

Model clause for a fiduciary Protector*

- (1) All powers and discretions conferred on the Protector shall be fiduciary in nature
- (2) In relation to those powers the Protector must accordingly:
 - (a) act in the way that he in good faith considers to be for the benefit of the Beneficiaries
 - (b) exercise independent judgment
 - (c) exercise reasonable care, skill and diligence and
 - (d) not accept benefits from third parties
- (3) If the Protector is a Beneficiary, he may nevertheless:
 - (a) take into account his own interests, opinions and wishes
 - (b) exercise (or consent to the exercise of) powers and discretion for his own benefit
 - (c) exercise any of his powers or discretions notwithstanding a conflict of interest but shall be bound to consider the interests of the other Beneficiaries
- (4) The Protector may release or restrict the future exercise of any power or discretion conferred on him by written instrument delivered to the Trustees and any such release or restriction may be revocable or irrevocable and shall (unless a contrary intention appears) bind his successors
- (5) The Protector shall be entitled to reimbursement from the capital or income of the Trust Fund of all reasonable costs and expenses incurred in the performance of his responsibilities relating to this Trust and all other liabilities of whatever nature incurred as a result of acting as Protector unless arising from the Protector's own fraud, dishonesty, wilful wrongdoing or gross negligence
- (6) The Protector shall not be liable for any loss to the capital or income of the Trust Fund arising in consequence of any mistake or omission or any other matter or thing except the Protector's own fraud, dishonesty, wilful wrongdoing or gross negligence
- (7) Any Protector shall be entitled to reasonable remuneration for time spent and work done by himself or any partner or employee of his or of any corporate entity of which he is a director or member
- (8) The Protector shall have the same rights to information about this Trust and the Trust Fund as if he were a Trustee
- (9) If at any time there is no Protector, the Trustee may exercise all powers and discretions requiring the consent of the Protector free from that requirement

* See also the model clauses in Appendix 1 to Hubbard on Protectors of Trusts.