
Lloyd's Australian Trust Deed

This Deed of Trust

is made on 6 June 2000 between the following parties:

1. **Lloyd's**, the Society incorporated under Lloyd's Act (UK) 1871 having its principal office at
One Lime Street, London, England
(**Lloyd's**)
2. **National Australia Trustees Limited**, a company incorporated in Victoria, Australia ACN 007 350 405 whose registered office is at 271 Collins Street, Melbourne, Victoria, Australia
(**Trustee**)

Recitals

- A. Each of the Relevant Underwriters is engaged in insurance business and has or will have Policyholders in Australia.
- B. Each of the Relevant Underwriters desires to provide security for the Policyholders in Australia and to meet among other things the requirements of the Act.
- C. The form of this trust deed has been approved by the APRA and the trust fund constituted by this deed will be a "designated security trust fund" on and from the commencement of Schedule 2 of the Amending Act within the meaning of section 69 of the Act.
- D. The Trustee agrees to act as trustee of security provided to it by or on behalf of the Relevant Underwriters.
- E. The Trustee agrees to administer such security principally from an office in Australia, on the terms of this deed and in accordance with the requirements of the Act.
- F. Lloyd's enters into this trust deed to ensure compliance with the Act as amended by the Amending Act and has the requisite authority to do so.

This deed witnesses

that in consideration of, among other things, the mutual promises contained in this deed, the parties agree:

1 Definitions and Interpretation

1.1 Definitions

The following terms, unless the context otherwise requires, have the following meanings:

1992 and Prior Business means, in relation to an underwriter, all liabilities under contracts of insurance underwritten at Lloyd's (other than Life Business) and originally allocated to the 1992 year of account or any earlier year of account including, without limitation, any such liabilities reinsured to close into the 1993 or any later year of account but excluding any liabilities re-signed, or re-allocated pursuant to a premium transfer, into 1993 or any later year;

Act means the Insurance Act 1973;

active underwriter means, in relation to a syndicate, the person at, or deemed by the Council or Committee of Lloyd's to be at, the underwriting box with principal authority to accept risk on behalf of the members of that syndicate;

Amending Act means the Insurance Laws Amendment Act 1998;

APRA means the Australian Prudential Regulation Authority, a body corporate established by the Australian Prudential Regulation Authority Act, 1998 and includes any successor body appointed to carry out the functions of the Commissioner under the Act;

Auditor means the auditor of the accounts of the Trust Fund from time to time;

Australian Liabilities means, in relation to an underwriter, the liabilities of that underwriter as a member of a syndicate for a particular year of account under an Australian Policy;

Australian Policy means, in relation to an underwriter:

- (a) any contract or policy of insurance or reinsurance incepting on or after 1 July 1998 (excluding any contract or policy underwritten on or after that date under a binding authority commencing before that date), in respect of:
 - (1) real property, fixtures or buildings located in Australia;
 - (2) any other property of any kind (including but not limited to ships, aircraft, yachts and other moveable property) and any other risk of any kind where:
 - (A) in the case of an insured which is a body corporate, that body corporate has a registered office or principal place of business in Australia and
 - (B) in any other case, the insured has a residential address or place of business in Australia; or
 - (3) in the case of any contract of reinsurance:
 - (A) where the registered office of the ceding company which has reinsured with the Relevant Underwriter is in Australia; or
 - (B) in the case of such a contract made with or through a branch office in Australia of the ceding company which has reinsured with the Relevant Underwriter, where the ceding company is incorporated out of Australia,

where the currency in which the contract or policy is expressed and in which the premium is paid is Australian; and

- (4) which is underwritten by the underwriter as a member of a syndicate for a year of account on or after 1 July 1998; or
 - (5) in respect of which the underwriter is liable as a member of a syndicate for a year of account of the syndicate on or after 1 July 1998 to members of the same syndicate or any other syndicate for an earlier year of account pursuant to any Reinsurance to Close; and
- (b) any contract or policy of insurance or reinsurance written or incepting on or before 30 June 1998, (including any contract or policy underwritten after that date under a binding authority commencing on or before that date),
- (1) which is not comprised in the 1992 and Prior Business of any underwriter that has been reinsured by Equitas Reinsurance Limited;
 - (2) which is not Equitas Reinsured Business;
 - (3) where the amount of premiums received by, or due to, the underwriter are premiums to which Division 15 of Part III of the Tax Act as in force on the day preceding the commencement of Schedule 2 of the Amending Act (as modified by paragraph 10 of the Schedule to the Act) applies; and
 - (4) in respect of which the underwriter is liable as a member of a syndicate for a year of account of the syndicate on or after 1 July 1998 to members of the same syndicate or any other syndicate for an earlier year of account pursuant to any Reinsurance to Close,

but does not include

- (c) any such contract or policy of insurance or reinsurance the premiums in respect of which are or were paid or payable in United States of America dollars, or
- (d) a contract or policy of insurance or reinsurance if the liabilities of the underwriter as a member of the particular syndicate for the particular year of account under or in respect of the contract or policy have been reinsured pursuant to any Reinsurance to Close with Continuing Underwriters, where, in respect of each such Continuing Underwriter the liabilities under that contract or policy of insurance or reinsurance are taken into account in calculating the Minimum Amount for the syndicate and year of account of which the Continuing Underwriters are members and the Syndicate Share of the Trust Fund for that syndicate and particular year of account is not less than that Minimum Amount;

Authorised Officer means:

- (a) in relation to Lloyd's, any officer of Lloyd's authorised by Lloyd's from time to time in writing and accompanied by a specimen signature of that officer, as an officer authorised to sign on behalf of Lloyd's at that time; and
- (b) in relation to the Trustee, any officer of the Trustee authorised by the Trustee from time to time in writing and accompanied by a specimen signature of that officer, as an officer authorised to sign on behalf of the Trustee at that time;

Bank means a corporation authorised under the Banking Act 1959 to carry on banking business in Australia;

binding authority means an authority given by or on behalf of a Lloyd's underwriter to any person, (including an insured or reinsured but excluding the active underwriter of the syndicate in relation to which such authority is given), to enter into, as agent for the Lloyd's underwriter, contracts of insurance or reinsurance on behalf of the Lloyd's underwriter as insurer or reinsurer, in accordance with the rules or practice of Lloyd's;

Business Day means a day on which banks are open for business in Sydney, Melbourne and London excluding a Saturday, Sunday or public holiday;

Claim means, in relation to a Relevant Underwriter, a claim under an Australian Policy in respect of which the Relevant Underwriter has a liability to:

- (a) the holder; or
- (b) another underwriter in relation to whom the Relevant Underwriter is a Continuing Underwriter;

Continuing Underwriter means a Relevant Underwriter who is a reinsuring member within the meaning of the definition of "Reinsurance to Close";

Council means the Council of Lloyd's or (in relation to any power or discretion which is hereby vested in the Council but which has for the time being been delegated by the Council to the Committee of Lloyd's or to the Chairman or a Deputy Chairman of the Committee of Lloyd's pursuant to the provisions of section 6(6) of Lloyd's Act (UK) 1982) the Committee of Lloyd's or the Chairman or a Deputy Chairman of the Committee of Lloyd's (as the case may be) or such other person or persons as are for the time being authorised by the Council of Lloyd's to exercise any power or discretion which is hereby vested in the Council;

Determination means the Insurance (Lloyd's Security Trust Fund Arrangements) Determination 1998 (as amended from time to time).

Distributable Income means, in respect of a Financial Year, the amount determined in accordance with the following formula

$$DI = NI + AI$$

where

DI is the Distributable Income for the Financial Year;

NI is the Net Income for the Financial Year; and

AI is the amount determined by the Trustee on a direction from Lloyd's under clause 5.5(f) for the Financial Year;

Effective Date means the date on which schedule 2 (other than Item 27) of the Amending Act comes into force;

Equitas Limited means the limited company of that name registered in England and Wales with company No. 3173352 whose registered office is at 33 St Mary Axe, London, England;

Equitas Reinsurance Contract means

- (a) the reinsurance and run-off contract dated 3 September 1996 and entered into by Equitas Reinsurance Limited, Equitas Limited, Lloyd's, Additional

Underwriting Agencies (No. 9) Limited (for itself and on behalf of the members for whom it is appointed as substitute agent) and others; and

(b) the Lioncover Reinsurance Contract;

Equitas Reinsurance Limited means the limited company of that name registered in England and Wales with company No. 3136300 whose registered office is at 33 St Mary Axe, London, England;

Equitas Reinsured Business means all liabilities under contracts of insurance (whether direct or otherwise) or reinsurance underwritten at Lloyd's from time to time reinsured directly or indirectly by Equitas Reinsurance Limited and retroceded to Equitas Limited, which liabilities do not constitute 1992 and Prior Business;

Financial Year means a period of 12 months commencing on 1 July and ending on 30 June next following;

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

Judicial Trustee means a person appointed as judicial trustee of the Trust Fund under Division 5 of Part VII of the Act;

Investment Income means any income derived from any investment made pursuant to clause 5.3, including but not limited to interest, distributions and dividends;

Letter of Credit means an unconditional, irrevocable letter of credit in favour of the Trustee which

- (a) provides for immediate payment at the written direction of the Trustee;
- (b) satisfies the requirements under the Act; and
- (c) which is issued or confirmed by a Bank;

Life Business has the meaning ascribed to "long term business" in the Insurance Companies Act (UK) 1982 as in force on 3 September 1996;

Lioncover Insurance Company Limited means the limited company of that name registered in England and Wales with company number 2094618 whose registered office is One Lime Street, London, England, EC3M 7HA;

Lioncover Reinsurance Contract means the reinsurance contract dated 18 December 1997 and entered into between, inter alios, Equitas Reinsurance Limited, Equitas Limited, Lloyd's and Lioncover Insurance Company Limited in relation to the reinsurance and run-off by Equitas Reinsurance Limited of the liabilities of Lioncover Insurance Company Limited arising in relation to contracts of insurance underwritten at Lloyd's by the PCW Syndicates, as defined therein;

Lloyd's Agent in Australia means the individual resident in Australia appointed by Lloyd's as the agent of Lloyd's for the purposes of the Act;

Lloyd's Premiums Trust Deed means, in relation to a Relevant Underwriter, the Lloyd's Premiums Trust Deed or Trust Deeds approved pursuant to the Insurance Companies Act (UK) 1982 and executed by the Relevant Underwriter in respect of the Relevant Underwriter's insurance business at Lloyd's other than Life Business;

managing agent means an underwriting agent which is listed as a managing agent on the Lloyd's register of underwriting agents or any substitute agent appointed by the Council;

Matured Claim means a Policyholder Claim which the Trustee must pay pursuant to clause 4.2(d);

Minimum Amount means, in relation to a syndicate and year of account, subject to any direction made under the Act, an amount equal to the funding requirements calculated from time to time in accordance with the Determination;

Net Income means, in respect of any Financial Year, the operating profit of the Trust Fund for that Financial Year which shall:

- (a) include abnormal and extraordinary items;
- (b) be calculated before tax; and
- (c) be determined in accordance with generally accepted Australian accounting principles;

Net Taxable Income means, in respect of any Financial Year, the net income of the Trust Fund for that Financial Year, determined in accordance with the principles applicable under section 95(1) of the Tax Act;

Operational Agreement means any agreement entered into between Lloyd's and the Trustee pursuant to clause 3.2;

Other Underwriters means, in relation to a Relevant Underwriter, the underwriters other than the Relevant Underwriter;

Policyholder means, in relation to a Relevant Underwriter, the holder of an Australian Policy in respect of which the Relevant Underwriter has a liability to:

- (a) the holder; or
- (b) another underwriter in relation to whom the Relevant Underwriter is a Continuing Underwriter;

Policyholder Claim means a claim made on the Trustee by a Policyholder in accordance with the provisions of clause 4.1;

Portfolio Notice means a notice given to the Trustee by Lloyd's pursuant to clause 2.3.

Premiums Trust Fund means, in relation to a Relevant Underwriter, a trust fund set up with respect to the Relevant Underwriter which is constituted or regulated under a Lloyd's Premiums Trust Deed;

Qualified Entity means a Bank or any other corporation approved by the APRA to be appointed Trustee hereunder;

quarter means each calendar quarter;

Recognised Depository means any securities depository or clearing agency which operates a central system in Australia or a transnational system for handling securities in a physical or book entry form and which is authorised so to do under any applicable law;

registered office has the meaning given in the Corporations Law;

Reinsurance to Close means any one or more of:

- (a) an agreement under which underwriting members (the "reinsured members") who are members of a syndicate for a year of account (the "closed year") agree with underwriting members who constitute that or another syndicate for a later year of account (the "reinsuring members") that the reinsuring members will discharge or procure the discharge of, or indemnify the reinsured members against, all known and unknown liabilities of the reinsured members arising out of insurance business underwritten through that syndicate and allocated to the closed year of account, in consideration of:
 - (1) a premium; and
 - (2) either:
 - (A) the assignment, or agreement to assign, to the reinsuring members of all the rights of the reinsured members arising out of or in connection with that insurance business (including without limitation the right to receive all future premiums, recoveries and other monies receivable in connection with that insurance business); or
 - (B) an agreement by the reinsured members that the reinsuring members shall collect on behalf of the reinsured members the proceeds of all such rights and retain them for their own benefit so far as they are not applied in discharge of the liabilities of the reinsured members;
- (b) an agreement underwritten by members of one or more syndicates and complying with requirements made under paragraph 2(3) of Lloyd's Syndicate Accounting Byelaw (No.18 of 1994) or other requirements made by the Council;
- (c) in relation only to the 1993 year of account, 1994 year of account or 1995 year of account of any syndicate whose members have underwritten general business, the Equitas Reinsurance Contract, taken together with an agreement such as is referred to in paragraph (a) modified so as to reinsure the reinsured members in relation only to such of the insurance business underwritten through that syndicate and allocated to that year of account as has not been reinsured under the Equitas Reinsurance Contract;
- (d) in the case of a syndicate consisting only of a single corporate member which is not closed by reinsurance to close by another person, the inclusion in the underwriting account of that syndicate for the next following year of account of an amount representing a provision for all known and unknown liabilities attributable to the year of account which is closing;

Relevant Syndicate means a syndicate and year of account of which a Relevant Underwriter is a member;

Relevant Underwriter means each underwriter who has Australian Liabilities at the date hereof and includes any underwriter who has Australian Liabilities at any time thereafter;

Responding Syndicate means, in relation to a Matured Claim or a Claim which is to be paid in accordance with clause 5.10, the syndicate identified in accordance with the provisions of clause 5.11;

Responding Syndicate's Amount means, in relation to a Responding Syndicate, the amount calculated in accordance with the formula:

$$RSA = A \times \frac{P}{100}$$

where:

RSA is the Responding Syndicate's Amount;

A is the amount payable by the Trustee pursuant to clause 4.2(d) before any reduction is made to that amount in accordance with clause 4.2(e); and

P is the proportion (expressed as a percentage) of so much of A that is payable by the members of the Responding Syndicate being either:

- (a) the proportion identified from the judgment referred to in clause 4.1; or
- (b) if the liabilities of members of the Responding Syndicate under or in respect of the contract or policy have been reinsured with Continuing Underwriters pursuant to any Reinsurance to Close, the proportion identified in the judgement referred to in clause 4.1 multiplied by the percentage included in the RITC Matrix pursuant to clause 6.7(c);

Restricted Letter of Credit means any Letter of Credit identified by Lloyd's as such in accordance with clause 5.6(b);

Reversal Notice means a notice given to the Trustee by Lloyd's pursuant to clause 2.5;

RITC Matrix means at any time the report described as such last notified to the Trustee by Lloyd's pursuant to clause 6.7;

Rules means the Insurance (Designated Security Trust Funds) Rules 1998 (as amended from time to time);

Security Deposit has the meaning given in the Act ;

syndicate means a member or a group of members of Lloyd's underwriting insurance business at Lloyd's through the agency of a managing agent to which a particular syndicate number is assigned by or under the authority of the Council;

Syndicate Percentage in relation to a Relevant Syndicate means at any time the percentage included as such by Lloyd's in the most recent notice provided to the Trustee by Lloyd's pursuant to clause 6.2 and if at that time, no notice has been submitted pursuant to clause 6.2 then the latest of:

- (a) the Syndicate Percentage of the Relevant Syndicates as specified in the latest Portfolio Notice given by Lloyd's to the Trustee; or

- (b) the Syndicate Percentage of the Relevant Syndicates as specified in the latest Reversal Notice given by Lloyd's to the Trustee; or
- (c) if Lloyd's has not given the Trustee either a Portfolio Notice or a Reversal Notice, the Syndicate Percentage included in the notice provided to the Trustee by Lloyd's in accordance with clause 2.1(b);
- (d) the Syndicate Percentage of the Relevant Syndicates as specified in the latest notice given to the Trustee by Lloyd's pursuant to clause 6.6(c).

Syndicate Share of the Trust Fund means that amount calculated in accordance with clause 6.6(a);

Tax means any withholding tax, income tax, duty, (including financial institutions duty paid or reimbursed to other financial institutions), or any other taxes, duties, levies, imposts, deductions and charges and any interest, penalties or fines imposed in connection with any of them, of whatever nature and however named.

Tax Act means the Income Tax Assessment Act 1936;

Trust Fund means the property, including cash, held by the Trustee under the provisions of this deed;

Trustee means the person appointed as the trustee hereunder from time to time and includes any Judicial Trustee;

Trustee Claim means, in relation to the Trust Fund, a claim by the Trustee for all fees and expenses of the Trustee, including without limitation its legal fees and expenses and other disbursements properly incurred in negotiating and entering into this trust deed and the Operational Agreement and all liabilities and expenses properly incurred in the execution or purported execution of the trusts contained in this deed, or the exercise or attempted exercise of any of the powers, authorities and discretions vested in it under this deed;

underwriter means a member of Lloyd's, whether an individual, a body corporate or another legal person and any former member of Lloyd's and includes, in respect of a natural person who has died or become bankrupt, the personal representatives or trustee in bankruptcy of such member or former member and in respect of a body corporate in receivership, administration under part 5.3C of the Corporations Law or liquidation, the receiver, liquidator or administrator of that member or former member or any other person by law entitled or bound to administer the affairs of the member concerned; and

1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;

- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental or semi-governmental agency;
- (e) a reference to a part, clause or schedule is a reference to a part and clause of, and a schedule to, this deed and a reference to this deed includes any schedule;
- (f) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, rules and determinations issued under that statute;
- (g) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (h) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day;
- (i) in calculating the day on or by which any thing is to be done, a reference to days shall be calculated as clear days and without counting the day on or by which that thing is to be done;
- (j) references to sums of money are to amounts in Australian dollars.

2 The Trust Fund

2.1 Creation of Trust Fund

- (a) The Trust Fund is established by the transfer to the Trustee of property in accordance with clause 2.1(b) and otherwise by the transfer to the Trustee by or on behalf of the Relevant Underwriters of property to be held by the Trustee on trust pursuant to the terms of this deed and the Trustee declares that it will hold such property and all other property so transferred to it at any time after the establishment of the Trust Fund on trust pursuant to the terms of this deed to the intent that there is only one Trust Fund established pursuant to the terms of this deed.
- (b) Any property (including cash) which is transferred or paid to the Trustee to be held on the terms of this deed before the day on which Schedule 2 of the Amending Act commences will be held on the trusts of this deed on and from the day Schedule 2 of the Amending Act commences and if Schedule 2 of the Amending Act has not commenced before 4pm Australian Eastern Standard Time on 31 July 2000, the trust will be deemed to have failed and that property will remain the property of the person by whom that property was so transferred or paid absolutely and must be dealt with by the Trustee in accordance with the directions of that person.
- (c) Any property (including cash) which is transferred or paid to the Trustee to be held on the terms of this deed before the day on which Schedule 2 of the Amending Act commences must continue to be held by the Trustee and not otherwise dealt with until, in accordance with clause 2.1(b), that property is held on the trusts of this deed or the trust is deemed to have failed.

- (d) In the case of property transferred pursuant to clause 2.1(a), at the time of any such transfer and in the case of property transferred pursuant to clause 2.1(b) not later than 31 July 2000, Lloyd's must advise the Trustee of:
- (1) the syndicate and year of account to which such property relates;
 - (2) the Minimum Amount for each Relevant Syndicate as at the last day of the quarter ending immediately before the transfer;
 - (3) the percentage share of the Trust Fund referable to each Relevant Syndicate (excluding the amount of any share of any Restricted Letters of Credit referable to that Relevant Syndicate); and
 - (4) the Relevant Syndicate's share of any Restricted Letter of Credit referable to that syndicate;

and if at the time of any such transfer no or insufficient information is provided to the Trustee, the Trustee must seek that information from Lloyd's and pending receipt thereof the Trustee must credit those funds to a suspense account in the books of the Trustee and the Trustee may apply funds from that suspense account only if:

- (1) the APRA has given written approval; or
- (2) the Trustee has obtained the relevant information from Lloyd's and the Trustee transfers the funds to the Trust Fund.

2.2 Perpetuities

- (a) The Trust Fund established under this deed is terminated on the expiry of 80 years from the date of execution of this deed.
- (b) Lloyd's must, not more than 42 days and not less than 21 days prior to the expiration of the perpetuity period applicable to a Relevant Underwriter under the terms of the Lloyd's Premiums Trust Deed, notify the Trustee of the impending expiration of that perpetuity period and the date on which such perpetuity period will expire.
- (c) Notwithstanding any other provision of this deed, the Trustee must pay to the trustees of each of the Premiums Trust Funds of the Relevant Underwriter the amount standing to the credit of that Relevant Underwriter in the Trust Fund within 7 days of receiving a notice from Lloyd's pursuant to clause 2.2(b).

2.3 New portfolio

Subject to clause 2.6, Lloyd's may at any time and from time to time by notice in writing to the Trustee require the Trustee to hold the assets of the Trust Fund specified in the notice (including any assets held as a separate portfolio as a consequence of a prior application of this clause) as a separate portfolio from the other assets of the Trust Fund. In addition to the specification of the assets to be held as a separate portfolio, such a notice must also include the following:

- (a) a name by which that separate portfolio will thereafter be identified;

- (b) the syndicate and year account of the syndicates which will be Relevant Syndicates for the purposes of the particular portfolio;
- (c) the Syndicate Percentage of the Relevant Syndicates identified as such in the notice for the purposes of the particular portfolio; and
- (d) the Syndicate Percentage of the all other Relevant Syndicates who are not identified as such in the notice for the purposes of the particular portfolio.

2.4 Consequences of Portfolio Notice

If Lloyd's gives a Portfolio Notice to the Trustee the following provisions apply:

- (a) If the Portfolio Notice is the first such notice, the assets of the Trust Fund other than those identified in the Portfolio Notice must at that time be identified as "Portfolio 1".
- (b) All notices given by Lloyd's pursuant to the provisions of clause 6.2 of this deed must be given in respect of the Syndicate Percentage of a Relevant Syndicate in a portfolio the name of which is specified in the Portfolio Notice or Portfolio 1 (as the case may be).
- (c) The Syndicate Percentage of each syndicate which has been identified by Lloyd's as a Relevant Syndicate for the purposes of a particular portfolio must be expressed only in relation to the assets of those Relevant Syndicates identified by Lloyd's as Relevant Syndicates for the purposes of that portfolio.
- (d) In determining:
 - (1) the Syndicate Percentage of a Relevant Syndicate; or
 - (2) the Syndicate Share of the Trust Fund in accordance with clause 6.6(a);
 the assets of the Trust Fund shall be taken to be only those assets comprising the portfolio in respect of which that syndicate has been identified by Lloyd's as a Relevant Syndicate and if that syndicate has not been so identified, those assets comprising Portfolio 1.
- (e) Distributable Income derived from the assets of a particular portfolio must be accounted for and paid by the Trustee pursuant to clause 5.5 separately from other Distributable Income and must be identified by the Trustee as being Distributable Income referable to the assets of a named portfolio.

2.5 Reversal Notice

- (a) Lloyd's may at any time by notice in writing to the Trustee amend or revoke a Portfolio Notice and thereupon the assets of the named investment portfolio or such part of those assets as are specified in the Reversal Notice the subject of the Portfolio Notice become assets of Portfolio 1.
- (b) A Reversal Notice is effective as at the date of receipt of the notice by the Trustee.
- (c) A Reversal Notice must be accompanied by:

- (1) the syndicate and year account of the syndicates which will, as a result of the Reversal Notice, be Relevant Syndicates for the purposes of Portfolio 1;
- (2) the Syndicate Percentage of the Relevant Syndicates which will, as a result of the Reversal Notice, be Relevant Syndicates for the purposes of Portfolio 1.

2.6 Maximum Portfolios

Lloyd's must not give a notice to the Trustee pursuant to clause 2.3 if as a consequence the total number of portfolios would exceed three or such other number as Lloyd's and the Trustee may from time to time agree in writing.

3 The Trustee

3.1 Trustee's Qualification

The Trustee must always be a Qualified Entity and the Trustee shall immediately notify Lloyd's if it ceases to be a Qualified Entity or if it becomes aware that it will cease to be a Qualified Entity.

3.2 Operational Agreement

- (a) The Trustee and Lloyd's must enter into an Operational Agreement governing the methods and operational practices to be employed in carrying out the terms of this deed and specifying the fees which may be charged by the Trustee.
- (b) It will be a term of the Operational Agreement that the Operational Agreement may only be varied by agreement in writing between Lloyd's and the Trustee.
- (c) The Operational Agreement takes effect subject to this deed and has no effect on any rights or obligations of any person arising out of this deed.

3.3 Trustee's Duties

- (a) To the extent permissible by law and equity, the Trustee's duties and responsibilities are limited to those expressly provided under this deed and the Operational Agreement.
- (b) The Trustee must act in accordance with the reasonable written directions of Lloyd's in relation to any action or proposed action by any Governmental Agency in relation to the Trust or the Trust Fund, provided that the Trustee need not perform any act that is outside the scope of its duties and obligations under this deed and the Operational Agreement.
- (c) In addition to any powers the Trustee has under any applicable law or the Trust Deed and as between the parties to the Operational Agreement, the Trustee will have the benefit of the following provision in respect of its obligations under the Trust Deed and the Operational Agreement:

- (1) the Trustee may in relation to this deed act or decline to act on the opinion or advice of, or a certificate or any information obtained from any banker, valuer, surveyor, securities company, broker, auctioneer, accountant or other expert and whether obtained by Lloyd's or the Trustee or any other person and any such opinion or advice can be conveyed by electronic or facsimile transmission and the Trustee is not responsible for any loss solely occasioned by so acting or declining to act or any error in such electronic or facsimile transmission or it not being authentic;
- (2) the Trustee may, instead of acting personally or through its permanent employees employed in the carrying out of the trusts hereof, appoint an agent to transact all business and to do all acts required to be done under or pursuant to this deed (including the receipt and payment of money). The Trustee must obtain the prior written consent of Lloyd's to the appointment of any such agent, such consent not to be unreasonably withheld or delayed. The Trustee is taken to have done or refrained from doing anything that any agent of the Trustee has done or refrained from doing;
- (3) notwithstanding anything contained in this deed, the Trustee may refrain from doing anything which would in its reasonable opinion be contrary to any law of any applicable jurisdiction or any applicable direction or regulation of any agency of any state and may do anything which is, in its reasonable opinion, necessary to comply with any such law, directive or regulation.
- (4) the Trustee may delegate any of its rights, powers, authorities and discretions under this deed to one or more of its officers or employees and may revoke any such delegation whenever it thinks fit.

3.4 Trustee's Reliance upon Communications

The Trustee is entitled to rely upon any communication given in accordance with this deed or the Operational Agreement which it reasonably and in good faith believes to be genuine as conclusive evidence of the matters stated in it and the Trustee is not bound to call for further evidence or be responsible for any loss that may be occasioned thereby.

3.5 Proper Execution

- (a) Execution by an Authorised Officer on behalf of Lloyd's constitutes due execution of any instrument on behalf of Lloyd's and the Trustee is entitled to rely on such execution without recourse against it and without any obligation to make enquiry in relation to it.
- (b) Execution by an Authorised Officer on behalf of the Trustee constitutes due execution of any instrument on behalf of the Trustee and Lloyd's is entitled to rely on such execution without recourse against it and without any obligation to make enquiry in relation to it.

3.6 Trustee's Reliance on Opinions of its Counsel

- (a) The Trustee may select and consult with a barrister or solicitor and may, in good faith, take any action or make any omission in reliance on the opinion of such barrister or solicitor without recourse against it and without any obligation to make enquiry in relation to it.
- (b) The Trustee must promptly send to Lloyd's a copy of any opinion it obtains in its capacity as Trustee of the Trust Fund (other than an opinion obtained by the Trustee at its own expense) from a barrister or a solicitor in relation to the operation and administration of the Trust Fund or any action proposed to be taken or refrained from being taken in relation to the operation and administration of the Trust Fund (other than an opinion obtained by the Trustee at its own expense).

3.7 Trustee's Fees and Expenses

- (a) Lloyd's must pay or arrange payment to the Trustee of the fees for administering the Trust Fund. The level and nature of the fees shall be contained in the Operational Agreement between Lloyd's and the Trustee.
- (b) A Trustee Claim becomes enforceable against the Trust Fund when all of the following have occurred:
 - (1) the Trustee has given written notice to Lloyd's containing details of a Trustee Claim and how it became due;
 - (2) a period of 30 days has elapsed since the date of the notice in clause 3.7(b)(1) without discharge of that Trustee Claim;
 - (3) the Trustee has given the APRA and Lloyd's, after the period of 30 days referred to in clause 3.7(b)(2) has elapsed, a notice that it intends to recover the amount of the Trustee Claim from the Trust Fund if Lloyd's does not discharge the amount in full; and
 - (4) 14 days have elapsed since the date of the notice in clause 3.7(b)(3) without discharge of the relevant Trustee Claim.
- (c) Nothing in this deed shall be construed as requiring that the Trustee's fees and expenses be satisfied solely from the corpus of the Trust Fund and not otherwise satisfied by or on behalf of Lloyd's. Where a Trustee Claim is paid out of the Trust Fund the Trustee must first make the payment out of corpus and then out of any Distributable Income of the Trust not distributed pursuant to clause 5.5(b).
- (d) If at any time when a Trustee Claim is enforceable against the Trust Fund, the Trust Fund is divided into two or more portfolios pursuant to clause 2.3, that Trustee Claim is to be met out of the assets of each of those portfolios in the same proportions as the value of the assets in each of the portfolios bears to the total value of the assets in all portfolios.

3.8 Maintenance and Inspection of Trustee's Records

- (a) The Trustee must keep or cause to be kept complete and accurate records of the Trust Fund and make them available for inspection in accordance with clause 3.8(c).
- (b) All records so kept by the Trustee must be kept in a manner consistent with the standards expected of a reasonably prudent trustee acting in the position of Trustee of the Trust Fund.
- (c) The Auditor, APRA or any person duly authorised by Lloyd's may, on giving at least 10 days' written notice to the Trustee:
 - (1) examine (and if necessary or convenient take copies of) the records of the administration of the Trust Fund during normal business hours;
 - (2) where assets comprising the Trust Fund are physically held by the Trustee or any custodian, have access to inspect and count such assets; and
 - (3) where assets comprising the Trust Fund are held in an account with a Recognised Depository, have access to the statements and records pertaining to such account;
- (d) Lloyd's must provide to the Trustee on a timely basis, all information, certifications, proofs and other applicable documentation required under any applicable law.
- (e) Subject to the terms of this deed, the Trustee is not required to furnish information with respect to amounts on deposit in the Trust Fund to any person other than the APRA, the Auditor and Lloyd's and is not otherwise required to account to the Relevant Underwriter or any other person.

3.9 Trustee's Resignation or Removal and Appointment of Successor

- (a) The succeeding provisions of this clause 3.9 (except for clause 3.9(k)) have no effect whilst and so long as the Trust Fund is under judicial trusteeship in accordance with Division 5 of Part VII of the Act.
- (b) Notwithstanding clause 2.1, the Trustee may resign as trustee at any time by sending at least 180 days' written notice of resignation (or such shorter notice period as Lloyd's may accept), to Lloyd's specifying the date on which the resignation is to take effect. The Trustee must send a copy of any such notice of resignation to the APRA forthwith.
- (c) Lloyd's may remove the Trustee or any successor Trustee by sending at least 30 days' written notice of removal to the Trustee specifying the date on which the removal is to take effect or forthwith if:
 - (1) the Trustee ceases to be a Qualified Entity;
 - (2) the Trustee has acted in breach of trust, negligently, fraudulently or made wilful default in respect of its duties under this deed, the Operational Agreement or the general law;

- (3) a receiver, receiver and manager, statutory manager, trustee, administrator or similar official, is appointed, or steps are taken for such appointment, over any of the assets or undertaking of the Trustee; or
- (4) the Trustee is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Law or the equivalent provisions in any other equivalent legislation to which the Trustee is subject, or is presumed to be insolvent under the Corporations Law or the equivalent provisions in any other equivalent legislation to which it is subject,

and Lloyd's must send a copy of any such notice to the APRA forthwith.

(d) In the event of either:

- (1) the provision by the Trustee to Lloyd's of a notice of resignation; or
- (2) the provision by Lloyd's to the Trustee of a notice of removal:
 - (A) Lloyd's must as soon as reasonably practicable use all reasonable endeavours to appoint a Qualified Entity as successor Trustee; and
 - (B) the outgoing Trustee must do all things necessary or convenient to effect the resignation or removal of the outgoing Trustee.

Acceptance of appointment as successor Trustee must be in writing delivered to Lloyd's and Lloyd's must forthwith send a copy of the acceptance to the Trustee. The successor Trustee must send a copy of such notice of acceptance to APRA forthwith.

- (e) As soon as reasonably practicable after the Trustee is informed of the acceptance of appointment by a successor Trustee pursuant to clause 3.9(d), the outgoing Trustee must:
 - (1) transfer all assets then comprising the Trust Fund (less an appropriate reserve for payment of its final fees and expenses) to the successor Trustee;
 - (2) deliver the books and records of the Trust Fund to the successor Trustee; and
 - (3) render a final account of its fees and expenses as Trustee to Lloyd's.
- (f) Notwithstanding the appointment of a successor Trustee, the outgoing Trustee remains entitled to:
 - (1) the settlement of its account in accordance with this Deed and the Operational Agreement; and
 - (2) reimbursement from the Trust Fund of any expenses or other disbursements or indemnities (whether arising before or after its removal or resignation) to which it would have been entitled had it continued to be the Trustee.

- (g) The outgoing Trustee is absolved and released from complying with all further obligations from the date of acceptance of appointment by the successor Trustee but:
- (1) the outgoing Trustee is not entitled to and will not ask for any release or indemnity other than those provided for in this Deed or the Operational Agreement;
 - (2) any release shall not extend to any liability the outgoing Trustee has in relation to this Deed or the transactions contemplated by this Deed for which the outgoing Trustee is not entitled to an indemnity under clause 9 of this Deed; and
 - (3) the outgoing Trustee retains the rights and remedies available to it under this Deed or at law in relation to the performance and exercise of its powers and obligations while Trustee;
- (h) Notwithstanding the preceding provisions of the clause, the resignation or removal of the Trustee does not take effect until a successor is appointed. Any successor Trustee shall and may from the date of appointment exercise all the powers, enjoy all the rights and be subject to all the duties and obligations of the Trustee under this Deed as fully as though the successor Trustee had been originally named as a party to this Deed but the successor Trustee has no liability in respect of any act or event that occurs prior to the successor Trustee accepting the appointment as Trustee.
- (i) If no prospective successor Trustee accepts an appointment within 30 days of the notice of resignation or removal made under this clause 3.9 taking effect, and the outgoing Trustee wishes to be relieved of responsibility as trustee under this deed, the Trustee or Lloyd's may apply to the Federal Court of Australia pursuant to Division 5 of Part VII of the Act for the appointment of a Judicial Trustee.
- (j) If an outgoing Trustee or Lloyd's takes the action specified in clause 3.9(i), it must give notice of such action forthwith to:
- (1) the APRA;
 - (2) Lloyd's or the Trustee (as the case may be); and
 - (3) in the case of the Trustee only, such Policyholders which have notified the Trustee in writing that they have an actual or potential claim against the assets of the Trust Fund.
- (k) On the appointment of a Judicial Trustee, the Trustee has no further responsibility under this deed as trustee other than:
- (1) to deliver the books and records of the Trust Fund to the Judicial Trustee;
 - (2) to do all things necessary to transfer any assets or rights in respect of the Trust Fund to the Judicial Trustee;
 - (3) to render a final account of its fees and expenses as Trustee to Lloyd's; and

- (4) liability under the Deed for which it is not entitled to an indemnity under clause 9.

3.10 Trustee's Obligations

No provision of this Deed requires the Trustee to expend or risk its own funds or to otherwise incur any financial liability in the performance of any of its duties or in the exercise of its rights including, but not limited to, prosecuting, defending or otherwise enforcing any claims by or against the Trust Fund.

3.11 Electronic Access

Where instructions are given by Lloyd's by electronic means, Lloyd's must operate the means of electronic access in accordance with the Operational Agreement so as to prevent unauthorised access.

3.12 Provision of information and notification

- (a) The Trustee must provide Lloyd's, its auditors or agents;
- (1) sufficient information as Lloyd's may request to allow Lloyd's to comply with its obligations under the Act, including its reporting obligations provided that the Trustee need only supply such information if it possesses that information in its capacity as Trustee; and
 - (2) such information and access to the books and records of the Trustee relating to the Trust Fund as Lloyd's may from time to time request.
- (b) Lloyd's must provide the Trustee with such information as the Trustee may reasonably request to assist the Trustee in operating and administering the Trust Fund in accordance with this deed, the Operational Agreement and the requirements of the Act provided the requested information is in Lloyd's possession at the time of the request.
- (c) The Trustee must promptly inform Lloyd's of:
- (1) any action or proposed action by any Governmental Agency in respect of the Trust or the Trust Fund of which the Trustee is aware; and
 - (2) any notice, direction or other communication sent to it by APRA or any Governmental Agency or received by it from APRA or any Governmental Agency in relation to or in connection with the Trust or the Trust Fund,
- and must provide Lloyd's with copies of all communications, notices or directions received from any Governmental Agency, including APRA in relation to the Trust or the Trust Fund.
- (d) If any notice or document is served on the Trustee in relation to the appointment of a Judicial Trustee of the Trust Fund then the Trustee must immediately provide a copy of that notice to Lloyd's and the Trustee must take such steps and do such things as Lloyd's may reasonably request in respect of any such appointment.

4 Payment of Claims

4.1 When Claims may be made Against the Trust Fund

- (a) If:
- (1) a Policyholder obtains a judgment in any court of competent jurisdiction within Australia (or an Australian court has made an order for the enforcement in Australia of a judgment of a court of another country or for the enforcement in Australia of the award of an arbitrator whether or not the arbitration was held in Australia or was conducted in accordance with Australian law) in respect of a liability under an Australian Policy in respect of which there is a Relevant Syndicate; and
 - (2) such judgment or order has become final in the sense that the particular litigation has been concluded, either through failure to appeal within the time permitted or through exhaustion of all possible avenues of appeal or review permitted by applicable law,
- the Policyholder may make a claim on the Trustee for payment out of the Trust Fund of an amount equal to the amount of the judgment (excluding any amount not expressly covered by the Australian Policy) by serving on the Trustee a statutory declaration or affidavit from the Policyholder's legal adviser stating that to the best of the adviser's knowledge, information and belief, but without further qualification:
- (3) the copy of the judgment or order attached or exhibited to the statement is a true copy of the judgment or order of which it purports to be a copy and that the judgment or order satisfies the requirements of paragraphs (a) and (b) above;
 - (4) the syndicate and year of account of the Australian Policy in respect of which the judgment or order was obtained or if the judgment or order relates to more than one syndicate or more than one year of account, the portion (as a sum of money) that is allocated to each such syndicate and each such year of account; and
 - (5) the judgment or order:
 - (A) does not include any amount not expressly covered by the Australian Policy; or
 - (B) includes amounts not expressly covered by the Australian Policy and that the amount or amounts thereof are not included in the amount claimed.
- (b) The Trustee may rely on any statutory declaration or affidavit served on it by a Policyholder's legal adviser pursuant to this clause 4.1 without the need for further enquiry and there will be no recourse against the Trustee for any such reliance.

4.2 Payment of Policyholder Claims

- (a) Upon receipt of a Policyholder Claim, the Trustee must within 7 Business Days:
- (1) notify Lloyd's; and
 - (2) provide copies of the documents received under clause 4.1 to Lloyd's.
- (b) Lloyd's must determine and advise the Trustee not later than 18 Business Days after service on the Trustee of a Policyholder Claim made under clause 4.1 (or, in the case of the termination date of the Trust Fund being less than 20 days following such date of service, the day before that termination date), whether the judgment or order is one in respect of:
- (1) the Relevant Underwriters' respective liabilities under an Australian Policy; and
 - (2) the syndicate and year of account to which the Policyholder Claim relates,
- and if Lloyd's fails so to advise of such determination, the judgment or order is deemed to be one in respect of such matters.
- (c) Lloyd's may at any time prior to the payment by the Trustee of a Policyholder Claim notify the Trustee if such Policyholder Claim has been satisfied.
- (d) The Trustee must (subject to clause 4.2(e)) pay to, or to the order of, the Policyholder who made the Policyholder Claim within 20 days after the expiration of the period referred to in clause 4.2(b) an amount equal to the amount of the judgment or order (excluding any amounts not expressly covered by the Australian Policy), if
- (1) a Policyholder Claim has been made on it pursuant to clause 4.1; and
 - (2) Lloyd's has not, within the period specified in clause 4.2(b), advised the Trustee that:
 - (A) the Relevant Underwriters' respective liabilities are not under an Australian Policy; or
 - (B) the judgment or order provided to the Trustee by the Policyholder relates to a syndicate or year of account which differs from that specified in the claim on the Trustee made in accordance with clause 4.1; or
 - (3) Lloyd's has not, prior to the payment by the Trustee of the Policyholder Claim, notified the Trustee that the judgment or order has been satisfied.
- (e) If the Responding Syndicate's Amount of any syndicate which is a Responding Syndicate in relation to a Matured Claim exceeds the aggregate of the Syndicate Share of the Trust Fund of the Responding Syndicate and the amount of Responding Syndicate's share of any Restricted Letter of Credit referable to that Responding Syndicate, the amount otherwise payable by the Trustee pursuant to clause 4.2(d) is reduced by the amount of the excess.
- (f) The Trustee must notify the APRA and Lloyd's that it has paid all or part of a Matured Claim within 10 days after making payment.

- (g) If the Trustee is not the trustee of the trust fund constituted under the Lloyd's Australian Joint Asset Trust Deed (No. 2) when a claim becomes a Matured Claim and the amount payable in respect of that claim is reduced by the operation of clause 4.2(e), the Trustee must forthwith send a written communication to the trustee of the trust fund constituted under the Lloyd's Australian Joint Asset Trust Deed (No. 2) containing the following information:
- (1) the communication is made pursuant to this clause;
 - (2) the existence and the amount of the Matured Claim;
 - (3) the amount of the Matured Claim remaining unsatisfied because of the operation of clause 4.2(e); and
 - (4) the last day for payment of the Matured Claim pursuant to clause 4.2(d); and
 - (5) the name and address of the person to whom payment of the Matured Claim is to be made.

4.3 Limitations

- (a) No Policyholder has any right of any nature or description under this deed to seek to enforce a Policyholder Claim or otherwise bring an action against the Trustee or Lloyd's except as provided in this deed.
- (b) A Policyholder may bring proceedings in any court of competent jurisdiction in Australia to challenge:
- (1) a determination of Lloyd's under clause 4.2(b); or
 - (2) a notification by Lloyd's under clause 4.2(c).
- (c) A Policyholder may bring proceedings in any court of competent jurisdiction in Australia to compel the Trustee to make a payment in accordance with clause 4.2(d).
- (d) No Policyholder may:
- (1) require an accounting from the Trustee; or
 - (2) inquire into the administration of the Trust Fund.

4.4 Sale of Trust Fund Assets

- (a) Unless otherwise directed in writing by Lloyd's and subject to the provisions of this clause 4.4, the Trustee must not dispose of any assets of the Trust Fund.
- (b) Payment of a Matured Claim under clause 4.2(d) must be made to, or to the order of, the Policyholder by whom, or on whose behalf, the Policyholder Claim was made.
- (c) Payment of Matured Claims and Trustee Claims must be made to the extent available and practical and out of the following assets in the following order to the extent that assets are available for that purpose:

- (1) from any cash in the Trust Fund (other than amounts which form part of the Distributable Income of the Trust Fund);
 - (2) from the proceeds of the sale by the Trustee of any or all of the marketable securities or other investments (other than Letters of Credit) in the Trust Fund;
 - (3) from the proceeds of the sale of any other assets in the Trust Fund (other than Letters of Credit);
 - (4) from the proceeds of drawings against any Letter of Credit; and
 - (5) from the Distributable Income of the Trust which has not been distributed pursuant to clause 5.5(b).
- (d) The Trustee may not use any Restricted Letter of Credit for the payment of Trustee Claims.
- (e) The Trustee may, subject to clause 4.4(c), in its sole discretion, sell all or part of the Trust Fund at the prevailing market price, in order to effect timely payment of any Matured Claim or any Trustee Claim (for which the Trustee is entitled to be reimbursed or paid out of the Trust Fund) and other than as provided in clause 9 the Trustee is not liable for any loss incurred in the sale of assets or for its selection of the assets to be sold or the timing of sale.
- (f) If at any time when a Matured Claim is to be paid, the Trust Fund is divided into two or more portfolios pursuant to clause 2.3, the assets which may be sold by the Trustee to enable each Responding Syndicate's Share of that Matured Claim to be paid must be of assets of that portfolio for the purposes of which the Responding Syndicate has been identified by Lloyd's as a Relevant Syndicate.

4.5 Payments Out of Trust Fund

- (a) Any obligation on the Trustee pursuant to this deed or the Operational Agreement to pay any sum to the trustees of a Premiums Trust Fund is satisfied by payment of that sum to the Lloyd's Clearing Account, Australia or to such other account as Lloyd's may notify the Trustee in writing from time to time.
- (b) The following priority applies to payments to be made out of the Trust Fund:
- (1) the payment of Trustee Claims;
 - (2) the payment of any Taxes;
 - (3) the payment of Matured Claims;
 - (4) the payment of Distributable Income; and then
 - (5) the payment of any other monies required to be paid in accordance with this deed.

5 Administration and Use of Trust Fund

5.1 Trustee's Powers

In connection with the management and investment of the Trust Fund, but subject to the provisions of this deed, the Operational Agreement, the Determination and Rules, the Trustee has all of the powers of a natural person with respect to that person's own assets.

5.2 Commingling

- (a) The Trustee may commingle the assets of the Trust Fund with those of trust funds established under two trust deeds dated 6 June 2000 between Lloyd's and the Trustee and entitled Lloyd's Australian Joint Asset Trust Deed (No. 1) and Lloyd's Australian Joint Asset Trust Deed (No. 2).
- (b) The Trustee must not commingle (or allow to be commingled) the assets of the Trust Fund with assets belonging to itself or any custodian.
- (c) The Trustee must not allow the assets of the Trust Fund to be commingled in any registered name, or account, at any custodian or Recognised Depository with those of any other client of the Trustee.
- (d) The names in which the assets are registered and the names of the accounts at any custodian or Recognised Depository in which assets comprising the Trust Fund may be held will be listed in the Operational Agreement.

5.3 Management of Trust Fund

- (a) Lloyd's may, subject to Part 7.3 of the Corporations Law, from time to time direct the Trustee (or such other person as the Trustee may nominate from time to time for the purpose) in accordance with the Operational Agreement and this deed to invest or reinvest any part of the Trust Fund (except to the extent that that part of the Trust Fund consists of Letters of Credit) in a manner permitted under the Act:
 - (1) in any stocks, bonds and securities;
 - (2) by making or changing any deposit; or
 - (3) by selling or disposing of any negotiable assets of the Trust Fund,and the Trustee must, subject to any direction or rule made under the Act in relation to any asset of the Trust Fund, act on such direction.
- (b) Unless Lloyd's directs the Trustee under clause 5.3(a) and subject to clause 5.3(e), the Trustee must not make, and has no responsibility to make, and has no liability for omitting to make, any investment of the Trust Fund other than depositing the Trust Fund (except to the extent the Trust Fund consists of Letters of Credit) with a Bank.
- (c) The Trustee is under no duty to give, and has no liability for omitting to give, any investment advice to any person in connection with the Trust Fund.

- (d) The Trustee must notify Lloyd's, in accordance with the Operational Agreement, as soon as reasonably practical after it becomes aware of any rights to conversion, subscription, voting or other rights pertaining to that part of the Trust Fund referred to in clause 5.3(a) and of any default in the payment of principal or interest. The Trustee must exercise all such rights in accordance with the instructions of Lloyd's.
- (e) In the absence of instructions from Lloyd's pursuant to clause 5.3(d) the Trustee may but is not obliged to:
 - (1) in the case of any rights or similar entitlement of a renounceable nature which bear an expiration date,
 - (A) sell, or authorise or direct the issuer to sell, the entitlement; and
 - (B) if the entitlement is sold, promptly deposit the proceeds of sale into the Trust Fund.
 - (2) in the case of:
 - (A) the right to elect whether or not to participate in a dividend reinvestment plan:
 - (B) the right to elect to convert a security to shares or cash; or
 - (C) the right to elect to receive a dividend in cash or in some other form of property (such as shares),
elect for cash.
 - (3) in the case of:
 - (A) the right to exercise a call or a put option or a warrant;
 - (B) the right to accept a takeover or similar offer; or
 - (C) a call being made in respect of any security comprising the Trust Fund,
take any action the Trustee considers appropriate.
- (f) Lloyd's must ensure that any direction to the Trustee to invest or reinvest any part of the Trust Fund pursuant to clause 5.3(a) will not prevent the Trustee from paying any Matured Claim within the time period specified in clause 4.2.

5.4 Borrowings

The Trustee must not:

- (a) borrow or raise any money for the purposes of the Trust Fund;
- (b) charge any part of the Trust Fund; or
- (c) incur, or allow to be incurred, a liability that is not connected with the administration of the Trust Fund in accordance with this deed, the Operational Agreement or the Act.

5.5 Distribution and Reinvestment

- (a) The Trustee must collect all Investment Income paid or receivable in respect of the Trust Fund and reinvest the same as an asset of the Trust Fund as directed in writing by Lloyd's.
- (b) The Trustee must, subject to any direction made under the Act, distribute the Distributable Income in respect of a Financial Year:
 - (1) in accordance with instructions in writing from Lloyd's from time to time;
 - (2) to the trustees of each of the Premiums Trust Funds of the members of the Relevant Syndicate;
- (c) As at the end of each Financial Year:
 - (1) the Trustee holds the Distributable Income which has not then been distributed on trust for the trustees referred to in clause 5.5(b); and
 - (2) those trustees (in their capacity as trustees of each of the Premiums Trust Funds of such members) have an absolute vested and indefeasible interest in that amount;

in the shares as directed by Lloyd's and, failing such direction, in equal proportions.
- (d) If at the expiration of 90 days after the end of a Financial Year, Distributable Income in relation to that Financial Year has not been distributed, the Trustee must distribute that income to the trustees of each of the Premiums Trust Funds of the members of the Relevant Syndicates in equal shares.
- (e) The Trustee must notify Lloyd's of the extent to which a distribution is composed of, and the types of, income and capital.
- (f) If in respect of any Financial Year, the amount of the Net Taxable Income exceeds the amount of the Net Income, the Trustee must act on direction from Lloyd's in determining whether or not any or all of that excess amount is to form part of the Distributable Income for that Financial Year.
- (g) To the extent there is an amount payable to a person otherwise than in accordance with clause 5.5(b) the Trustee must first make that payment of out of corpus and thereafter make the payment by application of the income of the Trust which has not been distributed pursuant to clause 5.5(b).
- (h) On the termination of the Trust, any money remaining after satisfaction by the Trustee of all its obligations in respect of the Trust Fund that is referable to a Relevant Underwriter must be paid to the trustees of the relevant Premiums Trust Fund for that Relevant Underwriter.
- (i) Any amount of Distributable Income which has not been distributed pursuant to this clause 5.5 is available to meet any Trustee Claim or Matured Claim.

5.6 Letters of Credit and Restricted Letters of Credit

- (a) If the assets of the Trust Fund consist in whole or in part of a Letter of Credit (which Letter of Credit may be issued by the Trustee or an affiliate in its commercial capacity and not its capacity as Trustee), the Trustee must:
- (1) in the absence of any notice from Lloyd's at least 30 days in advance of any termination of the Letter of Credit to the effect that:
 - (A) the Letter of Credit will be renewed or extended before its expiry date;
 - (B) other assets will be substituted for the Letter of Credit before its expiry date; or
 - (C) failure to draw down the Letter of Credit will not result in the amount standing to the credit of any Relevant Syndicate falling below the Minimum Amount of that Relevant Syndicate as at the date at which the most recent valuation of the Trust Fund as provided for in clause 6.3(b)(3) was made; or
 - (2) if the Trustee receives notice pursuant to clauses 5.6(1)(A) or (B) and the Trustee does not receive any such renewed or extended Letter of Credit or substitution of assets as the case may be at least 14 days prior to any termination of the Letter of Credit;

draw down the Letter of Credit and hold the proceeds as an asset of the Trust Fund in respect of the syndicate and year of account to which the Letter of Credit related pursuant to the terms of this deed.

- (b) A Letter of Credit which is an asset of the Trust Fund is a Restricted Letter of Credit if Lloyd's notifies the Trustee in writing that the Letter of Credit is referable to one or more but not all Relevant Syndicates and Lloyd's has, in that notification:
- (1) identified the Relevant Syndicate or the Relevant Syndicates to which that Restricted Letter of Credit is referable; and
 - (2) if more than one, the respective interests of each such Relevant Syndicate in that Restricted Letter of Credit.

5.7 Substitution and Surrender of Letters of Credit

The Trustee must within 14 days of receipt of a written notice from Lloyd's to that effect:

- (a) surrender any Letter of Credit where at the time the Letter of Credit is surrendered, the Trustee receives as an asset of the Trust Fund property (including another Letter of Credit) having a value not less than the face value of the Letter of Credit that is being surrendered;
- (b) surrender any Restricted Letter of Credit held by the Trustee where at the time the Restricted Letter of Credit is surrendered, the Trustee receives as an asset of the Trust Fund property (including another Restricted Letter of Credit) having a value not less than the face value of the Restricted Letter of Credit that is being

surrendered provided that if the Restricted Letter of Credit which is being surrendered is:

- (1) only referable to one Relevant Syndicate, the Trustee receives property referable to that Relevant Syndicate having a value not less than the face value of the Restricted Letter of Credit that is being surrendered;
 - (2) referable to more than one Relevant Syndicate, the value of the respective interest of each such Relevant Syndicate in the property received by the Trustee is not less than the value of its interest in the Restricted Letter of Credit which is being surrendered; and
- (c) surrender or vary any Letter of Credit or Restricted Letter of Credit if the Trustee is satisfied that the consequences of such surrender or variation are such that the Syndicate Share of the Trust Fund of a Relevant Syndicate plus that Relevant Syndicate's share of any Restricted Letter of Credit referable to that Relevant Syndicate will not, as a result of the surrender or variation, be less than the Minimum Amount for that Relevant Syndicate.

5.8 Payment of Distributable Income

- (a) Lloyd's must not give the Trustee a direction to distribute any Distributable Income referable to any quarter until Lloyd's has given the Trustee a notice pursuant to clause 6.1(a) in relation to that quarter.
- (b) If Lloyd's directs the Trustee to distribute any Distributable Income in respect of a Relevant Syndicate and at that time the Syndicate Share of the Trust Fund of that Relevant Syndicate (plus the amount of any share of any Restricted Letter of Credit referable to that Relevant Syndicate):
 - (1) is less than the Minimum Amount for that Relevant Syndicate as at such date; or
 - (2) would be less than the Minimum Amount for that Relevant Syndicate if that distribution was made;

the Trustee is hereby irrevocably directed by the trustees of the Premiums Trust Funds of the members of the Relevant Syndicate to apply so much of an amount equal to the distribution as is specified in a notice in writing from Lloyd's in making good or reducing that deficiency as the case may be and the Trustee must so apply the amount so specified.

5.9 Transfer of Funds

Subject to any direction under the Act, Lloyd's may at any time and from time to time direct the Trustee in writing to transfer any funds in excess of the Minimum Amount of a Relevant Syndicate as reported in the latest required notice given pursuant to clause 6.1(a) to the trustees of the Premiums Trust Funds of the members of the Relevant Syndicate or otherwise as directed by Lloyd's in accordance with the Operational Agreement. If the latest required notice has not been given, no transfer may be made.

5.10 Payment of Claims

- (a) Lloyd's may at any time and from time to time direct the Trustee in writing to pay to a person who is a Policyholder in relation to a Relevant Underwriter in satisfaction of a Claim in relation to that Relevant Underwriter such amount out of the Trust Fund (not exceeding the lesser of the amount of the Claim and the aggregate of the Syndicate Share of the Trust Fund of the Responding Syndicate and the amount of the Responding Syndicate's share of any Restricted Letter of Credit referable to that Responding Syndicate) as Lloyd's may direct.
- (b) Lloyd's may only make a direction under clause 5.10(a) if:
 - (1) the latest required notice has been given pursuant to clause 6.1(a);
 - (2) the aggregate value of such Claims of a particular Policyholder in respect of the Responding Syndicate is not less than \$10 million;
 - (3) such Claims are to be satisfied in Australia; and
 - (4) Lloyd's procures in favour of the Trustee the prior written consent of the APRA to such withdrawal;
- (c) On payment of any claim pursuant to clause 5.10(a), the Minimum Amount of the Responding Syndicate is reduced by the amount of the payment.

5.11 Responding Syndicate

The Responding Syndicate in relation to a Matured Claim or a Claim which is to be paid in accordance with clause 5.10 in respect of a contract or policy of insurance or reinsurance is:

- (a) the syndicate and year of account against which a judgement referred to in clause 4.1 has been given; or
- (b) if the liabilities of the members of that syndicate in respect of the contract or policy have been reinsured pursuant to any Reinsurance to Close with Continuing Underwriters, the syndicate or syndicates which is or are shown in the RITC Matrix as the accepting syndicate or syndicates in relation to the syndicate the members of which are the original underwriters of that contract or policy of insurance or reinsurance pursuant to the terms of which the Matured Claim or Claim is being paid.

5.12 Trustee's Authority to Hold Investments

The Trustee is authorised to delegate from time to time the safekeeping of any of the assets held in the Trust Fund to such custodians as the Trustee and Lloyd's may agree from time to time in writing, on the following bases:

- (a) The custodian must be a Bank, a subsidiary of a Bank, or a Recognised Depository.
- (b) The Trustee must notify Lloyd's of the appointment and dismissal of any custodian.

- (c) The Trustee's liability hereunder with respect to the duties and functions so performed by such custodians shall be the same as if such duties and functions were performed by the Trustee itself.
- (d) The custodian may be permitted to delegate the safekeeping of any of the assets held in the Trust Fund to other custodians on the same terms as in this clause 5.12.
- (e) The delegation is consistent with the requirements of the APRA in relation to custodians and managers as set out in the relevant APRA circulars.

5.13 Assets of the Trust Fund

The Trustee is under no duty or obligation to require, and has no liability for omitting to require, Lloyd's to make any transfers or payments of additional assets to the Trust Fund and it is to be conclusively presumed that any and all such transfers or payments to Trustee have been properly made.

5.14 Tax

The Trustee must pay out of the Trust Fund all Taxes which are by law payable by it in the execution of the trusts contained in this deed. In the case of any withholding Tax, the Trustee must deduct any withholding Tax due or which may become due in respect of any amount payable or which may become payable to the trustees of the Premiums Trust Funds and must remit the same to the Australian Taxation Office in accordance with the relevant provisions of the Tax Act.

5.15 Audit

- (a) The Trustee must appoint a registered company auditor or (if permitted by APRA) a firm at least one of whose members is a registered company auditor (in either case approved by Lloyd's), to be Auditor of the Trust Fund.
- (b) The Trustee may after consultation with Lloyd's remove the Auditor.
- (c) The terms of appointment of the Auditor must specify that the Auditor may retire by giving not less than 3 months' notice to the Trustee (or such shorter notice agreed to by the Trustee and Lloyd's).
- (d) The remuneration of the Auditor must be set by the Trustee and approved by Lloyd's.
- (e) The Trustee must keep or cause to be kept proper books and records relating to the Trust Fund. The Trustee may establish such accounts and records as shall be reasonable and otherwise as it may determine. The Trustee must ensure that the accounts are audited by the Auditor in respect of each calendar year and each Financial Year.
- (f) Graeme Mark McKenzie, a partner in the firm of Ernst & Young, is the first Auditor of the Trust Fund and is deemed to have been appointed by the Trustee and approved by Lloyd's in accordance with clause 5.15(a) by the execution of this deed.

5.16 Judicial Trustee

If at any time the Trustee is a Judicial Trustee appointed pursuant to the provisions of Division 5 of Part VII of the Act, notwithstanding any provisions of this deed to the contrary, and in connection with the management and investment of the Trust Fund:

- (a) the Trustee has all of the powers of a natural person with respect to that person's own assets;
- (b) the Trustee is under no obligation to act in accordance with the directions of Lloyd's or any other person;
- (c) the Trustee is not bound by the Operational Agreement; and
- (d) the Trustee must not make any distributions pursuant to clauses 5.5(b) or 5.5(d).

6 Valuation and Reporting

6.1 Notice of Minimum Amount

- (a) Lloyd's must determine, as at the last day of each quarter following the Effective Date and as at the last day of each quarter thereafter, the Minimum Amount in relation to each Relevant Syndicate and Lloyd's must advise the Trustee of the amounts so determined within 52 days of each quarter end concerned.
- (b) Subject to any contrary direction of the APRA, the Trustee may rely on the most recent statement from Lloyd's as to the Minimum Amount of a Relevant Syndicate without any recourse against the Trustee and without any obligation to make enquiry in relation to the statement.

6.2 Notice of Syndicate Percentage

- (a) Lloyd's must determine, as at the date or dates specified in the Operational Agreement:
 - (1) the percentage share of the Trust Fund referable to each Relevant Syndicate (excluding the amount of any share of any Restricted Letters of Credit referable to that Relevant Syndicate); and
 - (2) the Relevant Syndicate's share of any Restricted Letter of Credit referable to that syndicate;

and Lloyd's must advise the Trustee of the percentages and amounts so determined within 59 days of each quarter end.

- (b) Any notice given by Lloyd's to the Trustee pursuant to clause 6.2(a) must, if necessary, separately identify the Syndicate Percentage of the Relevant Syndicates which are Relevant Syndicates for the purposes of any notice given in accordance with clause 2.3.
- (c) Subject to any contrary direction of the APRA, the Trustee may rely on the most recent statement from Lloyd's as to the Syndicate Percentage of a Relevant Syndicate without any recourse against the Trustee and without any obligation to make enquiry in relation to the statement.

6.3 Trustee to Certify Value of the Trust Fund

- (a) The Trustee must within 30 days after the end of each quarter promptly certify, as at the last day of each quarter ending after the Effective Date to Lloyd's and, if so directed by either Lloyd's or the APRA, to the APRA:
- (1) the existence of the Trust Fund;
 - (2) the value of each of the assets of the Trust Fund; and
 - (3) the aggregate value (net of any charges, liens or encumbrances held by the Trustee or Trustee Claims or Matured Claims) of the Trust Fund.
- (b) The Trustee must make the certifications contained in clause 6.3(a)(2) and (3) based on the most recent values available to the Trustee whenever so directed by the APRA or Lloyd's Agent in Australia within 10 days of being so directed.
- (c) Whenever the Trustee is required under this deed to value the assets of the Trust Fund, it may do so itself or employ an agent for such valuation (which agent may be a subsidiary, affiliate or associate of the Trustee).
- (d) The valuation of any assets of the Trust Fund under this clause 6.3 must be carried out in accordance with the Rules.

6.4 Provision of Information to the APRA

Lloyd's and the Trustee must make available to the other or to the APRA (as the case may require) such information as is reasonably necessary or reasonably required to enable it to provide information to the APRA or to undertake or cause to be undertaken any actuarial investigation required by the APRA at any time and from time to time.

6.5 Notice of Syndicate Constitution

- (a) Lloyd's must within 30 days of a transfer of property to the Trustee under clause 2.1 deliver to the Trustee a copy of the initial syndicate constitution for each relevant syndicate and year of account.
- (b) Lloyd's must within 60 days of the end of the calendar year corresponding to the year of account of a Relevant Syndicate deliver to the Trustee a copy of the final syndicate constitution for each Relevant Syndicate and year of account.
- (c) Whenever required by the Trustee in accordance with the Operational Agreement, Lloyd's must deliver to the Trustee a copy of any revised or amended syndicate constitution for each syndicate and year of account specified in the notice requiring such delivery.

6.6 Valuation and Reporting

- (a) If the Trustee is required to calculate the Syndicate Share of the Trust Fund of a Relevant Syndicate at any time, it must do so as follows:

$$SST = SS \times TF$$

where:

- SST is the Syndicate Share of the Trust Fund of a Relevant Syndicate at any time
- SS is the Syndicate Percentage of a Relevant Syndicate as last notified by Lloyd's to the Trustee pursuant to clauses 2.1(b) 2.3, 2.5 or 6.2 (as the case may require)
- TF is the value of the Trust Fund (excluding any Restricted Letters of Credit) as at the date on which the Trust Fund was last valued in accordance with this deed
- (b) Immediately prior to the payment out of the Trust Fund of any amount pursuant to clauses 4.2(d) or 5.10 the Trustee must determine the value of the assets in the Trust Fund (excluding any Restricted Letters of Credit) and determine the Syndicate Share of the Trust Fund of the Responding Syndicate and:
- (1) the Syndicate Share of the Trust Fund so determined is the Syndicate Share of the Trust Fund for the purposes of clause 4.2(e) or 5.10 as the case requires in respect of that payment; and
 - (2) immediately following that payment, the Syndicate Share of the Trust Fund in respect of the Responding Syndicate must be reduced in the manner provided in the Operational Agreement.
- (c) Immediately following any recalculation of the Syndicate Share of the Trust Fund in respect of a Responding Syndicate pursuant to clause 6.6(b), Lloyd's must notify the Trustee in writing of:
- (1) the percentage share of the Trust Fund referable to each Relevant Syndicate (excluding the amount of any share of any Restricted Letters of Credit referable to that Relevant Syndicate); and
 - (2) the Relevant Syndicate's share of any Restricted Letter of Credit referable to that syndicate.

6.7 RITC Matrix

Lloyd's must as and when necessary to ensure that the Trustee has up to date information provide to the Trustee a document to be called the "RITC Matrix" which shows in tabular form:

- (a) the name and year of account of each syndicate (to be identified as ceding syndicates) the members of which are underwriters who have, as original underwriters, underwritten liabilities under contracts or policies of insurance that are, in relation to Continuing Underwriters, Australian Policies;
- (b) opposite the name and year of account of each ceding syndicate, the name and year of account of each syndicate (to be identified as accepting syndicates) the members of which:
 - (1) have assumed liabilities under the contracts or policies of insurance referred to in clause 6.7(a) pursuant to a contract or contracts of Reinsurance to Close; and
 - (2) are Relevant Underwriters in respect of those liabilities; and

- (c) opposite the name and year of account of each accepting syndicate, the proportion of the liabilities under contracts or policies of insurance referred to in clause 6.7(a) (expressed as a percentage) which have been assumed by the members of each of the accepting syndicates referred to in clause 6.7(b).

7 Deficiency in Trust Fund Assets

The Trustee must give notice to Lloyd's, Lloyd's Agent in Australia and the APRA forthwith if, on the expiration of 60 days after the date as at which the most recent valuation of the Trust Fund as provided for in clause 6.3(a)(3) was made :

- (a) the Syndicate Share of the Trust Fund that was referable to a Relevant Syndicate on the date of the valuation (plus the amount of any share of any Restricted Letters of Credit referable to that Relevant Syndicate) was less than the Minimum Amount for that Relevant Syndicate as at that date; and
- (b) any such deficiency has not been subsequently made good by a transfer of property to the Trustee by or on behalf of the Relevant Underwriters of an amount that is equal to or greater than the amount of the deficiency.

8 Formulation of Scheme

The principles in the Schedule are those set out for the purposes of section 92M(2) of the Act.

9 Limitation of liability and indemnity of Trustee

- (a) The Trustee has no liability in relation to this deed or the transactions contemplated by this deed except for any loss arising from :
- (1) its fraud, negligence or breach of trust; or
 - (2) any fraud, negligence or breach of trust committed by any officers, employees or agents.
- (b) Lloyd's must indemnify the Trustee against Taxes payable by the Trustee in its capacity as trustee of the Trust Fund and any stamp duty in respect of this deed or the Operational Agreement (including all penalties in respect thereof not caused by the fraud, negligence or breach of trust of the Trustee or any of its employees) and Lloyd's agrees that payment of any such duty by the Trustee is not a condition precedent to the enforcement of such indemnity.
- (c) The Trustee may, in any case where it is entitled to be indemnified or paid by Lloyd's if it incurs a cost, charge, liability or expense (including all duties, taxes, fines or penalties in respect thereof not caused by the Trustee or any of its employees) require Lloyd's to advance to it before that cost, charge, liability or expense is incurred a sum sufficient to cover that cost, charge, liability or expense. A certificate signed by an authorised officer of the Trustee stating the

amount of any advance requested under this clause will, in the absence of manifest error, be conclusive and binding on Lloyd's.

- (d) If any sum is advanced to the Trustee pursuant to clause 9(c) the Trustee must account for the manner in which that sum is used by providing to Lloyd's written evidence of the proper application of that sum toward payment of the relevant cost, charge, liability or expense and if any or all of such sum is not required or not used to pay such cost, charge, liability or expense then the Trustee must refund the difference to Lloyd's.

10 Miscellaneous

10.1 Breach of obligations

- (a) Each party must inform the other immediately it becomes aware of any breach by it of the terms of this deed or the obligations imposed by this deed.
- (b) Each party must inform the other immediately it becomes aware that any obligations imposed on it pursuant to this deed or the transactions contemplated by this deed cannot be fulfilled.

10.2 No Partnership

Nothing herein constitutes a partnership between any of the Relevant Underwriters or between a Relevant Underwriter and any of the Other Underwriters, the underwriting business of each Relevant Underwriter being carried on for that Relevant Underwriter's sole and separate account.

10.3 Governing Law

- (a) This deed is governed by and construed and enforced in accordance with the laws of the State of New South Wales.
- (b) The parties to this deed submit to the exclusive jurisdiction of the Supreme Court of New South Wales for the purpose of determining any dispute, question or difference (including, without limitation, its existence, validity or termination) arising under, out of, or in connection with it.

10.4 Amendment of this Deed

- (a) Lloyd's has power in its discretion to amend this deed with the written consent of the Trustee such consent not to be unreasonably withheld; provided that:
- (1) such power is exercised by the Council;
 - (2) amendments to this deed must be in writing and signed on behalf of the Council; and
 - (3) no amendment becomes effective without the prior written consent of the APRA.
- (b) Lloyd's must advise the Trustee in writing when any such amendment becomes effective.

10.5 Notices

- (a) Lloyd's must provide the Trustee with:
- (1) its mailing address;
 - (2) the mailing address of the APRA; and
 - (3) the name and mailing address of Lloyd's Agent in Australia,
- and must update this information from time to time as may be necessary to keep the information current. The Trustee may rely upon such information without the need to make further enquiries.
- (b) Any notice required by this deed to be given by any party or parties to any other party or parties must be given in the manner specified in the Operational Agreement.

10.6 Partial Invalidity Does Not Invalidate Entire Deed

If any provision of this deed is held invalid or unenforceable, the remainder of this deed shall be construed and enforced as if such provision had not been inserted herein.

10.7 Further assurances

Each party must do all things necessary to give full effect to this deed and the transactions contemplated by this deed.

10.8 Counterparts

- (a) This deed may be executed in counterparts.
- (b) Both counterparts, taken together, constitute one instrument.

10.9 Attorneys

Each of the Attorneys executing this deed states that the Attorney has no notice of the revocation of the power of attorney appointing that Attorney.

Schedule - (Clause 8.1)

Section 92M(2) principles

- 1 No Relevant Underwriter has financial or other responsibility for the liabilities of any other Relevant Underwriter.
- 2 Claims may be met when the scheme administrator has determined that the Claim is payable, notwithstanding the fact that no judgment may have been entered in favour of the Policyholder.
- 3 There must be established an account ("Underwriter's Account") in the name of each Relevant Underwriter who was a member of a Relevant Syndicate on the day on which the Federal Court of Australia approved a scheme formulated under section 92M of the Act ("Relevant Date").
- 4 There must be credited to an Underwriter's Account the share of that Relevant Underwriter in the Trust Fund.
- 5 The share of a Relevant Underwriter in the Trust Fund is an amount in respect of each Relevant Syndicate of which that Underwriter is a member calculated in accordance with the formula:

$$S = CS \times (SSTF + RLC)$$

where:

- S is the share of a Relevant Underwriter in the Trust Fund;
 - CS is the proportion that the Relevant Underwriter's syndicate premium limit in that syndicate bears to the syndicate allocated capacity in that year of account of that syndicate in each case as specified in the syndicate constitution as last communicated to the Trustee under clause 6.5 or in such other proportion as the Trustee believes on reasonable grounds more accurately reflects the Relevant Underwriter's share;
 - SSTF is the Syndicate Share of the Trust Fund of that syndicate calculated in accordance with clause 6.6; and
 - RLC is the amount of the Relevant Syndicate's share of any Restricted Letter of Credit referable to that syndicate.
- 6 Property of the Trust Fund that is referable to an Underwriter's Account (except for a Relevant Underwriter's share of expenses of the administration - see 6(d) below) is only to be available to meet the Relevant Underwriter's share of a liability under an Australian Policy if the Relevant Underwriter was a member of a Relevant Syndicate in respect of that Australian Policy on the Relevant Date.
 - 7 In explanation of 6 above:
 - (a) The property of the Trust Fund that is referable to an Underwriter's Account of a Relevant Underwriter is not available to meet that Underwriter's share of a liability under an Australian Policy issued by that Relevant Underwriter amongst others as a member of a syndicate for a particular year of account if the Relevant Underwriter was a member of a syndicate for a year of account which was not a Relevant Syndicate on the Relevant Date because that liability had been reinsured pursuant to a Reinsurance to Close with one or more of the Continuing Underwriters as members of the same or

another syndicate for a later year of account where those Continuing Underwriters were members of a Relevant Syndicate on the Relevant Date;

- (b) Any surplus in the Trust Fund that is referable to the Underwriter's Account of a Relevant Underwriter must be paid to the trustees of the relevant Premiums Trust Fund for that Relevant Underwriter; and
 - (c) Costs of winding-up or dissolution of the Trust Fund are to be debited to each Relevant Underwriter in the same proportion as the aggregate value of the property of the Trust Fund that is referable to the Underwriter's Account of that Relevant Underwriter on the Relevant Date bore to the aggregate value of the property of the Trust Fund that was referable to the Underwriter's Accounts of all Relevant Underwriters on that date.
- 8 Costs of winding-up or dissolution of the Trust Fund must first be met from the Security Deposit to the extent to which the Security Deposit is available for those purposes.
- 9 To the extent to which property held in respect of a Relevant Underwriter is insufficient to meet that Relevant Underwriter's liabilities under Australian Policies (including that Relevant Underwriter's share of the costs of winding-up or dissolution of the Trust Fund), those liabilities may be met from the property held under the Trust Deed made 6 June 2000 between Lloyd's and the Trustee and entitled Lloyd's Australian Joint Asset Trust Deed (No. 2) in accordance with its terms.
- 10 To the extent to which property held in respect of a Relevant Underwriter and the property held under the Lloyd's Australian Joint Asset Trust Deed (No. 2) is insufficient to meet that Relevant Underwriter's liabilities under Australian Policies (including that Relevant Underwriter's share of the costs of winding-up or dissolution of the Trust Fund), those liabilities must be paid proportionately.
- 11 No liabilities of a Relevant Underwriter which may be met from property held pursuant to the terms of this Trust Deed or the Lloyd's Australian Joint Asset Trust Deed (No. 2) may be met from any property held pursuant to the terms of the Trust Deed made 6 June 2000 and entitled Lloyd's Australian Joint Asset Trust Deed (No. 1).
- 12 On the winding up of the Trust, property held in respect of a Relevant Underwriter must be applied in the following order:
- (a) in payment of that Relevant Underwriter's share of costs of winding up or dissolution referred to in paragraph 7(b) above;
 - (b) in satisfaction of that Relevant Underwriter's share of liabilities as provided for in paragraph 7(a) above; and
- 13 If there is any surplus on the winding up of the Trust after any payments required to be made under paragraph 12 have been made, any property held in respect of a Relevant Underwriter must be transferred to the trustees of the relevant Premiums Trust Fund for that Relevant Underwriter as contemplated by clause 7(b) above and the scheme administrator must make these transfers as soon as the scheme administrator is satisfied that there are no other claims which can be met out of that Underwriter's Account.

**Executed as a deed:
Signed sealed and delivered for
Lloyd's**

by its attorney in the
presence of:

Witness

Attorney

Name (please print)

Name (please print)

**Signed sealed and delivered for
National Australia Trustees Limited**

by its attorney in the
presence of:

Witness

Attorney

Name (please print)

Name (please print)

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