

# Modified Freehold Capacity

Guidance on the adoption of Modified Freehold Capacity

**JULY 2026**

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## Introduction

At Lloyd's, the members of syndicates appoint managing agents to act as their agent for the binding of risks, the handling of claims, regulatory compliance and other activities involved with managing a book of insurance. The appointment of managing agents is governed by a standard managing agents agreement, a contract that all managing agents are required to enter into with the members of the syndicate(s) that they manage. The form of the standard managing agents agreement is prescribed by Lloyd's and cannot be amended without Lloyd's agreement. Having a standardized contract brings a number of benefits including making it more efficient to bring new members onto syndicates, easier to bring onto the syndicate multiple new members at the same time and also easier to facilitate the transferring of capacity, including through the Lloyd's Capacity Auctions. By prescribing the form of the contract, important terms, including the right of members to participate on the next and all future years of a syndicate, but also rights relating to the transfer of capacity, can be embedded.

As the capital backing syndicates has diversified, however, there has been a greater need for flexibility in the way that members participate on syndicates. This has required the parties being able to make certain changes to the standard managing agents agreement. Limited Tenancy Capacity variations are now well established in the market and more recently, variations for Modified Freehold Capacity have been developed.

- **Limited Tenancy Capacity (LTC)** is primarily concerned with amending the standard managing agents agreement to limit the period of time that a member can participate on a syndicate. At the end of the number of years of account provided for, the LTC member ceases to be a member of the syndicate in question and its capacity automatically drops back to the managing agent, unless the arrangement is renewed. Our approach to LTC is now set out in Market Bulletin Y5444 and, in most cases, the parties can rely on the advance consent given by Lloyd's to make the changes they require to the standard managing agents agreement.
- **Modified Freehold Capacity (MFC)**, in contrast to LTC, continues to give members 'security of tenure' on the syndicate in question. The capacity also remains tradable. With MFC Lloyd's has additionally permitted a number of other amendments to be made to the standard managing agents agreement to address points that in the past have been suggested as disincentives to managing agents inviting traditional freehold capacity onto syndicates.

We know that since its introduction in 2024, MFC, which this guidance note is concerned with, has been a popular option, particularly for new syndicates starting up. MFC does, however, require some technical understanding. With the right mechanisms and safeguards in place, which we address in this guidance, we believe MFC will continue to be a valuable tool in the toolbox for members, investors and sponsoring managing agents.

### About this document

This guidance sets out Lloyd's approach to when we will permit the adoption of MFC. MFC has still only been implemented by a relatively small number of syndicates and we expect it and our approach to it to develop further over the ensuing years, at which time we will update this guidance. However, by providing this guidance we aim to give the market an early and clear understanding of what arrangements we will approve.

We have also included in this guidance, an overview of the relevant Lloyd's requirements and how MFC is implemented. In the event of any conflict between this document and Lloyd's formal requirements (such as the byelaws), the formal requirements take precedence.

This document should also be read in conjunction with Market Bulletin Y5444 which explains the advance consent we have given to LTC variations that meet the conditions set out in that Market Bulletin. It should also be read with the document entitled "Termination & Changes to Agency Agreements" (April 2023) which provides guidance on the process to follow for syndicate mergers, minority buy-outs or cessations and for profit commission and fee changes by managing and members' agents.

### Further information

For further information, where questions relate to a proposal to adopt MFC, please contact the Lloyd's New Entrants Team ([NewEntrants@lloyds.com](mailto:NewEntrants@lloyds.com)) in the first instance.

# An Overview of Lloyd's Requirements governing Agency Agreements

## The Agency Agreements

In carrying on the underwriting activities of the syndicates they manage, managing agents act as the agent of the syndicate members. The relationship between managing agents and the Lloyd's members that make up the syndicate is governed by a managing agents agreement. For members that appoint a members' agent, there will additionally be a members' agents agreement which the members' agent and the member will enter into to govern the member's appointment of the members' agent. Additionally, where the members' agent has one or more of its members participating on a syndicate managed by a managing agent, there is a third agreement, entered into between the members' agents and the managing agent, called the agents agreement.

Where a member participates on more than one syndicate that is managed by the same managing agent they only enter into a single managing agents agreement, which will govern the managing agent's appointment on all of the syndicates (see clause 1.8 of the standard managing agents agreement). This last point needs to be remembered where there are LTC or MFC variations, as any variations to the managing agents agreement must be clear as to which syndicate they apply or otherwise they risk amending the terms of the managing agent's appointment for all of its syndicates on which the member participates or they may clash with any other variations agreed in respect of other syndicates managed by that managing agent.

Members with a members' agent do not themselves execute the managing agents agreement when appointing a managing agent for the first time. Instead, the member's members' agent will prepare a syndicate list of all of its members participating on the syndicate, which will be agreed and signed by the managing agent and the members' agent, the latter acting on behalf of its members.

Members given a dispensation from appointing a members' agent do not require a members' agents agreement and only enter into a managing agents agreement with the managing agent, which they will execute.

## The Agency Agreements Byelaw

### The standard agreements

The form of the managing agents agreement, the members' agents agreement and the agents agreement is prescribed by Lloyd's in the Agency Agreement Byelaw as follows:

- Members' agents agreement - see paragraph 2(1) & Schedule 1
- Managing agents agreement – see paragraph 3(1) & Schedules 3 & 4
- Agents agreement - see paragraph 4(1) & Schedule 2.

In the case of the managing agents agreement, two forms of the agreement have been prescribed. The managing agents agreement (general), for members that have appointed members' agents and the managing agents agreement (corporate), for members without members' agents. For the most part the terms of both agreements are materially similar.

The standard managing agents agreements are available on Lloyds.com. In the case of the managing agents agreement (general), the agreement is appended to the members' agents agreement.

### Terminating the appointment and varying the agreement

An important feature of the standard managing agents agreement is that it gives 'security of tenure' to members of syndicates, with only limited circumstances when members can be removed from a syndicate by the managing agent.

- Clause 11.1 of the standard managing agents agreement provides that, for each managed syndicate that a member participates on, the managing agent's appointment is for the current year of account and all subsequent years of account unless and until the appointment is terminated.
- Clause 11.6 of the managing agents agreement (implementing paragraph 11B of the Agency Agreements Byelaw) makes clear that, other than in limited circumstances listed in clause 11.7 (primarily relating to the insolvency of the member), managing agents cannot terminate their appointment by a member other than with the agreement of Lloyd's.

The parties may also not vary the terms of the managing agents agreement without the permission of Lloyd's (see paragraph 5(1) of the Agency Agreements Byelaw and clause 15.1 of the managing agents agreement).

It is clause 11.1 together with this restriction on the right of managing agents to terminate their appointment or to vary the agreement that gives members the general right to participate on the next and future years of account of syndicates. Capacity that has security of tenure is commonly referred to as freehold capacity.

## Limited Tenancy Capacity

The primary difference between freehold capacity and LTC is that in the case of LTC, permission is given to amend clause 11.6 of the managing agents agreement to give the member a fixed period of tenure on the syndicate, for one or more years of account. Alternatively the member may be given an open ended right to participate but the managing agent will have a right to give notice to terminate its appointment (referred to as 'rolling LTC'). In all cases, any appointment of the managing agent must be specified to end at the end of the year of account and not mid-year.

LTC is not permitted to be traded in the annual Lloyd's capacity auctions. Where LTC is implemented for a member it applies to all of that member's capacity and capacity should not be bifurcated so that part of the capacity is freehold and part is LTC. Any proposal to treat a member's capacity on a syndicate as part LTC and part freehold must be referred to Lloyd's.

Market Bulletin Y5444 now sets out our approach to approving LTC variations. As set out in that Market Bulletin, where the variations fall within the parameters agreed, the LTC variations can be treated as having advance consent from Lloyd's and there is no need to seek approval from Lloyd's. The managing agent is, however, required to provide a return to Lloyd's listing every LTC arrangement entered into in reliance on the advanced consent regime (including fixed term LTC arrangements that are being renewed).

Any proposed LTC variations that do not fall within the terms of Market Bulletin Y5444 must be notified to Lloyd's with a request for permission to make the variation.

## Modified Freehold Capacity

### What is Modified Freehold Capacity?

MFC is any capacity where the terms of the standard managing agent agreement have been amended by the parties (with Lloyd's agreement) but the freehold rights of the member have not been changed and it is intended that the capacity remains tradeable in the Lloyd's Capacity Auctions.

### When can Modified Freehold Capacity be adopted?

Varying the terms of the managing agents agreement pursuant to the MFC regime, in addition to requiring Lloyd's agreement, requires the agreement of all of the members on the relevant syndicate, who will each have their own, separate managing agents agreement with the managing agent. Once a syndicate is up and running, where a syndicate has only a small number of members, it may be possible to get agreement between the members and the managing agent to any managing agent agreement variations (although Lloyd's approval will also be required).

In most cases where MFC is contemplated, the syndicate will have a substantial number of members with freehold capacity. Getting every member to agree to the MFC variations is generally not realistic and having even one member objecting will mean the MFC cannot be implemented.

Accordingly, at present, MFC variations can only be adopted:

- (1) when a syndicate is first established, as part of which, agreement to the MFC variations can be mandated by the managing agent as a condition to joining the syndicate; and
- (2) when a syndicate is already established but the syndicate is admitting tradable freehold capacity for the first time. Again, agreement to the MFC variations can be made a condition to joining the syndicate.

At this time there is no mechanism in place for Lloyd's to consider and approve applications from syndicates with existing freehold capacity that wish to implement MFC. Similarly, it is presently not possible for syndicates that have adopted MFC to make further variations.

## What changes will Lloyd's permit?

Where MFC can be implemented, we will consider MFC requests to vary the managing agents agreement on a case by case basis. Certain changes, as discussed in the sections below can expect to be agreed unless there are any specific considerations that may mean the variations are not appropriate in the particular case.

Where the parties do adopt variations that fall within the categories set out below, the parties are expected to use standard form wordings to ensure consistency across syndicates. As the number of syndicates with MFC grows it is important that members' agents and members are able to efficiently assess syndicates and the differences between them, so that they can make informed decisions as to which syndicates to recommend (in the case of members' agents) or as to which syndicates on which to participate (in the case of members). This will be made more difficult if each syndicate includes minor drafting differences which will all need to be highlighted and considered by members and their members' agents. The one area where greater flexibility will be allowed is in relation to the disclosures that are commonly included. The model wording sets out a number of standard disclosures, but more bespoke changes will be considered as well.

The following are the changes that will usually receive approval in proposed MFC arrangements. Model wordings for each are included in Schedule 1. The clause references in brackets are references to the corresponding model clauses in Schedule 1.

1. Modifying the managing agent's obligations in relation to conflicts of interest and the duty to account for gain or profit (Clause 1(b)).
2. Advance agreement by members to the syndicate pre-empting by more than 7.5% for the purposes of paragraph 6(1) of the Syndicate Pre-emption Byelaw. (Clause 1(c))
3. Waiver of member's rights to receive a mandatory offer under paragraph 2 of the Mandatory Offer Byelaw. (Clause 1(c))
4. Agreement by the parties to a binding mechanism for determining the adequacy of consideration offered to members in a minority buy-out pursuant to paragraph 2 of the Major Syndicate Transactions Byelaw. (Clause 1(c))
5. Agreement by the parties to an accelerated timetable for the offering and acceptance of pre-emption rights and agreement by members that any pre-emption rights taken up by the member will be retained for the next year of account unless sold in the auctions, but will not be dropped. (Clauses 1(d) and 8 to 11)
6. Agreement by members that commercial terms between the managing agent and other members of the syndicate may be different and more advantageous to the other members. (Clause 1(e))
7. Acknowledgement by the members of the syndicate of the managing agent's right to reallocate any capacity dropped by the member. (Clause 1(e))
8. Agreement by the member to certain disclosures made by the managing agent. (Clauses 12 & 13; Schedule 1)
9. Agreement by members of the syndicate to certain limitations of the managing agent's liability in respect of the syndicate plan and the business to be written by the syndicate. (Clause 16)
10. Agreement to the process for appointing any investment manager and deciding on how to invest the assets in the premium trust funds. Where complied with, the managing agent's liability is limited. (Clauses 19 & 20)
11. The right of the managing agent to cease accepting business on behalf of the syndicate and the waiver of any right to compensation by the member in the event of the syndicate ceasing to underwrite. (Clauses 21 & 22)
12. Agreement by the members to enter into a novation agreement to transfer the syndicate to a replacement managing agent following the agreement by Lloyd's to such a proposal. (Clauses 23 & 24)

The parties can elect to adopt some or all of the options listed above.

The changes listed at 2 to 5 above will only be permitted for 'turnkey' managing agent arrangements. The wording must make clear that the variations only apply for so long as the managing agent remains in the role and operates as a turnkey managing agent. These changes will generally not be agreed for arrangements that are not turnkey arrangements.

It is important to note that the changes listed at 9 to 12 do not disapply any relevant byelaw provisions but merely set out how the parties agree to exercise their rights under such byelaws.

In addition to the above, we will usually approve proposed changes to the managing agent fee/profit commission terms where these are agreed between the parties. Any subsequent changes will be subject to the usual process for making

managing agent fee/profit commission changes, for which see our guidance note 'Termination & Changes to Managing Agents Agreements' (April 2023) on [Lloyds.com](https://www.loyds.com).

### **Process for Lloyd's approval of Modified Freehold Capacity**

Where new syndicates wish to adopt MFC, the proposed variations should be provided to Lloyd's by the relevant managing agent as part of the Making it Happen process. The variations will then be reviewed and approval, if given, will be included with the Permission to Underwrite letter.

Where MFC changes are being introduced to an existing syndicate that does not already have freehold capacity, proposed MFC variations can be sent to [kevin.lazarus@lloyds.com](mailto:kevin.lazarus@lloyds.com). (Note that adopting MFC is not possible for syndicates that already have tradable freehold capacity unless all the members with freehold capacity agree to the adoption.)

### **Process for implementing Modified Freehold Capacity and transfer in Capacity Auctions**

The terms of any modified freehold capacity form part of and amend the standard managing agents agreement. Therefore, in addition to their needing to be a managing agents agreement in place, the members and the managing agent also must adopt the MFC. When MFC is adopted for a new syndicate, it may be possible to include the change in a separate deed of variation to the managing agents agreement which is sent to be signed by each member of the new syndicate.

Once the syndicate is underwriting and its capacity is being traded in the Lloyd's Capacity Auctions then it becomes impractical to prepare separate deeds of variation for each new member that acquires capacity in the syndicate (or by any other route that Lloyd's permits the assignment of capacity). In that case, the practice is to append the MFC variations to the syndicate list that the member signs and by signing the syndicate list the member is deemed to agree to the variations. With more syndicates adopting MFC, this may mean that members are required to agree to several sets of MFC variations and each set of variations will need to be appended to the syndicate list. It needs to be made clear that, by signing the syndicate list, the member is agreeing to each of the MFC variations. Any member that refuses to adopt the MFC variations will not be permitted to participate on the syndicate for the upcoming year of account.

While it is expected that MFC variations will adopt standard drafting there will be differences between syndicates and therefore it is important that members (and their members' agents) are properly informed about what is included in any MFC variations before they make a decision whether to take up capacity on a syndicate. Managing agents of syndicates that have adopted MFC will need to publish a disclosure ahead of the annual Capacity Auctions setting out the material terms included in the MFC variations. The full terms of any MFC variations must also be available for members trading in the auctions to review. It is therefore expected that the variations will be appended to any auction disclosure made by the managing agent on behalf of the syndicate so that they can be downloaded from Lloyd's website.

### **Making changes to Modified Freehold Capacity**

Once a syndicate begins underwriting, as with regular freehold capacity it is not possible make further substantive changes to the MFC variations adopted unless there is agreement to the change from each member of the syndicate. Generally, it has not been possible to secure this agreement.

The mechanism that Lloyd's has adopted for permitting changes to managing agent fees or profit commission does provide one way in which Lloyd's could allow changes to be made to MFC terms. In those cases where Lloyd's has agreed to a proposed fee/profit commission change, Lloyd's gives managing agents permission to terminate their managing agents agreement solely for the purposes of implementing the fee/profit commission change. Members that agree to adopt the approved fee/profit commission change will therefore remain on the syndicate, subject to the new terms.

Where there is a manifest error in the MFC variations or an uncontroversial amendment is required then on an application from the managing agent, with the support of the members' agents, Lloyd's may agree to adopt the same approach as used for fee/profit commission changes to permit the change.

## Schedule 1 – Variations for Modified Freehold Capacity Addendum

### Amendments to the Agency Agreement

1 The Agency Agreement shall be amended in accordance with clause 15.1 of the Agency Agreement (but only to the extent specifically stated and in relation to the clauses specifically set out herein) with effect from the Commencement Date as follows:

(a) by the insertion (or replacement, where applicable) in clause 1.1 of the Agency Agreement of the following definitions:

**Active Underwriter** means the active underwriter from time to time of the Syndicate (being the individual with principal authority to accept risks on behalf of the members of the Syndicate), the first such active underwriter being *[insert name of active underwriter]*

**Addendum** means the addendum to the Syndicate List of the Member in respect of the Syndicate signed by the Agent, the Member and (if the Member is not a DCP) the Members' Agent on or around the date of this Agreement

**Agency Agreement** means the Lloyd's standard form managing agent's agreement (general) in the form set out in Schedule 3 to the Agency Agreements Byelaw (No. 8 of 1988) or, if the Member is a DCP, the Lloyd's standard form managing agent's agreement (corporate member) in the form set out in Schedule 4 to the Agency Agreements Byelaw (No. 8 of 1988)

**Agent Group** means the Agent and each of its Group Undertakings and Agent Group Company and Agent Group Companies shall be construed accordingly

**Agents' Agreement** means the Lloyd's standard form agents' agreement in the form set out in Schedule 2 to the Agency Agreements Byelaw (No. 8 of 1988)

**Circumstances Bulletin** means the Regulatory Bulletin 090/99 issued by Lloyd's on 18 November 1999 and the attached Guidance Note titled "Circumstances specified by the Council under paragraph 3(4) of the Agency Agreements Byelaw (No. 8 of 1988) as amended and supplemented by the Market Bulletin Y3439 dated 1 December 2004.

**Client Group** means the Service Company and each of its Group Undertakings and **Client Group Company** and **Client Group Companies** shall be construed accordingly

**Client Records** means all data, information, records and documents in any media and format and which the Service Company (or any person on its behalf) creates, receives or maintains from time to time on behalf of the members of the Syndicate in connection with the provision of the services provided by the Client Group for and on behalf of the Syndicate

**Commencement Date** means the date on which the Member becomes a member of the Syndicate with modified freehold capacity

**Council** has the meaning given to that expression in the Definitions Byelaw (No. 7 of 2005)

**DCP** means a Member which is not party to a Member's Agent's Agreement

**Disclosures** means the matters set out in Schedule 1 to the Addendum

**Group Undertaking** means, in relation to an undertaking (**U**), an undertaking which is a parent undertaking or subsidiary undertaking (each as defined by section 1162 of the Companies Act 2006) of U, or a subsidiary undertaking of any parent undertaking of U

**holding company** has the meaning given to it by section 1159 of the Companies Act 2006

**Investment Manager** has the meaning given to that expression in paragraph 19

**Members' Agent's Agreement** means the Lloyd's standard form members' agent's agreement in the form set out in Schedule 1 to the Agency Agreements Byelaw (No. 8 of 1988)

**Related Person** has the meaning given to that expression in the Circumstances Bulletin and includes (without limitation) any subsidiary of the Agent, holding company of the Agent and/or any subsidiary of any holding company of the Agent and any other person who controls, or who is controlled by a person who controls, the Agent

**Replacement Managing Agent** has the meaning given to that expression in paragraph 23

**Service Company** means *[insert company details for entity providing services to the Managing Agent as part of turnkey arrangements]*

**subsidiary** has the meaning given to it by section 1159 of the Companies Act 2006

**Syndicate** means the syndicate designated with the number *[insert syndicate number]*, as constituted for each underwriting year of account

**syndicate** includes, where the context allows, special purpose syndicates, special purpose arrangements, syndicates in a box or any similar arrangement howsoever called

**syndicate allocated capacity** has the meaning given to that expression in the Definitions Byelaw (No. 7 of 2005)

**Syndicate List** has the meaning given to that expression in the Definitions Byelaw (No. 7 of 2005)

**Syndicate Plan** means the syndicate business plan or the syndicate business forecast (as the context requires) for the Syndicate for a particular Year of Account (in such format and containing such information as may be required by the Council)

**Year of Account** means a year of account within the meaning of that term as specified from time to time by Lloyd's or as commonly understood in the Lloyd's market (as the case may be)

and (where the Member is not a DCP) any references to the Standard Agents' Agreement and the Members' Agent's Agreement shall be deemed to be references to such Agreements as amended by the Addendum.

- (b) by the deletion of clause 4.3A of the Agency Agreement and the substitution therefor of the following new clause 4.3A:

4.3A In relation to the Member's participation on the Syndicate, no transaction, arrangement, relationship, act or event (whether or not directly involving the Agent) which would or might otherwise be regarded as constituting or giving rise to a contravention of any obligation of the Agent under paragraph (b) or (d) of clause 4.2 or under any corresponding obligation or duty implied by law in relation to conflicts of duty or interest, or as requiring the Agent to account to the Member for any gain or profit such as is referred to in paragraph (c) of that clause, shall be regarded as constituting such a contravention or as giving rise to any such obligation to account if the transaction, arrangement, relationship, act or event arises or occurs:

- (A) in circumstances specified by the Council under paragraph 3(4) of the Agency Agreements Byelaw (No. 8 of 1988) and in compliance with any applicable conditions and requirements prescribed by the Council under that paragraph; or

- (B) in relation to the acquisition, development or acceptance of underwriting business, where not inconsistent with the Disclosures, (including in respect thereof, without limitation, (A) the acquisition, development or acceptance of underwriting business from a source of such business which is also a source of business for the Syndicate and (B) in relation to classes of business underwritten by the Syndicate) by a Related Person of the Agent or by the underwriting member(s) of another syndicate managed by the Agent (including, without limitation, if one or more of such underwriting members is or are Related Persons of the Agent), in each case for the benefit of persons other than the underwriting members of the Syndicate, provided that such acquisition, development or acceptance of underwriting business does not transfer or re-direct the renewal or extension of insurance or reinsurance contracts previously accepted by the underwriting members of the Syndicate to the underwriting members of another syndicate managed by the Agent or to any Related Person of the Agent.
- (c) (where the Member is not a DCP) by the addition of new clauses 7.6 and 7.7 after clause 7.5 of the Agency Agreement or (where the Member is a DCP) by the addition of clauses 7.7 and 7.8 after clause 7.6 of the Agency Agreement as follows:
- 7.6/7 The Member: (a) agrees to waive all rights to receive a mandatory offer under paragraph 2 of the Mandatory Offer Byelaw (No. 5 of 1999) and (b) grants its consent to the Agent increasing the syndicate allocated capacity of the Syndicate for a succeeding Year of Account by more than 7.5 per cent without being required to obtain its consent pursuant to paragraph 6(1) of the Syndicate Pre-Emption Byelaw (No. 19 of 1997).
- 7.7/8 The Member agrees that for the purposes of determining the adequacy of the consideration offered to members upon a minority buy-out under paragraph 2 of the Major Syndicate Transactions Byelaw (No. 18 of 1997), such consideration shall be binding on the Member and the Agent where it has been determined by an independent expert who has been appointed in accordance with this clause. Such expert shall be appointed to determine the consideration based on the application of its own judgement unless any more specific instructions have been provided to it in relation to the valuation exercise following agreement between the Agent and all members' agents who act for members participating on the Syndicate. The expert shall be appointed by agreement between the Agent and the members' agents who act for members participating on the Syndicate having consulted with Lloyd's (or, in the event no such agreement can be reached, as nominated by the President of the Institute of Chartered Accountants in England and Wales) and shall be a person with appropriate expertise in the valuation of Lloyd's capacity.
- (d) (where the Member is not a DCP) by the addition of a new clause 11.12 after clause 11.11 of the Agency Agreement or (where the Member is a DCP) by the addition of a new clause 11.11 after clause 11.10 as follows:
- 11.11/12 The Member undertakes to exercise its rights of pre-emption relating to its participation on the Syndicate, whether arising under the Syndicate Pre-Emption Byelaw (No. 19 of 1997) or otherwise, in accordance with this Agreement, including the 'Pre-Emption Arrangements' set out in the Addendum.
- (e) by the addition of new clauses 13.7 and 13.8 after clause 13.6 of the Agency Agreement as follows:
- 13.7 The Agent and the Member acknowledge and agree that the commercial terms agreed from time to time between the Agent and other underwriting member(s) of the Syndicate, such as underwriting members of the Syndicate participating on a 'limited tenancy' basis, may be different and more advantageous to such other underwriting member(s) than those terms set out in this Agreement in respect of the Member. The Member agrees that the fact that such other underwriting member(s) of the Syndicate have agreed, or may agree, different commercial terms with the

Agent shall not constitute or give rise to any contravention of any obligation of the Agent under paragraphs (b) or (d) of clause 4.2 of this Agreement or under any corresponding obligation or duty implied by law in relation to conflicts of duty or interest, or as requiring the Agent to account to the Member for any gain or profit such as is referred to in paragraph (c) of that clause.

13.8 The Member acknowledges and agrees that if it, or any other underwriting member of the Syndicate ceases for whatever reason to be a member of the Syndicate or reduces its member's syndicate premium limit or declines to accept the whole of its pre-emption entitlement pursuant to the Syndicate Pre-emption Byelaw, the Agent may allocate such part of the Member's syndicate allocated capacity of the Syndicate for the next underwriting Year of Account which relates to such cessation, reduction or declinature to any person (including (without limitation) any member which is a Related Person of the Agent) on such terms (including as to the payment of monies to the Agent) as the Agent and such other person may agree.

(f) by replacing all references in the Agency Agreement to:

(i) "the Managed Syndicate" with references to "the Syndicate"; and

(ii) "the Name" or "the Corporate Member" with references to "the Member".

2 The amendments to the Agency Agreement set out in paragraph 1 shall only operate in respect of any Year of Account in which the Member is an underwriting member of the Syndicate and shall not apply (for the avoidance of doubt) to the Member's participation on any other syndicate managed by the Agent.

3 Subject to the amendments set out in this Addendum, the terms of the Agency Agreement shall have full force and effect and otherwise remain unchanged.

#### Consequential Amendments to the Members' Agent's Agreement and the Agent's Agreement

4 The Members' Agent's Agreement shall be amended in accordance with clause 14.1 of the Members' Agent's Agreement (but only to the extent specifically stated and in relation to the clauses specifically set out herein) with effect from the Commencement Date as follows:

(a) by the deletion of the definition of "Standard Agents' Agreement" and the substitution therefor of the following definition:

**Standard Agents' Agreement** means the form of agreement between a members' agent and a managing agent prescribed by the Agency Agreements Byelaw (No. 8 of 1988) and set out in Schedule 2 thereto, subject to any variations made pursuant to clause 8.1 of such Agreement.

(b) by the deletion of the definition of "Standard Managing Agent's Agreement (General)" and the substitution therefor of the following definition:

**Standard Managing Agent's Agreement (General)** means the form of agreement between an underwriting member of Lloyd's and a managing agent prescribed by the Agency Agreements Byelaw (No. 8 of 1988) and set out in Schedule 3 thereto, subject to any variations made pursuant to clause 15.1 of such Agreement.

5 The Agent's Agreement shall be amended in accordance with clause 8.1 of the Agent's Agreement (but only to the extent specifically stated and in relation to the clauses specifically set out herein) with effect from the Commencement Date as follows

(c) by the deletion of the definition of "Standard Managing Agent's Agreement (General)" and the substitution therefor of the following definition:

**Standard Managing Agent's Agreement (General)** means the form of agreement between an underwriting member of Lloyd's and a managing agent prescribed by the Agency Agreements Byelaw (No. 8 of 1988) and set out in Schedule 3 thereto, subject to any variations made pursuant to clause 15.1 of such Agreement.

- (d) by the deletion of the definition of "Standard Members' Agent's Agreement" and the substitution therefor of the following definition:

**Standard Members' Agent's Agreement** means the form of agreement between an underwriting member of Lloyd's and a members' agent prescribed by the Agency Agreements Byelaw (No. 8 of 1988) subject to any variations made pursuant to clause 14.1 of such Agreement.

- 6 The amendments to the Members' Agent's Agreement and the Agents' Agreement set out in paragraphs 4 and 5 shall only operate in respect of any Year of Account in which the Member is an underwriting member of the Syndicate and shall not apply (for the avoidance of doubt) to the Member's participation on any other syndicate managed by the Agent.
- 7 Subject to the amendments set out in this Addendum, the terms of the Members' Agent's Agreement and the Agents' Agreement shall have full force and effect and otherwise remain unchanged.

#### Pre-emption arrangements

- 8 The following provisions set out in paragraphs 9 to 11 shall apply in respect of all pre-emption entitlements where the Agent proposes to increase the syndicate allocated capacity of the Syndicate for the succeeding year of account in accordance with the requirements of the Syndicate Pre-emption Byelaw (No. 15 of 1997).
- 9 Any offer may be made in electronic form in which case the date of the offer shall be the date of receipt of an automated delivery receipt or confirmation of receipt from the relevant server. The date of any offer made in any other form shall be the date the offer is deemed received under clause 18 of this Agreement.
- 10 When accepting the offer:
- (a) such acceptance shall be irrevocable and accompanied by confirmation from (where the Member is not a DCP) the Members' Agent on behalf of the Member or (where the Member is a DCP) the Member that any additional funds at Lloyd's that will be required from the Member in order to give effect to the increase in the Member's member's syndicate premium limit are available and fully committed to support underwriting during the next year of account; and
  - (b) provided the offer has been received by (or on behalf of) the Member on or before 6 September in the current year, the prescribed date for the purposes of paragraph 3(6)(c) of the Syndicate Pre-Emption Byelaw (No. 19 of 1997) shall be 30 September in the same year (or such other date as may be agreed in writing between the Agent and (where the Member is not a DCP) the Members' Agent or (where the Member is a DCP) the Member).
- 11 The confirmation included in the acceptance referred to in paragraph 10(a) shall no longer apply with respect to any capacity represented by the pre-emption entitlement sold by the Member in a capacity auction.

#### Disclosures

- 12 The Agent confirms and acknowledges that the matters set out in the Disclosures have been fairly made and presented.
- 13 The Member confirms and acknowledges that:

- (a) it has read and fully understands the Disclosures;
  - (b) it has had the opportunity to take independent advice on the effect of the Disclosures; and
  - (c) it irrevocably consents to each matter which has been fairly disclosed in the Disclosures.
- 14 Notwithstanding any other provision of this Addendum or the Agency Agreement, the Member hereby agrees that if, for any Year of Account, it does not exercise its right to participate on the Syndicate, it shall be deemed to irrevocably and unconditionally waive any and all rights, remedies and claims of whatsoever nature which it has or may have to participate in the Syndicate hereunder.

Liability of Managing Agent<sup>1</sup>

- 15 Nothing in this Addendum shall exclude or in any way limit the Agent's liability for: (a) death or personal injury caused by its negligence; (b) fraud or fraudulent misrepresentation; or (c) any other matter in respect of which liability cannot be limited or excluded by law.
- 16 The Member acknowledges to and agrees with the Agent that, except as expressly set out in this Addendum:
- (a) the Agent makes no, and will not make any, representation or warranty in respect of the Syndicate Plan or the business proposed to be written by the Syndicate or as to the viability and future performance (including expected profitability) of the Syndicate;
  - (b) the Agent owes no duty, and shall not owe any duty (whether in contract, in tort, in equity or otherwise) to advise the Member as to whether or not to participate on the Syndicate;
  - (c) the Member has made, and will make, its own commercial assessment of each Syndicate Plan and the business proposed to be written by the Syndicate;
  - (d) the Member shall have no claim or remedy against the Agent (and the Agent shall have no liability) in connection with or in respect of the Syndicate Plan and/or the business proposed to be written by the Syndicate (including where the underwriting results of the Syndicate do not conform with the commercial assessment undertaken by, or the expectations of, the Member), except to the extent such claim is in respect of any provision expressly set out in the Agency Agreement or this Addendum; and
  - (e) the Member shall not have any claim or remedy in respect of any warranty, statement, misrepresentation (whether negligent or innocent) or undertaking made to it or on behalf of the Agent in connection with or relating to the subject matter of any Syndicate Plan or the Syndicate, except to the extent such claim or remedy is in respect of any warranty, statement, representation or undertaking expressly set out in the Agency Agreement (as amended by this Addendum) or this Addendum.
- 17 If any limitation or exclusion of liability provision set out in this Addendum is held to be invalid under any applicable statute, or rule of law or court of competent jurisdiction then such provision shall to that extent be deemed omitted, but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded or limited, such liability shall be subject to the other limitation and exclusion of liability provisions set out in this Addendum.
- 18 No Party nor any other Group Undertaking shall have any liability for consequential or indirect loss.

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<sup>1</sup> Paragraphs 15 to 18 (Liability of Managing Agent) may only be adopted where, and for so long as, the syndicate is managed by a 'turnkey' managing agent.

### Investment Manager and Investments<sup>2</sup>

- 19 The Member acknowledges and agrees with the Agent that such investment manager as may be proposed by the Service Company, agreed by the Agent in writing (such agreement not to be unreasonably withheld or delayed) and, to the extent required by applicable regulation, approved by the Council (the **Investment Manager**) will be engaged by the Agent, on behalf of the Syndicate, to be responsible for managing the investments of the Syndicate, other than such investments as are required by the Council to be retained under the control of the Managing Agent's Trustees or otherwise invested by or as directed by Lloyd's or any other person.
- 20 The Member and the Agent acknowledge and agree that:
- (a) all premiums and other receipts transferred to the Premiums Trust Fund should be held in cash and/or (subject to applicable Lloyd's regulation and normal market practice) such other investments as the Service Company and the Agent may agree in writing from time to time;
  - (b) the Agent shall consult with and consider the reasonable views of the Service Company regarding the investment of the funds held in the Premiums Trust Fund in accordance with the criteria set out in paragraph 20(a);
  - (c) neither the Agent nor the Managing Agent's Trustees shall have any duty or obligation (whether under the Agency Agreement, the Premiums Trust Deed or otherwise) to invest any trust assets other than in compliance with this paragraph 20; and
  - (d) subject to the Agent and the Managing Agent's Trustees complying with applicable Lloyd's regulation and normal Lloyd's market practice concerning the investments of the Syndicate (and the Agent procuring that the Investment Manager complies with the same) neither the Agent nor the Managing Agent's Trustees shall have any liability to the Member in relation to the investment of the trust assets where the provisions of this paragraph 20 have been complied with.

### Cessation<sup>3</sup>

- 21 The Member acknowledges and agrees that:
- (e) the Council is empowered pursuant to the Underwriting Byelaw (No. 2 of 2003) to withdraw the Agent's permission to manage the Syndicate;
  - (f) the Agent may decide (whether as a result of there being insufficient support for the Syndicate or following discussions with the Council or otherwise) to cease accepting new or renewal business on behalf of the Syndicate; and
  - (g) the Member shall not be entitled to any compensation or other payment of whatsoever nature (and whether pursuant to the Major Syndicate Transactions Byelaw (No. 18 of 1997) or otherwise) following either the withdrawal by the Council of the Agent's permission to manage the Syndicate or a decision by the Agent to cease accepting new or renewal business on behalf of the Syndicate.
- 22 Following either the withdrawal by the Council of the Agent's permission to manage the Syndicate or a decision by the Agent to cease accepting new or renewal business on behalf of the Syndicate, the Agent shall run-off the business of the Syndicate in accordance with the Agency Agreement unless otherwise directed by the Council.

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<sup>2</sup> Paragraphs 19 to 20 (Investment Manager and Investments) may only be adopted where, and for so long as, the syndicate is managed by a 'turnkey' managing agent.

<sup>3</sup> Paragraphs 21 to 22 (Cessation) may only be adopted where, and for so long as, the syndicate is managed by a 'turnkey' managing agent.

### Replacement Managing Agent

- 23 In the event that it is proposed (with the agreement of the Agent and the Service Company, having obtained the approval of Lloyd's) that the Agent is replaced as the managing agent of the Syndicate by another agent qualified to act in such capacity (a **Replacement Managing Agent**), the Member shall enter into a novation agreement in a form as reasonably directed by the Agent to novate the Agency Agreement in order to give effect to such replacement.
- 24 The Parties acknowledge and agree that the following paragraphs will not, unless otherwise agreed by Lloyd's, apply in respect of any Replacement Managing Agent: paragraphs 15 to 22.

### **Schedule 1 to Addendum - Disclosures**

In agreeing to become a member of the Syndicate and in signing this Addendum with the Agent, the Member acknowledges the following Disclosures and consents to each of the matters or arrangements described in them.

#### Part A: The Agent may establish other syndicates

- 1 The Agent may establish and manage syndicates which underwrite business of a similar nature to, and/or in the same classes as, and/or from the same or similar sources (including brokers and other intermediaries) as the business underwritten, or from time to time proposed to be underwritten, by the Syndicate.
- 2 The Member consents to the Agent establishing and managing such syndicates and agrees that the Agent:
- (a) shall not be in breach of its contractual or common law duties to the Member as a result of managing such syndicates in this regard so long as the Agent continues to manage the Syndicate in accordance with the requirements of the Council; and
  - (b) shall have no obligation to invite the Member to participate on any such new syndicate.

#### Part B: Services from the Agent Group

- 3 The Agent benefits from and receives services from entities in the Agent Group. These services are provided on arm's length commercial terms (including, in addition to salaries and other employment related costs, an appropriate allocation of office overhead and similar expenses) which are accordingly in excess of the cost of those services.
- 4 The Member agrees that the Agent shall have no obligation to seek competitive tenders from other entities which provide similar services. The Member consents to the Agent Group receiving and retaining the fees (as described above) paid to it for providing such services.

#### Part C: Agent Group involvement in other insurance businesses

- 5 Members of the Agent Group are engaged in and will continue to be engaged in various insurance businesses, including the provision of underwriting management, claims and other insurance services to businesses which may provide services to and/or produce insurance business for the Syndicate and/or other syndicates managed by the Agent.
- 6 The Member consents to members of the Agent Group carrying on those businesses so long as the Agent continues to manage the Syndicate in accordance with the requirements of the Council.

#### Part D: Agent Group free to develop its various businesses

- 7 Members of the Agent Group will continue to develop their existing businesses. This may include the acquisition, formation or management of insurance underwriting businesses which accept

business from the same sources, or which write business in the same classes, as the Syndicate or which may underwrite business which could be underwritten by the Syndicate.

- 8 The Member agrees that the Agent shall not be in breach of its contractual or common law duties to the Member as a result of members of the Agent Group developing their businesses as described above, provided that the Agent does not transfer or re-direct the renewal or extension of insurance business previously underwritten by the Syndicate to a company in the Agent Group or to another syndicate managed by the Agent and for so long as the Agent continues to manage the Syndicate in accordance with the requirements of the Council.

#### Part E: Limited and modified freehold capacity

- 9 Certain underwriting members of the Syndicate may participate on a 'limited tenancy' basis under which the Agent may terminate their membership on certain terms and under which those underwriting members may not transfer their right to participate on the Syndicate and certain other underwriting members of the Syndicate may participate on a 'modified freehold tenancy' basis. The commercial terms may differ between those members underwriting on a 'limited tenancy' basis and those members underwriting on a 'modified freehold tenancy' basis and are confidential to the underwriting members.
- 10 The Member consents to underwriting members of the Syndicate participating on a 'limited tenancy' basis or a 'modified freehold tenancy' basis and , to the extent a member is participating on a 'limited tenancy' basis on different commercial terms to the Member.

#### Part F: Client Records

- 11 The Client Group may use the Client Records for purposes other than providing services to the Syndicate, provided such use shall not conflict with the Agent's obligations under the Agency Agreement (as amended by this Addendum) or any requirements of the Council or any other regulation applicable to the Agent.
- 12 The Client Group may underwrite business for insurers other than the Syndicate which is of a similar nature to, and/or in the same classes as, and/or from the same or similar sources (including brokers and other intermediaries) as the business underwritten, or from time to time proposed to be underwritten, by the Syndicate.
- 13 The Member consents to: (a) the Client Group using the Client Records for purposes other than providing services to the Syndicate; and (b) the Client Group underwriting business for insurers other than the Syndicate which is of a similar nature to, and/or in the same classes as, and/or from the same or similar sources (including brokers and other intermediaries) as the business underwritten, or from time to time proposed to be underwritten, by the Syndicate and agrees that the Agent shall have no liability in connection therewith.

#### Part G: The Active Underwriter

- 14 The Active Underwriter shall, in addition to writing business on behalf of the Syndicate, accept business on behalf of the members of the Client Group (in their capacity as agent for other insurers).
- 15 The Member agrees with the Agent that the Active Underwriter shall, in addition to writing business on behalf of the Syndicate, be permitted to accept business on behalf of the members of the Client Group (in their capacity as agent for other insurers) and the Agent shall have no liability in connection therewith.