

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

IN THE MATTER OF THE PRUDENTIAL ASSURANCE COMPANY LIMITED

-and-

IN THE MATTER OF ROTHESAY LIFE PLC

-and-

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

SCHEME

pursuant to Part VII of the Financial Services and Markets Act 2000 for the
transfer of certain long-term insurance business
of The Prudential Assurance Company Limited to
Rothesay Life Plc

Paragraph	Page
1. Interpretation	3
2. Background	19 <u>18</u>
3. Transfer of the Business, Assets and Liabilities.....	20 <u>19</u>
4. Continuity of Proceedings	24 <u>23</u>
5. Rights and Obligations in relation to the Transferred Business	24 <u>23</u>
6. Excluded Policies	26 <u>25</u>
7. Mandates and Other Payments	26 <u>25</u>
8. Declaration of Trust by the Transferor.....	26 <u>25</u>
9. Indemnities in favour of the Transferor and the Transferee	27 <u>26</u>
10. Withholdings and Deductions	28 <u>27</u>
11. Transfer Date.....	29 <u>28</u>
12. Modification or Additions	29 <u>28</u>
13. Third Party Rights	31 <u>30</u>
14. Governing Law	31 <u>30</u>

PART A - DEFINITIONS

1. INTERPRETATION

In this Scheme, unless the subject or context otherwise requires, the following words and phrases have the following meanings:

Actuary means the person appointed by the relevant insurer and approved by the PRA from time to time to perform SMF20;

Affiliate means, in relation to a person, a subsidiary or a holding company of that person and any other subsidiaries of such holding companies from time to time (and for the purposes of this Scheme **subsidiary** and **holding company** shall have the meanings ascribed to them in the Companies Act 2006);

Annuities Thematic Review means the FCA Thematic Review 14/20 into annuities sales practices;

Applicable Law means, at any time and in respect of either Party, any and all of the following as applicable to that Party and in force at that time:

- (a) legislation (including enactments, statutes, statutory instruments, treaties, regulations, orders, directives, by-laws and decrees where binding on a Party), common law and equitable principles;
- (b) rules, regulations, guidance and requirements of any governmental, regulatory, supervisory or administrative body which are binding on the Transferee or the Transferor (as the case may be) or with which a firm in the position of the Transferee or the Transferor (as the case may be) is customarily expected to comply (whether or not having the force of law) including the FS Handbook; and
- (c) binding judgments, resolutions, decisions, orders, directions, notices, demands or other requirements of a competent court, tribunal or applicable regulator;

Bailiwick of Guernsey means the islands of Guernsey, Alderney, Sark, Herm, Jethou, Breghou and Lihou;

Board means the board of directors of the relevant Party from time to time;

Business Day means a day (other than a Saturday or Sunday) on which banks are generally open in London, United Kingdom for normal business;

Business Services Agreements means any contract or agreement to which the Transferor is or has been a party under which any third party provides administration or other services to the Transferor in connection with the Transferred Business or the Transferred Policies (whether or not continuing at the Transfer Date);

Business Transfer Agreement means the business transfer agreement between the Transferor and Transferee dated 14 March 2018 (as amended);

Category 1 means the Transferred Policies identified as such on the Prudential/RL Transfer DVD;

Category 2 means the Transferred Policies identified as such on the Prudential/RL Transfer DVD;

Category 3 means the Transferred Policies identified as such on the Prudential/RL Transfer DVD;

Category 4 means the Transferred Policies identified as such on the Prudential/RL Transfer DVD;

Common Data means all personal data in relation to the Policies in respect of which both the Transferor and the Transferee are data controllers under the Data Protection Laws;

Court means the High Court of England and Wales;

C4 Mis-Selling Liabilities means the Mis-Selling Liabilities (other than Excluded Mis-Selling Liabilities) in respect of Category 4 which crystallise after the C4 Mis-Selling Liabilities Transfer Date but excluding:

- (a) any and all Excluded Liabilities; and
- (b) any and all Mis-Selling Liability arising out of or in connection with matters or circumstances in respect of Category 4 which have been notified by the Transferee to the Transferor prior to the C4 Mis-Selling Liabilities Transfer Date;

C4 Mis-Selling Liabilities Transfer Date means the earlier to occur of the Transfer Date and the Long-Stop Date;

Data Protection Laws means:

- (a) the Data Protection Act 2018;
- (b) Regulation (EU) 2016/679 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);
- (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 and Part 1 of the Regulation of Investigatory Powers Act 2000; and
- (d) any other Applicable Laws, regulations, directions, guidelines and codes of practice made by competent governmental authorities concerning the processing of data relating to living persons,

in each case as amended or superseded from time to time;

Data Subject Request means a request made by a Policyholder to exercise their rights under Data Protection Laws in respect of Transferred Personal Data;

EEA State has the meaning given to it in paragraph 8, Part I of Schedule 3 of FSMA;

EIOPA means the European Insurance and Occupational Pensions Authority, or such other authority as shall from time to time carry out the functions carried out by it as at the date of this Scheme;

Encumbrance means any option, right to acquire, mortgage, charge, pledge, lien or other form of security or encumbrance and any agreement to create any of the foregoing, save for any such right conferred by one Party in favour of the other Party or any lien routinely imposed on securities in a relevant clearing system;

Excluded Assets means any and all assets of the Transferor other than the Transferred Assets and the Residual Assets, and such Excluded Assets shall include:

- (a) the rights of the Transferor to any defences, claims, counterclaims, defences to counterclaims and rights of set off to the extent related to the Excluded Liabilities;

- (b) the rights, benefits or power of the Transferor under or relating to each Relevant Reinsurance Agreement solely insofar as such rights, benefits or power relate to an Excluded Liability referred to in limb (l) of the definition of Excluded Liability;
- (c) the rights of the Transferor under or relating to the Excluded Policies;
- (d) any Tax reliefs or other assets in respect of Tax of the Transferor; and
- (e) any property of the Transferor that would be comprised in the Transferred Assets but where the Transferor and the Transferee agree in writing prior to the Transfer Date that it should not be transferred pursuant to this Scheme;

Excluded Liabilities means:

- (a) any and all Excluded Mis-Selling Liabilities;
- (b) any and all Retained Historic Administration Losses;
- (c) in respect of Category 1, Category 2 and Category 3, any Losses (including any penalty or fine) relating to or arising out of or in connection with any policies whose proceeds were used, wholly or in part, to pay the premium for a Policy (a **C1-3 Pre-Cursor Policy**) included in such category or any policy (including any immediate and deferred annuities purchased by a trustee of a defined benefit scheme) pursuant to which a Policy included in such category was issued or vested prior to the Transfer Date) including Losses arising from any advice provided by or on behalf of the Transferor or documentation supplied by or on behalf of the Transferor in connection with such C1-3 Pre-Cursor Policy, save to the extent that such advice or documentation relates directly to a Policy;
- (d) in respect of Category 4, any Losses (including any penalty or fine) relating to or arising out of or in connection with any policies (a **C4 Pre-Cursor Policy**) (in this case excluding any immediate and deferred annuities purchased by a trustee of a defined benefit scheme) whose proceeds were used, wholly or in part, to pay the premium for a Policy included in such category including any advice provided by or on behalf of the Transferor or documentation supplied by or on behalf of the Transferor in connection with such C4 Pre-Cursor Policy, provided that such advice or documentation does not relate to a Policy;
- (e) any and all Losses (other than those referred to in paragraph (a)) which arise out of or in connection with acts or omissions of the Transferor or any member of the Transferor's Group (or any of their directors, officers, employees, contractors, agents or appointed representatives, or any person for whose acts or omissions the Transferor may be, become or have been, liable) during the period prior to the Transfer Date and which acts or omissions are identified within a period of 12 months after the Transfer Date, comprising any Losses arising out of or in connection with:
 - (i) any breach of the Transferred Policies;
 - (ii) any breach of Applicable Law in respect of any Transferred Policy;
 - (iii) any penalty or fine in respect of any Transferred Policy; or
 - (iv) any legal or administrative proceedings or steps including arbitration, mediation, any other dispute resolution procedure, any judicial, quasi-judicial, administrative or regulatory review or process, any investigations or reviews or requests or similar

carried out at the direction or requirement of any Regulator, or any complaint or claim to any ombudsman in connection with (e)(i), (e)(ii), or (e)(iii) above,

but, without prejudice to paragraph (a), excluding any Transferred Historic Administration Losses, with effect from the C4 Mis-Selling Liabilities Transfer Date, the C4 Mis-Selling Liabilities and, with effect from the Residual Mis-Selling Liabilities Transfer Date, the Residual Mis-Selling Liabilities;

- (f) any and all liabilities of the Transferor under or arising from this Scheme;
- (g) save as expressly agreed in writing between the Parties prior to the Transfer Date, any Losses of the Transferor in respect of Taxation or any Taxation arising in relation to the Transferred Policies which arises on or prior to the Transfer Date;
- (h) any and all Losses that would be comprised in the Transferred Liabilities but which the Parties agree in writing, prior to the date on which the Court grants an Order which sanctions this Scheme, shall not be transferred to the Transferee;
- (i) any and all Losses arising as a result of, or in connection with, any fraud by the Transferor or any member of the Transferor's Group or any of their directors, officers, employees, contractors, agents or appointed representatives;
- (j) any and all liabilities of the Transferor under or relating to the Excluded Policies;
- (k) any and all liabilities of the Transferor under or relating to any Business Services Agreements; and
- (l) any and all RRA Breach Liabilities;

Excluded Mis-Selling Liabilities means:

- (a) any and all TRASP Liabilities (other than TRASP Incremental Liabilities which are reinsured as at the Transfer Date following the procedures set out in Clause 4 of the Supplemental Agreement);
- (b) any and all Mis-Selling Liabilities which fall within limb (d) of the definition of Mis-Selling Liabilities; and
- (c) any and all Retained Mis-Selling Liabilities;

Excluded Policies means Policies comprised in the Transferred Policies under which any liability remains unsatisfied or outstanding at the Transfer Date:

- (a) written in the course of carrying on insurance business in the United Kingdom or any other EEA State:
 - (i) which, for the purpose of paragraph 1(2A) of Part I of Schedule 12 to FSMA, evidences a contract of insurance (other than reinsurance) concluded in an EEA State other than the United Kingdom (the **Relevant EEA State**); and
 - (ii) in respect of which the PRA has not prior to the making of the Order by which the Court sanctions this Scheme provided the certificate referred to in paragraph 3A of Part I of Schedule 12 to FSMA with respect to the Relevant EEA State;

- (b) written in an establishment situated in a Relevant EEA State, in respect of which the PRA has not prior to the making of the Order by which the Court sanctions this Scheme provided the certificate referred to in paragraph 3 of Part I of Schedule 12 to FSMA with respect to the Relevant EEA State; or
- (c) which are:
 - (i) Guernsey Policies (to the extent that and for so long only as the Guernsey Scheme has not yet become effective in accordance with its terms); or
 - (ii) Jersey Policies (to the extent that and for so long only as the Jersey Scheme has not yet become effective in accordance with its terms); or
- (d) which are not otherwise capable of being transferred pursuant to FSMA at the Transfer Date;

FCA means the Financial Conduct Authority of the United Kingdom, or such other authority as shall from time to time carry out the functions carried out by it in the United Kingdom as at the date of this Scheme;

Financial Ombudsman means the financial ombudsman service in the United Kingdom;

FS Handbook means the FCA handbook of rules and guidance and the PRA handbook of rules and guidance (including the PRA Rulebook) issued from time to time;

FSMA means the Financial Services and Markets Act 2000 (as amended from time to time);

Funding Account means the bank account held in the name of the Transferor designated as the 'Funding Account' for the purposes of the Reinsurance Agreement as at the Transfer Date;

Glossary means the glossary to the PRA Rulebook;

Guernsey Policy means a Policy of the Transferor comprised in the Transferred Business that was ~~written under Guernsey law or~~ issued to a resident of the Bailiwick of Guernsey and in respect of which any liability remains unsatisfied or outstanding at the Transfer Date and which the Royal Court of Guernsey has jurisdiction to transfer pursuant to section 44(1) of the Insurance Business (Bailiwick of Guernsey) Law 2002;

Guernsey Scheme means the scheme of transfer referred to in paragraph 3.2(a);

Guernsey Transfer Date means the time and date on which the transfer pursuant to the Guernsey Scheme becomes effective in accordance with its terms;

Group means, in respect of a person, that person and its Affiliates;

Historic Administration Error means an error or omission in relation to the administration of, or processes relating to, a Transferred Policy which:

- (a) was made prior to the Transfer Date; and
- (b) results in:
 - (i) amounts being or having been paid (or amounts becoming due to be paid in the future) to the relevant Policyholder which, by reference to the amount actually due (or becoming due in future) to the relevant Policyholder under or in respect of the relevant Transferred Policy, were (or will be) incorrect;

- (ii) statements (including calculations) being made to the relevant Policyholder regarding entitlements due to such Policyholder under the Transferred Policy which, by reference to the actual entitlement of the relevant Policyholder under or in respect of the relevant Transferred Policy, were incorrect; or
- (iii) policy or binding quotation documents (which have not been superseded) being provided to the relevant Policyholder which do not reflect the entitlements actually due to such Policyholder;

Independent Expert means the independent expert appointed pursuant to section 109 of FSMA in relation to the Scheme;

Jersey Policy means a Policy of the Transferor comprised in the Transferred Business carried on by the Transferor in or from within Jersey (as such expression is interpreted for the purposes of the Insurance Business (Jersey) Law 1996) and in respect of which any liability remains unsatisfied or outstanding at the Transfer Date and which the Royal Court of Jersey has jurisdiction to transfer pursuant to Article 27 of, and Schedule 2 to, the Insurance Business (Jersey) Law 1996;

Jersey Scheme means the scheme of transfer referred to in paragraph 3.2(b);

Jersey Transfer Date means the time and date on which the transfer pursuant to the Jersey Scheme becomes effective in accordance with its terms;

Long-Term Insurance Business has the meaning set out in the Glossary;

Long-Stop Date means 31 December 2019;

Longevity Swap Direct Security Agreement means a collateral or security arrangement entered into between, amongst others, the Transferee and a Relevant Reinsurer in connection with a Relevant Reinsurance Agreement pursuant to which the Transferee grants security over collateral assets directly to the Relevant Reinsurer on behalf of the Transferor;

Losses means:

- (a) all direct losses (including, for the avoidance of doubt, direct loss of profits), liabilities (including any settlement payment irrespective of whether legal liability has been admitted or determined), damages, penalties, costs (including costs relating to disciplinary actions, fines and legal fees) and expenses, but excluding consequential or indirect loss (such as, for the avoidance of doubt, indirect loss of profits or loss of goodwill); and
- (b) all costs and expenses (including third party professional fees) properly incurred as a result of investigating, defending or settling a claim or in connection with any threatened, pending or actual proceeding;

Lump Sum TRASP Liability means:

- (a) a lump sum amount due to a Policyholder in respect of benefit payments previously made to such Policyholder, which is determined by the PBR; or
- (b) a lump sum amount which has been determined by the PBR and which is payable in substitution for the TRASP Incremental Liability;

M&G Scheme means a scheme pursuant to section 49 of, and Part 1 of Schedule 2C to, the Insurance Companies Act 1982 under which the long term businesses of M&G Life Assurance

Company Limited and M&G Pensions and Annuity Company Limited were transferred to Scottish Amicable Life Plc;

Marketing Preference means:

- (a) a consent given by a data subject for use of personal data to market directly to him by any means;
- (b) an indication (by act or omission, as appropriate) by the data subject that such consent is withheld, or that the data subject has exercised their rights to object to receiving direct marketing; or
- (c) a record of the fact that a data subject has not so exercised their rights;

Mis-Selling Liabilities means any and all Losses relating to or arising out of or in connection with the sale, marketing, promotion or arrangement of (including the provision of any advice or information directly relating to) any Policy by or on behalf of the Transferor, such sale, marketing, promotion or arrangement having occurred on or prior to the Transfer Date or the Subsequent Transfer Date, as the case may be, including Losses arising from:

- (a) any complaint, claim, legal action or proceedings (including arbitration, mediation, any other dispute resolution procedure, any judicial, quasi-judicial, administrative or regulatory review process, any investigations or reviews or requests or similar) brought by or on behalf of any person or group of persons or any person appointed to the panel of persons maintained by the Financial Services Ombudsman Services Limited or any successor thereto or replacement thereof (on behalf of any policyholder, group of policyholders or otherwise in respect of a Policy) whether as a result of any agreed settlement or compromise (including any ex gratia payment) or otherwise, including the costs and expenses incurred in investigating and dealing with any such complaint, claim, legal action or proceeding;
- (b) the Transferor or any person acting on its behalf failing to comply with Applicable Law (including, for the avoidance of doubt, rules, regulations, directions, guidance, statement of principle or industry practice (whether formal or informal)) set by, given by or agreed with any Regulator) relating to the sale, marketing, promotion or arrangement of (including the provision of any advice or information directly relating to), or exercise of options or discretions relating to, annuities and including the costs and expenses in connection with any such non-compliance which are required to be incurred;
- (c) the Transferor's (or any person acting on its behalf) failure to comply with the Code of Conduct on Retirement Choices of the Association of British Insurers or any other code of conduct applicable to the sale, marketing, promotion or arrangement of the Policies; or
- (d) any penalty or fine levied, or which results from or arises in connection with any investigation or disciplinary action undertaken, by any Regulator, including the costs and expenses incurred in dealing with, investigating, challenging and defending against any such penalty, fine, investigation or disciplinary action whether or not the Transferor is found to be at fault;

Notified Historic Administration Error means a Historic Administration Error notified in the manner specified in the Reinsurance Agreement:

- (a) which the Transferor agrees is a Historic Administration Error; or

- (b) which is determined, in accordance with the provisions of the Reinsurance Agreement, to be a Historic Administration Error;

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

Parties means the parties to this Scheme, each being a **Party**;

PBR means the ongoing review of in scope non-advised annuity sales arising from the Annuities Thematic Review that is being carried out by the Transferor under the oversight of the Skilled Person;

Policy and **Policyholder** each have the meaning, as appropriate, set out in section 424(2) of FSMA and regulation 2 of the Financial Services and Markets Act 2000 (Meaning of “Policy” and “Policyholder”) Order 2001 (SI 2001/2361);

PRA means the Prudential Regulation Authority of the United Kingdom, or such other authority as shall from time to time carry out the functions carried out by it in the United Kingdom as at the date of this Scheme;

PRA Rulebook means the rulebook which contains the rules made by the PRA that apply to PRA-authorized firms and which is, at the date of this Agreement, available online at <http://www.prarulebook.co.uk>;

PRIL Scheme means a scheme pursuant to Part VII of FSMA under which Prudential Retirement Income Limited transferred the whole of its business to the Transferor;

Proceedings means any claim, counterclaim, complaint, petition, suit, appeal or other legal process (including any application), whether intended to have interim or final legal effect in relation to its subject matter, before any court, governmental authority, regulatory authority, tribunal, arbitration panel, ombudsman or other body subsisting or empowered by law or regulation or by the provisions of an agreement;

Prudential/RL Transfer DVD means the DVD-ROM entitled “Prudential/RL Transfer DVD” signed by or on behalf of the Transferor and the Transferee for the purposes of identification;

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

Records means copies of all documents, files and other records relating to the Transferred Business necessary to:

- (a) administer the Transferred Policies in accordance with Applicable Law and the policy terms and conditions and to a standard equivalent to that which applied prior to the Transfer Date;
- (b) perform and comply with all the obligations and exercise all the rights of the Transferor, under the Relevant Reinsurance Agreements (including any historic experience data relating to such agreements); and
- (c) administer in accordance with Applicable Law any other Transferred Liabilities not covered by limbs (a) and (b) (including in order to investigate and administer with effect from the C4 Mis-Selling Liabilities Transfer Date, any C4 Mis-Selling Liabilities or, with effect from the Residual Mis-Selling Liabilities Transfer Date, the Residual Mis-Selling Liabilities),

whether in physical or electronic form, which are in the actual possession of, or under the control of (including being held by a Service Provider), the Transferor (excluding any documents, files or other records solely relating to Tax other than Tax records relating to the Policies);

Regulator means each body or person having regulatory or supervisory authority over all or any part of the business of the Transferor or the Transferee, including all processing of Common Data by the Parties, or having statutory authority in respect of insurance business transfers in any relevant jurisdiction, including, without limitation, the PRA, the FCA, EIOPA and the UK Information Commissioner's Office;

Reinsurance Agreement means the reinsurance agreement entered into between the Transferor and the Transferee dated 14 March 2018 (as amended);

Relevant Reinsurance Agreement means each of:

- (a) the "Corsica 2" reinsurance agreement dated 23 December 2015 between the Transferor and Pacific Life Re Limited;
- (b) the "Norway 2" reinsurance agreement dated 28 June 2016 between the Transferor and Pacific Life Re Limited;
- (c) the "Norway 4 SCOR" reinsurance agreement dated 16 November 2016 between the Transferor and SCOR Global Life SE, UK Branch;
- (d) the "Norway 4 Swiss Re" reinsurance agreement dated 16 November 2016 between the Transferor and Swiss Re Europe S.A., UK Branch;
- (e) the "Norway 6" reinsurance agreement dated 16 November 2016 between the Transferor and SCOR Global Life SE, UK Branch;
- (f) the "Serbia 2" reinsurance agreement dated 11 August 2015, as amended and restated on 22 March 2017, between the Transferor and SCOR Global Life SE, UK Branch;
- (g) the master reinsurance terms dated 8 February 2017 between the Transferor and Prudential Retirement Insurance and Annuity Company, together with the "Norway 5" trade confirmation dated 8 February 2017;

in each case together with all agreements (including security ~~or~~ [agreements but excluding account control agreements and](#) custody agreements) entered into under or relating thereto, as amended from time to time;

Relevant Reinsurer means, in respect of a Relevant Reinsurance Agreement, the reinsurer under such Relevant Reinsurance Agreement;

Residual Assets means:

- (a) any property of the Transferor that would be comprised in the Transferred Business (including any right, benefit or power under any Transferred Policy or a Relevant Reinsurance Agreement) but for a refusal by the Court to order the transfer to the Transferee under section 112 of FSMA at the Transfer Date;
- (b) any other property of the Transferor that would be comprised in the Transferred Business (including any right, benefit or power under a Transferred Policy or a Relevant Reinsurance

Agreement) but for any agreement between the Transferor and the Transferee prior to the Transfer Date that its transfer should be delayed or should not be transferred at all;

- (c) any property of the Transferor that would be comprised in the Transferred Business (including any right, benefit or power under any Transferred Policy or a Relevant Reinsurance Agreement) but for the fact that it 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 that would be comprised in the Transferred Business (including any right, benefit or power under any Transferred Policy or a Relevant Reinsurance Agreement) but which cannot be transferred to or vested in the Transferee on the Transfer Date for any other reason; or
- (e) Residual Policy Records;
- (f) any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, or any other property or rights earned or received from time to time after the Transfer Date but prior to any relevant Subsequent Transfer Date in respect of any such property referred to in paragraphs (a) to (d) of this definition;

Residual Liability means any liability of the Transferor:

- (a) that is attributable to or connected with a Residual Asset (including any right, benefit or power under any Transferred Policy or a Relevant Reinsurance Agreement) and arises at any time before the Subsequent Transfer Date applicable to that Residual Asset;
- (b) that would be comprised in the Transferred Business but for the refusal by the Court to order the transfer to the Transferee under section 112 of FSMA on the Transfer Date;
- (c) that would be comprised in the Transferred Business but for the fact that it cannot be transferred to or vested in the Transferee for any other reason on the Transfer Date; or
- (d) that would be comprised in the Transferred Business (including any right, benefit or power under a Transferred Policy or a Relevant Reinsurance Agreement) but for any agreement between the Transferor and the Transferee prior to the Transfer Date that its transfer should be delayed,

but, for the avoidance of doubt, excluding the Excluded Liabilities;

Residual Mis-Selling Liabilities means any and all Mis-Selling Liabilities in respect of Category 1, Category 2 and Category 3, crystallising during the period commencing on the Residual Mis-Selling Liabilities Transfer Date excluding:

- (a) any and all Excluded Mis-Selling Liabilities whenever arising or crystallising;
- (b) any and all Mis-Selling Liability arising out of or in connection with matters or circumstances which have been notified by the Transferee to the Transferor prior to the Residual Mis-Selling Liabilities Transfer Date; and
- (c) any and all Excluded Liabilities;

Residual Mis-Selling Liabilities Transfer Date means the date falling on the first to occur of the 7th anniversary of (i) the Transfer Date and (ii) the Long-Stop Date;

Residual Policy has the meaning given in paragraph 3.6(b)(ii) of this Scheme;

Residual Policy Record means any Record related to an Excluded Policy;

Retained Historic Administration Losses means any and all Losses arising out of or in connection with a Notified Historic Administration Error, but excluding any such Loss crystallising during the period commencing on the Residual Mis-Selling Liabilities Transfer Date save to the extent notified by the Transferee to the Transferor prior to the Residual Mis-Selling Liabilities Transfer Date in respect of which relevant actions or rectification processes are ongoing at the Residual Mis-Selling Liabilities Transfer Date;

Retained Mis-Selling Liabilities means any and all Mis-Selling Liabilities which are:

- (a) not covered by limb (a) or (b) of the definition of Excluded Mis-Selling Liabilities;
- (b) not, with effect from the C4 Mis-Selling Liabilities Transfer Date, C4 Mis-Selling Liabilities; and
- (c) not, with effect from the Residual Mis-Selling Liabilities Transfer Date, Residual Mis-Selling Liabilities;

RRA Breach Liabilities means any and all liabilities of the Transferor under or in respect of the Relevant Reinsurance Agreements or the transaction documents entered into under or directly in connection therewith, whenever arising, which:

- (a) relate to any act or omission during the period prior to the Transfer Date; or
- (b) relate to a breach of such Relevant Reinsurance Agreements by the Transferor,

but excluding:

- (i) any liabilities arising from any Longevity Swap Direct Security Agreement; and
- (ii) any such liabilities crystallising during the period commencing on the Residual Mis-Selling Liabilities Transfer Date unless they arise out of, or in connection with, matters or circumstances which have been notified by the Transferee to the Transferor prior to the Residual Mis-Selling Liabilities Transfer Date;

SAL Scheme means a scheme pursuant to Part VII of FSMA under which Scottish Amicable Life Plc transferred the whole of its business to the Transferor;

Service Provider means any provider of services to the Transferor which:

- (a) provides material services in relation to the Transferred Policies and/or the Relevant Reinsurance Agreements; or
- (b) which, in its capacity of providing services to the Transferor in relation to the Transferred Policies, hold Records,

from time to time,

Scheme means this scheme made pursuant to Part VII of FSMA in its original form or with or subject to any modification, addition or condition which may be approved or imposed in accordance with paragraph 12;

Skilled Person means the skilled person appointed in respect of the Transferor and the PBR by a notice under section 166 of FSMA issued by the FCA on 9 February 2017;

Subsequent Transfer Date means:

- (a) in relation to any Residual Asset or Residual Liability, the date (and each date) after the Transfer Date on which such Residual Asset or Residual Liability is transferred to the Transferee, namely:
 - (i) in respect of any Residual Asset falling within paragraph (a), (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 paragraph (b) or (c) of the definition of Residual Liability, the date on which any impediment to its transfer shall have been removed or overcome;
 - (ii) in respect of any Residual Asset falling within paragraph (b) of the definition of Residual Assets and of any Residual Liability falling within paragraph (d) of the definition of Residual Liability which is attributable to or connected with that Residual Asset, the date on which the relevant Transferor and Transferee agree the transfer should take effect; and
 - (iii) in respect of a Residual Policy Record, the date on which the Excluded Policy to which such Residual Policy Record relates is novated or transferred to the Reinsurer as referenced in paragraph 6.2;
 - (iv) in respect of any Residual Asset falling within paragraph (f) of the definition of Residual Assets, the Business Day after the date on which such Residual Asset is received by the Transferee in accordance with paragraph 8.3; or
- (b) in respect of any Excluded Policy falling within paragraph (c) of the definition thereof, the Guernsey Transfer Date or the Jersey Transfer Date (as the case may be); ⁺

Supplemental Agreement is the agreement between the Transferor and the Transferee dated 14 March 2018 entitled ‘Supplemental Agreement’;

Tax or Taxation means any kind of tax, duty or levy or any similar charge, whether or not similar to any in force at the Transfer Date, and whether of the United Kingdom or elsewhere, and any related fine, penalty, interest or other charge in respect thereof;

Transfer Date means the date on which the Scheme takes effect in accordance with paragraph 11;

Transferee has the meaning given in paragraph 2.2;

Transferor has the meaning given in paragraph 2.1;

Transferred Assets means:

⁺ ~~Note: transfer of existing security and custody documents to be confirmed in due course, given separate workstream to put in place Longevity Swap Direct Security Documents and replacement security documents with existing reinsurers.~~

- (a) the rights, benefits and property of the Transferor under or by virtue of or otherwise arising in connection with the Transferred Policies;
- (b) the Records, including all rights, title and interest of the Transferor in the Records;
- (c) the rights, benefits and property of the Transferor under or by virtue of or otherwise arising in connection with the Relevant Reinsurance Agreements, save for any right, benefit and property of the Transferor in relation to which the Transferor has granted a security interest in favour of the counterparty of the Transferor pursuant to the Relevant Reinsurance Agreements (or related documentation);
- (d) an amount in cash equal to the opening balance of the Funding Account as at the Transfer Date or such other amount as the Parties agree;
- (e) the rights of the Transferor under Business Services Agreements to the extent they relate to Transferred Historic Administration Losses;
- (f) any other assets which the Parties agree, whether before or after the Transfer Date, are to be transferred under this Scheme; and
- (g) the rights of the Transferor to any defences, claims, counterclaims, defences to counterclaims, settlements and rights of set-off and any other rights that would have been available to the Transferor in respect of the Transferred Liabilities, Transferred Assets as set out in (a) to (f) above and Transferred Policies,

but excluding the Excluded Assets and, prior to the applicable Subsequent Transfer Date, the Residual Assets and any rights, benefits and property under or relating to the Excluded Policies;

Transferred Business means:

- (a) the Transferred Policies;
- (b) the Transferred Assets;
- (c) the Transferred Liabilities; and
- (d) following each Subsequent Transfer Date, the relevant Residual Asset or Residual Liability;

Transferred Historic Administration Losses means any Loss arising from or in connection with Historic Administration Errors which are not Notified Historic Administration Errors;

Transferred Liabilities means:

- (a) any and all liabilities of the Transferor under or in respect of the Transferred Policies (including any and all TRASP Incremental Liabilities which are reinsured as at the Transfer Date following the procedures set out in Clause 4 of the Supplemental Agreement), provided that:
 - (i) the C4 Mis-Selling Liabilities will only transfer with effect from the C4 Mis-Selling Liabilities Transfer Date; and
 - (ii) the Residual Mis-Selling Liabilities will only transfer with effect from the Residual Mis-Selling Liabilities Transfer Date;

- (b) any and all liabilities of the Transferor under the contractual terms of the Relevant Reinsurance Agreements; and
- (c) the Transferred Historic Administration Losses,

but excluding the Excluded Liabilities;

Transferred Personal Data has the meaning given in paragraph 3.5(b);

Transferred Policies means the annuity policies included in a file in the form of a database having the filename “[PAC_RL_Transferred_Policies_20190626](#)”, as provided by the Transferor to the Transferee on or before the Transfer Date and included on the Prudential/RL Transfer DVD in respect of which any current, contingent or future liability remains unsatisfied or outstanding on the Transfer Date including any benefits attributable to any such annuity policy but recorded under a different or replacement policy number, but excluding any Excluded Policies, other than an Excluded Policy falling within paragraph (a) of the definition of Excluded Policies in respect of which the Subsequent Transfer Date has occurred;

TRASP Determination Date means, in respect of a Transferred Policy, the date as at which the Lump Sum TRASP Liability and TRASP Incremental Liability are calculated in respect of such Transferred Policy following the acceptance of an offer by the relevant Policyholder;

TRASP Incremental Liability means in respect of a Transferred Policy a specified uplift amount in the offer accepted by the Policyholder which is required to be added to each future benefit amount payable to a Policyholder under such Transferred Policy calculated in respect of the period commencing on the TRASP Determination Date and ending on the date on which the obligation to pay benefits under such Transferred Policy ends, which is determined by the PBR but excluding any other TRASP Liability applicable in respect of such Transferred Policy (including any liability in respect of the uplift amount having been calculated incorrectly or otherwise being insufficient to provide appropriate redress to the Policyholder);

TRASP Liabilities means any and all:

- (a) Lump Sum TRASP Liabilities;
- (b) TRASP Incremental Liabilities;
- (c) sums the Transferor is ordered to pay to a Policyholder by the Financial Ombudsman in relation to a Lump Sum TRASP Liability or a TRASP Incremental Liability; and
- (d) other Losses which results from the Annuities Thematic Review in respect of the Transferred Policies and which is not expressly covered by paragraphs (a) to (c) above; and

(and **TRASP Liability** shall be construed accordingly); and

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

1.2 In this Scheme:

- (e) any reference to a **person** includes a body corporate, firm, unincorporated association of persons (including a partnership, joint venture or consortium), government, state, agency, local or municipal authority, government body, organisation and any other entity whether or not having separate legal personality, and an individual, his estate and personal representatives;

- (f) any reference to a **party** to this Scheme includes the successors and assigns (immediate or otherwise) of that party;
- (g) the words **including** and **include** shall mean including without limitation and include without limitation, respectively;
- (h) any reference to **liabilities** includes duties and obligations of every description (whether present or future, actual or contingent);
- (i) any reference to **property** or **assets** includes property (including real property and charges registered at the Land Registry within England and Wales and at the Registers of Scotland in Scotland and elsewhere and unregistered real property and charges), assets, cash, Encumbrances, causes of action, 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 held on trust and securities, benefits, income or interest accrued but unpaid, powers of any description and any interest whatsoever in any of the foregoing;
- (j) any reference to **transfer** includes (as the context may require) “assign”, “assignment” or “assignment”, “dispose” or “disposal”, or “convey” or “conveyance”;
- (k) any reference to **variation** includes any amendment, modification, variation, supplement, deletion, replacement or termination, however effected;
- (l) 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;
- (m) any reference in this Scheme to a statute, a statutory provision or any subordinate legislation shall be deemed to include a reference to that statute, statutory provision or subordinate legislation as amended, replaced or re-enacted on or before the Transfer Date and any reference to a statute or statutory provision shall be deemed to include a reference to any subordinate legislation made thereunder (as amended, replaced or re-enacted on or before the Transfer Date);
- (n) expressions used in this Scheme which have meanings under FSMA shall bear those meanings (unless the context otherwise requires);
- (o) any references to paragraphs or Parts are to paragraphs or Parts of this Scheme (unless the context otherwise requires);
- (p) headings are inserted for convenience only and shall not affect the construction of this Scheme;
- (q) 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;
- (r) any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- (s) any reference to an amount shall be exclusive of any applicable value added or other Tax (unless the context otherwise requires); and
- (t) the words "to the extent that" are used to indicate an element of degree and are not synonymous with the word "if".

PART B - INTRODUCTION

2. BACKGROUND

- 2.1 The Prudential Assurance Company Limited (the **Transferor**), a company incorporated in England and Wales is authorised under FSMA to effect and carry out contracts of Long-Term Insurance Business in the United Kingdom in classes I, II, III, IV, VI and VII set out in Part II of Schedule 1 to the RAO.
- 2.2 Rothesay Life Plc (the **Transferee**), a company incorporated in England and Wales, is authorised under FSMA to effect and carry out contracts of Long-Term Insurance Business in the United Kingdom in classes I, III, IV and VII set out in Part II of Schedule 1 to the RAO.
- 2.3 The purpose of this Scheme is to effect the transfer to the Transferee, subject to the terms of this Scheme, of certain Long-Term Insurance Business carried on by the Transferor. The assets held in respect of that Long-Term Insurance Business have already been transferred pursuant to the terms of the Reinsurance Agreement between the Transferor and Transferee.

PART C - TRANSFER OF THE BUSINESS

3. TRANSFER OF THE BUSINESS, ASSETS AND LIABILITIES

3.1 Each part of the Transferred Business (including, for the avoidance of doubt, the Transferred Business constituted by the Jersey Policies and the Guernsey Policies), the Residual Assets and the Residual Liabilities shall be transferred to and vested in the Transferee in accordance with this Scheme, so that:

- (a) on and with effect from the Transfer Date, each Transferred Asset and all the interest and property of the Transferor in it shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee, subject to all Encumbrances (if any) affecting such asset in accordance with this Scheme;
- (b) on and with effect from each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and all the interest and property of the Transferor in it shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee, subject to all Encumbrances (if any) affecting such asset in accordance with this Scheme;
- (c) on and with effect from the Transfer Date, each Transferred Liability shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee in accordance with this Scheme 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 in accordance with this Scheme and shall cease to be a liability of the Transferor.

3.2 Further:

- (a) the transfer of the Guernsey Policies to the Transferee shall only take place to the extent that the transfer of such Policies to the Transferee by a scheme of transfer pursuant to the Insurance Business (Bailiwick of Guernsey) Law 2002 has been approved by the Royal Court of Guernsey and has become effective; and
- (b) the transfer of the Jersey Policies to the Transferee shall only take place to the extent that the transfer of such Policies to the Transferee by a scheme of transfer pursuant to the Insurance Business (Jersey) Law 1996 has been approved by the Royal Court of Jersey and has become effective.

3.3 Nothing in this Scheme shall be construed as having the effect of transferring the Excluded Assets or the Excluded Liabilities and no Excluded Assets or Excluded Liabilities will be transferred to or vested in the Transferee under or by virtue of the terms of this Scheme.

3.4 The Transferee shall accept without investigation or requisition such title as the Transferor shall have to the Transferred Assets at the Transfer Date and, at any Subsequent Transfer Date, to each Residual Asset then transferred.

3.5 **Data Protection**

(a) In this paragraph 3.5, terms shall be construed in accordance with the definitions in the Data Protection Laws.

(b) On and with effect from the Transfer Date, and as between the Transferor and the Transferee, in respect of all personal data comprised in the Transferred Business in respect of which the Transferor was the data controller immediately before the Transfer Date (“the **Transferred Personal Data**”):

(i) the Transferee shall become the data controller in place of the Transferor, except in circumstances in which the Transferor continues to use the Transferred Personal Data after the Transfer Date for the purposes of ~~-(A)~~ payment of any TRASP Liability ~~-and-~~ ~~(B)~~ any other purpose in connection with PBR, ~~and (C) the provision of services to the Transferee under a transitional services agreement~~ in which case the Transferee and the Transferor shall both be ~~separate~~ independent (and not joint) data controllers;

(ii) any information made available to, or consent obtained or request or other notice received from, any data subject by or on behalf of the Transferor in respect of the Transferred Personal Data will be deemed to have been made available to, obtained or received by the Transferee; and

(iii) any reference to the Transferor in any such information, consent, request or other notice will be deemed to include a reference to the Transferee and any reference to the Transferor’s Group will be deemed to include a reference to the Transferee’s Group.

(c) Subject to paragraph 3.5(d), with effect from the Transfer Date, the Transferee shall have the benefit of any Marketing Preferences relating to the Transferred Personal Data as provided by the relevant data subjects to the Transferor.

(d) Where, prior to the Transfer Date, a data subject of Transferred Personal Data has provided Marketing Preferences to the Transferor or the Transferee, the most recent Marketing Preference provided by such data subject to any of the Transferor or the Transferee shall be deemed to apply on and with effect from the Transfer Date.

(e) As between the Transferor and the Transferee, where a data subject of Transferred Personal Data has made a Data Subject Request to the Transferor before the Transfer Date and the Transferor has not responded with a copy of the Transferred Personal Data held by it in accordance with the Data Protection Laws before the Transfer Date, the Transferee may respond to the request in accordance with the Data Protection Laws, including by providing copies of the Transferred Personal Data held by the Transferor immediately before the Transfer Date.

3.6 Other effects of the transfer

- (a) Neither the transfer of the Transferred Business nor this Scheme nor anything done or omitted to be done in connection with the transfer of the Transferred Business or this Scheme shall, in relation to the Transferred Business or any Transferred Policies, Transferred Assets, Transferred Liabilities, Residual Assets, Residual Liabilities or any other asset, property, liability or business of any member of the Transferee's Group whether before or after the Transfer Date (or where applicable, the Subsequent Transfer Date applicable to Residual Assets or Residual Liabilities):
- (i) invalidate, discharge or result in the termination of any Policy, agreement, instrument, trust deed, indenture, Encumbrance, right, interest, benefit, power, obligation or title;
 - (ii) constitute a breach of or default, event of default, potential event of default, termination event, mandatory prepayment event, enforcement event, perfection event or other similar event or condition (however described) under, or allow any person to terminate, any Policy, agreement, instrument, trust deed, indenture, Encumbrance, right, interest, benefit, power, obligation or title;
 - (iii) require any registration, re-registration or filing or any amendment to any existing registration or filing in respect of any Policy, agreement, instrument, trust deed, indenture, Encumbrance, right, interest, benefit, power, obligation or title;
 - (iv) require any person to perform any new or additional obligation or take any new or additional step or action, including the giving of any notice, the obtaining of any consent, approval or determination, the accession to any agreement, the payment of any fee, cost, expense, interest or other amount, the granting of any new or additional Encumbrance or the transfer of any asset or property;
 - (v) entitle or require any person to exercise any right or remedy, to reduce, suspend, delay, alter or discharge its rights or obligations, to accelerate, terminate, suspend, delay, alter or discharge the performance of any rights or obligations or otherwise to vary, amend, disclaim, repudiate or terminate any Policy, agreement, instrument or Encumbrance;
 - (vi) affect the enforceability, priority or ranking of any Encumbrance; or
 - (vii) invalidate, discharge or affect:
 - (A) any rights or obligations of the Transferor; or
 - (B) any rights or obligations of any person,

under or relating to a Relevant Reinsurance Agreement that relate to an Excluded Liability falling within limb (1) of the definition thereof.
- (b) To the extent that the risk under:
- (i) any Excluded Policy; or
 - (ii) any Transferred Policy in respect of which liabilities under such Transferred Policy are Excluded Liabilities (each a **Residual Policy**),

has been ceded by the Transferor to a Relevant Reinsurer under a Relevant Reinsurance Agreement (which is a Transferred Asset), any payment in respect of such risk made to the Policyholder by the Transferor:

- (A) under the relevant Excluded Policy falling within limbs (a) to (d) of the definition thereof (or, if applicable, to the Transferee pursuant to the indemnity under paragraph 9.2); or
- (B) under the relevant Residual Policy, until the Subsequent Transfer Date applicable to it,

shall be deemed to be a payment by the Transferee for the purpose of such Relevant Reinsurance Agreement, and shall give rise to a claim by the Transferee thereunder as if it were the insurer under the relevant Excluded Policy or Residual Policy.

4. CONTINUITY OF PROCEEDINGS

- 4.1 On and with effect from the Transfer Date, any Proceedings issued, served, pending, threatened or otherwise (including future Proceedings not yet in contemplation) in connection with the Transferred Policies, Transferred Assets or the Transferred Liabilities in respect of which the Transferor is a party (including as the plaintiff, claimant, applicant, defendant, respondent, pursuer, defender or petitioner), and including any such Proceedings commenced in error against the Transferor on or after the Transfer Date, shall be continued or commenced by or against the Transferee and the Transferee shall be entitled to all defences, claims, counterclaims, defences to counterclaims, settlements, rights of set-off and any other rights that would have been available to the Transferor in relation to the Transferred Policies, Transferred Assets, the Transferred Liabilities and such Proceedings.
- 4.2 On and with effect from the Subsequent Transfer Date applicable thereto, any Proceedings issued, served, pending, threatened or otherwise in connection with the Residual Assets or the Residual Liabilities which are to be transferred on such Subsequent Transfer Date in respect of which the Transferor is a party (including as the plaintiff, claimant, applicant, defendant, respondent, pursuer, defender or petitioner), and including any such Proceedings commenced in error against the Transferor on or after the relevant Subsequent Transfer Date, shall be continued or commenced by or against the Transferee and the Transferee shall be entitled to all defences, claims, counterclaims, defences to counterclaims, settlements, rights of set-off and any other rights that would have been available to the Transferor in relation to the Residual Assets, the Residual Liabilities and such Proceedings. Until such Subsequent Transfer Date, the relevant Proceedings shall be continued by or against the Transferor, provided that such Proceedings shall be conducted by the Transferor in accordance with the instructions of the Transferee in relation to such Proceedings and the Transferee agrees to reimburse the Transferor against any professional costs reasonably incurred in conducting the Proceedings in accordance with its instructions.
- 4.3 For the avoidance of doubt, any Proceedings to the extent issued or served which are not to be continued by or against the Transferee pursuant to paragraph 4.1 or 4.2 shall be continued by or against the Transferor and the Transferor shall remain entitled to all defences, claims, counterclaims, settlements, rights of set-off and any other rights that were or would have been available to it in relation to those Proceedings.
- 4.4 On and with effect from the Transfer Date, any judgment, settlement, order or award which is obtained by or against the Transferor in respect of the Transferred Policies, Transferred Assets or the Transferred Liabilities and not fully satisfied before the Transfer Date shall, to the extent to which it was enforceable by or against the Transferor immediately prior thereto, become enforceable by or against the Transferee.
- 4.5 On and with effect from the Subsequent Transfer Date, any judgment, settlement, order or award which is obtained by or against the Transferor in respect of the Residual Assets or the Residual Liabilities and not fully satisfied before the Subsequent Transfer Date shall, to the extent to which it was enforceable by or against the Transferor immediately prior thereto, become enforceable by or against the Transferee.

5. RIGHTS AND OBLIGATIONS IN RELATION TO THE TRANSFERRED BUSINESS

- 5.1 On and with effect from the Transfer Date, the Transferee shall become entitled, subject to the terms of this Scheme, to all the rights, benefits and property of the Transferor whatsoever subsisting on the Transfer Date under the Transferred Business including the Transferred Assets and the Transferred Policies.

- 5.2 Every person who is a holder of any of the Transferred Policies or is a party to, or has the benefit of, any other agreement with the Transferor which forms part of the Transferred Business shall, on and with effect from the Transfer Date, become entitled, in succession to, and to the exclusion of, any rights which he may have had against the Transferor under any of the Transferred Policies or any other such agreement relating to the Transferred Business, to the same rights against the Transferee (subject to the terms of this Scheme) as were available to him against the Transferor under such Policies or such other agreement which forms part of the Transferred Business.
- 5.3 Subject to Clause 5.5 all references in any Transferred Policy, any Relevant Reinsurance Agreement or any other agreement or document evidencing title to or the benefit or burden of the Transferred Business (including in a contract to which the Transferor is party, a contract to which the Transferor is not party or elsewhere and whether in writing or not) in relation to the Transferred Business to the Transferor, its Board, its Actuary or any other officers, employees or agents of the Transferor shall from and after the Transfer Date be read as references to the Transferee, the Transferee's Board, the Transferee's Actuary or any other officers, employees or agents of the Transferee respectively, as appropriate. In particular, but without limitation, all rights and duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor, its Board, its Actuary or any other officers, employees or agents of the Transferor in relation to any Transferred Policy, any Relevant Reinsurance Agreement or other agreement or document evidencing title to or any benefit or burden of the Transferred Business relating, in each case, to the Transferred Business (including in a contract to which the Transferor is party, a contract to which the Transferor is not party or elsewhere and whether in writing or not) shall, from and after the Transfer Date, be exercisable or required to be performed by the Transferee, the Transferee's Board, the Transferee's Actuary or any other officers, employees or agents of the Transferee respectively, as appropriate.
- 5.4 The transfer of any rights, benefits, liabilities and obligations under or in connection with any Transferred Policy, Transferred Asset, Residual Asset, Transferred 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 on transferring, assigning or otherwise dealing with the same and such transfer shall be deemed to take effect on the basis that it does not contravene any such restriction and does not give rise to any right to terminate, modify, acquire or claim an interest or right, or to treat an interest or right as terminated or modified.
- 5.5 Where an Excluded Liability exists and it is necessary in order to enable the Transferor to fulfil its obligations in respect of such Excluded Liability or to allow a third party to exercise or enforce its rights in respect of such Excluded Liability in respect of any contractual provisions in a contract between the Transferor and such third party, such contractual provision shall continue in force as between such parties and for such purpose, references in the relevant contract to:
- 5.6.1 the Transferor;
 - 5.6.2 its offices;
 - 5.6.3 its Board;
 - 5.6.4 its auditors; or
 - 5.6.5 any other officers, employees, or agents of the Transferor,
- shall continue to be construed accordingly for such limited purposes only.

6. EXCLUDED POLICIES

- 6.1 Subject to paragraph 6.2 below, Excluded Policies falling within limbs (a), (b) and (d) of the definition of Excluded Policies shall not be transferred to the Transferee by this Scheme and all liabilities attributable to such Excluded Policies and Excluded Policies falling within limb (c) of the definition of Excluded Policies for so long as they have not been transferred in accordance with the Guernsey Scheme or the Jersey Scheme (as applicable) shall remain liabilities of the Transferor and be fully reinsured by the Transferee without limit in time or amount with effect from the Transfer Date on the terms set out in the Reinsurance Agreement.
- 6.2 The Parties may agree in writing to amend the terms of the Reinsurance Agreement in which event the provisions of this paragraph 6 shall be deemed to be amended accordingly.
- 6.3 If all consents, orders, permissions or other requirements for the transfer or novation of an Excluded Policy from the Transferor to the Transferee are obtained, and such Excluded Policy is transferred or novated to the Transferee, the rights, benefits, property and liabilities relating to such Excluded Policy shall, to the extent not previously transferred, be transferred to the Transferee and such Excluded Policy shall thereafter be treated in all respects, as if it were a Transferred Policy on the terms of this Scheme and not an Excluded Policy.

7. MANDATES AND OTHER PAYMENTS

- 7.1 All premiums payable on and after the Transfer Date (or, if relevant, Subsequent Transfer Date) in respect of the Transferred Policies, if any, shall be payable to the Transferee.
- 7.2 Any direct debit mandate, standing order or other instruction or authority in force at the Transfer Date (or if relevant, Subsequent Transfer Date) (including, without limitation, any instructions given to a bank by its customer in the form of direct debit or standing order) that provides for the payment by a bank or other intermediary of premiums or other amounts payable to the Transferor under any Transferred Policy or Transferred Asset 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 Transfer Date (or if relevant, Subsequent Transfer Date) as to the manner of payment of any sum payable by the Transferor under any of the Transferred Policies shall, on and from the Transfer Date, continue in force as an effective authority to the Transferee.

8. DECLARATION OF TRUST BY THE TRANSFEROR

- 8.1 The Transferor shall, in relation to any and all Residual Assets which are the property of the Transferor, from the Transfer Date (but save to the extent that giving effect to such a trust would require a consent or waiver which has not been obtained or that such a trust would not be recognised by any Applicable Law or that the Transferor and the Transferee agree not to give effect to such a trust for any reason), hold any such Residual Asset, together with any proceeds of sale or income or other right accrued or return arising in respect thereof, as trustee for the Transferee.
- 8.2 The Transferor shall be subject to the Transferee's directions in respect of any property referred to in paragraph 8.1 above from the Transfer 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 Transfer Date in respect of the Transferred Business, any Transferred

Asset, any Residual Asset or any asset referred to in paragraph 8.1 above, the Transferor shall, as soon as is reasonably practicable after its receipt, pay over the full amount of such payment or (to the extent to which it is able to do so) transfer such property or right to, or in accordance with the directions of, the Transferee and the Transferee shall indemnify the Transferor on demand against any costs reasonably incurred in making any such payment or transfer upon receipt of reasonable supporting evidence thereof.

9. INDEMNITIES IN FAVOUR OF THE TRANSFEROR AND THE TRANSFEE

9.1 On and from the Transfer Date, the Transferee shall in respect of the Transferred Liabilities and all Residual Liabilities, indemnify the Transferor against any and all Losses incurred by the Transferor which arise in respect of:

- (a) the Residual Liabilities until the relevant liability is transferred to or becomes a liability of the Transferee (save to the extent that such Residual Liability has arisen as a result of a failure by the Transferor to comply with any directions given by the Transferee under paragraph 8.2 above); and
- (b) the Transferred Liabilities, provided that the Transferor shall consult with the Transferee prior to taking any action in respect of any Transferred Liabilities and shall not agree or settle or indicate an intention to agree or settle any Transferred Liabilities without the written consent of the Transferee.

If the Transferor becomes aware of a matter which constitutes or which would be reasonably likely to give rise to a claim under this indemnity (a **Claim**), the Transferor shall:

- (c) as soon as practicable, give notice to the Transferee of the matter;
- (d) provide to the Transferee such information and documents as are within the reasonable power or control of the Transferor and as the Transferee may reasonably request for the purposes of investigating the matter subject to the preservation of any form of privilege or Applicable Law;
- (e) act reasonably and consult with the Transferee prior to taking any action in respect of the Claim, taking account of any reasonable representations it receives from the Transferee, in deciding whether and how to take any action to avoid, dispute, resist, appeal, compromise, defend, remedy or mitigate the Claim; and
- (f) not agree or settle or indicate an intention to agree or settle any potential Claim without the written consent of the Transferee.

9.2 On and from the Transfer Date, the Transferor shall in respect of all Excluded Assets and Excluded Liabilities, indemnify the Transferee against any and all Losses arising in respect of all Excluded Assets and Excluded Liabilities. If the Transferee becomes aware of a matter which constitutes or which or might give rise to a claim under this indemnity (a **Claim**), the Transferee shall:

- (a) as soon as practicable, give notice to the Transferor of the matter;
- (b) provide to the Transferor such information and documents as are within the reasonable power or control of the Transferee and as the Transferor may reasonably request for the purposes of investigating the matter subject to the preservation of any form of privilege or Applicable Law;

- (c) act reasonably and consult with the Transferor prior to taking any action in respect of the Claim, taking account of any reasonable representations it receives from the Transferor, in deciding whether and how to take any action to avoid, dispute, resist, appeal, compromise, defend, remedy or mitigate the Claim; and
- (d) not agree or settle or indicate an intention to agree or settle any potential Claim without the written consent of the Transferor.

9.3 For the avoidance of doubt, the terms of the Reinsurance Agreement shall apply in respect of liabilities under the Excluded Policies.

10. WITHHOLDINGS AND DEDUCTIONS

10.1 Any payment made by or due from the Transferee to the Transferor or vice versa pursuant to paragraph 8.3 or 9 shall be made free and clear of all deductions and withholdings whatsoever save only for any deductions or withholdings required by law. Save in relation to interest and save to the extent that such deduction or withholding has already been taken into account in determining the amount of the relevant payment, if any deductions or withholdings are required by law from a payment pursuant to paragraph 8.3 or 9, the payer shall be liable to pay to the recipient such further sums as shall be required to ensure that the net amount received by the recipient will equal the full amount which would have been received under the relevant provisions of paragraph 8.3 or 9 in the absence of any such deductions or withholdings, the payer shall provide the recipient with a certificate of tax in respect of any such deduction or withholding and, if the recipient obtains and utilises a tax credit, or obtains a tax repayment, which the recipient determines (acting in good faith) as being attributable to any increased payment made pursuant to this paragraph 10.1, the recipient shall pay an amount to the payer which the recipient (acting in good faith) determines will leave it with such amount that the recipient would have received under the relevant provisions of paragraph 8.3 or 9 in the absence of any deductions or withholdings.

PART D – MISCELLANEOUS

11. TRANSFER DATE

- 11.1 This Scheme shall become effective at 00.01 hrs (BST) on ~~{26 June 2019}~~ or such other time and date as may be agreed by the Parties and specified in the Order sanctioning the Scheme.
- 11.2 If the Transferor and the Transferee agree that the transfer to the Transferee of the Transferred Business should become effective on or after 00.01 BST on ~~{27 September 2019}~~, the Transferor and Transferee must apply to the Court for a further order, specifying any time and date on or after 00.01 BST on ~~{27 September 2019}~~ which, subject to the consent of the Court, shall then become the Transfer Date for the purposes of this Scheme and this Scheme shall then become operative on and from the time and date so specified, provided that:
- (a) the PRA and FCA shall be notified in advance and as soon as reasonably practicable, and shall have the right to be heard at, any hearing of the Court at which such application is considered;
 - (b) such application shall be accompanied by a certificate from the Independent Expert to the effect that the proposed amendment will not materially adversely affect the holders of the Transferred Policies or existing policyholders of the Transferor or the Transferee, including as to their benefit expectations;
 - (c) the Independent Expert shall be provided with the most up-to-date financial information (audited and/or unaudited, as may be appropriate) available to the Transferor and the Transferee in respect of that party; and
 - (d) a notice of the making of such order is published on the website of the Transferor within 5 days of the making of such further order.

~~11.3 This Scheme shall not become effective at the Transfer Date unless all Tax clearances have been obtained in form and content satisfactory to both Parties (acting reasonably), unless the Parties agree otherwise in writing, on or prior to the Transfer Date.~~

12. MODIFICATION OR ADDITIONS

- 12.1 The Transferor and the Transferee may consent for and on behalf of all other persons concerned (other than the PRA and FCA) 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.
- 12.2 Subject to paragraph 12.5, at any time after the sanction of this Scheme, the Transferee and the Transferor shall be at liberty to apply jointly to the Court for consent to amend its terms, provided that in any such case:
- (a) the PRA and the FCA shall be notified at least 30 Business Days in advance of any hearing of the Court at which such application is considered, such period to commence on the earlier of i) the date (or the latest date) on which each of the PRA and the FCA gives notice of receipt of the notification of the amendment to the Transferee or the Transferor (as the case may be); and ii) the date which falls three Business Days following delivery of the notification of the amendment to the PRA and the FCA by the Transferee or the Transferor, and the PRA and the FCA shall have the right to be heard at such hearing; and

- (b) such application shall be accompanied by a certificate from an independent expert, approved for the purpose by the PRA (having consulted with the FCA), to the effect that in his opinion (having considered the proposed amendments in the round), the proposed amendments to the Scheme will not have a material adverse effect on the Policyholders of the Transferee, including by reference to:
- (i) the effect of the proposed amendments to the Scheme on the security of those Policyholders' contractual rights, including the likelihood and potential effects of the insolvency of the Transferee;
 - (ii) the likely effects of the proposed amendments to the Scheme on matters such as investment management, new business strategy, administration, governance, expense levels and valuation bases in so far as they may affect (x) the security of those Policyholders' contractual rights; (y) level of service provided to those Policyholders; or (z) the reasonable benefit expectations of those Policyholders; and
 - (iii) the cost and tax effects of the proposed amendments to the Scheme, including in so far as they may affect the security of those Policyholders' contractual rights or their reasonable benefit expectations,

and, taking account of any relevant regulatory guidance applicable to modifications of insurance business transfer schemes under Part VII of the Act (or its successors).

- 12.3 If such consent is granted pursuant to paragraph 12.2 above, the Transferee and the Transferor may amend the terms of this Scheme in accordance with such consent.
- 12.4 The consent of the Court or the PRA and the FCA shall not be required in relation to the amendment or termination of the Reinsurance Agreement.
- 12.5 Notwithstanding paragraph 12.2, any amendment to this Scheme will not require Court approval where such amendment is:
- (a) a minor and/or technical amendment to terms (including amendments to correct manifest errors) that may be agreed by the Transferee and the Transferor;
 - (b) required to reflect any change in Applicable Law which has or will have any implications for the Transferor or Transferee in relation to the terms or operation of this Scheme;
 - (c) necessary to reflect any changes in the generally accepted actuarial practices relating to the Transferred Policies; or
 - (d) required to protect the rights and reasonable expectations of the Policyholders of the Transferred Policies,

provided that:

- (i) the PRA and FCA have been notified of the same at least 28 days in advance of the amendment being made, such period commencing on the earlier of (A) the date (or the latest date) on which each of the PRA and the FCA gives notice of receipt of the notification of the amendment to the Transferee or Transferor (as the case may be); and (B) the date which falls three Business Days following delivery of the notification of the amendment to the PRA and the FCA by the Transferee or the Transferor (the **Notification Period**); and

(ii) each of the PRA and FCA have indicated, by the end of the Notification Period, that it does not object thereto.

12.6 Subject to paragraph 12.7 below, each of the SAL Scheme, the PRIL Scheme and the M&G Scheme (the ~~“Terminating Schemes”~~) shall cease to have effect in relation to the Transferred Policies at the Transfer Date save as expressly set out in this Scheme.

12.7 Paragraph 12.6 shall be without prejudice to:

- (a) any rights or liabilities arising under the Terminating Schemes and which remain to be fulfilled or which are capable of being exercised immediately prior to the Transfer Date; and
- (b) any action taken pursuant to, or provisions implemented under a Terminating Scheme prior to the Transfer Date.

13. THIRD PARTY RIGHTS

No 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.

14. GOVERNING LAW

14.1 This Scheme and any non-contractual obligations arising out of or in connection with this Scheme shall be governed by, and interpreted in accordance with, English law.

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND
PROPERTY COURTS OF
ENGLAND AND WALES
COMPANIES COURT
(ChD) CR-2018-003686**

**IN THE MATTER OF THE PRUDENTIAL
ASSURANCE COMPANY LIMITED**

-AND-

IN THE MATTER OF ROTHESAY LIFE PLC

-AND-

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

SCHEME

(pursuant to Part VII of the Financial Services
and Markets Act 2000)

ALLEN & OVERY
One Bishops Square
London E1 6AD

Ref: 0042338-0000579
Tel: 020 3088 0000
Fax: 020 3088 0088

**Solicitors for The Prudential Assurance Company
Limited**

Comparison Details	
Title	pdfDocs compareDocs Comparison Results
Date & Time	19/05/2019 19:04:11
Comparison Time	5.68 seconds
compareDocs version	v4.2.306.1

Sources	
Original Document	[#32358878] [v28] A1: The Scheme
Modified Document	[#32358878] [v32] A1: The Scheme

Comparison Statistics	
Insertions	4
Deletions	12
Changes	20
Moves	0
TOTAL CHANGES	36

Word Rendering Set Markup Options	
Name	Standard
<u>Insertions</u>	
Deletions	
<u>Moves / Moves</u>	
Inserted cells	
Deleted cells	
Merged cells	
Formatting	Color only.
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	True
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	True
Show Track Changes Toolbar	Word	False
Show Reviewing Pane	Word	False
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	True