

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

CR-2019-006061

IN THE MATTER OF ROTHESAY LIFE PLC

-and-

**IN THE MATTER OF MONUMENT LIFE INSURANCE DAC
(formerly Laguna Life DAC)**

-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 Rothesay Life Plc to
Monument Life Insurance DAC (formerly Laguna Life DAC)

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PART A – DEFINITIONS

1. INTERPRETATION

1.1 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 from time to time either by the PRA to perform SMF20 or by the CBI to perform PCF 48 (as relevant);

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** will have the meanings ascribed to them in the Companies Act 2006);

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, decrees, orders, directions, notices, demands or other requirements of a competent court, tribunal or applicable regulator;

BMA means the Bermuda Monetary Authority, or such other authority as will from time to time carry out the functions carried out by it in Bermuda as at the date of this Scheme;

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 (a) London, United Kingdom and (b) Dublin, the Republic of Ireland, for normal business;

CBI means the Central Bank of Ireland or such other authority as will from time to time carry out the functions carried out by it in the Republic of Ireland as at the date of this Scheme;

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

Court means the High Court of England and Wales;

Custody Agreement means the custody agreement entered into between the Transferor, Monument Re and The Bank of New York Mellon, London Branch dated 26 March 2019;

Data Protection Laws means, in each case, to the extent applicable:

- (a) the EU GDPR, the UK GDPR, the UK Data Protection Act 2018, the Irish Data Protection Acts 1988 to 2018 and other EU Data Protection Laws;
- (b) in the UK, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and Part 1 of the Regulation of Investigatory Powers Act 2000;
- (c) in Ireland, SI 336/2011 the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011; and
- (d) any other Applicable Law, 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;

DISP means the 'Dispute Resolution: Complaints' section of the FCA Handbook setting out rules in relation to policyholder complaints and compensation;

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 will 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;

EU Data Protection Laws means any law, enactment, regulation or order transposing, implementing, adopting, supplementing or derogating from, the EU GDPR and the EU Directive 2002/58/EC in each Member State and the United Kingdom;

EU GDPR means General Data Protection Regulation 2016/679;

Excluded Assets means any and all assets of the Transferor other than the Transferred Assets and the Residual Assets, including, without limitation:

- (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) any Tax reliefs or other assets in respect of Tax of the Transferor; and
- (c) any property of the Transferor that would be comprised in the Transferred Assets but where the Transferee and the Transferor agree in writing prior to the Transfer Date that it should not be transferred pursuant to this Scheme;

Excluded Liabilities means the following:

- (a) any liabilities of the Transferor under or arising from or in connection with this Scheme;

- (b) save as expressly agreed in writing between the Transferee and the Transferor prior to the Transfer Date, any liabilities of the Transferor in respect of Tax;
- (c) any liabilities 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, will not be transferred to the Transferee; and
- (d) the Mis-selling and Historic Breach 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;
- (c) which the Court for any reason determines will not be transferred by virtue of this Scheme or the Order; or
- (d) which, prior to the Court making the Order, the Transferee and the Transferor agree should be excluded from this Scheme;

Excluded Policies Reinsurance Agreement means the reinsurance agreement entered into between the Transferor and the Transferee described in paragraph 6.1;

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

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

FCA Handbook mean the handbook which contains the rules made by the FCA that apply to FCA-authorized firms and which is, at the date of this Scheme, available online at: <http://www.handbook.fca.org.uk>;

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);

Glossary means the glossary to the PRA Rulebook;

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

Historic Underpayments means any amounts contractually owed to any Policyholder or any beneficiary under any of the Transferred Policies, where such amounts first fell due for payment prior to the Transfer Date and have not otherwise been paid, including any interest contractually owed and accruing in respect of such amounts but excluding any extra-contractual compensation or other forms of redress;

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

Irish Insurance Regulations means the European Union (Insurance and Reinsurance) Regulations SI No 485 of 2015;

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

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 and Historic Breach Liabilities means:

- (a) any liabilities, losses, costs and/or expenses relating to the mis-selling of any Transferred Policy or of any policy whose proceeds were used, wholly or in part, to pay the premium for a Transferred Policy, including liabilities, losses, costs and/or expenses arising from:
 - (i) any misrepresentation or other false statement made to any person in connection with a Transferred Policy or any such policy prior to the Transfer Date;
 - (ii) a failure, prior to the Transfer Date, to comply with Applicable Law, or with rules, regulations, directions, guidance or industry practice (whether formal or informal) set by or given by any Relevant Authority, including a failure to disclose any information required to be disclosed, and including the requirement to treat customers fairly; or
 - (iii) the FCA's Thematic Reviews: Fair treatment of long-standing customers in the life insurance sector (TR 16/2) and Meeting investors' expectations (TR 16/3);
- (b) all liabilities arising in relation to any breach, prior to the Transfer Date, of the contractual terms of any Transferred Policy or any policy whose proceeds were used, wholly or in part, to pay the premium for a Transferred Policy (and for the avoidance of doubt, where the obligation that was breached was an obligation to pay an amount under the contractual terms of a Transferred Policy, this paragraph (b) does not include the liability to pay that amount or contractual interest thereon (which is a Historic Underpayment), but includes any additional liability that arises as a result of the failure to pay that amount when due); and
- (c) any of the following arising in respect of any of paragraph (a) or (b) above;

- (i) any complaint, claim, legal action or proceedings brought by or on behalf of any person;
- (ii) any disciplinary action undertaken by any Relevant Authority; or
- (iii) any agreed settlement or compromise;

Monument Re means Monument Re Limited, an exempted company incorporated in Bermuda with registration number 51969, registered as a Class E insurer under the Bermuda Insurance Act 1978, as amended, whose registered office is at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda;

Order means an order made by the Court pursuant to section 111 of FSMA sanctioning this 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**;

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 will 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 authorised firms and which is, at the date of this Scheme, available online at <http://www.prarulebook.co.uk>;

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;

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

Records means, in relation to the Transferred Policies:

- (a) the terms and conditions;
- (b) payment history (including lump sum payment information);
- (c) birth, marriage and death records;
- (d) all correspondence with Policyholders or other beneficiaries; and
- (e) the results of existence checking exercises undertaken in respect of any Transferred Policy that has been suspended,

in each case, whether stored in electronic or hard copy format and 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 Transferred 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, the CBI, the BMA, EIOPA, the UK Information Commissioner's Office and Ireland's Office of the Data Protection Commission;

Reinsurance Agreement means the reinsurance agreement entered into between the Transferor and Monument Re dated 26 March 2019 (as amended by a deed of amendment entered into between the Transferor and Monument Re dated 20 August 2019);

Relevant Authority means any Regulator, ombudsman, trade association or industry body;

Residual Assets means:

- (a) any property of the Transferor that would be comprised in the Transferred Business (including any right, benefit or power under or arising from or in connection with any Transferred Policy) 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 or arising from or in connection with a Transferred Policy) but for any agreement between the Transferee and the Transferor prior to the Transfer Date that its transfer should be delayed;
- (c) any property of the Transferor that would be comprised in the Transferred Business (including any right, benefit or power under or arising from or in connection with any Transferred Policy) 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) the rights of the Transferor under, relating to, arising from or in connection with the Excluded Policies;
- (e) any property of the Transferor that would be comprised in the Transferred Business (including any right, benefit or power under or arising from or in connection with any Transferred Policy) but which cannot be transferred to or vested in the Transferee on the Transfer Date for any reason other than those in paragraph (a), (b) or (c) above; 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, 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 (e) above,

but, in each case, excluding the Excluded Assets;

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 or arising from or in connection with any Transferred Policy) 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 reason other than those in paragraph (a) or (b) on the Transfer Date;
- (d) that would be comprised in the Transferred Business (including any right, benefit or power under or arising from or in connection with a Transferred Policy) but for any agreement between the Transferee and the Transferor prior to the Transfer Date that its transfer should be delayed; or
- (e) under, relating to, arising from or in connection with the Excluded Policies,

but, in each case, excluding the Excluded Liabilities;

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 11;

Security Deed means the security deed entered into between the Transferor and Monument Re dated 26 March 2019 (as amended and restated by a deed of amendment and restatement entered into between the Transferor and Monument Re dated 20 August 2019);

Security Document means each of the Security Deed and the Custody Agreement, and **Security Documents** means both of them;

Subsequent Transfer Date means 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:

- (a) 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), (c) or (e) of the definition of Residual Liability, the date on which any impediment to its transfer will have been removed or overcome;
- (b) 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 Transferor and the Transferee agree the transfer should take effect;
- (c) in respect of an Excluded Policy Record, the date on which the Excluded Policy to which such Excluded Policy Record relates is novated or transferred to the Transferee as referenced in paragraph 6.3; and
- (d) 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;

Tax 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 charge in respect thereof;

Transfer Date means the date on which this Scheme takes effect in accordance with paragraph 10;

Transferee has the meaning given in paragraph 2.2;

Transferor has the meaning given in paragraph 2.1;

Transferred Assets means:

- (a) the rights, benefits and property of the Transferor under or arising from or 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 (including accrued rights, benefits and property as of the Transfer Date) under or arising from or in connection with the Reinsurance Agreement;
- (d) the rights, benefits and property of the Transferor (including accrued rights, benefits and property as of the Transfer Date) under or arising from or in connection with the Security Documents;
- (e) any other assets which the Parties agree, whether before or after the Transfer Date, are to be transferred under this Scheme; and
- (f) 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, the Transferred Assets as set out in paragraphs (a) to (e) above and the Transferred Policies,

but excluding the Excluded Assets and, prior to the applicable Subsequent Transfer Date, the Residual Assets;

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 Liabilities means:

- (a) any and all liabilities of the Transferor under, in respect of, arising from or in connection with the Transferred Policies;
- (b) any and all liabilities of the Transferor (including any accrued liabilities as of the Transfer Date) under or arising from or in connection with the Reinsurance Agreement; and

- (c) any and all liabilities of the Transferor (including any accrued liabilities as of the Transfer Date) under or arising from or in connection with the contractual terms of the Security Documents, save for any Liability of the Transferor which, as of the Transfer Date, had already accrued in favour of Monument Re,

but, in each case, excluding the Excluded Liabilities and, prior to the applicable Subsequent Transfer Date, the Residual Liabilities;

Transferred Personal Data has the meaning given in paragraph 3.4(b);

Transferred Policies means:

- (a) each annuity policy referred to in the file with filename [●] set out in [●], or any policy arising out of or replacing such annuity policy having a different policy number or numbers; and
- (b) any other individual annuity policy issued from the bulk purchase annuities listed in the file with filename [●] set out in [●] along with all residual liabilities to first life members and associated spouses and spouses-only benefits insured as at the inception date of the bulk purchase annuities in the file with filename [●],

whether the Policyholder is believed to be alive, dead or suspended;

United Kingdom or **UK** means the United Kingdom of Great Britain and Northern Ireland; and

UK GDPR means the General Data Protection Regulation 2016/679 as it forms part of retained EU law (as defined in the European Union (Withdrawal) Act 2018).

1.2 In this Scheme:

- (a) 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;
- (b) any reference to a **Party** to this Scheme includes the successors and assigns (immediate or otherwise) of that Party;
- (c) the words **including** and **include** will mean including without limitation and include without limitation, respectively;
- (d) any reference to **liabilities** includes all liabilities, duties and obligations of every description, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or unascertained or disputed and whether owed or incurred severally or jointly or as principal or surety, and **liability** means any one of them;
- (e) 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;

- (f) any reference to **transfer** includes (as the context may require) “assign”, “assignment” or “assignment”, “dispose” or “disposal”, or “convey” or “conveyance”;
- (g) any reference to **variation** includes any amendment, modification, variation, supplement, deletion, replacement or termination, however effected;
- (h) any reference to the singular will include a reference to the plural and vice versa and any reference to the masculine will include a reference to the feminine and neuter and vice versa;
- (i) any reference in this Scheme to a statute, a statutory provision or any subordinate legislation will 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 will be deemed to include a reference to any subordinate legislation made thereunder (as amended, replaced or re-enacted on or before the Transfer Date);
- (j) expressions used in this Scheme which have meanings under FSMA will bear those meanings (unless the context otherwise requires);
- (k) any references to paragraphs or Parts are to paragraphs or Parts of this Scheme (unless the context otherwise requires);
- (l) headings are inserted for convenience only and will not affect the construction of this Scheme;
- (m) if a period of time is specified from a given day or date or from the day or date of an actual event, it will be calculated exclusive of that day or date;
- (n) any reference to writing will include any modes of reproducing words in a legible and non-transitory form;
- (o) any reference to an amount will be exclusive of any applicable value added or other Tax (unless the context otherwise requires); and
- (p) 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 Rothesay Life Plc (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, III, IV and VII set out in Part II of Schedule 1 to the RAO.
- 2.2 Monument Life Insurance DAC (formerly Laguna Life DAC) (the **Transferee**), a company incorporated in the Republic of Ireland, is authorised by the CBI under the Irish Insurance Regulations to carry out contracts of Long-Term Insurance Business in the Republic of Ireland in classes I, III and IV set out in Schedule 2 to the Irish Insurance Regulations.
- 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 investments held in respect of that Long-Term Insurance Business have already been transferred to Monument Re pursuant to the terms of the Reinsurance Agreement between the Transferor and Monument Re.
- 2.4 The Transferring Policies comprise of in payment annuity policies and deferred annuity policies which were written by Rothesay Assurance Limited (formerly MetLife Assurance Limited) in the Republic of Ireland on a freedom of services basis. These annuity policies were issued by Rothesay Assurance Limited (formerly MetLife Assurance Limited) to members of five pension schemes in consequence of a buy out of such pension schemes and subsequently transferred to Rothesay Life Plc by way of an order sanctioning an insurance business transfer scheme pursuant to Part VII of FSMA.

PART C – TRANSFER OF THE BUSINESS

3. TRANSFER OF THE BUSINESS, ASSETS AND LIABILITIES

3.1 Each part of the Transferred Business, the Residual Assets and the Residual Liabilities will 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 will, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee, free from all Encumbrances 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 will, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee, free from all Encumbrances in accordance with this Scheme;
- (c) on and with effect from the Transfer Date, each Transferred Liability will, 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 will 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 will, 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 will cease to be a liability of the Transferor.

3.2 Nothing in this Scheme will 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.

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

3.4 Data Protection

- (a) In this paragraph 3.4, terms used in respect of the performance of an activity or obligation will be construed in accordance with the definitions in the relevant Data Protection Laws at the time at which that activity or obligation was performed.
- (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 controller immediately before the Transfer Date (the **Transferred Personal Data**):
 - (i) the Transferee will become the controller in place of the Transferor;
 - (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, save to the extent prohibited or restricted by the Data Protection Laws, 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, save to the extent prohibited or restricted by the Data Protection Laws, 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 3.4(d), with effect from the Transfer Date and save to the extent prohibited or restricted by the Data Protection Laws, the Transferee will 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 will 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.

3.5 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 will, 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 Transferred Policy, agreement, instrument or Encumbrance; or

(vi) affect the enforceability, priority or ranking of any Encumbrance.

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, will be continued or commenced by or against the Transferee and the Transferee will 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, will be continued or commenced by or against the Transferee and the Transferee will 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 and the Residual Liabilities and such Proceedings. Until such Subsequent Transfer Date, the relevant Proceedings will be continued by or against the Transferor, provided that such Proceedings will 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 will be continued by or against the Transferor and the Transferor will 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 will, 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 will, to the extent to which it was enforceable by or against the Transferor immediately prior thereto, become enforceable by or against the Transferee.

- 4.6 On and with effect from the Transfer Date, the Transferee undertakes to comply with the relevant provisions of DISP (including but not limited to DISP 3.7.12R) in respect of the Transferred Policies to the extent that DISP applied to the Transferred Policies prior to the Transfer Date.
- 4.7 On and from the Transfer Date:
- (a) any policyholder who has a Transferred Policy will be entitled to enforce the provisions of paragraph 4.6 against the Transferee; and
 - (b) the PRA and FCA will be entitled to enforce the provisions of paragraph 4.6 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 will 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 will, 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 Transferred Policies or such other agreement which forms part of the Transferred Business.
- 5.3 Subject to paragraph 5.5 all references in any Transferred Policy 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 will 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, Actuary or any other officers, employees or agents of the Transferor in relation to any Transferred Policy 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) will, 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 will take effect and will 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 will 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 will continue in force as between such parties and for such purpose, references in the relevant contract to:

- (a) the Transferor;
- (b) its officers;
- (c) its Board;
- (d) its auditors; or
- (e) any other officers, employees, or agents of the Transferor,

will continue to be construed accordingly for such limited purposes only.

6. EXCLUDED POLICIES

- 6.1 Subject to paragraph 6.2 below, Excluded Policies will not be transferred to the Transferee by this Scheme and all liabilities attributable to Excluded Policies will 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 Excluded Policies Reinsurance Agreement.
- 6.2 The Parties may agree in writing to amend the terms of the Excluded Policies Reinsurance Agreement in which event the provisions of this paragraph 6 will 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 will, to the extent not previously transferred, be transferred to the Transferee and such Excluded Policy will 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, will 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 will 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 will, 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 will, 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 will 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 will account to the Transferee for the proceeds of sale thereof), and the Transferee will 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 will, 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 (for no additional consideration) and the Transferee will 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. WITHHOLDINGS AND DEDUCTIONS

Any payment made by or due from the Transferee to the Transferor or vice versa pursuant to paragraph 8.3 will 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, the payer will be liable to pay to the recipient such further sums as will 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 in the absence of any such deductions or withholdings, the payer will 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 9, the recipient will 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 in the absence of any deductions or withholdings.

PART D – MISCELLANEOUS

10. TRANSFER DATE

This Scheme will become effective at 00.01 hrs (BST) on 7 September 2020 or such other time and date as may be agreed by the Parties and specified in the Order sanctioning this Scheme.

11. MODIFICATION OR ADDITIONS

11.1 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.

11.2 Subject to paragraph 11.4, at any time after the sanction of this Scheme, the Transferee and the Transferor will 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 will 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 will have the right to be heard at such hearing; and

(b) such application will 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 this Scheme will not have a material adverse effect on the Policyholders of the Transferee, the Policyholders of the Transferor or any other person, including by reference to:

(i) the effect of the proposed amendments to this 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 this 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) the 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 this 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 FSMA (or its successors).

11.3 If such consent is granted pursuant to paragraph 11.2 above, the Transferee and the Transferor may amend the terms of this Scheme in accordance with such consent.

- 11.4 The consent of the Court or the PRA and the FCA will not be required in relation to the amendment or termination of the Excluded Policies Reinsurance Agreement.
- 11.5 Notwithstanding paragraph 11.2, 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 actuarial practices relating to, or techniques for the management of, the Transferred Policies; or
 - (d) required to protect the rights and reasonable expectations of the Policyholders of the Transferred Policies,

provided that each of the PRA and FCA have been notified of the same at least 28 days in advance of the amendment being made and each has indicated that it does not object thereto prior to that date.

12. 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.

13. GOVERNING LAW

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