

**The Managing Agent's Agreement
(Corporate Member)**

THIS AGREEMENT is made on _____ between:

(1) _____ whose registered/principal office is at _____
(the "**Corporate Member**"); and

(2) _____ whose registered/principal office is at _____
(the "**Agent**").

WHEREAS the Corporate Member wishes to appoint the Agent to act as its managing agent in respect of the underwriting business carried on by it as a member of a particular syndicate or syndicates at Lloyd's.

NOW IT IS AGREED as follows:

1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

"active underwriter" has the meaning given to it in the Definitions Byelaw (No.7 of 2005);

the *"Agent"* includes, in the case of a partnership, any persons who are for the time being carrying on, under whatever name or style, the business of that partnership, and includes any Substitute Agent;

"Agents' Syndicate List" has the meaning given to it in paragraph 1 of the Agency Agreements Byelaw (No. 8 of 1988);

"Audited Closed Year Loss" means a loss ascertained at the closing of a year of account of the Managed Syndicate, the amount of which is set out in an underwriting account in relation to which the syndicate auditor has reported whether in its opinion the underwriting account gives a true and fair view of the profit or loss of that year of account at closure;

"Central Fund contribution" means any contribution to the Central Fund made under any general or special levy pursuant to paragraph 4(1) or (5) of the Central Fund Byelaw (No. 4 of 1986) (including any contributions made to the Central Fund under the Syndicate Premium Income Byelaw (No. 6 of 1984) or the Underwriting Byelaw (No. 2 of 2003), but not any special contributions under such agreement as is referred to in paragraph 4 of the Membership, Central Fund and Subscriptions (Miscellaneous Provisions) Byelaw (No. 16 of 1993));

"closed" in relation to a year of account, means closed by reinsurance to close;

“Corporate Member” includes (i) any person to whom the Corporate Member’s property may pass by operation of law in any jurisdiction on bankruptcy, reorganisation or otherwise and, on the dissolution of a Scottish Limited Partnership, any general partner;

the *“Council”* means the Council of Lloyd’s and includes its delegates and persons by whom it acts;

“Corporate Member’s Syndicate List” means a schedule in the form prescribed under paragraph 6 of the Agency Agreements Byelaw (No. 8 of 1988) prepared in respect of a year of account listing the Managed Syndicates for that year of account and specifying (among other things) in relation to each Managed Syndicate the Corporate Member’s member’s syndicate premium limit and the basis and level of the Agent’s remuneration and, where applicable, the formulae for ascertaining such syndicate premium limit and remuneration;

“Financial Services Authority” means the body corporate known by that name with the functions conferred on it by or under the Financial Services and Markets Act 2000;

“Financial Services Authority’s requirements” has the meaning given in the Definitions Byelaw (No. 7 of 2005);

“limited liability partnership” means a limited liability partnership incorporated under section 2 of the Limited Liability Partnership Act 2000

the *“Lloyd’s Arbitration Scheme”* means any rules made or any scheme established from time to time by a special resolution of the Council or by byelaw in relation to the conduct of arbitrations;

“LPSO” has the meaning given to it in the Interpretation Byelaw (No. 1 of 1983);

“Managed Syndicate” means a syndicate of which the Corporate Member is a member and in respect of which the Agent is the managing agent;

“managing agent” means an underwriting agent which is listed as a managing agent on the register of underwriting agents maintained under the Underwriting Byelaw (No. 2 of 2003) and which is appointed by an underwriting member of Lloyd’s to provide services and perform duties of the same kind and nature as those set out in this Agreement in respect of a particular syndicate;

“Managing Agent’s Agreement” means an agreement between an underwriting member of Lloyd’s and a managing agent in the terms of the Standard Managing Agent’s Agreement (General) or (where the underwriting member is a body corporate or a Scottish Limited Partnership) in substantially the same terms as this Agreement;

“Managing Agent’s Trustees” means the trustees of the Premiums Trust Fund appointed by the Agent in its capacity as the Corporate Member’s managing agent pursuant to the Premiums Trust Deed or, where any Overseas Direction or Special Trust Direction provides for the Agent in its capacity as the Corporate Member’s managing agent to appoint trustees, the trustees of the Overseas Fund or Special Trust Fund (as the case may be) so appointed;

“MAPA participation” means, in relation to any member of a Managed Syndicate, a Managed Syndicate and a MAPA, the amount of the member’s syndicate premium limit of that member allocated to the syndicate through a MAPA operated by the members’ agent of that member as ascertained in accordance with the formula specified in an Agents’ Syndicate List prepared by that member’s agent;

“members’ agent” means an underwriting agent which is listed as a members’ agent on the register of underwriting agents maintained under the Underwriting Byelaw (No. 2 of 2003) and which is appointed by an underwriting member of Lloyd’s to provide services and perform duties of the same kind and nature as those set out in the Standard Members’ Agent’s Agreement;

“members’ agent pooling arrangement” or *“MAPA”* means an arrangement of the kind described in paragraph 10 of the Agency Agreements Byelaw (No. 8 of 1988) operated by a members’ agent;

“Member’s Agent’s Agreement” means an agreement between an underwriting member of Lloyd’s and a members’ agent in the form of the Standard Members’ Agent’s Agreement;

“Membership Agreement” means an agreement between a member of the Society which is a body corporate or a Scottish Limited Partnership and the Council in the form of the agreement for the time being prescribed by the Council pursuant to paragraph 7 of the Membership Byelaw (No. 5 of 2005) as a requirement of admission to membership of the Society;

“member’s syndicate premium limit” has the meaning given to it in the Definitions Byelaw (No. 7 of 2005);

“New Central Fund” means the New Central Fund referred to in the New Central Fund Byelaw (No. 23 of 1996) and any other assets expressed to be held as part of the New Central Fund;

“New Central Fund contribution” means any contribution to the New Central Fund made under any general or special levy pursuant to the New Central Fund Byelaw (No. 23 of 1996) (but not including any special contributions under any such agreement as is referred to in paragraph 4 of the Membership, Central Fund and Subscriptions (Miscellaneous Provisions) Byelaw (No. 16 of 1993));

“overall premium limit” has the meaning given to it in the Definitions Byelaw (No. 7 of 2005);

“Overseas Direction” has the meaning given in the Premiums Trust Deed;

“Overseas Fund” means a Premiums Trust Fund constituted or regulated or to be constituted or regulated by an Overseas Direction;

“Premiums Trust Deed” means a trust deed (other than a Special Trust Direction or an Overseas Direction) executed or to be executed by the Corporate Member in a form for the time being required by the Council and constituting the Premiums Trust Fund;

“Premiums Trust Fund” means the trust fund or funds to which all premiums received by or on behalf of the Corporate Member in respect of the Underwriting are required to be transferred under the Financial Services Authority’s requirements;

“Provisional Insurer” has the meaning given to it in clause 8.2;

“Regulating Trustee” means the Society or such other person as the Council may, under any Premiums Trust Deed, appoint to act as Regulating Trustee (as defined in that deed) acting in its capacity as Regulating Trustee;

“reinsurance to close” has the meaning given to it in the Definitions Byelaw (No. 7 of 2005);

“requirement of the Council” has the meaning given to it in the Definitions Byelaw (No. 7 of 2005);

“run-off manager” has the meaning given to it in the Definitions Byelaw (No. 7 of 2005);

“Scottish limited partnership” has the meaning given to it in the Definitions Byelaw (No. 7 of 2005);

“Special Trust Direction” has the meaning given in the Premiums Trust Deed;

“Special Trust Fund” means a Premiums Trust Fund constituted or regulated or to be constituted or regulated by a Special Trust Direction;

the *“Society”* or *“Lloyd’s”* means the Society incorporated by Lloyd’s Act 1871 by the name of Lloyd’s;

“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);

“*Standard Members’ Agent’s Agreement*” means the form of agreement between an underwriting member of Lloyd’s and members’ agent prescribed by the Agency Agreements Byelaw (No. 8 of 1988);

“*Substitute Agent*” has the meaning given in the Definitions Byelaw (No. 7 of 2005);
“*syndicate*” means a group of underwriting members of Lloyd’s underwriting insurance business at Lloyd’s through the agency of a managing agent to which a particular syndicate number is assigned by the Council;

“*syndicate allocated capacity*” means the aggregate of the member’s premium limits of all the members for the time being of the syndicate;

“*Syndicate and Arbitration Agreement*” means an agreement in the form set out in Schedule 2 to this Agreement;

“*Syndicate List*” has the meaning given to it in paragraph 1 of the Agency Agreements Byelaw (No. 8 of 1988);

“*Underwriting*” means the business of underwriting and all related activities carried on by the Corporate Member and the other members of the Managed Syndicates at Lloyd’s as members of the Managed Syndicates;

“*underwriting account*” has the meaning given in the Definitions Byelaw (No. 7 of 2005); and

“*year*” means a calendar year, except when used to refer to a year of account.

- 1.2 (a) For the purpose only of interpreting references in this Agreement to a syndicate and like expressions, and subject always to clause 17.2, unless the context otherwise requires:
- (i) the several groups of underwriting members of Lloyd’s to which in successive years a particular syndicate number is assigned by the Council shall be treated as the same syndicate, notwithstanding that they may not comprise the same underwriting members with the same individual participations (and where two or more numbers are assigned to a group of underwriting members, the number which appears first in the list of syndicates published by the Council and specified by the Council for the purposes of this paragraph shall be the number taken into account for the purposes of this paragraph); and
 - (ii) references to assets or liabilities of a member of a syndicate, or to anything done by or to a member of a syndicate or by or to any person on his behalf, shall be construed as references to assets employed or liabilities incurred by him, or to things done by or to him or such other person on his behalf, in the course of or in relation to the underwriting business carried on by him through that syndicate.

- (b) [This paragraph is intentionally left blank];
- 1.2A For the purpose only of interpreting references in this Agreement to members' agent pooling arrangements, MAPA participations, participating in a Managed Syndicate through a MAPA and like expressions, and subject always to clause 17.2, unless the context otherwise requires:
- (a) this paragraph is intentionally left blank
 - (b) where a members' agent has delivered an agent's syndicate list in respect of a year of account in relation to members of a Managed Syndicate (including, if applicable, the Corporate Member) specifying such members' MAPA participations, then each of those members shall be treated as belonging to the same MAPA as each other;
 - (c) where the Corporate Member participates in a syndicate through more than one members' agent (in addition to its participation under this Agreement) and where its MAPA participations are set out in more than one Agents' Syndicate List then the Corporate Member shall be treated as belonging to a separate MAPA in relation to each such list;
 - (d) where in respect of any year of account the Corporate Member or any member of a Managed Syndicate belongs to a MAPA it and they may be said to be participating in that syndicate "through" that MAPA and the members' agent which arranged such participation may be said to be "operating" that MAPA; and
 - (e) where in any year of account a members' agent which acts as such for members of the Managed Syndicate operates one or more MAPAs, and whether or not each such MAPA comprises the same underwriting members and whether or not such members have the same MAPA participations in relation to each such MAPA, then those MAPAs shall be treated as separate MAPAs.

1.3 For the purposes of this Agreement:

- (a) a person is connected with the Agent if that person is controlled by:
 - (i) the Agent;
 - (ii) if the Agent is a partnership, any partner for the time being in the Agent;
 - (iii) if the Agent is a body corporate, any person who controls the Agent;
- (b) a person controls another person if:
 - (i) where the other person is a body corporate, he, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15 per cent. or more of the voting power at any general meeting (or, in the case of a limited liability partnership, any members' meeting) of the body corporate or another body corporate of which it is a subsidiary;
 - (ii) where the other person is a partnership:

- (aa) the partners are accustomed to act in accordance with his directions or instructions, either alone or with those of any associate or associates (disregarding advice given in a professional capacity); or
- (bb) he, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 15 per cent. or more of the voting power at any meeting of the partners;

and for the purposes of this paragraph:

- (A) “associate”, in relation to any person, means that person’s wife, husband or minor child or step-child, any body corporate of which that person is a director, or, in the case of a limited liability partnership, a member, any person who is an employee or partner of that person and, if that person is a body corporate, any subsidiary of that body corporate and any employee of any such subsidiary; and
- (B) “subsidiary” has the meaning given to it by section 736 of the Companies Act 1985.

- 1.4 No provision of this Agreement shall have effect to the extent that it is contrary to Lloyd’s Acts 1871 to 1982 or to any requirement of the Council which is for the time being applicable to the Corporate Member as a member of Lloyd’s or to the Agent.
- 1.5 References in this Agreement to requirements of the Council are to any requirement imposed by any byelaw or regulation made under Lloyd’s Acts 1871 to 1982, any condition or requirement imposed or direction given under any such byelaw or regulation, any direction given under section 6 of Lloyd’s Act 1982, any requirement imposed by or under any undertaking given by the Corporate Member to Lloyd’s or to the Council and any other requirement imposed or direction given by the Council under Lloyd’s Acts 1871 to 1982; and the phrase “required by the Council” and similar phrases shall be construed accordingly.
- 1.6 Any reference in this Agreement to an enactment, byelaw or regulation is a reference to it as already amended and includes a reference to any repealed enactment or any revoked byelaw or regulation which it may re-enact, with or without amendment, and to any future re-enactment or amendment of it.
- 1.7 The headings in this Agreement shall not affect its interpretation.
- 1.8 This Agreement applies separately to each Managed Syndicate.
- 1.9 If the Corporate Member participates in a Managed Syndicate both by virtue of the signature of a Syndicate List or Agents’ Syndicate List and by virtue of the signature of a Corporate Member’s Syndicate List under this Agreement, this Agreement shall in its application to that Managed Syndicate extend only to the Corporate Member’s participation by virtue of the signature of that Corporate Member’s Syndicate List and shall be construed accordingly.

2. **Appointment of the Agent**

- 2.1 The Corporate Member hereby appoints the Agent, and the Agent hereby agrees, to provide the services and perform the duties set out in this Agreement in respect of the Underwriting.
- 2.2 By signing a Corporate Member's Syndicate List in respect of any year of account to which this Agreement applies the Corporate Member will be deemed to appoint the Agent as its managing agent (or, in the case of a Managed Syndicate of which the Corporate Member is already a member, to agree that the appointment of the Agent as its managing agent is to continue) and the Agent will be deemed to agree to act (or to continue to act) as the Corporate Member's managing agent, in respect of each of the syndicates specified in the Corporate Member's Syndicate List on the terms of this Agreement and with such allocations of the Corporate Member's overall premium limit, and for a remuneration on such basis and at such level, as are specified in the Corporate Member's Syndicate List.
- 2.3 By signing a Corporate Member's Syndicate List in respect of a particular year of account the Corporate Member and the Agent shall also be deemed to agree in the same terms the matters referred to in clause 2.2 in respect of subsequent years of account, subject to any reduction in the corporate member's syndicate premium limit arising as a result of a reduction made in accordance with the Syndicate Pre-emption Byelaw (No. 19 of 1997) by the Agent of the member's syndicate premium limits of all of the members of any particular syndicate in which the corporate member participates for the time being, unless and until that Corporate Member's Syndicate List is replaced by a new Corporate Member's Syndicate List signed by the Corporate Member and the Agent (or by a memorandum signed by the Corporate Member and the Agent recording that there are no Managed Syndicates in respect of a particular year of account) or the appointment of the Agent under this Agreement is terminated.
- 2.4 The Corporate Member and the Agent may agree that this Agreement shall apply in relation to any syndicate (a "Provisional Syndicate") in respect of which the Corporate Member is to be a Provisional Insurer within the meaning of clause 8.2 of this Agreement by virtue of paragraph (b) or (c) of that clause, and agree on the amount of the Corporate Member's overall premium limit to be allocated to the Provisional Syndicate and the basis and level of the Agent's remuneration as managing agent, by signing a written memorandum recording their agreement on these matters or in such other manner as the Corporate Member and the Agent may agree.
- 2.5 The Corporate Member and the Agent may sign a supplementary Corporate Member's Syndicate List in respect of any year of account for the purpose of agreeing that the Corporate Member is to participate in a syndicate commencing business otherwise than at the beginning of the corresponding year and agreeing the amount of the Corporate Member's overall premium limit to be allocated to that syndicate and the basis and level of the remuneration of the Agent as the managing agent of that syndicate, but not otherwise.

3. Services to be provided by the Agent

The Agent shall carry out the Underwriting on behalf of the Corporate Member and the other members of the Managed Syndicate and in particular (but without limitation) shall:

Underwriting

- (a) determine the underwriting policy of the Managed Syndicate;
- (b) appoint and supervise the active underwriter or the run-off manager (as the case may be) of the Managed Syndicate and associated underwriting, claims, administrative and accounting staff (but so that the acts and omissions of the active underwriter or the run-off manager (as the case may be) and of such staff shall for all purposes of this Agreement be treated as acts and omissions of the Agent);
- (c) accept risks on behalf of the Managed Syndicate;
- (d) determine the policy of the Managed Syndicate in relation to reinsurance and, if the Agent considers that the Managed Syndicate should adopt a reinsurance programme, effect and manage the reinsurance programme of the Managed Syndicate;
- (e) settle and pay claims on behalf of the Managed Syndicate;
- (f) subject to clause 9.4 and the proviso to clause 5, determine the premium for, and effect, the reinsurance to close for the Managed Syndicate in respect of each year of account;

Premiums Trust Fund

- (g) perform its functions under the Premiums Trust Deed or Deeds and any Overseas Direction or Special Trust Direction applicable in respect of the Underwriting or other trust fund required or permitted to be maintained by the Corporate Member in connection with the Underwriting including (without limitation) the appointment of any Managing Agent's Trustees;
- (h) manage the investment of the monies and other assets held on behalf of the Corporate Member by or under the control of any Managing Agent's Trustees or any trustees of any Overseas Direction or Special Trust Direction or other trust fund required or permitted to be maintained by the Corporate Member in connection with the Underwriting and subject to the direction of the Agent;
- (i) *[this paragraph is intentionally left blank]*
- (j) direct the Managing Agent's Trustees or other relevant trustees to pay the profits of the Underwriting to the Regulating Trustee or to hold them subject to the direction of the Regulating Trustee, as the case may be, in accordance with clause 9.3;

Accounts and audit

- (k) appoint auditors for the Managed Syndicate in accordance with the requirements of the Council;
- (l) prepare and send to the Corporate Member and to Lloyd's such annual reports, personal accounts and other reports and documents in respect of the Managed Syndicate as are for the time being required by the Council to be so prepared and sent;

Regulation

- (m) take such action as is required of, or appropriate for, a managing agent in advising or assisting the Corporate Member as to compliance, or itself complying on behalf of the Corporate Member, with all laws, byelaws, regulations, rules, codes of practice, conditions and requirements applicable to the Corporate Member in connection with the Underwriting and in particular (but without limitation) the Agent shall, so far as lies within its control and is appropriate for a managing agent, ensure the completion, execution and timely submission to Lloyd's and to other competent authorities of all deeds, agreements, schedules, returns and other documents required to be so submitted in connection with the Underwriting;
- (n) comply with the requirements for the time being of the Council in relation to the preparation and filing of syndicate constitutions in relation to the Managed Syndicate;

Taxation

- (o) carry out in relation to taxation matters connected with the Underwriting such functions as are required by the Income and Corporation Taxes Act 1988, the Tax Acts (as defined in section 831 of that Act), the Taxation of Chargeable Gains Act 1992 and the Taxes Management Act 1970 and any regulations made under any of those Acts or are otherwise appropriate for a managing agent and use its reasonable endeavours to ensure compliance by the Corporate Member with any law or regulation of any foreign jurisdiction relating to taxation and applicable to the Underwriting, including by exercising any power the Agent may have under any Premiums Trust Deed, Overseas Direction or Special Trust Direction to direct payment of amounts due in respect of or in connection with such taxation; and

Run-off

- (p) run off the business of the Managed Syndicate in respect of any year of account until such time as the liabilities arising out of that business are covered by reinsurance to close.

4. Duties of the Agent

- 4.1 The Agent undertakes to the Corporate Member subject to clause 4.3(d), that it will comply with Lloyd's Acts 1871 to 1982 and with the requirements of the Council, and will have regard to the codes of practice from time to time promulgated or made by the Council, which are applicable to it as a managing agent at Lloyd's.
- 4.2 In providing services, performing its duties and exercising its powers under this Agreement the Agent shall:

Duties of care and skill

- (a) use such skill, care and diligence as could reasonably be expected of a managing agent carrying on business at Lloyd's and as is necessary for the proper provision of services, performance of duties and exercise of powers by it under this Agreement;

Fiduciary duties

- (b) act in what it believes to be the interest of the Corporate Member and not allow its personal interest to conflict with the obligations owed by it to the Corporate Member under this Agreement;
- (c) account to the Corporate Member for any gain or profit it receives directly or indirectly in connection with the performance of this Agreement otherwise than as expressly permitted or contemplated by this Agreement;
- (d) make full disclosure to the Corporate Member of any interests it may have or any duties it may owe which could give rise to a conflict of interest or duty in the performance of this Agreement;

Property and monies of the Corporate Member

- (e) subject to clause 5(k), not use or apply any property which it receives or controls on behalf of the Corporate Member otherwise than for the benefit of the Corporate Member in accordance with the terms of this Agreement and the Premiums Trust Deed and in particular the Agent shall not use or apply any such property for its own benefit;
- (f) at all times keep any property which it receives or controls on behalf of the Corporate Member separate from its own property;
- (g) forthwith pay all premiums and other monies received by it on behalf of the Corporate Member in connection with the Underwriting and all monies required by any Premiums Trust Deed, Overseas Direction or Special Trust Direction or other trust fund required or permitted to be maintained by the Corporate Member in connection with the Underwriting or by law to be so paid by it into a trust account of the Managing Agent's Trustees or of any other trustee of the relevant Overseas Fund or Special Trust Fund or other trust fund (as the case may be) to be held by the relevant trustees subject to the relevant trusts;

- (h) cause to be placed on deposit or invested or otherwise applied in accordance with the provisions of the relevant trusts all monies standing to the credit of the trust accounts of the Managing Agent's Trustees or of the trustees of any Overseas Fund or Special Trust Fund or other trust fund required or permitted to be maintained by the Corporate Member in connection with the Underwriting which are subject to the direction of the Agent and, in the opinion of the Agent, are not currently required for the satisfaction of claims, outgoings and expenses and other amounts which can, under the terms of the relevant trusts, be paid from the Premiums Trust Fund, Overseas Fund or Special Trust Fund or other trust fund (as the case may be);

Information and reporting

- (i) subject to paragraph (jb) below disclose to the Corporate Member or, if so directed by the Corporate Member in good time any information in its possession relating to the Managed Syndicate and its activities, or any developments in respect of those activities, which could reasonably be expected to influence the Corporate Member in deciding whether to become or remain a member of the Managed Syndicate or to increase or reduce its participation in the Managed Syndicate, and use its reasonable endeavours to obtain any such information;
- (j) without prejudice to paragraph (i) above but subject to paragraph (jb), promptly inform the Corporate Member or, if so directed by the Corporate Member if a decision is made by or on behalf of the Agent to allow a year of account of the Managed Syndicate to remain open after the date as at which it would normally have been closed (in which event the Agent shall also inform the Corporate Member of the reasons for that decision);
- (ja) comply with the requirements of the Council for the time being in relation to the holding of meetings of, among others, the members of the Managed Syndicate;
- (jb) comply with the requirements of the Council (including requirements prescribing, restricting or regulating the disclosure or dissemination of information) directed to ensuring compliance with Part V of the Criminal Justice Act 1993, the Financial Services Authority's requirements or any other enactment, or the requirements of any stock exchange or investment exchange, for the time being in force relating to insider dealing or to the dissemination or publication of information affecting listed, quoted or traded securities ;

Systems of control, record keeping and disclosure

- (k) establish and maintain adequate and effective systems and control procedures (including, if appropriate, data processing controls and procedures) for:
 - (i) monitoring and controlling the premium income of the Managed Syndicate;
 - (ii) managing the cash flow of the Managed Syndicate;

and otherwise in connection with the operation of the Managed Syndicate and of the Premiums Trust Fund;

- (l) manage and control the expenses of the Managed Syndicate;
- (m) establish and maintain proper procedures in connection with the assessment of reinsurance security;
- (n)
 - (i) maintain accounting, statistical and other records relating to the Managed Syndicate in accordance with the requirements for the time being of the Council;
 - (ii) maintaining accounting and other records relating to such part of the Premiums Trust Fund, any Overseas Fund or Special Trust Fund or other trust fund acquired or permitted to be maintained by the Corporate Member in connection with the Underwriting as is held by or under the control of the Managing Agent's Trustees or is subject to the direction of the Agent sufficient to show and explain all receipts into and payments out of, and all transactions affecting, that part of the relevant trust fund;
 - (iii) upon request during usual business hours make available and (upon payment of a reasonable charge) provide copies of the records referred to in sub-paragraphs (i) and (ii) above to the Corporate Member or the professional advisers of either of them;

provided however that the records referred to in sub-paragraphs (i) and (ii) above shall be the property of the Agent; and

- (o) if the Corporate Member has formulated a claim against the Agent relating in whole or in part to the performance of the Agent's duties under this Agreement, disclose to the Corporate Member upon request all documents and information stored on computer records in its possession or under its control which are or may be relevant to any issue arising or likely to arise in connection with such claim and (upon request and payment of a reasonable charge) provide to the Corporate Member copies of those documents and memoranda in legible form of such information, provided that the Agent shall not be obliged to disclose to the Corporate Member any document or information unless the Agent could be compelled to produce that document or information in the course of proceedings instituted by the Corporate Member in relation to any such claim.

- 4.3
- (a) The Agent shall not be treated as contravening paragraph (b) of clause 4.2 because of the existence of a personal interest if the existence, nature and extent of that interest have been fully disclosed to the Corporate Member in writing and the Corporate Member has agreed that the Agent may continue to act for it despite that interest.
 - (b) Paragraph (c) of clause 4.2 shall not oblige the Agent to account to the Corporate Member for any gain or profit if the existence, nature and extent of that gain or profit have been fully disclosed to the Corporate Member in writing and the Corporate Member has agreed that it may be retained by the Agent.
 - (ba) The Agent shall not be treated as contravening paragraph (b) of clause 4.2 and paragraph (c) of that clause shall not oblige the Agent to account to the

Corporate Member for any gain or profit made by it in any case where the Agent from time to time applies any part of the Premiums Trust Fund (in accordance with the Premiums Trust Deed) to purchase any tangible fixed asset or any interest in a tangible fixed asset, provided that the Agent has complied, and continues to comply, with any requirements of the Council relating to the relevant purchase.

- (c) Paragraph (d) of clause 4.2 shall not require the Agent to disclose to the Corporate Member the fact that it is acting as a managing agent for underwriting members of Lloyd's other than the Corporate Member.

4.3A 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 implied by law in relation to conflicts of duty or interest, or as requiring the Agent to account to the Corporate 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
- (b) in compliance with any applicable conditions and requirements prescribed by the Council under that paragraph.

4.4 In providing services, performing duties and exercising its powers under this Agreement, the Agent shall not make any arrangement, take any step or enter into any transaction in relation to the Managed Syndicate which requires approval and which has not been approved at a duly convened meeting held for the purpose of considering such arrangement, step or transaction or, if so required or permitted by the requirements of the Council, by written approval given by or on behalf of members of the syndicate in accordance with those requirements.

5. **Powers of the Agent**

The Corporate Member hereby authorises the Agent to exercise on its behalf such powers as are necessary or expedient for the provision by the Agent of the services and the performance by the Agent of the duties set out in this Agreement including (without limitation) the power:

Underwriting

- (a) to conduct the Underwriting subject to the provisions of clauses 4.1 and 4.2 but otherwise in such manner as the Agent in its sole discretion sees fit;
- (b) to enter into contracts of insurance on behalf of the Corporate Member and the other members of the Managed Syndicate;

- (c) without prejudice to paragraph (d) below, to enter on behalf of the Corporate Member and the other members of the Managed Syndicate into contracts to reinsure any risks insured by any contract entered into under paragraph (b) above;
- (ca) where some but not all of the members of the Managed Syndicate for a year of account (including, if applicable, the Corporate Member) are authorised under the law of a particular state, province or territory, to accept risks in that state, province or territory:
 - (i) to accept on their behalf risks which the other members are not so authorised to accept and to reinsure such risks on their behalf with the other members, provided in either case that there exist, or the Agent effects pursuant to sub-paragraph (ii) below, adequate arrangements (whether by way of retrocession or otherwise) to ensure so far as possible that such insurance and reinsurance of those risks confers no relative practical advantage or detriment on any of the members of one group in relation to any of the members of the other group; and
 - (ii) to enter into any such arrangements as are referred to in sub-paragraph (i) above on behalf of any of the members of the Managed Syndicate affected;
- (d) on behalf of the members of the Managed Syndicate for a year of account (“the earlier year”) including, if applicable, the Corporate Member (“the reinsured members”) and on behalf of the members of the Managed Syndicate for the next succeeding or any later year of account (“the later year”), including, if applicable, the Corporate Member (“the reinsuring members”), to effect in accordance with clause 9 a contract of reinsurance to close under which:
 - (i) the reinsuring members agree to indemnify the reinsured members against all known and unknown liabilities of the reinsured members arising out of insurance business underwritten through the Managed Syndicate and allocated to the earlier year; and
 - (ii) the reinsured members assign to the reinsuring members all the rights of the reinsured members arising out of or in connection with that insurance business (including without limitation the right to receive all future premiums, recoveries and other monies receivable in connection with that insurance business);
and to debit the reinsured members and credit the reinsuring members with such reinsurance premium in respect of the reinsurance to close as the Agent, subject to any requirements of the Council, thinks fair;
- (da) without prejudice to paragraph (d), where the Managed Syndicate for a year of account consists only of a single corporate member, on behalf of the member of the Managed Syndicate to close the year of account in accordance with the provisions of clause 9.2A;

- (e) to determine (subject to any requirements of the Council) to which year of account the benefit and burden of any contract of insurance should belong, irrespective of the date of acceptance of a risk or the signing of a policy;
- (f) to settle or compromise claims, whether or not such claims are in the opinion of the Agent legally enforceable;
- (g) to enter into arrangements which the Agent considers will or may avoid or reduce any liability in respect of a claim;
- (h) to collect all premiums and other monies, whether paid in cash or credited by book entry or otherwise, which are due to the Corporate Member in connection with the Underwriting;
- (i) generally to enter into such contracts and arrangements as are necessary or expedient for the purposes of or in connection with the Underwriting or the discharge of any of the functions of the Agent under this Agreement or the Premiums Trust Deed, any Overseas Direction, Special Trust Direction or deed governing any other trust fund required or permitted to be maintained by the Corporate Member in connection with the Underwriting and for this purpose to incur and discharge or cause to be discharged such expenses as are necessary and reasonable;

Premiums Trust Fund

- (j)
 - (i) to apply or cause to be applied any monies or other assets of the Corporate Member under its control in or towards the satisfaction of claims and necessary and reasonable expenses and outgoings made or incurred in connection with the Underwriting and other amounts which can, under the terms of the relevant trusts, be paid from the Premiums Trust Fund, Overseas Fund or Special Trust Fund or other trust fund required or permitted to be maintained by the Corporate Member in connection with the Underwriting in accordance with the provisions of the relevant deed; and
 - (ii) to direct the Managing Agent's Trustees or trustees of any other fund referred to in sub-paragraph (i) to apply assets held by or under their control and subject to the direction of the Agent to pay any such claims, expenses, outgoings or other amounts on behalf of the Corporate Member or, so far as permitted by the governing deed, to provide security for the purposes of or in connection with such payments;
- (k) to direct the Managing Agent's Trustees or other trustees referred to in paragraph (j) from time to time to pay out of the monies held by them or under their control and subject to the trusts of the Premiums Trust Deed or other relevant deed:
 - (i) all or part of the fee and commission payable to the Agent under clause 6; and
 - (ii) such sums on account of the commission payable to the Agent under clause 6 as the Agent may determine, not exceeding the amount in respect of the year

of account which the Agent has caused to be transferred to or placed at the direction of the Regulating Trustee as part of the Personal Reserve Sub-Fund multiplied by the rate of commission specified in Part B of Schedule 1 as supplemented by the Corporate Member's Syndicate List for the relevant year of account;

- (l) to exercise as the Agent shall think fit all such powers, authorities and discretions of the Agent as are referred to in, or apply by law in relation to, the Premiums Trust Fund, any Overseas Fund, any Special Trust Fund or any other trust fund required or permitted to be maintained by the Corporate Member in connection with the Underwriting with regard to blending, investing in and acquiring assets, dealing in and realising assets and severing or apportioning blended assets comprised in any one of those funds;

Borrowing and financial transactions

- (m) to borrow money or cause the Managing Agent's Trustees or other trustees referred to in paragraph (j) in accordance with the provisions of the Premiums Trust Deed or other relevant deed to borrow or raise money for the purpose of meeting any claims or any necessary and reasonable expenses or outgoings made or incurred in connection with the Underwriting or other amounts which may be paid from the relevant trust fund under the terms of the governing deed or for such other purposes as may be permitted under the terms of the governing deed in such amounts, on such terms and from such persons (including the Agent) as the Agent considers appropriate, provided that any borrowing from the Agent or from any person or persons who is or are connected with the Agent shall be made on reasonable commercial terms;
- (n) to cause the Managing Agent's Trustees or other trustees referred to in paragraph (j) to borrow money from or lend money to, other members of Lloyd's or the trustees of any Overseas Fund, Special Trust Fund or Premiums Trust Fund, subject to and in accordance with the provisions of the Premiums Trust Deed or other relevant governing deed;
- (na) to cause the Managing Agent's Trustees or other trustees referred to in paragraph (j) to deposit money with, or lend money to, the Society, or any company which is a subsidiary of the Society or Additional Securities Limited or any other company nominated by the Council, subject to and in accordance with the provisions of the Premiums Trust Deed or other relevant governing deed;
- (o) to enter into such transactions and arrangements with respect to banking, financing and investments as may be necessary or expedient for the purposes of or in connection with the Underwriting, including without limitation:
 - (i) the establishment of letters of credit for any purpose;
 - (ii) the assignment (whether by way of security or outright for valuable consideration) of any rights or entitlements to have any monies or other assets paid or transferred to the Corporate Member or to any other person on behalf of the Corporate Member for the purpose of or in connection with

- the Underwriting and whether those rights or entitlements are current contingent or future;
- (iii) the acquisition or disposal of investments which fall (or would if made for investment purposes fall) within paragraphs 83, 84 and 85 of Part III of the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001;
 - (iv) the exercise by the Agent, the Managing Agent's Trustees or other trustees referred to in paragraph (j) of any power, discretion or authority they may have to enter into any netting or other similar agreement with any person, pursuant to and in accordance with the governing deed (including, without limitation, any power to enter into any such agreement without distinguishing between assets held in a fund which has been blended in accordance with the provisions of the relevant deed);
- (oa) (i) to request on behalf of the Corporate Member that monies be applied out of the Central Fund or the New Central Fund for the purpose of paying, or putting the Managing Agent's Trustees or the trustees of any Overseas Fund or Special Trust Fund held in respect of the Managed Syndicate in funds for the purpose of paying, any claims, expenses or outgoings on behalf of the Corporate Member; and
- (ii) to apply or procure the application of any such monies in discharge of the Corporate Member's obligations under clause 7.1(a) of this Agreement;

Regulation

- (p) to take such action as is required of, or appropriate for, a managing agent in complying on behalf of the Corporate Member or assisting the Corporate Member to comply with all laws, byelaws, regulations, rules, codes of practice, conditions and requirements applicable to the Corporate Member in connection with the Underwriting;

Legal Proceedings

- (q) to take in any part of the world, and in such name or names as the Agent thinks fit (whether or not including that of the Corporate Member), such legal or other proceedings as the Agent considers necessary or expedient for the purposes of or in connection with the Underwriting;

Power of attorney

- (r) to sign and execute on behalf of the Corporate Member and as the attorney of the Corporate Member, in its name or otherwise, all deeds and documents relating to the Underwriting or the Corporate Member's affairs at Lloyd's which the Agent may consider it necessary or expedient for the Corporate Member to sign or execute;

Delegation

- (s) subject to any requirements of the Council, to delegate to any person or persons any or all of the services to be provided by it, any or all of the duties to be performed by it or any or all of the powers, including this power of delegation, to be exercised by it under this Agreement (but so that the Agent shall be responsible for the acts and omissions of any person to whom any such service, duty or power may be delegated);
- (t) without prejudice to paragraph (s) above, to substitute and appoint in its place an attorney or attorneys to exercise on behalf of the Corporate Member any or all of the powers conferred on the Agent by this Agreement and to revoke any such appointment and to appoint in the place of such attorney or attorneys a substitute or substitutes as the Agent thinks fit;

Taxation

- (u) to make such returns, deliver such accounts, statements, reports and other documents and disclose such information, to make or procure to be made such payments on account or in respect of taxation and generally to do all such other acts and things as any taxation authority may properly require in relation to or in connection with the Underwriting and the Corporate Member's participation in the Underwriting and at its sole discretion to dispute or appeal against any assessment for taxation made by any taxation authority in relation to or in connection with the business of the Managed Syndicate, including by exercising any power the Agent may have under any Premiums Trust Deed, Overseas Direction or Special Trust Direction to direct payment of amounts due in respect of or in connection with such taxation;

Regulatory authorities

- (v) to disclose to Lloyd's and to any other regulatory authority such information relating to the Underwriting and the Corporate Member's participation in the Underwriting as any such authority may properly require; and

Acceptance of notices etc.

- (w) to accept on behalf of the Corporate Member service of writs, processes, notices, documents and other communications in connection with the Underwriting.

6. Remuneration

- 6.1 The Corporate Member shall pay to the Agent as remuneration for the services of the Agent set out in clause 3 in relation to each year of account a fee on the basis, at the rate and at the times specified in Part A of Schedule 1 as supplemented by the Corporate Member's Syndicate List for the relevant year of account.
- 6.2 The Corporate Member shall pay to the Agent as remuneration for the services of the Agent set out in clause 3 in relation to each year of account a profit commission on the basis, at the rate and at the times specified in Part B of Schedule 1 as supplemented by the Corporate Member's Syndicate List for the relevant year of account.
- 6.3 Subject to paragraphs (e), (f) and (g) of clause 14.2, if the appointment of the Agent is terminated during a year by operation of law or under clause 11.7(b), the fee referred to in clause 6.1 shall not be payable in respect of the corresponding year of account, and any amounts already paid to or retained by the Agent in respect or on account of such fee shall promptly be paid to the Managing Agent's Trustees to be held by them subject to the trusts of the Premiums Trust Deed.
- 6.4 Subject to paragraphs (e), (f) and (g) of clause 14.2, if during a year the appointment of the Agent is terminated, or a requirement of the Council is made in respect of the Corporate Member which results in that Corporate Member being suspended from underwriting, in circumstances where clause 14.2(c) applies, the amount of the fee payable to the Agent shall be:

$$\frac{A \times P}{365}$$

where:

- A is the amount of the fee which would have been payable to the Agent if the Corporate Member had remained a member of the Managed Syndicate throughout the relevant year; and
- P is the Period or Periods (as defined in clause 14.2(c)) during which the Corporate Member is a member of the Managed Syndicate during the year, expressed as a number of days.

Upon determination of the amount of the fee payable to the Agent, such payment shall be made between the Agent and the Managing Agent's Trustees as shall ensure that the net amount received or retained by the Agent is equal to that amount after taking into account any amounts previously so paid or retained.

- 6.4A (a) Where VAT is charged under the Value Added Tax Act 1994 on the provision of any service or performance of any duty under the Agreement for the 2001 year of account or any subsequent year of account the Corporate Member shall pay to the Agent in addition to the fee, profit commission or other remuneration specified by this Agreement an amount equal to the VAT so charged.
- (b) Paragraph (a) shall not be taken to affect any question whether in relation to any service provided or duty performed for any year of account before the 2000 year of account the Name would be liable to pay to the Agent, in addition to any fee, profit commission or any other remuneration specified by this Agreement, an amount equal to any VAT charged on the provision of the service or performance of the duty.
- 6.5 For the purposes of this clause 6 the “Corporate Member’s Syndicate List for the relevant year of account” means the Corporate Member’s Syndicate List in relation to a particular year of account which has been signed by the Agent and the Corporate Member or, if no Corporate Member’s Syndicate List has been so signed in respect of that year of account, the Corporate Member’s Syndicate List which has been so signed in respect of the most recent previous year of account.

7. Obligations and acknowledgements of the Corporate Member

- 7.1 (a) The Corporate Member shall ensure that at all times there are available sufficient funds subject to the trusts of the Premiums Trust Deed or, where relevant, of an Overseas Direction or Special Trust Direction and held by or under the control of the Managing Agent’s Trustees or the trustees of the relevant Overseas Direction or Special Trust Direction to enable them to pay all claims and all necessary and reasonable expenses and outgoings made or incurred in connection with the Underwriting and other amounts which may be paid from the relevant trust fund under the terms of the governing deed at the direction of the Agent and shall comply with any request by the Agent to make such funds available; provided however that the Corporate Member shall not be obliged to make any payment in or towards the satisfaction of any such request by the Agent for funds unless the Corporate Member has first been supplied:
- (i) if the request for funds is made for the purpose of satisfying an Audited Closed Year Loss, with an audited underwriting account prepared as at the date at which the relevant year of account was closed;
 - (ii) in any other case, with a statement signed by the Agent, accompanied by a report signed by the auditors of the Managed Syndicate, complying with paragraph (b) below.
- (b) The Agent’s statement and the auditors’ report referred to in paragraph (a)(ii) above shall state the matters and shall be in the form for the time being required by the Council.

- (c) Any sum requested to be paid under this clause 7.1 which is not paid by the due date for payment shall bear interest which shall accrue from day to day at the rate of two per cent. per annum or such other rate as the Council may from time to time prescribe above the base rate from time to time of such London clearing bank as the Agent may select [or, in the case of a sum requested to be paid in a currency other than sterling, at such other rate of interest as the Council may from time to time prescribe. For the purposes of this paragraph (c), the “due date for payment” means the date specified by the Agent in its request for payment, being not earlier than thirty-five days after the later of service of the request for payment and (if appropriate) submission of the statement signed by the Agent, accompanied by the auditors’ report, referred to in paragraph (a)(ii) above.
- (d) Any payment requested by the Agent under and in accordance with the provisions of this clause 7.1 shall be made by the Corporate Member free and clear from any set-off, counterclaim or other deduction on any account whatsoever and in connection with any proceedings which may be brought to enforce the Corporate Member’s obligation to comply with any such request for payment by the Agent. The Corporate Member hereby waives stay of execution and consents to the immediate enforcement of any judgment obtained.
- (e) The Corporate Member may not issue proceedings nor make any reference to arbitration, and no cause of action shall arise or accrue, in connection with any request for payment made by the Agent under and in accordance with the provisions of this clause 7.1 unless the Corporate Member has first complied in full with any such request. The Corporate Member shall not seek injunctive or any other relief for the purpose, or which would have the result, of preventing the Agent from making any such request for payment or enforcing the Corporate Member’s obligation to comply with any such request or of preventing the Agent from applying any money or assets held by or under the control of the Managing Agent’s Trustees in or towards the discharge of any claims or any necessary and reasonable expenses or outgoings made or incurred in connection with the Underwriting.

7.2 The Corporate Member undertakes to reimburse to the Agent any payments made or costs incurred by the Agent (including, without limitation, in relation to any borrowing made by it pursuant to clause 5(m)) in or towards satisfaction of any claims or necessary and reasonable expenses or outgoings made or incurred in connection with the Underwriting.

7.3 The Corporate Member acknowledges that it has delegated to the Agent sole management and control of the Underwriting and that the Agent is not bound to comply with any instructions or requests of the Corporate Member relating to the conduct of the Underwriting and undertakes that it will not in any way interfere with the exercise of such management or control.

- 7.4 The Corporate Member acknowledges that risks underwritten at a time when it was not a member of the Managed Syndicate (whether by reinsurance to close or under clause 8 or otherwise) may be included as liabilities of the Managed Syndicate and the Corporate Member hereby agrees that it will be bound by the manner of the Agent's accounting treatment of any such risks.
- 7.5 The Corporate Member undertakes to keep the Managing Agent informed at all times of the names of all bodies corporate which are members of Lloyd's and are connected companies (which for the avoidance of doubt includes limited liability partnerships) in relation to the Corporate Member within the meaning of the Definitions Byelaw (No. 7 of 2005).
- 7.6 The Corporate Member shall forthwith notify the Managing Agent if:
- (a) there occurs in relation to the Corporate Member any such event as is specified in clause 11.7(b);
 - (b) a petition is presented or filed in any court in respect of its bankruptcy, winding-up or other insolvency or which seeks any reorganisation, arrangement, composition, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation; or
 - (c) a director or major shareholder of the Corporate Member is convicted of a reportable criminal offence within the meaning of the Definitions Byelaw (No. 7 of 2005); or
 - (d) there is any other change in the Corporate Member's circumstances which is material to the Underwriting.

8. Novation of liabilities

- 8.1 The Corporate Member acknowledges that the Agent may effect contracts of insurance ("Relevant Contracts") on terms that those contracts will, in accordance with the custom and practice of the Lloyd's market and any requirements of the Council for the time being applicable, constitute liabilities of the Managed Syndicate allocated to a given year of account ("the Relevant Year of Account") notwithstanding that they are effected before the beginning of the year ("the Relevant Year") which corresponds to the Relevant Year of Account, and the Corporate Member and the Agent agree that the following provisions of this clause shall have effect in relation to such contracts.
- 8.2 Subject to clause 8.2A, a Relevant Contract shall be deemed to be underwritten by the Agent on behalf of the Provisional Insurers, and a person is a Provisional Insurer for this purpose if the following conditions are satisfied when the Relevant Contract is effected:
- (a) where the Relevant Year of Account is not the first year of account of the Managed Syndicate and he is a member of the Managed Syndicate for the year of account immediately preceding the Relevant Year of Account:

- (i) the appointment of the Agent as his managing agent in respect of the Managed Syndicate under the Managing Agent's Agreement between him and the Agent (or, in the case of the Corporate Member, this Agreement) has not terminated by reason of his death or bankruptcy or otherwise by operation of law, has not been terminated under clause 11.2 or 11.3 or 11.4 and is not liable to be terminated under clause 11.7 of the relevant agreement; and
 - (ii) no notice to terminate that appointment has been given or, unless the Agent accepts shorter notice than that specified in clause 11.5 of the relevant agreement, can be given to take effect in the Relevant Year under clause 11.5 or 11.6 of the relevant agreement;
- (b) where the Relevant Year of Account is not the first year of account of the Managed Syndicate and he is not a member of the Managed Syndicate for the year of account immediately preceding the Relevant Year of Account:
- (i) he has entered into an agreement with the Agent, in the same terms as this Agreement or in the terms of the Standard Managing Agent's Agreement (General), under which the Agent will underwrite on his behalf as a member of the managed Syndicate for the Relevant Year of Account;
 - (ii) the conditions set out in sub-paragraphs (a)(i) and (ii) above are satisfied in relation to that agreement; and
 - (iii) he is an underwriting member of Lloyd's;
- (c) where the Relevant Year of Account is the first year of account of the Managed Syndicate:
- (i) he has entered into an agreement with the Agent, in the same terms as this Agreement or in the terms of the Standard Managing Agent's Agreement (General), under which the Agent will underwrite on his behalf as a member of the Managed Syndicate for the Relevant Year of Account;
 - (ii) the conditions set out in sub-paragraphs (a)(i) and (ii) above are satisfied in relation to that agreement; and
 - (iii) he is an underwriting member of Lloyd's; and
- (d) in every case, such conditions (if any) as are specified in any requirements for the time being of the Council are satisfied.

8.2A The Corporate Member acknowledges that the Agent may effect Relevant Contracts on its behalf notwithstanding that the Corporate Member is not a Provisional Insurer if all the following conditions are satisfied when the Relevant Contract is effected:

- (a) the Relevant Year of Account is not the first year of account of the Managed Syndicate;
- (b) the Corporate Member is a member of the Managed Syndicate at the date on which the Agent effects the Relevant Contract; and

- (c) the date on which the Agent effects the Relevant Contract is not later than 5 November (or by any later date which the Agent may in any particular case permit or by any later date which the Council may in any particular case direct under clause 11.5 in the year preceding the Relevant Year.
- 8.2B A Relevant Contract effected in accordance with clause 8.2A above shall be deemed to be underwritten by the Agent on behalf of the members of the Managed Syndicate (“the Previous Insurers”) for the year of account which corresponds to the year in which the Relevant Contract is effected.
- 8.3 The Agent shall be authorised at any time after the beginning of the Relevant Year to effect a contract of novation under which:
- (a) the underwriting members of Lloyd's who are members of the Managed Syndicate for the Relevant Year of Account (the “Definitive Insurers”) agree to assume the liabilities of the Provisional Insurers under the Relevant Contract severally in proportion to the respective participations of the Definitive Insurers in the Managed Syndicate in the Relevant Year of Account and to indemnify the Provisional Insurers against those liabilities; and
 - (b) the Provisional Insurers agree that the Definitive Insurers are to be entitled to the benefit of all premiums, recoveries and other rights in respect of the Relevant Contract severally in proportion to their respective participations in the Managed Syndicate in the Relevant Year of Account, to the exclusion of the Provisional Insurers in their capacity as such.
- 8.3A The Agent shall be authorised at any time after the beginning of the Relevant Year to effect a contract of novation under which:
- (a) the Definitive Insurers agree to assume the liabilities of the Previous Insurers under the Relevant Contract severally in proportion to the respective participations of the Definitive Insurers in the Managed Syndicate in the Relevant Year of Account and to indemnify the Previous Insurers against those liabilities; and
 - (b) the Previous Insurers agree that the Definitive Insurers are to be entitled to the benefit of all premiums, recoveries and other rights in respect of the Relevant Contracts severally in proportion to their respective participations in the Managed Syndicate in the Relevant Year of Account, to the exclusion of the Previous Insurers in their capacity as such.
- 8.4 The Agent may effect a contract of novation such as is referred to in clauses 8.3 and 8.3A above in such manner as it thinks fit and, except in so far as the Agent otherwise determines (such determination to be evidenced by a memorandum in writing signed by the Agent) at or before the time when particulars of the Relevant Contract are submitted for processing by LPSO, such a contract of novation shall be deemed to be effected when such particulars are submitted for processing by LPSO.

8.5 The Corporate Member authorises the Agent on its behalf (whether in the capacity of Provisional Insurer or in the capacity of Previous Insurer or in the capacity of Definitive Insurer, or in all those capacities) to effect all such agreements, execute all such documents and do all such acts and things as may be necessary fully to carry this clause into effect.

8.6 Where under clause 5(ca) the Agent accepts risks on behalf of some members only of the Managed Syndicate or reinsures them with the other members, for the purposes of this clause 8 references to “Relevant Contracts”, “Provisional Insurers”, “Previous Insurers” or “Definitive Insurers” shall be construed, as the context requires, as references only to the authorised or the unauthorised group of members concerned.

9. **Reinsurance to close and determination and distribution of profits**

9.1 A decision by the Agent to close a year of account in accordance with clause 5(d) shall be effected by the Agent, through the active underwriter of the Managed Syndicate or some other duly authorised officer of the Agent, executing a written memorandum of the terms of the contract of reinsurance to close. Upon the execution of the memorandum the contract of reinsurance to close shall be binding on the reinsuring members and the reinsured members (as defined in clause 5(d)), and after such execution the Agent shall have no authority to cancel or vary the contract of reinsurance to close.

9.2 A decision by the Agent to close a year of account in accordance with clause 5(da) shall be effected by the Agent by the inclusion in the underwriting account of the Managed Syndicate for the next succeeding year of account of an amount representing a provision for all known and unknown liabilities attributable to the year of account which is closing.

9.3 Promptly following the closing of a year of account the Agent shall determine, subject to the requirements of the Council for the time being applicable, the profit or loss attributable to the Corporate Member in respect of the Underwriting for that year of account. Forthwith upon such determination and subject to clause 9.5, the Agent shall determine the amount of the surplus in each prescribed currency in each Premiums Trust Fund (including any Overseas Fund or Special Trust Fund) in respect of the Underwriting for that year of account, as shown in accounting records, and (in accordance with the provisions of the deeds governing the trust funds in which such surpluses are held) shall cause such surpluses to be transferred (directly or indirectly) to or placed at the direction of the Regulating Trustee, as part of the Personal Reserve Sub-Fund (as defined in the Premiums Trust Deed) or of an Overseas Fund or Special Trust Fund (as the case may be). Such surpluses shall, unless the Council otherwise requires or permits, be so transferred or placed in the relevant prescribed currency.

- 9.4 Instead of closing a year of account in accordance with the provisions of this clause 9 set out above as at the date when it would normally have been closed, the Agent may allow that year of account to remain open until the outstanding liabilities attributable to that year of account have been run off or reinsured in accordance with this clause 9.
- 9.5 For the avoidance of doubt clause 9.3 shall not prevent the Agent from causing the transfer to or placing at the direction of the Regulating Trustee of amounts which do not exceed in aggregate the amount determined in accordance with clause 9.6.
- 9.6 The amount referred to in clause 9.5 is the aggregate amount of any deficits of the Corporate Member in each prescribed currency in each Premiums Trust Fund (including any Overseas Fund or Special Trust Fund) in respect of the Underwriting for the relevant year of account for which the Corporate Member's result has been calculated under clause 9.3, as shown in accounting records, which the Agent is prohibited or prevented by any Premiums Trust Deeds, Overseas Directions or Special Trust Directions or other requirements of the Council from eliminating plus, in a case where the Corporate Member's result is a profit, the amount of that profit.
- 9.7 In this clause 9, "prescribed currency" means sterling, United States dollars, Canadian dollars and such other currencies as may from time to time be prescribed by the Council pursuant to paragraph 9(1) of the Solvency and Reporting Byelaw (No. 13 of 1990).

10. Appointment of Substitute Agent

- 10.1 If the Council for any reason appoints a Substitute Agent to act for the Corporate Member in place of the Agent, the appointment shall take effect on the terms set out in clause 10.2 and the Corporate Member shall be deemed to have agreed to the appointment of the Substitute Agent on those terms.
- 10.2 The appointment of a Substitute Agent to act for the Corporate Member in place of the Agent shall take effect from such date and shall be on such terms as the Council may direct and may be terminated at any time by the Council. Subject thereto, the appointment of such a Substitute Agent shall be on the terms set out in this Agreement and this Agreement shall during the period of any such appointment take effect as if it had been made between the Corporate Member and the Substitute Agent.
- 10.3 A Substitute Agent shall not be responsible for and shall have no liability in respect of any action taken or omission made by the Agent whether before or after the appointment of the Substitute Agent.

10.4 If a Substitute Agent is appointed to act for the Corporate Member in the place of the Agent the remuneration payable by the Corporate Member under this Agreement for any year of account in respect of which services are performed by the Substitute Agent shall be apportioned between the Agent and the Substitute Agent in such manner as the Council may direct and, subject to any such direction, in such proportions as the Agent and the Substitute Agent may agree.

11. Commencement and Duration

11.1 This Agreement shall take effect on execution and shall apply in respect of each Managed Syndicate in relation to the year of account specified in the Corporate Member's Syndicate List (or, in so far as it relates to a Provisional Syndicate, the memorandum or other agreement referred to in clause 2.4) and to subsequent years of account unless and until terminated by operation of law or pursuant to any of the following provisions of this clause 11.

11.2 The appointment of the Agent shall, subject to clause 11.8, terminate forthwith:

- (a) if the Corporate Member ceases to be an underwriting member of Lloyd's; or
- (b) if the Corporate Member's underwriting membership or underwriting is suspended by the Council consequent upon the outcome of disciplinary proceedings.

11.3 (a) Except in so far as the Council may otherwise direct, the appointment of the Agent shall be suspended forthwith if the Agent ceases for any reason to be a managing agent approved by the Council or if the Agent's right to act as a managing agent is suspended in whole or in part by the Council and, subject to the following provisions of this clause 11.3, shall terminate on the expiration of the period of seven days from the date of such cessation or suspension, or of such longer period as the Council may before the expiration of that seven day period allow.

(b) Notwithstanding the suspension of the Agent's appointment under paragraph (a) above it may before the expiration of the period referred to in that paragraph, with the prior approval of the Council and subject to and in accordance with clause 5(s), delegate the services to be provided, the duties to be performed and the powers to be exercised by it (or such services, duties and powers as may in the circumstances be appropriate) to a person or persons acceptable to the Council, in which case this Agreement shall, subject to the requirements of the Council, continue in effect (to the extent appropriate) between the Corporate Member and the person or persons to whom such services, duties and powers have been delegated.

(c) If before the expiration of the period referred to in paragraph (a) above a Substitute Agent has been appointed by the Council to act for the Corporate Member in place of the Agent, this Agreement shall continue in effect, subject to clause 10.2, between the Corporate Member and that Substitute Agent.

- (d) If any suspension of the Agent's right to act as a managing agent is revoked or expires and the Agent thereafter continues to be a managing agent approved by the Council, this Agreement shall on the termination of the delegation referred to in paragraph (b) above or (as the case may be) of the appointment of the Substitute Agent referred to in paragraph (c) above take effect again between the Corporate Member and the Agent.

11.4 This sub-clause is intentionally left blank.

11.5 The Corporate Member may terminate the appointment of the Agent under this Agreement, subject to clause 11.8, by notice in writing given by or on behalf of the Corporate Member to the Agent by 5 November (or by any later date which the Agent may in any particular case permit or by any later date which the Council may in any particular case direct) in any year and expiring at the end of that year; provided that –

- (a) if in any year in which the Agent is required by the Council or any applicable legislation to send to the Corporate Member accounts in respect of the Managed Syndicate those accounts have not been received by the Corporate Member by 1 August, notice may be given by or on behalf of the Corporate Member to the Agent by the earlier of 30 days after receipt by the Corporate Member of those accounts and 5 November (or by any later date which the Agent may in any particular case permit or by any later date which the Council may in any particular case direct under clause 11.5) in that year;
- (b) if in any year the Council has undertaken to notify the Corporate Member on or before a specified date of the rate of the annual subscription under the Membership (Entrance Fees and Annual Subscriptions) Byelaw (No. 9 of 1987) or of any contribution to the New Central Fund under paragraph 4 of the New Central Fund Byelaw (No. 23 of 1996), or of both, which the Council proposes to prescribe or levy for the next succeeding year, notice may be given by or on behalf of the Corporate Member to the Agent within 30 days after the later of the date so specified and the actual date of such notification (but in any event before 1st January of the next succeeding year);
- (c) if in any year the Council has given written notice to the Corporate Member pursuant to clause 8.2(b) of a Membership Agreement between the Society and the Corporate Member, notice may be given by or on behalf of the Corporate Member to the Agent within 30 days after the date of the Council's notice (but in any event before 1st January of the next succeeding year).

11.6 The Agent may, with the prior approval of the Council and subject to clause 11.8, terminate its appointment under this Agreement by notice in writing given by the Agent to the Name by 31 May (or such later date as the Council may allow) in any year and expiring at the end of that year.

11.7 The Agent may terminate its appointment under this Agreement, subject to clause 11.8, by not less than 48 hours' notice in writing given to the Corporate Member if:

- (a) the Corporate Member fails to comply with a request made by the Agent in accordance with clause 7.1 to pay monies by the due date for payment (as defined in clause 7.1); or
- (b)
 - (i) the Corporate Member makes or proposes any composition with its creditors or otherwise acknowledges its insolvency;
 - (ii) a proposal is made in respect of the Corporate Member under section 2 of the Insolvency Act 1986;
 - (iii) a bankruptcy order is made against the Corporate Member by the due process of law of any country;
 - (iv) the Corporate Member is adjudicated bankrupt, or adjudicated or declared insolvent, by the due process of law of any country;
 - (v) an order is made, a resolution is passed or an act, decree or other instrument is passed for the winding up or dissolution of the Corporate Member;
 - (vi) an administration order is made in respect of the Corporate Member under Schedule B1 to the Insolvency Act 1986;
 - (vii) a receiver, trustee or analogous officer is appointed in respect of the whole or any material part of the Corporate Member's property or assets;
 - (viii) the Corporate Member or its directors, partners or, in the case of a limited liability partnership, members present or file in any court a petition in respect of the Corporate Member's bankruptcy, winding up or other insolvency or which seeks any reorganisation, dissolution or similar relief; or
 - (viiiia) a sequestration order made pursuant to the Bankruptcy (Scotland) Act 1985;
 - (ix) there occurs an event in any jurisdiction which is analogous to any event referred to in the preceding provisions of this sub-paragraph.

11.8 Upon the termination of the Agent's appointment pursuant to the preceding paragraphs of this clause 11, the Agent's authority to accept risks on behalf of the Corporate Member shall also terminate, except in relation to:

- (a) variations and extensions of existing risks effected under the customary and usual powers of the Agent;
- (b) reinsurance to close an earlier year of account ;
- (c) in relation to the reinsurance to close any year of account of the syndicate, acceptance on behalf of the Corporate Member as a member of the Managed Syndicate for any later year of account of a proportionate retrocession of any class or classes of business included in such reinsurance to close, as permitted or required by requirements of the Council;

Subject to this and to any requirements of the Council for the time being applicable, the Agent shall be empowered and obliged following the termination of its appointment to run off the Underwriting so far as it concerns the Corporate Member's participation in the Managed Syndicate and, subject to performing this obligation, shall remain entitled to receive the profit commission payable to it in respect of the Underwriting under clause 6.2. For these purposes the Agent shall continue to have the powers, duties and discretions conferred by this Agreement:

- (i) in relation to any matter arising out of business of the Managed Syndicate allocated to a year of account which at the date of termination has not been closed, until that year of account is closed or, if it is not closed, until all matters arising from the business of that year of account have been determined; and
- (ii) so long as is necessary to enable the Agent to deal with and determine any matters arising in connection with the business of the Managed Syndicate allocated to a year of account which has been closed (whether before or after the termination of the Agent's appointment).

11.9 Without limiting the generality of clause 11.8, following the termination of the Agent's appointment otherwise than at the end of a year the Agent may issue policies of insurance in relation to risks accepted prior to such termination in the names of the Corporate Member and of any other underwriting members of Lloyd's who are members of the Managed Syndicate for the remainder of the year in which such termination occurs or in the names of those other underwriting members of Lloyd's but not of the Corporate Member.

11.10 If a requirement of the Council is made in respect of the Corporate Member, which results in that Corporate Member being suspended from underwriting, while the requirement remains in force the Corporate Member shall take only such part (if any) in the Underwriting, and the powers, duties and discretions of the Agent under this Agreement shall continue only to such an extent, as is compatible with the direction.

11A. Assignment of Corporate Member's right of future participation

11A.1 In this clause:

- (a) the "Succeeding Year" means, in relation to a nomination made under clause 11A.2, the year of account corresponding to the year next following that in which the nomination is made;
- (b) the "Corporate Member's Prospective Participation" means the aggregate of:
 - (i) the Corporate Member's member's syndicate premium limit in respect of the Managed Syndicate for the year of account corresponding to the year in which a nomination is made under clause 11A.2 (or, if the Corporate Member and the Agent have agreed that the Corporate Member will be

- entitled to participate in the Managed Syndicate for the Succeeding Year with a different member's syndicate premium limit, that other limit); and
- (ii) if the Agent, in pursuance of the requirements of the Council relating to syndicate pre-emption, has offered the Corporate Member the opportunity to increase or required the Corporate Member to decrease its member's syndicate premium limit for the Succeeding Year, the amount of the increase specified in that offer or the amount of the decrease so required as applicable.

11A.2 Subject to and in accordance with the following provisions of this clause and any applicable requirements of the Council, the Corporate Member may in any year nominate an underwriting member or underwriting members of Lloyd's to underwrite as a member or members of the Managed Syndicate for the Succeeding Year with a specified member's syndicate premium limit not exceeding, or specified member's syndicate premium limits not exceeding in the aggregate, the Corporate Member's Prospective Participation, in substitution for the Corporate Member either wholly or, as the case may be, to the extent of the member's syndicate premium limit or limits so specified.

11A.3 Any nomination under this clause shall be in writing signed by the Corporate Member or by another person duly authorised to sign it on its behalf; and any such authority may be given in favour of such person or persons as shall be nominated by or under the authority of the Council in accordance with any applicable requirements of the Council.

11A.4 Unless the Council shall otherwise direct or the Agent shall otherwise allow, any nomination under this clause shall not be effective unless on or before the date prescribed by the Council for the purposes of this sub-clause written notice of the nomination, together with any such other documents and information as may be prescribed by or under any applicable requirements of the Council, has been delivered to the Agent.

11A.5 The Agent shall do all such acts and things and execute all such documents as shall be necessary or expedient on its part:

- (a) to give effect to any nomination duly made under this clause;
- (b) where a nomination or nominations have been made in respect of part only of the Corporate Member's Prospective Participation, to enable the Corporate Member to underwrite as a member of the Managed Syndicate for the Succeeding Year with a member's syndicate premium limit equal to the remaining part:

PROVIDED THAT:

- (A) unless the requirements of the Council provide otherwise, this clause shall not oblige the Agent to enter into an agreement in the terms of the Standard Agents' Agreement with a members' agent if at the relevant time there is no such agreement (other than an agreement under which notice of termination has been given by either party) current between the Agent and that members' agent;
- (B) the obligations of the Agent under this clause are subject to any direction for the time being in force given by the Council or by the Appeal Tribunal under the Agency Agreements Byelaw (No. 8 of 1988) that effect shall not be given to a nomination made under this clause.

11A.6 Where effect is not given to a nomination made under this clause as a result of such a direction as is referred to in proviso (B) to clause 11A.5, the Agent shall, if so requested by or on behalf of the Corporate Member and subject to any direction of the Council or the Appeal Tribunal, use its best endeavours to permit the Corporate Member to underwrite as a member of the syndicate for the Succeeding Year with the member's syndicate premium limit which would have applied if the nomination had not been made.

12. Waiver of confidentiality

12.1 In so far as is necessary for the purposes of the exercise by the Council of powers contained in Lloyd's Acts 1871 to 1982 or in byelaws or regulations made thereunder, but not further or otherwise, the Corporate Member hereby:

- (a) consents to the persons listed in clause 12.2 providing to the Council any information or documents relating to the Underwriting or any part thereof, whether or not in response to a request by the Council; and
- (b) authorises and directs the Agent to waive on its own behalf all duties of confidentiality owed to the Agent by the persons referred to in clause 12.2(b) in respect of such information or documents.

12.2 The persons referred to in clause 12.1 are:

- (a) the Agent; and
- (b) any auditor appointed by the Agent.

13. Relations between syndicate members

13.1 Except to the extent provided in this Agreement, the Agent shall not in the performance of its duties under this Agreement discriminate between or treat differently in any material respect the Corporate Member and any other member or members of the Managed Syndicate.

- 13.2 There shall be attributed to the Corporate Member (subject to clause 5(ca)) the same proportion of the risks underwritten by the Agent on behalf of the members of the Managed Syndicate and allocated to a year of account as the amount of the Corporate Member's member's syndicate premium limit in relation to the Managed Syndicate for that year of account bears to the syndicate allocated capacity of the Managed Syndicate for that year of account, in each case as specified in the initial syndicate constitution filed with Lloyd's at or about the beginning of the relevant year; and this proportion shall not be materially altered during the course of the year except by reason of the operation of clause 14 or with the express previous consent of the Corporate Member.
- 13.3 Income received in respect of, and appreciation in the value of, deposits or investments held by the Managing Agent's Trustees or trustees of any Overseas Fund or Special Trust Fund] during any year on behalf of members of the Managed Syndicate or on behalf of members of the Managed Syndicate and members of other syndicates, as shown by realisations or transfers made during the year or by valuation at the end of the year, made where practicable at the mean market price or at such other price as the Agent (subject to the requirements of the Council) may determine, shall be held on their behalf and apportioned among the respective syndicates concerned (where applicable) and the respective years of account open during that year in such proportions as the Agent shall in its absolute discretion consider fair having regard to the balances available for investment attributable to each of the relevant syndicates (where applicable) and each of the relevant years of account during the year.
- 13.4 The expenses and outgoings incurred in connection with the Underwriting which in the opinion of the Agent ought to be borne rateably by the Corporate Member and any other members of the Managed Syndicate shall be debited to their respective accounts and the Corporate Member's rateable part thereof shall be calculated according to the proportion of risks attributed to the Corporate Member under clause 13.2. In the case of any expense or outgoing incurred in connection with the Underwriting which has been incurred in respect of more than one syndicate or more than one year of account, or in the case of a credit received in respect of any such expense or outgoing, the Agent may debit or, as the case may be, credit the respective accounts of the members of the Managed Syndicate with such proportions of that expense or outgoing as the Agent in its absolute discretion considers fair.
- 13.5 If at the beginning of any year the Corporate Member's underwriting membership of Lloyd's has been and remains suspended or the Corporate Member has been and remains suspended from underwriting, the Corporate Member shall take no part in the Underwriting during that year whether or not such suspension is revoked or expires during the year.

13.6 The Corporate Member hereby authorises and directs the Agent:

- (a) in each year to enter into a Syndicate and Arbitration Agreement on its behalf with the Agent, every other member of the Managed Syndicate and every members' agent through the agency of which any of those members participate in the Managed Syndicate; and
- (b) to take such action or proceedings as the Agent thinks fit against any member of the Managed Syndicate or the members' agent through the agency of which any such member participates in the Managed Syndicate who has committed or threatened to commit a breach of the terms of the Syndicate and Arbitration Agreement, on behalf and at the expense of the other members of the Managed Syndicate (including the Corporate Member).

14. Taking over provisions

14.1 For the purposes of this clause an underwriting member of Lloyd's (including, where the case so requires, the Corporate Member) shall be treated:

- (a) as ceasing to be a member of the Managed Syndicate if the appointment of the Agent as the managing agent of that underwriting member in respect of the Managed Syndicate is terminated under any provision of clause 11 of the Managing Agent's Agreement between that underwriting member and the Agent (or, in the case of the Corporate Member, this Agreement);
- (b) if a requirement of the Council is made in respect of that underwriting member which results in that underwriting member being suspended from underwriting, as ceasing to be a member of the Managed Syndicate at the time when the direction takes effect and, if the direction is revoked or expires in the same year in which it is made, as again becoming a member of the Managed Syndicate upon such revocation or expiry.

14.2 Subject to paragraph (e) of this clause, in the event of changes in the membership of the Managed Syndicate for any reason whatsoever, including suspension, occurring otherwise than at the end of a year, then for the purposes of calculating the profit or loss of the Corporate Member and of the other members of the Managed Syndicate for the relevant year of account, the following provisions shall apply:

- (a) Subject to paragraphs (aa) and (ab) of this clause, in the event of the death or bankruptcy of a member of the Managed Syndicate, or in the event of the membership of a member of the Managed Syndicate being terminated by operation of law or by virtue of the provisions of clause 11.7(b) of the relevant Managing Agent's Agreement otherwise than at the end of any year, the relevant member of the Managed Syndicate shall, for the purposes of calculating the profit and loss of the Corporate Member and of every other member of the Managed Syndicate for the relevant year of account, be treated as though he had taken no part in the Underwriting during that year and the profit or loss

which, apart from this provision, would have accrued to him from his participation as a member of the Managed Syndicate for the relevant year of account, together with his responsibility for all claims, expenses and outgoings payable in connection with the Underwriting, shall be apportioned among the other members of the Managed Syndicate in proportion to the amounts of their respective member's syndicate premium limits in relation to the Managed Syndicate.

- (aa) Where the relevant member referred to in paragraph (a) of this clause 14.2 participates in the Managed Syndicate through a MAPA and not otherwise then the apportionment provided for in that paragraph shall be made only among the other members of such MAPA and in proportion to their respective MAPA participations in relation to such MAPA.
- (ab) Where the relevant member referred to in paragraph (a) of this clause 14.2 participates in the Managed Syndicate partly through a MAPA and partly otherwise then:
 - (i) in relation to his MAPA participation, the method of apportionment provided for in paragraph (aa) of this clause 14.2 shall apply; and
 - (ii) in relation to his non-MAPA participation, the method of apportionment provided for in paragraph (a) of this clause 14.2 shall apply.
- (b) In the event of:
 - (i) a member of the Managed Syndicate purporting to terminate the appointment of the Agent otherwise than at the end of any year in breach of any of the provisions of clause 11 of the relevant Managing Agent's Agreement; or
 - (ii) a member of the Managed Syndicate purporting to resign his underwriting membership of Lloyd's in breach of the applicable requirements of Lloyd's; or
 - (iii) a member of the Managed Syndicate purporting to terminate the Members' Agent's Agreement entered into by him with his members' agent in breach of that agreement;

then without prejudice to any rights or remedies which may be available to the Agent or the other members of the Managed Syndicate in consequence of the breach, the liabilities of the relevant member of the Managed Syndicate in respect of risks attributable to the relevant year of account shall, for the purposes of calculating the profit or loss of the Corporate Member and of every other member of the Managed Syndicate for the relevant year of account, be assessed by the Agent on the footing that the relevant member of the Managed Syndicate had continued to be a member of the Managed Syndicate until the end of that year.

- (c) Subject to paragraphs (ca) and (cb) of this clause 14.2, in the event of a member of the Managed Syndicate ceasing other than by reason of any of the events mentioned in paragraphs (a) and (b) of this clause 14.2 to be a member of the Managed Syndicate otherwise than at the end of any year, or in the event of a member of the Managed Syndicate again becoming a member of the Managed Syndicate on a date other than at the beginning of any year following the revocation or expiry of a requirement of the Council made earlier in the same year which had resulted in a member of the Managed Syndicate being suspended from underwriting, then, as between all the members (including the Corporate Member and any other outgoing or incoming members) of the Managed Syndicate or their personal representatives, the profit or loss of the Managed Syndicate for the relevant year of account shall be divided between the members of the Managed Syndicate as follows, due regard being had to the provisions of paragraphs (a), (aa), (ab) and (b) of this clause 14.2 and their effect in relation to any member of the Managed Syndicate in respect of the year in question:
- (i) the year shall be divided into periods (“Periods”) comprising: the period from the beginning of the year until the date of the first variation in the membership of the Managed Syndicate to which this sub-paragraph applies; each period between each such variation; and the period from the date of the last such variation until the end of the year;
 - (ii) on the closing of the Managed Syndicate’s accounts for the year the profit or loss of the Managed Syndicate (including any profit or loss reallocated pursuant to paragraph (a) above) shall be apportioned between the Periods by reference to the number of days in each Period;
 - (iii) the profit or loss apportioned to each Period shall be apportioned among members of the Managed Syndicate during such Period, having regard to paragraph (b) above, by reference to the amounts of their respective member’s syndicate premium limits in relation to the Managed Syndicate; and
 - (iv) the profit or loss of each member for the whole year shall then be ascertained by aggregating the profit or loss of such member in respect of each of the Periods during which he was a member of the Managed Syndicate.
- (ca) Where the relevant member referred to in paragraph (c) of this clause 14.2 participates in the Managed Syndicate through a MAPA and not otherwise then:
- (i) the division provided for in paragraph (c) of this clause 14.2 shall be made in relation to the members of such MAPA; and
 - (ii) the apportionment provided for by sub-paragraph (iii) of paragraph (c) of this clause 14.2 shall be made only among the members of such MAPA and in proportion to their respective MAPA participations in relation to such MAPA.

- (cb) Where the relevant member referred to in paragraph (c) of this clause 14.2 participates in the Managed Syndicate partly through a MAPA and partly otherwise then:
 - (i) in relation to his MAPA participation, the method of division and apportionment provided for in paragraph (ca) of this clause 14.2 shall apply; and
 - (ii) in relation to his non-MAPA participation, the method of division and apportionment provided for in paragraph (c) of this clause 14.2 shall apply.

- (d) For the purposes of this clause 14.2, “non-MAPA participation” means in relation to any member of a Managed Syndicate and a Managed Syndicate the amount of the member’s syndicate premium limit allocated to the syndicate other than through a MAPA.

- (e) If the appointment of the Agent as the managing agent of an underwriting member in respect of the Managed Syndicate is terminated under any provision of clause 11 of the Managing Agent’s Agreement between that underwriting member and the Agent (or, in the case of the Corporate Member, this Agreement) otherwise than at the end of a year, and the member’s syndicate premium limit of that underwriting member is equal to or greater than 2% (or such other percentage as the Council may from time to time prescribe) of the syndicate allocated capacity of the Managed Syndicate, the Agent shall forthwith notify the Council and the Council may give such directions to modify the application of this clause 14 in relation to the Managed Syndicate as the Council may in its sole discretion think fit.

- (f) Without limiting the generality of paragraph (e) of this clause 14.2, any directions given under that paragraph may include provision that, instead of the results of the Managed Syndicate for the relevant year of account being allocated between the members of the Managed Syndicate by dividing between them the profit or loss for that year of account as a whole on any basis specified in any other provision of this clause 14.2, such results be allocated instead by:
 - (i) causing accounts to be prepared for such periods of the year (“Accounting Periods”) on such basis and in accordance with such accounting policies as may be specified;
 - (ii) allocating the profit or loss of the Managed Syndicate for each such Accounting Period among the members of the Managed Syndicate during such Period by reference to the amounts of their respective member’s syndicate premium limits in relation to the Managed Syndicate; and
 - (iii) ascertaining the profit or loss of each member for the whole year by aggregating the profit or loss of such member in respect of each of the Accounting Periods during which he was a member of the Managed Syndicate.

- (g) Any directions given under paragraph (e) of this clause 14.2 may also include:
 - (i) provision varying the time at which a member of the Managed Syndicate is to be treated as ceasing to be a member of the Managed Syndicate for the purposes of any of the preceding provisions of this clause; and
 - (ii) consequential provision for the operation of clauses 6.3 and 6.4 in such manner as the Council may in its sole discretion consider fair.

14.3 The decision of the auditors for the time being of the Managed Syndicate as to any question or dispute relating to the operation of any part of this clause 14 shall, save in the case of manifest error, be final and binding on the Corporate Member and the Agent.

15. Variation

15.1 None of the provisions of this Agreement, other than those provisions of Schedule 1 which are to be or may be completed or deleted as specified in the Corporate Member's Syndicate List, may be varied or amended in any manner whatsoever (otherwise than in consequence of the operation of clause 1.4, clause 10, clause 14.2(e) or clause 15.2) without the written consent of the Council. Any permitted variation or amendment of this Agreement shall, subject as aforesaid, be in writing and signed by each of the parties.

- 15.2 (a) The Council may by byelaw vary or amend any of the provisions of this Agreement with effect from 1 January in any year provided (subject to paragraph (b) below) that such date falls no sooner than eight months after the date of the relevant byelaw.
- (b) The Council may by byelaw made no later than 31 January 2007 but with effect from 1 January 2007 vary or amend any of the provisions of this Agreement (including, without limitation, clauses 11 and 11A) as it thinks necessary or expedient for the purpose of or in connexion with the making or implementation of any byelaw or other requirement of the Council which may be made in connection with the implementation of the Strategic Plan referred to in "Building the Optimal Platform" published by the Society in January 2006.

16. Arbitration

16.1 Subject to clause 16.2 and clause 16.3, any dispute, difference, question or claim arising under, out of or in connection with this Agreement shall be referred at the request of either the Agent or the Corporate Member to arbitration in London under the rules of the Lloyd's Arbitration Scheme for the time being, which rules are deemed to be incorporated by reference into this clause.

16.2 This clause 16 does not apply to any dispute, difference, question or claim relating to any of the provisions of clause 7.1 or clause 14.

16.3 This clause 16 does not apply or applies as modified to any dispute, difference, question or claim in respect of which and to the extent to which the application of this clause 16 is excluded or modified by byelaw or by the Lloyd's Arbitration Scheme.

17. Agreement not a partnership

17.1 Nothing in this Agreement shall constitute a partnership between the Corporate Member and the Agent or between the Corporate Member and any or all of the other members of the Managed Syndicate.

17.2 The Corporate Member and the Agent acknowledge that the association between the members of a syndicate for a year of account is made solely for the purposes of, and is limited to, the underwriting of insurance business allocated to that year of account and matters arising out of or in connection with insurance business so underwritten, and nothing in this Agreement shall be taken to create or give rise to any longer or further association or to constitute the syndicate as an entity continuing from year to year.

18. Notices

18.1 Any notice under this Agreement shall be in writing (including telex or facsimile transmission) and may be served by personal delivery or by leaving it at or sending it by prepaid post (which shall in the case of a notice under clause 11 be recorded delivery or registered post) to the address of the relevant party set out above or, in the case of a notice served by telex or facsimile transmission, by transmitting it to such number as the party on whom it is to be served may from time to time notify to the other party. Any notice so served or document sent by post shall be deemed to have been received 72 hours from the time of posting and any notice sent by telex or by facsimile transmission shall be deemed to have been received when evidence of its receipt is transmitted to the person sending it.

18.2 The Corporate Member undertakes to maintain an agent for service of process in England. The first such agent shall be . The Corporate Member shall forthwith give notice to the Agent of any change in the identity, name or address of its agent appointed under this sub-clause. Any writ, judgment or other notice of judicial process shall be sufficiently served on the Corporate Member if delivered to its agent appointed under this sub-clause at the address of that agent for the time being.

19. Governing law and jurisdiction

19.1 This Agreement is governed by, and shall be construed in accordance with, the laws of England.

19.2 Each of the parties hereby irrevocably submits for all purposes of and in connection with this Agreement to the exclusive jurisdiction of the courts of England.
IN WITNESS whereof the parties have executed this Agreement as a deed the day and year first above written.

Schedule 1 - Agent's Fees

Part A: Annual Fee

The fee payable to the Agent under clause 6.1 in respect of each year of account shall be:

———% of the Corporate Member's member's syndicate premium limit in relation to the Managed Syndicate for that year of account* payable (subject to any requirements of the Council) monthly/quarterly/annually* in advance/arrears* on [date or dates*] in the year corresponding to the relevant year of account.

(* As specified in the Corporate Member's Syndicate List)

Part B: Profit Commission and Deficit Clause

1. Basis of calculation

The profit commission payable to the Agent under clause 6.2 in respect of each year of account of the Managed Syndicate shall be the percentage specified in the Corporate Member's Syndicate List of the Corporate Member's Adjusted Profit for the relevant year of account, the Adjusted Profit being calculated in accordance with the following provisions of this Schedule.

2. Determination of underwriting profits and losses

For the purposes of this Schedule the closed year of account profit or loss of the Managed Syndicate for any year of account shall, subject to the following provisions of this Schedule, be determined by reference to the audited underwriting account of the Managed Syndicate for the relevant year of account but any necessary adjustments shall be made to ensure that:

- (a) investment income shall be taken into account before deduction of tax;
- (b) capital appreciation and depreciation and profit or loss on the realisation of investments shall be taken into account before making any provision for tax thereon;
- (c) foreign currency exchange gains and losses shall be taken into account;
- (d) no deduction shall be made for any United Kingdom or overseas taxation on underwriting profits; and
- (e) deductions shall be made for syndicate expenses but for any other charges, costs or expenses incurred by the Corporate Member.

3. **Deficit clause: basic calculation of Adjusted Profit**

- (a) Subject to the following provisions of this Schedule, the Corporate Member's Adjusted Profit for any year of account is the amount of the Syndicate Adjusted Profit attributable to the Corporate Member's Allocation for that year of account less the Corporate Member's Expenses for that year of account (as adjusted, where applicable, under clause 14).
- (b) In this Schedule:
- (i) "Syndicate Adjusted Profit" for any year of account ("the Relevant Year") is the Syndicate Profit for the Relevant Year less the Eligible Losses at the Closing Date of the Relevant Year;
 - (ii) "the Corporate Member's Allocation" for a year of account means the amount of the Corporate Member's member's syndicate premium limit in relation to the Managed Syndicate for that year of account;
 - (iia) "the Corporate Member's expenses" for a year of account means the amount payable by the Corporate Member in respect of that year of account by way of Lloyd's subscriptions, Central Fund contributions, New Central Fund contributions and the Agent's annual fee;
 - (iii) "Syndicate Profit" for a year of account means the closed year of account profit of the Managed Syndicate for that year of account determined in accordance with paragraph 2 above, and "Syndicate Loss" has a corresponding meaning;
 - (iv) a Syndicate Loss incurred in respect of a year of account is deemed to be incurred at the Closing Date of that year of account;
 - (v) "Closing Date" means a date at which a year of account is closed;
 - (vi) "Prior Year End(s)" means, in relation to a Closing Date, the end(s) of the [*] year(s) immediately preceding the year ending on that Closing Date;
 - (vii) "Eligible Loss" means, in relation to the calculation of the Syndicate Adjusted Profit for the Relevant Year, a Syndicate Loss, Initial Deficit or Further Deficit incurred at the Closing Date of the Relevant Year or at a Prior Year End, so far as not taken into account under this Schedule in calculating the Syndicate Adjusted Profit for a year of account closed before or at the same time as the Relevant Year; and
 - (viii) "Initial Deficit" and "Further Deficit" have the meanings respectively given to them in paragraph 6 below.

(* As specified in the Corporate Member's Syndicate List)

4. **Deficit clause: carry-forward of surplus Eligible Losses**

If the Eligible Losses exceed the Syndicate Profit for the Relevant Year, the Syndicate Adjusted Profit for the Relevant Year shall be treated as nil and so much of the excess as was not incurred at the earliest Prior Year End shall be carried forward as Eligible Losses available, subject to the provisions of this Schedule, to be taken into account in calculating the Syndicate Adjusted Profit at the following Closing Date.

5. **Deficit Clause: Priority among Eligible Losses**

Where the calculation of the Syndicated Adjusted Profit involves subtracting from the Syndicate Profit Eligible Losses incurred at more than one year end, the Eligible Losses incurred at the earliest relevant year end shall be deemed to be subtracted first.

6. **Deficit Clause: run-off accounts**

- (a) This paragraph applies where a year of account of the Managed Syndicate (“the Run-Off Year”) is not closed at the date at which it would normally have been closed in accordance with the policies and procedures generally adopted in respect of the Managed Syndicate (“the Normal Closing Date”).
- (b)
 - (i) Where the run-off account result for the Run-off Year at the Normal Closing Date, as shown in the underwriting account prepared as at that date, is a deficit, that deficit is in this Schedule referred to as the “Initial Deficit”.
 - (ii) Where at any anniversary of the Normal Closing Date the Run-off Year remains open and the cumulative run-off account balance for the Run-off(* As specified in the Corporate Member’s Syndicate List) Year as at that anniversary, as shown in the underwriting account prepared as at that anniversary, is a deficit, that deficit is in this Schedule referred to as an “Intermediate Deficit”.
 - (iii) If the Run-off Year is closed, the Syndicate Profit or Syndicate Loss in respect of the Run-off Year, as shown in the underwriting account prepared as at the Closing Date, is in this Schedule referred to as the “Final Balance”.
- (c) An Initial Deficit shall for the purposes of the definition of “Eligible Loss” in paragraph 3(b) above be treated as incurred at the Normal Closing Date.
- (d) If at any anniversary of the Normal Closing Date there is an Intermediate Deficit exceeding whichever is the greatest of the Initial Deficit and any previous Intermediate Deficit, a loss equal to the excess (or, where there has been no Initial Deficit and no previous Intermediate Deficit, equal to the Intermediate Deficit at that anniversary) shall be treated as incurred at that anniversary. Such a loss is in this Schedule referred to as a “Further Deficit”.
- (e) If the Run-off Year is closed, the Final Balance at the Closing Date shall be adjusted by crediting an amount equal to the aggregate amounts of the Initial Deficit and of any Further Deficit which previously have been applied as Eligible Losses in reducing the Syndicate Adjusted Profit at the closing Date of any other year of account. The resulting amount (“the Adjusted Final Balance”) shall be treated as the Syndicate Profit arising, or the Syndicate Loss incurred, at the Closing Date of the Run-off Year.

7. Deficit clause: apportionment of Eligible Losses

- (a) Where a Syndicate Profit arises on the closing of each of two or more years of account closed at the same date, any Eligible Losses available at that date shall be apportioned between the respective Syndicate Profits rateably according to the amounts of those Syndicate Profits.
- (b) Where the calculation of the Syndicate Adjusted Profit involves subtracting from a Syndicate Profit Eligible Losses incurred at the same year end in respect of two or more years of account, those Eligible Losses shall be apportioned between the relevant years of account rateably according to the respective total amounts of the Eligible Losses as at the relevant Closing Date attributable to each such year of account.
- (c) Any apportionments falling to be made under this paragraph in a case where paragraph 8 below applies shall be made before effect is given to that paragraph.

7A. Deficit Clause: Syndicate Merger

- (a) This paragraph 7A applies where:
 - (i) for any Relevant Year after 1998 the Managed Syndicate is a successor syndicate in consequence of a syndicate merger;
 - (ii) the successor syndicate and the ceasing syndicate are or were managed by the same managing agent or by related managing agents; and
 - (iii) the Corporate Member is a member of the successor syndicate for the Relevant Year and was a member of the ceasing syndicate for its final year of account and of the successor syndicate for the next following year of account.
- (b) Any Syndicate Loss, Initial Deficit or Further Deficit of the ceasing syndicate which, if the ceasing syndicate had continued to accept new or renewal business for subsequent years of account, would have been an Eligible Loss under the Managing Agent's Agreement between the Corporate Member and the managing agent of the ceasing syndicate for the purpose of calculating any profit commission payable by the Corporate Member under that agreement for the Relevant Year (assuming neither profit nor loss for the ceasing syndicate for any year of account between its final year of account and the Relevant Year) shall, subject to any adjustment in accordance with sub-paragraph (c) or (d) below, be treated as an Eligible Loss of the Managed Syndicate for the purposes of this Part B.

- (c) Where the Corporate Member's Allocation for the final year of account of the ceasing syndicate was greater than the Corporate Member's Merger Allocation and Eligible Losses attributable to any year or years of account of the ceasing syndicate fall under this paragraph 7A to be subtracted from the Syndicate Profit in calculating the Syndicate Adjusted Profit for the Relevant Year of the Managed Syndicate, the aggregate amount of the Eligible Losses attributable to that year or those years of account of the ceasing syndicate which may be so subtracted is limited to:

$$\frac{L \times A2}{A1}$$

where:

- L = the amount of the Eligible Losses attributable to that year or those years of account of the ceasing syndicate;
- A1 = the amount of the Corporate Member's Allocation for the last year of account of the ceasing syndicate; and
- A2 = the amount of the Name's Merger Allocation.

- (d) Where the Corporate Member's Allocation for the final year of account of the ceasing syndicate was less than Corporate Member's Merger Allocation and Eligible Losses attributable to any year or years of account of the ceasing syndicate fall under this paragraph 7A to be subtracted from the Syndicate Profit in calculating the Syndicate Adjusted Profit for the Relevant Year of the Managed Syndicate, the aggregate amount of the Eligible Losses attributable to that year or those years of account of the ceasing syndicate which may be so subtracted is limited to:

$$\frac{P \times A1}{A2}$$

where:

- P = the amount of the Syndicate Profit for the Relevant Year;
- A1 = the amount of the Corporate Member's Allocation for the last year of account of the ceasing syndicate; and
- A2 = the amount of the Corporate Member's Merger Allocation.

- (e) For the purposes of this paragraph 7A:
- (i) "ceasing syndicate" and "successor syndicate" have the meanings given in the Major Syndicate Transactions Byelaw (No. 18 of 1997, **332**);
- (ii) "related managing agents" means two or more managing agents, being bodies corporate, which are members of the same group, and "group" means for this purpose a holding company and its subsidiaries, in each case as defined by section 736 of the Companies Act 1985;

- (iii) “Corporate Member’s Merger Allocation” means the amount of the Corporate Member’s Allocation on the successor syndicate for the first year of account after the syndicate merger to which the Corporate Member became entitled, by reason of the terms of the syndicate merger or by reason of any requirements of the Council made in relation thereto, by reference to the amount of the Corporate Member’s Allocation for the final year of account of the ceasing syndicate; and
- (iv) expressions defined in paragraph 3(b) of this Part in relation to the Managed Syndicate have the corresponding meanings in relation also to a ceasing syndicate notwithstanding that the ceasing syndicate is not the Managed Syndicate.

8. **Transitional provisions**

- (a) References in this Schedule to a year of account do not include a year of account earlier than the 1994 year of account.
- (b) References in this Schedule to the ends of the two (or more) years immediately preceding a year ending on a Closing Date do not include a year ending earlier than 31 December 1996.

9. **Time of payment**

- (a) the profit commission payable to the Agent in respect of any year of account shall be calculated and, after taking account of any amount already paid to the Agent on account of such commission, the net amount paid forthwith upon the despatch to the Name's Members' Agent (or where the Managed Syndicate is a Direct Syndicate, the Name) of the underwriting account prepared as at the Closing Date of the relevant year of account.
- (b) where the amount already paid to the Agent on account of profit commission in respect of any year of account exceeds the amount of the profit commission payable to the Agent under clause 6, the Agent shall forthwith pay to the Regulating Trustee the amount of such excess.

Schedule 2 - The Syndicate And Arbitration Agreement

THIS AGREEMENT is made on.....

BETWEEN:

- (1) _____ whose registered/principal office is at _____ (the "Managing Agent");
- (2) Each of the underwriting members of Lloyd's who participates in the Managed Syndicate (as defined below) for the Relevant Year of Account (as defined below), the names of such underwriting members being listed in the syndicate constitution attached to this Agreement (the "Names"); and
- (3) Each of the members' agents through the agency of which any of the Names participates in the Managed Syndicate for the Relevant Year of Account, the names of such members' agents being listed in the syndicate constitution attached to this Agreement (the "Members' Agents").

WHEREAS

Each of the Names and each of the Members' Agents has authorised and directed the Managing Agent to enter on their behalf into an agreement in the form of this Agreement.

NOW IT IS AGREED as follows:

1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

"Managing Agent's Agreement" means an agreement between a Name and the Managing Agent in the terms of the standard agreement set out in Schedule 3 or Schedule 4 to the Agency Agreements Byelaw (No. 8 of 1988) regulating the Name's participation in the Managed Syndicate for the relevant Year of Account;

"Managed Syndicate" means the syndicate specified in the Schedule;

"Relevant Year of Account" means the year of account specified in the Schedule;

"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).

1.2 Unless the context otherwise requires and except for the words and expressions defined in clause 1.1, words and expressions defined in the Standard Members' Agent's Agreement have the same meanings in this Agreement.

1.3 This Agreement shall apply to the Managed Syndicate for the Relevant Year of Account.

2. **Undertakings of the Names**

Each of the Names hereby undertakes to each of the other Names, the Managing Agent and each of the Members' Agents:

- (a) to comply with the provisions of the Managing Agent's Agreement between that Name and the Managing Agent in relation to the Managed Syndicate;
- (b) without prejudice to paragraph (a) above, to remain a member of the Managed Syndicate unless and until the appointment of the Managing Agent under the Managing Agent's Agreement between that Name and the Managing Agent in relation to the Managed Syndicate is terminated pursuant to and in accordance with the provisions of clause 11 of that agreement; and
- (c) not to terminate the appointment of the Members' Agent (if any) designated by that Name as being appointed to act as its members' agent in relation to the Managed Syndicate for the Relevant Year of Account otherwise than pursuant to and in accordance with the provisions of clause 11 of the Members' Agent's Agreement between that Name and that Members' Agent.

3. **Syndicate Disputes**

3.1 Subject to clause 3.3 and clause 3.4, any disputes, differences, questions or claims whatsoever between any or all of the Names, the Members' Agents and the Managing Agent, whether in contract, tort or otherwise, arising at any time and in any way out of or in connection with or in relation to the Managed Syndicate for the Relevant Year of Account or its constitution or business for the Relevant Year of Account ("Syndicate Disputes") shall be referred at the request of any such Names, Members' Agents or the Managing Agent to arbitration in London under the rules of the Lloyd's Arbitration Scheme for the time being, which rules are deemed to be incorporated by reference into this clause.

3.2 Subject to the rules of the Lloyd's Arbitration Scheme, any Syndicate Disputes which involve common questions or issues shall be referred to the same arbitrator or arbitrators who shall have full power to direct that any such Syndicate Disputes shall be heard concurrently between each and all of the Names, Members' Agents and the Managing Agent involved.

3.3 This clause 3 does not apply to any dispute, difference, question or claim relating to any of the provisions of clause 7.1, clause 13.6 or clause 14 of the Managing Agent's Agreement between any of the Names and the Managing Agent.

3.4 This clause 3 does not apply or applies as modified to any dispute, difference, question or claim in respect of which and to the extent to which the application of this clause 3 is excluded or modified by byelaw or by the Lloyd's Arbitration Scheme.

IN WITNESS whereof this Agreement has been signed by the Managing Agent on its own behalf and for and on behalf of each of the Names and each of the Members' Agents the day and year first above written.

Schedule

The Managed Syndicate is syndicate no. _____

The Relevant Year of Account is the _____ year of account.

SIGNED by

for and on behalf of
the Managing Agent,
each of the Names and
each of the Members'
Agents in the
presence of:

EXECUTED AS A DEED
by [the Corporate Member]

EXECUTED AS A DEED
by [the Agent]"

[In the case of a partnership]
SIGNED SEALED AND DELIVERED

by a partner duly authorised for and on behalf of the Agent
in the presence of: