

DATED

2019

AVIVA LIFE & PENSIONS UK LIMITED
(as Chargor)

- and -

FRIENDS FIRST LIFE ASSURANCE COMPANY DESIGNATED ACTIVITY COMPANY
(as Reinsured)

DEED OF CHARGE

Slaughter and May
One Bunhill Row
London EC1Y 8YY

551299546

THIS DEED OF CHARGE made on 2019

BETWEEN:

- (1) **Aviva Life & Pensions UK Limited**, a company incorporated in England and Wales under registered number 4096141 whose registered office is at Wellington Row, York, YO90 1WR (the “**Chargor**”); and
- (2) **Friends First Life Assurance Company Designated Activity Company**, a company incorporated in the Republic of Ireland under registered number 165970 whose registered office is at Friends First House, Cherrywood Business Park, Loughlinstown, Dublin 18, Ireland (the “**Reinsured**”).

WITNESSES as follows:

1. Interpretation

- 1.1 In this Deed, except insofar as the context otherwise requires, the following words and expressions shall have the meanings set out below:

“**Brexit Reinsurance Agreement**” means the reinsurance agreement dated on or around the date of this Deed whereby the Chargor agrees to reinsure the Reinsured in respect of certain business transferred to it from the Chargor pursuant to Part VII of the Financial Services and Markets Act 2000 which the Chargor had previously written pursuant to EU passporting permissions, and to which this Deed is attached as an appendix.

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in England or Ireland on which banks are ordinarily open for business in London and Dublin;

“**Charged Property**” means the assets of the Chargor from time to time (other than any Excluded Assets), and includes any part of them;

“**Enforcement Event**” means any event or circumstance specified in Clause 14.1 (*Termination on Notice*) (excluding paragraphs (C), (E), (L) and (M) thereof) of the Brexit Reinsurance Agreement;

“**Excluded Assets**” means any asset subject to fixed security, or over which the Chargor is prohibited, either absolutely or conditionally, from creating security, including where prior consent would be required;

“**Insurance Debts**” has the meaning attributed to that expression by Regulation 2 of The Insurers (Reorganisation and Winding Up) Regulations 2004;

“**Liabilities**” means any liability, damage, loss, cost, claim or expense of any kind or nature (including VAT), whether direct, indirect, special, consequential or otherwise;

“Reinsurance Contracts” means reinsurance contracts written by the Chargor which are contracts of long term insurance as that term is defined in Article 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“Secured Amounts” means all money and liabilities now or in the future due, owing or incurred in any manner to the Reinsured by the Chargor under or in connection with the Brexit Reinsurance Agreement, whether actually, prospectively or contingently;

“Security Interest” means any right or interest arising out of:

- (a) any mortgage, charge, pledge, assignment (whether or not expressed to be by way of security), hypothecation, lien, encumbrance or other priority or security interest of any kind, howsoever created or arising;
- (b) any deferred purchase, title retention, trust, sale-and-repurchase, sale-and-leaseback, hold back or “flawed asset” arrangement or right of set-off;
- (c) any other agreement or arrangement of any kind having the same or a similar commercial or economic effect as security; and
- (d) any agreement for any of the foregoing; and

“VAT” means valued added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

1.2 **Interpretation:** Unless the context otherwise requires, in this Deed:

- (a) references to any party shall be construed so as to include that party’s respective successors in title, permitted assigns and permitted transferees;
- (b) **“including”** and **“in particular”** shall not be construed restrictively but shall mean respectively “including, without prejudice to the generality of the foregoing” and “in particular, but without prejudice to the generality of the foregoing”;
- (c) a **“person”** includes any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- (d) **“variation”** includes any variation, amendment, accession, novation, restatement, modification, assignment, transfer, supplement, extension, deletion or replacement however effected and **“vary”** and **“varied”** shall be construed accordingly;
- (e) **“writing”** includes facsimile transmission legibly received except in relation to any certificate, notice or other document which is expressly required by this Deed to be signed and **“written”** has a corresponding meaning;

- (f) subject to clause 12 (*Variations*), references to this Deed or to any other document include references to this Deed or such other document as varied in any manner from time to time;
- (g) the singular shall include the plural and vice versa; any gender shall include the other genders; clauses shall be construed as references to clauses of this Deed.

1.3 **Statutes:** Any reference to any statute or statutory instrument or any section of it shall be deemed to include a reference to any statutory modification or re-enactment of it for the time being in force.

1.4 **Headings:** Headings in this Deed are inserted for convenience and shall not affect its interpretation.

2. **Covenant to pay Secured Amounts**

The Chargor hereby covenants that it will pay or discharge when due to the Reinsured all Secured Amounts owing by it to the Reinsured in accordance with the terms of the Brexit Reinsurance Agreement.

3. **Creation of Floating Charge and Crystallisation**

3.1 As continuing security for the payment or discharge of the Secured Amounts, the Chargor hereby charges to the Reinsured by way of floating charge all its right to and title in the Charged Property, provided that, unless and until all Insurance Debts of the Chargor have been fully discharged, the amount recoverable under this Deed shall not exceed such amount (up to the Secured Amounts) as the Reinsured would have been entitled to receive from the Chargor if the Secured Amounts had been unsubordinated Insurance Debts of the Chargor and had not been hereby secured.

3.2 The Reinsured shall not appoint out of court a receiver, an administrator or other person in a similar capacity and shall not take possession of the Charged Property without a court order.

3.3 The Reinsured may crystallise the floating charge by giving notice to the Chargor in respect of any or all of the Charged Property where:

- (A) an administrator, a liquidator or other person in a similar capacity has been appointed to act in relation to the Chargor; and
- (B) the Reinsured reasonably considers there to be a serious imminent risk that such person may distribute a dividend to creditors (other than preferential creditors) of the Chargor.

3.4 The floating charge created by clause 3.1 shall crystallise if and when:

- (A) an Enforcement Event has occurred and is continuing and the Reinsured has served a notice in writing to the Chargor in accordance with Clause 14.1 of the Brexit Reinsurance Agreement; and
- (B) an administrator, a liquidator or other person in a similar capacity (including but not limited to persons in foreign jurisdictions) decides or resolves to take or takes any step to distribute a dividend to creditors (other than preferential creditors) of the Chargor, or gives notice or otherwise expresses his intention to do so to such creditors.

In such event, the floating charge created by Clause 3.1 shall automatically and instantly crystallise into a fixed charge over the Charged Property.

- 3.5 A charge which has crystallised under Clauses 3.3 or 3.4 may, by notice in writing given at any time by the Reinsured, be reconverted into a floating charge in relation to the Charged Property specified in such notice.

4. Representations and Warranties

The Chargor represents and warrants to the Reinsured that:

- (a) it has the capacity and power to execute and deliver this Deed and to perform its obligations under it and has taken all necessary action to authorise such execution, delivery and performance;
- (b) the persons signing this Deed on its behalf are duly authorised to do so on its behalf;
- (c) it has obtained all authorisations of any governmental or regulatory body required in connection with execution, delivery and performance of this Deed and such authorisations are in full force and effect;
- (d) the execution, delivery and performance of this Deed has not, and will not, violate any law or rule applicable to it;
- (e) it is acting as a principal in entering into this Deed and performing its obligations hereunder; and
- (f) it has the right to charge the Charged Property in favour of the Reinsured under this Deed.

5. Ranking

The floating charge hereby created shall rank *pari passu* with any prior, contemporaneous or subsequent floating charge which is expressed to rank *pari passu* with it that secures liabilities incurred by the Chargor under or in connection with Reinsurance Contracts with other reinsureds or cedants.

6. Ordinary course of dealings

- 6.1 At all times prior to the crystallisation of the floating charge created by this Deed, the Chargor shall be at liberty to deal with the Charged Property in the ordinary course of business.
- 6.2 Without any intention to limit the scope of paragraph 6.1, it is hereby agreed that the Chargor may, in the ordinary course of business, enter into any agreement for the transfer of securities, financial instruments, money and/or other assets by way of a stock lending or borrowing, repurchase arrangement or sale and buy-back, as well as enter into collateralised derivatives contracts, and perform its obligations under any such agreement, arrangement or contract.

7. Continuance of Security; Redemption

- 7.1 Without prejudice to the generality of clause 2 (*Covenant to pay Secured Amounts*), the charge, covenants and provisions contained in this Deed shall remain in force as a continuing security to the Reinsured, notwithstanding any settlement of account or any other act, event or matter whatsoever, except only the execution by the Reinsured of an absolute and unconditional release by deed under English law.
- 7.2 Once the Secured Amounts are repaid and discharged in full and the Chargor has no further obligation (whether actual, prospective or contingent) in relation to the Brexit Reinsurance Agreement, the Chargor shall be entitled to redeem the security constituted by this Deed and to require the Reinsured to effect a full release and discharge of it, including performing all such deeds, acts and things as are necessary to release the Charged Property from the security created by this Deed.

8. Reinsured's Undertaking

If the Reinsured is notified in advance in writing that a meeting of creditors of the Chargor is to be convened or held for the purposes of approving a proposal for a scheme of arrangement under Part 26 of the Companies Act 2006 or for a voluntary arrangement under Part 1 of the Insolvency Act 1986 in respect of the Chargor, the Reinsured undertakes that it will agree to be bound by the proposal and (to the extent necessary to give effect to the intention of this clause) to release the security constituted by this Deed, provided that:

- (a) the proposal has the effect of ensuring that the Reinsured will receive the amount recoverable under this Deed up to the limit specified in clause 3.1; and
- (b) if (but only if) the Reinsured had notified the Chargor at or prior to the meeting that the Reinsured opposed the proposal, the proposal would have been passed by the requisite majority(ies) even if the Reinsured had been entitled to vote on the proposal in respect of the Secured Amounts as an Insurance Debt and had voted against the proposal in respect of that amount.

9. Additional Security

The charge contained in this Deed is in addition to, and shall neither be merged in, nor in any way exclude or prejudice, any other Security Interest, right of recourse or other right whatsoever which the Reinsured may now or in the future hold or have (or would apart from this Deed hold or have) as regards the Chargor or any other person in respect of the Secured Amounts, whether by virtue of contract, statute or otherwise.

10. Third Party Rights

No person other than a party to this Deed shall have any right by virtue of the Contracts (Rights of Third Parties) Act 1999 to enforce any term (express or implied) of this Deed, but without prejudice to any right or remedy of the third party which may exist or be available apart from that Act.

11. Forbearance and Illegality

11.1 **Delay etc:** All rights, powers and privileges under this Deed shall continue in full force and effect, regardless of the Reinsured exercising, delaying in exercising or omitting to exercise any of them.

11.2 **Illegality, invalidity, unenforceability:** Any provision of this Deed which is or becomes illegal, invalid or unenforceable shall be ineffective only to the extent of such illegality, invalidity and unenforceability, without invalidating the remaining provisions of this Deed.

12. Variations

No variation of this Deed shall be valid and constitute part of this Deed, unless such variation shall have been made in writing and signed by the Chargor and the Reinsured.

13. Demands, Notices etc

13.1 **Demands:** A demand for payment or other demand or notice to the Chargor under this Deed shall be made or given by any director or officer of the Reinsured in accordance with clause 13.2.

13.2 **Addresses for notice and deemed service:** Each party shall notify to the other party an authorised address and email address in the United Kingdom or the Republic of Ireland for the purpose of this clause and the first such authorised address for each party shall be the address and email address stated in clause 13.3. Any demand, notice, consent or approval or other communication to be given under this Deed shall be in writing and shall either be delivered personally or sent by pre-paid post or email to the relevant party's address or email address stated in clause 13.3 (or such other address or email address (in each case in the United Kingdom or the Republic of Ireland) as is notified in writing from time to time by such party to the other party in accordance with the requirements of this clause). Any such notice shall be effective upon receipt and shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) if sent by pre-paid post, at noon two Business Days following posting; and
- (c) if communicated by email, upon receipt by the recipient,

PROVIDED that where, in the case of delivery by hand or email, delivery or transmission occurs after 3.00pm on a Business Day or on a day which is not a Business Day, receipt shall be deemed to occur at 9.00am on the next following Business Day.

13.3 **Addresses for service:** For the purposes of this clause the authorised address of each party shall be the address set out below:

(a) **Chargor:**

Address: Wellington Row, York, YO90 1WR

Email address: lplaw@aviva.com (and cc'd to thomas.sealy@aviva.com)

Attention: General Counsel, Aviva UKI

(b) **Reinsured:**

Address: One Park Place, Hatch Street, Dublin 2

Email address: irelandcosec@aviva.com

Attention: The Company Secretary

14. Governing law and jurisdiction

14.1 **Governing law:** This Deed and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with English law.

14.2 **Jurisdiction of English courts:**

- (a) The English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed, including a dispute regarding the existence, validity or discharge of this Deed or the security comprised in it or any non-contractual obligations connected with it (a "**Dispute**").
- (b) The parties agree that the English courts are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- (c) Nothing in this clause limits the rights of the Reinsured to bring proceedings against the Chargor in connection with this Deed in any other court of competent jurisdiction or concurrently in more than one jurisdiction.

15. Counterparts

This Deed may be executed in any number of counterparts, each of which when executed and delivered is an original and all of which together evidence the same Deed.

THIS DEED has been executed by the Parties as a deed and it shall take effect on the day and year first above written.

EXECUTED as a **DEED** by)
as attorney for and on behalf of)
AVIVA LIFE & PENSIONS UK LIMITED in)
the presence of)

Signature of attorney

Witness signature

Witness name

Witness address

Witness occupation

PRESENT when the common seal of)
FRIENDS FIRST LIFE ASSURANCE)
COMPANY DAC)
was affixed hereto:)

Director

Director/Secretary