

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

**IN THE MATTER OF
TRAVELERS CASUALTY AND SURETY COMPANY OF EUROPE LIMITED**

and

**IN THE MATTER OF
TRAVELERS INSURANCE COMPANY LIMITED**

and

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

INSURANCE BUSINESS TRANSFER DOCUMENT

 **NORTON ROSE FULBRIGHT**

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WHEREAS:

- (1) The Transferor was incorporated in England and Wales on 13 April 1992 under the name Law 421 Limited and changed its name to Aetna National Accounts U.K. Limited on 13 August 1992, to Gulf Insurance Company U.K. Limited on 25 November 1997, to Travelers Casualty and Surety Company of Europe, Limited on 18 July 2003, to St Paul Travelers Casualty and Surety Company of Europe Limited on 21 December 2004 and to St. Paul Travelers Casualty and Surety Company of Europe Limited on 24 February 2005. It changed to its current name, Travelers Casualty and Surety Company of Europe Limited on 27 April 2007. The registered number of the Transferor is 02706447 and its registered office is situated at 23-27 Alie Street, London E1 8DS.
- (2) The Transferor is a "UK authorised person" as defined in section 105(8) of FSMA, with permissions, inter alia, to effect and carry out contracts of general insurance in the UK under classes of business 1 to 18 set out in Part I of Schedule 1 to the Regulated Activities Order.
- (3) The Transferee was incorporated in England and Wales on 10 December 1971 under the name St. Katherine Insurance Company Limited and changed its name to St. Paul International Insurance Company on 1 October 1992 and again to St. Paul Travelers Insurance Company Limited on 29 October 2004. It changed to its current name, Travelers Insurance Company Limited on 1 February 2008. The registered number of the Transferee is 01034343 and its registered office is situated at 23-27 Alie Street, London E1 8DS.
- (4) The Transferee is a "UK authorised person" as defined in section 105(8) of FSMA, with permission, inter alia, to effect and carry out contracts of general insurance in the UK under classes of business 1 to 17 set out in Part I of Schedule 1 to the Regulated Activities Order. The Transferring Business will be carried on by the Transferee through an establishment in the UK.
- (5) The Transferor and the Transferee have agreed that the Transferring Business will transfer to the Transferee in accordance with this Transfer and by virtue of the Order.

1 Interpretation

1.1 In this Transfer, unless the subject or context otherwise requires:

Asset(s) means any assets and property of every kind and description, wherever located, whether real, personal or mixed, tangible or intangible, whether owned, leased or licensed including without limitation all rights, benefits and powers under any contract and all rights, claims and powers against any third party

Court means the High Court of Justice in England and Wales

EEA means the European Economic Area and **EEA State** means a state which is a contracting party to the agreement on the EEA signed at Oporto on 2 May 1992

Effective Date means the time and date when this Transfer shall become operative in accordance with paragraph 10

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

Excluded Assets means:

- (a) the corporate minute books and stock records of the Transferor; and any other books and records to the extent relating to any other Excluded Asset
- (b) all Assets not used (in whole or in part) in the conduct of the operation of the Transferring Business
- (c) the Retained Records
- (d) all cash and other investments other than those held as reserves for the Transferring Business
- (e) any right to repayment of Tax or any available Tax credits and
- (f) all rights, benefits and powers under the Residual Policies Reinsurance Contract

Excluded Liabilities means:

- (a) its non-insurance Liabilities
- (b) Liabilities to make a payment of or in respect of or of an amount representing, equal to, equivalent to, or deemed to be, Tax (whether actual, present, future, contingent or deferred) and
- (c) all obligations and Liabilities under the Residual Policies Reinsurance Contract

FCA means the Financial Conduct Authority or any successor UK conduct regulatory authority of insurance and/or reinsurance companies

FSMA means the Financial Services and Markets Act 2000

Governmental Authority means any national, supra-national, federal, state, provincial or local government, political subdivision, governmental, regulatory, department, bureau, board or other

administrative authority, instrumentality, agency, body or commission, self-regulatory organization or any court (including, without limitation, the Court), tribunal, or judicial or arbitral body

Group means, in relation to a company, that company and any subsidiary, subsidiary undertaking or holding company of such company and any subsidiary or subsidiary undertaking of any such holding company

Independent Expert means Alex Marcuson of Marcuson Consulting Limited

Intellectual Property means all of the following, whether protected, created or arising under the laws of any jurisdiction and whether or not registered or published: copyrights; moral rights; database rights; design rights; trade secrets; Trademarks; all rights arising from or in respect of domain names and domain name registrations and reservations; intellectual property rights arising from or in respect of technology; and all other applications and registrations related to any of the rights set forth in this definition and all rights therein whether provided by international treaty, convention or otherwise

Liability means any debt or liability (whether direct or indirect, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) including, without limitation, all costs and expenses relating thereto

Order means an order made by the Court pursuant to Section 111(1) of FSMA sanctioning this Transfer and any order (including any subsequent order which is ancillary thereto) in relation to this Transfer made by the Court pursuant to Section 112 of FSMA

Outwards Reinsurance Agreements means all agreements pursuant to which any portion of the Liabilities under the Transferring Policies is or has been reinsured or retroceded, and which are in force immediately prior to the Effective Date

Permits means any approvals, authorisations, consents, registrations, franchises, licences, permits or certificates of a Governmental Authority

Person means any natural person, general or limited partnership, corporation, limited liability company, limited liability partnership, firm, joint venture, joint stock company, trust, unincorporated organization, association or organization or other legal entity

Policies means all policies (as defined in the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (S.I. 2001/2361)), treaties, facultative certificates, binders, slips and other contracts of or for insurance, reinsurance or retrocession and all binding quotations (and including at any time any constituent part of a Policy which gives rise to any separately identifiable benefit) written by or on behalf of or assumed by the Transferor as insurer, reinsurer or retrocessionaire (where such policy, treaty, facultative

certificate, binder, slip or other contract was not written or assumed solely by or on behalf of the Transferor, to the extent and only for and in respect of the proportion written by or on behalf of the Transferor) (including, without limitation, all supplements, endorsements and riders thereto and all ancillary agreements in connection therewith) prior to the Effective Date. For the avoidance of doubt, Policies shall include any policies falling within class 15 of Part 1 of Schedule 1 to the Regulated Activities Order including surety bonds, admiralty bonds, performance bonds, appeals bonds and other similar surety or bond products

PRA means Prudential Regulation Authority or any successor UK prudential regulatory authority of insurance and/or reinsurance companies

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

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

Residual Asset means each Asset which would form part of the business transferred pursuant to the Transfer (including any right, benefit or power of the Transferor under any Transferring Policy) but for the fact that, in relation to the relevant Asset:

- (a) the Court has declined to order the transfer of such Asset to the Transferee under section 112(2) of FSMA (either at all or without the consent of a person other than the Transferee or the Transferor)
- (b) the transfer of such Asset to the Transferee is outside the jurisdiction of the Court
- (c) such Asset is subject to the law of any country or territory outside the UK and such law provides that further steps, in addition to the Order, are required to be taken to effect the transfer of such Asset pursuant to such law

- (d) the laws of a jurisdiction in which such Asset is situated or which are otherwise relevant to any security relating to such Asset do not recognise the security trustee arrangement referred to in paragraph 5, or under such laws these security trustee arrangements are not sufficient to provide in all material respects the same rights to the Transferor as security trustee, or the same benefits to the Transferee, as were available to the Transferor prior to the Effective Date
- (e) such Asset cannot be transferred or vested in the Transferee for any other reason or
- (f) any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, earned or received from time to time after the Effective Date in respect of such Asset, but excluding for the avoidance of doubt, the Excluded Assets

Residual Liability means any Liability of the Transferor relating to the Business, not being an Excluded Liability:

- (a) in respect of which the Court has declined to order the transfer to the Transferee under section 112(2) of FSMA;
- (b) in respect of which the transfer to the Transferee is outside the jurisdiction of the Court;
- (c) 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; or
- (d) that cannot be transferred or vested in the Transferee for any other reason

Residual Policies Reinsurance Contract means the contract to be entered into between the Transferor and the Transferee in relation to certain Liabilities pursuant to paragraph 4 in the agreed form

Residual Policy means any Policy which would be a Transferring Policy save that:

- (a) it is agreed by the Transferor and the Transferee, or proved by the relevant Policyholder, whether before or after the Effective Date, that:
 - (i) such Policy, if a Policy of reinsurance, is governed by the law of any country or territory outside the UK or, otherwise, is governed by the law of any country or territory outside the EEA and
 - (ii) further steps additional to the Order are required to secure that its transfer to the Transferee is fully effective under the law of that country or territory or
- (b) such Policy was written by the Transferor in the course of carrying on insurance business in the UK or any other EEA State, in respect of which:

- (i) for the purposes of paragraph 1(4) of Schedule 12 to FSMA an EEA State other than the UK is the EEA State in which the risk is situated; and
- (ii) the PRA has not prior to the making of the Order by which the Court sanctions this Transfer provided the certificate referred to in paragraph 5 of Schedule 12 to FSMA or
- (c) such Policy was written by the Transferor in an establishment situated in an EEA State other than the UK, in respect of which the PRA has not prior to the making of the Order by which the Court sanctions this Transfer provided the certificate referred to in paragraph 3 of Schedule 12 to FSMA or
- (d) the Order requires further steps be taken to make the transfer of such Policy to the Transferee fully effective or such Policy is not otherwise capable of being transferred to the Transferee pursuant to FSMA at the Effective Date;

Retained Records means any accounting and financial and other records of the Transferor which the Transferor is required by law to retain, including VAT records

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

- (a) in respect of:
 - (i) any Residual Policy falling within paragraph (a), (b), (c) or (d) of the definition of Residual Policy
 - (ii) any Residual Asset falling within paragraph (a), (c), (d), (e) or (f) of the definition of Residual Asset, and of any Residual Liability which is attributable to or connected with that Residual Asset or
 - (iii) any Residual Liability falling within paragraph (a), (c) or (e) of the definition of Residual Liability

the date on which any impediment to its transfer shall have been removed or overcome;
and

- (b) in respect of
 - (i) any Residual Policy falling within paragraph (e) of the definition of Residual Policy

- (ii) any Residual Asset falling within paragraph (b) of the definition of Residual Asset and of any Residual Liability which is attributable to or connected with that Residual Asset or
- (iii) any Residual Liability falling within paragraph (b) 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 the final paragraph of the definition of Residual Asset, the date on which such Residual Asset is received or earned by the Transferor

Tax means:

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

Third Party Contracts means all contracts to which the Transferor is party or beneficiary which relate to the Transferring Business other than the Policies and the Outwards Reinsurance Agreements including, for the avoidance of doubt, all of the Transferor's rights under any indemnity agreements, collateral agreements, pledges, liens, guarantees and other repayment or reimbursement rights of the Transferor related to the surety bonds or Policies written by or on behalf of or assumed by the Transferor as insurer, reinsurer or retrocessionaire

Trademarks means all of the following, whether protected, created or arising under the laws of England and Wales or the laws of any other jurisdiction: trademarks, service marks, trade names, service names, trade dress, logos, designs, slogans and other identifiers of source, including all goodwill associated therewith and all common law rights, registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions, and all extensions and renewals of any of the foregoing

Transfer means this Transfer in its original form or with, or subject to, any modification or addition thereto

Transferring Assets means all of the Assets comprised in or relating to the Transferring Business, including without limitation all right, title and interest of the Transferor in, to or under:

- (a) Assets held as of the Effective Date by the Transferor in an amount equal to the technical reserves for the Transferring Policies as reflected in the books and records of the Transferor
- (b) the benefit of the Outwards Reinsurance Agreements
- (c) Third Party Contracts
- (d) all accounts, notes, premiums, reinsurance, retrocession and subrogation recoveries and other receivables that primarily relate to the Transferring Business
- (e) all expenses that have been prepaid by the Transferor relating to the Transferring Business, including ad valorem Taxes and lease and rental payments
- (f) all of the Transferor's causes of action against third parties relating to the Transferring Business whatsoever and howsoever arising including those causes of action relating to the Transferring Assets or the Transferring Liabilities
- (g) all Intellectual Property other than the Excluded Intellectual Property
- (h) all transferable Permits used in connection with the Transferring Business
- (i) all books, records, files and papers, whether in hard copy or computer format, of the Transferring Business, including insurance and reinsurance contracts, claims and underwriting files, sales and promotional literature, manuals and data, sales and purchase correspondence and lists of present and former customers, excluding the Retained Records and
- (j) all goodwill (including the renewal rights) associated with the Transferring Assets

but excluding the Excluded Assets;

Transferring Business means all the insurance and reinsurance business of the Transferor carried on prior to the Effective Date and all reinsurance and retrocession of such business and all business ancillary thereto including:

- (a) all Transferring Policies to the extent written by or on behalf of, or for which responsibility has been assumed by, the Transferor as insurer, reinsurer or retrocessionaire prior to the Effective Date including, where such Policy has been commuted, any obligation or Liability whether or not contingent which as at the Effective Date remains unperformed or unpaid and any rights that remain exercisable at the Effective Date
- (b) all Outwards Reinsurance Agreements including, where such Outwards Reinsurance Agreement has been commuted, any obligation or Liability whether or not contingent

which as at the Effective Date remains unperformed or underpaid and any rights that remain exercisable at the Effective Date

- (c) all activities and services carried on principally in connection with or principally for the purposes of any such businesses
- (d) all rights, undertakings and assets of whatever nature used in, or relating to, any such businesses including the Transferring Assets and
- (e) all liabilities of whatever nature relating to any such businesses including the Transferring Liabilities and including any such liabilities that are contingent

but excluding the Excluded Policies, the Excluded Assets and the Excluded Liabilities;

Transferring Liabilities means all insurance and associated Liabilities and commitments of every kind and description of the Transferor to the extent arising from or relating to the Transferring Business, as such business shall exist on the Effective Date and irrespective of whether the Liabilities and commitments shall arise prior to or following the Effective Date, including, without limitation:

- (a) all Liabilities in connection with the Transferring Policies;
- (b) any Liabilities in connection with the Outwards Reinsurance Agreements to the extent such Liabilities relate to the Transferring Policies;
- (c) any mis-selling Liabilities which may apply to the Transferring Policies;
- (d) all Liabilities in connection with lapsed, matured, surrendered and expired policies, or in connection with quotations not proceeded with; and
- (e) all Liabilities in connection with reinstated policies.

but excluding the Excluded Liabilities;

Transferring Policies means the Policies comprised in or relating to the Transferring Business together or individually as the context may indicate, excluding any Excluded Policy and any Residual Policy

Transferring Policyholder means an insured (including the person named on the face of the Policy and any other third party who has been granted a benefit or right in relation to such Policy), insurer, reinsurer or syndicate at Lloyd's that has ceded a risk to or insured a risk with the Transferor pursuant to a Transferring Policy

UK means the United Kingdom of Great Britain and Northern Ireland and

VAT means value added or similar turnover or sales taxes, wheresoever imposed (including any interest, surcharges or penalties in respect of the same).

1.2 In this Transfer:

- (a) **property** and **asset** includes property, assets, rights (including contingent rights as to the repayment of tax) and powers of every description (whether present or future, actual or contingent) and includes property and assets held on trust, securities (quoted or unquoted), benefits (including tax benefits), powers of any description and any interest whatsoever in any of the foregoing;
- (b) **transfer** includes (as the context may require) **assign, assignation, assignment, dispose, disposal, novate, novation, convey** and **conveyance** and shall include a transfer by operation of law;
- (c) 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;
- (d) any reference to a court, tax, accounting or regulatory authority shall be deemed to include a reference to such authority's successors from time to time;
- (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) expressions used which have meanings under FSMA shall bear those meanings unless stated otherwise;
- (g) the expressions **subsidiary** and **holding company** shall have the meanings given in section 1159 of the CA 2006, save that for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c) of the CA 2006 a company shall be treated as a member of another company
 - (i) if any shares in that other company are held by a person acting on behalf of the company or any of its subsidiaries;
 - (ii) if any of its subsidiaries is a member of that other company; or
 - (iii) if any shares in that other company are held by a person (or that person's nominee) by way of security or in connection with the taking of security granted by the company or any of its subsidiaries;

- (h) the expression **subsidiary undertaking** shall have the meaning given in section 1162 of the CA 2006, save that for the purposes of section 1162(2) of the CA 2006, an undertaking shall also be treated as a member of another undertaking if any shares in that other undertaking are held by a person (or that person's nominee) by way of security or in connection with the taking of security granted by the undertaking or any of its subsidiary undertakings
- (i) any reference to this Transfer shall include the recitals and Schedules to it and (unless inconsistent with the subject or context) references in this Transfer to paragraphs, parts or Schedules are to paragraphs of, parts of or the Schedules to this Transfer;
- (j) 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;
- (k) headings are inserted for convenience only and shall not affect the construction of this Transfer;
- (l) 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;
- (m) any reference to writing shall include any mode of reproducing words in a legible and non-transitory form; and
- (n) if a period of time is specified from a given day or date or from the day or date of an act or event, it shall be calculated exclusive of that day or date.

2 Transfer of the Transferring Business, Assets and Liabilities

2.1 On and with effect from the Effective Date, the Transferring Business shall by the Order and without any further act or instrument be transferred to, and vested in, the Transferee in accordance with this Transfer, so that:

- (a) on and with effect from the Effective Date, each Transferring Asset and all of the rights, benefits, powers, obligations and interests of the Transferor in each Transferring Asset shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee subject to all Encumbrances and other concomitant obligations (if any) affecting such Transferring Assets and the Transferee shall succeed to each Transferring Asset as if in all respects it were the same person in law as the Transferor;

- (b) on and with effect from each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and all of the rights, benefits, powers, obligations and interests of the Transferor in each such Residual Asset shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee subject to all Encumbrances and other concomitant obligations (if any) affecting such Residual Asset and the Transferee shall succeed to each such Residual Asset as if in all respects it were the same person in law as the Transferor;
 - (c) on and with effect from the Effective Date, each Transferring Liability and all the estate and interest of the Transferor in such Transferring Liability shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee and the Transferee shall succeed to each Transferring Liability as if in all respects it were the same person in law as the Transferor and such Transferring Liability 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 and all the estate and interest of the Transferor in such Residual Liability shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee and the Transferee shall succeed to each such Residual Liability as if in all respects it were the same person in law as the Transferor and each such Residual Liability shall cease to be a liability of the Transferor.
- 2.2 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 each Subsequent Transfer Date, to the Residual Assets then transferred.
- 2.3 The Transferee shall accept the Transferring Liabilities under each Transferring Policy, whether such Transferring Policy is governed by English law or the law of another jurisdiction.
- 2.4 The Transferee shall accept that any award or other determination made against the Transferor in any judicial, quasi-judicial, arbitral, ombudsman or other analogous proceedings concerning the Transferring Business shall be enforceable against the Transferee without the need for any further order to be made against the Transferee and shall be dealt with accordingly by it.
- 2.5 Each of the Transferor and the Transferee shall, as and when appropriate, use reasonable endeavours to execute all such documents and perform such other acts and things as may be required to effect or perfect the transfer and vesting in the Transferee of any Transferring Asset, Transferring Liability, Residual Asset or Residual Liability in accordance with the terms of this Transfer including, for the purposes of clarity, obtaining any required consent or waiver.
- 2.6 The transfer of any Transferring Asset, Transferring Liability, Residual Asset or Residual Liability to the Transferee shall have effect notwithstanding any provision (whether express or

implied) to the contrary in any contract or arrangement with any policyholder or any other person.

- 2.7 The transfers effected pursuant to paragraph 2.1 above shall have effect whether or not the Transferor would, other than pursuant to the terms of this Transfer, have capacity to effect the same.
- 2.8 This Transfer shall not operate to transfer or have the effect of transferring, or be construed to operate to transfer or have the effect of transferring, to the Transferee any of the Excluded Assets or Excluded Liabilities.

3 Transferring Policies and other contracts

- 3.1 In addition to the provisions of paragraph 2 and save as provided in this Transfer, on and with effect from the Effective Date, the Transferee shall, by the Order and without any further act or instrument, be entitled to all the rights, benefits and powers under the Transferring Policies and be subject to all the obligations and Transferring Liabilities of the Transferor under the Transferring Policies whatsoever subsisting on the Effective Date.
- 3.2 Save as provided in this Transfer, every Transferring Policy shall be construed and have effect on and from the Effective Date as if the Transferee had always been an original party thereto from inception instead of the Transferor (such that the Policy shall continue in force as between the Transferee and the relevant policyholder or other party thereto on the terms which applied to that Policy prior to the Effective Date, but without prejudice to any right which the Transferee may have subsequently to vary, terminate or avoid such Policy, whether under the terms thereof or at law).
- 3.3 Save as provided in this Transfer, the transfer and vesting of any Asset or Liability relating to any part of the Transferring Business by virtue of the Order and this Transfer shall not:
- (a) invalidate or discharge any contract, security interest or any other agreement or arrangement having a similar effect; or
 - (b) require further registration in respect of any security; or
 - (c) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would have otherwise been the case under, any contract or instrument to which the Transferee or the Transferor are a party or are bound; or
 - (d) allow any party to a contract to which the Transferee or the Transferor are a party to terminate that contract when he would not otherwise have been able to terminate it; or

- (e) entitle any party to any contract to which the Transferee or the Transferor are a party to vary the terms of that contract when he would not otherwise have been able to vary those terms or confer a right or benefit on him which he would not otherwise have had; or
 - (f) confer any greater or lesser rights or benefits, or impose any greater or lesser obligations, on any party to any contract to which the Transferor or the Transferee are a party when that greater or lesser obligation would not otherwise have been imposed.
- 3.4 Every Transferring Policyholder shall, on and from the Effective Date and to the exclusion of any rights he may have against the Transferor under any Transferring Policy, be entitled to the same rights against the Transferee as were available to him against the Transferor under such Transferring Policies.
- 3.5 All premiums and other amounts attributable or referable to the Transferring Policies shall on and after the Effective Date be payable to the Transferee and shall be receivable and received by the Transferee.
- 3.6 The Transferee shall be entitled to any and all defences, claims, counterclaims and rights of set-off under the Transferring Policies which would have been available to the Transferor including, without limitation, as a result of the commutation of any Transferring Policy.
- 3.7 Every Transferring Policyholder shall, from and after the Effective Date, in substitution for any Liability or obligation owed by him thereunder to the Transferor, be under the same Liability or obligation to the Transferee.
- 3.8 All references in any Transferring Policy (to the extent they relate to the Transferor's participation on that Transferring Policy) to the Transferor, the board of directors of the Transferor, 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 board of directors of the Transferee, or any other officers, employees or agents of the Transferee. In particular all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor, the board of directors of the Transferor, or any other officers, employees or agents of the Transferor in relation to any of the Transferring Policies shall, from and after the Effective Date be exercisable or required to be performed by the Transferee, the board of directors of the Transferee or any other officers, employees or agents of the Transferee.
- 3.9 The provisions of paragraph 3.1 to 3.8 shall apply, *mutatis mutandis*, to all Outwards Reinsurance Agreements and Third Party Contracts.
- 3.10 With effect from the Effective Date, the Transferee shall:
 - (a) succeed to all rights, Liabilities and obligations of the Transferor in respect of data which relates to the Transferring Business and which is subject to the Data Protection Act 2018

and/or 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 (General Data Protection Regulation) (the **GDPR**);

- (b) become the data controller of any data which relates to the Transferring Business and which is subject to the Data Protection Act 2018 and/or the GDPR in place of the Transferor and shall be deemed to have been the data controller of all such data at all material times when data was processed; and
- (c) in respect of 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.

3.11 In any consent given by a data subject in respect of such data as is mentioned in paragraph 3.10, 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) provided however that where any data subjects referred to in paragraph 3.10 continue also to be data subjects of the Transferor after the Effective Date then any consent given by a data subject shall also continue to apply to the Transferor (or to any member of the Transferor's Group).

4 Residual Policies

- 4.1 Liabilities arising out of the Residual Policies shall pending their transfer to the Transferee (whether pursuant to this Transfer or otherwise), remain Liabilities of the Transferor but all such Liabilities of the Transferor and all other amounts paid or payable by the Transferor in respect of such Residual Policies shall at all times after the Effective Date be reinsured in their entirety by the Transferee under the Residual Policies Reinsurance Contract.
- 4.2 The premiums payable by the Transferor in respect of such Residual Policies Reinsurance Contract shall be an amount relating to such Residual Policies as at the Effective Date, which shall be deemed to have been satisfied by the transfer to the Transferee of the Transferring Assets, plus all subsequent premium or other payments received by the Transferor in respect of such Residual Policies.
- 4.3 The Transferor and the Transferee shall enter into the Residual Policies Reinsurance Contract on or before the Effective Date pursuant to which the Transferor shall appoint the Transferee to administer, adjudicate and settle all claims relating to any Residual Policy subject to claims handling guidelines to be agreed between the parties.

4.4 If any person entitled to do so with respect to a Residual Policy exercises any option granted under the terms of that Policy and either:

- (a) the option provides for a new, additional or replacement Policy to be issued; or
- (b) it is necessary in order to comply with that option to issue a new Policy,

the Transferee shall (to the extent it is lawfully able) offer to enter into the new Policy with such person in its own name or in the name of another member of its Group. Such person shall nevertheless be entitled to require that the obligation thereby arising shall be satisfied by the issue by the Transferor of a replacement Policy that complies with the terms of such option and such replacement Policy shall be a Residual Policy and shall (to the extent it is lawfully able) be reinsured by the Transferee under the Residual Policies Reinsurance Contract (and the Transferor shall (to the extent it is lawfully able) transfer to the Transferee any Assets receivable in respect of such replacement Policy) but (without prejudice to the right of such person to have the option satisfied by the issue by the Transferee of such a Policy), the Transferee shall be entitled to offer to such person in lieu thereof the Policy it considers to be the nearest equivalent of such replacement Policy.

4.5 The Transferor and the Transferee shall, as and when necessary or appropriate, execute and deliver all documents and perform all such other acts as may be reasonably required to effect or perfect the transfer to, and vesting in, the Transferee of any Residual Policy in accordance with the terms of this Transfer, including, for the purposes of clarity, obtaining any required consent or waiver.

4.6 On and from each Subsequent Transfer Date, each Residual Policy to which such Subsequent Transfer Date applies and all the Residual Assets and Residual Liabilities relating to such Residual Policy, shall to the extent not previously transferred, by the Order and without further act or instrument be transferred to, and be vested in, the Transferee, whereupon it shall constitute a Transferring Policy, Transferring Asset or Transferring Liability (as the case may be) under this Transfer.

4.7 If any Residual Policy is novated by written agreement to the Transferee, the property and liabilities relating to such Policy shall, to the extent not previously transferred, be transferred to the Transferee and such Policy shall thereafter be dealt with by the Transferee under the provisions of this Transfer in all respects as if such Residual Policy were a Transferring Policy.

5 Declaration of Trust by the Transferor

5.1 The Transferor shall from the Effective Date, until the relevant Subsequent Transfer Date or for so long as is legally permissible (but save to the extent that giving effect to such a trust would have the effect of transferring any interest falling within the definition of Residual Assets or Excluded Assets), hold the Residual Assets as trustee and in trust for the Transferee absolutely.

- 5.2 The Transferor shall be subject to the Transferee's direction in respect of any such Residual Asset until it 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). The Transferee shall have authority (with authority to sub-delegate) to act as the attorney of the Transferor in respect of any such Residual Asset for all such purposes.
- 5.3 In the event of any payment (including any reinsurance receipts) being made to, property being received by, or a right being conferred upon the Transferor in relation to any Residual Asset, the Transferor shall as soon as is reasonably practicable notify the Transferee and 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 the Transferee or otherwise in accordance with the reasonable directions of the Transferee and the Transferee shall on demand indemnify the Transferor against any reasonable costs properly incurred by it to complete such transaction.

6 Indemnities in favour of the Transferor

- 6.1 The Transferee shall discharge on behalf of the Transferor or, failing that, indemnify the Transferor from the Effective Date against:
- (a) all Transferring Liabilities whether the same shall arise prior to or following the Effective Date but, where such Transferring Liabilities are the subject of a policy of indemnity insurance or a claim or right of recovery against a third party which constitutes a Residual Asset that has not yet transferred to the Transferee, the Transferee shall not discharge on behalf of or indemnify the Transferor to the extent that the Transferor has successfully claimed under such a policy or against such third party. The Transferee shall indemnify, and keep indemnified, the Transferor against any cost or Liability it may incur in taking such action; and
 - (b) save as otherwise provided in this Transfer or the agreements referred to herein, any other cost, claim, loss, damages, Liability or expense (whatsoever) incurred in connection with the Transferring Business (other than regulatory capital costs) including, without limitation, the conduct of the trust arrangements, and the conduct of claims under paragraph 8, whether the same shall arise prior to or following the Effective Date.

7 Outwards Reinsurance Agreements

- 7.1 Notwithstanding anything in paragraph 2:
- (a) any commutations entered into by the Transferor (whether globally or on any other basis) with any of its reinsurers or retrocessionaires before the Effective Date shall not in any way affect any reinsurance, retrocession or similar protection entered into by the Transferee before the Effective Date; and

(b) any commutations entered into by the Transferee (whether globally or on any other basis) with any of its reinsurers or retrocessionaires before the Effective Date shall not in any way affect any reinsurance, retrocession or similar protection transferred from the Transferor to the Transferee pursuant to this Transfer.

7.2 To the extent that the risk under any Residual Policy has been ceded to a third party under an Outwards Reinsurance Agreement, any payment in respect of such risk made to the Policyholder by the Transferee on behalf of the Transferor under the relevant Residual Policy or to the Transferor under the Residual Policies Reinsurance Contract shall be deemed to be a payment by the Transferee for the purposes of such Outwards Reinsurance Agreement, and shall give rise to a claim by the Transferee thereunder as if it were the reinsured under the relevant Outwards Reinsurance Agreement.

8 Continuity of Proceedings

8.1 At and with effect from the Effective Date any judicial, quasi-judicial or arbitration proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim (whether current or future) by or against the Transferor from the Effective Date in connection with the Transferring Business (including the Transferring Policies, the Transferring Assets and the Transferring Liabilities) shall be continued by or against the Transferee and 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 and the Transferor shall have no liability under those proceedings and, for the avoidance of doubt, the Transferee, in its absolute discretion, may determine to discontinue after the Effective Date any such proceedings brought by the Transferor.

8.2 At and with effect from the Effective Date, any judicial, quasi-judicial, or arbitration proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim in relation to the Transferor and concerning the Transferring Business shall be commenced against the Transferee. Any such proceedings after the Effective Date commenced in error against the Transferor shall be deemed to have been commenced and shall be continued against the Transferee without the need for further order, whether for substitution of parties or otherwise. In any event, the Transferee shall be entitled to all defences, claims, counterclaims and rights of set off that would have been available to the Transferor in relation to such proceedings.

8.3 All documents which would before the Effective Date have been evidence in respect of any matter for or against the Transferor shall be admissible in evidence in respect of the same matter for or against the Transferee.

8.4 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 in relation to the Transferring Business immediately prior to the Effective Date.

- 8.5 On and from the Effective Date, the Transferee shall be entitled to direct the Transferor as to the conduct of any on-going Proceedings referred to in paragraph 8.1 or 8.2 and the Transferee shall have full authority (with authority to sub-delegate) to act on behalf of the Transferor in respect of any such Proceedings.

9 Premiums and other mandates

- 9.1 All premiums attributable or referable to the Transferring Policies shall from the Effective Date be payable to the Transferee.
- 9.2 Any direct debit mandate, standing order or other instruction or authority in force on the Effective Date and providing for payment by a bank or other intermediary of premiums payable under any Transferring Policy shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.
- 9.3 Any mandate or other instruction or authority in force on the Effective Date as to the manner of payment by the Transferor of any sum payable under any Transferring Policy shall continue in force as an effective mandate, instruction or authority to the Transferee.
- 9.4 In the case of premiums attributable or referable to Residual Policies the provisions of paragraphs 9.1 to 9.3 shall apply to each such Residual Policy with effect from the relevant Subsequent Transfer Date as if references in those paragraphs to Transferring Policies were to such Residual Policies.

10 Effective Date

- 10.1 Subject to paragraph 10.2, this Transfer shall become operative at 23.59 on 28 February 2019 (London time) or such other time and date as may be specified in the Order and unless this Transfer shall become operative on or before 23.59 on 29 March 2019 or such later date as the Court may allow upon the application of the Transferor, this Transfer shall lapse.
- 10.2 Notwithstanding paragraph 10.1, this Transfer shall not become operative unless any modification of or addition to this Transfer or any further condition or provision affecting the same imposed by the Court (or recommended by the Court with a view to it being imposed) has been consented to by the Transferor and the Transferee.

11 Costs and Expenses

- 11.1 All costs and expenses, including Court and regulatory fees and the fees and disbursements of the Independent Expert, legal advisers, financial advisers and accountants, incurred in

connection with this Transfer and the transactions contemplated by this Transfer shall be paid by the Transferor.

12 Modifications, Amendments or Additions

- 12.1 The Transferor and the Transferee may consent on their own behalf and on behalf of all other persons concerned (other than the PRA and/or the FCA) to any modification, amendment or addition to this Transfer or to any further condition or provision affecting the same which the Court may approve or impose prior to or after the sanction of this Transfer.
- 12.2 The Transferor and the Transferee may amend this Transfer without further sanction of the Court to correct a manifest error provided that:
- (a) the PRA and the FCA have been notified of the proposed amendment; and
 - (b) each of the PRA and the FCA has indicated that it does not object to the proposed amendment.

13 Gross-up

Where the Transferor is entitled to receive an amount pursuant to an indemnity in this Transfer, it shall be entitled to receive such amount so that, after payment of or provision for any Liability to Tax 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.

14 Contracts (Rights of Third Parties) Act 1999

A person not party to this Transfer may not enforce any of its terms pursuant to the Contracts (Rights of Third Parties) Act 1999.

15 Successors and Assigns

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

16 Governing Law

This Transfer shall be governed by and construed in accordance with English law.

Dated this [•th] day of [• 2019].