

SCHEDULE 2

Scheme

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT**

**IN THE MATTER OF
THE NAMES AT LLOYD'S FOR THE 1992 AND PRIOR YEARS OF ACCOUNT,
REPRESENTED FOR THE PURPOSES OF THIS SCHEME BY**

EQUITAS LIMITED

- AND -

**IN THE MATTER OF EQUITAS INSURANCE LIMITED (FORMERLY KNOWN AS
SPEYFORD LIMITED)**

- AND -

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

SCHEME

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1. INTRODUCTION

1.1 Interpretation

- 1.1.1 The definitions and other provisions relating to interpretation set out in paragraph 2 below apply throughout this Scheme.

1.2 Parties involved in the Scheme

- 1.2.1 The Names are or were individual underwriting members at Lloyd's who carried on non-life business at Lloyd's originally allocated to the 1992 and prior years of account.
- 1.2.2 ERL was incorporated in England and Wales on 5 December 1995 and EL was incorporated in England and Wales on 11 March 1996. Each of ERL and EL is a "**UK authorised person**" as defined in Section 178(4) of FSMA, currently with permissions, *inter alia*, to effect and carry out contracts of general reinsurance in the UK under Classes of Business 1 to 18, as defined in Part 1 of Schedule 1 to the Regulated Activities Order and authorised to carry on such business on a services basis in all EEA States.
- 1.2.3 EPTL was incorporated in England and Wales on 23 August 1996.
- 1.2.4 Newco was incorporated in England and Wales on 23 September 2008 and is a "**UK authorised person**" as defined in section 178(4) of FSMA, with permissions, *inter alia*, to effect and to carry out contracts of general insurance and reinsurance in the UK under Classes 1 to 18 as defined in Part 1 of Schedule 1 to the Regulated Activities Order and authorised to carry on such business on a services basis in all EEA States. Its permission to effect contracts of general insurance and reinsurance is limited to accepting the Transferring Business under this Scheme.
- 1.2.5 EL is a wholly-owned subsidiary of ERL. ERL, EPTL and Newco are wholly-owned subsidiaries of EHL and EHL is wholly-owned by the Equitas Trustees (jointly) in their capacity as trustees of the Equitas Trust.
- 1.2.6 Lioncover was incorporated in England and Wales on 29 January 1987 and is a "**UK authorised person**" as defined in Section 178(4) of FSMA, currently with permissions, *inter alia*, to effect and carry out contracts of general reinsurance in the UK under Classes of Business 1 to 18, as defined in Part 1 of Schedule 1 to the Regulated Activities Order. Lioncover is a wholly-owned subsidiary of Lloyd's.

1.3 Background

- 1.3.1 In September 1996, Lloyd's implemented a market restructuring through its reconstruction and renewal plan ("Lloyd's R&R"). The primary objectives of Lloyd's R&R were to stem market wide litigation through a settlement arrangement; separate the 1992 and Prior Business from the ongoing business conducted at Lloyd's; and provide Names with reinsurance to close in respect of their Liabilities for the 1992 and Prior Business. This enabled Names with no other years of account remaining open to resign their membership of Lloyd's.
- 1.3.2 That reinsurance to close was achieved on 3 September 1996 through the Equitas Reinsurance Contract pursuant to which the Names' Liabilities in respect of the 1992 and Prior Business were reinsured into ERL. ERL, in turn, entered into the Equitas Retrocession Agreement with EL on the same date pursuant to which it retroceded the Liabilities to EL.
- 1.3.3 As part of Lloyd's R&R, pursuant to the Lioncover Reinsurance Contract and Centrewrite Reinsurance Contract, ERL agreed to reinsure Lioncover and Centrewrite, respectively, in respect of their Liabilities relating to the 1992 and Prior Business of the PCW Names and Warrilow Names.
- 1.3.4 The Initial Reinsurance Contracts and the Lioncover Reinsurance Contract are the only contracts of reinsurance entered into by ERL in respect of which Liabilities have been retroceded to EL under the Equitas Retrocession Agreement.
- 1.3.5 Lloyd's R&R also provided for the establishment of EPTL whose primary purpose is to hold on trust the rights of the Names as reinsureds under the Equitas Reinsurance Contract, for the benefit of the holders of the Relevant Policies.
- 1.3.6 On 10 November 2006 EL, EHL and RMSL entered into the NICO Retrocession Agreement with NICO under which EL retroceded to NICO its Liabilities under the Equitas Retrocession Contract.
- 1.3.7 Under the NICO Retrocession Agreement, NICO agreed to make available additional reinsurance of up to USD1.3 billion upon a transfer from Names to Newco of the Transferring Business becoming effective, subject to a Court sanctioning the transfer on or prior to 31 December 2009 and payment by EL to NICO of an additional premium.

1.4 Scheme

- 1.4.1 In order to transfer from the Names their Liabilities to Policyholders in respect of the 1992 and Prior Business, EL, ERL and Newco have agreed, with the consent of the Equitas Trustees, to transfer the Transferring Business to Newco.
- 1.4.2 EL has authority to act on behalf of the Names. Under the Equitas Reinsurance Contract, the Names irrevocably appointed ERL to assume exclusive responsibility for the run-off of the 1992 and Prior Business with a general power to conduct the run-off as agent of the Names in its absolute discretion. Under the Lioncover Reinsurance Contract ERL was given a similar appointment with respect to the run-off of the business of the PCW Syndicates. Under the Equitas Retrocession Agreement ERL delegated such authority and powers to EL. Pursuant to the Lloyd's Order, on 24 September 2008 the Council certified that EL has authority to act on behalf of the Names for the purposes of this Scheme.
- 1.4.3 At the date of the NICO Retrocession Agreement, it was not possible under Part VII of FSMA and the Lloyd's Order to transfer the 1992 and Prior Business of the Names who had ceased to be underwriting members of Lloyd's prior to 24 December 1996. FSMA and the Lloyd's Order have since been amended so as to permit a transfer of the 1992 and Prior Business of such Names.
- 1.4.4 The Transferring Business will transfer to Newco in accordance with this Scheme and by virtue of the Order.
- 1.4.5 Following implementation of this Scheme, the Names will not carry out as principal any Relevant Policies, except as provided in this Scheme.
- 1.4.6 RMSL (formerly known as Equitas Management Services Limited) currently provides operational functions in relation to the Transferring Business and will continue to do so following implementation of this Scheme.
- 1.4.7 In order to ensure that following the transfer the Transferring Policyholders benefit from a similar level of protection in respect of the Equitas Reinsurance Obligation as is currently available, EPTL, EL, ERL and Newco have agreed, with the consent of the Equitas Trustees, to effect certain amendments to the EPTL Trust Declaration pursuant to this Scheme.
- 1.4.8 Lioncover's business consists solely of the PCW Reinsurance Contracts. EL, ERL, Newco, Lloyd's and Lioncover have agreed to simplify the reinsurance structure in respect of the 1992 and Prior Business of the PCW Names by

removing Lioncover from the reinsurance chain. In order to achieve this, pursuant to this Scheme, after the rights and obligations of the PCW Names under the PCW Reinsurance Contracts have transferred to Newco as part of the Transferring Business, Lioncover's rights and obligations as reinsured under the Lioncover Reinsurance Contract will transfer to Newco (so that Newco becomes directly reinsured by ERL in respect of the 1992 and Prior Business of the PCW Names) and immediately thereafter the PCW Reinsurance Contracts will terminate.

1.4.9 As the financial support provided through the Lioncover Bond will cease to benefit policyholders of the PCW Syndicates upon termination of the PCW Reinsurance Contracts, Lloyd's has undertaken, on the terms of the Lioncover Substitute Undertaking, to pay the claims of policyholders of the PCW Syndicates in the event that Newco fails to meet its Liabilities. This undertaking has been given to EPTL, who will hold it on trust for the benefit of the policyholders of the PCW Syndicates.

1.4.10 Each of EHL, ERL, EPTL, RMSL, the Equitas Trustees, Lioncover and Lloyd's has agreed to appear by Counsel on the hearing of the claim to sanction this Scheme and to undertake to be bound thereby and to do all such acts and things as may be necessary or expedient to be executed or done by it for the purposes of giving effect to this Scheme.

1.5 Scheme structure

1.5.1 Paragraphs 3 to 7 set out the terms for the transfer of the Transferring Business to Newco.

1.5.2 Paragraphs 8 to 11 set out the necessary amendments to the Equitas Reinsurance Contract, Lioncover arrangements, Centrewrite arrangements and the EPTL Trust Declaration.

2. INTERPRETATION

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

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| "1992 and Prior Business" | all Liabilities under Policies underwritten at Lloyd's (other than life business) and originally allocated to the 1992 year of account or any earlier year of account including any such Liabilities reinsured to close into the 1993 year of account or any later year of account, but excluding any Liabilities re-signed, or re-allocated pursuant to a premium transfer, into the 1993 year of |
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account or any later year of account;

"Asset" or "Assets"

any assets, property, rights or powers of any kind or description, wherever located, whether real, personal or mixed, tangible or intangible, present or future, actual or contingent, that are owned, leased or licensed including all rights, benefits and powers under any contract and all rights, claims and powers against any third party;

"Books and Records"

all information prepared or maintained in respect of the Transferring Policies, including policy slips, policy wordings, underwriting cards, certificates of insurance, policy renewal or cancellation documents, claims information, reserving documentation, reinsurance information, facultative and treaty outwards reinsurance wordings, and all correspondence relating thereto and all books of account, financial information, investment records and other records (however stored, including in electronic format);

"Centrewrite"

Centrewrite Limited, a limited company registered in England and Wales with registered number 02551468, whose registered office is at Council Secretariat, Lloyd's of London, 1 Lime Street, London EC3M 7HA;

"Centrewrite Reinsurance Contract"

the reinsurance contract entered into by ERL on 7 February 1997 pursuant to which ERL agreed to reinsure and indemnify Centrewrite in respect of its Liabilities under the Warrilow Reinsurance Contracts;

"Closed Year Syndicate"

any syndicate constituted for the 1992 or any prior year of account which has been reinsured to close either directly or indirectly into a Syndicate, Centrewrite or Lioncover;

"Council"

the Council of Lloyd's, its delegates and any persons by whom it acts;

"EEA State"

the meaning given in FSMA;

"Court"

the High Court of Justice in England and Wales;

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| "E&O Companies" | the meaning given in the E&O Companies Reinsurance Contract; |
| "E&O Companies Reinsurance Contract" | the reinsurance contract entered into by ERL on 3 September 1996 pursuant to which ERL agreed to reinsure and indemnify the E&O Companies in relation to all Liabilities under the E&O Policies in respect of the 1992 and Prior Business; |
| "E&O Policy" | the meaning given in the E&O Companies Reinsurance Contract; |
| "Effective Date" | the time and date when this Scheme will become operative in accordance with paragraph 14; |
| "EL" | Equitas Limited, a limited company registered in England and Wales with registered number 3173352, whose registered office is at 33 St Mary Axe, London EC3A 8LL; |
| "EHL" | Equitas Holdings Limited, a limited company registered in England and Wales with registered number 3136296, whose registered office is at 33 St Mary Axe, London EC3A 8LL; |
| "Encumbrance" | any charge, pledge, security assignment, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, any other encumbrance or security interest of any kind and any other type of preferential arrangement (including title transfer and retention agreements) having a similar effect; |
| "EPTL" | Equitas Policyholders Trustee Limited, a limited company registered in England and Wales with registered number 3243970, whose registered office is at 33 St Mary Axe, London EC3A 8LL; |
| "EPTL Trust Declaration" | the declaration of trust by EPTL dated 3 September 1996 pursuant to which EPTL agreed to hold, inter alia, the rights of the Names in respect of the Equitas Reinsurance Obligation on trust for the benefit of policyholders of 1992 and Prior Business reinsured under the Equitas Reinsurance Contract; |

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| "Equitas Contract" | Reinsurance | the reinsurance contract entered into by ERL on 3 September 1996 pursuant to which ERL agreed to reinsure and indemnify the Names in respect of the 1992 and Prior Business and was appointed by the Names to assume responsibility for the run-off of the 1992 and Prior-Business; |
| "Equitas Obligation" | Reinsurance | the obligation of ERL to reinsure and indemnify the Names under clause 3 of the Equitas Reinsurance Contract; |
| "Equitas Agreement" | Retrocession | the retrocession contract entered into by EL on 3 September 1996 pursuant to which ERL retroceded to EL its Liabilities under the Initial Reinsurance Contracts and Lioncover Reinsurance Contract and delegated to EL responsibility for the run-off of the business reinsured under the Initial Reinsurance Contracts and Lioncover Reinsurance Contract; |
| "Equitas Trust" | | the trust constituted by the Equitas Trust Deed; |
| "Equitas Trust Deed" | | the trust deed entered into by Lloyd's, the Original Equitas Trustees, EHL and EL on 3 September 1996 pursuant to which the Equitas Trustees agreed to exercise the rights and powers attaching to the shares of EHL with a view to protecting and furthering the interests of the Names in their capacity as reinsureds under the Equitas Reinsurance Contract; |
| "Equitas Trustees" | | the trustees from time to time of the Equitas Trust, being at the date of this Scheme Sir Adam Nicholas Ridley, Michael Eunan McLarnon Deeny, Gordon David Gilchrist and Richard Brett Spooner; |
| "ERL" | | Equitas Reinsurance Limited, a limited company registered in England and Wales with registered number 3136300, whose registered office is at 33 St Mary Axe, London EC3A 8LL; |
| "Excluded Policies" | | those Relevant Policies under which any Liability remains unsatisfied or outstanding at the Effective Date and which the Court determines not to transfer by virtue of the Order, together with the rights, benefits, powers and Liabilities of the Names under such |

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| | | Policies; |
| "FSA" | | the UK Financial Services Authority or any successor UK regulatory authority of insurance and/or reinsurance companies; |
| "FSMA " | | the Financial Services and Markets Act 2000; |
| "Illinois Collateral Reinsurance Contract" | | the reinsurance contract entered into by ERL on 3 September 1996 pursuant to which ERL agreed to reinsure and indemnify the Names of certain Syndicates or Closed Year Syndicates in relation to certain of their Liabilities in Illinois in respect of 1992 and Prior Business; |
| "Initial Reinsurance Contracts" | | the Equitas Reinsurance Contract, the Centrewrite Reinsurance Contract, the E&O Companies Reinsurance Contract, the Illinois Collateral Reinsurance Contract and the PSL Companies Reinsurance Contract; |
| "Liability" | | any debt, liability, duty or obligation of any kind or description (whether direct or indirect, absolute or contingent, accrued or unaccrued, liquidated or unliquidated or due or to become due), including all costs and expenses relating thereto; |
| "Lioncover" | | Lioncover Insurance Company Limited, a limited company registered in England and Wales with registered number 02094618, whose registered office is at Council Secretariat, Lloyd's, 1 Lime Street, London EC3M 7HA; |
| "Lioncover Bond" | | the bond dated 26 May 1987 pursuant to which Lloyd's has agreed to provide certain financial support to Lioncover to ensure that Lioncover is able to meet its Liabilities as they fall due; |
| "Lioncover Reinsurance Contract" | | the reinsurance contract entered into by ERL on 18 December 1997 pursuant to which ERL agreed to reinsure and indemnify Lioncover in relation to all Liabilities in respect of contracts of insurance underwritten at Lloyd's by the PCW Syndicates and to administer the run-off of all such business, which |

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| | | contract is an "Additional Reinsurance Contract" for the purposes of the Equitas Retrocession Agreement; |
| "Lioncover Undertaking" | Substitute | the deed of undertaking given by Lloyd's pursuant to which Lloyd's has undertaken, with effect from the Effective Date and subject to the terms and conditions set out therein, to pay the claims of policyholders of the PCW Syndicates in the event that Newco fails to meet its Liabilities; |
| "Lloyd's" | | the Society incorporated by the Lloyd's Act 1871 by the name of Lloyd's of One Lime Street, London EC3M 7HA; |
| "Lloyd's Order" | | the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001; |
| "Names" | | the underwriting members and former underwriting members of Lloyd's comprising the Syndicates and Closed Year Syndicates, in their capacity as members of such syndicates; |
| "Names Contracts" | Reinsurance | the Equitas Reinsurance Contract, PCW Reinsurance Contracts and Warrilow Reinsurance Contracts; |
| "Newco" | | Equitas Insurance Limited, a limited company registered in England and Wales with registered number 06704451, whose registered office is at 33 St Mary Axe, London EC3A 8LL; |
| "NICO" | | National Indemnity Company, a company incorporated in the State of Nebraska, whose registered office is at 3024 Harvey Street, Omaha, Nebraska, USA 68131; |
| "NICO Agreement" | Retrocession | the retrocession contract entered into by NICO, EL, EHL and RMSL on 10 November 2006 (as amended by the Retrocession and Run-off Amendment Agreement dated 4 March 2007) pursuant to which EL retroceded to NICO its Liabilities under the Equitas Retrocession Agreement and delegated to RMSL responsibility for the conduct of the run-off of such business as sub-agent of the Names; |
| "Order" | | an order made by the Court pursuant to Section 111(1) |

of FSMA sanctioning this Scheme and any order (including any subsequent order which is ancillary thereto) in relation to this Scheme made by the Court pursuant to Section 112 of FSMA;

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| "Original Parties" | Centrewrite | the persons who entered into the Centrewrite Reinsurance Contract on 7 February 1997; |
| "Original Parties" | Lioncover | the persons who entered into the Lioncover Reinsurance Contract on 18 December 1997; |
| "Original RROC Parties" | | the persons who entered into the Equitas Reinsurance Contract on 3 September 1996; |
| "Original Trustees" | Equitas | the initial trustees of the Equitas Trust, being Sir Adam Nicholas Ridley, Christopher Hiley Ludlow Bathurst Third Viscount Bleddisloe QC, Michael Eunan McLarnon Deeny, John Patrick Desmond Heyward, John Boyce Mays, Colin Keith Murray and Richard Brett Spooner; |
| "Outwards Contracts" | Reinsurance | the Names Reinsurance Contracts and Syndicate Reinsurance Contracts; |
| "PCW Names" | | the underwriting members and former underwriting members of Lloyd's comprising the PCW Syndicates, in their capacity as members of such syndicates; |
| "PCW Contracts" | Reinsurance | the reinsurance contracts entered into on 17 July 1987 (as novated on 6 October 1999) pursuant to which Lioncover agreed to reinsure and indemnify the PCW Names in relation to all Liabilities under Policies underwritten at Lloyd's through the PCW Syndicates; |
| "PCW Syndicates" | | each of the syndicate years of account listed in Schedule 3 to the Lioncover Reinsurance Contract and any syndicates reinsured to close either directly or indirectly into any of those syndicates; |
| "person" | | any natural person, general or limited partnership, corporation, limited liability company, limited liability partnership, firm, joint venture, joint stock company, trust, unincorporated organisation, association or organisation or other legal entity; |

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| <p>"Policy" and "Policyholder"</p> | <p>the meanings ascribed to "policy" and "policyholder" by the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (S.I. 2001/2361), including for the avoidance of doubt, treaties, facultative certificates, binders, binding quotations, slips and other contracts of insurance, reinsurance or retrocession;</p> |
| <p>"Proceedings"</p> | <p>any action or other legal or administrative proceedings or step (whether direct or indirect, by way of a claim, demand, legal proceedings, execution of judgement, arbitration, complaint or otherwise) including:</p> <ul style="list-style-type: none"> (a) arbitration; (b) mediation; (c) any other dispute resolution procedure (whether or not it involves submission to any court); (d) any judicial, quasi-judicial, administrative or regulatory review or process; and (e) any complaint or claim to any ombudsman; |
| <p>"PSL Companies"</p> | <p>the meaning given in the PSL Companies Reinsurance Contract;</p> |
| <p>"PSL Companies Reinsurance Contract"</p> | <p>the reinsurance contract entered into by ERL on 3 September 1996 pursuant to which ERL agreed to indemnify the PSL Companies in respect of certain personal stop loss Liabilities;</p> |
| <p>"Regulated Activities Order"</p> | <p>the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);</p> |
| <p>"reinsurance to close"</p> | <p>the meaning given to it in the Definitions Byelaw (No 7 of 2005) and "reinsured to close" and similar terms shall be construed accordingly;</p> |
| <p>"Relevant Policies"</p> | <p>all Policies (other than Policies of long-term insurance) effected or carried out at Lloyd's by or on behalf of any of the Names as insurer, reinsurer or retrocessionaire (including all supplements, endorsements and riders thereto and all ancillary</p> |

agreements in connection therewith) and originally allocated to the 1992 year of account or any earlier year of account, excluding any such business re-signed, or reallocated pursuant to a premium transfer, into the 1993 year of account or any later year of account;

"Residual Provisions" **Lioncover** clause 6 (*Adjustment of Premium Obligation*), clause 11 (*Lloyd's Guarantee and Indemnity*), clause 7 (*Warranties as to Information*), clause 13.4(f) (*ERL's Maintenance of Books and Records and access thereto*) and clause 20.2 (*Variation of this Agreement or the Reinsurance Contract*) of the Lioncover Reinsurance Contract;

"Residual Policies" the Excluded Policies and, pending the taking of all necessary steps for securing that the transfer of the relevant Policy to Newco is fully effective under the Order, the Retained Policies;

"Residual Provisions" **RROC** clause 2 (*Conditions*), 3.11 (*Underwriting Decision*), clause 5 (*Consideration*), clauses 6.1-6.5, 6.8-6.10, 6.13, 6.15 and 6.16 (*Additional Consideration*), clause 7 (*Segregated Account*), clause 8 (*Return Premium*), clauses 11, 12 and 13 (*Interim Provisions*), clause 15.2 (*Books and Records*), clause 18 (*Currency of Payment*), clause 19 (*Consequences of Termination*) clause 22.2 (*Notices*), clause 24 (*Costs*) and clause 25.2 (*Service of Process*) and Schedules 4 (*Consideration*) and 5 (*Return Premium*) of the Equitas Reinsurance Contract;

"Retained Policies" any Relevant Policy in respect of which the Order requires further steps be taken to make its transfer to Newco fully effective;

"RMSL" Resolute Management Services Limited, a limited company registered in England and Wales with registered number 03136297, whose registered office is at 33 St Mary Axe, London EC3A 8LL;

"RROC Rights" **Reinsurance** the right, title and interest of the Names in relation to the Equitas Reinsurance Obligation;

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| "Scheme" | | this scheme in its original form or with, or subject to, any modification or addition thereto; |
| "Shared Centrewrite Provisions" | Amended | clause 16 (<i>Notices</i>) and the definition of "Insurance Creditors" in Schedule 1 (<i>Definitions and Interpretation</i>) of the Centrewrite Reinsurance Contract; |
| "Shared Lioncover Provisions" | Amended | clause 19 (<i>Notices</i>) and the definition of "Insurance Creditors" in Schedule 1 (<i>Definitions and Interpretation</i>) of the Lioncover Reinsurance Contract; |
| "Shared Amended RROC Provisions" | | clause 1 (<i>Definitions and Interpretation</i>), clauses 4.6 and 4.10 (<i>Declaration of Trust</i>), clauses 6.6, 6.7, 6.11, 6.12 and 6.14 (<i>Additional Consideration</i>), clause 9 (<i>Run-off</i>), clause 14 (<i>Further Assurance</i>), clauses 15.3 and 15.4 (<i>ERL's maintenance of Books and Records</i>), clause 22.1 (<i>Notices</i>) and clause 25.1 (<i>Governing Law and Jurisdiction</i>) and certain definitions in Schedule 2 (<i>Definitions and Interpretation</i>) of the Equitas Reinsurance Contract; |
| "Shared Centrewrite Provisions" | Centrewrite | the Shared Amended Centrewrite Provisions and the Shared Unamended Centrewrite Provisions; |
| "Shared Lioncover Provisions" | Lioncover | the Shared Amended Lioncover Provisions and the Shared Unamended Lioncover Provisions; |
| "Shared RROC Provisions" | RROC | the Shared Amended RROC Provisions and the Shared Unamended RROC Provisions; |
| "Shared Centrewrite Provisions" | Unamended | clause 1 (<i>Definitions and Interpretation</i>), clause 14 (<i>Waiver</i>), clause 15 (<i>Invalidity</i>), clause 17 (<i>Variation</i>) and clause 19 (<i>Governing Law and Jurisdiction</i>) of the Centrewrite Reinsurance Contract; |
| "Shared Lioncover Provisions" | Unamended | clause 1 (<i>Definitions and Interpretation</i>), clause 17 (<i>Waiver</i>), clause 18 (<i>Invalidity</i>), clause 20.1 (<i>Variation of this Agreement or the Reinsurance Contract</i>) and clause 22 (<i>Governing Law and Jurisdiction</i>) of the Lioncover Reinsurance Contract; |
| "Shared RROC Provisions" | Unamended | clause 4.9 (<i>Declaration of Trust</i>), clause 6.17 (<i>Syndicate Reinsurance</i>), clause 17 (<i>Confidentiality</i>), |

clause 20 (*Waiver*), clause 21 (*Invalidity*), clause 23 (*Variation*) and Schedule 1 (*The Syndicates*) of the Equitas Reinsurance Contract;

"Subsequent Date" **Transfer** in relation to any Residual Policy, any date after the Effective Date on which such Residual Policy is transferred to Newco, including:

- (a) in respect of any Retained Policy, the date on which the further steps required to be taken under the Order have been taken; and
- (b) in the case of an Excluded Policy, the date on which the transfer of all rights, titles, interests in and obligations under such Policy is fully effective in the UK;

"syndicate" a group of underwriting members of Lloyd's, to which a particular number is assigned by or under the authority of the Council, for whose account an active underwriter accepted or accepts insurance business at Lloyd's;

"Syndicate" each of the syndicate years of account listed in Schedule 1 of the Equitas Reinsurance Contract;

"Syndicate Reinsurance Contracts" in respect of any Syndicate or Closed Year Syndicate, those reinsurance contracts (excluding the Names Reinsurance Contracts and the reinsurance to close of any Closed Year Syndicate) taken out by the Syndicate or Closed Year Syndicate and those which enure to the benefit of the Syndicate taken out by other syndicates or any Closed Year Syndicate reinsured to close, either directly or indirectly, by the Syndicate (or otherwise in respect of 1992 and Prior Business) but excluding any claim, right, title, benefit or interest under personal stop loss, estate protection reinsurance and individual run off policies purchased on behalf of any Name for his own account;

"Tax", "tax", "taxation" all forms of tax, duty, rate, levy, charge or other imposition or withholding whenever and by whatever authority imposed and whether of the UK or

elsewhere;

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| "Transferring Amended RROC Provisions" | clauses 3.1 to 3.10 (<i>Reinsurance Obligation</i>), clauses 4.1, 4.3, 4.4, 4.8 (<i>Assignment to Trustee</i>), clause 15 (<i>Access to Books and Records</i>) and clause 16 (<i>Reports and Accounts</i>) and Schedule 3, Paragraphs 9-14 (<i>Operation of Proportionate Cover</i>) of the Equitas Reinsurance Contract; |
| "Transferring Assets" | <p>all right, title and interest of the Names in, to or under:</p> <ul style="list-style-type: none">(a) the rights, benefits and powers under or in relation to the Transferring Policies and Transferring Reinsurance Provisions (in respect of the RROC Reinsurance Rights, subject to the rights therein of EPTL);(b) the Syndicate Reinsurance Contracts (subject to the rights therein of ERL under clause 6 (<i>Additional Consideration</i>) of the Equitas Reinsurance Contract);(c) the Books and Records; and(d) the Names' causes of action against third parties relating to the Transferring Policies, Transferring Reinsurance Provisions and Transferring Liabilities, <p>excluding until the relevant Subsequent Transfer Date, if any, the rights, benefits and powers under the Retained Policies;</p> |
| "Transferring Business" | the Relevant Policies, Transferring Assets and Transferring Liabilities; |
| "Transferring Centrewrite Provision" | clause 11 (<i>Reports and Accounts</i>) of the Centrewrite Reinsurance Contract; |
| "Transferring Liabilities" | all Liabilities and commitments of every kind and description of the Names to the extent arising from or relating to the Transferring Policies and the Transferring Reinsurance Provisions, irrespective of whether the Liabilities and commitments shall arise |

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| | prior to or following the Effective Date, excluding Liabilities under any Retained Policies until the relevant Subsequent Transfer Date, if any, for such Liabilities; |
| "Transferring Lioncover Provisions" | the provisions of the Lioncover Reinsurance Contract other than the Shared Lioncover Provisions and Residual Lioncover Provisions; |
| "Transferring Policies" | the Relevant Policies, together or individually as the context may indicate, excluding any: <ul style="list-style-type: none"> (a) Excluded Policy; and (b) Retained Policy until the relevant Subsequent Transfer Date, if any, for each such Retained Policy; |
| "Transferring Policyholder" | a Policyholder in relation to a Transferring Policy; |
| "Transferring Reinsurance Provisions" | the Transferring RROC Provisions, Transferring Centrewrite Provision, the provisions of the PCW Reinsurance Contracts and the provisions of the Warrilow Reinsurance Contracts; |
| "Transferring RROC Provisions" | the Transferring Amended RROC Provisions and the Transferring Unamended RROC Provisions; |
| "Transferring Unamended RROC Provisions" | clauses 4.2 and 4.5 (<i>Assignment to Trustee</i>), clause 4.7 (<i>Declaration of Trust</i>) and Schedule 3 (other than paragraphs 9 to 14 thereof) (<i>Operation of Proportionate Cover</i>) of the Equitas Reinsurance Contract; |
| "UK" | the United Kingdom of Great Britain and Northern Ireland; |
| "Warrilow Names" | the underwriting members and former underwriting members of Lloyd's comprising the Warrilow Syndicates and any syndicate reinsured to close either directly or indirectly into a Warrilow Syndicate, in their capacity as members of such syndicates; |
| "Warrilow Reinsurance" | the reinsurance contracts entered into between |

| | |
|------------------------------|--|
| Contracts" | Centrewrite and CJW (Underwriting Agencies) Ltd pursuant to which Centrewrite agreed, with effect from 31 December 1992, to reinsure and indemnify the Warrilow Names in relation to Liabilities under Policies underwritten by them at Lloyd's through the Warrilow Syndicates; and |
| "Warrilow Syndicates" | syndicate 553 as constituted for each of the 1985 and 1987 years of account. |

2.2 In this Scheme:

- 2.2.1 "transfer" includes (as the context may require) "assign", "assignation" and "assignment", "dispose", "disposal", "novate", "novation", "convey" and "conveyance";
- 2.2.2 "include" and "including" shall be construed without limitation;
- 2.2.3 any reference to the singular shall include a reference to the plural and vice versa and any reference to the masculine shall include a reference to the feminine;
- 2.2.4 any reference to a court, tax, accounting or regulatory authority shall be deemed to include a reference to such authority's successors in time;
- 2.2.5 any reference to an enactment, a statutory provision or any subordinate legislation shall be deemed to include a reference to that enactment, statutory provision or subordinate legislation as amended, replaced or re-enacted from time to time and to any instrument or order made from time to time under such enactment, statutory provision or subordinate legislation;
- 2.2.6 expressions used which have meanings under FSMA shall bear those meanings, except where such expression is defined otherwise in paragraph 2.1 of this Scheme;
- 2.2.7 any reference to this Scheme shall include the Schedules to it and (unless inconsistent with the subject or context) references in this Scheme to paragraphs, parts or Schedules are to paragraphs of, parts of or the Schedules to this Scheme;
- 2.2.8 any reference to writing shall include any mode of reproducing words in a legible and non-transitory form;
- 2.2.9 if a period of time is specified from a given day or date or from the day or date of an act or event, it shall be calculated exclusive of that day or date;

- 2.2.10 where a document, or provision of a document, is expressed to be amended pursuant to, and restated in, this Scheme, additions to the document or provision (as restated) are shown in underlined text and deletions to the document or provision (as restated) are shown in struck-through text; and
- 2.2.11 if a court of competent jurisdiction determines that there is a conflict or inconsistency between a provision of paragraphs 3 to 5 and a provision of paragraphs 8 to 10, the provision of paragraphs 8 to 10 shall prevail.

3. TRANSFERRING ASSETS

- 3.1 On and with effect from the Effective Date, the Transferring Assets, and all the estate and interest of the Names in them shall, by the Order and without any further act or instrument, be transferred to, and be vested in, Newco subject to all Encumbrances (if any) affecting such Transferring Assets, in accordance with this Scheme.
- 3.2 Newco shall accept, without investigation or requisition, such title as the Names shall have at the Effective Date to the Transferring Assets.
- 3.3 EL (on behalf of the Names) and Newco shall, as and when necessary or appropriate, execute and deliver all documents and perform all such other acts as may be reasonably required to effect or perfect the transfer to, and vesting in, Newco of any Transferring Asset in accordance with the terms of this Scheme.

4. TRANSFERRING POLICIES

- 4.1 In addition to the provisions of paragraph 3, on and with effect from the Effective Date, Newco shall, by the Order and without any further act or instrument, be entitled to all the rights, benefits and powers, and be subject to all the obligations and Liabilities, of the Names whatsoever subsisting on the Effective Date under or by virtue of the Transferring Policies.
- 4.2 Every Transferring Policyholder shall, on and from the Effective Date and to the exclusion of any rights he may have against the Names under any Transferring Policy, be entitled to the same rights against Newco as were available to him against the Names under such Transferring Policies.
- 4.3 Newco shall be entitled to any and all defences, claims, counterclaims and rights of set-off under the Transferring Policies which would have been available to the Names.
- 4.4 Every Transferring Policyholder shall, from and after the Effective Date, in substitution for any Liability or obligation owed by him thereunder to the Names, be under the same Liability to Newco (in relation to any Residual Policy, as agent of the Names but subject to paragraph 6).

- 4.5 All references in any Transferring Policy to a Syndicate, Closed Year Syndicate, Name or agent of a Name shall from and after the Effective Date or Subsequent Transfer Date, as the case may be, be read as references to Newco or, where appropriate, agents of Newco. In particular, but without limitation, all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by the Names or agents of the Names in relation to any of the Transferring Policies shall, from and after the Effective Date, or Subsequent Transfer Date, as the case may be, be exercisable or required to be performed by Newco or, where appropriate, agents of Newco.
- 4.6 Where the transfer of any Transferring Policy, Transferring Asset or Transferring Liability is governed by the law of any country or territory outside the UK, ERL and EL shall, if Newco so requires, use their reasonable commercial endeavours to secure the effective transfer thereof, under the law of that country or territory, to Newco.
- 4.7 Newco shall be entitled to all and any right, title and interest Names may have in the Syndicate Reinsurance Contracts which shall continue to operate and cover the Transferring Policies in the same way and to the same extent after the Effective Date as prior to the Effective Date and, in particular, no additional set-off rights or obligations will be created, and no existing set-off rights or obligations will be extinguished, purely by virtue of the transfer of the 1992 and Prior Business into one entity.

5. TRANSFERRING LIABILITIES

- 5.1 Subject to paragraph 5.2, on and with effect from the Effective Date, the Transferring Liabilities and all the estate and interest of the Names in them shall, by the Order without any further act or instrument, be transferred to, and become Liabilities of, Newco and shall cease to be Liabilities of the Names.
- 5.2 On and from each Subsequent Transfer Date, each Liability relating to a Retained Policy to which the Subsequent Transfer Date applies shall, by the Order and without any further act or instrument, be transferred to, and become a Liability of, Newco and shall cease to be a Liability of the Names.

6. RESIDUAL POLICIES

- 6.1 The Liabilities under the Residual Policies shall pending their transfer to Newco (whether pursuant to this Scheme or otherwise) remain Liabilities of the Names.
- 6.2 EL (on behalf of the Names) and Newco shall, as and when necessary or appropriate, execute and deliver all documents and perform all such other acts as may be reasonably required to effect or perfect the transfer to, and vesting in, Newco of any Residual Policy.

6.3 On and from each Subsequent Transfer Date, each Retained Policy to which such Subsequent Transfer Date applies and all the Assets and Liabilities relating to such Policy shall, to the extent not previously transferred, by the Order and without any further act or instrument be transferred to, and be vested in, Newco, whereupon it shall constitute a Transferring Policy under this Scheme.

6.4 Upon the novation or transfer of any Excluded Policy to Newco the Assets and Liabilities relating to such Policy shall, to the extent not previously transferred, be transferred to Newco on the Subsequent Transfer Date and such Policy shall thereafter be dealt with by EL and Newco under the provisions of this Scheme as if it had transferred as a Transferring Policy pursuant to this Scheme.

7. INDEMNITIES IN FAVOUR OF THE NAMES

7.1 Newco shall discharge on behalf of the Names or, failing that, indemnify the Names from and after the Effective Date against:

7.1.1 all Transferring Liabilities and Liabilities under the Residual Policies whether the same shall arise prior to or following the Effective Date; and

7.1.2 to the extent the same would be recoverable by the Names under the Names Reinsurance Contracts but for this Scheme, each other cost, claim, loss, damages, Liability or expense (whatsoever) incurred in connection with the Transferring Business including the conduct of claims under paragraph 13, whether the same shall arise prior to or following the Effective Date.

7.2 Where any Name is entitled to receive an amount pursuant to the indemnity in this paragraph 7, it shall be entitled to receive such amount as, after payment of or provision for any Liability to taxation in respect of the amount receivable, will result in the receipt of an amount equal to the value of the Liability to be indemnified against.

7.3 Any payment made on behalf of, or to, the Names pursuant to paragraph 7.1 shall, to the extent it relates to a risk that has been ceded to a third party under an Outwards Reinsurance Contract, be deemed to be a payment by Newco for the purposes of the Outwards Reinsurance Contract and shall give rise to a claim thereunder.

8. EQUITAS REINSURANCE CONTRACT

8.1 Transfer and amendment of Equitas Reinsurance Contract

In addition to the provisions of paragraph 3, on and with effect from the Effective Date, by the Order and without any further act or instrument all the rights, benefits and powers conferred on or vested in the Names or their agents (other than ERL) and all the Liabilities imposed on the Names or their agents (other than ERL), by or under the Transferring RROC Provisions, shall be transferred to, and be vested in, Newco (in

respect of the RROC Reinsurance Rights, subject to the rights therein of EPTL) and the Equitas Reinsurance Contract shall be amended and take effect as follows:

- 8.1.1 the Transferring Unamended RROC Provisions shall cease to have effect on, and in respect of, the Names and shall have effect on, and in respect of, Newco as if Newco had been an original party thereto from inception of the Equitas Reinsurance Contract;
- 8.1.2 the Transferring Amended RROC Provisions shall:
 - (a) cease to have effect on, and in respect of, the Original RROC Parties (other than ERL and EPTL); and
 - (b) have effect on, and in respect of, ERL, EPTL and Newco as amended and restated in the form set out in Part A of Schedule 1 as if Newco had been an original party thereto from inception of the Equitas Reinsurance Contract;
- 8.1.3 the Shared Unamended RROC Provisions shall:
 - (a) continue to have effect on, and in respect of, the Original RROC Parties and the rights and Liabilities of the Original RROC Parties thereunder shall not be affected by this Scheme; and
 - (b) have effect on, and in respect of, the Original RROC Parties and Newco as if Newco had been an original party thereto from inception of the Equitas Reinsurance Contract;
- 8.1.4 the Shared Amended RROC Provisions shall:
 - (a) continue to have effect on, and in respect of, the Original RROC Parties and the rights and Liabilities of the Original RROC Parties thereunder shall not be affected by this Scheme; and
 - (b) have effect on, and in respect of, the Original RROC Parties and Newco as amended and restated in the form set out in Part B of Schedule 1 as if Newco had been an original party thereto from inception of the Equitas Reinsurance Contract;
- 8.1.5 the Residual RROC Provisions, and the rights and Liabilities of the Original RROC Parties thereunder, shall not be affected by this Scheme;
- 8.1.6 ERL shall have no greater or lesser Liability to Newco under any of the Transferring RROC Provisions than it would have had to the Names in the absence of this Scheme and Newco shall have no greater or lesser Liability to

ERL under any of the Transferring RROC Provisions than the Names would have had to ERL in the absence of this Scheme;

8.1.7 ERL shall have no greater or lesser Liability to Newco and the Names, in aggregate, under any of the Shared RROC Provisions than it would have had to the Names in the absence of this Scheme and Newco and the Names shall have no greater or lesser Liability, in aggregate, to ERL under any of the Shared RROC Provisions than the Names would have had to ERL in the absence of this Scheme; and

8.1.8 ERL shall have no greater or lesser Liability to the Names under any of the Residual RROC Provisions than it would have had to the Names in the absence of this Scheme and the Names shall have no greater or lesser Liability to ERL under any of the Residual RROC Provisions than they would have had to ERL in the absence of this Scheme.

9. LIONCOVER

9.1 Transfer of PCW Reinsurance Contracts

In addition to the provisions of paragraph 3, on and with effect from the Effective Date, by the Order and without any further act or instrument all the rights, benefits and powers conferred on or vested in the PCW Names and all the Liabilities imposed on the PCW Names, by or under the PCW Reinsurance Contracts, shall be transferred to, and be vested in, Newco who shall be substituted as a party in place of the PCW Names as if Newco had been an original party thereto from inception of the PCW Reinsurance Contracts.

9.2 Transfer of Lioncover Reinsurance Contract

The provisions of this paragraph 9.2 are conditional on the provisions of paragraph 9.1 taking effect. Upon the transfer referred to in paragraph 9.1 taking effect, by the Order and without any further act or instrument, all the rights, benefits and powers conferred on or vested in Lioncover and all the Liabilities imposed on Lioncover, by or under the Transferring Lioncover Provisions, shall be transferred to, and be vested in, Newco and the Lioncover Reinsurance Contract shall be amended and take effect as follows:

9.2.1 the Transferring Lioncover Provisions shall cease to have effect on, and in respect of, Lioncover and shall have effect on, and in respect of, Newco as if Newco had been an original party thereto from inception of the Lioncover Reinsurance Contract, references therein to Lioncover were references to Newco and references therein to Insurance Creditors of the PCW Names or PCW Syndicates were references to Insurance Creditors of Newco;

- 9.2.2 the Shared Unamended Lioncover Provisions shall:
- (a) continue to have effect on, and in respect of, the Original Lioncover Parties and the rights and Liabilities of the Original Lioncover Parties thereunder shall not be affected by this Scheme; and
 - (b) have effect on, and in respect of, the Original Lioncover Parties and Newco as if Newco had been an original party thereto from inception of the Lioncover Reinsurance Contract;
- 9.2.3 the Shared Amended Lioncover Provisions shall:
- (a) continue to have effect on, and in respect of, the Original Lioncover Parties and the rights and Liabilities of the Original Lioncover Parties thereunder shall not be affected by this Scheme; and
 - (b) have effect on, and in respect of, the Original Lioncover Parties and Newco as amended and restated in the form set out in Schedule 2 as if Newco had been an original party thereto from inception of the Lioncover Reinsurance Contract;
- 9.2.4 the Residual Lioncover Provisions, and the rights and Liabilities of the Original Lioncover Parties thereunder, shall not be affected by this Scheme;
- 9.2.5 ERL shall have no greater or lesser Liability to Newco under any of the Transferring Lioncover Provisions than it would have had to Lioncover in the absence of this Scheme and Newco shall have no greater or lesser Liability to ERL under any of the Transferring Lioncover Provisions than Lioncover would have had to ERL in the absence of this Scheme;
- 9.2.6 ERL shall have no greater or lesser Liability to Newco and the Original Lioncover Parties, in aggregate, under any of the Shared Lioncover Provisions than it would have had to the Original Lioncover Parties in the absence of this Scheme and Newco and the Original Lioncover Parties shall have no greater or lesser Liability, in aggregate, to ERL under any of the Shared Lioncover Provisions than the Original Lioncover Parties would have had to ERL in the absence of this Scheme; and
- 9.2.7 ERL shall have no greater or lesser Liability to the Original Lioncover Parties under any of the Residual Lioncover Provisions than it would have had to the Original Lioncover Parties in the absence of this Scheme and the Original Lioncover Parties shall have no greater or lesser Liability to ERL under any of the Residual Lioncover Provisions than they would have had to ERL in the absence of this Scheme.

9.3 Termination of PCW Reinsurance Contracts

The provisions of this paragraph 9.3 are conditional on the provisions of paragraph 9.2 taking effect. Upon the transfer and amendments referred to in paragraph 9.2 taking effect, by the Order and without any further act or instrument:

- 9.3.1 the PCW Reinsurance Contracts shall terminate and have no further validity or effect;
- 9.3.2 each party to the PCW Reinsurance Contracts shall be irrevocably released and discharged from all past, present and future Liabilities which arise under the PCW Reinsurance Contracts;
- 9.3.3 without prejudice to the validity of any reinsurance claims made under the PCW Reinsurance Contracts, to the extent they have not been paid all outstanding reinsurance claims under the PCW Reinsurance Contracts as at the Effective Date shall be deemed to become reinsurance claims under the Lioncover Reinsurance Contract; and
- 9.3.4 for the avoidance of doubt, save as set out in this Scheme, no party to the PCW Reinsurance Contracts shall have any obligation to repay the others any payment previously made under the PCW Reinsurance Contracts, to make good any loss incurred by the others in respect of past obligations, or to perform any obligation outstanding at the Effective Date under or in relation to the PCW Reinsurance Contracts.

This paragraph 9.3 is intended to effect the termination of the PCW Reinsurance Contracts, but in such a way as not to affect in any respect the rights and obligations of the parties under any other contracts and agreements between the parties.

10. CENTREWRITE

10.1 Transfer of Warrilow Reinsurance Contracts

In addition to the provisions of paragraph 3, on and with effect from the Effective Date, by the Order and without any further act or instrument:

- 10.1.1 all the rights, benefits and powers conferred on or vested in the Warrilow Names and all the Liabilities imposed on the Warrilow Names, by or under the Warrilow Reinsurance Contracts, shall be transferred to, and be vested in, Newco who shall be substituted as a party in place of the Warrilow Names as if Newco had been an original party thereto from inception of the Warrilow Reinsurance Contracts and references therein to:

- (a) "the Syndicate" or "the members of the Syndicate" were references to Newco; and
- (b) "the Syndicate's business as underwriters at Lloyd's" were references to "Newco's business";

10.1.2 Article 3 (*Recoveries*) of each of the Warrilow Reinsurance Contracts shall be amended and restated as follows:

"All underlying policies of reinsurance (other than the reinsurance contract entered into with Equitas Reinsurance Limited) and amounts recoverable thereunder to which Newco is or becomes entitled shall enure to the benefit of this reinsurance"; and

10.1.3 Centrewrite shall have no greater or lesser Liability to Newco under the Warrilow Reinsurance Contracts than it would have had to the Warrilow Names in the absence of this Scheme and Newco shall have no greater or lesser Liability to Centrewrite under any the Warrilow Reinsurance Contracts than the Warrilow Names would have had to Centrewrite in the absence of this Scheme.

10.2 Centrewrite Reinsurance Contract

In addition to the provisions of paragraph 3, on and with effect from the Effective Date, by the Order and without any further act or instrument all the rights, benefits and powers conferred on or vested in the Warrilow Names or their agents (other than ERL) and all the Liabilities imposed on the Warrilow Names or their agents (other than ERL), by or under the Transferring Centrewrite Provision, shall be transferred to, and be vested in, Newco and the Centrewrite Reinsurance Contract shall be amended and take effect as follows:

10.2.1 the Transferring Centrewrite Provision shall:

- (a) cease to have effect on, and in respect of, the Warrilow Names; and
- (b) have effect on, and in respect of, ERL, Centrewrite and Newco as amended and restated in the form set out in Part A of Schedule 3 as if Newco had been an original party thereto from inception of the Centrewrite Reinsurance Contract; and

10.2.2 the Shared Unamended Centrewrite Provisions shall:

- (a) continue to have effect on, and in respect of, the Original Centrewrite Parties and the rights and Liabilities of the Original Centrewrite Parties thereunder shall not be affected by this Scheme; and

- (b) have effect on, and in respect of the Original Centrewrite Parties and Newco as if Newco had been an original party thereto from inception of the Centrewrite Reinsurance Contract;

10.2.3 the Shared Amended Centrewrite Provisions shall:

- (a) continue to have effect on, and in respect of, the Original Centrewrite Parties and the rights and Liabilities of the Original Centrewrite Parties thereunder shall not be affected by this Scheme; and
- (b) have effect on, and in respect of the Original Centrewrite Parties and Newco as amended and restated in the form set out in Part B of Schedule 3 as if Newco had been an original party thereto from inception of the Centrewrite Reinsurance Contract;

10.2.4 as if references therein to Insurance Creditors of the Warrilow Names or Warrilow Syndicates were references to Insurance Creditors of Newco;

10.2.5 ERL can have no greater or lesser Liability to Newco under the Transferring Centrewrite Provision than it would have had to Centrewrite and the Warrilow Names, in aggregate, in the absence of this Scheme; and

10.2.6 ERL can have no greater or lesser Liability to Newco and the Original Centrewrite Parties, in aggregate, under any of the Shared Centrewrite Provisions than it would have had to the Original Centrewrite Parties in the absence of this Scheme and Newco and the Original Centrewrite Parties can have no greater or lesser Liability, in aggregate, to ERL under any of the Shared Centrewrite Provisions than the Original Centrewrite Parties would have had to ERL in the absence of this Scheme.

11. EPTL

On and with effect from the Effective Date, the EPTL Trust Declaration shall, by the Order and without any further act or instrument, be amended and restated in the form set out in Schedule 4.

12. FURTHER UNDERTAKING

In the event of any payment (including any reinsurance receipts) being made to, property being received by, or a right being conferred upon a Name on or after the Effective Date in relation to any Transferring Asset, Transferring Policy or Residual Policy, the Name shall, to the extent such payment, property or right is not required to be paid over or transferred to ERL under the Equitas Reinsurance Contract, as soon as reasonably practicable notify Newco and, to the extent legally permissible, pay over the amount of such payment or transfer such property or right to Newco and ERL shall

on demand indemnify the Name against any reasonable costs properly incurred by it to complete such transaction.

13. CONTINUITY OF PROCEEDINGS

- 13.1 Subject to paragraph 13.2, on and with effect from the Effective Date, any Proceedings which are pending by or against the Names in connection with the Transferring Policies, Transferring Assets or Transferring Liabilities shall be continued by or against Newco who shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to the Names in relation thereto.
- 13.2 On and from the Subsequent Transfer Date any Proceedings which are pending by or against the Names in connection with the relevant Residual Policies to which such Subsequent Transfer Date applies shall be continued by or against Newco who shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to the Names in relation thereto.
- 13.3 On and from the Effective Date, Newco shall be entitled to direct the Names as to the conduct of any on-going Proceedings referred to in paragraphs 13.1 and 13.2 that are not subject to oversight or control by ERL under the Equitas Reinsurance Contract and Newco shall have full authority (with authority to sub-delegate) to act on behalf of the Names in respect of any such Proceedings.
- 13.4 The production of a copy of the Order shall, for all purposes, be evidence of the transfer to, and vesting in, Newco of the Transferring Business in accordance with the Order and the provisions of this Scheme.

14. EFFECTIVE DATE

- 14.1 Subject to paragraph 14.2, this Scheme shall become operative on 30 June 2009 or such other time and date as EL and Newco may agree in writing (being a time and date falling after the making of the Order) and unless this Scheme shall become operative on or before 31 December 2009 or such later date as the Court may allow upon the application of EL and Newco this Scheme shall lapse.
- 14.2 Notwithstanding paragraph 14.1, this Scheme shall not become operative unless any modification of or addition to this Scheme or any further condition or provision affecting the same imposed by the Court (or recommended by the Court with a view to it being imposed) has been consented to in writing by EL and Newco.

15. COSTS AND EXPENSES

Save as otherwise provided in this Scheme or ordered by the Court, all costs and expenses, including fees and disbursements of legal and financial advisers and

accountants, incurred in connection with this Scheme and the transactions contemplated by this Scheme shall be paid by the party incurring such costs and expenses.

16. MODIFICATIONS, AMENDMENTS OR ADDITIONS

16.1 EL and Newco may consent on their own behalf and on behalf of all other persons concerned (other than the FSA) to any modification, amendment or addition to this Scheme or to any further condition or provision affecting the same which the Court may approve or impose prior to the sanction of this Scheme, provided that any such modification, amendment, addition, condition or provision that affects any right, obligation or interest of Lioncover or Centrewrite shall require the consent of Lloyd's.

16.2 Subject to paragraphs 16.3 and 16.4, after the grant of the Court Order, Newco may amend the terms of this Scheme if:

16.2.1 the FSA has been notified of the proposed amendment and has not objected thereto within 30 business days of such notification;

16.2.2 an independent expert has certified that, in his opinion the proposed amendment will not materially and adversely affect the reasonable expectations of the holders of Relevant Policies;

16.2.3 to the extent such amendment affects any right, obligation or interest of EL, ERL or the Names, EL has consented thereto in writing; and

16.2.4 to the extent such amendment affects any right, obligation or interest of Lioncover or Centrewrite, Lloyd's has consented thereto in writing.

16.3 Subject to paragraph 16.4, after the grant of the Court Order, any amendment by Newco to the terms of this Scheme, shall (in addition to the requirements of paragraphs 16.2.1 to 16.2.4) require an application by Newco to the Court for consent to the amendment. If such consent of the Court is granted, Newco may amend the terms of the Scheme in accordance with such consent.

16.4 Paragraphs 16.2 and 16.3 shall not apply, and the consent of the Court shall not be required, in relation to minor and/or technical amendments to the terms of the Scheme (including amendments to correct manifest errors) that are agreed in writing by EL and Newco, provided that the FSA has been notified of the same and has confirmed it does not object thereto.

17. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person not party to this Scheme may not enforce any of its terms pursuant to the Contracts (Rights of Third Parties) Act 1999.

18. **SUCCESSORS AND ASSIGNS**

This Scheme will bind and enure to the benefit of the successors and assigns of each of EL, ERL, EPTL, Newco and the Names.

19. **GOVERNING LAW**

This Scheme shall be governed by and construed in accordance with English law.

SCHEDULE 1

Part A

Transferring Amended RROC Provisions

THE REINSURANCE OBLIGATION

Scope of reinsurance obligation

3.1 ERL shall, ~~in consideration of:~~

- ~~(a) the obligation to transfer the Segregated Account Assets held in respect of each and every Syndicate;~~
- ~~(b) the obligation of the Names to pay their Name's Premiums;~~
- ~~(c) the obligation of the Names to assign the rights granted to ERL pursuant to clause 6; and~~
- ~~(d) the obligation of the Names to assign the rights specified in clause 5.1(d), reinsure and indemnify each and every Syndicate and each Closed Year Syndicate Newco by payment in accordance with clause 3.4 and otherwise upon and subject to the terms and conditions of this Agreement.~~

3.2 The reinsurance and indemnity obligation of ERL shall be to indemnify without limitation in time and amount, subject to and in accordance with the remainder of this clause 3, ~~each Syndicate and each Closed Year Syndicate from and including the Effective Date~~Newco, by way of reinsurance, in respect of all liabilities, losses, claims, returns, reinsurance premiums, costs and other liabilities including extra-contractual obligations or punitive or penal damages arising in relation to the ~~Syndicate-1992 and Prior Business of that Syndicate or Closed Year Syndicate~~Newco, after deduction of:

- (a) all amounts recoverable and actually recovered ~~after the Effective Date~~ in respect of the relevant Syndicate Reinsurances; and
- (b) all other income receivable and actually received ~~after the Effective Date~~, including premiums, return premiums, salvages, claim refunds or other moneys which may be applied in reducing the amount of any liability comprised in the ~~Syndicate-1992 and Prior Business of that Syndicate or Closed Year Syndicate~~.

In the performance of the Reinsurance Obligation ~~in respect of any Syndicate or Closed Year Syndicate~~ ERL shall have the obligation and responsibility for the collection of the amounts referred to in paragraphs (a) and (b) above and shall bear any risk of failure to collect such amounts. ERL shall pay, or procure payment of, amounts agreed or lawfully due and payable

in respect of any Claim or otherwise due under clause 3.2 on behalf of the relevant Syndicate ~~(or Closed Year Syndicate in the circumstances set out in clause 3.3)~~ Newco.

~~3.3 The obligation of ERL to indemnify any Closed Year Syndicate in respect of 1992 and Prior Business pursuant to clause 3.1 shall only arise if the reinsurance to close of that Closed Year Syndicate shall have been set aside by a final order, nor subject to further appeal, of any court of competent jurisdiction, or shall otherwise have ceased to have effect. In either event and on payment pursuant to such indemnification in respect of any liability comprised in 1992 and Prior Business, ERL shall have no further obligation pursuant to clause 3.1 in respect of such liability to any Syndicate or Closed Year Syndicate.~~

3.43 Unless the Trustee has made an election pursuant to clause 4.10, and subject to clause 3.83.7, ERL shall pay, or procure payment of any amount due under this clause 3, in the following manner:

- (a) in the case of payments from the EATF, in accordance with the terms of the EATD;
- (b) in the case of payments from the ECTF, in accordance with the terms of the ECTD;
- (c) in the case of payments from any Overseas Deposit Fund, in accordance with the terms of the relevant Overseas Deposit Deed; and
- ~~(d) in the case of payments in respect of motor and/or employer's liability business of each of the Syndicates listed in schedule 6, to the Premiums Trust Funds of that Syndicate; and~~(e) in any other case, direct to the Insurance Creditors of the Syndicate 1992 and Prior Business ~~of that Syndicate or Closed Year Syndicate~~ or such other person as is entitled thereto,¹

provided that nothing in this clause 3.43 or any other provision of this Agreement shall be construed to mean that amounts agreed and lawfully due in respect of any Claim in respect of the Syndicate 1992 and Prior Business ~~of any Syndicate~~ are not payable until the aggregate ultimate net liability in respect of that Claim has been ascertained and ERL shall, where necessary, advance payment of all such amounts.

3.54 If at any time a Certified Reinsurance Trigger Event or Automatic Reinsurance Trigger Event occurs, the liability of ERL to ~~the Names and the Closed Year Names~~ Newco in respect of the Reinsurance Obligation (whether or not previously adjusted as a result of any prior operation of this clause 3.54) shall be adjusted subject to and in accordance with the

¹ Schedule 6 (Relevant Motor and Employer's Liability Syndicates) shall be deleted accordingly.

provisions of schedule 3 PROVIDED THAT such adjustment shall only be made if an adjustment is or shall be made under and in accordance with the equivalent provisions in any other contract of insurance underwritten by ERL, including the Centrewrite Reinsurance, the E&O Companies Reinsurance and the PSL Companies Reinsurance. ERL undertakes not to underwrite any contract of insurance, other than the Illinois Collateral Reinsurance, which does not contain provisions equivalent to and having the same effect as those contained in this clause 3.54 and schedule 3.

3.65 ERL, in respect, of any decision to adjust the liability of ERL to ~~the Names or the Closed Year Names~~ Newco pursuant to this Agreement, and Equitas, in respect of any decision to adjust the liability of Equitas to ERL pursuant to the Retrocession Agreement, each acknowledges and agrees for the benefit of the ~~Names and the Closed Year Names~~ Newco that such decision shall be taken bona fide and that all reasonable skill, care and diligence will be taken in arriving at any such decision.

3.76 It is hereby acknowledged by each of the parties to this Agreement that, ~~other than pursuant to clause 3.11,~~ this Agreement is not intended to and does not create any obligations to, or confer any rights upon, Insurance Creditors or any other persons not parties to the Agreement. It is hereby further acknowledged by each of the parties to this Agreement that this Agreement is not intended to and does not create any third party beneficiary status in, or confer third party beneficiary rights upon, Insurance Creditors or any other persons with respect to this Agreement but without prejudice to the terms of the Declaration of Trust.

3.7 If (A) any overseas governmental, quasi governmental, supranational, statutory or regulatory body:

- (i) seizes or otherwise takes control of the EATF, the ECTF or any Overseas Deposit Fund (for the purposes of this clause, a Fund);
- (ii) takes steps which result in the appointment of a judicial trustee or any other party having an analogous function for the purposes of taking control of the administration of such Fund;
- (iii) issues directions or requests to any party having control of or responsibility for such a Fund, the effect of which is or may be to restrict the availability of that Fund for its stated purposes or in any way limit or prejudice ERL's reimbursement rights from such Fund

whether for the purposes of securing obligations to Insurance Creditors or otherwise; or (B) a trustee or other party having an analogous function, indicates that it has ceased or intends to cease or suspend the operation of the Fund for the purposes for which it was established or take action which in any way may limit or prejudice ERL's reimbursement rights from such Fund;

- (a) ERL shall be entitled to suspend its obligation to pay that portion of any claim that would otherwise have been paid from the relevant Fund (or in any respect of which the relevant Fund would have reimbursed ERL for making such payment) for so long as such circumstances apply; and
- (b) the Reinsurance Obligation shall be treated as discharged to the extent that cash or assets held in the relevant Fund are applied towards the settlement of any Claim.

No termination for non-payment or non-disclosure

~~3.9 The Reserve Groups, Lloyd's and ERL have been provided with or been given access to certain materials and information and received representations and responses to certain questions put to the Managing Agent of each Syndicate or any predecessor managing agent of that Syndicate in relation to the Syndicate 1992 and Prior Business of that Syndicate, assets held in respect thereof and non insurance liabilities of that Syndicate (such materials, information, representations and responses being collectively referred to as the Disclosure).~~ 8

ERL shall have no right to avoid this Agreement after the Effective Date by reason of any non-disclosure or misrepresentation (whether or not innocent) notwithstanding that some material facts or matters may not have been or may not be disclosed to ERL, any Reserve Group or Lloyd's and/or that some of the Disclosure facts or matters disclosed may not be accurate or complete, but this shall be without prejudice to any rights of ERL under any Supervisory Management Agreement or any Information and Administration Agreement or the Completion Accounts and Co-operation Agreement.

3.109 ERL expressly acknowledges that it shall have no right to terminate this Agreement, in whole or in part, following the Effective Date, as a result of non-payment of any Name's Premium premium or any other failure of the consideration to be provided to ERL pursuant to clause 5.

POLICYHOLDER PROTECTION

Assignment to Trustee

4.1 For the purposes of this Agreement, the *Assigned Property* shall mean in respect of any ~~Name or Closed Year Name~~ Newco, except as provided in clause 4.2, all right, title, benefit and interest which ~~that Name or Closed Year Name~~ Newco has or may have against ERL, in relation to:

- (a) the performance of the Reinsurance Obligation by ERL, including, without limitation:
 - (i) any right to receive damages for breach of the Reinsurance Obligation; and
 - (ii) any rights in relation to the Reinsurance Obligation in a winding-up of ERL or pursuant to any scheme or composition entered into between ERL and its creditors including any scheme of arrangement or compromise made under

section 425 of the Companies Act 1985 and any voluntary arrangement made between ERL and its creditors under sections 1 to 8 of the Insolvency Act 1986; and

- (b) any return of premium payable on a winding-up or pursuant to any scheme or composition entered into between ERL and its creditors to the extent that the Secured Obligations have not been satisfied in full.

4.3 ~~In consideration of an assignment in the same terms by all other Names and Closed Year Names, the Substitute Agent on behalf of each Name and Closed Year Name~~Newco hereby assigns the Assigned Property absolutely by way of first fixed mortgage to the Trustee, with effect from the Effective Date, such assignment ~~on behalf of each Name and each Closed Year Name~~ being an assignment of the Assigned Property as security for the discharge and payment of all obligations of all Names and all Closed Year Names Newco under all contracts of insurance which have been reinsured pursuant to the Equitas Scheme.

4.4 The Trustee undertakes to reassign to ~~each Name and Closed Year Name~~Newco the relevant Assigned Property in the circumstances set out in clause 2.13 of the Declaration of Trust.

4.8 ~~The Substitute Agent~~Newco hereby covenants with the Trustee that so long as any of the Secured Obligations remains outstanding ~~and for so long as the Substitute Agent retains authority pursuant to the Substitute Agent's Appointment, it will execute and do all such assurances, acts, deed and things as the Trustee may reasonably require for protecting or perfecting the security over the Assigned Property and the exercise of all powers, authorities and discretions vested in it and shall in particular execute all transfers, conveyances, assignments, assurances and registrations of the Assigned Property whether to the Trustee or its nominees or purchasers and give all notices, orders and discretions which the Trustee may think necessary or expedient.~~

BOOKS AND RECORDS

Access to Books and Records

~~15.1 The Substitute Agent agrees, upon or after the date on which the last of the conditions in clause 2.1 is satisfied, to transfer or procure the transfer of such Books and Records of each Syndicate and Closed Year Syndicate as are in the custody, possession or control of the Substitute Agent which relate exclusively to the Syndicate 1992 and Prior Business of that Syndicate or Closed Year Syndicate to ERL or as ERL may direct, which ERL shall then hold as agent on behalf of that Syndicate.~~

15.1 Books and Records held by or to the direction of ERL are held by ERL as agent on behalf of Newco.

REPORTS AND ACCOUNTS

16. ERL shall, until the ~~Syndicate-1992~~ and Prior Business of each ~~Syndicate~~Newco has been discharged in full, provide to ~~the Names and to the Substitute Agent~~Newco copies of the annual report and consolidated accounts of the Equitas Group and/or such other documents as may be agreed between ERL and ~~the Substitute Agent on behalf of the Names~~Newco from time to time.

SCHEDULE 3 - OPERATION OF PROPORTIONATE COVER

Suspension of payments

9. Following the occurrence of a Certified Reinsurance Trigger Event, ERL shall be entitled, for the minimum period reasonably necessary, to reduce or to suspend payments in respect of the Reinsurance Indemnities under this Agreement, provided that ERL may only exercise such power if it also exercises at or about the same time the equivalent power granted pursuant to all other Reinsurance Indemnities. ERL shall have no power to reduce or suspend payments in respect of any liabilities of ERL other than in respect of Reinsurance Indemnities, and liabilities which are not in respect of Reinsurance Indemnities shall continue to be payable in the ordinary course of business as and when they fall due. ~~Each Name and each Closed Year Name (for himself and for his successors in title)~~Newco agrees that if ERL exercises the power conferred on it by this paragraph 9, ~~such Name or Closed Year Name~~Newco shall not ~~(by himself or in conjunction with others)~~ but without prejudice to clause 3.65 of this Agreement:

- (a) take any step or proceeding against ERL or its property (whether by way of demand, set-off, legal proceedings, execution of judgment, enforcement of security, arbitration proceedings or otherwise howsoever) in any jurisdiction whatsoever for the purpose of enforcing his rights under this Agreement or otherwise procuring the payment of any amount in respect of a Reinsurance Indemnity or any part thereof; or
- (b) apply to the court ~~under section 53 of the Insurance Companies Act 1982~~ for leave to petition for the winding up of ERL in accordance with the Insolvency Act 1986 or take or seek to take any action in accordance with any other statutory or common law powers available to ~~such Name~~ Newco including, without limitation, section 122 of the Insolvency Act 1986.

Entitlement upon liquidation

10.1 Upon the occurrence of an Automatic Reinsurance Trigger Event the amount of the liability of ERL to ~~Names and Closed Year Names~~Newco in respect of the Reinsurance Indemnities shall be calculated in accordance with the provisions of paragraph 6 of this schedule, and may be recalculated to the extent considered appropriate by any liquidator of ERL. The amount for which ~~any Name or Closed Year Name~~Newco or the Trustee on his behalf may prove in the liquidation of ERL shall, accordingly, be limited by reference to the

calculation and/or recalculation of the liabilities of ERL following the application of this schedule.

10.2 Nothing in this paragraph 10 shall require a liquidator to act in a manner inconsistent with any applicable rule of law.

Entitlement upon Section 425 plan being proposed

11. If ERL proposes a compromise or arrangement within the terms of section 425 of the Companies Act 1985, or any successor thereto, at any time after a Certified Reinsurance Trigger Event has occurred, the amount of the liability of ERL to ~~the Names and Closed Year Names~~ Newco in respect of the Relevant Reinsurance Indemnities (and accordingly the amount for which claims can be made in respect of such liability) shall be calculated in accordance with the provisions of this schedule unless and until the extent of such liability is varied by the terms of any such compromise or arrangement that may be approved.

Subordination to General Creditors

12. ~~Each Reinsured Name~~ Newco acknowledges and agrees that its right to receive any payment from ERL shall be subordinated to (i) payment of the General Creditors in full; and (ii) payment of (or the making of appropriate provision for payment of) the expenses of a liquidation, a section 425 plan or other insolvency, moratorium reorganisation or reconstruction procedure (or any variation of any existing procedure), as the case may be, in full.

Upwards adjustment of payments

13.1 If, at any time when a Retrocession Plan is in force, there is an upwards adjustment in a Retrocession Rate, ERL shall, for each payment that has been made on the basis of a Retrocession Rate lower than the new adjusted Retrocession Rate, be entitled to compensation from Equitas. The compensation shall be such amount as is required to increase the level of payments already made to the same level as it is proposed to pay in respect of payments subject to the new adjusted Retrocession Rate.

13.2 ~~ERL and Equitas acknowledge that compensation payments made will be identifiable by reference to specific Names and/or Closed Year Names, on an individual basis, in respect of whom payments to Insurance Creditors have been made at a rate lower than 100% following the implementation of a Proportionate Cover Plan. In the event that ERL receives a compensation payment from Equitas, pursuant to paragraph 13.1 of this schedule, it shall hold such payment on trust for the following purposes:~~

- (a) to the extent that the Actual Insurance Creditors of a ~~Name~~ Newco in respect of which a compensation payment is received have not been paid in full, such payment will be applied to increase or, where possible, discharge in full any remaining amounts due in

respect of such Actual Insurance Creditors. Where it is not possible to make payment in full to such Actual Insurance Creditors, payment will be made pro rata;

- (b) where the Actual Insurance Creditors of a ~~Name~~Newco have been paid in full but the ~~Name in question~~Newco has Contingent Insurance Creditors then any compensation payment applicable to such ~~Name~~Newco shall be retained on trust for the payment of any amounts due in respect of such Contingent Insurance Creditors;
- (c) where a compensation payment has been received for the benefit of a ~~Name in respect of whom~~Newco and all Actual Insurance Creditors and Contingent Insurance Creditors (in circumstances where the full discharge of Contingent Insurance Creditors can, to the reasonable satisfaction of ERL, be conclusively proved) have been discharged in full then, subject to sub-paragraph (d) below, any such payment, or the remaining balance of any such payment, will be paid to the ~~Name~~Newco; and
- (d) where the Actual Insurance Creditors and Contingent Insurance Creditors of a ~~Name~~Newco have been discharged in full but all or part of such payment has been made directly or indirectly by a third party source other than ERL (including, without limitation, Lloyd's, members of Lloyd's or any subsidiary of Lloyd's or from a regulatory deposit which Lloyd's, members of Lloyd's or any subsidiary of Lloyd's is obliged to or chooses to replenish) then, to the extent of the amount of any payment made by that third party, ERL shall make an equivalent payment to such third party source.

13.3 The reference in paragraph 13.2(d) to the making of a payment by a third party source includes payments incurred in replenishing regulatory deposits out of which payments have been made in discharging the liability in question or, in the case of a regulatory deposit which consists of or includes a guarantee, letter of credit or other arrangement, in reimbursing sums paid under that guarantee, letter of credit or other arrangement in or towards the discharge of that liability.

Professional advice

14. In making any determination under this schedule, the Board of ERL shall be entitled to rely on such professional advice as it considers appropriate and the determination of the Board of ERL in respect of any matter in relation to clause 3.5, this schedule or a Proportionate Cover Plan shall be conclusive and binding on ~~all the Names and the Closed Year Names~~Newco. Without prejudice to clause 3.6 of the Agreement, no person shall have any claim against ERL or Equitas (or any officer, director or employee of ERL or Equitas) arising directly or indirectly out of any decision taken or omitted to be taken in relation to the application of this schedule.

Part B
Shared Amended RROC Provisions

DEFINITIONS AND INTERPRETATION

1.1 The words and expressions used in this Agreement shall have the meaning set out in paragraph 1 of schedule 2, and terms and provisions used in this Agreement shall be interpreted in accordance with paragraph 2 of schedule 2.

POLICYHOLDER PROTECTION

Declaration of trust

4.6 ~~The Trustee hereby agrees that it will, on the date hereof, enter into the Declaration of Trust in the form set out in Appendix 1. The Trustee shall hold the Assigned Property on the terms set out in the Declaration of Trust. Each party to this Agreement~~Newco shall be bound by the terms of the Declaration of Trust and to the extent that ~~they are~~it is stated to have any obligation pursuant to the terms thereof hereby expressly agrees to be bound by such obligation.

Payment to Trustee

4.10 Following any Insolvency Event, the Trustee may by notice to ERL require that all payments which ERL is to make or procure be made pursuant to clause 3.4(d) and 3.4(e) should instead be made directly to it. Such payment shall be treated as discharging in part or in whole the Reinsurance Obligation in the same way as if it had been paid in accordance with clause 3.4(d) or clause 3.4(e). The Trustee shall have absolute discretion as to whether to serve such notice and shall incur no liability to Insurance Creditors or ~~Names~~Newco or any other person as a result of its exercise or non-exercise of the power to serve such notice.

ADDITIONAL CONSIDERATION

Syndicate Reinsurances, Financial Reinsurances and Other Returns

6.6 ~~Each of the Names and the Closed Year Names, acting through the Substitute Agent, and the Substitute Agent covenant that the Substitute Agent on behalf of each Name and each Closed Year Name and on its own behalf or as managing agent of any Name or Closed Year Name~~Newco ~~covenants that it will take all action from time to time directed by ERL to ensure that the~~any benefit of the Financial Reinsurances and of the Orion/L&O Reinsurances ~~of each Syndicate and Closed Year Syndicate that may be vested in Newco,~~ including without limitation, rights to rebate or return of premium thereunder, and any credit support, Security Interest or other rights granted in connection therewith (for the purposes of this clause 6 referred to together as the *Relevant Rights*) are transferred to and will enure to the benefit of ERL or such other person as ERL may direct.

6.7 The actions which ERL may direct be taken by a ~~Name or a Closed Year Name~~ or the ~~Substitute Agent~~Newco pursuant to clause 6.6 include, without limitation:

- ~~(a) assigning any of the Relevant Rights to the Managing Agent's Trustees of the relevant Premiums Trust Deed to be held on the terms of such Premiums Trust Deed and taking steps to perfect such assignment;~~
- (a) ~~(b)~~ assigning to ERL, or as ERL may direct, any of the Relevant Rights or the right to receive proceeds in respect of any of the Relevant Rights and taking steps to perfect such assignment;
- (b) ~~(c)~~ entering into a contract pursuant to which ~~the Name or the Closed Year Name~~Newco agrees to the discharge of hisits rights in respect of any of the Relevant Rights in consideration of corresponding or similar rights being granted to ERL or such other person as ERL may direct;
- (c) ~~(d)~~ entering into a contract varying in any manner the rights of ~~the Name or the Closed Year Name~~Newco in respect of any of the Relevant Rights;
- (d) ~~(e)~~ exercising any rights conferred on ~~the Name or the Closed Year Name (alone, or jointly with other members of the relevant Syndicate or Closed Year Syndicate)~~Newco pursuant to, or as the person entitled to, any of the Relevant Rights in such manner as ERL may from time to time direct; and
- (e) ~~(f)~~ declaring a trust, in such terms as may be directed, over any of the rights of ~~the Name or the Closed Year Name~~Newco in respect of any of the Relevant Rights.

6.11 Without limiting the effect of any other provision of this clause 6, the benefit of Syndicate Reinsurances (including, without limitation, the Financial Reinsurances) and of the Other Returns will enure to the benefit of ERL, as reinsurer to close of the aggregate ultimate net liability of each ~~Syndicate or Closed Year Syndicate~~Newco in respect of ~~that Syndicate or Closed Year Syndicate's~~the 1992 and Prior Business.

6.12 ~~Each Name and each Closed Year Name~~Newco agrees, subject to clause 6.3, that, if, on or after the Effective Date, ~~he~~it receives any funds in respect of Other Returns, Syndicate Reinsurances or any Relevant Rights of which ~~the Name or the Closed Year Name~~ is, as at the date hereof, the legal owner or has or may in the future acquire any other rights (whether because the right to receive such funds has not been effectively assigned or transferred to ERL or otherwise), or if such funds are received by the trustees of the ~~Name's or the Closed Year Name's Premiums Trust Funds, LATF or LCTF~~, ~~the Name or Closed Year Name~~it will pay to ERL an amount equal to the funds so received, which shall, to that extent, constitute due performance of the obligation to transfer the rights in satisfaction of which the payment was made, ~~PROVIDED THAT the amount payable by the Name or the Closed Year Name under this clause 6.12 shall be limited to such amount in respect thereof as can properly be paid~~

~~from the funds then or at any later time standing to the credit of the Name's or the Closed Year Name's Premiums Trust Funds, LATF or LCTF.~~

6.13 ERL is authorised to give notice of any assignment under this clause 6 to any person affected thereby and to the extent that the relevant rights or interests:

- (a) ~~a)~~ are not capable of assignment;
- (b) ~~b)~~ have not been assigned; or
- (c) ~~e)~~ have been assigned to ERL pursuant to a request under this clause 6 but that assignment is not recognised by any relevant court or body,

ERL is irrevocably authorised to collect the same for its own account (but subject to the obligations in clause 6.17) whether in its own name or that of ~~the relevant Names and/or Closed Year Names~~Newco and to that end ERL shall be entitled to exercise all such powers as may be necessary or expedient in connection therewith.

RUN-OFF FROM THE EFFECTIVE DATE

9.1 ~~In consideration of the Names and Closed Year Names, acting through the Substitute Agent, entering into the reinsurance agreement contained in Part I of this Agreement, ERL shall be entitled to assume~~ERL has assumed, and undertakes and agrees to continue to assume, responsibility for, ~~and the Names and Closed Year Names irrevocably appoint ERL to perform,~~ the Run-off in accordance with the provisions of this Part II of this Agreement and subject to and in accordance with the provisions of the EATD, the ECTD and any Overseas Trust Deeds.

Powers of ERL

9.2 ~~With effect from the time and date on which the last condition in clause 2.1 is satisfied, and subject~~Subject to and in accordance with the provisions of the EATD, the ECTD and any Overseas Trust Deeds, ERL ~~will~~shall continue to assume exclusive and irrevocable responsibility for the Run-off of the Syndicate-1992 and Prior Business of each Syndicate and each Closed Year Syndicate. ~~ERL shall be entitled and obliged from the time and date on which the last condition in clause 2.1 is satisfied to.~~ ERL shall conduct the Run-off of the Syndicate-1992 and Prior Business of each Syndicate and each Closed Year Syndicate as agent of the Names and Closed Year NamesNewco in its absolute discretion without prejudice to the powers of the Substitute Agent under any Premiums Trust Deed, ~~the LATD or the LCTD or otherwise in relation to the discharge of any consideration due under clause 3.1,~~ and, without prejudice to the generality of the foregoing, ERL shall be entitled, in accordance with, and subject to, all applicable laws, to exercise the following powers together with all such other powers as may be necessary or expedient in relation thereto:

- (a) power to adjust, handle, agree, settle, pay, compromise or repudiate any Claim, return premium, reinsurance premium or any other insurance or reinsurance liability on behalf of ~~the Syndicate or Closed Year Syndicate~~ Newco;
- (b) power to adjust, handle, agree, settle, pay, compromise or repudiate any other liability, outgoing or expense of ~~the Syndicate or Closed Year Syndicate~~ Newco of whatever nature and wherever arising without limitation in time and amount;
- (c) power to agree to any variation or extension of existing contracts of insurance or reinsurance entered into by or on behalf of ~~the Syndicate or Closed Year Syndicate~~ Newco and to set any additional premium payable by the insured or reinsured unless already fixed under the terms of the original insurance or reinsurance;
- (d) power to commence, conduct, pursue, prosecute, settle, appeal or compromise any Legal Proceedings on behalf of ~~the Syndicate or Closed Year Syndicate or any Name~~ Newco or to defend any such proceedings taken out against ~~the Syndicate or Closed Year Syndicate or any Name or Closed Year Name~~ Newco in which any outcome will by virtue of this Agreement be for the account of ERL including the provision of any security in respect of any such proceedings;
- (e) power to agree, take down and collect premiums, claim refunds, salvages and reinsurance recoveries;
- (f) power to agree to, or exercise any right to, set off any claims against reinsurance recoveries or vice versa, or to settle any balance of account at any time owing to or from ~~the Syndicate or Closed Year Syndicate or any Name or Closed Year Name~~ Newco in relation to ~~the Syndicate~~ 1992 and Prior Business, whether in respect of claims, premiums, reinsurance, insurance or any other amounts whatsoever;
- (g) power to agree on behalf of ~~the Syndicate or Closed Year Syndicate~~ Newco to fund the obligations of any third party in connection with any Claim or any other matter;
- (h) power to agree any ex gratia or goodwill payment or any extra contractual obligation of or on behalf of ~~the Syndicate or Closed Year Syndicate~~ Newco;
- (i) power to enter into any arrangements which ERL considers will or may avoid or reduce any liability in respect of a Claim;
- (j) power to use the ~~names of any or all of the Names or Closed Year Names~~ name of Newco in exercise of any or all of the powers conferred on ERL by this Agreement;
- (k) power to commute or enter into an agreement for the discharge of any liability or prospective liability under any insurance or reinsurance policy, or for the recovery of any asset;

- (l) power to exercise any rights of subrogation of ~~the Syndicate or Closed Year Syndicate or any of its members~~Newco or to exercise any other rights of recovery of the ~~Syndicate or Closed Year Syndicate or any of its members~~Newco (whether by way of contribution, indemnity or otherwise howsoever) in respect of losses sustained or expenses incurred by it or by ~~any of them~~Newco;
- (m) power to engage in any discussion or negotiation with any insured person, reinsured person, class of insured or reinsured persons, reinsurer, broker, legal or other representative of insureds or any other party in relation to any Claim or any other matter;
- (n) power to enter into, amend or cancel any claims handling arrangement irrespective of whether such arrangement forms part of the original contract;
- (o) power to enter into, amend or cancel any claims collection or reinsurance recovery collection arrangement with any broker, specialist collection agency or any other debt collector;
- (p) power to instruct lawyers, claim adjusters or any other experts or consultants in any matter;
- (q) power to enter into any market arrangement with any insured person or class of persons or their representatives or insurers or reinsurers whereby ERL or ~~the Syndicate or Closed Year Syndicate~~Newco would be bound to adopt a particular settlement policy in relation to any claim or category of claims, or which could extend or increase the liability of ERL or ~~the Syndicate or Closed Year Syndicate~~Newco;
- (r) power to enter into any agreement to indemnify or release any other person, in relation to any of the above matters;
- (s) power to represent ~~the Syndicate or Closed Year Syndicate~~Newco in any market or industry discussion group (which may also involve post 1992 years of account); and
- (t) power to establish any security in respect of any policy liabilities which are comprised in the relevant ~~Syndicate~~ 1992 and Prior Business.

Delegation

9.3 ERL may from time to time (without affecting its duties, obligations and responsibilities hereunder) during the term of this Agreement, in its absolute discretion, appoint or employ sub-agents or contractors in any part of the world as it shall determine to be necessary or expedient in connection with the performance of its duties, obligations and responsibilities under this Agreement and may delegate to Equitas or any other sub-agent or contractor any or all of the services to be provided by it, any or all of the duties to be performed by it or any or all of the powers, including this power of delegation, to be

exercised by it under this Agreement but ERL shall be responsible for the acts and omissions of any such sub-agent or contractor, and ~~the Names and the Closed Year Names acknowledge that it is intended~~Newco acknowledges that all the rights, powers, duties and obligations of ERL under this Agreement ~~will be~~are delegated to Equitas under the Retrocession Agreement and may be delegated by Equitas to third parties and their sub-contractors.

ERL's powers exclusive and irrevocable

9.4 It is expressly agreed that ERL and its delegates and sub-delegates will have irrevocable and exclusive power to manage each Run-off in accordance with the provisions of this Agreement and, subject to the provisions of the EATD, the ECTD and any Overseas Trust Deeds and to the fullest extent possible, shall manage each Run-off as if it were principal and, without prejudice to the generality of the foregoing, it is expressly agreed that:

- (a) ERL and its delegates and sub-delegates are not bound to comply with any instructions or requests of ~~any Name or Closed Year Name~~Newco;
- (b) in no circumstances will ~~any Name or any Closed Year Name~~Newco interfere with the exercise of the management or control of any Run-off; and
- (c) in no circumstances will ~~any Name or any Closed Year Name~~Newco be entitled to receive directly, payment of any amount payable by ERL in the performance of the Reinsurance Obligation in respect of any Claim, ~~return premium or other amount in relation to the Syndicate-1992 and Prior Business of any Syndicate or Closed Year Syndicate of which that Name or Closed Year Name is a member~~Newco (other than under clause 8 of this Agreement and schedule 5 or paragraph 13 of schedule 3 to this Agreement).

DUTIES AND LIABILITY OF ERL

ERL's standard of care

10.1 In performing its duties and exercising its powers under this Part II of this Agreement, ERL shall operate its business and conduct its affairs in a bona fide and businesslike manner and use all reasonable skill, care and diligence for the proper provision of services, performance of duties and exercise of powers by it under this Agreement but, without prejudice to its obligations under this Agreement, ERL shall not have any fiduciary obligations to ~~the Names or the Closed Year Names~~Newco.

Liability of ERL

10.2 ERL shall keep ~~each Name and each Closed Year Name~~Newco fully indemnified and held harmless at all times against all costs, losses, claims, damages or expenses including extra-contractual obligations or punitive or penal damages arising out of or relating to any acts and omissions (including without limitation any errors, omissions, breaches of contract and breaches of fiduciary duty) of ERL or any delegate or sub-delegate of ERL in relation to the ~~Syndicate-1992 and Prior Business of any Syndicate or Closed Year Syndicate of which that Name or Closed Year Name was a member, whether in its own name or on behalf of and in the name of the Name or Closed Year Name~~Newco PROVIDED THAT the indemnity in this clause 10.2 shall not apply in relation to any liability in respect of the Reinsurance Obligation.

10.3 In the event of any claim being made against ~~any Name or Closed Year Name~~Newco in respect of which ERL may be required to indemnify ~~the Name or Closed Year Name~~Newco pursuant to clause 10.2 above, (subject to being fully indemnified to the reasonable satisfaction of ~~the Substitute Agent~~Newco against all reasonable out-of-pocket costs and expenses incurred by ~~any Name or Closed Year Name~~the Name or Closed Year Name or in each case the Substitute Agent on its or his behalfNewco) Newco:

- (a) shall procure that notice of such claim is given to ERL as soon as reasonably practicable;
- (b) shall not make any admission of liability, agreement or compromise with any person, body or authority in relation to any such claim without prior consultation with and the prior agreement of ERL which agreement shall not be unreasonably withheld or delayed;
- (c) shall take such action as ERL may reasonably request to avoid, dispute, resist, appeal, compromise or defend such claim or any adjudication in respect of that claim; and
- (d) if so required by ERL in writing, shall use all reasonable endeavours to ensure that ERL is placed in a position to take on or take over the conduct of all proceedings

and/or negotiations of whatsoever nature arising in connection with the claim in question and provide such information and assistance as ERL may reasonably require in connection with the preparation for and conduct of such proceedings and/or negotiations.

FURTHER ASSURANCE

14.1 ~~The Substitute Agent~~Newco undertakes, if so requested by ERL or any delegate or sub-delegate of ERL, to ratify and confirm any act or thing lawfully done or caused to be done by ERL or any delegate or sub-delegate of ERL in good faith in the performance of its duties under this Agreement and to procure and do all such other acts and things as may be necessary to enable the provisions of this Agreement to be carried out and given full force and effect and fully to cooperate with ERL to enable ERL or any delegate or sub-delegate of ERL to perform the obligations of ERL under this Agreement.

14.2 ~~The Substitute Agent hereby~~Newco undertakes at the reasonable request of ERL or any delegate of ERL to exercise any power of attorney to execute any deed or sign any document where it is necessary or expedient to do so in the exercise by ERL or any delegate of ERL of the authority delegated to ERL under clause 11.1.

BOOKS AND RECORDS

ERL's maintenance of Books and Records

15.3 ERL shall, until the ~~Syndicate-1992 and Prior Business of each Syndicate and Closed Year Syndicate~~Newco has been discharged in full:

- (a) use all reasonable endeavours to keep safe all Books and Records ~~relating to that Syndicate or Closed Year Syndicate delivered to it by the Substitute Agent or the relevant Managing Agent in accordance with such reasonable data and document retention policy as may be issued by ERL from time to time;~~
- (b) maintain records of its conduct of the Run-off, showing its conduct separately in respect of each Syndicate and, where relevant Closed Year Syndicate, showing the same separately from its conduct of the business of the other Syndicates, but only insofar as ERL determines that such separate books and records are necessary for the proper carrying on of its business;
- (c) at a charge which, in the reasonable opinion of ERL, represents the cost of making the information available, make available to ~~any Name or Closed Year Name and to the Substitute Agent on behalf of that Name or Closed Year Name~~Newco at the request of ~~that Name or Closed Year Name~~Newco, in connection with any Legal Proceedings brought and conducted by ~~that Name or Closed Year Name~~Newco in respect of the ~~Syndicate-1992 and Prior Business of any Syndicate or Closed Year Syndicate of which that Name or Closed Year Name was a member is a party~~, all

such books and records as are referred to in sub-clauses (a) and (b), and shall permit ~~that Name or Closed Year Name or the Substitute Agent~~Newco to take copies thereof, at ~~his~~its own expense, ~~whether in person or by their duly authorised agents;~~ and

- (d) following any adjustment of liabilities pursuant to clause 3.5 and schedule 3 to this Agreement and at a charge which, in the reasonable opinion of ERL, represents the cost of making the information available, make available to ~~any Name or Closed Year Name and to the Substitute Agent on behalf of that Name or Closed Year Name~~Newco at the request of ~~that Name or Closed Year Name~~Newco in connection with any Legal Proceedings brought against ~~that Name or Closed Year Name~~Newco in respect of the Syndicate 1992 and Prior Business of ~~any Syndicate or Closed Year Syndicate of which that Name or Closed Year Name was a member~~Newco, all such books and records as are referred to in sub-clauses (a) and (b), and shall permit ~~that Name or Closed Year Name or the Substitute Agent~~Newco to take copies thereof, at ~~his~~its own expense, whether in person or by their duly authorised agent,

PROVIDED THAT the obligation in sub-clauses (c) and (d) above shall not apply in any circumstance where, in the reasonable opinion of ERL, making such information available or permitting such copies to be taken would breach privilege or otherwise be prejudicial to the interests of ERL ~~or any other Name or Closed Year Name in relation to any 1992 and Prior Business.~~

15.4 All information and data made available in accordance with clauses 15.3(c) and (d) will be provided at the risk of ~~the relevant Name or Closed Year Name~~Newco. ERL and Equitas shall accept no responsibility therefor nor shall they make or be deemed to make any representation, warranty or undertaking as to the accuracy or fitness of such information and data for the purpose of which they are used by any person.

NOTICES

22.1 Any notice or notification to be given hereunder shall be in writing and may be given either by personal delivery, first class post or facsimile ~~in the case of the Names and the Closed Year Names to the Substitute Agent and in the case of the Substitute Agent and any other signatory to this Agreement to the address of such signatory~~to the address of the recipient party set out in this Agreement or to such other address as any such signatory party may have notified as being its address for service for the purposes of this Agreement. Any notice or notification to be given to Newco hereunder shall be given to the company secretary, 33 St Mary Axe, London, EC3A 8LL or to such other address as Newco may have notified as being its address for service for the purposes of this Agreement.

GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS

Governing law and jurisdiction

25.1 All rights and obligations, of whatever sort, of any person, arising out of, or in any way related to or connected with, this Agreement and all the terms and provisions hereof and all questions of construction, validity and performance hereunder and all appointments and authorities granted pursuant hereto shall be governed by and construed in accordance with the laws of England. In relation to any proceeding to enforce the rights and/or obligations of any person arising out of, or in any way related to or connected with this Agreement and all appointments and authorities granted pursuant to this Agreement each of the parties hereto, ~~including for the avoidance of doubt each Name and each Closed Year Name for his own part,~~ irrevocably and unconditionally agree that the High Court of England and Wales shall have exclusive jurisdiction to settle any dispute and/or controversy of whatsoever nature which may arise out of or in connection with this Agreement and all appointments and authorities granted pursuant hereto ~~or any Name's or Closed Year Name's membership of Lloyd's or underwriting of 1992 and Prior Business~~ and that accordingly, any suit, action or proceeding arising out of such matters shall be brought in such court and, to this end, each party hereto irrevocably agrees to submit to the jurisdiction of the High Court of England and Wales and irrevocably waives (a) any objection which it or he may have now or hereafter to any such suit, action or proceeding being brought in such court and (b) any claim that any such suit, action or proceeding has been brought in an inconvenient forum, and further irrevocably agrees that a judgment in any suit, action or proceeding brought in the High Court of England and Wales shall be conclusive and binding upon such party and may be enforced in the courts of any other jurisdiction.

SCHEDULE 2 - DEFINITIONS AND INTERPRETATION

Books and Records means ~~in respect of each Syndicate and Closed Year Syndicate,~~ all such information concerning the ~~Syndicate~~ 1992 and Prior Business of that ~~Syndicate or Closed Year Syndicate~~ Newco and assets held in respect thereof including (without prejudice to the generality of the foregoing) policy slips, policy wordings, underwriting cards, certificates of insurance, policy renewal or cancellation documents, claims information (including print-outs of recorded claims ~~provided by that Syndicate or Closed Year Syndicate or by Lloyd's Claims Office~~), reserving documentation, reinsurance information, facultative and treaty outwards reinsurance wordings, and all correspondence relating thereto and all books of account, financial information, investment records, accounting records and other records (however stored) prepared or maintained ~~by or on behalf of that Syndicate or Closed Year Syndicate~~ in respect of the 1992 and Prior Business of Newco;

Confidential Information means all information of whatever nature in whatever form (including, for the avoidance of doubt, professional advice) relating to the ~~business affairs of any Syndicate or Closed Year Syndicate~~ 1992 and Prior Business other than information which (a) at the time when it is disclosed or obtained is in the public domain; or (b) subsequently comes into the public domain otherwise than as a result of the breach by any

party (or its employees, agents, subcontractors or representatives) of the terms of this Agreement;

Insurance Creditor means any policyholder under any contract of insurance originally underwritten by a Syndicate or Closed Year Syndicate liabilities under which are comprised in 1992 and Prior Business other than a member or former member of Lloyd's who is such a policyholder in his capacity as an underwriter of insurance business at Lloyd's;

Newco means Equitas Insurance Limited, a limited company registered in England and Wales with company number 06704451 whose registered office is at 33 St Mary Axe, London, EC3A 8LL;

Proportionate Cover Declaration means a notice or advertisement issued by ERL stating that a Proportionate Cover Plan has been implemented or adjusted and stating: the effective date of coming into effect of the Proportionate Cover Plan or, as the case may be, the effective date of the adjustment to such Proportionate Cover Plan; the Proportionate Cover Rate or Rates; and whether ~~any reinsured Names~~Newco may be entitled to payments under paragraph 13 of schedule 3;

Proportionate Cover Plan means an adjustment of the liabilities of ERL in respect of the Reinsurance Indemnities to ~~Reinsured Names~~Newco in accordance with clause 3.45 and schedule 3;

Run-off means the administration and run-off of the ~~Syndicate~~ 1992 and Prior Business of any ~~Syndicate or any part thereof~~Newco;

Secured Obligations means all moneys and liabilities (including contingent liabilities) whatsoever which may be due, owing or payable by ~~any Name or any Closed Year Name~~Newco under any contract or insurance or reinsurance which has been reinsured by ERL under the terms of this Agreement.

SCHEDULE 2
SHARED AMENDED LIONCOVER PROVISIONS

19. NOTICES

Any notice or notification to be given hereunder shall be in writing and may be given either by personal delivery, first class post or facsimile in the case of the 9001 Names and the PCW Names to the Substitute Agent and in the case of any other ~~signatory~~party to this Agreement (except Lloyd's and Lioncover) to the address of ~~such signatory~~the recipient party set out in this Agreement or to such other address as any such ~~signatory~~party may have notified as being its address for service for the purposes of this Agreement. Any notice or notification to be given to Lloyd's or Lioncover hereunder shall be given to the Secretary to the Council of Lloyd's, One Lime Street, London EC3M 7HA or to such other address as Lloyd's may have notified as being its address for service for the purposes of this Agreement and any notification so given shall be deemed to be given to both Lioncover and Lloyd's. Any notice or notification to be given to Newco hereunder shall be given to the company secretary, 33 St Mary Axe, London, EC3A 8LL or to such other address as Newco may have notified as being its address for service for the purposes of this Agreement.

SCHEDULE 1 - DEFINITIONS AND INTERPRETATION

Insurance Creditor means any policyholder under any contract of insurance originally underwritten by a PCW Syndicate liabilities under which are comprised in PCW Business other than a member or former member of Lloyd's who is such a policyholder in his capacity as an underwrite of insurance business at Lloyd's;

SCHEDULE 3

Part A

Transferring Centrewrite Provision

11. REPORTS AND ACCOUNTS

ERL shall, until the Syndicates 1992 and Prior Business has been discharged in full, provide to Centrewrite, ~~the Warrilow Names and the Closed Year Names and to the Substitute Agent and Newco~~ copies of the annual report and consolidated accounts of the Equitas Group and/or such other documents as may be agreed between ERL and Centrewrite from time to time.

Part B

Shared Amended Centrewrite Provisions

12. NOTICES

Any notice or notification to be given hereunder shall be in writing and may be given either by personal delivery, first class post or facsimile in the case of the Warrilow Names and the Closed Year Names to the Substitute Agent and in the case of Centrewrite and any other ~~signatory party~~ to this Agreement to the address of ~~such signatory~~ the recipient party set out in this Agreement or to such other address as any such ~~signatory party~~ may have notified as being its address for service for the purposes of this Agreement. Any notice or notification to be given to Newco hereunder shall be given to the company secretary, 33 St Mary Axe, London, EC3A 8LL or to such other address as Newco may have notified as being its address for service for the purposes of this Agreement.

SCHEDULE 1 - DEFINITIONS AND INTERPRETATION

Insurance Creditors means any policyholder, under any contract of insurance originally underwritten by a Syndicate or Closed Year Syndicate liabilities under which are comprised in 1992 and Prior Business other than a member or former member of Lloyd's who is such a policyholder in his capacity as an underwriter of insurance business at Lloyd's;

SCHEDULE 4
EPTL DECLARATION OF TRUST

EQUITAS POLICYHOLDERS TRUSTEE LIMITED

DECLARATION OF TRUST

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THIS DECLARATION OF TRUST is made on 3 September 1996

BY:

EQUITAS POLICYHOLDERS TRUSTEE LIMITED of ~~20-22 Bedford Row~~ 33 St Mary Axe, London ~~WC1R 4JS~~ EC3A 8LL (the "Trustee", which expression shall include such company and any other person or persons acting as trustee for the time being of this Declaration of Trust).

WHEREAS:

- (A) This Declaration of Trust is made pursuant to the Reinsurance Contract (as defined below) pursuant to which ERL has agreed to reinsure and indemnify ~~the Reinsured Names~~Newco in relation to 1992 and Prior Business on the terms and conditions set out in the Reinsurance Contract.
- (B) Under the Reinsurance Contract, ~~each Reinsured Name has assigned absolutely by way of first fixed mortgage to the Trustee all right, title, benefit and interest which he~~ Newco has or may have against ERL in relation to:
- (a) the performance of the Reinsurance Obligation (as defined ~~in the Reinsurance Contract~~below) of ERL in accordance with clause 3 of the Reinsurance Contract including, without limitation:
 - (i) any right to receive damages from any person in respect of such rights; and
 - (ii) any rights in a winding-up of ERL or pursuant to any scheme or composition entered into between ERL and its creditors including any scheme of arrangement or compromise made under section 425 of the Companies Act 1985 and any voluntary arrangement made between ERL and its creditors under sections 1 to 8 of the Insolvency Act 1986; and
 - (b) any return of premium payable on a winding-up pursuant to any scheme or composition entered into between ERL and its creditors to the extent that the Secured Obligations have not been satisfied in full,
- but not including such rights, title, benefit and interest in the Reinsurance Obligation which are excluded from the assignment under the terms of the Reinsurance Contract, has been assigned absolutely by way of first fixed mortgage to the Trustee as security for the discharge and payment of the Secured Obligations, on the terms that the Trustee should hold such property assigned to it pursuant to a Declaration of Trust on the terms set out herein.
- (C) The Trustee has agreed to act as trustee for the purposes of this Declaration of Trust upon the terms and subject to the conditions set out herein.
- (D) This Declaration of Trust was made on 3 September 1996 and was varied pursuant to the Court Order (as defined below).

NOW IT IS HEREBY DECLAINED as follows:

1. **INTERPRETATION**

1.1 **Definitions**

In this Declaration of Trust and the Recitals hereto the following words and expressions have, except where the context otherwise requires, the meanings respectively shown opposite them:

"1992 and Prior Business" means 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;

"Authorised Investments" means any investment authorised by English law for the investment by trustees of trust moneys or in any other investment which may be selected by the Trustee as if the Trustee were an absolute beneficial owner of the Trust Property;

"Closed Year Names" means in respect of any Closed Year Syndicate, those members of Lloyd's who were members of that Closed Year Syndicate acting in their capacity as members of the Closed Year Syndicate;

"Closed Year Syndicate" means any Syndicate constituted for any 1992 or prior year of account which has been reinsured to close either directly or indirectly into any Syndicate or Centrewrite;

"Court Order" means the order of the High Court of Justice of England and Wales pursuant to which, inter alia, the liabilities of the Reinsured Names in respect of 1992 and Prior Business have been transferred to Newco and the benefit of the Reinsurance Obligation has been transferred to Newco subject to being held by the Trustee on the terms of this Declaration of Trust;

"this Declaration of Trust" means this Declaration of Trust as amended or modified from time to time, including any other declaration, deed or instrument expressed to be supplemental hereto;

"Equitas" means Equitas Limited, a limited company registered in England and Wales with company number 3173352 whose registered office is at ~~20-22 Bedford Row~~33 St Mary Axe, London-WC1R 4JS, EC3A 8LL;

"Equitas Holdings Limited" means Equitas Holdings Limited, a limited company registered in England and Wales with company number 3136296 whose registered office is at ~~20-22 Bedford Row~~33 St Mary Axe, London-WC1R 4JS, EC3A 8LL;

"ERL" means Equitas Reinsurance Limited, a limited company registered in England and Wales with company number 3136300 whose registered office is at ~~20-22 Bedford Row~~33 St Mary Axe, London-WC1R 4JS, EC3A 8LL;

"Insolvency Event" means any of the events specified in Clause 2.1~~54~~5 of this Declaration of Trust;

"Insurance Creditor" means any policyholder under any contract of insurance originally underwritten by a Syndicate or Closed Year Syndicate liabilities under which are comprised in 1992 and Prior Business other than a member or former member of Lloyd's who is such a policyholder in his capacity as an underwriter of insurance business at Lloyds;

"life business" has the meaning ascribed to long term business in the Insurance Companies Act 1982;

"Lloyd's" means the Society incorporated by Lloyd's Act 1871 by the name of Lloyd's;

"Names" means the members of a Syndicate for the underwriting year as set out in the Syndicate List acting in their capacity as members of such Syndicate;

"Newco" means Equitas Insurance Limited, a limited company registered in England and Wales with company number 06704451 whose registered office is at 33 St Mary Axe, London, EC3A 8LL;

"Proportionate Cover Plan" means a plan of such name introduced pursuant to clause 3.4~~5~~5 and schedule 3 to the Reinsurance Contract;

"Reinsurance Contract" means the contract dated ~~on or about the date hereof~~3 September 1996 entered into between *inter alia* ERL, the Names, the Closed Year Names, the Substitute Agent, Lloyd's, Equitas Limited and the Trustee, as transferred and amended by the Court Order, pursuant to which ERL agrees to reinsure and indemnify ~~the Syndicates~~Newco in relation to the ~~Syndicate~~-1992 and Prior Business of ~~each Syndicate~~Newco;

"Reinsurance Obligation" has the meaning given to it in the Reinsurance Contract;

"Reinsured Names" means the Names and the Closed Year Names;

"Secured Obligations" means all moneys and liabilities (including contingent liabilities) whatsoever which may be due, owing or payable by ~~any Name or any Closed Year Name~~Newco under any contract of insurance or reinsurance which has been reinsured by ERL under the terms of the Reinsurance Contract;

"Substitute Agent" means, in respect of the Reinsurance Contract, the person who ~~has~~ entered into such contract as substitute managing agent on behalf of the Syndicates, being the person appointed as substitute managing agent of such Syndicates pursuant to

a direction of the Council under the Substitute Agents Byelaw (No. 20 of 1983) and any successor managing agent or substitute managing agent;

"**syndicate**" means a group of underwriting members of Lloyd's, to which a particular number is assigned by or under the authority of the Council, for whose account an active underwriter accepted or accepts insurance business at Lloyd's;

"**Syndicate**" means each of the syndicate years of account listed in schedule 1 to the Reinsurance Contract;

"**Trust Corporation**" means a corporation entitled by rules made under the Public Trustee Act 1906 to act as a custodian trustee;

"**Trust Property**" means all the property, assets and rights (whether present, future, prospective or contingent) ~~of Reinsured Names~~ assigned to the Trustee pursuant to clause 4.1 of the Reinsurance Contract.

1.2 Construction: In this Declaration of Trust, except where the context otherwise requires:

- (a) clause headings are for ease of reference only;
- (b) references to clauses, sub-clauses or paragraphs are, unless otherwise specified, to be construed as references to clauses, sub-clauses and paragraphs of this Declaration of Trust;
- (c) references to any statute or other legislative provision shall include any statutory or legislative modification or re-enactment thereof, or any substitution therefor;
- (d) references to documents include any deed (including this Declaration of Trust), negotiable instrument, certificate, notice or other document of any kind and references to any document (or a provision thereof) shall be construed as a reference to that document or provision as from time to time amended, supplemented, varied or replaced (in whole or in part);
- (e) references to the word "person" or "persons" include, without limitation, individuals, firms, corporations, government agencies, authorities and other bodies, incorporated or unincorporated and whether having distinct legal personality or not;
- (f) references to any party hereto or any person include references to any successor or assignee of such party or other person;
- (g) reference to:
 - (i) a member of Lloyd's includes a former member of Lloyd's;
 - (ii) a former member of Lloyd's includes a member who has died or, as the context may require, the estate or personal representatives of such a member; and

- (iii) a member of Lloyd's includes reference to any administrator, administrative receiver, committee, curator bonis, executor, liquidator, manager, personal representative, supervisor or trustee in bankruptcy, or any other person entitled or bound to administer the affairs of the member concerned;
- (h) reference to:
 - (i) a managing agent includes a substitute agent appointed to perform any of the functions of a managing agent; and
 - (ii) a members' agent include a substitute agent appointed to carry out any of the functions of a members' agent; and
- (i) unless the context otherwise requires, words denoting the singular number shall include the plural and vice versa.

2. DECLARATION OF TRUST

2.1 The Trustee shall stand possessed of the Trust Property upon trust to hold or apply all or any of it in the manner and order of priority set out in paragraphs 2.2 to 2.17 below.

2.2 In the event of being notified by ~~any Reinsured Name or the Substitute Agent~~Newco that ERL has failed to discharge its obligation to ~~the Reinsured Name~~Newco and/or the Trustee to make any payment to an Insurance Creditor in accordance with the Reinsurance Contract, the Trustee shall take such steps as it shall in its absolute discretion deem appropriate to seek to enforce the obligation of ERL to make such payment or to seek to obtain damages from ERL for failure so to do provided that the Insurance Creditor and/or ~~the Reinsured Name~~Newco shall have provided the Trustee with such evidence as it may, acting in good faith, in its absolute discretion require as to the non performance by ERL of its obligation under the Reinsurance Contract and that ~~the relevant Reinsured Name~~Newco shall have taken such steps as the Trustee may reasonably require to seek to enforce performance by ERL of such obligation. The Trustee shall have power to determine, upon such advice as it, acting in good faith, in its absolute discretion thinks fit as to the merits of any such claim against ERL and having regard to all the circumstances, the most appropriate action (if any) which it should take against ERL to enforce such obligation. Any sums received by the Trustee in respect of such judgment shall, unless an Insolvency Event has occurred, be distributed in the following manner:

- (a) subject to paragraph (b) below, upon receiving such evidence as it may in its absolute discretion deem appropriate as to the identity of the Insurance Creditor to be paid such sums under the terms of the Reinsurance Contract, the Trustee shall pay such sums to the relevant Insurance Creditor. As a precondition to making such payment, the Trustee may require written confirmation from such Insurance Creditor that such sums will be applied to reduce or extinguish *pro tanto* the amounts owed to him under the policy of insurance or reinsurance which has been reinsured by ERL under the terms of

the Reinsurance Contract and/or any judgment he has obtained in respect of such contract;

- (b) if the Insurance Creditor referred to in paragraph (a) above has already received payment in whole or in part of the sums due to him under the policy of insurance or reinsurance which has been insured under the terms of the Reinsurance Contract (including by reason of the exercise of any rights of set-off which such Insurance Creditor may have), the Trustee shall only make payment to such Insurance Creditor up to the balance of the amounts owing to such Insurance Creditor under the relevant policies of insurance or reinsurance as determined by the Trustee upon receipt of such evidence as it, acting in good faith, in its absolute discretion determines necessary to be able to determine such amounts. Any balance shall be paid by the Trustee to the ~~Substitute Agent for distribution pro rata to their respective contributions to those persons who have contributed to such payments made to the relevant Insurance Creditor, including any contribution by way of set-off~~Newco. In determining whether such Insurance Creditor has already received payment in respect of the relevant policy of insurance or reinsurance as described above, the Trustee is entitled to assume without enquiry that no such payment has been received by such Insurance Creditor, in the absence of receiving such evidence from the ~~Reinsured Name or Substitute Agent~~Newco as it may in its absolute discretion require, establishing that such payment has been made.

- 2.3 If prior to the occurrence of an Insolvency Event the Trustee receives any sums in respect of the Trust Property other than in the circumstances described in Clause 2.2 above it shall either distribute such sums to the Insurance Creditors and/or the ~~Substitute Agent for distribution to the relevant Reinsured Name (in the case of a Syndicate or Closed Year Syndicate to the Names on that Syndicate or Closed Year Syndicate pro rata to their interests in that Syndicate or Closed Year Syndicate)~~Newco in the manner described in paragraphs (a) and (b) of Clause 2.2 or, to the extent that the sums received represent sums that should have been paid to an Insurance Creditor by ERL in accordance with clause 3.4 of the Reinsurance Contract, the Trustee may alternatively return such sums to ERL and require ERL to distribute such sums in accordance with the terms of the Reinsurance Contract.
- 2.4 Upon the occurrence of an Insolvency Event, the Trustee may serve a notice pursuant to clause 4.10 of the Reinsurance Contract requiring payments which would otherwise be paid to Insurance Creditors by ERL under the terms of the Reinsurance Contract to be paid to it and shall take such steps against ERL as it shall deem necessary to realise and protect the Trust Property, including, without limitation, petitioning for the winding-up of ERL or petitioning for an administration in respect of ERL or consenting or objecting to any scheme or composition proposed to be entered into between ERL and its creditors. Unless and until the Trustee receives notice in writing from any Insurance Creditor or ERL that an Insolvency Event has occurred, together with such supporting evidence of the occurrence of such Insolvency Event as the Trustee may acting in good faith in its absolute discretion require, the Trustee is

entitled to assume (and it is hereby declared to be the intention of the Trustee that it will assume) without enquiry that no Insolvency Event has occurred.

- 2.5 Following the occurrence of an Insolvency Event, any sums received by the Trustee in respect of the Trust Property including, without limitation, on a winding-up of ERL or pursuant to any scheme or composition entered into between ERL and its creditors including any scheme of arrangement or compromise made under section 425 of the Companies Act 1985 and any voluntary arrangements made between ERL and its creditors under sections 1 to 8 of the Insolvency Act shall be distributed by the Trustee to the Insurance Creditors in accordance with Clause 2.7.
- 2.6 In proving in a winding-up of ERL or in making a claim pursuant to a scheme or composition entered into between ERL and its creditors, the Trustee shall from the information available to it seek to establish the amount owing by ERL under the terms of the Reinsurance Contract and the amount of the Secured Obligations that is due to each Insurance Creditor. In doing so, the Trustee shall be entitled to consider all information provided to it by the Insurance Creditors or any broker or by ERL or any other information as it, in its absolute discretion, deems relevant. In the absence of obtaining sufficient evidence from each Insurance Creditor satisfactory to the Trustee to enable it to determine the amount that is due to such creditor in respect of the Secured Obligations, it shall be entitled to assume that any figures produced by a liquidator, administrator or supervisor or as determined pursuant to any scheme of arrangement pursuant to section 425 of the Companies Act 1985, which enables it to calculate directly or indirectly the amount so owing to such Insurance Creditor, are correct without further enquiry.
- 2.7 All moneys received or recovered by the Trustee in respect of the Secured Obligations following an Insolvency Event shall be held by it on trust to be applied as follows in the following order of priority (and in each case only if and to the extent that payments or provisions of a higher priority have been made in full):
- (a) first, in or towards satisfaction of the fees or other remuneration payable to the Trustee and any costs, charges, liabilities and expenses incurred by the Trustee under or in connection with this Declaration of Trust;
 - (b) second, in or towards satisfaction of the Secured Obligations owing to each Insurance Creditor (or any person to whom an Insurance Creditor has assigned all or any part of the Secured Obligations) rateably in proportion to the Secured Obligations, as determined by the Trustee in establishing a proof or claim in a liquidation of ERL or in any composition or scheme made between it and its creditors (or if no proof or claim has been made, in accordance with the Trustee's determination of the Secured Obligations owing (whether actually, prospectively or contingently) to each Insurance Creditor (or an assignee as aforesaid)); and
 - (c) ~~third, to each Reinsured Name who had, prior to any payment by the Trustee under paragraph (b) above, made any payment to an Insurance Creditor (or~~

~~any person to whom such Insurance Creditor had assigned the whole or any part of the Secured Obligations) including any payment made by way of set-off in respect of the Secured Obligations, to the extent of such payment, or, if there are insufficient moneys to make such payment in full, rateably in accordance with the amounts of such payments; and Newco.~~

- (d) ~~(d) fourth, to each Reinsured Name pro rata to the value of the Trust Property assigned by each Reinsured Name the value to be defined by reference to the amount the Trustee established in respect of the Trust Property assigned by each Reinsured Name in making a proof or claim in a liquidation of ERL or in any composition or scheme made between it and its creditors (or if no proof or claim has been made, in accordance with the Trustee's determination of the amount received by it in respect of the Trust Property assigned by such Reinsured Name)).~~

- 2.8 Provided the Trustee distributes any proceeds referred to in Clause 2.7 to Insurance Creditors (or an assignee thereof in accordance with Clause 2.7) or Reinsured Names~~Newco~~ as set out therein, in the absence of the wilful default of the Trustee in establishing the amount of the Secured Obligations owing to each Insurance Creditor (or an assignee thereof) ~~or the value of the Trust Property assigned by each Reinsured Name in accordance with Clause 2.7~~, no Insurance Creditor, Reinsured Name nor the Substitute Agent~~Newco~~ shall be entitled to make any claim against the Trustee in respect of the distribution of such proceeds by the Trustee.
- 2.9 ~~2.9 In determining whether an Insurance Creditor has received payment from any Reinsured Name in respect of a policy of insurance or reinsurance as set out in Clause 2.7(c), the Trustee is entitled to assume without enquiry that no such payment has been received by such Insurance Creditor, in the absence of receiving such evidence from the Reinsured Name or Substitute Agent as it may, acting in good faith, in its absolute discretion require establishing that such payment has been made.~~
- 2.10 ~~2.10~~ If the amount payable to the Trustee in respect of any winding-up or scheme or composition entered into between ERL and its creditors is adjusted as a result of the introduction of any Proportionate Cover Plan or due to the adjustment of the value attributed to any future or contingent liability or claim, in accordance with the terms of such winding-up or scheme or composition, the amount payable to the Insurance Creditors and Reinsured Names~~Newco~~ pursuant to Clause 2.7 shall be varied in accordance with such adjustment provided that such adjustment shall not affect any amounts previously paid to any Insurance Creditor or Reinsured Name~~Newco~~ by the Trustee. If the Trustee is of the view (considering such information as it in its absolute discretion deems necessary) that such adjustment of the amount payable in such winding-up or scheme or composition impacts upon the Trustees' previous determination of the Secured Obligations owing to each Insurance Creditor, the Trustee shall adjust the future amounts payable to each Insurance Creditor under this Declaration of Trust in accordance with the amount of the Secured Obligations it determines is owing to each Insurance Creditor following such adjustment. In

determining such adjustment, the Trustee shall be entitled to assume that any figures prepared by a liquidator, administrator or supervisor which enable it to calculate directly or indirectly the adjusted amount owing to such Insurance Creditor are correct.

- 2.11 ~~2.11~~—The Trustee may refrain from distributing any amounts received in respect of a proof or claim in accordance with Clause 2.7 to any Insurance Creditor until receipt of a written confirmation from such Insurance Creditor that such sums will be applied to reduce or extinguish *pro tanto* the amounts owed to him under the policy of insurance or reinsurance which has been reinsured by ERL under the terms of the Reinsurance Contract.
- 2.12 ~~2.12~~—The Trustee shall not be required to take any steps to enforce the Secured Obligations other than provided pursuant to Clauses 2.1 to 2.14~~0~~ above.
- 2.13 ~~2.13~~—Upon the receipt of such evidence as the Trustee may in its absolute discretion require that the Secured Obligations have been paid and discharged in full and that all sums which are or may become payable to it pursuant to the Declaration of Trust have been satisfied in full, the Trustee will release the security constituted by the Reinsurance Contract and this Declaration of Trust and ~~reassign~~assign to each ~~Reinsured Name~~Newco or such other person as each ~~Reinsured Name~~Newco may direct or such other person as may be entitled thereto, all of the Trust Property.
- 2.14 ~~2.14~~—The Trustee shall not be required to take any action under this Clause 2 or any other provision of this Declaration of Trust, unless it is satisfied that it will be indemnified in respect of all costs, charges, expenses and liabilities to be properly incurred by it in respect of such action. To the extent that the Trustee is not able to recover any such costs, charges, expenses or liabilities from Equitas under Clause 7 of this Declaration of Trust the Trustee is entitled, without prejudice to its right to indemnify itself from the Trust Property as a matter of law, to utilise the proceeds of any sums received in respect of the Trust Property in meeting such costs, charges, expenses or liabilities and to deduct such amounts from the amount payable by it to Insurance Creditors and to ~~the Substitute Agent or Names~~Newco under the terms of this Declaration of Trust.
- 2.15 ~~2.15~~—For the purpose of this Declaration of Trust, the following shall constitute an Insolvency Event:
- (a) ERL shall fail to comply with any obligation to make any payment under the terms of the Reinsurance Contract and, final judgment not being subject to further appeal having been obtained in the court of any relevant jurisdiction against ERL in respect of such breach, ERL shall fail to satisfy the terms of such judgment within 7 days;
 - (b) any order shall be made by any competent court or resolution passed for the winding-up of ERL or a liquidator or provisional liquidator is appointed in respect of ERL;

- (c) ERL is unable or deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or becomes unable to pay its debts as they fall due or suspends or threatens to suspend making payments (whether of principal or interest) with respect to all or any class of its debts. Provided that in determining whether ERL is unable to pay its debts as aforesaid, account shall be taken of the extent to which any debt which ERL would otherwise be obliged to pay in full can be paid at less than that amount under:
 - (a) any Proportionate Cover Plan then in effect; or
 - (b) any Proportionate Cover Plan which ERL has power to introduce unless ERL has stated that no Proportionate Cover Plan will be introduced to enable it to pay its debts; or
 - (c) any suspension of payments introduced pursuant to paragraph 9 of schedule 3 to the Reinsurance Contract; and
- 2.15.2 an administrator, administrative receiver or manager, receiver, trustee or similar officer is appointed or an administration order made with respect to ERL or the whole or any substantial part of its assets.
- 2.16 ~~2.16~~ Notwithstanding any other provision of this Declaration of Trust, if the Trustee receives any sums in respect of the Trust Property in respect of which it is unable to determine how such sums should be distributed in accordance with the terms of this Declaration of Trust or if it is aware of any dispute or proceedings by any person in respect of his entitlement under this Declaration of Trust or in respect of the Trustee's determination of such entitlement, it shall be entitled to withhold distribution of such sums until it has been possible to establish to its satisfaction how they should be distributed, and the Trustee shall be entitled to take such advice pursuant to Clause 5(a) as it thinks necessary to assist it in making such determination. Any determination of the persons entitled to any sums received by the Trustee in respect of the Trust Property shall be conclusive and, in the absence of wilful default on the part of the Trustee in making such determination, no Insurance Creditor, ~~or Reinsured Name~~ nor ~~the Substitute Agent~~ Newco shall be entitled to make any claim against the Trustee under this Declaration of Trust in respect of the distribution of such proceeds by the Trustee. Pending such determination, the Trustee shall be entitled to invest such sums in Authorised Investments and to accumulate any income arising thereon.
- 2.17 ~~2.17~~ Notwithstanding any provision hereof, the Trustee shall not seek to prevent the implementation of any scheme or composition proposed to be entered into between ERL and its creditors in respect of any return of premium payable under clause 8 of the Reinsurance Contract unless the Trustee, acting in good faith, is of the opinion that following the implementation of such scheme or composition ERL would be unable or deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, and, for these purposes, on the assumption that ERL has no power to introduce a Proportionate Cover Plan.

3. **THE SECURITY**

3.1

(a) The security created by the Reinsurance Contract and the Declaration of Trust shall not be satisfied by any intermediate payment or satisfaction of any amount hereby or thereby secured and the security so created shall be in addition to and shall not be prejudiced by any other security or guarantee now or hereafter held by the Trustee or any other person for all or any part of the Secured Obligations hereby and thereby secured or the liability of any person for the whole or any part of the Secured Obligations;

(b) Every power and remedy given to the Trustee herein shall be in addition to and not a limitation of any other power or remedy vested in the Trustee under the Reinsurance Contract, or by statute, rule or law or otherwise, and all such powers may be exercised from time to time and as often as the Trustee deems expedient.

3.2 The trusts constituted by the Reinsurance Contract and this Declaration of Trust shall (subject to Clause 3.3) remain in full force and effect for so long as any amounts remain due to the Trustee or delegate of the Trustee pursuant to the Reinsurance Contract and this Declaration of Trust and any of the Secured Obligations remain due to any of the Insurance Creditors.

3.3 The perpetuity period applicable hereto under the rule against perpetuities shall be the period of eighty years less one day from the date of these presents and every power, authority or discretion to which the said rule applies which is conferred upon the Trustee or any other person by these presents shall only be exercisable during that period.

4. **SUSPENSE ACCOUNT, INVESTMENT AND ACCUMULATIONS**

4.1 Pending appropriation and distribution in accordance with Clause 2 of any sums received by the Trustee in respect of the Trust Property, the Trustee may place such sums on a suspense account which it may maintain for as long as it thinks fit.

4.2 The Trustee may invest in the name or under the control of the Trustee an amount equal to the balance from time to time standing to the credit of any suspense account in any Authorised Investment or by placing the same on deposit in the name or under the control of the Trustee and in such currency as the Trustee may think fit. The Trustee may at any time vary or transfer any of such investments for or into any other such Authorised Investment or convert any other moneys so deposited into any other currency and shall not be responsible for any loss occasioned thereby (whether by depreciation in value, fluctuation in exchange rates or otherwise) unless such loss is occasioned by the wilful misconduct or fraud of the Trustee. The Trustee shall not be under any obligation to diversify any investment or investments made by it pursuant to this Clause.

- 4.3 The resulting income arising on any investments made pursuant to Clause 4.2 above may, at the discretion of the Trustee, be accumulated.

5. **TRUSTEE'S RIGHTS, DUTIES AND SUPPLEMENTAL POWERS**

By way of supplement to the Trustee Act 1925 it is expressly declared as follows:

- (a) The Trustee may in relation to the Reinsurance Contract or this Declaration of Trust act on the opinion or advice of, or a certificate or any information obtained from, any lawyer, banker, valuer, surveyor, securities company, broker, auctioneer, accountant or other expert in the United Kingdom or elsewhere and shall not if acting in good faith be responsible for any loss occasioned by so acting.
- (b) Any such opinion, advice, certificate or information may be sent or obtained by letter, telegram, telex, facsimile reproduction or in any other form and the Trustee shall not if acting in good faith be liable for acting on any opinion, advice, certificate or information purporting to be so conveyed although the same shall contain some error or shall not be authentic PROVIDED THAT such error or lack of authenticity is not manifest.
- (c) The Trustee shall as regards all rights, powers, authorities and discretions vested in it by the Reinsurance Contract or this Declaration of Trust, or by operation of law, have complete discretion as to the exercise or non-exercise thereof.
- (d) Any investment made by or on behalf of the Trustee pursuant to Clause 4 may, at its discretion, be made or retained in the name or names of a nominee or nominees.
- (e) The Trustee shall be at liberty to place this Declaration of Trust and all deeds and other documents relating to the Reinsurance Contract or this Declaration of Trust with any bank or banking company, or lawyer or firm of lawyers, believed by it to be of good repute, in any part of the world, and the Trustee shall not be responsible for or be required to insure against any loss incurred in connection with any such deposit.
- (f) The Trustee may, in the conduct of the trust business, instead of acting personally, employ and pay an agent to transact or conduct, or concur in transacting or conducting, any business and to do or concur in doing all acts required to be done by the Trustee (including the receipt and payment of money). The Trustee shall not, provided that the Trustee has exercised reasonable care in the selection of any person appointed by it in good faith hereunder, be responsible for any misconduct on the part of any such person or be bound to suspend the proceedings or acts of any such persons.
- (g) The Trustee may refrain from doing anything which would or might in its opinion be contrary to any law of any jurisdiction or any directive or

regulation of any agency of any state or which would or might otherwise render it liable to any person and may do anything which it reasonably believes to be necessary to comply with any such law, directive or regulation.

(h)

- (i) The Trustee shall not be bound to give notice to any person of either the execution of the Reinsurance Contract or this Declaration of Trust nor shall it be liable for any failure, omission or defect in perfecting the security intended to be constituted by the Reinsurance Contract or this Declaration of Trust including, without prejudice to the generality of the foregoing, (a) failure to obtain any licence, consent or other authority for the execution of the same, and (b) failure to effect or procure registration of or otherwise protect any of the Reinsurance Contract or this Declaration of Trust by registering the same under any registration laws in any territory, or by registering any notice, caution or other entry prescribed by or pursuant to the provisions of the said laws;
- (ii) The Trustee shall not be responsible for the genuineness, validity or effectiveness of either the Reinsurance Contract or this Declaration of Trust or any obligations or rights created or purported to be created thereby or any security constituted or purported to be constituted by or pursuant to either the Reinsurance Contract or this Declaration of Trust, nor shall it be responsible or liable to any person because of any invalidity of any provision of such documents, whether arising from statute, law or decision of any court;
- (iii) The Trustee shall not be liable or responsible for any loss, cost, damage, expense or inconvenience which may result from anything done or omitted to be done by it under the Reinsurance Contract or this Declaration of Trust, except such as arise as a result of the wilful misconduct or fraud of the Trustee.

6. SUPPLEMENTAL PROVISIONS REGARDING THE TRUSTEE

- 6.1 Except as herein otherwise expressly provided, the Trustee shall be and is hereby authorised to assume without enquiry, and it is hereby declared to be the intention of the Trustee that it shall assume without enquiry, that ERL is duly performing and observing all the covenants and provisions contained in the Reinsurance Contract and that ~~Reinsured Names are~~Newco is duly performing and observing ~~their~~its duties and obligations owed by ~~them~~it in respect of the Secured Obligations. The Trustee shall only be required to take any action against ERL in respect of the Trust Property in the circumstances set out in Clause 2 of this Declaration of Trust and shall incur no liability to Insurance Creditors, ~~Reinsured Names~~Newco or any other person for failing to take any action against ERL in any other circumstances. The Trustee shall not be required to take any action in respect of the failure by ~~any Reinsured Name~~Newco to

perform its duties or obligations in respect of the Secured Obligations except as expressly provided herein.

- 6.2 The Trustee may, in the execution of all or any of the trusts, powers, authorities and discretions vested in it by the Reinsurance Contract and this Declaration of Trust, act by responsible officers or a responsible officer for the time being of the Trustee. The Trustee may also, whenever it thinks expedient, whether by power of attorney or otherwise, for a period not exceeding 12 months delegate to any person or persons all or any of the trusts, rights, powers, duties, authorities and discretions vested in it by the Reinsurance Contract and this Declaration of Trust. Any such delegation may be made upon such terms and conditions and subject to such regulations (including power to sub-delegate) as the Trustee may think fit and, PROVIDED THAT the Trustee shall have exercised reasonable care in the selection of such delegate and, where a power to sub-delegate has been given, has obliged the delegate to exercise reasonable care in the selection of any sub-delegate, the Trustee shall not be responsible for any loss incurred by any misconduct or default on the part of such delegate or sub-delegate.
- 6.3 The Trustee shall not, and no director or officer of the Trustee shall, by reason of the fiduciary position of the Trustee, be in any way precluded from making any contracts or entering into any transactions in the ordinary course of business with ERL or any Insurance Creditor or ~~any Reinsured Name~~Newco or from accepting the trusteeship of any stock, shares, debenture stock, debentures or securities of ERL or any of its subsidiaries or company connected with it. Neither the Trustee nor any such director or officer shall be accountable to any Insurance Creditor or ~~any Reinsured Name~~Newco for any profit, fees, commissions, interest, discounts or share of brokerage earned, arising or resulting from any such contracts or transactions. The Trustee and any such director or officer shall be at liberty to retain the same for its or his own benefit.
- 6.4 The powers conferred by the Reinsurance Contract and this Declaration of Trust upon the Trustee shall be in addition to any powers which may from time to time be vested in it by general law.
- 6.5 Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Declaration of Trust.

7. TRUSTEE'S REMUNERATION AND INDEMNITIES

7.1

- (a) Equitas shall pay or shall arrange for payment to the Trustee remuneration for its services upon the terms and conditions contained in letters from time to time entered into between Equitas and the Trustee.
- (b) If the Trustee finds it expedient or is required to undertake any additional or exceptional duties in the course of its trusteeship under this Declaration of Trust, Equitas shall pay such additional remuneration as shall be agreed between the Trustee and Equitas. If the Trustee and Equitas fail to agree an alteration in the annual remuneration or the amount of any additional

remuneration as aforesaid, it shall be determined by a chartered accountant selected by the Trustee and approved by Equitas, or, failing such approval, nominated by the President for the time being of the Institute of Chartered Accountants in England and Wales. The expenses involved in such nomination and the fees of such chartered accountant shall be paid by Equitas. The determination of such chartered accountant (who shall be deemed to be acting as an expert and not as an arbitrator) shall be conclusive and binding upon the Trustee and Equitas.

- (c) Equitas shall pay to the Trustee an amount equal to the amount of any value added tax or similar tax chargeable in respect of its remuneration hereunder.

7.2 In addition to remuneration hereunder, Equitas shall, on written request, pay all other reasonable costs, charges and expenses (including travelling expenses and any value added tax or similar tax) which the Trustee may incur in relation to the preparation and execution of the Reinsurance Contract and this Declaration of Trust and the exercise of the rights, power, duties, authorities and discretions or the execution of the trusts vested in it by or pursuant thereto. Reference in this Clause to costs, charges and expenses shall include value added tax or similar tax charged in respect thereof.

7.3 Equitas shall indemnify the Trustee and keep it indemnified:

- (a) in respect of all liabilities and expenses properly incurred by it or by any person appointed by it to whom any trust, power, authority or discretion may be delegated by it in the execution or purported execution of the trusts, powers, authorities or discretions vested in it by the Reinsurance Contract and this Declaration of Trust; and
- (b) against all losses, liabilities, actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to the Reinsurance Contract and this Declaration of Trust, except to the extent that they are sustained or incurred as a result of the wilful misconduct or fraud of the Trustee.

7.4 All sums payable under Clauses 7.2 and 7.3 of this Clause shall be payable on demand. All sums payable by Equitas under this Clause shall, in the case of any payment actually made by the Trustee prior to the demand, (if the Trustee so requires) carry interest at the rate of one per cent per annum above the normal lending rate of a leading bank in London, and (in all other cases) shall carry interest at such rate from the date fifteen days after the date of the same being demanded or being due or (where the demand specified that payment will be made on an earlier date) from such earlier date.

7.5 Unless otherwise specifically stated in any discharge of these presents the provisions of this Clause 7 shall continue in full force and effect notwithstanding such discharge.

7.6 The Trustee may also make any arrangement for payment of remuneration for its acting as Trustee hereunder or for the indemnification of it in respect of any liabilities

and expenses incurred by it in so acting as Trustee with any person whatsoever in addition to any remuneration or indemnity it is entitled to hereunder and shall not be required to account to any Insurance Creditor, ~~Reinsured-Name~~Newco or any other person in respect of such remuneration or indemnity.

8. ACTION OF TRUSTEES

Whenever there shall be more than two trustees hereof the majority of such trustees shall (provided such majority includes a trust corporation) be competent to execute and exercise all the trusts, rights, powers, duties, authorities and discretions vested by this Declaration of Trust in the Trustee generally.

9. APPOINTMENT OF NEW OR FURTHER TRUSTEES

9.1 The power of appointing new Trustees shall be vested in Equitas Holdings Limited. Equitas Holdings Limited may at any time by notice in writing to ERL and the Trustee remove any Trustee or Trustees for the time being hereof. The removal of a Trustee shall not become effective unless there remains at least one Trustee or Trustees in office after such removal. The provisions of section 37(1)(c) of the Trustee Act 1925 shall not apply to the extent that they are inconsistent with the provisions of this Declaration of Trust.

9.2 Notwithstanding the provisions of Clause 9.1, the Trustee may, upon giving prior notice to ERL and EHL, appoint any person (whether a trust corporation or not) to act either as a separate trustee or as a co-trustee jointly with the Trustee:

- (a) if the Trustee considers such appointment to be in the interests of the Insurance Creditors or the Reinsured Names; or
- (b) for the purposes of conforming to any legal requirement or restriction.

Such person shall (subject always to the provisions of the Reinsurance Contract and this Declaration of Trust) have such trusts, rights, powers, duties, authorities and discretions (not exceeding those conferred on the Trustee by the Reinsurance Contract and this Declaration of Trust) and such duties and obligations as shall be conferred or imposed by the instrument of appointment. The Trustee shall have power in like manner to remove any such person. Such reasonable remuneration as the Trustee may pay to any such person, together with any attributable costs, charges and expenses incurred by it in performing its function as such separate trustee or co-trustee, shall, for the purposes of this Declaration of Trust, be treated as costs, charges and expenses incurred by the Trustee.

10. RETIREMENT OF TRUSTEE

Any Trustee for the time being of these presents may retire at any time upon giving not less than three months' notice in writing to ERL and EHL without assigning any reason therefor and without being responsible for any costs occasioned by such retirement. The retirement of a sole Trustee shall not take effect until the appointment of a new Trustee has been effected.

11. **MODIFICATIONS**

The Trustee may from time to time and at any time make any modification of this Declaration of Trust, if in the opinion of the Trustee such modification:

- (a) is of a formal, minor or technical nature; or
- (b) is made to correct a manifest error; or
- (c) is not prejudicial in the opinion of the Trustee to the interests of the Insurance Creditors or ~~any Reinsured Name~~Newco; or
- (d) is made to perfect or give effect to any charge or security created or intended to be created by the Reinsurance Contract or this Declaration of Trust or to facilitate the exercise, or the proposed exercise, of any of the Trustee's powers or the protection, management or realisation of any of the Trust Property.

12. **NOTICES**

12.1 Each notice, request, demand, approval, certificate or other communication to be given or made by one person to another under this Declaration of Trust shall be given, made or served by telex, facsimile or letter to the following address, telex or facsimile number:

- (a) if to ~~the Substitute Agent~~Newco, to the address, telex or facsimile number or other address for service specified in or pursuant to the Reinsurance Contract;
- (b) if to the Trustee, to its registered office from time to time; and
- (c) if to ERL to the address, telex or facsimile number or other address for service specified in or pursuant to the Reinsurance Contract,

or to such other address, telex or facsimile number in the United Kingdom as such person may have notified to the Trustee by not less than 15 days notice in writing as the address, telex or facsimile number for the time being of such person.

12.2 Any communication to any person shall be deemed to be received by that person (if sent by telex or facsimile) when such communication has been despatched and the appropriate answerback or confirmation received or (if sent by letter) when left at the appropriate address or (as the case may be) three days after being deposited in the post (first class postage prepaid) in an envelope addressed to such person at that address.

13. **WAIVER**

No course of dealing by the Trustee with any person and no failure or delay on the part of the Trustee to execute or exercise any trust, right, power, duty, discretion or authority under the Reinsurance Contract or this Declaration of Trust or provided by statute or by law or in equity or otherwise shall impair or operate as a waiver of any such trust, right, power, duty, discretion or authority or be construed as a waiver of

any default or as an acquiescence therein. Any single or partial execution or exercise of any such trust, right, power, duty, discretion or authority shall not preclude any other or further execution or exercise thereof or the execution or exercise of any other rights, privilege or remedies. The rights and remedies contained in the Reinsurance Contract and this Declaration of Trust are cumulative and not exclusive of any other right and remedy which the Trustee would have for the effective enforcement of the rights accorded in the Reinsurance Contract and this Declaration of Trust,

14. TAXES

Notwithstanding anything herein contained, to the extent, required by any applicable law, if the Trustee shall be required to deduct or withhold from any distribution or payment made by, it hereunder or if the Trustee shall otherwise be charged to tax as a consequence of performing its duties hereunder, any amount for which the Trustee may be liable, whether as principal or agent, by reason of any assessment or prospective assessment to taxation of whatsoever nature and whensoever made upon the Trustee in connection with or arising from any sums received by it or to which it may be entitled under the Trust Property (other than in connection with its remuneration specified in Clause 7) or any investments from time to time representing the same, including any income or gains arising therefrom or any action of the Trustee in or about the administration of the trusts of this Declaration of Trust (other than the remuneration specified in Clause 7), the Trustee shall be entitled to make such deduction or withholding or, as the case may be, retention in respect of taxation. If the Trustee incurs any loss, cost, liability or expense by reason of any such assessment for which no such deduction or withholding or retention has been made by the Trustee or if any such deduction or withholding or retention is insufficient, Equitas will indemnify the Trustee therefor and the Trustee shall be entitled to reimbursement of such amounts from the Trust Property.

15. PARTIAL INVALIDITY

If any of the provisions of this Declaration of Trust becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

16. GOVERNING LAW AND JURISDICTION

This Declaration of Trust and all the terms and provisions hereof and all questions of construction, validity and performance hereunder shall be governed by and construed in accordance with the laws, of England. The courts of England shall have exclusive jurisdiction to settle any dispute and/or controversy of whatsoever nature which may arise out of or in connection with this Declaration of Trust and any suit, action or proceeding arising out of such matters shall be brought in such courts.

IN WITNESS WHEREOF this Declaration of Trust has been executed as a deed by the parties hereof the day and year first above written.

| | | |
|--|---|-------------|
| EXECUTED as a DEED and |) | |
| DELIVERED by | } | M. Crall |
| EQUITAS POLICYHOLDERS |) | Director |
| TRUSTEE LIMITED |) | |
| acting by two Directors/a Director and |) | J.V. Barker |
| the Secretary) Director | | |