

Commonwealth of The Bahamas

TRUST DEED

THIS TRUST DEED is mad the day of between [insert name and address of Company] (“the Company”) and [insert names and addresses of Trustees] (“the Trustees”) and the Insurance Commission of The Bahamas (“the Commission”) pursuant to section 45 of the Insurance Act, 2005 (“the Act”).

WHEREAS -

1. The Company is required to establish and maintain a statutory fund in respect of its [insert class of insurance business] insurance business, such fund to be held in trust pursuant to section 45(4) [or 45 (5)] of the Act;
2. The Trust hereby constituted shall be known as [insert name of trust] (“the Trust”);
3. The Trust is to be comprised of assets of the Company which are equal to its liabilities and contingency reserves with respect to its policyholders in The Bahamas as established by the accounts of the Company at the end of its financial year for its long term business and the value of the Trust currently stands at the sum of [insert value], as detailed in Schedule A;
4. The Company shall transfer the assets set out in Schedule A to the Trust to be held in the manner and for the purpose declared;
5. The Trustees have agreed to act as the Trustees of this Trust at the request of the Company and the Company declares that the Trustees are the Trustees of the Trust property and shall be so called;
6. The assets which are transferred to the Trustees are to be held on the Trust declared by this Deed and subject to the provisions of this Deed and the Act;
7. This Deed is established for the purpose of application in favor of qualifying beneficiaries or policyholders if the Company fails to meet its obligations under the law or resulting from valid claims on policies issued; and
8. This Deed shall be governed by the laws of The Commonwealth of The Bahamas.

NOW THIS DEED WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:

1. The Company shall appoint Trustees subject to the approval of the Commission;
2. The Company has the power to remove the Trustee for any reason and the change of the Trustees shall be effected by the execution of a deed;
3. The Trustees shall, in furtherance of the purpose of the Trust, at all times act in accordance with the applicable provisions of the Act that is to say:
 - (a) By section 46(1) of the Act, the Trustees may not deal with any assets held in the trust without the prior general or specific approval of the Commission; and
 - (b) By section 48 of the Act, the Trustees shall submit to the Commission in such form and at such times as may be required, a list of the assets held in trust pursuant to section 47 of the Act;
4. The Trustees shall invest Trust money in accordance with instructions of the Company and with the approval of the Commission in or upon such investments or securities as may be approved by the Commission by way of regulations, policies or guidelines;
5. The Trustees shall at the request of the Company and with the approval of the Commission transfer or substitute any of the assets of the Trust set out in Schedule A for any other assets as may be required from time to time in accordance with section 46(3) of the Act;
6. The Trustees shall at the request of the Company and with the approval of the Commission release any assets from the Trust, which assets are not required by the Act or the Insurance (General) Regulations, 2010 to be subject to the Trust;
7. The Commission may determine from time to time the value at which the assets vested in trust with the Trustees shall be accepted for the purposes of the Act;
8. The Trustees shall pay to the Company all interest and dividends accruing on assets held in the Trust in such manner as may be agreed between the Trustees and the Company;

9. The Trustees shall exercise all powers and carry out all obligations under this Deed honestly and in good faith and in connection therewith exercise that degree of care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances;

10. The Trustees shall cause proper records to be kept with regard to:

- accounting records for the Trust;
- the preparation of annual statements of accounts for the Trust;
- auditing or independent examination of statements of accounts of the Trust; and
- the transmission of the statements of account or any other information to the Commission;

11. The Trustees shall at all times, upon reasonable notice, permit the Commission and the Company access, for purpose of examination, to all assets held in trust and to the records of the Trustees in relation thereto;

12. The Trustees shall be remunerated on such terms as may be agreed from time to time between the Company and Trustees;

13. The Trustees may terminate this Deed on at least sixty (60) days notice in writing to the Commission and the Company, specifying in the notice the date of termination. Upon the date of termination specified in the notice, the Trustees shall be discharged from any further responsibilities to carry out the terms of this Deed, save for its obligations under paragraph 14 of this Deed;

14. The Company shall, as soon as practicable,

- a) on the Trustees ceasing to carry on business, or refusing to act as trustees;
- b) on the Trustees becoming insolvent, being deemed insolvent or admitting that it is insolvent, or on becoming subject to any proceeding for its winding-up, liquidation or dissolution, voluntarily or involuntarily;
- c) on the Trustees defaulting in its duties or obligations under this Deed and not commencing to rectify the default within thirty (30) days after written notice from the Company or the Commission specifying the default and requiring the Trustees to remedy the same; or

d) after the Trustees give or the Company receives a notice under paragraph 13;

appoint other Trustees in accordance with the Act and the former Trustees shall:

- i) execute all documents that the Company shall deem necessary to vest in the new Trustees the assets of the Trust; and
- ii) transfer in writing to the new Trustees all its rights and obligations under this Deed;

save that the former Trustees may withhold an amount equal to the aggregate of an unpaid compensation for services and expenses to date of the transfer;

15. A Trustee shall not be liable for any loss to the property of the Trust not attributed to his own dishonesty or to the willful commission of any act known by him to be a breach of trust;

16. The Company may vary or amend any provisions of this Deed subject to the approval of the Commission;

17. The Commission shall give the Company notice of failure if the Company fails to meet its obligations under the law or resulting from valid claims on policies issued, and if the Company fails to rectify that failure within thirty (30) days of such notice the Commission shall be entitled to request the Trustees to apply discretion in favor of qualifying beneficiaries or policyholders;

18. The exercise of the discretion of the Trustees under paragraph 17 is without prejudice to the Commission's general powers of enforcement against the Company, but shall not defeat the powers of the Trustees or the effect of the Trustees;

19. The value of the Trust shall be reduced where the liability of the Company has been discharged with respect to the settlement of a claim or a number of claims and assets shall be released as required by this Deed; and

20. The Company shall not pay, allocate or transfer any part of the assets of its statutory fund with respect to the distribution of surplus except with the approval of the Commission and on the basis of section 46(2) of the Act.

IN WITNESS WHEREOF the parties have set their hands and seals the day and year first above written.

Signed and sealed:

On behalf of the Company:

Witnessed by:

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Chairman/CEO/Managing Director

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On behalf of the Trustees:

Witnessed by:

.....
Trustee

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On behalf of the Commission:

Witnessed by:

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Superintendent of Insurance

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SCHEDULE A