

# THE MEMBERS' AGENT'S AGREEMENT INCLUDING FORMS OF THE AGENTS' AND MANAGING AGENT'S (GENERAL) AGREEMENTS

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[IM (2007)]

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**THE MEMBERS' AGENT'S AGREEMENT**

APPENDIX

On the ..... day of ..... of

(the "Name") and

..... whose registered/principal office is at

(the "Agent")

hereby:

- (1) enter into the attached Members' Agent's Agreement;
- (2) agree that the Agent is to act as the Name's co-ordinating agent†; and
- (3) agree that the following particulars shall be inserted in Schedule 1 to the attached Members' Agent's Agreement:
  - (a) *Annual Fee*  
Insert applicable provisions of Part A of Schedule 1.
  - (b) *Profit Commission*  
Insert applicable provision in Part B of Schedule 1.
  - (c) *Co-ordinating Agent's Fee*  
Insert basis of remuneration in Part C of Schedule 1, if applicable.
  - (d) *Winding-up Fee*  
Insert applicable provisions in Part D of Schedule 1.

†Delete if not applicable

*in the case of an individual*

SIGNED and DELIVERED as a DEED by

in the presence of:

Signature

Name

Address

*in the case of a body corporate with a common seal*

EXECUTED and DELIVERED as a DEED under THE COMMON SEAL of the Name in the presence of:  
Director

Director/Secretary

*in the case of a body corporate (other than a limited liability partnership) to which section 36A or 36B of the Companies Act 1985 applies*

EXECUTED and DELIVERED as a DEED by acting by two Directors/a Director and the Secretary

Director

Director/Secretary

*In the case of a company*

THE COMMON SEAL of the Agent was hereunto affixed in the presence of:

Director

Director/Secretary

*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:

*"In the case of a limited liability partnership*

EXECUTED as a DEED by

*[name of a limited liability partnership]*

acting by *[name of member]*, member

and *[name of member]*, member

.....

Member

.....

Member"

THIS AGREEMENT made on the date specified in the Appendix BETWEEN:

- (1) A person who is or is about to become an underwriting member of Lloyd's, and whose name and address or registered/principal office are set out in the Appendix (the "Name"); and

- (2) An underwriting agent which is listed as a members' agent on the register of underwriting agents maintained at Lloyd's and whose name and registered/principal office are set out in the Appendix (the "Agent").

## WHEREAS

The Name wishes to appoint the Agent to act as his members' agent in respect of all or part of his underwriting business and affairs at Lloyd's.

NOW IT IS AGREED as follows:

### 1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

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' Agreement"* means an agreement between the Agent and a managing agent in the form of the Standard Agents' Agreement;

*"agents' syndicate list"* has the meaning given 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 a Contracted 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;

the "*Business*" means the business of underwriting and related activities carried on by the Name at Lloyd's as a member of the Contracted Syndicates;

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

*"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);

*"Central Syndicate Sub-Fund"*, in relation to a Premiums Trust Deed, has the meaning given in that deed;

*“Contracted Syndicate”* means a syndicate of which the Name is a member for a year of account in respect of which this Agreement applies (whether or not the Name ceases to be a member of that syndicate for any part of that year of account in consequence of any provision of clause 11 of the Managing Agent’s Agreement between the Name and the managing agent of that syndicate) and in respect of which the Agent acts as his members’ agent, and *“the Contracted Syndicates”* means all of such syndicates;

*“co-ordinating agent”* means a members’ agent appointed by an underwriting member of Lloyd’s to co-ordinate the administration of that member’s affairs at Lloyd’s in circumstances where more than one members’ agent is obliged to provide services as a members’ agent to that member;

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

*“Direct Syndicate”* means a Contracted Syndicate in respect of which the Agent acts as the Name’s managing agent;

*“Equitas reinsurance contract”* has the meaning given in the Reconstruction and Renewal Byelaw (No. 22 of 1995);

*“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 and Partnerships 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;

*“Lloyd’s deposit”* has the meaning given in the Definitions Byelaw (No. 7 of 2005) and includes any Lloyd’s life deposit;

*“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 the Standard Managing Agent’s Agreement (General) in respect of a particular syndicate;

*“Managing Agent’s Agreement”* means an agreement between the Name and a managing agent in the terms of the Standard Managing Agent’s Agreement (General);

*“members’ agent”* means an underwriting agent which is listed as 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 this Agreement;

*“MAPA participation”* means in relation to any member of a Contracted Syndicate, a Contracted 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 Agent as ascertained in accordance with the formula specified in the agents’ syndicate list prepared by the Agent;

*“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 the Agent;

*“Membership Agreement”* means an agreement between a member of the Society which is not an individual 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);

*“Name”* includes (i) the Name’s executors or administrators, trustees in bankruptcy and any receiver appointed under the Mental Health Act 1983 and any person performing similar functions in any jurisdiction (ii) on the dissolution of a Scottish Limited Partnership, any general partner;

*“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 MAPA participation”* means, in relation to an underwriting member participating in a MAPA for a year of account, that part of that underwriting member’s overall premium limit which is or is to be allocated through the MAPA for that year of account;

*“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 by an Overseas Direction;

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

*“Premiums Trust Deed”* means a trust deed (other than a Special Trust Direction or an Overseas Direction) executed or to be executed by the Name 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 Name in respect of the Business are required to be transferred under the Financial Services Authority’s requirements;

*“Regulating Trustee”* means Lloyd’s or such other person as the Council may, under any Premiums Trust Deed, appoint to act as Regulating Trustee acting in its capacity as Regulating Trustee;

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

*“requirements of the Council”* 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 Reserve Trust Deed”* means a trust deed executed or to be executed by the Name and Lloyd’s, constituting any Special Reserve Trust Fund;

*“Special Reserve Trust Fund”* means a trust fund in relation to which Part 1 of Schedule 20 to the Finance Act 1993 has effect established by the Name and vested in Lloyd’s as trustee or in any person appointed as trustee by Lloyd’s;

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

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

*“Standard Agents’ Agreement”* means the form of agreement between a members’ agent and a managing agent prescribed by the Agency Agreements Byelaw (No. 8 of 1988) and set out in Schedule 2;

*“Standard Managing Agent’s Agreement (General)”* means the form of agreement between an underwriting member of Lloyd’s and a managing agent prescribed by the Agency Agreements Byelaw (No. 8 of 1988) and set out in Schedule 3;

“*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) (being substantially in the form of this Agreement);

“*Substitute Agent*” has the meaning given in the Definitions Byelaw (No. 7 of 2005);

“*surrender arrangement*” has the meaning given to it in the Conversion and Related Arrangements Byelaw (No. 22 of 1996);

“*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 List*” means a schedule prepared in respect of a year of account listing the Contracted Syndicates for that year of account and specifying in relation to each Contracted Syndicate the Name’s member’s syndicate premium limit , the formula for ascertaining the Name’s member’s syndicate premium limit in relation to any MAPA participation the Name may have in the syndicate, the identity of the managing agent and the basis and level of the managing agent’s remuneration, and containing such other particulars as may for the time being be required by the Council; and

“*syndicate merger*” has the meaning given to it in paragraph 1 of the Major Syndicate Transactions Byelaw (No. 18 of 1997);

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

“*year*” means 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 16.2, 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 on 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 Contracted Syndicate through a MAPA and like expressions, and subject always to clause 16.2, unless the context otherwise requires:
- (a) the members of a Contracted Syndicate for whom the Agent also acts as members' agent and whose MAPA participations are ascertained in accordance with the formula specified in an agents' syndicate list together with the Name's MAPA participation shall, in relation to that syndicate, be treated as belonging to the same MAPA as the Name;
  - (b) where in respect of any year of account the Name or any member of a Contracted Syndicate belongs to a MAPA he 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
  - (c) where in respect of any year of account the Agent operates more than one MAPA, 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 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 Name as a member of Lloyd's or to the Agent.
- 1.4 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 Name 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.
- 1.5 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.
- 1.6 The headings in this Agreement shall not affect its interpretation.

## 2. **Appointment and authority of the Agent**

2.1 The Name 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 Business and the Name's affairs at Lloyd's.

2.2 The Name hereby authorises the Agent on behalf of the Name:

- (a) to allocate the whole or part of the Name's overall premium limit in such amounts as the Name and the Agent shall from time to time agree among those syndicates in which the Name and the Agent shall agree from time to time that the Name is to participate;
- (aa) where the Name and the Agent agree that the whole or part of the Name's overall premium limit is to be allocated through a MAPA operated by the Agent, to allocate the Name's overall MAPA participation in such amounts and among such syndicates as the Agent shall, subject to any such limits as may be specified in any Syndicate List and to any applicable requirements of the Council, determine;
- (b) to enter into an agreement in the terms of the Standard Managing Agent's Agreement (General) with the managing agent of each of the syndicates in which the Name and the Agent shall from time to time agree that the Name is to participate (other than any Direct Syndicates) and from time to time to agree with each of those managing agents in accordance with the relevant Agent's Agreement its remuneration on a basis and at a level agreed between the Agent and the Name; and
- (c) with the agreement (subject to clause 7.1(o) and (oa)) of the Name, to give notice to the managing agent of any Contracted Syndicate to terminate the appointment of that managing agent under the relevant Managing Agent's Agreement;
- (ca) in relation to any Contracted Syndicate, to enter into an agreement with a different managing agent whereby that managing agent is appointed in substitution for the original managing agent to run off the business of the Contracted Syndicate on the same terms as those of the Managing Agent's Agreement between the Names and the original managing agent in relation to the Contracted Syndicate other than terms relating to remuneration;
- (d) to do all such acts and things and to execute all such documents as shall be necessary or expedient, subject to and in accordance with the requirements of the Council, to exercise the rights of the Name in relation to any Contracted Syndicate under clause 11A of the relevant Managing Agent's Agreement and to give effect to any nomination made on such exercise: but so that, save in relation to a participation in a Contracted Syndicate which is, or a prospective participation in a syndicate which will be, through a MAPA operated by the Agent, this paragraph (d) shall authorise the Agent to act only on the instructions or with the agreement of the Name;

and the Agent undertakes with the Name to enter into an agreement in the form of the Standard Agents' Agreement with the managing agent of each of the syndicates in which the Name and the Agent shall from time to time agree that the Name is to participate (other than any Direct Syndicates).

- 2.3 In relation to those syndicates (if any) in respect of which the Agent is the managing agent and in which the Name and the Agent shall from time to time agree that the Name is to participate, the Name hereby agrees to appoint the Agent, and the Agent hereby agrees that it will act, as the Name's managing agent on the terms of the Standard Managing Agent's Agreement (General), with such allocations of the Name's overall premium limit, and for a remuneration on such basis and at such level, as shall from time to time be agreed between the Name and the Agent in accordance with clause 3.
- 2.4 Any appointment by the Name of the Agent as his co-ordinating agent, other than an appointment made on the execution of this Agreement and set out in the Appendix, shall be effected by a memorandum in writing signed by the Name and the Agent and setting out the year of account with effect from which the appointment is to take effect and the basis and level of the Agent's remuneration (if any) for acting as the Name's co-ordinating agent in accordance with Part C of Schedule 1.

### 3. **Syndicate List**

- 3.1 By signing a Syndicate List in respect of any year of account to which this Agreement applies:
- (a) where the Syndicate List specifies syndicates in which the Name is to participate in respect of that year of account otherwise than through a MAPA operated by the Agent, the Name and the Agent will be deemed to agree that the Name is to participate in those syndicates, and that the Agent is to act as his members' agent in relation to them, in respect of that year of account with such allocations of the Name's overall premium limit as are specified in the Syndicate List, and to agree that the managing agent of each such syndicate shall be entitled to remuneration in respect of that year of account at such level and on such basis as is specified in, or ascertained in accordance with formulae specified in, the Syndicate List;
  - (b) where the Syndicate List states that the Name is to participate in syndicates in respect of that year of account through a MAPA operated by the Agent, the Name and the Agent will be deemed to agree in respect of that year of account:
    - (i) that the Name is to participate through the MAPA in such syndicates with such allocations of the Name's overall premium limit (not exceeding in the aggregate the Name's overall MAPA participation specified in the Syndicate List) as the Agent may in its discretion, subject to any such limits as may be specified in the Syndicate List and to any applicable requirements of the Council, determine;
    - (ii) that the Agent will act as the Name's members' agent in respect of such syndicates for that year of account; and
    - (iii) that the managing agents of such syndicates shall be entitled to remuneration in respect of that year of account at such level and on such basis as the Agency may in its discretion, subject to any applicable requirements of the Council, agree with those managing agents;

- (c) if the Agent is a managing agent and the Syndicate List specifies Direct Syndicates in respect of which the Name is to participate in respect of that year of account otherwise than through a MAPA operated by the Agent, the Name will be deemed to appoint the Agent (or, in the case of a Direct Syndicate of which the Name is already a member, to agree that the appointment of the Agent as his managing agent is to continue) and the Agent will be deemed to agree to act (or to continue to act) as the Name's managing agent in respect of each of those Direct Syndicates on the terms of the Standard Managing Agent's Agreement (General) and with such allocations of the Name's overall premium limit, and for a remuneration on such basis and at such level, as are specified in, or ascertained in accordance with formulae specified in, the Syndicate List; and
- (d) if the Agent is a managing agent and the Syndicate List states that the Name is to participate in syndicates in respect of that year of account through a MAPA operated by the Agent and that those syndicates may include Direct Syndicates, then in respect of that year of account:
  - (i) the Name and the Agent will be deemed to agree that the Name is to participate in such syndicates with such allocations of the Name's overall premium limit (not exceeding in the aggregate the Name's overall MAPA participation specified in the Syndicate List) as the Agent may in its discretion, subject to any such limits as may be specified in the Syndicate List and to any applicable requirements of the Council, determine;
  - (ii) the Name and the Agent will be deemed to agree that the Agent will act as the Name's members' agent in respect of such syndicates;
  - (iii) the Name will be deemed to appoint the Agent as his managing agent in respect of such Direct Syndicates (if any) as may be determined in accordance with (i) above;
  - (iv) the Name and the Agent shall be deemed to agree that the Agent shall be entitled to remuneration for its services as managing agent of such Direct Syndicates at such level and on such basis as is specified in, or ascertained in accordance with formulae specified in, the Syndicate List;
  - (v) the Name and the Agent shall be deemed to agree that the managing agents of syndicates (other than Direct Syndicates) in which the Name is to participate through the MAPA shall be entitled to remuneration at such level and on such basis as the Agent may in its discretion, subject to any applicable requirements of the Council, agree with those managing agents.

3.2 By signing a Syndicate List in respect of a particular year of account the Name and the Agent shall also be deemed to agree in the same terms the matters referred to in clause 3.1 in respect of subsequent years of account , subject to any reduction in the Name's 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 managing agent of the syndicate allocated capacity of any syndicate in which the Name participates from time to time;] unless and until that Syndicate List is replaced by a new Syndicate List signed by the Name and the Agent (or by a memorandum signed by the Name and the Agent recording that there are no Contracted Syndicates in respect of a particular year of account) or the appointment of the Agent under this Agreement is terminated.

3.3 In relation to any syndicate (a "Provisional Syndicate") in respect of which the Name is to be a Provisional Insurer within the meaning of clause 8.2 of the Standard Managing Agent's Agreement (General) by virtue of paragraph (b) or (c) of that clause:

(a) if the Provisional Syndicate is not a Direct Syndicate, the Agent may with the previous agreement of the Name:

- (i) enter on behalf of the Name into an agreement in the terms of the Standard Managing Agent's Agreement (General) with the managing agent of the Provisional Syndicate; and
- (ii) agree on the amount of the Name's overall premium limit to be allocated to the Provisional Syndicate and the basis and level of the managing agent's remuneration;

in accordance with the relevant Agents' Agreement;

(b) if the Provisional Syndicate is a Direct Syndicate, the Name and the Agent may:

- (i) enter into an agreement in the terms of the Standard Managing Agent's Agreement (General); and
- (ii) agree on the amount of the Name'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 Name and the Agent may agree.

3.4 The Name and the Agent may sign a supplementary Syndicate List in respect of any year of account for the purpose of agreeing that the Name is to participate in a syndicate commencing business otherwise than at the beginning of the corresponding year and agreeing the amount of the Name's overall premium limit to be allocated to that syndicate and the basis and level of the remuneration of the managing agent of that syndicate, but not otherwise.

- 3.5 Each of the Name and the Agent agrees to sign such Syndicate Lists and supplementary Syndicate Lists as may be necessary from time to time to give effect to:
- (a) any exercise by or on behalf of the Name of any such right as is referred to in clause 2.2(d);
  - (b) any exercise by the Name of the rights conferred by clause 3.6;
  - (c) any exercise by the Agent of the powers conferred by clause 7.1(ob).
- 3.6 Where the Name is participating in a MAPA operated by the Agent, he may by notice in writing given to the Agent not later than 20 October in any year elect:
- (a) to terminate his participation in the MAPA with effect from the end of that year; and
  - (b) as regards those Contracted Syndicates in which the Name underwrites through the MAPA with a member's syndicate premium limit not less than the minimum for the time being prescribed by the Council for the purposes of this paragraph, to continue to participate in those syndicates for the following year with the same member's syndicate premium limits but otherwise than through the MAPA.
- 3.7 The Agent agrees that, if the Name gives such a notice as is referred to in clause 3.6 above, the Agent will continue to act as the Name's members' agent (and, in the case of a Direct Syndicate, as the Name's managing agent) in respect of such syndicates as are referred to in clause 3.6(b) above and will do all such acts and things and execute all such documents as are necessary or expedient on its part to give effect to the Name's election.

#### 4. **Services to be provided by the Agent**

The Agent shall, subject to clause 5.2:

##### *Syndicate participations*

- (a) advise the Name as to the syndicates in which he should participate, as to the amounts of his overall premium limit which should from time to time be allocated to each such syndicate and as to the exercise of any rights of the Name, or the response to any offer made to the Name, with respect to the Name's right of participation in any such syndicate;
- (b) from time to time agree with the Name and, if so required by the Council, inform Lloyd's of the allocation of the Name's overall premium limit among the Contracted Syndicates and ensure that the allocation is made in accordance with the requirements for the time being of the Council;

##### *Reviewing syndicate performance*

- (c) keep under review and report to the Name as and when appropriate on the performance of the Contracted Syndicates;

### *Syndicate List*

- (d) prepare a Syndicate List for the Name in respect of each year of account and send a copy of the Syndicate List to the Name by such date in every year as the Council may for the time being require and in any event not later than the beginning of the year corresponding to the relevant year of account;

### *Operation of trust funds*

- (e) [This paragraph is intentionally left blank];
- (f) [This paragraph is intentionally left blank];
- (g)
  - (i) [This sub-paragraph is intentionally left blank];
  - (ii) subject to clause 7.1(e), promptly following any calculation and (if required) certification contemplated by clause 4(ia), apply to the Regulating Trustee for the release from the Premiums Trust Fund or from any other trust funds from which assets can be distributed directly to the Name of all or such part (if any) as the Agent thinks fit or as the Name requires of the amount so calculated as the amount by which the assets held in the Personal Reserve Sub-Fund or other fund exceed the minimum amount required to be retained in those funds under requirements of the Council (taking into account, so far as relevant to that amount, any release from other premiums trust funds or special trust funds or other trust funds of the Name for which the Agent is also applying; and
  - (iii) where the Agent is applying to the Regulating Trustee for payment as contemplated in sub-paragraph (ii) and such payment is not to be made to the Name or under his control, direct the Regulating Trustee as regards such payment;
- (h) perform such functions, if any, as it may have under any other deed constituting a trust fund required or permitted to be maintained by the Name in connection with the Business;

### *Reserves*

- (i) advise the Name as to the requirements for the time being of the Council and of any other competent authorities relating to the composition and levels of the Personal Reserve Sub-Fund, the Special Reserve Trust Fund (if any) and the other assets maintained by the Name in connection with his underwriting business at Lloyd's, and as to the levels of the Personal Reserve Sub-Fund, of any Overseas Fund, of any Special Trust Fund and of the Special Reserve Trust Fund (if any) which the Agent considers it would be prudent for the Name to maintain;

### *Regulation*

- (j) take such action as is required of, or appropriate for, a members' agent in advising or assisting the Name as to compliance, or itself complying on behalf of the Name, with all laws, byelaws, regulations, rules, codes of practice, conditions and requirements applicable to the Name in connection with the Business and the Name's affairs at Lloyd's and in particular (but without limitation) the Agent shall:
  - (i) administer and assist the Name with the procedures for complying with the annual solvency test; and
  - (ii) so far as lies within its control and as is appropriate for a members' 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 Business and the Name's affairs at Lloyd's;
- (ja) comply with any requirements for the time being of the Council in relation to the preparation and filing of syndicate constitutions in relation to any Contracted Syndicate;

### *Taxation*

- (k) carry out such functions in relation to taxation matters connected with the Business as are required by any enactment or are appropriate for a members' agent, and use its reasonable endeavours to ensure compliance by the Name with any law or regulation of any foreign jurisdiction relating to taxation and applicable to the Business;

### *Winding up*

- (l) wind up the Business and the Name's affairs at Lloyd's if the Name ceases to carry on the business of underwriting at Lloyd's (save for the purpose of or in connection with business previously so underwritten);
- (m) if:
  - (i) the Name has terminated the appointment of a members' agent (other than the Agent) and that members' agent is continuing to provide services to the Name as a members' agent pursuant to clause 11.7 of the Members' Agent's Agreement between the Name and that members' agent; and
  - (ii) the Name and the Agent so agree:
    - advise and act on behalf of the Name in relation to the winding up of the business carried on by the Name through the members' agent whose appointment has been terminated and exercise on behalf of the Name such of the powers of the Name under the Managing Agent's Agreements entered into by the Name, through the agency of that members' agent, with the managing agents of the syndicates concerned as may be necessary or expedient for that purpose; and

*General*

- (n) advise the Name generally on all aspects of the Business and the Name's affairs at Lloyd's.

**5. Services to be provided where the Name has appointed a co-ordinating agent**

5.1 If the Name has appointed the Agent, and the Agent has agreed to act, as the Name's co-ordinating agent then, in addition to providing the services specified in clause 4, the Agent shall co-ordinate the administration of the Name's affairs at Lloyd's and in that connection deal on behalf of the Name with Lloyd's and with the Name's other members' agents and in particular (but without limitation) shall:

- (a) ensure in conjunction with the Name and with the Name's other members' agents that the aggregate of the Name's member's syndicate premium limits in respect of the syndicates of which the Name is or is to become a member for a particular year of account does not exceed the Name's overall premium limit for that year of account;
- (b) collate information received from the Name's other members' agents in connection with the annual solvency test;
- (c) [This paragraph is intentionally left blank];
- (ca) carry out such functions in relation to taxation connected with the Name's underwriting business at Lloyd's as a member of any syndicate (whether a Contracted Syndicate or otherwise) as are required by any enactment or are appropriate for a co-ordinating agent;
- (d) co-ordinate the 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 Name's affairs at Lloyd's; and
- (e) co-ordinate the winding-up of the Name's affairs at Lloyd's if (save for the purpose of or in connection with business previously so underwritten) the Name ceases to carry on the business of underwriting at Lloyd's;

but shall not be obliged (except where this Agreement expressly provides otherwise) to provide any of the services set out in clause 4 in relation to the business of underwriting and related activities carried on by the Name at Lloyd's as a member of a syndicate or syndicates other than the Contracted Syndicates.

5.2 If the Name has appointed a members' agent other than the Agent as his co-ordinating agent:

- (a) in substitution for the obligation imposed by paragraph (b) of clause 4, the Agent shall from time to time agree with the Name and inform the Name's co-ordinating agent of the allocation of the Name's overall premium limit among the Contracted Syndicates;
- (aa) sub-paragraphs (g)(ii) and (iii) of clause 4 shall not apply in relation to the Agent;

- (b) in substitution for the obligation imposed by paragraph (i) of clause 4, the Agent shall advise the Name as to the requirements for the time being of the Council and of any other competent authorities relating to the composition and levels of the Personal Reserve Sub-Fund, of any Overseas Fund, of any Special Trust Fund and the Special Reserve Trust Fund (if any) and shall advise the Name and the co-ordinating agent as to the levels thereof which the Agent considers it would be prudent for the Name to maintain;
- (ba) paragraph (ia) of clause 4 shall not apply in relation to the Agent;
- (c) paragraphs (j), (l) and (n) of clause 4 and paragraph (p) of clause 6.2 shall apply with the omission of references to the Name's affairs at Lloyd's;
- (ca) the Agent shall not be required by paragraph (n) of clause 6.2 to inform the Name of any amounts carried to the Personal Reserve for the purpose only of making future payments on account of or in respect of income tax;
- (d) in addition to the services to be provided by it under clause 4, as varied by this clause 5.2, the Agent shall provide to the Name's co-ordinating agent all such information and assistance as it may reasonably request in order to enable it to provide the services required by clause 4 (i) and (j) and clause 5.1 of the Members' Agent's Agreement between the Name and it; and
- (e) the Agent shall comply with any requirement imposed by the Name's co-ordinating agent:
  - (i) to reduce any allocation of the Name's overall premium limit among the Contracted Syndicates; and
  - (ii) [This sub-paragraph is intentionally left blank];

## 6. Duties of the Agent

- 6.1 The Agent undertakes to the Name, subject to clause 6.3(f), 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 members' agent at Lloyd's.
- 6.2 In providing services, performing its duties and exercising its powers under this Agreement the Agent shall, subject to clause 6.3:

### *Duties of care and skill*

- (a) use such skill, care and diligence as could reasonably be expected of a members' 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 Name and not allow its personal interest to conflict with the obligations owed by it to the Name under this Agreement;

- (c) account to the Name 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 Name 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 Name*

- (e) subject to clause 7.1(b), not use or apply any property which it receives or controls on behalf of the Name otherwise than for the benefit of the Name in accordance with the terms of this Agreement, the Premiums Trust Deed or any other applicable deed constituting a trust fund required or permitted to be maintained by the Name in connection with the Business 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 Name separate from its own property;
- (g) forthwith pay all monies required by any Premiums Trust Deed or by law to be so paid by it into a trust account of the Regulating Trustee to be held by it subject to the trusts of that Premiums Trust Deed, and forthwith pay all monies required by the deed constituting the Special Reserve Trust Fund and by any other deed constituting a trust fund required or permitted to be maintained by the Name in connection with the Business to be so paid by it to the trustees of that trust fund to be held by them subject to the trusts of that deed;
- (h) [This paragraph is intentionally left blank];
- (i) [This paragraph is intentionally left blank];
- (j) (i) [This sub-paragraph is intentionally left blank];  
(ii) without prejudice to clause 6.3(dc) below, as soon as practicable following receipt by the Regulating Trustee or by the trustees of any Special Trust Fund (subject to the direction of the Regulating Trustee) where the relevant Special Trust Direction permits payment directly to the Name of monies representing profits of the Name's underwriting business at Lloyd's determine the amount to be retained pursuant to clause 7.1(e) and, subject to such determination, to any applicable requirement of the Council and to the provisions of the Premiums Trust Deed or other relevant deed, promptly comply with paragraphs (g)(ii) and (iii) and (ia) of clause 4, where they apply;

*Information*

- (k) subject to paragraph (ma) below promptly forward to the Name all accounts, reports and other documents received by it from the managing agents of the Contracted Syndicates as are for the time being required by the Council to be forwarded to the Name and all other information received by it from the managing agents of the Contracted Syndicates which it reasonably considers to be material;

- (ka) where the Agent has requested funds under clause 9.1(a) for the purpose of making a payment in respect of a Contracted Syndicate in which the Name participates through a MAPA operated by the Agent, promptly forward to the Name, upon being requested by the Name so to do, a copy of the relevant audited underwriting account or statement (as the case may be) referred to in clause 9.1(a);
- (l) subject to paragraph (ma) below itself prepare and send to the Name:
  - (i) together with the documents referred to in paragraph (k) above, such commentary (if any) on those documents as it reasonably considers to be appropriate; and
  - (ii) such reports and other documents as may for the time being be required by the Council to be so prepared and sent;
- (m) subject to paragraph (ma) below disclose to the Name in good time any information in its possession relating to any of the Contracted Syndicates, or to any syndicate which the Agent has advised the Name to join or which the Name and the Agent have agreed that the Name should join, which could reasonably be expected to influence the Name in deciding whether to become or remain a member of, or to increase or reduce his participation in, any such syndicate, and use its reasonable endeavours to obtain any such information;
- (ma) 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 ;
- (n) without prejudice to paragraph (m) above but subject to paragraph (e) of clause 6.3, promptly inform the Name if:
  - (i) the Agent has served a notice pursuant to Clause 7.1(o) terminating the Name's participation in a Contracted Syndicate and inform the Name of the Name's right to continue to participate in such syndicate in the event that the Name enters into an agreement in the form of the Standard Managing Agent's Agreement (General) with the managing agent of such syndicate through the agency of another members' agent by 31st October (or by any later date which the managing agent concerned may permit) of the year in which such notice was served;
  - (ia) the Agent has served a notice pursuant to clause 7.1(oa) terminating the Name's participation in a Contracted Syndicate where such participation is through a MAPA operated by the Agent;
  - (ii) [This sub-paragraph is intentionally left blank];
  - (iii) pursuant to clause 7.1(e) the Agent requests the Regulating Trustee to retain in the Personal Reserve Sub-Fund held under the Premiums Trust Deed any amount out of profits of the Business which would otherwise be payable to the Name;

- (iv) any provision of this Agreement or of any Managing Agent's Agreement to which the Name is a party is varied or amended by byelaw pursuant to clause 14.2 of this Agreement or, as the case may be, clause 15.2 of that Managing Agent's Agreement; or
  - (v) the Agent exercises its powers of delegation under clause 7.1(i) or (j) in a manner which is material to the conduct of the Business as a whole;
- 
- (na) if the Agent has served a notice pursuant to clause 11.5 terminating its appointment under this Agreement, promptly inform the Name of the Name's right to continue to participate in any Contracted Syndicate in the event that the Name enters into an agreement in the form of the Standard Managing Agent's Agreement (General) with the managing agent of such syndicate through the agency of another members' agent by 31st October (or by any later date which the managing agent concerned may permit) of the year in which such notice was served;
  - (nb) if the managing agent of any Contracted Syndicate has served a notice pursuant to clause 11.6 of the relevant Managing Agent's Agreement terminating its appointment thereunder in relation to the Name and all of the other members of that syndicate for whom the Agent acts as members' agent (save where such members and the Name only participate in the syndicate through a MAPA operated by the Agent), promptly inform the Name of the Name's right to continue to participate in such syndicate in the event that the Name enters into an agreement in the form of the Standard Managing Agent's Agreement (General) with the managing agent of such syndicate through the agency of another members' agent by 31st October (or by any later date which the managing agent concerned may permit) of the year in which such notice was served;
  - (o) provide to the Name a statement of cash and other property held on his behalf by the Agent or by any trustee appointed by the Agent at the end of each year;

*Record keeping and disclosure*

- (p) maintain proper records relating to all transactions effected by the Agent concerning the Business or the Name's affairs at Lloyd's, make those records available for inspection to the Name or his professional advisers upon request during reasonable business hours and (upon request and payment of a reasonable charge) provide copies of those records to the Name or to his professional advisers, provided however that all such records shall be the property of the Agent;
- (q) use its best endeavours to obtain from the relevant managing agent copies of such accounting, statistical and other records relating to any Contracted Syndicate as the Name may reasonably request;

- (r) if the Name has formulated a claim against the Agent or the managing agent of a Contracted Syndicate relating in whole or in part to the performance of the Agent's duties under this Agreement or such managing agent's duties under the Managing Agent's Agreement between the Name and that managing agent, disclose to the Name or (as the case may require) use its best endeavours to obtain from the managing agent and disclose to the Name upon request all documents and information stored on computer records in the possession or under the control of the Agent or (as the case may be) the managing agent 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 Name copies of those documents and memoranda in legible form of such information, provided that the Agent shall not be obliged to obtain or to disclose to the Name any document or information which the Agent or (as the case may be) the relevant managing agent could not be compelled to produce in the course of proceedings instituted by the Name in relation to any such claim;

*Miscellaneous*

- (s) make available at the Agent's usual place of business during usual business hours appropriate personnel for personal consultation with the Name as reasonably required by him;
  - (t) on behalf of the Name, promptly serve such notices as the Name may request on the managing agent of any Contracted Syndicate (other than a Direct Syndicate) pursuant to and in accordance with the terms of the Managing Agent's Agreement between the Name and that managing agent and promptly forward to the Name all such notices as may be served on it as members' agent of the Name by the managing agent of any Contracted Syndicate under the relevant Managing Agent's Agreement; and
  - (u) comply with the requirements for the time being of the Council in relation to the holding of meetings of, among others, the members of the Contracted Syndicates.
- 6.3
- (a) The Agent shall not be treated as contravening paragraph (b) of clause 6.2 because of the existence of a personal interest if the existence, nature and extent of that interest have been fully disclosed to the Name in writing and the Name has agreed that the Agent may continue to act for him despite that interest.
  - (b) Paragraph (c) of clause 6.2 shall not oblige the Agent to account to the Name for any gain or profit if the existence, nature and extent of that gain or profit have been fully disclosed to the Name in writing and the Name has agreed that it may be retained by the Agent.
  - (c) Paragraph (b) of clause 6.2 shall not prevent the Agent from introducing the Name to membership of any syndicate of which the Agent is the managing agent or from acting as managing agent of and Direct Syndicate, and paragraph (c) of clause 6.2 shall not prevent the Agent from retaining any remuneration receivable by it in that capacity from the Name.
  - (d) Paragraph (d) of clause 6.2 shall not require the Agent to disclose to the Name the fact that it is acting as a members' agent for underwriting members of Lloyd's other than the Name.
  - (da) [This paragraph is intentionally left blank];

- (db) [This paragraph is intentionally left blank];
- (dc) Paragraph (j)(ii) of clause 6.2 shall not require the Agent to cause or direct payment of any amounts to be paid under that clause in sterling. The Agent may, unless it otherwise thinks fit or the Name otherwise requires, cause or direct payment in the currency in which those profits were received by the Regulating Trustee or other relevant trustee.
- (e) In relation to a Contracted Syndicate in which the Name participates through a MAPA operated by the Agent and not otherwise through the agency of the Agent, the Agent shall be treated as complying with paragraph (n) of clause 6.2 (in relation to any of the events described in sub-paragraphs (iv) and (v) of that paragraph) if it informs the Name of the relevant event in the next following MAPA brochure sent to the Name in accordance with any requirements made by the Council under the Underwriting Byelaw (No. 2 of 2003) or any other powers so enabling.

## 7. Powers of the Agent

- 7.1 The Name hereby authorises the Agent to exercise on his 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:

### *Premiums Trust Fund*

- (a) [This paragraph is intentionally left blank];
- (b) [This paragraph is intentionally left blank];
- (c) [This paragraph is intentionally left blank];
- (ca) to retain and apply income which is held in trust absolutely for the Name pursuant to the Premiums Trust Deed or pursuant to any Overseas Direction or Special Trust Direction as if it were part of the Premiums Trust Fund, Overseas Fund or Special Trust Fund from which it has been excluded by the terms of the relevant clause or provision and so that the Agent shall have the same powers, discretions and authorities in relation to such income as it would were that income still held as part of the relevant Premiums Trust Deed, Overseas Fund or Special Trust Direction;

### *Financial transactions*

- (d) to enter into such transactions and arrangements with respect to investments (including, without limitation, the acquisition and disposal of investments which fall (or which 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 as may be necessary or expedient for the purposes of or in connection with the Business;

- (da) (i) to request on behalf of the Name that monies be applied out of the Central Fund or the New Central Fund for the purpose of paying, or putting the trustees of the premiums trust fund appointed by the managing agent of any Contracted Syndicate or the trustees of any Overseas Fund or Special Trust Fund held in respect of any Contracted Syndicate in funds for the purpose of paying, any claims, expenses or outgoings on behalf of the Name; and
- (ii) to apply or procure the application of any such monies in discharge of the Name's obligations under clause 7.1(a) of the Managing Agent's Agreement between the Name and the managing agent of any Contracted Syndicate;

*Personal Reserve*

- (e) to request any other members' agent appointed as co-ordinating agent by the Name to arrange the retention of or, if there is no co-ordinating agent, request the Regulating Trustee to retain subject to the trusts of the relevant Premiums Trust Deed or other relevant deed such amounts out of the moneys received by them or it or any other trustee in connection with the Name's affairs at Lloyd's which would otherwise be payable to the Name as the Agent considers prudent to retain in the Personal Reserve Sub-Fund or other relevant trust fund;

*Regulation*

- (f) to take such action as is required of, or appropriate for, a members' agent in complying on behalf of the Name or assisting the Name to comply with all laws, byelaws, regulations, rules, codes of practice, conditions and requirements applicable to the Name in connection with the Business and the Name's affairs at Lloyd's;

*Legal proceedings*

- (g) 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 Name), such legal or other proceedings as the Agent considers necessary or expedient in connection with the Business;

*Power of attorney*

- (h) to sign and execute on behalf of the Name and as the attorney of the Name, in his name or otherwise, all deeds and documents relating to the Business or the Name's affairs at Lloyd's which the Name may be required by the Council to sign or execute or which the Agent may consider it necessary or expedient for the Name to sign or execute;

### *Delegation*

- (i) 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) provided that the Agent shall not be responsible for the acts and omissions of Lloyd's or any subsidiary of Lloyd's to which the Agent has made such a delegation pursuant to any express requirement of the Council to this effect;
- (j) without prejudice to paragraph (i) above, to substitute and appoint in its place an attorney or attorneys to exercise on behalf of the Name 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*

- (k) 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 Business, and, to the extent that it is competent to do so, 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 , 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*

- (l) to disclose to Lloyd's and to any other regulatory authority such information relating to the Business and the Name's affairs at Lloyd's as such authority may properly require;
- (m) to disclose to Lloyd's any breach by the Name of any requirement of the Council;

### *Miscellaneous*

- (n) to effect and accept on behalf of the Name service of notices, documents and other communications in connection with the performance of this Agreement and any Managing Agent's Agreement between the Name and the managing agent of a Contracted Syndicate;
- (o) to give notice (without being obliged under clause 2.2(c) to obtain the Name's agreement) to terminate the Name's participation in any Contracted Syndicate provided that at the same time the Agent also gives notice on behalf of all the other members of that syndicate for whom the Agent acts as members' agent to terminate their participations in that syndicate;

- (oa) where the Name participates in any Contracted Syndicate through a MAPA operated by the Agent, to give notice (without being obliged under clause 2.2(c) to obtain the Name's agreement) to terminate the Name's participation in any such Contracted Syndicate provided that at the same time the Agent also gives notice on behalf of all the other members of the syndicate participating in that MAPA to terminate their participations in that syndicate through that MAPA;
- (ob) as regards the Name's participation in any Contracted Syndicate through a MAPA operated by the Agent, to exercise on behalf of the Name (without being obliged to obtain the Name's agreement) all and any of the rights of the Name under clause 11A of the Managing Agent's Agreement between the Name and the Managing Agent of the Contracted Syndicate:
  - (i) in so far as such exercise is necessary or expedient for the purpose of ensuring that all underwriting members who participate in that MAPA for a year of account participate in all the syndicates to which the MAPA relates and that their member's syndicate premium limits (ignoring any part of such limits allocated otherwise than through the MAPA) bear the same proportion to each other for each such syndicate, in such manner and on such terms as the Agent may in its discretion think fit;
  - (ii) in any other case, in such manner and on such terms as the Name and the Agent may agree;
- (oba) as regards the Name's participation in any Contracted Syndicate through a MAPA operated by the Agent, subject to and in accordance with any requirements of the Council, to exercise on behalf of the Name (without being obliged to consult or comply with any instructions of the Name) all and any rights of the Name in relation to any proposed surrender arrangement;
- (obb) as regards the Name's participation in any Contracted Syndicate other than through a MAPA operated by the Agent, subject to and in accordance with any requirements of the Council, to exercise on behalf of the Name any of the rights conferred on the Name in relation to any proposed surrender arrangement in accordance with the Name's instructions;
- (oc) as regards the Name's participation in any Contracted Syndicate through a MAPA operated by the Agent, subject to and in accordance with any requirements of the Council, to exercise on behalf of the Name (without being obliged to consult or comply with any instructions of the Name) all and any of the rights of the Name in relation to any proposed syndicate merger or syndicate cessation.
- (od) as regards the Name's participation in any Contracted Syndicate other than through a MAPA operated by the Agent, subject to and in accordance with any requirements of the Council, to exercise on behalf of the Name any of the rights conferred on the Name in relation to any proposed syndicate merger or syndicate cessation.

- (p) generally to enter into such contracts and arrangements as are necessary or expedient for the purposes of or in connection with the Business or to discharge any of the functions of the Agent under or in connection with this Agreement, any Premiums Trust Deed, any Special Reserve Trust Deed any applicable Overseas Direction, any applicable Special Trust Direction or any other deed constituting a trust fund required or permitted to be maintained by the Name in connection with the Business and for this purpose to incur and discharge or cause to be discharged such expenses as are necessary and reasonable;
- (q) to give such notifications as may from time to time be required under any trust deed under which any Lloyd's deposit of the Name is held to permit the application of all or any part of that Lloyd's deposit in connection with the Name's affairs at Lloyd's and in accordance with the terms of that trust deed.

7.2 If the Name has appointed the Agent as his co-ordinating agent, the Name further authorises the Agent:

- (a) subject to any requirements of the Council, to require other members' agents of the Name to reduce any allocations of the Name's overall premium limit made by them on behalf of the Name to the extent necessary to ensure that the aggregate of the Name's members's syndicate premium limits in respect of the syndicates of which the Name is a member for a particular year of account does not exceed the Name's overall premium limit for that year of account;
- (b) [This paragraph is intentionally left blank];
- (c)
  - (i) to make such returns, deliver such accounts, statements, reports and other documents and disclose such information, and to make or procure to be made such payments on account or in respect of income tax as are required by the Income and Corporation Taxes Act 1988, the Tax Acts (as defined in section 831 of that Act) and the Taxes Management Acts 1970 and regulations made under any of those Acts in relation to or in connection with the Name's underwriting business at Lloyd's;
  - (ii) to the extent that it is competent to do so, at its sole discretion to dispute or appeal against any assessment for income tax or to apply for any relief in respect of income tax in relation to or in connection with the Name's underwriting business at Lloyd's.

7.3 If the Name has appointed a members' agent other than the Agent as his co-ordinating agent, then paragraphs (e), (f), (h) ,(l) and (q) of clause 7.1 shall apply with the omission of references to the Name's affairs at Lloyd's.

## 8. Remuneration

8.1 The Name shall pay to the Agent as remuneration for the services of the Agent set out in clause 4 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.

- 8.2 The Name shall pay to the Agent as remuneration for the services of the Agent set out in clause 4 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.
- 8.3 If the Name has appointed the Agent as his co-ordinating agent, the Name shall, if so specified in Part C of Schedule 1 or in the memorandum appointing the Agent as the Name's co-ordinating agent, pay to the Agent as remuneration for its services as co-ordinating agent a fee on the basis, at the rate and at the times specified in Part C of Schedule 1 or in the memorandum appointing the Agent as the Name's co-ordinating agent.
- 8.4 If the Agent performs the services set out in clause 4(l), the Name shall pay to the Agent a winding up fee on the basis, at the rate and at the time specified in Part D of Schedule 1.
- 8.5 If the Agent performs the services set out in clause 4(m), the Name shall pay to the Agent such remuneration (if any) for providing those services as the Name and the Agent may agree.
- 8.6 If the appointment of the Agent is terminated during a year by reason of the Name's death or bankruptcy or otherwise by operation of law or under clause 11.6(b), the fee referred to in clauses 8.1 and (if applicable) 8.3 shall not be payable in respect of the corresponding year of account, and any amounts already paid or retained by the Agent in respect or on account of such fees shall promptly be paid to the Regulating Trustee to be held by it subject to the trusts of the relevant Premiums Trust Deed.
- 8.7 If during a year the appointment of the Agent is terminated otherwise than in the circumstances set out in clause 8.6 or if a requirement of the Council is made in respect of the Name which results in that Name being suspended from underwriting, the amount of the fees payable to the Agent under clauses 8.1 and (if applicable) 8.3 shall be:

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

where:

- A is the amount of the fee which would have been payable to the Agent had the appointment of the Agent not been terminated or (as the case may be) a requirement of the Council has not been made during the relevant year which resulted in the Name being suspended from underwriting; and
- P is the number of days in the relevant year prior to the termination of the Agent's appointment or (as the case may be) the number of days in the relevant year on which the requirement of the Council resulting in the Name being suspended from underwriting was not in force.

Upon determination of the amount of the fee payable to the Agent, such payment shall be made between the Agent and the Regulating Trustee 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.

- 8.8 (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 Name 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.

## 9. **Obligations of the Name**

- 9.1 (a) The Name 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 Regulating Trustee or the trustees of the relevant Overseas Direction or Special Trust Direction to enable them or it (as the case may be) to put the trustees of a Premiums Trust Fund appointed by the managing agent of a Contracted Syndicate in funds, or to hold funds, subject to the directions of such a managing agent, for the purpose of paying all claims and all necessary and reasonable expenses and outgoings made or incurred in connection with the Business 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 (as the case may be) and shall comply with any request made by the Agent to make such funds available; provided however that, save in relation to a request for funds made by a managing agent of a Contracted Syndicate in which the Name participates through a MAPA operated by the Agent, the Name shall not be obliged to make any payment in or towards the satisfaction of any such request by the Agent for funds unless the Name 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 annual report 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 managing agent of the syndicate in respect of which the payment is requested, accompanied by a report signed by the syndicate auditors, pursuant to clause 7.1(a) of the Managing Agent's Agreement between the Name and that managing agent.
- (b) Any request for funds made under this clause shall specify the date for payment, which shall be not earlier than twenty-one days after the later of service of the request for payment and (if appropriate) submission of the statement signed by the managing agent, accompanied by the syndicate auditors' report, referred to in paragraph (a) above.

- (c) If the Name fails to comply with any request made by the Agent pursuant to paragraph (a) above, the Name shall reimburse to the Agent any sums which the Agent may be obliged to pay to a managing agent of the Name pursuant to clause 4(b) of the Agents' Agreement between the Agent and that managing agent.
- 9.2 The Name shall comply with any request made by the Agent to make funds available for the purpose of complying with the requirements for the time being of the Council relating to solvency. The Agent shall provide to the Name such evidence that funds are required for this purpose as the Name may reasonably request.
- 9.3 The Name shall promptly and diligently complete, sign or execute or otherwise deal with and return to the Agent or to the appropriate authority all documents forwarded to him by the Agent which are required to be completed, signed or executed or otherwise dealt with by the Name in connection with the Business or the Name's affairs at Lloyd's.
- 9.4 The Name shall forthwith notify the Agent if:
- (a) (i) a bankruptcy petition is presented against the Name;
  - (ii) the Name makes or proposes any composition with his creditors or otherwise acknowledges his insolvency;
  - (iii) the Name makes an application to the court for an interim order pursuant to section 253 of the Insolvency Act 1986;
  - (iv) a bankruptcy order is made against the Name by the due process of law of any country;
  - (v) the Name is adjudicated bankrupt, or adjudicated or declared insolvent, by the due process of law of any country;
  - (vi) a proposal is made in respect of the Name under section 2 of the Insolvency Act 1986;
  - (vii) 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 Name;
  - (viii) an administration order is made in respect of the Name under Schedule B1 to the Insolvency Act 1986;
  - (ix) a receiver, trustee or analogous officer is appointed in respect of the whole or any material part of the Name's property or assets;
  - (x) the Name 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 Name's bankruptcy, winding up or other insolvency or which seeks any reorganisation, dissolution or similar relief; or;
  - (xi) any action equivalent to any of the above is taken by or in respect of the Name;
- (b) the Name or a director, major shareholder, partner or (in the case of a limited liability partnership) member of the Name is convicted of a reportable criminal offence within the meaning of the Definitions Byelaw (No. 7 of 2005); or
- (c) there is any other change in the Name's personal circumstances which is material to the Business.

9.5 The Name shall inform the Agent of the appointment or proposed appointment of any members' agent in addition to the Agent to act as his members' agent and of the identity of any such other members' agent by not later than 30th April in the year immediately preceding the beginning of the first year of account in relation to which that other members' agent is to act as the Name's members' agent.

9.6 If at any time more than one members' agent is obliged to provide services as a members' agent to the Name (whether in respect of the same or different years of account), the Name shall ensure that at all times one of those members' agents is appointed to act as his co-ordinating agent and, if the Agent is not so appointed, the Name shall promptly notify the Agent of the identity of the co-ordinating agent.

## 10. **Appointment of Substitute Agent**

10.1 If the Council for any reason appoints a Substitute Agent to act for the Name in place of the Agent, the appointment shall take effect on the terms set out in clause 10.2 and the Name 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 Name 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 Name 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 Name in place of the Agent the remuneration payable by the Name 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 termination**

11.1 This Agreement shall take effect when executed and shall apply in relation to the year of account specified in the first Syndicate List signed by both the Name and the Agent and to subsequent years of account unless and until the appointment of the Agent is 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 11.7, terminate forthwith:

- (a) if the Name ceases to be an underwriting member of Lloyd's; or
- (b) if the Name'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 members' agent approved by the Council or if the Agent's right to act as a members' 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 7.1(i), 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 Name 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 Name in place of the Agent, this Agreement shall continue in effect, subject to clause 10.2, between the Name and that Substitute Agent.
- (d) If any suspension of the Agent's right to act as a members' agent is revoked or expires and the Agent thereafter continues to be a members' 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 Name and the Agent.

11.4 The Name may terminate the appointment of the Agent under this Agreement, subject to clause 11.7, by notice in writing given by the Name to the Agent by 30 September (or by any later date which the Agent may in any particular case permit) in any year and expiring at the end of that year.

11.5 The Agent may, with the prior approval of the Council and subject to clause 11.7, 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.

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

- (a) the Name fails to comply with a request made by the Agent in accordance with clause 9.1 to pay monies by the date specified under clause 9.1(b) as the date for payment;
- (b) any event falling within clause 9.4(a)(ii) to (xi) occurs in relation to the Name; or
- (c) the Name becomes, through mental or other infirmity, incapable of managing his affairs, unless the Name has validly appointed an attorney under the Enduring Powers of Attorney Act 1985 and the instrument appointing the attorney has within a reasonable time of the Name becoming so incapable been registered by the Court.

11.7 Upon the termination of the Agent's appointment pursuant to the preceding paragraphs of this clause 11, the Agent's authority under clause 2.2 shall also terminate. 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 wind up the Business and (if the Name has ceased to carry on the business of underwriting at Lloyd's save for the purpose of or in connection with business previously so underwritten) those affairs of the Name at Lloyd's in respect of which the Agent acts as the Name's members' agent. For these purposes, the Agent shall continue to have the powers, duties and discretions conferred by this Agreement:

- (a) in relation to any matter arising out of business of the Contracted Syndicates or any of them 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
- (b) so long as is necessary to enable the Agent to deal with and determine any other matters arising in connection with the Business or (if appropriate) the Name's affairs at Lloyd's; except that, if the Name has agreed with another members' agent that that other members' agent will act as the Name's members' agent in respect of the Business and those affairs or any part thereof in succession to the Agent, such obligations, duties and powers of the Agent shall continue only so far and so long as is necessary to ensure the effective transfer of the Agent's functions to that members' agent.

11.8 (a) Any appointment of the Agent as the Name's co-ordinating agent shall apply, if made on the execution of this Agreement and set out in the Appendix, in relation to a year of account specified in the first Syndicate List signed by both the Name and the Agent or, if effected under clause 2.4, in relation to the year of account in which it is stated to take effect in the memorandum effecting the appointment and, in either case, to subsequent years of account unless and until either:

- (i) the appointment of the Agent is terminated pursuant to the preceding paragraphs of this clause 11; or
- (ii) the appointment of the Agent as the Name's co-ordinating agent is terminated pursuant to paragraph (b) or (c) below.

- (b) The Name may terminate the appointment of the Agent as his co-ordinating agent (whether or not he also terminates the appointment of the Agent under clause 11.4) by notice in writing given 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 the Council has undertaken to notify the Name 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, **105**) or of any contribution to the New Central Fund under paragraph 4 of the New Central Fund Byelaw (No. 23 of 1996, **522**), 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 Name 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 1 January of the next succeeding year);
  - (b) if in any year the Council has given written notice to the Name pursuant to clause 8.2(b) of a Membership Agreement between the Council and the Name or any undertaking in like terms with that clause given by the Council in favour of the Name, notice may be given by or on behalf of the Name to the Agent within 30 days after the date of the Council's notice (but in any event before 1 January of the next succeeding year).
  - (c) The Agent may terminate its appointment as the Name's co-ordinating agent (whether or not it also terminates its appointment under clause 11.5) by notice in writing given to the Name by 31st May in any year and expiring at the end of that year.

11.9 If a requirement of the Council is made in respect of the Name which results in that Name being suspended from underwriting, the powers, duties and discretions of the Agent under this Agreement shall while the direction remains in force continue only to such extent as is compatible with the direction.

## 12. **Waiver of confidentiality**

12.1 In so far as 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 Name hereby:

- (a) consents to the persons listed in paragraphs (a), (b) and (c) of clause 12.2 providing to the Council any information or documents relating to the Business or the Name's affairs at Lloyd's 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 either of the persons listed in paragraphs (b) and (c) of clause 12.2 in respect of such information or documents.

12.2 The persons referred to in clause 12.1 are:

- (a) the Agent;
- (ab) any person to whom the Agent has under clause 7.1(i) delegated 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 to be exercised by it under this Agreement;
- (b) any managing agent with whom the Agent on behalf of the Name has entered into a Managing Agent's Agreement in relation to the Business or any part thereof; and
- (c) any auditor appointed by the Agent or by any such managing agent as is referred to in paragraph (b) above.

### **13. Power of attorney for managing agents**

13.1 The Name hereby appoints the managing agent of each syndicate (other than a Direct Syndicate) of which the Name shall become a member through the agency of the Agent under this Agreement as his attorney on his behalf and in his name or otherwise to do all acts and things and to sign and execute all deeds and documents which that managing agent may consider necessary or expedient for the purposes of or in connection with the exercise of any of the powers of that managing agent under the Managing Agent's Agreement between the Name and it relating to that syndicate.

13.2 The Name hereby appoints the Agent, in its capacity as the managing agent of any Direct Syndicate of which the Name may become a member under this Agreement, as his attorney on his behalf and in his name or otherwise to do all acts and things to sign and execute all deeds and documents which the Agent may consider necessary or expedient for the purposes of or in connection with the exercise of any of the powers of the Agent under the Managing Agent's Agreement between the Name and it relating to that Direct Syndicate.

13.3 The powers conferred by this clause include the power for the relevant managing agent to substitute and appoint in its place an attorney or attorneys to exercise on behalf of the Name any or all of the powers conferred on that managing agent by the Managing Agent's Agreement between the Name and it and to revoke any such appointment and to appoint in the place of such attorney or attorneys a substitute or substitutes as that managing agent thinks fit.

### **14. Variation**

14.1 None of the provisions of this Agreement, other than those provisions of Schedule 1 which are to be or may be completed or deleted by the parties, may be varied or amended in any manner whatsoever (otherwise than in consequence of the operation of clause 1.3, clause 10 or clause 14.2) 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.

- 14.2 (a) The Council may by byelaw vary or amend any of the provisions of this Agreement with effect from 1st 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 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.
- (c) Each of the Name and the Agent hereby agrees that it will be bound by any such variation or amendment in accordance with its terms and that this Agreement will take effect as so varied or amended with effect from such date.
- 14.3 Any agreement or arrangement (in either case whether or not legally binding and whether or not collateral to this Agreement) which has the effect of varying any of its terms (whether by altering the discretions, duties, rights or responsibilities of the agent or otherwise) shall for the purposes of clause 14.1 be treated as a variation of a term of this Agreement.

## 15. **Arbitration**

- 15.1 Subject to clause 15.2, 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 Name 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.
- 15.2 This clause 15 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 15 is excluded or modified by byelaw or by the Lloyd's Arbitration Scheme.

## 16. **Agreement not a partnership**

- 16.1 Nothing in this Agreement shall constitute a partnership between the Name and the Agent or between the Name and any or all of the other members of the Contracted Syndicates.
- 16.2 The Name 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 to give rise to any longer or further association or to constitute the syndicate as an entity continuing from year to year.

## 17. Notices

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 otherwise notified from time to time hereunder or, in the case of a notice served by telex or facsimile transmission, by submitting 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.

Provided that, if the Name is a body corporate and is not incorporated in the United Kingdom, it shall appoint an agent for service of notices under this Agreement and shall keep the Agent informed of any changes in that appointment. The first such agent shall be

[ ].

## 18. Governing law and jurisdiction

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

18.2 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 this Agreement has been executed by or on behalf of the parties hereto the day and year set out in the Appendix.

## Schedule 1 - Agent's Fees

### Part A: Annual Fee

1. The fee payable to the Agent under clause 8.1 in relation to each year of account shall be:

in relation to the Name's overall premium limit allocated by the Agent for that year of account other than through a MAPA operated by that Agent:

\_\_\_\_\_ % of the Name's overall premium limit so allocated\*

OR

£\_\_\_\_\_\*

OR

\_\_\_\_\_ % of the first £\_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of the next £\_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of the next £\_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of any excess over £\_\_\_\_\_

of the Name's overall premium limit so allocated\*†

subject to a minimum/maximum\* of £\_\_\_\_\_\*

AND/OR (where applicable) either:

- (a) (where the Name is to belong to the sole MAPA operated by the Agent) in relation to the Name's overall premium limit allocated by the Agent for that year of account through the MAPA operated by that Agent:

\_\_\_\_\_ % of the Name's overall premium limit so allocated\*

OR

£\_\_\_\_\_\*

OR

\_\_\_\_\_ % of the first £\_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of the next £\_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of the next £\_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of any excess over £\_\_\_\_\_

of the Name's overall premium limit so allocated\*

subject to a minimum/maximum\* of £\_\_\_\_\_ \*†; or

- (b) (where the Agent operates two MAPAs and the Name is to belong to both such MAPAs):

- (i) in relation to the Name's overall premium limit allocated by the Agent for that year of account through MAPA [insert number or other description] operated by that Agent:

\_\_\_\_\_ % of the Name's overall premium limit so allocated\*

OR

£ \_\_\_\_\_ \*

OR

\_\_\_\_\_ % of the first £ \_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of the next £ \_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of the next £ \_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of any excess over £ \_\_\_\_\_

of the Name's overall premium limit so allocated\*

subject to a minimum/maximum \* of £ \_\_\_\_\_ \*; and

- (ii) in relation to the Name's overall premium limited allocated by the Agent for that year of account through MAPA [insert number or other description] operated by that Agent:

\_\_\_\_\_ % of the Name's overall premium limit so allocated\*

OR

£ \_\_\_\_\_ \*

OR

\_\_\_\_\_ % of the first £ \_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of the next £ \_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of the next £ \_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of any excess over £ \_\_\_\_\_

of the Name's overall premium limit so allocated\*

subject to a minimum/maximum \* of £ \_\_\_\_\_ \*†.

2. The fee payable to the Agent under Clause 8.1 calculated in accordance with paragraph 1 above shall be payable monthly/quarterly/annually in advance/arrears\* on [date or dates\*] in the year corresponding to the relevant year of account.

\*As specified in the Appendix.

†This provision is optional.

## Part B - Profit Commission

### 1. Basis of calculation

The profit commission payable to the Agent in respect of any year of account (the "Relevant Year") shall be the specified percentage of the Name's Overall Profit (if any) for the Relevant Year in respect of all the Contracted Syndicates, the Overall Profit being calculated in accordance with the following provisions of this Schedule.

The specified percentage for this purpose is \_\_\_\_\_%\*

OR

The specified percentage for this purpose shall be the amount set out below against the amount of the Name's Overall Profit expressed as a percentage of the Name's overall premium limit allocated by the Agent for that year of account.

Name's Overall Profit	Specified percentage
(i) up to and including _____%	_____%
(ii) in excess of _____% up to & including _____%	_____%
(iii) in excess of _____%	_____%*

\*As specified in the Appendix.

### 2. Determination of underwriting profits and losses

For the purposes of this Schedule, the profit or loss of each Contracted Syndicate shall, subject to paragraph 4, be the amount of the closed year of account profit or loss as specified in the audited underwriting account of that syndicate for the Relevant Year attributable to the Name, but any necessary adjustments shall be made to ensure that:

- investment income shall be taken into account before deduction of tax;
- 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;
- foreign currency exchange gains and losses shall be taken into account;
- no deduction shall be made for any United Kingdom or overseas taxation on underwriting profits; and
- deductions shall be made for syndicate expenses, for Lloyd's subscriptions, for Central Fund contributions, for New Central Fund contributions, for High Level Stop Loss Fund contributions, for the Agent's annual fee and for the managing agent's annual fee and profit commission, but not for any other charges, costs or expenses incurred by the Name.

### 3. Deficit clause: basic calculation of Overall Profit

The Name's Overall Profit shall be calculated by aggregating the Name's profit or loss in respect of all the Contracted Syndicates for the Relevant Year.

4. Deficit clause: run-off accounts

- (a) This paragraph applies where a year of account (a “Run-off Year”) of a Contracted Syndicate (a “Run-off Syndicate”) 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 Run-off Syndicate (the “Normal Closing Date”); provided that the expression “Run-off year” shall not include a year of account earlier than the 1990 year of account.
- (b) For the purpose of calculating the Name’s Overall Profit for the relevant year of account, the amount attributable to the Name of the run-off account result of the Run-off Syndicate as shown in the audited annual report prepared as at the Normal Closing Date, adjusted as provided in sub-paragraphs (a) to (e) of paragraph 2, shall be deemed to be the Name’s profit or loss in respect of the Run-off Syndicate for that year of account.
- (c) At each anniversary of the Normal Closing Date up to and including the date at which the Run-off Year is closed, the amount attributable to the Name of the result of the Run-off Year for the calendar year ended on that anniversary, as shown in the audited annual report of the Run-off Syndicate prepared as at that anniversary, shall be combined with the Name’s profit or loss in respect of the other Contracted Syndicates for the year of account closed at that anniversary and shall for the purpose of calculating the Name’s Overall Profit for that year of account be deemed to be a profit or loss of a Contracted Syndicate for that year of account.

5. [This paragraph is intentionally left blank];

6. Payment

The Agent’s profit commission shall be payable forthwith upon application by the Agent to the Regulating Trustee pursuant to clause 6.2(j)(ii) (or upon application by the Name’s co-ordinating agent pursuant to clause 6.2(j)(ii) of its agreement with the Name) for the Relevant Year or of such part thereof as the Agent determines should be paid having regard to clause 7.1(e) or to any applicable requirements of the Council, provided that, if the Agent determines that none of the Name’s Overall Profit for the Relevant Year should be paid to the Name, the Agent’s profit commission shall be payable forthwith upon such determination.

7. Interpretation

In calculating the profit commission payable to the Agent, account shall be taken only of the results of syndicates of which the Name became a member through the agency of the Agent. Accordingly, in this Schedule the expression “Contracted Syndicate” does not include a syndicate of which the Name became a member otherwise than through the agency of the Agent (but so that if in respect of the first year of account in respect of which the Agent acts as the Name’s members’ agent the Name continues to be a member of a syndicate of which he was previously a member, the Name shall for the purposes of this paragraph be treated as becoming a member of that syndicate for that year of account through the agency of the Agent).

### Part C - Co-ordinating Agent's Fee

If the details set out below are completed, the fee payable to the Agent as remuneration for its services as co-ordinating agent in relation to each year of account shall be:

\_\_\_\_\_ % of the Name's overall premium limit allocated for that year of account\*

OR

£ \_\_\_\_\_ \*

OR

\_\_\_\_\_ % of the first £ \_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of the next £ \_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of the next £ \_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of any excess over £ \_\_\_\_\_

of the Name's overall premium limit allocated by the Agent for that year of account\*

OR

[Alternative basis of remuneration]\*

subject to a minimum/maximum\* of £ \_\_\_\_\_ \*†

payable monthly/quarterly/annually\* in advance/arrears\* on [date or dates\*] in the year corresponding to the relevant year of account.

\*As specified in the Appendix or in the memorandum appointing the Agent as the Name's co-ordinating agent.

†This provision is optional.

## Part D - Winding up Fee

The fee payable to the Agent under clause 8.4 shall be:

£ \_\_\_\_\_ \*

OR

\_\_\_\_\_ % of the Name's overall premium limit allocated by the Agent for the last year of account of the Business\*

OR

\_\_\_\_\_ % of the first £ \_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of the next £ \_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of the next £ \_\_\_\_\_ or any part thereof

\_\_\_\_\_ % of any excess over £ \_\_\_\_\_

of the Name's overall premium limit allocated by the Agent for the last year of account of the Business\*

OR

the same amount as the annual fee payable to the Agent in respect of the last year of account of Business\*

subject to a minimum/maximum\* of £ \_\_\_\_\_ \*†

payable at the commencement of the winding up.

\*As specified in the Appendix.

†This provision is optional.

**Schedule 2 - The Standard Agents' Agreement**  
[FORM OF STANDARD AGENTS' AGREEMENT]

**Schedule 3 - The Standard Managing Agent's Agreement (General)**  
[FORM OF STANDARD MANAGING AGENT'S AGREEMENT (GENERAL)]

## THE AGENTS' AGREEMENT

THIS AGREEMENT is made on

BETWEEN:

(1) \_\_\_\_\_ whose registered/principal office is at

(the "Members' Agent"); and

(2) \_\_\_\_\_ whose registered/principal office is at

(the "Managing Agent").

WHEREAS

- (A) The Members' Agent has been appointed by certain underwriting members of Lloyd's to act as their members' agent in respect of all or part of their underwriting business and affairs at Lloyd's.
- (B) Such underwriting members wish to conduct underwriting business at Lloyd's as members of one or more syndicates in relation to which the Managing Agent is the managing agent and have authorised the Members' Agent on their behalf to enter into an agreement with the Managing Agent to govern the conduct of such underwriting business.
- (C) The Members' Agent and the Managing Agent wish to establish certain obligations between themselves in order to enable them to fulfil their respective obligations as members' agent and as managing agent for such underwriting members of Lloyd's.

NOW IT IS AGREED as follows:

### 1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

*"Agents' Syndicate List"* means a schedule prepared in respect of a year of account listing the Relevant Syndicates for that year of account and specifying in relation to each Relevant Syndicate the Names who are members of that syndicate, each Name's member's syndicate premium limit, the basis and level of the Managing Agent's remuneration payable by each of the Names and the amount to be paid to the Members' Agent by the Managing Agent's Trustees in respect or on account of remuneration under clause 3(h), and where applicable, the formulae for ascertaining such syndicate premium limit and remuneration and containing such other particulars as may for the time being be required by the Council;

*“the Business”*, in relation to a Name, means the business of underwriting and related activities carried on by the Name at Lloyd’s and in respect of which the Managing Agent is appointed managing agent of the Name in accordance with clause 2 of this Agreement;

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

*“Equitas reinsurance contract”* has the meaning given in the Reconstruction and Renewal Byelaw (No. 22 of 1995);

*“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);

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;

*“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 the Standard Managing Agent’s Agreement (General) in respect of a particular syndicate;

*“Managing Agent’s Agreement”* means an agreement between a Name and a managing agent of that Name in the terms of the Standard Managing Agent’s Agreement (General);

*“Managing Agent’s Trustees”* means the trustees of the Premiums Trust Fund appointed by the Agent in its capacity as the Name’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 Name’s managing agent to appoint trustees, the trustees of the Overseas Fund or Special Trust Fund (as the case may be) so appointed;

*“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’s Agreement”* means an agreement between a Name and a members’ agent in the form of the Standard Members Agent’s Agreement;

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

*“Names”* means those underwriting members of Lloyd’s for whom the Members’ Agent acts as members’ agent and whose names are from time to time set out in the Agents’ Syndicate List and includes (i) their executors or administrators, trustees in bankruptcy and any receiver appointed under the Mental Health Act 1983 and any person performing similar functions in any jurisdiction (ii) on the dissolution of a Scottish Limited Partnership, any general partner;

*“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;

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

*“Premiums Trust Fund”* means the trust fund or funds to which all premiums received by or on behalf of a Name in respect of the underwriting business carried on by him at Lloyd’s are required to be transferred under the Financial Services Authority’s requirements;

*“Relevant Syndicate”* means a syndicate of which any of the Names is a member and in respect of which the Members’ Agent acts as his members’ agent and of which the Managing Agent is the managing agent, and the *“Relevant Syndicates”* means all of such syndicates;

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

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

*“Standard Members’ Agent’s Agreement”* 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 Managing Agent’s Agreement (General)”* 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);

*“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 and Arbitration Agreement”* means an agreement to be entered into in relation to each Relevant Syndicate between the Managing Agent, the Names, the Members’ Agent, the other members of that Relevant Syndicate and the members’ agents through the agency of which those other members participate in that Relevant Syndicate, in the form set out in Schedule 2 to the Standard Managing Agent’s Agreement (General); and

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

- 1.2 (a) For the purpose of interpreting references in this Agreement to a syndicate and like expressions, 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 participation (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 any thing 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];
- 1.3 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 on the Members’ Agent or to the Managing Agent.
- 1.4 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 a Name 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.
- 1.5 References in this Agreement to the “Members’ Agent” and the “Managing Agent” include, where any such agent is a partnership, any persons who are for the time being carrying on, under whatever name or style, the business of that partnership, and include any Substitute Agent.

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.

## 2. **Appointment of the Managing Agent**

2.1 The Members' Agent and the Managing Agent agree that by signing an Agents' Syndicate List in respect of any year of account to which this Agreement applies:

- (a) the Members' Agent will be deemed to confirm that it has entered into a Members' Agent's Agreement with each of the Names and that each such Members' Agent's Agreement remains in full force and effect;
- (b) the Members' Agent on behalf of each of the Names will be deemed to appoint the Managing Agent as the managing agent of that Name (or, in the case of a Relevant Syndicate of which that Name is already a member, to agree that the appointment of the Managing Agent as his managing agent is to continue), and the Managing Agent will be deemed to agree to act (or to continue to act) as the managing agent of that Name, in respect of the syndicate or syndicates in which that Name is shown as participating in the Agents' Syndicate List for that year of account on the terms of the Standard Managing Agent's Agreement (General), with such allocations of the Name's overall premium limit, and for a remuneration on such basis and at such level, as are specified in, or ascertained in accordance with formulae specified in the Agents' Syndicate List.

2.2 By signing an Agents' Syndicate List in respect of a particular year of account the Members' Agent and the Managing Agent shall also be deemed to agree in the same terms the matters referred to in clause 2.1 in respect of subsequent years of account, subject to any reduction in the member's syndicate premium limit of any Name arising as a result of a reduction made in accordance with the Syndicate Pre-emption Byelaw (No. 19 of 1997) by the Managing Agent; unless and until that Agents' Syndicate List is replaced by a new Agents' Syndicate List signed by the Members' Agent and the Managing Agent or this Agreement is terminated.

2.3 In relation to any syndicate (a "Provisional Syndicate") in respect of which the Managing Agent is the managing agent and any of the Names is to be a Provisional Insurer within the meaning of clause 8.2 of the Standard Managing Agent's Agreement (General) by virtue of paragraph (b) or (c) of that clause, the Members' Agent may:

- (a) enter on behalf of any such Name into an agreement in the terms of the Standard Managing Agent's Agreement (General) with the Managing Agent; and
- (b) agree with the Managing Agent the amount of the relevant Names' overall premium limits to be allocated to the Provisional Syndicate and the basis and level of the Managing Agent's remuneration;

by signing a written memorandum recording their agreement or in such other manner as the Members' Agent and the Managing Agent may agree.

- 2.4 Each of the Members' Agent and the Managing Agent agrees that it will 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 exercise by or on behalf of any Name of the rights conferred by clause 11A of a Managing Agent's Agreement between that Name and the Managing Agent relating to a Relevant Syndicate;
  - (b) where a nomination or nominations have been made under that clause in respect of part only of a Name's Prospective Participation, to enable that Name to underwrite as a member of the Relevant Syndicate for the Succeeding Year with a member's syndicate premium limit equal to the remaining part (and for this purpose the expressions "Name's Prospective Participation" and "Succeeding Year" have the meanings respectively given to them by that Managing Agent's Agreement);
  - (c) to give effect to any election made by a Name under clause 3.6 of the Members' Agent's Agreement between that Name and the Members' Agent which affects any Relevant Syndicate in which the Name underwrites through the MAPA with a member's syndicate premium limit not less than the minimum for the time being prescribed by the Council for the purposes of that clause.

### 3. **Duties of the Managing Agent**

The Managing Agent shall:

- (A) provide to the Members' Agent such information in its possession in relation to each of the Relevant Syndicates as is necessary to enable the Members' Agent to perform its obligations to each of the Names under the Members' Agent's Agreement between it and that Name and to comply with the requirements of the Council; and
- (B) perform its functions under the Premiums Trust Deed between each of the Names and the Members' Agent or Lloyd's, as the case may be, and under the Managing Agent's Agreement entered into by it with each of the Names and under any applicable Overseas Direction or Special Trust Direction so as to enable the Members' Agent to perform those obligations and comply with those requirements;

and in particular in (but without limitation) shall:

#### *Information and reporting*

- (a) prepare and send to the Members' Agent such annual reports, personal accounts and other reports and documents in respect of the Relevant Syndicates as are for the time being required by the Council to be so prepared and sent;
- (b) subject to paragraph (ca) below disclose to the Members' Agent in good time any information in its possession relating to any of the Relevant Syndicates and its activities, or any developments in respect of those activities, which could reasonably

- be expected to influence any of the Names in deciding whether to become or remain a member of, or to increase or reduce his participation in, that syndicate;
- (c) without prejudice to paragraph (b) above, promptly inform the Members' Agent if a decision is made by or on behalf of the Managing Agent to allow a year of account of any of the Relevant Syndicates to remain open after the date as at which it would normally have been closed (in which event the Managing Agent shall also inform the Members' Agent of the reasons for that decision);
  - (ca) 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;
  - (d) 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 Relevant Syndicates;
  - (da) comply with the requirements of the Council for the time being in relation to the holding of meetings of, amongst others, the members of the Relevant Syndicates;

*Record keeping and disclosure*

- (e) make available for inspection to the Members' Agent upon request during usual business hours all accounting, statistical and other records maintained by it in relation to each Relevant Syndicate and all accounting and other records maintained by it in relation to each Premiums Trust Fund and (upon request and payment of a reasonable charge) provide copies of those records to the Members' Agent;
- (f) if any of the Names has formulated a claim against the Managing Agent relating in whole or in part to the performance of the Managing Agent's duties under the relevant Managing Agent's Agreement, disclose to the Members' Agent 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 copies of those documents and memoranda in legible form of such information to the Members' Agent, provided that the Managing Agent shall not be obliged to disclose to the Members' Agent any document or information which the Managing Agent could not be compelled to produce in the course of proceedings instituted by the Name in relation to any such claim;

*Premiums Trust Fund*

- (g) perform its functions under each of the Premiums Trust Deeds entered into between the Members' Agent or Lloyd's, as the case may be, and each of the Names and under or in connection with any applicable Overseas Direction or Special Trust Direction; and

- (h) direct the Managing Agent's Trustees from time to time, subject to any applicable requirements of the Council, to pay to the Members' Agent such sums in respect or on account of the remuneration payable by each of the Names to the Members' Agent as are specified in the Agents' Syndicate List.

#### 4. **Duties of the Members' Agent**

The Members' Agent shall:

- (A) provide to the Managing Agent such information in its possession in relation to each of the Names as is necessary to enable the Managing Agent to perform its obligations to each of the Names under the Managing Agent's Agreement entered into by it with that Name and to comply with the requirements of the Council; and
- (B) shall perform its functions under the Premiums Trust Deed, under the Members' Agent's Agreement entered into by it with each of the Names and under or in connection with any applicable Overseas Direction or Special Trust Direction so as to enable the Managing Agent to perform those obligations and comply with those requirements;  
and in particular (but without limitation) shall:

##### *Underwriting liabilities*

- (a) use its best endeavours to procure that each of the Names complies with his obligation under clauses 9.1(a) of the Members' Agent's Agreement between that Name and the Members' Agent;
- (b) reimburse to the Managing Agent all reasonable legal and other costs and expenses incurred by it in taking action to recover from a Name any sums payable by that Name under clause 7.1(a) of the Managing Agent's Agreement between that Name and the Managing Agent in respect of claims or necessary and reasonable expenses or outgoings made or incurred in connection with the underwriting business carried on by that Name at Lloyd's, provided however that the Members' Agent shall not be obliged to reimburse such costs and expenses to the Managing Agent if the Managing Agent has not allowed the Members' Agent a reasonable opportunity to comply with its obligations under paragraph (a) above in relation to that Name;

##### *Information*

- (c) notify the Managing Agent:
  - (i) promptly if it becomes aware of any material breach by a Name of the Members' Agent's Agreement between that Name and the Members' Agent or of any grounds by reason of which it could terminate that Members' Agent's Agreement;
  - (ii) forthwith if it receives any notice from a Name under clause 9.4(a) or (b) of the Members' Agent's Agreement between that Name and the Members' Agent;
  - (iii) forthwith if it receives from a Name or serves on a Name notice of termination of the Members' Agent's Agreement between that Name and the Members' Agent;

- (iv) forthwith if the Members' Agent's Agreement between a Name and the Members' Agent is terminated;
- (v) forthwith if the Members' Agent has served a notice under clause 7.1(o) of the Members' Agent's Agreement; and
- (ca) 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 Relevant Syndicates;

*Miscellaneous*

- (d) receive on behalf of any Name and promptly forward to him such notices as the Managing Agent may serve on it as members' agent of that Name under the relevant Managing Agent's Agreement ; and
- (da) comply with any requirements for the time being of the Council in relation to the preparation and filing of syndicate constitutions in relation to the Relevant Syndicates.

**5. Commencement and termination**

- 5.1 This Agreement shall take effect when executed and shall apply in relation to the year of account specified in the first Agents' Syndicate List signed by both the Members' Agent and the Managing Agent and to subsequent years of account unless and until terminated pursuant to any of the following provisions of this clause 5.
- 5.2 This Agreement shall terminate if there cease to be any Relevant Syndicates as defined in clause 1.1.
- 5.3 (a) Except in so far as the Council may otherwise direct, this Agreement shall be suspended forthwith if the Members' Agent or the Managing Agent ceases for any reason to be an underwriting agent approved by the Council or if the Members' Agent's right to act as a members' agent or the Managing 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 5.3, 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) If before the expiration of the period referred to in paragraph (a) above the Members' Agent or, as the case may be, the Managing Agent has delegated the services to be provided, the duties to be performed and the powers to be exercised by it under the Members' Agent's Agreements or, as the case may be, the Managing Agent's Agreements between it and the Names (or such services, duties and powers as may in the circumstances be appropriate) pursuant to clause 11.3(b) of the relevant Members' Agent's Agreements or, as the case may be, Managing Agent's Agreements, this Agreement shall, subject to the requirements of the Council, continue in effect (to the extent appropriate) between the Managing Agent or, as the case may be, the Members' Agent 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 Names in place of the Members' Agent or the Managing Agent, this Agreement shall, subject to the requirements of the Council, continue in effect (to the extent appropriate) between the Managing Agent or, as the case may be, the Members' Agent and that Substitute Agent.
- (d) If any suspension of the Members' Agent's right to act as a members' agent or, as the case may be, the Managing Agent's right to act as a managing agent is revoked or expires and the Members' Agent or, as the case may be, the Managing Agent thereafter continues to be an underwriting agent approved by the Council, this Agreement shall on the termination of the delegation referred to in paragraph (b) above or of the appointment of the Substitute Agent referred to in paragraph (c) above take effect again between the Members' Agent and the Managing Agent.

5.4 Upon the termination of this Agreement pursuant to the preceding paragraphs of this clause 5 the Members' Agent and the Managing Agent shall nevertheless continue to be bound by the duties imposed by this Agreement:

- (a) in relation to any matter arising out of business of any of the Relevant Syndicates 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
- (b) so long as is necessary to enable both the Members' Agent and the Managing Agent to deal with and determine any matters arising in connection with the business of any of the Relevant Syndicates allocated to a year of account which has been closed (whether before or after the termination of this Agreement).

## 6. **Syndicate and Arbitration Agreement**

The Members' Agent hereby authorises and directs the Managing Agent on its behalf to enter into a Syndicate and Arbitration Agreement in each year in relation to each Relevant Syndicate with the Managing Agent, every member of that syndicate and every members' agent through the agency of which those members participate in that syndicate.

## 7. **Waiver of confidentiality**

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 Members' Agent and the Managing Agent each hereby waives all duties of confidentiality owed to it by either:

- (a) the other; or
- (b) any auditor appointed by either of them;

which attaches to any information or documents relating to the business of any of the Relevant Syndicates or any part thereof whether or not in response to a request by the Council.

## **8. Variation**

- 8.1 None of the provisions of this Agreement may be varied or amended in any manner whatsoever (otherwise than in consequence of the operation of clause 1.3, clause 5.3 or clause 8.2) 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.
- 8.2 (a) The Council may by byelaw vary or amend any of the provisions of this Agreement with effect from 1st 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 as it thinks necessary or expedient for the purpose of or in connection 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.
- (c) Each of the Members' Agent and the Managing Agent hereby agrees that it will be bound by any such variation or amendment in accordance with its terms and that this Agreement will take effect as so varied or amended with effect from such date.

## **9. Arbitration**

- 9.1 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 Members' Agent 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.

## **10. Notices**

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 or sending it by prepaid post to the address of the relevant party set out above or otherwise notified from time to time hereunder or, in the case of a notice served by telex or facsimile transmission, by transmitting it to such number as the party on which 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 48 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.

**11. Governing law and jurisdiction**

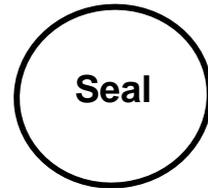
11.1 This Agreement is governed by, and shall be construed in accordance with, the laws of England.

11.2 Each of the parties hereby irrevocably submits for all purposes of and in connection with this Agreement to the exclusive jurisdiction to the courts of England.

IN WITNESS whereof this Agreement has been executed by or on behalf of the parties hereto the day and year first above written.

*[In the case of a company]*

THE COMMON SEAL of the Members' Agent was hereunto affixed in the presence of:

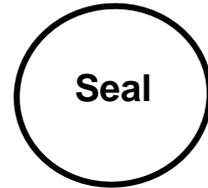


Director

Director/Secretary

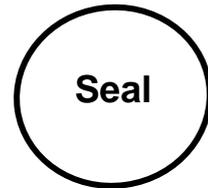
*[In the case of a partnership]*

SIGNED SEALED AND DELIVERED by a partner duly authorised for and on behalf of the Members' Agent in the presence of:



*[In the case of a company]*

THE COMMON SEAL of the Managing Agent was hereunto affixed in the presence of:

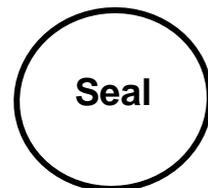


Director

Director/Secretary

*[In the case of a partnership]*

SIGNED SEALED AND DELIVERED by a partner duly authorised for and on behalf of the Managing Agent in the presence of:





## THE MANAGING AGENT'S AGREEMENT (GENERAL)

THIS AGREEMENT is made between:

- (1) A person who is or is about to become an underwriting member of Lloyd's as more particularly identified in Recital (D) below (the "Name"); and
- (2) An underwriting agent which is listed as a managing agent on the register of underwriting agents maintained at Lloyd's, as more particularly identified in Recital (D) below (the "Agent").

WHEREAS

- (A) The Name wishes to appoint the Agent to act as his managing agent in respect of the underwriting business carried on by him as a member of a particular syndicate at Lloyd's.
- (B) (Where the syndicate referred to in paragraph (A) above is not a Direct Syndicate (as defined below)) the Name has entered into an agreement appointing an underwriting agent to act as his members' agent in respect of all or part of his underwriting business at Lloyd's, and that members' agent has entered into a further agreement with the Agent under which provision is made for the members' agent on behalf of the Name to appoint the Agent to act as the Name's managing agent in respect of certain of his underwriting business at Lloyd's on the terms of this Agreement.
- (C) (Where the syndicate referred to in paragraph (A) above is a Direct Syndicate (as defined below)) the Name has entered into an agreement appointing the Agent to act as his members' agent in respect of all or part of his underwriting business at Lloyd's and providing for the appointment of the Agent to act as his managing agent in respect of certain of his underwriting business at Lloyd's on the terms of his Agreement.
- (D) The identity of the Name and the Agent are specified in the agreements referred to in paragraph (B) above or (as the case may be) the agreement referred to in paragraph (C) above.

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’ Agreement”* means an agreement between the Agent and the Name’s Members’ Agent in the form of the Standard Agents’ Agreement;

*“agents’ syndicate list”* has the meaning given in paragraph 1 of the Agency Agreements Byelaw (No. 8 of 1988);

*“Agents’ Syndicate List”* means (where the Managed Syndicate is not a Direct Syndicate) the Agents’ Syndicate List referred to in the Agents’ Agreement, being a schedule prepared in respect of a year of account and specifying (among other things) in relation to the Managed Syndicate the Name’s member’s syndicate premium limit, the basis and level of the Agent’s remuneration payable by the Name and the amount to be paid to the Name’s Members’ Agent by the Managing Agent’s Trustees in respect or on account of remuneration under clause 5(k)(ii) and where applicable, the formulae for ascertaining such syndicate premium limit and remuneration;

*“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;

*“co-ordinating agent”* means a members’ agent appointed by an underwriting member of Lloyd’s to co-ordinate the administration of his affairs at Lloyd’s in circumstances where more than one members’ agent is obliged to provide services as a members’ agent to that member;

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

*“Direct Syndicate”* means a Managed Syndicate in respect of which the Agent acts as the Name’s members’ agent;

*“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 Partnerships 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 Name 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 and a managing agent in the terms of the Standard Managing Agent’s Agreement (Corporate Member) or in 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 Name’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 Name’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 members’ 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;

*"Members' Agent's Agreement"* means an agreement between a Name 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 not an individual 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);

*"Name"* includes (i) the Name's executors or administrators, trustees in bankruptcy and any receiver appointed under the Mental Health Act 1983 and any person performing similar functions in any jurisdiction (ii) on the dissolution of a Scottish Limited Partnership, any general partner;

*"Name's Members' Agent"* means, in relation to a Managed Syndicate which is not a Direct Syndicate, the members' agent through the agency of which the Name enters into this Agreement or such other members' agent as may for the time being be designated by the Name (or, in the case of a Substitute Agent, by the Council) as being appointed to act as the Name's members' agent in respect of the Managed Syndicate;

*"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 Name, 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 Name 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 New 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);

*“requirements 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);

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

*“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;

*“Standard Agents' Agreement”* means the form of agreement between a members' agent and a managing agent prescribed by the Agency Agreements Byelaw (No. 8 of 1988);

*“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 syndicate 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”* means (in the case of a Direct Syndicate) the Syndicate List referred to in the Members' Agent's Agreement between the Name and the Agent, being a schedule prepared in respect of a year of account and specifying (among other things) in relation to that Direct Syndicate and the Name'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;

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

*“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 or 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 the 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) the members of a Managed Syndicate for whom the Name’s Members’ Agent also acts as members’ agent and whose MAPA participations are specified in the Agents’ Syndicate List together with the Name’s MAPA participation shall be treated as belonging to the same MAPA as the Name;
- (b) where a members’ agent other than the Name’s Members’ Agent has delivered an agents’ syndicate list in respect of a year of account in relation to members of a Managed Syndicate 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 Name participates in a syndicate through more than one members’ agent and where his MAPA participations are set out in more than one agents’ syndicate list then he 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 Name or any member of a Managed Syndicate belongs to a MAPA he 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 the Name’s Members’ Agent or a members’ agent which acts as such for members of the Managed Syndicate operates more than one 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 Name 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 Name 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 Name participates in a Managed Syndicate both by virtue of the agreement or agreements referred to in the recitals to this Agreement and by reason of an agreement in the form of the Standard Managing Agent's Agreement (Corporate Member) entered into by the Name and the Managing Agent, this Agreement shall in its application to that managed Syndicate extend only to the Name's participation by virtue of the agreement or agreements referred to in the recitals to this Agreement and shall be construed accordingly.

## 2. **Appointment of the Agent**

The Name 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.

## 3. **Services to be provided by the Agent**

The Agent shall carry out the Underwriting on behalf of the Name 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 clauses 9.4 and 9.5 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 Name 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 Name 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 Name in connection with the Underwriting and subject to the direction of the Agent;
- (i) (if the Managed Syndicate is not a Direct Syndicate) direct the Managing Agent's Trustees, subject to any applicable requirements of the Council, from time to time to pay to the Name's Members' Agent such sums in respect or on account of the remuneration payable by the Name to the Name's Members' Agent as are specified in , or ascertained in accordance with formulae specified in the Agents' Syndicate List;
- (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 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 Name's Members' Agent or (in the case of a Direct Syndicate) to the Name and to Lloyd's such accounts and other 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 Name as to compliance, or itself complying on behalf of the Name, with all laws, byelaws, regulations, rules, codes of practice, conditions and requirements applicable to the Name 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 Name 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 Name, subject to clause 4.3(e), 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 Name and not allow its personal interest to conflict with the obligations owed by it to the Name under this Agreement;
- (c) account to the Name 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 Name 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 Name*

- (e) subject to clause 5(k), not use or apply any property which it receives or controls on behalf of the Name otherwise than for the benefit of the Name 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 Name separate from its own property;
- (g) forthwith pay all premiums and other monies received by it on behalf of the Name 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 Name 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 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 Name 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 Name's Members' Agent or (in the case of a Direct Syndicate) the Name 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 Name in deciding whether to become or remain a member of the Managed Syndicate or to increase or reduce his 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) and to paragraph (d) of clause 4.3, promptly inform the Name's Members' Agent or (in the case of a Direct Syndicate) the Name if a decision is made by or on behalf of the Agent to allow a year of account of a 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 Name's Members' Agent or, as the case may be, the Name 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 such part of the Premiums Trust Fund as is held by or under the control of in the Managing Agent's Trustees;
- (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 required or permitted to be maintained by the Name 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 Name, the Name's Members' Agent, any co-ordinating agent appointed by the Name or the professional advisers of any of the foregoing, provided that (if the Managed Syndicate is not a Direct Syndicate) the Agent shall not be obliged to make available or provide copies of any records to the Name or his professional advisers unless the Name has requested and failed within a reasonable time to obtain copies of those records from the Name's Members' Agent; 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 Name has formulated a claim against:
- (i) the Agent relating in whole or in part to the performance of the Agent's duties under this Agreement, or
  - (ii) if the Managed Syndicate is not a Direct Syndicate, the Name's Members' Agent relating in whole or in part to the performance of the Name's Members' Agent's duties under the Members' Agent's Agreement between the Name and it,

disclose to the Name 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 Name copies of those documents and memoranda in legible form of such information, provided that the Agent shall not be obliged to disclose to the Name any document or information unless (A) the Agent could be compelled to produce that document or information in the course of proceedings instituted by the Name in relation to any such claim and (B) (if the Managed Syndicate is not a Direct Syndicate) the Name has requested and failed within a reasonable period to obtain disclosure of that document or information from the Name's Members' Agent.

- 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 Name in writing and the Name has agreed that the Agent may continue to act for him despite that interest.
- (b) Paragraph (c) of clause 4.2 shall not oblige the Agent to account to the Name for any gain or profit if the existence, nature and extent of that gain or profit have been fully disclosed to the Name in writing and the Name 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 Name 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 relevant 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 Name the fact that it is acting as a managing agent for underwriting members of Lloyd's other than the Name.
- (d) In relation to a Direct Syndicate in which the Name participates through a MAPA operated by the Agent and not otherwise, the Agent shall be treated as complying with paragraph (j) of clause 4.2 if it informs the Name of the decision referred to in that paragraph in the next following MAPA brochure sent to the Name in accordance with any requirements made by the Council under the Underwriting Byelaw (No. 2 of 2003) and any other powers so enabling.

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 Name 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 Name hereby authorises the Agent to exercise on his 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 Name and the other members of the Managed Syndicate;
- (c) without prejudice to paragraph (d) below, to enter on behalf of the Name and the other members of the Managed Syndicate into contracts to reinsure any risks insured by any contract entered into under paragraph (b) above;
- (d) on behalf of the members of the Managed Syndicate for a year of account (“the earlier year”) including, if applicable, the Name (“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 Name (“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 Name 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 Name 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 Name 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 Name 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 such claims, expenses, outgoings or other amounts on behalf of the Name or, so far as permitted by the governing deed, to provide security for the purposes of or in connection with such payments;

provided that if the Managed Syndicate is a Direct Syndicate this power, so far as it relates to monies or assets forming part of the Personal Reserve Sub-Fund (as defined in the Members' Agent's Agreement between the Name and the Agent) shall not be exercisable, save as otherwise permitted by the Council in connection with the operation of any Overseas Fund or Special Trust Fund, unless the Name has first been supplied:

- (i) if the relevant monies or assets are to be applied in satisfaction of 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 clause 7.1(b);
- (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 any part of the fee and commission payable to the Agent under clause 6;
  - (ia) 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 Agent's Syndicate List or, in the case of a Direct Syndicate, the Syndicate List for the relevant year of account; and

- (ii) such sums in respect or on account of the remuneration payable by the Name to the Name's Members' Agent as are specified in the Agents' Syndicate List or, in the case of a Direct Syndicate, such sums in respect or on account of the remuneration payable by the Name to the Agent in its capacity as the Name's members' agent as the Name and the Agent shall from time to time agree;
- (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 Name 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;
- (la) to retain and apply income which is held in trust absolutely for the Name pursuant to clause 13(a) of an Old Premiums Trust Deed or 16(a) of a New Premiums Trust or any corresponding provision of any Overseas Direction or Special Trust Direction as if it were a part of the Premiums Trust Fund, Overseas Fund or Special Trust Fund from which it has been excluded by the terms of the relevant clause or provision and so that the Agent shall have the same powers, direction and authorities in relation to such income as it would were that income still held as part of the relevant Premiums Trust Fund, Overseas Fund or Special Trust Direction;

*Borrowing and financial transactions*

- (m) to borrow money or cause the Managing Agent's Trustees [or other trustees referred to in paragraph (l)] 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 Name or to any other person on behalf of the Name 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 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 Name 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 Name; and
  - (ii) to apply or procure the application of any such monies in discharge of the Name'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 Name or assisting the Name to comply with all laws, byelaws, regulations, rules, codes of practice, conditions and requirements applicable to the Name 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 Name), 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 exercise the power of attorney conferred by clause 13.1 of the Members' Agent's Agreement between the Name and the Name's Members' Agent (or, in the case of a Direct Syndicate, by clause 13.2 of the Members' Agent's Agreement between the Name and the Agent);

#### *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 exercise the power of substitution conferred by clause 13.3 of the Members' Agent's Agreement between the Name and the Name's Members' Agent (or, in the case of a Direct Syndicate, by clause 13.3 of the Members' Agent's Agreement between the Name and the Agent);

#### *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 Name'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 Name's participation in the Underwriting as any such authority may properly require; and

#### *Acceptance of notices etc*

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

## **6. Remuneration**

- 6.1 The Name 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 Agents' Syndicate List or, in the case of a Direct Syndicate, the Syndicate List for the relevant year of account.
- 6.2 The Name 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 Agents' Syndicate List or, in the case of a Direct Syndicate, the 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 reason of the Name's death or bankruptcy or otherwise 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 relation to the Name which results in that Name 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 Name 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 Name 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 Name 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:

- (a) the “Agents’ Syndicate List for the relevant year of account” means the Agents’ Syndicate List in relation to a particular year of account which has been signed by the Agent and the Name’s Members’ Agent or, if no Agents’ Syndicate List has been so signed in respect of that year of account, the Agents’ Syndicate List which has been so signed in respect of the most recent previous year of account; and
- (b) the “Syndicate List for the relevant year of account” means the Syndicate List in relation to a particular year of account which has been signed by the Agent and the Name or, if no Syndicate List has been so signed in respect of that year of account, the Syndicate List which has been so signed in respect of the most recent previous year of account.

## 7. **Obligations and acknowledgements of the Name**

- 7.1 (a) The Name 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 made by the Agent to make such funds available; provided however that the Name shall not be obliged to make any payment in or towards the satisfaction of any such request by the Agent for funds unless the Name 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 auditor’s 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 Name 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 Name’s obligation to comply with any such request for payment by the Agent the Name hereby waives stay of execution and consents to the immediate enforcement of any judgment obtained.
  - (e) The Name 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 Name has first complied in full with any such request. The Name 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 Name’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 Name 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 Name acknowledges that he 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 Name relating to the conduct of the Underwriting and undertakes that he will not in any way interfere with the exercise of such management or control.
- 7.4 The Name acknowledges that risks underwritten at a time when he 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 Name hereby agrees that he will be bound by the manner of the Agent’s accounting treatment of any such risks.

7.5 The Name undertakes to keep the 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 Name within the meaning of the Definitions Byelaw (No. 7 of 2005).

## 8. **Novation of liabilities**

8.1 The Name 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 Name 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 Name, 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 (Corporate Member), 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 (Corporate Member)], 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 Name acknowledges that the Agent may effect Relevant Contracts on his behalf notwithstanding that the Name 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 Name 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 Council may in any particular case permit or any alter date which the Council may in any particular case direct under clause 11.5) in a 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 a 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 Contract 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 Name authorises the Agent on his 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 Name in respect of the Underwriting for that year of account. Forthwith upon such determination and subject to clause 9.6, 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:
- (i) the Name's Members' Agent's Trustees or the Members' Agent (where an Old Premiums Trust Deed applies in respect of the Underwriting); or
  - (ii) the Regulating Trustee (where a New Premiums Trust Deed applies in respect of the Underwriting);

as part of the Personal Reserve Sub-Fund (as defined in the Members' Agent's Agreement between the Name and the Name or, where the Managed Syndicate is a Direct Syndicate, between the Name and the Agent) 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 [This paragraph is intentionally left blank];
- 9.6 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 persons referred to in paragraphs (i) and (ii) of clause 9.3 of amounts which do not exceed in aggregate the amount determined in accordance with clause 9.7.
- 9.7 The amount referred to in clause 9.6 is the aggregate amount of any deficits of the Name in each prescribed currency in each Premiums Trust Fund (including any Overseas Fund or Special Trust Fund) in respect of the Underwriting for the year of account for which the Name'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 any other requirements of the Council from eliminating plus, in a case where the Name's result is a profit, the amount of that profit.

9.8 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 Name in place of the Agent, the appointment shall take effect on the terms set out in clause 10.2 and the Name 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 Name 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 Name 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 Name in the place of the Agent the remuneration payable by the Name 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 termination**

11.1 This Agreement shall take effect:

- (a) if the Managed Syndicate is not a Direct Syndicate, on the date of signature of an Agents' Syndicate List under clause 2 of the Agents' Agreement between the Name's Members' Agent and the Agent;
- (b) if the Managed Syndicate is a Direct Syndicate, on the date of signature of a Syndicate List under clause 3 of the Members' Agent's Agreement between the Name and the Agent;
- (c) if the Name is a Provisional Insurer, on the date of the agreement referred to in clause 2.3 of the Agents' Agreement between the Agent and the Name's Members' Agent or (in the case of a Direct Syndicate) the agreement referred to in clause 3.3(b) of the Members' Agent's Agreement between the Name and the Agent;

and shall apply in relation to the year of account specified in that Agents' Syndicate List, Syndicate List or agreement (as the case may be) 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 Name ceases to be an underwriting member of Lloyd's; or
- (b) if the Name'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 Name 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 Name in place of the Agent, this Agreement shall continue in effect, subject to clause 10.2, between the Name 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 Name and the Agent.

11.4 The appointment of the Agent shall, subject to clauses 11.8 and 11.11 terminate forthwith:

- (a) if the Managed Syndicate is not a Direct Syndicate, upon the termination of the appointment of the Name's Members' Agent under the Members' Agent's Agreement between the Name and the Name's Members' Agent;
- (b) if the Managed Syndicate is a Direct Syndicate, upon the termination of the appointment of the Agent as the Name's members' agent under the Members' Agent's Agreement between the Name and the Agent.

11.5 The Name may terminate the appointment of the Agent under this Agreement, subject to clauses 11.8 and 11.11 by notice in writing given by or on behalf of the Name 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 under clause 11.5) 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 Name accounts in respect of the Managed Syndicate those accounts have not been received by the Name by 1st August, notice may be given by or on behalf of the Name to the Agent by the earlier of 30 days after receipt by the Name 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 Name 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, **105**) 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 Name 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 1 January of the next succeeding year); and
- (c) if in any year the Council has given written notice to the Name pursuant to clause 8.2(b) of a Membership Agreement between the Council and the Name or any undertaking in like terms with that clause given by the Council in favour of the Name, notice may be given by or on behalf of the Name 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 Name if:

- (a) the Name 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);
- (b)
  - (i) the Name makes or proposes any composition with his creditors or otherwise acknowledges his insolvency;
  - (ii) the Name makes an application to the court for an interim order pursuant to section 253 of the Insolvency Act 1986;
  - (iii) a bankruptcy order is made against the Name by the due process of law of any country;

- (iv) the Name is adjudicated bankrupt, or adjudicated or declared insolvent, by the due process of law of any country; . . .
  - (v) a proposal is made in respect of the Name under section 2 of the Insolvency Act 1986;
  - (vi) 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 Name;
  - (vii) an administration order is made in respect of the Name under Schedule B1 to the Insolvency Act 1986;
  - (viii) a receiver, trustee or analogous officer is appointed in respect of the whole or any material part of the Name's property or assets;
  - (ix) the Name 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 Name's bankruptcy, winding up or other insolvency or which seeks any reorganisation, dissolution or similar relief; or
  - (ixa) a sequestration order made pursuant to the Bankruptcy (Scotland) Act 1985;
  - (x) any action equivalent to any of the above is taken by or in respect of the Name; or
- (c) the Name becomes, through mental or other infirmity, incapable of managing his affairs, unless the Name has validly appointed an attorney under the Enduring Powers of Attorney Act 1985 and the instrument appointing the attorney has within a reasonable time of the Name becoming so incapable been registered by the Court.

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 Name 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 Name 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 Name'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 Name 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 Name.

11.10 If a requirement of the Council is made in respect of the Name which results in that Name being suspended from underwriting, while the requirement remains in force the Name 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.

11.11 (a) Where the appointment of the Agent is to terminate in any of the circumstances listed in paragraph (b) below, the Agent and the Name agree that if the Name enters into an agreement in the form of the Standard Managing Agent's Agreement (General) with the Agent through the agency of a members' agent other than the Name's Members' Agent no later than 31 October (or by any later date which the Agent may in any particular case permit) of the relevant year, the Agent will permit the Name to participate in the Managed Syndicate in the year of account corresponding to the year next following with a member's syndicate premium limit of an amount not less than the Name's member's syndicate premium limit for the relevant year as varied for the year of account next following in accordance with the Syndicate Pre-emption Byelaw (No. 19 of 1997); (but excluding any MAPA participation of the Name of an amount less than the minimum for the time being prescribed by the Council for the purposes of this paragraph).

(b) The circumstances referred to in paragraph (a) above are:

- (i) where the appointment of the Agent is to terminate under the provisions of clause 11.4; and
- (ii) where the appointment of the Agent is to terminate under the provisions of clause 11.5 pursuant to a notice served by the Name's Members' Agent under clause 7.1(o) of the Members' Agent's Agreement between the Name and the Name's Members' Agent.

- (c) For the purposes of this clause 11.11 the “relevant year” means the year in which notice of termination of the appointment of the Agent was given under this Agreement, or notice of termination of the appointment of the Name’s Members’ Agent was given under the Members’ Agent’s Agreement, as the case may be.

**11A. Assignment of Name’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 Name’s Prospective Participation” means the aggregate of:
  - (i) the Name’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 Name and the Agent have agreed that the Name 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 Name the opportunity to increase or required the Name to decrease his 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 Name may in any year nominate an underwriting member or underwriting members 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 Name’s Prospective Participation, in substitution for the Name 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 Name or by another person duly authorised to sign it on his 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 Name's Prospective Participation, to enable the Name 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) where the Managed Syndicate is a Direct Syndicate, this clause shall not oblige the Managing Agent to enter into an agreement in the terms of the Standard Members' Agent's Agreement with any person;
- (C) 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 (C) to clause 11A.5, the Agent shall, if so requested by or on behalf of the Name and subject to any direction given by the Council or the Appeal Tribunal, use its best endeavours to permit the Name 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.

11A.7 If in any year the appointment of the Agent under this Agreement terminates by reason of the death of the Name, then, notwithstanding such termination, the rights conferred by this clause may be exercised for the benefit of the Name's estate by the Name's personal representatives or such other person as may be duly authorised by law to act on behalf of the Name's estate.

## 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 Name hereby:

- (a) consents to the persons listed in paragraphs (a), (b), (c) and (d) of 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 either of the persons listed in paragraphs (b) and (c) of clause 12.2 in respect of such information or documents.

12.2 The persons referred to in clause 12.1 are:

- (a) the Agent;
- (b) if the Managed Syndicate is not a Direct Syndicate, the Name's Members' Agent;
- (c) any co-ordinating agent appointed by the Name; and
- (d) any auditor appointed by the Agent or by the Name's Members' 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 Name and any other member or members of the Managed Syndicate.

13.2 There shall be attributed to the Name 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 Name's members' 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 Name.

13.3 Income received in respect of, and appreciation in the value of, deposits of 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 opened 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 Name and any other members of the Managed Syndicate shall be debited to their respective accounts and the Name's rateable part thereof shall be calculated according to the proportion of risks attributed to the Name 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 Name's underwriting membership of Lloyd's has been and remains suspended or the Name has been and remains suspended from underwriting, the Name 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 Name 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 the Name and 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 Name).

#### 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 Name) 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 Name, this Agreement);
  - (b) if a requirement of the Council is made in relation to that underwriting member which results in the 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 Name 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 Name 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 premiums 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 Name 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, in the event of a member of the Managed Syndicate ceasing other than by reason of any of the events mentioned in paragraphs (a), (aa), (ab) 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 Name 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) 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 purpose 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 Name, 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;
  - (ii) consequential provision for the operation of clause 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 Name 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 Agents' Syndicate List or (in the case of a Direct Syndicate) the 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 1st 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.

(c) Each of the Name and the Agent hereby agrees that it will be bound by any such variation or amendment in accordance with its terms and that this Agreement will take effect as so varied or amended with effect from such date.

15.3 Any agreement or arrangement (in either case whether or not legally binding and whether or not collateral to this Agreement) which has the effect of varying any of its terms (whether by altering the discretions, duties, rights or responsibilities of the Agent or otherwise) shall for purposes of clause 15.1 be treated as a variation of a term of this Agreement.

## 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 Name 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 Name and the Agent or between the Name and any or all of the other members of the Managed Syndicate.
- 17.2 The Name 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 to 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 specified in clause 18.2 or in the case of a notice served by telex or facsimile transmission by transmitting it to the number specified in clause 18.2. 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 (a) Any notice given to the Agent may be left at or sent to the address of the Agent set out in, or to the telex or facsimile number referred to in, the Agent's Agreement between the Agent and the Name's Members' Agent or (in the case of a Direct Syndicate) in the Members' Agent's Agreement between the Agent and the Name or such other address as the Agent may from time to time notify to the Members' Agent or (in the case of a Direct Syndicate) to the Name.
- (b) Any notice given to the Name:

- (i) if the Managed Syndicate is not a Direct Syndicate, may be left at or sent to the address or telex or facsimile number at or to which notices to the Name's Members' Agent may for the time being be left or sent for the purposes of clause 10 of the Agents' Agreement between the Name's Members' Agent and the Agent;
- (ii) if the Managed Syndicate is a Direct Syndicate, may be left at or sent to the address or telex or facsimile number of the Name at or to which notices may for the time being be left or sent for the purposes of clause 17 of the Members' Agent's Agreement between the Name and the Agent.

**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.

## **Schedule 1**

### **Agent's Fees**

Schedule 1 to Schedule 3 of the Byelaw

#### **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 Name'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 Agents' Syndicate List or (in the case of a Direct Syndicate) the 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 Agents' Syndicate List or (if the Managed Syndicate is a Direct Syndicate) the Syndicate List of the Name'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 not for any other charges, costs or expenses incurred by the Name.

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

- (a) Subject to the following provisions of this Schedule, the Name's Adjusted Profit for any year of account is the amount of the Syndicate Adjusted Profit attributable to the Name's Allocation for that year of account less the Name'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 Name's Allocation" for a year of account means the amount of the Name's member's syndicate premium limit in relation to the Managed Syndicate for that year of account;
  - (iii) "the Name's Expenses" for a year of account means the amount payable by the Name 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;
  - (iv) "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;
  - (v) 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;
  - (vi) "Closing Date" means a date at which a year of account is closed;
  - (vii) "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;
  - (viii) "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
  - (ix) "Initial Deficit" and "Further Deficit" have the meanings respectively given to them in paragraph 6 below.

\*As specified in the Agent's Syndicate List or (if the Managed Syndicate is a Direct Syndicate) the 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 Syndicate 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 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 Name 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 Name and the managing agent of the ceasing syndicate for the purpose of calculating any profit commission payable by the Name 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 Name's Allocation for the final year of account of the ceasing syndicate was greater than the Name'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 Name'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 Name's Allocation for the final year of account of the ceasing syndicate was less than the Name'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 Name's Allocation for the last year of account of the ceasing syndicate; and

A2 = the amount of the Name'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);
  - (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) "Name's Merger Allocation" means the amount of the Name's Allocation on the successor syndicate for the first year of account after the syndicate merger to which the Name 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 Name'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

Schedule 2 to Schedule 3 of the Byelaw

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 the Names participate 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.

1.2A In relation to a Name which is a body corporate, references in this Agreement to a "Managing Agent's Agreement" or to any particular provisions thereof shall be treated respectively as references to any agency agreement between that Name and the Managing Agent in relation to the Managed Syndicate or to the corresponding provisions thereof.

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 designated by that Name as being appointed to act as his 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: