

**EXECUTION VERSION**

RETROCESSION AGREEMENT

between

POOL REINSURANCE COMPANY LIMITED

and

THE LORDS COMMISSIONERS OF HER MAJESTY'S TREASURY

(Incorporating amendments made during 2015)

March 2015



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Presented to Parliament pursuant to section 1(2) of the  
Reinsurance (Acts of Terrorism) Act 1993.

March 2015



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ISBN 978-1-910835-04-3

Printed on paper containing 75% recycled fibre content minimum

RETROCESSION AGREEMENT

THIS RETROCESSION AGREEMENT is made on 25 March 2015, with effect in respect of Covered Loss (as defined in the Reinsurance Agreements) arising under Contracts of Direct Insurance incepting or renewing during the Period of Application.

BETWEEN

- (1) POOL REINSURANCE COMPANY LIMITED (registered in England under number 02798901) whose registered office is at Hanover House, 14 Hanover Square, London, W1S 1HP ("the Retrocedant"); and
- (2) THE LORDS COMMISSIONERS OF HER MAJESTY'S TREASURY of 1 Horse Guards Road, London SW1A 2HQ ("the Retrocessionaire")

WHEREAS

- (A) The Retrocedant and the Retrocessionaire are parties to the Original Retrocession Agreement (as defined herein) pursuant to which the Retrocessionaire provides protection to the Retrocedant in respect of its liability under Reinsurance Agreements in relation to Contracts of Direct Insurance (as defined herein).
- (B) The Parties wish to enter into this Retrocession Agreement to set out new terms on which the Retrocessionaire will provide protection to the Retrocedant.
- (C) The new terms will apply in relation to Contracts of Direct Insurance incepting or renewing on or after 1 January 2015. The existing terms of the Original Retrocession Agreement will continue to apply in relation to Contracts of Direct Insurance incepting or renewing before 1 January 2015, to the extent that amounts would become payable by one Party to the other under those terms.
- (D) Notwithstanding the agreement of new terms, the Original Retrocession Agreement and this Retrocession Agreement represent one cumulative financial arrangement between the Retrocedant and the Retrocessionaire. In particular:
  - (i) all of the assets of the Retrocedant are to be taken into account, without any segregation of them between the agreements, for the purposes of calculations to be made under each of the agreements; and
  - (ii) all of the liabilities of the Retrocedant arising from Reinsurance Agreements are intended to be covered under either the Original Retrocession Agreement or this Retrocession Agreement.

IT IS AGREED

ARTICLE 1 - SCOPE

- 1.1 This Retrocession Agreement applies to Covered Loss (as defined in the Reinsurance Agreements) arising under Contracts of Direct Insurance incepting or renewing during the Period of Application and accepted by Retrocedant pursuant to the Reinsurance Agreements ("In-Scope Direct Contracts of Insurance").
- 1.2 In accordance with Article 3 of this Retrocession Agreement, certain terms of the Original Retrocession Agreement shall continue to apply to Covered Loss (as defined in the Reinsurance Agreements) arising under Contracts of Direct Insurance incepting or renewing on or before 31 December 2014 and accepted by the Retrocedant pursuant to the Reinsurance Agreements ("Original Agreement Covered Loss").

ARTICLE 2 - LIMITS OF INDEMNITY

- 2.1 The Retrocessionaire hereby undertakes (subject to the provisions of this Retrocession Agreement) to indemnify the Retrocedant for the amount of the Retrocedant's Ultimate Net Loss which exceeds the Retention, which indemnity shall be calculated as at the end of each Quarter.
- 2.2 The Retrocedant shall, subject to availability and the prior written approval of the Retrocessionaire (such approval being at the Retrocessionaire's absolute discretion), effect such additional retrocessions to protect business falling within the scope of this Retrocession Agreement as are considered by the Retrocedant to be appropriate, provided that:
- (a) for the purposes of its determination of whether any additional retrocession is required, the Retrocedant shall, if requested to do so by the Retrocessionaire, obtain at its own cost, share with the Retrocessionaire, and take into account independent actuarial advice;
  - (b) the Retrocessionaire shall only be liable hereunder for the amount of the Retrocedant's Ultimate Net Loss which exceeds the Retention, which includes the amount or amounts paid and payable under any such additional retrocessions; and
  - (c) notwithstanding paragraph (b), the Retention shall not include any amount payable under any additional retrocession to the extent that:
    - (i) the Third Party Retrocessionaire has defaulted in payment; or

(ii) the Retrocedant has made a provision in its management accounts against non-payment by the Third Party Retrocessionaire;

and Article 4.3 shall apply in respect of any such amounts.

ARTICLE 3 - PERIOD OF APPLICATION AND INTERACTION WITH ORIGINAL RETROCESSION AGREEMENT

- 3.1 This Retrocession Agreement shall be deemed to have commenced on the Effective Date and shall continue in full force and effect unless and until terminated pursuant to and in accordance with the provisions of Article 14 ("the Period of Application").
- 3.2 Subject to Articles 3.3 and 3.4, the Original Retrocession Agreement shall be deemed to have terminated with effect from the Effective Date and, without prejudice to any rights and obligations under this Retrocession Agreement, neither Party shall have any further rights or obligations under the Original Retrocession Agreement.
- 3.3 The Retrocedant shall continue to have an obligation to make payment to the Retrocessionaire of the Retrocessionaire's Maximum Premium Entitlement in respect of the Underwriting Periods (as defined in the Original Retrocession Agreement) ending on 31<sup>st</sup> December 2012, 31<sup>st</sup> December 2013 and 31<sup>st</sup> December 2014, calculated in accordance with Schedule 2 to the Original Retrocession Agreement as if the Original Retrocession Agreement had been terminated pursuant to Article 15.1 thereof. This obligation shall be subject to the terms of the Original Retrocession Agreement including, for the avoidance of doubt, the limitations in Article 7 thereof and Schedule 2 thereto.
- 3.4 The Retrocessionaire shall continue to have an obligation to indemnify the Retrocedant in respect of Original Agreement Covered Loss in accordance with the Original Retrocession Agreement.
- 3.5 For the purpose of calculating the amount of the obligations of the Parties under Articles 3.3 and 3.4, the Retrocedant shall provide to the Retrocessionaire such reports and calculations referred to in Articles 5 and 8 of the Original Retrocession Agreement as are necessary for the calculation of the Retrocessionaire's Maximum Premium Entitlement and the indemnity obligation of the Retrocessionaire.
- 3.6 The reports required to be provided under Article 3.5 shall be prepared using the updated forms set out in the Reinsurance Underwriting Manual from time to time, but shall be accompanied by a supplementary report showing a reconciliation of the information in those reports with the components of the calculations of the Retrocessionaire's

Maximum Premium Entitlement and the indemnity obligation of the Retrocessionaire under the Original Retrocession Agreement.

ARTICLE 4 - ULTIMATE NET LOSS

- 4.1 In this Retrocession Agreement "Ultimate Net Loss" means the total sum actually paid by the Retrocedant in respect of Covered Loss (as defined in the Reinsurance Agreements) arising under In-Scope Direct Contracts of Insurance including litigation and other expenses reasonably incurred by the Retrocedant in connection with the adjustment thereof, but excluding office expenses and salaries of the Retrocedant attributable thereto and after deduction of all salvage payments and/or recoveries (including recoveries due from all other reinsurances inuring for the benefit of the Retrocedant whether collected or not, except to the extent that a Third Party Retrocessionaire has defaulted in payment or the Retrocedant has made a provision in its management accounts against non-payment by the Third Party Retrocessionaire).
- 4.2 For the purposes of Article 4.1, but subject to Article 4.3, all salvage, recoveries or payments recovered or received subsequent to any loss settlement hereunder shall be applied as if recovered or received prior to any such settlement and all adjustments as shall be necessary to reflect the above shall be made by the Parties.
- 4.3 To the extent that an amount paid by the Retrocessionaire was increased by reason of:
- (a) the previous non-payment by a Third Party Retrocessionaire; or
  - (b) the Retrocedant having made a provision in its management accounts against non-payment by a Third Party Retrocessionaire;
- then, where such amounts are subsequently received from the Third Party Retrocessionaire they shall not be applied as if recovered or received prior to any such settlement but shall immediately be payable to the Retrocessionaire.
- 4.4 No liability shall be incurred by the Retrocessionaire to the Retrocedant unless and until the Retrocedant has made actual payment to the Reinsured or to its order under the Reinsurance Agreement; subject to the proviso, however, that nothing in this Article shall be construed to mean that recovery cannot be made by the Retrocedant from the Retrocessionaire until the Retrocedant's Ultimate Net Loss has been finally ascertained and the Retrocedant will be taken to have made actual payment for these purposes when it has complied with the requirements specified from time to time in the Underwriting Manual and/or Reinsurance Underwriting Manual relating to the payment of a claim.



- 4.5 In the event that the Retrocedant shall not, for any reason, have paid the Reinsured (or to its order) within 60 days of payment becoming due and payable, the Retrocessionaire may at its option pay directly to the Reinsured (or to its order) such amount as would have been due to the Retrocedant under this Retrocession Agreement in respect of that Reinsured but for such non-payment; any such payment (if and when made by the Retrocessionaire) shall operate as a pro tanto discharge of the Retrocessionaire's liability to the Retrocedant.

ARTICLE 5 - CLAIMS CO-OPERATION AND REPORTING

5.1 Notwithstanding anything contained to the contrary in this Retrocession Agreement (with the exception of Article 15 to the provisions of which this Article is subject) it is a condition precedent to the Retrocessionaire's liability in respect of the Retrocedant's Ultimate Net Loss arising as a consequence of each and every claim under a Reinsurance Agreement that:

- (a) the Retrocedant shall render quarterly (or at such other intervals greater than or equal to a calendar month as may be agreed between the Parties from time to time) to the Retrocessionaire bordereaux in the form set out in the Reinsurance Underwriting Manual containing such information as is reasonably required by the Retrocessionaire in relation to the claim concerned and the circumstances which could give rise to such claim;
- (b) the Retrocedant shall have notified the Retrocessionaire in accordance with Article 21 of the Reinsurance Agreements of the event or events giving rise to the claim which in the opinion of the Retrocedant or the Reinsured constitutes an Act of Terrorism; and either a Certificate (as defined in the Reinsurance Agreements) has been issued by the Retrocessionaire pursuant to those provisions or the event or events in question has or have been determined to be an Act of Terrorism by the Tribunal;
- (c) the Retrocedant if requested by the Retrocessionaire co-operates fully with the Retrocessionaire and any other person or persons designated by the Retrocessionaire to oversee the investigation adjustment and settlement of the claim notified to the Retrocessionaire as aforesaid and the Retrocedant shall not if so requested by the Retrocessionaire litigate the claim without consulting the Retrocessionaire or such person or persons;
- (d) save to the extent that the payment is made pursuant to paragraph 5.2 of this Article, or the Parties and the Reinsured otherwise agree in writing, the total amount of the Retrocedant's liability to the relevant Reinsured

in respect of the Covered Loss shall have been finally determined either by judgment or award against the Retrocedant made by a competent court or arbitration tribunal of competent jurisdiction; and

- (e) the Retrocedant obtains the written consent of the Retrocessionaire prior to making any payment in respect of the claim pursuant to the Retrocedant's option contained in paragraph 7.2 of Article 7 of the Reinsurance Agreements.

5.2 The Retrocedant shall be entitled to settle claims pursuant to Reinsurance Agreements, and claims so paid shall form part of the Retrocedant's Ultimate Net Loss, if either:-

- (a) the Retrocedant reasonably considers at the time of payment of the claim that its total liability in respect of Covered Loss incurred by a Reinsured per Head of Cover per Loss Occurrence (as each of such terms is defined in the relevant Reinsurance Agreements), per In-Scope Direct Contract of Insurance does not exceed £10 million or such other sum as may be specified in the Underwriting Manual; or
- (b) the claim is paid in accordance with arrangements or procedures relating to the handling of claims set out from time to time in the Underwriting Manual and/or Reinsurance Underwriting Manual; and in both cases
- (c) the Retrocedant shall have complied with its notification obligations referred to in Article 5.1(b) above.

#### ARTICLE 6 - PREMIUM

6.1 The Retrocessionaire shall be entitled in respect of each Underwriting Period to receive premium equal to the amount of the Retrocessionaire's Maximum Premium Entitlement together with interest thereon calculated as set out in Schedule 2. Premium and interest shall be paid to the Retrocessionaire in accordance with the provisions of paragraphs 6.2 to 6.5 inclusive of this Article.

6.2 Notwithstanding the Retrocessionaire's entitlement to premium as provided for in Article 6.1 the Retrocessionaire shall not, subject to the provisions of Article 6.4, seek payment of the Retrocessionaire's Maximum Premium Entitlement unless and until there is a Surplus and so that, at any time when there is a Surplus and notwithstanding termination of this Retrocession Agreement, the Retrocessionaire shall be entitled by notice in writing to the Retrocedant to require the Retrocedant to pay to the Retrocessionaire forthwith the Payment Required as defined in paragraph 6.5 of this Article.

- 6.3 In the event of the termination of this Retrocession Agreement pursuant to paragraph 14.1 of Article 14 the Retrocessionaire shall be paid premium and interest in accordance with the provisions of paragraph 6.2 of this Article.
- 6.4 In the event of the termination of this Retrocession Agreement pursuant to paragraph 14.2 of Article 14 the Retrocessionaire shall be paid by the Retrocedant forthwith upon calculation all premium and interest to which the Retrocessionaire is entitled pursuant to paragraph 6.1 of this Article and for these purposes paragraph 1 of Schedule 2 shall be disregarded and such calculation shall be made immediately following and as at the effective date of termination provided that no later than 31<sup>st</sup> March in the Fourth Year of the Underwriting Period in which this Retrocession Agreement is terminated, the Retrocessionaire's Maximum Premium Entitlement shall be calculated again in accordance with Schedule 2 and either:
- (a) all premium and interest to which the Retrocessionaire is then entitled shall be paid forthwith to the Retrocessionaire; or
  - (b) the Retrocessionaire shall repay to the Retrocedant all premium and interest already paid to the Retrocessionaire in excess of that actually due in respect of that Underwriting Period, together with interest thereon calculated to the date of payment on the same basis as set out in Schedule 2.
- 6.5 (a) Subject to (b) below, for the purposes of paragraph 6.2 of this Article the Payment Required shall be such aggregate amount of premium to which the Retrocessionaire is entitled under paragraph 6.1 of this Article ("Premium") and interest on such Premium (as calculated under Schedule 2) ("Interest") as does not exceed the Surplus.
- (b) If the Retrocessionaire's Maximum Premium Entitlement plus interest thereon exceeds the Surplus then the Premium comprised in the Payment Required as defined in (a) above shall be taken to be the following elements of the Retrocessionaire's Maximum Premium Entitlement in the following order:
- (i) the amount of the Retrocessionaire's Maximum Premium Entitlement based on premium received by the Retrocedant from Reinsureds as referred to in paragraph 2 of Schedule 2 in respect of the Underwriting Period commencing on the Effective Date; and then (as to any balance)
  - (ii) the amount of the Retrocessionaire's Maximum Premium Entitlement based on the Retrocessionaire's Payments if any made in that Underwriting Period and represented in the Excess (as such terms are

defined in paragraph 2 of Schedule 2); and then (as to any balance)

(iii) paragraph (i) and (ii) shall each be applied in turn in respect of each subsequent Underwriting Period in chronological order up to and including the Underwriting Period for which the calculation is being made.

ARTICLE 7 - ACCOUNTS AND ACCOUNTING REQUIREMENTS

7.1 The Retrocedant shall prepare and deliver to the Retrocessionaire no later than sixty (60) calendar days after the end of each Quarter (or at such other intervals greater than or equal to a calendar month as may be agreed between the Parties from time to time) and in respect of such Quarter (or other interval greater than or equal to a calendar month as may be agreed between the Parties from time to time), Revenue Statements in the form reasonably required by the Retrocessionaire (which form shall, inter alia, be consistent with the form in which its annual accounting balance sheet is prepared in accordance with applicable accounting standards, and will set out the items required to calculate the Retrocessionaire's liability hereunder).

7.2 In the event that at the end of any Quarter the Retrocedant notifies the Retrocessionaire of its opinion that there is a Qualifying Underwriting Loss in respect of an Underwriting Period; and

(a) the Retrocessionaire agrees (such agreement not to be unreasonably withheld or delayed) on the basis of the information contained in the Revenue Statements and any further information which it may reasonably require, that there is a Qualifying Underwriting Loss in respect of that Underwriting Period and is in agreement (such agreement not to be unreasonably withheld or delayed) with the amount of such Qualifying Underwriting Loss; and

(b) as at the end of that Quarter the Retrocedant has insufficient Funds to meet such Ultimate Net Losses as will be payable by the Retrocedant during the next Quarter (regardless of the Underwriting Period to which such Ultimate Net Losses relate),

then the Retrocessionaire shall upon request by the Retrocedant pay to the Retrocedant on account the amount or amounts by which Aggregate Liabilities payable during the next Quarter are estimated to exceed 120% of Aggregate Premium in relation to the Underwriting Period concerned less the aggregate of all amounts already paid by the Retrocessionaire pursuant to this Article 7.2 in respect of that Underwriting Period.

7.3 Thereafter to the extent that the Revenue Statements evidence the Ultimate Net Loss of the Retrocedant in respect of an Underwriting Period paid in accordance with the provisions of Article 5 either:

7.3.1 the Retrocessionaire shall pay to the Retrocedant the Retrocessionaire's liability pursuant to Article 2 in respect of the Underwriting Period concerned after deduction of the aggregate of amounts paid by the Retrocessionaire on account pursuant to Article 7.2; or

7.3.2 the Retrocedant shall pay to the Retrocessionaire by no later than 30<sup>th</sup> April in the Fourth Year such amount by which the aggregate amounts paid on account pursuant to Article 7.2 in respect of the Underwriting Period concerned exceed the amount of the Retrocessionaire's liability pursuant to Article 2 in respect of that Underwriting Period;

and so that for the purposes of this paragraph, the liability of the Retrocessionaire pursuant to Article 2 shall be allocated to Underwriting Periods at the end of each Quarter pro rata to the Ultimate Net Losses taken into account in respect of that Quarter for such Underwriting Periods.

7.4 Following payment by either of the Parties pursuant to paragraph 7.3 above, to the extent that the Revenue Statements evidence additional Ultimate Net Loss incurred by the Retrocedant not taken into account in the calculation pursuant to that paragraph in respect of the same Underwriting Period, the Retrocessionaire shall pay to the Retrocedant the Retrocessionaire's liability pursuant to Article 2 in respect of that Underwriting Period at the end of each Quarter.

#### ARTICLE 8 - DISCUSSION REGARDING TIMING OF PAYMENTS

8.1 Following the occurrence of an Act of Terrorism, which may reasonably be expected to result in the Ultimate Net Loss exceeding the Retention at the end of the next Quarter, representatives of the Parties shall discuss the details upon which the Retrocedant will repay the Retrocessionaire any amounts paid to and repayable by the Retrocedant, under this Agreement.

#### ARTICLE 9 - UNDERTAKINGS

9.1 The Retrocedant hereby undertakes to the Retrocessionaire that it shall:

- (a) operate its business and conduct its affairs in accordance with the provisions of the Reinsurance Underwriting Manual and in a bona fide and business-like manner;

- (b) not commit any dishonest, fraudulent or criminal act or omission relating to the operation of this Retrocession Agreement;
- (c) comply with the Reinsurance Underwriting Manual in all respects, including all alterations and/or amendments to it from time to time pursuant hereto;
- (d) give written notice to the Retrocessionaire of any breach of any of the terms of the Reinsurance Agreements and/or Membership Agreement by any of the Reinsureds and/or its Members as soon as practicable after becoming aware of any such breach;
- (e) save to the extent that the Parties otherwise agree in writing, take all available steps at all times to enforce its contractual rights under Articles 8, 9, 10.3, 11.1, 16 and Schedule 3 of the Reinsurance Agreement as soon as practicable after becoming aware that it is entitled to exercise such rights;
- (f) ensure that there is in force at all times for its directors and other officers, directors and officers liability insurance in relation to their position as directors and officers of the Retrocedant;
- (g) purchase and maintain insurance (to the extent that such insurance is available at reasonable cost) indemnifying the Retrocedant and its employees against liability which it or they may incur as a consequence of any error or omission on behalf of any of them in the course of the operation of the business or the conduct of the affairs of the Retrocedant.

#### ARTICLE 10 - SECURITY

10.1 The Retrocedant shall, if so required and when required by the Retrocessionaire, enter into and create a floating charge in favour of the Retrocessionaire in the terms of the draft set out in Schedule 8, and shall from time to time whenever requested by the Retrocessionaire execute (whether under hand or under seal) in favour of the Retrocessionaire or as the Retrocessionaire may direct such further or other legal assignments, transfers, mortgages, legal or other charges, securities or documents as in each such case the Retrocessionaire shall stipulate over the Retrocedant's estate or interest in all or any property (including over property acquired after the date hereof) and wheresoever situate whether for the purpose of perfection or protection of the security constituted by the said floating charge or for more effectively providing security for the payment or discharge of the obligations hereunder or for the better realisation of any property or for the exercise or more effective exercise of the powers authorities directions rights or remedies vested in the Retrocessionaire or any

receiver appointed pursuant to the said floating charge or any other security.

- 10.2 The Retrocedant shall be entitled to request the Retrocessionaire to enter into a guarantee or guarantees in respect of the Retrocedant's obligations to its bankers from time to time, whereupon the Retrocessionaire may, if the Retrocessionaire considers it appropriate, enter into one or more guarantees for such purposes.
- 10.3 The Retrocedant shall forthwith upon receipt of a written demand from the Retrocessionaire indemnify the Retrocessionaire in full in respect of any and all sums which the Retrocessionaire is liable to pay or has paid pursuant to a demand (whether valid or not) under a guarantee entered into pursuant to this Article, such indemnity to include interest, costs and expenses incurred by the Retrocessionaire and any other sums whatsoever payable by the Retrocessionaire in relation to the said guarantee and interest shall accrue to such sum or sums at the rate and on the basis specified in paragraph 3 (b), (c) and (d) of Schedule 2 from the date of payment of the same by the Retrocessionaire.
- 10.4 The benefit of this Retrocession Agreement shall not be assigned whether in whole or in part by the Retrocedant whatsoever other than in favour of any bankers from time to time of the Retrocedant by way of security for any banking facility made available by such bankers to the Retrocedant and then only to the extent of such facilities and with the prior written consent of the Retrocessionaire.

ARTICLE 11 MATTERS REQUIRING PRIOR WRITTEN CONSENT OF RETROCESSIONAIRE

- 11.1 Unless the prior written consent of the Retrocessionaire is obtained, or where expressly permitted in Article 11.6 or otherwise by this Retrocession Agreement, the Retrocedant shall not:-
- (a) sell, transfer, lease, assign or otherwise dispose of a material part of the undertaking property and/or assets of the Retrocedant or contract so to do;
  - (b) delegate any part of the management of its business to a third party or agent;
  - (c) borrow any sum (except from the Retrocedant's bankers in the ordinary and proper course of the Retrocedant's business) in excess of a maximum aggregate sum outstanding at any time of £10 million;
  - (d) save for a floating charge required by the Retrocessionaire pursuant to Article 10.1 create any fixed or floating charge, liens (other than a lien arising by operation of law) or other encumbrance over

the whole or any part of the undertaking, property and/or assets of the Retrocedant;

- (e) give any guarantee or indemnity to secure the liabilities or obligations of another person other than:
  - (i) under the Reinsurance Agreements;
  - (ii) by reason of the renewal or extension in time of any guarantee or indemnity for which consent has previously been given; or
  - (iii) an indemnity which arises by operation of law by reason of the execution of a document that the Retrocedant is otherwise permitted to execute, provided that any such indemnity is promptly notified to the Retrocessionaire;
- (f) invest in any class of asset other than in accordance with investment guidelines approved by the board of directors of the Retrocedant;
- (g) enter into any contract or transaction except in the ordinary and proper course of the Retrocedant's business at arms' length terms;
- (h) enter into any partnership or profit-sharing agreement with any person;
- (i) do or so far as it is within its power, permit or suffer to be done any act or thing whereby the Retrocedant may be wound up (whether voluntarily or compulsorily) save as otherwise expressly provided for in this Retrocession Agreement or required by its Articles of Association or applicable law;
- (j) amend or alter the provisions of the Underwriting Manual other than as permitted by Article 11.5;
- (k) enter into any variation of or amendment of the Membership Agreement and the Supplemental Deeds;
- (l) lend money other than in the normal course of operating bank accounts or as the holder of a security or investment;
- (m) participate in any transaction which, if the Retrocedant (or any Subsidiary of the Retrocedant) were listed on the London Stock Exchange, would constitute a "class 1 transaction" as defined for the purposes of the Listing Rules;
- (n) so far as it is within its power, permit or cause to be proposed any amendment to the Retrocedant's memorandum and articles of association; or



- (o) withdraw or cease to offer as a class of business, reinsurance cover in respect of losses occurring as a result of Acts of Terrorism, other than as a result of a decision to cease to effect any new contracts of insurance.
- 11.2 Save as provided in Article 11.3, the Retrocedant shall not distribute among its Members or to Reinsureds, or take any step which would immediately thereafter result in the distribution among its Members or to Reinsureds of, any property of the Retrocedant unless all the directors of the Retrocedant shall have prior thereto unanimously resolved to do so at a duly convened and held meeting of the said directors or by resolution in writing signed by all the said directors (or, in the case of a winding up, the liquidator shall have resolved to do so) and the basis of any such distribution shall comply with Article 4.2 of the Supplemental Deeds and the Articles of Association of the Retrocedant.
- 11.3 Notwithstanding Article 11.2, unless the Retrocedant, with the Retrocessionaire's prior written consent, such consent not to be unreasonably withheld or delayed, decides not to do so, the Retrocedant shall, in respect of each Financial Year:
- (a) subject to the requirements of the Companies Act 2006; and
  - (b) provided that, on the date on which its annual accounts are submitted to the Registrar in respect of that Financial Year, there is a Surplus;
- pay a dividend to its Members equal to the Return Percentage of the Annual Profit in respect of that Financial Year. Where applicable, the dividend in respect of a Financial Year shall be paid within 60 Business Days after submission to the Registrar of the audited accounts of the Retrocedant relating to that Financial Year.
- 11.4 If, at any date on which the Retrocedant's annual accounts are submitted to the Registrar, there is no Surplus for any reason, Article 11.3 shall be suspended unless and until otherwise agreed between the Parties in writing.
- 11.5 The Reinsurance Agreements, the Underwriting Manual and the Reinsurance Underwriting Manual shall not be amended otherwise than by agreement in writing by the Parties, save that the Retrocedant may amend the Reinsurance Agreements, the Underwriting Manual or the Reinsurance Underwriting Manual without the consent of the Retrocessionaire where it gives 21 days prior written notice to the Retrocessionaire of its intention to make the amendment if the amendment is not an Excluded Amendment.
- 11.6 The Retrocedant may do any act or thing which would otherwise be a breach of paragraphs (a), (c), (d), (e) or (l) of Article

11.1 (each a "Restricted Act") without the prior consent of the Retrocessionaire where the board of the Retrocedant reasonably anticipates that the aggregate amount involved in, or put at risk by, all such Restricted Acts that will be or have been done without the prior written consent of or subsequent ratification by the Retrocessionaire in the then-current Underwriting Period is less than 2.5 per cent of the total premium received by the Retrocedant from Reinsureds in respect of In-Scope Direct Contracts of Insurance in respect of the previous Underwriting Period.

11.7 Without prejudice to Article 11.6, if at any time during an Underwriting Period, the board of the Retrocedant reasonably anticipates that, or it subsequently becomes apparent to the board of the Retrocedant that, the aggregate amount involved in, or put at risk by, all Restricted Acts that will be or have been done without the prior consent of or subsequent ratification by the Retrocessionaire in that Underwriting Period is greater than 1.25 per cent of the total premium received by the Retrocedant from Reinsureds in respect of In-Scope Direct Contracts of Insurance in respect of the previous Underwriting Period, the Retrocedant shall promptly notify the Retrocessionaire in writing of each applicable and subsequent Restricted Act that it has done or will do during that Underwriting Period.

#### ARTICLE 12 - INSPECTION OF RECORDS

12.1 For as long as either Party remains under any liability hereunder the Retrocedant shall, upon request by the Retrocessionaire and at the Retrocedant's expense, make available at the Retrocedant's head office or wherever the same may be located, for inspection at any reasonable time by such representatives as may be authorised by the Retrocessionaire for that purpose (being employees of a government body, or an independent person or persons engaged for the purpose), all information relating to and generated pursuant to the Reinsurance Agreements in the Retrocedant's possession or under its control and shall supply the Retrocessionaire with such copies of any of the records containing the aforesaid information as the Retrocessionaire may require.

12.2 The Retrocessionaire shall at all times (whether before or after the expiry or sooner determination of this Retrocession Agreement) use its best endeavours to keep confidential (and to ensure that its agents (if any) shall keep confidential) any information which it may acquire in relation to the business, assets or affairs of the Retrocedant and/or its Members and shall not without the written consent of the Retrocedant use or disclose such information or make such information available to any other person, unless disclosure of any such information is required by law (whether statutory

or otherwise) or to enable the Retrocessionaire to fulfil his obligations to Parliament.

ARTICLE 13 - ALTERATIONS

13.1 No variation in this Retrocession Agreement shall be effective unless in writing and duly signed on behalf of the Parties. Variations sent by instantaneous means of communication are also effective provided they are capable of being shown by means of permanent or retrievable record to have been agreed by both Parties.

ARTICLE 14 - TERMINATION

14.1 This Retrocession Agreement may be terminated by either Party giving the other Party not less than one hundred and twenty (120) days' notice in writing expiring at midnight on 31<sup>st</sup> December in any year.

14.2 The Retrocessionaire shall be entitled to terminate this Retrocession Agreement immediately and upon notice given to the Retrocedant in the event that:

(a) the performance of the whole or any part of this Retrocession Agreement is either prohibited or rendered impossible de jure or de facto in particular and without prejudice to the generality of the preceding words in consequence of any law or regulation which is or shall be in force in any jurisdiction or in the event that any law or regulation in any jurisdiction shall prevent directly or indirectly the remittance of any payments due to or from either of the Parties provided that, if the European Commission or the Competition and Markets Authority informs any of the Parties that, in its view, any provision of the Pool Agreements (as defined in Article 19.2) infringes Article 101 of the Treaty on the Functioning of the European Union or the Chapter I prohibition of the Competition Act 1998, or that the conclusion, performance or enforcement of any provision of any of them would constitute an abuse of a dominant position contrary to Article 102 of the Treaty on the Functioning of the European Union or the Chapter II prohibition of the Competition Act 1998, then neither Party shall be entitled, under this Article 14.2(a), to terminate this Retrocession Agreement by virtue of any infringement of Article 101 or 102 of the Treaty on the Functioning of the European Union or of the Chapter I or Chapter II prohibitions of the Competition Act 1998 to which that information relates unless and until termination is required to comply with a legally binding order or direction given by the European Commission or the Competition and Markets Authority;

(b) the Retrocedant is unable to pay its debts or a petition is presented (which is not withdrawn or set aside within 30 days) or a resolution passed to wind up the Retrocedant;

(c) the Retrocedant shall have failed to comply with any of the provisions of this Retrocession Agreement;

(d) the Retrocedant's Memorandum and Articles of Association are amended without the Retrocessionaire's prior written consent;

(e) the Retrocessionaire becomes liable to pay or has paid any sum pursuant to a demand (whether valid or not) under a guarantee entered into pursuant to Article 10.2;

(f) there has been an Event of Default (as defined therein) under any floating charge given by the Retrocessionaire under Article 10.1.

14.3 The Retrocessionaire shall notify the Retrocedant of termination pursuant to paragraph 14.2 of this Article, failing which such termination shall not be effective but so that such notice may, in the absolute discretion of the Retrocessionaire, determine that termination shall be effective as from and including the date of the relevant event giving rise to the right to terminate, or as from such later date as the Retrocessionaire may determine.

14.4 The Retrocessionaire shall (save to the extent that the Parties have specifically agreed otherwise) remain liable in respect of the Retrocedant's Ultimate Net Loss arising only in respect of In-Scope Direct Contracts of Insurance which incepted or renewed prior to the effective date of termination of this Retrocession Agreement and all quotations issued by Reinsureds in compliance with the Reinsurance Agreements which cannot be withdrawn and which are outstanding on the effective date of termination of this Retrocession Agreement.

14.5 The provisions of this Retrocession Agreement which either are expressed to survive termination of this Retrocession Agreement or by implication of their terms would or should survive termination of this Retrocession Agreement (including but not limited to Articles 5, 6, 7, 8, 9, 10, 11 other than paragraph (o), 12, 13, 14, 16, 17 and 18) shall continue in full force and effect notwithstanding termination of this Retrocession Agreement provided that all Articles and all other paragraphs of Article 11.1 shall cease to have force and effect once the Retrocessionaire has no further liability to indemnify the Retrocedant hereunder.

14.6 In the event of termination of this Retrocession Agreement pursuant to paragraphs 14.1 or 14.2 of this Article, the Retrocessionaire shall not exercise any rights which the Retrocessionaire may have to recover from the Retrocedant or its directors or former directors, officers or employees any amount of the Retrocessionaire's Maximum Premium Entitlement which remains unpaid, save to the extent that the Retrocedant has funds in excess of the aggregate of its Ordinary Business Expenses, technical reserves relating to liability under

Reinsurance Agreements the subject of this Retrocession Agreement and retrocession expenses so far as they relate to additional retrocessions taken out pursuant to Article 2.2 which are available to be applied in payment of such amount of the Retrocessionaire's Maximum Premium Entitlement which is outstanding for payment.

ARTICLE 15 - ERRORS AND OMISSIONS

15.1 It is hereby understood and agreed between the Parties that any inadvertent or immaterial delays, omissions or errors made in connection with this Retrocession Agreement shall not (save to the extent that the Retrocedant has persisted in making such delays, omissions or errors) be held to entitle the Retrocessionaire to exercise any right of termination or to relieve the Parties from any liability which would have attached to them hereunder if such delay, omission or error had not occurred, provided that if rectification is possible, it is made as soon as practicable upon discovery.

ARTICLE 16 - NOTICES AND LANGUAGE

16.1 Save as provided in Schedule 3, a notice, approval, consent or other communication in connection with this Retrocession Agreement:

(a) must be in writing;

(b) in the case of the Retrocessionaire, must be marked for the attention of The Head of Insurance, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

(c) in the case of the Retrocedant, must be marked for the attention of General Counsel and the Company Secretary and sent to 5 Lloyd's Avenue, London EC3N 3AE Fax: 020 7337 7171; and

(d) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside the United Kingdom) to the address of the addressee or sent by telex or facsimile to the telex or facsimile number of the addressee, or if the addressee notifies another address or telex or facsimile number then to that address or telex or facsimile number.

16.2 A notice, approval, consent or other communication shall take effect from the time it is received (or, if earlier, the time it is deemed to be received in accordance with paragraph 16.3 of this Article 16) unless a later time is specified in it.

16.3 A letter or facsimile is deemed to be received:

(a) in the case of a posted letter, unless actually received earlier, on the third (seventh, if posted to or from a place outside the United Kingdom) day after posting; and

(b) in the case of facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

- 16.4 Each document, notice or other communication given, delivered or made by one Party to the other or to any other person under or in connection with this Retrocession Agreement shall be in English or, if not in English, be accompanied by a formal English translation (and the party or other person which receives such a translation shall be entitled to assume its accuracy and to rely upon it).

#### ARTICLE 17 - ARBITRATION

- 17.1 All matters of difference between the Parties arising under, out of or in connection with this Retrocession Agreement, with the exception of a dispute in relation to the Certification Issue (which shall be dealt with in accordance with the provisions of Schedule 3) including formation and validity, and whether arising during or after the period of this Retrocession Agreement, shall be referred to an arbitration tribunal in the manner hereinafter set out.
- 17.2 Unless the Parties appoint a sole arbitrator within 14 days of one receiving a written request from the other for arbitration, the claimant (the Party requesting arbitration) shall appoint its arbitrator and give written notice thereof to the respondent. Within 30 days of receiving such notice the respondent shall appoint its arbitrator and give written notice thereof to the claimant, failing which the claimant may apply to the appointor hereafter named to nominate an arbitrator on behalf of the respondent.
- 17.3 Before they enter upon a reference the two arbitrators shall appoint a third arbitrator. Should they fail to appoint such a third arbitrator within 30 days of the appointment of the respondent's arbitrator then either of them or either of the Parties may apply to the appointor for the appointment of the third arbitrator. The three arbitrators shall decide by majority. If no majority can be reached the verdict of the third arbitrator shall prevail. He shall also act as chairman of the tribunal.
- 17.4 Unless the Parties otherwise agree the arbitration tribunal shall consist of persons (including those who have retired) with not less than ten years' experience at senior management level in the insurance industry itself or as lawyers or other professional advisers with relevant experience.
- 17.5 The arbitration tribunal shall, so far as is permissible under the law and practice of the place of arbitration, have power to fix all procedural rules for the holding of the arbitration including discretionary power to make orders as to any matters which it may consider proper in the circumstances of the case

with regard to pleadings, discovery, inspection of the documents, examination of witnesses and any other matter whatsoever relating to the conduct of the arbitration and may receive and act upon such evidence whether oral or written strictly admissible or not as it shall in its discretion think fit.

- 17.6 The appointor shall be the Chairman for the time being of ARIAS (UK) or, if he is unavailable or it is inappropriate for him to act for any reason, such person as may be nominated by the Committee of ARIAS (UK). If for any reason such persons decline or are unable to act, then the appointor shall be the Judge of the appropriate Courts having jurisdiction at the place of arbitration.
- 17.7 All costs of the arbitration shall be determined by the arbitration tribunal who may, taking into account the law and practice of the place of arbitration, direct to and by whom and in what manner they shall be paid.
- 17.8 The place of arbitration may be chosen by the Parties, but in default of such choice, the place of arbitration shall be London, England.
- 17.9 The proper law of this Retrocession Agreement shall be and its terms shall be construed in accordance with the law of England.
- 17.10 The award of the arbitration tribunal shall be in writing and binding upon the Parties who consent to carry out the same.

#### ARTICLE 18 - JURISDICTION

- 18.1 In the event that Article 17 becomes or is found null, void or otherwise unenforceable for any reason each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the English Courts and each Party waives any right that it may have to object to an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.
- 18.2 Without preventing any other mode of service, any document in an action (including but not limited to any writ of summons or other originating process or any third or other party notice) may (in the event that paragraph 18.1 of this Article applies) be served on either Party by being delivered to or left for that Party at its address for service of notices under Article 16.

#### ARTICLE 19 - COMPETITION LAW COMPLIANCE

- 19.1 If the European Commission or the Competition and Markets Authority issues a legally binding decision to the effect that the Pool Agreements (or any provision of any of them)

infringes Article 101 of the Treaty on the Functioning of the European Union or the Chapter I prohibition of the Competition Act 1998, or that the conclusion, performance or enforcement of the Pool Agreements (or any provision of any of them) infringes Article 102 of the Treaty on the Functioning of the European Union or the Chapter II prohibition of the Competition Act 1998, then the Parties shall use all reasonable endeavours to amend the Pool Agreements (or shall execute new agreements) so as to ensure that the objectives of the Pool Agreements are achieved and that the Pool Agreements as so amended (or any such new agreements) will not infringe Article 101 of the Treaty on the Functioning of the European Union or the Chapter I prohibition of the Competition Act 1998 and that the conclusion, performance and enforcement of the Pool Agreements as so amended (or those new agreements) by any party thereto will not infringe Article 102 of the Treaty on the Functioning of the European Union or the Chapter II prohibition of the Competition Act 1998 and, save to the extent that it is reasonable to do so, and/or it is no longer possible to achieve the objectives of the Pool Agreements or to amend the Pool Agreements or enter into new agreements which do not give rise to an infringement of Articles 101 or 102 of the Treaty on the Functioning of the European Union or of the Chapter I or Chapter II prohibitions of the Competition Act 1998, no Party shall withhold its consent (to the extent to which it is required) to the making of any such amendment or the execution of any such new agreement.

19.2 In this clause 19 "Pool Agreements" means:

- 19.2.1 the Memorandum and Articles of Association of the Retrocedant;
- 19.2.2 the Membership Agreement (and each Accession Agreement executed pursuant thereto);
- 19.2.3 each Reinsurance Agreement to which the Retrocedant is or becomes party (including the Underwriting Manual);
- 19.2.4 each Supplemental Deed to which the Retrocedant is or becomes party; and
- 19.2.5 this Retrocession Agreement (including the Reinsurance Underwriting Manual)

each as from time to time amended or supplemented.

#### ARTICLE 20 - ENTIRE AGREEMENT

20.1 This Retrocession Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes any previous agreement between the Parties relating to such matters. It is noted



that, in accordance with Article 3 of this Retrocession Agreement, certain terms of the Original Retrocession Agreement will continue to apply in respect of the period prior to 31 December 2014.

20.2 Each of the Parties acknowledges and agrees that in entering into this Retrocession Agreement, and the documents referred to in it, it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Retrocession Agreement or not) other than as expressly set out in this Retrocession Agreement.

20.3 Subject to Article 20.4, each Party:

- (a) agrees to the exclusion of the other Party's duty or obligation to make, in anticipation of entering into this Retrocession Agreement, any representation, warranty or disclosure relating to the subject matter of this Retrocession Agreement other than those set out in this Retrocession Agreement;
- (b) waives any remedy it might have by reason of any breach by the other Party of any duty of utmost good faith or other duty to make any disclosure in relation to the subject matter of this Retrocession Agreement, other than as set out in this Retrocession Agreement; and
- (c) acknowledges that it has not been induced to enter into this Retrocession Agreement by any representation which is not expressly contained in this Retrocession Agreement and that it shall not have any remedy, whether in equity, contract or tort, under the Misrepresentation Act 1967 for any such representation.

20.4 Nothing in Article 20.3 is intended to affect and/or waive and/or otherwise exclude any rights or remedies in respect of fraud on the part of the other Party or which are otherwise incapable of being waived or excluded as a matter of law or public policy (as determined by reference to the governing law and jurisdiction of this Retrocession Agreement).

#### ARTICLE 21 - COMPLIANCE WITH LAWS AND REGULATIONS

21.1 Without prejudice to Article 14.2, in exercising its rights and performing its obligations under this Retrocession Agreement, each Party shall comply with all applicable laws and regulation including those concerning:

- (a) UN, EU and UK economic sanctions;
- (b) the processing or controlling of personal data (including the Data Protection Act 1998);

- (c) anti-money laundering and the detection or prevention of financial crime;
- (d) anti-bribery and anti-corruption (and neither Party shall offer or pay to, or solicit or accept from, any other party, any bribe, or cause or permit such an offer or payment to be made, or cause or permit such solicitation or acceptance), and

each Party must promptly notify the other in writing of any breach by it of this Article 21.1 (provided always that it shall not be obliged to make such notification if and to the extent that to do so would cause it to breach any applicable laws or regulation).

21.2 Each Party shall ensure that it implements and maintains in place during the term of this Retrocession Agreement appropriate policies and procedures to ensure its compliance with the laws and regulations specified in Article 21.1.

#### ARTICLE 22 - NO PARTNERSHIP OR AGENCY

22.1 Nothing in this Retrocession Agreement is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

#### ARTICLE 23 - BENEFIT OF THIS RETROCESSION AGREEMENT

23.1 This Retrocession Agreement is solely between the Parties, and in no instance shall any Reinsured or other third party have any rights in, to, or under this Retrocession Agreement. A person who is not a Party to this Retrocession Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any terms under this Retrocession Agreement. The Parties may amend, vary or terminate this Retrocession Agreement (to the extent permitted hereunder) without reference to, or the consent of, any person who is not a Party to this Retrocession Agreement.

#### ARTICLE 24 - WAIVERS AND REMEDIES

24.1 Any failure to exercise or any delay in exercising a right or remedy provided by this Retrocession Agreement or at law or in equity will not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. A waiver of a breach of any of the terms of this Retrocession Agreement or of a default under this Retrocession Agreement will not constitute a waiver of any other breach or default and will not affect the other terms of this Retrocession Agreement.

24.2 The rights and remedies provided by this Retrocession Agreement are cumulative and (subject as otherwise provided in this Retrocession Agreement) are not exclusive of any rights or remedies provided at law or in equity.

ARTICLE 25 - SEVERABILITY

25.1 If any provision of this Retrocession Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

25.2 If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provisions shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties and the Parties shall use reasonable endeavours to modify those provisions accordingly.

25.3 The Parties agree to attempt to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves, to the greatest extent possible, the same effect as would have been achieved by the invalid or unenforceable provision.

ARTICLE 26 - SET OFF

26.1 Subject to Article 26.2, all amounts due under this Retrocession Agreement will be paid in full without any deduction or withholding other than as required by law and neither Party will be entitled to assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part.

26.2 Each Party may set off any sum which has become due and payable by it to the other Party under this Retrocession Agreement against any sum which has become due and payable to it by the other Party under this Retrocession Agreement provided that the obligation to pay each sum and the amount of each sum are not the subject of any on-going good faith dispute.

ARTICLE 27 - COUNTERPARTS

27.1 This Retrocession Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed for all purposes an original, but all of which shall constitute but one and the same instrument.

SCHEDULE 1

Definitions

1. In the Retrocession Agreement of which this Schedule 1 forms part the following definitions are used and shall have the respective meanings appearing alongside them:-

- "Accession Agreement" means any agreement entered into from time to time between the Retrocedant and any new members in order to accede those new members to the Membership Agreement;
- "Act of Terrorism" means an act of any person acting on behalf of or in connection with any organisation with activities directed towards the overthrowing or influencing of any government de jure or de facto by force or violence;
- "Aggregate Liabilities" shall have the meaning ascribed to it in Schedule 4 for the purposes of determining a Qualifying Underwriting Loss;
- "Aggregate Premium" shall have the meaning ascribed to it in Schedule 4 for the purposes of determining a Qualifying Underwriting Loss;
- "Annual Profit" means, in respect of a Financial Year, the lesser of:
- (a) the amount by which the Profit and Loss Account of the Retrocedant increased between the beginning and the end of that Financial Year, as shown in the audited accounts of the Retrocedant in respect of that Financial Year; and
  - (b) the distributable reserves of the Retrocedant as at the date on which a dividend is declared in respect of that Financial Year for payment under Article 11.3, as determined by the directors of the Retrocedant;
- in either case excluding the effect of any dividend paid under

Article 11.3 or further premium paid under Schedule 2 paragraph 2(1)(b) in respect of the previous Financial Year;

- "Business Day" means a day (not being a Saturday) on which banks are open for general banking business in the City of London;
- "Certification Issue" means the issue of whether or not there has been an Act of Terrorism;
- "Contract of Direct Insurance" means a contract of direct insurance, any part of which is reinsured under a Reinsurance Agreement;
- "Effective Date" means 1<sup>st</sup> January 2015;
- "Excluded Amendment" means an amendment that:
- (a) relates to premium rates or zones under Reinsurance Agreements;
  - (b) makes changes to the Reinsurance Agreements, Underwriting Manual or Reinsurance Underwriting Manual that would reasonably be expected to result in a change to the total premium received by the Retrocedant from Reinsureds in respect of In-Scope Direct Contracts of Insurance in respect of an Underwriting Period of more than £5 million or other such amount as the Parties may from time to time agree; or
  - (c) would alter any then-applicable threshold or trigger relating to claims or accounting provisions under Reinsurance Agreements, the Underwriting Manual or the Reinsurance Underwriting Manual by more than 10 per cent;

"Financial Year"	means a financial year of the Retrocedant in respect of which the Retrocedant prepares audited accounts;
"Fourth Year"	means the Underwriting Period which commences on the third anniversary of the commencement date of an Underwriting Period;
"Funds"	means cash in hand or at bank and investments;
"Further Premium"	means a further premium which the Retrocedant becomes liable to pay in accordance with Schedule 2 paragraph 2(1)(b);
"Further Premium Percentage"	means 25 per cent or such other percentage of the Annual Profit as the Parties may agree in writing from time to time;
"In-Scope Direct Contracts of Insurance"	has the meaning given in Article 1.1;
"LIBOR"	means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for three month sterling deposits displayed on page LIBOR01 of the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters; provided that if such page or service ceases to be available, the Retrocessionaire may specify another page or service displaying the relevant rate after consultation with the Retrocedant;
"Listing Rules"	means the Listing Rules made by the Financial Conduct Authority under Part VI of the Financial Services and Markets Act 2000;

- "Members" means persons who are members of the Retrocedant from time to time;
- "Membership Agreement" means the agreement between the Retrocedant and its members dated 1<sup>st</sup> November 1993, as supplemented by each Accession Agreement executed pursuant thereto;
- "Non-Covered Expenses" means any costs and expenses of the Retrocedant which are not:
- (a) Ordinary Business Expenses; or
  - (b) expenses included in the definition of Ultimate Net Loss in Article 4;
- "Ordinary Business Expenses" means the reasonable costs and expenses incurred by the Retrocedant in operating its business and in conducting its affairs and shall include but shall not be limited to:-
- (i) the costs and expenses of purchasing and/or maintaining insurances purchased or maintained by the Retrocedant pursuant to paragraphs (f) and (g) of Article 9.1;
  - (ii) any Taxation paid or provision or reserve for Taxation (other than Taxation on investment income);
  - (iii) costs and expenses incurred by the Retrocedant in the pursuit of any proceedings;
  - (iv) costs and expenses incurred by the Retrocedant in proceedings relating to the Retrocedant's obligation to indemnify a Reinsured under a Reinsurance Agreement;
  - (v) costs and expenses incurred by the Retrocedant in the defence of proceedings which do not relate to the Retrocedant's obligation to indemnify a Reinsured under a

Reinsurance Agreement where the principal sum in issue is £500,000 or less;

but shall not include:

(vi) costs and expenses incurred by the Retrocedant in the defence of proceedings which are not relating to the Retrocedant's obligation to indemnify a Reinsured under a Reinsurance Agreement or to the Retrocedant's obligations hereunder where the principal sum in issue is £500,000 or more and the amount of the sum in question which exceeds £500,000 and the related costs and expenses incurred by the Retrocedant are not covered by another insurance policy, save to the extent that the Retrocessionaire has agreed to the treatment of such costs and expenses as Ordinary Business Expenses; or

(vii) any actual or contingent liability of the Retrocedant to pay the Retrocessionaire's Maximum Premium Entitlement;

"Original Agreement Covered Loss" has the meaning given in Article 1.2;

"Original Insured" means the policyholder of a Contract of Direct Insurance, any part of which is reinsured under a Reinsurance Agreement;

"Original Retrocession Agreement" means the retrocession agreement dated 30<sup>th</sup> July 1993 between the Parties (as amended);

"Parties" means the Retrocessionaire and the Retrocedant and "Party" shall be construed accordingly;

"Period of Application" has the meaning given to it in Article 3.1;

"Profit and Loss Account" means the amount which, as at any particular date, would appear as the balance of the Profit and Loss



Account Reserve which appears on the balance sheet in the statutory accounts of the Retrocedant properly drawn up at such date using Companies Act accounting policies and appropriate accounting conventions, principles, and practices, as disclosed in such statutory accounts, save that where a change made at any time after the Effective Date in the applicable accounting policies would result in a material change in the amounts payable under this Agreement, the Profit and Loss Account will, unless the Parties otherwise agree in writing, be determined using the accounting policies that applied as at the Effective Date;

- "Qualifying Underwriting Loss" means an underwriting loss determined in the manner set out in Schedule 4;
- "Quarter" means a three month period ending on 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September or 31<sup>st</sup> December;
- "Registrar" means the Registrar of Companies of England and Wales;
- "Reinsurance Agreements" means Reinsurance Agreements substantially in the terms of the agreement which appears as Schedule 5 to this Retrocession Agreement or in such other terms as may be agreed in writing by the Parties or amended by the Retrocedant in accordance with Article 11.5;
- "Reinsurance Underwriting Manual" means the Reinsurance Underwriting Manual in the agreed terms containing the terms and conditions which are to be applied by the Retrocedant reinsuring and otherwise conducting the business retroceded hereunder (without prejudice to the requirement for the consent of the Parties to amend the Underwriting Manual appended thereto);
- "Reinsured" means a reinsured under a Reinsurance Agreement;
- "Restricted Act" has the meaning given in Article 11.6;

"Retention"

means, as regards all Contracts of Direct Insurance, the amount (whether positive or negative) that would be the balance of the Profit and Loss Account if the obligation of the Retrocedant to pay the Retrocessionaire's Maximum Premium Entitlement were fully provided for therein and no account were taken of any amount which the Retrocedant is entitled to receive from the Retrocessionaire or from any Third Party Retrocessionaire, plus:

- (a) the amount of any provision that has been made for unearned premiums (net of the Retrocessionaire's share and the share of any Third Party Retrocessionaire) in determining the Profit and Loss Account;
- (b) the amount of any provision that has been made in determining the Profit and Loss Account for any actual or contingent obligation of the Retrocedant to pay the Retrocessionaire's Maximum Premium Entitlement;
- (c) payments made by the Retrocedant in respect of Covered Loss from the Effective Date, together with any costs and expenses included in the definition of Ultimate Net Loss in Article 4 in respect of that Covered Loss which are not Ordinary Business Expenses and which have reduced the Profit and Loss Account;
- (d) the amount of any Non-Covered Expenses which have reduced the Profit and Loss Account; and
- (e) any amount payable to the Retrocedant under any other retrocession except to the extent that the Third Party Retrocessionaire has defaulted in payment or the Retrocedant

has made a provision in its management accounts against non-payment by the Third Party Retrocessionaire;

- "Retrocessionaire's Maximum Premium Entitlement" means the maximum amount of premium to which the Retrocessionaire is entitled under the Retrocession Agreement and which is calculated as provided for in Schedule 2;
- "Return Percentage" means 25 per cent or such other percentage of the Annual Profit as the Parties may agree in writing from time to time;
- "Revenue Statements" means the form of quarterly (or at such other intervals greater than or equal to a calendar month as may be agreed between the Parties from time to time) treaty declarations and balance sheets provided for by the Reinsurance Underwriting Manual and to be delivered by the Retrocedant to the Retrocessionaire at the time and in respect of the Underwriting Periods specified in the Reinsurance Underwriting Manual;
- "Subsidiary" shall have the meaning ascribed to a subsidiary in Section 1159 of the Companies Act 2006;
- "Supplemental Deeds" means deeds supplemental to the Reinsurance Agreements substantially in the terms of the deed which appears as Schedule 6 to this Retrocession Agreement or in such other terms as may be agreed by the Parties from time to time;
- "Surplus" means, as regards all Contracts of Direct Insurance, the amount by which:
- (a) the sum of:
    - (i) the amount (whether positive or negative) that would be the balance of the Profit and Loss Account if the obligation of the Retrocedant to pay the Retrocessionaire's

Maximum Premium  
Entitlement were fully  
provided for therein and  
no account were taken of  
any amount which the  
Retrocedant is entitled to  
receive from the  
Retrocessionaire or from  
any Third Party  
Retrocessionaire;

- (ii) the amount of any  
provision that has been  
made for unearned premiums  
(net of the  
Retrocessionaire's share  
and the share of any Third  
Party Retrocessionaire) in  
determining the Profit and  
Loss Account;
- (iii) the amount of any  
provision that has been  
made in determining the  
Profit and Loss Account  
for any actual or  
contingent obligation of  
the Retrocedant to pay the  
Retrocessionaire's Maximum  
Premium Entitlement;
- (iv) the amount of any Non-  
Covered Expenses which  
have reduced the Profit  
and Loss Account;
- (v) any amount payable to the  
Retrocedant under any  
other retrocession except  
to the extent that the  
Third Party  
Retrocessionaire has  
defaulted in payment or  
the Retrocedant has made a  
provision in its  
management accounts  
against non-payment by the  
Third Party  
Retrocessionaire;

exceeds

(b) one billion pounds sterling,  
and for the purposes of this Retrocession Agreement there is a "Surplus" at any given time if this amount is greater than zero at that time;

- "Taxation" means any form of taxation levy duty charge contribution impost of whatever nature (including any fine, penalty, surcharge or interest in relation thereto) imposed by a local municipal governmental state federal or other body or authority in the United Kingdom or elsewhere;
- "Third Party Retrocessionaire" means any retrocessionaire other than the Retrocessionaire with whom the Retrocedant has entered into a retrocession in accordance with Article 2;
- "Tribunal" means the Tribunal defined at Article 21 of the Reinsurance Agreements and established pursuant to Schedule 3 of this Retrocession Agreement for the purposes of determining whether an Act of Terrorism has taken place;
- "Underwriting Manual" means the Underwriting Manual in the agreed terms and as may be amended by the Parties from time to time containing the terms and conditions which are to be applied by a Reinsured insuring and otherwise conducting the business retroceded hereunder, appended to the Reinsurance Underwriting Manual;
- "Underwriting Period" means a period of twelve calendar months commencing on 1<sup>st</sup> January and ending on 31<sup>st</sup> December or such lesser period as is appropriate in circumstances of termination pursuant to Article 14, and the first Underwriting Period for purposes of this Retrocession Agreement shall commence on 1<sup>st</sup> January 2015.

2. In this Retrocession Agreement of which this Schedule 1 forms part, save where the context otherwise requires:

(a) words in the singular shall include the plural, and vice versa;

(b) a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association or to a person's executors or administrators;

(c) if a period of time is specified and dates from a given day or the day of an act or event, it shall be calculated exclusive of that day and both time and date shall be determined by reference to that prevailing in Great Britain at the relevant time;

(d) references to any English legal term for any action, remedy, method or judicial proceedings, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English legal term;

(e) references to writing shall include any modes of reproducing words in a legible and non-transitory form;

(f) references to documents "in the agreed terms" shall be to documents agreed between the Parties and initialled and dated for the purposes of identification by or on behalf of the Parties;

(g) references to this Retrocession Agreement or any other agreement or document shall be construed as a reference to this Retrocession Agreement (and the Schedules) or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated, supplemented or replaced;

(h) references to a statute, statutory instrument, rule, or regulation shall be construed as a reference to such statute, statutory instrument, rule, or regulation as the same may have been, or may from time to time be, amended or supplemented or replaced or extended (including by subordinate legislation) or, in the case of a statute, re-enacted;

(i) the headings in the Retrocession Agreement are for convenience only and shall not affect the interpretation of any provision of the Retrocession Agreement; and

(j) a reference to an Article, paragraph or schedule shall be a reference to an Article, paragraph or schedule (as the case may be) of or to this Retrocession Agreement.

SCHEDULE 2

Retrocessionaire's Maximum Premium Entitlement and interest thereon

1. The Retrocessionaire's Maximum Premium Entitlement in respect of an Underwriting Period shall be calculated in arrears no later than 31<sup>st</sup> March in the Fourth Year and adjusted thereafter (if required) pursuant to paragraph 2 below.
2.
  - (1) The Retrocessionaire's Maximum Premium Entitlement in respect of the Underwriting Period for which the calculation is being made shall, subject to subparagraph (2) below, be
    - (a) such amounts being fifty per cent (50%) (or such other percentage as may be agreed in writing from time to time between the Parties) of the total premium received by the Retrocedant from Reinsureds in respect of In-Scope Direct Contracts of Insurance in respect of each Underwriting Period from and including the Underwriting Period which commenced on the Effective Date up to and including the Underwriting Period concerned;
    - (b) plus, in circumstances where a dividend has been paid under Article 11.3 in respect of a Financial Year, a Further Premium in an amount equal to the Further Premium Percentage of the Annual Profit in respect of that Financial Year, such Further Premium to be paid in accordance and subject to the conditions of Article 11.4;
    - (c) minus the aggregate amount of Retrocessionaire's Maximum Premium Entitlement already received by the Retrocessionaire from the Retrocedant in respect of that or any earlier Underwriting Periods pursuant to Article 6 ("Total Premium Received")  
  
(the "Relevant Premium")
  - (2) To the extent that any payments by the Retrocessionaire to the Retrocedant pursuant to article 7.2, 7.3 or 7.4, ("the Retrocessionaire's Payments") from and including the Underwriting Period which commenced on the Effective Date up to and including the Underwriting Period concerned exceed the sum of the Total Premium Received and the Relevant Premium, the Retrocessionaire's Maximum Premium Entitlement in respect of that Underwriting Period shall also include the amount of such excess ("the Excess").

- (3) To the extent that the Retrocedant has not paid the Retrocessionaire's Maximum Premium Entitlement and interest thereon in respect of an Underwriting Period on or prior to the 31<sup>st</sup> December in the Fourth Year because, in the absence of a Surplus, the Retrocessionaire is not entitled to seek payment under article 6.2, the Retrocedant shall cease to be liable to make any such payments in respect of that Underwriting Period.
- (4) For the avoidance of doubt, in the event that, pursuant to sub-paragraph (3) above, the Retrocedant ceases to be liable to make any payment of Retrocessionaire's Maximum Premium Entitlement and interest thereon for an Underwriting Period:
- (a) No further interest shall accrue on any Retrocessionaire's Maximum Premium Entitlement calculated in respect of that Underwriting Period;
  - (b) The Retrocessionaire's entitlement to interest on the Retrocessionaire's Maximum Premium Entitlement for that Underwriting Period shall cease absolutely;
  - (c) The Retrocessionaire's entitlement to Retrocessionaire's Maximum Premium Entitlement for that Underwriting Period shall cease absolutely;
  - (d) Notwithstanding that they have already been taken into account for the purposes of calculating the Retrocessionaire's Maximum Premium Entitlement for previous Underwriting Periods, part or all of which have since been extinguished pursuant to sub-paragraph (3) above:
    - (i) the premium received by the Retrocedant from Reinsureds in respect of previous Underwriting Periods;
    - (ii) amounts of reinsurance premium paid by the Retrocedant pursuant to paragraph 2.2. of Article 2;
    - (iii) amounts of Retrocessionaire's Maximum Premium Entitlement already received by the Retrocessionaire from the Retrocedant; and
    - (iv) payments by the Retrocessionaire to the Retrocedant pursuant to article 7.2, 7.3 or 7.4,may be taken into account for the purposes of calculating the Retrocessionaire's Maximum Premium Entitlement under paragraphs 2(1) to 2(3) above for



the Underwriting Period for which a calculation is being made.

3.

(a) For the purpose of and subject to paragraph 2 above, and subject to Article 15:

(i) interest shall accrue on the Relevant Premium in respect of the Underwriting Period for which the calculation is being made with effect from and including the first day of such Underwriting Period; and

(ii) interest shall accrue on any amount representing an Excess in respect of the Underwriting Period for which the calculation is being made with effect from the first day of such Underwriting Period or, if later, the date or dates on which any amount or amounts representing the Excess are paid by the Retrocessionaire.

(b) Interest shall accrue from day to day based upon a year of 365 days upon the Retrocessionaire's Maximum Premium Entitlement at the rate which is two per cent (2%) above LIBOR on the first Business Day of each Interest Period and interest shall be compounded quarterly on the last day of each Interest Period.

(c) The duration of each Interest Period shall be three months and Interest Periods shall commence on 1<sup>st</sup> January, 1<sup>st</sup> April, 1<sup>st</sup> July and 1<sup>st</sup> October.

(d) If in the Retrocessionaire's opinion LIBOR is no longer calculated in a manner that is comparable with the manner in which it was calculated at the Effective Date it shall promptly notify the Retrocedant of such opinion. Thereafter the Retrocessionaire and the Retrocedant will negotiate in good faith an alternative rate. If such negotiations fail to agree such alternative rate within 30 days then the reference in paragraph 3(b) of this Schedule 2 to LIBOR shall be construed as a reference to the bank base rate of such clearing bank as the Retrocessionaire shall nominate. If an alternative rate is agreed or if the rate prescribed by the preceding sentence is to be applied such rate shall (in either case) be applied from the first day of the relevant Interest Period until the first day of the next Interest Period where the Retrocessionaire accepts that LIBOR resumes being calculated in a manner that is comparable to that at the Effective Date.

SCHEDULE 3

Disputes relating to the Certification Issue

All disputes and differences arising out of or in connection with the Certification Issue shall be referred to arbitration by a tribunal (the "Tribunal") in the manner and under the procedure set out below.

The Tribunal shall consist of three arbitrators, one to be appointed by the Retrocedant, one to be appointed by the Retrocessionaire and the third to be appointed by the President for the time being of the Chartered Institute of Arbitrators (the "CIA"), or (in his absence) by a Deputy President of the CIA nominated by the CIA for the purpose.

The reference shall be begun by either the Retrocedant or the Retrocessionaire, once 21 days have expired since notification to the Retrocessionaire by the Retrocedant that in its opinion there has been an Act of Terrorism, giving notice to the other Party that a dispute or difference has arisen between them over the Certification Issue, appointing an arbitrator and calling upon the other to appoint an arbitrator within 7 days, whereupon that other Party shall appoint its arbitrator within that period.

The third member of the Tribunal shall be appointed as soon as practicable, and in any event no later than 7 days, after the appointment of the two Party-appointed arbitrators, whereupon the Tribunal shall be constituted.

The two Party-appointed arbitrators shall be members of the Attorney-General's A Panel of Counsel who have Developed Vetting Security Clearance. The third arbitrator, who shall act as Chairman of the Tribunal but shall not have a casting vote, shall be a retired judge of the Supreme Court or of the Court of Appeal.

Where a Party fails to appoint an arbitrator within 7 days of being called upon to do so, the President for the time being of the CIA or (in his absence) a Deputy President of the CIA nominated by the CIA for the purpose, shall appoint an arbitrator meeting the qualifications set out above to fill the vacancy. At any time prior to the appointment by the Chairman or Committee member of the CIA, the Party in default may make such appointment.

If an arbitrator shall resign his appointment for any reason or be removed or die, the reference shall not terminate but a successor shall be appointed in the same manner as the arbitrator being replaced.

Once constituted, the Tribunal may in its sole discretion and subject only to the provisions of this Agreement make such orders and directions as it considers necessary for the final determination of the Certification Issue. The Tribunal shall have

the widest discretion permitted under the law governing the arbitral procedure when making such orders or directions.

If the Tribunal is not in unanimous agreement, the decision of the Tribunal shall be decided by a majority vote. In the event that there is no unanimous or majority decision (e.g. if one arbitrator refuses to make a decision), a new Tribunal shall be convened following the same procedure as outlined in this Schedule.

The seat of the arbitration shall be London, and the location a suitably sized and laid out Courtroom or Government building.

For the purposes of this Schedule 3, communication shall be by email, confirmed by hard copy. The individuals to be notified at each Party and their contact details are as follows:

The Retrocessionaire: The Head of Insurance, H M Treasury, 1 Horse Guards Road, London SW1A 2HQ; and

The Retrocedant: The Chief Executive, Pool Reinsurance Company Limited, 5 Lloyd's Avenue, London EC3N 3AE

The proceedings of the Tribunal shall in any event be confidential and each and every individual participating in them in any manner shall undertake in writing to maintain that confidentiality.

The procedure adopted by the Tribunal shall be as follows, in the interests of speed of decision:

1. Given the narrow compass of the Certification Issue, there shall be no exchange of statements of case.

2. Within 7 days of the Tribunal being constituted each Party shall supply to the other copies of all documents relating to the Certification Issue which are within its possession, custody or control, together with any witness evidence on which it intends to rely, except for privileged documents and "Confidential Material" (as defined below). The Tribunal shall have the power to call upon either Party to produce to it, within such timescale as is appropriate in the light of: the importance of the material; the length of time likely to be needed to produce it; and the need to progress the reference rapidly, such further documentary or witness evidence as in its discretion it considers may assist it in its consideration of the Certification Issue or its decision in relation thereto. The Retrocedant shall supply a copy of all the documents and witness statements thus exchanged or produced to each member of the Tribunal.

3. As soon as practicable after the exchange of evidence, the Tribunal shall convene a hearing at which it shall receive such oral or written representations and such live witness evidence as the Parties wish to present. Any witness whose evidence is put forward by a Party and is not Confidential Material shall be made available by that Party for cross-examination by the other.

4. In conjunction with such hearing the Tribunal shall also receive from either Party in the absence of the other any Confidential Material and any submission which the Party adducing it may wish to make in relation to it. For these purposes "**Confidential Material**" means evidence, whether documentary or witness evidence, which both the Party adducing it and the Tribunal consider after an examination of such evidence should not be disclosed to the other Party, or more widely, in the interests of national security. Where Confidential Material and related submissions are presented to, and accepted as such by, the Tribunal, an open summary of each shall be prepared by the Party presenting such Confidential Material and submissions, and approved by the Tribunal for supply to the other Party.

5. As soon as practicable after such hearing the Tribunal shall deliver its decision, and shall also give reasons for its decision, but such reasons may be given in summary form and need not be given at the same time as the decision. In its decision and reasons, the Tribunal shall make no reference to any Confidential Material beyond that which appears in the open summary of such Confidential Material.

The decision of the Tribunal shall be final and binding on the Parties, who expressly disclaim any right of appeal which they may otherwise have had.

The Parties agree to do all things practicable and appropriate to expedite any reference to the Tribunal.

Each Party shall bear one half of the costs of the Tribunal, and each Party shall bear its own legal and other costs arising out of or connected with a reference to the Tribunal.

## SCHEDULE 4

Qualifying Underwriting Loss

If in relation to an Underwriting Period the aggregate of:-

(a) the aggregate of sums actually paid by the Retrocedant in respect of Covered Loss (as defined in the Reinsurance Agreements) arising under In-Scope Direct Contracts of Insurance in respect of that Underwriting Period, including litigation and other expenses reasonably incurred by the Retrocedant in connection with the adjustment thereof, but excluding office expenses and salaries of the Retrocedant attributable thereto and after deduction of all salvage payments and/or recoveries (including all amounts paid and payable to the Retrocedant under additional retrocessions (entered into pursuant to Article 2.2)); and

(b) the Retrocedant's technical reserves; and

(c) the aggregate of the Retrocedant's Ordinary Business Expenses, retrocession expenses (incurred pursuant to Article 2.2) and such amount of the Retrocessionaire's Maximum Premium Entitlement as has been paid to the Retrocessionaire or of which the Retrocessionaire has sought payment pursuant to Article 6.2, properly allocated by the Retrocedant to that Underwriting Period (items (a), (b) and (c) above, together being referred to as "Aggregate Liabilities")

exceeds one hundred and twenty percent (120%) of the Retrocedant's reasonable estimate of total premium paid and payable to it (less any return premium paid or payable) in respect of that Underwriting Period ("Aggregate Premium"), then there shall be a Qualifying Underwriting Loss in respect of that Underwriting Period.

SCHEDULE 5

Risk Excess of Loss Reinsurance Agreement

(Provided separately)

SCHEDULE 6

Deed Supplemental to Risk Excess of Loss Reinsurance Agreement

(Provided separately)

SCHEDULE 7

Membership Agreement

(Provided separately)



SCHEDULE 8

Floating Charge

(Not attached)

IN WITNESS whereof this Retrocession Agreement has been signed in duplicate for and on behalf of and by the authority of each contracting Party.

In London, this 19 day of March 2015

For and on behalf of the Retrocedant

[Signed on original]

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In London, this 24 day of March 2015

For and on behalf of the Retrocessionaire

[Signed on original]

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Director-General, Financial Services

The Schedules are deemed to form an integral part of this Retrocession Agreement.