

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

**IN THE MATTER OF THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE  
ASSOCIATION (EUROPE) LIMITED**

**AND IN THE MATTER OF UK P&I CLUB NV**

**AND IN THE MATTER OF PART VII OF THE FINANCIAL SERVICES AND MARKETS  
ACT 2000**

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**INSURANCE BUSINESS TRANSFER SCHEME**

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## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Scheme, unless the context otherwise requires, the following expressions bear the meanings respectively set opposite them:

- Act** the UK Financial Services and Markets Act 2000.
- Blue Card** a document (written or electronic) known as a ‘Blue Card’ and provided by UKE evidencing that there is in place insurance meeting the liability requirements of all or any of:
- (a) article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 and 1992;
  - (b) article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001;
  - (c) article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea Act 1974 (as amended by the Protocol of 2002);
  - (d) article 3 of the EU Regulation on the Liability of Carriers of Passengers by Sea in the Event of Accidents (No. 392/2009); and
  - (e) article 12 of the Nairobi International Convention on the Removal of Wrecks 2007.
- Business Day** means a day, other than a Saturday, Sunday or public holiday, on which banks in the City of London are open for business generally.
- Capitalisation and Guarantee Deed** the capitalisation and guarantee deed dated 17 January 2007 between UKB and UKE, pursuant to which UKB guarantees

the liabilities of UKE.

<b>Competent Authority</b>	any national, supra national, federal, state, municipal or local government (including any court, commission, agency, authority or other body or entity exercising powers on behalf of any of the same) or any quasi-governmental or private body or entity exercising any governmental or judicial or quasi-governmental authority or function or anybody or entity exercising regulatory authority under any law including the European Union and the European Commission.
<b>Court</b>	the High Court of Justice in England.
<b>Data Protection Laws</b>	all applicable laws, directives, statutes, regulations and codes of practice (to the extent that any codes of practice have legal effect) relating to the processing and protection of personal data.
<b>DISP</b>	the Dispute Resolution: Complaints Sourcebook within the UK Financial Conduct Authority handbook.
<b>EEA State</b>	any state which is a contracting party to The Agreement on the European Economic Area 1992 at the Effective Time.
<b>Effective Time</b>	the time and date on which the Scheme shall become operative in accordance with paragraph 13.
<b>Excluded Assets and Liabilities</b>	means: (a) all assets and liabilities of UKE to the extent they do not relate to the Transferred Business;

- (b) all assets and liabilities of UKE to the extent they relate to any business carried on by any of UKE's branches in Hong Kong, Japan and Singapore;
- (c) the membership interests of UKE in UKB and UKL and all shares held by UKE in the capital of UKNV;
- (d) the management agreement between (i) UKE and (ii) Thomas Miller P&I (Europe) Limited and (iii) Thomas Miller Holdings Limited dated 28 May 2018, and all assets and liabilities relating thereto;
- (e) the protection and indemnity reinsurance contract between UKE and UKB dated 20 February 2007 and amended and restated on 20 February 2013 (pursuant to which UKB reinsures certain of UKE's insurance liabilities) including the rights and obligations of UKE arising out of or in connection with it;
- (f) the reinsurance contract between UKE and UKNV dated 15 October 2019 (pursuant to which UKE reinsures certain of UKNV's insurance liabilities) including the rights and obligations of UKE arising out of or in connection with it;
- (g) any Policies which are subject to the benefit of any licence, permission and/or assurance granted to UKE by HM Treasury or any other Competent Authority in connection with sanctions where, as at the Effective Time, (i) such licence, permission and/or assurance cannot be transferred pursuant to the terms of this Scheme; and (ii) where UKNV has not been granted the appropriate licence, permission and/or assurance

by the relevant Competent Authority in connection with sanctions;

- (h) all licences, permissions or authorisations granted to UKE by any Competent Authority and any assets and liabilities relating thereto (other than those licences, permissions and assurances referred to in paragraph (c) of the definition of Transferred Assets);
- (i) all cash or non-cash assets held by or on behalf of UKE as, or in support of, the regulatory capital provisions imposed or required in respect of the Transferred Business;
- (j) all assets and liabilities of UKE under the Capitalisation and Guarantee Deed;
- (k) all assets and liabilities of UKE in respect of Tax relating to the Transferred Business; and
- (l) all obligations of UKE to indemnify any party under the Pooling Agreements.

**Excluded Policies**

all Policies written by or on behalf of UKE in the course of carrying on the Transferred Business:

- (a) which are not capable of being transferred under section 111 of Part VII of the Act at the Effective Time; or
- (b) which the Court determines for any reason not to transfer by virtue of the Order.

**FMC Certificate**

a guarantee or other undertaking given by UKE to the Federal

Maritime Commission under the US Public Law 89 777 pursuant to either section 2 (being a guarantee or undertaking to secure payment of liabilities for loss of life of, or injury to, passengers) and/or section 3 (being a guarantee or an undertaking to establish financial responsibility to passengers in the event of non-performance of their transportation).

**FOS**

the UK Financial Ombudsman Service.

**Hydra**

Hydra Insurance Company Ltd, a company incorporated in Bermuda under number 34834.

**Hydra Reinsurance**

all contracts of reinsurance and/or indemnity entered into between Hydra, acting for and on behalf of the UK P&I Club Cell, and UKB prior to the Effective Time, to the extent such contracts relate to any liabilities of UKE arising in respect of claims subject to the Pooling Agreements.

**Independent Expert**

Alex Lee of Ernst & Young LLP of 1 More London Place, London SE1 2AF, the expert appointed to report on the terms of this Scheme and approved by the Prudential Regulatory Authority pursuant to section 109 of the Act, or any successor appointed to report on the same and approved pursuant to section 109 of the Act.

**International Group**

the International Group of P&I Associations as constituted from time to time.

<b>Order</b>	an order made by the Court pursuant to section 111 of the Act sanctioning this Scheme and any order (including any subsequent order) in relation to this Scheme made by the Court pursuant to section 112 of the Act.
<b>Policy</b>	shall have the meaning given to the term ‘policy’ in the UK Financial Services and Markets Act 2000 (Meaning of ‘Policy’ and ‘Policyholder’) Order 2001, regardless of how that contract of insurance may be evidenced, and includes rules, certificates of entry, endorsement slips, notices of variation, notices of termination, and addendum clauses incorporated by reference in a certificate of entry or in an endorsement slip, and shall in addition include any contract of reinsurance written by UKE (regardless of how that contract of reinsurance may be evidenced) (including any associated rules, certificates of entry, endorsement slips, notices of variation, notices of termination, and addendum clauses incorporated by reference in a certificate of entry or in any endorsement slip).
<b>Policyholder</b>	shall have the meaning given to the term ‘policyholder’ in the UK Financial Services and Markets Act 2000 (Meaning of ‘Policy’ and ‘Policyholder’) Order 2001 and in addition shall be construed in a manner consistent with the definition of ‘Policy’ in this Scheme.
<b>Policy Year</b>	a year from noon Greenwich Mean Time on any 20 February to noon Greenwich Mean Time on the next following 20 February and ‘Policy Years’ shall be construed accordingly.

<b>Pooling Agreements</b>	the 2020 pooling agreement between the P&I clubs in the International Group for the pooling of certain risks and all prior pooling agreements in respect of previous Policy Years between members of the International Group.
<b>RAO</b>	the UK Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
<b>Regulators</b>	the UK Prudential Regulation Authority and the UK Financial Conduct Authority (or any successor authority or authorities with responsibility to supervise the prudential and/or conduct of business requirements which apply to the carrying on of general insurance and/or reinsurance business in the UK).
<b>Scheme</b>	this Scheme in its original form or with or subject to any modification, addition, provision or condition which may be approved or imposed in accordance with paragraph 14.
<b>Subsidiary</b>	shall have the meaning given to that term in section 1159 of, and schedule 6 to, the UK Companies Act 2006.
<b>Tax</b>	means: <ul style="list-style-type: none"> <li>(a) all forms of tax, levy, duty, charge, impost, withholding or other amount whenever created or imposed and whether of the UK or elsewhere, payable to or imposed by any authority responsible for the collection or management of any tax; and</li> <li>(b) all charges, interest, penalties, and fines incidental or relating to any tax falling within (a) above or which arise as a result of the failure to pay any tax on the due</li> </ul>



date or to comply with any obligation relating to tax.

**Transferred Assets**

means:

- (a) all rights of UKE under or by virtue of the Transferred Policies or any of the Transferred Reinsurances;
- (b) all rights of UKE against any third party in relation to the Transferred Business or arising as a result of UKE having carried on the Transferred Business; and
- (c) the benefit of any licences, permissions and/or assurances granted to UKE by HM Treasury, or any other Competent Authority, in connection with sanctions and relating to the Transferred Business, to the extent the same can be transferred,

but in each case excluding (i) all rights under the Excluded Policies (including the benefit of any reinsurance, retrocession or indemnity of UKE in relation to liabilities arising under the Excluded Policies) and (ii) all assets comprised in the Excluded Assets and Liabilities.

**Transferred Business**

the insurance and reinsurance business carried on at any time by UKE up to and including the Effective Time to the extent it relates to the Transferred Policies (including all activities carried on by UKE in connection with or for the purposes of such business), but excluding such business to the extent it comprises (i) assets and/or liabilities relating to the Excluded Policies or (ii) the Excluded Assets and Liabilities.

**Transferred Liabilities**

means:

- (a) all liabilities under the Transferred Policies and the Transferred Reinsurances; and
  - (b) all other liabilities of UKE to the extent they relate to the Transferred Business (including any liabilities under Blue Cards or FMC Certificates),
- but in each case excluding all liabilities under (i) the Excluded Policies and all other liabilities relating to the Excluded Policies (including liabilities relating to any reinsurance, retrocession or indemnity of UKE in relation to liabilities arising under the Excluded Policies) and (ii) all liabilities comprised in the Excluded Assets and Liabilities.

**Transferred Policies**

every Policy written by or on behalf of UKE or which is otherwise a Policy of UKE (including any Policy written by another entity and subsequently transferred or novated to or otherwise assumed by UKE) prior to the Effective Time to the extent that such Policy relates to (i) any vessel the flag state of which is noted in such Policy as being an EEA State (other than the UK) and/or (ii) any Policyholder the establishment of which is situated in an EEA State (other than the UK), but excluding (i) the Excluded Policies and (ii) any Policy comprised in the Excluded Assets and Liabilities.

**Transferred Reinsurances**

all contracts of reinsurance (for the avoidance of doubt excluding any contract of reinsurance falling within the definition of 'Policy' above), retrocession and/or indemnity under which (and to the extent to which) UKE is covered in respect of any risks insured or reinsured by UKE under or pursuant to any Transferred Policies (including all rights to be indemnified under the Hydra Reinsurance, the Pooling

Agreements or any excess of loss program for the benefit of members of the International Group) but excluding any rights of reinsurance, retrocession or indemnity (i) in respect of liabilities arising under the Excluded Policies and (ii) comprised in the Excluded Assets and Liabilities.

<b>UK</b>	the United Kingdom of Great Britain and Northern Ireland.
<b>UKB</b>	The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited, a company incorporated in Bermuda under number 1446.
<b>UKE</b>	The United Kingdom Mutual Steam Ship Assurance Association (Europe) Limited, a company incorporated in England and Wales under number 00022215.
<b>UKL</b>	The United Kingdom Mutual Steam Ship Assurance Association (London) Limited, a company incorporated in England and Wales under number 00010375.
<b>UKL Scheme</b>	the scheme to give effect to the insurance business transfer by UKL to UKE of the whole of UKL's insurance business, in accordance with Part VII of the Act.
<b>UKNV</b>	UK P&I Club NV, a company incorporated in the Netherlands under number 73217484.

1.2 In this Scheme, unless the context otherwise requires:

1.2.1 **'asset'** includes property, assets, data, records, shares, securities, security interests and rights, in each case of every description, wherever located, whether tangible or

intangible and whether present or future, actual or contingent and includes any of the foregoing held on trust, and any interest whatsoever or howsoever held in any of the foregoing;

- 1.2.2 **'liabilities'** includes duties and obligations of every description (whether present or future, actual or contingent) including liabilities and obligations under guarantees and letters of undertaking;
- 1.2.3 **'rights'** includes rights (including contractual rights and benefits, rights of subrogation, rights to be indemnified, rights under guarantees and any right to receive any security, counter-security or the benefit of any lien, assignment or trust), benefits (including the benefit of any security, counter-security, lien, assignment, trust, set-off or escrow), rights and benefits under any licence and/or permission, advantages, powers and claims of every description, in every case whether present or future, actual or contingent;
- 1.2.4 **'transfer'** includes (as the context may require) 'assign' or 'assignment' or 'assignment', 'dispose' or 'disposal', 'convey' or 'conveyance';
- 1.2.5 the singular includes the plural and vice versa;
- 1.2.6 any reference to any gender includes a reference to every other gender;
- 1.2.7 any reference to an enactment, a statutory provision or any subordinate legislation shall be deemed to include a reference to that enactment, statutory provision or subordinate legislation as amended, replaced or re-enacted from time to time and to any instrument or order made from time to time under such enactment, statutory provision or subordinate legislation;
- 1.2.8 any reference to a contract, agreement or other arrangement is to that contract, agreement or arrangement as in force and amended or varied at the relevant time;
- 1.2.9 references to paragraphs are to paragraphs of this Scheme;

1.2.10 any references to ‘**including**’ or to ‘**in particular**’ shall be deemed to be followed by the words ‘without limitation’; and

1.2.11 the headings in this Scheme are for convenience only and shall not affect its interpretation.

## **2. INTRODUCTION AND CONDITION**

2.1 UKE is a mutual insurance company incorporated under the laws of England and Wales which has permission under Part 4A of the Act to effect and carry out contracts of general insurance under paragraphs 1, 2, 4, 5, 6, 7, 11, 12, 13, 15, 16 and 17 of part I of schedule 1 to the RAO.

2.2 UKNV is an insurance company incorporated under the laws of the Netherlands which has permission under Section 2:27 of the Dutch Financial Supervision Act (*Wet op het financieel toezicht*) to effect and carry out contracts of general insurance under classes 6, 7, 8, 9, 10b, 11, 12 and 13 of such Law. Such permissions are sufficient to enable UKNV to carry out the Transferred Business.

2.3 UKNV is the wholly-owned Subsidiary of UKE.

2.4 Subject always to paragraph 2.5, is proposed that the Transferred Business shall, in accordance with this Scheme, be transferred to UKNV (and that an Order be made accordingly for the sanction of this Scheme under section 111 of the Act).

2.5 Notwithstanding any other provision of this Scheme, the Scheme and the proposed transfer of the Transferred Business pursuant to it is conditional upon the sanction by the Court of the UKL Scheme prior to the Effective Time.

## **3. TRANSFER OF BUSINESS**

The Transferred Business shall be transferred to and be vested in UKNV in accordance with this Scheme notwithstanding any terms in any agreement prohibiting all or any of such transfer and/or vesting and/or imposing any limitations on the circumstances in which any assets or liabilities comprised in the Transferred Business may be transferred and/or vested or

purporting to terminate, limit or otherwise affect such assets or liabilities in the event of a transfer.

#### **4. TRANSFER OF ASSETS**

4.1 On and with effect from the Effective Time, the Transferred Assets and all the estate and interest of UKE therein, shall, by the Order and without any further act or instrument, be transferred to and be vested in UKNV.

4.2 UKE and UKNV shall as and when appropriate execute all such documents and perform such other acts and things as may be required to effect or perfect the transfer to and vesting in UKNV of any Transferred Asset in accordance with the terms of this Scheme or otherwise for effecting or perfecting the transfer of the Transferred Business in accordance with the terms of this Scheme.

4.3 In the case of any Policies which are subject to the benefit of any licence, permission and/or assurance granted to UKE by HM Treasury or any other Competent Authority in connection with sanctions which, as at the Effective Time, were treated as Excluded Assets and Liabilities but where, following the Effective Time, the appropriate licence, permission and/or assurance has transferred or been granted to UKNV by HM Treasury or such other Competent Authority then, immediately upon such transfer or grant taking place, such Policies shall, by the Order and without any further act or instrument, be transferred to and vested in UKNV and the assets and liabilities relating to such Policies shall immediately upon the transfer of such Policies be transferred to UKNV and such Policies, assets and liabilities shall thereafter be dealt with by UKNV under the provisions of this Scheme in all respects as if such Policy were a Transferred Policy and if such assets and liabilities were part of the Transferred Business and the Transferred Reinsurances, Transferred Assets and/or Transferred Liabilities, as relevant.

#### **5. TRANSFER OF LIABILITIES**

On and with effect from the Effective Time, the Transferred Liabilities shall, by the Order and without any further act or instrument, be transferred to and become liabilities of UKNV and shall cease to be liabilities of UKE.

## **6. TRANSFERRED POLICIES AND TRANSFERRED REINSURANCES**

- 6.1 Without prejudice to the generality of paragraphs 3, 4 and 5, on and with effect from the Effective Time, UKNV shall by the Order, and without any further act or instrument, be entitled to all rights of UKE under the Transferred Policies (including the right to levy additional premiums, supplementary calls, overspill calls and release calls) and be subject to all of UKE's obligations under the Transferred Policies whatsoever subsisting at the Effective Time, and in any document evidencing or constituting a Transferred Policy references to UKE and/or to rights and/or liabilities of UKE, its board of directors or other officers, employees, agents or managers and/or to liabilities of holders of Transferred Policies to UKE shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated as references to UKNV and/or to rights and/or liabilities of UKNV, its board of directors or other officers, employees, agents or managers and/or to liabilities of the holders of Transferred Policies to UKNV, in each case subject to and in accordance with the terms of this Scheme.
- 6.2 Without prejudice to the generality of paragraphs 3, 4 and 5, on and with effect from the Effective Time, UKNV shall by the Order and without any further act or instrument, be entitled to all rights of UKE under the Transferred Reinsurances and be subject to all liabilities of UKE under the Transferred Reinsurances (including any obligation to indemnify under the Pooling Agreements) whatsoever subsisting at the Effective Time, and in any document evidencing or constituting a Transferred Reinsurance references to UKE and/or to rights and/or liabilities of UKE, its board of directors or other officers, employees, agents or managers and/or to liabilities of the reinsurers or other third parties under Transferred Reinsurances to UKE shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated as references to UKNV, its board of directors or other officers, employees, agents or managers and/or to liabilities of the reinsurers or other third parties under Transferred Reinsurances to UKNV subject to and in accordance with the terms of this Scheme and the Transferred Reinsurances shall (notwithstanding any provision to the contrary therein) continue in force and shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated so that the Transferred Reinsurances

shall operate for the benefit of UKNV as if UKNV was the original party thereto in place of UKE.

- 6.3 Without prejudice to the generality of paragraphs 3, 4 and 5 and without prejudice to paragraphs 6.1 and 6.2, on and with effect from the Effective Time, any references to UKE in any contract between UKE and any third party relating to the Transferred Policies, Transferred Reinsurances or otherwise comprised in the Transferred Business, shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated as references to UKNV and such contract shall operate as if UKNV was the original party to the contract in place of UKE.

## **7. PERSONAL DATA**

On and with effect from the Effective Time, UKNV shall:

- 7.1.1 succeed to all rights, liabilities and obligations of UKE in respect of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Reinsurances, Transferred Assets or Transferred Liabilities to the extent transferred by this Scheme;
- 7.1.2 become the data controller of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Reinsurances, Transferred Assets or Transferred Liabilities, to the extent required by the Data Protection Laws and shall be deemed to have been the controller of all such data at all material times when personal data is processed; and
- 7.1.3 in respect of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Reinsurances, Transferred Assets or Transferred Liabilities be under the same duty as UKE was under to respect the confidentiality and privacy of any person in relation to that personal data and shall be bound by any specific notice or consent given, or request made by, the data subject which was binding on UKE and which required UKE not to use the personal data for marketing purposes,



and in any consent given by a data subject in respect of such data as is mentioned in this paragraph any reference to UKE shall be deemed to include a reference to UKNV.

## **8. CONTINUITY OF PROCEEDINGS**

- 8.1 At and with effect from the Effective Time, any judicial, quasi-judicial or arbitration proceedings or any complaint or claim to any ombudsman or similar or other proceedings for the resolution of a dispute or claim (whether current or future (including those not yet in contemplation)) by or against UKE from the Effective Time in connection with the Transferred Policies, the Transferred Reinsurances, the Transferred Assets, the Transferred Liabilities or otherwise in relation to the Transferred Business shall be continued by or against UKNV and UKNV shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to UKE in relation to such proceedings and UKE shall have no liability under those proceedings and, for the avoidance of doubt, UKNV, in its absolute discretion, may determine to discontinue after the Effective Time any such proceedings brought by UKE.
- 8.2 At and with effect from the Effective Time, any judicial, quasi-judicial, or arbitration proceedings or any complaint or claim to any ombudsman or similar person or entity or other proceedings for the resolution of a dispute or claim (whether current or future (including those not yet in contemplation)) in relation to UKE and concerning the Transferred Policies, Transferred Reinsurances, Transferred Assets, Transferred Liabilities or otherwise in relation to the Transferred Business shall be commenced against UKNV. Any such proceedings after the Effective Time commenced against UKE shall be deemed to have been commenced and shall be continued against UKNV without the need for further order, whether for substitution of parties or otherwise. In any event, UKNV shall be entitled to all defences, claims, counterclaims and rights of set off that would have been available to UKE in relation to such proceedings, complaint or claim.
- 8.3 Any judgment, order or award obtained by or against UKE (whether before or after the Effective Time) which relates to the Transferred Policies, the Transferred Reinsurances, the Transferred Assets, the Transferred Liabilities or otherwise to any part of the Transferred

Business and which is not fully satisfied before the Effective Time shall, on and from that date, be enforceable by or against UKNV and shall be dealt with by UKNV without the need for further order.

8.4 Without prejudice to the foregoing provisions of this paragraph 8 and subject always to any laws, regulations or regulatory requirements applicable to UKNV from time to time, if any proceedings with the FOS are continuing at the Effective Time or commence after the Effective Time and which relate to the acts or omissions of UKE prior to the Effective Time, UKNV shall comply with:

8.4.1 each provision of DISP which relates to the complaint handling procedures of the FOS (including, but not limited to, DISP 3.7.12R) in the event that the relevant complaint is within the jurisdiction of the FOS under the provisions of DISP; and

8.4.2 any judgment, settlement, order or award (or relevant part thereof) handed down by the FOS in respect of a complaint within the jurisdiction of the FOS under the provisions of DISP.

8.5 Without prejudice to paragraph 15, any holder of a Transferred Policy shall be entitled to enforce the provisions of paragraph 8.4, provided that the consent of such holders of Transferred Policies shall not be required to terminate, modify, vary or otherwise alter the provisions of this Scheme.

## **9. EXCLUDED POLICIES**

9.1 The Excluded Policies shall not be transferred to UKNV by this Scheme and the liabilities and assets of UKE relating to the Excluded Policies shall remain liabilities and assets of UKE subject to paragraph 9.2.

9.2 If:

9.2.1 UKE or UKNV procures the novation of any Excluded Policy to UKNV;

9.2.2 any impediment to the transfer of any Excluded Policy to UKNV shall have been removed or overcome (including any waiver, consent, permission or licence having been obtained or notice having been given);

9.2.3 any conditions to the transfer of an Excluded Policy to UKNV contained in the Order shall have been satisfied; or

9.2.4 the Court orders the transfer of such Excluded Policy to UKNV,

then, notwithstanding any other provisions of this Scheme, the assets and liabilities relating to such Excluded Policy shall be transferred to UKNV and such Excluded Policy, assets and liabilities shall thereafter be dealt with by UKNV under the provisions of this Scheme in all respects as if such Excluded Policy were a Transferred Policy and as if such assets and liabilities were part of the Transferred Business and the Transferred Reinsurances, Transferred Assets and/or Transferred Liabilities, as relevant.

## **10. PREMIUMS AND OTHER PAYMENTS**

10.1 All premiums and calls attributable or referable to the Transferred Policies (including supplementary premiums, overspill calls and release calls) shall on and after the Effective Time be payable to UKNV and shall be receivable and received by UKNV.

10.2 Any mandate or other instruction in force at the Effective Time (including any instruction given to a bank by its customer in the form of a direct debit or standing order) and providing for the payment by a banker or other intermediary of premiums and calls payable under or in respect of any of the Transferred Policies to UKE on their behalf shall thereafter take effect as if it had provided for and authorised such payment to UKNV.

## **11. DECLARATION OF TRUST BY UKE**

11.1 If:

11.1.1 any asset (other than an asset referred to in paragraph 9) of UKE proposed to be transferred pursuant to this Scheme is not, or is not capable of being, immediately transferred at the Effective Time by the Order by reason of:

(a) such asset being governed by the law of any country or territory outside the UK; or

(b) for any other reason; or

11.1.2 the transfer of any asset (other than an asset referred to in paragraph 9) of UKE proposed to be transferred pursuant to this Scheme is not recognised by the law of the country or territory in which such asset is situated,

UKE shall, on and from the Effective Time and until the relevant asset is transferred to UKNV, hold any asset referred to in paragraphs 11.1.1 or 11.1.2 as trustee for UKNV absolutely.

11.2 UKE shall in any event be subject to UKNV's directions in respect of any asset referred to in paragraphs 11.1.1 or 11.1.2 until the relevant asset is transferred to or otherwise vested in UKNV or is disposed of (whereupon UKE shall account to UKNV for the proceeds of disposal thereof), and UKNV shall have authority to act as the agent and/or attorney of UKE in respect of such asset for all such purposes.

11.3 In the event of any payment being made to, or other asset being received by or being conferred upon, UKE on or after the Effective Time in respect of the Transferred Business or any Transferred Asset, UKE shall as soon as is reasonably practicable after its receipt pay over the full amount of such payment or (to the extent to which it is able to do so) transfer such asset to, or deal with such payment or asset in accordance with the reasonable directions of, UKNV.

11.4 Without prejudice to the foregoing provisions of this paragraph 11 or the provisions of paragraph 12, if:

11.4.1 any asset or liability included in the Order is governed by the law of any country or territory outside the UK, UKE shall take all necessary steps as UKNV may require for securing that the transfer to UKNV of that asset or liability is fully effective under the law of that country or territory; and

11.4.2 any asset or liability of UKE proposed to be transferred pursuant to this Scheme is not for whatever reason immediately transferred to UKNV at the Effective Time, UKE

shall take all necessary steps as UKNV may require for securing the transfer to UKNV of that asset or liability.

## **12. INDEMNITIES IN FAVOUR OF UKE**

### **12.1 If:**

12.1.1 any liability (other than a liability referred to in paragraph 9) of UKE proposed to be transferred pursuant to this Scheme is not, or is not capable of being, immediately transferred at the Effective Time by the Order by reason of:

- (a) such liability being governed by the law of any country or territory outside the UK; or
- (b) for any other reason; or

12.1.2 the transfer of any liability (other than a liability referred to in paragraph 9) of UKE proposed to be transferred pursuant to this Scheme is not recognised by the law of the country or territory in which such liability is situated,

on and with effect from the Effective Time, until the relevant liability is transferred to or becomes a liability of UKNV, UKNV shall discharge such liability on behalf of UKE or, failing that, indemnify UKE against such liability and any other loss or expense incurred by or demand made against UKE that is attributable to such liability.

12.2 UKE shall in any event be subject to UKNV's directions in respect of any liability referred to in paragraphs 12.1.1 and 12.1.2 until the relevant liability is transferred to or becomes a liability of UKNV, and UKNV shall have authority to act as the agent and/or attorney of UKE in respect of such liability for all such purposes.

## **13. EFFECTIVE TIME**

Subject to the Court having made an Order under section 111 of the Act sanctioning this Scheme, this Scheme shall become operative at noon Greenwich Mean Time on 31 December 2020, or such other time and date as may be specified in the Order sanctioning this Scheme.

## 14. MODIFICATIONS OR ADDITIONS

14.1 Save as provided in paragraph 14.3, UKE and UKNV may consent to any modification of or addition to this Scheme or to any further condition or provision affecting the same which the Court may approve or impose before the Effective Time.

14.2 Save as provided in paragraph 14.3, UKNV may consent for and on behalf of UKE to any modification of or addition to this Scheme or to any further condition or provision affecting the same provided that the Regulators have been notified of the same at least 28 days in advance of any hearing of the Court at which such application is considered, such period to commence on the earlier of:

14.2.1 the date (or the latest date) on which each of the Regulators gives notice of receipt of the notification of the amendment to UKE or UKNV (as the case may be); and

14.2.2 the date which falls three Business Days following delivery of the notification of the amendment to the Regulators by UKE or UKNV (as the case may be),

and each have indicated by the end of such 28 day notice period that they do not object thereto and which the Court may approve or impose after the Effective Time.

14.3 For the purposes of paragraphs 14.1 and 14.2, the consent of the Court shall not be required in relation to minor and/or technical amendments to the terms of this Scheme which are reasonably required to give full effect to the terms of the Scheme (including amendments to correct manifest errors), provided that the Regulators have been notified of the same at least 28 days in advance of the amendment being made, such period commencing on the earlier of:

14.3.1 the date (or the latest date) on which each of the Regulators gives notice of receipt of the notification of the amendment to UKE or UKNV (as the case may be); and

14.3.2 the date which falls three Business Days following delivery of the notification of the amendment to the Regulators by UKE or UKNV (as the case may be),

and each have indicated by the end of such 28 day notice period that they do not object thereto.

**15. THIRD PARTY RIGHTS AND JURISDICTION**

A person who is not a party to this Scheme may not enforce any term of this Scheme pursuant to the UK Contracts (Rights of Third Parties) Act 1999.

**16. SUCCESSORS AND ASSIGNS**

This Scheme will bind and enure to the benefit of the successors and assigns of each of UKNV and UKE.

**17. COSTS AND EXPENSES**

All costs and expenses of and incidental to the preparation and carrying into effect of this Scheme shall be borne by UKE.

**18. GOVERNING LAW AND JURISDICTION**

18.1 The validity, construction and performance of this Scheme (and any claim, dispute or matter arising under or in connection with it or its enforceability), and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with English law.

18.2 Each of UKE and UKNV irrevocably submits to the exclusive jurisdiction of the courts of England and Wales over any claim, dispute or matter arising out of or in connection with this Scheme or its enforceability or the legal relationships established by this Scheme (including non-contractual disputes or claims) and waives any objection to proceedings being brought in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inconvenient forum. Each of UKE and UKNV further irrevocably agrees that a judgment in any proceedings brought in the courts of England and Wales shall be conclusive and binding upon each of them and may be enforced in the courts of any other jurisdiction.