the **Retained Benefits** and the income from them shall be held upon trust for the absolute and indefeasible benefit of the **Settlor**.
- ii. If the **Settlor** signs the box below, the **Settlor** also gives the **Retained Benefits** to the **Trustees** to hold on such trusts subject to the powers and provisions as set out in this deed and the **Gifted Benefits** shall include the **Retained Benefits**.

#### Signature of Settlor

.....

### C. Gifted Benefits

- i. The **Trustees** shall hold the **Trust Fund**, and the income from it, on such trusts and subject to such powers and provisions in favour of such one or more of the **Potential Beneficiaries** as the **Trustees** may appoint during the **Trust Period**. The appointed trusts, powers and provisions may include protective and discretionary trusts and powers operative or exercisable at the discretion of the **Trustees** or any other person(s). The appointment must be exercised by deed (or deeds) and may be revocable (whether by the person(s) making the deed or some other person(s)) or irrevocable.
- ii. Until and subject to and in default of any appointment made under paragraph i of this Part V section C or so far as any such appointment shall not extend or shall fail for any reason, the **Trustees** shall hold the **Trust Fund** and the income thereof absolutely for the **Default Beneficiaries** and if more than one in the shares specified in Part II and if no shares are specified in equal shares absolutely.
- iii. The **Settlor** shall not be capable of benefiting from the **Trust Fund**.

### D. Trust Income

Whilst any **Beneficiary** who is entitled to income under this **Trust** (including under any appointment) is a minor, the **Trustees** shall pay or apply the whole or such part as they think fit for or towards the maintenance, education or benefit of such **Beneficiary** until that **Beneficiary** attains the age of majority. The **Trustees** shall retain the balance of any income and shall hold such income for that **Beneficiary** absolutely.

## Part VI – Administrative Provisions

1. The statutory power of appointing or removing trustees is changed.  
The **Settlor** has the power to appoint new or further **Trustees**, and can remove existing **Trustees** without giving a reason. If the **Settlor** has died the **Trustees** have these powers.
2. The **Trustees** have the powers set out below in addition to all powers given to them by law.
  - a) To invest all or part of the **Trust Fund** in any kind of investments. These investments may generate income, but don't have to. The **Trustees** should make investment decisions taking the same care as if the **Trust Fund** was their own.
  - b) To borrow money using the **Trust Fund** as security for any reason, including more investment.
  - c) To use their discretion to:
    - i. lend all or part of the **Trust Fund** to any one or more of the persons listed in Parts I and II. The **Trustees** can choose whether to charge interest payments, ask for security and apply other conditions
    - ii. recover, receive or give valid receipts for all money due to them under any of the **Plans**. Once they've received payments due in full, to discharge the company that provided the **Plans**. Once discharged, the company will have no obligation to make sure the **Trustees** deal properly with the **Trust** property
    - iii. delegate some or all of their powers to any person to deal with any of the **Trust Fund**
    - iv. employ any person to act as an agent for them. Any fees payable to the agent can be paid out of the **Trust Fund**. If they do this, none of the **Trustees** will be liable for any loss which happens as a result of the fraud or negligence of any agent appointed in good faith by them. This applies even where the **Trustees** could have acted for themselves without needing an agent
    - v. pay or transfer any capital or income, where a beneficiary is under age 18 (age 16 in Scotland) or legally cannot receive money for his or her benefit, which is for that person's benefit to their parent, guardian or any other person the **Trustees** decide is suitable. When a parent, guardian or other suitable person accepts money on behalf of any such person, it means that the **Trustees** have no more liability to that person
    - vi. change, remove or add to the terms of this **Trust** at any time to allow them to carry out their duties and exercise their powers under the **Trust**. They can do this using a deed signed by all of them.
3. The **Trustees** will not have to keep the **Plans** in force or to restart them if they end because premiums have not been paid. They will not have to replace them with new plans either.
4. Any **Trustee** who is a solicitor or other person providing professional or advisory services may charge for:
  - costs incurred
  - business transacted
  - time spent, and
  - acts doneon the instructions of the **Trustees**. Charges can be paid for out of the **Trust Fund**. This does not apply if the **Trustee** is also the **Settlor**, the **Settlor's** wife or husband, or the **Settlor's** civil partner.
5. If the law that applies to this **Trust** is the law of England and Wales the perpetuity period that applies to this deed will be 125 years from the date of this deed, if the law that applies to this **Trust** is Scots Law, the **Trustees** may exercise their powers under this **Trust** for 80 years from the date of this deed. (This means that the **Trust** can legally exist for 125 years in England and Wales, and 80 years in Scotland).
6. This declaration of **Trust** is subject to the laws of England and Wales unless Part IV has been signed when this **Trust** shall be subject to Scots Law.

7. By signing this deed the **Trustees** accept their appointment as **Trustees**. Where Scots Law applies, the **Trustees** request that the **Plans** be delivered to them at the address for the **Settlor** set out in this deed, (unless they request them to be delivered to their nominated agent, whose details are set out below).

Name of agent: .....

Address: .....

..... Post code: .....

## Part VI – Administrative Provisions (continued)

8. By signing and submitting your Trust deed you are accepting full responsibility for the accuracy and validity of all the details and are fully aware that legal advice should be sought for clarity.  
Smart Insurance are unable to provide advice and do not accept responsibility for any omissions or errors in the completion of this document or the effectiveness of it at the time a claim is made.



**EXECUTED AS A DEED** by the **Settlor** and the additional **Trustees** on the date which appears on the first page of this deed.

### Settlor Details

**Signed as a Deed by the said**

Name: .....

Signature: .....

**In the presence of** (Witness to **Settlor** and **Trustee**)

Name: .....

Signature: .....

Address: .....

.....

Post code:.....

### Additional Trustee – first additional Trustee

**Signed as a Deed by the said**

Name: .....

Signature: .....

**In the presence of** (Witness to first additional **Trustee**)

Name: .....

Signature: .....

Address: .....

.....

Post code:.....

### Additional Trustee – second additional Trustee

**Signed as a Deed by the said**

Name: .....

Signature: .....

**In the presence of** (Witness to second additional **Trustee**)

Name: .....

Signature: .....

Address: .....

.....

Post code:.....

## Additional Trustee – third additional Trustee

### Signed as a Deed by the said

Name: .....

Signature: .....

### In the presence of (Witness to third additional Trustee)

Name: .....

Signature: .....

Address: .....

.....

..... Post code: .....

## Additional Trustee – fourth additional Trustee

### Signed as a Deed by the said

Name: .....

Signature: .....

### In the presence of (Witness to fourth additional Trustee)

Name: .....

Signature: .....

Address: .....

.....

..... Post code: .....