



## VitalityLife Trust form

# The VitalityLife Discretionary Trust

At VitalityLife we try to avoid complex language and unnecessary jargon wherever possible. However, because this is a legal document and trust laws are complex the words in this form are more technical than other VitalityLife documents. We've included margin notes to help with completion but if you have any questions let us know and we'll answer them as simply as possible.

### Important notes

- This Discretionary Trust is for use with your plan. It allows you to keep for yourself the benefits under the plan that are payable during your lifetime (such as Serious Illness Cover, LifestyleCare Cover or Income Protection Cover) and to give away other benefits, such as Life Cover, that are paid on death.
- You must indicate in the trust whether you want to keep the sum paid on diagnosis of a terminal illness for yourself or give it away. Once made, this choice cannot be changed. As this choice may have important tax consequences, you should discuss your requirements with your adviser. Where the plan is a joint life first death plan it is assumed that both of you would wish to be paid the benefit on diagnosis of a terminal illness and so in this circumstance, this benefit cannot be gifted to others.
- Where the plan is a joint life second death plan, death benefits (including Terminal Illness benefits) are only paid on the second death or the second event. This means that if one life assured has already died or suffered a terminal illness, benefits will be paid when the second life assured dies or suffers terminal illness. In cases where the second event is terminal illness it is probably the case that both of you would not want the survivor to receive terminal illness benefits. This benefit can therefore be gifted by completing the appropriate box in the trust. Benefits based on a life assured's health (such as, Serious Illness Cover benefit) will be paid on the first event to happen in the normal way.
- **To ensure there are no adverse inheritance tax ("IHT") implications, if the plan provides serious illness cover you need to make sure that, it is set up as a separate cover from the outset. We strongly recommend that discuss your requirements with your adviser.**
- **Where the plan provides LifestyleCare Cover, you need to ensure that the plan includes, from outset, LifestyleCare Cover Protector. The level required will depend on the level of LifestyleCare Cover, if it is equal to the Life Cover then Level 1 will be required, if unequal then Level 1 and 2 are required. Failure to do so does not affect the validity of the trust but may have adverse IHT consequences. You should discuss your requirements with your adviser.**
- This trust may be used either when you are applying for a new plan or with an existing plan.
- This trust may be used whether the plan is owned/ applied for by one person or two people jointly (with death benefits payable on either the first death or second death).
- This trust can be used with plans that are on a whole of life basis or those that expire after a fixed term, where available.
- With a joint life plan that pays death benefits on the first death, you can choose for the survivor to benefit after the first death provided they survive the death by 30 days. If they do not, the benefit will be held by the trustees for the other beneficiaries. This option is not available on joint life second death Plans because benefits are not payable until the second event.

### Disclaimer

VitalityLife cannot accept responsibility that this Trust is suitable for your individual requirements. If you or your adviser are unsure about its suitability, we strongly advise that you seek specialist legal or tax advice.

The notes in this Trust form are based on VitalityLife's understanding of the law and HM Revenue & Customs practice. We have made every effort to ensure they are accurate but accept no responsibility for our interpretation of the law, or future changes in the law.

## Important notes continued

- For a full explanation of the features and the legal and tax implications of this trust please refer to the VitalityLife Client guide to trusts. The VitalityLife Discretionary Trust - Adviser Guide, gives more in-depth coverage of the technical issues.
- This trust is provided in draft form. We recommend that you seek legal or tax advice before using the trust as, once created, it cannot be revoked or altered.
- If after seeking legal advice, the draft trust is to be used unaltered, you should follow the completion instructions in the margin of the document.
- We strongly recommend that you appoint additional trustees to act with you from the outset. If there are no surviving trustees when the benefits are payable we will not be able to pay out the benefits quickly as we will need to wait until probate is obtained.

## Key Trust provisions

1. The Retained Fund is comprised of the benefits under the Plan that you want to keep for yourself. They will be held on a bare trust for you.
2. The Gifted Fund is comprised of the benefits of the Plan that you give away and that will be held by the Trustees on discretionary trust for the Beneficiaries. The Appointor chooses which of the Beneficiaries referred to in the Trust should receive any payments from the Gifted Fund. The Appointor is you, during your lifetime, and then the Trustees.

Please sign this page as confirmation that you have read and understood these notes.

Signature:

## Next steps?

If you decide to make your Plan subject to the VitalityLife Discretionary Trust, it is important that you follow the process below to make sure all documents are correctly completed and submitted:

You/your adviser completes the Discretionary Trust form. This Trust form must be dated on or after the date of the Plan application.

Consider appointing at outset at least one additional trustee to act with you and providing the Trustees with a Letter of Wishes to guide them.

Post the original Trust form (along with the Plan application if placing in Trust from outset) to VitalityLife, PO Box 619, Darlington, DL1 9FH.

We will return the original Trust form by special delivery once processed.

We will confirm to you by letter when our Trust records have been successfully updated.

You should then:

1. Provide all additional Trustees with copies of the Trust form.
2. Provide the first additional Trustee with the original Letter of Wishes (if produced) and copies to any other Trustees.
3. Make the Trustees aware of where the Trust form is kept for ease at point of claim.

## Part A - Trust request and declaration

Insert here the date this Trust is signed and your name and address. Where there are two applicants for the Plan or two Planholders (in the case of existing Plans) both names and addresses need to be inserted.

This Declaration of Trust is made the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_  
by \_\_\_\_\_  
Name  
of \_\_\_\_\_  
Address

Please note where the Plan includes LifestyleCare Cover there will only be one applicant.

AND

by \_\_\_\_\_  
Name  
of \_\_\_\_\_  
Address

(called "the Settlor". Where two persons are named above, they will both be the Settlor) of the first part

Insert full name, address, date of birth and email address of the additional trustees

Name of first additional trustee  
of \_\_\_\_\_  
Address

Date of birth  
Email address

And

Name of second additional trustee  
of \_\_\_\_\_  
Address

Date of birth  
Email address

And

## **Part A - Trust request and declaration - continued**

Name of third additional trustee

of

Address

Date of birth

Email address

(called "the Additional Trustees") of the second part

As follows:

### **(i) Where a new Plan has been applied for**

The Settlor refers to the application for the Plan described in Part B below and now requests and directs that the Plan be issued in such manner as to constitute the Trustees (as defined below) as the Trustees to hold the Plan on the trusts and subject to the powers and provisions of this Trust.

**or**

### **(ii) Where a Plan is already in existence**

The Settlor as the legal and beneficial owner of the Plan described in Part B below now declares that from the date of this Declaration the Trustees (as defined below) hold the Plan as the Trustees on trusts and subject to the powers and provisions of this Trust.

## Part B - Plan subject to Trust

This Trust can be used with a new or existing Plan. Insert the name(s) of the life (lives) assured under the Plan.

If the Plan is a joint life first death Plan and you wish the surviving Settlor to benefit from the death benefits if they survive for 30 days from the first death, both of you must initial Part B paragraph 3. **This option is not available for single life Plans, Plans with LifestyleCare Cover or joint life second death Plans.**

You (both of you) must initial either Part B paragraph 4(a) or Part B paragraph 4(b). **You must not initial both fields.**

If you wish to keep the payment made on diagnosis of Terminal Illness for yourself, you (both of you) must initial Part B paragraph 4(a). You both must choose this option if you have a joint life Plan that pays death benefits on the first death and you have elected for the "Reversion to surviving Settlor" option in Part B paragraph 3.

If you wish to give the payment made on diagnosis of Terminal Illness to your Beneficiaries, you (both of you) must initial Part B paragraph 4(b). **Do not initial Part B paragraph 4(b) if you have initialled Part B paragraph 4(a).**

In cases of joint life second death Plans it is likely that you would wish to gift terminal illness benefits payable where terminal illness is the second event to occur. If this is the case please initial Part B paragraph 4(b).

- 1) Plan number(s):
- 2) Life (Lives) Assured:
- 3) For joint life first death Plans  
Reversion to surviving Settlor
- 4) Entitlement to benefits on diagnosis of Terminal Illness
  - (a) Retained Fund
  - (b) Gifted Fund

## Part C - Definitions

In this Trust, in addition to the terms defined above, the following expressions shall have the following meanings and, unless the context does not permit the singular shall include the plural and the masculine shall include the feminine and vice versa.

- 1) "**Appointor**" means the Settlor whilst alive and of full Capacity (and where two persons are the Settlor both of them whilst alive and of full Capacity and then the survivor subject to them having full Capacity) and the Trustees following the Settlor's (or the second Settlor's) death or loss of full Capacity.
- 2) "**Beneficiaries**" means:
  - a) any Spouse, Widow or Widower of the Settlor (provided they are not also the Settlor).
  - b) the Children and Remoter Issue of the Settlor whenever born.
  - c) any Spouse, former Spouse, Widow or Widower of any such Child or Remoter Issue.
  - d) any brother or sister of the Settlor and their issue.
  - e) any person other than the Settlor (either Settlor for joint Plans) who shall upon the death of the Settlor (either Settlor for joint Plans) become beneficially entitled to the whole or any part of the estate of the deceased Settlor) whether by virtue of any will or codicil or under the rules of intestacy or by virtue of survivorship or otherwise.
  - f) any person (other than the Settlor(s) that have been nominated to the Trustees in writing by the Settlor(s) as a Beneficiary. For joint Plans, this nomination must be made by both Settlors jointly during their joint lives and afterwards by the survivor.

## Part C - Definitions continued

g) any of the people listed below:

Name(s) of Beneficiaries

Date of birth

You can insert here the name(s) of any individuals you would like to benefit from the Trust.

Please note that the Trustees have discretion to pay anyone from Part C(2).

We will only use the above information in connection with the payment of benefits under the Plan. You should make your Beneficiaries aware of how we use their information.

- 3) **"Capacity"** means mental capacity within the provisions of the Mental Capacity Act 2005 or any Act which supersedes it.
- 4) **"Child", "Children"** and **"Issue"** includes any illegitimate step adopted or legitimated (whether adopted or legitimated before or after the date hereof) child, children or issue.
- 5) **"Gifted Fund"** means the Trust Fund to the exclusion of the Retained Fund.
- 6) **"Life Assured"** means the person(s) identified as such in Part B(2) above.
- 7) **"Plan"** means the VitalityLife contract of life assurance the number of which or the date of application for which (as appropriate) is specified in Part B(1) above.
- 8) **"Retained Fund"** means any rights to any of the following benefits that are provided under the Plan, and paid during the lifetime of the Life Assured, namely:
  - Serious Illness Cover (including any benefits which become payable at the same time as the Serious Illness Cover as well as Dementia and FrailCare Cover),
  - Life with Serious Illness Cover (including any benefits which become payable at the same time as the Life with Serious Illness Cover, as well as Dementia and FrailCare Cover),
  - LifestyleCare Cover,
  - Child Serious Illness Cover,
  - Income Protection Cover,
  - Family Income Cover (where the benefits become payable on the diagnosis of a serious illness; otherwise the benefits will form part of the Gifted Fund),
  - all benefits arising under The Vitality Programme,
  - if paragraph (a) in Part B(4) above has been initialled any payments made on diagnosis of Terminal Illness as defined in the definitions section of the Plan Provisions,
  - all other benefits which are payable under the Plan during the lifetime of the Life Assured or either of them by reason of the Life Assured suffering an illness or condition as specified in the Plan,
  - any property from time to time representing the same and for the avoidance of doubt if neither paragraph (a) nor (b) in part B (4) has been initialled, the Terminal Illness Benefit will not be a part of the Retained Fund except where the Settlers have indicated by initialling the bx in Part B (3) that the Reversion to the Surviving Settlor provision shall apply in which case the Terminal Illness Benefit will be a part of the Retained Fund.
  - For the avoidance of doubt any death benefit payable from Life with Serious Illness Cover will be held on the trusts of the Gifted Fund in favour of the Beneficiaries as set out in Part E of this trust.
- 9) **"Spouse"** and **"Widow/Widower"** includes any civil partner or surviving civil partner registered under the Civil Partnership Act 2004.
- 10) **"Trust Fund"** means the Plan, the full benefit thereof, any assets at anytime added to this Trust by way of further settlement, capital accretion, accumulation of income or otherwise and all assets from time to time representing the same.
- 11) **"Trust Period"** means the period of 125 years from the date of this Trust deed.
- 12) **"Trustees"** means the Settlor and Additional Trustees (as defined above) or other the trustee or trustees for the time being of this Trust.

## **Part D - Principal Trust terms - the Retained Fund**

The Trustees shall hold the Retained Fund and its income upon trust for the absolute and indefeasible benefit of the Settlor or, if the Settlor is two persons, for the benefit of that Settlor in respect of whose illness or disability the relevant benefit under the Plan is payable, provided that any benefit in respect of Child Serious Illness Cover (as defined in the Plan) shall be held for both Settlers jointly.

## **Part E - Principal Trust terms - the Gifted Fund**

1. During the Trust Period the Appointor shall have power by deed(s) revocable (whether by the person(s) making the deed or some other person(s)) or irrevocable to appoint the whole or any part(s) of the Gifted Fund and its income for any one or more of the Beneficiaries in such one or more shares and for such interests and subject to such trusts powers and provisions (including protective trusts, discretionary trusts or powers operative or exercisable at the discretion of the Appointor or any other persons) as the Appointor shall in their absolute discretion think fit.

Provided always that no such appointment shall infringe the rule against perpetuities (where this is relevant) or affect the entitlement of any person to any payment made or asset transferred to him.

Provided also that where the Trustees are the Appointor, no appointment shall be made in favour of a Beneficiary who is one of the Trustees unless there is at least one other Trustee who does not benefit directly or indirectly from the appointment.

2. Subject to paragraph 1 of this Part E:
  - a) The Trustees may accumulate the whole or part of the income of the Gifted Fund during the Trust Period by adding such income to the Gifted Fund.
  - b) The Trustees shall pay or apply the remainder of the income of the Gifted Fund to or for the benefit of such of the Beneficiaries as the Trustees think fit during the Trust Period.
3. To the extent that any part of the Gifted Fund and its income shall not have been appointed or otherwise disposed of by the Trustees during the Trust Period, the Gifted Fund shall be held for the absolute of the individual or charity who is entitled to the largest part (or the whole) of the estate of the Settlor (or the surviving Settlor) under the Settlor's will or, if there is no valid will, under intestacy, and if there is more than one individual or charity entitled equally then for such individuals or charities as appropriate.
4. During the Trust Period
  - a) the Trustees shall have power to pay transfer or apply the whole or any part(s) of the capital of the Gifted Fund for or towards the advancement or maintenance, education or benefit of any Beneficiary entitled to such whole or part.
  - b) the Trustees shall have power to lend with or without security to any Beneficiary the whole or any part of the Gifted Fund upon such conditions as to interest (if any), repayment and generally upon such terms as the Trustees in their absolute discretion think fit PROVIDED ALWAYS that any such loan must be repayable before the end of the Trust Period.
5. Notwithstanding the provisions of Paragraphs 1, 2, 3 and 4 of this Part E, where two persons are the Settlor and the box in Part B(3) is initialled by both of them then if the Life Cover becomes payable under the Plan the Gifted Fund shall be held for the absolute benefit of the surviving (or the other) Settlor if he or she survives the first to die for a period of 30 days.
6. None of the Trusts powers or provisions shall operate or be exercised to allow any part of the Gifted Fund or its income to be paid, transferred or applied, to or for the benefit of the Settlor(s) except where both Settlers have initialled the box in Part B(3) in which case the Settlers' rights under this Trust are limited to those specified in paragraph 5 of this Part E.

## **Part F - Administrative powers of the Trustees**

In addition to any powers conferred upon them by law the Trustees shall have the following powers:

1. All the powers of an absolute owner of the Plan (or any life assurance policy forming part of the Trust Fund) including the power to exercise any option or to sell or realise the Plan or any such policy or to convert the same to any other form of assurance Provided that if the Settlor(s) is alive then the right to exercise any options under the Plan which can reduce or increase the level of benefits payable under the Plan will vest in the Settlor or either or both of them as appropriate. For the avoidance of doubt it is confirmed that any additional cover arising as a result of the Settlor exercising their rights under the Plan will form part of the Trust Fund.
2. Power to borrow money on the security of the Plan (or any life assurance policy) in order to pay any overdue or future premium or any other sum necessary for maintaining the Plan or policy in force.
3. Power to mortgage, surrender or otherwise deal with the said Plan (or any life assurance policy) in such manner as the Trustees shall in their absolute discretion think appropriate.
4. Power to invest or apply the Trust Fund for acquisition of either income or non-income producing assets including other life assurance policies or such stocks, funds, shares, securities or other investments or property, of whatever nature and wherever situated, and whether involving liabilities or not, with or without security as the Trustees in their absolute discretion shall think fit with the intention that the Trustees shall have the same powers as absolute owners who are beneficially entitled.
5. Power to 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 parent or guardian of that Beneficiary or to such other person on behalf of such Beneficiary, as the Trustees shall think fit and the receipt of that person shall be a complete discharge to the Trustees who shall be under no obligation to see to the proper application of the funds.

## **Part G - Appointment and dismissal of Trustees**

1. The power to appoint new or additional trustees by deed will vest in the Appointor and where necessary the Trustees will grant any necessary documentation to complete such appointment.
2. The Settlor whilst alive and of full Capacity will have power by deed to dismiss any Trustee (and where two persons are the Settlor this power shall be exercised by them jointly whilst alive and of full Capacity and thereafter by the survivor subject to him having full Capacity) provided at least two Trustees remain after such dismissal at least one of whom is not the Settlor.
3. Where the Appointor are the Trustees a majority of the Trustees will have power by deed to dismiss a Trustee who has lost Capacity provided that:
  - i) at least two Trustees remain after such dismissal, 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 dismissal under this provision may take effect even if the Trustee being dismissed is the Settlor or a Beneficiary under this Trust.
4. Where the Appointor are the Trustees and there are only two individuals acting as Trustees and one of them has lost Capacity, the power to dismiss under Part G paragraph 3 above will vest in the other Trustee provided a new Trustee is appointed simultaneously with the dismissal of the incapable Trustee.

## **Part H - Remuneration and liability of Trustees**

1. Any Trustee (other than the Settlor or a Spouse of the Settlor) who is a solicitor or other person engaged in any profession or business shall be entitled to charge and to be paid all usual professional or other charges for business done by him or his firm in connection with the Trust whether in the ordinary course of his profession or business or not.
2. No Trustee who is an individual shall be liable for any loss to the Trust Fund or the income arising from it by reason either of (a) any investment made in good faith by him or any other Trustee; or (b) any mistake or omission made in good faith by him or any other Trustee except in the case of negligence by a paid Trustee; or (c) the negligence or fraud of any delegate or agent employed in good faith by him or any other Trustee although the delegation to or employment of such agent was not strictly necessary or expedient; or (d) any other matter except individual fraud on the part of the Trustee whom it is sought to make liable or, in the case of a paid Trustee, negligence.

## **Part I - The law of the Trust**

This trust shall be irrevocable and shall be governed by and construed in accordance with the law of England and Wales.

## Part J - Signatures

IN WITNESS whereof the Settlor executed this deed the day and year stated above.

SIGNED AS A DEED AND DELIVERED by the said Settlor:

The Settlor (or in cases of joint Settlers, the first Settlor) must sign here in the presence of an independent witness.

**Name of Settlor**

In the presence of:

**Signature of Settlor**

A witness must be over 18 and an independent person, that is, someone who is not a Trustee or Beneficiary of the Trust.

**Name and address of Witness**

**Signature of Witness**

The second Settlor (where a joint Plan) must sign here in the presence of an independent witness.

**Name of second Settlor**

In the presence of:

**Signature of second Settlor**

A witness must be over 18 and an independent person, that is, someone who is not a Trustee or Beneficiary of the Trust.

**Name and address of Witness**

**Signature of Witness**

SIGNED AS A DEED AND DELIVERED by the said first additional trustee:

The first additional trustee must sign here in the presence of an independent witness.

**Name of first additional trustee**

In the presence of:

**Signature of first additional trustee**

**Signature of Witness**

**Name and address of Witness**

SIGNED AS A DEED AND DELIVERED by the said second additional trustee:

The second additional trustee must sign here in the presence of an independent witness.

**Name of second additional trustee**

In the presence of:

**Signature of second additional trustee**

**Signature of Witness**

**Name and address of Witness**

SIGNED AS A DEED AND DELIVERED by the said third additional trustee:

The third additional trustee must sign here in the presence of an independent witness.

**Name of third additional trustee**

In the presence of:

**Signature of third additional trustee**

**Signature of Witness**

**Name and address of Witness**

