

**IN THE HIGH COURT OF JUSTICE**

**CR – 2019-007461**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**COMPANIES COURT (ChD)**

**IN THE MATTER OF**

**SCOR UK COMPANY LIMITED**

**AND**

**R&Q GAMMA COMPANY LIMITED**

**IN THE MATTER OF**

**PART VII OF THE FINANCIAL SERVICES AND MARKETS ACT 2000**

**INSURANCE BUSINESS TRANSFER SCHEME**

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## 1 **INTERPRETATION**

1.1 In this insurance business transfer scheme, unless the context otherwise requires, the following words or phrases have the following meanings:

**"Accredited"** means Accredited Insurance (Europe) Limited, a company incorporated and registered in Malta with company number C59505 whose registered office is at 3<sup>rd</sup> Floor, Development House, St Ann Street, Floriana, FRN 9010, Malta;

**"Act"** means the Financial Services and Markets Act 2000 together with the rules and regulations implemented pursuant thereto;

**"ADC"** means an adverse development cover under which with effect from the Effective Date Accredited provides unlimited reinsurance cover to the Transferee in respect of the Transferred Policies above an attachment point of £9.55 million;

**"Adjustment Notice"** means the notice to be sent pursuant to Clause 4.1 detailing the aggregate amount of any Gross Losses paid and the aggregate amount of any Recoveries received by or on behalf of the Transferor during the Adjustment Period;

**"Adjustment Period"** means the period between 23:59 on the Calculation Date and the Effective Date;

**"Affiliate"** means in relation to any party any subsidiary undertaking or parent undertaking of that party and any subsidiary of any such parent undertaking in each case from time to time;

**"Business Day"** means a day (other than a Saturday, Sunday or public holiday) when banks in London, England are open for business;

**"Calculation Date"** means the date falling 5 Business Days before the Effective Date;

**"Calculation Period"** means 23:59 on 31 December 2018 and 23:59 on the day before the Calculation Date;

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

**"Deductions"** means deductions for Deductible Rights, salvage, recoveries, subrogation, or sums paid or payable under the Third Party Reinsurance or any other applicable funds held, trust funds, claims against insolvent estates, letters of credit or other application security;

**"Deductible Rights"** means the Transferor's right under the terms of a Transferred Policy to recover any sums paid or payable by the Transferor to an insured from that insured;

**"EEA Agreement"** has the meaning ascribed to that term in the Interpretation Act 1978;

**"EEA State"** means a member state of the European Union and any other state which is a party to the EEA Agreement excluding for the avoidance of doubt the United Kingdom;

**"Effective Date"** means the date and time on which the Scheme takes effect in accordance with Clause 11;

**"Exchange Rate"** means the mid-market rate of exchange for the relevant currency quoted in the Financial Times on the last Business Day before the Calculation Date;

**"Exit Date"** has the meaning ascribed to that term in section 20(1) of the European Union (Withdrawal) Act 2018 (as amended, if applicable, pursuant to section 20(4) of that Act);

**"Extra Contractual Obligations"** means:

- (a) any award made by a court of competent jurisdiction against an insurer or reinsurer, which award is not within the coverage granted by any insurance and/or reinsurance contract made between the parties in dispute and which causes a liability to arise under a Transferred Policy; and
- (b) any commitment to settle commute or discharge any liability which is not within the coverage granted by an insurance and/or reinsurance contract made between the parties in dispute and which was given prior to the Inception Date but which became effective on or after the Inception Date;

**"FCA"** means the UK Financial Conduct Authority or any successor UK regulatory authority with the same functions in relation to insurance and/or reinsurance companies;

**"FS EU Exit Regulations"** means the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/710);

**"Gross Loss"** means the amount paid by or on behalf of the Transferor:

- (a) in settlement of a claim under a Transferred Policy;
- (b) in settlement of costs and commissions incurred in relation to or in connection with the Transferred Policies and any other liability of the Transferor under or in connection with a Transferred Policy, without making any Deductions;
- (c) in settlement of Loss Adjustment Expenses incurred during the Adjustment Period; and
- (d) in settlement of losses in respect of Extra Contractual Obligations provided in the case of Extra Contractual Obligations incurred before the Inception Date the facts or circumstances giving rise to such loss were disclosed to Accredited on or prior to the Inception Date;

**"Gross Technical Liabilities"** means USD7,339,499.00 being the amount attributable to the Transferred Policies of:

- (a) gross claims outstanding as at 31 December 2018; and
- (b) creditors arising out of insurance and reinsurance operations as at 31 December 2018;

in each case as reported within Accredited's 31 December 2018 financial statements;

**"Inception Date"** means 23:59 in London on 30 June 2017;

**"Loss Adjustment Expenses"** means sums paid by or on behalf of the Transferor that are not part of the amounts paid under the Transferred Policies (including as to costs, if in addition to the Transferred Policies' limits) and which are made in connection with the Transferred Policies, the Deductible Rights or the Third Party Reinsurance in respect of a claim, loss or legal proceedings, including sums paid in respect of:

- (a) adjustment (including by any delegated claims handling/servicing agency or sub-contractor), investigation, negotiation, cost of bonds, court costs, statutory penalties, prejudgment interest or delayed damages, and interest on any judgment or award and legal expenses of litigation; and
- (b) the Transferor's own defence costs and legal expenses incurred in connection with legal actions, including but not limited to declaratory judgment actions, brought to determine the Transferor's defence and/or indemnification obligations under any disputed Transferred Policies and Third Party Reinsurance, whether coverage is found to exist or not for such obligations;

excluding the internal costs and/or expenses of RQCS or any of its Affiliates. For the purposes of this definition, "prejudgment interest or delayed damages" shall mean interest or damages added to a settlement, verdict, award, or judgment based on the amount of time prior to the settlement, verdict, award, or judgment whether or not made part of the settlement, verdict, award, or judgment;

**"LPTA"** means the loss portfolio transfer reinsurance agreement entered into on 31 August 2017 between the Transferor as cedant and Accredited (under its previous name, R&Q Insurance (Malta) Limited) as the reinsurer;

**"Order"** means an order of the Court pursuant to section 111 of the Act sanctioning the Scheme and any order (including any subsequent order) in relation to the Scheme made by the Court making provision under section 112 of the Act;

**"Policy"** and **"Policyholder"** each has the meaning set out in section 424(2) of the Act and Regulation 2 of the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (S.I. 2001/2361);

**"PRA"** means the UK Prudential Regulation Authority or any successor UK regulatory authority with the same functions in relation to insurance and/or reinsurance companies;

**"Proceedings"** means any judicial, quasi-judicial, administrative or arbitration proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim (whether pending, current or future);

**"RAO"** means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);

**"Records"** means all documents, files and other records, whether in physical or electronic form, relating to the Transferred Policies which are in the possession of, or under the control of, the Transferor or any sub-contractor of the Transferor;

**"Recoveries"** means

- (a) recoveries under Third Party Reinsurance; and

- (b) all recoveries in the form of salvage, subrogation, additional premiums, refunds, indemnity or contribution towards, or other form of recovery (including recoveries under the Deductible Rights but excluding for the avoidance of doubt reinsurance recoveries);

**"Related Policy"** means any Transferred Policy entered into by the Transferor as insurer or reinsurer to the extent that it gives rise to rights under a Retained Reinsurance;

**"Related Reinsurance"** means any Third Party Reinsurance to the extent that it provides cover in respect of a Retained Policy;

**"Retained Business"** means a Retained Policy, Retained Reinsurance, a Related Policy or Related Reinsurance;

**"Retained Policy"** means a Transferred Policy under which any liability (whether current or future, actual or contingent) remains unsatisfied or outstanding at the Effective Date and:

- (a) in the case of policies of direct insurance only, in respect of which:
  - (i) for the purpose of Schedule 12 to the Act (if applicable, as amended by the FS EU Exit Regulations), an EEA State is the State in which the contract was concluded; and
  - (ii) the PRA has not prior to the issue of the Order provided the certificate referred to in Schedule 12 to the Act with respect to the relevant EEA State which is the State in which the contract was concluded; or
- (b) which the Court for any reason determines shall not be transferred by virtue of the Scheme or the Order and which is not transferred by any vesting order under section 112 of the Act or otherwise; or
- (c) which prior to the Court making the Order the Transferor and the Transferee agree should be excluded from the Scheme;

and for the avoidance of doubt, a policy which cannot be transferred at the Effective Date solely due to the fact that the Third Party Reinsurance providing cover in respect of that policy cannot be transferred at the Effective Date shall not be a Retained Policy.

**"Retained Reinsurance"** means any Third Party Reinsurance which the Court for any reason determines shall not be transferred by virtue of the Scheme or the Order and which is not transferred by any vesting order under section 112 of the Act or otherwise;

**"RQCS"** means R&Q Central Services Limited a company incorporated in England with company number 04179375;

**"Scheme"** means the insurance business transfer scheme set out in this document with or subject to any modification, addition or condition approved or imposed by the Court;

**"Services Agreement"** means the Claims Handling and Administration Services Agreement entered into between the Transferor and RQCS on 31 August 2017 as

amended or replaced by agreement between the Transferor and RQCS from time to time;

**"Subsequent Transfer Date"** means:

- (a) in the case of a Retained Policy or a Retained Reinsurance, the date on which the Transferor's rights and liabilities under such Retained Policy and Retained Reinsurance are transferred to the Transferee whether by means of novation or as a result of any necessary consent or waiver being obtained or the making of a court order dispensing with such consent or waiver or otherwise; and
- (b) in the case of a Related Policy or Related Reinsurance, the Subsequent Transfer Date for the relevant Retained Reinsurance or the relevant Retained Policy or, if earlier, and in the case of a Related Policy only, the date on which the relevant Retained Reinsurance is commuted;

**"Tax"** or **"Taxation"** means any form of taxation, levy, duty, charge, contribution, withholding or impost of whatever nature (including any related fine, penalty, surcharge or interest) imposed, collected or assessed by, or payable to, a Tax Authority and includes, for the avoidance of doubt, income tax and amounts equivalent to or in respect of income tax required to be deducted or withheld from or accounted for in respect of any payment;

**"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, customs or excise function including, without limitation, HMRC;

**"Third Party Claims"** means all rights and claims of or against any third party in relation to the Transferred Policies and the Third Party Reinsurance or arising as a result of the Transferor having carried on the business of carrying out the Transferred Policies and all activities necessary or incidental to such business;

**"Third Party Reinsurance"** means any contract of reinsurance to which the Transferor is party in the capacity of cedant (other than the LPTA and the two quota share reinsurances underwritten respectively by Hamburger Internationale Ruckversicherungs AG and Rampart Insurance Company) to the extent that it provides cover in respect of a Transferred Policy;

**"Transferee"** means R&Q Gamma Company Limited, a company incorporated and registered in England and Wales with registered number 01335239 whose registered office is at 71 Fenchurch Street, London EC3M 4BS, United Kingdom;

**"Transferee's Account"** means the Transferee bank account details of which are notified to the Transferor by the Transferee;

**"Transferred Business"** means:

- (a) the Transferred Policies and the estate, interest, rights, liabilities, obligations and powers of the Transferor under or by virtue of the Transferred Policies;
- (b) the Third Party Reinsurance and the rights and liabilities of the Transferor under or by virtue of the Third Party Reinsurance;
- (c) the Transfer Funds;

- (d) the Third Party Claims;
- (e) the Records, including, without limitation, all rights, title and interest of the Transferor in the Records;

**"Transferring Personal Data"** means any personal data contained in the Records which is subject to the Data Protection Act 2018 and/or the General Data Protection Regulation (Regulation (EU) 2016/679) and which relates to the Transferred Business;

**"Transferred Policies"** means all Policies originally underwritten by Brightgrey Limited under its former name Anglo French Insurance Company Limited and assumed in September 1990 by the Transferor by means of a transfer under Section 51 of the Insurance Companies Act 1982;

**"Transferor"** means SCOR UK Company Limited, a company incorporated and registered in England and Wales with registered number 01334736 whose registered office is at 10 Lime Street, London, EC3M 7AA;

**"Transfer Funds"** means cash in an aggregate amount equal to:

- (a) Gross Technical Liabilities; less
- (b) the aggregate amount of all Gross Losses incurred since 31 December 2018; plus
- (c) the aggregate of all Recoveries received by or on behalf of the Transferor during the Calculation Period;

as calculated by the Transferee as at the Calculation Date. For the purposes of such calculation sums which are not denominated in USD shall be converted to USD at the Exchange Rate.

**"USD"** means United States dollars;

**"VAT"** means the tax imposed by EU Council Directive 2006/112/EC and any national legislation implementing that directive, together with legislation supplemental thereto, or any similar sales or turnover tax, whether of the United Kingdom or elsewhere.

1.2 In the Scheme unless the context otherwise requires or expressly provides:

- (a) references to Clauses and Schedules are to Clauses and Schedules to the Scheme;
- (b) **"assets"** includes property, rights and powers of any description;
- (c) **"liabilities"** includes duties and obligations of every description (whether present or future, actual or contingent or otherwise);
- (d) **"novation"** includes transfer or assignment;
- (e) **"property"** includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present, future or vested or contingent, arising out of, or incidental to, property;



- (f) “**rights**” includes benefits, powers and claims of every description (whether present, future, actual or contingent) including without limitation rights to the repayment of taxation, duties or other imposts;
- (g) the singular includes the plural and vice versa and any reference to one gender includes the other;
- (h) headings are for convenience only and shall not affect the interpretation of the Scheme;
- (i) the terms subsidiary undertaking and parent undertaking shall have the meanings ascribed to them in the Companies Act 2006;
- (j) save as expressly provided otherwise, any reference in the Scheme to an enactment, a statutory provision or any subordinate legislation shall be deemed to include a reference to that enactment, statutory provision or subordinate legislation as amended, replaced or re-enacted from time to time after the date of the Scheme and to any instrument or order made from time to time after the date of the Scheme under such enactment, statutory provision or subordinate legislation;
- (k) any reference to a person shall include a reference to any individual, company, firm, partnership, joint venture, association, organisation, trust or agency, whether or not having a separate legal personality;
- (l) 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;
- (m) any reference to the time of day is to the time in London, England.
- (n) any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- (o) the expression variation or varied shall include any variation, supplement, deletion, replacement or termination, however effected; and
- (p) the interpretation of general words shall not be restricted by words indicating a particular class or particular examples and **including** shall mean **including without limitation**.

## 2 INTRODUCTION

2.1 The Transferor is a UK authorised insurer with permission, *inter alia*, to carry out contracts of general insurance in the UK in classes 1 to 17 of Part I of Schedule 1 to the RAO.

2.2 The Transferee is a UK authorised insurer with permission, *inter alia*, to effect (subject to seeking non-objection from the FCA and PRA before using that permission) and carry out contracts of general insurance in the UK in classes 1 to 17 of Part I of Schedule 1 to the RAO.

## 3 TRANSFER OF THE TRANSFERRED BUSINESS

3.1 On and with effect from the Effective Date, subject to Clause 5.1:

- (a) the Transferred Business and all the estate and interest of the Transferor in the Transferred Business shall by the Order and without any further act

or instrument be transferred to and vest in the Transferee in accordance with and subject to the terms of the Scheme;

- (b) the liabilities and obligations under the Transferred Policies shall be transferred to and shall become liabilities of the Transferee and shall cease to be liabilities of the Transferor and the Transferee shall accept such liabilities (whether such Transferred Policy is governed by English law or the laws of another jurisdiction);
- (c) in any document evidencing or constituting a Transferred Policy, references to the Transferor and/or to rights, powers, duties and/or obligations imposed upon the Transferor, its board of directors or other officers, employees or agents and/or to liabilities of the Policyholders to the Transferor shall, to the extent necessary to give full effect to the Scheme, be read, construed and treated as references to the Transferee and/or to rights, powers, duties and/or obligations imposed upon the Transferee, its board of directors or other officers, employees or agents and/or to liabilities of the Policyholders to the Transferee subject to and in accordance with the terms of the Scheme.

3.2 On and with effect from the Effective Date, the Third Party Reinsurance shall continue in force with the substitution of the Transferee in place of the Transferor as the reinsured party and on the terms which applied before the Effective Date and on the basis that the Transferee is reinsured thereby, or the beneficiary thereof, for all purposes as if all references therein (however worded and whether express or implied) to the Transferor were references to the Transferee.

3.3 With effect from the Effective Date, subject to Clause 6.2 the Transferor shall pay to the Transferee all sums which may thereafter be received by the Transferor under the Transferred Policies and the Third Party Reinsurance.

3.4 Forthwith following the Effective Date the Transferor shall:

- (a) transfer the Transfer Funds to the Transferee's Account for same day value;
- (b) to the extent in its possession or control, deliver or cause to be delivered to the Transferee the Records which are capable of being transferred by delivery.

3.5 Nothing in the Scheme shall operate to transfer any obligations or liabilities of the Transferor not included within the definition of Transferred Business including any liability of the Transferor to or in respect of Tax in relation to the Transferred Business with the exception for the avoidance of doubt of any VAT which may be or become chargeable on the transfer of the Transferred Business pursuant the Scheme which shall be the responsibility of the Transferee.

3.6 Unless and to the extent otherwise provided in the Order, the transfer of the Transferred Business or any other matter provided for by the Scheme shall not:

- (a) invalidate or discharge any agreement, document, instrument or other thing;
- (b) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would otherwise have been the case under, any agreement, document, instrument or other thing to which the Transferor or the Transferee is a party or is bound;

- (c) allow any party to any agreement, document, instrument or other thing to terminate that document, agreement or instrument or other thing when that party would not otherwise have been able to do so;
- (d) entitle any party to the agreement, document, instrument or other thing to which either of the Transferor or the Transferee is a party or is bound to vary the terms of that agreement, document, instrument or other thing when that party would not otherwise have been able to do so; or
- (e) cause the imposition of any greater or lesser obligation on any party to any such agreement, document, instrument or other thing when that greater or lesser obligation would not otherwise have been imposed including the release of any obligation or liability of any party which would not have otherwise been released or release such liability or obligation sooner or later than would have otherwise been the case.

#### **4 ADJUSTMENT OF TRANSFER FUNDS**

4.1 Within 14 Business Days of the Effective Date the Transferee shall calculate the aggregate amount of any Gross Losses paid and the aggregate amount of any Recoveries received by or on behalf of the Transferor during the Adjustment Period and, if applicable, shall send an Adjustment Notice to Accredited detailing such amounts and the amount (if any) by which such Gross Losses exceed such Recoveries or by which such Recoveries exceed such Gross Losses.

4.2 In the event that:

- (a) the aggregate amount of Gross Losses paid exceeds the aggregate amount of Recoveries received during the Adjustment Period, the Transferee will pay a cash sum equal to the amount of the excess to Accredited;
- (b) the aggregate amount of Recoveries received exceeds the aggregate amount of Gross Losses paid during the Adjustment Period, Accredited will pay a cash sum equal to the excess to the Transferee;

within 14 Business Days of the date of the Adjustment Notice.

#### **5 TRANSFER OF RETAINED POLICIES AND RETAINED REINSURANCES**

5.1 The Transferor's rights and liabilities under Retained Policies and Retained Reinsurances shall by virtue of the Scheme and (unless required as a condition of any necessary consent or waiver being obtained or any court order providing for such transfer) without any further act or instrument being required transfer to, vest in and become rights and liabilities of the Transferee with effect from the applicable Subsequent Transfer Date. Until such date the rights and liabilities of the Transferor under such Retained Policies and Retained Reinsurances shall remain with the Transferor.

5.2 With effect from the applicable Subsequent Transfer Date, the provisions of the Scheme shall apply to the relevant Retained Policies and Retained Reinsurances as if references to the Effective Date were references to the applicable Subsequent Transfer Date.

5.3 The Transferor shall retain the right to be indemnified under any Related Reinsurance in respect of any liability arising out of a Retained Policy until the Subsequent Transfer Date in relation to that Related Reinsurance. With effect from

that date, the Transferee shall have the right to be indemnified in respect of any such liability.

5.4 Insofar as it is necessary to ensure that indemnity under a Retained Reinsurance will still be available in respect of any liability arising under a Related Policy, the Transferor shall remain liable under such Related Policy until the Subsequent Transfer Date for the Retained Reinsurance. With effect from such Subsequent Transfer Date the Transferee shall assume liability under such Related Policy and the Scheme shall apply to such Related Policy as if references to the Effective Date were to such Subsequent Transfer Date.

5.5 The Transferor shall on, and with effect from, the Effective Date hold its rights under each Retained Policy and each Retained Reinsurance on trust for the Transferee absolutely until:

- (a) the applicable Subsequent Transfer Date; or
- (b) such other date as the Transferor and the Transferee shall otherwise agree
- (c) and until then the Transferee shall indemnify the Transferor in accordance with Clause 6.

5.6 In the event that a Third Party Reinsurance provides cover in respect of both (i) a Retained Policy or Related Policy and (ii) a Transferred Policy which is not a Retained Policy or Related Policy the terms and conditions of such Third Party Reinsurance (including, where applicable, the deductibles, limits and any other applicable policy limitations) shall apply in aggregate across both the Transferor and the Transferee such that:

- (a) the reinsurer has a contract with each of the Transferor and the Transferee but is in no better or worse position in respect of such contractual terms and conditions as a result of the Scheme than it was in before the Effective Date; and
- (b) the Transferor and the Transferee are each able to enjoy the benefit of such Third Party Reinsurances.

Where applicable, the method of allocating the rights of the Transferor and Transferee to effect a recovery under any such Third Party Reinsurance shall be determined by agreement between the Transferor and Transferee.

5.7 In the event that a Retained Reinsurance is commuted, the Transferor shall account to the Transferee for the proceeds of such commutation.

5.8 Until the Subsequent Transfer Date or such other date as the Transferor and the Transferee shall agree pursuant to Clause 5.5(b):

- (a) the Transferee shall have authority to act as the attorney of the Transferor in respect of its rights under the Retained Business for all purposes, and shall have the power to give reasonable directions to the Transferor for any lawful purpose in connection with such rights; and such authority and power shall include authority and power in relation to the exercise, enforcement, variation, commutation, compromise, settlement or transfer of such rights;
- (b) the Transferee shall procure that RQCS continues to provide the services in respect of the Retained Policies and Related Policies that it provided to the

Transferor prior to the Effective Date materially in accordance with the terms, including as to reporting to the Transferor, of the Services Agreement.

## **6 INDEMNITY**

6.1 Subject to Clause 6.2, from the Effective Date, the Transferee shall observe and perform the Transferor's obligations under the Retained Business and shall indemnify and keep fully and effectively indemnified and held harmless the Transferor on a continuing basis and on demand against and from any liability, loss or expense incurred by, or demand or claim made against, the Transferor under a Transferred Policy or Third Party Reinsurance including for the avoidance of doubt any Transferred Policy or Third Party Reinsurance forming part of the Retained Business.

6.2 The amount of any payment by the Transferee to the Transferor in respect of a liability under a Retained Policy or Related Policy pursuant to the indemnity contained in Clause 5.2 shall be the amount of the liability less any sum already received by the Transferor under a Retained Reinsurance or Related Reinsurance at the time of payment by the Transferee (and for the avoidance of doubt the provisions of Clause 3.3 shall from that time no longer apply to any sum so deducted). The Transferor shall reimburse the Transferee in respect of any payment made by the Transferee in discharge of a liability under a Retained Policy or Related Policy pursuant to Clause 5.2 out of, and to the extent of, any recovery subsequently made in respect of such liability under a Retained Reinsurance or Related Reinsurance. Pending reimbursement to the Transferee, the Transferor shall hold such recovery on trust for the Transferee.

## **7 LEGAL PROCEEDINGS AND CONTINUITY**

7.1 From the Effective Date, (or in the case of Proceedings relating to the Retained Business the applicable Subsequent Transfer Date) any Proceedings in relation to the Transferred Business shall:

- (a) if commenced by, against or in relation to the Transferor before the Effective Date be continued by, against or in relation to the Transferee;
- (b) if commenced after the Effective Date, be commenced by or against the Transferee;
- (c) if commenced after the Effective Date against the Transferor 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 and the Transferor shall have no liability under such Proceedings.

7.2 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. For the avoidance of doubt, the Transferee, in its absolute discretion, may discontinue any such Proceedings brought by the Transferor.

7.3 Without prejudice to clause 7.1 from the Effective Date the Transferee shall have the right to direct the conduct of any Proceedings in relation to the Transferred Business which are pending at or commenced after the Effective Date in any jurisdiction outside the United Kingdom until such time as the Transferee is joined to such Proceedings in substitution for the Transferor.

7.4 The Transferee shall not assert in any dispute, controversy, claim or Proceeding in any jurisdiction arising out of or in connection with a Transferred Policy that the Scheme is ineffective or invalid under the law of that jurisdiction to transfer rights and obligations under the Transferred Policies to the Transferee.

7.5 Any final judgment, order or award in respect of a claim under a Transferred Policy or Third Party Reinsurance that is not subject to further appeal obtained:

(a) by or against the Transferor and which is not fully satisfied before the Effective Date shall, on and from that date, be enforceable by or against the Transferee;

(b) by or against the Transferor on or after the Effective Date shall be enforceable by or against the Transferee,

without the need for further order, whether for substitution of parties or otherwise.

7.6 Until the relevant Subsequent Transfer Date, the Transferee shall have the right to direct the conduct of any Proceedings by or against the Transferor in relation to the Retained Business which are pending at or commenced on or after the Effective Date.

## 8 **PREMIUMS, MANDATES ETC.**

8.1 Any direct debit mandate, standing order or other instruction or authority in force on the Effective Date including any instruction given to a bank by its customer in the form of a direct debit or standing order and providing for payment by a bank or other intermediary of premiums or other sums payable to the Transferor under or in respect of any Transferred Policy or other contract that forms part of the Transferred Business, shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.

8.2 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 Transferred Policy shall continue in force as an effective mandate, instruction or authority to or of the Transferee.

## 9 **PERSONAL DATA**

9.1 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 Transferring Personal Data;

(b) in respect of the Transferred Business, become the data controller of any Transferring Personal Data in place of the Transferor;

(c) in respect of any Transferring Personal Data 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 which required the Transferor not to use the personal data for marketing purposes; and

(d) without prejudice to clause (c) in any consent given by a data subject in respect of such data as is mentioned in this Clause 9, any reference to the Transferor shall be deemed to include a reference to the Transferee.

10        **FURTHER ASSURANCE**

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

11        **THE EFFECTIVE DATE**

11.1      Subject to the Court having made an Order under Section 111 of the Act sanctioning the Scheme and the ADC having been entered into, the Scheme shall take effect at 23:59 (London time) on:

- (a)      5 March 2020, unless the directors of the Transferor and the Transferee have resolved before that it shall not take effect on such date; and
- (b)      If the said directors do so resolve, such other date not being later than 30 April 2020 as the said directors shall determine.

11.2      If the Scheme does not take effect on or before 30 April 2020 or such later date as the Court may allow upon the application of the Transferor and the Transferee, it shall lapse.

11.3      The Transferee shall notify the PRA and the FCA if a resolution is made deferring the date on which the Scheme is to become effective and shall provide the PRA and the FCA with sufficient notice of any application pursuant to Clause 11.2. The PRA and the FCA shall be entitled to be heard at the hearing of any such application.

12        **MODIFICATION**

12.1      The Transferee may, with the consent of the Transferor, agree on behalf of all persons concerned to any modification of or addition to the Scheme or to any further condition or provision affecting the same that the Court may approve or impose, whether before or after the Effective Date, provided that any modification to the substance of the Scheme (being a change to the terms of the Scheme which is not immaterial) may only be made with the consent of the PRA and the FCA. For the avoidance of doubt, the consent of the Transferor shall not be required following any dissolution of the Transferor.

12.2      The Transferee shall provide the PRA and the FCA with sufficient notice of any application to modify the Scheme. The PRA and the FCA shall be entitled to be heard at any such application.

13        **GOVERNING LAW**

The Scheme shall be governed by and construed in accordance with English law.

[date]