

**LLOYD'S**

and

**ROYAL TRUST CORPORATION OF CANADA**

as Trustee

and

**THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS**

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**LLOYD'S CANADIAN MARGIN FUND TRUST DEED**

2001

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STIKEMAN ELLIOTT

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## LLOYD'S CANADIAN MARGIN FUND TRUST DEED

This Lloyd's Canadian Margin Fund Trust Deed is made as of 2001 among the Society incorporated by Lloyd's Act (UK) 1871 under the laws of England and Wales by the name of Lloyd's ("Lloyd's") and Royal Trust Corporation of Canada a trust corporation incorporated under the laws of Canada (the "Trustee") and the Superintendent of Financial Institutions (the "Superintendent")

### WHEREAS:

- (A) The underwriting members of Lloyd's from time to time (the "Members") are collectively authorised under the *Insurance Companies Act* (the "Act") to insure in Canada risks as a foreign company
- (B) The parties to this Deed and certain Members (being the Current Contributors as hereinafter defined) have agreed to establish a joint trust fund in Canada in accordance with the Act and the Assets (Foreign Companies) Regulations for securing the payment of any Matured Claim (as hereinafter defined) against a Member under a Policy in Canada (as hereinafter defined) in the event that such Matured Claim cannot be satisfied out of the Lloyd's Canadian Trust Fund or elsewhere
- (C) The Trustee is a qualified Canadian financial institution approved by the Superintendent
- (D) The Act defines "assets in Canada" as the assets that have been vested in trust for a foreign company under Part XIII of the Act
- (E) The assets comprising the Trust Fund are assets in Canada for the purpose of the Act
- (F) This Deed is an Overseas Business Regulatory Deposit as defined in each Lloyd's premiums trust deed of any Member that applies to any underwriting year of account after the 1986 year of account

**NOW THIS DEED WITNESSES** and it is hereby **DECLARED** by and between the parties hereto as follows -

### INTERPRETATION

#### Clause 1.1 Interpretation

The provisions of the Schedule have effect for the purposes of construing this Deed

## CONSTITUTION OF TRUST FUND

### Clause 2.1 Property to be held in trust

- (1) The Trustee hereby agrees to its appointment as trustee of the Trust Fund and further acknowledges and declares that it holds the Trust Fund as constituted on the Effective Date and all property which may be assigned or transferred to or received by the Trustee hereunder and any accumulations and increments from any such property upon the trusts and with and subject to the powers and provisions hereinafter contained
- (2) Subject to Clauses 2.3 4.1 4.2 and Clause 2.1(3) prior to vesting an asset in trust or withdrawing an asset vested in trust Lloyd's shall obtain the written approval of the Superintendent and upon receipt of the written approval of the Superintendent the Trustee shall follow the written direction of Lloyd's
- (3) Unless the Superintendent has otherwise directed by written notice to both Lloyd's and the Trustee Lloyd's may without the prior written consent of the Superintendent -
  - (a) vest in trust an asset listed or referred to in Schedule 2 hereto, and
  - (b) withdraw an asset listed or referred to in Schedule 2 provided that at all times the aggregate value of assets maintained in the Trust Fund shall be not less than the Trust Fund Minimum Amount
- (4) Assets vested in trust under this Deed shall be free of all liens charges and encumbrances of any nature
- (5) For purposes of this Deed the basis for the determination of the value of the assets of the Trust Fund shall be such basis as are agreed in writing between Lloyd's and the Superintendent and notified to the Trustee in writing.

### Clause 2.2 Duration of the Trust Fund

Subject to the provisions of Clauses 9.1 to 9.4 and 12.1 and 12.2 inclusive hereof this Trust Deed shall come into force on May 29 2001 ("**Effective Date**") and shall be irrevocable and remain in full force and effect for a period of twenty (20) years and eleven (11) months from the Effective Date or such shorter period as the Council (with the written approval of the Superintendent) may determine

### Clause 2.3 Trust Fund Minimum Amount

The Council shall provide the Trustee quarterly with written notice of the aggregate minimum value of assets which the Members are required by the Superintendent to maintain in the Trust Fund (the "**Trust Fund Minimum Amount**")

**Clause 2.4 Withdrawal of excess funds**

The Council may from time to time (with the written approval of the Superintendent) direct the Trustee in writing pursuant to Clause 5.6 to pay over any funds in excess of the Trust Fund Minimum Amount to the Member's Canadian Trust Fund or Member's Premiums Trust Fund of each of the Current Contributors in such shares as the Council shall direct

**Clause 2.5 Contributions to the Trust Fund**

The Trustee may accept further contributions to the Trust Fund from time to time which further contributions shall be subject to the terms and conditions hereof and the Trustee shall be accountable only for the funds actually paid to or otherwise vested in it in accordance herewith

**Clause 2.6 Letters of Credit**

In the event that the assets of the Trust Fund consist in whole or in part of a Letter of Credit (which Letter of Credit may be issued by the Trustee or an affiliate in its commercial and not its trust capacity) and the Letter of Credit bears a termination date the Trustee shall unless the Trustee receives notice of at least thirty (30) days in advance of any termination of the Letter of Credit that the Letter of Credit will be renewed extended or replaced by another Letter of Credit or replaced by cash or other qualified investments and such renewal extension or replacement is made at least ten (10) days in advance of any such termination draw down and convert such Letter of Credit to cash and hold the same as assets of the Trust Fund pursuant to the terms hereof

**INCOME OF THE TRUST FUND**

**Clause 3 Income of the Trust Fund**

Subject to any written requirements of the Superintendent the Trustee shall collect and pay not more frequently than each calendar quarter any Trust Income to each trust fund relating to the Lloyd's underwriting business of the Current Contributors from which one or more Current Contributions have been made in shares bearing the same ratio to the total amount payable as each Current Contribution bears to the total of Current Contributions as directed by the Council pursuant to Clause 5.6

**APPLICATION OF THE TRUST FUND**

**Clause 4.1 Priority of payments out of the Trust Fund**

- (1) The Trust Fund shall be exclusively available first for the payment of all expenditures and fees under Clause 7.1 of this Deed including legal fees and expenses actually incurred by or on behalf of the Trustee in connection with

its administration or preservation of the Trust Fund (“Trustee Priority Claims”)

- (2) Any amount in excess of the amount necessary to satisfy Trustee Priority Claims shall be available for the payment of Matured Claims

**Clause 4.2 When Claims become enforceable against the Trust Fund**

- (1) Subject to the payment of Trustee Priority Claims a Claim against any of the Members shall be enforceable against the Trust Fund when all of the following conditions have been satisfied -
  - (a) a judgment has been obtained by a Policyholder or Third-Party Claimant against the Member in respect of that Member’s liability under a Policy in Canada in any court of competent jurisdiction within Canada
  - (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 disposal of any appeal or appeals that may be taken
  - (c) there has been delivered to the Trustee a certified copy of the judgment obtained as aforesaid together with such proof as to its finality in accordance with Clause 4.2(1)(b) as the Trustee may reasonably require
  - (d) the receipt by the Trustee of a written statement under oath from the Policyholder’s or Third Party Claimant’s legal counsel stating without qualification that the Policyholder or Third Party Claimant has pursued all rights and remedies against the Member’s Canadian Trust Fund of that Member and that the amount of the Policyholder’s or Third Party Claimant’s Claim against the Trust Fund is limited to the amount of its total claim which remains unsatisfied after all recourse to the Member’s Canadian Trust Fund of that Member
  - (e) the receipt by the Trustee of a written statement under oath from the Policyholder’s or Third Party Claimant’s legal counsel stating without qualification other than with respect to the passage of the time period described in Clause 4.2(1)(f) that the Claim does not include exemplary or punitive damages or any extra contractual obligations not expressly covered by the Policy in Canada and that the Policyholder or Third Party Claimant has complied with all of the conditions set forth in Clause 4.2(1)(a) to (d)



- (f) a period of thirty (30) days has expired from the date of delivery of the certified copy of the said judgment and all such proof as aforesaid to the Trustee without the judgement having been satisfied
- (2)
- (a) A Claim which has satisfied each of the above six conditions shall be deemed to be a Matured Claim
  - (b) The Trustee shall determine that the above conditions have been met on the basis of the evidence specified above and shall be held harmless in relying upon such evidence in its determination provided however that the Trustee may rely upon a determination by the Council that a particular judgment relates to liability under a Policy in Canada
  - (c) If the Council determines that such judgment does not relate to liability under a Policy in Canada the Council's determination shall be binding and the Council shall notify the Trustee of such determination at least 10 days prior to the expiration of the period described in Clause 4.2(1)(f) whereupon the Trustee shall notify the Superintendent of such determination by the Council
  - (d) If having been requested to do so the Council does not furnish such determination to the Trustee at least 10 days prior to the expiration of the period described in Clause 4.2(1)(f) then such judgment shall be deemed to relate to liability under a Policy in Canada
  - (e) The Council may at any time notify the Trustee if such claim has been satisfied prior to the expiration of the period set forth in Clause 4.2(1)(f)
  - (f) Any Matured Claim shall subject to the provisions of Clauses 9.1 to 9.4 inclusive be paid by the Trustee by cheque mailed to the address of the Policyholder or Third Party Claimant solely out of the Trust Fund then in its actual and sole possession
- (3) The Trustee shall promptly notify the Council and the Superintendent in writing of the receipt of a Claim which has been determined by the Trustee to meet the conditions contained in Clause 4.2(1)(a) to (e) of this Clause and of the amount thereof
- (4) The Trustee shall be fully subrogated as against the defaulting Member with respect to the full amount of all monies paid out of the Trust Fund to satisfy the said judgment together with interest at 10% per annum

**Clause 4.3 Limitations of Policyholder's rights of recovery**

- (1) No Policyholder or Third Party Claimant shall have any right of any nature or description under this Deed to seek to enforce a Claim or otherwise bring an action against the Trustee in respect of any assets of the Trustee or of any assets other than those in the Trust Fund
- (2) No Policyholder or Third Party Claimant even after its Claim has become a Matured Claim may require an accounting from the Trustee or inquire into the administration of the Trust question any of the Trustee's acts or omissions or otherwise enforce this Deed the sole right of such Policyholder or Third Party Claimant under this Deed being to receive the amount of its Claim after it has become a Matured Claim from the assets then in the Trust Fund and available for such payment under this Deed

**ADMINISTRATION MANAGEMENT AND INVESTMENT OF TRUST FUND**

**Clause 5.1 Authority**

- (1) The Trust Fund shall be administered managed and invested by the Trustee at the sole direction of the Council subject to Clause 5.2
- (2) Subject to the requirements of the Council the administration management and investment of the Trust Fund shall be conducted pursuant to such administrative accounting and banking services and procedures as the Trustee may establish in time

**Clause 5.2 Management and investment powers**

Subject to the requirements of the Council and Clauses 2.1(2) and (3) and Schedule 2 hereto the Trustee shall invest and reinvest the Trust Fund in accordance with investment and lending policies standards and procedures established by the Council and approved by the Superintendent

**Clause 5.3 Registration of property in the Trust Fund**

Subject to the requirements of the Council the Trustee shall register property comprised in the Trust Fund in its own name or subject to the prior written approval of the Superintendent in the names of its nominees or authorized depository provided that the Trustee shall have the same responsibility for any such property so registered as for the other property comprised in the Trust Fund

**Clause 5.4 Canadian Depository for Securities Limited**

Subject to the requirements of the Council until otherwise directed in writing by the Superintendent the Trustee may deposit property comprised in the Trust Fund with the Canadian Depository for Securities Limited or any other depository

approved by the Superintendent provided that the Trustee shall have the same responsibility for assets vested in trust whether in the possession of the Trustee or deposited with the Canadian Depository for Securities Ltd.

**Clause 5.5 No commingling of assets**

The Trustee shall not cause or permit any part of the Trust Fund to be pooled or commingled with assets of any other Person and shall at all times keep the assets of the Trust Fund separate ascertainable and segregated from the assets of any other Person provided always that the Trustee may blend the assets of the Trust Fund with assets of the Lloyd's Canadian Trust Fund

**Clause 5.6 Payments directed to be made to Current Contributors' Trust Funds**

The Trustee shall make any payments pursuant to Clause 2.4 or 3 or 12.2 of this Deed in accordance with the instructions contained in any direction of the Council as to the Current Contributors entitled thereto

**TRUSTEE'S ACCOUNTING FOR TRUST ASSETS**

**Clause 6.1 Maintenance of books and records**

The Trustee shall keep or cause to be kept such books records and accounts as are necessary and appropriate to document the Trust Fund and the transactions thereof or as may be required under any applicable law or regulation or the guideline or direction of any regulatory authority

**Clause 6.2 Quarterly reports on Trust assets**

The Trustee shall at the end of each calendar quarter and at any other time when so required by the Superintendent furnish to the Superintendent and the Council a declaration in a form approved by the Superintendent of all the assets for the time being held by or under the control of the Trustee subject to the provisions of this Deed

**Clause 6.3 Market valuation of assets**

- (1) The Trustee shall at the end of each calendar quarter or at such other time or times as the Council or the Superintendent may reasonably require certify the existence of the assets and their valuation in accordance with the Assets (Foreign Companies) Regulations to the Council and the Superintendent such notification being made within two (2) Business Days after the end of each quarter or other date specified by the Council or the Superintendent under this sub-clause (1)
- (2) If exceptions of the Council or of the Superintendent to any such statement are not filed in writing with the Trustee or the Superintendent within **[fifteen**

(15)] days of the date of notification approval of such statement shall be deemed to have been given

**Clause 6.4 Inspection of records and assets**

The Trustee shall at all times permit such examination of the assets and records of the Trust Fund by the Council the Superintendent or any of their authorized representatives and shall at all times provide such reports or accounts as the Council or the Superintendent may deem necessary or expedient

**REMUNERATION REIMBURSEMENT OF TRUSTEE AND  
INDEMNIFICATION**

**Clause 7.1 Trustee's fees and expenses**

- (1) The Trustee shall be entitled to remuneration for acting hereunder at such rate as may be agreed from time to time between the Council and the Trustee and to reimbursement of all expenses which it may reasonably incur in connection with the Trust Fund
- (2) All amounts to which the Trustee is entitled by reason of Clause 7.1(1) shall be Trustee Priority Claims for purposes of Clause 4.1
- (3) Nothing in this Deed shall be construed as requiring that the Trustee's fees and expenses be satisfied solely from the Trust Fund

**Clause 7.2 Indemnification**

- (1) The Trustee shall reimburse indemnify and hold Lloyd's and each Current Contributor harmless from any and all liability loss claim damage cost and expense which shall occur as a result of the failure of the Trustee any of its nominees or any of its or their directors officers employees or agents to exercise reasonable care and diligence or as a result of negligent acts or negligent failures to act
- (2) Lloyd's shall indemnify and agrees to hold harmless the Trustee its directors officers employees and agents from and against any and all taxes charges costs expenses damages claims actions demands and liabilities to which they become subject including legal costs for or in respect of anything done or permitted by them to be done in connection with this Deed except such as shall occur as a result of the failure of the Trustee any of its nominees or any of its or their directors officers employees or agents to exercise reasonable care and diligence or as a result of a negligent act or negligent failure to act

## RESIGNATION AND REMOVAL OF TRUSTEE

### Clause 8.1 Resignation of Trustee

The Trustee may resign at any time upon giving not less than ninety (90) days' written notice to the Superintendent and the Council

### Clause 8.2 Removal of Trustee

- (1) The Council may at any time by written notice to the Trustee and the Superintendent remove the Trustee and such notice shall also indicate the name and address for notices of the successor trustee
- (2) The Council shall remove the Trustee upon written notice to the Trustee and the Superintendent in the event that the Trustee defaults in its duties or obligations or any of them hereunder and has not begun to rectify the default within thirty (30) days after written notice from the Council to the Trustee and the Superintendent specifying the default and requiring the Trustee to remedy the same

### Clause 8.3 Successor Trustee

- (1) Upon
  - (a) the resignation or removal of the Trustee
  - (b) the Trustee ceasing to carry on business or refusing to act as a trustee or
  - (c) the Trustee becoming bankrupt or insolvent or committing or suffering any act of bankruptcy or insolvency or making any assignment for the benefit of creditors

the Council shall forthwith appoint in writing a trustee to succeed the Trustee which shall be a Canadian financial institution approved by the Superintendent and upon such financial institution being appointed the Trust Fund shall automatically vest in such financial institution without the necessity of any act of transfer or transmission by the Trustee

- (2) Notwithstanding the foregoing the Trustee shall execute such deeds and other documents as the Superintendent or the Council may request to evidence the automatic vesting of the Trust Fund in the successor Trustee and shall thereupon be released from its obligations under this Deed
- (3) The Trustee further hereby irrevocably nominates constitutes and appoints the Chairman of Lloyd's from time to time with full power of substitution as its agent and true and lawful attorney to act on its behalf with full power and

authority in its name place and stead to execute and deliver any such deeds and documents as may be required or expedient to evidence the vesting or transfer of the Trust Fund to the successor Trustee

## **APPLICATION OF TRUST FUND IN CERTAIN EVENTS**

### **Clause 9.1 Inability to discharge obligations or shortfall in Trust Fund**

Clauses 9.2 to 9.4 shall apply on the occurrence of either of the following events (whichever is earlier)

- (a) Insolvency Event has occurred and a Court Order has been issued and the Trustee receives written notice from the Superintendent of the Insolvency Event and a copy of the Court Order or
- (b) a failure to remedy within such period of time as is for the time being agreed between the Superintendent and Lloyd's (which agreed period of time shall forthwith be notified by Lloyd's and the Superintendent to the Trustee) any shortfall in the aggregate amount contained in the Trust Fund on the last day of any calendar quarter below the Trust Fund Minimum Amount at that date

### **Clause 9.2 Notice of event**

In the event specified in Clause 9.1(b) the Trustee shall on the expiry of the period referred to in Clause 9.1(b) promptly transmit a written notice of this event by registered mail to the Council and the Superintendent

### **Clause 9.3 One-year Waiting Period after event**

- (1) Except in cases where Trust Fund assets have been transferred to a designated receiver as provided for in Clause 9.4 and unless otherwise ordered by a court of competent jurisdiction no Claims (other than the Trustee's Priority Claims) shall be paid out of the Trust Fund during the 12-month period (the "**Waiting Period**") commencing on the date the Trustee receives written notice of the Insolvency Event and a copy of the Court Order as set forth in Clause 9.1(a) or the date following the expiry of the period referred to in Clause 9.1(b) whichever occurs first
- (2) The payment of Matured Claims shall recommence if the shortfall in the Trust Fund as specified in Clause 9.1(b) is remedied during the Waiting Period or if the Lloyd's market resumes trading during the Waiting Period
- (3) Matured Claims whether arising prior to or during the Waiting Period may be filed throughout said period by registered mail requested

**Clause 9.4 Transfer of Trust assets to receiver**

- (1) In either of the events specified in Clause 9.1 and notwithstanding the provisions of Clauses 9.1 to 9.3 inclusive or any other provision in this Deed and subject to any statutory claims which would otherwise apply the Trustee shall comply with an order of the Superintendent directing the Trustee to transfer to the designated receiver all of the assets of the Trust Fund except those assets which are necessary to satisfy the Trustee's Priority claims as determined in Clauses 4.1 and 7.1 and assets comprising any Matured Claim
- (2) Compliance with such a direction shall relieve the Trustee of all further duties obligations and liabilities of any kind or description under this Deed
- (3) Nothing in this Clause shall be construed as relieving the Trustee of any liability under this Deed for any acts or omissions which occurred prior to the date on which the Trustee transfers the assets of the Trust Fund to the Superintendent

**POWERS AND AUTHORITY OF TRUSTEE**

**Clause 10.1 Liability of Trustee for negligent acts**

- (1) The Trustee shall be obligated to exercise reasonable care and diligence in carrying out the provisions of this Deed and shall be liable for its own negligent acts or negligent failures to act and for the negligent acts or negligent failures to act of any authorized nominee as contemplated by Clause 5.3 or any other persons for whose acts the Trustee is responsible
- (2) Where the Superintendent determines that an asset vested in trust in the Trust Fund is withdrawn other than in accordance with Clause 2.1(2) or (3)(b) the Superintendent shall so notify the Trustee and Lloyd's and within thirty (30) days of the day on which the Trustee is so notified by the Superintendent the Trustee shall replace that asset with an asset or assets of the kind listed or referred to in Schedule 2 annexed hereto, such that the aggregate value of assets in the Trust Fund on the replacement date shall be not less than the Trust Fund Minimum Amount
- (3) In each instance where the Trustee replaces an asset in accordance with Clause 10.1 (2) above Lloyd's shall immediately request the Members to reimburse the Trustee for all losses, damages, expenses and costs reasonably incurred by the Trustee in respect of such replacement

**Clause 10.2 Reliance of Trustee on certain writings**

- (1) The Trustee may accept as sufficient and act upon and give effect to any statement or direction of the Council as to what monies or other assets are to

be paid or transferred out of the Trust Fund and to whom such monies or other assets are to be paid or transferred for the purpose specified in the provisions of Clauses 4.1 to 4.3 inclusive of this Deed and as to what assets are from time to time to be transferred loaned borrowed acquired realized or exchanged in exercise of the powers of administration management and investment contained in the provisions of Clauses 5.1 to 5.6 inclusive of this Deed and in what manner in all respects such payment transfer loan borrowing acquisition realization or exchange is to be made without requiring the accuracy of any such statement to be further verified

- (2) The Trustee shall not under any circumstances be under any liability for acting upon or giving effect to any such statement or direction without requiring any verification thereof

#### **Clause 10.3 Verification of statements**

The Trustee may in its absolute discretion require any such statement or direction to be verified in such manner as it considers fit but it shall not under any circumstances be under any obligation to do so

#### **Clause 10.4 Delegation**

- (1) Subject to the written approval of the Superintendent the Trustee may from time to time (subject to any terms or conditions that it may think fit) delegate to any person whatsoever all or any of its powers authorities and discretions whatsoever whether conferred by this Deed or under the general law (so far as such powers authorities and discretions are not already vested in some other person by any provision of this Deed) and any delegation under this clause 10.4 shall (unless that delegation otherwise states) confer on any such delegate power to sub-delegate to any person 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
- (2) Subject to Clauses 10.4(3) and 10.4(4) the Trustee shall be responsible for exercising reasonable care in its choice and use of delegates and shall be responsible for the negligent acts or negligent failures to act of its delegates or sub-delegates
- (3) The Trustee shall not have any responsibility under Clause 10.4(2) where it has chosen or used delegates or sub-delegates at the request of Lloyd's
- (4) Lloyd's shall be responsible for the acts or omissions of any subsidiary of Lloyd's to which the Trustee has delegated or sub-delegated at the express request of Lloyd's



- (5) Any person other than the 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
- (6) Any delegation made under this Clause 10.4 shall be on such terms and subject to such conditions 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

## **TRUSTEE'S PROTECTING PROVISION**

### **Clause 11.1 Exclusion of Trustee's liability**

The Trustee shall not be liable for any loss that may result from investing and reinvesting the Trust Fund pursuant to the instructions of the Council given in accordance herewith and for greater certainty shall not be responsible for any depreciation in the value of assets as a result of complying with such instructions

### **Clause 11.2 Council approval protects Trustee**

- (1) If any difference at any time arises between the Trustee and a Member who is or at any time has been a Current Contributor relating to the trusts and powers declared and contained in this Deed or if the Trustee at any time has any difficulty in connection therewith it shall be an absolute protection to the Trustee against all claims and demands whatsoever that in the case of any act or thing already done or omitted the Council approved or approve of any such act or thing already done or omitted and that in the case of any act or thing intended to be done or omitted the Council approved or approve of such intended act or omission and it shall not be necessary for the Council to give any reason for any such approval provided that this Clause shall not alter the rights hereunder of any Policyholder Third Party Claimant or the Superintendent
- (2) This Clause is to be for the protection of the Trustee and shall not be construed to impose any obligation on the Trustee to apply for the approval of the Council nor shall it be under any liability for omitting to do so

## **TERMINATION OF THE TRUST**

### **Clause 12.1 Valuation of Trust Fund on termination**

- (1) In the event of the revocation or termination otherwise of the trusts declared by this Deed as permitted hereunder and prior to the final distribution of the

Trust Fund the Council shall appoint a qualified Canadian chartered accountant as auditor to perform the audit contemplated in Clause 12.1(2) and give notice to the Superintendent of such appointment

- (2) An independent audit shall be made as of the date of such revocation or termination of the trusts declared by this Deed and prior to the final distribution of the Trust Fund including the aggregate amount of Matured Claims

#### **Clause 12.2 Assets remaining in Trust Fund**

Upon the revocation or termination of the trusts declared by this Deed and the final distribution of the Trust Fund and the payment of any fees and expenses of the Trustee provided for hereunder due and owing the Trustee shall transfer pay over and deliver to each trust fund relating to the Lloyd's underwriting business of the Current Contributors or to such other person as the Council may direct from which one or more Current Contributions have been made in shares bearing the same ratio to the total amount payable as each Current Contribution bears to the total of Current Contributions as directed by the Council pursuant to Clause 5.6 the income and principal assets of the Trust Fund then in its actual and sole possession or the balance thereof then remaining save and except for the aggregate amount of Matured Claims which shall be paid according to the report of the auditor and such payment transfer and delivery shall constitute a full final and sufficient release discharge and acquittance to the Trustee in respect thereof

### **MISCELLANEOUS**

#### **Clause 13.1 Notices**

- (1) Any notice or other document to be served under this Agreement (including statements and directions given to the Trustee or to Lloyd's) may be delivered during the addressee's normal business hours or sent by prepaid first class post (or airmail where the recipient is overseas) or facsimile to the party to be served at its address set out in clause 13.1(3) below or at such other address as it may have notified to the other parties in accordance with this clause
- (2) Any notice or document shall be deemed to have been served
  - (a) if delivered, at the time of delivery or
  - (b) if posted, at 10:00 a.m. (Toronto time) on the fifth day after it was put in the post or

- (c) if sent by facsimile, at the expiration of two hours after the time of despatch, if despatched before 3:00 p.m. (Toronto time) on any business day and in any other case at 10:00 a.m. (Toronto time) on the business day following the date of despatch

(3) The address for service of notices of each of the respective parties, shall be as follows:

- (a) Notices to Lloyd's or to any Managing Agent

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

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

and in the case of any such notice from the Superintendent to the Chief Agent of Lloyd's in Canada

- (b) Notices to the Trustee

Royal Trust Corporation of Canada  
Royal Trust Tower 11<sup>th</sup> Floor  
77 King Street West  
P.O. Box 7500 Station "A"  
Toronto, Ontario M5W 1P9  
Canada

Attention: Director Client Relations Insurance Industry  
Telephone: (416) 955-2246  
Facsimile: (416) 955-2600  
SWIFT ROTRCATTSC (500 Series Messages)

- (c) Notices to the Superintendent  
Superintendent of Financial Institutions  
16<sup>th</sup> Floor Kent Square  
255 Albert Street  
Ottawa, Ontario K1A 0H2  
Canada

Attention: Deputy Superintendent, Supervision

Telephone: (613) 990-6282  
Facsimile: (613) 952-8219

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

**Clause 13.2 Entire agreement**

This Deed and any agreements contemplated herein constitute the entire trust agreement between the parties in respect of the Trust Fund and such other agreement as is from time to time entered into between the Superintendent and Lloyd's (and notified in writing to the Canadian Trustee) as contemplated herein or required under the Act

**Clause 13.3 Governing law**

This Deed shall be governed and construed in all respects in accordance with the laws of the Province of Ontario

**Clause 13.4 Successors and assigns**

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

**Clause 13.5 Survival of individual liability of Members**

Nothing in this Deed shall affect or limit the Members' obligations to make payment of insurance claims against them

**Clause 13.6 Severability**

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

**Clause 13.7 Third party beneficiaries**

The parties hereto agree that except as specifically provided for herein this Deed shall not benefit or create any right or cause of action in or on behalf of any Person other than the parties to this Deed and no Person other than the parties to this Deed shall be entitled to rely on the provisions of this Deed in any action suit proceeding hearing or other forum

**Clause 13.8 Amendments**

Subject to the prior written approval of the Superintendent the Council and the Trustee may amend this Deed which amendment shall be valid and binding upon the parties to this Deed

**Clause 13.9 Waiver**

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

**Clause 13.10 Superintendent to receive copies of directions and requirements of Council**

Copies of directions of Council and requirements of Council referred to in this Deed shall be provided to the Superintendent when provided to the Trustee

**Clause 13.11 Execution by Superintendent**

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

**Clause 13.12 Execution in counterpart**

This Deed may be executed and delivered in counterparts each of which when so executed and delivered shall be deemed to be an original all such counterparts together shall constitute one and the same agreement

SCHEDULE 1  
INTERPRETATION

**1. Defined Terms**

In this Deed unless the context otherwise requires:

- (a) **“Act”** means the *Insurance Companies Act* S.C. 1991 c. 47 including any amendments or regulations made pursuant thereto
- (b) **“Business Day”** means any day except Saturday Sunday or any day on which banks are not open for business in the City of Toronto Ontario
- (c) **“Claim”** means (i) a claim against one or more Members by a Policyholder or Third Party Claimant for a loss under a Policy in Canada excluding punitive or exemplary damages awarded to or against a Policyholder and also excluding any extra contractual obligations not expressly covered by the Policy in Canada or (ii) a claim against one or more Members by a Policyholder for the return of unearned premium under a Policy in Canada
- (d) **“Contribution Period”** means each period of time determined by the Council during which each group of Current Contributors is required to maintain the Current Contributions in the Trust Fund
- (e) **“Council”** means the Council of Lloyd's constituted by the *Lloyd's Act (U.K.) 1982* and such persons as shall from time to time be authorized by the Council to exercise any power of the Council
- (f) **“Court Order”** means a final and binding order of a court of competent jurisdiction in Canada which is not subject to appeal or in respect of which all appeals have been taken or applicable appeal periods have expired without any appeal having been taken
- (g) **“Current Contributors”** means those persons (whether individuals bodies corporate or partnerships) whose contributions to the Trust Fund constitute the principal of the Trust Fund for the time being the total amount contributed for the time being to be the **“Current Contributions”** and each contribution to the Trust Fund to be a **“Current Contribution”**
- (h) **“Deed”** means this trust deed being the present Lloyd's Canadian Margin Fund Trust Deed and any amendments or supplements thereto
- (i) **“Effective Date”** has the meaning given in Clause 2.2

- (j) **“Insolvency Event”** means those circumstances where Lloyd’s and the underwriting members collectively are incapable of paying or discharging generally the obligations of underwriting members or former members with respect to Policies in Canada, as confirmed and reflected by a Court Order
- (k) **“Letter of Credit”** means an unconditional irrevocable letter of credit in favour of the Trustee approved by the Superintendent
- (l) **“Lloyd’s Canadian Trust Fund”** means the trust fund required to be maintained in Canada pursuant to the Act and which is constituted pursuant to the Lloyd’s Canadian Trust Deed dated June 11, 1989 as amended and restated from time to time
- (m) **“Matured Claim”** means a Claim which is enforceable against the Trust Fund as provided for in Clause 4.2 of this Deed
- (n) **“Member”** means for the purposes of this Deed an underwriting member or former underwriting member at Lloyd’s and includes such underwriting member’s administrator administrative receiver committee curator bonis executor liquidator manager personal representative supervisor or trustee in bankruptcy or any other person at law entitled to or bound to administer the affairs of the member concerned
- (o) **“Member’s Canadian Trust Fund”** has the meaning given in the Lloyd’s Canadian Trust Deed
- (p) **“Person”** means a natural person partnership limited liability partnership corporation joint stock company trust unincorporated association joint venture or other entity
- (q) **“Policy in Canada”** means a policy means a policy with respect to the insuring in Canada of risk as authorized under Part XIII of the Act (including all risks underwritten by the Member prior to January 1, 2012 which as at that date are reported on the books, records and accounts of the Member's underwriting business at Lloyd's maintained pursuant to Part XIII of the Act). For the avoidance of doubt, “Policy in Canada” does not refer to the definition of that term in the Act or any previous version of the Act

- (r) **“Policyholder”** for the purposes of this Deed means the person who for the time being is the holder of a Policy in Canada
- (s) **“requirements of the Council”** means any direction or requirement of the Council (whether comprised in any bye-law regulation direction or other written instrument) issued by the Council to the Trustee or other persons concerned
- (t) **“Superintendent”** means the Superintendent of Financial Institutions for Canada or his or her successor however designated under the Act
- (u) **“Third Party Claimant”** means a person who is not a party to the insurance contract but has a final judgment against any of the Members for a Claim covered by a Policy in Canada
- (v) **“Trust Fund”** or **“Trust”** or **“Margin Fund”** means the property in the actual and sole possession of the Trustee and held under the provisions of this Deed save and except as otherwise expressly provided herein
- (w) **“Trust Fund Minimum Amount”** has the meaning given in Clause 2.3



- (x) **“Trust Income”** means all interest dividends and other income (including net capital gains) resulting from the investment of the property of the Trust Fund

**2. Gender and number**

In this Deed where the context so admits words importing the singular include the plural and vice versa and reference to any gender shall include both genders and the neuter

**3. Headings**

The division of this Deed into Clauses and Sub-clauses and the insertion of headings are for convenience of reference only and are not to affect the interpretation or construction of this Deed

**SCHEDULE 2**

**VESTING OF ASSETS PAYABLE IN  
CANADIAN DOLLARS**

- I Cash
- II Bonds, Debentures and other Evidences of Indebtedness:
  - (a) Government:
    - (i) Canada and Guaranteed
    - (ii) Canadian Provincial and Guaranteed
    - (iii) Canadian Municipal, Public Authority, School and Parochial
  - (b) Corporate: Canadian
- III Shares
  - (a) Common: Canadian
  - (b) Preferred: Canadian
- IV Guaranteed Investment Certificates
- V Such other types of assets payable in Canadian or such other currencies as Lloyd's and the Superintendent may agree upon in writing from time to time and notified to the Trustee in writing

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

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

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Authorized Signatory

**SIGNED AND SEALED** as a Deed by  
the Trustee

**ROYAL TRUST CORPORATION  
OF CANADA**

Authorized Signatory

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Authorized Signatory

**SIGNED** as a Deed by the Superintendent of Financial Institutions in the presence of

**SUPERINTENDENT OF  
FINANCIAL INSTITUTIONS**

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Witness

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Authorized Signatory