

12 June 2012

IN THE MATTER OF THE COMPANIES ACT 1993

and

IN THE MATTER OF ACS (NZ) LIMITED

SCHEME OF ARRANGEMENT

(pursuant to Part 15 of the Companies Act 1993)

between

ACS (NZ) LIMITED

and its

SCHEME CREDITORS
(as defined in this Scheme)

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PART A – PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

1.1 In this Scheme, unless inconsistent with the subject or context, the following expressions bear the meanings respectively set opposite them:

Act: the Companies Act 1993;

Adjusting Payment: a payment to adjust payments made on the increase of the applicable Payment Percentage by reference to a notional rate of interest, as further described and defined in clause 24.1.2(b);

Allocated Reinsurance Monies: Charged Reinsurance Monies allocated to an Event from time to time pursuant to clause 23.2 pending settlement of the relevant Scheme Claim(s);

Ansvar Australia: Ansvar Insurance Limited, a company registered in Australia with company number 007 216 506, whose registered office is at Level 12, Ansvar House, 432 St Kilda Road, Melbourne;

Appointor: a Scheme Creditor who has either granted a general power of attorney to a Committee Member or otherwise appointed a Committee Member as his, her or its representative in accordance with clause 34.2;

Base Percentage: in relation to Established Scheme Liabilities which relate to Unallocated Liabilities (or to the extent that they relate to Unallocated Liabilities) the percentage of such Established Scheme Liabilities which are payable by the Company from time to time under the Scheme, as set out and described at clause 23.1.

Board: the managing board for the time being of the Company;

Cash Assets: the aggregate at any time of:

- (a) any cash deposits; and
- (b) any other assets of the Company at that time which are invested in accordance with the provisions of clause 19, other than investments in subsidiaries,

in each case including deposits subject to a trust created pursuant to clause 22.2 and including Allocated Reinsurance Monies, but excluding deposits subject to any other trust or security;

Charged Reinsurance Monies: reinsurance monies recovered by the Company under reinsurance in respect of its liability to pay under an Insurance Contract which are subject to a LRA Charge;

Committee Member: a member of the Creditors' Committee appointed in accordance with clause 35 and as further described in clause 34.2;

Company: ACS (NZ) Limited (company number 115156) whose registered office is at Level 6, 396 Queen Street, Auckland, New Zealand;

Court: the High Court of New Zealand;

Creditors' Committee: the committee established pursuant to Part G to represent the interests of the Scheme Creditors;

Delegate: in respect of a delegate of the Scheme Administrators, has the meaning given in clause 31.4 (in respect of the Initial Scheme Period) or clause 32.2.17 (in respect of the Reserving Period);

Directors: the directors of the Company from time to time, and **Director** shall be construed accordingly;

Effective Date: the date specified in the final order of the Court approving this Scheme as being the date on which this Scheme becomes effective;

EIO: Ecclesiastical Insurance Office plc, a company incorporated and registered in England and Wales with company number 00024869, whose registered office is at Beaufort House, Brunswick Road, Gloucester GL1 1JZ;

Employee: any partner or member in, or director of, the same firm (or another member of its group) as any of the Scheme Administrators, or any individual employed (whether under a contract of service or for services by that firm or by any part of its group) in accordance with clause 31.5 (in respect of the Initial Scheme Period) or clause 32.2.9 (in respect of the Reserving Period). For the purposes of this definition of Employee, **group** shall include, in respect of the initial Scheme Administrators, any entity or firm within the worldwide network of PricewaterhouseCoopers firms and entities and, in respect of any other person or persons for the time being appointed as a Scheme Administrator or Scheme Administrators who are partners, members, directors or employees in respect of a firm or entity outside such network, then such entities or firms within any analogous network of which that firm or entity is a part;

Encumbrance: any mortgage, charge, pledge, security assignment, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest or any other encumbrance or security interest of any kind and any other type of preferential arrangement (including, without limitation, title transfer and retention agreements) having a similar effect to any of the foregoing;

Established Scheme Liability: a liability of the Company in respect of a Scheme Claim in relation to which a present obligation of the Company to pay an ascertained sum of money has been established in accordance with clause 13.1;

Event: in relation to Established Scheme Liabilities, an event, or group of events (as determined in accordance with clause 23.2); giving rise to an obligation of the Company to pay under the relevant Insurance Contract(s) in relation to which the Company is entitled to recover fully or in part under reinsurance;

Event Percentage: in relation to an Event, the percentage of Established Scheme Liabilities which relate to that Event (or to the extent that they relate to that Event) which are payable by the Company from time to time under the Scheme, as set out at and described in clause 23.1, and **Event Percentages** shall be construed accordingly;

Explanatory Statement: the statement dated 10 May 2012 (including the appendices to such statement) explaining the effect of this Scheme in accordance with the Court's procedural orders;

Final Order: an award of a court or tribunal of competent jurisdiction which is not subject to any appeal, request for reargument, rehearing, reconsideration or similar relief, and in relation to which the time to seek a stay or to appeal, request reargument, rehearing, reconsideration, or similar relief has expired or been refused;

Initial Scheme Period: the period beginning on the Effective Date and ending on the day before the Trigger Date;

Insurance Contract: any contract or policy of insurance underwritten by the Company as insurer;

Insurance Act: the Insurance (Prudential Supervision) Act 2010;

Liquidated Claim: a Scheme Claim in respect of which both the existence and amount of the Company's liability have been determined by agreement between the parties or by a Final Order;

Liquidated Receivable: a claim by the Company against a Scheme Creditor in respect of which both the existence and amount of that Scheme Creditor's liability have been determined by agreement between the parties or by a Final Order;

Liquidation Event: the appointment of a liquidator or administrator in respect of the Company;

LRA: the Law Reform Act 1936;

LRA Charge: a statutory charge attaching to reinsurance monies recoverable by the Company in respect of Scheme Claims pursuant to the LRA;

Management Services Agreement: the agreement to be entered into between the Company, Ansvr Australia and EIO on or before the Effective Date in respect of the provision of actuarial support and assistance with, and advice on, claims

management, reinsurance recovery and general insurer administration to the Company;

Net Liquidated Balance: the net balance from time to time between the Company and a Scheme Creditor arising after off-setting all Liquidated Receivables against all Liquidated Claims as between the Company and that Scheme Creditor;

Non-Insurance Claim: any claim against the Company other than a claim under or arising out of, or which may arise out of, an Insurance Contract;

Payment Percentage: in relation to an Established Scheme Liability, the percentage of such Established Scheme Liability which is payable by the Company from time to time under the Scheme, being either the Base Percentage or the relevant Event Percentage, as set out and described at clause 23.1, and **Payment Percentages** shall be construed accordingly;

Proceedings: any action, step or other legal proceedings in any jurisdiction including, without limitation, any judicial action or proceeding, but excluding any dispute resolution procedure which does not involve submission to the courts other than any arbitration that is provided for under the terms of a contract giving rise to a Scheme Claim;

Reserving Period: the period beginning on the Trigger Date and ending on the day that the Scheme is terminated in accordance with clause 47;

Review Date: the Trigger Date and 31 December of each year or such other date as the Scheme Administrators may from time to time decide in their absolute discretion, but in consultation with the Creditors' Committee;

Scheme: this scheme of arrangement in its original form or with or subject to any modification, addition, provision or condition which may be approved or imposed in accordance with clause 51 and references to a provision of this Scheme shall be construed as a reference to that provision as in force from time to time;

Scheme Administrators: Dan Yoram Schwarzmann, a partner in the United Kingdom firm of PricewaterhouseCoopers LLP, and Colin Thomas McCloy, a partner in the firm of PricewaterhouseCoopers New Zealand, or such other person or persons for the time being appointed as Scheme Administrator or Scheme Administrators in accordance with Part F;

Scheme Assets: all assets of the Company (whether present or future, actual or contingent), including (without limitation) any assets which are held or recovered for the benefit of the Company by a liquidator or similar officeholder of the Company, which are made available to the Company to be applied in accordance with the terms of this Scheme;

Scheme Claims: any claim against the Company (other than a Non-Insurance Claim) under or arising out of, or which may arise out of, any Insurance Contract;

Scheme Costs: the costs, charges, expenses, disbursements and remuneration relating to the operation of the Scheme as referred to in clause 50;

Scheme Creditors: a creditor of the Company in respect of an actual or potential Scheme Claim;

Scheme Liabilities: all liabilities or potential liabilities of the Company in respect of actual or potential Scheme Claims, including (without limitation) Scheme Claims which have been reported and not yet agreed and Scheme Claims which may be reported in the future;

Shareholders: Ansvar Australia and EIO;

Special Share: the share in the capital of the Company held, or to be held, by EIO giving it the right to appoint and remove or replace one Director as set out in clause 5.5;

Trigger Date: the date and time at which the Trigger Event occurs;

Trigger Event: when the Board concludes that:

- (a) the Company is unable to pay its debts as they fall due; and/or
- (b) on a prudent basis, the value of the Company's assets is less than the value of its liabilities; and/or
- (c) some other event or circumstance has either occurred or is likely to occur,

and in any such case that, without the operation of this Scheme, there would be no reasonable prospect that the Company would avoid going into liquidation;

Trust Deed: the deed between, amongst others, the Trustee, Ansvar Australia and EIO dated 15 May 2012 relating to the holding on trust of Trust Property (as defined in the Trust Deed) and including, without limitation, the entire issued share capital of the Company other than the Special Share;

Trustee: Canterbury Earthquake Church and Heritage Trustee Limited, or such other trustee(s) for the time being under or by virtue of the Trust Deed;

Unallocated Assets: the amount of the Scheme Assets LESS Allocated Reinsurance Monies from time to time;

Unallocated Liabilities: Scheme Liabilities which are not (or to the extent that they are not) capable of being met from Allocated Reinsurance Monies from time to time; and

Working Day: a day (other than a Saturday or Sunday) when banks in Auckland are open for business.

1.2 In this Scheme:

- 1.2.1 headings to Parts, clauses and Schedules are for ease of reference only and shall not affect the interpretation of this Scheme;
- 1.2.2 references to Parts and clauses are references to the Parts and clauses respectively of this Scheme;
- 1.2.3 **liabilities** includes (without limitation) duties and obligations of every description (whether present or future, actual or contingent), but for the avoidance of doubt excluding any obligation or liability under a contract or policy which is void or, being voidable, has been duly avoided;
- 1.2.4 references to a **person** include references to an individual, firm, partnership, company, corporation, unincorporated body of persons or any state or state agency;
- 1.2.5 **property** and **asset** includes (without limitation) property, assets, rights and powers of every description (whether present or future, actual or contingent) and includes property held on trust and securities, benefits, powers of any description and any interest whatsoever in any of the foregoing;
- 1.2.6 **transfer** includes (as the context may require) **novate** or **novation**, **assign** or **assignation** or **assignment**, **dispose** or **disposal**, **convey** or **conveyance**;
- 1.2.7 any reference to the singular shall include a reference to the plural and vice versa and any reference to the masculine shall include a reference to the feminine;
- 1.2.8 any reference to an enactment, a statutory provision or any subordinate legislation shall be deemed to include a reference to that enactment, statutory provision or subordinate legislation as amended, replaced or re-enacted from time to time and to any instrument or order made from time to time under such enactment, statutory provision or subordinate legislation;
- 1.2.9 unless the context otherwise requires expressions used which are defined in the Act shall bear those meanings;
- 1.2.10 any reference to writing shall include any mode of reproducing words in a legible and non-transitory form;

- 1.2.11 where there is a conflict between the terms of the Company's constitution and the terms of this Scheme, the terms of this Scheme shall prevail;
- 1.2.12 if a period of time is specified from a given day or date or from the day or date of any act or event, it shall be calculated exclusive of that day or date; and
- 1.2.13 nothing in this Scheme or in the Explanatory Statement will give any person any right to enforce any term of this Scheme, except as expressly provided for under the provisions of this Scheme.

2. THE COMPANY AND OTHER PARTIES

- 2.1 The Company was incorporated under the Companies Act 1955 on 30 August 1982 and was reregistered to become a company under the Act on 10 June 1997. As at 15 May 2012, the Company's issued share capital is 11,700,000 ordinary shares of NZ\$1.00 each, all of which are paid up or credited as paid up. The Trustee is the majority owner of the Company and shortly will be the registered holder of all the Company's shares, save for the Special Share, and such shares will be held in trust pursuant to the Trust Deed.
- 2.2 The Trustee, EIO and Ansvar Australia have agreed to undertake to the Court to be bound by this Scheme, and to execute or do, or procure to be executed or done, all such documents, acts or things as may be necessary or as the Court may consider desirable to be executed or done by them or on their behalf for the purposes of giving effect to this Scheme.
- 2.3 Bruce Harris, David Harrison, Andrew Moon, Brent Pattison and Michael Tripp have each given and have not withdrawn their consent to serve as members of the Board from the Effective Date.
- 2.4 Dan Yoram Schwarzmann, a partner in the United Kingdom firm of PricewaterhouseCoopers LLP, and Colin Thomas McCloy, a partner in the firm of PricewaterhouseCoopers New Zealand, have each given and have not withdrawn their consent to act as the initial Scheme Administrators from the Effective Date.
- 2.5 The members of the Creditors' Committee shall be as established pursuant to Part G.

3. PURPOSE OF THIS SCHEME

- 3.1 The purpose of this Scheme is to enable the Company's liabilities in respect of Scheme Claims to be established, ascertained and paid in the ordinary course until the Trigger Event and to manage payments after the Trigger Event in an orderly manner to reflect the rights of Scheme Creditors in accordance with this Scheme.

- 3.2 Written notice of the Trigger Event must be given by the Board to the Trustee, the Creditors' Committee and the Scheme Administrators as soon as practicable after the occurrence of the Trigger Event (and in any case no later than 5:00pm on the day that the Board reaches its conclusion or, if such conclusion is reached by the Board after 5:00pm or it is not a Working Day, no later than 9am on the next Working Day).
- 3.3 After the Trigger Event, the Company shall cease to pay Scheme Claims in full and this Scheme will operate in relation to Scheme Claims to ensure that:
- 3.3.1 the Company's liabilities in respect of Scheme Claims continue to be established in the ordinary course;
 - 3.3.2 payments are made to those of the Company's creditors whose Scheme Claims have from time to time become Established Scheme Liabilities; and
 - 3.3.3 sufficient Cash Assets are retained by the Company to enable the same payments to be made by the Company to those of its creditors whose Scheme Claims become Established Scheme Liabilities at a later date.

PART B – THE SCHEME PERIODS

4. APPLICATION OF THIS SCHEME

- 4.1 This Scheme shall apply to all liabilities of the Company in respect of Scheme Claims.
- 4.2 The Initial Scheme Period begins on the Effective Date and ends immediately before the Reserving Period begins.
- 4.3 The Reserving Period begins on the Trigger Date and ends on the date that the Scheme is terminated in accordance with clause 47.

5. THE SHAREHOLDERS

- 5.1 The Company, the Trustee and the Shareholders have entered into the Trust Deed by which the Shareholders have agreed to transfer their entire holdings of shares in the capital of the Company to the Trustee, other than the Special Share held by EIO, pursuant to the Trust Deed. Other than the Special Share, which shall be held by EIO, any further shares in the capital of the Company subscribed for by the Shareholders after the date of such transfers shall be transferred to the Trustee as soon as practicable after such subscription(s) to hold pursuant to the Trust Deed.
- 5.2 The Shareholders shall not, except for any transfer to the Trustee pursuant to the Trust Deed of shares in the capital of the Company, sell, transfer or otherwise dispose of, or create any Encumbrance over or create any interest in or deal with any shares in the capital of the Company that they may hold from time to time.
- 5.3 Except to the extent necessary for the purposes of complying with clause 29.2, until termination of the Scheme the Shareholders and the Trustee shall not, whether in exercising their rights in respect of Non-Insurance Claims or otherwise, apply to the Court for the appointment of a liquidator to the Company, nor, so far as they are able, allow a resolution to be passed for voluntary appointment of a liquidator to the Company.
- 5.4 To the extent that any debts are due from the Company to Ansvar Australia and/or EIO from time to time:
 - 5.4.1 subject to clause 5.4.2, such debts shall be treated as Non-Insurance Claims and be paid in accordance with clauses 6.1 or 7.2 and 15 (as relevant);
 - 5.4.2 during the Reserving Period, any such debts which represent monies outstanding under loan arrangements between the Company and Ansvar Australia and/or EIO which have been used to fund payments to Scheme Creditors in respect of their Scheme Claims shall not be paid in full, but shall instead be paid from time to time in accordance with the

relevant Payment Percentage(s) which apply to such Scheme Claims. For the avoidance of doubt, the provisions of this clause 5.4.2 shall not apply to any debts to the extent that they represent Scheme Costs,

and neither Ansvar Australia nor EIO shall be Scheme Creditors for the purposes of this Scheme.

- 5.5 Under the rights attaching to the Special Share, EIO shall have the right to appoint one person as a Director, to remove such person from office and to appoint another person in his or her place as a Director should that person die or be otherwise removed from office for so long as it holds the Special Share.
- 5.6 If any provision in the Company's constitution conflicts with any provision of this Scheme, this Scheme shall prevail as between the Trustee, Ansvar Australia, EIO, the Scheme Administrators and the Scheme Creditors and each of the Trustee, Ansvar Australia, EIO and the Scheme Administrators (as applicable) shall, when necessary, exercise their powers of voting and any other rights and powers they have to amend, waive or suspend a conflicting provision in the Company's constitution to the extent necessary to permit the Company and its business to be administered as provided in this Scheme.

6. INITIAL SCHEME PERIOD

The provisions of this clause 6 shall apply during the Initial Scheme Period:

- 6.1 Subject to the restrictions noted in clause 6.2, all liabilities of the Company shall be paid in full in the ordinary course of business as and when they fall due, or otherwise in accordance with the Company's normal business practices.
- 6.2 The Board shall have management and control of the business and affairs of the Company as provided for in the Company's constitution from time to time or as otherwise provided or required by law, subject to:
- 6.2.1 the restrictions on the Company and its activities set out in clause 6.5;
 - 6.2.2 the provisions for production of reports set out in clause 26.3; and
 - 6.2.3 the Scheme Administrators assuming management and control of the Company in accordance with clause 31.7 where the number of Directors falls under and remains less than three.
- 6.3 The powers and duties of the Scheme Administrators shall be as set out in clause 31.
- 6.4 The Creditors' Committee shall be established in accordance with Part G and its functions shall be as set out in clause 37.

6.5 The Company shall not do any of the following:

6.5.1 enter into any insurance or reinsurance contracts as underwriter, or renew, replace or extend any existing Insurance Contract or vary the same in a way that would increase the total amount of any liability of the Company to any person under such contract except:

(a) in accordance with clause 28.4; and

(b) with the consent of the Scheme Administrators:

(i) contracts of insurance protecting the Company, the Directors or the other officers, employees or agents of the Company against risks incurred in the run-off of the Company's business; and

(ii) contracts of reinsurance in relation to liabilities to which the Company is subject;

6.5.2 carry on any business other than in connection with, and for the purpose of carrying out, the Scheme or which are necessary or incidental to such purpose;

6.5.3 without prejudice to clause 22.2, create or cause or permit to be created, any trust of or in relation to any Scheme Asset, other than for the purpose of investment in the ordinary course of the proper conduct of the run-off of the Company's business, or appropriate or set aside any Scheme Asset to meet any of its liabilities otherwise than in accordance with the terms of this Scheme.

7. RESERVING PERIOD

The provisions of this clause 7 shall apply during the Reserving Period:

7.1 The Company shall stop paying liabilities in full in respect of Scheme Claims as and when they fall due and the rights of the Scheme Creditors in relation to their respective Scheme Claims (including, without limitation, in respect of payments of Scheme Claims which are deferred by this Scheme) shall be modified in accordance with the provisions of Part D.

7.2 All liabilities of the Company other than liabilities in respect of Scheme Claims shall continue to be payable in the ordinary course of business as they fall due.

7.3 The management and control of the business and affairs of the Company shall, subject to any delegation in accordance with the provisions of clause 32.2.17, be carried on by the Scheme Administrators and the powers of the Board shall be restricted as set out in clause 32.3.

7.4 The functions of the Creditors' Committee shall be as set out in clause 37.

PART C – GENERAL RESERVING PERIOD SCHEME PROVISIONS

8. APPLICATION OF PART C OF THIS SCHEME

The provisions of this Part shall only apply during the Reserving Period.

9. STAY OF PROCEEDINGS

9.1 Without the prior written agreement of the Scheme Administrators, no Scheme Creditor shall be permitted to institute or continue any Proceedings or any other judicial, quasi judicial, administrative or regulatory process whatsoever against the Company to establish the existence or amount of any Scheme Claim unless the Scheme Creditor has first given notice to the Company of such Scheme Claim (in accordance with the notice provisions set out in clause 52) including:

9.1.1 fully particularised details of how and when the Scheme Claim arose, of the Insurance Contract pursuant to which it arose and of the quantum of the Scheme Claim (if reasonably calculable); and

9.1.2 legible copies of all contracts, orders, judgments, decisions and awards which are relevant to the Scheme Claim, and of all other items required to be provided to the Company pursuant to the terms of the Insurance Contract between the Company and the Scheme Creditor, together with such other supporting information and documentation as the Company shall reasonably require.

9.2 If and to the extent that a Scheme Creditor obtains an order, judgment, decision or award against the Company in contravention of clause 9.1, such order, judgment, decision or award shall not give rise to an Established Scheme Liability in respect of the Scheme Claim and shall be disregarded when determining the liability of the Company in respect of the Scheme Claim.

9.3 Nothing in this Scheme shall preclude the Company from either:

9.3.1 commencing or continuing any Proceedings against a Scheme Creditor;
or

9.3.2 seeking to be joined into any subsisting Proceedings between a Scheme Creditor and any insurer or reinsurer.

10. ENFORCEMENT OF SCHEME CLAIMS

10.1 Subject to the rights of Scheme Creditors under clauses 11 and 12, to the extent that the Company has performed its obligation to make a payment to the relevant Scheme Creditor under the provisions of this Scheme, no Scheme Creditor shall be entitled to take any proceeding or step (including without limitation by way of demand, legal proceedings, execution of judgment, arbitration or other dispute resolution proceedings) against the Company or its property in any jurisdiction

whatsoever for the purpose of enforcing payment of all or any part of a Scheme Claim.

- 10.2 If any Scheme Creditor takes any action which is prohibited by clause 10.1, it shall be treated as having received an advance payment on account of its Scheme Claim under clause 24 equal to the amount or gross value of any money, property, benefit or advantage obtained by it at the expense of the Company as a result of such action and the extent, if any, to which it is entitled to any payment under clauses 24.1.1 and 24.1.2 shall be reduced accordingly.
- 10.3 For the purposes of clause 10.2, the gross value of any such property, benefit or advantage shall in the absence of agreement be conclusively determined by the Scheme Administrators and, without limitation, may include such amount as the Scheme Administrators may consider to be appropriate by way of interest, costs, charges or expenses incurred by or on behalf of the Company as a consequence of the relevant Scheme Creditor acting in a manner prohibited by clause 10.1.
- 10.4 Where the Company has performed its obligation to make a payment to a Scheme Creditor under the provisions of this Scheme, the following provisions shall apply, without prejudice to any rights the Company may have under or pursuant to the relevant Insurance Contract(s):
- 10.4.1 the Company shall be subrogated to all rights such Scheme Creditor may have against any third party that relate to the Scheme Claim (including all rights of recovery under the LRA or otherwise);
- 10.4.2 the Company shall be entitled, but not obliged, to enforce those rights against such third parties;
- 10.4.3 the proceeds of any recovery from such a third party shall be applied in the following order:
- (a) first, to pay the costs of the recovery process;
 - (b) second, to any portion of the Scheme Creditor's loss that has not in fact been compensated by a payment by the Company (except any excess or deductible amount);
 - (c) third, to the Company, up to the amount paid by the Company to the Scheme Creditor in accordance with the Scheme (such funds to be received as Unallocated Assets in accordance with the provisions of this Scheme); and
 - (d) fourth, to the Scheme Creditor, any excess or deductible amount.

11. SECURITY, LETTERS OF CREDIT AND TRUSTS

11.1 Subject to clause 11.2, nothing in this Scheme shall affect the right of any person to take any appropriate action to enforce:

11.1.1 any security over the property of the Company which could have been enforced if the Company were being wound up pursuant to a winding-up order made on the Trigger Date or which has been created after the Trigger Date in accordance with clause 17.2; or

11.1.2 any letter of credit issued or trust created (expressly, by implication or by operation of law) in respect of the Company and of which it is a beneficiary, if such letter of credit or trust was issued or created before the Trigger Date or has been issued or created after the Trigger Date in accordance with clause 17.2.

11.2 No Scheme Creditor shall be entitled to enforce any LRA Charge and accordingly no attempt by a Scheme Creditor to enforce a LRA Charge against the Company shall be binding on, or effective against, the Company.

11.3 Nothing in this Scheme shall affect the right of the Company against any person in respect of any wrongful drawdown or enforcement of any security, letter of credit issued or trust created in respect of the Company.

12. SET-OFF

12.1 Subject to the provisions set out in clauses 13.2 and 13.3 in respect of the treatment of the Net Liquidated Balance, a Scheme Creditor which has a liability to the Company may rely on any set-off or cross claim upon which it could have relied if the Company were being wound up pursuant to a winding-up order made on the Trigger Date.

12.2 For the avoidance of doubt:

12.2.1 no Scheme Claim which has been assigned to a person after the Trigger Date may be applied in extinguishing or reducing any liability of that person to the Company; and

12.2.2 no liability of a Scheme Creditor to the Company which arises out of an obligation incurred by such Scheme Creditor after the Trigger Date may be extinguished or reduced by any Scheme Claim which such Scheme Creditor has against the Company.

13. ESTABLISHED SCHEME LIABILITIES

13.1 Subject to clauses 9 (Stay of proceedings), 10 (Enforcement of Scheme Claims), 13.2, 13.3, 14 (Interest), 18.1.1(b) (Commutations, settlements and other agreements), a liability of the Company in respect of a Scheme Claim shall become

an **Established Scheme Liability** when by either (i) agreement or (ii) Final Order in Proceedings a present obligation of the Company to pay an ascertained sum of money has been established taking account of:

- 13.1.1 any security over the property of the Company that the Scheme Creditor is entitled (or claims to be entitled) to enforce in accordance with clause 11.1.1;
- 13.1.2 any letter of credit issued or trust created in respect of the Company which the Scheme Creditor is entitled (or claims to be entitled) to enforce in accordance with clause 11.1.2;
- 13.1.3 any set-off or cross claim which may be taken into account from time to time in accordance with clause 12; and
- 13.1.4 any recoveries (net of the costs of recovery) from any third party made by the Scheme Creditor to the extent that the same are in respect of and reduce such Scheme Claim.

13.2 The Company shall be entitled (but not obliged) to treat a Scheme Creditor's Net Liquidated Balance (or any part thereof) as an Established Scheme Liability and to pay the Scheme Creditor concerned the applicable Payment Percentage accordingly, subject to the following:

- 13.2.1 if such Scheme Creditor has a further Liquidated Claim against the Company, the Net Liquidated Balance in such Scheme Creditor's favour (and the associated Established Scheme Liability) may be increased accordingly and, subject to clause 13.2.2(b), the Company may (at its discretion) pay the then current applicable Payment Percentage in respect of the increased Net Liquidated Balance (or any part thereof); and
- 13.2.2 if a Liquidated Receivable becomes due to the Company from such Scheme Creditor, the Net Liquidated Balance in such Scheme Creditor's favour (and the associated Established Scheme Liability) may be reduced accordingly and the Company may (at its discretion) either:
 - (a) make a written demand to the Scheme Creditor for repayment of a sum equivalent to the difference between (i) the sum already received by the Scheme Creditor by way of Payment Percentage from the Company and (ii) the sum that the Scheme Creditor would have received by way of Payment Percentage if it had been calculated in respect of the reduced Net Liquidated Balance (or any part thereof); or
 - (b) on a subsequent increase of the applicable Payment Percentage, withhold any further payment to the Scheme Creditor until the

sums paid under the Scheme to the Scheme Creditor are equivalent to the then current applicable Payment Percentage in respect of the Net Liquidated Balance (or any part thereof) as adjusted in accordance with clause 13.2.1 and 13.2.2.

- 13.3 Notwithstanding any payment made (or treated as having been made) under this Scheme, the amount of an Established Scheme Liability shall for the purposes of this Scheme be the amount established in accordance with this clause 13.

14. INTEREST

- 14.1 Other than interest to which a Scheme Creditor is entitled by reason of contract, judgment against the Company, decree or otherwise for a period or periods prior to and ending on the Trigger Date (**Admissible Interest**):

14.1.1 no liability the Company may have to pay interest shall be included as part of an Established Scheme Liability for the purpose of paying or providing for payments under this Scheme; and

14.1.2 no payment shall be made under this Scheme in respect of any part of a Scheme Claim which represents interest.

- 14.2 For the avoidance of doubt, this clause 14 does not affect any entitlement a Scheme Creditor may have to assert a Scheme Claim in respect of its liability in interest to a third party.

15. PAYMENT OF NON-INSURANCE CLAIMS

The Company shall pay all debts due from it in respect of Non-Insurance Claims, but shall not be obliged by any provision of this Scheme to pay any such debt at any time before the date on which such debt would, apart from the Scheme, have become due and payable.

16. METHOD OF PAYMENT

- 16.1 Payments to a Scheme Creditor under this Scheme may be made, in the absolute discretion of the Scheme Administrators:

16.1.1 by cheque in favour of the relevant Scheme Creditor sent by post to the last known address of such Scheme Creditor, or to such other person and/or such other address as the Scheme Creditor may notify the Scheme Administrators in writing;

16.1.2 if the relevant Scheme Creditor has provided the Scheme Administrators with full details of the bank account into which payment should be made, by telegraphic transfer; or

- 16.1.3 in such other manner or in favour of such other person (including any third party) as the Scheme Administrators may determine from time to time.
- 16.2 The cost and risk of using any particular payment method shall be borne by the relevant Scheme Creditor.
- 16.3 Payment shall be deemed to have been made:
- 16.3.1 if by telegraphic or other electronic transfer, on the day that the instructions were given to the relevant bank; or
- 16.3.2 if by cheque, or otherwise via post, on the day that it is sent,
- and in each case such deemed payment shall be a good discharge and satisfaction of the relevant payment.
- 16.4 Without prejudice to clause 16.3, payment by or on behalf of the Company in respect of an Established Scheme Liability:
- 16.4.1 to a Scheme Creditor;
- 16.4.2 if a Scheme Creditor is comprised of two or more persons, to any one such person;
- 16.4.3 to any person acting on behalf of a Scheme Creditor (whether actually or ostensibly); or
- 16.4.4 otherwise pursuant to clause 16.1,
- shall for all purposes be a good discharge and satisfaction in respect of such Established Scheme Liability to the extent of such payment.
- 16.5 If from time to time there are any amounts represented by:
- 16.5.1 a cheque which is not presented by its payee within six months of the date on which it is despatched; or
- 16.5.2 an attempted payment by electronic transfer which remains unclaimed after six months from the date on which the attempt was made,
- the relevant Scheme Creditor's right to such payment shall be extinguished and any Established Scheme Liabilities to which it relates shall be deemed to have been settled in full. Any funds representing such amounts shall be returned to the Company.

17. RESTRICTIONS ON CARRYING ON INSURANCE BUSINESS

17.1 The Company shall not:

17.1.1 enter into any further or renew, replace or extend any existing, contracts (including without limitation contracts of insurance, reinsurance, retrocession or otherwise) or vary the same in a manner which would increase the total amount of any liability of the Company to any person under such a contract except:

- (a) contracts of insurance protecting the Directors, officers, employees or agents of the Company, the Scheme Administrators, Employees, Delegates or any Committee Member against risks incurred in the run-off of the Company's business in accordance with the provisions of this Scheme; and
- (b) contracts of reinsurance in relation to liabilities of the Company arising out of obligations incurred by the Company prior to the Trigger Date;

17.1.2 carry on any other business except in connection with, and for the purpose of carrying out, this Scheme and all other matters which are necessary and incidental to it; or

17.1.3 without prejudice to clauses 17.2 and 22.2:

- (a) create or cause or permit to be created any trust of or in relation to any of its assets (including, without limitation, any cash deposit), save for the purpose of investment in the ordinary course of the proper conduct of the run-off of the Company's business; or
- (b) appropriate or set aside any asset to meet a liability of the Company,

otherwise than in accordance with clauses 17.2 or 23 or otherwise for the purposes of this Scheme.

17.2 The Company may, if the Scheme Administrators consider it would be in the best interests of the Scheme Creditors, arrange for the issue or creation of new letters of credit, trusts, bonds or other instruments or security over any of its assets:

17.2.1 to replace existing letters of credit or trusts;

17.2.2 to secure liabilities incurred in accordance with the terms of this Scheme; or

17.2.3 to provide security for the purpose of any proceeding in relation to any liabilities of the Company,

but not otherwise, and the Company may renew or permit the renewal of any existing letter of credit.

18. COMMUTATIONS, SETTLEMENTS AND OTHER AGREEMENTS

18.1 The Company may, if the Scheme Administrators consider it would be in the best interests of the Scheme Creditors (excluding the interests of the Scheme Creditor with whom the contract is made in the case of contracts referred to in clause 18.1.1), enter into contractual arrangements:

18.1.1 with a Scheme Creditor under which all or part of the Company's liability to that Scheme Creditor:

- (a) (which may include, without limitation, a liability to provide or fund the costs of that Scheme Creditor's defence) is discharged in full in consideration of a payment made by the Company; or
- (b) becomes an Established Scheme Liability otherwise than as a result of an obligation to pay being established in accordance with clause 13.1; and

18.1.2 with any of its reinsurers for the discharge of any such reinsurer's liabilities to the Company under reinsurance contracts in consideration for payment to the Company.

18.2 Without prejudice to clause 18.1, the Scheme Administrators shall consider any request made by a Scheme Creditor, supported by appropriate actuarial and other relevant information, for the Company to enter into any such contractual arrangements as referred to in clause 18.1 with such Scheme Creditor.

19. INVESTMENT

19.1 Subject to clause 19.2, the Company shall have power to invest all or any of its assets in such manner as it considers prudent from time to time, and to vary, alter or transpose any such investments into others of any nature.

19.2 The Scheme Administrators shall not invest any monies held by the Company or the Scheme Administrators otherwise than in accordance with the investment policy to be formulated by the Scheme Administrators from time to time in consultation with the Creditors' Committee. In the absence of such a policy the Scheme Administrators shall not invest any monies held by the Company otherwise than in cash and sovereign debt as defined in the Solvency Standard.

20. SCHEME CREDITORS TO ASSIST THE COMPANY

20.1 The Scheme Creditors shall provide to the Scheme Administrators all reasonable assistance that they may require in connection with this Scheme and shall provide such assistance as the Scheme Administrators may reasonably require in

connection with the recovery of any Scheme Assets or the enforcement of obligations or liabilities which are or may become owed to the Company.

20.2 A Scheme Creditor shall either:

20.2.1 take all reasonable and practicable steps to recover any sums which any third party may be liable to pay in respect of its Scheme Claim; or

20.2.2 at the request of the Scheme Administrators allow, consent to and facilitate the recovery of any such sums by the Company (by way of right of subrogation) in the name of the relevant Scheme Creditor but at the expense of the Company.

PART D – PAYMENTS TO SCHEME CREDITORS DURING THE RESERVING PERIOD

21. APPLICATION OF PART D OF THIS SCHEME

The provisions of this Part shall only apply during the Reserving Period.

22. APPLICATION OF THE ASSETS OF THE COMPANY

22.1 On and from the Trigger Date, the Scheme Assets shall be placed under the control of the Scheme Administrators and shall, subject to clause 22.2, be applied for the benefit of the Scheme Creditors in accordance with the provisions of this Scheme.

22.2 The Scheme Administrators shall be entitled at any time to procure that Scheme Assets, or any part or parts thereof, are held by the Company upon trust to apply the same in accordance with the terms of the Scheme, and are authorised to execute any deed or document necessary or desirable to constitute or otherwise give effect to such trust arrangements.

22.3 Any trust constituted in accordance with clause 22.2 shall determine upon the Scheme determining in accordance with clause 47.1 but, for the avoidance of doubt, the trust and the objects and conduct thereof shall continue notwithstanding the occurrence of any Liquidation Event.

23. COMPUTATION OF PAYMENT PERCENTAGES

23.1 The Scheme Administrators shall, in accordance with the remaining provisions of this clause 23, determine the percentages of Established Scheme Liabilities that shall be payable by the Company from time to time under this Scheme (**Payment Percentages**), by:

23.1.1 setting an initial **Base Percentage**, which:

- (a) shall be used in calculating the Event Percentages in accordance with clause 23.4; and
- (b) shall be the Payment Percentage applied to all Scheme Liabilities to the extent that they are not subject to an Event Percentage;

23.1.2 setting an initial **Event Percentage** for each Event, which shall be the Payment Percentage applied to all Scheme Liabilities which have been allocated to that Event; and

23.1.3 from time to time revising the Payment Percentages previously set by setting new Payment Percentages of a greater or lesser amount,

in each case in accordance with the remaining provisions of this clause 23.

- 23.2 Before setting any Payment Percentages from time to time the Scheme Administrators shall, for the purposes of the computation of Payment Percentages:
- 23.2.1 on a prudent basis estimate the amount of Charged Reinsurance Monies held by the Company at the relevant time and establish as nearly as practicable which events gave rise to the LRA Charges over such Charged Reinsurance Monies and to which Scheme Liability each such LRA Charge relates;
 - 23.2.2 determine if such events can reasonably be considered together as one or more group(s) without, in the opinion of the Scheme Administrators, materially affecting the fairness of this Scheme as between the Scheme Creditors as a whole (each such event, or group of events, being an **Event**).
 - 23.2.3 allocate the Charged Reinsurance Monies between each Event to reflect, as nearly as practicable, which of the relevant LRA Charges arose as a result of the Event (**Allocated Reinsurance Monies**); and
 - 23.2.4 estimate on a prudent basis:
 - (a) all Scheme Liabilities;
 - (b) all Unallocated Liabilities;
 - (c) all liabilities or potential liabilities of the Company in respect of actual or potential Non-Insurance Claims;
 - (d) all liabilities or potential liabilities of the Company in respect of actual or potential liabilities for Scheme Costs;
 - (e) Scheme Assets;
 - (f) future investment income derived from the Scheme Assets;
 - (g) Unallocated Assets; and
 - (h) any other liability or asset which the Scheme Administrators consider appropriate for the purpose of setting the Payment Percentages.
- 23.3 The Scheme Administrators shall set the Base Percentage by dividing the Unallocated Assets by the Unallocated Liabilities, having ensured that the Company has created such reserves as they consider prudent to enable it to meet its liabilities for Non-Insurance Claims and Scheme Costs as and when they fall due, taking into account future investment income. For the avoidance of doubt, if the Scheme Administrators consider that Unallocated Assets are insufficient to meet the

Company's liabilities for Non-Insurance Claims and Scheme Costs as they fall due the Base Percentage shall be zero.

23.4 The Scheme Administrators shall set each Event Percentage by:

23.4.1 first, estimating and allocating to that Event:

- (a) each Scheme Liability (including Unallocated Liabilities), or part thereof, which arose as a result of that Event;
- (b) an amount of the Unallocated Assets equal to the Base Percentage of the Unallocated Liabilities allocated to that Event; and
- (c) Allocated Reinsurance Monies allocated to that Event; and

23.4.2 second, dividing the aggregate amount of Unallocated Assets and Allocated Reinsurance Monies allocated to that Event pursuant to clauses 23.4.1(b) and 23.4.1(c) by the Scheme Liabilities allocated to that Event pursuant to clause 23.4.1(a).

23.5 As soon as practicable after the Trigger Date and after each subsequent Review Date before initial Payment Percentages have been set, the Scheme Administrators shall consider, with reference to clause 23.7, if initial Payment Percentages should be set.

23.6 After the initial Payment Percentages have been set, the Scheme Administrators shall review the Payment Percentages as soon as practicable after each Review Date and consider, with reference to clause 23.7, if they should be revised.

23.7 The Scheme Administrators shall not set Payment Percentages unless, on the basis of the information and advice referred to in clause 23.10, they consider that after:

23.7.1 the Company has, by reference to Payment Percentages at that rate, complied with the provisions of clause 24 in relation to all Established Scheme Liabilities owed by it as at the relevant Review Date; and

23.7.2 the creation of the reserves described in clause 23.3,

the Company will retain sufficient Cash Assets to enable it to comply with the provisions of clause 24 (by reference to Payment Percentages at those rates) in relation to all Scheme Liabilities which have become, or which the Scheme Administrators consider may become, Established Scheme Liabilities after the relevant Review Date.

23.8 If on considering the current Payment Percentages in accordance with clause 23.6 the Scheme Administrators consider that there are insufficient Cash Assets for such Payment Percentages to be set at that level whilst complying with the provisions of

clause 23.7, they shall reduce such Payment Percentages to such level as they consider appropriate.

- 23.9 No reduction made to the Payment Percentages in accordance with clause 23.3 and 23.4 shall give rise to any obligation on the part of any Scheme Creditor to repay the difference between the amount which would be payable in respect of an Established Scheme Liability of such Scheme Creditor in accordance with such revised Payment Percentages and the amount actually paid to such Scheme Creditor in respect of such Established Scheme Liability under previously existing Payment Percentages.
- 23.10 For the purposes of setting Payment Percentages as at a particular Review Date, the Scheme Administrators shall obtain and consider such financial and/or actuarial information and advice as the Scheme Administrators shall, following consultation with the Creditors' Committee, consider appropriate.

24. PAYMENTS TO SCHEME CREDITORS

24.1 Subject to clause 10.2 (Enforcement of Scheme Claims) and 24.5 (Scheme Costs), in respect of an Established Scheme Liability the Company shall:

24.1.1 as soon as reasonably practicable, but in any event within ninety days following the later of the day on which it becomes an Established Scheme Liability and the date on which the initial Payment Percentages are set, pay to the relevant Scheme Creditor an amount equal to the applicable Payment Percentage(s) of such Established Scheme Liability; and

24.1.2 as soon as reasonably practicable, but in any event within ninety days following any increase in the applicable Payment Percentage(s), pay to the relevant Scheme Creditor (whether or not the same person who received payment under clause 24.1.1):

(a) a further amount equal to the difference between:

- (i) the applicable Payment Percentage(s) (as increased) of such Established Scheme Liability; and
- (ii) the amount of such Established Scheme Liability which has previously been discharged by the Company or is treated as having been discharged under clause 10.2 (Enforcement of Scheme Claims),

but excluding for this purpose any previous Adjusting Payment (as defined in clause 24.1.2(b)); and

(b) an **Adjusting Payment** calculated by reference to a notional rate of interest applied to a notional principal amount equivalent to the

further sum paid pursuant to clause 24.1.2(a) for the period from the first date on which the relevant Scheme Creditor received payment under clause 24.1.1 in respect of such Established Scheme Liability or, if earlier, the later of the dates falling:

- (i) ninety days after the date on which such Scheme Claim became an Established Scheme Liability; and
- (ii) ninety days after the date on which the relevant Payment Percentage(s) are set,

until the date of payment of such increased amount, and assuming such notional interest rate as the Scheme Administrators may in their absolute discretion determine from time to time for this purpose.

24.2 The Company shall not be liable to make any payment to a Scheme Creditor under clause 24.1.2 in respect of any Established Scheme Liability to the extent that such payment would, when aggregated with all payments previously made to that Scheme Creditor under clause 24.1 in respect of that Established Scheme Liability, exceed the amount of that Established Scheme Liability.

24.3 If information becomes available to the Scheme Administrators concerning the financial position of the Company as a result of which they are required to consider if they should set reduced Payment Percentages or which in their opinion would mean that Non-Insurance Claims would be likely not to be capable of being paid as they fall due, the Scheme Administrators shall suspend payments under clause 24.1 for such period (not exceeding six months) that they consider appropriate. As soon as practicable, and in any event by the end of such period, the Scheme Administrators shall set reduced Payment Percentages, or conclude that no such reduction is required, and continue to make payments under clause 24.1 accordingly.

24.4 If at any time when Scheme Costs fall due for payment the reserves created in respect of Unallocated Assets pursuant to clause 22.3 are insufficient to meet the Company's obligation to make any such payment, such payment may be made out of Allocated Reinsurance Monies notwithstanding the provisions of Part 3 of the LRA.

24.5 If any payment in respect of Scheme Costs is made out of Allocated Reinsurance Monies pursuant to clause 24.4, the payments made to Scheme Creditors pursuant to this clause 24 shall be reduced accordingly by allocating such Scheme Costs amongst the relevant Scheme Creditors as follows:

- 24.5.1 first, such Scheme Costs shall be allocated as nearly as possibly between each Event in proportion to the amount of the Allocated Reinsurance Monies allocated to that Event; and

24.5.2 second, between the Scheme Creditors receiving payments in respect of each such Event in proportion to the amount of the Allocated Reinsurance Monies they would receive.

PART E – THE BOARD AND THE TRUSTEE

25. THE BOARD GENERALLY

- 25.1 The Board shall consist of such Directors validly appointed and in office from time to time pursuant to the Company's constitution.
- 25.2 The initial members of the Board shall be the persons whose names are set out in clause 2.3.
- 25.3 Without prejudice to the Act and the provisions of the Company's constitution, a Director may be a creditor of the Company, or interested in a creditor of the Company (whether by being a director or shareholder of such creditor or otherwise), but shall not be entitled to receive any confidential information relating to any matter where he, or the relevant creditor, has an interest in conflict with the Company (whether in respect of carrying out his duties as a Director of the Company or otherwise).

26. THE BOARD DURING THE INITIAL SCHEME PERIOD

During the Initial Scheme Period:

- 26.1 The Company shall ensure that:
- 26.1.1 the Board's composition complies with the Act and the Company's constitution and the Insurance Act; and
 - 26.1.2 so far as it is able, there are sufficient numbers of Directors in office at all times.
- 26.2 Directors may be appointed or dismissed in accordance with the Company's constitution and the Act.
- 26.3 At least every twelve months, commencing on the Effective Date, the Board shall produce reports on the affairs of the Company and send the same to the Scheme Administrators, the Creditors' Committee and the Trustee and it shall in addition from time to time notify the Scheme Administrators, the Creditors' Committee and the Trustee of any material circumstances which in its opinion might lead to it concluding that a Trigger Event should occur.
- 26.4 Subject to the following clauses, the management and control of the business and affairs of the Company shall be carried on by the Board as provided for in the Company's constitution from time to time and as required by law:
- 26.4.1 clause 6.5 (restrictions on the Company and its activities during the Initial Scheme Period);
 - 26.4.2 clause 26.3;

26.4.3 clause 27.4; and

26.4.4 clause 31.7 (insufficient number of Directors),

and it shall monitor the position of the Company and determine, in its discretion but subject to this Scheme, if at any time it should conclude that a Trigger Event should occur.

27. THE BOARD DURING THE RESERVING PERIOD

During the Reserving Period:

27.1 The Scheme Administrators shall ensure that:

27.1.1 the Board's composition complies with the Act and the Company's constitution and the Insurance Act; and

27.1.2 so far as they are able, there are sufficient numbers of Directors in office at all times.

27.2 Subject to the rights of the Special Share, the Trustee shall, when called upon to do so by the Scheme Administrators, forthwith take such steps as are within its power to appoint or remove any Director who has been nominated (or is to be treated as having been nominated) by the Scheme Administrators as they may direct.

27.3 The Directors shall only be permitted to appoint or co-opt other persons to act as Directors with the prior written approval of the Scheme Administrators.

27.4 The management and control of the business and affairs of the Company shall, subject to any delegation by the Scheme Administrators pursuant to clause 32.2.17, be carried on by the Scheme Administrators and the powers of the Board shall lapse in accordance with clause 32.3.

28. RESPONSIBILITIES AND INDEMNITY OF THE BOARD

28.1 If the Board, or any one or more of its members, acts, omits to act, or exercises any power conferred upon him in good faith and with due care in accordance with and to implement, or otherwise for the purposes of, this Scheme:

28.1.1 no Scheme Creditor shall be entitled to challenge the validity of such act, omission to act or exercise of power; and

28.1.2 such member shall not be liable for any resultant loss except to the extent that it is attributable to his negligence, default, breach of duty, breach of trust, fraud or dishonesty.

28.2 Subject to the Act and to the Company's constitution, the Company shall indemnify each Director for any costs incurred by him or her in any proceeding:

- 28.2.1 that relates to liability for any act or omission in his or her capacity as a Director in the course of implementing this Scheme in accordance with its terms; and
 - 28.2.2 in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.
- 28.3 Subject to the Act and to the Company's constitution, the Company shall indemnify each Director in respect of any:
- 28.3.1 liability to any person other than the Company for any act or omission in his or her capacity as a Director in the course of implementing this Scheme in accordance with its terms; and
 - 28.3.2 costs incurred by that Director in defending or settling any claim or proceeding relating to any such liability, not being criminal liability or liability in respect of a breach of the duty specified in section 131 of the Act.
- 28.4 Subject to the provisions of the Act and the Company's constitution, and during the Reserving Period subject to the approval of the Scheme Administrators and the Creditors' Committee (not to be unreasonably withheld or delayed), the Company may (with the prior approval of the Board) effect insurance for a Director in respect of any:
- 28.4.1 liability, not being criminal liability, for any act or omission in his or her capacity as a Director in the course of implementing this Scheme in accordance with its terms; or
 - 28.4.2 costs incurred by that Director in defending or settling any claim or proceeding relating to any such liability; or
 - 28.4.3 costs incurred by that Director in defending any criminal proceedings that have been brought against him or her in relation to any act or omission in his or her capacity as a Director in the course of implementing this Scheme in accordance with its terms and in which he or she is acquitted.

29. THE TRUSTEE

- 29.1 In respect of the shares in the Company held pursuant to the Trust Deed, the Trustee shall (and shall ensure any nominee shall), act in accordance with the provisions of the Trust Deed and, subject to such provisions, shall:
- 29.1.1 exercise all rights and powers to which it or any nominee is entitled in relation to such shares (including, without limitation, to appoint and dismiss Directors and to vote at meetings of shareholders) for the

purpose of carrying out the Scheme, or which are necessary or incidental to such purpose, and during the Reserving Period:

- (a) shall exercise such rights and powers as the Scheme Administrators shall direct; and
- (b) shall not exercise such rights and powers except at the direction of the Scheme Administrators; and

29.1.2 without prejudice to the generality of clause 29.1.1:

- (a) not sell, transfer or otherwise dispose of, or create any Encumbrance over or create any interest in or deal with any of the shares; and
- (b) except for the purposes of complying with clause 29.2, until termination of the Scheme:
 - (i) not, nor permit any nominee to, present a petition asking for an order that the Company be wound up by the Court; and
 - (ii) ensure, on its own behalf and on behalf of any nominee, that no resolution is passed for the voluntary winding up of the Company,

except with the consent of the Scheme Administrators.

29.2 If either:

29.2.1 the Company gives notice to the Trustee of a determination under clause 47.1.3; or

29.2.2 a resolution is passed by the Scheme Creditors in accordance with clause 47.1.4 (where the relevant meetings of Scheme Creditors also pass a resolution that the Company should be wound up),

the Trustee shall forthwith take such steps as lie within its power to place the Company in voluntary liquidation pursuant to the Act.

PART F – THE SCHEME ADMINISTRATORS

30. QUALIFICATION, APPOINTMENT, RESIGNATION AND REMOVAL OF THE SCHEME ADMINISTRATORS

- 30.1 A Scheme Administrator shall be an individual qualified to act as a fit and proper person in accordance with the Insurance Act.
- 30.2 The initial Scheme Administrators shall be Dan Yoram Schwarzmann and Colin Thomas McCloy.
- 30.3 Subject to clause 42.3.2 (where there are insufficient members of the Creditors' Committee for it to act), a Scheme Administrator may resign his appointment at any time by giving not less than six months' notice (or such shorter period as the Creditors' Committee may agree) in writing to the Company and to the Creditors' Committee.
- 30.4 Subject to clause 30.5, upon removal of a Scheme Administrator, or if a Scheme Administrator ceases to hold office for any other reason, the Creditors' Committee shall be entitled to appoint any other person qualified to act pursuant to clause 30.1 to be a Scheme Administrator in his place, save that where a resolution requiring the removal of such Scheme Administrator is passed at a meeting of the Scheme Creditors pursuant to clause 30.6, such appointment may be made by the Scheme Creditors at such meeting.
- 30.5 Following the appointment of a Scheme Administrator by the Creditors' Committee pursuant to clause 30.4, a resolution requiring ratification of such appointment shall be proposed at the next meeting of the Scheme Creditors, but until such resolution has been passed or rejected by the relevant meeting such Scheme Administrator shall have full power to act as a Scheme Administrator.
- 30.6 A Scheme Administrator may be removed, and any other person qualified to act pursuant to clause 30.1 be appointed to be a Scheme Administrator in his place and/or as additional Scheme Administrator(s) by resolution duly passed at a meeting of Scheme Creditors in accordance with Part H.
- 30.7 Where more than one person has been appointed as a Scheme Administrator, the functions and powers of the Scheme Administrators under this Scheme may be performed and exercised jointly or severally and any act required to be done by the Scheme Administrators pursuant to this Scheme may be done by all or any one or more of them.

31. FUNCTIONS, POWERS AND DUTIES OF THE SCHEME ADMINISTRATORS DURING THE INITIAL SCHEME PERIOD

During the Initial Scheme Period, the Scheme Administrators shall be entitled to:

- 31.1 receive from the Company reports on its affairs at least every 12 months, prepared in accordance with clause 26.3 and, on request by the Scheme Administrators, meet with the Board every 6 months to discuss the affairs of the Company and the content of such reports;
- 31.2 receive notice of, attend and speak at (in an *ex officio* capacity) all meetings of the Creditors' Committee;
- 31.3 be remunerated for carrying out their functions and powers under this Scheme and for all expenses reasonably and properly incurred by them in connection with the exercise of such functions and powers;
- 31.4 delegate to any person all or any of the functions, powers, rights, authorities and discretions conferred upon the Scheme Administrators under this Scheme (**Delegate**) and from time to time revoke any such delegation, provided that:
- 31.4.1 such person is:
- (a) a partner in the same firm as the Scheme Administrators;
 - (b) qualified to act pursuant to clause 30.1; and
 - (c) approved for the time being by the Board and the Creditors' Committee for the purposes of this clause 31.4; and
- 31.4.2 the Scheme Administrators shall be personally responsible for any act or omission of any such person to the same extent as if they had expressly authorised it;
- 31.5 engage and remunerate (with the approval of the Board) accountants, actuaries, lawyers and other professional advisers or agents whether in New Zealand or other jurisdictions provided such engagement is necessary for the purpose of performing their functions and powers under this Scheme;
- 31.6 give directions (or consent) to the Trustee in relation to the exercise by it of its functions and powers in respect of this Scheme pursuant to this Scheme and the Trust Deed; and
- 31.7 assume full management and control of the Company's business and affairs (to the exclusion of any remaining Director) and shall have all the powers, functions and duties of the Board (including, without limitation, such rights, powers and functions as are conferred on the Board and/or the Company under this Scheme) where:
- 31.7.1 one or more Directors resigns, is removed or otherwise ceases to hold office with the result that the number of Directors falls below three; and
- 31.7.2 the Scheme Administrators, after consulting with the Creditors' Committee, are unable to identify any other suitably qualified person or

persons to act as Directors in their place within 10 Working Days of such resignation, removal or vacancy; and

31.7.3 the Trustee does not, on being directed to do so by the Scheme Administrators and in accordance with the provisions of the Trust Deed, procure the appointment of a sufficient number of Directors during that period of 10 Working Days,

provided that the Scheme Administrators management powers and functions pursuant to this clause 31.7 shall automatically lapse and re-vest in the Board upon the Trustee, as directed by the Scheme Administrators and in accordance with the provisions of the Trust Deed, procuring the appointment of a sufficient number of replacement Directors.

32. FUNCTIONS, POWERS AND DUTIES OF THE SCHEME ADMINISTRATORS DURING THE RESERVING PERIOD

32.1 With immediate effect from the Trigger Date, the Scheme Administrators shall be empowered to and shall supervise and ensure the carrying out of this Scheme, and for these purposes:

32.1.1 shall, and shall have the power to, act in the name and on behalf of the Company to manage its affairs, business and property (including for the avoidance of doubt the management of the run-off of the Company's business); and

32.1.2 shall realise the assets of the Company and apply them for the benefit of the Scheme Creditors in accordance with this Scheme.

32.2 Without prejudice to the generality of clause 32.1, in carrying out their functions, powers and duties under this Scheme during the Reserving Period the Scheme Administrators shall:

32.2.1 determine the Payment Percentages in accordance with clause 23;

32.2.2 exercise all rights, powers and duties of the Company under this Scheme;

32.2.3 agree claims and process reinsurance recoveries as part of the run-off of the Company's business;

32.2.4 take possession of, collect and get in all the property and assets (of whatever nature) to which the Company is or appears to be entitled and do all such things as may be necessary for the realisation of any such property or assets and the application of the property and assets of the Company for the benefit of the Scheme Creditors;

- 32.2.5 do all such things which may be necessary or expedient for the protection of the Company's assets or of any of the assets that appear to belong to the Company;
- 32.2.6 be entitled to receive from the Company reports on its affairs at least every 12 months, prepared in accordance with clause 26.3;
- 32.2.7 have full access at all times to all books, papers and other documents of the Company and receive all such information as they may require in relation to its affairs;
- 32.2.8 be entitled to receive notice of and, subject to any request by the Creditors' Committee pursuant to clause 36.10, attend and speak at (in an *ex officio* capacity) all meetings of the Creditors' Committee;
- 32.2.9 be entitled to engage and remunerate accountants, actuaries, lawyers and other professional advisers or agents whether in New Zealand or other jurisdictions provided they regard such engagement as necessary for the purpose of performing their functions and powers under this Scheme;
- 32.2.10 be entitled to give directions (or consent) to the Trustee in relation to the exercise by it of its functions and powers in respect of this Scheme pursuant to the Trust Deed and to the Board and shareholders of the Company in relation to the exercise by them of their rights and powers in connection with the Company;
- 32.2.11 be entitled to do all acts and to execute in the name and on behalf of the Company any deed, receipt or other document and to use the Company's seal;
- 32.2.12 be entitled to borrow and to make any payment which is necessary or incidental to the performance of their functions and to give a valid discharge for amounts received by the Company;
- 32.2.13 be entitled to bring, defend or manage any action or other legal proceedings in the name and on behalf of the Company or otherwise;
- 32.2.14 to the extent that it has jurisdiction, to apply to the Court, or to cause the Company to apply, in relation to any particular matter arising in the course of the Scheme;
- 32.2.15 subject to the agreement of the Creditors' Committee, if the Scheme Administrators consider it to be in the best interests of the Scheme Creditors as a whole, to propose a further scheme of arrangement under Part 15 of the Act either to amend the provisions of this Scheme or to implement a new scheme of arrangement between the Company and

the Scheme Creditors (or the relevant Scheme Creditors proposed to be affected by the Scheme);

32.2.16 be remunerated, in accordance with the approval of the Creditors' Committee pursuant to clause 37.3.2 from time to time, for the carrying out of such functions and powers and to be reimbursed for all expenses reasonably and properly incurred by them in connection with the exercise of such functions and powers;

32.2.17 delegate to any person all or any of the functions, powers, rights, authorities and discretions conferred upon the Scheme Administrators under this Scheme (**Delegate**) and from time to time revoke any such delegation, provided that:

(a) such person is:

(i) a partner in the same firm as the Scheme Administrators who is qualified to act pursuant to clause 30.1; or

(ii) a Director,

and in either case is approved for the time being by the Creditors' Committee for the purposes of this clause 32.2.17; and

(b) the Scheme Administrators shall be personally responsible for any act or omission of any such person to the same extent as if they had expressly authorised it; and

32.2.18 be entitled to do all other things incidental to the exercise of the functions and powers referred to in clause 32.1 and in this clause 32.2.

32.3 With immediate effect from the Trigger Date, and subject to any delegation of powers pursuant to clause 32.2.17:

32.3.1 the powers of the Board in relation to the Company shall lapse; and

32.3.2 any function of, or power conferred on, the Company or its officers, whether by statute, its constitution or this Scheme, which could be exercised so as to interfere with the Scheme Administrators' exercise of their functions and powers in relation to the Company shall not be exercisable except with the consent of the Scheme Administrators, which may be given either generally or in relation to particular cases,

provided that nothing in this clause 32.2 shall relieve the Board from its duty to act in accordance with the Act and the Insurance Act.

32.4 As soon as reasonably practicable following the Trigger Date, the Scheme Administrators shall ensure (or shall procure) that a review of any potential causes

of action which might be available in an insolvent liquidation of the Company is carried out and that the results of such review are reported to the Creditors' Committee.

- 32.5 The Scheme Administrators shall consult with, and take account of the views expressed by, the Creditors' Committee on any matter material to this Scheme (which for the avoidance of doubt includes, without limitation, setting and revising Payment Percentages pursuant to clause 23) when carrying out their functions and exercising their powers and duties under this Scheme during the Reserving Period.

33. RESPONSIBILITY AND INDEMNITY OF THE SCHEME ADMINISTRATORS

33.1 The Scheme Administrators shall:

33.1.1 act *bona fide* and with due care and diligence in the interests of Scheme Creditors as a whole in carrying out their functions and exercising their powers under this Scheme; and

33.1.2 use their powers under this Scheme for the purpose of ensuring that this Scheme is operated in accordance with its terms.

33.2 If the Scheme Administrators act, or omit to act, or exercise any power conferred upon them in good faith and with due care in accordance with and to implement, or otherwise for the purposes of, this Scheme:

33.2.1 no Scheme Creditor shall be entitled to challenge the validity of such act, omission to act or exercise of power; and

33.2.2 the Scheme Administrators shall not be liable for any resultant loss except to the extent that it is attributable to their own negligence, default, breach of duty, breach of trust, fraud or dishonesty (or to that of any Employee or Delegates).

33.3 If any Employee acts, or omits to act, in good faith and with due care in accordance with and to implement, or otherwise for the purposes of, this Scheme:

33.3.1 no Scheme Creditor shall be entitled to challenge the validity of such act or omission to act; and

33.3.2 the Employee shall not be liable for any resultant loss except to the extent that it is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty.

33.4 Without prejudice to clause 33.2 or to the proviso in clause 32.2.17(b), if any Delegate acts, or omits to act, or exercises any power conferred upon the Scheme Administrators in good faith and with due care in accordance with and to implement, or otherwise for the purposes of, this Scheme:

- 33.4.1 no Scheme Creditor shall be entitled to challenge the validity of such act or omission to act; and
 - 33.4.2 the Delegate shall not be liable for any resultant loss except to the extent that it is attributable to his own negligence, default, breach of duty, breach of trust, fraud or dishonesty (or to that of any Employee).
- 33.5 Subject to the Act and to the Company's constitution, the Company shall indemnify each Scheme Administrator (and each Employee and Delegate) for any costs incurred by him or her in any proceeding:
- 33.5.1 that relates to liability for any act or omission in his or her capacity as a Scheme Administrator, Employee or Delegate in the course of implementing this Scheme in accordance with its terms; and
 - 33.5.2 in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.
- 33.6 Subject to the Act and to the Company's constitution, the Company shall indemnify each Scheme Administrator (and each Employee and Delegate) in respect of any:
- 33.6.1 liability to any person other than the Company for any act or omission in his or her capacity as a Scheme Administrator, Employee or Delegate in the course of implementing this Scheme in accordance with its terms; and
 - 33.6.2 costs incurred by that Scheme Administrator, Employee or Delegate in defending or settling any claim or proceeding relating to any such liability, not being criminal liability or liability in respect of a breach of the duty specified in section 131 of the Act.
- 33.7 Subject to the provisions of the Act and the Company's constitution, and during the Reserving Period subject to the approval of the Scheme Administrators and the Creditors' Committee (not to be unreasonably withheld or delayed), the Company may (with the prior approval of the Board) effect insurance for a Scheme Administrator, Employee or Delegate in respect of any:
- 33.7.1 liability, not being criminal liability, for any act or omission in his or her capacity as a Scheme Administrator, Employee or Delegate in the course of implementing this Scheme in accordance with its terms; or
 - 33.7.2 costs incurred by that Scheme Administrator, Employee or Delegate in defending or settling any claim or proceeding relating to any such liability; or
 - 33.7.3 costs incurred by that Scheme Administrator, Employee or Delegate in defending any criminal proceedings that have been brought against the

Scheme Administrator, Employee or Delegate in relation to any act or omission in his or her capacity as a Scheme Administrator, Employee or Delegate in the course of implementing this Scheme in accordance with its terms and in which he or she is acquitted.

PART G – THE CREDITORS’ COMMITTEE

34. CONSTITUTION OF THE CREDITORS’ COMMITTEE

- 34.1 From the Effective Date there shall be a Creditors’ Committee under the Scheme.
- 34.2 The Creditors’ Committee shall consist of not less than 3 nor more than 9 individuals (each a **Committee Member**) each of whom is:
- (a) a Scheme Creditor; or
 - (b) a person holding a general power of attorney from one or more Scheme Creditors; or
 - (c) an authorised representative of one or more Scheme Creditors.
- 34.3 Any Committee Member may, by notice in writing to the Creditors’ Committee, appoint any person qualified to act as a Committee Member as his or her alternate to attend and vote at any meeting of the Creditors’ Committee in his or her place. Such alternate shall have the same powers and be subject to the same duties and limitations as the Committee Member who has appointed him or her.
- 34.4 Any person entitled to appoint an alternate under clause 34.3 may, by notice in writing to the Creditors’ Committee, from time to time revoke such appointment and appoint another person qualified to act as that Committee Member’s alternate.

35. MEMBERSHIP OF THE CREDITORS’ COMMITTEE

- 35.1 The initial Creditors’ Committee shall consist of those persons appointed, at the meeting of Scheme Creditors at which approval is sought for the Scheme, in accordance with the following procedure:
- 35.1.1 subject to clause 35.1.2, Scheme Creditors may submit nominations for proposed members of the initial Creditors’ Committee (**Proposed Members**);
 - 35.1.2 a Proposed Member shall only be eligible for nomination to the initial Creditors’ Committee if:
 - (a) he or she is qualified in accordance with clause 34.2; and
 - (b) a Nomination Paper is completed and returned in accordance with clause 35.1.4;
 - 35.1.3 nominations for Proposed Members must be submitted on a nomination paper, which is part of the voting form for this Scheme sent to Scheme Creditors (**Nomination Paper**);

- 35.1.4 Nomination Papers must be completed and returned to the Company by 5:00pm on Tuesday, 5 June 2012;
- 35.1.5 the initial Creditors' Committee shall consist of:
- (a) Proposed Members;
 - (b) Representatives of certain Scheme Creditors who have agreed to act in advance (**Default Members**); and
 - (c) any additional members appointed pursuant to clause 35.1.9,
- as decided in accordance with clauses 35.1.6 and 35.1.7;
- 35.1.6 if the total number of Proposed Members and Default Members does not, in aggregate, exceed seven the initial Creditors' Committee shall comprise:
- (a) the Default Members;
 - (b) the Proposed Members (if any); and
 - (c) any additional persons appointed pursuant to clause 35.1.9;
- 35.1.7 if the total number of Proposed Members and Default Members is, in aggregate, greater than seven, the Scheme Creditors shall vote on the initial Creditors' Committee in accordance with clause 35.1.8;
- 35.1.8 if there is a vote on the initial Creditors' Committee:
- (a) the appointment of all Default Members and Proposed Members shall be subject to that vote;
 - (b) that vote shall take place at the Scheme Meeting on 12 June 2012;
 - (c) each Scheme Creditor shall be entitled to vote for up to seven members, but shall only be entitled to cast one vote in relation to each member;
 - (d) all Scheme Creditors shall be entitled to vote, notwithstanding whether they voted for or against this Scheme or abstained;
 - (e) the seven members who receive the greatest aggregate value of votes cast in their favour shall, together with any additional members appointed pursuant to clause 35.1.9 become the initial Creditors' Committee;
 - (f) the votes cast shall be assessed according to the value of the relevant Scheme Claims based on:

- (i) for Scheme Creditors who voted for this Scheme, the value of their Scheme Claims as submitted for the purposes of voting on this Scheme; and
- (ii) for Scheme Creditors who did not vote on this Scheme, details of their Scheme Claims that such Scheme Creditors shall be required to provide if they wish to vote by completing a form; and

35.1.9 notwithstanding whether there is a vote in relation to the initial Creditors' Committee, the Board may (in consultation with the Scheme Administrators) appoint up to 4 members of the initial Creditors' Committee, provided that:

- (a) each such member meets the eligibility criteria set out in clause 34.2; and
- (b) the total membership of the initial Creditors' Committee does not exceed 9 persons,

and in making any such appointments shall use their reasonable endeavours to ensure that the composition of the initial Creditors' Committee is such that it represents a proper balance of the interests of the Scheme Creditors as a whole.

35.2 The Creditors' Committee may, with the agreement of the Company, resolve in a meeting by at least two thirds of the members present, to appoint any eligible person to be a member, either to fill a vacancy or as an additional member, subject to:

35.2.1 the maximum number of members provided for in clause 34.2; and

35.2.2 a resolution requiring ratification of such appointment being put before the next meeting of the Scheme Creditors, pending which such appointee shall have full power to act as a Committee Member; and

35.3 The Scheme Creditors in a meeting may, with the agreement of the Company or, during the Reserving Period, the Scheme Administrators by at least two thirds of members present, remove any Committee Member from office, subject to the minimum number of members provided for in clause 34.2.

35.4 A Committee Member shall automatically cease to be a member of the Creditors' Committee if he or she:

35.4.1 ceases to be, or is found never to have been, qualified to act as a Committee Member in accordance with clause 34.2;

35.4.2 resigns by notice in writing addressed to the Creditors' Committee;

- 35.4.3 dies;
- 35.4.4 becomes bankrupt or subject to the no asset procedure or a summary instalment order;
- 35.4.5 is, or is deemed to be, subject to a compulsory treatment order made under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- 35.4.6 becomes disqualified or prohibited from acting as a director;
- 35.4.7 without the leave of the Creditors' Committee, fails to attend three consecutive meetings of the Creditors' Committee and the Creditors' Committee resolves, by a majority of two thirds of the members present, to remove him or her; or
- 35.4.8 is removed by resolution at a meeting of the Scheme Creditors in accordance with clause 35.3,

or if the Scheme Creditor that he or she represents is dissolved, struck off or has a liquidator, administrator, receiver or statutory manager appointed.

- 35.5 Whenever there is a proposed change in the composition of the Creditors' Committee, the Creditors' Committee (in consultation with the Scheme Administrators and, during the Initial Scheme Period, the Company) shall endeavour to ensure that such composition will between the Committee Members secure a proper balance of the interests of the Scheme Creditors.

36. PROCEEDINGS OF THE CREDITORS' COMMITTEE

- 36.1 Subject to the provisions of this Scheme, the Creditors' Committee may convene, adjourn and otherwise regulate its meetings as it considers appropriate.
- 36.2 The quorum of any meeting of the Creditors' Committee shall be at least a majority of its members from time to time, provided that if a quorum is not present within half an hour from the time appointed for a meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to such time and place as may be determined by the majority of members present and the members present at any such adjourned meeting shall constitute a quorum.
- 36.3 Each Committee Member shall have one vote and, except as otherwise provided in this Scheme, matters arising at a meeting shall be decided by a majority of votes cast at the meeting.
- 36.4 During the Initial Scheme Period, the Creditors' Committee shall meet in accordance with clauses 36.6 to 36.10 as it shall consider desirable for the purpose of performing its functions under this Scheme during that period.

- 36.5 During the Reserving Period, it shall meet for the purpose of receiving a report from the Scheme Administrators on the progress of this Scheme as referred to in clause 37.3.4 and shall hold such other meetings in accordance with clauses 36.6 to 36.10 as it shall consider desirable for the purpose of performing its functions under this Scheme during that period.
- 36.6 A meeting of the Creditors' Committee shall be called as soon as reasonably practicable:
- 36.6.1 if so required by at least three of its members; or
- 36.6.2 if the Company or the Scheme Administrators otherwise consider it appropriate.
- 36.7 Except with the consent of all Committee Members and:
- 36.7.1 during the Initial Scheme Period, the Company; or
- 36.7.2 during the Reserving Period, the Scheme Administrators,
- no meeting of the Creditors' Committee may be called on less than 14 days' notice and, except with the consent of all Committee Members, no business may be transacted at any such meeting other than that set out in the notice of that meeting.
- 36.8 Each Committee Member, the Company and the Scheme Administrators shall be entitled to and shall receive notice of all meetings of the Creditors' Committee.
- 36.9 The Company shall be represented by one Director duly appointed by the Board during the Initial Scheme Period and by the Scheme Administrators (or their representatives) during the Reserving Period. Any such duly appointed Director and the Scheme Administrators (or their respective representatives) shall, subject to clause 36.10, be entitled to attend, but not to vote, at all meetings of the Creditors' Committee and, if so requested by the Creditors' Committee, the Company and/or the Scheme Administrators shall attend such meetings.
- 36.10 Where a meeting of the Creditors' Committee is attended by the Company or the Scheme Administrators (or their respective representatives), if so requested by the Creditors' Committee, any one or more of such persons shall absent themselves from such part or parts of the meeting as the Creditors' Committee may specify.
- 36.11 Proper minutes shall be kept of all proceedings of the Creditors' Committee and shall, subject to clauses 38.4 and 38.5, be open to inspection at all reasonable times by any Committee Member. Copies of such minutes shall be sent as soon as practicable to:
- 36.11.1 during the Initial Scheme Period, the Company and the Scheme Administrators; and

36.11.2 during the Reserving Period, the Scheme Administrators.

36.12 All or any of the Committee Members, the Company and the Scheme Administrators may participate in a meeting of the Creditors' Committee by means of a conference telephone or any communication equipment which allows all persons participating in the meeting to hear and speak to each other throughout the meeting. A person so participating shall be deemed to be present in person at the meeting and shall, in the case of a Committee Member, be entitled to vote or be counted in a quorum accordingly.

36.13 A resolution executed by all the Committee Members for the time being, in each case who would have been entitled to vote on the matter had it been proposed as a resolution at a meeting of the Creditors' Committee, shall be as valid and effectual as if it had been passed at a meeting of the Creditors' Committee, which in every case was duly convened and held.

36.14 For the purposes of a resolution in writing under clause 36.13:

36.14.1 a resolution shall consist of one or more written instruments (including emails and faxes) or one or more communications by electronic means sent to an address specified for the purpose by or on behalf of the Creditors' Committee from time to time, provided that each such written instrument and communication by electronic means (if more than one) is to the same effect;

36.14.2 a written instrument is executed when the person executing it signs it;

36.14.3 a communication by electronic means is executed when the person executing it sends it provided that it has been authenticated in such manner (if any) as the Creditors' Committee may prescribe from time to time;

36.14.4 the members need not execute the same written instrument or electronic communication; and

36.14.5 a resolution shall be effective when the Scheme Administrators certify that sufficient evidence has been received that the resolution has been executed in accordance with clause 36.13 and this clause 36.14.

37. FUNCTIONS OF THE CREDITORS' COMMITTEE

37.1 During the Initial Scheme Period the Creditors' Committee shall:

37.1.1 monitor the carrying out of this Scheme by the Company; and

37.1.2 be entitled to receive from the Company reports on its affairs in accordance with clause 26.3.

- 37.2 During both the Initial Scheme Period and during the Reserving Period:
- 37.2.1 the Creditors' Committee shall, so far as it is able, ensure that there is a Scheme Administrator in office at all times;
 - 37.2.2 the Creditors' Committee shall have the powers as provided in clause 30.4 to appoint a replacement Scheme Administrator if a Scheme Administrator ceases to hold office, in accordance with the provisions of that clause;
 - 37.2.3 the Company shall not increase the level of the Directors' remuneration or emoluments received by them or vary or amend the terms of any contract between the Company and any Director without the prior written consent of the Creditors' Committee;
 - 37.2.4 the Creditors' Committee shall consider and, if thought fit, approve or agree (as relevant):
 - (a) any Delegate proposed by the Scheme Administrators in accordance with clause 31.4 or clause 32.2.17 (as relevant);
 - (b) any proposal to terminate this Scheme pursuant to clause 47.1.3; and
 - (c) any proposed reduction in the quorum to apply to a meeting of Scheme Creditors pursuant to clause 45.13,and the Creditors' Committee may, with the consent of the Company or, during the Reserving Period, the Scheme Administrators, delegate such consideration and approval or agreement to one or more of its members to act on its behalf; and
 - 37.2.5 the Creditors' Committee shall consult with the Scheme Administrators in relation to any modification of this Scheme pursuant to clause 51.2.
- 37.3 During the Reserving Period:
- 37.3.1 the Creditors' Committee shall monitor the Scheme Administrators in the exercise of their functions under this Scheme;
 - 37.3.2 the Creditors' Committee shall consider and, if thought fit, approve or agree (as relevant):
 - (a) (such approval not to be unreasonably withheld or delayed), on behalf of the Company the level and payment of the fees and expenses of the Scheme Administrators from time to time, and the Scheme Administrators shall provide all information requested by the Creditors' Committee in relation to such consideration;

- (b) the effecting of insurance for any Director, Scheme Administrator, Employee, Delegate or Committee Member pursuant to clauses 28.4, 33.7 and 39.4 respectively; and
- (c) the proposal of a further scheme of arrangement pursuant to clause 32.2.15,

and the Creditors' Committee may, with the consent of the Scheme Administrators, delegate such consideration and approval or agreement to one or more of its members to act on its behalf;

37.3.3 the Creditors' Committee shall consult with the Scheme Administrators in relation to:

- (a) any proposed investment of any monies pursuant to clause 19.2 otherwise than in accordance with the investment policy noted in that clause;
- (b) the appropriate financial and/or actuarial information and advice pursuant to clause 23.10; and
- (c) the suitability of any person or persons to be appointed as Directors pursuant to clause 31.7;

37.3.4 on a date not later than the first anniversary of the Trigger Date and within 3 months of each subsequent anniversary of the Trigger Date, the Scheme Administrators shall submit to the Creditors' Committee a report on the conduct of the affairs of the Company and the operation of the Scheme during the period since the last such report was prepared;

37.3.5 the Scheme Administrators shall, or shall appoint a representative to, attend any meeting of the Creditors' Committee at which a report prepared in accordance with clause 37.3.4 is considered to provide such explanations and information as the Creditors' Committee may require;

37.3.6 the Scheme Administrators shall provide a copy of each report produced pursuant to clause 37.3.4 free of charge to Scheme Creditors, incorporating such amendments (if any) as the Scheme Administrators and the Creditors' Committee may agree;

37.3.7 the Creditors' Committee may from time to time resolve what further information it is desirable to seek from the Scheme Administrators concerning the affairs of the Company and/or the operation of this Scheme, and may depute to any one Committee Member to apply in writing to the Scheme Administrators for, and to receive, such information;

- 37.3.8 the Scheme Administrators shall promptly supply such information as is reasonably requested by or on behalf of the Creditors' Committee pursuant to clause 37.3.7;
- 37.3.9 each Committee Member shall be entitled to raise questions or to request a meeting with the Scheme Administrators at any time in connection with the performance of his responsibilities as a Committee Member;
- 37.3.10 subject to their duties under this Scheme, the Scheme Administrators shall use reasonable endeavours to respond to such questions or to comply with any such request for a meeting pursuant to clause 37.3.9; and
- 37.3.11 notwithstanding the previous provisions of this clause 37.3, neither the Scheme Administrators nor the Company shall be obliged to disclose any of the Company's confidential information to a Committee Member if the information relates to a matter where such member or the Appointor(s) that the member represents has an interest in conflict with the Company, other than a general conflict arising solely as a result of the status of the Committee Members (or their respective Appointors) as creditors of the Company.

38. DUTIES OF THE CREDITORS' COMMITTEE

38.1 Each Committee Member and their respective alternates shall, in performing their functions as Committee Members in relation to the Company, act *bona fide* in the interests of the Scheme Creditors as a whole.

38.2 Each:

38.2.1 Committee Member who is in any way interested, directly or indirectly; or

38.2.2 Committee Member whose Appointors (or any one of them) are in any way interested, directly or indirectly,

in a contract or proposed contract with the Company (other than a contract arising as a result of the provisions of this Scheme) shall be under a duty to declare the nature of such interest at a meeting of the Creditors' Committee.

38.3 For the purposes of clause 38.2 a general notice given to the Creditors' Committee to the effect that a member or an Appointor is related to (within the meaning of the Act) a specified company and is to be regarded as interested in any contract with that company or firm is deemed a sufficient declaration of interest in relation to any such contract.

- 38.4 A Committee Member in respect of whom the duty to declare an interest in a contract, or proposed contract, with the Company arises under clause 38.2:
- 38.4.1 shall not be counted in the quorum at the meeting(s), or parts of such meeting(s) during which the matter is discussed and voted upon;
 - 38.4.2 shall not be entitled to vote in relation to any matter relating specifically to any such contract;
 - 38.4.3 shall retire from the meeting for so long as the matter is discussed and voted upon; and
 - 38.4.4 notwithstanding the rights of Committee Members to inspect minutes of its meetings pursuant to clause 36.11, shall not receive any information, nor be entitled to inspect any part of the minutes of a meeting of the Creditors' Committee relating to such matter.
- 38.5 Subject to clauses 38.6 and 38.7, each Committee Member shall be entitled to report to his or her Appointor(s) on the proceedings of the Creditors' Committee and, so far as necessary for this purpose, to disclose the Company's confidential information to those officers, employees and professional advisers of any such Appointor(s) who need to know it in connection with the Committee Member's performance of his or her responsibilities as a Committee Member.
- 38.6 No information shall be disclosed by a Committee Member to their Appointor(s) that to his or her knowledge (after due enquiry) relates to any matter where any such Appointor has an interest in conflict with the Company (other than a general conflict arising solely as a result of the status of the Committee Members or their respective Appointors as creditors of the Company).
- 38.7 Each Committee Member shall, and shall procure that their respective Appointors (and Appointors' officers and employees) and professional advisers shall preserve the confidentiality of any such information of the Company and shall use such information only for the purposes of performing their responsibilities and functions in relation to the Creditors' Committee.

39. RESPONSIBILITIES AND INDEMNITY OF CREDITORS' COMMITTEE

- 39.1 If the Committee Members (or any alternates) act, or omit to act, or exercise any power conferred upon them in good faith and with due care in accordance with and to implement, or otherwise for the purposes of, this Scheme:
- 39.1.1 no Scheme Creditor shall be entitled to challenge the validity of such act, omission to act or exercise of power; and

- 39.1.2 the Committee Members shall not be liable for any resultant loss except to the extent that it is attributable to their own wilful default, fraud, dishonesty or wilful breach of duty or trust.
- 39.2 Subject to the Act and to the Company's constitution, the Company shall indemnify each Committee Member for any costs incurred by him or her in any proceeding:
 - 39.2.1 that relates to liability for any act or omission in his or her capacity as a Committee Member in the course of implementing this Scheme in accordance with its terms; and
 - 39.2.2 in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.
- 39.3 Subject to the Act and to the Company's constitution, the Company shall indemnify each Committee Member in respect of any:
 - 39.3.1 liability to any person other than the Company for any act or omission in his or her capacity as a Committee Member in the course of implementing this Scheme in accordance with its terms; and
 - 39.3.2 costs incurred by that Committee Member in defending or settling any claim or proceeding relating to any such liability, not being criminal liability or liability in respect of a breach of the duty specified in section 131 of the Act.
- 39.4 Subject to the provisions of the Act and the Company's constitution, and during the Reserving Period subject to the approval of the Scheme Administrators and the Creditors' Committee (not to be unreasonably withheld or delayed), the Company may (with the prior approval of the Board) effect insurance for a Committee Member in respect of any:
 - 39.4.1 liability, not being criminal liability, for any act or omission in his or her capacity as a Committee Member in the course of implementing this Scheme in accordance with its terms; or
 - 39.4.2 costs incurred by that Committee Member in defending or settling any claim or proceeding relating to any such liability; or
 - 39.4.3 costs incurred by that Committee Member in defending any criminal proceedings that have been brought against the Committee Member in relation to any act or omission in his or her capacity as a Committee Member in the course of implementing this Scheme in accordance with its terms and in which he or she is acquitted.

40. VALIDATION OF ACTS OF THE CREDITORS' COMMITTEE

Notwithstanding that it is subsequently discovered that there is any defect in the appointment of a Committee Member, or of an alternate, or that any of them were disqualified, all acts done by such persons acting in such capacities shall be valid as if every such person had been duly appointed and qualified.

41. EXPENSES OF THE CREDITORS' COMMITTEE

Each Committee Member and their respective alternates shall be entitled to be reimbursed by the Company for their reasonable expenses of attending meetings of the Creditors' Committee, provided that such meetings are held in Christchurch or in such other place as the Company may from time to time agree with the Creditors' Committee.

42. INSUFFICIENT MEMBERS OF THE CREDITORS' COMMITTEE

42.1 If at any time there are less than 3 Committee Members:

42.1.1 the Creditors' Committee may continue to exercise all its functions under this Scheme for a period of 28 days, other than those functions provided for in the following clauses, which shall not be exercised:

- (a) clause 23 (computation of Payment Percentages);
- (b) clause 30.4 (appointing a replacement for Scheme Administrators);
and
- (c) clauses 47.1.3 (termination of this Scheme),

and during such 28 day period the remaining Committee Members shall endeavour to fill the vacancies;

42.1.2 if the remaining Committee Members fail to fill the vacancies within such 28 day period, the Company shall, within a further period of 14 days, appoint such additional Scheme Creditors (**Interim Appointees**) as are required to fill such vacancies;

42.1.3 when appointing any Interim Appointees, the Company shall endeavour to ensure that the composition of the Creditors' Committee, including such Interim Appointees, secures a proper balance of the interests of the Scheme Creditors as between themselves in relation to the Company;
and

42.1.4 if such vacancies are filled, whether by appointees of the Creditors' Committee or by Interim Appointees, the full powers and functions of the Creditors' Committee under this Scheme shall be restored, provided that

no Interim Appointee shall be entitled to vote in relation to any resolution to appoint an additional member of the Creditors' Committee.

- 42.2 Whilst any Interim Appointees are appointed as Committee Members from time to time pursuant to clause 42.1:
- 42.2.1 the Committee Members (excluding any such Interim Appointees) shall use their reasonable endeavours to fill any vacancy held by such an Interim Appointee as soon as possible; and
 - 42.2.2 any such Interim Appointee shall be liable to be removed as Committee Members at any time without notice if the Creditors' Committee (excluding any such Interim Appointees) appoints a Scheme Creditor to fill the vacancy which had been filled by such Interim Appointee.
- 42.3 If, following the procedure set out in clause 42.1, there are still less than 3 Committee Members (including any Interim Appointees appointed pursuant to clause 42.1) then until there are 3 or more such members the Creditors' Committee shall not exercise any functions or have any powers under this Scheme and the following provisions shall apply:
- 42.3.1 the Company or, during the Reserving Period, the Scheme Administrators shall use all reasonable endeavours to find additional Committee Members to enable the Creditors' Committee to regain its functions and powers;
 - 42.3.2 a Scheme Administrator may resign under clause 30.3, and a new Scheme Administrator may only be appointed in his place, at a meeting of the Scheme Creditors pursuant to a resolution proposed by the Company or, during the Reserving Period, the Scheme Administrators;
 - 42.3.3 the remuneration of the Scheme Administrators shall be payable at the same rate as last set by the Creditors' Committee, except to the extent varied by the Scheme Creditors, and where no such rate has been previously set by the Creditors' Committee, at a rate set by resolution at a meeting of the Scheme Creditors; and
 - 42.3.4 the requirement to obtain the consent, approval or agreement of, or for consulting with or notifying or providing reports to the Creditors' Committee under this Scheme shall be modified so that such consent, approval or agreement from, consultation with, notification or provision of reports to, shall instead be from, with or to the Scheme Creditors or a meeting of the Scheme Creditors (as appropriate).

PART H – MEETINGS OF SCHEME CREDITORS

43. CONVENING OF MEETINGS OF SCHEME CREDITORS

43.1 For the avoidance of doubt, Schedule 5 of the Act does not apply to meetings of Scheme Creditors under this Scheme.

43.2 A meeting of Scheme Creditors may be held –

43.2.1 by assembling together those Scheme Creditors entitled to take part and who choose to attend at the place, date and time appointed for the meeting; or

43.2.2 by means of audio, or audio and visual, communication by which all Scheme Creditors participating can simultaneously hear each other throughout the meeting; or

43.2.3 by conducting, in accordance with clause 45, a postal ballot of those Scheme Creditors entitled to take part.

43.3 Meetings of Scheme Creditors shall be convened as follows:

43.3.1 the Company or the Scheme Administrators may at any time convene a meeting of the Scheme Creditors for such purpose as it or they think fit, whether during the Initial Scheme Period or during the Reserving Period, including (without limitation) to consider resolutions for;

(a) the remuneration of the Scheme Administrators pursuant to clause 42.3.3; and

(b) consent, approval or agreement of, or for consulting with the Scheme Creditors in place of the Creditors' Committee pursuant to clause 42.3.4;

43.3.2 any 50 Scheme Creditors who have Scheme Claims of an aggregate value in excess of 10 per cent of all Scheme Claims or, if there are fewer than 50 Scheme Creditors at the relevant time, Scheme Creditors representing at least 50% of the aggregate value of Scheme Claims as between such Scheme Creditors, may by notice in writing in accordance with clause 43.3.3 to the Company at its registered office require it to convene a meeting of the Scheme Creditors for such purposes as they think fit;

43.3.3 a notice to the Company under clause 43.3.2 shall specify the purpose for which the meeting is required and it shall be the duty of the Company, acting by the Scheme Administrators during the Reserving Period, to promptly summon a meeting of Scheme Creditors for that purpose and to give notice of such meeting as is necessary to enable

that purpose to be carried out as effectively in accordance with the provisions of this Scheme; and

43.3.4 at least 28 days' notice (excluding the date that it is served, or deemed to have been served, and the date of the meeting) shall be given of a meeting of Scheme Creditors and any such notice shall specify the place and time of the meeting and, if the meeting is being convened to discuss the report referred to in clause 37.3.3, the place from which copies of the relevant report may be obtained by Scheme Creditors free of charge prior to the meeting.

43.4 Notice of a meeting of Scheme Creditors shall be given:

43.4.1 during the Initial Scheme Period, to each Scheme Creditor by sending notice by pre-paid post to his last known address and by placing advertisements containing the requested information in such newspaper or newspapers as the Company shall consider appropriate;

43.4.2 during the Reserving Period:

(a) to each Scheme Creditor to whom the Company owes an Established Scheme Liability, and to any other Scheme Creditor who has applied in writing to the Scheme Administrators to receive notice of such meeting, by sending notice by pre-paid post to his last known address; and

(b) to all other Scheme Creditors by placing advertisements containing the requested information in such newspaper or newspapers as the Scheme Administrators shall consider appropriate; and

43.4.3 in either case (as appropriate) to the Company, the Creditors' Committee and the Scheme Administrators,

and any such notice shall be deemed to have been served on the date on which it is posted or, as the case may be, the latest date on which the advertisement appears.

43.5 An irregularity in or a failure to send or receive a notice of a meeting of Scheme Creditors does not invalidate anything done by such meeting.

44. RESOLUTIONS AT MEETINGS OF SCHEME CREDITORS

44.1 No meeting shall be convened unless the notice of the meeting sets out:

44.1.1 the text of each resolution which is proposed at the meeting, or an adequate summary of such resolutions; or

44.1.2 if no resolution is to be proposed at the meeting, the nature of the business to be discussed at such meeting,

and, in the case of a notice sent by post, is accompanied by a letter explaining in relation to each resolution why the meeting is being convened.

- 44.2 If a meeting of the Scheme Creditors is convened at a time when a resolution is to be put to the next meeting of Scheme Creditors pursuant to clauses 30.5 (ratification of an appointment of a Scheme Administrator), 30.6 (removal or appointment of a Scheme Administrator), 35.2 (ratification of an appointment to the Creditors' Meeting) or 35.3 (removal or appointment of a Committee Member), the business of the meeting shall include the resolution concerned and, in the case of a resolution to remove a Scheme Administrator pursuant to clause 30.6 which, if passed, would result in there being no Scheme Administrator in office, shall also include a resolution that a named person, qualified to act under clause 30.1 and willing to be appointed, be appointed as a Scheme Administrator in his place.

45. VOTING AT MEETINGS OF SCHEME CREDITORS

- 45.1 A resolution put to a meeting of Scheme Creditors shall only be adopted if approved by a majority in number, representing at least 75% in value, of the Scheme Creditors voting at the meeting (whether in person, by proxy or by post).
- 45.2 Every Scheme Creditor who is entitled to vote shall have the right to appoint any person (who need not be a Scheme Creditor) to attend and vote instead of him.
- 45.3 An instrument appointing a proxy may be in any form that the Company or, during the Reserving Period, the Scheme Administrators may approve and must be lodged at the place specified in the relevant notice of meeting for the lodging of proxies not less than 48 hours before the meeting (or adjourned meeting) at which it is to be used.
- 45.4 Unless the instrument appointing a proxy indicates otherwise, it must be treated as:
- 45.4.1 allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
 - 45.4.2 appointing that person as a proxy in relation to any adjournment of the meeting to which it relates as well as the meeting itself.
- 45.5 A Scheme Creditor entitled to vote at a meeting of creditors may exercise the right to vote by casting a postal vote in relation to a matter to be decided at that meeting.
- 45.6 If a Scheme Creditor votes by casting a postal vote in respect of a resolution that is to be submitted to the meeting and a materially different resolution is submitted to the meeting:
- 45.6.1 the Scheme Creditor's postal vote is invalid in respect of that different resolution; but

- 45.6.2 the Scheme Creditor may vote, in respect of that different resolution, either by being present in person or by proxy.
- 45.7 The notice of meeting must state the name of the person authorised to receive and count postal votes in relation to that meeting.
- 45.8 If no person has been authorised to receive and count postal votes in relation to a meeting or if no person is named as being so authorised in the notice of the meeting, every Director (during the Initial Period), or every Scheme Administrator (during the Reserving Period), is deemed to be so authorised.
- 45.9 A Scheme Creditor may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a marked voting paper to a person authorised to receive and count postal votes in relation to that meeting, so as to reach that person not less than 48 hours before the start of the meeting.
- 45.10 It is the duty of a person authorised to receive and count postal votes in relation to a meeting:
- 45.10.1 to collect together all postal votes received by him or her; and
- 45.10.2 in relation to each resolution to be voted on:
- (a) to count the number of Scheme Creditors voting in favour of the resolution and calculate the total amount of the Scheme Claims owed by the Company to those Scheme Creditors; and
- (b) to count the number of Scheme Creditors voting against the resolution and calculate the total amount of the Scheme Claims owed by the Company to those Scheme Creditors,
- the value of such Scheme Claims to be determined in accordance with clause 46; and
- 45.10.3 to sign a certificate:
- (a) that he or she has carried out the duties set out in 45.10.2(a) and 45.10.2(b) of this subclause; and
- (b) stating the results of the counts and determinations required by 45.10.2 of this subclause; and
- (c) to ensure that the certificate required by this subclause is presented to the person chairing or convening the meeting.
- 45.11 If a vote is taken at a meeting on a resolution on which postal votes have been cast, the person chairing the meeting must include the results of voting by all Scheme

Creditors who have sent in a voting paper duly marked as for or against the resolution.

- 45.12 A certificate given under clause 45.10.3 in relation to the postal votes cast in respect of a meeting of Scheme Creditors must be annexed to the minutes of the meeting.
- 45.13 No business shall be transacted at any meeting of Scheme Creditors unless a quorum is present when the meeting proceeds to business. Three Scheme Creditors present in person or by proxy and having the right to vote at the meeting shall be a quorum, unless the Company or, during the Reserving Period, the Scheme Administrators agree a smaller number with the Creditors' Committee from time to time.
- 45.14 All resolutions put to the vote of any meeting shall be decided on a show of hands unless the Company or, during the Reserving Period, the Scheme Administrators determine in their absolute discretion that a poll should be taken.
- 45.15 During the Initial Scheme Period:
- 45.15.1 a Director shall preside (or shall nominate a representative to preside) at each meeting of the Scheme Creditors, but if a Director (or his nominated representative) is not present within 30 minutes after the time the meeting was due to start or is unwilling to preside, the Scheme Creditors present in person or by proxy shall choose a Committee Member or, if no such members are present and willing to preside, one of themselves, to be chairman of the meeting;
- 45.15.2 the Scheme Administrators are entitled to attend and be notified of each meeting of the Scheme Creditors; and
- 45.15.3 during any period where the Scheme Administrators have assumed management and control of the Company pursuant to clause 31.7 due to an insufficient number of Directors holding office, references in this clause 45.15 to a Director shall be construed as references to a Scheme Administrator, provided that where a resolution is proposed at the meeting to remove one or more of the Scheme Administrators, no Scheme Administrator shall be entitled to preside at such meeting and the provisions of this clause 45.15 shall be construed as if they are not present and/or are unwilling to act.
- 45.16 During the Reserving Period, one of the Scheme Administrators shall preside (or shall nominate a representative to preside) at each meeting of the Scheme Creditors, but if:
- 45.16.1 a Scheme Administrator (or his nominated representative) is not present within 30 minutes after the time the meeting was due to start or is unwilling to preside; or

45.16.2 a resolution is proposed at the meeting to remove one or more of the Scheme Administrators,

the Scheme Creditors present in person or by proxy shall choose a Committee Member or, if no such members are present and willing to preside, one of themselves, to be chairman of the meeting.

45.17 If at any time there is no person who is willing to preside as chairman of a meeting it shall be adjourned for 7 days and, if no person is willing to preside as chairman of the adjourned meeting, the meeting shall be dissolved.

45.18 An irregularity or defect in the proceedings at a meeting of Scheme Creditors does not invalidate anything done at such meeting.

46. VALUATION OF SCHEME CLAIMS FOR THE PURPOSES OF MEETINGS OF SCHEME CREDITORS

46.1 The value of a Scheme Claim for the purposes of clause 42.1.3 (threshold for Scheme Creditors to convene a meeting) and clause 45.1 (majority to pass resolutions of Scheme Creditors), shall be:

46.1.1 if the Scheme Claim has become an Established Scheme Liability, the amount of such liability less the amount of any payments made, or deemed to have been made, by the Company in respect of such Scheme Claim; and

46.1.2 if the Scheme has not become an Established Scheme Liability, such amount as may, for the purposes of such meeting only, be estimated as the value of such Scheme Claim by the Company.

46.2 If a Scheme Creditor disputes the value which has been given to its Scheme Claim pursuant to clause 46.1.2, or otherwise the amount for which its vote should be counted, the dispute shall be referred to a relevant expert agreed by the Scheme Creditor and the Company, who shall act as an expert and not an arbitrator and whose decision (including as to who should bear the costs of such referral) shall be final as regards the convening of the meeting and/or the relevant vote(s). If the parties cannot agree on an expert, then the dispute shall be referred by the parties to either the president of The New Zealand Law Society or the chair of The Insurance Council of New Zealand, who shall consult with such relevant experts as he thinks appropriate and may nominate an expert.

PART I – DURATION OF THE SCHEME

47. TERMINATION EVENTS

47.1 This Scheme shall terminate if:

47.1.1 a statutory manager is appointed in respect of the Company;

47.1.2 all the liabilities of the Company have been discharged in full;

47.1.3 the Company and the Scheme Administrators, with the agreement of the Creditors' Committee, give notice to all Scheme Creditors that it has been determined after due enquiry that this Scheme is no longer in the best interests of the Scheme Creditors as a whole and that the Company should be wound up;

47.1.4 a resolution that this Scheme should be terminated and the Company should be wound up is passed by more than 50% in number, representing not less than 75% in value, at a meeting of the Scheme Creditors; or

47.1.5 the period of 80 years has expired after the establishment of any trust under clause 22.2.

47.2 If this Scheme terminates the following provisions shall apply:

47.2.1 termination will not prejudice any right or obligation which shall have arisen under this Scheme as a result of an act or omission prior to such termination, including (without limitation) any right to an indemnity out of the assets of the Company as a result of an act or omission that took place, or expenses which were incurred, prior to termination;

47.2.2 the provisions of this clause 47.2 and clause 48; and

47.2.3 as soon as practicable following termination, the Company (or the Scheme Administrators on behalf of the Company) shall cause notices stating that this Scheme has terminated to be placed in such newspaper(s) as the Company considers appropriate for one day a week for three consecutive weeks following termination.

48. EFFECT OF LIQUIDATION EVENT

48.1 Unless it has terminated in accordance with clause 47.1, this Scheme shall not terminate and shall continue in full force and effect if the Company becomes subject to a Liquidation Event.

48.2 If there is a conflict or inconsistency between the provisions of this Scheme and the provisions of the Act, the Receiverships Act 1993 and the Corporations

(Investigation and Management) Act 1989 as they apply to the Company following the Liquidation Event, for the purposes of this Scheme its provisions shall prevail.

48.3 If the Company becomes subject to a Liquidation Event either before or after this Scheme is terminated in accordance with clause 47.1, the following provisions will apply:

48.3.1 the assets of the Company shall be applied in discharge of its liabilities in the following order of priority (and rateably within each such category):

- (a) first, Scheme Claims to the extent that Allocated Reinsurance Monies have been, or could be, allocated to them in accordance with clause 23;
- (b) second, all liabilities given preference in its winding up by virtue of the statute pursuant to which it is being wound up;
- (c) third, all liabilities proved in its winding up in respect of claims against it other than Scheme Claims; and
- (d) fourth, Scheme Claims, to the extent not discharged under clause 48.3.1(a); and

48.3.2 the entitlement of each Scheme Creditor who has received payment during the Reserving Period under this Scheme in respect of a Scheme Claim to dividends in the winding up of the Company shall be determined as follows:

- (a) the amount which such Scheme Creditor proves in the winding up shall be treated as having been increased by the aggregate amount of payments received by him in respect of the Scheme Claim under clause 24.1.1 or 24.1.2, or treated as having been received under clause 10 or otherwise under or pursuant to this Scheme (**Scheme Amount**);
- (b) such Scheme Creditor shall be treated as having received an amount equal to the Scheme Amount by way of dividend in the winding-up and shall not be entitled to any other dividend in the winding-up unless and until all the Scheme Creditors proving in the winding-up have received an equivalent percentage dividend in accordance with the principles set out in clauses 23 and 24; and
- (c) such Scheme Creditor shall be entitled to receive dividends in the winding-up (calculated by reference to the amount for which he or she is treated as having proved pursuant to this clause 48.3.2, *pari passu* with all the Scheme Creditors of the Company.

PART J – GENERAL SCHEME PROVISIONS

49. EFFECTIVE DATE

This Scheme shall become effective on the Effective Date.

50. SCHEME COSTS

50.1 Subject to clause 50.2, whilst the Scheme remains in force there shall be paid in full out of the Scheme Assets:

50.1.1 all costs, charges, expenses and disbursements incurred by the Company in the course of carrying out this Scheme and of complying with the provisions of the Act and the Insurance Act, including (without limitation) payments made under the Management Services Agreement, or which were payable prior to the Effective Date in connection with this Scheme and are outstanding;

50.1.2 without prejudice to the provisions of clauses 37.2.3 and 37.3.2, all costs, charges, expenses and disbursements incurred by, and the remuneration of, the Directors, Scheme Administrators and/or any liquidator or similar officeholder appointed to the Company, to the extent that such costs, charges, expenses, disbursements and remuneration are referable to the affairs of the Company;

50.1.3 the expenses of the Creditors' Committee payable under clause 41;

50.1.4 the costs, charges, expenses and disbursements incurred by, and the remuneration of the Trustee in its capacity as trustee of the trusts constituted under the Trust Deed; and

50.1.5 any sum which the Company is obliged to pay in respect of the indemnities and related insurance and costs in favour of the Directors, the Scheme Administrators and the members of the Creditors' Committee under clauses 28, 33 and 39 respectively.

50.2 During the Reserving Period, Scheme Costs shall be paid out of:

50.2.1 first, Unallocated Assets; and

50.2.2 second, notwithstanding the provisions of Part 3 of the LRA, to the extent that Unallocated Assets are insufficient to pay such Scheme Costs in full, out of Allocated Reinsurance Monies.

51. MODIFICATION OF THIS SCHEME

51.1 At any hearing to approve this Scheme, the Company may consent on behalf of all those concerned to any modification of this Scheme or any terms or conditions

which the Court may think fit to approve or impose and which would not directly or indirectly have a materially adverse effect on the interests of any Scheme Creditor under this Scheme.

51.2 If there is any change in law or regulation after the date of this Scheme which, in the opinion of the Scheme Administrators in consultation with the Creditors' Committee, would mean that the provisions of this Scheme are no longer in the best interests of the Scheme Creditors as a whole, or could be amended as a result of such change(s) to materially improve the position of the Scheme Creditors as a whole or the fairness of this Scheme as between the Scheme Creditors as a whole, the Company or (during the Reserving Period) the Scheme Administrators may seek approval of the Court to modify this Scheme accordingly and may consent on behalf of all those concerned to any such modification which the Court may think fit to approve.

51.3 Clause 51.2 shall, without limitation, include any change in law or regulation which affects the rights of Scheme Creditors in respect of Charged Reinsurance Monies under or pursuant to the LRA.

51.4 No modifications made pursuant to clause 51.2 shall:

51.4.1 affect the validity of any act, omission or exercise of power by the Directors, the Scheme Administrators and/or the Creditors' Committee in good faith and with due care in accordance with and to implement this Scheme, or otherwise for the purposes of this Scheme;

51.4.2 give rise to any obligation on the part of a Scheme Creditor to repay any difference between the amount which would be payable in respect of the relevant Established Scheme Liabilities in accordance with the provisions of this Scheme after such modifications and the amount actually paid to such Scheme Creditor under the provisions in effect prior to such modifications; or

51.4.3 subject to any increase in the Payment Percentages in accordance with clause 23.6, without prejudice to clause 51.4.1, give rise to any obligation on the part of the Company to make any additional payment(s) in respect of a liability which has already been paid in whole or in part in accordance with the provisions of this Scheme, or to otherwise amend any payment which has already been determined in accordance with the provisions of this Scheme.

52. NOTICES

52.1 Any notice or other written communication to be given under or in relation to this Scheme shall be given in writing and shall be deemed to have been duly given if it is delivered by hand, sent by pre-paid post or airmail, or sent by facsimile or other electronic means (including email) to:

- 52.1.1 in the case of the Company, C/o PricewaterhouseCoopers, 188 Quay Street, Auckland/Private Bag 92162, Auckland 1142 (attention: Colin McCloy; Colin.McCloy@nz.pwc.com; fax +649 355 8013), or such address as may be notified to the Trustee, the Scheme Administrators and the Creditors' Committee from time to time for such purpose;
 - 52.1.2 in the case of the Trustee, Level 6, 396 Queen Street, Auckland, or such address as may be notified to the Company, the Scheme Administrators and the Creditors' Committee from time to time for such purpose;
 - 52.1.3 in the case of the Scheme Administrators, PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, (attention: Dan Schwarzmann; dan.schwarzmann@uk.pwc.com) and PricewaterhouseCoopers, 188 Quay Street, Auckland/Private Bag 92162, Auckland 1142 (attention: Colin McCloy; Colin.McCloy@nz.pwc.com; fax +649 355 8013), or such address as may be notified to the Company, the Trustee and the Creditors' Committee from time to time for such purpose;
 - 52.1.4 in the case of the Creditors' Committee, such address as may be notified to the Company, the Trustee and the Scheme Administrators from time to time for such purpose; and
 - 52.1.5 in the case of a Scheme Creditor, its last address known to the Company or the Scheme Administrators (as applicable).
- 52.2 Except as otherwise provided in this Scheme, any notice or other written communication to be given under this Scheme shall be deemed to have been served or received:
- 52.2.1 if delivered by hand, at the time of actual delivery to the recipient's address;
 - 52.2.2 if sent by pre-paid post where the recipient is in the country of despatch, on the second Working Day after posting;
 - 52.2.3 if sent by airmail, on the seventh Working Day after posting;
 - 52.2.4 if sent by facsimile, at the time of transmission specified in a transmission report from the sending machine which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
 - 52.2.5 if sent by any other electronic means (including email), at the time of sending, if (in the case of email) sent to a current email address and no delivery failure report is received,

provided that, if a notice or other written communication is received or deemed to have been received after 5pm on a Working Day in accordance with the above provisions, it will not be deemed to have been received until the next Working Day.

52.3 In proving service it shall be sufficient proof:

52.3.1 in the case of a notice sent by pre-paid post or airmail, that the envelope containing it was properly stamped, addressed and placed in the post; and

52.3.2 in the case of a notice sent by fax or other electronic means (including email), that it was properly addressed.

53. GOVERNING LAW AND JURISDICTION

53.1 Subject to clause 53.2, this Scheme shall be governed by, and construed in accordance with, the laws of New Zealand, and the Scheme Creditors agree that the courts of New Zealand shall have exclusive jurisdiction to hear and determine any Proceedings and to settle any dispute which may arise out of the Explanatory Statement or any provision of this Scheme, including this clause 53, or out of any action taken or omitted to be taken under this Scheme or in connection with the administration of this Scheme, and for such purposes the Scheme Creditors irrevocably submit to the jurisdiction of the Court.

53.2 Nothing in clause 53.1 shall affect the validity of any of the provisions determining governing law and/or jurisdiction as between the Company and any of the Scheme Creditors, whether contained in any Insurance Contract or otherwise.

Dated this 12th day of June 2012