

DRAFT: RAC/EZZS
21 November 2019

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

CR-2019-005060

**IN THE MATTER OF
AGEAS INSURANCE LIMITED**

- and -

**IN THE MATTER OF
RIVERSTONE INSURANCE (UK) LIMITED**

- and -

**IN THE MATTER OF
THE FINANCIAL SERVICES AND MARKETS ACT 2000**

SCHEME DOCUMENT

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CONTENTS

Part I: Definitions and Interpretation	1
1. Definitions	1
Part II: Introduction	11
2. Purpose of the Scheme	11
3. The Transferor	11
4. The Transferee	11
Part III: Transfer of Business	12
5. Transfer of Transferring Business	12
6. Transfer of Assets	12
7. Transfer of Liabilities	12
8. Rights and Obligations under Transferring Policies and Transferring Contracts	13
9. Residual Policies Reinsurance	14
10. Continuity of Proceedings	15
11. Premiums, Mandates and other Instructions	15
12. Declaration of Trust by the Transferor	16
13. Data Protection	16
14. Indemnities	17
Part IV: Miscellaneous	18
15. Effective Date	18
16. Modifications or Additions	18
17. Costs and Expenses	18
18. Third Party Rights	19
19. Successors and Assigns	19
20. Evidence of transfer	19

21. Governing Law	19
Schedule (Transferring Business)	20

Part I: Definitions and Interpretation

1. Definitions

1.1 In this Scheme, unless inconsistent with the subject or context, the words and expressions set out in the first column below shall bear the respective meanings set out against them in the second column:

Act	means the Financial Services and Markets Act 2000;
Affiliates	means with respect to any person, each person that controls, is controlled by, or is under common control with, such person. For purposes of this definition, control of a person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by power to appoint directors, by contract or otherwise;
Applicable Privacy Laws	means all applicable data protection laws, rules and regulations, including Regulation (EU) 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 (General Data Protection Regulation), and any data protection legislation in force in the United Kingdom at the Effective Date which is, or is intended to be, materially equivalent to such regulation including the UK Data Protection Act 2018;
Board	means, in relation to a company, the board of directors from time to time of that company;
Business Records	means all books, files, registers, documents, literature, correspondence, papers and other records of the Transferor (wherever situated and whether recorded in computerised form or otherwise) to the extent they relate to the Transferring Policies, Policyholders of Transferring Policies or any claim or circumstance notified under any Transferring Policies which are in existence at the Effective Date, in each case, save for the Transferor Marks;
Court	means the High Court of Justice in England;
Effective Date	means the time and date on which this Scheme shall become effective in accordance with Clause 15 of Part IV;
Encumbrance	means any option, right to acquire, mortgage, charge, pledge, lien or other form of security and any agreement to create any of the foregoing, save for any such right conferred by a party in

favour of the other party;

Excluded Assets	means the assets listed in Part B of the Schedule to this Scheme;
Excluded Liabilities	means the liabilities listed in Part D of the Schedule to this Scheme;
Excluded Policies	means: <ul style="list-style-type: none">(a) all policies written by the Transferor through the London and Hull Aviation Underwriting Agency between 1972 and 1985 (both dates inclusive);(b) all United Kingdom employers' liability and motor liability Policies written by the Transferor and having an inception date prior to 31 December 1992;(c) Northern Star policy 95DC53592 (also referred to as policy C95PCP1N);(d) Policies in relation to which the Policyholder is included on any of the Sanctions Lists; and(e) any other Policies which the Transferor and the Transferee agree prior to the Effective Date should not be transferred;
FCA	means the Financial Conduct Authority or any previous or successor regulator or regulators as shall from time to time carry out such functions as were at the date of this Scheme allocated to the Financial Conduct Authority under the Act;
Independent Expert	means the person approved by the Regulator for the purposes of section 109 of the Act in relation to this Scheme, or such other person as may be nominated or approved by the Regulator for such purposes from time to time;
Intellectual Property Rights	means patents, trade-marks, domain names, rights in designs, copyrights and database rights and topography rights (whether or not any of these is registered and including applications for registration of any such thing), and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;
IT Systems	means information technology systems comprising computer hardware, software and/or networks;

- Liabilities** means any claims, liabilities, losses, damages, costs (including legal costs and experts' fees and the cost of remediation), payments, redress, or other forms of compensation, including any fines or penalties, statutory levies, ex gratia payments, agreed settlements, buybacks, commutations or compromises, paid, suffered or incurred (including any amount in respect of VAT thereon);
- Mis-selling Liability** means any liabilities, losses, costs and/or expenses from time to time incurred or assumed by the Transferor in respect of the marketing or sale of any Transferring Policy, including liabilities, losses, costs and/or expenses arising or resulting from or in connection with:
- (a) any complaint, claim, legal action or proceedings (including any judicial, quasi-judicial or other proceedings for the resolution of a dispute or claim) brought against the Transferor by or on behalf of any person or group of persons whether as a result of any judgment of any court, any arbitration, any decision of any regulator or any agreed settlement or compromise;
 - (b) the Transferor complying with (or failing to comply with) applicable law or with rules, regulations, directions, guidance or industry practice (whether formal or informal) set by or given by any regulatory authority; or
 - (c) any penalty or fine levied, or which results from or arises in connection with any disciplinary action undertaken by, any regulatory authority;
- in each case, to the extent that such liabilities are incurred in connection with the marketing or sale by the Transferor or any member of the Transferor Group (or any of its or their respective agents, brokers, representatives or other intermediaries for whose acts or omissions the Transferor or any member of the Transferor Group is or was liable), of any Transferring Policy, and "**Mis-selling Liability**" shall be construed accordingly;
- Northern Star** means Northern Star Insurance Company Limited (company number AC000714);
- Order** means an order made by the Court pursuant to section 111 of the Act sanctioning this Scheme and any order (including any subsequent order) in relation to this Scheme made by the Court pursuant to section 112 of the Act;

Outwards Reinsurance Agreement	means any contract of reinsurance entered into by the Transferor as cedant, or of which the Transferor has the benefit as cedant, at any time prior to [21 December 2018] under which any obligations remain to be performed at any time after the Effective Date to the extent such contract relates to one or more of the Transferring Policies;
Policy	has the meaning given to that term in the Financial Services and Markets Act 2000 (Meaning of “Policy” and “Policyholder”) Order 2001 (SI 2001/2361) and references to “ Policyholder ” and “ Policies ” shall be construed accordingly;
PRA	means the Prudential Regulation Authority or any previous or successor regulator or regulators as shall from time to time carry out such functions as were at the date of this Scheme allocated to the Prudential Regulation Authority under the Act;
Proceedings	means any claim, investigation, counterclaim, complaint, petition, suit, appeal, enforcement action, or judicial, administrative, regulatory or arbitration proceedings, process or action (whether current, threatened or pending, or which may be brought in the future including those not yet in contemplation), whether intended to have interim or final effect in relation to the subject matter, before or taken by any court, governmental authority, regulatory authority, arbitration panel, ombudsman or other body subsisting or empowered by law or regulation or by the provisions of an agreement;
RAO	means The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544);
Regulators	means, as the context requires, the FCA or the PRA or both;
Residual Assets	means: <ul style="list-style-type: none">(a) any Transferring Assets (including, without limitation, any right, benefit or power of the Transferor under any Transferring Assets) to be transferred pursuant to this Scheme which the Court (despite having jurisdiction to transfer pursuant to section 112(1)(a) of the Act) determines, notwithstanding section 112(2)(a) of the Act, not so to transfer;(b) any Transferring Assets which are 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;

- (c) any property of the Transferor attributable to the Residual Policies or the Transferring Assets which cannot be transferred to or vested in the Transferee on the Effective Date for any other reason;
- (d) any Transferring Assets (including, without limitation, any right, benefit or power of the Transferor under any Transferring Assets) which the Transferor and the Transferee agree in writing prior to the Effective Date that its transfer shall be delayed;
- (e) any other interest of the Transferor in any Transferring Assets or any agreement relating to any Transferring Assets which the Transferor and the Transferee agree in writing prior to the Effective Date should be transferred pursuant to this Scheme in conjunction with any Transferring Assets referred to in paragraphs (a), (b), (c) or (d) of this definition; and
- (f) any proceeds of sale or income or other accrual, right 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 Transferring Assets referred to in paragraphs (a), (b), (c), (d) or (e) of this definition;

Residual Liabilities means:

- (a) any Transferring Liability the transfer of which 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 (despite having jurisdiction to transfer pursuant to section 112(1)(a) of the Act) determines, notwithstanding section 112(2)(a) of the Act, not so to transfer;
- (b) any Transferring Liability which is attributable to or connected or associated with a Residual Asset and arises at any time before the Subsequent Transfer Date applicable to that Residual Asset;
- (c) any other Transferring Liability which cannot be transferred to or vested in the Transferee on the Effective Date for any other reason;
- (d) any Transferring Liabilities which the Transferor and the

Transferee agree in writing prior to the Effective Date shall not be transferred at the Effective Date; and

- (e) any other interest of the Transferor in any Transferring Liabilities or any agreement relating to any Transferring Liabilities 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 Transferring Liabilities referred to in paragraphs (a), (b) or (c) of this definition;

Residual Policies

means any Transferring Policy written by the Transferor in the course of carrying on insurance business in the United Kingdom or any other EEA State which is a contract of general insurance (other than reinsurance) in respect of which:

- (a) for the purpose of paragraph 1(2A) of Schedule 12 to the Act, the contract was concluded in an EEA State other than the United Kingdom and the Regulator 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 the Act with respect to the relevant EEA State in which the contract was concluded;
- (b) is not otherwise capable of being transferred pursuant to the Act on the Effective Date; or
- (c) further steps are necessary to be taken following the Order before any such Transferring Policy can be transferred and the Transferor and the Transferee agree that such steps should be taken,

where, for the purposes of this definition, the expression “**EEA State**” shall have the meaning ascribed thereto by, or for the purposes of, Part VII of the Act;

Sanctions List

means the sanctions lists maintained by the following at the Effective Date:

- (a) the United Nations;
- (b) the European Union;
- (c) the US Department of the Treasury;
- (d) Switzerland (including any relevant governmental body or regulatory body);

- (e) the Office of Foreign Asset Control; and
- (f) HM Treasury;

Scheme means the insurance business transfer scheme within the meaning of section 105 of the Act set out herein in its original form or with, or subject to, any modification, addition or condition made in accordance with Clause 16;

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, namely:

- (a) in respect of any Residual Asset falling within paragraphs (a), (b) or (c) 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 paragraphs (a), (b) or (c) of the definition of Residual Liabilities, the date on which any impediment to its transfer shall have been removed or overcome;
- (b) in respect of any Residual Asset falling within paragraphs (d) or (e) 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 paragraphs (d) or (e) of the definition of Residual Liabilities, the date on which the Transferor and the Transferee agree in writing that the transfer shall take effect; and
- (c) in respect of any Residual Asset falling within paragraph (f) 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 or Tax means:

- (a) all forms of tax, levy, duty, charge, impost, withholding or other amount whenever created or imposed and whether of the UK or elsewhere, payable to or imposed by any Taxation Authority; and
- (a) all charges, interest, penalties and fines incidental or relating to any taxation falling within (a) above or which arise as a result of the failure to pay any taxation on the due date or to comply with any obligation relating to taxation;

Taxation Authority	means any authority responsible for the collection or management of any Tax;
Transferee	means RiverStone Insurance (UK) Limited;
Transferee Group	means the Transferee and its Affiliates from time to time;
Transferor	means Ageas Insurance Limited;
Transferor Group	means the Transferor and its Affiliates from time to time;
Transferor Marks	means all trade-mark rights (including rights in trade-marks, logos and devices, brand names, trade dress and business names) owned by any member of the Transferor Group, including in the name Ageas and any associated logo or device;
Transferring Assets	means the assets listed in Part A of the Schedule to this Scheme;
Transferring Business	means the general insurance business carried on by the Transferor in relation to the Transferring Policies (including, without limitation, all liabilities under any policies issued by or on behalf of the Transferor), comprising the Transferring Policies, the Transferring Assets, the Transferring Liabilities, the Residual Assets and the Residual Liabilities;
Transferring Contracts	means the Outwards Reinsurance Agreements and any letters of credit disclosed by the Transferor to the Transferee on or before [21 December 2018];
Transferring Liabilities	means the liabilities listed in Part C of the Schedule to this Scheme and excluding the Excluded Liabilities;
Transferring Policies	means any Policy or Policies: (a) written by or on behalf of the Transferor, or transferred to or assumed by the Transferor prior to 20 December 2018, in each case having an inception date prior to 31 December 1992; (b) written by Northern Star or its predecessor entities which was transferred to the Transferor in 2000, and which in each case remains in force at the Effective Date (including any policies under which a valid claim may be made at or after the Effective Date), but excluding any Excluded Policy;

United Kingdom	means the United Kingdom of Great Britain and Northern Ireland;
US Surplus Lines Trust Agreement	means the Trust Agreement for Alien Surplus Lines Insurers entered into between Bishopsgate Insurance Company Limited and Bankers Trust Company, effective 30 April 1970, as amended and restated from time to time; and
VAT	means value added tax or any equivalent Tax.

1.2 In this Scheme (save where otherwise stated or where the context otherwise requires):

- (A) **“property”** or **“asset”** includes (without limitation) property, assets, cash, rights and powers of every description (whether present or future, actual or contingent and, in the case of rights, howsoever arising) and includes property held on trust, rights under any contract, deed or other instrument and any interest in any of the foregoing and, for the avoidance of doubt, real and heritable property, moveable and personal property and any interest as proprietor, landlord, tenant, mortgagee, chargee, beneficiary or heritable creditor, and **“assets”** shall be construed accordingly;
- (B) **“liabilities”** include all liabilities, obligations and duties whatsoever (whether present or future, actual or contingent), including, without limitation, any cost, expense, liability, damage or loss of any kind, and **“liability”** shall be construed accordingly;
- (C) references to a Policy of any description or to a reinsurance contract or treaty which is or are **“in force”** are to a Policy, reinsurance contract or treaty under which any liability (whether of an insurer, of a reinsurer or of a Policyholder) remains;
- (D) **“transfer”** includes (as the context may require) **“assign”**, **“assignment”** or **“assignment”**, **“dispose”** or **“disposal”** or **“convey”** or **“conveyance”**, and **“transferring”** and **“transferred”** shall be construed accordingly;
- (E) **“reinsurance”** includes (as the context may require) **“retrocession”**, and **“reinsure”** and **“reinsurer”** shall be construed accordingly;
- (F) any word in the singular shall include the plural and vice versa;
- (G) where any obligation is expressed to be undertaken or assumed by any person, that obligation shall be interpreted as including a requirement on that person to exercise all rights and powers of control over the affairs of any other person which that person is properly able to exercise (whether directly or indirectly) in order to secure performance of that obligation;
- (H) the rule known as the *ejusdem generis* rule shall not apply, and accordingly words introduced by words and phrases such as **“include”**, **“including”**, **“other”** and **“in particular”** shall not be given a restrictive meaning or limit the generality

of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible;

- (I) any reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted except to the extent that the liability of the Transferor or the Transferee is thereby increased or extended;
- (J) any reference to any rules, regulations or guidance issued by the Regulators shall be deemed to include a reference to such rules, regulations or guidance as amended or replaced from time to time, and any reference to any provision of the rules and guidance issued by the Regulators 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 Regulators as most closely corresponded to that provision at the date of the Scheme;
- (K) the terms “**subsidiary**” and “**holding company**” shall have the meanings ascribed to them in section 1159 of the Companies Act 2006;
- (L) any reference to an agreement or document is to the same as amended from time to time;
- (M) any reference to the masculine gender shall include the feminine and neuter genders and vice versa;
- (N) any reference to a “**person**” shall include a reference to a body corporate, a partnership, an unincorporated association, a joint venture and a person’s executors or administrators (whether or not having separate legal personality), and shall include a trustee;
- (O) any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- (P) any reference to an amount shall be exclusive of any applicable VAT;
- (Q) references to any process or concept of English law shall include all equivalent processes or concepts under the laws of any other applicable jurisdiction;
- (R) any reference to a Part, a Clause or a Schedule is respectively a reference to a Part or Clause of, or a Schedule to, this Scheme and references within a Part of this Scheme to Clauses are to Clauses in that Part;
- (S) the Schedule forms part of this Scheme and shall have the same force and effect as if expressly set out in the body of this Scheme, and any reference to this Scheme shall include the Schedule; and
- (T) all headings in this Scheme are inserted for convenience only and do not affect the interpretation of this Scheme.

Part II: Introduction

2. Purpose of the Scheme

It is proposed that, subject to the sanction of this Scheme by the Court, the Transferring Business shall, by the Order, be transferred to the Transferee and shall be dealt with in accordance with this Scheme.

3. The Transferor

3.1 The Transferor is a private limited company, incorporated in England and Wales on 1 July 1939 under registered number 00354568 with the name The Bishopsgate Insurance Company Limited. It re-registered as a public limited company and changed its name to Bishopsgate Insurance plc on 22 June 1982. It re-registered as a private limited company on 1 October 1986 and was thereafter known as Bishopsgate Insurance Limited until it changed its name to Fortis Insurance Limited on 1 March 2000. It changed its name to Ageas Insurance Limited on 1 October 2010. The registered office of the Transferor is at Ageas House, Hampshire Corporate Park, Templars Way, Eastleigh, Hampshire, SO53 3YA.

3.2 The Transferor is authorised by the PRA and regulated by the PRA and the FCA. The Transferor has permission, *inter alia*, to effect and carry out contracts of insurance in the United Kingdom in categories 1 to 18 of Part I of Schedule 1 (Contracts of General Insurance) to the RAO.

4. The Transferee

4.1 The Transferee is a private limited company, incorporated in the United Kingdom on 19 April 1974 under registered number 01167327 with the name Springy Limited. It changed its name to RiverStone Insurance (UK) Limited on 1 August 2000. The registered office of the Transferee is Park Gate, 161-163 Preston Road, Brighton, East Sussex, BN1 6AU, United Kingdom.

4.2 The Transferee is authorised by the PRA and regulated by the PRA and the FCA. The Transferee has permission, *inter alia*, to effect and carry out contracts of insurance in the United Kingdom in categories 1 to 18 of Part I of Schedule 1 (Contracts of General Insurance) to the RAO.

Part III: Transfer of Business

5. Transfer of Transferring Business

On and with effect from the Effective Date, the Transferring Business shall (subject to the terms of this Scheme), by the Order and without any further act or instrument, be transferred to, and vest in, the Transferee.

6. Transfer of Assets

6.1 On and with effect from the Effective Date, the Transferring Assets and all the property, title, right, interest and powers of the Transferor in respect thereof shall (subject to the terms of this Scheme), by the Order, and without any further act or instrument, be transferred by the Transferor to, and vest in, the Transferee subject to all Encumbrances (if any) affecting those assets.

6.2 Subject to Clause 12, on and with effect from the applicable Subsequent Transfer Date, the Residual Assets and all the property, title, right, interest and powers of the Transferor in respect thereof shall (subject to the terms of this Scheme), by the Order, and without any further act or instrument, be transferred by the Transferor to, and vest in, the Transferee, subject to all Encumbrances (if any) affecting those assets.

6.3 The Transferee shall accept without investigation such title as the Transferor shall have to the Transferring Assets at the Effective Date and the Residual Assets on the Subsequent Transfer Date or Subsequent Transfer Dates applicable thereto.

6.4 Each of the Transferor and the Transferee shall, as and when appropriate, execute such documents and perform such other acts as may be required to effect or perfect the transfer to and vesting in the Transferee of the Transferring Assets in accordance with this Scheme.

7. Transfer of Liabilities

7.1 On and with effect from the Effective Date, the Transferring Liabilities of the Transferor shall (subject to the terms of this Scheme), by the Order, and without any further act or instrument, be transferred by the Transferor to, assumed by, and become liabilities of, the Transferee and the Transferor shall be released from those liabilities.

7.2 Subject to Clause 12, on and with effect from the applicable Subsequent Transfer Date, the Residual Liabilities of the Transferor shall (subject to the terms of this Scheme), by the Order, and without any further act or instrument, be transferred by the Transferor to, assumed by, and become liabilities of, the Transferee and the Transferor shall be released from those liabilities.

7.3 Each of the Transferor and the Transferee shall, as and when appropriate, execute such documents and perform such other acts as may be required to effect or perfect the transfer to and vesting in the Transferee of the Transferring Liabilities in accordance with this Scheme.

7.4 The transfers made pursuant to Clause 6 and this Clause 7 shall have effect pursuant to and subject to the terms of this Scheme and shall take place notwithstanding any restriction on such transfer or requirements for counterparty consent or waiver, and without giving rise to any pre-emption, termination or other rights which might otherwise arise and whether or not the Transferor or the Transferee has capacity to effect the same.

8. Rights and Obligations under Transferring Policies and Transferring Contracts

8.1 On and with effect from the Effective Date, the Transferee shall become entitled to all the rights (including contribution rights), discretions, authorities, benefits and powers of the Transferor whatsoever subsisting at the Effective Date under, or by virtue of, the Transferring Policies or the Transferring Contracts and shall be entitled to any and all defences, claims, counterclaims and rights of set-off which would have been available to the Transferor under or in respect of the Transferring Policies or the Transferring Contracts. For the avoidance of doubt, where, under the terms of any Transferring Policy or Transferring Contract the Transferor is entitled to exercise a discretion in relation thereto prior to the Effective Date, that entitlement shall transfer to the Transferee at the Effective Date.

8.2 Any reference in any Transferring Policy (including, without limitation, any literature relevant to, or the terms and conditions of, any such Transferring Policy) or Transferring Contract or in any other agreement, contract, instrument or deed entered into by the Transferor and forming part of the Transferring Business, to the Transferor, the Transferor's Board or any officer or employee of the Transferor, shall, on and with effect from the Effective Date, be deemed to be a reference to the Transferee, the Transferee's Board or the appropriate officer or employee of the Transferee (as the case may be). 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 officer or employee of the Transferor in relation to the Transferring Business or any part thereof shall, from the Effective Date, be exercisable or required to be performed respectively by the Transferee, the Transferee's Board or the appropriate officer or employee of the Transferee (as the case may be).

8.3 Subject to the terms of this Scheme, on and with effect from the Effective Date, every person who is a Policyholder of a Transferring Policy or a party to a Transferring Contract shall become entitled, in succession to, and to the exclusion of, any rights which he may have had against the Transferor under that Transferring Policy or Transferring Contract to the same rights against the Transferee as were available to him against the Transferor under that Transferring Policy or Transferring Contract and (as regards any Transferring Policy or Transferring Contract under which premiums or any other sums attributable or referable thereto continue to be payable by him) shall, with effect from the Effective Date, account to the Transferee for any such premiums or other sums and any further or additional premiums or other sums attributable or referable thereto (as applicable) as and when the same become due and payable.

8.4 On and with effect from the Effective Date, every person who, immediately prior to that date, is a party to a Transferring Policy or a Transferring Contract shall, in substitution

for any liability to or obligation owed by him thereunder to the Transferor, be under the same liability or obligation to the Transferee.

- 8.5 The transfer of any Transferring Policy, Transferring Asset, Transferring Liability, Residual Asset and Residual Liability pursuant to this Scheme shall not contravene any restriction (whether contractual or otherwise) on transferring 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.

9. Residual Policies Reinsurance

- 9.1 Subject to Clause 9.2, the Residual Policies, if any, shall not be transferred to the Transferee and the liabilities under the Residual Policies shall remain liabilities of the Transferor but shall, on and with effect from the Effective Date, be fully reinsured to the Transferee on the following basis:

- (A) all liabilities of the Transferor attributable to the Residual Policies and all other amounts paid or payable by the Transferor in respect of the Residual Policies shall be reinsured in their entirety by 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 Transferring Policies; and
- (C) the premiums payable by the Transferor to the Transferee in connection with the provision of the reinsurance described in this Clause 9 shall be deemed to have been paid to the Transferee by reason of the transfer of the Transferring Assets to the Transferee pursuant to this Scheme.

- 9.2 If all consents, permissions or other requirements for the transfer of an Residual Policy from the Transferor to the Transferee are obtained or where not obtained are no longer required:

- (A) such Residual Policy shall by the Order and without further act or instrument be transferred to the Transferee, and shall thereafter be treated in all respects, as if it were a Transferring Policy; and
- (B) any liability attributable to such Residual Policy shall by the Order and without further act or instrument be transferred to the Transferee, and shall thereafter be treated in all respects, as if it were a Transferring Liability.

- 9.3 If any Residual Policy is novated to the Transferee, the rights and liabilities relating to such Policy shall, to the extent not previously transferred, by the Order and without further act or instrument be transferred to the Transferee and such 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 Transferring Policy.

10. Continuity of Proceedings

10.1 On and with effect from the Effective Date, any Proceedings by or against the Transferor in connection with the Transferring Business, in respect of which the Transferor is plaintiff, claimant, applicant, defendant or respondent shall be continued or commenced by or against the Transferee. The Transferee shall be entitled to all claims, counterclaims, defences to counterclaims, defences and rights of set-off which were or would have been available to the Transferor in connection with such Proceedings.

10.2 On and with effect from the Subsequent Transfer Date applicable thereto, any Proceedings to the extent issued or served in connection with any Residual Asset or Residual Liability which is to be transferred on such Subsequent Transfer Date in respect of which the Transferor is plaintiff, claimant, applicant, defendant or respondent shall be continued or commenced by or against the Transferee and the Transferee shall be entitled to all claims, counterclaims, defences to counterclaims, defences and rights of set-off which were or would have been available to the Transferor in connection with such Proceedings. Until the applicable Subsequent Transfer Date, the relevant Proceedings shall be continued by or against the Transferor.

10.3 On and with effect from the Effective Date, any judgment, decree, settlement, order or award obtained by or against the Transferor to the extent related to Proceedings which, had they been ongoing as of the Effective Date, would have been subject to Clause 10.1, and which has not been fully satisfied before the Effective Date shall, to the extent to which it was enforceable by or against the Transferor immediately prior thereto, become enforceable by or against the Transferee.

10.4 On and with effect from the Subsequent Transfer Date applicable thereto, any judgment, decree, settlement, order or award obtained by or against the Transferor to the extent related to Proceedings which, had they been ongoing as of the relevant Subsequent Transfer Date, would have been subject to Clause 10.2, and which has not been fully satisfied before the relevant Subsequent Transfer Date shall, to the extent to which it was enforceable by or against the Transferor immediately prior thereto, become enforceable by or against the Transferee.

11. Premiums, Mandates and other Instructions

11.1 Any and all premiums and other amounts payable to the Transferor which are attributable or referable to the Transferring Policies shall, on and with effect from the Effective Date, be payable to the Transferee.

11.2 Any mandate or other instruction in force as at the Effective Date (including any instruction given to any 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 under or in respect of any Transferring Policy to the Transferor shall thereafter take effect as if it had provided for and authorised that payment to the Transferee.

- 11.3 Any mandate, standing order or other instruction or authority in force as 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) as to the manner of payment of any premium, claim or other amount payable under or in respect of a Transferring Policy or Transferring Asset given to the Transferor shall continue in force after the Effective Date as an effective authority given to the Transferee.

12. Declaration of Trust by the Transferor

12.1 If:

- (A) any Transferring Asset is not, or is not capable of being, immediately transferred to, and vested in, the Transferee as at the Effective Date by the Order for any reason;
- (B) the transfer of any Transferring Asset outside the jurisdiction of the Court is not recognised by the laws of that jurisdiction in which that Transferring Asset is situated; or
- (C) in any circumstances the Transferor and the Transferee agree in writing before the Effective Date that it is not expedient to effect a transfer of any Transferring Asset to the Transferee pursuant to this Scheme,

then the Transferor shall from the Effective Date hold that Transferring Asset as trustee for the Transferee absolutely and shall be subject to the Transferee's directions in respect thereof until the relevant Transferring Asset 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 disposal thereof) and the Transferee shall have irrevocable authority to act as the attorney of the Transferor in respect of such Transferring Asset for all such purposes.

- 12.2 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 Transferring Business, any of the Transferring Policies or any of the Transferring Assets, the Transferor shall, as soon as is reasonably practicable after its receipt and to the fullest extent legally permissible, pay over the full amount of that payment or (to the extent that it is able to do so) transfer such property or right to, or in accordance with the directions of, the Transferee. The Transferee shall indemnify the Transferor on demand against any costs or liability incurred by the Transferor in making any such payment or transfer referred to in this Clause 12.2.

13. Data Protection

13.1 Subject to Clause 13.2, with effect from the Effective Date the Transferee shall:

- (A) succeed to any rights, liabilities and obligations of the Transferor in respect of any personal data which relates to the Transferring Business and which is subject to the Applicable Privacy Laws;

- (B) become the controller in place of the Transferor of any personal data which relates to the Transferring Business and which is subject to the Applicable Privacy Laws to the extent that such Transferor is, at the Effective Date, the controller in respect of such data; and
- (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 data and shall be bound by any specific notice given or request made by the data subject which was binding on the Transferor and which required the Transferor not to use data for marketing purposes,

and in any consent, notice or request given by a data subject in respect of such data, any reference to the Transferor (or to any past or present subsidiary or holding company of the Transferor or subsidiary of any such holding company) shall be deemed to include a reference to the Transferee.

- 13.2 In Clause 13.1 the expressions “**controller**”, “**personal data**” and “**data subject**” shall have the meanings given in the Applicable Privacy Laws.

14. Indemnities

- 14.1 With effect from the Effective Date, the Transferee shall indemnify the Transferor against, all charges, costs, liabilities, losses and claims arising in respect of all Transferring Liabilities and Residual Liabilities which are not, or are not capable of being, transferred by this Scheme or by a vesting order pursuant to section 112(1) of the Act (whether made before, on or after the Effective Date) until the relevant liability is transferred to or becomes a liability of the Transferee.
- 14.2 On and from the Effective Date, the Transferor undertakes to fully and effectively indemnify, keep indemnified and hold harmless the Transferee from and against all charges, costs, liabilities, losses and claims which the Transferee and/or any member of the Transferee Group may reasonably and properly suffer or incur or which may be brought against the Transferee and/or any member of the Transferee Group in any jurisdiction arising, directly or indirectly, out of, in respect of, or in connection with any Excluded Liabilities.

Part IV: Miscellaneous

15. Effective Date

- 15.1 Subject to Clause 15.2, this Scheme shall become effective at [00:01 a.m. on 1 April 2020] or at such other time and/or such other date as the Transferee and the Transferor may agree, being a time and date falling after the making of the Order.
- 15.2 Unless this Scheme shall become effective on or before [30 June 2020] or such later date as the Transferee and the Transferor may agree and the Court may allow, it shall lapse.

16. Modifications or Additions

- 16.1 Subject to Clause 16.4, the Transferor and the Transferee may, at any time before the Effective Date, consent for and on behalf of themselves and all other persons concerned (other than the PRA or the FCA) to any modification of, or addition to, this Scheme or to any further condition or provision affecting the same which the Court may approve or impose.
- 16.2 Subject to Clause 16.4, any material modification or addition to this Scheme after the Effective Date must be approved by the Court and must not, in the opinion of an independent expert appointed jointly by the Transferee and the Transferor, materially adversely affect the Policyholders of the Transferor or the Transferee, including the Policyholders of Transferring Policies. Such independent expert need not be the same person as the Independent Expert.
- 16.3 The Regulators shall have the right to be heard by the Court in relation to any proposed modification or addition to this Scheme pursuant to Clause 16.2, and the Transferor and/or the Transferee shall notify the Regulators of any application to the Court for such modification or addition a reasonable period prior to such application being made.
- 16.4 Clauses 16.1 to 16.3 shall not apply, and the consent of the Court shall not be required, in relation to minor and/or technical modifications to the terms of this Scheme (including modifications to correct manifest or obvious errors, changes required by law or regulation or changes in actuarial practice), provided that the Regulators have been notified of the same and have confirmed to the Transferor and the Transferee that they do not object to the modifications within 28 days following the Regulators acknowledging receipt of such notification.

17. Costs and Expenses

Except as otherwise agreed in writing (including 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.

18. Third Party Rights

A person who is not a party to this Scheme may not enforce any term of this Scheme pursuant to or by virtue of the Contracts (Rights of Third Parties) Act 1999.

19. Successors and Assigns

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

20. Evidence of transfer

The production of a copy of the Order with any modifications, amendments and/or additions made under Clause 16, 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.

21. Governing Law

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

Dated: _____ 2020

**Schedule
(Transferring Business)**

Part A: Transferring Assets

- 1 The Transferring Assets comprise the following (excluding the Excluded Assets listed in Part B of this Schedule):
- (a) the rights and benefits of the Transferor (subject to the burden) of, under or by virtue of the Transferring Policies (including contractual, tortious and statutory rights);
 - (b) the Business Records of the Transferor and such rights as the Transferor or a member of the Transferor Group holds in the Business Records;
 - (c) the rights and benefits of the Transferor (subject to burden) under or by virtue of the Transferring Contracts (including contractual, tortious and statutory rights); and
 - (d) all rights and claims against any third party in relation to the Transferring Business or arising as a result of the Transferor having carried on the Transferring Business.

Part B: Excluded Assets

- 2 The Excluded Assets comprise all assets of the Transferor other than the Transferring Assets, including, for the avoidance of doubt:
- (a) the right to carry on any part of the Transferring Business under the name of any member of the Transferor Group;
 - (b) all and any cash or non-cash assets held as, or in support of, the regulatory capital provisions imposed or required or reserve held in respect of the Transferring Business;
 - (c) the rights and benefits of the Transferor (subject to the burden) of, under or by virtue of the Excluded Policies (including contractual, tortious and statutory rights);
 - (d) the rights and benefits of the Transferor (subject to the burden) of, under or by virtue of the US Surplus Lines Trust Agreement including all entitlement to the Trust Fund (as defined therein);
 - (e) all Intellectual Property Rights owned by a member of the Transferor Group;
 - (f) all IT Systems;
 - (g) all real property and any leases for real property and interests in real property;
 - (h) any tax asset or deferred tax asset arising to any member of the Transferor Group in relation to the Transferring Business, including any Tax asset recognised in computing policyholder liabilities or policyholder funds in respect of the period prior to the Effective Date and any right of any member of the Transferor Group to a repayment of VAT (and any applicable interest or repayment supplement on such

VAT) paid in respect of any supply made by any member of the Transferor Group in relation to the operation of the Transferring Business prior to the Effective Date;

- (i) any right of a member of the Transferor Group to a repayment of income or corporation tax (including any applicable interest or repayment supplement) relating to the operation of the Transferring Business prior to the Effective Date; and
- (j) any undertaking, arrangement, agreement or understanding to acquire any of the assets referred to in paragraph (a) to (i) above.

Part C: Transferring Liabilities

- 3 The Transferring Liabilities comprise all Liabilities of the Transferor arising from or in connection with the Transferring Business other than the Excluded Liabilities, including (without limitation):
- (a) the Transferor's Liabilities arising from or in connection with the Transferring Policies; and
 - (b) the Liabilities of any member of the Transferor Group arising from or in connection with the Transferring Contracts.

Part D: Excluded Liabilities

- 4 The Excluded Liabilities comprise the following:
- (a) any Liabilities in relation to the Excluded Policies;
 - (b) any Liabilities in relation to the US Surplus Lines Trust Agreement, excluding, for the avoidance of doubt, any American Policies (as such term is defined therein);
 - (c) any Liabilities in relation to the Excluded Assets;
 - (d) any Liabilities for or in respect of Taxation relating to the operation of the Transferring Business on or prior to the Effective Date; and
 - (e) any Mis-selling Liabilities, whether or not in respect of the Transferring Business.