

# LLOYD'S SOUTH AFRICAN TRUST DEED



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## LLOYD'S SOUTH AFRICAN TRUST DEED

THIS DEED OF TRUST is made on <sup>15<sup>th</sup> AD</sup> ~~15<sup>th</sup> AD~~ ~~15<sup>th</sup> AD~~ 1997

### BETWEEN:

1. **LLOYD'S**, the Society incorporated under Lloyd's Act (UK) 1871 having its principal office at One Lime Street, London, England (*Lloyd's*); and
2. **STANDARD TRUST LIMITED**, registration number 11/00010/06, having its registered office at 9th floor, Standard Bank Centre, 5 Simmonds Street, Johannesburg (with its successors the *Trustee*)

### RECITALS:

- A. The Short-term Insurance Act, 1998, requires that security be deposited in one of the following Trusts for the obligations of Lloyd's Underwriters under South African short-term policies, as follows:
  - (1) the security is to be provided to this Trust in the case of policies where the cover commences on or after 1 January 1999, except to the extent, in accordance with Lloyd's accounting practice, the policy is accounted for in the 1998 or an earlier Year of Account; and
  - (2) the security is to be provided to the Lloyd's South African Transitional Trust in the case of all other policies, except where a policy is reinsured into the 1999 or any subsequent Year of Account pursuant to the mechanism at Lloyd's known as a Reinsurance to Close in which event the policy from then on comes under this Trust instead of the Lloyd's South African Transitional Trust.
- B. Existing and future Underwriters, and the managing agents of the Syndicates of which the Underwriters are Members, become parties to this Deed by notice to the *Trustee*.
- C. The security is to be provided by the Members of the Syndicate which underwrote

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the policy, except that:

- (1) the Members of a reinsuring Syndicate provide the security from the effective date of the reinsurance where:
    - (a) the policy is reinsured pursuant to a Reinsurance to Close; or
    - (b) the period of the cover under the policy exceeds a year and the period in excess of a year is wholly or partly reinsured; and
  - (2) where a Member of a Syndicate ceases to be a Member before the end of the Year of Account into which the policy falls and the remaining Members take over the Member's participation in the Syndicate, the security that would otherwise be provided by that Member is provided by the remaining Members.
- D. Each Underwriter's liability to the holders of policies underwritten by the Syndicate of which he is or was a Member, is several, not joint and several. Accordingly, the part of the Trust Fund arising from contributions made by or on behalf of an Underwriter secures the obligations of that Underwriter only and not the obligations of any other Underwriter or Underwriters, whether they are Members of the same Syndicate or not, even though for administrative convenience the records of the Trust are kept mostly on a per Syndicate basis and not on a per Underwriter basis.

## **THIS DEED WITNESSES**

That Lloyd's and the Trustee agree as follows:

## **PART 1 - DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

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

*Act* means the Short-term Insurance Act, 1998 (Act 53 of 1998);

*Agent*, in relation to a Syndicate and a Year of Account, means the managing agent at

Lloyd's that Underwriters who participate in such Syndicate during all or part of that Year of Account appoint to act, and who is acting, as the agent of such Underwriters for the purpose of conducting the underwriting business of such Underwriters as Members of the Syndicate, and includes:

- (a) a substitute managing agent appointed by the Lloyd's Council in accordance with the Lloyd's Byelaws or Regulations, and
- (b) where the context so admits, any person, including Lloyd's or a nominee of Lloyd's, designated by the Agent in writing to the Trustee as having the power for the time and to the extent designated (or until revoked by notice in writing to the Trustee) to act on behalf of and in like manner and with the same effect as the Agent itself may act under this Deed;

**Deed** means this trust deed including the schedules to it and all notices of accession given in terms of clause 3.1;

**Lloyd's Byelaw or Regulation** means any byelaw or regulation, or any condition, requirement or direction, or other regulatory provision, made under any such byelaw or regulation, made by or under the authority of the Lloyd's Council from time to time.

**Member** means an Underwriter who is a member of a Syndicate, and any Underwriter who is a former member of a Syndicate who continues to have South African Obligations;

**Minimum Amount**, in relation to an Underwriter as a Member of a particular Syndicate and in respect of a particular Year of Account, means the minimum amount of security determined in accordance with schedule 3 to the Act read with clause 5 of this deed in respect of that Underwriter as a Member of that Syndicate for that Year of Account;

**Operational Agreement** means an agreement entered into between Lloyd's and the Trustee pursuant to clause 9.2;

**Part of the Fund**, in relation to an Underwriter as a Member of a particular Syndicate and in respect of a particular Year of Account, means the part of the Trust Fund arising from:

- (a) contributions paid by or on behalf of the Underwriter as a Member of that Syndicate and in respect of that Year of Account, plus

- (b) any amount owing to the Underwriter by a Lloyd's correspondent and paid to the Trust by the Lloyd's correspondent pursuant to a notice to do so given by the Registrar in terms of section 62(6) of the Act due to a default on the part of the Underwriter, such amount to be allocated among the Parts of the Fund relating to the Underwriter in proportion to the value of those Parts of the Fund unless otherwise stipulated in that notice, plus
- (c) the investment income, gains and losses accruing on that part of the Trust Fund from time to time net of all charges and expenses, less
- (d) withdrawals from time to time in accordance with clause 6 to pay claims and surpluses;

***Parties to this Deed*** means Lloyd's, the Trustee and the Agents and Underwriters who have given notice of accession as parties to this Deed under clause 3.1 and have not ceased to be parties as set out in clause 3.3;

***Premiums Trust Fund***, in relation to an Underwriter, means the premiums trust fund set up with respect to the Underwriter pursuant to, and which is governed by, the Lloyd's Premiums Trust Deed approved pursuant to the Insurance Companies Act (UK) 1982 and executed from time to time by the Underwriter in respect of the Underwriter's insurance business at Lloyd's other than long-term business;

***Registrar*** means the Registrar of Short-term Insurance under the Act;

***Reinsurance to Close*** means an agreement:

- (a) under which Underwriters (the ***Reinsured Underwriters***) who are Members of a Syndicate for a Year of Account (the ***Closed Year***) agree with Underwriters who constitute that or another Syndicate for a later Year of Account (the ***Reinsuring Underwriters***) that the Reinsuring Underwriters will discharge or procure the discharge of, or indemnify the Reinsured Underwriters against, all known and unknown liabilities of the Reinsured Underwriters arising out of insurance business underwritten through the former Syndicate and falling into the Closed Year, excluding liabilities reinsured under the reinsurance and run-off contract dated 3 September 1996 entered into between Equitas Reinsurance Ltd, Equitas Ltd, Lloyd's, Additional Underwriting Agencies (No. 9) Ltd and others; or

(b) as otherwise defined from time to time in the Lloyd's Byelaws or Regulations;

**South African Obligations** means, in relation to an Underwriter, the obligations of the Underwriter under South African Short-term Insurance Policies to which this Deed applies;

**South African Short-term Insurance Policy** means a policy to which this Deed applies as set out in Part 2 of this Deed;

**South African Representative** means the person appointed by Lloyd's as its representative for the purposes of the Act and includes the person appointed as deputy representative while acting in the place of his principal;

**Syndicate** means a group of Lloyd's Underwriters, not being a legal entity, or a single corporate Underwriter, underwriting insurance business at Lloyd's, through the agency of a managing agent, to which a particular syndicate number has been assigned by or under the authority of the Lloyd's Council, notwithstanding that the membership of the Syndicate and/or the participations of the Members in the Syndicate may change from time to time;

**Trust** means the trust established by this Deed;

**Trust Fund** means the fund arising from the contributions made by or on behalf of the Underwriters pursuant to this Deed, including any amount paid to the Trust by a Lloyd's correspondent pursuant to a notice to do so given by the Registrar in terms of section 62(6) of the Act due to a default on the part of an Underwriter;

**Trustee's Charges** means the fees and disbursements properly charged or incurred by the Trustee in carrying out the Trustee's functions under this Deed, including the charges of any legal advisers reasonably consulted by it;

**Underwriter** means an underwriter at Lloyd's, and any former underwriter at Lloyd's who continues to have South African Obligations;

**Working Day** means a day on which banks are open for business in London and Johannesburg, excluding Saturdays, Sundays and United Kingdom public holidays;

**Year of Account** means a year from 1 January to 31 December.



## 1.2 General Interpretation Provisions

In this Deed, unless the context otherwise requires:

- (a) where the day on or by which anything is to be done is not a Working Day, that thing must be done on or by the first Working Day after that non-Working Day;
- (b) the recitals and headings are for convenience only and do not affect the interpretation of this Deed;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing a gender include any gender;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation, trust or other body corporate or unincorporate and any governmental or semi-governmental agency;
- (f) a reference to a clause is a reference to a clause of this Deed;
- (g) a reference to any statute includes all statutes amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, government notices, ordinances, byelaws and like subordinate legislation issued under that statute;
- (h) a reference to a document includes an amendment or supplement to, or replacement, extension or novation of, that document.

## PART 2 - POLICIES TO WHICH THIS DEED APPLIES

This Deed applies to all South African Short-term Insurance Policies which are underwritten by Syndicates and which:

- (a) fall within paragraph 1(1) of the definition of "South African Short-term Insurance Policy" in Schedule 3 to the Act; or

- (b) fall within paragraph 1(2) of that definition if all the obligations under the policy are reinsured pursuant to a Reinsurance to Close by the same or another Syndicate and are accounted for in the 1999 or a later Year of Account in accordance with Lloyd's accounting practice;

with effect from:

- (i) inception of the policy in the case of a policy referred to in paragraph (a) above;
- (ii) the effective date of the Reinsurance to Close in the case of a policy referred to in paragraph (b) above.

### **PART 3 - ACCESSION OF AGENTS AND UNDERWRITERS TO THIS DEED**

#### **3.1 Notice of Accession**

- (a) A person becomes a Party to this Deed as an Agent by written notice given by that person to the Trustee in the form of the first schedule to this Deed.
- (b) A person becomes a Party to this Deed as an Underwriter by written notice given to the Trustee in the form of the second schedule to this Deed by a person as described at the foot of that schedule.

#### **3.2 Parties Remain Parties Despite Changes in Syndicates**

Whenever an Agent or an Underwriter who has already become a Party to this Deed becomes the Agent or a Member of a new Syndicate, as the case may be, or the membership of a Syndicate changes, the provisions of this Deed automatically apply to that Agent or Underwriter as the Agent or a Member of that new or changed Syndicate, unless the Agent or Underwriter has in the meantime ceased to be an Agent or Underwriter in accordance with clause 3.3.

#### **3.3 Ceasing to be a Party**

- (a) An Agent ceases to be an Agent for the purposes of this Deed if:

- (1) the Agent is replaced as the managing agent of all Syndicates the Members of which have South African Obligations; or
  - (2) all the South African Obligations of the Members of each Syndicate managed by the Agent have been reinsured pursuant to Reinsurances to Close by another Syndicate or Syndicates not managed by the Agent.
- (b) An Underwriter ceases to be an Underwriter for the purposes of this Deed and this Deed ceases to apply to the Underwriter if the Underwriter ceases to have any South African Obligations or if all the Underwriter's South African Obligations are reinsured by one or more Syndicates pursuant to Reinsurances to Close, under which the Underwriter is not one of the reinsurers.
- (c) The fact that an Agent or Underwriter ceases to be an Agent or Underwriter for the purposes of this Deed does not relieve the Agent or Underwriter of any outstanding obligations under this Deed.

### **3.4 Notice of Change in Agent's Syndicates**

An Agent shall promptly notify the Trustee in writing in the form of the third schedule to this Deed if any change in the list as previously notified of Syndicates of which it is the Agent and which will underwrite South African Short-term Insurance Policies.

## **PART 4 - TERMINATION**

### **4.1 Termination of Trust**

The Trust shall terminate on the first to occur of the following:

- (a) the Trust no longer being required by law; or
- (b) the Registrar certifying in writing that he is satisfied that there are unlikely to be any further South African Obligations owed by any of the Underwriters or that he otherwise consents to the termination of the Trust.



#### **4.2 Termination in Relation to Part of a Fund**

This Deed shall cease to apply in relation to a Part of the Fund:

- (a) in respect of an Underwriter who is a natural person, 20 years after the beginning of the Year of Account to which the Part of the Fund relates; and
- (b) in respect of an Underwriter which is a corporate body, on 31 December 2071,

and no further contributions shall be payable under clause 5 into that Part of the Fund after such cessation.

#### **4.3 Distribution on Termination**

On:

- (a) termination of this Trust as set out in clause 4.1, or
- (b) an Underwriter ceasing to be an Underwriter for the purposes of this Deed as set out in clause 3.3(b); or
- (c) this Deed ceasing to apply to a Part of the Fund as set out in clause 4.2,

the Parts of the Fund relating to each Underwriter, or the Parts of the Fund relating to the Underwriter referred to in clause 3.3(b) or the Part of the Fund referred to in clause 4.2, as the case may be, shall be realised and paid to the Agent of the Syndicate concerned as set out in clause 6.2(b).

### **PART 5 - CONTRIBUTIONS**

Contributions shall be payable by or on behalf of Underwriters in respect of the South African Short-term Insurance Policies to which this Deed applies, as follows:

#### **5.1 By Whom Payable**

- (a) Subject to paragraph (c) below, the contributions due in respect of a policy are



payable by or on behalf of the Members of the Syndicate which underwrote the policy, in the ratio of their participations in the Syndicate at the time they underwrote the policy, provided that:

(1) if at the date as at which the contribution is determined the obligations under the policy have been reinsured:

(i) pursuant to a Reinsurance to Close, or

(ii) where the period of the cover under the policy exceeds a year and the whole or a portion of the period in excess of a year is reinsured,

the contribution is payable by or on behalf of the Members of the reinsuring Syndicate (or last such reinsuring Syndicate if there has been more than one Reinsurance to Close), in the ratio of their participations in the reinsuring Syndicate at the time they reinsured the obligations;

(2) if before the end of the Year of Account in which the risk was accepted or reinsured as set out in paragraph (a) above:

(i) a Member's membership of the Syndicate or reinsuring Syndicate, as the case may be, has ceased and not been reinstated; and

(ii) the Member's participation in the profits and losses of the Syndicate has been reallocated among the other Members of the Syndicate in such a way that the profits and losses under the policy concerned are shared by the other Members of the Syndicate,

the contribution is payable by or on behalf of the other Members of the Syndicate in the ratio of their participations in the profits and losses of the policy after such reallocation.

(b) The contributions due by or from the Members of each Syndicate shall be paid through the Agent of that Syndicate, or if the Syndicate has had different Agents for different Years of Account then through the relevant Agent for each Year of Account.



- (c) Unless the Agent of the Syndicate or Lloyd's notifies the Trustee in writing of a different ratio, whether before, at or after the due date of payment, the Members of the Syndicate for the Year of Account in which the risk under the policy was accepted or the obligations under the policy were reinsured pursuant to a Reinsurance to Close are deemed to be liable to pay the contribution in the ratio of the Members' participations in the Syndicate:
- (1) at the commencement of the Year of Account, until paragraph (2) applies; or
  - (2) at the end of one calendar year after such commencement, once Lloyd's has furnished the Trustee with details of the participations at the end of that calendar year, in accordance with clause 10.1(a)(1).

## **5.2 To Whom Payable**

The contributions are payable to the Trustee.

## **5.3 Payment Intervals**

The contributions are payable quarterly in arrear in respect of the quarters ending 31 March, 30 June, 30 September and 31 December commencing with the quarter ending 31 March 1999.

## **5.4 Amount Payable**

- (a) The amount payable by each Underwriter at the end of a quarter shall be calculated in accordance with schedule 3 to the Act read with clause 5.1 of this Deed, and the calculation shall be done separately for each Underwriter in respect of each Year of Account of each Syndicate of which he is a Member.
- (b) If the minimum amount of security required by the Act, as read with clause 5.1, from an Underwriter as a Member of a Syndicate and for a Year of Account exceeds the Underwriter's Part of the Fund as a Member of that Syndicate and for that Year of Account, the Underwriter shall contribute the excess.

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### **5.5 Determination and Notice of Value of Trust Fund**

- (a) The Trustee shall determine as at the last day of each such quarter the value in accordance with Schedule 2 to the Act of the Trust Fund or, if one or more Agents have exercised the right under clause 9.3(b) to require separate investments, the value of each such separate portion of the Trust Fund, together with the value of the remainder of the Trust Fund, and the Trustee shall within 30 days after the end of the quarter concerned advise:
- (1) each Agent who has exercised that right, of the value so determined of the separate investments concerned, with a copy to Lloyd's; and
  - (2) Lloyd's, of the value so determined of the remainder of the Trust Fund.
- (b) On receipt of the notice of the value of the Trust Fund or of the remainder of the Trust Fund under paragraph (a)(2) above, Lloyd's shall determine the allocation of the value among the Syndicates and Years of Account concerned and shall within seven days after receipt of the notice notify each Agent concerned of the values relating to each of the Agent's Syndicates and each Year of Account.

### **5.6 Determination and Notice of Minimum Amounts and Contributions Due**

- (a) Subject to clause 5.6(b) to (d), each Agent must determine as at the last day of each such quarter:
- (1) the aggregate Minimum Amount in respect of the South African Short-term Insurance Policies issued by each Syndicate managed by the Agent and falling, in accordance with Lloyd's accounting practice, into each Year of Account;
  - (2) the difference between the amount under paragraph (a)(1) above and the aggregate value of the Parts of the Fund relating to the Members of each such Syndicate for each such Year of Account, such difference being the amount of the contribution due, or the surplus available to be withdrawn, as the case may be, in respect of each such Year of Account of each such Syndicate;



and the Agent must advise the Trustee and Lloyd's of the amounts so determined within 45 days after the end of the quarter concerned.

- (b) The Agent must further advise the Trustee and Lloyd's if all the South African Obligations of any of its Syndicates arising out of South African Short-term Insurance Policies falling into a Year of Account have been reinsured pursuant to a Reinsurance to Close, including the Lloyd's number of the reinsuring Syndicate and the name and address of the Agent of the reinsuring Syndicate.
- (c) Once the aggregate Minimum Amount in respect of a Syndicate for a Year of Account is nil, either pursuant to a Reinsurance to Close or otherwise, and this has been advised to the Trustee and Lloyd's under clause 5.6(a) above, no further advice of the aggregate Minimum Amount in respect of that Syndicate and Year of Account is required as long as, where there has been no Reinsurance to Close, the aggregate Minimum Amount remains nil.
- (d) The determination under paragraph (a) above in the case of a Year of Account of a Syndicate shall be made and the notice given on a per Underwriter basis instead of a per Syndicate basis if at the time as at which the determination is made the values of the Parts of the Fund of the Members of the Syndicate are not in the ratio of their liability to contribute as at the time of the determination for any reason.

#### **5.7 Due Date of Payment**

The payment for each quarter must be received by the Trustee within 50 days after the end of the quarter.

#### **5.8 Account into Which Payment is to be Made**

Payments of contributions shall be made into a bank account in the name of the Trust as designated from time to time by the Trustee provided that Lloyd's may specify on behalf of the Underwriters that the designated account is to be in London, subject to any approval that may be required from the South African Reserve Bank and subject further to the duty of the Trustee to promptly remit to a bank account in the Republic of South Africa the contributions so paid.



### **5.9 Information to be Furnished with Payments**

At the time of payment of each contribution, the Agent making the payment must advise Lloyd's and the Trustee in writing of the Syndicate number and Year of Account to which the payment relates.

### **5.10 Change in Agent of Syndicate**

If a Syndicate has had different Agents for different Years of Account and the different Agents remain the Agents for those different Years of Account, the payments, notices and information to be made, given and furnished in respect of the Syndicate under this clause 5 shall be made by or given to or by or furnished by each of the Agents concerned in respect of the Years of Account for which the Agent acts as Agent for the Syndicate.

### **5.11 Allocation of Payments**

For the purpose of allocating payments of contributions by or on behalf of a Syndicate among the Parts of the Fund of the Members of the Syndicate for the Year of Account to which the payment relates:

- (a) a payment on behalf of a Syndicate of a contribution is deemed to have been made by or on behalf of the Members of the Syndicate in the ratio they are liable to pay the contribution (as deemed under clause 5.1(c), if applicable); and
- (b) if payments have been allocated in the ratio set out in clause 5.1(c)(1), they shall be reallocated in the ratio set out in clause 5.1(c)(2), when that ratio comes into effect.

### **5.12 Non-Receipt of Notices or Contributions**

- (a) If Lloyd's does not receive from the Trustee a copy of the notice under clause 5.5(a)(1) or a notice under clause 5.5(a)(2), by the due date, Lloyd's shall immediately notify the Trustee, and if the notice has still not been received seven Working Days after that due date, Lloyd's shall immediately notify the South African Representative and the Registrar in writing with a copy to the Trustee.
- (b) If the Trustee or Lloyd's does not receive a notice from an Agent under clause 5.6 by the due date, the Trustee or Lloyd's, as the case may be, shall immediately notify the



other of them and the Agent, and if the notice has still not been received seven Working Days after that due date, Lloyd's shall immediately notify the South African Representative and the Registrar in writing with a copy to the Agent and Trustee.

- (c) If the Trustee does not receive a contribution by due date, the Trustee shall immediately notify Lloyd's and the Agent concerned, and if payment has still not been made seven Working Days after that due date, the Trustee shall immediately notify Lloyd's, the South African Representative and the Registrar in writing with a copy to the Agent.

### **5.13 Trustee Not Obligated to Ensure Payment or Correctness of Amount**

Except as set out in clause 5.12, the Trustee is not obliged to take any steps to ensure that any payment is made by an Agent or that the amount of any payment is correct.

## **PART 6 - WITHDRAWALS FROM TRUST FUND**

Withdrawals may be made from the Trust Fund exclusively as follows:

### **6.1 Purposes for Which Withdrawals May be Made**

Withdrawals may be made exclusively to pay:

- (a) claims, as set out in clause 7; and
- (b) surpluses, as set out in clause 6.2.

### **6.2 Withdrawal of Surpluses**

- (a) If at the end of a quarter the value of the Part of the Fund relating to an Underwriter in respect of a Year of Account of a Syndicate exceeds the Minimum Amount in respect of the Underwriter in respect of that Year of Account of that Syndicate, as set out in clause 5.6(a)(2), the excess may be withdrawn.
- (b) An excess to be withdrawn under paragraph (a) above shall be paid to the Agent of the Syndicate concerned on behalf of the Premiums Trust Fund of the Underwriter

or be used to offset an amount to be contributed by the Underwriter for another Year of Account or as a Member of another Syndicate, as directed by the Agent of the Syndicate with the excess.

### **6.3 Assets to be Realised to Pay Withdrawals**

- (a) Payment of withdrawals under clauses 6.1 and 6.2 shall be made from the following sources and in the following order, subject to any direction to the contrary by the Agent of the Syndicate concerned:
- (1) from any cash in the relevant Part of the Fund;
  - (2) from the proceeds of the sale or other realisation by the Trustee of any or all of the marketable securities or other investments in the Part of the Fund; and
  - (3) from the proceeds of the sale of any other assets in the Part of the Fund.
- (b) Any assets to be sold or realised in order to effect timely payment of a claim or the withdrawal of a surplus may be sold or realised at the prevailing market price and the Trustee shall not be liable for any loss incurred in the sale or realisation of the assets or for its selection of the assets to be sold or realised or the timing of the sale or realisation.

## **PART 7 - CLAIMS**

If an Underwriter fails to pay an amount due by the Underwriter under a South African Short-term Insurance Policy (the *Policy*), a claim may be submitted to the Trustee for payment of the amount due with interest and costs out of the Trust Fund as follows:

### **7.1 When Claim May be Submitted**

A claim may be submitted to the Trustee by:

- (a) the holder of the Policy when a final judgment has been obtained as set out in section 61(a) of the Act or the Part of the Fund out of which payment is claimed is placed in winding-up pursuant to section 63(7) of the Act, or

- (b) the Agent of the Syndicate which underwrote the Policy, or of the reinsuring Syndicate where all the obligations under the Policy have been reinsured pursuant to a Reinsurance to Close, where the auditor of the Premiums Trust Fund relating to the Underwriter concerned has certified in writing that there are insufficient assets in that fund to meet the Underwriter's obligations and Lloyd's agrees to the payment.

## **7.2 Documents and Information to be Submitted**

- (a) A claim by the holder of the Policy is submitted by submission to the Trustee of:
  - (1) a copy of the final judgment certified a true copy by the registrar or clerk of the court which granted the judgment; or
  - (2) due proof of the claim in a winding-up; and
  - (3) a copy of the policy, certificate of insurance, cover note or other contract of insurance constituting the Policy, or if a copy of such document cannot be produced, then such details, on oath, regarding the contents of the document as the Trustee or liquidator may reasonably call for.
- (b) A claim by the Agent is submitted by the submission to the Trustee of Lloyd's agreement to the payment.

## **7.3 Costs and interest**

The claimant may include in the claim any recoverable interest and costs.

## **7.4 Period for Payment of Claim**

The Trustee must pay a claim complying with clause 7.2 within 10 Working Days after receiving it unless the Trustee has been notified in writing by Lloyd's that the claim has been paid.

## **7.5 Copy of Claim to be Furnished to Lloyd's and Agent**

On receipt of a claim by the holder of the Policy the Trustee must immediately furnish a

copy to Lloyd's which shall in turn furnish a copy to the Agent of the Syndicate which is liable in respect of the Policy.

#### **7.6 Determination of Allocation of Claim and Amounts of Parts of Fund**

- (a) On receipt of a copy of the claim by the holder of the Policy, the Agent of the Syndicate concerned or in default Lloyd's must:
- (1) determine the Year of Account into which the Policy falls and against which Member or Members of the Syndicate the claim lies, and hence the Part or Parts of the Fund to which the claim is to be allocated;
  - (2) the amount of each Part of the Fund concerned;
  - (3) notify the Trustee in writing of its determination; and
  - (4) furnish a copy of the determination and notification to Lloyd's or the Agent of the Syndicate concerned, as the case may be.
- (b) In the case of a claim by the Agent, Lloyd's agreement to the payment of the claim shall specify the Part or Parts of the Fund to which the claim is to be allocated.

#### **7.7 Inadequacy of Parts of Fund**

- (a) Should any Part of the Fund to which the whole or part of a claim is to be allocated under clause 7.6 be inadequate to discharge in full the whole or that part of the claim and all other unpaid claims received by the Trustee to the extent allocable to that Part of the Fund, the shortfall shall be allocated to the other Parts of the Fund:
- (1) relating to that Underwriter;
  - (2) as a Member of the Syndicate concerned;
  - (3) in respect of other Years of Account;

pro rata to those Parts of the Fund.

- (b) Should all the Parts of the Fund relating to the Underwriter as a Member of the Syndicate concerned be inadequate to discharge in full all claims made under this clause 7 and allocable to those Parts of the Fund:
- (1) the Trustee shall immediately notify the Registrar, Lloyd's and the Agent of the Syndicate concerned in writing;
  - (2) the Trustee shall not pay any claim allocable to those Parts of the Fund as long as the deficit continues; instead all Parts of the Fund relating to the Underwriter as a Member of that Syndicate shall be available for proportionate payment of all claims against those Parts of the Fund, in accordance with such directions as the Registrar may give.
- (c) Should the Registrar at any time exercise the power under section 62 of the Act to prohibit all Lloyd's underwriters from carrying on short-term insurance business in South Africa, paragraphs (a) and (b) above shall cease to apply and all Parts of the Fund relating to each Underwriter shall be available for proportionate payment to all holders of South African Short-term Insurance Policies underwritten by that Underwriter, in accordance with such directions as the Registrar may give;
- (d) If paragraphs (b) or (c) above applies the Registrar may:
- (1) determine in what form and by when claims must be submitted;
  - (2) determine what will constitute "proportionate payment" as referred to in paragraphs (b) and (c) above, in the event of uncertainty in this regard; and
  - (3) direct the Trustee to exercise any power, or may himself exercise any power, under this Deed relating to the Parts of the Fund concerned or the Trust Fund as a whole, as the case may be, in any manner the Registrar may decide.

## **PART 8 - THE TRUSTEE**

### **8.1 Trustee's Qualification**

The Trustee must always be an entity approved by the Registrar.



## 8.2 Exemption from Security

The Trustee is exempt from furnishing security for the performance of the Trustee's duties.

## 8.3 Trustee's Resignation, Removal or Suspension and Appointment of Successor

- (a) The Trustee may resign at any time on at least 90 days' written notice (or such shorter notice period as Lloyd's may accept) to Lloyd's and the Registrar, specifying the date on which the resignation is to take effect.
- (b) Lloyd's may remove the Trustee on at least 30 days' written notice to the Trustee and to the Registrar, specifying the date on which the removal is to take effect, or may forthwith remove or suspend the Trustee by notice to the Trustee and the Registrar if:
- (1) Lloyd's receives a notice from the Registrar in terms of section 63(3) of the Act requiring Lloyd's to terminate the Trustee's appointment;
  - (2) the Trustee has acted negligently, fraudulently or made wilful default in carrying out the terms of this Deed;
  - (3) a liquidator, judicial manager, curator or similar official is appointed, or steps are taken for such appointment, in respect of the Trustee or any of its subsidiaries or any of the assets or undertaking of the Trustee or any of its subsidiaries; or
  - (4) the Trustee or any of its subsidiaries is or becomes unable to pay its debts when due or is or becomes unable to pay its debts within the meaning of section 345 of the Companies Act, 1973, or commits an act which would be an act of insolvency as set out in section 8 of the Insolvency Act, 1936, (Act 24 of 1936) if committed by a natural person.
- (c) In the event of the resignation, removal or suspension of the Trustee, Lloyd's must take immediate steps to appoint a successor Trustee to replace the outgoing Trustee or to act during the suspension, as the case may be. Acceptance of such appointment must be in writing delivered to Lloyd's and the successor Trustee must promptly send a copy of the appointment and of the acceptance to the Registrar.

- (d) Immediately a successor Trustee accepts appointment pursuant to paragraph (c) above, the outgoing Trustee must:
  - (1) deliver all documents of title to assets of the Trust Fund to the successor Trustee and take all necessary steps to transfer the registration of all assets registered in the outgoing Trustee's name, or its nominee's name, into the name of the successor Trustee or its nominee;
  - (2) deliver all records of the Trust to the successor Trustee, fully up-to-date.
- (e) If no successor Trustee is appointed by Lloyd's, or the successor Trustee appointed by Lloyd's does not accept appointment, within 30 days after the resignation, removal or suspension takes effect, the Registrar may appoint a successor Trustee.
- (f) From the time the resignation, removal or suspension takes effect to the time the appointment of the successor Trustee takes effect, Lloyd's and failing Lloyd's the Registrar may exercise any right, power or discretion of the Trustee, and Lloyd's shall perform the obligations and duties of the Trustee, for the account of the Trust.
- (g) The outgoing Trustee and Lloyd's must furnish in writing any information the Registrar may reasonably request regarding the circumstances in which the outgoing Trustee resigned or was removed or suspended.

#### **8.4 Trustee's Charges**

- (a) Responsibility for the Trustee's Charges and the level, nature and allocation between Syndicates of the Trustee's Charges shall be contained in the Operational Agreement.
- (b) Should the Registrar appoint a successor Trustee pursuant to clause 8.3(e), the Registrar may give such directions regarding the recovery of the Trustee's Charges of the successor Trustee as the Registrar may decide, including directing that the charges may be debited to the Parts of the Fund in such ratio and manner as the Registrar may decide.





### **8.5 Trustee's Reliance on Communications**

The Trustee may rely on any communication given in accordance with the Operational Agreement which it reasonably and in good faith believes to be genuine and to have been properly authorised by the proper Party to this Deed in accordance with the Operational Agreement, without the need to make further enquiry.

### **8.6 Trustee's Reliance on Identity and Authority of Agent**

The Trustee may in good faith rely on a written notice or certificate given by Lloyd's as to the identity of an Agent and act on any written statement made by an Agent as to the Agent's authority, without further enquiry.

### **8.7 Trustee's Liability**

The Trustee shall be liable for losses, liabilities, costs, expenses and demands arising directly or indirectly from the performance of the services under this Deed suffered by or occasioned to any of the other Parties to this Deed or any holder of a South African Short-term Insurance Policy underwritten by a Syndicate, to the extent that the Trustee or any of its delegated custodians has been negligent, fraudulent or in wilful default in respect of its duties under this Deed or the Operational Agreement or under the general law.

## **PART 9 - ADMINISTRATION OF THE TRUST FUND**

### **9.1 Trustee's Powers**

Subject to the provisions of this Deed and the Operational Agreement, the Trustee has all of the powers of a natural person with respect to that person's own assets, in the administration and investment of the Trust Fund.

### **9.2 Operational Agreement**

- (a) Lloyd's and the Trustee may at any time and from time to time enter into and vary an **Operational Agreement governing the methods and operational practices to be**

employed in carrying out the terms of this Deed and specifying the fees and disbursements which may be charged by the Trustee.

- (b) The Operational Agreement takes effect subject to this Deed and may not derogate from any rights or obligations of any of the Parties to this Deed arising out of this Deed.
- (c) The Agents and Underwriters by becoming Parties to this Deed agree to be bound by the terms of the Operational Agreement, as it may be varied from time to time.

### 9.3 Investment

- (a) The Trust Fund shall be invested in the Republic of South Africa (within the meaning of section 31 of the Act) in the kinds of assets set out in Schedule 1 to the Act and subject to the limitations on assets specified by regulation.
- (b)
  - (1) The Agent of a Syndicate may, subject to any requirements and directions from time to time of the Lloyd's Council or persons authorised by the Lloyd's Council to make such requirements and directions whether comprised in any Lloyd's Byelaw or Regulation or any other written instrument, at any time direct the Trustee, and subject to the terms of the Operational Agreement, to invest or reinvest any Parts of the Fund of the Members of the Syndicate separately from other Parts of the Trust Fund.
  - (2) If the Agent does so, the Agent shall be liable for any additional costs, including additional Trustee's Charges, arising from the choice to invest separately rather than as part of the Trust Fund generally.
- (c) Lloyd's acting on behalf of all Syndicates where Agents have not directed separate investments as set out in paragraph (b) above may direct how the Parts of the Fund relating to the Members of the Syndicates concerned are to be invested or may appoint an investment manager who may direct how the Parts of the Fund are to be invested.
- (d) Should neither the Agent nor Lloyd's direct the Trustee under clause 9.3(b) or (c), the Trustee shall hold or deposit those Parts of the Fund in one or more



interest-bearing bank accounts as permitted under the Act, in the Trustee's discretion.

- (e) The Trustee is under no duty to give any investment advice to any person in connection with the Trust Fund.
- (f)
  - (1) As soon as the Trustee becomes aware of any rights to conversion, subscription, voting or other rights pertaining to any separate investments directed by an Agent under clause 9.3(b) or to any investments forming part of the remainder of the Trust Fund, or of any default in the payment of principal or interest relating to such separate investments or the remainder of the Trust Fund, the Trustee must immediately notify the Agent concerned, or Lloyd's in the case of the remainder of the Trust Fund.
  - (2) The Trustee must exercise all such rights in accordance with the instructions of the Agent concerned, or Lloyd's acting on behalf of the Agents of the Syndicates to whose Members the Parts of the Fund making up the remainder of the Trust Fund relate, as the case may be.

#### **9.4 Maintenance and Inspection of Trustee's Records**

- (a) The Trustee shall keep in its custody all notices received by it from the other Parties to this Deed and may act on the information contained in the notices.
- (b) The Trustee has no obligation to maintain records, except to the extent that the necessary data is furnished to the Trustee to enable the Trustee to do so.
- (c) Lloyd's, the South African Representative, the auditor of the Trust and any persons duly authorised by any of them may, on giving at least ten days' written notice to the Trustee:
  - (1) examine the notices in the Trustee's custody and all other records relating to the Trust during normal business hours;
  - (2) where assets comprising the Trust Fund are physically held by the Trustee or any other custodian, have access to inspect and count such assets; and

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- (3) where assets comprising the Trust Fund are held in an account with a securities depository or clearing agency handling securities in book entry form, have access to the statements and records pertaining to such account.
- (d) The auditor of the Trust may, where assets comprising the Trust Fund are commixed with those of another person, have access to the records and accounts of the Trustee relating to the holdings of that other person in those assets, on giving at least ten days' written notice to the Trustee.
- (e) Each Agent also has the rights set out in paragraph (c) above but only in relation to the Parts of the Fund relating to Members of the Agent's Syndicates.
- (f) The Trustee is not required:
- (1) to furnish information with respect to the Trust Fund, or
  - (2) to provide an account,
- to an Underwriter or any other person other than to the Registrar, Lloyd's, the South African Representative or the Agent of the Syndicate of which the Underwriter is a Member, on request by the Registrar, Lloyd's, the South African Representative or the Agent, provided that an Agent is only entitled to information and an account in relation to the Agent's Syndicates.

## 9.5 Valuation of Assets

Whenever the Trustee is required to value the assets of the Trust Fund or a Part of the Fund, the valuations shall be made in accordance with Schedule 2 to the Act and the Trustee may employ an agent for such valuation and the agent may be a subsidiary, affiliate or associate of the Trustee.

## 9.6 Certification of Value of Assets

The Trustee must at any time if so directed by the Registrar, Lloyd's or the South African Representative promptly certify the existence of the Trust Fund held by the Trustee and the aggregate value of the Parts of the Fund of the Members of each Syndicate, or each Member where separate records must be kept in respect of each Member in accordance

with clause 5.6(d), in respect of each Year of Account, to Lloyd's and to the South African Representative and, if so directed by either Lloyd's or the Registrar, to the Registrar.

### **9.7 Delegation of Safe-keeping of Assets**

The Trustee is authorised, subject to Lloyd's prior written approval and any applicable legislation from time to time, to delegate from time to time the safekeeping of any of the assets held in the Trust Fund to such custodians as the Trustee may think fit, on the following basis:

- (a) The custodian must be a registered South African bank, a subsidiary of such a bank, or a securities depository or clearing agency which operates a central system in South Africa or a transnational system for handing securities in a physical or book entry form and which is authorised to do so under any applicable law.
- (b) The Trustee must notify the Agent of the Syndicate/s to which the assets relate in writing of the appointment and dismissal of any custodian.
- (c) The Trustee's liability under this Deed 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 further custodians on the same terms as in this clause 9.7.

### **9.8 Commixture of Assets**

- (a) The Trustee may, unless the Agent of the Syndicate concerned shall otherwise direct, commix the assets of the aggregate Parts of the Fund relating to a Syndicate with those of any other Syndicate.
- (b) The Trustee shall not commix (or allow to be commixed) such assets with assets belonging to itself or any custodian to whom it has delegated the safekeeping of assets in accordance with clause 9.7.
- (c) The Trustee may not allow the assets of the Trust Fund to be commixed in any registered name, or account, at any custodian referred to in paragraph (b) with

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those of any other persons without gaining the prior written approval of the Agent if the assets are separate investments directed by the Agent under clause 9.3(b) or Lloyd's acting on behalf of the Agents of the Syndicates to whose Members the Parts of the Fund making up the remainder of the Trust Fund relate.

- (d) The names in which the assets are registered and the names of the accounts at any custodian referred to in paragraph (b) in which the assets are held shall be listed in the Operational Agreement and any changes or additions to the list shall be notified by the Trustee to each Agent who has directed separate investments under clause 9.3(b) and to Lloyd's.

## **PART 10 - MISCELLANEOUS**

### **10.1 Details of Membership of Syndicates**

- (a) Lloyd's shall furnish to the Trustee:
- (1) as soon as available details of the Members of each Syndicate as at the commencement of each Year of Account and again as at the end of that calendar year, and the participation of each Member in the Syndicate at the dates concerned; and
  - (2) on request by the Trustee details of any changes in the details furnished under paragraph (a)(1) above as at the commencement of the Year of Account and the effective date of each change.
- (b) Each Agent shall also on request by the Trustee at any time furnish any information as set out in paragraph (a) above in respect of the Syndicates managed by the Agent.
- (c) The information may be furnished in hard copy or electronic form, whether on-line or otherwise.

### **10.2 Appointment of an Auditor**

- (a) The South African Representative shall, in accordance with section 57(5) of the Act



and subject to the approval of the Registrar, appoint an auditor registered in terms of the Public Accountants' and Auditors' Act, 1991, (Act 80 of 1991) as auditor of the Trust and notify the Trustee in writing of such appointment. In default of such appointment by the South African Representative, the Registrar may appoint an auditor in accordance with section 63(4) of the Act.

- (b) The auditor shall:
- (1) carry out the duties vested in him by law;
  - (2) carry out an audit of the statutory returns required to be submitted in respect of the Trust, and
  - (3) carry out any other reasonable directions given to him by Lloyd's or the South African Representative.

### **10.3 Authorised Signatories**

- (a) Any Party to this Deed may designate a person or persons in writing and accompanied by a specimen signature of each such person to sign on behalf of that Party to this Deed all documents, or such documents as may be specified in the notice.
- (b) Execution by such a designee on behalf of the Party to this Deed who designated him constitutes due execution on behalf of that Party to this Deed, and the other Parties to this Deed are entitled to rely on such execution without recourse against them and without any obligation to make enquiry in relation to it.

### **10.4 Information and Evidence to be Furnished by Agents**

- (a) Each Agent must provide to the Trustee, on a timely basis, all information, certifications, proofs and other applicable documentation required under any applicable law.
- (b) Each Agent agrees promptly and diligently to complete, sign or execute and return to Lloyd's such deeds or other documents as Lloyd's may request from time to time

to evidence and effectuate the accomplishment of the Agent's obligations under this Deed.

#### **10.5 Policyholders Not Entitled to Accounting or Information**

No policyholder may:

- (a) require an accounting from the Trustee; or
- (b) inquire into the administration of the Trust Fund.

#### **10.6 Electronic Access**

Where instructions are given by electronic means, the Agent shall operate the means of electronic access in accordance with the terms of the Operational Agreement so as to prevent unauthorised access.

#### **10.7 No Partnership**

Nothing in this Deed shall constitute a partnership between an Underwriter and an Agent or between an Underwriter and any other Underwriter, the underwriting business of each Underwriter being carried on for that Underwriter's sole and separate account.

#### **10.8 Lloyd's liability**

Lloyd's shall not be liable for any act or failure to act in respect of its duties under this Deed, other than any duties owed to the Registrar, unless Lloyd's has been fraudulent or negligent.

#### **10.9 Amendment of this Deed**

- (a) Without prejudice to the powers of the Registrar under the Act to vary or substitute this Deed, Lloyd's shall have power in its discretion to amend this Deed, with the agreement of the Registrar, provided that:





- (1) no amendment increasing the duties of the Trustee or reducing the rights and protections of the Trustee is binding on the Trustee without the Trustee's consent; and
  - (2) the exercise of this power, the Registrar's agreement and the Trustee's consent, if applicable, must be in writing and signed by Lloyd's, the Registrar and the Trustee, as the case may be.
- (b) This power may only be exercised through the Council of Lloyd's, no delegation of the power being permitted.
  - (c) Lloyd's must advise the Trustee in writing when any such amendment becomes effective.

#### **10.10 Governing Law**

- (a) This Deed is governed by, and shall be construed and enforced in accordance with, the laws of South Africa.
- (b) The Parties to this Deed submit to the exclusive jurisdiction of the High Court at Johannesburg.

#### **10.11 Notices**

- (a) Lloyd's must provide the Trustee with the names, addresses and fax numbers of the South African Representative and the Registrar and must update this list from time to time as may be necessary to keep the information in the list current. The Trustee may rely upon such information without the need to make further enquiry.
- (b) The Parties to this Deed choose the following addresses and fax numbers to which notices shall be given, and addresses at which documents in legal proceedings shall be served (ie their domicilia citandi et executandi), in connection with this Deed :



(1) in the case of Lloyd's:

postal and physical address:

One Lime St  
London EC3M 7HA  
United Kingdom

current fax no :

44 171 626 2389;

(2) in the case of the Trustee :

postal address :

PO Box 1291  
Parklands 2121  
South Africa

physical address:

Rosebank Corner  
191 Jan Smuts Avenue  
Parktown North  
Johannesburg  
South Africa

current fax no :

27 11 283 1111

(3) in the case of each Agent and the Members of the Agent's Syndicates:

the Agent's addresses and fax number as furnished in  
the notice of accession as Agent given by the Agent  
pursuant to clause 3.1.

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- (c) Notices given to the above addresses shall be deemed to have been duly given :
- (1) 5 days after posting, if posted by registered post to the party's postal address if in the same country;
  - (2) 10 days after posting, if posted by registered airmail post to the party's postal address if in another country;
  - (3) on delivery, including by courier, if delivered to the party's physical address;
  - (4) the first Working Day after despatch, if sent to the party's then fax number and promptly confirmed by post (airmail if available).
- (d) A Party to this Deed may change that party's addresses and fax number for this purpose, by notice in writing to the other Parties to this Deed, provided that an Agent need not notify any other Agent or any Underwriter and an Underwriter need not notify any other Underwriter or any Agent.

#### 10.12 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 in this Deed, unless the provision goes to the root of this Deed.

Signed at



THE COMMON SEAL OF  
LLOYD'S WAS HEREUNTO  
AFFIXED IN THE PRESENCE OF

for Lloyd's

*Secretary to the Council  
of Lloyd's*

Signed at

for [Trustee]

**FIRST SCHEDULE**

(Clause 3.1(a))

**Notice of Accession as Agent**

[Trustee's name]

[Date]

[Trustee's address]

Dear Sirs

**Lloyd's South African Trust Deed - Notice of Accession as Agent**

We refer to the Lloyd's South African Trust Deed dated \_\_\_\_\_ 199 (the *Trust Deed*). Words defined in the Trust Deed have the same meaning in this notice.

We give notice in terms of clause 3.1(a) of the Trust Deed that we by this notice elect to become a party to the Trust Deed as an Agent, with immediate effect.

The syndicate numbers assigned by Lloyd's to the Syndicates of which we are managing agents and which will underwrite South African Policies, are set out in annex "A".

We confirm that:

- we are an Agent as defined in the Trust Deed, and
- the Syndicates set out in annex "A" and the members of these Syndicates are Syndicates and Underwriters respectively as defined in the Trust Deed.

We choose, both for ourselves and for the members of the Syndicates set out in annex "A", the addresses and fax number set out on this letterhead as our and their addresses and fax number for the purposes of clause 10.11(b) of the Trust Deed.

Yours faithfully

[Name of Agent]

**ANNEX "A"**

**Syndicate Number**

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**SECOND SCHEDULE**

(Clause 3.1(b))

**Notice of Accession as Underwriters**

[Trustee's name]

[Trustee's address]

Dear Sirs

**Lloyd's South African Trust Deed - Notice of Accession as Underwriters**

We refer to the Lloyd's South African Trust Deed dated \_\_\_\_\_ 199 (the *Trust Deed*). Words defined in the Trust Deed have the same meaning in this notice.

We give notice in terms of clause 3.1(b) of the Trust Deed that the members of the Syndicates set out in annex "A" by this notice elect to become parties to the Trust Deed as Underwriters, with immediate effect.

We confirm that :

- we are authorised by the Lloyd's Underwriters concerned to make this election and give this notice; and
- the Lloyd's Underwriters concerned are Underwriters as defined in the Trust Deed.

Yours faithfully

[To be signed by the Chairman of Lloyd's, a Deputy Chairman or any person authorised by the Lloyd's Council or by anyone else who produces to the Trustee a written authority to sign]

**ANNEX "A"**

**Syndicate Number**

**Agent of Syndicate**

### **THIRD SCHEDULE**

(Clause 3.4)

#### **Notice of Change in Agent's Syndicates**

[Trustee's name]

[Date]

[Trustee's address]

Dear Sirs

#### **Lloyd's South African Trust Deed - Notice of Change in Agent's Syndicates**

We refer to the Lloyd's South African Trust Deed dated \_\_\_\_\_ 199 (the *Trust Deed*). Words defined in the Trust Deed have the same meaning in this notice.

We give notice in terms of clause 3.4 of the Trust Deed that the list previously notified to you of Syndicates of which we are the managing agents and which underwrite South African Policies has changed.

An updated list showing the syndicate numbers assigned by Lloyd's to the Syndicates of which we are currently managing agents and which underwrite South African Policies, are set out in annex "A".

We confirm that:

- we are an Agent as defined in the Trust Deed, and
- the Syndicates set out in annex "A" and the members of these Syndicates are Syndicates and Underwriters respectively as defined in the Trust Deed.



We choose, both for ourselves and for the members of the Syndicates set out in annex "A", the addresses and fax number set out on this letterhead as our and their addresses and fax number for the purposes of clause 10.11(b) of the Trust Deed.

Yours faithfully

[Name of Agent]



**ANNEX "A"**

**Syndicate Number**

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