

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)**

**BEFORE: MR JUSTICE MARCUS SMITH
DATED: 17 JANUARY 2025**

CR-2024-005455



CR-2024-005455

IN THE MATTER OF CX REINSURANCE COMPANY LIMITED – IN ADMINISTRATION

-and-

IN THE MATTER OF THE COMPANIES ACT 2006

SANCTION ORDER

UPON the application by the Part 8 Claim Form dated 18 September 2024 of the above-named CX Reinsurance Company Limited (in Administration) (the “**Company**”), whose registered office is 1 More London Place, London, SE1 2AF and whose registered number is 01086556

AND UPON hearing Marcus Haywood, Counsel for the Company

AND UPON READING the Part 8 Claim Form and the evidence filed

IT IS ORDERED that:

1. The Court hereby sanctions the scheme of arrangement as set out in the Schedule hereto.
2. The Company or its solicitors shall deliver, as soon as reasonably practicable, an office copy of this Order to the Registrar of Companies for England and Wales.

Service of this Order

The Court has provided a sealed copy of this Order to the serving party:

Stevens & Bolton LLP, Wey House, Farnham Road, Guildford, Surrey GU1 4YD

Ref: DJS/HEM/CX.0001.0004

SCHEDULE

SCHEME OF ARRANGEMENT

SECTION II

SCHEME OF ARRANGEMENT

(pursuant to Part 26 of the Companies Act 2006)

between

(1) CX REINSURANCE COMPANY LIMITED (IN ADMINISTRATION)

and its

(2) DIRECT SCHEME CREDITORS (AS DEFINED HEREIN)

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1 PART 1 PRELIMINARY

1.1 Definitions

In this Direct Scheme, unless the context otherwise requires or otherwise expressly provides, the following expressions shall bear the following meanings:

Act means the Companies Act 2006;

Adjusted Security Amount has the meaning given to such term in clause 4.6.3;

Administration means the administration commenced in respect of the Company under the IA 1986 on the Administration Date pursuant to the Administration Order;

Administration Costs means the remuneration, expenses, costs and disbursements of the Administrators and any other expenses, costs, charges, debts, liabilities and obligations either incurred on behalf of the Company by the Administrators as administration expenses or determined as administration expenses by the Court, whether arising by agreement, statute or otherwise and whether arising before or after the Effective Date;

Administration Creditors' Committee means the committee appointed to the Company from time to time in respect of the Administration in accordance with the provisions of the Insolvency Legislation;

Administration Date means 17 August 2020;

Administration Order means the order of the Court made on the Administration Date appointing the Administrators to the Company as the same may be amended and/or extended from time to time;

Administration Period means the period beginning on the Administration Date and ending on the expiry of the Administration Order;

Administrators means the persons appointed as administrators from time to time in the Administration;

Admissible Interest means any interest provided for in a contract giving rise to a Direct Scheme Claim, or any relevant statute or any other relevant law or judgment;

Agent means any person other than a broker who is authorised whether actually or ostensibly to act as an agent, attorney or representative for the Company or a Direct Scheme Creditor;

Agreed Unpaid Claim means any Direct Scheme Claim which has been reported by the Direct Scheme Creditor to the Company and agreed by the Company prior to the Scheme Reference Date but has not been paid by the Company or discharged by the operation of set-off or otherwise;

Alternate Scheme Adjudicator means an alternate to the Direct Scheme Adjudicator appointed pursuant to clause 4.5.1 or 4.5.2 in the event that the Direct Scheme Adjudicator has a conflict of interests;

American Policy means any contract or policy of insurance issued or any agreement to insure made by the Company pursuant to the excess or surplus lines laws of any state, district, territory, commonwealth or possession of the United States in which the Company is not

licensed to do business, provided that such policies shall not include reinsurance or life insurance;

American Policyholder means the holder of an American Policy resident or doing business in the United States, and any other persons or associations who are assignees, pledgees or mortgagees named therein;

Associated Company means, in relation to a company, any subsidiary company or any parent company of such company, or any subsidiary of such company's parent company;

Blocked Monies means any money or amount payable to a Direct Scheme Creditor under the Direct Scheme the payment of which is prohibited by an applicable law or regulation referred to in clause 5.6 (*International Sanctions*);

Broker means any broker who placed an Insurance Contract with or on behalf of the Company, or, if applicable, any successor to such a broker;

Business Day means any day other than Saturday, Sunday or any other day on which banks in the City of London are not open for business;

Claim Form means the document entitled Claim Form, in substantially the form set out in Schedule 5, made available to Direct Scheme Creditors on the Website after the Effective Date or sent to Direct Scheme Creditors pursuant to clauses 3.2.1 or a Voting and Proxy Form in which a Direct Scheme Creditor has elected to have such form treated as its Claim Form;

Committee Chair has the meaning given to such term in clause 8.2.1;

Committee Member means a member of the Administration Creditors' Committee or a Direct Committee Member as the context shall admit;

Company means CX Reinsurance Company Limited (in administration), a company incorporated in England and Wales with registered number 01086556 whose registered office is at 1 More London Place, London, SE1 2AF;

Corporate Termination Event in relation to a corporate Office Holder means that Office Holder:

- (a) becomes unable to pay its debts within the meaning of Section 123 of the IA 1986; or
- (b) takes or becomes subject to any steps, actions, legal proceedings or other procedure (other than such steps, actions, legal proceedings or other procedures which are unmeritorious and are dismissed within 28 Business Days of the relevant corporate Office Holder becoming aware of them) in relation to:
 - (i) a moratorium on or suspension of payment of debts, winding up, dissolution, administration or re-organisation;
 - (ii) a composition or arrangement with any creditor;
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator or other similar officer in relation to it or its assets;
 - (iv) the enforcement of any security held over any of its assets; or
- (c) takes or becomes subject to any similar or analogous steps or procedures in any jurisdiction;

Court means the High Court of Justice of England and Wales;

Determination Notice means a notice sent by the Company to a Direct Scheme Creditor pursuant to clause 4.6 (*Determination Notice*) setting out the amount which the Company or the Direct Scheme Adjudicator has determined to be the Direct Scheme Creditor's Gross Ascertained Claim and Net Ascertained Claim;

Direct Creditors' Committee means the committee established in accordance with Part 8 of this Direct Scheme;

Direct Committee Member means a member of the Direct Creditors' Committee, appointed in accordance with Part 8 of this Direct Scheme and whose appointment has not been terminated in accordance with that Part;

Direct Delegate has the meaning given to that term in clause 6.2.2(m);

Direct Employee means a partner in the same firm as the Direct Scheme Administrators, or any individual employed under a contract of services or contract for services by that firm or a company owned by that firm who is employed by one or both Direct Scheme Administrators in connection with their functions and powers under the Direct Scheme;

Direct Explanatory Statement means the explanatory statement required to be provided to Direct Scheme Creditors in connection with the Direct Scheme pursuant to section 897 of the Act;

Direct Insurance means the cover provided by an insurer to a non-insurer policyholder, as opposed to reinsurance cover provided by an insurer to cover insurance risks written by another insurer;

Direct Payment Percentage means the percentage of a Net Ascertained Claim payable by the Company to a Direct Scheme Creditor, as determined in accordance with clause 5.1 and 5.2;

Direct Scheme means this scheme of arrangement in respect of the Company under Part 26 of the Act in the form set out in this document with or subject to any modification, addition or condition approved or imposed by the Court and that is consented to by the Company in accordance with clause 11.2;

Direct Scheme Actuary means any person or entity appointed as actuarial adviser to the Company in relation to the Direct Scheme pursuant to clause 7.2;

Direct Scheme Adjudicator means a person appointed as scheme adjudicator pursuant to clause 7.1 (*Direct Scheme Adjudicator*), and any alternate Direct Scheme Adjudicator appointed pursuant to clause 4.5 (*Direct Scheme Adjudicator: Conflict of Interests*);

Direct Scheme Administrator means a person appointed as scheme administrator in accordance with clause 6.1 (*Qualification, appointment, resignation and removal*);

Direct Scheme Claim means a claim against the Company arising pursuant to a policy of Direct Insurance;

Direct Scheme Creditor means a person in respect of whom the Company owes a Direct Scheme Claim;

Direct Scheme Document means the document to be sent to Direct Scheme Creditors, comprising, among other things, the Direct Explanatory Statement, the Direct Scheme, the Notice of the Direct Scheme Meeting and the Voting and Proxy Form;

Direct Scheme Meeting means the meeting of the Company's creditors convened by the Company with the permission of the Court for the purpose of considering, and if thought fit approving, the Direct Scheme;

Direct Scheme Period means the period commencing on the Effective Date and ending on the Termination Date;

Dispute means a disputed matter in relation to a Direct Scheme Claim which has been referred to a Direct Scheme Adjudicator pursuant to clause 4.3.5, 4.3.6 or 4.6.7;

Dispute Notice has the meaning given to such term in clause 4.3.1;

Distributable Property means the net proceeds of all and any Property of the Company realised after having first paid or provided for the Administration Costs (including by making provision for future unanticipated costs), Preferential Claims and Pre-Scheme Expenses;

Effective Date means the date on which an office copy of the order of the Court sanctioning the Direct Scheme is delivered for registration to the Registrar of Companies;

Estimation Guidelines means the actuarial methodology for use in valuing Direct Scheme Claims set out in Schedule 1 to the Direct Scheme Document, including the supporting evidence guidelines set out in Schedule 2 to the Direct Scheme Document;

Euro or € means the single currency adopted by participating Member States in furtherance of economic and monetary union under Article 109 of the Treaty of the European Union;

Exchange Rate means the closing mid-market rate of exchange applying to a particular currency as quoted by the Financial Times on 29 December 2023, being the Business Day immediately preceding the Scheme Reference Date;

Excess Distributable Property means any Distributable Property remaining after the Scheme Costs and the Net Ascertained Claims of Direct Scheme Creditors have been paid in full in accordance with the terms of the Direct Scheme;

Excluded Liability means any Liability of the Company if and to the extent that it is any one of the following:

- (a) an Administration Cost;
- (b) a Preferential Claim;
- (c) a Pre-Scheme Expense; and/or
- (d) a Scheme Cost;

Final Claims Deadline means 11.59 p.m. in England on the day 180 days after (and not including) the Effective Date, or, if such day is not a Business Day, on the Business Day next following;

Gross Ascertained Claim means the gross value of a Direct Scheme Creditor's Direct Scheme Claim as agreed or determined in accordance with the Direct Scheme pursuant to either clause 4.2 (*Direct Scheme Claim agreed as set out on Claim Form*); clause 4.3 (*Direct*

Scheme Claim not agreed as set out on Claim Form) or clause 4.4 (Scheme Adjudication procedure);

IA 1986 means the Insolvency Act 1986;

IBNR Claim means an incurred but not reported Direct Scheme Claim arising under or in respect of an Insurance Contract for:

- (a) the amount payable by the Company in respect of a loss which has been incurred but has not been reported to or discovered by a Direct Scheme Creditor as at the Scheme Reference Date; plus
- (b) the amount payable in respect of losses which have been notified to the Company as at the Scheme Reference Date which are not yet certain in amount and to the extent that the current notified amount may prove to be inadequate;

IBNR Liability means the Liability of the Company in respect of an IBNR Claim;

Individual Termination Event in relation to an individual Office Holder, means that Office Holder:

- (a) dies;
- (b) becomes bankrupt or subject to an individual voluntary arrangement or takes or becomes subject to any similar or analogous step or procedure in any jurisdiction;
- (c) is admitted to hospital because of mental disorder or is the subject of an order in matters concerning his mental disorder made by a court having jurisdiction in England or elsewhere in such matters;
- (d) is disqualified from acting as a director under the Company Directors Disqualification Act 1986;
- (e) becomes unable to perform their duties by reason of illness or any other reason; or
- (f) is convicted of an indictable offence

Insolvency Legislation means the IA 1986 and the subordinated legislation thereto;

Insurance Contract a contract or a policy of Direct Insurance of any kind whatsoever entered into by or on behalf of the Company or in relation to which the Company has assumed liability (including any contract which amends or commutes the same but in respect of which the Company still has a Liability);

Letter of Credit means any valid letter of credit issued to or for the benefit of a Direct Scheme Creditor in respect of any liability the subject of a Direct Scheme Claim;

Liability means any debt or liability (being a liability to pay money or money's worth) of a person whether it is present or future, certain or contingent, whether its amount is fixed or liquidated or is capable of being ascertained by fixed rules or as a matter of opinion, including any liability under any enactment (in England and Wales or in any other jurisdiction) and any liability in contract, tort or bailment or arising out of an obligation to make restitution or in any other manner whatsoever provided that such expression does not include any debt or liability which is barred by statute under English law or the law of any other jurisdiction which applies to that liability or is otherwise unenforceable. For the avoidance of doubt, where any contract or policy is void or, being voidable, has been duly avoided, no obligation or liability shall arise in respect of such contract or policy;

Lloyd's means the society incorporated by the Lloyd's Act 1871 in the name of Lloyd's and situated at One Lime Street, London EC3M 7HA, United Kingdom;

Lloyd's Syndicate means a group of underwriting members of Lloyd's, to which a number is assigned by the Council of Lloyd's;

Net Ascertained Claim means the net value of a Direct Scheme Creditor's Direct Scheme Claim as set out in a Determination Notice after application of the adjustments to its Gross Ascertained Claim pursuant to clause 4.6.1(b);

Notified Outstanding Claim means a Direct Scheme Claim arising under an Insurance Contract in respect of a loss that has been reported to the relevant Scheme Creditor as at the Scheme Reference Date but excluding any Agreed Unpaid Claim;

Notified Outstanding Liability means the Liability of the Company in relation to a Notified Outstanding Claim;

Office Holder means each of the Direct Scheme Administrators, the Direct Scheme Adjudicator, any Alternate Scheme Adjudicator, and the Direct Scheme Actuary;

Post means delivered by hand (including a generally recognized commercial courier service), pre-paid first or second class post, or airmail;

Pounds Sterling, GBP or £ means pounds sterling, being the lawful currency of the United Kingdom;

Practice Statement Letter means the letter dated 4 September 2024 (a copy of which is also available on the Website) sent by the Company to the Direct Scheme Creditors, brokers and interested parties notifying them that the Direct Scheme is being promoted;

Preferential Claim means a Liability of the Company which constitutes a preferential debt under section 386 of the IA 1986;

Pre-Scheme Expenses means all costs, charges, expenses and disbursements reasonably incurred by the Administrators in connection with the negotiation, promotion, preparation and implementation of the Direct Scheme, including the costs of holding the Direct Scheme Meeting and the costs of obtaining the sanction of the Court to the Direct Scheme;

Proceedings means any form of proceedings in any jurisdiction or forum including, without limitation, any legal proceedings, demand, arbitration, alternative dispute resolution procedure, judicial review, adjudication, mediation, execution, seizure, distraint, forfeiture, re-entry, enforcement of judgment or enforcement of any Security or any step taken for the purpose of creating or enforcing a lien;

Property means all forms of property (including money, goods, things in action, land and every description of property wherever situated) and of obligations and every description of interest, whether present, future, vested or contingent arising out of or incidental to, property and including, for the avoidance of doubt, all contributions to the assets of the Company not falling within the meaning of the Company's property under the IA 1986;

Registrar of Companies means the registrar or other officer performing under the Companies Act 2006 (and any provisions of the Companies Act 1985 which remain in force) the duty of registration of companies in England and Wales;

Relevant Currency means:

- (a) for Liabilities incurred in US Dollars, US Dollars;
- (b) for Liabilities incurred in Pounds Sterling, Pounds Sterling;
- (c) for Liabilities incurred in Euro, Euros; and
- (d) for Liabilities incurred in all other currencies, US Dollars

Revised Determination Notice means a revised Determination Notice sent to a Direct Scheme Creditor pursuant to clause 4.6.5, 4.6.6 or 4.6.7;

Scheme Costs means:

- (e) all costs, charges, expenses, disbursements and other debts incurred by the Company in the course of implementing and carrying out the Direct Scheme and of complying with the provisions of the Act; and
- (f) insofar as they do not fall within (a), all costs, charges, expenses and disbursements incurred by, and the remuneration of, the Direct Scheme Administrators and Office Holders;

Scheme Reference Date means 31 December 2023;

Security means:

- (a) any deposit or reserve of funds or assets established by the Company (including, for the avoidance of doubt, the Surplus Lines Trust Fund); or
- (b) any guarantee provided by a third party; or
- (c) any Letter of Credit; or
- (d) any funds held or otherwise retained by a Direct Scheme Creditor

in each case to secure payment of any Direct Scheme Claim;

Surplus Lines Trust Agreement means the agreement dated 7 August 2003 (as amended on 31 July 2006) between the Company and State Street Bank and Trust Company, N.A. (as Trustee), and as it may be further amended, by which the Company established the Surplus Lines Trust Fund;

Surplus Lines Trust Fund means the multi-beneficiary trust fund established by the Company by the Surplus Lines Trust Agreement for the benefit of (i) American Policyholders, and (ii) Third Party Claimants;

Surviving Provisions means clauses 1.1, 1.2, 4.12, 6.3.2, 6.3.3, 6.3.4, 6.3.5, 6.3.6, 7.4.1, 7.4.2, 7.4.3, 7.4.4, 7.4.5, 8.5.1, 8.5.2, 8.5.3, 10, 11.2, 11.3, 11.4 and 11.6;

Tax means any form of taxation, levy, duty, charge, contribution, withholding, or impost of whatever nature (including any related fine, penalty, surcharge or interest) imposed, collected or assessed by or payable to a Tax Authority;

Tax Authority means any government, state, municipality, or any local, state, federal or other fiscal, revenue, customs or excise authority, body or official anywhere in the world (including in the United Kingdom, without limitation, HM Revenue and Customs);

Termination Date means the day upon which the Direct Scheme terminates in accordance with Part 10 of the Direct Scheme;

Third Party Claimant means any person who is not a party to the relevant American Policy, but has a claim for a loss under an American Policy excluding punitive or exemplary damages awarded to or against an American Policyholder and also excluding any extracontractual obligation not expressly covered by the American Policy, or a claim for unearned premium arising from an American Policy;

Unclaimed Balance means:

- (a) an amount represented by any cheque issued in settlement of a Net Ascertained Claim not presented for payment by its payee;
- (b) any electronic transfer payment made in settlement of a Net Ascertained Claim and returned to the Company; or
- (c) any electronic transfer payment in settlement of a Net Ascertained Claim which the Direct Scheme Administrators are unable to complete due to the payment details provided by the relevant Direct Scheme Creditor being incorrect or out of date;

U.S. Dollars, \$ or USD means United States Dollars, being the lawful currency of the United States of America;

Voting and Proxy Form means a voting and proxy form in the form provided at Schedule 5 of the Direct Scheme Document to be submitted by a Direct Scheme Creditor at the Direct Scheme Meeting; and

Website means the website with the address:

https://www.ey.com/en_uk/administrations/cxreinsurancecompanydirectscheme

1.2 Interpretation

In this Direct Scheme, unless the context otherwise requires or the Direct Scheme expressly provides otherwise:

- 1.2.1 references to parts, clauses, sub-clauses and schedules are references to the parts, clauses, sub-clauses and schedules respectively of the Direct Scheme;
- 1.2.2 references to a "person" include an individual, firm, partnership, limited liability partnership, company, corporation, unincorporated body of persons or any state or state agency;
- 1.2.3 references to a statute or a statutory provision or to a statutory instrument or provision of a statutory instrument include the same as subsequently modified, amended or re-enacted from time to time;
- 1.2.4 the singular includes the plural and vice versa and words importing one gender shall include all genders;
- 1.2.5 headings to parts, clauses, sub-clauses and schedules are for ease of reference only and shall not affect the interpretation of the Direct Scheme; and
- 1.2.6 references to meetings may include a meeting held either in person, by telephone, by video conference, or by other electronic means.

1.3 **Participation in the Direct Scheme**

1.3.1 The Administrators, Direct Scheme Administrators and Direct Scheme Adjudicator have each consented to act in relation to and agreed to be bound by the Direct Scheme from the Effective Date.

2 **PART 2 INTRODUCTORY PROVISIONS**

2.1 **Application of the Direct Scheme**

The Direct Scheme shall apply to all Direct Scheme Claims only. Excluded Liabilities are not subject to the terms of this Direct Scheme.

2.2 **Distributable Property**

2.2.1 Until such time as the Administration Order is discharged, the Administrators may continue to collect in and, to the extent possible, realise the Property of the Company. After the Company (acting by the Administrators) has paid or provided for Administration Costs (including by making provision for future unanticipated costs), Preferential Claims and Pre-Scheme Expenses, the Distributable Property will be held by the Company (acting by the Direct Scheme Administrators) for distribution in accordance with the Direct Scheme.

2.2.2 The Company (acting by the Direct Scheme Administrators) shall hold the Distributable Property on trust for the following purposes:

- (a) to be applied in payment of Scheme Costs;
- (b) after all Scheme Costs have been paid or provided for in full, to be applied in payment of Net Ascertained Claims in accordance with the terms of the Direct Scheme; and
- (c) following payment in full of all Scheme Costs and Net Ascertained Claims, to be applied in accordance with clause 5.4 as Excess Distributable Property.

2.2.3 Any interest, income or capital gains accruing in relation to the Distributable Property shall accrue as Distributable Property. If the Distributable Property is paid into a bank account, the Direct Scheme Administrators shall use reasonable endeavours to ensure that the interest rate of the relevant account is comparable to other such accounts as are available in the market at that time.

2.3 **Proceedings by Direct Scheme Creditors**

2.3.1 Without prejudice to clause 2.3.4 and save with the consent of the Company, or to the extent that such restriction is prohibited by law, or as set out in clause 2.3.2, no Direct Scheme Creditor shall be permitted to institute or continue any Proceedings whatsoever against the Company or its Property in any jurisdiction to establish the existence or quantum of a Direct Scheme Claim.

2.3.2 Nothing in the Direct Scheme shall preclude an American Policyholder or Third Party Claimant from instituting or continuing any Proceedings against the Company for the purpose of establishing the existence and/or quantum of its claim on the Surplus Lines Trust Fund in accordance with the terms of the Surplus Lines Trust Agreement.

2.3.3 Save to the extent that the Company has failed to perform any obligation to make a payment to a Direct Scheme Creditor under the provisions of the Direct Scheme, no Direct Scheme Creditor shall be permitted to institute or continue any

Proceedings whatsoever against the Company or its Property, in any jurisdiction whatsoever to enforce payment in whole or in part of any Direct Scheme Claim.

- 2.3.4 Nothing in the Direct Scheme shall preclude the Company from instituting or continuing any Proceedings against a Direct Scheme Creditor. For the avoidance of doubt, the relevant Direct Scheme Creditor shall be entitled to assert and prosecute a Direct Scheme Claim against the Company by way of counter-claim in such Proceedings (but only to the extent that the court or tribunal in question would – absent this Direct Scheme - have jurisdiction to adjudicate upon such counter-claim in such Proceeding).
- 2.3.5 For the purposes of clause 2.3.4, the Company shall be deemed not to be continuing any Proceedings which commenced before the Effective Date and in which the Company is not actively prosecuting its claims against such Direct Scheme Creditor.
- 2.3.6 For limitation purposes, time shall stand still in respect of Direct Scheme Claims from the Effective Date. Should the Direct Scheme terminate pursuant to clause 10.1.1(b), the Company shall not be entitled to reject a claim on the basis that any limitation period, whether contractual or statutory, has expired since the Effective Date and time will begin to run again from the date of termination.

2.4 Effect of proceedings by Direct Scheme Creditors

- 2.4.1 If, and to the extent that, a Direct Scheme Creditor obtains an order, judgment, decision or award of a court or tribunal against the Company in relation to a Direct Scheme Claim in contravention of clauses 2.3.1 and/or 2.3.3, such order, judgment, decision or award shall not give rise to a Net Ascertained Claim and shall be disregarded when determining the Liability of the Company in respect of the relevant Direct Scheme Claim or any Liability of the Direct Scheme Creditor to the Company.
- 2.4.2 If any Direct Scheme Creditor takes any action after the Effective Date which is prohibited by clauses 2.3.1 and/or 2.3.3, it shall, without prejudice to any other rights of the Company, be treated as having received an advance distribution on account of its Direct Scheme Claim equal to the amount or gross value of any money, Property, benefit or advantage obtained by it at the expense of the Company as the result of such action, and the extent to which it is entitled to participate in any distribution under the Direct Scheme shall be determined accordingly.
- 2.4.3 For the purpose of clause 2.4.2, the gross value of any money, Property, benefit or advantage obtained by a Direct Scheme Creditor shall be conclusively determined by the Company and, without limitation, may include such amount as the Company may consider to be appropriate by way of interest, costs, charges or expenses incurred by the Company as a consequence of the relevant Direct Scheme Creditor acting in a manner prohibited by clause 2.3 (*Proceedings by Direct Scheme Creditors*).
- 2.4.4 If the amount of an advance distribution which a Direct Scheme Creditor is treated as having received pursuant to clause 2.4.2 exceeds the total amount the relevant Direct Scheme Creditor would otherwise be entitled to receive from the Company pursuant to the Direct Scheme, then without prejudice to any other rights of the Company, the Direct Scheme Creditor shall immediately repay the excess to the

Company, failing which interest shall accrue on such excess for the period from and including the date upon which the Direct Scheme Creditor's Liability to the Company is established under the Direct Scheme to the date of repayment of such excess, at the rate of 3% over the base rate set by the Bank of England from time to time. Interest shall be calculated on the basis of the actual number of days elapsed and on the basis of a 365 day year if the amount concerned is denominated in Pounds Sterling, but otherwise on the basis of a 360 day year and shall be payable immediately. Such excess and any interest thereon shall be held on trust for the Company by the relevant Direct Scheme Creditor until paid.

2.5 Interest

- 2.5.1 For the purpose of paying or providing for distributions under the Direct Scheme, where a Direct Scheme Claim includes an element of Admissible Interest, such Admissible Interest shall be deemed payable for the period from the date provided for in the relevant contract, judgment or statute to the day immediately preceding the Scheme Reference Date.
- 2.5.2 No distribution shall be paid under the Direct Scheme in respect of any part of a Direct Scheme Claim which represents interest which is not Admissible Interest.
- 2.5.3 Any payment made under the Direct Scheme in respect of any part of a Direct Scheme Claim which represents Admissible Interest shall be made net of any deduction or withholding for or on account of Tax which may be required by law.

2.6 Currency of Payment

- 2.6.1 All payments under the Direct Scheme will be made in a Relevant Currency.
- 2.6.2 Where a Direct Scheme Claim is in a currency other than a Relevant Currency, it shall for the purposes of set-off and payment under the Direct Scheme be converted into either:
 - (a) if the relevant Direct Scheme Creditor also has Direct Scheme Claims in a Relevant Currency, into the Relevant Currency which accounts for the largest proportion of its Direct Scheme Claims; or
 - (b) US Dollars.
- 2.6.3 Where a Direct Scheme Creditor has Direct Scheme Claims in more than one Relevant Currency, they shall for the purposes of set-off and payment under the Direct Scheme be converted into the Relevant Currency in which that Direct Scheme Creditor has the largest Direct Scheme Claim.

3 PART 3 CLAIMS SUBMISSION

3.1 Date for valuation of Direct Scheme Claims

All Direct Scheme Claims shall be valued as at the Scheme Reference Date.

3.2 Notice of Effective Date and Distribution of Claim Forms

- 3.2.1 The Company shall, within ten Business Days of the Effective Date, send by email or post to each known Direct Scheme Creditor for which the Company has current

email or postal address details, and each Broker and Agent of a Direct Scheme Creditor for which the Company has current email or postal address details:

- (a) a notice:
 - (i) confirming that the Direct Scheme has become effective;
 - (ii) confirming the Final Claims Deadline; and
 - (iii) calling on all Direct Scheme Creditors to submit a Claim Form by the Final Claims Deadline; and
 - (b) where applicable, the documents specified in clause 3.3.1 below.
- 3.2.2 The Company shall within ten Business Days of the Effective Date or as soon as may be practicable thereafter cause to be published, where reasonably practicable, in the same newspapers and publications in which the Direct Scheme Meeting was advertised, namely: The London Gazette; Les Echos (France); USA Today; Business Insurance (US) and The Financial Times UK and Worldwide editions:
- (a) notice that the Direct Scheme has become effective;
 - (b) confirmation of the Final Claims Deadline; and
 - (c) instructions on how a Direct Scheme Creditor can download a copy of the Claim Form from the Website or request a Claim Form to be sent by Post by the Company.
- 3.2.3 The Company shall, within three Business Days of the Effective Date, make available on the Website:
- (a) a copy of the notice referred to in clause 3.2.1;
 - (b) the full text of the Direct Explanatory Statement;
 - (c) the full text of the Direct Scheme;
 - (d) all other documents referred to in the Direct Explanatory Statement and the Direct Scheme; and
 - (e) a copy of the Claim Form.
- 3.2.4 The Company will send a physical copy of any of the documents available on the Website to any Direct Scheme Creditor upon request.

3.3 Completion of Claim Forms by Direct Scheme Creditors

- 3.3.1 Together with any notice given in accordance with clause 3.2.1, the Company shall send each Direct Scheme Creditor:
- (a) a copy of such Direct Scheme Creditor's completed Voting and Proxy Form in which the Direct Scheme Creditor has elected to have such form treated as its Claim Form in the Direct Scheme; or
 - (b) a Claim Form completed with such details of Agreed Unpaid Claims of that Direct Scheme Creditor as the Company has on its books as at the Scheme Reference Date and instructions on how to complete it.
- 3.3.2 Save as provided in clause 3.4.2, each Direct Scheme Creditor (whether or not it is has received a Claim Form in accordance with clause 3.2.1) must submit a Claim Form in accordance with its accompanying instructions and the provisions of this clause 3.3 and by no later than the Final Claims Deadline in order to be eligible to receive any payment in respect of its Direct Scheme Claim.
- 3.3.3 Direct Scheme Creditors shall provide with their Claim Forms:
- (a) the specific amount the Direct Scheme Creditor seeks to claim in respect of its Direct Scheme Claim;

- (b) whether the Direct Scheme Claim consists of Agreed Unpaid Claims and/or Notified Outstanding Claims and/or IBNR Claims;
 - (c) details of any Security held in respect of all or any part of their Direct Scheme Claim, including evidence to support their entitlement to such Security;
 - (d) whether there is any Admissible Interest payable in respect of the Direct Scheme Claim;
 - (e) such other additional details as may be available to assist the Company in verifying the claim including date of loss, claimant name, excess policy and policy limit;
 - (f) evidence to support the reasonableness of the Direct Scheme Claim in accordance with the instructions contained in the Estimation Guidelines; and
 - (g) an email address at which the Direct Scheme Administrators and Direct Scheme Adjudicator can communicate with the Direct Scheme Creditor in relation to its Direct Scheme Claim.
- 3.3.4 Each Direct Scheme Creditor shall be entitled to complete and submit a new or revised Claim Form in accordance with clause 3.3 and the instructions accompanying the Claim Form and to provide revised or further information in respect of its Direct Scheme Claim, together with any relevant supporting documentation, to the Company so as to reach the Company at any time before the Final Claims Deadline. The last Claim Form received from a Direct Scheme Creditor before the Final Claims Deadline will be the only Claim Form which the Company will consider pursuant to Part 4 (*Determination of Net Ascertained Claims*) in respect of that Direct Scheme Creditor's Direct Scheme Claim.
- 3.3.5 No revisions to the quantum of any Direct Scheme Claim will be accepted from a Direct Scheme Creditor after the Final Claims Deadline and no revised or further information will be accepted after that date unless sent in response to a request by the Company or the Direct Scheme Adjudicator.

3.4 **Failure to Return Claim Form**

- 3.4.1 Subject to clause 3.4.2, no Direct Scheme Creditor shall be entitled to receive any payment from the Company under the Direct Scheme in respect of a Direct Scheme Claim unless that Direct Scheme Claim has been notified to the Company by the Direct Scheme Creditor on a Claim Form in accordance with clause 3.3 (*Completion of Claim Forms by Direct Scheme Creditors*), such Claim Form being received by the Company no later than the Final Claims Deadline.
- 3.4.2 A Direct Scheme Creditor will only be entitled to receive payment in respect of a Direct Scheme Claim without submitting a Claim Form in accordance with clause 3.3.2 in the following circumstances:
- (a) if the Direct Scheme Creditor has elected on its Voting and Proxy Form to have that Voting and Proxy Form treated as its Claim Form, and such Direct Scheme Claim was set out in that Voting and Proxy Form;
 - (b) if the Direct Scheme Creditor only wishes to receive payment in relation to a Direct Scheme Claim consisting of Agreed Unpaid Claims set out by the Company on its Claim Form in accordance with clause 3.3.1(b) (in which case it will only be entitled to receive payment in relation to such Agreed Unpaid

Claims, unless it submits a Claim Form in respect of any other Direct Scheme Claims in accordance with clause 3.3.2).

Direct Scheme Creditors falling into any of sub-paragraphs (a) to (b) above are nevertheless entitled to submit a Claim Form at any time prior to the Final Claims Deadline in accordance with clause 3.3 (*Completion of Claim Forms by Scheme Creditors*).

- 3.4.3 Subject to clause 3.4.2, any Direct Scheme Claim not notified to the Company in accordance with clause 3.3 (*Completion of Claim Forms by Direct Scheme Creditors*) by no later than the Final Claims Deadline shall be deemed to have been satisfied in full and the Direct Scheme Creditor shall have no further rights against the Company in respect of that Direct Scheme Claim.

4 PART 4 DETERMINATION OF NET ASCERTAINED CLAIMS

4.1 Review of Claim Forms

- 4.1.1 The Company will consider the information concerning a Direct Scheme Creditor's Direct Scheme Claim contained in its Claim Form including, but not limited to, consideration of whether any Direct Scheme Claim is adequately supported with relevant documentation, whether any estimates in relation to IBNR Claims are reasonable, having taken account of the principles set out in the Estimation Guidelines, and whether there is any applicable Security or set-off.
- 4.1.2 The Company will not be bound by, or prepared to follow, any settlement made between the Direct Scheme Creditor and another risk carrier if it believes that settlement to be unreasonable.
- 4.1.3 As part of the process of determining a Direct Scheme Creditor's Gross Ascertained Claim, the Company shall apply the principles set out in the Estimation Guidelines.
- 4.1.4 The Company shall be entitled at any time, by written notice to the Direct Scheme Creditor concerned, to request the production of such further information or such documentation or other evidence as it may reasonably require to assist it in agreeing a Direct Scheme Claim.

4.2 Direct Scheme Claim agreed as set out on Claim Form

If the Company agrees with a Direct Scheme Creditor's estimate of the value of its Direct Scheme Claim as set out in its Claim Form it shall, during the period commencing on the day following the Final Claims Deadline and ending 90 days after the Final Claims Deadline, notify the relevant Direct Scheme Creditor of such agreement and send a Determination Notice to that Direct Scheme Creditor as set out in clause 4.6.

4.3 Direct Scheme Claim not agreed as set out on Claim Form

- 4.3.1 If the Company does not agree with a Direct Scheme Creditor's estimate of the value of its Direct Scheme Claim as set out in its Claim Form or any value or information set out by a Direct Scheme Creditor on its Claim Form, it shall, during the period commencing on the day following the Final Claims Deadline and ending 90 days after the Final Claims Deadline, send a notice in writing to the relevant Direct Scheme Creditor (a "**Dispute Notice**") specifying:
- (a) those matters which are not agreed;
 - (b) the reasons for failing to agree such matters; and

- (c) any additional information and/or documentation or other evidence that the Company may require.
- 4.3.2 The relevant Direct Scheme Creditor shall, no later than 30 Business Days after the date of a Dispute Notice, submit its written response to such Dispute Notice, including any additional information and/or documentation or other evidence as requested in the Dispute Notice.
- 4.3.3 The Company and Direct Scheme Creditor will endeavour in good faith to reach agreement as to the disputed matters and the value of the relevant Direct Scheme Claim within 60 Business Days after the date of a Dispute Notice. In the event that the Direct Scheme Claim is so agreed, the Company shall send a Determination Notice to the relevant Direct Scheme Creditor as set out in clause 4.6 (*Determination Notice*).
- 4.3.4 If a Direct Scheme Creditor fails:
 - (a) to provide its written response to a Dispute Notice within 30 Business Days of the date of a Dispute Notice; or
 - (b) to provide any additional information and/or documentation or other evidence requested by the Company in a Dispute Notice within 30 Business Days of the date of a Dispute Notice,
 the Company shall be entitled to make such determination as to the value of the Direct Scheme Creditor's Direct Scheme Claim as it sees fit in accordance with the Estimation Guidelines and on the basis of the information available to it and shall send a Determination Notice to the relevant Direct Scheme Creditor as set out in clause 4.6 (*Determination Notice*).
- 4.3.5 In the event that a Direct Scheme Creditor's Direct Scheme Claim has not been agreed or determined and set out on a Determination Notice pursuant to clause 4.2 (*Direct Scheme Claim agreed as set out on Claim Form*), 4.3.3 or 4.3.4 by the date falling 150 Business Days after the Final Claims Deadline, the Company shall refer any disputed matter relating to that Direct Scheme Creditor's Direct Scheme Claim to the Direct Scheme Adjudicator for determination.
- 4.3.6 At any time after the return of a Claim Form, the Company may refer any disputed matter relating to a Direct Scheme Claim to the Direct Scheme Adjudicator for determination if it considers in good faith that it will not be able to reach agreement with the relevant Direct Scheme Creditor as to the value of that Direct Scheme Claim.

4.4 **Scheme Adjudication Procedure**

- 4.4.1 When referring a Dispute to the Direct Scheme Adjudicator in accordance with clauses 4.3.5 or 4.3.6, the Company shall send written notice of the Dispute to the Direct Scheme Adjudicator by post or email, with a copy to the relevant Direct Scheme Creditor, enclosing:
 - (a) a copy of the relevant Claim Form;
 - (b) any supporting documents, supporting schedules or evidence accompanying such Claim Form; and
 - (c) any notice, statement or correspondence sent or received by the Company in connection with the Dispute in the course of attempting to determine the Direct Scheme Creditor's claim under the Direct Scheme.
- 4.4.2 When referring a Dispute relating to an Adjusted Security Amount to the Direct Scheme Adjudicator in accordance with clause 4.6.7, the Company shall send written notice of

the Dispute to the Direct Scheme Adjudicator by post or email, with a copy to the relevant Direct Scheme Creditor, enclosing:

- (a) a copy of the relevant Revised Determination Statement;
- (b) any supporting documents or evidence relating to the Adjusted Security Amount set out on such Revised Determination Statement; and
- (c) any correspondence sent or received by the Company in connection with the Adjusted Security Amount or the Revised Determination Statement.

4.4.3 In addition to the documents sent to them pursuant to clause 4.4.1 or clause 4.4.2 (as appropriate), the Direct Scheme Adjudicator shall have access to such of the Company's records and information in the possession of or under the control of the Company which the Direct Scheme Adjudicator considers they need to resolve the Dispute.

4.4.4 The Direct Scheme Adjudicator shall within 21 Business Days of the date of the notice referring the Dispute to them, notify the Company and/or the relevant Direct Scheme Creditor if they require:

- (a) any additional documentation and/or information which the relevant person shall provide within 21 Business Days of receipt of such notice along with a copy to any other party to the dispute; and/or
- (b) the Direct Scheme Creditor and/or the Company to attend a meeting with them either in person or by telephone/ video call, on a date to be agreed between the relevant parties within a further 21 Business Days of receipt of such notice, to discuss any matter the Direct Scheme Adjudicator shall determine, and the relevant person(s) (or its or their duly authorised representative) shall attend on such date, and at such place as the Direct Scheme Adjudicator shall prescribe.

4.4.5 If any Direct Scheme Creditor or the Company fails to provide any additional information, documentation and/or other evidence in accordance with clause 4.4.4(a) or fails to attend a meeting with the Direct Scheme Adjudicator in accordance with clause 4.4.4(b) the Direct Scheme Adjudicator shall be entitled to make such determination as they see fit in relation to the disputed matters in relation to the Dispute on the basis of the information available to them.

4.4.6 The Direct Scheme Creditor and the Company shall each be entitled to request a meeting with the Direct Scheme Adjudicator for the purpose of discussing the Dispute and supporting evidence at any time prior to the Direct Scheme Adjudicator's determination of the disputed matters.

4.4.7 The Direct Scheme Adjudicator shall be entitled to consult with such advisers, including legal advisers and experts, as they may deem appropriate in determining any Dispute.

4.4.8 In reaching a determination in relation to any Dispute, the Direct Scheme Adjudicator shall act as an expert and not as an arbitrator and shall apply the Estimation Guidelines.

4.4.9 Subject to clause 4.5 (*Direct Scheme Adjudicator: Conflict of Interests*), the Direct Scheme Adjudicator shall notify the relevant Direct Scheme Creditor and the Company of their determination in respect of the Dispute by notice sent by Post or email within 30 Business Days after the later of:

- (a) the date of the notice referring the Dispute to them; or

- (b) the provision of any additional documentation and/or information to them pursuant to clause 4.4.4(a); or
 - (c) the conclusion of any meeting pursuant to clause 4.4.4(b); or
 - (d) the failure of the relevant party to provide such additional documentation and/or information in accordance with clause 4.4.4(a) or to attend a meeting in accordance with clause 4.4.4(b).
- 4.4.10 The determination of the Direct Scheme Adjudicator in relation to any Dispute shall, to the extent permitted by law and subject to any mathematical or other manifest error, be final and binding on the Company and the relevant Direct Scheme Creditor who shall have no right to appeal therefrom or to make any claim against the Direct Scheme Adjudicator in respect of such determination save in respect of the Direct Scheme Adjudicator's wilful default, wilful breach of duty or trust, fraud or dishonesty.
- 4.4.11 Any remuneration (including the Direct Scheme Adjudicator's own remuneration calculated on a time cost basis), costs, charges and expenses incurred by the Direct Scheme Adjudicator in respect of a Dispute including the fees and expenses of any adviser or expert consulted by the Direct Scheme Adjudicator pursuant to clause 4.4.7, shall be paid by the Company as a Scheme Cost. However, the Direct Scheme Adjudicator may determine in their absolute discretion that the relevant Direct Scheme Creditor should reimburse the Company in respect of some or all of those costs where the Direct Scheme Adjudicator considers that the relevant Direct Scheme Creditor has behaved unreasonably in relation to the Dispute, in which case such costs shall be paid by the Direct Scheme Creditor in accordance with clause 4.4.12.
- 4.4.12 Any costs, charges and expenses incurred by the relevant Direct Scheme Creditor in respect of a Dispute shall be borne by the Direct Scheme Creditor. The amount of the relevant Direct Scheme Creditor's share of any remuneration, costs, charges and expenses as determined by the Direct Scheme Adjudicator pursuant to clause 4.4.11 shall be a Liability immediately due and payable by that Direct Scheme Creditor to the Company and may be deducted from any payment to be made to the Direct Scheme Creditor in accordance with Part 5 (*Payment of Net Ascertained Claims*).

4.5 **Direct Scheme Adjudicator: Conflict of Interests**

- 4.5.1 If a conflict of interests arises in respect of any Dispute such that the Direct Scheme Adjudicator is not able to act in relation to that Dispute, the Direct Scheme Adjudicator will immediately notify the relevant Direct Scheme Creditor and the Company of such conflict. On receipt of such notice, the Company and relevant Direct Scheme Creditor shall attempt in good faith to agree, within ten Business Days of receipt of the notice, either:
- (a) to appoint an Alternate Scheme Adjudicator; or
 - (b) to waive the conflict and permit the Direct Scheme Adjudicator to act, provided that the Direct Scheme Adjudicator is willing so to act.
- 4.5.2 If no agreement can be reached pursuant to clause 4.5.1 within ten Business Days of receiving notice of the conflict, the Direct Scheme Administrators shall appoint as an Alternate Scheme Adjudicator an individual who (in the reasonable opinion of the Direct Scheme Administrators) possesses the necessary expertise to

adjudicate the relevant Dispute, and who confirms that they do not have a conflict of interests in respect of the relevant Dispute having regard to the professional conduct standards of the relevant professional body.

- 4.5.3 Any waiver of a conflict pursuant to clause 4.5.1 will only be made after the Direct Scheme Adjudicator has provided sufficiently detailed disclosure of the details and nature of the conflict to the relevant Direct Scheme Creditor and the Company to enable each of them to make an informed decision on whether the conflict may be waived without prejudicing any party.
- 4.5.4 If a Direct Scheme Creditor with a Dispute or the Company considers that the Direct Scheme Adjudicator has a conflict of interests in relation to that Dispute, the Direct Scheme Creditor or Company shall notify the other party to the Dispute and the Direct Scheme Adjudicator of such conflict within ten Business Days of the date of the notice of referral of the Direct Scheme Claim to the Direct Scheme Adjudicator.
- 4.5.5 On receipt of a notice pursuant to clause 4.5.4, the Direct Scheme Adjudicator shall consider whether they have a conflict of interests having regard to any applicable professional conduct standards. In the event that the Direct Scheme Adjudicator considers that they do have a conflict of interests, they will give notice to the relevant Direct Scheme Creditor and the Company and the provisions of clauses 4.5.1 and 4.5.2 will apply. In the event that the Direct Scheme Adjudicator considers that they do not have a conflict of interests having regard to the professional conduct standards of the relevant professional body, no Alternate Scheme Adjudicator will be appointed and the Direct Scheme Adjudicator shall adjudicate the Dispute in accordance with the provisions of clause 4.4 (*Scheme Adjudication Procedure*).
- 4.5.6 Where a Dispute is referred to an Alternate Scheme Adjudicator pursuant to clause 4.5.1 or 4.5.2, they shall adjudicate on that Dispute only. The conflicted Direct Scheme Adjudicator's appointment, shall, subject to clause 7.1.10, continue during the appointment of the Alternate Scheme Adjudicator, and the conflicted Direct Scheme Adjudicator shall continue to act in relation to all other Disputes referred to them unless a conflict shall arise in respect of any of those Disputes, in which case clause 4.5.1 or 4.5.2 as applicable shall apply.
- 4.5.7 The provisions of clause 4.4 (*Scheme Adjudication Procedure*) shall apply in full to any adjudication by an Alternate Scheme Adjudicator.

4.6 **Determination Notice**

- 4.6.1 Following the agreement or determination of a Direct Scheme Creditor's Direct Scheme Claim in accordance with clauses 4.1 to 4.4, the Company shall send by Post or e-mail to that Direct Scheme Creditor a Determination Notice setting out, in the amount so agreed or determined:
 - (a) the Direct Scheme Creditor's Gross Ascertained Claim;
 - (b) the adjustments to be applied to the Direct Scheme Creditor's Gross Ascertained Claim pursuant to the Direct Scheme, as follows:
 - (i) the amount of any Security which is to be deducted pursuant to clause 4.9.4;
 - (ii) the amount of any Liability of the Direct Scheme Creditor which is to be applied in set-off pursuant to clauses 4.9.1 to 4.9.2 (and a

- schedule setting out how the amount of any Liability applied in set-off pursuant to clauses 4.9.1 to 4.9.2 was calculated);
- (iii) details of any currency conversions undertaken pursuant to clause 2.6;
 - (iv) the discount to be applied for the time value of money in accordance with the Estimation Guidelines in respect to any Notified Outstanding Claim or IBNR Claim; and
- (c) the resultant amount of the Direct Scheme Creditor's Net Ascertained Claim, or Liability due to the Company from the Direct Scheme Creditor.
- 4.6.2 The amount shown in the Determination Notice as a Direct Scheme Creditor's Gross Ascertained Claim shall, to the extent permitted by law and subject to any mathematical or other manifest error, be fixed as the amount of that Direct Scheme Creditor's Gross Ascertained Claim, and shall be final and binding on the relevant Direct Scheme Creditor and the Company.
- 4.6.3 The Company may, at any time after a Determination Notice has been issued, adjust the amount shown in the Determination Notice as a Direct Scheme Creditor's Net Ascertained Claim to take into account:
- (a) the actual amount of any Security in respect of which a Direct Scheme Creditor has received payment pursuant to clause 4.9.4; or
 - (b) the Company's revised estimate of the amount of any Security in respect of which a Direct Scheme Creditor is entitled to receive payment pursuant to clause 4.9.4,
- such adjustment being the "**Adjusted Security Amount**".
- 4.6.4 For the avoidance of doubt, the Company may not adjust any Gross Ascertained Claim set out on a Determination Notice which has been issued to a Direct Scheme Creditor.
- 4.6.5 In the event that a Direct Scheme Creditor's Net Ascertained Claim is adjusted by the Company pursuant to clause 4.6.3, the Company will send the relevant Direct Scheme Creditor a Revised Determination Notice by Post or e-mail. Any reference in this Direct Scheme to a Direct Scheme Creditor's Net Ascertained Claim is to the Net Ascertained Claim set out on the most recent Determination Notice or Revised Determination Notice sent to such Direct Scheme Creditor.
- 4.6.6 If the relevant Direct Scheme Creditor disagrees with the Adjusted Security Amount and resulting Net Ascertained Claim set out on a Revised Determination Notice it shall, within 15 Business Days of receipt of the Revised Determination Notice, send written notice to the Company setting out the reasons for such disagreement. No later than 30 Business Days after the date of such notice, the Company and Direct Scheme Creditor will endeavour in good faith to reach agreement as to the value of the Adjusted Security Amount and resulting Net Ascertained Claim. If agreement is reached within such 30 Business Day period, the Company will issue a Revised Determination Notice reflecting the agreed Adjusted Security Amount and Net Ascertained Claim.
- 4.6.7 If agreement cannot be reached between the Company and the relevant Direct Scheme Creditor pursuant to clause 4.6.6 within the time period specified in that clause, the Adjusted Security Amount and resulting Net Ascertained Claim will be referred to the Direct Scheme Adjudicator as a Dispute for determination in accordance with clause 4.4 (*Scheme Adjudication Procedure*).

4.7 Extension of Time Limits

- 4.7.1 The Company may, at its absolute discretion, extend any time period referred to in this Part 4 (*Determination of Net Ascertained Claims*) or in Part 5 (*Payment of Net Ascertained Claims*), other than the Final Claims Deadline and the time limits in clause 4.4 (*Scheme Adjudication Procedure*), whether for any one or more or all Direct Scheme Creditors.
- 4.7.2 The Direct Scheme Adjudicator may in their absolute discretion extend any of the time periods referred to in clause 4.4 (*Scheme Adjudication Procedure*) whether for any one or more or all Direct Scheme Creditors.

4.8 Direct Scheme Creditors to Provide Assistance

- 4.8.1 During the Direct Scheme Period, Direct Scheme Creditors shall provide to the Company, Direct Scheme Administrators and Direct Scheme Adjudicator all reasonable assistance required by any of them in connection with the Direct Scheme and shall provide such assistance as any of them may reasonably require in connection with the recovery of any Property, including for the avoidance of doubt any surplus collateral held in respect of any Security or the enforcement of any obligations owed to the Company.
- 4.8.2 The Company shall provide the Direct Scheme Administrators and Direct Scheme Adjudicator with all reasonable assistance required by any of them in connection with the Direct Scheme.

4.9 Set-Off and Security

- 4.9.1 Where there have been mutual credits, mutual debts or other mutual dealings between the Company and any Direct Scheme Creditor (including, but not limited to, Liabilities arising under or in respect of an Insurance Contract or under the Direct Scheme), an account shall be taken of:
- (a) the aggregate Direct Scheme Claim of the Direct Scheme Creditor, as agreed or determined pursuant to the terms of the Direct Scheme, prior to any deductions; and
 - (b) all Liabilities of the Direct Scheme Creditor to the Company (including, but not limited to, Liabilities arising under or in respect of an Insurance Contract or under the Direct Scheme);
- and the sums due from one party shall be set off against the sums due from the other.
- 4.9.2 For the avoidance of doubt, the Company will not exercise any right of set-off under the Direct Scheme where the exercise of that right would conflict with or constitute an extension of any of the Company's rights under a set-off regime established by any applicable statutory provision or rule of law which is binding on the Company and the relevant Direct Scheme Creditor.
- 4.9.3 Nothing in the Direct Scheme will prevent a Direct Scheme Creditor from obtaining payment by means of its Security at any time, provided that this is done strictly in accordance with the terms of the contract pursuant to which such Security was established and the terms (if any) of the Security (including for the avoidance of doubt the Surplus Lines Trust Fund).
- 4.9.4 Any Direct Scheme Creditor who is entitled to, or who does, obtain or receive payment by enforcing, drawing down, withdrawing or calling on any Security (including for the avoidance of doubt the Surplus Lines Trust Fund) shall have

such entitlement or such payment taken into consideration by the Company in determining or adjusting that Direct Scheme Creditor's Net Ascertained Claim.

- 4.9.5 Subject to clause 4.9.8, the proceeds of any enforcement, drawdown or withdrawal under or call on a Security established in respect of an Insurance Contract shall only be applied to a Direct Scheme Claim arising under that Insurance Contract, or to any other Direct Scheme Claim to which the Direct Scheme Creditor is contractually entitled to apply it. Any surplus remaining after discharge of such Direct Scheme Claim shall not be applied in satisfaction or reduction of any other Liability, but shall be held on trust by the Direct Scheme Creditor for the purposes of the Direct Scheme and shall be paid to the Company forthwith without set-off, deduction, retention, abatement or counterclaim.
- 4.9.6 Subject to clause 4.9.8, nothing in the Direct Scheme shall affect the rights of the Company under any applicable law against any Direct Scheme Creditor in respect of any wrongful drawdown or enforcement of any Security. The amount of any payment received by a Direct Scheme Creditor in respect of any such wrongful drawdown ("**Wrongful Drawdown Amount**") shall be:
- (a) held on trust by the relevant Direct Scheme Creditor for the Company to be applied in accordance with the terms of the Direct Scheme;
 - (b) repaid by relevant Direct Scheme Creditor to the Company forthwith without set-off, deduction, retention, abatement or counterclaim.
- 4.9.7 To the extent that the Direct Scheme Creditor fails to repay the Wrongful Drawdown Amount to the Company, the Company shall be entitled to set off the Wrongful Drawdown Amount against any sums due from the Company to the relevant Direct Scheme Creditor.
- 4.9.8 The provisions of clauses 4.9.5, 4.9.6 and 4.9.7 shall not apply in relation to any enforcement or other exercise of rights in relation to the Surplus Lines Trust Fund in accordance with the terms of the Surplus Lines Trust Agreement by a Direct Scheme Creditor which is an American Policyholder or Third Party Claimant.

4.10 **Treatment of Agents, Underwriting Agents, Lloyd's Syndicates and Pools**

- 4.10.1 In any of a Direct Scheme Creditor's dealings with the Company, the Direct Scheme Administrators or the Direct Scheme Adjudicator under the Direct Scheme, the Direct Scheme Creditor may appoint an Agent to act on its behalf. The Company may, in its absolute discretion, require the Agent or the Direct Scheme Creditor to provide evidence of the Agent's authority and its scope, before dealing or continuing to deal with the Agent under the Direct Scheme.
- 4.10.2 The Direct Scheme Creditors authorise the Company at its discretion to treat any underwriting agent (including, but not limited to, a manager of an underwriting pool, a managing general agent or a holder of a line-slip or binding authority) as a single Direct Scheme Creditor of the Company in respect of the Direct Scheme Claim of its principal(s) and as a single debtor of the Company in respect of the Liabilities owed to the Company by its principal(s) and to set off such Direct Scheme Claims and Liabilities against each other or any other applicable Direct Scheme Claims or Liabilities.
- 4.10.3 The Company shall treat the members of a Lloyd's Syndicate which have Direct Scheme Claims against the Company arising out of obligations incurred through that Lloyd's Syndicate as a single Direct Scheme Creditor in respect of those Direct

Scheme Claims. Where the members of that same Lloyd's Syndicate also owe Liabilities to the Company arising out of obligations incurred through that same Lloyd's Syndicate, the Company shall treat those members as a single debtor in respect of those Liabilities and shall set off such Direct Scheme Claims and Liabilities against each other. For these purposes, the effect of closing an underwriting year of account by means of reinsurance to close into a later underwriting year of account shall be deemed to be that the rights and liabilities of the members of the syndicate in such closing year shall instead become the rights and liabilities of the members of the successor syndicate in such later year.

4.11 Funding

4.11.1 Brokers who have funded Direct Scheme Claims shall not constitute Direct Scheme Creditors for the purposes of advancing such Direct Scheme Claims in the Direct Scheme unless:

- (a) they have acquired an assignment of the funded Direct Scheme Claim, or written confirmation from the beneficiaries of such funding that the Broker is entitled to submit a claim in the Direct Scheme in the place of such beneficiaries in respect of the funded Direct Scheme Claim, such assignment or confirmation being in a form acceptable to the Company; or
- (b) such funding took place pursuant to a contractual obligation of the Broker to the Company in circumstances where, as a matter of law, the Company is liable to indemnify or reimburse such Broker.

4.11.2 For the purpose of determining whether funding falls within sub-clause 4.11.1, in the absence of agreement between the Company and the relevant Broker, the matter shall be referred to the Direct Scheme Adjudicator as a Dispute for determination in accordance with clause 4.4 (*Scheme Adjudication Procedure*) (in which case all references in that clause to the Direct Scheme Creditor shall be read as references to the relevant Broker). Any such determination shall, to the extent permitted by law and subject to any mathematical or other manifest error, be final and binding on the Company and the relevant Broker and neither a Broker nor the Company shall have any right to appeal therefrom or to make any claim against the Direct Scheme Adjudicator in respect of such determination save in respect of their wilful default, wilful breach of duty or trust, fraud or dishonesty.

4.11.3 For the avoidance of doubt, any Broker claiming in respect of a funded Direct Scheme Claim shall complete and return a Claim Form in respect of such Direct Scheme Claim in accordance with the provisions of clause 3.3 (*Completion of Claim Forms by Direct Scheme Creditors*). The supporting information to be provided pursuant to clause 3.3.3 shall, unless the Broker is claiming pursuant to clause 4.11.1(b), include a copy of the assignment or written confirmation required pursuant to clause 4.11.1(a).

4.12 Methodology, principles and assumptions limited to Direct Scheme

For the avoidance of doubt, the views of any of the Company or any Office Holder (and/or any of their Associated Companies, directors, employees, members, partners, delegates, alternates, agents or advisers) as to the appropriate methodology, principles or assumptions to be applied in determining the value of any Direct Scheme Claim, whether express or implied and whether contained in the Direct Scheme, the Estimation Guidelines

or any other document or communication, are provided only for the purpose of determining the Direct Scheme Claim owed by the Company to the Direct Scheme Creditor (if any) and may not be relied upon for any other purpose. Further, no such methodology, principle or assumption shall be construed as advice being given by the Company or any Office Holder (and/or any of their Associated Companies, directors, employees, members, partners, delegates, alternates, agents or advisers) to the Direct Scheme Creditor or any other person for any purpose.

5 PART 5 PAYMENT OF NET ASCERTAINED CLAIMS

5.1 Direct Payment Percentage

- 5.1.1 As soon as reasonably practicable following the Final Claims Deadline, the Company shall determine whether, in its reasonable opinion, based on the then currently available information, all Net Ascertained Claims can be paid in full by the Company from Distributable Property.
- 5.1.2 In the event that, following the Final Claims Deadline, the Company determines that, in its reasonable opinion, based on the then currently available information, all Net Ascertained Claims cannot be paid in full by the Company from the Distributable Property, the Company shall, as soon as reasonably practicable, set an initial Direct Payment Percentage.
- 5.1.3 After the initial Direct Payment Percentage has been set in accordance with clause 5.1.2, the Company may review the Direct Payment Percentage, and consider, in the light of clause 5.1.4, whether it should be revised.
- 5.1.4 In setting or revising a Direct Payment Percentage, the Company shall use reasonable endeavours to ensure that sufficient reserves have been created by the Company as it considers to be prudent to enable the Company, or any third party acting on behalf of the Company, to:
 - (a) pay all Excluded Liabilities and all other Liabilities of the Company ranking in priority to the Net Ascertained Claims in full; and
 - (b) pay the same Direct Payment Percentage in respect of all Net Ascertained Claims.
- 5.1.5 In considering whether sufficient reserves have been created in accordance with clause 5.1.4, the Company shall be entitled to take into account:
 - (a) the Company's Distributable Property; and
 - (b) the aggregate amount in respect of which Direct Scheme Creditors are entitled to receive payment by enforcing, drawing down, withdrawing or calling on any Security.
- 5.1.6 For the purpose of setting or revising a Direct Payment Percentage, the Company shall be entitled to obtain and consider such financial and/or actuarial information and advice as the Company shall consider appropriate.
- 5.1.7 If, on considering a Direct Payment Percentage previously set in accordance with clauses 5.1.2 and 5.1.3, the Company considers that, taking into consideration those matters referred to in clause 5.1.4, there is insufficient Distributable Property for the then current Direct Payment Percentage to be maintained at that level, the Company shall reduce the Direct Payment Percentage to such level as it considers appropriate in the light of those provisions. Any such reduction in the Direct Payment Percentage

shall not give rise to any obligation on the part of any Direct Scheme Creditor to repay the difference between the amount which would have been payable in respect of such reduced Direct Payment Percentage and the amount actually paid to such Direct Scheme Creditor in respect of any previous Direct Payment Percentage.

- 5.1.8 The Company shall be entitled to suspend payments to all Direct Scheme Creditors for such period as it considers appropriate if information becomes available to it concerning the financial position of the Company as a result of which it is required to consider whether or not to set a reduced Direct Payment Percentage. As soon as practicable during, and in any event at the end of, such period, the Direct Scheme Administrators shall set a reduced Direct Payment Percentage or resume payments in respect of any previously set Direct Payment Percentage.

5.2 Payment of Net Ascertained Claims

- 5.2.1 In the event that the Company determines that all Net Ascertained Claims can be paid in full, the Company shall, as soon as reasonably practicable thereafter, make payment in full in respect of all Net Ascertained Claims to the relevant Direct Scheme Creditors.
- 5.2.2 Where, following any payment under clause 5.2.1, any Direct Scheme Claim subsequently becomes a Net Ascertained Claim, the Company shall, as soon as reasonably practicable, make payment in respect of such Net Ascertained Claim in full (provided that the Company is satisfied that following such payment there will remain sufficient reserves to pay all remaining Direct Scheme Claims in full once such claims become Net Ascertained Claims).
- 5.2.3 In the event that the Company sets a Direct Payment Percentage, the Company shall, as soon as reasonably practicable thereafter, pay the Direct Payment Percentage in respect of all Net Ascertained Claims to the relevant Direct Scheme Creditors.
- 5.2.4 Where, following any payment under clause 5.2.3, any Direct Scheme Claim subsequently becomes a Net Ascertained Claim, the Company shall, as soon as reasonably practicable thereafter, pay the Direct Payment Percentage in respect of such Net Ascertained Claim (provided that the Company is satisfied following such payment there will remain sufficient reserves to pay all remaining Direct Scheme Claims the same Direct Payment Percentage once such claims become Net Ascertained Claims).
- 5.2.5 In the event that the Company sets an increased Direct Payment Percentage, the Company shall, as soon as reasonably practicable thereafter, pay:
- (a) the increased Direct Payment Percentage in respect of all Direct Scheme Claims which subsequently become Net Ascertained Claims to the relevant Direct Scheme Creditors; and
 - (b) the difference between the most recent previous Direct Payment Percentage and the increased Direct Payment Percentage in respect of all Direct Scheme Creditors who had received the previous Direct Payment Percentage in respect of their Net Ascertained Claims.

5.3 Effect of Payment of Net Ascertained Claims

The amount of a Direct Scheme Creditor's Net Ascertained Claim under the Direct Scheme as determined in accordance with Part 4 (and for the avoidance of doubt, following any adjustment made pursuant to clause 4.6.3) shall constitute the Company's entire liability to the

relevant Direct Scheme Creditor in respect of its Direct Scheme Claim and payment of such Net Ascertained Claim in accordance with the Direct Scheme (whether in full or at the final relevant Payment Percentage set under the Direct Scheme in respect of such Net Ascertained Claim), regardless of whether such sum becomes an Unclaimed Balance pursuant to clause 5.7 (*Unclaimed Balances*), shall be in full and final settlement of all and any Direct Scheme Claims of that Direct Scheme Creditor against the Company.

5.4 Excess Distributable Property

Any Excess Distributable Property will be held by the Company (acting by the Administrators or, if applicable, by any subsequently appointed liquidator of the Company) for the purpose of paying Excluded Liabilities (to the extent that they have not already been paid) and any other Liabilities of the Company which are not subject to the Direct Scheme. For the avoidance of doubt, the Direct Scheme Administrators will have no obligations with respect to the Excess Distributable Property.

5.5 Method of Payment

- 5.5.1 All payments to Direct Scheme Creditors under the Direct Scheme shall be made in accordance with this clause 5.5.
- 5.5.2 Where a Direct Scheme Creditor provides the Company with full details of the bank account into which payment should be made on a Claim Form or otherwise in writing to the Company, payments will be made by electronic transfer. Such payment shall be at the Direct Scheme Creditor's own risk, cost and expense.
- 5.5.3 Where a Direct Scheme Creditor has not provided the Company with bank account details in accordance with clause 5.5.2, all payments to such Direct Scheme Creditor shall be made by way of cheque in favour of the Direct Scheme Creditor concerned or in favour of such other person as the Direct Scheme Creditor may notify the Company in writing. Cheques shall be sent by Post at the risk of the relevant Direct Scheme Creditor to such address as shall be notified on the Direct Scheme Creditor's Claim Form or otherwise as the Direct Scheme Creditor may notify the Company in writing.
- 5.5.4 Payment under the Direct Scheme in respect of a Net Ascertained Claim shall be deemed to have been made on the day that the electronic transfer instructions were given to the relevant bank pursuant to clause 5.5.2 or the relevant cheque is sent by Post pursuant to clause 5.5.3 (as the case may be) and such deemed payment shall be a good discharge and satisfaction of the relevant Net Ascertained Claim.
- 5.5.5 The Company will not be required to make any payments to Direct Scheme Creditors unless and until the Company is satisfied that the making of such payment is not prohibited by an applicable law or regulation referred to in clause 5.6 (*International Sanctions*).

5.6 International Sanctions

- 5.6.1 Where the Company is prevented by any law or regulation imposing international sanctions, restrictions or prohibitions, whether promulgated by the United Kingdom or any other jurisdiction to which the Company is subject or affected in relation to the making of a payment to a Direct Scheme Creditor or otherwise complying with any term of the Direct Scheme, the requirements of such law or regulation shall

take precedence over the terms of the Direct Scheme and compliance with such law or regulation which persists up to and as at the Termination Date shall be necessary and will constitute the proper discharge of the Company's duties in the context of any such Direct Scheme Creditor's Direct Scheme Claim under the Direct Scheme.

- 5.6.2 Any Blocked Monies shall be applied by the Company in accordance with the requirements of such law or regulation or the instructions of the relevant authority. The Company shall be under no obligation to make any application to the relevant authority for a waiver of such law or regulation in any particular case. The Company shall be under no obligation to monitor whether any such sanction, restriction or prohibition has been lifted and it shall be the relevant Direct Scheme Creditor's responsibility to inform the Company if it becomes legal to pay them.
- 5.6.3 In the event that the applicable law or regulation does not contain provisions as to how to deal with Blocked Monies, the Company shall hold such monies in an account with a United Kingdom clearing bank until such time as the Company is instructed by the relevant authority as to how to deal with the Blocked Monies or it becomes legal (and the Direct Scheme Creditor informs the Company that it has become legal) to pay them to the relevant Direct Scheme Creditor. Any interest earned on such account shall be applied at the discretion of the Company. In the event that no such instruction is received by the Termination Date, the Company shall be entitled to such Blocked Monies absolutely and the relevant Direct Scheme Creditor shall cease to have any entitlement to them. The Direct Scheme Claim in respect of which such Blocked Monies would otherwise have been payable shall be deemed to be cancelled and the Direct Scheme Creditor shall have no rights in respect of it.

5.7 Unclaimed Balances

- 5.7.1 The Company shall use its reasonable endeavours to pay any Unclaimed Balances to the Direct Scheme Creditors entitled thereto according to their respective entitlements. Within 15 Business Days of becoming aware that an amount due to a Direct Scheme Creditor has become an Unclaimed Balance, the Company shall give notice to the relevant Direct Scheme Creditor informing them that the Company has been unable to make payment, and requesting that the Direct Scheme Creditor supplies alternative payment details or corrects any error in the details previously supplied. For the purposes of this clause 5.7, if the Direct Scheme Creditor does not respond to any notice given in accordance with clauses 11.3 or 11.4 the Company shall be entitled to use any reasonable means to attempt to contact the relevant Direct Scheme Creditor
- 5.7.2 The Company shall give 30 Business Days' notice of the proposed termination of the Direct Scheme to all Direct Scheme Creditors which have outstanding Unclaimed Balances. To the extent that it has not been possible to make payment to a Direct Scheme Creditor by three Business Days prior to the Termination Date, the Direct Scheme Administrators shall be entitled to treat the aggregate remaining amount of any Unclaimed Balances, as Excess Distributable Property to be applied in accordance with clause 5.4.
- 5.7.3 The Direct Scheme Claims in respect of any Unclaimed Balances referred to in clause 5.7.2 shall be deemed to have been paid in full by the Company to the

relevant Direct Scheme Creditor and the Direct Scheme Creditor shall have no further rights in respect of it.

6 PART 6 DIRECT SCHEME ADMINISTRATORS

6.1 Qualification, appointment, resignation and removal

- 6.1.1 During the Administration Period, the Direct Scheme Administrators shall be the Administrators appointed to the Company from time to time in accordance with the provisions of the IA86. Where an Administrator is appointed to, resigns from, is removed from or vacates such office in accordance with the provisions of the IA86, such Administrator shall be deemed to have also resigned, vacated or been appointed to or removed from office as a Direct Scheme Administrator hereunder. For the avoidance of doubt, during the Administration Period, no person may be appointed, removed nor may resign as a Direct Scheme Administrator if that person is an Administrator who has not been appointed, removed nor resigned in accordance with the Administration and clauses 6.1.3 and 6.1.4 shall not apply.
- 6.1.2 In the event that the Administration ends prior to the Termination Date (including by conversion to liquidation), the Administrators in office immediately prior to the end of the Administration shall continue as the Direct Scheme Administrators hereunder. Thereafter:
- (a) there shall be a minimum of one Direct Scheme Administrator in office at any time;
 - (b) each Direct Scheme Administrator shall be an individual qualified to act as an insolvency practitioner within the meaning of section 390 of the IA86;
 - (c) a Direct Scheme Administrator may appoint an additional person (qualified in accordance with clause 6.1.2(b)) as an additional Direct Scheme Administrator;
 - (d) where there is no Direct Scheme Administrator, the Direct Creditors' Committee may appoint a person (qualified in accordance with clause 6.1.2(b)) as a Direct Scheme Administrator;
 - (e) the office of Direct Scheme Administrator shall be vacated if that person is subject to an Individual Termination Event;
 - (f) a Direct Scheme Administrator may resign in accordance with clause 6.1.3; and
 - (g) a Direct Scheme Administrator may resign if called upon to do so by the Direct Creditors' Committee in accordance with clause 6.1.4 and shall resign if a resolution put to a meeting of Direct Scheme Creditors in accordance with that clause is passed.
- 6.1.3 After the end of the Administration, a Direct Scheme Administrator may resign their appointment at any time by giving no less than three months' notice in writing to any remaining Direct Scheme Administrator and to the Direct Creditors' Committee or such shorter period of notice as any remaining Direct Scheme Administrator may agree in writing.
- 6.1.4 After the end of the Administration, the Direct Creditors' Committee shall be entitled (by a resolution passed by at least two-thirds of all Direct Committee Members for the time being) at any time to call upon a Direct Scheme Administrator to resign, provided

that such Direct Scheme Administrator has been given at least 28 Business Days' notice of:

- (a) the proposed resolution; and
- (b) the reasons why the resolution is to be put to the Direct Creditors' Committee, and is given a reasonable opportunity to make representations at the meeting at which the resolution is proposed. If such Direct Scheme Administrator declines to resign, a resolution requiring their removal shall be put before a meeting of Direct Scheme Creditors.

6.1.5 Where there is more than one Direct Scheme Administrator, the functions, powers and duties of the Direct Scheme Administrators under the Direct Scheme may be performed and exercised jointly or severally and any act required to be done by the Direct Scheme Administrators pursuant to the Direct Scheme may be done by all or any one or more of them.

6.2 **Functions, powers and duties of the Direct Scheme Administrators**

6.2.1 With immediate effect from the Effective Date, the Direct Scheme Administrators shall be empowered to and shall supervise and ensure the carrying out of the Direct Scheme for and on behalf of the Company, and for these purposes only shall:

- (a) have the power to act in the name and on behalf of the Company to, and shall, manage the affairs, business and Property of the Company; and
- (b) realise the assets of the Company and apply them for the benefit of Direct Scheme Creditors in accordance with the terms of the Direct Scheme.

6.2.2 Without prejudice to the generality of clause 6.2.1, in carrying out their functions, powers and duties under the Direct Scheme, the Direct Scheme Administrators, for the purposes of the Direct Scheme only, shall be entitled to:

- (a) exercise all rights, powers and duties of the Company under the Direct Scheme;
- (b) agree claims and process reinsurance recoveries as part of the Company's business;
- (c) take possession of, collect and get in all the Property (of whatever nature) to which the Company is or appears to be entitled and do all such things as may be necessary for the realization of any such Property and the application of the Property of the Company for the benefit of Direct Scheme Creditors and other persons as appropriate;
- (d) invest or apply all or any part of the Property of the Company, and any Property which the Company holds on trust, as if they were absolutely and beneficially entitled to such Property, in any manner, whether or not involving liability or producing income, and whether or not authorised by law as an appropriate investment of trust assets, including (without prejudice to the generality of the foregoing), in the following investments:
 - (i) deposit accounts with a bank, building society, finance company or local authority;
 - (ii) stocks, shares, debentures, bearer securities, commodities or other investments;
 - (iii) units in unit trusts, exempt or mutual funds, other collective investment schemes or partnership shares;

- (iv) foreign currencies at any rate of exchange and for present or forward settlement, or
- (v) futures, traded options, swaps, contracts for differences or other financial instruments;
- (e) have full access at all times to all books, papers and other documents of the Company and shall be entitled to receive all such information as they may require in relation to its affairs;
- (f) do all things which may be necessary or expedient for the protection of the Company's Property or of any Property that appears to belong to the Company;
- (g) bring or defend any action or other legal Proceedings in the name and on behalf of the Company or otherwise;
- (h) do all acts and execute in the name and on behalf of the Company any deed, receipt or other document and to use the Company's seal;
- (i) to the extent that the Court has jurisdiction, be entitled to apply, or to cause the Company to apply, to the Court in relation to any particular matter arising in the course of the Direct Scheme;
- (j) propose, where they consider it to be in the interests of Direct Scheme Creditors as a whole, in relation to one or more classes of Direct Scheme Creditor a further scheme of arrangement under Part 26 of the Act, with a view to either amending the provisions of the Direct Scheme or to implementing a new scheme of arrangement between the Company and the Direct Scheme Creditors concerned;
- (k) be remunerated on a time cost basis for the carrying out of their functions, powers, rights, authorities, discretions and duties and to be reimbursed for all expenses properly incurred by them in connection therewith;
- (l) employ and remunerate accountants, actuaries, lawyers and other professional advisers or agents whether in England and Wales or in other jurisdictions provided such employment is necessary for the purpose of performing their functions and powers under the Direct Scheme;
- (m) delegate to any person (being a partner in the same firm as the Direct Scheme Administrators qualified to act as an insolvency practitioner within the meaning of section 390 of the IA86) (a "**Direct Delegate**"), all or any of the functions, powers, rights, authorities, discretions and duties conferred upon the Direct Scheme Administrators under the Direct Scheme and from time to time to revoke any such delegation, provided that the Direct Scheme Administrators shall be responsible for any act or omission of any such Direct Delegate to the same extent as if they had expressly authorised it; and
- (n) do all other things incidental to the exercise of the functions and powers referred to in this clause 6.2 (*Functions, powers and duties of the Direct Scheme Administrators*).

6.2.3 Nothing in this clause 6.2 (*Functions, powers and duties of the Direct Scheme Administrators*) shall be deemed to in any way modify the rights, powers, duties or obligations of the Administrators whilst acting in their capacity as Administrators of the Company.

- 6.2.4 Any function of or power conferred on the Company or its officers, whether by statute or its memorandum or articles of association, which could be exercised in such a way as to interfere with the exercise by the Direct Scheme Administrators of their functions and powers in relation to the Company, shall not be exercisable except with the consent of the Direct Scheme Administrators, which may be given either generally or in relation to particular cases.
- 6.2.5 The Direct Scheme Administrators shall act as agents of the Company without personal liability in respect of all functions and powers conferred on them under this Direct Scheme, The Direct Scheme Administrators, in their capacity as such, shall not incur any liability to any Direct Scheme Creditor or any person other than pursuant to clause 6.3.2.

6.3 **Responsibility and indemnity**

- 6.3.1 In carrying out their functions and exercising their powers under the Direct Scheme, the Direct Scheme Administrators shall act bona fide and with due care and diligence in the interests of the Direct Scheme Creditors as a whole and shall use their powers under the Direct Scheme for the purpose of ensuring that the Direct Scheme is operated in accordance with its terms.
- 6.3.2 No Direct Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by a Direct Scheme Administrator in accordance with, and to implement the provisions of, the Direct Scheme or the exercise by the Direct Administrators in good faith and with due care of any power conferred upon them for the purposes of the Direct Scheme if exercised in accordance with, and to implement the provisions of, the Direct Scheme and the Direct Scheme Administrators shall not be liable for any loss unless such loss is attributable to their own wilful default, breach of duty, breach of trust, fraud or dishonesty (or to that of any Direct Delegate).
- 6.3.3 No Direct Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any Direct Employee in accordance with and to implement the provisions of the Direct Scheme and no Direct Employee shall be liable for any loss unless such loss is attributable to their own wilful default, breach of duty, breach of trust, fraud or dishonesty.
- 6.3.4 No Direct Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any Direct Delegate in accordance with and to implement to provisions of the Direct Scheme or the exercise by such Direct Delegate in good faith and with due care of any power conferred upon the Direct Scheme Administrators for the purposes of the Direct Scheme if exercised in accordance with and to implement the provisions of a Scheme and no Direct Delegate shall be liable for any loss unless such loss is attributable to his own wilful default, breach of duty, breach of trust, fraud or dishonesty.
- 6.3.5 Subject to the Act, each Direct Scheme Administrator (in their capacity as such) and each Direct Employee and Direct Delegate shall be entitled to an indemnity out of the Company's Property against:
- (a) all actions, claims, proceedings and demands brought or made against such Direct Scheme Administrator (or Direct Employee or Direct Delegate) in respect of any act done or omitted to be done by such Direct Scheme Administrator (or Direct Employee or Direct Delegate) in good faith without

- wilful default, breach of duty, breach of trust, fraud or dishonesty in the course of implementing the Direct Scheme in accordance with its terms; and
- (b) all costs, charges, expenses and liabilities properly incurred by such Direct Scheme Administrator (or Direct Employee or Direct Delegate) in carrying out its functions and powers (or the functions for which such Direct Employee or Direct Delegate is retained) in the course of implementing the Direct Scheme in accordance with its terms.
- 6.3.6 Without prejudice to the generality of clause 6.3.5, each such person as is expressed to be entitled to an indemnity in accordance with that clause (in the capacity in which they are entitled to such an indemnity) shall be entitled to an indemnity out of the Property:
- (a) against any liability incurred by them in defending any Proceedings, whether civil or criminal, in respect of any wilful default, breach of duty, breach of trust, fraud or dishonesty in which judgment is given in their favour or in which they are acquitted; or
- (b) in connection with any application in any Proceedings in which relief is granted to them by a court from liability for wilful default, breach of duty, breach of trust, fraud or dishonesty in relation to the affairs of the Company.
- 6.3.7 The Company may:
- (a) purchase and maintain for any such person as is referred to in clause 6.3.5 insurance against any liability in respect of which the Company would be obliged to indemnify that person in accordance with clauses 6.3.5 and 6.3.6; and
- (b) pay costs incurred by any such person as is referred to in clause 6.3.5 in defending Proceedings of the nature described in clause 6.3.6 provided that the Company obtains from such party an obligation to reimburse the Company (with interest) in respect of any such which would not, in the event, have been payable by the Company under clause 6.3.6.
- 6.3.8 Any premium payable in respect of the insurance cover referred to in clause 6.3.7(a) shall be a Scheme Cost.
- 6.3.9 The Direct Scheme Administrators shall be entitled to rely on any communication, instrument, document or information (whether provided in writing or orally) believed by them to be genuine and correct and shall be entitled to rely upon the advice of, or information obtained from, any professional adviser or other person instructed by them and believed by them in good faith to be competent.
- 6.3.10 Neither the Direct Scheme Administrators nor the Administrators shall incur any personal liability whatsoever in connection with the preparation, adoption, implementation or conduct of the Direct Scheme or in connection with any collateral arrangement or any act of a Direct Delegate except in the case of their own wilful default, breach of duty, breach of trust, fraud or dishonesty.

7 PART 7 THE DIRECT SCHEME OFFICE HOLDERS

7.1 Direct Scheme Adjudicator

- 7.1.1 The first Direct Scheme Adjudicator shall be Andrew Maneval of Chesham Consulting, LLC.

- 7.1.2 Only an individual shall be appointed as a Direct Scheme Adjudicator or Alternate Scheme Adjudicator.
- 7.1.3 The Direct Scheme Adjudicator and any Alternate Scheme Adjudicator shall be qualified to act if the Company is of the reasonable opinion that the person to be appointed has the ability to carry out the functions of the Direct Scheme Adjudicator or Alternate Scheme Adjudicator under the Direct Scheme.
- 7.1.4 The Direct Scheme Adjudicator shall be responsible for the determination of Disputes. The Direct Scheme Adjudicator shall determine any Disputes referred to the Direct Scheme Adjudicator pursuant to Part 4 (*Determination of Net Ascertained Claims*) and shall undertake all other duties and functions conferred upon the Direct Scheme Adjudicator by the Direct Scheme. Any Alternate Scheme Adjudicator shall be responsible for the determination of any Dispute referred to them only. The Direct Scheme Adjudicator and any Alternate Scheme Adjudicator shall have the powers and rights conferred upon the Direct Scheme Adjudicator or Alternate Scheme Adjudicator by the Direct Scheme for such purposes.
- 7.1.5 The Direct Scheme Adjudicator or any Alternate Scheme Adjudicator shall be entitled to appoint an actuarial adviser and/or other professional advisers to assist them, provided such appointment is necessary or desirable for the purpose of the Direct Scheme Adjudicator or Alternate Scheme Adjudicator performing their functions and powers under the Direct Scheme.
- 7.1.6 In exercising their powers and rights and in carrying out their duties and functions under the Direct Scheme, the Direct Scheme Adjudicator and any Alternate Scheme Adjudicator shall act in good faith and with due care and diligence and shall exercise their powers and rights under the Direct Scheme to ensure that the Direct Scheme is operated in accordance with its terms.
- 7.1.7 A Direct Scheme Adjudicator and any Alternate Scheme Adjudicator shall be paid on a time cost basis for the exercise and performance of their powers, rights, duties and functions under the Direct Scheme, such remuneration to be paid in accordance with clause 4.4.11 and 4.4.12.
- 7.1.8 The Company may appoint more than one Direct Scheme Adjudicator in which case such Direct Scheme Adjudicators may carry out their duties and functions under the Direct Scheme either jointly or severally.
- 7.1.9 A Direct Scheme Adjudicator or Alternate Scheme Adjudicator may resign their appointment at any time by giving no less than three months' notice in writing to the Company or on such shorter period of notice as the Direct Scheme Adjudicator and the Company may agree in writing.
- 7.1.10 The office of a Direct Scheme Adjudicator or Alternate Scheme Adjudicator shall be vacated if they are subject to an Individual Termination Event.
- 7.1.11 If the office of a Direct Scheme Adjudicator or Alternate Scheme Adjudicator is vacated in accordance with clause 7.1.9 or 7.1.10, or if the Company wishes to appoint more than one Direct Scheme Adjudicator in accordance with clause 7.1.8, the Company shall appoint a person who is suitably qualified in accordance with clause 7.1.3 as replacement or additional Direct Scheme Adjudicator or Alternate Scheme Adjudicator provided that:
- (a) such replacement or addition consents to act and is independent; and
 - (b) all remaining Direct Scheme Adjudicators, if any, consent to such appointment.

7.1.12 There shall be no more than two additional Direct Scheme Adjudicators at any time. Any such additional Direct Scheme Adjudicator shall have all the powers and duties conferred upon the Direct Scheme Adjudicator under the Direct Scheme. The Company shall direct which Direct Scheme Adjudicator shall deal with which Dispute so as to prevent a Direct Scheme Adjudicator dealing with a Dispute where a conflict of interests or other issue exists that might prevent a Direct Scheme Adjudicator from being seen to deal fairly with a Dispute.

7.2 The Direct Scheme Actuary

- 7.2.1 The first Direct Scheme Actuary shall be Alex Lee of Ernst & Young LLP.
- 7.2.2 The Direct Scheme Actuary's function will be to provide actuarial advice to the Company to enable it to assess Direct Scheme Creditors' Direct Scheme Claims in accordance with the Estimation Guidelines. When called upon to do so the Direct Scheme Actuary will also provide information to the Direct Scheme Adjudicator in relation to the advice given to the Company.
- 7.2.3 The Company shall be entitled to appoint more than one Direct Scheme Actuary, in which case such Direct Scheme Actuaries may carry out their duties and functions under the Direct Scheme either jointly or severally.
- 7.2.4 A Direct Scheme Actuary may resign their appointment at any time by giving no less than three months' notice in writing to the Company or on such shorter period of notice as the Direct Scheme Actuary and the Company may agree in writing.
- 7.2.5 The office of a Direct Scheme Actuary shall be vacated if, being an individual, they are subject to an Individual Termination Event or if, being a corporation, it is subject to a Corporate Termination Event.
- 7.2.6 If the office of a Direct Scheme Actuary is vacated, the Company shall be entitled to appoint a replacement Direct Scheme Actuary provided that:
 - (a) such replacement consents to act and is independent; and
 - (b) all remaining Direct Scheme Actuaries, if any, consent to such appointment.
- 7.2.7 The Company acknowledges and agrees that the Direct Scheme Actuary will be entitled to have full access to all such information as may from time to time be required in relation to the operation of the Direct Scheme and to all books, papers, documents and other information contained or represented in any format whatsoever in the possession or under the control of the Company.

7.3 Notification of Change of Office Holder

- 7.3.1 In the event that there is a change of Office Holder or an additional Office Holder is appointed, the Direct Scheme Administrators shall place a notice on the Website giving details of the change or appointment.

7.4 Limit on Actions and Indemnity

- 7.4.1 Neither the Direct Scheme Creditors nor the Company shall be entitled to challenge the validity of any act done or omitted to be done by a Direct Scheme Adjudicator or any Alternate Scheme Adjudicator in good faith and with due care and diligence pursuant to the provisions of the Direct Scheme or in the performance or exercise or non-exercise of any power, right, duty or function conferred upon them under the Direct Scheme and a Direct Scheme Adjudicator and any Alternate Scheme Adjudicator shall not be liable for any loss unless any

such loss is attributable to their wilful default, wilful breach of duty or trust, fraud or dishonesty.

- 7.4.2 No Direct Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done by any Office Holder (other than the Direct Scheme Adjudicator or Alternate Scheme Adjudicator) or any of their Associated Companies, directors, partners, members, officers or employees in connection with the Direct Scheme and no Office Holder nor any of their Associated Companies, directors, partners, members, officers or employees shall be liable for any loss suffered by any Direct Scheme Creditor or third party unless such loss is attributable to their negligence, wilful default, wilful breach of duty or trust, fraud or dishonesty. Accordingly, no Direct Scheme Creditor shall bring or institute any proceedings, claims or complaints against any Office Holder or any of their Associated Companies, directors, partners, members, officers or employees.
- 7.4.3 The Office Holders and any of their Associated Companies, directors, partners, members, officers or employees shall, to the extent allowed by law, be entitled to an indemnity out of the Company's property against:
- (a) all expenses and liabilities properly incurred by the Office Holders or any of their Associated Companies, directors, partners, members, officers or employees in performing any services in connection with the Direct Scheme; and
 - (b) any liability (including costs) incurred by the Office Holders or any of their Associated Companies, directors, partners, members, officers or employees in defending any Proceedings, whether civil or criminal, including in respect of any alleged negligence, wilful default, wilful breach of duty or trust, fraud or dishonesty on their part in relation to the Direct Scheme, or in connection with any application in any such Proceedings, save in either case in respect of any Proceedings in which a court of competent jurisdiction holds that the relevant Office Holder has been wilfully in breach of duty or trust, fraudulent or dishonest.
- 7.4.4 The Company will pay the costs incurred by the Office Holders or any of their Associated Companies, directors, partners, members, officers or employees in defending Proceedings of the nature described in clause 7.4.3(b) which relate to the operation of the Direct Scheme provided such Office Holder undertakes to reimburse the Company (with interest) for any amount which would not, in the event, have been payable by the Company under clause 7.4.3(b).
- 7.4.5 The indemnity at clause 7.4.3(b) and 7.4.4 shall not apply to any proceedings brought by the Company against an Office Holder or any of their Associated Companies, directors, partners, members, officers or employees in relation to the performance by that Office Holder or Associated Company, director, partner, member, officer or employee of its duties and functions in connection with the Direct Scheme.

7.5 Insurance

The Company may purchase insurance cover to protect any Office Holder in respect of such Office Holder's potential liabilities arising out of their performance of their functions under the

Direct Scheme. Any premium payable in respect of that insurance cover shall be a Scheme Cost.

8 PART 8 THE DIRECT CREDITORS' COMMITTEE

8.1 Constitution of the Direct Creditors' Committee

8.1.1 There shall be a Direct Creditors' Committee under the Direct Scheme.

8.1.2 The Direct Creditors' Committee shall be comprised of at least three but not more than five Direct Committee Members, of whom:

- (a) a majority must be Direct Scheme Creditors; and
- (b) at least one must be a creditor of the Company who is not a Direct Scheme Creditor.

8.1.3 The first Direct Creditors' Committee shall be comprised of the following (provided in each case that such person agrees to act as a Direct Committee Member):

- (a) any member of the Administration Creditors' Committee as at the Effective Date who is a Direct Scheme Creditor;
- (b) at least one other member of the Administration Creditors' Committee as at the Effective Date who is not a Direct Scheme Creditor, such member to be nominated by the Direct Scheme Administrators following consultation with the Administration Creditors' Committee; and
- (c) to the extent necessary in order to ensure that the constitution of the Direct Creditors' Committee complies with clause 8.1.2, such other Direct Scheme Creditor or other creditor of the Company as shall be nominated by the Direct Scheme Administrators following consultation with the Administration Creditors' Committee.

8.1.4 During the Administration Period:

- (a) where a member of the Administration Creditors' Committee resigns or is removed from or vacates such appointment in accordance with the provisions of the Insolvency Legislation, such Direct Committee Member shall be deemed to have also resigned or removed from or vacated its appointment to the Direct Creditors' Committee hereunder; and
- (b) where a Direct Scheme Creditor is appointed as a member of the Administration Creditors' Committee, such Direct Scheme Creditor shall be deemed to have been appointed to the Direct Scheme Committee.

8.1.5 Subject to clauses 8.1.2, 8.1.3 and 8.1.4, the Direct Creditors' Committee shall be subject to the same rules of constitution and membership (including with regard to appointment, resignation, removal or vacation of appointment) as apply to a creditors' committee established for the purposes of an administration in accordance with the Insolvency Legislation (save that for these purposes, where the Insolvency Legislation refers to the "office-holder", this shall be deemed to be a reference to the Direct Scheme Administrators).

8.2 Proceedings

8.2.1 Save as otherwise specifically provided in the Direct Scheme, the Direct Creditors' Committee may convene, adjourn and otherwise regulate its meetings in such manner as it shall consider appropriate. The chair at any meeting shall be one of the Direct

Scheme Administrators or a person nominated by them so to act (the “**Committee Chair**”) save where the Direct Scheme Administrators and/or their representatives have been requested to absent themselves from the meeting pursuant to clause 8.2.4. The quorum at any meeting of the Direct Creditors’ Committee shall be at least two-thirds of the Direct Committee Members, 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 the Direct Committee Members present and the members present at any such adjourned meeting shall constitute a quorum.

- 8.2.2 Each Direct Committee Member shall have one vote and, except as otherwise provided in the Direct Scheme, matters arising at a meeting shall be decided by a majority of votes cast at the meeting. A Direct Committee Member shall not be entitled to vote or to form part of the quorum in relation to any matter in which the Direct Committee Member is in any way, in the opinion of the Direct Scheme Administrators, interested (other than a general interest arising by reason only of the Direct Committee Member’s status as a Direct Scheme Creditor) and, if requested to do so, shall absent themselves from the meeting for so long as such matter is discussed and voted upon and shall not receive any information nor be entitled to inspect any part of the minutes of a meeting of the Direct Creditors’ Committee relating thereto.
- 8.2.3 The Direct Scheme Administrators may summon, and three Direct Committee Members may at any time request the Direct Scheme Administrators to summon, a meeting of the Direct Creditors’ Committee. The Direct Scheme Administrators shall call a meeting of the Direct Creditors’ Committee as soon as practicable after receiving a request to do so under this Clause 8.2.3. When summoning a meeting of the Direct Creditors’ Committee, the Direct Scheme Administrators shall send written notice to each Direct Committee Member of such meeting, setting out the time and place of the meeting and indicating the nature of the business to be transacted at such meeting. Except with the consent of all Direct Committee Members and the Direct Scheme Administrators, no meeting of the Direct Creditors’ Committee may be called upon less than 15 Business Days’ notice and, except with the consent of all Direct Committee Members, no business may be transacted at any such meeting other than that set out in the notice of that meeting.
- 8.2.4 Each Direct Committee Member and the Direct Scheme Administrators (or their representative) shall be entitled to receive notice of all meetings of the Direct Creditors’ Committee. The Direct Scheme Administrators, acting in their capacity as such and, where applicable, in their capacity as the Administrators shall be entitled to attend and speak, but not to vote, at all meetings of the Direct Creditors’ Committee. If so requested by the Direct Creditors’ Committee, a Direct Scheme Administrator (or his representative) shall absent himself from such part of a meeting of the Direct Creditors’ Committee as the Direct Creditors’ Committee may specify.
- 8.2.5 The Committee Chair shall cause proper minutes of all proceedings of the Direct Creditors’ Committee to be taken (save for those parts of a meeting where the Direct Scheme Administrators and/or their representatives absented themselves pursuant to a request made under clause 8.2.4) and such minutes shall at all reasonable times be open to inspection by any Direct Committee Member (except insofar as a Direct Committee Member is interested as contemplated by Clause 8.2.2 in any matter detailed in the minutes) and the Direct Scheme Administrators and, where applicable,

the Administrators. The Direct Committee Members shall approve the minutes of each meeting of the Direct Creditors' Committee. Copies of such minutes shall be sent as soon as practicable after their preparation to the Direct Scheme Administrators.

- 8.2.6 A Direct Committee Member and a Direct Scheme Administrator may participate in a meeting of the Direct Creditors' Committee through the medium of conference telephone or similar form of communication equipment if all persons participating in the meeting are able to hear and speak to each other throughout the meeting. A person participating in this way is deemed to be present in person at the meeting and, in the case of a Direct Committee Member, is counted in a quorum and entitled to vote. All business transacted in this way by the Direct Creditors' Committee is deemed to be validly and effectively transacted at a meeting of the Direct Creditors' Committee although fewer than two-thirds (2/3) of the Direct Committee Members are physically present at the same place.
- 8.2.7 A resolution in writing signed by all Direct Committee Members for the time being (or their alternates) shall be as valid and effective as if passed at a meeting of the Direct Creditors' Committee duly convened and held.

8.3 Functions

8.3.1 The Direct Creditors' Committee shall be entitled to:

- (a) review and be consulted in respect of the financial and/or actuarial information and advice obtained and considered by the Company for the purpose of setting or revising a Direct Payment Percentage;
- (b) appoint a person (qualified in accordance with clause 6.1.2) as a Direct Scheme Administrator where there is no Direct Scheme Administrator and provided such appointment is in accordance with clause 6.1.2(d));
- (c) receive notice of a Direct Scheme Administrator's resignation in accordance with clause 6.1.3;
- (d) call upon a Direct Scheme Administrator to resign by a resolution passed by at least two-thirds of all Direct Committee Members for the time being and provided that such call is otherwise in accordance with clause 6.1.4;
- (e) approve the rates and payment of the remuneration of the Direct Scheme Administrators for the carrying out of their functions, powers, rights, authorities, discretions and duties and their properly incurred expenses in accordance with clause 6.2.2(k) and, save in the circumstances where there is no Direct Creditors' Committee, in which case clause 8.8 will apply, such approval must be obtained by the Direct Scheme Administrators before being compensated;
- (f) approve the purchase and maintenance for any such person as is referred to in clause 8.5.2 of insurance against any liability in respect of which the Company would be obliged to indemnify that person in accordance with clauses 8.5.2 and 8.5.3;
- (g) convene a meeting of the Direct Scheme Creditors to consider a resolution for the removal of a Direct Scheme Administrator in accordance with clause 9.1.1(a) and, in accordance with clause 6.1.2(g), if such resolution passes, the relevant Direct Scheme Administrator shall resign;
- (h) be consulted in respect of a determination by the Direct Scheme Administrators that it is in the interest of the Direct Scheme Creditors for the Direct Scheme to terminate in accordance with clause 10.1.1(b); and

- (i) be consulted on any matter which the Direct Scheme Administrators, acting reasonably, consider appropriate.

8.4 Duties

In carrying out their functions under the Direct Scheme, the Direct Creditors' Committee shall act in the interests of the general body of Direct Scheme Creditors.

8.5 Responsibilities and indemnity

8.5.1 No Direct Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith and with due care by any current or former Direct Committee Member (or alternate) in accordance with and to implement the provisions of the Direct Scheme or the exercise by any such person in good faith and with due care of any power conferred upon it or him for the purposes of the Direct Scheme if exercised in accordance with and to implement the provisions of the Direct Scheme and no such person shall be liable for any loss unless such loss is attributable to its or their own wilful default, fraud, dishonesty or breach of duty or trust.

8.5.2 Subject to the Act, each Direct Committee Member (and each alternate) (in each case in their capacity as such) shall be entitled to an indemnity out of the Company's Property against all actions, claims, proceedings and demands brought or made against it or them in respect of any act done or omitted to be done in relation to the Company in good faith and with due care by such person without negligence, wilful default, breach of duty, breach of trust, fraud or dishonesty in the course of performing it or their duties and functions under the Direct Scheme.

8.5.3 Without prejudice to the generality of Clause 8.5.2, each such person as is expressed to be entitled to an indemnity in accordance with that clause (in the capacity in which they are entitled to such an indemnity) shall be entitled to an indemnity out of the Company's Property:

- (a) against any liability incurred by them in defending any Proceedings, whether civil or criminal, in respect of any negligence, wilful default, breach of duty, breach of trust, fraud or dishonesty in relation to the operation of the Direct Scheme in which judgment is given in their favour or in which they are acquitted; or
- (b) in connection with any application in any such Proceedings in which relief is granted to them by a court from liability for negligence, wilful default, breach of duty, breach of trust, fraud or dishonesty in relation to the operation of the Direct Scheme.

8.5.4 The Company may, with the approval of the Direct Scheme Administrators:

- (a) and with the approval of the Direct Creditors' Committee, purchase and maintain for any such person as is referred to in clause 8.5.2 insurance against any liability in respect of which the Company would be obliged to indemnify that person in accordance with clauses 8.5.2 and 8.5.3; and
- (b) pay costs incurred by any such person as is referred to in clause 8.5.2 in defending Proceedings of the nature described in clause 8.5.3 provided that the Company obtains from such person an obligation to reimburse the Company (with interest) in respect of any sum which would not, in the event, have been payable by the Company under Clause 8.5.3.

8.6 Validation of acts

All acts done by the Direct Creditors' Committee or any meeting of the Direct Creditors' Committee or any person acting as a Direct Committee Member or alternate shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a Direct Committee Member or person acting as aforesaid, or that any of them were disqualified, be valid as if every such person had been duly appointed and qualified.

8.7 Expenses

Each Direct Committee Member and their respective alternates shall be entitled to be reimbursed by the Company for their reasonable expenses of attending meetings of the Direct Creditors' Committee, provided that such meetings are held in London or in such other place as the Direct Scheme Administrators may from time to time agree. Such amounts shall be paid as Scheme Costs.

8.8 No Creditors' Committee

If at any time there are fewer than three Direct Committee Members, the Direct Creditors' Committee shall not exercise any functions or have any powers under the Direct Scheme and the following provisions shall apply:

- 8.8.1 the Direct Scheme Administrators shall use all reasonable endeavours to find additional members of the Direct Creditors' Committee to enable it to function;
- 8.8.2 the requirements for obtaining the consent, approval or agreement of and for consulting with or notifying the Direct Creditors' Committee contained in this Direct Scheme shall be modified so that each such requirement is removed; and
- 8.8.3 the remuneration of the Direct Scheme Administrators shall be payable at such rates as the Direct Scheme Administrators consider, in their reasonable opinion, to be appropriate, taking into account the rates charged by Ernst & Young LLP for matters of similar size and complexity.

9 PART 9: MEETINGS OF DIRECT SCHEME CREDITORS

9.1 Convening of meetings

9.1.1 Meetings of Direct Scheme Creditors may be convened as follows:

- (a) the Direct Creditors' Committee may at any time convene a meeting of the Direct Scheme Creditors to consider a resolution for the removal of a Direct Scheme Administrator pursuant to clause 6.1.4; and
- (b) the Direct Scheme Administrators may at any time convene a meeting of the Direct Scheme Creditors for such purpose as they think fit.

9.1.2 At least 15 Business days' notice shall be given of a meeting of Direct Scheme Creditors. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place and time of the meeting.

9.1.3 Notice of a meeting of Direct Scheme Creditors shall be in the English language and shall be given:

- (a) to any Direct Scheme Creditor who has applied in writing to the Company to receive notice of such meeting, by sending notice by pre-paid post to such Direct Scheme Creditor at his last known address; and

- (b) to all other Direct Scheme Creditors by placing advertisements containing the requisite information, where reasonably practicable, in those newspapers and publications in which the Direct Scheme Meeting was advertised.
- 9.1.4 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.
- 9.1.5 The accidental omission to give notice of a meeting of Direct Scheme Creditors to, or the non-receipt of a notice of such a meeting by, any Direct Scheme Creditor entitled to receive notice shall not invalidate the proceedings at that meeting.

9.2 Resolutions

- 9.2.1 If a meeting of Direct Scheme Creditors is convened for the purpose of putting a resolution to Direct Scheme Creditors for the removal of a Direct Scheme Administrator pursuant to clause 6.1.4 which, if passed, would result in there being no Direct Scheme Administrators in office, such resolution shall also include a resolution that a named person qualified to act under clause 6.1.2(b) and willing to be appointed, be appointed as a Direct Scheme Administrator in their place.
- 9.2.2 No meeting shall be convened unless the notice of the meeting sets out the text of each resolution, or an adequate summary thereof, which is to be proposed at the meeting (or if no resolution is to be proposed at the meeting, the nature of the business to be discussed thereat) and (in the case of a notice which is sent by post) is accompanied by a letter explaining (in relation to each such resolution) why the meeting is being convened.

9.3 Voting

- 9.3.1 A resolution put to a meeting of Direct Scheme Creditors shall be effective only if it is approved by a majority in number and three-quarters in value of the Direct Scheme Creditors present and voting either in person or by proxy at the meeting.
- 9.3.2 Every Direct Scheme Creditor entitled to vote shall have the right to appoint any person as his proxy to attend and vote instead of him. The instrument appointing a proxy may be in any form which the Direct Scheme Administrators may approve and must be lodged at the place specified in the 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.
- 9.3.3 No business shall be transacted at any meeting of Direct Scheme Creditors unless a quorum is present when the meeting proceeds to business. 20 Direct Scheme Creditors present in person or by proxy and having the right to vote at the meeting shall be a quorum, unless the Direct Scheme Administrators and the Direct Creditors' Committee agree a smaller number. All resolutions put to the vote of any meeting shall be decided on a poll (rather than on a show of hands).
- 9.3.4 A Direct Scheme Administrator shall preside (or shall nominate a representative to preside) at each meeting of the Direct Scheme Creditors (other than at a meeting at which a resolution to remove a Direct Scheme Administrator is proposed, when the Direct Scheme Adjudicator shall preside), but if a Direct Scheme Administrator (or their alternate) or, if relevant, the Direct Scheme Adjudicator is not present within thirty minutes after the time appointed for opening the meeting or is unwilling to preside, the Direct Scheme Creditors present in person or by proxy shall choose a Direct Committee Member, or, if no such member is present or if all such members present decline to preside, one of themselves, to be chairman of the meeting. If no person is

willing to preside as chairman of the meeting, the meeting 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.

9.4 Valuation of Direct Scheme Claims for the purposes of meeting

9.4.1 For the purposes of valuing any Direct Scheme Claim for the purposes of clause 9.3.1 the value of the Direct Scheme Claim shall be:

- (a) in the case of a Direct Scheme Claim which has become a Net Ascertained Claim, the amount of the Net Ascertained Claim (less the amount of any payments paid, or treated as having been paid, by the Company under the Direct Scheme in respect hereof); and
- (b) in the case of any other Direct Scheme Claim, such amount as may, for the purposes of such meeting only, be estimated as the value of such Direct Scheme Claim.

9.4.2 In the event that a Direct Scheme Creditor disputes the value which has been put on its Direct Scheme Claim pursuant to clause 9.4.1 or otherwise the amount for which its vote should be counted, the dispute shall be referred to the Direct Scheme Adjudicator who shall be entitled to consult with such relevant experts as they think appropriate and who shall act as an expert not an arbitrator and whose decision (including as to who should bear the costs of such referral) shall be final (but only as regards the convening of the meeting or the vote on that occasion).

9.4.3 For the purposes of ascertaining whether or not the requisite percentage for the convening of any meeting of Direct Scheme Creditors or the requisite majority at any meeting of Direct Scheme Creditors has been obtained, the amount of each Direct Scheme Claim which is denominated in a currency other than US Dollars shall be converted into US Dollars at the Exchange Rate.

10 PART 10 TERMINATION OF THE DIRECT SCHEME

10.1 Termination of the Direct Scheme

10.1.1 The Direct Scheme shall terminate upon:

- (a) the Direct Scheme Administrators determining that all payments due to Direct Scheme Creditors in respect of their Net Ascertained Claims have been paid (or deemed to have been paid) pursuant to Part 5 (*Payment of Net Ascertained Claims*) and any Excess Distributable Property has been retained by the Company in accordance with clause 5.4; or
- (b) in the event that the Direct Scheme Administrators, acting in consultation with the Direct Creditors' Committee, determine that it is in the interest of the Direct Scheme Creditors for the Direct Scheme to terminate.

10.1.2 The Direct Scheme Administrators, acting in consultation with the Direct Creditors' Committee, may determine that it is in the best interests of the Direct Scheme Creditors for the Direct Scheme to remain open (and not to be terminated) for such period as they may consider necessary to enable all Property of the Company to be collected in and realised.

10.2 **Notice of Termination**

Where the Direct Scheme terminates pursuant to clause 10.1 (*Termination of the Direct Scheme*) the Direct Scheme Administrators shall within three Business Days thereof, place a notice of termination on the Website.

10.3 **Provisions Surviving Termination**

Save as otherwise provided by the Direct Scheme Administrators, the Surviving Provisions shall survive termination of this Direct Scheme.

11 **PART 11 GENERAL PROVISIONS**

11.1 **Effective Date**

The Direct Scheme shall become effective on the Effective Date.

11.2 **Modifications of the Direct Scheme**

The Company may at any hearing by the Court to sanction the Direct Scheme consent on behalf of Direct Scheme Creditors to any modification of, or addition to, the Direct 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 rights of any Direct Scheme Creditor under the Direct Scheme (in its capacity as a Direct Scheme Creditor).

11.3 **Notices**

11.3.1 Without prejudice to clause 11.4 (*Electronic Communications*), any notice or other written communication to be given under or in relation to the Direct Scheme shall be sent:

- (a) in the case of the Direct Scheme Administrators, by email to CxReClaims@uk.ey.com or such other email address as the Direct Scheme Administrators may notify to Direct Scheme Creditors for the purpose of this clause 11.3 (*Notices*);
- (b) in the case of a Direct Scheme Creditor, Broker or Agent, by email or Post to its last known email or postal address of which the Direct Scheme Administrators are aware; and
- (c) in the case of the Direct Creditors' Committee, via the Direct Scheme Administrators, marked for the attention of the Direct Creditors' Committee, to CxReClaims@uk.ey.com.

11.3.2 For the purposes of Part 3 (*Claims Submission*) or Part 4 (*Determination of Net Ascertained Claims*), the omission by any of the Company or any Office Holder to send any notice, written communication or other document in accordance with this clause 11.3 (*Notices*) shall not affect the provisions of that Part.

11.4 **Electronic Communications**

11.4.1 Save where the Company agrees otherwise in relation to any particular case, or where a Direct Scheme Creditor, Broker or Agent has not provided a current email address, information concerning Direct Scheme Claims (including Claim Forms and copies of any relevant supporting documentation) and any other communications required to be or capable of being given or sent hereunder must

be given or sent by the Direct Scheme Administrators, Direct Scheme Adjudicator, or the Direct Scheme Creditor concerned in electronic form to the address specified for that purpose by the Direct Scheme Creditor, Direct Scheme Administrators or Direct Scheme Adjudicator (all of whom hereby consent to the use of electronic communications).

11.4.2 Where any communication is sent to the Direct Scheme Administrators in electronic form:

- (a) the complete electronic mail including any attachments must be less than 25 megabytes in size;
- (b) a hard copy of any electronic mail must be sent to the Direct Scheme Administrators if so requested;
- (c) receipt by the Direct Scheme Creditor of an automated acknowledgement shall constitute conclusive proof that the electronic mail was sent in accordance with clause 11.4.1; and
- (d) the electronic mail shall not be deemed to have been received unless it is received in the Direct Scheme Administrators' mail box and the Direct Scheme Administrators are able to open and print it and any attachments, unless a hard copy is received in accordance with clause 11.4.2(b).

11.4.3 Where any communication to the Direct Scheme Administrators, Direct Scheme Adjudicator or Direct Scheme Creditor in electronic form exceeds 25 megabytes in size, the electronic mail should be split into multiple electronic mails each of which must be less than 25 megabytes in size, including any attachments. Alternatively, the communication should be sent to the Direct Scheme Administrators, Direct Scheme Adjudicator or Direct Scheme Creditor by Post.

11.4.4 Subject to clause 11.4.2(b), notice given, or information provided, in electronic form shall be deemed to have been received on the first Business Day following the expiration of 48 hours after the time it was sent by the sender.

11.5 **Calculation of Time Periods**

11.5.1 Time periods laid down by the Direct Scheme which are expressed in days shall be calculated by reference to elapsed days and not Business Days.

11.5.2 For the purposes of clauses 6.1.3, 7.1.9 and 7.2.4, a period of three months shall run from the day of the month on which the period commences to the day in the third month thereafter numerically corresponding to that day, less one day. Where there is no numerically corresponding day in that month the period shall end on the last day of that month.

11.5.3 In the event that a time period expires on a day which is not a Business Day, such period shall be deemed not to expire until 5.30 p.m. (U.K. time) on the Business Day next following.

11.6 **Governing Law and Jurisdiction**

11.6.1 The Direct Scheme shall be governed by, and construed in accordance with, the laws of England and Wales, and the Direct Scheme Creditors hereby agree that the Court shall have exclusive jurisdiction to hear and determine any Proceedings and to settle any dispute which may arise out of the Direct Explanatory Statement or any provision of the Direct Scheme, including this clause 11.6 (*Governing Law and Jurisdiction*), or out of any action taken or omitted to be taken under the Direct

Scheme or in connection with the administration of the Direct Scheme, and for such purposes the Direct Scheme Creditors irrevocably submit to the jurisdiction of the Court provided, however, that nothing in this clause 11.6 shall affect:

- (a) the validity of any other provisions determining governing law as between the Company and any of its Direct Scheme Creditors whether contained in any Insurance Contract or otherwise;
- (b) the application of any choice-of-law rules that would otherwise apply to determine the substantive law governing any Insurance Contract that does not contain a governing law provision; nor
- (c) the governing law applied by a court in any decision applicable to the Company and any Direct Scheme Creditor.

11.6.2 Notwithstanding the provisions of clause 11.6.1, the Company shall retain the right to bring Proceedings in the courts of any other country having jurisdiction under its own laws to hear such Proceedings.

Dated 7 October 2024