

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

**IN THE MATTER OF  
DAS LEGAL EXPENSES INSURANCE COMPANY LIMITED**

**- and -**

**IN THE MATTER OF  
ARAG ALLGEMEINE VERSICHERUNGS-AG**

**- and -**

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

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**INSURANCE BUSINESS TRANSFER SCHEME**

for the transfer of the insurance business of the Irish branch of DAS Legal Expenses Insurance Company Limited to ARAG Allgemeine Versicherungs-AG in accordance with Part VII of the Financial Services and Markets Act 2000

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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:

**ALP** means ARAG Legal Protection Limited, a company registered in the Republic of Ireland with company registration number 639625, whose registered office is at Ground Floor, 8-9 Marino Mart, Fairview Clontarf, Dublin D03 P590, Ireland

**Applicable Privacy Laws** means all applicable data protection laws, rules and regulations, including the General Data Protection Regulation, as amended or replaced from time to time, and any applicable national laws, rules and regulations implementing the foregoing

**BaFin** means Bundesanstalt für Finanzdienstleistungsaufsicht, the German Federal Financial Supervisory Authority and any successor responsible for the regulation of insurance in Germany from time to time

**Branch** means the Transferor's establishment in Ireland

**Coverholder Agreement** means the coverholder agreement made between the Transferor, the Transferee and ALP and dated 30 November 2019, pursuant to which the Transferor, with effect from the Initial Transfer Date, delegated authority to ALP to write policies on the Transferor's behalf in respect of (i) Transferring Policies which were the subject of renewal notices sent prior to the Initial Transfer Date; and (ii) risks relating to certain binding authority and distribution agreements which had not been assigned, novated or replaced prior to the Initial Transfer Date

**Coverholder Policies** means all contracts of insurance underwritten by or on behalf of the Transferor pursuant to the Coverholder Agreement

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

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

**Excluded Assets** means:

- (a) the right to carry on any part of the Transferring Business under the name(s) of the Transferor;
- (b) all and any cash or non-cash assets held as, or in support of, the regulatory capital provisions imposed or required 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) all Intellectual Property Rights owned by the Transferor (other than all Intellectual Property Rights owned by the Transferor in the Transferring Business Records);
- (e) the benefit of any insurance policies pursuant to which the Transferor is insured, other than the Transferring Reinsurance Agreements;
- (f) any Tax asset or deferred Tax asset arising to the Transferor or any member of the Transferor's Group in relation to the Transferring Business, including, but not limited to, 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 the Transferor or any member of the Transferor's Group to a repayment of VAT (and any applicable interest on such VAT) paid in respect of any supply made by the Transferor or any member of the Transferor's Group in relation to the operation of the Transferring Business prior to the Effective Date;
- (g) any right of the Transferor or any member of the Transferor's Group to a repayment of income or corporation tax relating to the operation of the Transferring Business prior to the Effective Date;
- (h) any asset, property, right or benefit of the Transferor (including any right or benefit under any Transferring Policy) which the Transferor and the Transferee agree in writing prior to the Effective Date should not be transferred at all;
- (i) any undertaking, arrangement, agreement or understanding to acquire any of the assets referred to in paragraphs (a) to (h) above

**Excluded Liabilities** means any Liability of the Transferor:

- (a) arising from or in connection with the Excluded Policies;
- (b) arising from or in connection with the Excluded Assets;
- (c) any liabilities for or in respect of Taxation, including any Liability relating to the deduction or withholding of Tax arising to any member of the Transferor's Group in respect of the operation of the Transferring Business on or prior to the Effective Date;
- (d) which the Transferor and the Transferee agree in writing prior to the Effective Date should not be transferred at all; or
- (e) in respect of any claim for mis-selling by any current or former policyholder who holds a Legacy Policy or who at any time prior to the Initial Transfer Date held a policy issued by the Branch

**Excluded Policies** means:

- (a) any contract of insurance underwritten by or on behalf of the Transferor to a person resident in Northern Ireland; and
- (b) any policy (including any policy which would otherwise be a Transferring Policy) which the Transferor and the Transferee agree in writing prior to the Effective Date should not be transferred

**FCA** means the Financial Conduct Authority or its successors from time to time

**Framework Agreement** means the framework agreement made between the Transferor and the Transferee and dated 26 February 2019, pursuant to which the Transferor transferred to the Transferee on the Initial Transfer Date those assets and liabilities comprised in the Transferring Business capable of being transferred outside this Scheme

**FSMA** means the Financial Services and Markets Act 2000

**General Data Protection Regulation** means:

- (a) Regulation (EU) 2016/679 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
- (b) laws implementing Regulation 2016/679

**Group** means in respect of any person:

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

**Independent Expert** means Kate Angell of Willis Towers Watson or any other independent expert approved pursuant to section 109(2)(b) of FSMA

**Initial Transfer Date** means 1 December 2019

**Intellectual Property Rights** means copyrights, (including, without limitation, rights in computer software), patents, trade marks, trade names, service marks, business names (including, without limitation, internet domain names), design rights, database rights, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether patentable or

not)), and all other intellectual property or similar proprietary rights of whatever nature (whether registered or not and including, without limitation, applications to register or rights to apply for registration) which may now or in the future subsist anywhere in the world

**Legacy Business** means the Transferring Assets and the Transferring Liabilities

**Legacy Policies** means all contracts of insurance underwritten by or on behalf of the Transferor or reinsured by the Transferor prior to the Initial Transfer Date as part of the Transferring Business, other than the Excluded Policies

**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 or compromises, paid, suffered or incurred

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

**Policyholder Order** means the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (SI 2001/2361)

**PRA** means the Prudential Regulation Authority or its successors from time to time

**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 judgement, arbitration, complaint or otherwise howsoever), including:

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

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

**Reinsurance Agreement** means the reinsurance agreement made between the Transferor and the Transferee and dated 26 February 2019 in relation to the Transferring Business and in respect of the Transferring Policies

**Residual Assets** means:

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

but excluding any Excluded Assets

**Residual Liabilities** means any Liability of the Transferor related to the Legacy Business (other than under an Excluded Policy):

- (a) that is attributable to or connected with a Residual Asset and arises at any time before the Subsequent Transfer Date applicable to that Residual Asset;
- (b) in respect of which the Court has declined to, or does not have jurisdiction to, order the transfer to the Transferee pursuant to section 112(2) of FSMA on the Effective Date;
- (c) which the Transferor and the Transferee agree prior to the Effective Date that its transfer should be delayed; or
- (d) which cannot be transferred to or vested in the Transferee for any other reason on the Effective Date

**Residual Policies** means any Transferring Policies (other than any Excluded Policies):

- (a) written or assumed by the Branch in the course of carrying on the Transferring Business but which are not otherwise capable of being transferred pursuant to FSMA at the Effective Date;
- (b) in respect of which further steps are necessary to be taken following the Order before any such Transferring Policies can be transferred and the Transferor and the Transferee agree that such steps should be taken;
- (c) which the Transferor and the Transferee agree in writing prior to the Effective Date should be delayed beyond the Effective Date or should not be transferred at all; or
- (d) which cannot be transferred to the Transferee for any other reason at 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 clause 13

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

- (a) in respect of any Residual Asset falling within clauses (a), (b), (c), or (d) of the definition of Residual Assets and of any Residual Liability which is attributable to or connected with that Residual Asset or which falls within clauses (a), (b) or (d) of the definition of Residual Liability, the date on which any impediment to its transfer shall have been removed or overcome;



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

**Taxation** means:

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

**Transferee** means ARAG Allgemeine Versicherungs-AG

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

**Transferor** means DAS Legal Expenses Insurance Company Limited

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

**Transferring Assets** means, as at the Effective Date:

- (a) the rights, benefits and powers of the Transferor (subject to the burden) of, under or by virtue of the Transferring Policies (including contractual, tortious and statutory rights);
- (b) the rights, benefits and powers of the Transferor (subject to burden) under or by virtue of the Transferring Reinsurance Agreements including in each case all of the Transferor's rights (including contractual, tortious and statutory rights) to payment thereunder and collateral and security referred to therein;

but excluding:

- (i) the Excluded Assets; and
- (ii) until the relevant Subsequent Transfer Date the Residual Assets; and
- (iii) any rights, benefits and powers under or relating to the Residual Policies

**Transferring Business** means the general insurance business carried on by the Branch (being “after the event” and “before the event” legal expenses insurance and breakdown insurance business) carried on by the Branch (i) prior to the Initial Transfer Date; or (ii) on or after the Initial Transfer Date, pursuant to the Coverholder Agreement

**Transferring Business Records** means the policy records relating to the Transferring Policies held by the Transferor in archive and the working files relating to open claims in respect of the Transferring Policies, in each case which have not already been provided to the Transferee and which are in possession or control of the Transferor for the time being

**Transferring Liabilities** means all Liabilities of the Transferor arising from, under or in connection with the Transferring Policies (other than the Excluded Liabilities and, until the relevant Subsequent Transfer Date, the Residual Liabilities), including (without limitation) the Transferor’s Liabilities arising from or in connection with the Transferring Reinsurance Agreements

**Transferring Policies** means the Legacy Policies and the Coverholder Policies, but excluding, until the relevant Subsequent Transfer Date, the Residual Policies

**Transferring Policyholder** means any person holding a Transferring Policy

**Transferring Reinsurance Agreements** means:

- (a) the outwards reinsurance agreement made between the Transferor and Mapfre Asistencia Compania Internacional de Seguros y Reasuguros, S.A. pursuant to which the Transferor has reinsured the Transferring Liabilities in respect of the breakdown insurance risks comprised in the Transferring Policies; and
- (b) the Reinsurance Agreement.

1.2 In this Scheme:

- (a) **property** includes (without limitation) property, assets, rights and powers of every description (whether present or future, actual or contingent) and includes property held on trust and securities, benefits, powers of any description and any interest whatsoever in any of the foregoing;
- (b) **transfer** includes (as the context may require) **assign, assignation or assignment, dispose or disposal or convey or conveyance;**
- (c) **“policy”** has the meaning given to that term in the Policyholder Order as applicable, and references to **“policyholder”** and **“policies”** shall be construed accordingly;

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

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

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

## **Part B – Introduction**

### **2 Introduction**

- 2.1 The Transferor is a company incorporated in England and Wales with registered number 00103274. The registered office of the Transferor is at Das House, Quay Side, Temple Back, Bristol, BS1 6NH.
- 2.2 The Transferee is a company incorporated in Germany with registered number HRB 10418. The registered office of the Transferee is at ARAG Platz 1, 40472, Düsseldorf, Germany.
- 2.3 The Transferor is a “UK authorised person” as defined in section 105(8) of FSMA and has permission under Part 4A of FSMA to carry out and effect contracts of insurance falling within classes 17 and 18 set out in Part I of Schedule 1 to the RAO.
- 2.4 The Transferor has established the Branch and is permitted to effect and carry out contracts of general insurance on a freedom of establishment basis in Ireland (classes 17 and 18).
- 2.5 The Transferee is an EEA firm as defined in Schedule 3 to FSMA falling within paragraph 5(d) of Schedule 3 to FSMA. The Transferee is authorised in Germany and supervised by BaFin and is authorised under paragraph 8 German Insurance Supervision Act (Versicherungsaufsichtsgesetz) to effect and carry out contracts of general insurance in Germany under property and casualty insurance classes of business 16, 17 and 18, which are the same classes of business for which the Transferor is authorised. The Transferee has branches authorised in the UK and the Republic of Ireland on a freedom of establishment basis (and in the case of the UK, approved under the Temporary Permissions Regime by a letter granted by the PRA on 29 January 2019).
- 2.6 It is proposed that, subject to the sanction of this Scheme by the Court, the Legacy Business, in accordance with this Scheme, shall be transferred to the Transferee.

## **Part C – Transfer**

### **3 Transfer of the Transferring Assets and Transferring Liabilities**

- 3.1 On and with effect from the Effective Date, the Legacy Business shall be transferred to, and vest in, the Transferee subject to, and in accordance with the terms of this Scheme, so that:
- (a) on and with effect from the Effective Date, each Transferring Asset and all the rights, benefits, powers and interests of the Transferor in it shall, by the Order and without any further act or instrument, be transferred to and vest in, the Transferee;
  - (b) on and with effect from each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and the rights, benefits, powers and interests of the Transferor in it shall, by the Order and without any further act or instrument, be transferred to, and vest in, the Transferee;
  - (c) on and with effect from 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; and
  - (d) on and with effect from each Subsequent Transfer Date, each Residual Liability to which such Subsequent Transfer Date applies shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee and shall cease to be a liability of the Transferor.
- 3.2 The Transferee shall accept without investigation or requisition such title as the Transferor shall have at the Effective Date to the Transferring Assets and, at any Subsequent Transfer Date, to each Residual Asset then transferred and the Transferor shall not be liable for any charges, expenses, costs, claims, losses or any other Liabilities in connection thereto that arise after the Effective Date, save as otherwise agreed between the parties in writing (including under any existing agreement between the Transferor and the Transferee) or as set out in this Scheme.
- 3.3 The Transferor and the Transferee shall take all such steps, and execute all such documents, as may be necessary or desirable:
- (a) to effect or perfect the transfer to and vesting in the Transferee of any Transferring Asset or Residual Asset pursuant to this Scheme;
  - (b) to correct any errors in the identity or amount of the assets so transferred; and
  - (c) to effect or perfect the transfer to and assumption by the Transferee of any Transferring Liability or Residual Liability pursuant to this Scheme.

- 3.4 On and with effect from the Effective Date, following the sanction of the Scheme by the Court the Transferring Assets and Transferring Liabilities shall be transferred to and be vested in the Transferee's Irish branch in accordance with this Scheme.
- 3.5 On and with effect from the Effective Date, following the sanction of the Scheme by the Court, the Transferring Business (including the Legacy Business) shall be carried on by the Transferee from its Irish branch.

#### **4 Continuity of Proceedings**

- 4.1 On and with effect from the Effective Date, any Proceedings (or relevant part thereof) which have, prior to the Effective Date, been issued or served or commenced or which are threatened or contemplated or are pending, or which are commenced or threatened or contemplated or are pending on or after the Effective Date (including those not yet in contemplation at the Effective Date), by or against the Transferor in connection with the Transferring Policies, the Transferring Assets or the Transferring Liabilities shall be continued or commenced by, against or in relation to the Transferee (and for the avoidance of doubt any future Proceedings in connection with the Transferring Policies, the Transferring Assets or the Transferring Liabilities shall be brought by, against or in relation to the Transferee) and the Transferee shall be entitled to all defences, claims, counterclaims, settlements, rights of set-off, rights of subrogation and any other rights that would have been available to the Transferor in relation to the Transferring Policies, the Transferring Assets or the Transferring Liabilities in any such Proceedings and the Transferor shall have no liability under those Proceedings.
- 4.2 On and with effect from the Subsequent Transfer Date applicable thereto, any Proceedings (or relevant part thereof) which have, prior to the Subsequent Transfer Date, been issued or served or commenced or which are threatened or contemplated or are pending, or which are commenced or threatened or contemplated or are pending on or after the Subsequent Transfer Date (including those not yet in contemplation at the Subsequent Transfer Date) by or against the Transferor in connection with the Residual Assets or the Residual Liabilities which are to be transferred on such Subsequent Transfer Date shall be continued or commenced by, against or in relation to the Transferee (and for the avoidance of doubt any future Proceedings in connection with such Residual Assets or Residual Liabilities shall be brought by, against or in relation to the Transferee) and the Transferee shall be entitled to all defences, claims, counterclaims, settlements, rights of set-off, rights of subrogation and any other rights that would have been available to the Transferor in relation to the Residual Assets and the Residual Liabilities. Until such Subsequent Transfer Date, the relevant Proceedings shall be continued or commenced by or against the Transferor and the Transferor shall conduct such Proceedings in accordance with the reasonable instructions of the Transferee and at the cost of the Transferee and the Transferor shall have no liability under such Proceedings.

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

## **5 Rights and Obligations regarding the Transferring Policies**

- 5.1 On and with effect from the Effective Date the Transferee shall, by the Order and without any further act or instrument, become entitled to all the rights, benefits and powers of the Transferor whatsoever subsisting at the Effective Date under and related to the Transferring Policies.
- 5.2 Every person who is a Transferring Policyholder or is a party to any of the Transferring Policies or Transferring Reinsurance Policies shall on and with effect from the Effective Date:
- (a) become entitled, in succession to, and to the exclusion of, any rights which he may have had against the Transferor under any of the Transferring Policies or Transferring Reinsurance Policies, to the same rights against the Transferee subject to the terms of this Scheme as were available to him against the Transferor under such Transferring Policies; and
  - (b) as regards Transferring Policies under which premiums or other sums attributable or referable thereto continue to be payable, account to the Transferee for any further or additional premiums or other sums attributable or referable thereto as and when the same become due and payable.
- 5.3 All references in any Transferring Policy or Transferring Reinsurance Policies to the Transferor, the Transferor's Board, or any other officers, employees or agents of the Transferor shall from and after the Effective Date be read as references to the Transferee, the Transferee's Board, or any other officers or employees of the Transferee or, where appropriate, agents of the Transferee to which the administration of the relevant part of the business carried on by the Transferee has



been delegated. In particular, but without limitation, all rights and duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor, the Transferor's Board, or any other officers, employees or agents of the Transferor in relation to any of the Transferring Policies or Transferring Reinsurance Policies shall, from and after the Effective Date, be exercisable or required to be performed by the Transferee, the Transferee's Board, or any other officers, employees or agents of the Transferee.

5.4 The transfer of any rights, benefits, Liabilities and obligations under or in connection with any Transferring Policy or Transferring Reinsurance Policies, Transferring Asset, Residual Asset, Transferring Liability or Residual Liability pursuant to this Scheme shall take effect and shall be valid and binding on all parties having any interest in the same notwithstanding any restriction howsoever arising (including but not limited to, at law, in equity, tort or by contract) on transferring, assigning or otherwise dealing with the same and such transfer shall be deemed to take effect on the basis that:

- (a) 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 which might otherwise arise in respect of such transfer; and
- (b) any entitlement which 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 or pursuant to the Scheme will not be enforceable.

## **6 Residual Policies**

6.1 Subject to clauses 6.2, 6.3, and 6.4, the Residual Policies shall not be transferred to the Transferee by this Scheme and all Liabilities attributable to the Residual Policies shall remain Liabilities of the Transferor with effect from the Effective Date.

6.2 the Transferee shall assume from the Transferor the administration of the Residual Policies and shall bear all expenses in relation thereto, save as otherwise agreed in writing between the parties.

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

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

and shall thereafter be treated in all respects as if it were a Transferring Liability save that references in this Scheme to the Effective Date shall be deemed for these purposes to be references to the Subsequent Transfer Date applicable to such Residual Policy or Residual Liability (as the case may be).

- 6.4 If any Residual Policy is novated by written agreement to the Transferee, the property and Liabilities relating to such Residual Policy shall, to the extent not previously transferred, be transferred to the Transferee and such Residual Policy shall thereafter be dealt with by the Transferee under the provisions of this Scheme in all respects as if such Residual Policy were a Transferring Policy save that references in this Scheme to the Effective Date shall be deemed for these purposes to be references to the Subsequent Transfer Date applicable to such Residual Policy or Residual Liability (as the case may be).

## **7 Premiums, Mandates and other Payments**

- 7.1 All premiums payable to the Transferor in respect of the Transferring Policies shall on and with effect from the Effective Date be payable to the Transferee.
- 7.2 Any mandate or other instruction in force on the Effective Date (including, without limitation, any instruction given to a bank by its customer in the form of a direct debit or standing order) and which provides for the payment by a banker or other intermediary of premiums payable to the Transferor under or in respect of any of the Transferring Policies shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.
- 7.3 Any mandate or other instruction in force on the Effective Date as to the manner of payment of any sum payable by the Transferor under any of the Transferring Policies shall, on and with effect from the Effective Date, continue in force as an effective authority to the Transferee in place of the Transferor.
- 7.4 The provisions of clauses 7.1 to 7.3 shall also apply, *mutatis mutandis* to Residual Policies with effect from the Subsequent Transfer Date.

## **8 Declaration of Trust by the Transferor**

- 8.1 In the case of any Residual Asset, the Transferor shall from the Effective Date until the relevant Subsequent Transfer Date, hold any such Residual Asset on trust for and on behalf of the Transferee absolutely.
- 8.2 The Transferor shall be subject to the Transferee's directions in respect of any property referred to in clause 8.1 from the Effective Date until the relevant property is transferred to or otherwise vested in the Transferee or is disposed of (whereupon the Transferor shall account to the Transferee for the proceeds of sale thereof), and the Transferee shall have authority to act as the attorney of the Transferor in respect of such property for all such purposes.

- 8.3 In the event of any payment being made to, property being received by or right being conferred upon the Transferor after the Effective Date in respect of the Transferring Policies, 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.
- 8.4 The Transferee shall indemnify the Transferor against any reasonable out-of-pocket charges, costs, expenses, claims and other Liabilities arising in respect of any obligation under or in connection with this clause 8.

## **9 Indemnities in favour of the Transferor**

- 9.1 On and with effect from the Effective Date, the Transferee shall discharge on the Transferor's behalf or, failing that, shall indemnify the Transferor against:
- (a) charges, costs, Taxation, expenses and claims and any other Liabilities arising in respect of any Transferring Liabilities and Residual Liabilities (other than Liabilities which would otherwise be the subject of double recovery under clause 9.1(b) or clause 9.2 below) until the relevant liability is transferred to or becomes a liability of the Transferee;
  - (b) any amount paid by the Transferor in respect of any Transferring Liabilities and Residual Liabilities that are, whether wholly or in part, the subject of a policy of indemnity insurance or a claim or right of recovery against a third party, but only to the extent that the Transferor, having made a claim under such a policy or against such third party, shall have failed to recover any such amount pursuant to rights it may have under such policy, claim or right of recovery (having used all reasonable endeavours to do so, including complying with clause 9.3); and
  - (c) charges, costs and claims arising in respect of any relevant Proceedings continued or commenced by or against the Transferor in accordance with the instructions of the Transferee as contemplated by clause 4.2.
- 9.2 For the avoidance of doubt, the Transferee shall not be required under clause 9.1 to discharge or indemnify the Transferor against Excluded Liabilities or for any charges, costs, expenses and claims or any other Liabilities arising in respect of any Excluded Liabilities.
- 9.3 The Transferee shall indemnify the Transferor against any reasonable costs and/or expenses which it may incur in pursuing any claim under any such policy of indemnity insurance or against any such third party as is referred to in clause 9.1(b).

## 10 Data Protection

10.1 Subject to clause 10.2, 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 Policies or any Transferring Reinsurance Policies and which is subject to Applicable Privacy Laws;
- (b) become the data controller of any personal data which relates to the Transferring Policies and which is subject to Applicable Privacy Laws in place of the Transferor and shall be deemed to have been the controller of all such data at all material times when personal data was processed; and
- (c) in respect of any personal data which relates to the Transferring Policies or Transferring Reinsurance Policies, be subject to the same duty by virtue of any law to which the Transferor was subject to respect the confidentiality and privacy of each data subject of that personal data and shall be bound by any specific notice or consent given, or request made, by the data subject which was binding on the Transferor and which required the Transferor not to use the personal data for marketing purposes,

and in any consent given by a data subject in respect of such data as is mentioned in this clause 10, any reference to the Transferor (or to any member of the Transferor's Group) shall be deemed to include a reference to the Transferee (and to any member of the Transferee's Group).

10.2 In clause 10.1, the expressions **controller**, **personal data** and **data subject** shall have the meanings given in the GDPR.

## **Part D – Miscellaneous Provisions**

### **11 Effective Date**

- 11.1 Subject to clause 11.3, this Scheme shall become effective at 00:01 BST on 31 July 2020, or such other time and date specified in the Order sanctioning the Scheme.
- 11.2 If this Scheme has not become effective on or before 00:01 BST on 31 July 2020, the provisions of this Scheme shall lapse.
- 11.3 This Scheme will not become effective on the Effective Date unless on or prior thereto the Order shall have been made.

### **12 Costs and Expenses**

The costs and expenses in relation to the preparation and carrying into effect of this Scheme shall only be borne by the Transferor and Transferee and in such proportions as have been agreed by them in writing.

### **13 Modification or Additions**

- 13.1 The Transferor and the Transferee may, as required, consent for and on behalf of the parties hereto and all other persons concerned to any modification of or addition to this Scheme or to any further condition or provision affecting the same which, prior to its sanction of this Scheme, the Court may approve or impose.
- 13.2 Subject to clause 13.3, at any time after the sanction of this Scheme, the Transferee, with the Transferor's consent (not to be unreasonably withheld or delayed), shall be at liberty to apply to the Court for consent to amend this Scheme, provided that in any such case:
- (a) the PRA and the FCA shall be notified in advance and not less than 42 days from the date the PRA and FCA acknowledges such notice of a proposed change must elapse prior to any hearing of the Court at which such application is considered , and the PRA and FCA shall have the right to be heard at such hearing; and
  - (b) such application shall be accompanied by a certificate (supported by a report which has been prepared on the basis of the most recent available financial information) from the Independent Expert to the effect that in his opinion the proposed amendment will not materially adversely affect the policyholders or the Transferor or the Transferee.

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

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

## **14 Gross up**

Where the Transferor is entitled to receive an amount pursuant to an indemnity under the terms of this Scheme, it shall be entitled to receive such amount so that, after payment of or provision for any liability to Taxation in respect of the amount receivable, will result in the receipt of an amount equal to the full value of the liability to be indemnified against.

## **15 Third Party Rights**

It is not intended that any person who is not a party to this Scheme may enforce any of its terms, whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## **16 Governing law**

This Scheme, and any obligation, matter, claim or dispute arising out of or in connection with it, whether contractual or non-contractual, shall be governed by and construed in accordance with English law.

Dated this 31<sup>st</sup> day of March 2020