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Inspiring. Independent. Trusted.

Settlement without Protector
Explanatory Notes

Private Client



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Settlement without Protector - Explanatory Notes

In order to assist you with understanding of the terms of the draft trust instrument appended hereto these notes have been produced to explain the provisions contained in the settlement.

You should read the draft trust instrument in full; these notes are no substitute for reading the trust instrument. For the avoidance of doubt, this document is not intended to and does not add to, vary, amend or affect the true interpretation of the terms of the draft trust instrument.

If having read the draft trust instrument and explanatory notes you remain uncertain as to the effect of any clause contained in the draft trust instrument you should refer your query to the person dealing with the establishment of the trust.

These notes are set out to correspond with the format of the settlement for ease of reference.

Your settlement has been drafted to comply with both the Trusts (Jersey) Law 1984 (as amended) ('the Trust Law') which provides a statutory framework for the establishment, administration and management of trusts in Jersey and the general law of trusts. If you wish to obtain a copy of the Trust Law we shall provide you with a copy upon request. The provisions of this draft settlement will take effect (when appropriate) subject to and in accordance with these sources of law.

GLOSSARY OF TERMS

Set out below are the definitions of certain basic terms that are either referred to in the document creating your settlement or with respect to it.

"Beneficiary" means a person entitled to benefit under a trust or in whose favour a discretion to distribute property held on trust may be exercised.

"Letter of Wishes" is a non-binding document which is normally signed by the settlor for the purpose of giving guidance to the trustees on the manner in which they may exercise their discretionary powers contained in the Trust.

"Settlor" is a person who provides trust property whether during his lifetime or by will.

"Settlement" means a trust in circumstances where a person known as a settlor transfers his property to a trustee to be held on trust in accordance with the arrangements set out in the settlement.

"Trust" means a legal relationship that exists where a person (known as the trustee) holds property (of which he is not the absolute owner) for the benefit of any person(s) (known as a beneficiary or beneficiaries) or permissible purpose(s) which not solely for the benefit of the trustee. A settlement is a form of trust.

"Trustee" means a person who holds trust property for beneficiaries of a trust or for permissible purposes.

"Trust Property" Property for the time being held in trust.

SETTLEMENT PROVISIONS

- 1. INTERPRETATION** - This clause provides definitions to reduce uncertainty when interpreting the clauses in the instrument.
- 2. PROPER LAW AND EXCLUSIVE JURISDICTION** - This clause sets out the law which governs the settlement. In this instance it is the laws of Jersey. The courts of Jersey are given exclusive jurisdiction over the settlement.
- 3. TRUST OF ORIGINAL AND ADDITIONAL PROPERTY** - This clause confirms that the trustees shall hold the trust fund on the terms of the Trust and may receive additional property at a later date to be held as part of the Trust Fund including property of an "onerous" nature so long as the trustee considers it to be in the interests of the beneficiaries or any one of them to hold it.

- 4. TRUST OF INCOME AND CAPITAL** - This clause provides the trustees wide powers in relation to the trust fund both in terms of distribution and accumulation.
- Clause 4(a) gives the trustees discretionary power to pay or apply income or capital to any one or more beneficiaries that they determine to benefit.
- Clause 4(b) permits the trustees (among other things) to hold some or all of the trust fund on a separate trust for any particular beneficiary.
- Clause 4(c) permits the trustees to retain income and add it to the capital of the trust fund.
- Clauses 4(d) and (e) deal with the distribution of the trust fund at the end of the trust period (perpetual unless reduced at the discretion of the trustees). The trustees can distribute the trust fund to one or more of the beneficiaries in the manner in which they determine. In default of this, the trust fund will be held for the beneficiaries equally and subject to that for such charity or charities or charitable purposes as the trustee chooses, or in default of this, general charitable purposes.
- 5. POWERS OF APPOINTMENT AND ADVANCEMENT** - This clause gives the trustees very wide powers to appoint new trusts and enlarge the interests of any one or more of the beneficiaries. The trustees are also permitted to transfer part or all of the trust fund to a separate trust provided that there is a beneficiary common to both those trusts. The trustees may also pay taxes both levied upon it and taxes levied in respect of any other trust under which one or more of the beneficiaries is also a beneficiary. In addition the trustees may form companies and transfer to the company all or any part of the capital and income of the trust fund.
- 6. POWER TO IGNORE INTERESTS** - The trustees have the ability to ignore the interests of one or more beneficiaries when considering conferring a benefit on a particular beneficiary.
- 7. PAYMENT TO PERSONS NOT OF FULL CAPACITY AND CHARITIES** - The trustees may transfer trust property to any parent, guardian or other representative on behalf of any minor beneficiary or other beneficiary under an incapacity, without seeing to the manner in which the money thereafter is applied or apply trust property as may be directed in writing by the parent guardian or representative. The receipt of such parent guardian or other representative will be sufficient discharge to the trustees. When transferring money to any charity the trustees may get a valid receipt from its treasurer or any other officer whom they consider appropriate.
- 8. POWER OF ADDITION** – The trustees may add persons who are not Excluded Persons to the class of beneficiaries.
- 9. POWER OF EXCLUSION** – The trustees may revocably or irrevocably (i) name a person as an excluded person who thereafter will be incapable or partially incapable of receiving any future benefit under the settlement; or (ii) remove a person from being a beneficiary.
- 10. THE EXCLUSION OF EXCLUDED PERSONS** - This confirms the extensive manner in respect of which an Excluded Person is precluded or (depending on the circumstances) partially precluded from receiving any benefit out of the trust fund.
- 11. DISCLAIMERS OF INTEREST** - This permits a beneficiary to disclaim either wholly or partly his interest (if any) in the trust fund.
- 12. POWER TO CHANGE PROPER LAW** - This clause permits the trustees to change the proper law of the settlement subject to the matters set out in the clause
- 13. ADDITIONAL POWERS OF THE TRUSTEES** - This clause refers to the additional powers of the trustees set out in the First Schedule to the document.
- 14. EXERCISE OF TRUSTEES' POWERS AND DISCRETIONS** – The trustees' powers are discretionary and the trustees may exercise a power for the benefit of one or more beneficiaries. [The Trustees may act by majority. PLEASE NOTE: If a decision is taken by a majority, a trustee not among the majority he will not be liable for the decision.]
- 15. RESTRICTIONS ON EXERCISE OF POWERS** - No discretion or power conferred on the trustees can be exercised after the trust period or exercised so as to infringe legal rules against “excessive accumulations” and “perpetuities”. These rules are only likely to be relevant if the proper law of the settlement changes from that of Jersey.
- 16. RELEASE OR RESTRICTION OF POWERS** - The trustees may revocably or irrevocably release or restrict any power conferred on them notwithstanding the fiduciary nature of any such power.
- 17. DELEGATION** - This clause permits the trustees to delegate their powers that are contained in the trust document to other persons including persons connected to them such as parent companies or subsidiaries, which may charge for services if the work is carried out in the course of their trade, profession or vocation. Any such delegation must be done in good faith and without neglect.
- 18. CORPORATE TRUSTEES** - This clause explains how a corporate trustee may perform its duties under the trust.
- 19. VALIDITY OF ACTS OF SOLE TRUSTEE** - This clause provides that there is no need for more than one trustee.
- 20. RESIGNATION AND APPOINTMENT OF NEW AND ADDITIONAL TRUSTEES** - The trustees have the power to appoint new or additional trustees and this clause contains other provisions dealing with the retirement and appointment of trustees.

21. **LIABILITY OF FORMER TRUSTEE - PLEASE NOTE:** This clause provides that if a trustee retires or is removed as a trustee he shall be released from all claims and demands made by those actually or prospectively interested under the settlement except in relation to actions arising from his fraud, wilful misconduct, and gross negligence or which are brought to recover trust property or the proceeds of trust property in the possession of such trustee (or if corporate) any of its officers.
22. **EXONERATION OF TRUSTEES – PLEASE NOTE:** This clause specifically excludes the liability of the Trustees in relation to loss resulting to the trust fund except in relation to claims arising by reason of fraud, wilful misconduct or gross negligence on the part of the Trustee who is sought to be made liable.
23. **REMUNERATION OF TRUSTEE – PLEASE NOTE:** This clause provides that the Trustees may charge for their services and provides the basis upon which they may do so. It provides, amongst other things, that corporate trustees may charge in accordance with their scale of charges published from time to time. If such Trustees do not publish a scale of charges they are allowed to charge reasonable fees for the work they do.
24. **DISCLOSURE** - This clause provides that the trustees are not obligated to disclose to a beneficiary or other persons certain categories of document or information, including documents or information relating to the reasoning and deliberations of the trustees in respect of the exercise of their discretionary powers.
25. **POWER TO VARY AND RECTIFY** - This clause provides that the trustees may vary the provisions of the settlement or to rectify errors contained in the provisions if they consider such to be for the benefit of any one or more of the beneficiaries. The power cannot be used to vary clause 10 relating to the exclusion of excluded persons.
26. **IRREVOCABILITY** - This clause states that the trust is created on an irrevocable basis.
27. **EXPENSES OF CREATION OF THIS SETTLEMENT** - Part of the trust fund may be used to pay the costs of establishing the settlement
28. **SIGNIFICANCE OF HEADINGS** - This clause states that the headings are for reference only and do not affect the legal interpretation of the provisions.

FIRST SCHEDULE – ADDITIONAL POWERS

1. **General Powers** – The trustees have wide powers over the trust fund as would an actual beneficial owner.
2. **Powers of Investment** – This clause sets out a wide range of investment activities that the trustees may undertake albeit that those powers are unrestricted.
PLEASE NOTE: Paragraph 2(3) seeks to provide that the trustees are not under a duty to: hold a balance between conflicting interests of beneficiaries, obtain and consider investment advice of any nature, or preserve and enhance the value of the trust fund.
3. **Companies** – The trustees may form companies for various purposes.
4. **Overseeing Management of Companies** – this relates to the duties of the trustees in relation to companies and other entities owned or partially owned by them as trustees of the settlement.
PLEASE NOTE: The clause seeks to provide (among other things) that: the Trustees are not bound to involve themselves in the affairs of any company entity or other association (whether corporate or unincorporated) in which they have an interest unless they have actual notice of an act of dishonesty or misfeasance on the part of any directors managers or persons in control of the relevant entity; the Trustees shall not be liable for any loss suffered arising from any acts or omissions of the directors and officers of such entities even if they do have express notice or intimation of the default; the Trustees are not obliged to make any claims arising from the default acts and omissions of those officers and no beneficiary can make them do so (but a trustee may be obliged to lend his name to proceedings brought by a beneficiary in respect of such act or omission if given a full indemnity in respect of all costs and expenses of the proceedings).
5. **Power to Make Loans** – The trustees can loan trust property to a beneficiary or underlying company or other similar entity.
6. **Power to Borrow Money** – The trustees may borrow money and give security over the trust fund to a third party.
7. **Power to Permit Occupation of Property by Beneficiaries** – The trustees are given wide powers to permit beneficiaries to occupy real property and use chattels or other property subject to the settlement on such terms as the trustees wish (including for free). It does not matter if someone else other than a beneficiary also has use or enjoyment of the real property or chattels.
8. **Power to Engage in Trade** – The trustees have wide powers to become involved in trades and ventures.
9. **Power to appropriate** – The trustees may satisfy the interest of a beneficiary under the trust by distributing part of the trust fund in satisfaction of that interest which would otherwise continue.
10. **Power to Apportion between Capital and Income** – The trustees have power to decide whether to treat as income or as capital proceeds derived from property which forms all or part of the trust fund and whether any outgoings or losses should be paid out of capital or income.

- 11. Power to Pay Taxes and Duties** – The trustees may pay any duties, taxes or fiscal impositions arising in respect of the trust fund even if they are not enforceable in the jurisdiction where the trust is administered or even if the payment of them is not to the advantage of any beneficiary under the trust.
- 12. Employment of Agents** – The trustees may retain agents to discharge their duties under the trust (including persons connected to or associated with any of them) and to pay their fees out of the trust fund. In particular the trustees are empowered to retain an investment adviser (which is defined to include discretionary investment manager) which also may be a person who is connected to or associated with the trustees and may also be paid from the trust fund.
- PLEASE NOTE:** paragraphs 12(2)(a) and (b) seek to provide that: no trustee is under any duty to review supervise or otherwise monitor the conduct of an investment adviser in carrying out his duties under the settlement; carry into effect the action proposed by any such advice; or go behind query or question the advice he is given, but the trustees are entitled to rely on such advice in its entirety and assume it to be true and accurate in all respects; the Trustees will not liable for anything done or not done as a result of advice or recommendations of such an investment adviser or for not following it; the Trustees will not be liable for not diversifying the investments of the trust fund.
- 13. Receipts** – The trustees can give receipts for any property received.
- 14. Power to Take Legal Advice** – The trustees may instruct legal counsel [of at least 5 years standing] to assist them with any matter and to settle their fees out of the trust fund. **PLEASE NOTE:** the clause seeks to provide that if the Trustees act in accordance with that legal advice, the Trustees will not be liable for any loss to the Trust Fund.
- 15. Power to Effect Compromises** – This provides (among other matters) that the trustees may compromise abandon submit to arbitration or settle any debt or claim relating to the Trust Fund. **PLEASE NOTE:** the clause seeks to provide the Trustees may do these things without being liable for any loss to the Trust Fund occurring as a result.
- 16. Power to Guarantee Debts** – The trustees may guarantee the debts of a beneficiary or company or other entity in which a beneficiary is interested or in which or an underlying company or other entity in which the trustees are interested and provide security with respect thereto.
- 17. Power to Indemnify** – The trustees may provide an indemnity to an outgoing or former trustee in respect to certain liabilities including taxation and charge or deposit the whole or any part of the Trust Fund as security for such indemnity.
- 18. Trustees May Act Notwithstanding Personal Interest** – The trustees may enter into transactions notwithstanding a personal interest. Nevertheless, the trustees would at all times be required to act responsibly in good faith and in the interests of one or more of the beneficiaries. If there is more than one trustee he may abstain from acting except merely as a formal party and may allow his co-trustee or co-trustees to exercise the relevant powers.
- 19. Transactions With Other Trusts** – Subject to any overriding principles in the general law, the trustees may sell trust property or otherwise transact with other trusts (including trusts in respect of which one or more of them is trustee) provided that no excluded person is a beneficiary under that other trust.

SECOND SCHEDULE – The initial settled property that is transferred to the trustees at the commencement of the trust arrangement.

THIRD SCHEDULE – The beneficiaries that are initially named as the objects of the trust. This schedule can be amended by the trustees' exercise of their powers to add or exclude beneficiaries.

SIGNING/EXECUTING THE SETTLEMENT





No particular formalities apply under the laws of Jersey in respect to signing or executing a trust document but we require that (a) in the case of an individual signing a trust document, it is signed personally (i.e. not pursuant to a power of attorney) and witnessed by an independent party who is not a relative or a beneficiary under the terms of the trust (b) in respect to corporate settlors the common seal of the company is affixed to the trust document in accordance with the provisions contained in the articles of association of the company.

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