

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (ChD)**

IN THE MATTER OF SUNDERLAND MARINE INSURANCE COMPANY LIMITED

and

**IN THE MATTER OF THE NORTH OF ENGLAND PROTECTING AND INDEMNITY ASSOCIATION
LIMITED**

and

IN THE MATTER OF PART VII OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

SCHEME

(pursuant to Part VII of the Financial Services and Markets Act 2000)

 **NORTON ROSE FULBRIGHT**

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PART A - DEFINITIONS AND INTERPRETATION

1 Definitions and Interpretation

- 1.1 In this Scheme, unless the subject or context requires otherwise, the following expressions bear the meanings respectively set opposite them:

Appointed Representative has the meaning given to that expression in the FCA Glossary;

Business means the entire insurance and reinsurance business of the Transferor including, without limitation, the Transferred Assets, the Transferred Liabilities, the Transferred Policies and the Transferred Reinsurance Agreements;

Capital Assets has the meaning given to that expression in clause 3.6;

Capital Requirements means the obligation to hold sufficient own funds to cover the higher of the following:

- (a) the Minimum Capital Requirement; and
- (a) the Solvency Capital Requirement;

Court means the High Court of Justice in England and Wales;

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data;

Effective Date means the time and date on which this Scheme shall take effect in accordance with clause 11;

Encumbrance means any mortgage, charge, pledge, security assignment, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, any other encumbrance or security interest of any kind and any other type of preferential arrangement (including, without limitation, title transfer and retention agreements) having a similar effect;

FCA means the Financial Conduct Authority, or such other governmental, statutory or other authority or authorities as shall from time to time perform such regulatory and supervisory functions in relation to General Business carried on in the United Kingdom as are at the date of this Scheme allocated to the Financial Conduct Authority under FSMA;

FCA Glossary means the Glossary of the FCA Handbook;

FCA Handbook means the FCA Handbook of principles, rules or guidance (including any supervisory statements and statements of policy) made by the FCA under the powers granted to it under FSMA;

FSMA means the Financial Services and Markets Act 2000;

General Business means the business of effecting and/or carrying out general insurance contracts as principal, being contracts falling within Part 1 of Schedule 1 to the RAO;

Group means in respect of any person:

- (a) that person;
- (b) that person's holding companies from time to time;
- (c) that person's subsidiaries from time to time; and
- (d) each of the subsidiaries from time to time of any such holding company;

Independent Expert means Derek Newton of Milliman LLP or any other independent expert approved pursuant to section 109 of FSMA;

Intermediary means any broker, agent, independent financial adviser or other intermediary that is not an Appointed Representative and that has entered into an agreement with the Transferor to distribute the Transferor's products in respect of the Business from time to time;

Jersey Business means the General Business carried on by the Transferor in or from within Jersey and which forms part of the Transferred Business;

Jersey Effective Date means the time and date on which the Jersey Scheme has received the requisite court approval and becomes effective in accordance with its terms;

Jersey Policy means a policy of the Transferor which forms part of the Jersey Business, the transfer of which the Royal Court of Jersey has jurisdiction to sanction pursuant to the Insurance Business (Jersey) Law 1996;

Jersey Scheme means the scheme of transfer referred to in clause 2.8;

liability to taxation means a liability to make an actual payment of taxation;

Minimum Capital Requirement means the Minimum Capital Requirement as required by Article 128 of the Solvency II Directive;

Order means an order made by the Court pursuant to section 111 of FSMA sanctioning this Scheme (or any part of it) and any order (including any subsequent order) in relation to this Scheme made by the Court pursuant to section 112 of FSMA;

Part 4A permission means a permission to carry on regulated activities granted under part 4A of FSMA, or having effect as if so given;

Payment has the meaning given to that expression in clause 10.3;

Passporting Regulations means the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (SI 2001/2511)

Policyholder means any person holding a Transferred Policy;

PRA means the Prudential Regulation Authority, or such other governmental, statutory or other authority or authorities as shall from time to time perform such prudential and supervisory functions in relation to General Business carried on in the United Kingdom as are at the date of this Scheme allocated to the Prudential Regulation Authority under FSMA;

PRA Rulebook means the PRA Rulebook of principles, rules or guidance (including any supervisory statements and statements of policy) made by the PRA under the powers granted to it under FSMA;

Proceedings means any action or other legal or administrative proceedings or step (whether direct or indirect, by way of a claim, demand, legal proceedings, execution of judgment, arbitration, complaint or otherwise howsoever arising), including:

- (a) arbitration;
- (b) mediation;
- (c) any other dispute resolution procedure (whether or not it involves submission to any court);
- (d) any judicial, quasi-judicial, administrative or regulatory review or process; and
- (e) any complaint or claim to any ombudsman;

RAO means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544);

Residual Assets means:

- (a) the Residual Policies and the rights, benefits and powers of the Transferor of, under or by virtue of the Residual Policies;

- (b) any property of the Transferor attributable to the Residual Policies or the Transferred Business (including any right, benefit or power of the Transferor under any Transferred Policy) in respect of which the Court has declined to order the transfer to the Transferee under section 112(2) of FSMA on the Effective Date;
- (c) any property of the Transferor attributable to the Residual Policies or the Transferred Business which is outside the jurisdiction of the Court or in respect of which the transfer pursuant to an order of the Court is not recognised by the laws of the jurisdiction in which the property is situated or in respect of which further steps are necessary to effect the transfer pursuant to the laws of the jurisdiction in which such property is situated;
- (d) any property of the Transferor attributable to the Residual Policies or the Transferred Business which cannot be transferred to or vested in the Transferee on the Effective Date for any other reason;
- (e) any property of the Transferor attributable to the Residual Policies or the Transferred Business (including any right, benefit or power of the Transferor under any Residual Policy or any Transferred Policy) where the Transferor and the Transferee agree prior to the Effective Date that its transfer should be delayed;
- (f) any other property of the Transferor attributable to the Residual Policies or the Transferred Business (including any right, benefit or power under a Residual Policy, a Transferred Policy or Transferred Reinsurance Agreement) in respect of which:
 - (i) the Court makes an order as to the enforceability of an interest or right as referred to in section 112A(2)(b) of FSMA; and
 - (ii) the Transferor and the Transferee have agreed in writing prior to the Effective Date that its transfer should be delayed; and
- (g) any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, earned or received from time to time after the Effective Date but prior to any relevant Subsequent Transfer Date in respect of any such property referred to in clauses (a) to (d) of this definition,

but excluding any rights, benefits and powers of the Transferor under or relating to any Residual Policies Reinsurance Arrangement;

Residual Liability means any liability whatsoever of the Transferor relating to the Business:

- (a) that is attributable to or connected with a Residual Asset and arises at any time before the Subsequent Transfer Date applicable to that Residual Asset;

- (b) in respect of which the Court has declined to order the transfer to the Transferee under section 112(2) of FSMA on the Effective Date;
- (c) where the Transferor and the Transferee agree prior to the Effective Date that its transfer should be delayed; or
- (d) which cannot be transferred to or vested in the Transferee for any other reason on the Effective Date;

Residual Policies means insurance policies comprised in the Business:

- (a) written by the Transferor in the course of carrying on insurance business in the United Kingdom or any other EEA State, in respect of which:
 - (i) for the purpose of paragraph 1(2A) of Schedule 12 to FSMA, an EEA State other than the United Kingdom is the State in which the policy was concluded; and
 - (ii) the PRA has not prior to the making of the Order by which the Court sanctions this Scheme provided the certificate referred to in paragraph 3A of Schedule 12 to FSMA with respect to the relevant EEA State which is the State in which the policy was concluded;
- (b) which are Jersey Policies (to the extent and for so long only as the Jersey Scheme has not yet receive the requisite court approval and become effective in accordance with its terms);
- (c) written by the Transferor in the course of carrying on General Business but which are not otherwise capable of being transferred pursuant to FSMA at the Effective Date; or
- (d) in respect of which further steps are necessary to be taken following the Order before any such Policies can be transferred and the Transferor and the Transferee agree that such steps should be taken,

and any further Policy issued by the Transferor pursuant to the exercise of any right or option under a Residual Policy, but excluding any Policy that is or becomes a Transferred Policy as described in clause 7.2;

Residual Policies Reinsurance Arrangement means a reinsurance arrangement implemented in respect of the Residual Policies pursuant to and in accordance with clause 7.1;

Scheme means this scheme in its original form or with or subject to any modification, addition or condition which may be approved or imposed in accordance with clause 14;

Solvency II Directive means Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and reinsurance;

Solvency Capital Requirement means the Solvency Capital Requirement as required by Article 100 of the Solvency II Directive;

Subsequent Transfer Date means in relation to any Residual Asset or Residual Liability, the date (and each date) after the Effective Date on which such Residual Asset or Residual Liability as the case may be is or is to be transferred to the Transferee, namely:

- (a) in respect of any Residual Asset falling within clauses (a), (b), (c) or (d) of the definition of Residual Assets and of any Residual Liability which is attributable to or connected with that Residual Asset or which falls within clauses (a), (b) or (d) of the definition of Residual Liability, the date on which any impediment to its transfer shall have been removed or overcome;
- (b) in respect of any Residual Asset falling within clauses (e) or (f) of the definition of Residual Assets and of any Residual Liability which is attributable to or connected with that Residual Asset or which falls within clause (c) of the definition of Residual Liability, the date on which the Transferor and the Transferee agree the transfer should take effect; and
- (c) in respect of any Residual Asset falling within clause (g) of the definition of Residual Assets and of any Residual Liability which is attributable to or connected with that Residual Asset, the date on which such Residual Asset is received or earned by the Transferor;

taxation means:

- (a) all forms of tax, levy, duty, charge, impost, withholding or other amount whenever created or imposed and whether of the United Kingdom or elsewhere, payable to or imposed by any authority responsible for the collection or management of any such tax, levy, duty, charge, impost, withholding or other amount; and
- (b) all charges, interest, penalties and fines incidental or relating to any sum falling within (a) above or which arise as a result of the failure to pay that sum on the due date or to comply with any obligation relating to it;

Transferee means The North of England Protecting and Indemnity Association Limited;

Transferee's Board means the board of directors of the Transferee from time to time;

Transferor means Sunderland Marine Insurance Company Limited;

Transferor's Board means the board of directors of the Transferor from time to time;

Transferred Assets means any and all property of the Transferor whatsoever and wheresoever situated comprised in or attributable to the Transferred Business (including, for the avoidance of doubt, any shares or securities held in any subsidiary) as at the Effective Date including (without prejudice to the generality of the foregoing):

- (a) the rights, benefits and powers of the Transferor under or by virtue of the Transferred Policies;
- (b) all rights and claims (in contemplation, present or future, actual or contingent) against any third party in relation to the Transferred Business or arising as a result of the Transferor having carried on the Transferred Business; and
- (c) the Transferred Reinsurance Agreements and the rights, benefits and powers of the Transferor under or by virtue of the Transferred Reinsurance Agreements,

but excluding: (1) the Residual Assets; (2) any rights, benefits and powers under or relating to any Residual Policies or any Residual Policies Reinsurance Arrangement; and (3) the benefit of any charges attaching to any Transferred Reinsurance Agreement;

Transferred Business means the entirety of the Business, excluding any Residual Assets and Residual Liabilities;

Transferred Liabilities means any and all liabilities whatsoever of the Transferor comprised in or attributable to the Transferred Business or otherwise arising in connection with or in relation to the carrying on of the Transferred Business as at the Effective Date including (without prejudice to the generality of the foregoing):

- (a) all liabilities arising from, under or in connection with the Transferred Policies;
- (b) all liabilities arising under or in connection with lapsed, surrendered, expired and reinstated policies written and/or assumed by or on behalf of the Transferor;
- (c) all liabilities in connection with quotations made by or on behalf of the Transferor which were not proceeded with and/or which did not become policies of insurance for any reason whatsoever (including due to an administrative or proceeding error);
- (d) all liabilities under and in connection with the Transferred Reinsurance Agreements arising in, and relating to, the period on and after the Effective Date; and
- (e) all liabilities for damages (including compensatory, consequential, exemplary, punitive, bad faith or similar or other damages) which relate to the marketing, sale, underwriting, issuance, delivery, cancellation or administration of any Transferred Policy including

(without limitation): (1) any amount in respect of interest arising in connection thereto or in connection with any payment made in respect thereof; (2) any amount in respect of any additional liability or an increase in liability to taxation of a policyholder or former policyholder when compared to that person's liability to taxation if the event or series of events giving rise to the relevant damages had not occurred; and (3) any liability arising out of or relating to any alleged or actual act, error or omission by the Transferor or its agents, whether intentional or otherwise, with respect to any such Transferred Policy, including:

- (i) any alleged or actual reckless conduct or bad faith in connection with the handling of any claim arising out of or under such Transferred Policy; or
- (ii) the marketing, sale, underwriting, issuance, delivery, cancellation or administration of such Transferred Policy,

but excluding: (1) the Residual Liabilities; and (2) any liabilities under or relating to the Residual Policies or any Residual Policies Reinsurance Arrangement;

Transferred Policies means every insurance policy written and/or assumed by the Transferor which is comprised in the Transferred Business (and any and all rights to renew the same), together with all proposals for insurance received by or on behalf of the Transferor before the Effective Date which have not been written by the Transferor prior to the Effective Date but which are subsequently underwritten, but excluding (subject to clauses 7.1 to 7.3 inclusive) the Residual Policies; and

Transferred Reinsurance Agreements means all contracts, agreements, policies and other arrangements of whatsoever nature made between the Transferor and a third party or a related party of the Transferor in the nature of reinsurance under or in connection with any Transferred Liability.

1.2 In this Scheme:

- (a) **"property"** includes (without limitation) property, assets, rights and powers of every description (whether present or future, actual or contingent) and includes property held on trust and securities, benefits, powers of any description and any interest whatsoever in any of the foregoing;
- (b) **"liabilities"** includes (without limitation) duties and obligations of every description (whether present or future, actual or contingent);
- (c) **"transfer"** includes (as the context may require) **"assign"**, **"assignment"** or **"assignment"**, **"dispose"** or **"disposal"** or **"convey"** or **"conveyance"**;

- (d) any reference to the singular shall include a reference to the plural and vice versa and any reference to the masculine shall include a reference to the feminine and neuter and vice versa;
- (e) any reference in this Scheme to an enactment, a statutory provision or any subordinate legislation shall be deemed to include a reference to that enactment, statutory provision or subordinate legislation as amended, replaced or re-enacted from time to time and to any instrument or order made from time to time under such enactment, statutory provision or subordinate legislation;
- (f) any reference to any rules, regulations or guidance made by the PRA and/or the FCA (as applicable) shall be deemed to include a reference to such rules or regulations as amended or replaced from time to time, and any reference to any provision of the PRA Rulebook or the FCA Handbook (as applicable) which is not in force at the date of this Scheme but will be in force by the Effective Date shall, in respect of the period before it comes into force, be deemed to include a reference to such rules or regulations issued by the PRA and/or the FCA (as applicable) as most closely corresponded to that provision at the date of this Scheme;
- (g) expressions used in this Scheme which have meanings under FSMA shall bear those meanings, including "**EEA State**" which bears the meaning set out in paragraph 8 of Part 1 of Schedule 3 to FSMA;
- (h) the expressions "**holding company**" and "**subsidiary**" shall have the same meanings as in the Companies Act 2006;
- (i) headings are inserted for convenience only and shall not affect the construction of this Scheme;
- (j) any reference to a person shall include a reference to a body corporate, a partnership, an unincorporated association or to a person's executors or administrators, and for the avoidance of doubt, shall include a trustee;
- (k) unless otherwise specified, if a period of time is specified from a given day or date or from the day or date of an actual event, it shall be calculated exclusive of that day or date;
- (l) any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- (m) any reference to a calculation, decision, determination or opinion of any of the Transferee's Board or the Transferor's Board (or any similar expression) shall be deemed to include a calculation, decision, determination or opinion of a duly constituted committee

or duly authorised representative of the Transferee's Board or the Transferor's Board (as appropriate);

- (n) the expression "**variation**" shall include any variation, supplement, deletion, replacement or termination, however effected;
- (o) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- (p) any reference to an amount shall be exclusive of any applicable value added or other tax; and
- (q) any reference to "insurance" shall include "reinsurance".

PART B - INTRODUCTION

2 Introduction

- 2.1 The Transferor is a company incorporated in England and Wales with registered number 00016432. The registered office of the Transferor is at The Quayside, Newcastle-upon-Tyne NE1 3DU.
- 2.2 The Transferee is a company incorporated in England and Wales with registered number 00505456. The registered office of the Transferee is at The Quayside, Newcastle-upon-Tyne NE1 3DU.
- 2.3 The Transferor has a Part 4A permission under FSMA to carry on General Business in the United Kingdom in classes 1, 5, 6, 7, 8, 9, 11, 12, 13, 15, 16 and 17 as set out in Part I of Schedule 1 to the RAO.
- 2.4 The Transferor carries on General Business on a freedom of services basis in each of Belgium, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Spain and Sweden under the Passporting Regulations.
- 2.5 The Transferee has a Part 4A permission under FSMA to carry on General Business in the United Kingdom in classes 1, 4, 5, 6, 7, 8, 9, 11, 12, 13, 15, 16 and 17 as set out in Part I of Schedule 1 to the RAO.
- 2.6 The Transferee carries on General Business on a freedom of services basis in each of Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain and Sweden under the Passporting Regulations.

- 2.7 It is proposed that, subject to the sanction of the Scheme by the Court, the Transferred Business carried on by the Transferor shall, in accordance with this Scheme, be transferred to the Transferee.
- 2.8 It is further proposed that the transfer of the Jersey Policies to the Transferee shall take place only if and to the extent that the transfer of such Jersey Policies to the Transferee by a scheme or transfer pursuant to the Insurance Business (Jersey) Law 1996 has been approved by the Royal Court of Jersey and has become effective; and that if and to the extent that the Jersey Effective Date has not fallen on or before the Effective Date, then the Jersey Policies shall be reinsured to the Transferee on the terms set out in the Residual Policies Reinsurance Arrangement.

PART C - TRANSFER

3 Transfer of Business

- 3.1 Subject to clause 3.6, each part of the Transferred Business, the Residual Assets and the Residual Liabilities shall be transferred to and be vested in the Transferee in accordance with this Scheme, so that:
- (a) subject to clause 9, on and with effect from the Effective Date, each Transferred Asset and all the interest of the Transferor in it shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee, subject to all Encumbrances (if any) affecting such asset in accordance with this Scheme;
 - (b) subject to clause 9, on and with effect from each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and all the interest of the Transferor in it shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee, subject to all Encumbrances (if any) affecting such asset in accordance with this Scheme;
 - (c) on and with effect from the Effective Date, each Transferred Liability shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee in accordance with this Scheme and shall cease to be a liability of the Transferor; and
 - (d) on and with effect from each Subsequent Transfer Date, each Residual Liability to which such Subsequent Transfer Date applies shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee in accordance with this Scheme and shall cease to be a liability of the Transferor.
- 3.2 For the avoidance of doubt and without limitation to the generality of clause 3.1:

- (a) an offer or invitation to treat made to or by a Transferor prior to the Effective Date in relation to the Transferred Business shall be construed and have effect after the Effective Date as an offer or invitation to treat made to or by the Transferee; and
 - (b) any existing indemnity, power of attorney, authority, declaration, consent or other form of authorisation or instruction given to or by the Transferor relating to any part of the Transferred Business (including, for the avoidance of doubt, the Transferred Policies) shall have effect from the Effective Date as if given to or, as the case may be, by the Transferee.
- 3.3 The Transferee shall accept without investigation or requisition such title as the Transferor shall have at the Effective Date to the Transferred Assets and, at any Subsequent Transfer Date, to each Residual Asset then transferred and the Transferor shall not be liable for any charges, expenses, costs, claims, losses or any other liabilities in connection thereto that arise after the Effective Date, save as otherwise agreed between the parties in writing (including under any existing agreement between the Transferor and the Transferee) or as set out in this Scheme.
- 3.4 The Transferor and the Transferee shall take all such steps, and execute all such documents, as may be necessary or desirable:
 - (a) to effect or perfect the transfer to and vesting in the Transferee of any Transferred Asset or Residual Asset pursuant to this Scheme;
 - (b) to correct any errors in the identity or amount of the assets so transferred; and
 - (c) to effect or perfect the transfer to and assumption by the Transferee of any Transferred Liability or Residual Liability pursuant to this Scheme.
- 3.5 On and with effect from the Effective Date, the Transferee shall:
 - (a) succeed to all rights, liabilities and obligations of the Transferor in respect of any personal data which relates to the Transferred Business and which is subject to Data Protection Legislation;
 - (b) become the data controller of any personal data which relates to the Transferred Business and which is subject to the Data Protection Legislation in place of the Transferor and shall be deemed to have been the controller of all such data at all material times when personal data was processed; and
 - (c) in respect of any personal data which relates to the Transferred Business be subject to the same duty by virtue of any law to which the Transferor was subject to respect the confidentiality and privacy of each data subject of that personal data and shall be bound by any specific notice or consent given, or request made, by the data subject which was

binding on the Transferor and which required the Transferor not to use the personal data for marketing purposes,

and in any consent given by a data subject in respect of such data as is mentioned in this clause 3.5, any reference to the Transferor (or to any member of the Transferor's Group) shall be deemed to include a reference to the Transferee (and to any member of the Transferee's Group).

3.6 In clause 3.5, the expressions “controller”, “personal data” and “data subject” shall have the meanings given to them in the Data Protection Legislation.

3.7 Notwithstanding any other provision of the Scheme, such amount of the Transferred Assets as is necessary to ensure that the Transferor continues to comply with its Capital Requirements after the Effective Date shall be retained by the Transferor and shall not transfer to the Transferee on the Effective Date (the **Capital Assets**). On and with effect from the date on which the PRA confirms in writing to the Transferor that all the Transferor's authorisations under Part 4A of FSMA have been cancelled, the Capital Assets shall without further act or instrument be transferred to and vest in the Transferee in accordance with and subject to the terms of the Scheme.

4 Continuity of Proceedings

4.1 On and with effect from the Effective Date, any Proceedings which have, prior to the Effective Date, been issued, served, commenced, threatened, contemplated or are pending, or which are commenced or threatened or contemplated or are pending on or after the Effective Date (including future Proceedings not yet in contemplation, including those which relate to acts or omissions of the Transferor that occurred prior to the Effective Date) in connection with the Transferred Business, the Transferred Policies, the Transferred Assets or the Transferred Liabilities and in respect of which the Transferor is a party, and including any such Proceedings commenced in error against the Transferor after the Effective Date, shall be continued or commenced by, against or in relation to the Transferee (and for the avoidance of doubt any future Proceedings in connection with the Transferred Business, the Transferred Policies, the Transferred Assets or the Transferred Liabilities shall be brought by, against or in relation to the Transferee) and the Transferee shall be entitled to all defences, claims, counterclaims, settlements, rights of set-off, rights of subrogation and any other rights that would have been available to the Transferor in relation to the Transferred Business, the Transferred Policies, the Transferred Assets, the Transferred Liabilities and such Proceedings and the Transferor shall have no liability under those Proceedings.

4.2 On and with effect from the Subsequent Transfer Date applicable thereto, any Proceedings which have, prior to the Subsequent Transfer Date, been issued, served, commenced, threatened, contemplated or are pending, or which are commenced or threatened or

contemplated or are pending on or after the Subsequent Transfer Date (including future Proceedings not yet in contemplation, including those which relate to acts or omissions of the Transferor that occurred prior to the Effective Date) in connection with the Residual Assets or the Residual Liabilities which are to be transferred on such Subsequent Transfer Date and in respect of which the Transferor is a party, and including any such Proceedings commenced in error against the Transferor after the Effective Date, shall be continued or commenced by, against or in relation to the Transferee (and for the avoidance of doubt any future Proceedings in connection with such Residual Assets or Residual Liabilities shall be brought by, against or in relation to the Transferee) and the Transferee shall be entitled to all defences, claims, counterclaims, settlements, rights of set-off, rights of subrogation and any other rights that would have been available to the Transferor in relation to the Residual Assets and the Residual Liabilities and such Proceedings and the Transferor shall have no liability under those Proceedings. Until such Subsequent Transfer Date, the relevant Proceedings shall be commenced or continued by or against the Transferor and the Transferor shall conduct such Proceedings in accordance with the reasonable instructions of the Transferee and at the cost of the Transferee.

- 4.3 Any judgment, settlement, order or award obtained by or against the Transferor whether before or after the Effective Date to the extent that it relates to any part of the Transferred Business, the Transferred Policies, the Transferred Assets, the Transferred Liabilities, the Residual Assets or the Residual Liabilities and which is not fully satisfied before the Effective Date or, as the case may be, the applicable Subsequent Transfer Date, shall, on that date and to the extent to which it was enforceable by or against the Transferor immediately prior to such date (or, if later, the date on which the judgment, settlement, order or award is obtained), become enforceable by or against the Transferee (to the exclusion of the Transferor).
- 4.4 All documents which would before the Effective Date have been evidence in respect of any matter for or against the Transferor shall on and from the Effective Date be evidence in respect of the same matter for or against the Transferee.
- 4.5 On and from the Effective Date, the Transferee shall owe to the policyholders of the Transferred Business or to any other person the same duties of confidentiality and privacy (whether pursuant to statute or contract) as those which the Transferor owed under the Transferred Business immediately prior to the Effective Date.

5 Rights and Obligations in relation to the Transferred Business

- 5.1 On and with effect from the Effective Date, the Transferee shall become entitled to all the rights, benefits and powers of the Transferor whatsoever subsisting on the Effective Date under or by virtue of the Transferred Policies, and the Transferor shall cease to be entitled to such rights, benefits and powers.

- 5.2 Every person who is a Policyholder or is a party to, or has the benefit of, any of the agreements with the Transferor comprising the Transferred Business shall on and with effect from the Effective Date become entitled, in succession to, and to the exclusion of, any rights which he may have had against the Transferor under any of the Transferred Policies or any other such agreement comprising the Transferred Business, to the same rights against the Transferee subject to the terms of this Scheme as were available to him against the Transferor under such Transferred Policies or such other agreement comprising the Transferred Business and (as regards Transferred Policies under which premiums or other sums attributable or referable thereto continue to be payable) shall on and with effect from the Effective Date account to the Transferee for any further or additional premiums or other sums attributable or referable thereto as and when the same become due and payable.
- 5.3 All references in any Transferred Policy or other agreement comprising the Transferred Business to the Transferor, the Transferor's Board or any other officers, employees or agents of the Transferor shall from and after the Effective Date be read as references to the Transferee, the Transferee's Board or any other officers or employees of the Transferee or, where appropriate, agents of the Transferee to which the administration of the relevant part of the business carried on by the Transferee has been delegated. In particular, but without limitation, all rights and duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor, the Transferor's Board or any other officers, employees or agents of the Transferor in relation to any of the Transferred Policies or other agreements relating to the Transferred Business shall, from and after the Effective Date, be exercisable or required to be performed by the Transferee, the Transferee's Board or any other officers, employees or agents of the Transferee.
- 5.4 The transfer of any rights, benefits, liabilities and obligations under or in connection with any Transferred Policy, Transferred Asset, Residual Asset, Transferred Liability or Residual Liability pursuant to this Scheme shall take effect and shall be valid and binding on all parties having any interest in the same notwithstanding any restriction howsoever arising (including but not limited to, at law, in equity, tort or by contract) on transferring, assigning or otherwise dealing with the same and such transfer shall be deemed to take effect on the basis that it does not contravene any such restriction and does not give rise to any right to terminate, modify, acquire or claim an interest or right, or to treat an interest or right as terminated or modified or to treat any obligations or liabilities as discharged, modified or released.
- 5.5 The Transferee shall on and from the Effective Date, as principal, take over from the Transferor the administration and negotiation of proposals for insurance which would become Transferred Policies if the Transferee determined to accept them (but whether or not the Transferee does so determine). The Transferee shall bear all expenses and liabilities in relation thereto. Nothing contained herein shall oblige the Transferee to accept any proposal for insurance received by or

on behalf of the Transferor before the Effective Date but not accepted by the Transferor by the Effective Date.

- 5.6 The Transferred Policies shall be deemed to be 'Fixed Premium Non Member Business' pursuant to the Transferee's Articles of Association with the effect that the policyholders of the Transferred Policies shall not become members of the Transferee as a consequence of the Transferred Policies transferring to the Transferee.

6 Reinsurance Arrangements

- 6.1 On and with effect from the Effective Date, all the rights, benefits and powers conferred on or vested in the Transferor and all the liabilities imposed on the Transferor by or under the Transferred Reinsurance Agreements, whether express or implied, shall, by the Order and without any further act or instrument, be transferred to and vest in the Transferee who shall, where appropriate, be substituted as a party in place of the Transferor as if the Transferee had always been the original party to such agreements from inception.
- 6.2 All references in the Transferred Reinsurance Agreements to the Transferor, the Transferor's Board, or any other officers, employees or agents of the Transferor shall from and after the Effective Date be read as references to the Transferee, the Transferee's Board, or any other officers or employees of the Transferee or, where appropriate, agents of the Transferee to which the administration of the business carried on by the Transferee has been delegated. In particular, but without limitation, all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor, the Transferor's Board, or any other officers, employees or agents of the Transferor in relation to any of the Transferred Reinsurance Agreements shall, from and after the Effective Date, be exercisable or required to be performed by the Transferee, the Transferee's Board or any other officers, employees or agents of the Transferee.

7 Residual Policies

- 7.1 Subject to clauses 7.2 and 7.3, the Residual Policies shall not be transferred to the Transferee by this Scheme and all liabilities attributable to the Residual Policies shall remain liabilities of the Transferor and be fully reinsured with effect from the Effective Date on the following basis:
- (a) all liabilities of the Transferor attributable to and arising under the Residual Policies shall be reinsured in full to the Transferee on and with effect from the Effective Date;
 - (b) the liability of the Transferee on and with effect from the Effective Date shall be such that the rights, benefits and powers provided to holders of Residual Policies shall, to the extent possible, be the same as the rights, benefits and powers which would have been provided to such holders if the Residual Policies had been Transferred Policies;

- (c) the premiums payable by the Transferor to the Transferee in connection with the provision of the reinsurance described in this clause 7.1 shall comprise an amount equal to the sum of:
 - (i) the Residual Assets which relate to such Residual Policies and which have been received by the Transferee;
 - (ii) all premiums received by the Transferor in respect of such Residual Policies at any time after the Effective Date, which premiums shall be paid to the Transferee as soon as practicable after they are received; and
 - (iii) all charges due to or deductible or receivable or received by the Transferor in accordance with the relevant Residual Policy's terms and conditions; and
 - (iv) less any fees, charges and expenses in respect of the Residual Policies to the extent that such fees, charges and expenses are deducted from amounts received by the Transferor in accordance with the terms and conditions of the Residual Policies; and
- (d) the Transferee shall assume from the Transferor the administration of Residual Policies and shall bear all expenses and liabilities in relation thereto, save as otherwise agreed in writing between the parties (including under any existing agreement between the Transferor and the Transferee).

7.2 If all consents, permissions or other requirements for the transfer of a Residual Policy from the Transferor to the Transferee are obtained:

- (a) such Residual Policy shall be transferred to the Transferee and shall thereafter be treated in all respects as if it were a Transferred Policy save that references in this Scheme to the Effective Date shall be deemed for these purposes to be references to the Subsequent Transfer Date applicable to such Residual Policy or Residual Liability (as the case may be); and
- (b) any liability attributable to such Residual Policy (which, if it were attributable to a Transferred Policy, would be a Transferred Liability) shall be transferred to the Transferee and shall thereafter be treated in all respects as if it were a Transferred Liability save that references in this Scheme to the Effective Date shall be deemed for these purposes to be references to the Subsequent Transfer Date applicable to such Residual Policy or Residual Liability (as the case may be).

7.3 If any Residual Policy is novated by written agreement to the Transferee, the property and liabilities relating to such Residual Policy shall, to the extent not previously transferred, be transferred to the Transferee and such Residual Policy shall thereafter be dealt with by the

Transferee under the provisions of this Scheme in all respects as if such Residual Policy were a Transferred Policy save that references in this Scheme to the Effective Date shall be deemed for these purposes to be references to the Subsequent Transfer Date applicable to such Residual Policy or Residual Liability (as the case may be).

- 7.4 The Jersey Policies shall be treated with effect from the Jersey Effective Date for all purposes of this Scheme as if they were Transferred Policies, and shall, on the later of the Effective Date and the Jersey Effective Date, be transferred to and vested in the Transferee by the Order (in addition to any order of the Royal court of Jersey).

8 Premiums, Mandates and other Payments

- 8.1 All premiums payable to the Transferor in respect of the Transferred Policies shall on and with effect from the Effective Date be payable to the Transferee.
- 8.2 Any mandate or other instruction in force on the Effective Date (including, without limitation, any instruction given to a bank by its customer in the form of a direct debit or standing order) and providing for the payment by a banker or other Intermediary of premiums payable to the Transferor under or in respect of any of the Transferred Policies shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.
- 8.3 Any mandate or other instruction in force on the Effective Date as to the manner of payment of any sum payable by the Transferor under any of the Transferred Policies shall, on and with effect from the Effective Date, continue in force as an effective authority to the Transferee in place of the Transferor.
- 8.4 The provisions of clauses 8.1 to 8.3 shall apply mutatis mutandis to Residual Policies with effect from the relevant Subsequent Transfer Date.

9 Declaration of Trust by the Transferor

- 9.1 In the case of any Residual Asset, the Transferor shall from the Effective Date, until the relevant Subsequent Transfer Date, hold any such Residual Asset as trustee for the Transferee.
- 9.2 The Transferor shall be subject to the Transferee's directions in respect of any property referred to in clause 9.1 from the Effective Date until the relevant property is transferred to or otherwise vested in the Transferee or is disposed of (whereupon the Transferor shall account to the Transferee for the proceeds of sale thereof), and the Transferee shall have authority to act as the attorney of the Transferor in respect of such property for all such purposes.
- 9.3 In the event of any payment being made to, property being received by or right being conferred upon the Transferor after the Effective Date in respect of the Transferred Business, the Transferred Policies, any Transferred Asset or any Residual Asset, the Transferor shall, as soon

as is reasonably practicable after its receipt, pay over the full amount of such payment or (to the extent to which it is able to do so) transfer such property or right to, or in accordance with the directions of, the Transferee.

- 9.4 The Transferee shall indemnify the Transferor against any reasonable out-of-pocket charges, costs, expenses, claims and other liabilities arising in respect of any obligation under or in connection with this clause 9.

10 Indemnities in favour of the Transferor

- 10.1 On and with effect from the Effective Date, the Transferee shall discharge on the Transferor's behalf or, failing that, shall indemnify the Transferor against:
- (a) charges, costs, expenses and claims and any other liabilities (which, in each case, the Transferor shall procure are reasonable to the extent such matters are within its control) arising in respect of all Transferred Liabilities and Residual Liabilities (other than liabilities which would otherwise be the subject of double recovery under clause 10.1(b) or clause 10.2 below) until the relevant liability is transferred to or becomes a liability of the Transferee;
 - (b) any amount paid by the Transferor in respect of any Transferred Liabilities and Residual Liabilities that are, whether wholly or in part, the subject of a policy of indemnity insurance or a claim or right of recovery against a third party, but only to the extent that the Transferor, having made a claim under such a policy or against such third party, shall have failed to recover any such amount pursuant to rights it may have under such policy, claim or right of recovery (having used all reasonable endeavours to do so, including complying with clause 10.2); and
 - (c) charges, costs and claims arising in respect of any relevant Proceedings continued by or against the Transferor in accordance with the instructions of the Transferee as contemplated by clause 4.2.
- 10.2 The Transferee shall indemnify the Transferor against any reasonable costs and/or expenses which it may incur in pursuing any claim under any such policy of indemnity insurance or against any such third party as is referred to in clause 10.1(b). Subject thereto, the Transferor shall take such steps as the Transferee shall require in order to pursue the rights it may have under any such policy of indemnity insurance or against any such third party. The Transferee shall be entitled, upon notice to the Transferor, to have conduct of all litigation or other proceedings in respect of any such claim. In that connection, the Transferor shall give all such assistance as the Transferee may reasonably require in conducting any such proceedings.
- 10.3 Where the Transferor is entitled to receive an amount pursuant to the indemnities contained in clauses 10.1 or 10.2, it shall be entitled to receive such amount on the basis that the amount

payable by the Transferee pursuant to such obligation (the **Payment**) shall be calculated in such a manner as will ensure that the Transferor is in the same position as that in which it would have been if the matter giving rise to the Payment had not occurred, including by taking into account:

- (a) any taxation required to be deducted or withheld by the Transferee from the Payment;
- (b) the amount of any additional taxation which becomes payable by the Transferor as a result of the Payment being subject to taxation in the hands of the Transferor which or would have been so payable but for the use of a relief; and
- (c) the amount of any tax relief which is obtained by the Transferor or another member of the Transferor's Group, to the extent that such tax relief is attributable to the matter giving rise to the Payment or as a result of receiving the Payment,

(which taxation and tax relief is to be determined, by taking into account its value, certainty of its availability and timing of its utilisation, by the Transferor, acting reasonably and in good faith, to the reasonable satisfaction of the Transferee).

- 10.4 For the avoidance of doubt, the Transferor shall not be entitled to obtain payment or indemnity more than once in respect of any shortfall or other event or any other circumstances which give rise to a claim under this Scheme or any other related agreement between the parties.

PART D - MISCELLANEOUS PROVISIONS

11 Effective Date

- 11.1 This Scheme shall become effective at 00:00 GMT on 30 June 2020 or such other time and date as the Transferor and the Transferee, acting by their respective boards of directors, may, subject to clause 11.2, agree in writing (being a date and time falling after the making of the Order sanctioning this Scheme).
- 11.2 If the Transferor and the Transferee agree that this Scheme should become effective after 00:00 GMT on 30 June 2020, the Transferor and the Transferee must apply to the Court for a further order, specifying any time and date after 00:00 GMT on 30 June 2020 which, subject to the consent of the Court, shall then become the Effective Date for the purposes of this Scheme and this Scheme shall then become operative on and from the time and date so specified, provided that:
- (a) the PRA and the FCA shall be notified in advance and as soon as reasonably practicable, and shall have the right to be heard at any hearing of the Court at which such application is considered;

- (b) such application shall be accompanied by a supplementary report from the Independent Expert to the effect that the proposed amendment will not materially adversely affect the security of benefits of holders of the Transferred Policies or the Residual Policies or existing policyholders of the Transferor or the Transferee and such supplementary report shall be published on the websites of the Transferor and the Transferee within five (5) days of such application; and
- (c) a notice of the making of such further order is published on the websites of the Transferor and the Transferee within five (5) days of the making of such further order.

11.3 If this Scheme shall not have become effective on or before 00:00 GMT on 30 June 2020 (or such later date, if any, as each of the Transferor and the Transferee may agree and the Court may approve), the provisions of this Scheme shall lapse.

11.4 This Scheme shall not become effective on the Effective Date unless on or prior thereto the Order shall have been made.

12 Further Assurance

The Transferor and the Transferee shall each take such steps and execute such documents as may reasonably be required to effect or perfect the transfer to the Transferee of the Transferred Business.

13 Costs and Expenses

Except as otherwise agreed in writing (including under any existing agreement between the Transferor and the Transferee), the Transferor and the Transferee shall each bear its own costs and expenses in relation to the preparation and carrying into effect of this Scheme.

14 Modification or Additions

14.1 The Transferor and the Transferee may, as required, consent for and on behalf of the parties hereto and all other persons concerned to any modification of or addition to this Scheme or to any further condition or provision affecting the same which, prior to its sanction of this Scheme, the Court may approve or impose.

14.2 Subject to clause 14.3, at any time after the sanction of this Scheme, the Transferee and, if in existence at the relevant time, the Transferor, shall be at liberty to apply to the Court for consent to amend this Scheme, provided that in any such case:

- (a) the PRA and the FCA shall be notified in advance and not less than 42 days from the date the PRA and FCA acknowledges such notice of a proposed change must elapse prior to any hearing of the Court at which such application is considered, and the PRA and FCA shall have the right to be heard at such hearing; and

- (b) such application shall be accompanied by a certificate (supported by a report which has been prepared on the basis of the most recent available financial information) from an independent actuary to the effect that in his opinion the proposed amendment will not:
 - (i) adversely affect the persons who were policyholders of the Transferee immediately prior to the Effective Date; or
 - (ii) adversely affect the persons who were holders of the Transferred Policies or the Residual Policies.

If such consent is granted by the Court, the Transferee may amend the terms of this Scheme in accordance with such consent.

- 14.3 The consent of the Court shall not be required in relation to minor and/or technical amendments to the terms of this Scheme (including amendments to correct manifest errors and/or to reflect changes required by law or regulation, including changes in generally accepted actuarial practice and/or minor or technical amendments) that are agreed by the Transferor and the Transferee, provided that each of the PRA and the FCA has been notified of the same and has either (i) indicated within that it does not object thereto; or (ii) a period of 28 days has passed commencing on the date of receipt of the relevant notification by both regulators without either regulator indication any objection thereto.

15 Third party rights and governing law

- 15.1 It is not intended that any person who is not a party to this Scheme may enforce any of its terms, whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 15.2 This Scheme shall be governed by and construed in accordance with English law.

Dated this 25th day of February 2020