

CR-2017-009253

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

IN THE MATTER OF

RIVERSTONE INSURANCE LIMITED

AND

RIVERSTONE INSURANCE (UK) LIMITED

AND

IN THE MATTER OF

THE FINANCIAL SERVICES AND MARKETS ACT 2000

SCHEME

**for the transfer of
the general insurance business of
RiverStone Insurance Limited
to
RiverStone Insurance (UK) Limited
pursuant to Part VII of the Financial Services and Markets Act 2000**



Freshfields Bruckhaus Deringer

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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:

Affiliate means, in relation to any entity, any subsidiary or parent company of the entity and any subsidiary of any such parent company, in each case from time to time;

Applicable Privacy Laws means all applicable data protection laws, rules and regulations, including the EU Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, as it may be amended or replaced from time to time (including by the General Data Protection Regulation), and any applicable national laws, rules and regulations implementing the foregoing;

Authorised Person has the meaning set out in the Regulatory Handbook;

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

EEA State and *State in which the contract was concluded* bear the meanings given to those terms for the purposes of Part VII of FSMA;

Effective Date means the time and date on which this Scheme shall become effective in accordance with paragraph 11;

Excluded Assets means the amount of EUR 3.7m being the minimum capital requirement applicable to the Transferor in accordance with the PRA Rulebook;

Excluded Business means the Excluded Assets and the Excluded Liabilities;

Excluded Liabilities means any liabilities under or relating to the Excluded Assets;

FCA means the Financial Conduct Authority of the United Kingdom or its successors from time to time;

FCA Handbook means the handbook of rules and guidance issued by the FCA from time to time pursuant to FSMA;

FSMA means the UK Financial Services and Markets Act 2000 (as amended);

General Data Protection Regulation means:

- (a) Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC; and
- (b) laws implementing Regulation 2016/679;

HMRC means Her Majesty's Revenue & Customs;

Independent Expert means Philip Tippin of KPMG LLP;

Order means an order made by the Court pursuant to section 111 of FSMA sanctioning this Scheme and any order (including, without limitation, any subsequent order) in relation to this Scheme made by the Court pursuant to section 112 of FSMA;

Periodical Payment Orders or **PPOs** means the Periodical Payment Orders to which the Transferor is a party, as listed in Schedule 1, and any other order of the court pursuant to section 2 of the Damages Act 1996 to which the Transferor is a party;

PRA means the Prudential Regulation Authority of the United Kingdom (or its successors from time to time);

PRA Rulebook means the rulebook of rules issued by the PRA from time to time pursuant to 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) including arbitration, mediation, adjudication, any other dispute resolution procedure (whether or not it involves submission to any court), any judicial, quasi-judicial, administrative or regulatory review or process or any complaint or claim to any ombudsman, including the Financial Ombudsman Service, or other proceedings for the resolution of a dispute or claim, in each case whether current, commenced, continued, future, pending, threatened or otherwise or any other claims or complaints which may be brought in the future including those not yet in contemplation;

Records means all documents, files and other records, whether in physical or electronic form, relating to the Transferring Business and which are in the possession or control of the Transferor;

Regulatory Handbook means the FCA Handbook and PRA Rulebook (and any successor handbooks of rules and guidance);

Residual Assets means:

- (a) any Transferring Asset (including, without limitation, any right, benefit or power of the Transferor under any Transferring Policy) to be transferred pursuant to this Scheme:
 - (i) the transfer of which to the Transferee pursuant to this Scheme requires, at the Effective Date, either:
 - (A) the consent of any person (other than the Transferee, the Transferor or the Court); or

- (B) the waiver by any person of any right to acquire, or to be offered the right to, or to offer to, acquire or procure the acquisition by some other person of, all or any part of such property, being a right which directly or indirectly arises or is exercisable as a consequence of such transfer being proposed or taking effect;
 - (ii) which the Court does not have jurisdiction to transfer pursuant to section 112(1)(a) of FSMA, or which (despite having such jurisdiction) the Court determines, notwithstanding section 112(2)(a) of FSMA, not to transfer or the transfer of which is not recognised by the laws of any relevant jurisdiction in which such property is situated;
- (b) any Transferring Asset to be transferred pursuant to this Scheme (including, without limitation, any right, benefit or power under a Transferring Policy) which the Transferor and the Transferee agree in writing prior to the Effective Date shall not be transferred on the Effective Date;
- (c) any other interest of the Transferor in any property or any agreement relating to any property which the Transferor and the Transferee shall agree in writing prior to the Effective Date should be transferred pursuant to this Scheme in conjunction with any property referred to in paragraphs (a) or (b) of this definition;
- (d) any property of the Transferor (other than Excluded Assets) which cannot be transferred to or vested in the Transferee pursuant to the Scheme for any other reason; or
- (e) 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 in respect of any property referred to in paragraphs (a) to (d) of this definition;

Residual Liability means any liability under or in connection with the Transferring Policies and in connection with the Transferring Assets:

- (a) the transfer of which liability to the Transferee pursuant to this Scheme requires, as at the Effective Date, the consent or waiver of any person (other than the Transferee, the Transferor or the Court) and which the Court either does not have jurisdiction to transfer to the Transferee pursuant to section 112(1)(a) of FSMA or which (despite having such jurisdiction) the Court determines, notwithstanding section 112(2A) of FSMA, not to so transfer; or
- (b) which is attributable to or connected with a Residual Asset and arises at any time before the Subsequent Transfer Date applicable to that Residual Asset; or

- (c) which the Transferor and the Transferee agree in writing prior to the Effective Date shall not be transferred on the Effective Date; or
- (d) which cannot be transferred to or vested to the Transferee pursuant to the Scheme for any other reason;

Retained Policies means any policy of the Transferor under which any liability remains unsatisfied or outstanding at the Effective Date in respect of which:

- (a) for the purpose of paragraph 1(4) of Schedule 12 to FSMA, an EEA State other than the United Kingdom is the State in which the contract was concluded; and
- (b) the PRA has not prior to the issue of the Order by which the Court sanctions this Scheme delivered a Schedule 12 Certificate; or
- (c) which is not otherwise capable of being transferred pursuant to Part VII of FSMA on the Effective Date;

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 paragraph 12;

Schedule 12 Certificate means, in respect of any Transferring Policy, a certificate referred to in paragraph 3A of Part 1 of Schedule 12 to FSMA with respect to the relevant EEA State which is the State in which the contract was concluded;

Subsequent Transfer Date means, in relation to any Residual Asset or Residual Liability, the date after the Effective Date on which such Residual Asset or Residual Liability is to be transferred to the Transferee, namely:

- (a) in respect of any Residual Asset falling within paragraph (a) of the definition thereof, and of any Residual Liability falling within paragraph (a) of the definition thereof, the date on which the requisite consent, waiver or order to enable the same to be transferred to the Transferee upon the terms of this Scheme is:
 - (i) obtained;
 - (ii) no longer required; or
 - (iii) dispensed with by Order of the Court;
- (b) in respect of any Residual Asset falling within paragraphs (b), (c) or (d) of the definition thereof and of any Residual Liability which falls within paragraph (b), (c) or (d) of the definition thereof, the date on which the Transferor and the Transferee agree that the transfer of the relevant Residual Asset or Residual Liability shall take effect; and

- (c) in the case of any Residual Asset falling within paragraph (e) of the definition thereof, the date on which such Residual Asset is received or earned by the Transferor;

Tax means any form of taxation, levy, duty, charge, contribution, withholding or impost in the nature of taxation (including any related fine, penalty, surcharge or interest) imposed, collected or assessed by, or payable to, a Tax Authority;

Tax Authority means any government, state or municipality or any local, state, federal or other authority, body or official anywhere in the world exercising a fiscal, revenue, custom or excise function;

Transfer means the transfer of the Transferring Business to the Transferee pursuant to the Order as contemplated in this Scheme and Transferred shall be construed accordingly;

Transferee means RiverStone Insurance (UK) Limited a company incorporated in England and Wales with registered number 01167327 whose registered office is at Park Gate, 161-163 Preston Road, Brighton, East Sussex, BN1 6AU, United Kingdom;

Transferee Board means the board of directors, from time to time, of the Transferee;

Transferor means RiverStone Insurance Limited a company incorporated in England and Wales with registered number 02763688 whose registered office is at Park Gate, 161-163 Preston Road, Brighton, East Sussex, BN1 6AU, United Kingdom;

Transferor Board means the board of directors, from time to time, of the Transferor;

Transferring Assets means all of the following whatsoever and wheresoever situated as at the Effective Date:

- (a) the assets matching the reserves, balance sheet liabilities and surplus of the Transferring Business;
- (b) any rights of the Transferor to a refund or recovery of Taxation or any other tax asset;
- (c) the Records and all rights, title and interest of the Transferor in the Records;
- (d) the rights (including contribution rights), benefits and powers of the Transferor under or by virtue of the Transferring Policies;
- (e) the rights, benefits and powers of the Transferor under or by virtue of the Transferring Reinsurance;
- (f) the rights, benefits and powers of the Transferor under or by virtue of the Transferring Contracts; and

(g) all other assets of the Transferor,

but excluding (i) the Residual Assets, (ii) the Excluded Assets, (iii) any rights, benefits and powers under the Retained Policies and (iii) any assets already transferred from the Transferor to the Transferee;

Transferring Business means all the business of the Transferor carried on as at the Effective Date, including (without limitation), the Transferring Policies, Transferring Assets, Transferring Contracts, Transferring Liabilities and (following the relevant Subsequent Transfer Date) any Residual Assets and Residual Liabilities and including all activities carried on or in connection with or for the purposes of such business but excluding, for the avoidance of doubt, the Retained Policies and the Excluded Business;

Transferring Contracts means all contracts to which the Transferor is a party;

Transferring Liabilities means in respect of the Transferor all liabilities and commitments of every kind and description of the Transferor under or in connection with the Transferring Policies or the Transferring Assets or arising from or attributable to the Transferring Business or the transfer thereof, irrespective of whether the liabilities and commitments shall arise prior to or following the Effective Date, including (without limitation) all liabilities, if any, arising out of the jurisdiction of the Financial Ombudsman Service under DISP 2 (Jurisdiction of the Financial Ombudsman Service) of the FCA Handbook, all liabilities under the Periodical Payment Orders and any liability of the Transferor to Tax relating to the Transferring Business, but excluding the Residual Liabilities and the Excluded Liabilities;

Transferring Policies means any and all policies in relation to the Transferring Business written or assumed by the Transferor in whole or in part or for the account of the Transferor as at the Effective Date (including any expired, surrendered, lapsed, matured or reinstated policies) and all binders, slips, other contracts of reinsurance and binding quotations written by or on behalf of the Transferor as reinsurer (including all supplements, endorsements, notices, assignments, novations and riders thereto and all ancillary agreements in connection therewith) that were entered into or assumed by the Transferor in relation to the Transferring Business prior to the Effective Date but excluding the Retained Policies;

Transferring Reinsurance means that part or all of any contracts of reinsurance, together with any security arrangements or letter of credit facilities which have been arranged by the relevant reinsurer for the benefit of the Transferor to which the Transferor is a party, which cover any part or all of any of the Transferring Policies; and

United Kingdom or **UK** means the United Kingdom of Great Britain and Northern Ireland.

1.2 In this Scheme:

- (a) **assets** includes property, rights and powers of any description;
- (b) **liabilities** means all liabilities, duties and obligations of every description, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or unascertained or disputed and whether owed or incurred severally or jointly or as principal or surety any debt or liability (whether direct or indirect, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) including all liability to taxation, and including all costs and expenses relating thereto and **liability** means any one of them;
- (c) **property** includes, without limitation property, assets, cash, causes of action, rights and powers of every description (whether present or future, actual or contingent), including, without limitation, income or interest accrued but unpaid, and includes property held on trust and securities, benefits, powers of any description and any interest whatsoever in any of the foregoing;
- (d) **transfer** includes (as the context may require) assign, assignation and assignment, dispose, disposal, novate, novation, convey and conveyance;
- (e) references to rights or liabilities being “under” a Transferring Policy shall mean rights or liabilities howsoever arising whether contractually or otherwise in respect of the Transferring Policy;
- (f) 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;
- (g) any reference 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;
- (h) any reference to any rules or regulations issued by the FCA or PRA shall be deemed to include a reference to such rules or regulations as amended or replaced from time to time;
- (i) references to (i) a **subsidiary** or **holding company** are to be construed in accordance with section 1159 (and Schedule 6) of the Companies Act 2006 and for the purposes of this definition, a person shall be treated as a member of another person if any of that person's subsidiaries is a member of that other person, or if any shares in that other person are held by a person acting on behalf of it or any of its subsidiaries and (ii) a **subsidiary undertaking** or **parent undertaking**

are to be construed in accordance with section 1162 (and Schedule 7) of the Companies Act 2006. A subsidiary and a subsidiary undertaking shall include any person the shares or ownership interests in which are subject to security and where the legal title to the shares or ownership interests so secured are registered in the name of the secured party or its nominee pursuant to such security;

- (j) references to a *policy* and a *policyholder* shall have the meanings ascribed to them by the Financial Services and Markets Act 2000 (Meaning of Policy and Policyholder) Order 2001;
- (k) references to paragraphs, Parts or Schedules are to paragraphs, Parts and Schedules respectively of this Scheme;
- (l) headings are inserted for convenience only and shall not affect the construction of this Scheme;
- (m) any reference to a person shall include a reference to any individual, firm, joint venture, association, organisation, trust or agency, body corporate, partnership (whether or not having separate legal personality) or unincorporated association or to a person's executors or administrators, and for the avoidance of doubt, shall include a trustee;
- (n) 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;
- (o) any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- (p) any reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation"; and
- (q) the expression *variation* shall include any variation, supplement, deletion, replacement or termination, however effected.

PART B - INTRODUCTION

2. Introduction

- 2.1 At the date of this Scheme, each of the Transferor and the Transferee is an Authorised Person with permission, *inter alia*, to carry on general insurance business in the United Kingdom (and also to carry on general insurance business in certain EEA States) with respect to categories 1-18 of Part I of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
- 2.2 It is proposed that:
- (a) all of the Transferring Policies, Transferring Assets, Transferring Liabilities, Residual Assets and Residual Liabilities shall, in accordance with this Scheme, be transferred to the Transferee, and that the Order be made accordingly for the sanction of this Scheme under section 111(1) of FSMA;
 - (b) by the Order, provision be made, as hereinafter appearing, for, among other matters, the transfers of the Transferring Policies, Transferring Assets, Transferring Liabilities, Residual Assets and Residual Liabilities from the Transferor to the Transferee pursuant to section 112(1) of FSMA. Retained Policies, however, will not transfer to nor be reinsured by the Transferee under this Scheme but instead will remain with the Transferor;
 - (c) the transfer of the Transferring Business is to be treated as a transfer of all or part of the business of the Transferor as a going concern within article 5 of the Value Added Tax (Special Provisions) Order 1995; and
 - (d) the transfer of the Transferring Business shall be in consideration for the payment by the Transferee to the Transferor of an amount equal to the surplus net assets to be transferred under the Scheme, such amount to be agreed by the Transferor and Transferee and left outstanding as a debt payable.

PART C - TRANSFER

3. Transfer of policies, assets and liabilities

3.1 At the Effective Date each:

- (a) Transferring Policy; and
- (b) Transferring Asset,

and, in each case, all the interest and title 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.

3.2 At each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and all the interest and title 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.

3.3 At the Effective Date, each Transferring Liability shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee and shall cease to be a liability of the Transferor.

3.4 At 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 and shall cease to be a liability of the Transferor.

3.5 Unless and to the extent otherwise provided in the Order, the transfers made pursuant to paragraphs 3.1 to 3.4 inclusive shall take effect and shall be valid and binding on all parties having any interest in the same notwithstanding any restriction 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. Any entitlement which, but for section 112A of FSMA, would or might arise to terminate, modify, acquire or claim an interest or right or to treat an interest or right as terminated or modified as a result of anything done pursuant to the Scheme will not be enforceable.

3.6 The Transferor (on the one hand) and the Transferee (on the other hand) shall, as and when necessary or appropriate, execute and deliver all documents and perform all such other acts as may be reasonably required to effect or perfect the transfer to, and vesting in, the Transferee of any relevant Transferring Policy, Transferring Asset, Residual Asset, Transferring Liability or Residual Liability in accordance with the terms of this Scheme including, for the avoidance of doubt, obtaining any required consent or waiver and the Transferee shall on demand indemnify the Transferor against any reasonable costs properly incurred by it in taking any such step.

3.7 Without limitation to paragraph 5, any existing indemnity, power of attorney, authority, declaration or consent given to or by the Transferor relating to any

part of the Transferring Business (including the Transferring Policies) shall have effect on and from the Effective Date as if given to, or as the case may be, by the Transferee.

- 3.8 On and with effect from the Effective Date or Subsequent Transfer Date, as the case may be, and without prejudice to any other provision of this Scheme, all references to the Transferor in any contract between the Transferor and any other party, or in any document or instrument, to the extent evidencing title to or the benefit or burden of the Transferring Policies, the Transferring Assets, the Residual Assets, the Transferring Liabilities and the Residual Liabilities shall, in so far as they are transferred to the Transferee, be read and construed as if the same were references to the Transferee so that such contract, document or instrument shall operate as if such references had always been to the Transferee rather than the Transferor.
- 3.9 The Transferor shall not be liable to the Transferee for any claim or remedy arising in connection with the Transferor's title to the Transferring Policies, the Transferring Assets or the Residual Assets other than as previously agreed in writing between the Transferor and the Transferee.
- 3.10 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 Transferring Business and which is subject to Applicable Privacy Laws;
 - (b) become the data controller of any personal data which relates to the Transferring Business and which is subject to Applicable Privacy Laws in place of the Transferor;
 - (c) in respect of any personal data which relates to the Transferring Business be under the same duty by virtue of any law as the Transferor was under to respect the confidentiality and privacy of any person in relation to 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
 - (d) in any consent given by a data subject in respect of such data as is mentioned in this paragraph 3.10, any reference to the Transferor or its Affiliates shall be deemed to include a reference to the Transferee or its Affiliates, as applicable.
- 3.11 No Excluded Assets or Excluded Liabilities shall be transferred to or vested in the Transferee under or by virtue of the terms of this Scheme.

4. Continuity of Proceedings

- 4.1 On and with effect from the Effective Date, any Proceedings, to the extent issued, served or commenced or continued in connection with the Transferring Policies, the Transferring Assets or the Transferring Liabilities against the Transferor, shall be continued by or against the Transferee and the Transferee

shall be entitled to all claims, counterclaims, defences, defences to counterclaims and rights of set-off that were or would have been available to the Transferor in relation to those Proceedings. The Transferor shall not have any liability under those Proceedings and for the avoidance of doubt the Transferee, in its absolute discretion, may determine after the Effective Date to discontinue any such Proceedings brought by the Transferor.

- 4.2 On and with effect from the Subsequent Transfer Date applicable thereto, any Proceedings, to the extent issued, served or commenced in connection with the relevant Residual Asset or the relevant Residual Liability which relate to a Transferring Asset or a Residual Asset which is to be transferred on such Subsequent Transfer Date against the Transferor, shall be continued by or against the Transferee and the Transferee shall be entitled to all claims, counterclaims, defences to counterclaims and rights of set-off that were or would have been available to the Transferor in relation to those Proceedings. The Transferor shall not have any liability under those Proceedings and for the avoidance of doubt the Transferee, in its absolute discretion, may determine after the Subsequent Transfer Date to discontinue any such Proceedings brought by the Transferor. Until such Subsequent Transfer Date, the relevant Proceeding shall be continued by the Transferor.
- 4.3 For the avoidance of doubt, any Proceedings to the extent issued, served or commenced by or against the Transferor which are not to be continued by or against the Transferee pursuant to paragraph 4.1 or 4.2 shall be continued by or against the Transferor and the Transferor shall remain entitled to all defences, claims, counterclaims, defences to counterclaims and rights of set-off available to it at any time (whether before, on or after the Effective Date) in relation to those Proceedings.
- 4.4 Any judgment, settlement, order or award obtained by or against the Transferor which relates to any part of the Transferring Business, the Transferring Policies, the Transferring Assets, the Transferring Liabilities, the Residual Assets or Residual Liabilities and which is not fully satisfied before the Effective Date (or, in the case of the Residual Assets or Residual Liabilities, the 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, become enforceable by or against the Transferee (to the exclusion of the Transferor).
- 4.5 On and with effect from the Effective Date, without any restriction whatsoever, any Proceedings for the resolution of a dispute or a claim in relation to the Transferor and concerning the Transferring Business shall be commenced against the Transferee. Any such Proceedings commenced in error against the Transferor after the Effective Date or Subsequent Transfer Date (as the case may be) shall be deemed to have been commenced and shall be continued against the Transferee without the need for further order, whether for substitution of parties or otherwise. In any event, the Transferee shall be entitled to all defences, claims, counterclaims and rights of set off that would have been available to the Transferor in relation to such Proceedings.

- 4.6 At and with effect from the Effective Date, all references to the Transferor in any Periodical Payment Orders relating to the Transferring Business shall be read and construed as if the same were references to the Transferee so that such references shall take effect as if the Transferee were the original party to the Periodical Payment Orders in place of the Transferor and any liabilities of the Transferor in respect of any such Periodical Payment Orders shall be the liabilities of the Transferee.

5. Retained Policies

- 5.1 Without prejudice to paragraph 10.2, the Retained Policies shall not be transferred by this Scheme and the liabilities under each Retained Policy and any liabilities to any third party so far as they relate to any Retained Policy shall (except where such Retained Policy has been novated to the Transferee and is treated as a Transferring Policy pursuant to paragraph 5.2) remain liabilities of the Transferor.
- 5.2 The Transferee shall use its reasonable endeavours to procure the novation to it of any Retained Policy with effect from the Effective Date or such later date as such novation is procured, and following such novation, such Retained Policy and the rights and obligations relating to it shall thereafter be dealt with by the Transferor and Transferee under the provisions of this Scheme in all respects as if it were a Transferring Policy.

6. Contribution rights

- 6.1 On the Effective Date, the Transferee shall become entitled to all the rights, benefits and powers of the Transferor to claim contribution from any other person, including any insurer, reinsurer or retrocessionaire, subsisting on the Effective Date which arises as a result of or in connection with the Transferring Policies (whether under the terms of the Transferring Policies themselves or pursuant to the Compensation Act 2006 or any other applicable law or regulation) and be subject to all the obligations and liabilities of the Transferor to make any such similar contribution towards the liability of any other person subsisting on the Effective Date.

7. Mandates

- 7.1 Any mandate, standing order or other instruction or authority in force at the Effective Date (including, without limitation, any instructions given to a bank by its customer in the form of direct debit or standing order) and providing for the payment by a bank or other intermediary of premiums or other amounts payable to the Transferor under any Transferring Policy or Transferring Asset shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.
- 7.2 Any mandate or other instruction or authority in force on the Effective Date as to the manner of payment by the Transferor of any sum payable under any Transferring Policy shall continue in force as an effective mandate, instruction or authority to the Transferee.

8. Rights and obligations under the Transferring Policies

- 8.1 On the Effective Date, the Transferee shall become entitled to all the rights (including contribution rights), benefits and powers of the Transferor whatsoever subsisting on the Effective Date under or by virtue of the Transferring Policies and be subject to all the obligations and liabilities of the Transferor whatsoever subsisting on the Effective Date under or by virtue of the respective Transferring Policies.
- 8.2 Subject to the terms of this Scheme, every person who is a policyholder in respect of a Transferring Policy shall, on and with effect from the Effective Date, become entitled, in succession to, and to the exclusion of, any rights (including any rights in Proceedings) which he may have had against the Transferor under such Transferring Policy, to the same rights (including any rights in Proceedings) against the Transferee as were available to him against the Transferor under such Transferring Policy and (as regards a Transferring Policy under which premiums or other sums attributable or referable thereto continue to be payable by him) 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, if any, as and when the same become due and payable.
- 8.3 If any person entitled to do so with respect to a Transferring Policy exercises any right or option granted under the terms of that Transferring Policy and either:
- (a) the right or option provides for amendments to be made to an existing Transferring Policy; or
 - (b) it is appropriate in the opinion of the Transferee Board in order to comply with that right or option to amend an existing Transferring Policy,
- such person shall be entitled to require that the obligation thereby arising be satisfied by the amendment by the Transferee of the Transferring Policy in order to comply with the terms of such right or option.
- 8.4 All references in any Transferring Policy to the Transferor, the Transferor Board or any other officers, employees or agents of the Transferor shall, with effect on and from the Effective Date, be read as references to the Transferee, the Transferee Board or any other officers, employees or agents of the Transferee respectively or, where appropriate, agents of the Transferee to which the administration or investment management of the relevant part of the business carried on by the Transferee has been delegated. In particular, but without limitation, and subject to the other provisions of this Scheme, all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by any of the Transferor, the Transferor Board or any other officers, employees or agents of the Transferor in relation to any of the Transferring Policies shall, with effect on and from the Effective Date, be exercisable or required to be performed by the Transferee, the Transferee Board or any other officers, employees or such agents of the Transferee

respectively, and accordingly all obligations of the Transferor, the Transferor Board or any other officers, employees or agents of the Transferor in relation to any of the Transferring Policies shall, with effect on and from the Effective Date, cease and determine. All references in a Transferring Policy to the Transferor and its Affiliates shall, where the context requires, be read and construed with effect from the Effective Date as references to the Transferee and its Affiliates.

8.5 The terms of this paragraph 8 shall apply, *mutatis mutandis*, to the Transferring Contracts and Transferring Reinsurance.

9. Declaration of trust by the Transferor

9.1 If:

- (a) any property of the Transferor is not, or is not capable of being, transferred to and vested in the Transferee by the Order on the Effective Date by reason of such property being a Residual Asset or for any other reason; or
- (b) any Residual Asset is not, or is not capable of being, transferred to and vested in the Transferee by the Order on the Subsequent Transfer Date applicable thereto,

then the Transferor shall, from the Effective Date (but save to the extent that giving effect to such a trust would require a consent or waiver which has not been obtained) hold any property referred to in paragraphs 9.1(a) to 9.1(b) together with any proceeds of sale or income or other right accrued or return arising in respect thereof (including, without limitation, any payment, property or right within paragraph 9.3 below), as trustee for the Transferee.

9.2 The Transferor shall be subject to exclusive directions from the Transferee in respect of any property referred to in paragraphs 9.1(a) to 9.1(b) 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 the 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 on or after the Effective Date in respect of any Transferring 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 and the Transferee shall indemnify the Transferor on demand against any costs or liability reasonably incurred in making any such payment or transfer.

10. Indemnities

- 10.1 From the Effective Date the Transferee shall indemnify and keep indemnified the Transferor against any loss or expense incurred by or demand made against the Transferor that is attributable to the Transferring Policies, including in relation to any Proceedings, whether arising before or after the Effective Date.
- 10.2 From the Effective Date, the Transferee shall discharge on the Transferor's behalf or, failing that, shall indemnify the Transferor against (i) each Residual Liability until the relevant Subsequent Transfer Date, and (ii) all liabilities arising in respect of Retained Policies, provided always that the Transferee shall indemnify the Transferor in respect of any costs, claims, charges and other liabilities incurred by the Transferor in connection therewith.
- 10.3 In respect of each Residual Liability and all liabilities arising in respect of Retained Policies, to the extent that:
- (a) the Transferor recovers under a policy of indemnity insurance or recover pursuant to a claim or right of recovery against a third party, a sum which compensates the Transferor (in whole or in part); and
 - (b) the Transferee has discharged on the Transferor's behalf or indemnified the Transferor against a Residual Liability or other liability pursuant to paragraph 9.1,
- the Transferor shall (i) promptly notify the Transferee of the fact and (ii) pay to the Transferee, as soon as reasonably practicable after receipt, an amount equal to the amount recovered from the third party less any Tax on such receipt, providing always that the Transferee shall indemnify the Transferor in respect of any costs, claims, charges and other liabilities incurred by the Transferor in recovering the same.
- 10.4 Where the Transferor is entitled to receive an amount pursuant to paragraph 10.1, they shall be entitled to receive such amount as, after payment of any liability to Tax in respect of the amount receivable and/or any deduction or withholding required to be made from any payment under paragraph 10.1, will result in the receipt of an amount equal to the liability indemnified against.
- 10.5 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 circumstances which may give rise to a claim against the Transferee under the terms of this Scheme.

PART D – MISCELLANEOUS PROVISIONS

11. Effective Date

- 11.1 Subject to the Court having made the Order sanctioning this Scheme, this Scheme shall become effective at 23.59 BST on 28 September 2018 (the *Effective Date*) or such other time as may be specified in the Order or such later date and/or time, if any, as the Transferor and Transferee may agree (being a date and time falling after the making of the Order) provided that if such time and date for the Scheme to become effective is:
- (a) after the Effective Date but prior to 23.59 GMT on 28 November 2018, this Scheme will only become effective on such date and time if the conditions set out in paragraph 12.2 are satisfied; or
 - (b) on or after 23.59 GMT on 28 November 2018, this Scheme will only become effective on such date and time if the conditions set out in paragraph 12.3 are satisfied.
- 11.2 Unless this Scheme shall become effective in its entirety at 23.59 GMT on 31 December 2019 it shall lapse.

12. Modifications or additions

- 12.1 The Transferee and the Transferor may consent for and on behalf of themselves and all other persons concerned (other than the PRA and/or FCA) to any modification of or addition to this Scheme or to any further condition or provision affecting the same which, in each case prior to its sanction of this Scheme, the Court may approve or impose.
- 12.2 If the Transferor and Transferee agree that the transfer to the Transferee of the Transferring Business should become effective after 23.59 BST on 28 September 2018 but prior to 23.59 GMT on 28 November 2018, the Transferor and Transferee shall, as soon as reasonably practicable, inform the PRA and FCA in writing of the revised Effective Date.
- 12.3 If the Transferor and Transferee agree that the transfer to the Transferee of the Transferring Business should become effective on or after 23.59 GMT on 28 November 2018, the Transferor and Transferee must apply to the Court for a further order, specifying any time and date on or after 23.59 GMT on 28 November 2018 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 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 certificate from the Independent Expert (or an alternate independent expert, as approved by the PRA in consultation with the FCA) to the effect that the proposed

amendment will not materially adversely affect the Transferring Policies or existing policyholders of the Transferor or the Transferee;

- (c) the Independent Expert shall be provided with the most up-to-date financial information (audited and/or unaudited, as may be appropriate) available to the Transferor and the Transferee in respect of that party; and
- (d) a notice of the making of such order is published on the website of the Transferor within five days of the making of such further order.

12.4 At any time after the sanction of this Scheme, the Transferee and the Transferor shall be at liberty to apply to the Court for consent to amend its terms (such Court approval not being necessary in the event of immaterial amendments or in the event of manifest error, provided any such amendment is agreed in writing between the Transferor and Transferee), provided that in any such case:

- (a) the Transferor or the Transferee (as appropriate) shall be given reasonable notice of any proposed amendment in advance of any such application to the Court, subject to paragraph 11.6;
- (b) the Transferor or the Transferee (as appropriate) shall have the right to be heard at any hearing of the Court at which such application is considered;
- (c) the FCA and PRA shall be notified of, and have the right to be heard at, any hearing of the Court at which such application is considered; and
- (d) such application shall be accompanied by a certificate from an independent actuary to the effect that in his opinion the proposed amendment will not materially adversely affect the policyholders of the Transferor or Transferee.

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

12.6 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) that are agreed by the Transferor and the Transferee, provided that the relevant departments at the PRA and FCA with whom the Transferor and Transferee have been in communication in connection with the Scheme have been notified of the same and have indicated that they do not object thereto within 20 Business Days from the acknowledgment of receipt by those departments.

12.7 In the event that the Transferor ceases to exist, the requirement to provide notice pursuant to paragraph 12.4(a) shall be satisfied by providing notice to the holding company of the Transferor or such other entity as the Transferor may notify to the Transferee after the date of this Scheme.

13. Costs and expenses

All costs and expenses in relation to the preparation and carrying into effect of this Scheme, other than in relation to Tax, whether before or after the Effective Date shall be borne equally by the Transferor and Transferee.

14. Successors and assigns

This Scheme will bind and enure to the benefit of the successors and assigns of the Transferor and the Transferee.

15. Evidence of transfer

The production of a copy of the Order with any modifications, amendments and/or additions made under paragraph 12, shall for all purposes be evidence of the transfer to and vesting in the Transferee of (i) the Transferring Business, the Transferring Assets, the Transferring Liabilities and the Transferring Policies, on and from the Effective Date; and (ii) the Residual Assets and Residual Liabilities, on and from the Subsequent Transfer Date.

16. Governing law

This Scheme is governed by, and shall be construed in accordance with, the laws of England and Wales.

Dated 7 September 2018

Schedule 1

Periodical Payment Orders

The Transferor is a party to the following Periodical Payment Orders:

- HQ13X05444
- 3NR90005
- HQ11X04899
- 6NR05930