

**PTD G 2009**

**LLOYD'S PREMIUMS TRUST DEED**  
**(general business)**

MEM656E

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**LLOYD'S PREMIUMS TRUST DEED**  
**(general business)**

**THIS TRUST DEED** is made the

**BETWEEN**

(1)

("the Member") and

(2) **THE SOCIETY incorporated by Lloyd's Act 1871 by the name of LLOYD'S**  
("Lloyd's")

**WHEREAS -**

- (A) The Member is or is about to become an underwriting member of Lloyd's for the purpose of underwriting insurances
- (B) Full details have been provided to the Financial Services Authority of this Trust Deed as the trust deed in accordance with the provisions of which the Member is on and after the Commencement Date to carry all premiums received by him or on his behalf in respect of general business
- (C) The Member has agreed with Lloyd's to execute this Deed in consideration of Lloyd's requiring that an appropriate Premiums Trust Deed shall be or shall have been executed as a deed by each of the other underwriting members of Lloyd's and in consideration of the payment of premiums by or on behalf of the insureds in respect of general business
- (D) The principal purpose of this Trust Deed is to cause the Trust Fund to be held first in trust for the payment or discharge of Permitted Trust Outgoings in accordance with clause 3(a) and secondly (and subject to the first trust) in trust for the Member in accordance with clause 3(b)
- (E) It is intended that trust assets may inter alia be held (in accordance with the provisions of this Deed) either -
  - (i) at syndicate level by or under the control of a permitted number of the Managing Agent's Trustees of the applicable Managing Agent or
  - (ii) at personal reserve level or in the Central Syndicate Sub-Fund by or under the control of the Regulating Trustee

and that in any such case the same may be blended (inter alia) with assets belonging to other trust deeds at Lloyd's (whether relating to the Member or to any of the other members)

- (F) The discretions powers and authorities hereby conferred on a Managing Agent are intended only to be exercisable by it in respect of the Managing Agent's 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 Central Syndicate Sub-Fund or the Personal Reserve Sub-Fund (or assets which will when received belong thereto)

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

### **Commencement and Interpretation**

- 1(a) The trusts powers and provisions declared and contained in this Deed shall have effect on and after the Commencement Date
- (b) The provisions of Schedule 1 shall have effect for the purpose of construing this Deed (including its Recitals)

### **Constitution of the Trust Fund**

- 2 The Trust Fund shall consist of the assets specified as comprised therein in Schedule 2

### **Declaration of Trust and Application of the Trust Fund**

- 3 The Trust Fund and its income shall be held (by whomsoever including the Member and in whatever names the trust assets are respectively held or stand at the Commencement Date or shall thereafter at any time be held or stand) upon the following trusts subject as provided in this Deed -
  - (a) in trust during the Trust Period for the payment or discharge as provided in clause 13 of the respective outgoings (hereinafter collectively referred to as "Permitted Trust Outgoings") specified in paragraph 1 of Schedule 3 and
  - (b) subject to the foregoing trust in trust for the Member absolutely

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

- 4(a) Without prejudice to clause 5 the Council may from time to time during the Perpetuity Period revoke and determine the trusts constituted by this Deed or (after providing to the Financial Services Authority full details of the proposed amendments) vary or amend all or any of them or any of the provisions hereof in such manner as the Council thinks fit and on so acting the Council shall notify the Member (either directly or by notice to the Relevant Members' Agent) and each of the Member's Underwriting Agents accordingly
- (b) Any and every discretion power or authority conferred by this Deed or by any Special Trust Direction on the Member or any of the Member's Underwriting Agents or any of the Trustees 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) or otherwise)
- (c) The Council may under this clause 4(c) if thought fit make requirements for the purpose of clause 4(b) and requirements of the Council (whether made under this clause or otherwise) may direct precisely how any discretion power or authority referred to in clause 4(b) is to be exercised

- (d) Without prejudice to the foregoing where any provision of this Deed requires or otherwise provides for the authorisation consent or approval of the Council -
  - (i) the Council may in giving any such authorisation consent or approval impose (and make such authorisation consent or approval subject to compliance with) such conditions or requirements (if any) of whatsoever nature as the Council shall in its absolute discretion think fit and
  - (ii) the Council may decline to give such authorisation consent or approval or may impose any such conditions or requirements without in either case being obliged to disclose its reasons for doing so

and in no circumstances shall the Council be liable to any person for giving or withholding any such authorisation consent or approval

- (e) In giving or declining to give any authorisation consent or approval under this Deed the Council may if thought fit (and by means of the same instrument) give or decline to give a like authorisation consent or approval under any one or more other Premiums Trust Deeds (whether relating to the Member or to any of the other members) and any such authorisation consent or approval may (unless there is an express requirement that it should be given or declined in writing or in some other specified form) be given or declined electronically or in writing or in any other communicable form capable of creating a permanent record and without any need to refer to the provision of this Deed under which the same is being given or declined

### **Special Trust Funds**

- 5(a) Notwithstanding anything to the contrary herein contained but without prejudice to clause 4(a) the Council may from time to time during the Perpetuity Period (after providing to the Financial Services Authority full details of the proposed directions) by byelaw or other instrument in writing -
  - (i) give any directions (any such direction being a “Special Trust Direction”) concerning -
    - (1) all or any assets whatsoever that would otherwise be or become comprised in the Trust Fund and
    - (2) any (or any class of) Permitted Trust Outgoings that could otherwise (or can also) be paid or discharged out of the Trust Fund and
    - (3) payments or transfers of assets between any Special Trust Fund and the Member or the Trust Fund or any other Special Trust Fund and vice versa and
  - (ii) revoke or amend any subsisting Special Trust Direction

but so that any such direction revocation or amendment shall to the extent that it affects any subsisting Special Trust Direction comply with any requirements for revocation or amendment (as the case may be) contained in or applying to that Special Trust Direction

- (b) It shall not be necessary for the validity of the same that any such Special Trust Direction or revocation or amendment should be executed by or on behalf of the Member but the Council may in its discretion nevertheless direct such execution if in any case it thinks fit (and in any case where such a direction is given the Member hereby irrevocably authorises the Council by deed to nominate a person to effect such execution on behalf of and in the name of the Member as the Member's duly appointed attorney for that purpose)
- (c) A Special Trust Direction shall if it expressly or impliedly so requires be construed and have effect and be governed in all respects by a system of law other than that of England
- (d) Except as provided in clause 5(e) any provision in a Special Trust Direction for the payment or discharge of any (or any class of) Permitted Trust Outgoings out of any particular fund or assets to the exclusion of or in priority to other Permitted Trust Outgoings shall not prevent the former (or former class of) Permitted Trust Outgoings so provided for exclusively or in priority from being paid or discharged instead out of the Trust Fund
- (e) If any Special Trust Direction specifically states that this clause 5(e) is to apply thereto the Special Trust Fund constituted or regulated by it is a "Restricting Special Trust Fund" and Permitted Trust Outgoings which may be paid or discharged out of the Special Trust Fund constituted or regulated by that Special Trust Direction shall only be capable of being paid or discharged out of the Trust Fund after such time as all other Permitted Trust Outgoings have been wholly paid discharged or provided for and shall then be so paid or reimbursed (unless the Special Trust Direction otherwise provides) in accordance with clause 13 (and pending the occurrence of any such time paragraph 6 of Schedule 3 shall have effect)
- (f) Except as provided in clause 5(g) any Special Trust Direction shall contain provisions regarding the allocation and apportionment of assets which correspond with those contained in paragraph 3 of Schedule 2 and any Special Trust Direction in respect of a Restricting Special Trust Fund shall contain provisions regarding the allocation of and apportionment of outgoings which are correspond with those contained in paragraph 6 of Schedule 3
- (g) The Lloyd's American Trust Deed the Lloyd's American Instrument and the Lloyd's Canadian Trust Deed and (once they are respectively brought into force) Lloyd's Asia (Offshore Policies) Instrument 2002 Lloyd's Asia (Singapore Policies) Instrument 2002 and Lloyd's Japanese Instrument shall each have effect in regard to the Underwriting and this Deed as Special Trust Directions in accordance with their respective terms and may (but need not) contain provisions regarding the allocation and apportionment of assets which correspond with those contained in paragraph 3 of Schedule 2

### **Appointment and removal of Trustees**

- 6(a)(i) There shall be one trustee of this Deed designated as the Regulating Trustee and the original Regulating Trustee shall be Lloyd's or such other corporate body (if any) as has prior to the date hereof been appointed in writing by the Council (under an appointment that is still in force) as the Regulating Trustee for all or a class of Premiums Trust Deeds of a type similar to this Deed

- (ii) The Council may in writing appoint a new Regulating Trustee being a corporate body (whether or not a trust corporation) and shall also have power in writing to remove any Regulating Trustee
- (iii) The Regulating Trustee shall be entitled to be paid remuneration for acting as the Regulating Trustee in accordance with scales of fees from time to time published by or under the authority of the Council and in the case of a Regulating Trustee other than Lloyd's notified to the Financial Services Authority
- (iv) The Regulating Trustee shall also be entitled to reimbursement in full for all costs and expenses and other charges incurred by it in acting as the Regulating Trustee (including a fair proportion of the cost of employing officers and other staff and establishing and maintaining appropriate systems such fair proportion to be calculated by the Regulating Trustee by reference to the value of assets being handled or to the number of transactions involved or in some other reasonable manner)
- (v) The Regulating Trustee shall be entitled to take the reimbursement provided for in clause 6(a)(iv) and any such remuneration as is provided for in accordance with clause 6(a)(iii) from any part of the Personal Reserve Sub-Fund or its income or of the Central Syndicate Sub-Fund or its income (to the extent that such reimbursement or remuneration is not paid to it directly by the Member or any of the Member's Underwriting Agents or from some other source) including (if though fit) by means of the sharing with stockbrokers of any commission which is or otherwise would be charged by them
- (vi) On any change in the Regulating Trustee all trust assets vested in or under the control of the Regulating Trustee ceasing on the change to act as such a trustee shall forthwith be paid or transferred to or otherwise vested in or under the control of the new Regulating Trustee
- (b)(i) In respect of each Managing Agent there shall be trustees of this Deed designated as the Managing Agent's Trustees and the number of Managing Agent's Trustees of each Managing Agent shall not be more than three nor less than two (or one if that one is a body corporate whether or not a trust corporation)
- (ii) Except where the Council exercises its discretion under clause 6(b)(iii) each Managing Agent shall -
  - (A) in writing appoint the original Managing Agent's Trustees or Trustee of that Managing Agent (save only in any such case as is mentioned in clause 6(b)(iv)) and
  - (B) have power in writing at any time to appoint any new or additional Managing Agent's Trustees of that Managing Agent and
  - (C) have power in writing at any time to remove all or any of the Managing Agent's Trustees of that Managing Agent

but in doing so shall in every such case first obtain the prior written consent of the Council to the appointment or removal concerned
- (iii) Where a Managing Agent has become such by virtue of being appointed by the Council after the Commencement Date as a substitute agent the original Managing Agent's

Trustees or Trustee of that Managing Agent may be appointed in writing by the Council forthwith upon appointment of the substitute agent

- (iv) Where a Managing Agent (not being a substitute agent in respect of which the Council has exercised its discretion under clause 6(b)(iii)) has before the date of this Deed with the prior written consent of the Council appointed in writing persons or a person to act as the managing agent's trustees or trustee of that Managing Agent for all Premiums Trust Deeds in respect of which it needs to appoint such trustees or trustee or for a class of such Premiums Trust Deeds of a type similar to this Deed (and that appointment is still in force at the date hereof and complies with clause 6(b)(i)) then the persons or person so appointed shall for the purposes of this Deed automatically stand appointed as at the date hereof as the original Managing Agent's Trustees or Trustee of that Managing Agent
- (v) (A) If the Council permits and subject to any requirements of the Council any Managing Agent's Trustee which is a body corporate shall be entitled to be paid such remuneration for acting as Managing Agent's Trustee as the Relevant Managing Agent may determine and agree with the Trustee in question and the Relevant Managing Agent may arrange for payment of such remuneration out of the Trust Fund or its income  
  
(B) A Managing Agent's Trustee who is an individual shall not be entitled to be paid any remuneration for acting as Managing Agent's Trustee.
- (vi) On any change in the Managing Agent's Trustees of any Managing Agent all trust assets vested (either solely or jointly with others) in or under the control of any of the Managing Agent's Trustees ceasing on the change to act as such a trustee shall forthwith be paid or transferred to or otherwise vested in or under the control of a permitted number of the new or continuing Managing Agent's Trustees of such Managing Agent
- (vii) A Managing Agent shall forthwith notify Lloyd's of the death of any of the Managing Agent's Trustees of that Managing Agent or of the occurrence in relation to any of them of a notifiable event
- (c) Lloyd's may be a Managing Agent's Trustee (whether or not it is at the same time the Regulating Trustee) but (except to the extent that any trust assets are held for the time being by any other person including the Member or except in consequence of a Special Trust Direction) there shall be no trustee of this Deed who is neither the Regulating Trustee nor a Managing Agent's Trustee nor shall any Members' Agent or Managing Agent be appointed or act as a trustee hereof

### **Vesting of the 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 11) 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 Regulating Trustee as part of the Personal Reserve Sub-Fund
- (b) Notwithstanding clause 7(a) (but subject to clause 7(c) and clauses 8 to 11) 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 a permitted number of the Managing Agent's Trustees of the Managing Agent concerned as part of the Managing Agent's Sub-Fund and (for the avoidance of doubt) if and to the extent that any such assets are received by the Member but are not so paid transferred or otherwise vested then and in every such case such assets shall (subject as aforesaid) be vested in accordance with clause 7(a)

- (c) Nothing in clauses 7(a) or 7(b) shall require the vesting for any purpose in or under the control of the Regulating Trustee or (as the case may be) any Managing Agent's Trustees of any Rights of Recovery or any rights comprised in Auction Proceeds but the Regulating Trustee may at any time or times during the Trust Period if it so thinks fit direct (without being responsible for any loss) that all or any of the PSL Rights of Recovery shall be vested in it or under its control as part of the Personal Reserve Sub-Fund (and on any such direction being made the subject matter thereof shall be vested accordingly)

### **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 4 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 any of the Trustees) 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 or authorised by clause 7 or clause 10(a) or by any other provision of this Deed to be paid transferred or vested in or under the control (or to be transferred back to or under the control of) the Regulating Trustee or any Managing Agent's Trustees of any Managing Agent or
  - (ii) which fall to be paid or transferred out of the Personal Reserve Sub-Fund or the Central Syndicate Sub-Fund or their respective income or out of the Managing Agent's Sub-Fund of any Managing Agent or its income in consequence of any such direction as is mentioned in clause 10(a)(ii) or clause 13 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 Regulating Trustee or as the case may be 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 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 by the Regulating Trustee or as the case may be 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 broking 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 the account and any commission fee charges or other sums that are due to be paid to it personally) and
- (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)

### **Auction Proceeds**

- 9(a) Subject to clause 4 and clauses 9(b) and (c) but otherwise notwithstanding the other provisions of this Deed any Auction Proceeds being or becoming trust assets which are held in the Lloyd's Auction Settlement Account or by an Issuer need not be vested in accordance with clauses 7(a) or (b) but may be dealt with in accordance with the Auction Rules
- (b) In any case where -
  - (i) trust assets consist of monies payable by Lloyd's as legal owner of the Lloyd's Auction Settlement Account to an Issuer and that Issuer is the Member or is one of the other members and has been acting as an Issuer in respect of the Member or
  - (ii) Lloyd's is under the Auction Rules to pay Auction Proceeds that are trust assets from that account directly to the Member (as a Participant) instead of to the Member's Issuer

then Lloyd's as such legal owner shall hereby stand appointed as the nominee of the Regulating Trustee for the purpose of holding such trust assets on behalf of the Regulating Trustee (and at its direction) as part of the Personal Reserve Sub-Fund (and shall account for the same accordingly)

- (c) Subject to clauses 4 and 9(b) but otherwise notwithstanding the other provisions of this Deed each Issuer shall hereby stand appointed as the nominee of the Regulating Trustee for the purpose of holding any Auction Proceeds that are trust assets in the form of monies received by or vested in that Issuer on behalf of the Regulating Trustee (and at its direction) as part of the Personal Reserve Sub-Fund (and shall account for the same accordingly)

### **Coverholders**

10(a) Subject to clauses 4 8 and 11 and to any condition imposed by clause 10(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) have already been or may later be transferred to or to the account of that other person by any of the Managing Agent's Trustees of that Managing Agent (acting at the direction of such Managing Agent) or by the Regulating Trustee

in or towards the payment or discharge of any Permitted Trust Outgoings then or thereafter capable of being paid or discharged out of the Trust Fund under clause 3(a) and accordingly (subject to clauses 8 and 11) to pay transfer or vest under clauses 7(a) or 7(b) or (as the case may be) to transfer back to such transferring Trustees or 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 10(a) that the person who is given such authority shall at all times keep the assets to which such authority applies 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 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 permitted to retain such interest or capital appreciation by the Managing Agent or the Regulating Trustee giving such authority 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 19(d) to (f) 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 10(a) as if such person were a delegate of the Managing Agent or the Regulating Trustee giving such authority

### **Central Syndicate Sub-Fund**

11(a) During the Trust Period a Managing Agent shall whenever so required by the Council and may (if agreed by the Regulating Trustee) direct the Managing Agent's Trustees of

that Managing Agent to raise out of the Managing Agent's Sub-Fund of that Managing Agent such amount as is specified by the Council or agreed by the Regulating Trustee and to pay or transfer the same to or otherwise vest the same in or under the control of the Regulating Trustee to be held as part of the Central Syndicate Sub-Fund

- (b) Notwithstanding clauses 7(a) and 7(b) if and whenever during 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 Regulating Trustee as part of the Central Syndicate Sub-Fund

### **Rights of Recovery**

- 12(a) For the avoidance of doubt any Managing Agent may on behalf of the Member 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 the Managing Agent's appointment notwithstanding that such discretion power or authority may be exercisable in relation to Syndicate Rights of Recovery which are comprised in the Trust Fund and in exercising any such discretion power or authority in relation to Syndicate Rights of Recovery so comprised the Managing Agent shall (subject always to clause 12(e)) 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) For the avoidance of doubt any Members' Agent may on behalf of the Member under the applicable Underwriting Agent's Appointment or under any specific discretion power or authority granted to it by the Member collect all monies and other assets settle or compromise claims rights or entitlements take legal or other proceedings and exercise any other discretion power or authority conferred by any such appointment or specific discretion power or authority notwithstanding that such discretion power or authority may be exercisable in relation to PSL Rights of Recovery which are comprised in the Trust Fund and in exercising any such discretion power or authority in relation to PSL Rights of Recovery so comprised the Members' Agent shall (subject always to clause 12(e)) be entitled to have regard solely to the provisions of that appointment or that specific discretion power or authority Provided always that in any such case any proceeds attributable to the Member of any such collection settlement compromise proceedings 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

- (c)(i) As regards any Relevant Cause of Action comprised in the Trust Fund not falling within clause 12(a) or (whether or not within clause 12(a)) any Relevant Cause of Action so comprised in respect of which any Managing Agent's interest conflicts with its duty the declaration of trust effected by clause 2 and paragraph 1(i)(G) of Schedule 2 hereto -
- (1) shall not interfere in any way with the right of the Member to decide whether or how or on what terms to join or participate in any action group or other group of persons for the purpose of pursuing that Relevant Cause of Action and
  - (2) shall not interfere in any way with the right of the Member or of any such action group or other group of persons to decide whether or how or on what terms to pursue or compromise that Relevant Cause of Action or whether or how or on what terms to commence conduct or compromise any court proceedings or arbitration in respect thereof and
  - (3) shall not authorise any other interference whatsoever with the rights of the Member as regards the commencement conduct or compromise of any such court proceedings or arbitration

Provided that any proceeds attributable to the Member as a result of exercising any such rights shall be held as trust assets and duly vested and applied only in accordance with the trusts powers and provisions of this Deed

- (ii) A good discharge may only be obtained for the payer as regards any payment made in satisfaction or partial satisfaction of a Relevant Cause of Action falling within clause 12 (c)(i) so long as (A) such payment is made to a firm of solicitors of the Supreme Court practising in England or Wales acting on behalf of the Member or other person or persons entitled to receive the same and is not made to such person or persons directly and (B) the identity and address of such firm of solicitors is notified in writing to Lloyd's at least 7 clear days before such payment is made
- (d) The declaration of trust effected by clause 2 and paragraph 1(i) (E) of Schedule 2 hereto shall not interfere in any way with the rights of the Member to collect all monies and other assets settle or compromise claims rights or entitlements and take legal and other proceedings in relation to PSL Rights of Recovery which are comprised in the Trust Fund Provided always that in any such case any proceeds attributable to the Member of any such collection settlement compromise or proceedings 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
- (e) Any Managing Agent or Members' Agent or the Member shall in exercising any of the discretions powers authorities rights referred to in clauses 12(a) to (d) at all times act bona fide and for the benefit of the trust constituted by this Deed
- (f) Without prejudice to the foregoing the Member hereby directs and covenants that all monies or other assets received by the Member or any other person under or in respect of any Rights of Recovery comprised in the Trust Fund shall be held as trust assets and shall be duly vested in accordance with clauses 7 to 11

### **Manner and order of application of the Trust Fund**

- 13 The payment or discharge of different Permitted Trust Outgoings under clause 3(a) shall (subject as provided in clauses 8 and 10) be made (as between each other) in such order and manner and at such respective times (or on the occurrence of such respective events) during 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 Trust Outgoings then or thereafter becoming payable or incurred or otherwise liable to be discharged in connection with that part of the Underwriting which is or has been conducted or is being wound up by the Managing Agent so far as those Permitted Trust Outgoings can be paid or discharged out of the Managing Agent's Sub-Fund of the Managing Agent in question (or out of assets which on receipt by or on behalf of the Member would be required to be added to that Sub-Fund) and
  - (b) by the Regulating Trustee in regard to Permitted 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 Personal Reserve Sub-Fund or in the Central Syndicate Sub-Fund (or assets which on receipt by or on behalf of the Member would be required to be added to the Sub-Fund in question)

### **Transfers**

14(a) During the Trust Period -

- (i) if and whenever the Regulating Trustee so determines it may pay or transfer trust assets to or otherwise vest them in or under the control of the trustees or trustee of a Special Trust Fund to be held thereafter as part of that Special Trust Fund and
- (ii) if and whenever any Managing Agent so directs its Managing Agent's Trustees (or such of them as are affected by the direction in question) shall to the extent specified in the direction (whether specified as an amount or value or by identifying specific assets or otherwise) pay or transfer trust assets to or otherwise vest them in or under the control of the trustees or trustee of a Special Trust Fund to be held thereafter as part of the Special Trust Fund concerned

(b) During the Trust Period -

- (i) The Regulating Trustee may transfer any assets for the time being held in the Personal Reserve Sub-Fund or the Central Syndicate Sub-Fund to the Managing Agent's Sub-Fund of any Managing Agent (by causing such assets to be vested in or under the control of a permitted number of the Managing Agent's Trustees of that Managing Agent as part of that Sub-Fund) and
- (ii) The Regulating Trustee may transfer any assets for the time being held in the Central Syndicate Sub-Fund to the Personal Reserve Sub-Fund (by recording that they are vested in or under the control of the Regulating Trustee as part of that Sub-Fund) and
- (iii) The Regulating Trustee may transfer any assets for the time being held in the Personal Reserve Sub-Fund to the Central Syndicate Sub-Fund (by recording that

they are vested in or under the control of the Regulating Trustee as part of that Sub-Fund) and

- (iv) Any Managing Agent may direct that any assets for the time being held in the Managing Agent's Sub-Fund of that Managing Agent shall be transferred to the Personal Reserve Sub-Fund (by being vested in or under the control of the Regulating Trustee as part of that Sub-Fund) and
- (v) Any Managing Agent may direct that any assets for the time being held in the Managing Agent's Sub-Fund of that Managing Agent shall be transferred to the Managing Agent's Sub-Fund of another Managing Agent (by being vested in or under the control of a permitted number of the Managing Agent's Trustees of that other Managing Agent as part of that other Sub-Fund)
- (c) The Regulating Trustee may also at any time or times during the Trust Period cause the whole or any part of the Personal Reserve Sub-Fund to be paid or transferred to or otherwise vested in or under the control of the trustees or trustee for the time being of any other Premiums Trust Deed of the Member or of any Lloyd's Deposit of the Member as an addition to the relevant trust fund and discharged from all the trusts powers and provisions of this Deed
- (d) No person making or directing any transfer of assets under this clause 14 shall have any obligation to see to the future application of any assets so transferred

#### **Distributions out of Trust**

- 15(a) Subject to the requirements of the Council and to clause 15(b) the Regulating Trustee may in its absolute discretion at any time or times during the Trust Period pay or transfer any trust assets then belonging to the Personal Reserve Sub-Fund (including without limitation any held by the Managing Agent's Trustees as nominees of the Regulating Trustee under clause 18(b)) out of trust altogether
- (b) Subject to the requirements of the Council and to clause 15(e) the Regulating Trustee shall from time to time during the Trust Period raise out of the Personal Reserve Sub-Fund (including without limitation any part thereof held by Lloyd's or by an Issuer as the nominee of the Regulating Trustee under clauses 9(b) or (c)) an amount equal to any Auction Proceeds comprised in the Trust Fund payable to it and pay the same out of trust altogether
- (c) Where a payment or transfer is made out of trust altogether under clauses 15(a) or (b) it shall be made either to or under the control of the Member himself absolutely or otherwise howsoever as may be directed on the Member's behalf by the Relevant Members' Agent or (in any case where there is for the time being no Relevant Members' Agent) as may be directed by the Member himself and the assets so paid or transferred shall be wholly released and discharged from all the trusts powers and provisions of this Deed
- (d) If at any time during the Trust Period the total value of the assets then comprised in the Personal Reserve Sub-Fund (together with any income thereof in hand) does not exceed the sum of £10 (or such other sum as the Council may from time to time specify for the purposes of this clause 15(d)) the Regulating Trustee may in its absolute discretion pay or transfer the assets (and income in hand) in question out of the Trust Fund altogether to

such Charity absolutely as the Council shall from time to time specify for the purposes of this clause 15(d) (wholly released and discharged from all the trusts powers and provisions of this Deed)

- (e) Where the Regulating Trustee or Lloyd's or an Issuer (as nominee of the Regulating Trustee) is holding any Auction Proceeds comprised in the Trust Fund which relate to the Member's membership of a MAPA the amount referred to in clause 15(b) in respect of those proceeds is their total amount less any expenses paid or payable from the Trust Fund under paragraph 2(vii) of Schedule 3 in respect of the MAPA in question in the calendar year in which those proceeds are received into the Personal Reserve Sub-Fund and the Regulating Trustee shall not be obliged to make the relevant payment under clause 15(b) until the amount of any such expenses is known

### **Application of income of the Trust Fund**

- 16 All interest dividends and other income from time to time earned in respect of trust assets shall be added to and held as capital of the Trust Fund in accordance with paragraph 1(iii) 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 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 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 Trust**

- 17(a) Notwithstanding anything herein contained no assets shall in any circumstances be added to or otherwise become comprised in the Trust Fund after the expiry of the Trust Period
- (b) On the expiry of the Trust Period the whole of the Trust Fund then remaining undistributed and the future income thereof shall thenceforth be held in trust for the Member absolutely in accordance with clause 3(b) freed and discharged from all the other trusts powers and provisions of this Deed

### **Nominees and custodians**

- 18(a) The Regulating Trustee or (as the case may be) the Relevant Managing Agent may at any time or times -
  - (i) appoint any authorised person (including such Agent itself where it is an authorised person) to act as a nominee of or as a custodian for the Regulating Trustee or (as the case may be) a permitted number of the Managing Agent's Trustees of the Relevant Managing Agent 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 Trust Fund

- (ii) arrange for (and enter into agreements in respect of) the participation of the Regulating Trustee or (as the case may be) a permitted number of the Managing Agent's Trustees of the Relevant Managing Agent or any such nominee or custodian in any dematerialised 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 system may be through any such sub-appointee and references in clause 18(a)(vi) to a nominee or custodian and in clauses 18(c) and (e) 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 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) Without prejudice to clause 18(a) the Regulating Trustee may at any time or times appoint a permitted number of the Managing Agent's Trustees of any Managing Agent to act as a nominee of the Regulating 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 Personal Reserve Sub-Fund (so acting either directly or through a sub-nominee) and clauses 18(a)(ii) to (vii) shall apply in respect of any such appointment in a like manner as they apply in respect of an appointment made under clause 18(a)(i)
- (c) Any custodian or a nominee appointed directly by a Managing Agent or the Regulating Trustee (except any nominee of the Regulating Trustee appointed under clauses 9(b) or (c) or 18(b)) must be an authorised person but it shall not be necessary for any sub-appointee of any custodian or nominee to be an authorised person
- (d) Where any person holds or will or may hold assets as a nominee of or custodian for any one or more of the Managing Agent's Trustees of any Managing Agent a permitted number of the Managing Agent's Trustees of that Managing Agent or the Managing Agent itself 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 any or any other Trustees and such person shall be entitled to act upon any directions purporting to be so given
- (e) (i) Subject to clause 18(e)(ii) the provisions of clause 19(d) to (f) 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)

(ii) The Regulating Trustee shall not have any responsibility under clause 19(d)(i) in respect of any nominee appointed under clauses 9(b) or (c) or 18(b)

### **Delegation**

- 19(a) Such one or more of the Trustees as at any time has or have any trust assets vested in itself or themselves or under its or their control may itself or themselves apply that part in executing the trusts and provisions of this Deed relating thereto (or give any receipt in respect thereof)
- (b) Such one or more of the Managing Agent's Trustees as at any time has or have any trust assets vested in itself or themselves or under its or their control may in its or their absolute discretion pay or transfer or cause to be paid or transferred any trust assets falling to be so applied to the Relevant Managing Agent or (at its direction) to any delegate of it (in any case whether or not an authorised person and other than the Member himself) to be so applied by that person
- (c) Any Managing Agent or the Regulating 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 an authorised person but subject to clause 19(h) 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) or delegated to the Managing Agent by its Managing Agent's Trustees under clause 19(b) and any delegation under this clause 19(c) 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
- (d)(i) Subject to clauses 19(d)(ii) and 19(e) the Regulating Trustee shall be responsible for exercising reasonable care in its choice and use of delegates but shall not otherwise be responsible in any way for the acts or defaults of its delegates or sub-delegates (unless they are officers or employees of the Regulating Trustee in which case the Regulating Trustee shall retain full responsibility for them)
- (ii) The Regulating Trustee shall not have any responsibility under clause 19(d)(i) where it has delegated to the Member or has chosen or used delegates or sub-delegates at the request of the Member or any of the Member's Underwriting Agents or (in any such case as is mentioned in clause 19(e)) Lloyd's
- (e) Lloyd's (whether or not for the time being a trustee of this Deed) shall be responsible for the acts or omissions of any subsidiary of Lloyd's to which any of the Trustees or any Managing Agent has delegated or sub-delegated at the express request of Lloyd's
- (f) Save in any such case as is mentioned in clause 19(e) any person other than the Regulating 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

- (g) Any delegation made under this clause 19 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 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
- (h) Subject to clause 19(i) but notwithstanding clause 19(c) the Regulating Trustee may from time to time (but subject to any terms or conditions that it may think fit) delegate to the Member himself all or any of its powers authorities and discretions under clause 21(a) and any such delegation shall (unless that delegation otherwise states) confer on the Member power to sub-delegate all or any of the powers authorities and discretions so delegated and (unless that delegation otherwise states) authorise any further such sub-delegation to any number of degrees
- (i) The Member shall not sub-delegate any powers authorities and discretions at any time conferred on him under clause 19(h) or authorise their further sub-delegation except to a person who is permitted by law or regulation to exercise the power authority or discretion concerned
- (j) For the avoidance of doubt it is hereby declared that none of the powers conferred by Part IV of the Trustee Act 2000 shall apply to the trusts of this Deed (all such statutory powers being hereby excluded for all purposes whatsoever)

### **Bank accounts and blending**

- 20(a) Trust assets may be held in any number of bank accounts denominated in any currency whatsoever and whether situated in the United Kingdom or in any other part of the world
- (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 the United Kingdom or in any other part of the world) as or may otherwise be blended with -
  - (i) any other trust assets (even if belonging to a different Sub-Fund) or
  - (ii) any 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 of the other members (and without limitation whether relating to general business or to long term business) or
  - (iii) any assets which consist of or represent income held in trust for the Member absolutely under exception (a) to clause 16 (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 any other Premiums Trust Deed

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 any of the Trustees or by any custodian or nominee or sub-appointee as is referred to in clause 18 in a bank account in the name of an authorised person or in any dematerialised system may be blended with any other assets held by such Trustees or by that custodian or nominee or sub-appointee or authorised person or in that system without any need for segregation
- (e) Subject to clauses 8 9 and 10(a) all trust monies shall at all times stand to the credit of an account with an approved bank
- (f) Subject to clauses 8 9 and 10(a) any person or persons in whose name any bank account containing trust monies is held must be a Trustee or an authorised person
- (g) Where any bank account is held in the name of one or more of the Managing Agent's Trustees of any Managing Agent a permitted number of the Managing Agent's Trustees of that Managing Agent or the Managing Agent itself may in regard to that account give directions to the approved bank concerned without obtaining the concurrence of or consulting any or any other Trustees and such bank shall be entitled to act upon any directions purporting to be so given

### **Investment and laying out of the Trust Fund**

- 21(a) Subject to the requirements of the Council any part of the 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 Applicable Investments (hereby termed "investments" for the purpose of construing clause 19(a)(ii) of Lloyd's Canadian Trust Deed) or any currency or any other choses in action or other assets of any nature whatsoever (other than Excepted Investments) 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 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 system

but (for the avoidance of any doubt) neither the general power of investment conferred by Part II of the Trustee Act 2000 nor the power to acquire freehold and leasehold land conferred by Part III of that Act is to apply to the trusts of this Deed (such statutory powers being hereby excluded for all purposes whatsoever)

- (b) In determining the investment or other application of any part of the Trust Fund account may properly be taken (inter alia) of the likely nature of anticipated future Permitted 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 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) -
  - (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 Central Syndicate Sub-Fund and the Personal Reserve 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 Regulating Trustee shall be entitled if in its absolute discretion it thinks fit (and without being liable for any loss) either (A) to retain any trust assets contained in the 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 21) 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 Regulating 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 during the Trust Period direct that any assets for the time being held as part of the Personal Reserve Sub-Fund or (as the case may be) the Managing Agent's Sub-Fund of that Managing Agent shall be released altogether from the 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 21 or by clauses 22 to 23 or cash)
- (e) For the avoidance of doubt nothing in this Deed shall authorise any part of the Trust Fund or its income to be used for the purpose of underwriting securities issues

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

- 22(a) Subject to the requirements of the Council the Regulating Trustee or (as the case may be) the Relevant Managing Agent may for any purpose of or in connection with the Underwriting cause any part of the Trust Fund to be deposited with or lent to -
  - (1) any of the other members or
  - (2) 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 any other Trustee) or
  - (3) Additional Securities Limited or any other company nominated for the purposes of this power by the Council or
  - (4) all or any of the trustees for the time being of any Special Trust Fund or of any other Premiums Trust Deed (whether relating to general business or long term business) of the Member or of any of the other members

- (b) Subject to the requirements of the Council any part of the Trust Fund may be used at the direction of the Relevant Managing Agent or by 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 Underwriting (and any such security may also be given over any assets liable in the future to become comprised in the Trust Fund or any part thereof including all or any Rights of Recovery)
- (c) Without prejudice to the generality of the foregoing it is hereby declared that in any case where any part of the Trust Fund is used at the direction of the Relevant Managing Agent or by the Regulating Trustee to pay more than the Member's proper share of or contribution to -
- (1) any deposit loan letter of credit or guarantee referred to in clauses 22(a) or 22(b) or
  - (2) the funding or provision of any Overseas Business Regulatory Deposit or
  - (3) 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 Underwriting

(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 22(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

### **Power to borrow and give security for Member's borrowings**

- 23(a) Subject to the requirements of the Council any deposit may be taken or loan may be raised in order to augment the Trust Fund or any part thereof or to replace wholly or partly any other indebtedness owing by the Trustees or any of them 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 Trust Fund
- (b) Any security given for any deposit taken or loan raised under clause 23(a) may be given over assets liable in the future to become comprised in the Trust Fund including all or any Rights of Recovery and where raised at the direction of a Managing Agent with sole liability on the part of the Managing Agent's Trustees concerned 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 Trust Outgoings may be secured in any manner permitted under clauses 23(a) or (b)

### **Provisions supplementary to clauses 21 to 23**

- 24(a) The Managing Agent's Trustees of any Managing Agent or any one or more of them shall give effect to any direction given by that Managing Agent under clauses 22(b) or 23(b) to give any security over Rights of Recovery and the Regulating Trustee may give security over Rights of Recovery notwithstanding that the relevant part or parts of the Trust Fund are not vested in or under the control of the Trustees in question or any of the Trustees
- (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 all or any of the Trustees or for or to the order of any Managing Agent purporting to be acting pursuant to the powers given by clauses 22 or 23 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 21(a) or clause 22(a) or taken or raised under clause 23(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 21(a) or clause 22(a) or taken or raised under clause 23(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

### **Purchase and holding of tangible fixed assets**

- 25 If the Council permits (and subject to any requirements of the Council) any Managing Agent may at any time or times during the Trust Period direct that any trust assets held as part of the Managing Agent's Sub-Fund of that Managing Agent be used to purchase as a trust asset any tangible fixed asset or any interest therein for the purpose of that part of the Underwriting which is or has been conducted or is being wound up by that Managing Agent and it need not be satisfied that the tangible fixed asset or interest concerned is a suitable investment for trust assets

### **Netting agreements**

- 26 In effecting any acquisition or sale of or other dealing with trust assets or in directing the same any of the Trustees 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 20(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

### **Termination of the agency of a Managing Agent**

27(a) If a Managing Agent becomes neither an agent nor a sub-agent of the Member for the purpose of conducting or winding up all or any part of the Underwriting previously conducted or being wound up by that Managing Agent the whole or (where the Managing Agent is continuing to act in respect of some other part of the Underwriting) an appropriate part or parts (ascertained in accordance with clause 27(b)) of the Managing Agent's Sub-Fund of that Managing Agent shall (unless the Council otherwise directs) forthwith -

- (i) be paid or transferred to or otherwise vested in or under the control of the Managing Agent's Trustees of the Managing Agent who is (to the extent in question) appointed as a substitute agent in place of the outgoing Managing Agent or (as the case may be) appointed in the latter's place by the Member or the Members' Agent or Managing Agent that appointed the outgoing Managing Agent (so as instead to become part or parts of the Managing Agent's Sub-Fund of such succeeding Managing Agent) or
- (ii) (if there is no such succeeding Managing Agent) be paid or transferred to or otherwise vested in or under the control of the Regulating Trustee (so as instead to become part of the Personal Reserve Sub-Fund)

and the Managing Agent's Trustees of the outgoing Managing Agent shall thereupon cease to be trustees of this Deed in respect of the whole or part or parts in question and references in this Deed to the outgoing Managing Agent shall thenceforth be read as regards that whole or part or parts as referring to the succeeding Managing Agent or if there is none the Regulating Trustee

(b) The "appropriate part or parts" of the Managing Agent's Sub-Fund of the outgoing Managing Agent referred to in clause 27(a) shall be such part or parts thereof as may be agreed between the outgoing Managing Agent and the succeeding Managing Agent or as shall otherwise be determined by the Council

#### **Persons in whom discretions are vested**

28(a) Subject to clause 4(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 1925 or any other statute or otherwise howsoever)

shall

- (1) as regards the Personal Reserve Sub-Fund (or assets which will when received belong thereto) be vested in and exercisable by the Regulating Trustee alone (save only to the extent if any as the Regulating Trustee otherwise directs) and
- (2) as regards the Managing Agent's Sub-Fund of any Managing Agent (or assets which will when received belong thereto) be vested in and 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

- (3) as regards the Central Syndicate Sub-Fund (or assets which will when received belong thereto) be vested in and exercisable by the Regulating Trustee (save only to the extent if any as the Regulating Trustee otherwise directs)
- (b) For the avoidance of any doubt it is hereby expressly declared -
- (i) that the discretions powers and authorities conferred by this Deed on a Managing Agent shall only be exercisable by it in respect of the Managing Agent's 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 Personal Reserve Sub-Fund or the Central Syndicate Sub-Fund (or assets which will when received belong thereto)
- (c) Any of the Managing Agent's Trustees of any Managing Agent who for the time being has or have any part of the Trust Fund vested in them or under their control shall if and so far as the Managing Agent in question so directs effect with that part or so much thereof as may be requisite any deposit loan letter of credit guarantee or investment (or the giving of any security) authorised by clauses 21 to 24 or any other transaction authorised by this Deed and directed to be effected by that Managing Agent
- (d) Notwithstanding anything hereinbefore contained but subject to the requirements of the Council a permitted number of the Managing Agent's Trustees of any Managing Agent may withdraw call in or realise any deposit loan letter of credit guarantee or investment or require the withdrawal calling in or realisation of any deposit loan letter of credit guarantee or investment comprised in a part of the Trust Fund under its control so far as may in the opinion of the trustees or trustee so acting be requisite in order to enable them or it to make any payment falling to be made by them or it and necessary for carrying out the trusts and provisions of this Deed

### **Exercise of discretions**

- 29(a) The Regulating Trustee any Managing Agent's Trustee which is a body corporate the Relevant Members' Agent 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 the Relevant Members' Agent or 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 Regulating Trustee or the Managing Agent's Trustee or the Relevant Members' Agent 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 Regulating Trustee or the Relevant Members' Agent 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 4(b) and (subject thereto) so as not to infringe or be inconsistent with -
- (i) any applicable Underwriting Agent's Appointment and

- (ii) (in the case of the Regulating Trustee or of any delegate or sub-delegate acting for or in place of the Regulating Trustee) any byelaw or any agreement to which the Regulating Trustee is a party relating in either case to all or any of the functions of the Regulating Trustee under this Deed (or to those and any equivalent functions under any other Premiums Trust Deeds)
- (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 any of the Trustees 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) Any direction or other exercise of a discretion power or authority that is capable of being made under this Deed or any notice to be given or calculation or certification to be made hereunder may (unless there is an express requirement that it should be made in writing or in some other specified form) be made electronically or in writing or in any other communicable form capable of creating a permanent record and without any need to refer to the provision of this Deed under which the same is being made and (if thought fit) in giving any such direction or notice or making any such calculation or certification (or in giving effect to the same) use may be made of and reliance may be placed on any computerised accounting or payment systems
- (e) Any such direction or other exercise of a discretion power or authority or notice or calculation or certification may if thought fit be made or given in conjunction with (and by means of the same communication as) any similar direction or exercise of discretion power or authority or notice or calculation or certification under any one or more other Premiums Trust Deeds (whether relating to the Member or to any of the other members)

### **Self-dealing**

- 30(a) It is hereby declared that Lloyd's (acting in any capacity whatsoever) or any of the Member's Underwriting Agents or any of the Trustees 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 Members' Agent or Managing Agent or any of the Trustees 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 Special Trust Fund or of any other Premiums Trust Deed 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 Trust Outgoings

### **Rights of policyholders to claim on the Trust Fund**

- 31 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 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 Trustees or any of them or of the Underwriting the Member 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 England (or any other country where the judgment is enforceable in England after registration or extension without obtaining a judgment of a court in England 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 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 31(b) as such Managing Agent 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 Managing Agent concerned without the judgment having been satisfied

### **No partnership**

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

### **Evidence on which Trustees may act**

- 33(a) Any of the Trustees may accept as sufficient and act upon and give effect to any statement of (or which purports to be a statement of) Lloyd's or any of the Member's Underwriting Agents as to what sums or other assets are from time to time required to be paid or transferred out of the 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) Without prejudice to the generality of the foregoing when making any distribution out of trust under clauses 15(a) or (b) the Regulating Trustee may rely on the calculation of (or what purports to be a calculation of) the Relevant Members' Agent of what is then the amount by which the trust assets in the Personal Reserve Sub-Fund exceed the minimum amount required to be retained in that Sub-Fund under requirements of the Council (or in any case where there is no Relevant Members' Agent the calculation thereof of or what purports to be a calculation thereof of the Member itself) and such certification as the Council thinks fit of the person making the calculation
- (c) None of the Trustees shall under any circumstances be under any liability for acting upon or giving effect to any such statement or calculation 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 or calculation without requiring any such verification
- (d) Any of the Trustees may however if such Trustee thinks fit require any such statement or calculation to be verified in such manner as he or it thinks fit but such Trustee shall not under any circumstances be under any obligation to do so
- (e) Clauses 33(a) and (b) shall apply even where there is (unknown to the Managing Agent's Trustee in question or unknown to the officer or employee by whom the Regulating Trustee is acting) a fault or invalidity in the appointment of the person appearing to be one of the Member's Underwriting Agents or the Relevant Members' Agent 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

### **Protecting provision**

- 34 If any difference at any time arises between any of the Trustees and the Member or any present or past Members' Agent or Managing Agent or Trustee hereof relating to the trusts hereby constituted or the administration thereof or anything connected therewith or if any of the Trustees at any time feel 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**

- 35(a) If and so far as any of the trusts powers or provisions of this Deed or of any Special Trust Direction are at any time inconsistent with any existing agreement between the Member and any of the Member's Underwriting Agents or the Regulating Trustee with reference to the conduct or winding-up of the Underwriting or with reference to the Trust Fund and its income or any Special Trust Fund or where the Member's Underwriting Agent in question is a substitute agent the terms of its appointment (including but not limited to any applicable Underwriting Agent's Appointment) then and in every such case every such other agreement or terms of appointment shall so far as it or they may be

inconsistent with any of the terms of this Deed or the Special Trust Direction in question be deemed cancelled and suspended by this Deed or that Special Trust Direction so that in every such case of inconsistency (if any) the provisions of this Deed or that Special Trust Direction 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 Underwriting to the intent that except so far as is necessary to give full effect to this Deed or any Special Trust Direction any such agreement or appointment as last mentioned shall continue in full force

**Electronic communications**

- 36 A notice sent by electronic means is deemed to have been received at the time when any such notice enters the information system controlled by the recipient in such a way that it can be retrieved by the recipient between 9 am and 5 pm (London time) on a business day or if not between those hours at 10 am (London time) on the next business day

**English law**

- 37 This Deed shall be read and construed and take effect in all respects in accordance with English Law (which shall be the proper law of this Deed)

**English jurisdiction**

- 38 The parties hereto irrevocably and unconditionally submit for all purposes of and in connection with this Deed to the exclusive jurisdiction of the English Courts

**IN WITNESS** whereof the Common Seal of Lloyd's has been hereto affixed and the Member has signed this instrument as a Deed the year first above written

## SCHEDULE 1

### Interpretation

1 In this Deed unless the context otherwise requires

“Applicable Investments” means all and any of the kinds of “investment” that are specified for the purposes of section 22 of the Financial Services and Markets Act 2000 by Part III of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 other than (and except only for) any Excepted Investments

“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 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 -

- (i) 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
- (ii) 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 of all or a class of Premiums Trust Deeds including this Deed)

“authorised 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 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 -

- (i) 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
- (ii) has been authorised by the Council to act as a nominee or custodian for the purposes of this Deed (or of all or a class of Premiums Trust Deeds including this Deed)

“assets” include an interest or interests in other assets

“Auction Proceeds” means all monies at any time during the Trust Period payable or becoming payable to the Member under Auction Rules by an Issuer or by Lloyd’s as legal owner of the Lloyd’s Auction Settlement Account (including any such amount so payable or becoming payable to the Member in the capacity of an Issuer and belonging beneficially to it) and includes -

- (i) any monies for the time being during the Trust Period held by an Issuer pending payment of the same to the Member under Auction Rules (and the Member’s interest in any assets in the hands of the Issuer prior to allocation among the Member and any other Participant who has an interest in the same) and

- (ii) any rights (contingent or otherwise) which the Member may have in amounts for the time being standing to the credit of the Lloyd's Auction Settlement Account

“Auction Rules” means rules for the time being made under the Auction Byelaw (No 14 of 1997)

“business day” means a day on which banks generally are open for a full range of business in London (excluding Saturdays and Sundays)

“Central Fund” means the Central Fund referred in the Central Fund Byelaw (No 4 of 1986) including for the avoidance of doubt the CFUS Trust Fund (as that expression is defined in Lloyd's Central Fund United States Trust Deed made between Lloyd's and Citibank NA on 17th July 1992 (as amended)) and the CFUS Trust Fund (Number 2) (as that expression is defined in Lloyd's Central Fund United States Trust Deed made between Lloyd's and Citibank NA on 15th September 1995) and any other assets expressed to be held as part of such Central Fund

“Charity” means a charitable company society trust or other entity which is wholly and exclusively charitable in accordance with English law

“Central Syndicate Sub-Fund” means the Sub-Fund referred to in clause 11

“the Commencement Date” means whichever of the following dates shall first occur namely -

- (i) the 1st January next after the date of execution of this Deed and
- (ii) such earlier date (if any) being a date on or after the date of execution of this Deed when the Member first conducts general business at Lloyd's as part of the Underwriting

“the Council” means the Council of Lloyd's constituted by Lloyd's Act 1982 (and also in regard to any discretion authority or power hereby conferred on the Council except only for the purposes of clause 4(a) of this Deed such persons as are for the time being authorised by it to exercise that discretion authority or power)

“dematerialised 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 -

- (i) in which any person falling within (i) of the definition of authorised person is permitted under the regulatory regime applying to it to participate (directly or indirectly) or
- (ii) which is approved by the Council

“Equitas Trust Fund” means any trust fund comprising or including all or any entitlements (or right title benefit or interest) of the Member under any contract of reinsurance underwritten by Equitas Reinsurance Limited of any liabilities of the Member under policies or contracts of insurance underwritten at Lloyd's (being a trust fund under a trust or trust deed provided for or referred to in that contract of reinsurance)

“Excepted Investments” means anything falling within any of the following articles of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 namely –

- (i) article 75 (contracts of insurance)

- (ii) article 82 (rights under a stakeholder pension scheme)
- (iii) article 86 (Lloyd's syndicate capacity and syndicate membership)
- (iv) article 87 (funeral plan contracts) and
- (v) article 88 (regulated mortgage contracts)

“excluded compensation award” means any amount awarded to the Member under the Members’ Compensation Scheme Byelaw (No 15 of 1989) other than an amount which has been awarded because of a failure by then present or past Managing Agent’s Trustees or any of them or any person who then is or has been a managing agent’s trustee under any other Premiums Trust Deed executed by the Member to account for or render to the Member assets received by them

“the Financial Services Authority” means the corporate body known as the Financial Services Authority that is referred to in section 1 of the Financial Services and Markets Act 2000

“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)

“Issuer” has the meaning given in Auction Rules and in relation to any underwriting agent includes any substitute agent appointed by the Council to act in place of an Issuer

“land” includes (without prejudice to the generality of that expression) anything falling within the definition of land in the Trustee Act 1925

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

“Lloyd’s American Trust Deed” means the instrument governing Lloyd’s American Trust Fund for general business as for the time being in force (including any modification or replacement of the same)

“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 Asia (Offshore Policies) Instrument 2002” means the Special Trust Direction so entitled which is intended to be made by the Council during the year 2002

“Lloyd’s Asia (Singapore Policies) Instrument 2002” means the Special Trust Direction so entitled which is intended to be made by the Council during the year 2002

“Lloyd’s Auction Settlement Account” has the meaning given in Auction Rules

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

“Lloyd’s Canadian Trust Deed” means the instrument governing Lloyd's Canadian Trust Fund as for the time being in force (including any modification or replacement of the same)

“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)

“Lloyd’s Japanese Instrument” means the Special Trust Direction so entitled which is intended to be entered into by Lloyd’s and Lloyd’s Japan Inc and certain other parties

“Lloyd’s Ombudsman” means the Lloyd’s Ombudsman referred to in the Members’ Ombudsman Byelaw (No 13 of 1987)

“long term business” means the business of effecting or carrying out “contracts of long term insurance” as defined in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

“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 or winding up all or any part of the Underwriting (and any successor in whole or in part of such underwriting agent including any substitute agent)

“Managing Agent's Sub-Fund” means in regard to any Managing Agent that part of the Trust Fund which is for the time being vested in or under the control of all or any one or more of the Managing Agent's Trustees appointed by or for that Managing Agent

“Managing Agent's Trustees” means in regard to any Managing Agent the trustees for the time being of this Deed designated under clause 6(b)(i) as the Managing Agent's Trustees in respect of that Managing Agent

“MAPA” has the meaning given in paragraph 10(1) of the Agency Agreements Byelaw (No 8 of 1988)

“the Member” means the party to this Deed so designated above including where the context so admits or requires -

- (1) in the case of an individual his administrators executors or assigns
- (2) in the case of a corporate body its assigns and
- (3) 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

“Members' Agent” means any members' agent of the Member at Lloyd's appointed by the Member (and any successor in whole or in part of such agent including any substitute agent)

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

“New Central Fund” means the New Central Fund referred to in the New Central Fund Byelaw (No 23 of 1996)

“notifiable event” means

- (i) in relation to a Managing Agent’s Trustee who is an individual
  - (a) the making of a receiving order in bankruptcy against such individual by the due process of law of any country or such individual making or proposing any composition with his creditors or otherwise acknowledging his insolvency or
  - (b) that individual becoming through mental or other infirmity incapable of managing his affairs and
- (ii) in relation to a Managing Agent’s Trustee which is not an individual the making or proposing of any composition with its creditors or otherwise acknowledging its insolvency or a proposal being made in respect of it under section 2 of the Insolvency Act 1986 or a bankruptcy order being made against it by the due process of law of any country or its being adjudicated or declared insolvent by the due process of law of any country or an order being made or resolution being passed for its winding up or dissolution or an administration order being made in respect of it under section 9 of the Insolvency Act 1986 or a receiver trustee or analogous officer being appointed in respect of the whole or any material part of its property or assets or its directors presenting or filing in any court a petition in respect of its bankruptcy winding up or other insolvency or which seeks any reorganisation dissolution or similar relief or there occurring an event in any jurisdiction which is analogous to any of the foregoing events and
- (iii) any other matter prescribed by the Council for the purposes of this definition

“the other members” means (other than and excepting the Member himself) the 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 Business Regulatory Deposit” means any Lloyd's US Surplus Lines Trust Deed or Lloyd’s US Reinsurance 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 (wheresoever situate in any part of the world) -

- (1) full details of which (and of any and every alteration variation or restatement of which) have been provided to the Financial Services Authority and
- (2) 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 for (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 governmental or regulatory authority having jurisdiction in or in any part of any overseas territory) 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 Underwriting relating to (or conducted in the currency of) a particular territory outside the United Kingdom

“Overseas Direction” means Lloyd’s American Trust Deed Lloyd’s American Instrument or Lloyd’s Canadian Trust Deed

“Participant” has the meaning given in Auction Rules

“permitted number” means in regard to the Managing Agent’s Trustees of any Managing Agent at least two of those Trustees or one if that one is a body corporate (whether or not a trust corporation)

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

“the Perpetuity Period” means the period commencing with the date of this Deed and terminating

- (1) in a case where the Member is an individual on the twenty-first anniversary of the Member’s death and
- (2) in any other case on the expiry of eighty years from 1<sup>st</sup> January 1993

(such period being the perpetuity period for the purposes of this Deed)

“the Personal Reserve Sub-Fund” means that part of the Trust Fund (not being the Central Syndicate Sub-Fund) which is for the time being vested in or under the control of the Regulating Trustee

“Premiums Trust Deeds” means this Deed and all other trust deeds in a form prescribed by the Council as a form of trust deed in accordance with the provisions of which the Member or any of the other members is to carry to a trust fund all premiums received by him or on his behalf (including all such trust deeds relating to long term business) made by the Member or any of the other members as from time to time varied and amended

“PSL Rights of Recovery” means all rights and potential rights of recovery (as opposed to monies received) whether current contingent or future under any such policies or contracts as are mentioned in paragraph 1(i)(E) of Schedule 2

“Regulating Trustee” means Lloyd’s or other the trustee for the time being of this Deed designated under clause 6(a) as the Regulating Trustee

“Reinsurance to Close” has the meaning given in the Definitions Byelaw (No. 7 of 2005)

“Relevant Cause of Action” means any (or any potential) cause of action or other claim of the Member (whether current contingent or future) which for the time being may thereafter give rise during the Trust Period to any recoveries or (where some recoveries have then already been made) further recoveries falling within paragraph 1(i)(D) of Schedule 2

“Relevant Managing Agent” means in regard to the Managing Agent's Trustees of any Managing Agent or assets which are vested or which are or will be required to be vested in or under the control of all or any of the Managing Agent's Trustees of any Managing Agent (including any Rights of Recovery which if they were to be received by that Managing Agent would be required to be so vested) the Managing Agent in question

“Relevant Members' Agent” means the Members' Agent (if any) or where the Member has for the time being more than one Members' Agent that one of them who is appointed as a co-ordinating agent to co-ordinate the administration of the Member’s affairs at Lloyd's

“requirements of the Council” means any requirement imposed by any byelaw or regulation made under Lloyd’s Acts 1871 to 1982 or under the authority given by this 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 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 any 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 any Trustee and any other direction or requirement given or made by the Council under Lloyd’s Acts 1871 to 1982

“Restricting Special Trust Fund” means a Special Trust Fund to which clause 5(e) applies

“Rights of Recovery” means all Syndicate Rights of Recovery all Relevant Causes of Action and all PSL Rights of Recovery

“Special Reserve Fund” means any fund so designated and set up in relation to the Member if an individual or any of the other members who are individuals in accordance with arrangements referred to in section 175 of and Schedule 20 to the Finance Act 1993

“Special Trust Direction” means Lloyd’s American Trust Deed Lloyd’s American Instrument Lloyd’s Canadian Trust Deed or any directions given by the Council under clause 5(a) 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

“Sub-Fund” means a Sub-Fund under this Deed being either the Personal Reserve Sub-Fund the Central Syndicate Sub-Fund or a Managing Agent’s Sub-Fund

“subsidiary” has the meaning given in section 736 of the Companies Act 1985 (as applied with any necessary modifications in the case of a company incorporated outside Great Britain)

“substitute agent” has the meaning given in the Definitions Byelaw (No. 7 of 2005)

“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 member or group 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 Rights of Recovery” means (other than and excepting any Auction Proceeds) all rights and potential rights of the Member whether current contingent or future to have any assets paid or transferred at any time during 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 during the Trust Period to that Managing Agent or other person on behalf of the Member) where the assets in question -

(i) have not for the time being been so paid or transferred and

(ii) will (when or if so paid or transferred) themselves be syndicate trust assets

and includes (in any such case) any Relevant Cause of Action which any Managing Agent has power discretion or authority to conduct on behalf of the Member under any applicable Underwriting Agent's Appointment but no other Relevant Cause of Action

"syndicate trust assets" means trust assets connected directly or indirectly with so much of the Underwriting as is conducted by any Managing Agent

"tangible fixed assets" has the same meaning as in article 21 of the European Council Directive of 18 June 1992 on the coordination of laws regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (92/49/EEC)

"trust assets" means assets for the time being comprised in the Trust Fund or its income (including income falling within exception (a) to clause 16 during the calendar year in which the same is received)

"the Trustees" means the Trustees for the time being of this Deed appointed under clause 6 (whether the Regulating Trustee or the Managing Agent's Trustees of any Managing Agent) but excluding any other person (including the Member) who may hold or in whose name may be held any trust assets at any time and excluding any separate trustees of any Special Trust Fund

"the Trust Fund" means the trust fund constituted as provided in clause 2 and Schedule 2

"the Trust Period" means the period commencing on the Commencement Date and expiring two days before the termination of the Perpetuity Period

"the Underwriting" means the underwriting business (whether current or past or future) of the Member at Lloyd's but excluding any long term business of the Member (and also excluding in a case where the Member is not an individual any business of the Member conducted for any year of account commencing after the sixtieth anniversary of the date of this Deed)

"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

2 In this Deed unless the context otherwise requires -

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

(ii) 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

(iii) 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

- 3 The cross-headings contained in this Deed are for reference purposes only and shall not in any way affect its meaning or effect

## SCHEDULE 2

### The Trust Fund

- 1 Subject to paragraphs 2 and 3 of this Schedule the Trust Fund shall consist of -
- (i) all of the following assets at the Commencement Date or at any time thereafter during 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 -
- (A) all premiums in connection with the Underwriting
  - (B) all reinsurance recoveries in connection with the Underwriting
  - (C) all rights of salvage and subrogation rights in connection with the Underwriting
  - (D) all litigation recoveries (including recoveries made by way of settlement of litigation or potential litigation but not including any award made by the Lloyd's Ombudsman or any excluded compensation award or any recovery of disbursements of the Member save to the extent that the disbursements in question have already been met from the Trust Fund) made against Lloyd's or any of the Member's underwriting agents at Lloyd's or against the then existing or former directors officers partners employees or agents of any such agent or any such agent's professional or other advisers or against any Lloyd's broker or syndicate auditor or syndicate professional or other adviser for breach of contract dishonesty recklessness negligence misrepresentation non-disclosure or other breach of duty (except defamation) -
    - (1) in relation to (or to the conduct on behalf of the Member of) all or any part of the Underwriting carried on by the Member at syndicate level as a member of a syndicate or
    - (2) in respect of negligence in syndicate selection or the omission to effect or to advise in relation to any policy or contract of a kind referred to in paragraph (i)(E) or in respect of any other activities of any Members' Agent in advising the Member and looking after his interests as a single underwriter (whether or not in connection with the Underwriting) or
    - (3) otherwise howsoever in relation to the Member's affairs at Lloyd'sand for the avoidance of doubt litigation recoveries shall include receipts of any distribution from any such group as is mentioned in Clause 12(c)(i)(1)
  - (E) all monies payable (whether or not in connection with the Underwriting) under any personal stop loss or estate protection plan policies for the time being belonging to the Member (or held on his behalf) and any open year reinsurance contracts of (or held for) the Member
  - (F) all Auction Proceeds

- (G) (subject to clause 12) all Rights of Recovery 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 12 to be held as trust assets
- (H) all other assets connected with the Underwriting (excluding any repayment of United States federal income tax received from the United States Internal Revenue Service by or on behalf of the Member)
- (ii) any assets falling within paragraph 4 of this Schedule
- (iii) such income of the Trust Fund as is referred to in clause 16 of this Deed other than any falling within exception (a) to that clause or paid to the Member absolutely under exception (b) thereto
- (iv) all further property at any time added to the Trust Fund during 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 Trust Fund may be given in respect of any liabilities relating thereto) and
- (v) all assets now or for the time being representing the foregoing respectively

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

2 Notwithstanding paragraph 1 but subject to paragraph 4 of this Schedule the following (and the assets representing the same) shall not be treated as comprised in the Trust Fund -

- (i) the Lloyd's Deposits of the Member and any Special Reserve Fund of the Member and their respective income and any assets released at any time from the same
- (ii) all such assets whatsoever as are by Lloyd's American Trust Deed Lloyd's American Instrument Lloyd's Canadian Trust Deed or (once they are respectively brought into force) Lloyd's Asia (Offshore Policies) Instrument 2002 Lloyd's Asia (Singapore Policies) Instrument 2002 Lloyd's Japanese Instrument or any other Special Trust Direction or by this Deed held or required to be held as (or as part of) or for the purpose of a fund separate from the Trust Fund or upon trusts or subject to provisions distinct from those contained in this Deed
- (iii) any Equitas Trust Fund and its income and any assets released at any time from the same
- (iv) all premiums relating to long term business and any other assets which relate wholly and exclusively to long term business and which can be identified as so relating without the need for any partition or apportionment from assets relating to the general business of the Member
- (v) any assets subject to any other Premiums Trust Deed of the Member expressed to have effect in respect of years of account at Lloyd's prior to the 1987 year of account and any assets released at any time from the same
- (vi) any amounts authorised by this Deed to be paid or released out of the Trust Fund or the income thereof to or in accordance with the directions of the Member (or of the Relevant

Members' Agent acting on his behalf under clause 15(c) of this Deed) so far as such amounts or assets representing them have actually been paid or transferred to or otherwise vested in or placed under the control of the Member or in accordance with any such directions

3 In any case where during the Trust Period an unascertainable or unascertained part or proportion of any assets falls within paragraph 1 of this Schedule as belonging to the Trust Fund and another unascertainable or unascertained part or proportion is excluded from the Trust Fund by paragraph 2 hereof the Relevant Managing Agent (or alternatively the Regulating Trustee) 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 Trust Fund

4(a) Paragraphs 2(i) and (v) shall not be taken as excluding from paragraph 1 assets or income referred to in either of those paragraphs which shall during the Trust Period have become vested in or under the control of any Members' Agent or Managing Agent (otherwise than as a trustee or under the terms of and subject to any other Premiums Trust Deed of the Member) or the Trustees or any of them as trustees of this Deed

(b) Paragraph 2(ii) shall not be taken as preventing any Special Trust Direction from providing (if thought fit) that the beneficiaries or other persons entitled thereunder shall be or include all or any of the Trustees of this Deed acting in their capacity as such Trustees (so that they are to hold or account for any assets or rights given to them thereunder as such beneficiaries or other persons entitled as part of the capital or income of the Trust Fund or of any Sub-Fund under this Deed that may be specified in the provision in question) and accordingly any such provision in any such Special Trust Direction shall be given full effect under this Deed in accordance with its terms

5 Assets not falling within the above definition of the Trust Fund shall not be treated as comprised in the Trust Fund by reason only that they have been blended with assets of the Trust Fund (or are income of any assets so blended) and no blending under this Deed shall have the effect of removing from the Trust Fund any assets which would otherwise be comprised in it

## **SCHEDULE 3**

### **Permitted Trust Outgoings**

1 The following outgoings are Permitted Trust Outgoings capable of being paid or discharged during the Trust Period (subject to paragraphs 3 to 6 of this Schedule) under the trust contained in clause 3(a) namely -

- (i) 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 Underwriting
- (ii) any syndicate operating expenses and syndicate investment expenses and charges from time to time being or becoming payable in connection with the Underwriting and any other expenses whose payment or discharge is authorised by paragraph 2 of this Schedule
- (iii) where there has been made into the Trust Fund a payment of a type referred to in paragraphs 4 or 5 of Schedule 20 to the Finance Act 1993 any payments back into a Special Reserve Fund (not exceeding in aggregate the amount of the original payment into the Trust Fund) required to be made (from whatever source) under those provisions or under arrangements referred to in those provisions
- (iv) the Member's obligations to keep fully funded or provide or pay any costs in respect of any and every Overseas Business Regulatory Deposit
- (v) 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)
- (vi) 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 Trust Fund or any Special Trust Fund or have been used for the payment or discharge of any Permitted Trust Outgoings (together with any outstanding interest thereon referable to the monies so paid or used)
- (vii) 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 (i) to (vi) above

2 Subject to paragraphs 3 to 6 of this Schedule expenses falling within any of the following categories can be paid or discharged under paragraph 1(ii) hereof -

- (i) the amounts from time to time payable by the Member to any of the Member's Underwriting Agents by way of salary or fee (in the case of a Members' Agent whether or not exclusively in connection with the Underwriting)
- (ii) the amounts of profit commission from time to time payable by the Member to any of the Member's Underwriting Agents (in the case of a Members' Agent whether or not exclusively in connection with the Underwriting)

- (iii) 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 (in the case of a Members' Agent whether or not exclusively in connection with the Underwriting)
- (iv) the final or estimated amount of any overseas taxation payable by the Member
- (iv)(a) the final or estimated amount of any UK insurance premium tax and fire brigade charge payable by the Member
- (v) where there has been made into the Trust Fund a payment falling within paragraph 1(i)(D) of Schedule 2 pursuant to a Relevant Cause of Action (other than one which is a Syndicate Right of Recovery) any reasonable and proper disbursements of the Member not otherwise recovered by him in pursuing or compromising the Relevant Cause of Action in question or any reasonable and proper contribution (including but not limited to any subscription) paid or incurred by him as a member of any such action group or group of persons as is referred to in clause 12(c)(i) provided that the amount of any Permitted Trust Outgoing under this paragraph (v) shall not exceed in aggregate the amount of the payment into the Trust Fund pursuant to the Relevant Cause of Action in question
- (vi) any amounts from time to time due from the Regulating Trustee to any broker or counterparty 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
- (vii) where there has been made into the Trust Fund a payment of Auction Proceeds which relate to the Member's membership of a MAPA any amounts owed by the Member under Auction Rules in respect of the MAPA in question (not exceeding in aggregate the amount of the payment of proceeds concerned and also not exceeding the amount which could be paid under Auction Rules by an Authorised MAPA Operator on behalf of the Member without obtaining any authority from the Member in addition to that contained in the applicable Underwriting Agent's Appointment) and in this paragraph "Authorised MAPA Operator" has the meaning given in Auction Rules

3 The following are not Permitted Trust Outgoings unless they are syndicate operating expenses or syndicate investment expense and charges payable in connection with the Underwriting -

- (i) 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)
- (ii) 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)

- (iii) 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 (a) any reinsurance effected by or on behalf of the Member or (b) the payment or settlement of any claims made in connection with the Underwriting (including the processing compromise payment repudiation and litigation of any such claims and all matters ancillary thereto)
  - (iv) 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) for the provision of the services of that other person's officers or employees
  - (v) 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
  - (vi) 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
  - (vii) any other outgoings of an overhead nature payable by or on behalf of the Member
- 4(i) Any outgoings or expenses which would but for this paragraph fall within paragraphs 1 or 2 are not Permitted Trust Outgoings if and to the extent that they would be brought into account as attributable in respect of any year of account at Lloyd's prior to the 1987 year of account or are or were incurred in respect of any such pre-1987 underwriting year of account or of the profits or receipts or income of any such year
- (ii) If at any time during the Trust Period only a proportion or part of any outgoing or expense is a Permitted Trust Outgoing and the remaining proportion or part thereof is not because of paragraph 4(i) the Relevant Managing Agent or (as the case requires) the Regulating Trustee shall in its absolute discretion determine what are the proportions or parts in question and only the proportion or part so determined as then being a Permitted Trust Outgoing shall be treated as such and as capable of being paid or discharged out of the Trust Fund
- 5(i) Any outgoings or expenses which would but for this paragraph fall within paragraphs 1 or 2 are not Permitted Trust Outgoings if they relate wholly and exclusively to long term business and are capable of being separately identified as so relating
- (ii) For the avoidance of doubt it is hereby declared that the payment out of the Trust Fund under the trust contained in clause 3(a) of any Permitted 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 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
- 6(i) If at any time during the Trust Period only a proportion or part of any Permitted Trust Outgoing may be paid or discharged out of the Trust Fund and the remaining proportion or part thereof may only be paid or discharged out of a Restricting Special Trust Fund the

Relevant Managing Agent or (as the case requires) the Regulating Trustee shall in its absolute discretion determine what are the proportions or parts in question and only the proportion or part so determined as then being able to be paid or discharged out of the Trust Fund shall be treated as being capable of being so paid or discharged (and the remaining proportion or part thereof shall be treated as capable of being paid or discharged out of the Restricting Special Trust Fund in question)

- (ii) If and to the extent that the proportion or part of any Permitted Trust Outgoing determined under paragraph 6(i) above to be capable of being paid out of the Trust Fund shall have already been paid or discharged out of the Restricting Special Trust Fund in question (whether by way of loan or otherwise) any payment in respect thereof out of the Trust Fund may be made to the trustees of that Restricting Special Trust Fund in reimbursement of such payment or discharge out of that Restricting Special Trust Fund

The **COMMON SEAL** of **LLOYD'S** )  
was hereunto affixed in the presence of )

Authorised Signatory

**Individual** **SIGNED** as a **DEED** and **DELIVERED** )  
**Member** by the **MEMBER** in the presence of )

Witness

Address

Occupation

**OR**

**Corporate** **EXECUTED** and **DELIVERED** )  
**Member** as a **DEED** by the **MEMBER** )  
acting by two directors/a director )  
and the Secretary )

Director

Director/Secretary

**OR**

**Scottish** **EXECUTED** and **DELIVERED** )  
**Limited** as a **DEED** by the **MEMBER** )  
**Partnership** acting by its General Partner )

Director

Director/Secretary

**Limited** **EXECUTED** and **DELIVERED** )  
**Liability** as a **DEED** by the **MEMBER** )  
**Partnership** acting by its Members )

.....  
and  
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