

Nucleus Discretionary By-pass Trust

Trust deed

Nucleus client relations, PO BOX 26968, Glasgow G2 9DY.

This document is provided strictly for general consideration only. Any action taken or refrained from in connection with the Nucleus Discretionary Bypass Trust must be preceded by discussion with the settlor's legal and other professional advisers. Accordingly, neither Nucleus nor any associated or affiliated company nor any of their representatives, officials or employees can accept any responsibility for any loss occasioned as a result of the use of the draft Nucleus Discretionary Bypass Trust in any circumstances whatsoever except as provided by law.

Important notes on using the Nucleus Discretionary By-pass Trust

- The Discretionary By-pass Trust is suitable for use by investors holding investments in the Nucleus Pensions Account (the Scheme). In these Notes the investor holding such an account is called the Member (which is the term used in the Scheme Rules).
- The main purpose of the Nucleus Discretionary By-Pass Trust is to provide a flexible structure to receive death benefits from the Scheme. This assumes that the Scheme rules allow for the payment of those benefits to a wide range of beneficiaries including the member's widow/er and dependants as well as any trust that the member has created.
- For the arrangement to work the member must:
 - i. elect for a lump sum to be paid on their death
 - ii. declare a Discretionary By-Pass Trust, and
 - iii. complete a nomination form asking the scheme administrator to exercise their discretion to pay death benefits to the Trustees of the Discretionary By-Pass Trust.
- The Nucleus Discretionary By-pass Trust is governed by the law of England and Wales but it may be used by individuals living in any part of the UK.
- If, having obtained legal advice, the investor wishes to execute the draft as a deed, the Settlor and the Trustees should follow the instructions in the completion guide at the end of this document.
- There is no need to send a copy of the Deed to Nucleus when the Trust is made. This will be needed only if the Trustees decide to invest the funds they receive from the Scheme after the death of the member in investments held in the Nucleus wrap.

This document is presented as a draft for the consideration of the Settlor's legal advisers. Every effort has been taken in the preparation of the document to ensure that it is capable of achieving the objectives stated above and explained in more detail in the guides referred to earlier. However, as the circumstances of each individual are different, Nucleus cannot guarantee that the objectives of any particular Settlor will be achieved using this draft. Accordingly, Nucleus can accept no responsibility for any loss occasioned from the use of this draft Trust.

The nomination form is available from Nucleus.

- The Discretionary By-pass trust is set up with a nominal amount, normally a £10 note which should be pinned to the Trust Deed. It is not expected that any additions will be made until after the Member's death when the Pensions Account death benefits will be paid to the Trustees of this Trust.
- The Discretionary By-pass Trust is a settlement and so has important legal and tax consequences. For an overview of the features of this Trust, investors should refer to the client guide to the Nucleus Discretionary By-pass Trust. A more detailed guide for advisers can be found in the adviser guide to the Nucleus Discretionary By-pass Trust.

Nucleus Discretionary By-pass Trust Trust deed

The Trust deed

This Trust deed is made the _____ day of _____ in the year

Between

of

_____ 'the Settlor' of the first part and the

Settlor and

of

and

of

and

of

(hereinafter together called 'the Original Trustees') of the second part

Nucleus Discretionary By-pass Trust Trust deed

Part 1: Declaration

- A. The Settlor wishes to declare this Trust and has transferred or delivered to the Trustees the sum of
- £
- (hereinafter referred to as the 'Initial Sum').
- B. From time to time further moneys investments or other property may be paid or transferred to or otherwise placed under the control of the Trustees (as hereinafter defined) by way of addition.
- C. In particular it is intended that sums will be paid to the Trustees which originate from pension schemes of which the Settlor is or may be a member.
- C. Name of the Trust
This trust will be known as:

- g) the Default Beneficiaries (as hereinafter defined)
- h) Any person or class of persons named or identified below:
- j) any charity
- v. 'Default Beneficiaries' means the one or more persons named in the boxes below
- | Name | % share if more than one |
|------|--------------------------|
|------|--------------------------|

Part 2: Definitions

In this Trust the following expressions shall have the following meanings and unless the context does not permit the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

- i. 'Appointor' means the Settlor while he is alive and of full Capacity and subject thereto the Trustees.
- ii. 'Beneficiaries' means the Default Beneficiaries and the Discretionary Beneficiaries.
- iii. 'Capacity' means mental capacity within the provisions of the Mental Capacity Act 2005 or any Act which supersedes it.
- iv. 'Discretionary Beneficiaries' means:
- a) any widow or widower of the Settlor
 - b) the children and remoter issue of the Settlor whenever born
 - c) every spouse, former spouse, widow or widower of any such child or remoter issue
 - d) the brothers and sisters of the Settlor and their issue
 - e) any one or more persons beneficially entitled under the will (or any codicil thereto) of the Settlor or who would be entitled to an interest in the Settlor's estate if the Settlor had died intestate
 - f) any person (other than the Settlor) nominated in writing to the Trustees by the Settlor (while he is alive and of full Capacity) as a Discretionary Beneficiary
- vi. 'Excluded Person' means the Settlor, the Settlor's estate or the Settlor's legal personal representatives and, whilst the Settlor is alive, the spouse of the Settlor. A widow/widower of the Settlor is not an Excluded Person.
- vii. 'Trustees' means the trustee or trustees as appropriate for the time being of this Trust and at the commencement of this Trust the Trustees are the Original Trustees.
- viii. 'Trust Fund' means:
- a) the Initial Sum and
 - b) all money, investments or other property paid or transferred by any person or persons to or so as to be under the control of and (in either case) accepted by the Trustees as additions, any capital accretions and accumulations of income; and in particular
 - c) any sums paid to the Trustees as a result of trustees or scheme administrators (as appropriate) of any registered or non-registered occupational or personal pension scheme of which the Settlor has been a member exercising their discretion to pay a lump sum death benefit to the Trustees on the Settlor's death, and
 - d) all the money, investments and other property from time to time representing the said Initial Sum, money, investments, other property additions, capital accretions and accumulations of income.

Nucleus Discretionary By-pass Trust Trust deed

ix. 'Trust Period' means the period of one hundred and twenty five years commencing from the date of this Trust.

When property is added to this Trust from another settlement or trust commencing before 6 April 2010 then the trusts powers and provisions applicable to the added property must not infringe any applicable rule against perpetuities.

x. In this Trust '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.

xi. 'Spouse' includes any civil partner registered under the Civil Partnership Act 2004 and widow(er) includes any surviving civil partner so registered. Any references to marriage include registered civil partnership.

Part 3: Main trust terms

1

- i. The Appointor shall have power by deed revocable (whether by the person making the deed or some other person) during the Trust Period or irrevocable to appoint that they shall hold the Trust Fund or any part thereof for the benefit of any Beneficiary or Beneficiaries on such terms as the Appointor in their absolute discretion think(s) fit and any such appointment may create any provisions and in particular discretionary trusts, protective trusts and dispositive or administrative powers exercisable by any person.
- ii. The Appointor shall have power by deed to declare that the Trustees hold the Trust Fund or any part thereof on trust to transfer it to the trustees of another settlement wherever established to hold on the terms of that settlement freed and released from the terms of this Trust provided that nobody who is not a Beneficiary under this Trust can benefit under such a transferee settlement.

Provided that

- a) no appointment shall infringe the rule against perpetuities (where relevant) or affect the entitlement of any person to any payment made or asset transferred to him previously; and
- b) where the Appointor is the Trustees, no appointment shall be made in favour of a Beneficiary who is also a Trustee, or a spouse of a Trustee, unless the appointment is also made by at least one other Trustee who does not, and whose spouse does not, benefit directly or indirectly from the appointment.

2 Subject to any exercise of the power of appointment conferred by paragraph 1 of this Part 3:

- i. The Trustees may accumulate the whole or any part of the income of the Trust Fund during the Trust Period. Such income shall be added to the Trust Fund.
- ii. The Trustees shall pay or apply the remainder of the income to or for the benefit of such one or more of the Beneficiaries as the Trustees in their absolute discretion think fit during the Trust Period.

3 Subject to any exercise of the power of appointment conferred by paragraph 1 of this Part 3, during the Trust Period:

- i. the Trustees shall have power to pay transfer or apply the whole or any part or parts of the capital of the Trust Fund as they in their absolute discretion think fit to or for the benefit of any Beneficiary entitled to such part or whole.
- ii. the Trustees shall have power to lend with or without security, and with or without interest, to any Beneficiary the whole or any part of the Trust Fund upon such conditions as to interest (if any) and 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 and provided that where the Beneficiary to whom a loan is being made is also a Trustee, there must be at least one other Trustee exercising the power to lend.

4 Where the Trustees wish to pay transfer or apply any capital or income to or for the benefit of a Beneficiary who is under a legal disability they may do so by paying the income or capital 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 such person shall be a complete discharge to the Trustees who shall be under no obligation to see to the proper application thereof.

5 Subject to the preceding trusts and to any exercise of the powers conferred above the Trustees shall at the end of the Trust Period hold the Trust Fund and its income so far as not otherwise disposed in trust for the Default Beneficiaries absolutely and if more than one in the shares set out in paragraph v. of Part 2 and if no shares are specified in equal shares absolutely.

Nucleus Discretionary By-pass Trust

Trust deed

Part 4: Trustees' Administrative Powers

The Trustees shall in the management and administration of the Trust Fund 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 in all respects as if the Trustees were the absolute beneficial owners thereof and without prejudice to the generality of the foregoing the Trustees shall have the following powers:

- i. Power to accept payments from trustees or administrators of pension schemes of which the Settlor is a member and which satisfy the circumstances described in paragraph viii. c) of Part 2 above.
- ii. Power to sell or otherwise liquidate and deal with any asset whatsoever comprised in the Trust Fund and to invest in any property of whatsoever nature and wheresoever situate and whether producing income or not, including land, heritable property and investment in any policies of assurance as the Trustees may in their absolute discretion think fit.
- iii. With regard to any policy of assurance or capital redemption policy held subject to the trust, the power:
 - a) to pay premiums on any such policy and to borrow from any person (including any of themselves) the moneys required for any such premium upon such terms as to repayment interest and otherwise as they may think fit
 - b) to exercise any of the elections powers options and privileges conferred by any such policy and to alter the amount of any periodic premiums payable thereunder or the period during which such premiums are payable and to alter the terms of any such policy in any manner by agreement with the insurers and to do any of the foregoing notwithstanding that the sum assured may thereby be reduced or increased
 - c) to convert any such policy into a fully paid up policy free from payment of future premiums
 - d) to surrender wholly or partially any such policy
 - e) to appoint in writing such person or persons as the Trustees think fit to act as agent of the Trustees for the purpose of receiving moneys from any person and to apply the said moneys as premiums under any such policy already in force or under any such policy which is about to come into force and to become comprised in the Trust Fund
 - f) to recover receive or give valid receipts for all moneys due or to become due under any such policy so that the receipt by the Trustees of any moneys payable under or deriving from any dealing with any such policy shall be a full and sufficient discharge to the insurance company making the payment who shall not be concerned to see to the application of any such moneys

- iv. Power 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 part or parts of the Trust Fund or upon personal security only and to use such money in purchasing or subscribing for investments or property to be held as part of the Trust Fund or otherwise for any purpose for which capital moneys forming part of the Trust Fund may be used.
- v. Power revocably or irrevocably to delegate any power or powers in making managing realising or otherwise dealing with any property comprised in the Trust Fund to any person or persons (including nominees) 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 Trustee in question employed or incurred expense in employing him in good faith. The Trustees shall also have power to pay any fees or other charges made by any such person acting for the Trustees in any of the specified capacities.
- vi. Power to delegate any administrative functions in connection with the investment of the Trust Fund to any two of their number.
- vii. Power at any time or times by deed or deeds to confer on themselves any administrative power not conferred on them by this Deed or the general law which the trustees may consider necessary or expedient.

Part 5: Appointment, Dismissal, Retirement and Remuneration of Trustees

- 1 The Appointor shall have power to appoint by deed new or additional Trustees and where necessary the Trustees will grant any necessary documentation to complete such appointment.
- 2 The Settlor while he is alive and of full Capacity shall have power to dismiss by deed any Trustee and the said power shall be exercisable notwithstanding that as a result of its exercise the sole Trustee is a corporation which is not a Trust Corporation for the purpose of section 37 of the Trustee Act 1925, where relevant, or a single individual but not so as to result in the Settlor and/or his spouse for the time being becoming the only Trustee(s).
- 3 Where the Settlor has died or lost Capacity 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 or from a registered medical practitioner appointed by the other Trustees, 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 the Trust.

Nucleus Discretionary By-pass Trust

Trust deed

- 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 paragraph 3 of this Part 5 and the power to appoint Trustees under paragraph 1 of this Part 5 will vest in the other Trustee provided a new Trustee is appointed simultaneously with the dismissal of the incapable Trustee
 - 5 Any Trustee may retire at any time on giving 30 days written notice to the Appointor, and the Trustees, if different, Provided Always that no retirement of any Trustee shall take effect so as to result in the Settlor or the Settlor's spouse for the time being becoming the only Trustee.
 - 6 Any corporate body which is empowered to act as a trustee may at any time be appointed as a Trustee and may act by its proper officers in the discharge of its duties as such Trustee and in the exercise of the powers and discretions conferred hereby or by law.
 - 7 Every corporate Trustee shall be entitled to remuneration upon such terms as may be agreed by the Appointor at the time of its appointment and in the absence of such agreement every corporate Trustee shall be entitled to remuneration in accordance with its normal scale of charges (if applicable) at the time of its appointment provided always that the Settlor and the spouse for the time being of the Settlor shall not in any capacity or in any way be entitled to remuneration as a Trustee.
 - 8 Any Trustee other than the Settlor and any spouse for the time being of the Settlor:
 - a) who, not being a body corporate, is engaged in any profession business or trade may be employed by the Trustees and any Trustee so engaged and employed may charge and be paid all reasonable professional business or trade costs and charges for business transactions and time expended and acts done by him (or any partner or employee of his) in connection with this Trust including acts which a Trustee not being engaged in any profession business or trade could have done personally and whether or not in the usual scope of his profession business or trade.
 - b) may exercise or concur in exercising all powers and discretions given to him by this Trust or by law notwithstanding that he has a direct or other personal interest in the mode or result of any such exercise but any of the Trustees may nevertheless abstain from acting except as a merely formal party in any matter in which he may be so directly or personally interested and may allow his co-trustees to act alone in relation thereto.
 - ii. 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
 - iii. 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
 - iv. any other matter or thing 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.
- 2 The Trustees shall have power by deed or deeds revocable (whether by the person making such deed or some other person) during the Trust Period or irrevocable wholly or partially to release or restrict the future exercise of any power hereby conferred on them (including this power) whether or not of a fiduciary nature and whether dispositive or administrative and so as to bind their successors.
 - 3 Notwithstanding any of the foregoing provisions no excluded person shall be capable of taking any direct or indirect benefit of any kind by virtue or in consequences of this Trust Deed and in particular but without prejudice to the generality of this paragraph:
 - a) the Trust Fund and its income shall be held and enjoyed to the entire exclusion of any Excluded Person and to the entire exclusion of any direct or indirect benefit to any excluded person by contract or otherwise;
 - b) no part of the capital or income of the Trust Fund shall be paid to or held by any Excluded Person (except in a fiduciary or parental capacity) or lent to or applied for the direct or indirect benefit of any excluded person; and
 - c) no power or discretion conferred on the Trustees shall be capable of being exercised or operating in any manner so as to confer any benefit whether directly or indirectly on any Excluded Person in any manner or circumstances whatsoever.
 - 4 When property is added to this Trust from another settlement or trust commencing before 6 April 2010 then the trusts powers and provisions applicable to the added property must not infringe any applicable rule against perpetuities.

Part 7: Proper Law

The proper law of this Trust shall be that of England and Wales and all rights under this Trust and its construction and effect shall be subject to the jurisdiction of the courts and construed according to the law of England and Wales.

Part 6: Further Trust Provisions

- 1 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:
 - i. any investment made in good faith by him or any other Trustee or

Nucleus Discretionary By-pass Trust Trust deed

Part 8: Signatures

Whereof the Parties hereto executed this deed the day and year first before written at the location stated below.

Signed as a deed and delivered

By the said (the Settlor)

Settlor's signature (must be a 'wet' signature)

In the presence of:

Witness name

Occupation

Address

Witness' signature (must be a 'wet' signature)

Signed as a deed and delivered

By the said (1st Original Trustee)

1st Original Trustee's signature (must be a 'wet' signature)

In the presence of:

Witness name

Occupation

Address

Witness' signature (must be a 'wet' signature)

Nucleus Discretionary By-pass Trust Trust deed

Signed as a deed and delivered

By the said (2nd Original Trustee)

2nd Original Trustee's signature (must be a 'wet' signature)

In the presence of:

Witness name

Occupation

Address

Witness' signature (must be a 'wet' signature)

Signed as a deed and delivered

By the said (3rd Original Trustee)

3rd Original Trustee's signature (must be a 'wet' signature)

In the presence of:

Witness name

Occupation

Address

Witness' signature (must be a 'wet' signature)

Nucleus Discretionary By-pass Trust Trust deed

Nucleus Discretionary By-pass Trust Completion Guide

If, after seeking legal advice, the Nucleus Discretionary By-pass Trust is to be completed unamended the following parts of the document need to be completed as follows.

Personal details

- The date the Deed is executed must be inserted. If the parties sign the Deed on different days, this should be the date of the last signature.
- The names and addresses of the Settlor and the additional trustees who will act with the Settlor as Original Trustees must be inserted. A maximum of four Original Trustees (including the Settlor) should be inserted.

Part 1: Declaration

- In paragraph A. the sum of money to be transferred to the Trustees (e.g. £10) should be inserted.
- In paragraph D. Name of the Trust: the name of the Trust should be inserted, e.g. 'The 2020 Allan Jones Discretionary By-pass Trust'. This will help to distinguish it from any other trusts the Settlor may have created, which will help when corresponding with HM Revenue & Customs. It is also the name which will be used to refer to the Trust when corresponding with the Scheme Administrator.

Part 2: Definitions

In definition iv. 'Discretionary Beneficiaries' in paragraph h) the Settlor should insert the name(s) or class(es) of any other beneficiary(ies) they wish to include that are not already covered under categories a) – g).

In definition v. 'Default Beneficiaries' the names of the beneficiary or beneficiaries who will benefit in default of any other appointment (for example, if there is any capital left in the Trust at the end of the Trust Period which has not by that time been distributed to one or more of the Discretionary Beneficiaries) should be inserted. If there is to be more than one such beneficiary then the percentage shares in which they should benefit should be inserted. Please ensure that the shares add up to 100%. At least one name must always be included in this definition.

Part 8: Signatures

The Settlor and the Original Trustees should sign the document and each signature should be witnessed. It is sufficient for the Settlor to sign once.

HMRC Trust Registration Service

Most trusts now require to register with the HMRC Trust Registration Service. There are some exemptions and professional advice should be taken.