

LLOYD'S CANADIAN TRUST DEED

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LLOYD'S CANADIAN TRUST DEED

THIS AMENDED AND RESTATED LLOYD'S CANADIAN TRUST DEED is made as of May 25 2001 AMONG the Society incorporated by *Lloyd's Act 1871* (U.K.) by the name of Lloyd's ("**Lloyd's**") and Royal Trust Corporation of Canada a trust company incorporated under the laws of Canada (the "**Canadian Trustee**") and the Superintendent of Financial Institutions (the "**Superintendent**")

AND IS SUPPLEMENTAL as regards each underwriting member or former underwriting member of Lloyd's who has conducted or will hereafter conduct general business for the 1978 or any subsequent year or years of account (whether before 1987 or after 1986) ("**the Member**") to the Member's Lloyd's Premiums Trust Deed for general business (duly approved by the United Kingdom Financial Services Authority in exercise of the powers of the United Kingdom Treasury under section 83 of the Insurance Companies Act (UK) 1982 or by the United Kingdom Treasury or its predecessor the Secretary of State) applicable for the year or years of account in question or any of such years and where the Member has more than one of such Premiums Trust Deeds each of the same (such Trust Deed or if more than one the relevant such Trust Deed as for the time being modified being hereinafter called the "**Member's Premiums Trust Deed**")

WHEREAS

- (A) Each of the underwriting members or former underwriting members is or has been an underwriting member of Lloyd's for the purpose of underwriting insurances
- (B) The underwriting members are authorized under the *Insurance Companies Act* (the "**Act**") to insure in Canada risks as a foreign company
- (C) The Act requires the underwriting members in relation to each class of insurance risks that they are permitted to insure in Canada to maintain in Canada assets having a total value as determined in accordance with the Act which are required to be vested in trust in a Canadian financial institution chosen by Lloyd's and approved by the Superintendent
- (D) The Canadian Trustee is a qualified Canadian financial institution which has been chosen by Lloyd's and has been approved by the Superintendent
- (E) The Act defines "assets in Canada" as the assets that have been vested in trust for the Members under Part XIII of the Act
- (F) So much of the assets comprised in the Member's Canadian Trust Fund and vested in the Canadian Trustee as are received by or on behalf of the

Member in connection with policies in Canada (as defined in the Act) are assets in Canada for the purpose of the Act

- (G) In exercise of the powers conferred on it by Clause 5 of the Member's Premiums Trust Deed the Council by a Deed of Amendment and Direction dated December 28 2000 amended the Lloyd's American Instrument (a subsisting Special Trust Direction) as regards the Member so as *inter alia* to exclude from its operation on and after January 1 2001 the Member's Canadian Business notwithstanding that the liability of the Member in respect thereof may be expressed in United States dollars and that the premium payable to or for the account of that Member has been paid or is payable in United States dollars (but nevertheless without prejudice to any payment received or outgoings paid under such Lloyd's American Instrument prior to January 1 2000
- (H) The principal purpose of this Deed is to declare the trusts powers and provisions upon and with and subject to which receipts attributable to the Member's Canadian Business are to be held
- (I) It is intended that the Trust Assets may *inter alia* be held (in accordance with the provisions of this Deed) either –
- (i) at syndicate level as part of a Managing Agent's Canadian Sub-Fund of the Member or
 - (ii) in the Canadian Central Syndicate Sub-Fund or
 - (iii) at personal reserve level as part of the Member's Canadian Personal Reserve Sub-Fund
- and that in any such case the same may be blended (*inter alia*) with other Trust Assets constituting part of the Lloyd's Canadian Trust Fund (whether relating to the Member or to any of the other members)
- (J) The discretions powers and authorities hereby conferred on a Managing Agent are intended only to be exercisable by it in respect of the Member's Canadian Business carried on by such Managing Agent on behalf of the Member or in respect of the Managing Agent's Canadian Sub-Fund of that Managing Agent (or assets which will when received belong thereto) and those hereby conferred on the Regulating Trustee are intended only to be exercisable by it in respect of the Canadian Central Syndicate Sub-Fund or the Member's Canadian Personal Reserve Sub-Fund (or assets which will when received belong thereto)
- (K) The original form of indenture constituting the Lloyd's Canadian Trust Fund was made on November 9 1977 and was amended by an instrument dated March 8 1978 (such amendment being authorized by the Committee (the then governing body of Lloyd's)) and was

superseded by a deed dated June 11 1989 made pursuant to a resolution of the Council (the then and present governing body of Lloyd's) which deed was amended and restated by a deed dated September 26 1995 made pursuant to a resolution of the Council (the then and present governing body of Lloyd's) and was subsequently amended and restated (such amendment and restatement being expressed to have effect on and after March 1 2001) by deed dated December 28 2000 pursuant to a resolution of the Council

- (L) By resolution passed on February 28 2001 the Council determined pending the agreement with the Superintendent of amendments further to those made on December 28 2000 that the Lloyd's Canadian Trust Deed as amended and restated on December 28 2000 should have effect not on March 1 2001 but only on and after such date (not being a date later than September 25 2001) as the Council should subsequently specify in writing and the Lloyd's Canadian Trust Deed was accordingly amended by a deed of the same date as that resolution
- (M) By a resolution passed on May 25 2001 the Council has determined that it is expedient further to alter the provisions of this Deed constituting the Lloyd's Canadian Trust Fund and that such Deed as so varied and modified be restated in its entirety with effect from May 29 2001
- (N) This Deed as hereby amended and restated has been approved by the Superintendent and by the United Kingdom Financial Services Authority (on behalf of the United Kingdom Treasury)
- (O) This Deed as hereby amended and restated shall constitute the "**Canadian Instrument**" and shall also constitute in part a "**Special Trust Direction**" and an "**Overseas Direction**" as those terms are defined in the Member's Premiums Trust Deed

NOW THIS DEED made for such purposes and consideration **WITNESSES** and it is hereby **DECLARED** by and between the parties hereto as follows -

Direction by the Council

1. (a) It is hereby recorded that on June 11 1989 **THE COUNCIL OF LLOYD'S** in exercise of the powers in that behalf conferred on it by each underwriting member's Premiums Trust Deed for general business then in existence and of all other powers it enabling (and with the approval of the Secretary of State) by this Deed **DIRECTED AND DECLARED** in respect of each underwriting member of Lloyd's and each Premiums Trust Deed for general business of such a member that (subject to the Council's powers of revocation or amendment now contained in clause 5(a) hereof) on and after that date (or as regards any such

Premiums Trust Deed which might be executed after that date on and after the later date of execution of that Premiums Trust Deed) the Member's Canadian Trust Fund (then referred to as the Name's Trust Fund) in respect of that underwriting member and the income thereof should thenceforth be held (as a separate and distinct Fund) upon the trusts powers and provisions in this Deed declared and contained in respect of the same (and accordingly should not form part of the Member's Premiums Trust Fund held on the trusts of the Member's Premiums Trust Deed)

- (b) It is hereby also recorded that this Deed has subsequently been amended and restated on four separate occasions namely by Deeds respectively dated September 26 1995 December 28 2000 February 28 2001 and May 25 2001 made by the Council (with the approval as applicable of the United Kingdom Financial Services Authority or by one of Her Britannic Majesty's Principal Secretaries of State) in exercise of the relevant powers of amendment respectively conferred on it by this Deed and by each applicable underwriting member's Premiums Trust Deed for general business (as then for the time being modified) and of all other powers it enabling
- (c) It is hereby recorded that this Deed as so amended is a Special Trust Direction (and also an Overseas Direction) for the purposes of the Member's Premiums Trust Deed (and that the Member's Canadian Trust Fund is a Special Trust Fund for such purposes) it being expressly provided in clause 5(g) of the Member's Premiums Trust Deed that this Deed (as for the time being modified) shall have effect in accordance with its terms in regard to the Underwriting (as defined in the Member's Premiums Trust Deed) and the Member's Premiums Trust Deed

Commencement and interpretation

- 2. (a) The trusts powers and provisions declared and contained in this Deed in its amended and restated form shall have effect on and after May 29 2001
- (b) The provisions of Schedule 1 shall have effect for the purpose of construing this Deed
- (c) The recitals to this Deed are true and correct and form an integral part hereof

Constitution of the Lloyd's Canadian Trust Fund

3. (a) The Member's Canadian Trust Fund shall consist of the assets specified as comprised therein in Schedule 2
- (b) Provided always that in any case where the Member has more than one Premiums Trust Deed for general business (duly approved as aforesaid) (so that each of such Premiums Trust Deeds separately constitutes "the Member's Premiums Trust Deed" for the purposes of this Deed) the Member's Canadian Trust Fund in respect of each of such Premiums Trust Deeds of the Member shall on and after May 29 2001 be treated together with the respective Member's Canadian Trust Funds in respect of each of the others of the same as being one common blended or mixed Canadian trust fund in respect of the Member (without there being any requirement to identify or keep separate records in respect of the respective constituent parts of such common Canadian trust fund which lie within the control of any single Managing Agent) and in any such case -
 - (i) all references in this Deed (however expressed) to the Member's Canadian Trust Assets shall (where the context permits) be read as referring to that common Canadian trust fund in respect of the Member or (as the case may be) to the assets of that common Canadian trust fund and
 - (ii) clauses 4(c) and 7(c) and 15(c) shall have effect in accordance with their terms

Declaration of Trust and application of the Lloyd's Canadian Trust Fund

4. The Member's Canadian Trust Fund and its income shall be held (by whomsoever including the Member and in whatever names the Trust Assets shall at any time be held or stand) upon the following trusts for the purposes of the Act subject as provided in this Deed-
 - (a) in trust until the expiry of the Trust Period for the payment or discharge as provided in clause 12 of the respective outgoings (hereinafter collectively referred to as "**Permitted Canadian Trust Outgoings**") specified in paragraph 1 of Schedule 3
 - (b) in trust to pay or fund any deposit or asset requirement as may be imposed on the Member by any federal provincial or territorial law regulation or authority in respect of the Member's Canadian Business and

- (c) provided (for the avoidance of doubt) that in any case where clause 3(b) applies the Permitted Canadian Trust Outgoings (being defined by this Deed in precisely the same way in respect of each of the Premiums Trust Deeds of the Member referred to in that clause) may be paid or discharged as provided in clause 12 out of all or any of the constituent parts of the common Canadian trust fund in respect of the Member constituted by clause 3(b) and its income which lie within the control of any single Managing Agent without distinguishing between the part or parts thereof from which the same have been paid or discharged and
- (d) subject to the foregoing trusts and subject to clause 15(c) in trust to transfer the same as an addition to the Member's Premiums Trust Fund to be held upon and with and subject to the trust powers and provisions declared and contained in the Member's Premiums Trust Deed

Powers of the Council (including power to revoke or vary)

- 5. (a) The Council may from time to time during the Perpetuity Period with the written approval of the Superintendent and of the United Kingdom Financial Services Authority (in exercise of the powers of the United Kingdom Treasury) revoke or amend all or any of the provisions of this Deed (and the directions herein contained) in respect of the Lloyd's Canadian Trust Fund and its income
- (b) Any and every discretion power or authority conferred by this Deed on the Member or any of the Member's Underwriting Agents or the Canadian Trustee shall (notwithstanding the terms in which such discretion power or authority is expressed) only be exercised consistently with any requirements of the Council (whether made under clause 4(c) of the Member's Premiums Trust Deed or otherwise)
- (c) For the avoidance of doubt (but without limitation) it is hereby declared that requirements of the Council may from time to time be made (whether under clause 4(c) of the Member's Premiums Trust Deed or otherwise) in order to give effect to the requirements of the Act or any federal provincial or territorial law regulation or authority in respect of the Member's Canadian Business

Matters in respect of the Canadian Trustee

6. (a) There shall be one trustee of this Deed designated as the Canadian Trustee and the original Canadian Trustee shall be Royal Trust Corporation of Canada
- (b) The Canadian Trustee may resign at any time upon giving not less than ninety (90) days' notice in writing to the Superintendent and the Council
- (c) The Council shall have the power to remove the Canadian Trustee upon notice in writing to the Canadian Trustee and the Superintendent
- (d) The Council shall remove the Canadian Trustee upon written notice to the Canadian Trustee and the Superintendent in the event that the Canadian Trustee defaults in its duties or obligations or any of them hereunder and has not begun to rectify the default within thirty (30) days after written notice from the Council to the Canadian Trustee and the Superintendent specifying the default and requiring the Canadian Trustee to remedy the same
- (e) Upon-
 - (i) the resignation or removal of the Canadian Trustee
 - (ii) the Canadian Trustee ceasing to carry on business or refusing to act as a trustee or
 - (iii) the Canadian Trustee becoming bankrupt or insolvent or committing or suffering any act of bankruptcy or insolvency or making any assignment for the benefit of creditors

the Council shall forthwith appoint in writing a trustee to succeed the Canadian Trustee which shall be a Canadian financial institution approved by the Superintendent and upon such financial institution being appointed the Lloyd's Canadian Trust Fund shall automatically vest in such financial institution without the necessity of any act of transfer or transmission by the Canadian Trustee
- (f) Notwithstanding the foregoing paragraph (e) the Canadian Trustee shall execute such deeds and other documents as the Superintendent or the Council may request to evidence the automatic vesting of the Lloyd's Canadian Trust Fund in the successor Canadian Trustee and shall thereupon be released from

any obligations thereafter under this Deed provided that nothing in this paragraph shall be construed as relieving the Canadian Trustee of any liability under this Deed for any acts or omissions which occurred prior to the date on which the Canadian Trustee is released from its obligations pursuant to this paragraph.

- (g) The Canadian Trustee further hereby irrevocably nominates constitutes and appoints the Regulating Trustee from time to time with full power of substitution as its agent and true and lawful attorney to act on its behalf with full power and authority in its name place and stead to execute and deliver any such deeds and documents as may be required or expedient to evidence the vesting or transfer of the Lloyd's Canadian Trust Fund to the successor Canadian Trustee
- (h) The Canadian Trustee shall be entitled to remuneration for acting hereunder at such rate as may be agreed from time to time between the Council and the Canadian Trustee and to reimbursement of all expenses which it may reasonably incur in connection with Lloyd's Canadian Trust Fund
- (i) The Canadian Trustee shall reimburse indemnify and hold Lloyd's and the Member (as the case may be) harmless from any and all liability loss claim damage cost and expense including legal costs which shall occur as a result of the failure of the Canadian Trustee any of its nominees or custodians or any of its or their officers employees or agents to exercise reasonable care and diligence or as a result of negligent acts or negligent failures to act
- (j) Lloyd's shall indemnify and agrees to hold harmless the Canadian Trustee its directors officers employees and agents from and against any and all taxes charges costs expenses damages claims actions demands and liabilities to which they become subject including legal costs for or in respect of anything done or permitted by them to be done in connection with this Deed except such as shall occur as a result of the failure of the Canadian Trustee any of its nominees or custodians or any of its or their officers employees or agents to exercise reasonable care and diligence or as a result of a negligent act or negligent failure to act
- (k) The Canadian Trustee shall be accountable only for the Trust Assets actually paid or transferred to or otherwise vested in or under the control of the Canadian Trustee hereunder

Vesting of the Lloyd's Canadian Trust Fund

7. (a) All assets whatsoever being or becoming Trust Assets and received by the Member or on behalf of the Member by any Members' Agent or Managing Agent or any other person whatsoever shall (subject as otherwise provided in this clause or in any of clauses 8 to 10 or 20(d)) forthwith after receipt (if not already vested as hereinafter provided) be paid or transferred to or otherwise vested in or under the control of the Canadian Trustee as part of the Member's Canadian Personal Reserve Sub-Fund
- (b) Notwithstanding clause 7(a) (but subject to clause 7(c) and clauses 8 to 10 and 20(d)) all assets whatsoever being or becoming Syndicate Trust Assets may if received by the Member and shall if received on behalf of the Member by the Managing Agent concerned forthwith after receipt (if not already vested as hereinafter provided) be paid or transferred to or otherwise vested in or under the control of the Canadian Trustee as part of the Managing Agent's Canadian Sub-Fund
- (c) Provided always that in any case where clause 3(b) applies (so as to constitute on and after May 29 2001 one common Canadian trust fund in respect of the Member) and the Managing Agent in question is a Managing Agent of the Member as regards more than one of the Premiums Trust Deeds of the Member referred to in that clause (so that there is a Managing Agent's Canadian Sub-Fund of that Managing Agent under two or more of those Premiums Trust Deeds) -
- (i) the Managing Agent's Canadian Sub-Fund of that Managing Agent in respect of each of the applicable Premiums Trust Deeds of the Member in Question shall on and after May 29 2001 be treated together with the respective Managing Agent's Canadian Sub-Funds of that Managing Agent in respect of each of the others of the same as being one common blended or mixed Canadian sub-fund for the Member in respect of that Managing Agent (without there being any requirement to identify or keep separate records in respect of the respective constituent parts of such common Canadian sub-fund) and
- (ii) it shall be a sufficient compliance with the requirements of clause 7(a) for the trust assets there referred to to be paid or transferred or otherwise vested in or under the control of a Canadian Trustee as part of such common

Canadian sub-fund for the Member in respect of that Managing Agent and

- (iii) all references in this Deed (however expressed) to the Managing Agent's Canadian Sub-Fund of that Managing Agent shall (where the context permits) be read as referring to that common Canadian sub-fund
- (d) Nothing in clauses 7(a) or 7(b) shall require the vesting for any purpose in or under the control of the Canadian Trustee of any Canadian Receivables or any Canadian Syndicate Rights of Recovery

Central Accounting System and payments through Lloyd's brokers or other intermediaries

- 8. (a) The provisions contained in this clause shall have effect subject to clause 5 but otherwise notwithstanding the other provisions of this Deed
- (b) Any trust assets (whether or not then yet vested in or under the control of the Canadian Trustee) may be dealt with in any manner required or authorised by the Central Accounting system of Lloyd's
- (c) Any trust assets –
 - (i) which are required by clause 7 or clause 9(a) or any other provision of this Deed to be paid or transferred to or vested in or under the control of (or to be transferred back to or under the control) of the Canadian Trustee
 - (ii) which fall to be paid or transferred out of the Managing Agent's Canadian Sub-Fund of any Managing Agent or its income in consequence of any such direction as is mentioned in clause 9(a)(ii) or clause 12(a) or by virtue of any other provision of this Deed

may (in any such case) if thought fit be so paid or transferred or vested through a Lloyd's broker or other intermediary (being in any case where a particular Lloyd's broker or other intermediary has been expressly or impliedly specified by the Relevant Managing Agent the particular Lloyd's broker or other intermediary in question)

- (d) Any trust assets which fall to be paid or transferred or vested through a Lloyd's broker or other intermediary in accordance with clause 8(c) (including but without limitation any trust assets

which are already held by that Lloyd's broker or other intermediary when they first fall to be so paid transferred or vested) may (subject to any contrary direction made by the Council or the Relevant Managing Agent) be dealt with in accordance with the normal business terms and practices of the Lloyd's broker or other intermediary in question for the transmission of monies or other assets including without limitation (where consistent with such terms and practices) -

- (i) the holding and mixing of the same (or assets representing the same) together with other assets (not being trust assets) in an insurance broker or other account belonging to such Lloyd's broker or other intermediary and the making out of such account of any payments that are compatible with such normal business terms and practices (including where applicable the payment or retention thereof for its own use and benefit of any interest earned on or capital appreciation made by that account and any commission fees charges or other sums that are due to be paid to it personally)
- (ii) the periodic netting off on a global basis of assets due to be transmitted against assets due to be received and
- (iii) the making on a periodic basis of any net payment or transfer due (whether through the Central Accounting system of Lloyd's or otherwise howsoever)

Coverholders etc

- 9. (a) Subject to clauses 5 and 8 and to any condition imposed by clause 9(b) but notwithstanding the other provisions of this Deed a Managing Agent or the Regulating Trustee may at any time or times during the Trust Period authorise any other person (during such period or successive periods and on such terms and subject to such other conditions and with such remuneration as may be specified by the Managing Agent or the Regulating Trustee giving the authority) to retain apply or use any assets which then are or may later become trust assets and which then-
 - (i) are already held or may later be received by or to the account of that other person on behalf of the Member or
 - (ii) having already been or may later be transferred to or to the account of that other person by the Canadian Trustee (acting at the direction of such Managing Agent or the Regulating Trustee)

in or towards the payment or discharge of any Permitted Canadian Trust Outgoings then or thereafter capable of being paid or discharged out of the Member's Canadian Trust Fund under clause 4(a) and accordingly (subject to clauses 8 and 10) to pay transfer or vest under clause 7(a) or 7(b) or (as the case may be) to transfer back to the Canadian Trustee only the balance (if any) thereafter or from time to time remaining of the assets in question

- (b) Unless the Council otherwise agrees in writing it shall be a mandatory condition of any authority given under clause 9(a) that the person who is given such authority shall at all times keep the assets to which such authority applies (subject to any application use or transfer made in accordance with that authority) in such a way that they are segregated from that person's own assets and from other assets held by him or to his account and (so far as permitted by applicable laws or regulations) will not become available for his creditors in the event of his insolvency provided that -
 - (i) the trust assets in question may be held in the same account as assets that are comprised in any Special Trust Funds or Lloyd's Deposits or any other trust funds whatsoever at Lloyd's of the Member or any special trust funds Lloyd's Deposits or any other trust funds whatsoever at Lloyd's of any of the other members and
 - (ii) such person may retain for his own use and benefit any interest or capital appreciation earned on or attributable to the trust assets to which such authority applies while such assets are held by him in such manner as aforesaid to the extent (but only to the extent) that he is expressly authorised to retain such interest or capital appreciation by the Managing Agent in question or by the Council (and otherwise all such interest and capital appreciation shall itself constitute trust assets and shall be kept segregated as mentioned above)
- (c) The provisions of clauses 17(d) to (e) relating to responsibility for delegates and sub-delegates shall also apply as regards responsibility for any person given any such authority as is provided for in clause 9(a) as if such person were a delegate of the Managing Agent giving such authority

Canadian Central Syndicate Sub-Fund

10. (a) Until the expiry of the Trust Period a Managing Agent shall whenever so required by the Council direct the Canadian Trustee to raise out of the Managing Agent's Canadian Sub-Fund of that Managing Agent such amount as is specified by the Council and to pay or transfer the same to or otherwise vest the same in or under the control of the Canadian Trustee to be held as part of the Canadian Central Syndicate Sub-Fund
- (b) Notwithstanding clauses 7(a) and 7(b) if and whenever until the expiry of the Trust Period -
- (i) any person receives assets on behalf of the Member and some of the other members an unascertainable or unascertained proportion of which constitutes assets being or becoming Syndicate Trust Assets and is so required by the Council or
- (ii) the Council for any other reason so requires in respect of all or any Syndicate Trust Assets whatsoever

the Syndicate Trust Assets in question shall instead of being vested in accordance with clauses 7(a) or 7(b) forthwith be paid or transferred to or otherwise vested in or under the control of the Canadian Trustee as part of the Canadian Central Syndicate Sub-Fund.

Canadian Syndicate Rights of Recovery or the Canadian Receivables

11. (a) For the avoidance of doubt any Managing Agent may on behalf of the Member under the applicable Underwriting Agent's Appointment collect all premiums monies and other assets settle or compromise claims rights or entitlements take legal or other proceedings assign rights or entitlements (whether by way of security or outright for valuable consideration) and exercise any other discretion power or authority conferred by any such appointment notwithstanding that such discretion power or authority may be exercisable in relation to Canadian Syndicate Rights of Recovery or the Canadian Receivables as the case may be which are comprised in the Member's Canadian Trust Fund and in exercising any such discretion power or authority in relation to Canadian Syndicate Rights of Recovery or the Canadian Receivables as the case may be so comprised the Managing Agent shall (subject always to clause 11(b)) be entitled to have regard solely to the provisions of that appointment Provided always that in any such case any proceeds attributable to the Member of any such collection settlement compromise proceedings assignment or exercise of such other discretion

power or authority shall be held as Trust Assets and shall be duly vested and applied only in accordance with the trusts powers and provisions of this Deed

- (b) Any Managing Agent shall in exercising any of the discretions powers authorities rights referred to in clause 11(a) at all times act bona fide and for the benefit of the trust constituted by this Deed
- (c) Without prejudice to the foregoing it is hereby directed that all monies or other assets received by the Member or any other person under or in respect of any Canadian Syndicate Rights of Recovery or any Canadian Receivables as the case may be comprised in the Member's Canadian Trust Fund shall be held as Trust Assets and shall be duly vested in accordance with clauses 7 to 10

Manner and order of application of the Member's Canadian Trust Fund

12. The payment or discharge of different Permitted Canadian Trust Outgoings under clause 4(a) (as affected where applicable by clause 4(c)) shall (subject as provided in clauses 8 and 9) be made (as between each other) in such order and manner and at such respective times (or on the occurrence of such respective events) until the expiry of the Trust Period and to such extent respectively and out of such assets respectively as is or are from time to time directed -
 - (a) by each Managing Agent in regard to Permitted Canadian Trust Outgoings then or thereafter becoming payable or incurred or otherwise liable to be discharged in connection with that part of the Member's Canadian Business which is or has been conducted or is being wound up by the Managing Agent so far as those Permitted Canadian Trust Outgoings can be paid or discharged out of the Managing Agent's Canadian Sub-Fund of the Managing Agent in question and
 - (b) by the Regulating Trustee in regard to Permitted Canadian Trust Outgoings which for the time being have not been (or which are not capable of being) paid or discharged under (a) above but so as to use only Trust Assets contained in the Member's Canadian Personal Reserve Sub-Fund or in the Canadian Central Syndicate Sub-Fund

Transfers

13. (a) Subject to the requirements of the Council for securing compliance with the requirements of the Assets (Foreign Companies) Regulations and until the expiry of the Trust Period -
- (i) The Canadian Trustee on the direction of the Regulating Trustee may transfer any assets for the time being held in the Member's Canadian Personal Reserve Sub-Fund or the Canadian Central Syndicate Sub-Fund to the Managing Agent's Canadian Sub-Fund of any Managing Agent (by recording that the assets are vested in or under the control of the Canadian Trustee as part of that Sub-Fund) and
 - (ii) The Canadian Trustee on the direction of the Regulating Trustee may transfer any assets for the time being held in the Canadian Central Syndicate Sub-Fund to the Member's Canadian Personal Reserve Sub-Fund (by recording that the assets are vested in or under the control of the Canadian Trustee as part of that Sub-Fund) and
 - (iii) The Canadian Trustee on the direction of the Regulating Trustee may transfer any assets for the time being held in the Member's Canadian Personal Reserve Sub-Fund to the Canadian Central Syndicate Sub-Fund (by recording that the assets are vested in or under the control of the Canadian Trustee as part of that Sub-Fund) and
 - (iv) The Canadian Trustee on the direction of the Relevant Managing Agent or of the Council may transfer any assets for the time being held in the Managing Agent's Canadian Sub-Fund of any Managing Agent to such trustees or trustee of any other Special Trust Fund or of the Member's Premiums Trust Fund as may be specified in the direction so as to be held thereafter as part of such other Special Trust Fund or (as the case may be) the Member's Premiums Trust Fund or (in each case) any part thereof or sub-fund thereunder as may be specified in the direction and
 - (v) The Canadian Trustee on the direction of the Regulating Trustee may transfer any assets for the time being held in the Member's Canadian Personal Reserve Sub-Fund to such trustee or trustees of the Member's Premiums Trust Fund as may be specified in the direction so as to be held thereafter as part of the Member's Premiums Trust Fund

or any part thereof or sub-fund thereunder as may be specified in the direction and

- (vi) The Canadian Trustee on the direction of the Relevant Managing Agent or of the Council may transfer any assets for the time being held in the Managing Agent's Canadian Sub-Fund of any Managing Agent to the Member's Canadian Personal Reserve Sub-Fund (by recording that the assets are vested in or under the control of the Canadian Trustee as part of that Sub-Fund) and
 - (vii) The Canadian Trustee on the direction of the Relevant Managing Agent or of the Council may transfer any assets for the time being held in the Managing Agent's Canadian Sub-Fund of any Managing Agent to the Canadian Central Syndicate Sub-Fund (by recording that the assets are vested in or under the control of the Canadian Trustee as part of that Sub-Fund)
- (b) No person making or directing any transfer of assets under this clause 13 shall have any obligation to see to the future application of any assets so transferred

Application of income of the Member's Canadian Trust Fund

14. All interest dividends and other income from time to time earned in respect of the Trust Assets shall be added to and held as capital of the Member's Canadian Trust Fund in accordance with paragraph 1(b) of Schedule 2 except that –
- (a) in any case where the Member is an individual any such interest dividends and other income accruing after the death of the Member (so far as not used during the Trust Period in the calendar year in which the same are received in paying or discharging Permitted Canadian Trust Outgoings or other amounts becoming payable or reimbursable under this Deed or otherwise liable to be discharged in that calendar year or in any earlier year or period) shall be held in trust for the Member absolutely and
 - (b) whether or not the Member is an individual the whole or any part of any interest dividends and other income arising from the Member's Canadian Personal Reserve Sub-Fund may at the discretion of the Regulating Trustee be paid to the Member absolutely rather than being dealt with as provided in the foregoing provisions of this clause

Termination of the Member's Canadian Trust Fund

15. (a) Notwithstanding anything herein contained no assets shall in any circumstances be added to or otherwise become comprised in the Member's Canadian Trust Fund after the expiry of the Trust Period
- (b) Subject to clause 15(c) -
- (i) on the expiry of the Trust Period the whole of the Member's Canadian Trust Fund then remaining undistributed and the future income thereof shall thenceforth be held in trust to transfer the same as an addition to the Member's Premiums Trust Fund to be held upon and with and subject to the trusts powers and provisions declared and contained in the Member's Premiums Trust Deed freed and discharged from all the other trusts powers and provisions of this Deed
- (ii) in making the transfer directed by clause 15(b) Trust Assets comprised in the Managing Agent's Canadian Sub-Fund of any Managing Agent shall (save only to the extent if any that the Regulating Trustee under the Member's Premiums Trust Deed may have otherwise directed) be made part of the Managing Agent's Sub-Fund under the Member's Premiums Trust Deed of the same Managing Agent (or in any case where that is in the circumstances not practicable shall instead be made part of the Personal Reserve Sub-Fund thereunder)
- (c) Provided always that where clauses 3(b) and 7(c) have effect so that there exists -
- (i) a common Canadian trust fund in respect of the Member in accordance with clause 3(b) and
- (ii) in any case where a Managing Agent is a Managing Agent as regards more than one of the Premiums Trust Deeds of the Member referred to in that clause 3(b) a common Canadian sub-fund for the Member in respect of that Managing Agent under clause 7(c)

the provisions contained in clauses 4(d) and 15(b) for the transfer of the Member's Canadian Trust Fund as an addition to the Member's Premium Trust Fund shall be read -

- (i) as extending to the whole of such common Canadian trust fund in respect of the Member and
- (ii) as requiring the transfer (save only to the extent if any that the Council may during the Trust Period have already directed) of assets held in the Managing Agent's Canadian Sub-Fund of any Managing Agent (including when applicable any such common Canadian sub-fund for the Member in respect of that Managing Agent) to the Managing Agent's Sub-Fund or Sub-Funds of the same Managing Agent under such one or more of the Premiums Trust Deeds of the Member referred to in clause 3(b) that has such a Managing Agent's Sub-Fund and if more than one to the same in such proportions as the Managing Agent shall during the Trust Period in its absolute discretion determine

Nominees and custodians

16. (a) The Canadian Trustee may at any time or times -
- (i) with the prior written approval of the Superintendent appoint any Canadian authorised person to act as a nominee of or as a custodian for the Canadian Trustee for the purposes of acquiring holding realising or dealing in any other manner whatsoever with any assets that are or will be comprised in the Lloyd's Canadian Trust Fund
 - (ii) with the prior written approval of the Superintendent arrange for (and enter into agreements in respect of) the participation of the Canadian Trustee or any such nominee or custodian in any dematerialised or book-based electronic entry system
 - (iii) for the purposes of any such appointment or arrangement authorise the holding of Trust Assets in a fungible form
 - (iv) in making any such appointment or arrangement agree to such terms as it in its absolute discretion thinks fit (including the giving of any requisite warranties indemnities or undertakings)
 - (v) for the purposes of any such appointment or arrangement involving a nominee or custodian permit the nominee or custodian to act through any sub-appointee and authorise any further such sub-appointments whether limited in degree or extending

indefinitely to any number of degrees and so that any participation in any dematerialised or book-based electronic entry system may be through any such sub-appointee and references in clause 16(a)(vi) to a nominee or custodian and in clauses 16(b) and (d) to a sub-appointee shall be taken to include references to any such person

- (vi) arrange for (and enter into agreements in respect of) the payment out of the Lloyd's Canadian Trust Fund or its income of all normal charges and other costs involved in any such appointment or participation including the payment of the remuneration and expenses of any such nominee or custodian and the giving of any requisite security interest lien or right of retention and
 - (vii) terminate or modify any such appointment arrangement authority permission or agreement
- (b) Any custodian or a nominee appointed directly by the Canadian Trustee must be a Canadian authorised person but it shall not be necessary for any sub-appointee of any custodian or nominee to be a Canadian authorised person
 - (c) Where any person holds or will or may hold Syndicate Trust Assets as a nominee of or custodian for the Canadian Trustee the Relevant Managing Agent may in regard to those assets or assets representing or derived from them give directions to such person without obtaining the concurrence of or consulting with the Canadian Trustee and such person shall be entitled to act upon any directions purporting to be so given
 - (d) The provisions of clause 17(b) to (d) relating to responsibility for delegates and sub-delegates shall also apply as regards responsibility for nominees and their sub-appointees and custodians and their sub-appointees (as if directly appointed nominees and custodians were delegates and sub-appointees were sub-delegates)

Delegation

- 17. (a) Any Managing Agent or with the prior written approval of the Superintendent the Canadian Trustee may from time to time (subject to any terms or conditions that it may think fit) delegate to any person whatsoever (whether or not a Canadian authorised person but not the Member himself) all or any of its powers authorities and discretions whatsoever whether conferred by this

Deed or under the general law (so far as such powers authorities and discretions are not already vested in some other person by any provision of this Deed) and any delegation under this clause 17(a) shall (unless that delegation otherwise states) confer on any such delegate power to sub-delegate to any person other than the Member himself all or any of the powers authorities and discretions so delegated and (unless that delegation otherwise states) authorise any further such sub-delegation other than to the Member to any number of degrees

- (b)
 - (i) Subject to clauses 17(b)(ii) and 17(c) the Canadian Trustee shall be responsible for exercising reasonable care in its choice and use of delegates and shall be responsible for the negligent acts or negligent failures to act of its delegates or sub-delegates
 - (ii) The Canadian Trustee shall not have any responsibility under clause 17(b)(i) where it has chosen or used delegates or sub-delegates at the request of any of the Member's Underwriting Agents or (in any such case as is mentioned in clause 17(c)) Lloyd's
- (c) Lloyd's shall be responsible for the acts or omissions of any subsidiary of Lloyd's to which the Canadian Trustee has delegated or sub-delegated at the express request of Lloyd's
- (d) Save in any such case as is mentioned in clause 17(c) any person other than the Canadian Trustee who makes a delegation shall be liable for the acts or defaults of any persons to whom he may have delegated and for the acts or defaults of any sub-delegates of such persons as if they were the acts or defaults of the person making such delegation
- (e) Any delegation made under this clause 17 shall be on such terms and subject to such conditions and with such remuneration (and provision for the remuneration of sub-delegates) if any payable out of the Member's Canadian Trust Fund or its income as the person making such delegation may determine and agree with the person to whom the delegation is to be made and the person making such delegation may at any time revoke or vary any such determination

Bank accounts and blending

- 18. (a) Trust Assets held by or under the control of the Canadian Trustee may be held in any number of bank accounts situated in Canada

- (b) Any Trust Assets may be placed in the same bank account or pool of assets (in either case denominated in any currency whatsoever and whether situated in Canada or in any other part of the world) as or may otherwise be blended with -
- (i) any other Trust Assets of that Member (even if belonging to a different Sub-Fund) or
 - (ii) any assets that are comprised in any trust funds under the Member's Premiums Trust Deed or other Premiums Trust Deeds or other Special Trust Funds or other Overseas Funds or Lloyd's Deposits or any other trust funds whatsoever at Lloyd's of the Member or any of the other members or
 - (iii) any assets which consist of or represent income held in trust for the Member absolutely under exception (a) to clause 14 (or distributed in execution of that trust) or which consist of or represent income held in trust for the Member or any other member absolutely (or distributed in execution of that trust) under the like provision of the Member's Premiums Trust Deed or any other Premiums Trust Deeds

and may accordingly be held and may be deposited lent or invested or reinvested together with the same without any need for segregation

- (c) There shall be full power to sever and apportion any blended funds or assets and their income in any manner that complies with the practices adopted at Lloyd's or is otherwise fair and reasonable (without being responsible for any loss occasioned thereby)
- (d) Any Trust Assets held by the Canadian Trustee or by any custodian or nominee or sub-appointee as is referred to in clause 16 in a bank account in the name of a Canadian authorised person or in any dematerialised or book-based electronic entry system may be blended with any other assets held by the Canadian Trustee or by that custodian or nominee or sub-appointee or authorized person or Canadian authorised person or in that system without any need for segregation
- (e) Subject to clauses 8 and 9(a) and 20(d) all trust monies shall at all times stand to the credit of an account with an approved bank or a Canadian approved bank

- (f) Subject to clauses 8 and 9(a) and 20(d) any person or persons in whose name any bank account containing trust monies is held must be the Canadian Trustee or a Canadian authorised person

Investment and laying out of the Member's Canadian Trust Fund

- 19. (a) Subject to any requirements of the Council or of the Superintendent any part of the Member's Canadian Trust Fund may as the Regulating Trustee or (as the case may be) the Relevant Managing Agent may think fit be -
 - (i) deposited with or lent to any person in any part of the world (other than the Member or any of the Member's Underwriting Agents) or
 - (ii) invested or otherwise laid out in the acquisition of any "**investments**" as defined in clause 21(a)(ii) of the Member's Premiums Trust Deed or any currency or any other choses in action or other assets of any nature whatsoever (other than land buildings and other immovable property rights) that could be acquired by an absolute beneficial owner wherever the same are situate (in any part of the world) and although not within any range or classes of securities authorised by law in the absence of an express power including (without limitation) any shares or other securities or choses in action in any part of the world which are recorded held or transferred by any dematerialised or book-based electronic entry system
- (b) In determining the investment or other application of any part of the Member's Canadian Trust Fund account may properly be taken (*inter alia*) of the likely nature of anticipated future Permitted Canadian Trust Outgoings (including the currencies in which the same will fall due to be paid or discharged and the likely date or dates for payment of the same) and the desirability of the Member's Canadian Trust Fund having available at the appropriate time liquid funds out of which the same may be met
- (c) Without prejudice to the generality of the foregoing (but subject to the requirements of the Council or of the Superintendent) -
 - (i) the keeping of any trust monies in an interest-bearing account shall be regarded as a proper investment of the same and in the case of the Canadian Central Syndicate Sub-Fund and the Member's Canadian Personal Reserve Sub-Fund there shall be no obligation to invest any such

assets in any other manner (whether for reasons of diversification or otherwise howsoever)

- (ii) the Canadian Trustee shall be entitled if so directed by the Regulating Trustee (and without being liable for any loss) either (A) to retain any Trust Assets contained in the Member's Canadian Personal Reserve Sub-Fund in the form in which they are received by it (so long as falling within the range permitted by this clause 19) without being under any obligation further to invest or lay out the same in any other manner or (B) to invest or lay out any such Trust Assets or the proceeds of sale thereof within the permitted range in accordance with any recommendations which may from time to time be made by the Member or any person appearing to the Canadian Trustee to have been authorised by the Member to make such recommendations

- (d) The Regulating Trustee or (as the case may be) any Managing Agent may at any time or times until the expiry of the Trust Period direct that any assets for the time being held as part of the Member's Canadian Personal Reserve Sub-Fund or (as the case may be) the Managing Agent's Canadian Sub-Fund of that Managing Agent shall be released altogether from the Member's Canadian Trust Fund (discharged from all the trusts powers and provisions of this Deed) in any case where the same are forthwith replaced by substitute assets of equivalent value (being assets authorised by this clause 19 or by clauses 20 to 21 or cash)

- (e) For the avoidance of doubt nothing in this Deed shall authorise any part of the Member's Canadian Trust Fund or their income to be used for the purpose of underwriting securities issues

- (f) The Canadian Trustee may participate in a securities lending programme sponsored and administered by the Canadian Trustee and in connection therewith the Canadian Trustee is authorized to release and deliver securities and return collateral received for loaned securities in accordance with the provisions of the programme and within the guidelines issued by the Superintendent

- (g) The Canadian Trustee may acquire hold and deal with letters of credit which are issued or confirmed by a qualified Canadian financial institution

Deposits and loans free of interest or on special terms guarantees and letters of credit

20. (a) Subject to the requirements of the Council the Canadian Trustee (upon direction by the Regulating Trustee) or (as the case may be) the Relevant Managing Agent may for any purpose of or in connection with the Member's Canadian Business cause any part of the Member's Canadian Trust Fund to be deposited with or lent to -
- (i) any of the other members or
 - (ii) Lloyd's or any company which is a subsidiary of Lloyd's or in which Lloyd's otherwise has an interest (although Lloyd's may currently be the Regulating Trustee) or
 - (iii) Additional Securities Limited or any other company nominated for the purposes of this power by the Council or
 - (iv) all or any of the trustees for the time being of any other Special Trust Funds or the Member's Premiums Trust Deed or of any other Premiums Trust Deeds
- (b) Subject to the requirements of the Council any part of the Member's Canadian Trust Fund may be used by the Canadian Trustee at the direction of the Relevant Managing Agent or the Regulating Trustee to acquire or provide or give security for (either individually or jointly with any members of any syndicate or syndicates at Lloyd's whether or not the Member is a member of any or all of such syndicates) any letters of credit or guarantees (in favour of any person including without limitation Lloyd's itself) required for or otherwise in any way whatsoever relating to or connected with the Member's Canadian Business (and any such security may also be given over any assets liable in the future to become comprised in the Member's Canadian Trust Fund or any part thereof including all or any Canadian Syndicate Rights of Recovery or the Canadian Receivables)
- (c) Without prejudice to the generality of the foregoing it is hereby declared that in any case where any part of the Member's Canadian Trust Fund is used by the Canadian Trustee at the direction of the Relevant Managing Agent or the Regulating Trustee to pay more than the Member's proper share of or contribution to -

- (i) any deposit loan letter of credit or guarantee referred to in clauses 20(a) or 20(b) or
- (ii) the funding or provision of any Canadian Business Regulatory Deposit or
- (iii) the payment of any outgoings whatsoever of any syndicate or syndicates of or with which the Member is or was a member or is or was otherwise connected for the purposes of any part of the Member's Canadian Business

(any which such direction or action the Relevant Managing Agent or as the case may be the Regulating Trustee is hereby expressly authorised to make or take if it acting in good faith thinks fit) the excess over the Member's proper share thereof or contribution thereto shall be treated for all the purposes of this Deed as a loan validly made under clause 20(a) in favour of those of the other members whose own proper share of or contribution to the same has thereby been discharged or otherwise met

- (d) Subject to the requirements of the Council the Canadian Trustee upon direction by the Relevant Managing Agent may cause any part of the Member's Canadian Trust Fund to be deposited in escrow in respect of any particular claim by a policy holder or other person in connection with the Member's Canadian Business

Power to borrow and given security for member's borrowings

- 21. (a) Subject to the requirements of the Council any deposit may be taken or loan may be raised in order to augment the Member's Canadian Trust Fund or any part thereof or to replace wholly or partly any indebtedness owing by the Canadian Trustee or for any of the purposes of this Deed whatsoever and any such deposit or loan may be secured in any manner on the whole or any part of the Member's Canadian Trust Fund
- (b) Any security given for any deposit taken or loan raised under clause 21(a) may be given over assets liable in the future to become comprised in the Member's Canadian Trust Fund including all or any Canadian Syndicate Rights of Recovery or the Canadian Receivables and where raised at the direction of a Managing Agent with sole liability on the part of the Canadian Trustee or joint liability with the Member as to repayment-
- (c) Any deposit or loan which may be taken or raised by a Managing Agent on behalf of the Member to enable the Member to pay or

discharge any Permitted Canadian Trust Outgoings may be secured in any manner permitted under clauses 21(a) or (b)

Provisions supplementary to clauses 18 to 20

22. (a) The Canadian Trustee shall give effect to any direction given by a Managing Agent under clauses 20(b) or 21(b) to give any security over Canadian Syndicate Rights of Recovery or the Canadian Receivables and the Canadian Trustee may give security over Canadian Syndicate Rights of Recovery or the Canadian Receivables notwithstanding that the relevant part or parts of the Member's Canadian Trust Fund are not vested in or under the control of the Canadian Trustee
- (b) No person providing a letter of credit or guarantee for and no depositor or lender paying or advancing monies to or to the order of the Canadian Trustee or for or to the order of any Managing Agent purporting to be acting pursuant to the powers given by clauses 20 or 21 shall be concerned to inquire whether such letter of credit or guarantee or all or any of such monies is wanted or ought to be so provided or paid or advanced or otherwise as to the use made of any such letter of credit or guarantee or as to the application of any such payment or advance or as to the propriety or regularity of any exercise of such powers
- (c) Any deposit or loan may be made under clause 19(a) or clause 20(a) or taken or raised under clause 21(a) by way of an isolated sum or series of sums or by overdraft or by monies or remittances being made available to the credit of any running account or by monies being left as owing to the lender or by lending shares or other securities by way of stocklending or by any other means whatsoever
- (d) Any deposit or loan may be made under clause 19(a) or clause 20(a) or taken or raised under clause 21(a) either with or without security given by the recipient of the deposit or loan and on any such terms as to interest and charges and premium on repayment (if any) and generally upon such terms as to repayment and otherwise in all respects as the person initiating the making of the deposit or loan may think fit and agree with the recipient of the deposit or loan or where that first person is also acting as agent for the recipient of the deposit or loan as it may determine

Netting agreements

23. In effecting any acquisition or sale of or other dealing with the Trust Assets or in directing the same the Canadian Trustee or any Managing

Agent may enter into or direct the entering into of a netting or other similar agreement with any counterparty or other person involved in the transaction in question and where such transaction involves Trust Assets that have been or will be blended under the powers conferred by clause 18(b) any such netting or other agreement may be entered into without distinguishing between such Trust Assets and any other assets that are or may become held in the relevant blended fund

Administration

24. Subject to any requirement of the Council or of the Superintendent the administration management and investment of the Member's Canadian Trust Fund shall be conducted in accordance with applicable law and pursuant to such administrative accounting and banking services and procedures as the Canadian Trustee may establish from time to time in accordance with the directions of the Relevant Managing Agent including -

(a) the provision of services for electronic access to such services offered by the Canadian Trustee for the purposes of retrieving or transmitting information or initiating transactions including without limitation -

(i) access for the electronic transfer of funds to and from accounts

(ii) access to accounts for electronic deposits

(iii) terminal access to third-party accounts

(iv) access to transaction details and

(v) access for the electronic investment in the overnight money market by transferring funds and

(b) the maintenance of adequate insurance over the Trust Assets

subject to such agreements as may be entered into from time to time between the Canadian Trustee and the Relevant Managing Agent or the Canadian Trustee and the Regulating Trustee (as the case may be) in respect thereof

Persons in whom discretions are vested

25. (a) Subject to clause 5(b) and to any other express provision of this Deed all discretions powers and authorities -

(i) conferred in this Deed by a provision which does not itself state who is to exercise the same or

- (ii) conferred by the general law on trustees (whether by virtue of the *Trustee Act* R.S.O. 1990, Ch. T.23 as amended from time to time or any other statute or otherwise howsoever)

shall -

- (A) as regards the Member's Canadian Personal Reserve Sub-Fund (or assets which will when received belong thereto) be vested in and be exercisable by or at the direction of the Regulating Trustee alone (save only to the extent if any as the Regulating Trustee otherwise directs) and
- (B) as regards the Managing Agent's Canadian Sub-Fund of any Managing Agent (or assets which will when received belong thereto) be vested in and be exercisable by or at the direction of the Managing Agent concerned (save only to the extent if any as that Managing Agent otherwise directs) and
- (C) as regards the Canadian Central Syndicate Sub-Fund (or assets which will when received belong thereto) be vested in and be exercisable by or at the direction of the Regulating Trustee (save only to the extent if any as the Regulating Trustee otherwise directs) and

(b) For the avoidance of any doubt it is hereby expressly declared -

- (i) that the discretions powers and authorities conferred by this Deed on any Managing Agent shall only be exercisable by it in respect of the Managing Agent's Canadian Sub-Fund of that Managing Agent (or assets which will when received belong thereto) and
- (ii) that the discretions powers and authorities conferred by this Deed on the Regulating Trustee shall only be exercisable by it in respect of the Member's Canadian Personal Reserve Sub-Fund or the Canadian Central Syndicate Sub-Fund assets which will when received belong thereto

Exercise of discretions

26. (a) The Canadian Trustee the Regulating Trustee any Managing Agent and Lloyd's may in executing the trusts of this Deed and exercising any discretions powers or authorities conferred upon them by or under this Deed or by law act by any of their respective officers or employees or in the case of any Managing

Agent any partner therein but (in each such case) shall be responsible and liable for anything done or omitted by the officer employee or partner in the like manner and to the like extent as if it had been done or omitted by the Canadian Trustee or the Regulating Trustee or the Managing Agent or Lloyd's (as the case may be)

- (b) In exercising any discretions powers or authorities conferred upon them by or under this Deed the Canadian Trustee or the Regulating Trustee or any Managing Agent (or any delegate or sub-delegate acting for them or in their place) shall so exercise each power authority or discretion so as to comply with clause 5(b) and (subject thereto) so as not to infringe or be inconsistent with
 - (i) (in the case of a Managing Agent) any applicable Underwriting Agent's Appointment and
 - (ii) (in the case of the Canadian Trustee or of any delegate or sub-delegate acting for or in place of the Canadian Trustee) any agreement to which the Canadian Trustee is a party relating in either case to all or any of the functions of the Canadian Trustee under this Deed
- (c) In exercising any discretion power or authority which is conferred by this Deed on any person or persons (including without limitation the Council or the Canadian Trustee or any of the Member's Underwriting Agents) such person or persons may if thought fit exercise the same in a way which will or may (whether revocably or irrevocably) fetter the exercise of such discretion power or authority in the future (including without limitation by way of standing order or direction or by reference to future dates or times or to the occurrence or otherwise of future events or contingencies)
- (d) In making any calculation or certification (or in giving effect to the same) under this Deed use may be made of and reliance may be placed on any computerised accounting or payment systems

Self-dealing

27. (a) It is hereby declared that Lloyd's (acting in any capacity whatsoever) or any Managing Agent or the Canadian Trustee may (save only where expressly prohibited by any provision of this Deed) exercise any discretion power or authority conferred on it or him by or under this Deed in favour of itself or himself or any person in whom it or he has an interest or with whom it or he is connected in any way whatsoever (including in the case of

any discretion power or authority expressed to be conferred on the Council or the Regulating Trustee Lloyd's acting in that or any other capacity whatsoever and any company in which Lloyd's has a controlling or other interest) without (in any such case) the exercise in question being invalid or becoming liable to be set aside or reopened (and without the incurring of any personal liability) by reason of any self dealing disability or conflict of interest so occasioned

(b) It is hereby further declared that -

(i) any Managing Agent or the Canadian Trustee may effect any transaction with itself or himself either as principal or as an agent of any of the other members or as a trustee of any other Special Trust Fund or Overseas Fund or of the Member's Premiums Trust Deed or of any other Premiums Trust Deeds or other trust instrument whatsoever at Lloyd's of the Member or of any of the other members and

(ii) Lloyd's acting in any capacity may effect any transaction with itself in any other capacity whatsoever

without (in any such case) the transaction in question being invalid or becoming liable to be set aside or reopened (and without the incurring of any personal liability) by reason of any self dealing disability or conflict of interest so occasioned provided that the transaction is shown to have been at the time of the transaction fair and reasonable in regard to the Member and those entitled to Permitted Canadian Trust Outgoings

Rights of policyholders to claim on the Member's Canadian Trust Fund

28. No policyholder or other person having or alleging any claim or demand against the Member shall be entitled to have any account rendered to him of the Member's Canadian Trust Fund or its income or of the administration or execution of the trusts of this Deed or any aspect thereof or to see any of the books papers accounts vouchers or records of the Canadian Trustee or of the Member's Canadian Business or the Member's Underwriting Agents or any of them unless and until all of the following four conditions have been fulfilled -

(a) A judgment has been obtained by the policyholder or such other person as aforesaid against the Member in respect of the Member's liability under the relevant policy or contract of insurance in a court of competent jurisdiction in Canada (or any other country where the judgment is enforceable in Canada after

registration or extension without obtaining a judgment of a court in Canada other than an order for enforcement of the judgment)

- (b) Such judgment has become final in the sense that the particular litigation has been concluded either through failure to appeal within the time permitted for an appeal or through the final disposition of any appeal or appeals that may be taken
- (c) There has been delivered to the Canadian Trustee and the Managing Agent concerned an office or official copy of the judgment obtained as aforesaid together with such proof as to its finality and subsistence through satisfaction of the condition specified in clause 28(b) as such Managing Agent or the Canadian Trustee requires and
- (d) A period of forty-two days has expired from and after the date of delivery of the office or official copy of the said judgment and all such proof as aforesaid to the Canadian Trustee and the Managing Agent concerned without the judgment having been satisfied

No partnership

- 29. Nothing contained in this Deed shall constitute a partnership between the Member and any person or persons (the Member's Canadian Business being carried on for the Member's own sole and separate account)

Canadian Trustee's accounting for Trust assets

- 30. (a) The Canadian Trustee shall keep or cause to be kept such books records and accounts as are necessary and appropriate to document the Member's Canadian Trust Fund and the transactions thereof as may be required under any applicable law or regulation or the guideline or direction of any regulatory authority
- (b) The Canadian Trustee shall quarterly and at any other time when so required by the Superintendent furnish to the Superintendent and Lloyd's a declaration in a form approved by the Superintendent of all the assets for the time being held by or under the control of the Canadian Trustee subject to the provisions of this Deed
- (c) The Canadian Trustee shall at all times permit such examination of the assets and records of the Member's Canadian Trust Fund by Lloyd's the Council the Member's Underwriting Agents the Superintendent or any of their authorized representatives and

shall at all times provide such reports or accounts as Lloyd's the Council the Member's Underwriting Agents or the Superintendent may deem necessary or expedient

Evidence on which the Canadian Trustee may act

31. (a) The Canadian Trustee may accept as sufficient and act upon and give effect to any statement of Lloyd's or duly authorised agents of Lloyd's or (as the case may be) the Relevant Managing Agent as to what sums or other assets are from time to time required to be paid or transferred out of the Member's Canadian Trust Fund or its income and to whom these are to be paid or transferred and what investments or other property are or is to be acquired or realised or exchanged and in what manner in all respects such payment transfer acquisition realisation or exchange is to be made
- (b) The Canadian Trustee shall not under any circumstances be under any liability for acting upon or giving effect to any such statement without requiring any verification thereof or for paying or transferring any sums or assets or acquiring or realising or exchanging any investments or property on the basis of any such statement without requiring any such verification
- (c) The Canadian Trustee may however if it thinks fit require any such statement to be verified in such manner as he or it thinks fit but he shall not under any circumstances be under any obligation to do so
- (d) Clause 31(a) shall apply even where there is (unknown to the Canadian Trustee or unknown to the officer or employee by whom the Canadian Trustee is acting) a fault or invalidity in the appointment of the person appearing to be one of the Member's Underwriting Agents or in the appointment or authorisation of the officer partner or employee delegate or sub-delegate by which it or the Member itself appears to be acting

Notices

32. (a) Any notice or other document to be served under this Agreement (including statements and directions given to the Canadian Trustee or to Lloyd's) may be delivered during the addressee's normal business hours or sent by prepaid first class post (or airmail where the recipient is overseas) or facsimile to the party to be served at its address set out in clause 32(c) below or at such address as it may have notified to the other parties in accordance with this clause

- (b) Any notice or document shall be deemed to have been served
- (i) if delivered, at the time of delivery or
 - (ii) if post, at 10:00 a.m. (Toronto time) on the fifth day after it was put in the post or
 - (iii) if sent by facsimile, at the expiration of two hours after the time of despatch, if despatched before 3:00 p.m. (Toronto time) on any business day and in any other case at 10:00 a.m. (Toronto time) on the business day following the date of despatch
- (c) The address for service of notices of each of the respective parties shall be as follows
- (i) Notices to Lloyd's or to any Managing Agent

Market Finance
Lloyd's
One Lime Street
London EC3M 7HA
England

Attention: The Manager
Telephone: (44) 020 7327 1000
Facsimile: (44) 020 7327 5261

and in the case of any such notice from the
Superintendent to the Chief Agent of Lloyd's in Canada
 - (ii) Notices to the Canadian Trustee

Royal Trust Corporation of Canada
Royal Trust Tower 11th Floor
77 King Street West
P.O. Box 7500 Station "A"
Toronto, Ontario
Canada

Attention: Director Client Relations Insurance Industry
Telephone: (416) 955-2246
Facsimile: (416) 955-2600
 - (iii) Notice to the Superintendent

Superintendent of Financial Institutions
200 René-Levésque Boulevard West

West Tower
Room 903
Montréal, Québec H2Z 1X4
Canada

Attention: Director of Financial Institutions Group
Telephone: (514) 496-2192
Facsimile: (514) 496-1726

- (d) In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class letter (or airmail where appropriate) or that the facsimile message was properly addressed and despatched as the case may be

Protecting provision

33. If any difference at any time arises between the Canadian Trustee and the Member or any present or past Managing Agent or the Canadian Trustee hereof relating to the trusts hereby constituted or the administration thereof or anything connected therewith or if the Canadian Trustee at any time feels any doubt or difficulty in administering these trusts it shall be an absolute protection to all persons concerned (including Lloyd's) against all claims and demands whatsoever that in the case of any act or thing already done or omitted the Council approved or approves of such act or thing having been done or omitted and that in the case of any act or thing intended to be done or omitted the Council approves of such intended act or omission

Inconsistencies with other agreements

34. (a) If and so far as any of the trusts powers or provisions of this Deed are at any time inconsistent with any existing agreement between the Member and any of the Member's Underwriting Agents or the Regulating Trustee then and in every such case every such other agreement shall so far as it or they may be inconsistent with any of the terms of this Deed be deemed cancelled and suspended by this Deed so that in every such case of inconsistency (if any) the provisions of this Deed shall prevail and have full effect
- (b) Save as aforesaid nothing herein contained shall prejudice alter or affect any such agreement or appointment relating to the Member's Canadian Business to the intent that except so far as is necessary to give full effect to this Deed or any such agreement or appointment as last mentioned shall continue in full force

Choice of law

35. This Deed shall be read and construed and take effect in all respects in accordance with the law of the Province of Ontario (which shall be the proper law of this Deed) except with respect to the Perpetuity Period which for purposes of this Deed shall be governed by the law of England and Wales

Entire agreement

36. This Deed and any agreements contemplated herein constitute the entire trust agreement between the parties for the purposes of the Act and in respect of the Lloyd's Canadian Trust Fund

Further assurances

37. Each of the parties hereto shall execute and deliver all such instruments and assurances and do all other acts and things as are necessary to give full effect to and carry out their respective obligations under this Deed

Severance

38. If at any time any provision hereof is or becomes illegal invalid or unenforceable in any respect under the law of any jurisdiction neither the legality validity or enforceability of the remaining provisions hereof nor the legality validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired hereby

Waiver

39. No waiver by any party of any breach of any of the covenants provisos conditions restrictions or stipulations contained in this Deed shall take effect or be binding upon that party unless the same be expressed in writing under the authority of that party and be approved in writing by the Superintendent and any waivers so given and approved shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any further breach

Execution by Superintendent

40. The Superintendent by executing this deed also confirms his approval thereof pursuant to section 611(3) of the Act

Third party beneficiaries

41. The parties hereto agree that except as specifically provided for herein this Deed shall not benefit or create any right or cause of action in or on behalf of any person other than the parties to this Deed and no person other than the parties to this Deed shall be entitled to rely on the

provisions of this Deed in any actionsuit proceeding hearing or other forum

Revocation/alteration of Trust Deed

42. Subject to the approval in writing of the Superintendent, the Council may at any time upon giving not less than ninety (90) days' notice in writing to the Canadian Trustee revoke and determine the trusts hereby constituted and may at any time alter all or any of the provisions hereof in such manner as the Council considers fit

Successors and assigns

43. This Deed shall become effective when executed by Lloyd's, the Canadian Trustee and the Superintendent and after that time shall be binding upon and enure to the benefit of Lloyd's the Canadian Trustee and the Superintendent and their respective successors and permitted assigns

SCHEDULE 1

Interpretation

1. In this Deed unless the context otherwise requires

“Act” means the *Insurance Companies Act* S.C. 1991 c. 47 including any amendments or regulations made pursuant thereto.

“approved bank” means any natural or artificial person in any part of the world except only for the Member himself and any of the Member’s Underwriting Agents (and so including without limitation Lloyd’s or any trustee of the Member’s Premiums Trust Deed or any company whether or not incorporated in the United Kingdom which is a subsidiary of Lloyd’s or in which Lloyd’s otherwise has an interest) that either -

- (a) has and is acting through a permanent place of business in the United Kingdom and is permitted by law to carry on the business of banking in the United Kingdom and is regulated in carrying on that business or
- (b) has been authorised by the Council as a person in an account with whom trust monies can be held for the purposes of this Deed or the Member’s Premiums Trust Deed (or of all or a class of Premiums Trust Deeds and/or the special trust directions thereunder including the Member’s Premiums Trust Deed and/or this Deed)

“assets” include an interest or interest in other assets

“Auction Proceeds” has the meaning (if any) given in the Member’s Premiums Trust Deed

“authorized person” means any natural or artificial person in any part of the world except only for the Member himself (and so including without limitation Lloyd’s or any trustee of the Member’s Premiums Trust Deed or any of the Member’s Underwriting Agents or any company whether or not incorporated in the United Kingdom which is a subsidiary of Lloyd’s or in which Lloyd’s otherwise has an interest) that either -

- (a) has and is acting through a permanent place of business in the United Kingdom and is permitted by law to provide custody services in the United Kingdom and is regulated in the provision of those services or
- (b) has been authorized by the Council to act as a nominee or custodian for the purposes of this Deed or the Member’s

Premiums Trust Deed (or of all or a class of Premiums Trust Deeds and/or special trust directions thereunder including the Member's Premiums Trust Deed and/or this Deed)

"business day" means a day on which banks generally are open for a full range of business in Toronto Ontario (excluding Saturdays and Sundays)

"Canadian approved bank" means any natural or artificial person in any part of the world except only for the Member himself and any of the Member's Underwriting Agents (and so including without limitation Lloyd's or any company whether or not incorporated in the United Kingdom which is a subsidiary of Lloyd's or in which Lloyd's otherwise has an interest or the Canadian Trustee) that either -

- (a) has and is acting through a permanent place of business in Canada and is permitted by law to carry on the business of banking in Canada and is regulated in carrying on that business or
- (b) has been authorized by the Council and the Superintendent as a person in an account with whom trust monies can be held for the purposes of this Deed

"Canadian authorized person" means any natural or artificial person in any part of the world except only for the Member himself (and so including without limitation Lloyd's or any of the Member's Underwriting Agents or any company whether or not incorporated in the United Kingdom which is a subsidiary of Lloyd's or in which Lloyd's otherwise has an interest) that either -

- (a) has and is acting through a permanent place of business in Canada and is permitted by law to provide custody services in Canada and is regulated in the provision of those services or
- (b) has been authorized by the Council and the Superintendent to act as a nominee or custodian for the purposes of this Deed

"Canadian Business Regulatory Deposit" means the Lloyd's Canadian Margin Fund Trust Deed or any other deposit trust deed (including any joint asset trust deed) or any bank account covenant letter of credit guarantee company or other entity or arrangement whatsoever -

- (a) which (and any and every alteration variation or restatement of which) is approved by the Superintendent and
- (b) which (or any fund subject or relating to which) the Member is for the time being required to keep in funds to provide or to provide security (whether on an individual or syndicate or group

or other basis) as a regulatory or other condition or requirement (whether imposed by the Council or by any Canadian governmental or regulatory authority) in order to enable the Member (or any relevant syndicate or group or Managing Agent) to conduct (or more efficiently to conduct) any business which constitutes or which if conducted would constitute part of the Member's Canadian Business

"Canadian Central Syndicate Sub-Fund" means the Sub-Fund referred to in clause 10

"Canadian Receivables" means such monies (not being Specified Excluded Assets) as are now payable or may hereafter at any time become payable to the Member or to any person on behalf of the Member in connection with the Member's Canadian Business (but before receipt thereof by the Member or any such person) and all interest of the Member therein (including for the avoidance of doubt any chose in action representing the right of the Member and any interest of the Member in any chose in action representing the right of any such person to be paid any such monies aforesaid as are for the time being payable)

"Canadian Syndicate Rights of Recovery" means all rights and potential rights of the Member whether current contingent or future to have any assets paid or transferred at any time until the expiry of the Trust Period to the Member or to any Managing Agent or other person on behalf of the Member (and any and every interest of the Member in the rights and potential rights of any Managing Agent or other person whether current contingent or future to have any assets paid or transferred at any time until the expiry of the Trust Period to that Managing Agent or other person on behalf of the Member) where the assets in question -

- (a) have not for the time being been so paid or transferred and
- (b) will (when or if so paid or transferred) themselves be Syndicate Trust Assets

but (for the avoidance of doubt) does not include any Relevant Cause of Action

"Central Accounting system" means the system known as the Central Accounting system for the processing advice accounting netting and settlement of insurance transactions (including monetary obligations arising from insurance transactions) and other transfers of funds

"Central Fund" means the Central Fund referred to in Lloyd's Central Fund Bylaw (No 4 of 1986) and any other assets expressed to be held as part of such Central Fund

“the Council” means the Council of Lloyd's constituted by *Lloyd's Act 1982* (UK) (and also in regard to any discretion authority or power hereby conferred on the Council except only for the purposes of clause 5(a) of this Deed such persons as are for the time being authorised by it to exercise that discretion authority or power)

“Deed” means this amended and restated deed being the present Lloyd's Canadian Trust Deed and any amendments or supplements thereto.

“dematerialised or book-based electronic entry system” means any system in any part of the world for the recording holding or transferring of shares or other securities or any choses in action whatsoever that is based wholly or partly on computer records and being a system either -

- (a) in which any person falling within (a) of the definition of Canadian authorised person is permitted under the regulatory regime applying to it to participate (directly or indirectly)
- (b) the Canadian Depository for Securities Limited or
- (c) which is approved by the Council and the Superintendent

“Equitas Canadian Trust Deed” means the trust deed dated September 4 1996 among Equitas Reinsurance Limited Equitas Limited Royal Trust Corporation of Canada and the Superintendent which constitutes the Equitas Canadian Trust Fund and any amendments or supplements thereto

“Equitas Canadian Trust Fund” means the trust fund constituted by the Equitas Canadian Trust Deed

“general business” means insurance business other than long term business

“individual” means a single individual (as opposed to an individual in his capacity as a member of a partnership)

“Lloyd's” means the party to this Deed as so designated above

“Lloyd's American Instrument” means Lloyd's American Instrument 1995 (General Business of Individual Members or as the case may be Corporate Members) as for the time being modified which Instrument has an English proper law and governs the Dollar Trust Fund (as therein defined) but if or to the extent that such Instrument is replaced then the replacing instrument for the time being in force (as for the time being modified)

“Lloyd’s broker” means a partnership or body corporate for the time being entered in the register of Lloyd’s brokers maintained by the Council

“Lloyd’s Canadian Trust Fund” means the aggregate of the Members’ Canadian Trust Funds

“Lloyd’s Deposits” means the trust funds held under any Lloyd’s Deposit Trust Deeds or Lloyd’s Security and Trust Deeds including all such trust deeds relating to long term business (whether made by the Member or any of the other members)

“long term business” has the meaning given in the *Insurance Companies Act 1982* (U.K.)

“Managing Agent” means an underwriting agent at Lloyd’s appointed by the Member (either directly or by any other underwriting agent at Lloyd’s acting in exercise of any authority given by the Member or by any means derived from any such authority including any contract of Reinsurance to Close) to act as an agent or sub-agent of the Member for the purpose of conducting all or any part of the Member’s Canadian Business (and any successor in whole or in part of such underwriting agent including any substitute agent)

“Managing Agent’s Canadian Sub-Fund” means in regard to any Managing Agent of the Member that part of the Member’s Canadian Trust Fund which is for the time being vested in or under the control of the Canadian Trustee at the direction of that Managing Agent which has been received in connection with so much of the Member’s Canadian Business as has been conducted or wound up by that Managing Agent or is property representing the same

“Member” has the meaning given above including where the context so admits or requires -

- (a) in the case of an individual his administrators executors or assigns
- (b) in the case of a corporate body its assigns and
- (c) in the case of a Scottish limited partnership (having until dissolution its own separate legal personality) that partnership as constituted from time to time and the persons or person who will succeed or have succeeded to its assets and/or its liabilities after dissolution

“Member’s Canadian Business” means such part of the Member’s underwriting business at Lloyd’s (being general business) as constitutes either

- (a) contracts or policies of insurance (other than contracts or policies of marine insurance) to the extent to which such contracts or policies insure risks which are or will be ordinarily in Canada including all policies in Canada as defined in the Act
- (b) contracts or policies of reinsurance underwritten by the Member of any general business (other than contracts or policies of marine insurance) underwritten by a company (not being a member of Lloyd’s) incorporated in Canada and licensed to underwrite insurance business under the laws of Canada or any province or territory thereof
- (c) contracts or policies of reinsurance underwritten by the Member of general business (other than contracts or policies of marine insurance) underwritten in Canada by a company (not being a member of Lloyd’s) incorporated elsewhere than in Canada and licensed to underwrite insurance business under the laws of Canada or any province or territory thereof
- (d) any contract of Reinsurance to Close of any year of account underwritten by the Member to the extent only to which the Member is liable under such contract in respect of
 - (i) contracts or policies of insurance (other than contracts or policies of marine insurance) underwritten by other members to the extent to which such contracts or policies insure risks which are or will be ordinarily in Canada including all policies in Canada as defined in the Act or
 - (ii) contracts or policies of reinsurance underwritten by other members of general business (other than marine insurance) underwritten by a company (not being a member of Lloyd’s) incorporated in Canada and licensed to underwrite insurance business under the laws of Canada or any province or territory thereof
 - (iii) contracts or policies of reinsurance underwritten by other members of general business (other than contracts or policies of marine insurance) underwritten in Canada by a company (not being a member of Lloyd’s) incorporated elsewhere than in Canada and licensed to underwrite insurance business under the laws of Canada or any province or territory thereof

“Member’s Canadian Personal Reserve Sub-Fund” means that part of the Member’s Canadian Trust Fund (not being the Canadian Central Syndicate Sub-Fund) which is for the time being vested in or under the control of the Canadian Trustee at the direction of the Regulating Trustee (designated the Name’s Personal Reserve Fund in this Deed as restated on September 20 1995)

“Member’s Canadian Trust Fund” means the trust fund constituted as provided in clause 3 and Schedule 2

“Member’s Premiums Trust Deed” has the meaning given before the recitals to its Deed

“Member’s Premiums Trust Fund” means the trust fund constituted by the Member’s Premiums Trust Deed

“Member’s Underwriting Agents” means any and every Members' Agent and Managing Agent of the Member

“New Central Fund” means the New Central Fund referred to in Lloyd’s New Central Fund Bylaw (No 23 of 1996)

“the other members” means (with respect to any one member) the other underwriting members of Lloyd's and such former underwriting members of Lloyd's as continue to have general business or long term business not fully wound up (whether or not subject to a Reinsurance to Close) and the personal representatives or trustee in bankruptcy assigns or other successors of any such underwriting member or former underwriting member (including in the case of a Scottish limited partnership that partnership as constituted from time to time and the persons or person who will succeed or have succeeded to its assets and/or liabilities after dissolution)

“Overseas Direction” means this Deed and Lloyd’s American Trust Deed and Lloyd’s American Instrument (as respectively defined in the Member’s Premiums Trust Deed)

“Overseas Fund” means a fund constituted or regulated by an Overseas Direction

“Permitted Canadian Trust Outgoings” has the meaning given in Schedule 3

“the Perpetuity Period” shall be governed by the laws of England and Wales and means the period commencing with the date of the Member’s Premiums Trust Deed and terminating -

- (a) in a case where the Member is an individual on the twenty-first anniversary of the Member's death and
- (b) in any other case on the expiry of eighty years from 1st January 1993

(such period being the perpetuity period in respect of the Member's Canadian Trust Fund and its income for the purposes of this Deed)

"PSL Rights of Recovery" has the meaning (if any) given in the Member's Premiums Trust Deed

"Regulating Trustee" means the Regulating Trustee for the time being of the Member's Premiums Trust Deed

"Reinsurance to Close" means either:

- (a) an agreement under which underwriting members (the "reinsured members") who are members of a syndicate for a year of account (the "closed year") agree with the underwriting members who constitute that or another single syndicate for a later year of account (the "reinsuring members") that the reinsuring members will discharge or procure the discharge of or indemnify the reinsured members against all known and unknown liabilities of the reinsured members arising out of insurance business underwritten through that syndicate and allocated to the closed year of account in consideration of-
 - (i) a premium and
 - (ii) either
 - (A) the assignment or agreement to assign to the reinsuring members of all the rights of the reinsured members arising out of or in connection with that insurance business (including without limitation the right to receive all future premiums recoveries and other monies receivable in connection with that insurance business) or
 - (B) an agreement by the reinsured members that the reinsuring members shall collect on behalf of the reinsured members the proceeds of all such rights and retain them for their own benefit so far as they are not applied in discharge of the liabilities of the reinsured members

- (b) an agreement underwritten by members of one or more syndicates and complying with requirements made under paragraph 2(3) of the Syndicate Accounting Byelaw (No.18 of 1994)
- (c) a syndicate run-off reinsurance contract between members of a syndicate for a year of account and Centrewrite Limited Lioncover Insurance Company Limited Equitas Reinsurance Limited or any other insurance company which is designated by the Council for the purposes of this definition and is either authorised under the *Insurance Companies Act 1982* (U.K.) or an EC company whereby that insurance company agrees to indemnify the members of the syndicate for that year of account against all known and unknown liabilities arising out of insurance business underwritten through the syndicate and allocated to that year of account
- (d) (in relation to the 1992 year of account or any earlier year of account of any syndicate whose members have underwritten general business) the Equitas Reinsurance Contract
- (e) in relation only to the 1993 year of account 1994 year of account or 1995 year of account of any syndicate whose members have underwritten general business the Equitas Reinsurance Contract taken together with an agreement such as is referred to in subparagraph (a) modified so as to reinsure the reinsured members in relation only to such of the insurance business underwritten through that syndicate and allocated to that year of account as has not been reinsured under the Equitas Reinsurance Contract

“Relevant Cause of Action” has the meaning given in the Member’s Premiums Trust Deed

“Relevant Managing Agent” means in regard to the Managing Agent’s Canadian Sub-Fund of any Managing Agent the Managing Agent in question

“requirements of the Council” means any requirement imposed by any byelaw or regulation made under *Lloyd’s Acts 1871 to 1982* (U.K.) or under the authority given by the Member’s Premiums Trust Deed any condition or requirement imposed or direction given under any such byelaw or regulation or authority any direction given under section 6 of *Lloyd’s Act 1982* (U.K.) any requirement imposed by or under any agreement deed or other instrument between Lloyd’s or the Council and the Member any Member’s Underwriting Agent or the Canadian Trustee or by or under any undertaking in favour of Lloyd’s or the Council given by the Member any Member’s Underwriting Agent or the Canadian

Trustee and any other direction or requirement given or made by the Council under *Lloyd's Acts 1871 to 1982* (U.K.)

"Special Trust Direction" means this Deed or any directions given by the Council under clause 5(a) of the Member's Premiums Trust Deed as for the time being in force in regard to the Member

"Special Trust Fund" means a fund constituted or regulated or to be constituted or regulated by a Special Trust Direction

"Specified Excluded Assets" means all Specified Litigation Recoveries all Relevant Causes of Action or recoveries from (or from what previously was) a Relevant Cause of Action all PSL Rights of Recovery and monies received from (or from what previously was) a PSL Right of Recovery all Auction Proceeds and all assets for the time being representing any of the foregoing respectively

"Specified Litigation Recoveries" has the meaning (if any) given in the Member's Premiums Trust Deed

"Sub-Fund" means a Sub-Fund under this Deed being either the Member's Canadian Personal Reserve Sub-Fund the Canadian Central Syndicate Sub-Fund or a Managing Agent's Canadian Sub-Fund

"subsidiary" has the meaning given in section 736 of the *Companies Act 1985* (U.K.) (as applied with any necessary modifications in the case of a company incorporated outside Great Britain)

"substitute agent" has the meaning given in the Substitute Agents Byelaw (No 20 of 1983)

"Superintendent" means the Superintendent of Financial Institutions of Canada

"syndicate" means an underwriting member or group of underwriting members of Lloyd's underwriting insurance business at Lloyd's through the agency of a Lloyd's underwriting agent to which underwriting member or group of underwriting members a particular syndicate number is assigned by or under the authority of the Council (and the underwriting member or several groups of underwriting members to which in different years a particular syndicate number is assigned by or under the authority of the Council shall be treated as the same syndicate for the purpose of this Deed notwithstanding that they may not comprise the same underwriting members with the same individual participations)

"Syndicate Trust Assets" means Trust Assets connected directly or indirectly with so much of the Member's Canadian Business as is conducted by any Managing Agent

“Trust Assets” means assets for the time being comprised in the Member’s Canadian Trust Fund or its income (including income falling within exception (a) to clause 14 during the calendar year in which the same is received)

“the Trust Period” means in relation to any Member the period commencing June 11 1989 or where the Member’s Premiums Trust Deed is executed after that date on the later date of execution of the Member’s Premiums Trust Deed and expiring on the date being 20 days before the termination of the Perpetuity Period

“Underwriting Agent’s Appointment” means any agreement between a Members’ Agent and the Member or between a Managing Agent and the Member or between the Managing Agent and any Members’ Agent or in any case where the Member’s Underwriting Agent in question is a substitute agent the terms of its appointment

“the United Kingdom Financial Services Authority” means the United Kingdom’s Financial Services Authority (or such other authority as has for the time being succeeded to its functions under section 83 of the *Insurance Companies Act 1982* (U.K.))

“the United Kingdom Treasury” means Her Britannic Majesty’s Treasury (or such other authority as has for the time being succeeded to its functions under section 83 of the *Insurance Companies Act 1982* (U.K.))

“year of account” means a year which is accounted for as a separate underwriting venture of a syndicate under Lloyd’s system of account

2. Capitalized terms used but not defined in this Deed have the meanings ascribed to them in the Member’s Premiums Trust Deed *mutatis mutandis*

3. In this Deed unless the context otherwise requires -

(a) A reference to any clause number or numbered Schedule is to the appropriate numbered clause or Schedule of this Deed

(b) A reference to any document (including this Deed itself) or legislation (whether primary or subordinate) or to any provision of it shall after the coming into force of any modification or replacement of the same be read as referring to the same as so modified or replaced

(c) Expressions appearing in the singular shall be read as if appearing alternatively in the plural and vice versa and those appearing in the masculine (including without limitation references to the Member) shall be read as if appearing alternatively in the feminine and neuter and vice versa

4. The headings herein contained are for convenience of reference only and shall not in any way affect the interpretation or construction of this Deed

SCHEDULE 2

The Member's Canadian Trust Fund

1. Subject to paragraphs 2 to 4 and 6 of this Schedule the Member's Canadian Trust Fund shall consist of -
 - (a) all of the following assets on June 11 1989 (or if the Member's Premiums Trust Deed is executed after such date the later date of execution of the Member's Premiums Trust Deed) or at any time thereafter until the expiry of the Trust Period belonging (apart from this Deed) or being or becoming payable or transferable to the Member or to any person on behalf of the Member (and all interests of the Member therein) namely -
 - (i) all premiums in connection with the Member's Canadian Business
 - (ii) all reinsurance recoveries under any contract of Reinsurance to Close in connection with the Member's Canadian Business
 - (iii) all reinsurance recoveries from the Equitas Canadian Trust Fund
 - (iv) all rights of salvage and subrogation rights in connection with the Member's Canadian Business
 - (v) (subject to clause 11) in any case where the Member is conducting or has conducted general business for any year of account after the 1998 year of account all Canadian Syndicate Rights of Recovery and in any other case the Canadian Receivables and (without prejudice to any other provision of this paragraph 1 making the same Trust Assets) all proceeds monies and other assets directed by clause 11 to be held as Trust Assets
 - (vi) all other assets connected with the Member's Canadian Business
 - (vii) all assets properly paid into the Member's Canadian Trust Fund before May 29 2001 of a like nature to those referred to in sub-paragraphs (i) to (vi) of this sub-paragraph (a) notwithstanding that such assets may not on or after May 29 2001 constitute assets connected with the Member's Canadian Business as that expression is defined on or after that date

- (b) such income of the Member's Canadian Trust Fund as is referred to in clause 14 of this Deed other than any falling within the exception to that clause
- (c) all further property at any time added to the Member's Canadian Trust Fund until the expiry of the Trust Period whether by or on behalf of the Member or otherwise howsoever (and so that in accepting any such property an indemnity from the Member's Canadian Trust Fund may be given in respect of any liabilities relating thereto) and
- (d) all assets now or for the time being representing the foregoing respectively

and for the avoidance of doubt the Member's Canadian Trust Fund shall include each Managing Agent's Canadian Sub-Fund as well as the Canadian Central Syndicate Sub-Fund and the Member's Canadian Personal Reserve Sub-Fund

2. Notwithstanding paragraph 1 but subject to paragraphs 3 and 6 of this Schedule assets (and the property representing the same) shall not be treated as comprised in the Member's Canadian Trust Fund
 - (a) if they are not assets which but for this Deed would be or become comprised in the Member's Premiums Trust Fund or
 - (b) if they are Specified Excluded Assets
 - (c) if they are reinsurance recoveries in connection with the Member's Canadian Business received by or on behalf of the Member on or after March 1 2001 other than reinsurance recoveries under any contract of Reinsurance to Close
 - (d) if they are assets of Lloyd's American Trust Fund for general business governed by Lloyd's American Trust Deed
 - (e) (in the event of a winding-up order with respect to the Member's Canadian Business such as is referred to in paragraph 6 of this Schedule) if they are assets received on or after the date of the court order referred to in that paragraph otherwise than -
 - (i) assets received in connection with policies in Canada (as defined in the Act) which are underwritten by the Member or in respect of which the Member is liable under any contract of Reinsurance to Close underwritten by the Member

- (ii) income of the Member's Canadian Trust Fund referred to in paragraph 1(b) of this Schedule or
 - (iii) assets for the time being representing what were previously assets of the Member's Canadian Trust Fund
- 3. Nothing in paragraph 2 of this Schedule shall prevent any assets from being added to the Member's Canadian Trust Fund under paragraph 1(c) of this Schedule
- 4. In any case where until the expiry of the Trust Period an unascertainable or unascertained part or proportion of any assets falls within paragraph 1 of this Schedule as belonging to the Member's Canadian Trust Fund and another unascertainable or unascertained part or proportion is excluded from the Member's Canadian Trust Fund by paragraph 2 hereof the Relevant Managing Agent shall in its absolute discretion determine what proportion or part thereof is to be treated as falling within paragraph 1 and what proportion or part is to be treated as excluded therefrom by paragraph 2 and only the proportion or part thereof so determined as falling within paragraph 1 (and all interest of the Member in that proportion or part) shall be treated as constituting or becoming part of the Member's Canadian Trust Fund
- 5. Assets not falling within the above definition of the Member's Canadian Trust Fund shall not be treated as comprised in the Member's Canadian Trust Fund by reason only that they have been blended with assets of the Member's Canadian Trust Fund (or are income of any assets so blended) and no blending under this Deed shall have the effect of removing from the Member's Canadian Trust Fund any assets which would otherwise be comprised in it
- 6. In the event that a final and binding winding-up order (not subject to appeal or in respect of which all appeals have been taken or applicable appeal periods have expired) has been issued with respect to the Member's Canadian Business under the *Winding Up and Restructuring Act* (Canada) reinsurance recoveries received on and after the effective date of such winding-up order in connection with the Member's Canadian Business in respect of which the Member has claimed credit for purposes of complying with the obligation of the Member to maintain assets in Canada under the Act shall be included as assets of the Member's Canadian Trust Fund

SCHEDULE 3

Permitted Canadian Trust Outgoings

1. The following outgoings are Permitted Canadian Trust Outgoings capable of being paid or discharged until the expiry of the Trust Period (subject to paragraphs 3 to 7 of this Schedule) under the trust contained in clause 4 namely -
 - (a) any losses claims returns of premiums reinsurance premiums monies payable to (or to the order of) reinsurers to close and other outgoings from time to time being or becoming payable in connection with the Member's Canadian Business (for the avoidance of doubt including the direct payment to or to the order of any assured reassured or other person of any loss claim return of premiums or other monies in discharge of any liability in respect of which the Member is liable under any contract of Reinsurance to Close)
 - (b) any syndicate operating expenses and syndicate investment expenses and charges from time to time being or becoming payable in connection with the Member's Canadian Business and any other expenses in connection with the Member's Canadian Business whose payment or discharge is authorised by paragraph 2 of this Schedule
 - (c) the Member's obligations to keep fully funded or provide or pay any costs in respect of any and every Canadian Business Regulatory Deposit
 - (d) the Member's obligations under requirements of the Council or this Deed to pay any contributions fees or subscriptions or expenses or make any other payments or any repayments due to Lloyd's (or to the Central Fund or to the New Central Fund) in connection with the Member's Canadian Business
 - (e) the repayment of any outstanding loan borrowed on behalf of the Member by any Managing Agent to the extent (if any) that the borrowed monies (or any monies which they have been used to refinance) either have been paid into the Member's Canadian Trust Fund or have been used for the payment or discharge of any Permitted Canadian Trust Outgoings (together with any outstanding interest thereon referable to the monies so paid or used)

- (f) the Member's obligations to reimburse any person who has paid or discharged on the Member's behalf any outgoings which otherwise would fall within any of sub-paragraphs (a) to (e) above
 - (g) any claim being or becoming payable by virtue of or in connection with any Canadian Statute in connection with the Member's Canadian Business
 - (h) (to the extent only that recoveries have been paid into the Members' Canadian Trust Fund from the Equitas Canadian Trust Fund for the purpose) any obligation of the Member in respect of any 1992 and Prior Canadian Business (as that expression is defined in the Equitas Canadian Trust Deed) reinsured by Equitas Reinsurance Limited which is not the Member's Canadian Business
2. Subject to paragraphs 3 to 7 of this Schedule expenses falling within any of the following categories can be paid or discharged under paragraph 1(b) hereof to the extent that they are connected with or relate to the Member's Canadian Business
- (a) the amounts from time to time payable by the Member to any of the Member's Underwriting Agents by way of salary or fee
 - (b) the amounts of profit commission from time to time payable by the Member to any of the Member's Underwriting Agents
 - (c) the amounts of expenses (not being syndicate operating expenses or syndicate investment expenses and charges) from time to time payable by the Member to the Member's Underwriting Agents under any applicable Underwriting Agent's Appointment
 - (d) the final or estimated amount of any Canadian taxation payable by the Member
 - (e) any amounts from time to time due from the Canadian Trustee to any broker or counter-party in respect of any sale of Trust Assets where the amount due is in respect of income interest or dividends sold as part of that transaction which income interest or dividends have been or are to be received by the Member
3. The following are not Permitted Canadian Trust Outgoings unless they are syndicate operating expenses or syndicate investment expenses and charges payable in connection with the Member's Canadian Business
- (a) any fee or other remuneration payable by or on behalf of the Member to or for the benefit of any adviser or sponsor of the

Member (except in a case where such Lloyd's adviser or sponsor is also one of the Member's Underwriting Agents and the fee or other remuneration in question is paid to him or it solely in that latter capacity and in connection with the Member's Canadian Business)

- (b) any fee or other remuneration payable by or on behalf of the Member to or for the benefit of any director or other officer of the Member or of any other body corporate (except in a case where such other body corporate is one of the Member's Underwriting Agents and the fee or other remuneration in question is paid to a director or other officer of it acting in that capacity and in connection with the Member's Canadian Business)
 - (c) any fee or other remuneration payable to or for the benefit of any lawyer accountant stockbroker or financial adviser or other adviser whatsoever except in relation to (i) any reinsurance effected by or on behalf of the Member or (ii) the payment or settlement of any claims made in connection with the Member's Canadian Business (including the processing compromise payment repudiation and litigation of any such claims and all matters ancillary thereto)
 - (d) any salary wages fee or other remuneration payable by or on behalf of the Member to or for the benefit of any officer or employee of the Member or to or for the benefit of any other person (except Lloyd's itself or one of the Member's Underwriting Agents acting in that capacity in connection with the Member's Canadian Business) for the provision of the services of that other person's officers or employees
 - (e) any outgoings whatsoever payable by or on behalf of the Member in connection with its incorporation or with the setting up of the underwriting business of the Member at Lloyd's in relation to the Member's Canadian Business
 - (f) any outgoings whatsoever arising out of the acquisition or disposal or occupation of any premises by or on behalf of the Member or the acquisition or disposal or use of any equipment by or on behalf of the Member and in relation to the Member's Canadian Business and
 - (g) any other outgoings of an overhead nature payable by or on behalf of the Member
4. (a) Any outgoings or expenses which would but for this paragraph fall within paragraphs 1 or 2 are not Permitted Canadian Trust

Outgoings if they relate wholly and exclusively to long term business and are capable of being separately identified as relating

- (b) For the avoidance of doubt it is hereby declared that the payment out of the Member's Canadian Trust Fund under the trust contained in clause 4 of any Permitted Canadian Trust Outgoings which relate in part (but not wholly and exclusively) to long term business shall not prevent the reimbursement (if thought fit) of the same to the Member's Canadian Trust Fund to the extent that they relate or are assessed as relating to long term business from any Premiums Trust Deed of the Member relating to long term business in execution of any trust or discretion therein contained
5. If at any time until the expiry of the Trust Period only a proportion or part of any outgoing may be paid or discharged out of the Member's Canadian Trust Fund as a Permitted Canadian Trust Outgoing because only a proportion or part of such outgoing is connected with or related to the Member's Canadian Business the Relevant Managing Agent shall have power in its absolute discretion to determine what is the proportion or part in question
6. Any reinsurance recoveries from the Equitas Canadian Trust Fund shall be applied only in accordance with clause 16(b) of the Equitas Canadian Trust Deed
7. In the event that a final and binding winding-up order (not subject to appeal or in respect of which all appeals have been taken or applicable appeal periods have expired) has been issued with respect to the Member's Canadian Business under the *Winding-up and Restructuring Act (Canada)* then (except to the extent that the Member's Canadian Trust Fund comprises assets received in connection with policies or contracts of insurance or reinsurance underwritten by the Member or in respect of which the Member is liable under any contract of Reinsurance to Close which are not policies in Canada (as defined in the Act)) the Member's Canadian Trust Fund shall only be applied in the payment or discharge of Permitted Canadian Trust Outgoings so far as they relate to policies in Canada in the order of priority set out in that Act

IN WITNESS WHEREOF the parties have duly executed this Deed as of the date first mentioned above.

The Common Seal of Lloyd's was affixed to this Deed in the presence of
LLOYD'S

Witness

Authorized Signatory

SIGNED AND SEALED as a Deed by the Canadian Trustee

**ROYAL TRUST CORPORATION
OF CANADA**

Authorized Signatory

Authorized Signatory

SIGNED by the Superintendent of Financial Institutions in the presence of

**SUPERINTENDENT OF
FINANCIAL INSTITUTIONS**

Witness

Authorized Signatory

