

**IN THE HIGH COURT OF JUSTICE CLAIM NOS 21910, 21911, 21912 AND 21913 of 2009**

**CHANCERY DIVISION**

**COMPANIES COURT**

**IN THE MATTERS OF THE COMPANIES REFERRED TO BELOW**

**AND**

**IN THE MATTER OF THE COMPANIES ACT 2006**

**SOLVENT SCHEMES OF ARRANGEMENT  
(pursuant to Part 26 of the Companies Act 2006)**

**THE CUAL SCHEME**

**CONCERNING BUSINESS UNDERWRITTEN BY CAMOMILE UNDERWRITING  
AGENCIES LIMITED ("CUAL") ON BEHALF OF THE SCHEME COMPANIES  
(REFERRED TO BELOW) AS DEFINED AT PAGES 87 TO 88 OF THE SCHEME  
AND AS DESCRIBED AT PAGES 10 TO 11 OF THE EXPLANATORY  
STATEMENT**

**BETWEEN**

**ALLIANZ GLOBAL CORPORATE & SPECIALTY (FRANCE)  
(incorporated and registered in France with number 552.063.497 R.C.S. Nanterre,  
known as Compagnie d'Assurances Maritimes Aeriennes et Terrestres ("CAMAT")  
when writing in the CUAL Pool)**

**- and -**

**ALLIANZ IARD  
(incorporated and registered in France with number 542.110.291 R.C.S. Paris,  
(known as Assurances Générales de France I.A.R.T. ("AGF") when writing in the  
CUAL Pool)**

**- and -**

**DELVAG LUFTFAHRTVERSICHERUNGS-AG  
(incorporated and registered in Germany with number HRB 623)**

**- and -**

**NÜRNBERGER ALLGEMEINE VERSICHERUNGS-AG  
(incorporated and registered in Germany with number HRB 774)**

**AND THEIR RESPECTIVE SCHEME CREDITORS  
(as defined in the Scheme of Arrangement)**

**Scheme Website: [www.CUAL-Scheme.co.uk](http://www.CUAL-Scheme.co.uk)**

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## 1. DEFINITIONS

### 1.1 Definitions

In this Scheme, unless inconsistent with the subject or context, the following words shall have the following meanings:

<b>"Actuarial Adjudicator"</b>	the person referred to as such in clause 6.1 and any person appointed in substitution, replacement for or in addition to him pursuant to clauses 6.3.1.2, 6.5.1 and 6.6;
<b>"Actuarial Methodology"</b>	the Actuarial Methodology at Appendix D;
<b>"Adjudication"</b>	means the procedure for the resolution of disputes by a Scheme Adjudicator and/or Actuarial Adjudicator;
<b>"Adjudicator"</b>	a Scheme Adjudicator or the Actuarial Adjudicator as the context requires;
<b>"Admissible Interest"</b>	any interest provided for in an Insurance Contract or any relevant statute or any other relevant law from the date provided for therein up to the last Business Day of the month prior to the date of the relevant Net Valuation Statement;
<b>"Advertise"</b>	the placing of advertisements in the same publications as notice of the Creditors' Meetings

was placed (or if that is not practicable, in such other publications or forums as the Scheme Manager shall reasonably deem appropriate) and any additional publications which the Scheme Manager may deem appropriate;

**"Agency Manager"**

shall bear the meaning given to such term in clause 4.6.1;

**"Agreed Claim"**

the final and binding amount of the valuation of a Scheme Claim determined in accordance with the Scheme after the application of any discount in accordance with Appendix E and of any relevant counterclaim or right of contribution but prior to the application of any amounts referred to in clauses 3.2.1.4 to 3.2.1.10 inclusive;

**"Allianz Global"**

Allianz Global Corporate & Specialty (France), (Registre de Commerce 552.063.497 R.C.S. Nanterre), a company incorporated in France;

**"Allianz IARD"**

Allianz IARD, (Registre de Commerce 542.110.291 R.C.S. Paris), a company incorporated in France;

**"Bank Base Rate"**

in respect of each day of a calendar month:

- (a) the official bank rate set by the Bank of England as in force on the last Business Day of the preceding calendar month, save that if the Bank of England changes the name of the Bank Base Rate or substitutes an equivalent rate, then "Bank Base Rate" will mean the rate as renamed or substituted (as applicable); or
- (b) if no such rate exists then "Bank Base Rate" will mean the average of the base rates of the four largest clearing banks in London from time to time;

**"Best Estimate"**

an estimate of insurance liabilities that is intended to be the mean, or average, of a range of possible outcomes, intended to represent the expected outcome;

**"Blocked Monies"**

any monies payable to a Scheme Creditor under the Scheme the payment of which is prohibited by an applicable law or regulation referred to in clause 7.6;

<b>"Board"</b>	the board of directors of the Scheme Company from time to time;
<b>"Broker's Cover"</b>	a binding contractual agreement pursuant to which the Scheme Company gave authority to perform the functions specified therein in respect of an Insurance Contract;
<b>"Business Day"</b>	any day other than (1) Saturday, (2) Sunday or (3) a day on which the UK clearing banks are not open for business in London;
<b>"Canadian Dollars"</b>	Canadian dollars, being the lawful currency of Canada;
<b>"CEDR"</b>	the Centre for Effective Dispute Resolution of 70 Fleet Street, London EC4Y 1EU;
<b>"Chairman"</b>	the chairman of the Creditors' Meetings;
<b>"Charity"</b>	International Federation of Red Cross and Red Crescent Societies, P. O. Box 372, CH-1211 Geneva, Switzerland;
<b>"Claim Form"</b>	the Claim Form, including all guidance notes and instructions, in respect of each Scheme Company to be completed by Scheme Creditors (or their duly authorised agents), detailing



	Scheme Claims against the Scheme Company, which is at Appendix B;
<b>"Combined Net Valuation Statement"</b>	in respect of a Scheme Creditor, a statement aggregating its Net Valuation Statements from all the Scheme Companies and resulting in a single Net Ascertained Claim or Net Debt;
<b>"Companies Act"</b>	the Companies Act 2006 as amended and in force at the Effective Date;
<b>"Company Directors Disqualification Act"</b>	the Company Directors Disqualification Act 1986;
<b>"Completion Date"</b>	the date upon which the Scheme is certified to have been completed in accordance with clause 7.2;
<b>"Court"</b>	the High Court of Justice of England and Wales;
<b>"Creditors' Meetings"</b>	the meetings of Scheme Creditors convened by the Scheme Companies with the leave of the Court for the purpose of considering and, if thought fit, approving the Scheme;
<b>"CUAL Pool" or "Pool"</b>	the pooling arrangement in which the Scheme Companies wrote direct and reinsurance business through CUAL from 1978 to 1995;

<b>"Deed of Release"</b>	a deed in the form or substantially in the form set out in Appendix G;
<b>"Delegate"</b>	any person to whom the Scheme Manager delegates any of its powers, rights, duties or functions;
<b>"Delvag"</b>	Delvag Luftfahrtversicherungs-AG, (HRB 623), a company incorporated in Germany;
<b>"Dispute Notice"</b>	a notice sent to the Scheme Manager pursuant to clause 2.9.3 containing the information referred to in clause 2.9.4;
<b>"Disputed Claim"</b>	an amount set out on an Inwards Valuation Form which is disputed in accordance with clause 2.9.3 and/or a disputed matter referred to a Scheme Adjudicator pursuant to clause 3.3.2. For the avoidance of doubt, any claim which has become an Agreed Claim prior to referral to the relevant Adjudicator shall not form part of a Disputed Claim;
<b>"Effective Date"</b>	the date on which a copy of the order of the Court sanctioning the Scheme is delivered to the Registrar of Companies;

<b>"E-mail"</b>	delivery, where permitted by the terms of the Scheme and where a Scheme Creditor has provided an E-mail address, by electronic mail;
<b>"Employee"</b>	any partner or director in the same firm, company, limited liability partnership or partnership as another, or any individual employed, whether under a contract of service or a contract for services, by that firm, company, limited liability partnership or partnership or by any company owned by such firm, company, limited liability partnership or partnership;
<b>"Enhanced Discounted Best Estimate"</b>	the undiscounted Best Estimate, discounted to reflect the time value of money but at a rate preferential to the Scheme Creditors compared to the US Treasury security rate, as outlined in Appendix E;
<b>"Equitas"</b>	Equitas Limited, a company registered in England and Wales (registered number 3173352) whose registered office is at 33 St Mary Axe, London EC3A 8LL and/or its successors;
<b>"Euro"</b>	the currency adopted by participating Member States in furtherance of economic and monetary

union under Article 109 of the Treaty of European Union;

**"Explanatory Statement"** the explanatory statement prepared in accordance with Section 897 of the Companies Act in relation to the Scheme;

**"Final Claims Submission Date"** 11.59 p.m. London Time on 21 February 2011 or, if later, the date falling 180 days after the Effective Date (or, if such a date is not a Business Day, on the next Business Day);

**"Foreign Representative"** David McGuigan of Legacy Insurance Management and Business Outsourcing, or such other person as may be appointed as foreign representative of the Scheme Company in relation to its application for a permanent injunction pursuant to Chapter 15 of the United States Bankruptcy Code;

**"Insolvency Act"** the Insolvency Act 1986 as amended and in force at the Effective Date;

**"Insolvency Event"** (a) the making of an order by the Court to wind up the Scheme Company compulsorily pursuant to the Insolvency Act; or

- (b) the commencement of a creditors' voluntary liquidation in respect of the Scheme Company in accordance with the provisions of the Insolvency Act; or
- (c) the entering into by the Scheme Company of a company voluntary arrangement with its creditors in accordance with the provisions of the Insolvency Act; or
- (d) the appointment of an administrator, administrative receiver, receiver or provisional liquidator in respect of the Scheme Company in accordance with the provisions of the Insolvency Act; or
- (e) a determination by a Scheme Company that the value of its assets is less than the value of its liabilities; or
- (f) the taking in relation to the Scheme Company of any analogous proceeding in any other jurisdiction;

**"Institute of Actuaries"**

the Institute of Actuaries established by Royal Charter dated 29 July 1884, having its principal

place of business at Staple Inn, High Holborn,  
London WC1V 7Q7, United Kingdom;

- "Insurance Contract"** shall have the meaning set out in Appendix A;
- "Inwards Valuation Form"** a form to be prepared in accordance with clause 2.9 setting out the amount which the Scheme Manager believes is due in respect of each of a Scheme Creditor's unagreed Scheme Claims;
- "Letter of Credit"** any valid letter of credit issued to or for the benefit of a Scheme Creditor in respect of any Insurance Contract;
- "Liability"** any debt or liability (being a liability to pay money or money's worth) of a person, whether it is present or future, certain or contingent, whether or not its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion whether or not it involves the payment of money and whether it arises at common law, in equity, by contract or by statute, in England and Wales or in any other jurisdiction or in any manner whatsoever, but excluding any liability which, subject to the proviso below, is barred at the Effective Date by

statute or is otherwise unenforceable or which is claimed to arise in respect of a contract which is void or, being voidable, has duly been avoided.

Provided, however, that any sum representing an Unpaid Agreed Claim inserted by the Scheme Manager on a schedule accompanying the Claim Form pursuant to clause 2.3.2 shall constitute a Liability notwithstanding any statutory bar or unenforceability which would otherwise apply to it subject always to the provisions of clause 3.5.2;

**"Lineslip"**

a binding contractual agreement pursuant to which the Scheme Company gave authority to perform the functions specified therein in respect of an Insurance Contract;

**"Lloyd's"**

the society incorporated by the Lloyd's Act 1871 by the name of Lloyd's and situated at One Lime Street, London EC3M 7HA;

**"Lloyd's Syndicate"**

a group of underwriting members of Lloyd's to which a number is assigned on behalf of the Council of Lloyd's in respect of an underwriting year;

<b>"London Time"</b>	means the time at the relevant date in London, England;
<b>"Loss Reserve"</b>	the amount reserved to meet known losses on an Insurance Contract which have not been settled;
<b>"Manifest Error"</b>	an arithmetical or typographical error which is apparent either on the face of the document concerned or by reference to the information which has been or should, in accordance with the Scheme, have been inserted in the document concerned but has been incorrectly transcribed;
<b>"Net Ascertained Claim"</b>	the final balance shown as due to a Scheme Creditor in a Net Valuation Statement;
<b>"Net Debt"</b>	the final balance shown as due to the Scheme Company in a Net Valuation Statement;
<b>"Net Debtor"</b>	any person who has a Net Debt shown on their Net Valuation Statement;
<b>"Net Valuation Statement"</b>	the statement to be prepared in accordance with clause 3.1.2 (setting out only the amount of the Net Ascertained Claim or Net Debt as agreed) or clause 3.2 (setting out the amount of the Net Ascertained Claim or Net Debt and the



calculation thereof), as the case may be, in substantially the form set out in Appendix C;

**"Nürnberg"** Nürnberger Allgemeine Versicherungs-AG, (HRB 774), a company incorporated in Germany;

**"Post"** delivered by hand (including by a generally recognised commercial courier service), prepaid post or airmail;

**"Pounds Sterling"** pounds sterling, being the lawful currency of the United Kingdom;

**"Premium Reserve"** the amount of premium reserved to meet losses occurring in the unexpired element of an Insurance Contract;

**"Proceedings"** any form of proceedings in any jurisdiction or forum including, without limitation, any demand, legal proceedings, regulatory proceedings, insolvency proceedings, arbitration, alternative dispute resolution, judicial review, adjudication, mediation, seizure, distraint, forfeiture, re-entry, execution or enforcement of judgment or enforcement of any

Security or any step taken for the purpose of creating or enforcing a lien;

**"Property"**

all forms of property including money, goods, things in action, land and every description of property wherever situated and also any obligation or interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

**"Reference Date"**

the date selected by the Scheme Creditor, to be not earlier than 31 December 2008, as at which the Scheme Creditor has calculated its Scheme Claims;

**"Registrar of Companies"**

the registrar or other officer performing under the Companies Act the duty of registration of companies in England and Wales;

**"Released Parties"**

the Scheme Company, CEDR, any person who holds or has held the position of Chief Executive of CEDR, the Foreign Representative, any person who holds or has held the position of President of the Institute of Actuaries, any person holding, or who has at any time held, the position of Scheme Appointee, Chairman, Vote Assessor and any past or present director of the

Scheme Company, including any Delegate, Employee, partner or alternate of any of the foregoing, in each case in their capacity as such;

**"Relevant Currency"**

in relation to a Scheme Creditor, the Scheme Currency which the Scheme Creditor elects on its Claim Form in accordance with clause 2.7, or in the event that no such election is made, US Dollars or, at the discretion of the Scheme Manager, another Scheme Currency;

**"Scheme"**

the scheme of arrangement in the form herein contained, together with any modification thereof or addition thereto approved or imposed by the Court;

**"Scheme Adjudicator"**

any person appointed as such in accordance with clause 6.2 and any person appointed in substitution, replacement for, or addition to him pursuant to clauses 6.3.1.1, 6.5 and 6.6;

**"Scheme Appointee"**

any person holding or who has at any time held the position of Scheme Manager, Scheme Adjudicator or Actuarial Adjudicator including any Employee, Delegate, partner and alternate of such person;

**"Scheme Claim"**

save as excluded below, Scheme Claims shall comprise:

- (a) any claim against the Scheme Company in respect of all or part of a Liability arising under or in relation to an Insurance Contract;
- (b) all Liabilities of the Scheme Company arising under any agreement entered into before the Effective Date by which the Scheme Company has commuted, settled or compromised all or part of its Liability under an Insurance Contract;
- (c) all Liabilities of the Scheme Company arising under any agreement pursuant to which an insurance broker is entitled to brokerage or commission from the Scheme Company in respect of the placing of an Insurance Contract; and
- (d) Liabilities of the Scheme Company arising under rights of contribution and subrogation in respect of an Insurance Contract;

after the application of any relevant counterclaim or right of contribution but in each case prior to the application of any amounts referred to in clauses 3.2.1.4 to 3.2.1.10 inclusive in accordance with the Scheme;

Scheme Claims shall not include:

- (a) save to the extent provided for in an Insurance Contract, Liabilities in respect of fees, costs and expenses (including any tax thereon), in respect of services or advice, payable to service providers, excluding brokers, but including, without limitation, lawyers and loss adjusters;
- (b) all and any Liability from a Scheme Company to any other Scheme Company;
- (c) all and any Liability of Sovereign Marine & General Insurance Company Limited ("**Sovereign**"), a company which is now insolvent, but which wrote business as part of the CUAL Pool between 1989 and 1991. For the avoidance of doubt, no business written by Sovereign, whether

through CUAL or otherwise is included in the Scheme;

- (d) the whole or part of any policy of insurance underwritten by the Scheme Company to the extent that it insured, as at the Effective Date, any liability required under any of the following enactments to be covered by insurance or (as the case may be) by insurance or by some other provisions for securing its discharge:
  - (i) Section 1(4A)(d) of the Riding Establishments Act 1964 (or any corresponding enactment for the time being in force in Northern Ireland);
  - (ii) Section 1 of the Employers' Liability (Compulsory Insurance) Act 1969 or Article 5 of the Employers' Liability Order (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972;

(iii) Part VI of the Road Traffic Act 1988 or Part VIII of the Road Traffic (Northern Ireland) Order 1981;

(iv) Section 19 of the Nuclear Installations Act 1965;

**"Scheme Company"** as the context requires, Allianz Global, Allianz IARD, Delvag or Nürnberger in respect of the Scheme as it applies to them;

**"Scheme Creditor"** a creditor of the Scheme Company in respect of a Scheme Claim;

**"Scheme Currency"** (a) for the purposes of Scheme Claims submitted in any currency other than those listed in (b) to (d) below, US Dollars;

(b) for the purposes of Scheme Claims submitted in Canadian Dollars, Canadian Dollars;

(c) for the purposes of Scheme Claims submitted in Euros, Euros; and

(d) for the purposes of Scheme Claims submitted in Pounds Sterling, Pounds Sterling;

in the event that a Scheme Currency is replaced by another unit of currency, references to that Scheme Currency shall, where appropriate, be deemed to refer to such replacement unit of currency and any amounts denominated in the original Scheme Currency shall be converted into the replacement unit of currency at the rate of exchange specified in the legislation introducing the replacement unit of currency;

**"Scheme Debt"**

a Liability which is or may become payable to a Scheme Company arising in connection with an Insurance Contract including, without limitation, reinstatement premiums, claim reserve deposits, refunds, rights of subrogation and reinsurance recoverables, and also including (for the avoidance of doubt) any such Liability arising by virtue of the application of Agreed Claims to reinsurance contracts;

**"Scheme Manager"**

Whittington Insurance Services Limited and any Delegate thereof, or such other person as may be



appointed in substitution or replacement of Whittington Insurance Services Limited pursuant to the Scheme, and any Delegate thereof;

**"Scheme Rate"**

the closing mid-point rate of exchange for the Relevant Currency quoted in the Financial Times on the last Business Day of the month preceding the date of the relevant Inwards Valuation Form or Net Valuation Statement or if no such rate is published, such rate as may reasonably be selected by the Scheme Manager;

**"Security"**

any effective deposit or reserve of funds, escrow, cash reserves, trust fund or assets established by the Scheme Company including any Letter of Credit, Loss Reserve or Premium Reserve, to the extent only that it relates to business covered by the Scheme;

**"Tax"**

any form of taxation, levy, duty, charge, contribution, withholding or impost of any nature (including any related fine, penalty, surcharge or interest) imposed, collected or concerned by or payable to any Tax Authority;

**"Tax Authority"**

any government, state municipality or any local state, federal or other fiscal, revenue, customs or excise authority, body or official anywhere in the world (including in the United Kingdom, without limitation, Her Majesty's Revenue & Customs);

**"Termination Event"**

in respect of a company, limited liability partnership or partnership, the occurrence of an Insolvency Event in respect of such company, limited liability partnership or partnership; or

in respect of an individual, the point at which such individual:

- (a) dies;
- (b) is convicted of an indictable offence;
- (c) becomes bankrupt or enters into any composition or arrangement with one or more of its creditors;
- (d) is disqualified from acting as a director of a company under the Company Directors Disqualification Act or is disqualified by any professional body of which he is a member; or

(e) is admitted to hospital because of a mental disorder or is the subject of an order concerning his mental disorder made by a court having jurisdiction in such matters in England and Wales or elsewhere;

**"Undiscounted Agreed Claim"** the amount to which a discount is applied in accordance with Appendix E to reach the amount of an Agreed Claim;

**"Unpaid Agreed Claim"** any claim arising under or balance in relation to an Insurance Contract which, as at the Effective Date, is valid and due having been agreed by or on behalf of the Scheme Company and the party to which it is due, but which has not been paid or discharged by the operation of set-off or otherwise;

**"US Dollars"** United States dollars, being the lawful currency of the United States of America;

**"Vote Assessor"** the person appointed as such by the Court in relation to the Creditors' Meetings;

**"Website"** the website at [www.CUAL-Scheme.co.uk](http://www.CUAL-Scheme.co.uk).

## 1.2 Interpretation

In the Scheme unless the context otherwise requires or the Scheme expressly provides otherwise:

- 1.2.1 references to clauses, sub-clauses and Appendices are references to the clauses, sub-clauses and Appendices, respectively, of the Scheme;
- 1.2.2 references to months are to calendar months;
- 1.2.3 references to a person include an individual, firm, limited partnership, partnership, company, unincorporated body of persons and any state or state agency;
- 1.2.4 references to "insurance" shall include "reinsurance" and "retrocession", except where the context otherwise requires;
- 1.2.5 references to any enactment or other legislative provision shall be deemed to include the same as re-enacted, amended or extended save where expressly provided to the contrary;
- 1.2.6 the singular includes the plural and vice versa except with respect to the use of the term "the Scheme Company";
- 1.2.7 in relation to the Scheme as it applies to each Scheme Company, references to "the Scheme Company" shall be read as applying only to that Scheme Company;

- 1.2.8 time periods laid down by the Scheme shall, unless otherwise expressly stated, be calculated by reference to elapsed days and not Business Days, and in the event that a time period expires on a day which is not a Business Day, such period shall be deemed not to expire until 5.00 p.m. London Time on the next Business Day. Any time period expressed to run from a fixed date shall not include such date;
- 1.2.9 references to the date of a document sent by the Scheme Manager are to the date expressed as such on the relevant document;
- 1.2.10 words importing one gender include all genders; and
- 1.2.11 headings are for ease of reference only and shall not affect the interpretation of the Scheme.

## 2. **AGREEMENT AND ADJUDICATION OF SCHEME CLAIMS**

### 2.1 **Application and purpose of the Scheme**

2.1.1 The Scheme shall become effective on the Effective Date whereupon it shall apply to all Scheme Claims and be binding on the Scheme Company and all Scheme Creditors.

2.1.2 The purpose of the Scheme shall be to value each Scheme Creditor's Scheme Claims in accordance with this clause 2 and to discharge any resulting Net Ascertained Claim in full in accordance with clause 3. The valuation of each Scheme Creditor's Scheme Claim shall be on an Enhanced Discounted Best Estimate Basis as set out at Appendix E.

### 2.2 **Extension of time limits and deadlines**

2.2.1 At the Scheme Manager's absolute discretion any unexpired period of time or deadline referred to in the Scheme, other than the Final Claims Submission Date, may be extended in relation to one or more specific Scheme Claims or Scheme Creditors or generally, provided that in the exercise of such discretion, such extension (or if more than one extension is used in relation to the same Scheme Claim, the total of such extensions) shall not exceed the aggregate of (1) the duration of the original maximum period of time specified in the Scheme for the taking of the relevant step(s); together with (2) the time, if any, taken to replace a Scheme Adjudicator, Actuarial Adjudicator or Scheme Manager during the relevant period. In the event that the Scheme Manager exercises such discretion:

2.2.1.1 references to any relevant period of time or deadline elsewhere in the Scheme shall be construed accordingly, provided that the Final Claims Submission Date once determined shall not be extended; and

2.2.1.2 Scheme Creditors directly affected by the extension shall be given written notice of such extension and, in the event that Scheme Creditors generally are affected, such notice shall instead be placed on the Website.

2.2.2 Except for the Final Claims Submission Date, the Scheme Manager may, at any time prior to the completion or termination of the Scheme, extend any unexpired period of time or deadline referred to in the Scheme as it relates to one or more specific Scheme Claims or Scheme Creditors, by an unlimited amount of time, by agreement in writing with the relevant Scheme Creditor(s).

### 2.3 **Notification of Scheme and distribution of Claim Forms**

2.3.1 As soon as reasonably practicable after the Effective Date, the Scheme Manager shall Advertise and place on the Website a notice calling for Scheme Creditors to complete and return Claim Forms and notifying them of the Effective Date and the Final Claims Submission Date.

2.3.2 The Scheme Manager shall, so far as it is reasonably able, within 14 days of the Effective Date, ensure that notification of the Effective Date and of the Final Claims Submission Date together with a Claim Form and details of the Website are sent by Post or E-mail to each Scheme Creditor of which it is

aware and for which it possesses what it reasonably believes to be a current address. There shall be sent with each Claim Form provided pursuant to this clause 2.3.2, to the extent that the Scheme Manager has such information in its possession, details of:

2.3.2.1 all known Insurance Contracts which, in the reasonable opinion of the Scheme Manager, might give rise to the relevant Scheme Creditor having a Scheme Claim; and

2.3.2.2 any known Unpaid Agreed Claims arising under such Insurance Contracts.

2.3.3 Prior to the Final Claims Submission Date, any Scheme Creditor which has not received a Claim Form may for the purpose of submitting Scheme Claims also use: (a) a copy of the blank Claim Form attached at Appendix B to the Scheme; (b) a blank copy Claim Form downloaded from the Website; (c) a Claim Form requested from the Scheme Manager, who shall send this by Post, facsimile or E-mail to the relevant Scheme Creditor as soon as reasonably practicable.

## 2.4 **Effects of Final Claims Submission Date**

2.4.1 Save as provided in clause 2.5, if the Scheme Manager has not received a completed Claim Form from a Scheme Creditor on or before the Final Claims Submission Date, that Scheme Creditor shall not be entitled to assert any Scheme Claim and shall not be entitled to any payment pursuant to the



Scheme or otherwise from the Scheme Company in respect of a Scheme Claim.

2.4.2 No Scheme Creditor shall be entitled to amend the values submitted on a Claim Form after the Final Claims Submission Date, or to assert Scheme Claims other than those detailed on a Claim Form which has been duly submitted prior to the Final Claims Submission Date.

## 2.5 **Unpaid Agreed Claims**

Notwithstanding the other provisions of the Scheme, any Unpaid Agreed Claims referred to in clause 2.3.2.2 shall be deemed to be included in a Claim Form sent to and received by the Scheme Manager before the Final Claims Submission Date and each Scheme Creditor will, save as hereinafter provided, be entitled to receive payment under the Scheme in respect of the amount of such Unpaid Agreed Claims, subject to any deduction shown on its Net Valuation Statement pursuant to clause 3.2.1. For the avoidance of doubt, a Scheme Debt may arise even if a Claim Form is not submitted.

## 2.6 **Returning, amending and providing supporting evidence for Claim Forms**

2.6.1 Each Scheme Creditor shall (to the extent it wishes to assert Scheme Claims additional to the Unpaid Agreed Claims referred to in clause 2.5) complete and return its Claim Form by Post, facsimile or E-mail by the Final Claims Submission Date, in accordance with the instructions upon the Claim Form.

2.6.2 Without prejudice to the generality of the foregoing, a Scheme Creditor must submit its Scheme Claim(s) and supporting evidence at policy level, with each

claim made by reference to a specific Insurance Contract and in the event that a single claim impacts more than one Insurance Contract, the Scheme Creditor must set out on its Claim Form a separate claim for each Insurance Contract under which it wishes to claim. The Scheme Creditor must state on the Claim Form the Reference Date which it has selected.

- 2.6.3 A Scheme Creditor which amends or adds to the information set out on its Claim Form shall attach such supporting evidence as is reasonably necessary to support it in accordance with the instructions on the Claim Form and by reference to the Actuarial Methodology set out at Appendix D and the discounting methodology set out at Appendix E.
- 2.6.4 Save where a Net Valuation Statement is issued prior to the Final Claims Submission Date pursuant to clause 3.1.2, each Scheme Creditor shall be entitled to submit further or revised data on its Claim Form prior to the Final Claims Submission Date in accordance with the instructions upon it and its accompanying guidance notes and the provisions of this clause 2.6.
- 2.6.5 In the event that the Scheme Manager receives more than one Claim Form from a Scheme Creditor in relation to the same Scheme Claim, then to the extent that they are contradictory, the last to be submitted by the Scheme Creditor and received by the Scheme Manager prior to the Final Claims Submission Date shall prevail.
- 2.6.6 A Scheme Creditor returning a completed Claim Form shall bear all of the costs of preparing and returning it and any supporting evidence in connection with it.

2.6.7 For the avoidance of doubt, supporting evidence sent by the Scheme Creditor to the Scheme Manager in relation to its Claim Form must be received by the Scheme Manager by the Final Claims Submission Date.

2.6.8 Each Scheme Creditor shall be deemed to have represented and warranted to the Scheme Company and the Scheme Manager that the information added to or amended on the Claim Form and all supporting evidence provided by it or on its behalf to the Scheme Manager, including, without limitation, supporting evidence and information supplied after the Final Claims Submission Date pursuant to clause 2.11.2, are, to the best of its knowledge and belief, true, correct, complete and fair.

## 2.7 **Currencies**

Scheme Claims may be submitted in one or more Scheme Currencies or, if different, the currency of the original contract. A Scheme Creditor may elect on its Claim Form for its Net Ascertained Claim or Net Debt (including, for the avoidance of doubt, the Net Ascertained Claim or Net Debt shown on a Combined Net Valuation Statement) to be denominated in a single Scheme Currency.

## 2.8 **Agreement of Scheme Claim values within 126 days**

2.8.1 Following the Final Claims Submission Date, there shall be a 126 day period during which the Scheme Manager and each Scheme Creditor shall attempt in good faith to negotiate a mutually agreed value for the Scheme Creditor's Scheme Claims. The Scheme Manager and the Scheme Creditor shall conduct such negotiations by reference to the Actuarial Methodology. In pursuing

such negotiations, the Scheme Manager will consider the submitted claim information along with any reasonable and supported estimation methodology provided by the Scheme Creditor, in conjunction with the relevant part of the Actuarial Methodology.

2.8.2 In the event that the Scheme Manager and Scheme Creditor reach agreement as to the value of a Scheme Creditor's Scheme Claims or any of them within 126 days of the Final Claims Submission Date, the agreed values shall become Agreed Claims of such Scheme Creditor and shall be final and binding on the Scheme Company and the Scheme Creditor. For the purposes of this clause 2.8.2, the agreement must be confirmed by both parties in writing but is not required to be made by way of separate contract or deed.

## 2.9 **Procedure for non-agreement and referrals to Adjudication**

2.9.1 In the event that agreement in respect of any or all of a Scheme Creditor's Scheme Claims has not been reached by the end of said 126 day period, or if at any time before that in the reasonable opinion of the Scheme Manager agreement cannot be reached, the Scheme Manager shall send the relevant Scheme Creditor an Inwards Valuation Form setting out either (i) the amount which the Scheme Manager believes is due in respect of each of that Scheme Creditor's unagreed Scheme Claims or (ii) the total amount which the Scheme Manager believes is due to that Scheme Creditor (including any Agreed Claims). For the avoidance of doubt, the Inwards Valuation Form shall not include any amounts which are to be deducted from Agreed Claims.

- 2.9.2 The Inwards Valuation Form shall be denominated in the Relevant Currency, converted, if necessary, at the Scheme Rate.
- 2.9.3 A Scheme Creditor may dispute any amount set out in an Inwards Valuation Form by sending a Dispute Notice to the Scheme Manager to be received by it within 56 days of the date of the Inwards Valuation Form. For the avoidance of doubt, if such disputed amount includes sums attributable to Agreed Claims, such Agreed Claims shall not form part of the Disputed Claim. Any amounts shown on an Inwards Valuation Form for which the Scheme Manager does not receive a Dispute Notice shall upon the expiry of such 56 day period be final and binding upon the Scheme Company and relevant Scheme Creditor as Agreed Claims.
- 2.9.4 In a Dispute Notice, the Scheme Creditor shall indicate for any disputed amount (1) the amount it believes to be correct; (2) whether it objects to the disputed amount being adjudicated by the Actuarial Adjudicator alone, without reference to a Scheme Adjudicator in relation to matters of fact and law (if any); and (3) any specific items of supporting evidence previously supplied in relation to its Scheme Claims which it does not require the Scheme Manager to supply to the Actuarial Adjudicator and (if relevant) Scheme Adjudicator for the purposes of Adjudication.
- 2.9.5 Within 28 days of receipt of a Dispute Notice, the Scheme Manager shall refer the Disputed Claim(s) to Adjudication. Disputed Claims shall be referred to the Actuarial Adjudicator or the Scheme Adjudicator in accordance with the following procedure:

- 2.9.5.1 if the Scheme Creditor has not objected to the Disputed Claim(s) (including, for the avoidance of doubt, any matters of fact and/or law which have arisen or may subsequently arise in relation to the Disputed Claim(s)) being determined by the Actuarial Adjudicator alone, and the Scheme Company does not so object, the Disputed Claim(s) shall be referred to the Actuarial Adjudicator who shall determine all disputed matters and the value of the Disputed Claims;
- 2.9.5.2 where the Scheme Manager concludes that there are no issues of fact or law which require determination, the Scheme Manager shall refer the Disputed Claim(s) directly to the Actuarial Adjudicator who shall, subject to clause 2.11.1.4, determine all disputed matters and the value of the Disputed Claim(s);
- 2.9.5.3 in all other cases, the Disputed Claim(s) shall be referred first to one or more Scheme Adjudicators who shall determine any disputed issues of fact or law arising in relation to any Disputed Claim(s); and
- 2.9.5.4 if, after the final and binding determination by the Scheme Adjudicator(s) in relation to the Disputed Claim(s) referred pursuant to clause 2.9.5.3, further matters in relation to the relevant Scheme Claim remain unresolved, the Scheme Manager and the relevant Scheme Creditor shall endeavour to resolve and agree upon those matters. If these matters have not been resolved

and agreed within 21 days of the determination of the Scheme Adjudicator, the remaining disputed matter(s) shall be referred to the Actuarial Adjudicator. In such circumstances, subject to clause 2.11.1.4, all remaining disputed matters, and the value of the Disputed Claim(s) shall be resolved by the Actuarial Adjudicator.

2.9.6 When making a referral to Adjudication pursuant to clause 2.9.5, the Scheme Manager shall supply the relevant Adjudicator with:

2.9.6.1 copies of all the Scheme Creditor's supporting evidence (save any which the Scheme Creditor has indicated on its Dispute Notice should not be supplied); and

2.9.6.2 the Scheme Manager's written submissions and evidence (including, for the avoidance of doubt, any supporting evidence referred to in clause 2.9.6.1 that the Scheme Manager believes to be relevant) in relation to the Disputed Claim(s).

2.9.7 The Scheme Manager shall, at the same time as referring the Disputed Claim(s) to Adjudication pursuant to clause 2.9.5 send to the relevant Scheme Creditor:

2.9.7.1 notice to the effect that the Disputed Claim(s) have been referred to the Actuarial Adjudicator or a Scheme Adjudicator, as the case may be, for Adjudication; and

2.9.7.2 a copy of the Scheme Manager's submissions and evidence in relation to the Disputed Claim(s).

2.9.8 To the extent that it wishes to do so, the relevant Scheme Creditor may submit a written response to the submissions of the Scheme Manager referred to in clause 2.9.6.2, to be received by the relevant Adjudicator (with a copy to the Scheme Manager to be received at the same time) within 14 days of receipt by the Scheme Creditor of the Scheme Manager's submissions. The Scheme Manager may submit a reply to such response to be received by the relevant Adjudicator (with a copy to the Scheme Creditor to be received at the same time) within 14 days of receipt by the Scheme Manager of the Scheme Creditor's response. Without prejudice to clause 2.11.2, any response or reply which is received after the time limits set out in this clause 2.9.8 shall be disregarded by the relevant Adjudicator.

## **2.10 Rules governing Adjudication by the Actuarial Adjudicator and/or the Scheme Adjudicator**

2.10.1 Where a Scheme Claim (or part thereof) has been referred to the Actuarial Adjudicator as a Disputed Claim, the Actuarial Adjudicator shall apply the Actuarial Methodology to that Disputed Claim in accordance with this clause 2.10.

2.10.2 In respect of any issues of fact and/or law which have been referred to a Scheme Adjudicator, the Actuarial Adjudicator shall be bound by the decision of the Scheme Adjudicator and shall apply such decision when making his determination.



- 2.10.3 In any Adjudication upon a dispute as to fact or law, where the Adjudicator believes that there is uncertainty surrounding the outcome of the matter in dispute, he may adopt an approach that involves the use of probabilities assigned to different possible outcomes, if, in his absolute discretion, he believes that the matters in dispute are susceptible to the application of such an approach. The decision of the Adjudicator in that regard shall be final and binding so far as the law permits.
- 2.10.4 A Scheme Adjudicator may only determine matters of pure fact or law and shall not determine any issue which requires determination by actuarial methods such as those described within the Actuarial Methodology (excluding the methods described in section 2.4 of the Actuarial Methodology which deals with the determination of issues of fact or law).
- 2.10.5 Neither a Scheme Adjudicator's nor the Actuarial Adjudicator's determination in relation to a Disputed Claim shall result in its value exceeding the total amount asserted by a Scheme Creditor in respect of the aggregate of the Scheme Claims asserted on its Claim Form, received by the Scheme Manager in accordance with clause 2.6, less any amounts agreed pursuant to clause 2.8.2, and shall not result in the recognition of any Scheme Claim not included on such a Claim Form.
- 2.10.6 For the avoidance of doubt, a Scheme Creditor and the Scheme Manager may, at any time during Adjudication, agree a value for any Disputed Claim(s) and in the event that they do, such matters as are agreed in writing shall be withdrawn from Adjudication (subject to the provisions of clauses 2.13.2 to

2.13.4 regarding remuneration, costs and expenses incurred prior to such withdrawal) and the provisions of clause 3 shall apply thereto.

2.10.7 Unless a Scheme Adjudicator, or as the case may be, Actuarial Adjudicator shall agree otherwise, in relation to an Adjudication conducted by them:

2.10.7.1 Adjudication shall be conducted entirely in English;

2.10.7.2 all oral representations made for the purposes of the Adjudication shall be in English;

2.10.7.3 every document to be provided for the purposes of Adjudication shall be in English or, if not, accompanied by an English translation of it certified as accurate by a notary public admitted to the roll of notaries by the United Kingdom Faculty Office or such other person as is acceptable to the Scheme Manager;

2.10.7.4 if there is a conflict in meaning or interpretation between the English language version of any such document or written communication and the original version, then the original version shall prevail;

2.10.7.5 in relation to a matter referred to Adjudication, written submissions shall only be made in respect of it in accordance with clause 2.9.6, clause 2.9.8 or clause 2.11.2 as applicable;

2.10.7.6 for the avoidance of doubt, a Scheme Creditor shall be solely responsible for all and any translation, interpretation and other costs incurred by it pursuant to the application of clause 2.10.7.

## 2.11 Adjudication Procedures and Timescale

2.11.1 In considering and making decisions in respect of matters referred to him, a Scheme Adjudicator and the Actuarial Adjudicator shall:

2.11.1.1 act as an expert, not as an arbitrator;

2.11.1.2 be entitled to lay down such reasonable provisions and prescribe such reasonable procedures as he, in his absolute discretion may consider appropriate for the purposes of assisting him in reaching his decision;

2.11.1.3 be entitled to consult with and take advice from such experts, including legal experts and advisers, as he may deem appropriate provided that the cost of consulting such experts has been authorised by the Scheme Manager prior to such costs being incurred, which authorisation shall not be unreasonably withheld;

2.11.1.4 in the case of the Actuarial Adjudicator, where clauses 2.9.5.2 or 2.9.5.4 apply and the Actuarial Adjudicator considers that there are matters of fact or law in relation to the Disputed Claim(s) which require determination by a Scheme Adjudicator, the Actuarial Adjudicator may request a referral of such matters to a

Scheme Adjudicator to be appointed at the request of the Scheme Manager for the purpose;

2.11.1.5 be entitled to use his general knowledge and experience of the insurance market; and

2.11.1.6 be entitled to remuneration and reimbursement of his reasonable costs and expenses (including, without limitation, the costs and fees of any experts or advisers consulted by him in connection with a Disputed Claim pursuant to clause 2.11.1.3) in carrying out his duties under the Scheme in amounts determined in accordance with Appendix F.

2.11.2 Following the referral of a Disputed Claim, and the periods given in clause 2.9.8 for the making of submissions, an Adjudicator shall be entitled to request in writing that the Scheme Manager, the Scheme Company and/or the relevant Scheme Creditor provide him, within 28 days of his request, with such further supporting explanation or evidence as he may reasonably require at the expense of the party to whom the request is made, provided in each case that:

2.11.2.1 where further information is provided pursuant to such a request within the 28 day period referred to in clause 2.11.2, it shall be provided by the party sending it to the relevant Adjudicator and simultaneously to the other parties to the dispute who shall each have the right to respond to that information by written submissions thereon within 14 days of receipt of the relevant information;

- 2.11.2.2 in the event that such information or supporting evidence and/or response is not provided within the period referred to in clause 2.11.2 or 2.11.2.1, the Adjudicator shall determine the matter on the basis of the evidence before him and shall disregard any evidence or information received after the deadline.
- 2.11.2.3 the Adjudicator may submit further queries to the Scheme Manager, Scheme Company and/or Scheme Creditor, and shall have discretion as to the time limit within which he requires the response to be made;
- 2.11.2.4 the provisions of clause 2.6.8 shall apply to any responses and further information and supporting evidence provided by a Scheme Creditor pursuant to this clause 2.11.2. In the case of information and supporting evidence provided by the Scheme Manager or the Scheme Company, it shall be deemed to have warranted to the relevant Scheme Creditor that such information and supporting evidence is, to the best of its knowledge and belief, true, correct, complete and fair; and
- 2.11.2.5 further supporting evidence or information received pursuant to this clause 2.11.2 shall not result in the amendment by an Adjudicator of any amount agreed pursuant to clause 2.8.2 or by the Actuarial Adjudicator of a finding previously determined by a Scheme Adjudicator and nothing in this clause 2.11.2 shall give rise to a Scheme Claim being asserted which had not been duly

notified to the Scheme Manager on a Claim Form by the Final Claims Submission Date.

2.11.3 Subject as hereinafter provided, in relation to any matter referred to him for Adjudication, and where relevant, an Adjudicator shall, within 119 days of the matter being referred to him, notify the Scheme Manager and the relevant Scheme Creditor and (in the case of the Scheme Adjudicator only) the Actuarial Adjudicator in writing of his determination in respect of the Disputed Claim(s).

2.11.4 Where any issues of fact or law are referred back to a Scheme Adjudicator pursuant to clause 2.11.1.4, the time period allowed for the Scheme Adjudicator to notify his determination in relation to such matters referred to him shall be reduced from 119 to 60 days and the time periods set out in clauses 2.9.8 and 2.11.2 relating to the Adjudication shall each be reduced to half their original length. The time period allowed for the Actuarial Adjudicator to notify his determination in respect of the relevant Disputed Claim shall be extended by the time taken by the Scheme Adjudicator to make his determination.

## 2.12 **Adjudication final and binding**

2.12.1 So far as the law permits, an Adjudicator's determination in respect of any matter referred to him shall, in the absence of Manifest Error, be final and binding on the Scheme Company, the Scheme Manager and the relevant Scheme Creditor and there shall be no right of appeal or review thereof or to make any claim in respect thereof.

2.12.2 In the event that the Scheme Manager or relevant Scheme Creditor considers that there is a Manifest Error in a determination of an Adjudicator, it shall inform the Adjudicator and the other party(ies) to the Adjudication of such Manifest Error by notice in writing within 7 days of receiving such determination. The Adjudicator shall investigate and if necessary, correct any Manifest Error within 14 days of receiving such notice and (if necessary) shall revise his determination accordingly. Clause 2.12.1 shall apply to any such revised determination and there shall be no further right to appeal the determination on the basis of Manifest Error.

### 2.13 **Costs of Adjudication**

2.13.1 Except as provided by clause 2.13.2, the Scheme Company (or, if more than one Scheme Company shall be party to the same dispute, such Scheme Companies together in such shares as shall be determined by the Scheme Manager) shall be responsible for the costs, remuneration and expenses of an Adjudicator.

2.13.2 In the event that an Adjudicator considers that a Scheme Creditor has in relation to a Disputed Claim:

2.13.2.1 acted in bad faith, vexatiously, or for oppressive reasons in respect of a matter subject to Adjudication; or

2.13.2.2 unreasonably failed to indicate on a Dispute Notice the relevant supporting evidence which does not need to be supplied to the

Adjudicator, and such failure has resulted in an increase in the time and costs of the Adjudication; or

2.13.2.3 unreasonably failed to provide with his Claim Form (in accordance with clause 2.6.3) supporting evidence which could have assisted with the agreement or valuation of its Scheme Claim and such failure has resulted in the need for, or an increase in the time and costs of, the Adjudication;

he shall be entitled to direct (at the same time as he communicates his decision on the subject of the Adjudication) that some or all of the remuneration and costs and expenses properly incurred by him, including the fees and expenses of any adviser or expert consulted by him, be payable by the relevant Scheme Creditor.

2.13.3 Sums due under clauses 2.13.1 and 2.13.2 from the Scheme Company shall be paid by it within 28 days of the Adjudicator notifying it of his determination. Settlement of the amount of the relevant Scheme Creditor's share of such remuneration, costs and expenses shall be dealt with in accordance with clause 2.13.4.

2.13.4 The relevant Scheme Creditor shall pay any amount due from it pursuant to clause 2.13.2 within 28 days of being notified of it, provided, however, that if the Scheme Creditor does not make such payment within 28 days, the Scheme Company shall pay such amount on its behalf and the Scheme Manager shall, following such payment by the Scheme Company, either:



- 2.13.4.1 deduct the same, converted where appropriate at the Scheme Rate, from any amount which may be or may become payable to the Scheme Creditor pursuant to the Scheme (including, for the avoidance of doubt, any amount payable pursuant to clause 3.1.1), such Scheme Creditor being treated for these purposes as having received, on account, an advance under the Scheme equal to the amount which it has been directed to pay; or
- 2.13.4.2 where the Scheme Creditor is not entitled to receive a payment pursuant to the Scheme, or is subsequently found to be a Net Debtor, or the amount of such remuneration, costs and expenses exceeds its entitlement to a payment pursuant to the Scheme, treat such amount or excess as a debt owed by the Scheme Creditor as a Net Debtor to the Scheme Company, which shall be payable forthwith.

### 3. **DETERMINATION AND PAYMENT OF NET ASCERTAINED CLAIMS**

#### 3.1 **Scheme Manager's power to commute or settle**

3.1.1 At any time prior to the Completion Date, the Scheme Manager may enter into an agreement in writing with a Scheme Creditor for the full and final release and discharge, commutation, compromise, waiver or settlement of one or more Scheme Claims and to treat any sum agreed as being due from the Scheme Company to the Scheme Creditor as an Agreed Claim or as a sum payable outside the terms of the Scheme. For the avoidance of doubt, following agreement to payment outside the Scheme, any such sum shall not constitute a Scheme Claim or a Net Ascertained Claim and following payment in respect of it, the Scheme Company shall have no further obligations to the relevant Scheme Creditor in respect of such sum, or the Scheme Claim(s) that gave rise to it.

3.1.2 Alternatively, without limitation, the Scheme Manager and a Scheme Creditor may agree, in writing, the amount of the Net Ascertained Claim or Net Debt which shall appear on that Scheme Creditor's Net Valuation Statement. In the event that any such agreement is reached, the Scheme Manager shall, as soon as reasonably practicable, send the Scheme Creditor a Net Valuation Statement setting out only the amount of the Net Ascertained Claim or Net Debt so agreed. Such Net Valuation Statement shall be final and binding upon the Scheme Company and relevant Scheme Creditor whether it is issued before or after the Final Claims Submission Date. Clauses 3.2.1, 3.3.1, (other than in relation to Manifest Error), 3.3.2 and 3.3.3 shall not apply to a Net

Valuation Statement issued pursuant to this clause 3.1.2. For the avoidance of doubt there shall be no requirement to enter into a separate contract or deed in relation to the agreement of a Net Ascertained Claim or Net Debt pursuant to clause 3.1.2.

### **3.2 Calculation of any amounts to be applied to Agreed Claims to produce Net Ascertained Claims or Net Debts**

3.2.1 As soon as reasonably practicable following completion of the steps required for the valuation of all of a Scheme Creditor's Scheme Claims, the Scheme Manager shall send to such Scheme Creditor a Net Valuation Statement setting out in the Relevant Currency (converted, if necessary, at the Scheme Rate):

- 3.2.1.1 the total of the Scheme Creditor's Undiscounted Agreed Claims;
- 3.2.1.2 the amount of the discount to be applied to the Undiscounted Agreed Claims to arrive at the Scheme Creditor's total Agreed Claims;
- 3.2.1.3 the amount of each of the Scheme Creditor's Agreed Claims together with the total of such Agreed Claims;
- 3.2.1.4 the amount of any Scheme Debt owed by the Scheme Creditor to the Scheme Company;
- 3.2.1.5 the amount of adjustments reflecting payments by or to the Scheme Company or transactions effecting netting off or set-off in

respect of a Scheme Creditor's Agreed Claims to the date of the Net Valuation Statement;

- 3.2.1.6 the amount of any Scheme Claims which have been satisfied by the application of Security since the Effective Date and the amount of any Security which has been deducted from the total of such Scheme Creditor's Agreed Claims with the intention that the Scheme Creditor will draw down or realise the Security in that amount;
- 3.2.1.7 any amount in respect of a Scheme Adjudicator's or the Actuarial Adjudicator's remuneration, costs and expenses which fell due for payment by the Scheme Creditor pursuant to clause 2.13.2 and was subsequently paid by the Scheme Company pursuant to clause 2.13.4;
- 3.2.1.8 the amount of any advance payment treated as having been received by the Scheme Creditor for the purposes of clause 4.1.2 or 4.1.3 which is to be deducted from the total of such Scheme Creditor's Agreed Claims;
- 3.2.1.9 any amounts which are required to be deducted or withheld by the Scheme Company for or on account of Tax in respect of Admissible Interest or otherwise;
- 3.2.1.10 any other amounts not expressly referred to in 3.2.1.4 to 3.2.1.9 above which the Scheme Manager considers ought to be taken into

account for the purpose of calculating the Scheme Creditor's Net Ascertained Claim or Net Debt, as the case may be; and

3.2.1.11 the final balance, following aggregation of the amounts referred to in clause 3.2.1.3 to 3.2.1.10, which shall be that Scheme Creditor's Net Ascertained Claim or Net Debt, as the case may be.

3.2.2 In the event that a Scheme Creditor has a Net Ascertained Claim or a Net Debt in respect of more than one Scheme Company then, unless it has opted on its Claim Form to receive separate Net Valuation Statements from each Scheme Company, the Net Valuation Statement sent pursuant to clause 3.2.1 (or, as the case may be, clause 3.1.2), will be a Combined Net Valuation Statement. Where this applies, references in the Scheme to Net Valuation Statements and to Net Ascertained Claims or Net Debts shall be read to apply to Combined Net Valuation Statements and to Net Ascertained Claims or Net Debts shown on Combined Net Valuation Statements.

### **3.3 Disputes over amounts in Net Valuation Statements – Substantive Disputes and Manifest Errors**

3.3.1 Subject to clause 3.3.7, a Scheme Creditor may dispute the calculation or determination of any amount, other than the amounts referred to in clauses 3.2.1.1 to 3.2.1.3, shown on its Net Valuation Statement on substantive grounds. It shall inform the Scheme Manager of any such dispute by notice in writing to be received by the Scheme Manager within 21 days of the date of the Net Valuation Statement, setting out those matters which are not agreed and the reasons for failing to agree such matters and provide any relevant

additional information to support its position. The Scheme Manager and the Scheme Creditor shall endeavour to agree the disputed matters and the relevant Net Ascertained Claim or Net Debt within 60 days of the date of the Net Valuation Statement. In the event that a valuation is agreed between them during this period, the Scheme Manager shall, as soon as reasonably practicable, issue a revised Net Valuation Statement to that Scheme Creditor incorporating the agreed valuation. Such revised Net Valuation Statement may only be disputed in relation to Manifest Error in accordance with clause 3.3.5.

3.3.2 If the disputed matters and the relevant Net Ascertained Claim or Net Debt cannot be resolved between the Scheme Creditor and the Scheme Manager within the deadline imposed by clause 3.3.1, the Scheme Manager shall refer the disputed matters and the relevant Net Ascertained Claim or Net Debt to a Scheme Adjudicator as a Disputed Claim. For the avoidance of doubt, a Disputed Claim referred to a Scheme Adjudicator pursuant to this clause shall not include Agreed Claims on a Net Valuation Statement.

3.3.3 The Scheme Adjudicator's adjudication of Disputed Claims referred to him pursuant to clause 3.3.2 shall be conducted in accordance with clauses 2.9.6 to 2.9.8, clause 2.10 and clause 2.11 save that the time period referred to in clause 2.11.3 within which the Scheme Adjudicator shall notify the relevant Scheme Creditor and the Scheme Manager of his determination in respect of the Disputed Claim shall be reduced from 119 days to 60 days and the time

periods set out in clauses 2.9.8 and 2.11.2 relating to the Adjudication shall each be reduced to half their original length.

- 3.3.4 The Scheme Adjudicator's determination in respect of disputed matters referred to him pursuant to clause 3.3.2 shall be final and binding in accordance with clause 2.12.1, and clause 2.12.2 shall apply in the event of Manifest Error. Following the Scheme Adjudicator's determination the Scheme Manager shall, as soon as reasonably practicable, issue a revised Net Valuation Statement to that Scheme Creditor incorporating the amount(s) determined by the Scheme Adjudicator. Such revised Net Valuation Statement may only be disputed in relation to Manifest Error in accordance with clause 3.3.5. The provisions of clause 2.13 shall apply in respect of the costs of an Adjudication pursuant to clause 3.3.3, and the revised Net Valuation Statement shall reflect any amount to be deducted pursuant to clause 2.13.4.
- 3.3.5 A Scheme Creditor may dispute any amount or matter set out on its Net Valuation Statement on the grounds of Manifest Error. It shall inform the Scheme Manager of any such dispute by notice in writing to be received by the Scheme Manager within 14 days of the date of the Net Valuation Statement, setting out such details of the alleged Manifest Error as are reasonably necessary for the Scheme Manager to investigate it and, if necessary, correct it. The Scheme Manager shall investigate and, if necessary, correct the alleged Manifest Error within 35 days of the date of the Net Valuation Statement or revised Net Valuation Statement.

- 3.3.6 Having investigated an alleged Manifest Error in accordance with clause 3.3.5, the Scheme Manager shall either send the Scheme Creditor a revised Net Valuation Statement setting out the corrected amounts or other matters, or shall send notice in writing to the Scheme Creditor stating that preparation of a revised Net Valuation Statement is not necessary (and giving reasons).
- 3.3.7 Nothing in this clause 3.3 shall entitle a Scheme Creditor to dispute, or a Scheme Adjudicator to alter the amounts of Agreed Claims (including the Agreed Claims of other Scheme Creditors) or to dispute the principle of the application of the amounts of such Agreed Claims of Scheme Creditors to contracts by which the Scheme Company is reinsured in respect of the claims to which they relate, for the purposes of set-off pursuant to clause 3.2.1.4.

#### **3.4 Net Valuation Statements becoming binding**

- 3.4.1 If no dispute is notified to the Scheme Manager pursuant to clause 3.3 within 21 days of the date of the Net Valuation Statement or (if applicable) within 14 days of the revised Net Valuation Statement, then on the expiry of such period the Net Valuation Statement or revised Net Valuation Statement shall become final and binding.
- 3.4.2 The value of a Scheme Creditor's Net Ascertained Claim shown on a Net Valuation Statement which has become binding in accordance with clause 3.4.1 shall, so far as the law permits, be binding on the relevant Scheme Creditor, the Scheme Company and the Scheme Manager as the amount of that Scheme Creditor's Net Ascertained Claim and there shall be no right of appeal in respect thereof.



3.4.3 Any Liability shown as a Net Debt on a Net Valuation Statement which has become binding in accordance with clause 3.4.1, shall be deemed to have extinguished all of the relevant Scheme Creditor's Scheme Claims and the Scheme Company shall not owe any amount or have any Liability in respect of them.

### **3.5 Timing of payment and consequence of loss of contact with Scheme Creditors**

3.5.1 The Scheme Manager shall procure that payment be made to each Scheme Creditor as soon as reasonably practicable after the date on which such Scheme Creditor's Net Valuation Statement containing a Net Ascertained Claim has become final and binding in accordance with clause 3.4.1, and in any event within 42 days thereof.

3.5.2 In the event that the Scheme Manager is unable to contact a Scheme Creditor to which a payment is due pursuant to the Scheme, and has no current account details or a valid address for such Scheme Creditor, then subject to the provisions of clause 3.7.2, for the avoidance of doubt there shall be no obligation to make such payment unless, prior to the Completion Date, current account details or a valid address are notified to or discovered by the Scheme Manager. Any amounts due to Scheme Creditors which the Scheme Manager has not been able to pay for the reasons described in this clause shall as soon as reasonably possible after the Completion Date be paid to the Charity and following Completion of the Scheme, the relevant Scheme Creditor shall cease to have any entitlement in relation to them.

### **3.6 Payment on a Combined Net Valuation Statement**

3.6.1 If a Scheme Creditor has received a Combined Net Valuation Statement showing a Net Ascertained Claim, it will receive a single payment in respect of such Net Ascertained Claim on behalf of all relevant Scheme Companies.

3.6.2 If a Scheme Creditor does not wish to receive a Combined Net Valuation Statement, it must inform the Scheme Manager of this by completing the relevant section of its Claim Form, in which case it will receive an individual Net Valuation Statement in respect of each Scheme Company against which it asserts a Scheme Claim, and will receive a single payment in respect of the aggregate of the Net Ascertained Claims on such Net Valuation Statements. For the avoidance of doubt, Net Debts will not be set off against this amount and will remain due.

### **3.7 Form of payment**

3.7.1 Payments will be made by bank transfer, at the expense of the Scheme Company, to an account for which the Scheme Creditor has provided details on its Claim Form. However, if the Scheme Creditor so requests, or if the Scheme Manager in its reasonable opinion considers that the cost of making payment by bank transfer is prohibitive, payment will be made by cheque sent by Post to the address specified by the Scheme Creditor on its Claim Form or to any other address notified to the Scheme Manager by the Scheme Creditor or, if no such address has been specified or notified, to any valid address of the Scheme Creditor known to the Scheme Manager.

3.7.2 Where the Scheme Manager does not have details of a current account or correct address details sufficient to enable a payment to be made to a Scheme Creditor pursuant to clause 3.7.1, it shall use reasonable endeavours to contact the relevant Scheme Creditor and obtain such details during the six month period following the first date on which the Scheme Manager attempted to procure payment to the Scheme Creditor pursuant to clause 3.7.1.

### **3.8 Currency of payment**

A Scheme Creditor's Net Ascertained Claim or Net Debt shall be denominated and paid in the Relevant Currency.

### **3.9 Effect of the Scheme on Scheme Claims**

Each Scheme Creditor shall be deemed to agree that:

3.9.1 its Net Ascertained Claim shall constitute the Scheme Company's entire remaining Liability to the relevant Scheme Creditor in respect of all its Scheme Claims and the terms of all Insurance Contracts giving rise to Scheme Claims are amended accordingly;

3.9.2 notwithstanding the terms of clause 3.10, the sending of a cheque or the making of a telegraphic transfer (or any other means of payment or discharge including without limitation, any application of Security and any application of set-off) in accordance with the terms of the Scheme comprising the amount of the Net Ascertained Claim shall be deemed to constitute payment in full and final settlement of all and any Scheme Claims of that Scheme Creditor against the Scheme Company;

3.9.3 such deemed payment in full and final settlement of all and any Scheme Claims shall also be deemed to constitute full and final discharge of all sums and obligations due under any guarantee that may exist in respect of such Scheme Claims; and

3.9.4 nothing in the Scheme shall result in any Liability which is not a Scheme Claim against the Scheme Company forming part of a Net Ascertained Claim against the Scheme Company.

### **3.10 Lost or mislaid cheques and unclaimed payments**

3.10.1 Without prejudice to the effect of clause 3.9, in the event that a Scheme Creditor to whom a cheque is sent pursuant to clause 3.7.1 notifies the Scheme Manager within six months of the date on which it was sent that the cheque has been lost or mislaid, the Scheme Manager shall, if satisfied that the cheque has not been cashed and can be cancelled, send a replacement cheque to the Scheme Creditor concerned at the address notified by the Scheme Creditor.

3.10.2 If the Scheme Manager at any point within six months of an initial payment becomes aware that the transfer has not been effected or the cheque not presented, it shall use reasonable endeavours to contact the relevant Scheme Creditor and resolve this before the Completion Date.

### **3.11 Payments made on the basis of Misrepresentation or Fraud**

For the avoidance of doubt, the Scheme Company and the Scheme Manager shall be entitled to recover any amount which either or both has paid on the basis of misrepresentation, breach of warranty or fraud.

## 4. SCHEME CLAIMS

### 4.1 Stay of Proceedings and Consequences of Acting in Breach of the Stay

4.1.1 No Scheme Creditor nor any party acting on its behalf or deriving title from it shall be entitled to take or continue any step, or do or continue any act by way of Proceedings or otherwise in any jurisdiction whatsoever after the Effective Date

4.1.1.1 against or in respect of the Scheme Company or Property of the Scheme Company, for the purpose of obtaining payment, or establishing the existence or quantum, of any Scheme Claims;

4.1.1.2 save as permitted by clause 7.1 against or in respect of any of the Released Parties either individually or collectively in connection with their duties and obligations under the Scheme;

unless the Scheme Company has failed to perform any obligation to make payment to a Scheme Creditor in respect of a Net Ascertained Claim and then only in respect of such failure.

4.1.2 If any Scheme Creditor or other party acting on its behalf or deriving title from it takes any action which is prohibited by clause 4.1.1 after the Effective Date, then:

4.1.2.1 it shall be deemed to have received pursuant to the Scheme an advance payment under the Scheme equal to the amount or gross value of any Property or advantage obtained by it from or at the

expense of the Scheme Company and/or Scheme Appointee or Released Party as a result of such action, and the extent, if any, to which it is entitled to any other payment from the Scheme Company shall be determined accordingly. Each Scheme Creditor shall be deemed to agree that in the event that the amount of any advance payments that it is deemed to have received pursuant to this clause 4.1.2.1 exceed the total of all sums which it would otherwise be entitled to receive pursuant to the Scheme, it shall be treated as a Net Debtor of the Scheme Company in respect of such excess; and

4.1.2.2 the process of valuing its Scheme Claim(s) may be suspended, and the process of making payment in respect of it or them shall be suspended, until such action is discontinued.

4.1.3 For the purpose of clause 4.1.2, the value of any Property or advantage obtained as aforesaid shall be conclusively determined by the Scheme Manager and (without prejudice to the generality of the foregoing) shall include such amount as the Scheme Manager may in its absolute discretion consider to be appropriate in respect of costs, charges and expenses incurred by the Scheme Company or the Scheme Manager as a consequence of the action prohibited by clause 4.1.1.

4.1.4 If the amount of advance payment, which a Scheme Creditor is treated as having received pursuant to clause 4.1.2, exceeds the total amount the relevant

Scheme Creditor would otherwise be entitled to receive pursuant to the Scheme, then without prejudice to any other rights of the Scheme Company:

4.1.4.1 the Scheme Creditor shall immediately repay the excess to the Scheme Company, failing which interest shall accrue on such excess for the period from the date upon which the Scheme Creditor's Net Ascertained Claim is established under the Scheme to the date of repayment of such excess, at a rate equal to the Bank Base Rate plus four per cent from time to time. Interest shall accrue from day to day for the duration of such period (from and including the first day thereof) and shall be payable on the last day of such period. Such excess shall be held on trust for the Scheme Company by the relevant Scheme Creditor until it is paid to the Scheme Company; and

4.1.4.2 the Scheme Company shall be deemed to have satisfied the full amount of its liability in respect of all of such Scheme Creditor's Scheme Claims including any which have been sold or otherwise transferred to other parties.

4.1.5 Each Scheme Creditor is deemed to acknowledge that if it or any party acting on its behalf or deriving title from it brings or continues Proceedings against the Scheme Company and/or any of the Scheme Appointees or Released Parties in breach of clause 4.1.1, the Scheme Company, Scheme Appointee or Released Party (as appropriate) shall be entitled to obtain or procure the obtaining of an order staying or dismissing those Proceedings and providing

for payment by the Scheme Creditor concerned of any interest and of any costs, charges and expenses incurred by the Scheme Company, Scheme Appointee and Released Party in the exercise of their entitlement pursuant to this clause.

#### 4.2 **Interest**

No interest other than Admissible Interest shall form part of a Scheme Claim or Agreed Claim.

#### 4.3 **Security**

4.3.1 After a Net Ascertained Claim has been agreed or determined in accordance with clause 3.1.2 or clause 3.2 and has become binding on the Scheme Company and the Scheme Creditor or an amount due outside the Scheme pursuant to clause 3.1.1 has been agreed, a Scheme Creditor may obtain payment thereof by means of its Security, provided that this is done strictly in accordance with the terms of the contract pursuant to which such Security was established and the terms (if any) of the Security or as agreed in writing with the Scheme Manager.

4.3.2 In addition, when a Scheme Creditor's Net Ascertained Claim has become final and binding pursuant to clause 3.3 or clause 3.4.1 and to the extent that it takes account of the deduction of Security, the Scheme Creditor shall draw the applicable amount from the relevant Security notwithstanding any provision to the contrary in the terms on which the Security was established.



4.3.3 Nothing in the Scheme shall affect the rights of the Scheme Company under any applicable law against any person in respect of any wrongful or excessive enforcement, drawdown or withdrawal of funds in respect of any Security.

4.3.4 Where a Scheme Creditor has exhausted its rights to apply its Security against Scheme Claims but the Security is not exhausted, each Scheme Creditor in whose favour such Security was established shall provide such co-operation and assistance as the Scheme Company may require in order to obtain the release of the balance remaining of any funds deposited as, or as collateral in respect of, such Security to the Scheme Company. Each Scheme Creditor is deemed to acknowledge that, in the event that its Net Ascertained Claim has been satisfied or it becomes a Net Debtor, it shall continue to be obliged to provide assistance to the Scheme Company in accordance with this clause 4.3.4.

#### 4.4 **Broker and other third party funding**

4.4.1 Claims against the Scheme Company by a third party in respect of amounts paid by that third party to a Scheme Creditor in relation to sums due from the Scheme Company to that Scheme Creditor will not be admitted as Scheme Claims nor shall that third party be acknowledged to be a Scheme Creditor in lieu of the Scheme Creditor to whom the payment was made unless either:

4.4.1.1 the third party has acquired an assignment of the Scheme Claim or the said Scheme Creditor shall have provided a letter to the Scheme Manager confirming that (1) it accepts the payment received from that person in full and final settlement as between

the Scheme Company and itself of its claim against the Scheme Company for the Liability in respect of which that payment was made, and (2) irrevocably acknowledges that third party's right to assert that it has a Scheme Claim in respect of that Liability, such assignment or letter to be in a form acceptable to the Scheme Manager and to be submitted to them by the third party asserting the relevant Scheme Claim; or

4.4.1.2 the payment was made pursuant to a contractual obligation of such person to the Scheme Company or at the written request of the Scheme Company.

4.4.2 For the avoidance of doubt, any sum in respect of which a person is submitting a claim in accordance with clause 4.4.1.1 or 4.4.1.2 shall be included in the determination of that person's Net Ascertained Claim or Net Debt pursuant to clause 3.2.

#### **4.5 Lloyd's Syndicates**

4.5.1 The Scheme Manager shall treat the members of a Lloyd's Syndicate which has Scheme Claims as if they were a single Scheme Creditor of a Scheme Company in respect of all such Scheme Claims and any Scheme Debt or contingent Scheme Debt which has fallen due or which may fall due to a Scheme Company from that Lloyd's Syndicate.

4.5.2 For the purposes of the Scheme, where the year of account of a Lloyd's Syndicate has been closed by means of a reinsurance to close into the year of

account of another Lloyd's Syndicate or Equitas, the rights and Liabilities of the former Lloyd's Syndicate, including any deemed to be its rights and Liabilities pursuant to this clause 4.5, shall be deemed to be the rights and Liabilities of Equitas or the latter Lloyd's Syndicate as the case may be.

#### 4.6 **Managing General Agents, Lineslip holders, Managers of Underwriting Pools**

4.6.1 The Scheme Manager shall have the power, the exercise of which shall bind Scheme Creditors, to treat those acting, or believed to be acting, on behalf of Scheme Creditors insured or reinsured by the Scheme Company or who reinsured the Scheme Company, including but not limited to, managers of underwriting pools, managing general agents and the holders of Lineslips, Broker's Covers or binding authorities (together, the "**Agency Managers**"), as if they were a Scheme Creditor or debtor in place of the underlying Scheme Creditors unless, prior to taking steps pursuant to the Scheme in relation to such Scheme Creditor or debtor, the Scheme Manager receives notice in a form satisfactory to it in writing from any such Scheme Creditor or debtor that the relevant party has no authority to act on their behalf, or that the relevant party's authority to act on their behalf has come to an end.

4.6.2 The Scheme Manager shall, as an alternative to clause 4.6.1, be entitled to require any Agency Manager to allocate Scheme Claims submitted by it and, where applicable, Scheme Debts, by reference to each of the underlying Scheme Creditors. If the Scheme Manager does not receive sufficient details of the Scheme Claims allocated to each such Scheme Creditor together with any necessary supporting evidence supporting the application the Scheme

Manager shall, for the avoidance of doubt, be entitled to apply the provisions of clause 4.6.3. All Scheme Creditors affected by such allocation pursuant to this clause 4.6.2 shall be bound by the allocation.

4.6.3 Should the Scheme Manager not receive sufficient details of the Scheme Claims allocated to each underlying Scheme Creditor together with any necessary supporting evidence in a form acceptable to the Scheme Manager, from the relevant Agency Manager within 56 days after the Scheme Manager has submitted a requirement pursuant to clause 4.6.2, neither such agent or representative nor any Scheme Creditor on whose behalf such person purports to act shall be entitled to claim in, or receive any payment under, the Scheme in respect of such Scheme Claim(s).

4.6.4 Where the Scheme Manager chooses to exercise its power to require an allocation of Scheme Claims pursuant to clause 4.6.2, it shall not be required to issue any Inwards Valuation Form or Net Valuation Statement or to make any payment under the Scheme until such time, within the 56 days referred to in clause 4.6.3, as the relevant Agency Manager shall have provided it with the information requested, and the time periods under the Scheme shall be extended accordingly. For the avoidance of doubt, the provisions of clause 4.6.3 shall apply after the 56 day period, in the event that the information requested has not been received by the Scheme Manager within the said 56 days.

4.6.5 In the event of doubt as to which of clauses 4.6.1 and 4.6.2 shall apply to an Agency Manager, the decision of the Scheme Manager in this respect shall, so far as the law permits, be final and binding.

#### 4.7 **Allocation**

4.7.1 Where part or all of a Scheme Claim is asserted using an "All-Sums" basis, or an Adjudicator determines that such a basis is appropriate, the Scheme Manager or, as applicable, the Adjudicator will modify the amount so claimed using, as a form of proxy for this basis, "All-Sums Net of Contribution Rights" or "ASCOR", to the extent that this has not already been applied, as set out below.

4.7.2 The ASCOR allocation will be applied so as to produce an amount equivalent to the net cost to the Scheme Company of the claim having been paid on an All-Sums basis by the Scheme Company after reducing it by the amount of contributions attributable to the insurer(s) on the other coverage years. However, where the law of the applicable jurisdiction would so provide in relation to an All-Sums claim being asserted, this calculation will take account of insolvency of such other insurers and/or any uninsured gaps in the policyholder's coverage.

4.7.3 Where permitted and feasible, and where requested to do so by the relevant Scheme Creditor prior to Completion, the Scheme Company will assign such recovery or "contribution" rights to that Scheme Creditor, such assignment to be in a form approved by the Scheme Manager.

## 5. SCHEME MANAGER

### 5.1 The Role of Scheme Manager

5.1.1 The first Scheme Manager shall be Whittington Insurance Services Limited which has given to the Scheme Company, and not withdrawn, its consent to act as Scheme Manager from the Effective Date and has contracted to be bound by the terms of the Scheme to the extent that the same apply to the Scheme Manager. The Scheme Manager shall use any information received by it in its capacity as such only for the purpose of performing its functions under the Scheme and shall not disclose such information to any other person except where necessary for the purposes of the Scheme.

5.1.2 In exercising its powers and carrying out its duties and functions under the Scheme, the Scheme Manager shall act in good faith and with due care and diligence and shall exercise its powers under the Scheme for the purpose of ensuring that the Scheme is operated in accordance with its terms. The Scheme Company undertakes to be bound by the acts and decisions of the Scheme Manager pursuant to the Scheme.

5.1.3 Subject to its terms of engagement, the Scheme Manager shall have the power to manage and control the business and affairs of the Scheme Company in relation to, and for the purposes of, implementing the Scheme together with the powers specifically conferred on it by the Scheme.

5.1.4 The Scheme Manager shall not have the authority or power to bind the Scheme Company save as set out in the Scheme.

5.1.5 Nothing in the Scheme shall render the Scheme Manager liable for any Liabilities or other obligations of the Scheme Company.

## 5.2 **Specific powers and obligations of the Scheme Manager**

5.2.1 In carrying out its duties and functions under the Scheme, the Scheme Manager shall (without prejudice to the full terms of the Scheme) be empowered:

5.2.1.1 to petition the courts of any jurisdiction to obtain recognition or enforcement of the Scheme or, in connection with the Scheme, to bring, commence or defend any Proceedings in the name of and, in so far as permitted by law, on behalf of the Scheme Company, in any matter affecting the Scheme Company, in any jurisdiction, or to prevent the continuation or commencement of any Proceedings against the Scheme Company or its Property, or any act or the commencement or continuation of any Proceedings to create or enforce a lien against such Scheme Property, and/or to seek such other relief as it deems appropriate or which the relevant court, tribunal or body may grant and, for the avoidance of doubt, this shall include the power to make an application under Chapter 15 of the United States Bankruptcy Code;

5.2.1.2 to the extent that the Court has jurisdiction to determine any such application, to apply to the Court for directions in relation to any particular matter arising under, or in the course of the operation of the Scheme;

- 5.2.1.3 to do all acts, and to execute in the name and, in so far as permitted by law, on behalf of the Scheme Company in connection with the Scheme any deed, transfer, instrument, cheque, bill of exchange, receipt or other document which may be necessary for, or incidental to, the full and proper implementation of the Scheme;
- 5.2.1.4 on behalf of the Scheme Company, to negotiate and enter into agreements for the commutation, compromise, waiver or settlement of Scheme Claims in accordance with clause 3;
- 5.2.1.5 to exercise any other powers necessary for, or incidental to, the full and proper implementation of the Scheme whether in the name of the Scheme Company or otherwise;
- 5.2.1.6 to delegate all or any of its powers with the prior written agreement of the Scheme Company;
- 5.2.1.7 to do all other things incidental to the exercise of the foregoing powers; and
- 5.2.1.8 in the event that the Scheme Manager does not or is unable to exercise any of its powers, the Scheme Company may exercise such powers.



### 5.3 **Vacation of Office**

The office of Scheme Manager shall be vacated forthwith if the appointee shall:

- 5.3.1 resign by giving 90 days' notice in writing to the Scheme Company or such shorter period of notice as may be agreed by the Scheme Company; or
- 5.3.2 be removed by the Scheme Company; or
- 5.3.3 be subject to a Termination Event.

### 5.4 **Appointment of Replacement Scheme Manager**

In the event of a vacancy in the office of Scheme Manager, the Scheme Company shall as soon as reasonably practicable appoint a replacement Scheme Manager provided that such replacement Scheme Manager is, in the reasonable opinion of the Scheme Company, suitably qualified, has no conflict of interest in relation to the appointment and consents so to act. Without prejudice to the foregoing, in the event of a vacancy in the office of Scheme Manager, pending the appointment of a replacement Scheme Manager, all of the functions of the Scheme Manager shall be exercised by the Scheme Company.

## 6. THE ACTUARIAL ADJUDICATOR AND THE SCHEME ADJUDICATOR

### 6.1 The Actuarial Adjudicator

6.1.1 The first Actuarial Adjudicator shall be David Hindley of Deloitte LLP, who has given to the Scheme Company and not withdrawn, his consent to act as Actuarial Adjudicator from the Effective Date and has contracted to be bound by the terms of the Scheme to the extent that the same apply to the Actuarial Adjudicator.

6.1.2 There shall be one Actuarial Adjudicator, who shall have the powers, rights, duties and functions conferred upon him by the Scheme. In exercising his powers and carrying out his duties and functions under the Scheme, the Actuarial Adjudicator shall act in good faith and with due care and shall exercise his powers under the Scheme for the purpose of ensuring that the Scheme is operated in accordance with its terms.

6.1.3 Unless the context otherwise requires, references in the Scheme to the Actuarial Adjudicator shall be construed as referring to the Actuarial Adjudicator or any alternate or additional Actuarial Adjudicator who is carrying out or is appointed to carry out the functions of the Actuarial Adjudicator in relation to any particular matter.

6.1.4 The Actuarial Adjudicator shall:

6.1.4.1 be a Fellow or equivalent of an actuarial association recognised by the International Actuarial Association;

- 6.1.4.2 have at least 10 years experience of property/casualty insurance business;
  - 6.1.4.3 possess demonstrable understanding of claims reserving and run-off liabilities;
  - 6.1.4.4 (save in relation to the first Actuarial Adjudicator, David Hindley of Deloitte LLP), not be either an individual who has been employed in relation to the business subject to the Scheme or an employee of a firm which has provided professional services in relation to such business to either the Scheme Company or the relevant Scheme Creditor in the period one year prior to the proposed appointment as Actuarial Adjudicator; and
  - 6.1.4.5 be a different person from, and not in the same firm or organisation as, the Scheme Adjudicator.
- 6.1.5 The Actuarial Adjudicator shall adjudicate on all matters submitted to him in accordance with the provisions of the Scheme.
- 6.1.6 The Actuarial Adjudicator shall use any information received by him in his capacity as such only for the purpose of performing his functions under the Scheme and shall not disclose such information to any other person except where necessary for the purposes of the Scheme.

## 6.2 The Scheme Adjudicator

6.2.1 In relation to each Adjudication for which a Scheme Adjudicator is required, that Scheme Adjudicator shall:

6.2.1.1 subject to clause 6.2.2, be an individual agreed between the Scheme Manager and the relevant Scheme Creditor in relation to such Adjudication;

6.2.1.2 not be an individual who has been employed by or has provided services (other than as mediator) to the Scheme Company or the relevant Scheme Creditor in the period one year prior to the Effective Date;

6.2.1.3 not be ineligible by reason of any matters referred to in clauses 6.3 and 6.4 to act as Scheme Adjudicator; and

6.2.1.4 be an individual who consents to the appointment.

6.2.2 In the event that the Scheme Manager and the relevant Scheme Creditor are unable to agree on a mutually acceptable Scheme Adjudicator pursuant to clause 6.2.1 after trying to reach agreement for twenty-one days following a decision to refer a matter to Adjudication, the Scheme Manager shall request the Chief Executive of CEDR to nominate a Scheme Adjudicator in accordance with the requirements set out in clause 6.2.1.2 to 6.2.1.4 and to assist in their doing so shall furnish them with a brief written statement setting out the issues which shall be involved in the Adjudication. Should the Chief Executive of CEDR for any reason be unavailable or unable to make the

appointment or fail to do so within what the Scheme Manager considers in its absolute discretion to be a reasonable time, or, if for any reason the nominated Scheme Adjudicator is unavailable or unwilling to act, the Scheme Manager shall request such other independent person or body as it shall in its reasonable opinion consider appropriate to make the nomination. Provided that he consents to act as a Scheme Adjudicator, the person nominated shall be appointed as a Scheme Adjudicator by the Scheme Manager in respect of the relevant dispute.

6.2.3 In exercising his powers and carrying out his duties and functions under the Scheme, a Scheme Adjudicator shall act in good faith, and with due care and diligence, and shall exercise his powers under the Scheme for the purpose of ensuring that the Scheme is operated in accordance with its terms.

6.2.4 In the event of a vacancy in the office of a Scheme Adjudicator during an Adjudication being conducted by him, the Scheme Manager shall, and the Scheme Company shall if the Scheme Manager does not, within 28 days, appoint a replacement Scheme Adjudicator in accordance with clauses 6.2.1 and 6.2.2. The relevant time periods in clause 2.11 shall restart on the date that such replacement Scheme Adjudicator is appointed.

### **6.3 Conflicts of interest affecting a Scheme Adjudicator or the Actuarial Adjudicator**

6.3.1 Neither a Scheme Adjudicator nor the Actuarial Adjudicator shall act in relation to any matter in which they have a conflict of interest. In the event that the Actuarial Adjudicator or Scheme Adjudicator shall become aware that

he has a conflict of interest in relation to any matter referred to him for determination, or has any other good reason why it may be inappropriate for him to Adjudicate such matter, he shall inform the Scheme Manager and the Scheme Creditor concerned of such conflict or objection forthwith, and the Scheme Manager shall:

6.3.1.1 in the case of a Scheme Adjudicator, as soon as reasonably practicable ask the Chief Executive of CEDR to nominate a substitute Scheme Adjudicator in relation to the relevant matter in accordance with the terms of clause 6.2.2. If the Chief Executive of CEDR is, for any reason, unavailable or unable to make the nomination, or fails to do so within what the Scheme Manager considers in its absolute discretion to be a reasonable time, or the nominated Scheme Adjudicator is unable or unavailable to act as Scheme Adjudicator, the Scheme Manager shall ask such other independent person or body as it shall reasonably deem appropriate to make the nomination. Provided that he consents to act as a Scheme Adjudicator, the person nominated shall be appointed as a Scheme Adjudicator by the Scheme Manager in respect of the relevant dispute.

6.3.1.2 in the case of the Actuarial Adjudicator, as soon as reasonably practicable, ask the President of the Institute of Actuaries to nominate a substitute Actuarial Adjudicator. Provided he is duly qualified in the reasonable opinion of the Scheme Manager, has no

conflict of interest in relation to the appointment, is not ineligible for any of the reasons set out in clauses 6.4.1.1 to 6.4.1.5 and consents to act as Actuarial Adjudicator, the person nominated by the President of the Institute of Actuaries shall be appointed as Actuarial Adjudicator by the Scheme Manager. If, for any reason, the President for the time being of the Institute of Actuaries is, for any reason, unavailable or unable to make the nomination or fails to do so within what the Scheme Manager properly considers to be a reasonable time, or the nominated Actuarial Adjudicator is unable or unavailable to act as Actuarial Adjudicator, the Scheme Manager shall, as soon as practicable, appoint as substitute Actuarial Adjudicator, an individual who is, in its reasonable opinion, duly qualified to discharge the function of Actuarial Adjudicator, has no conflict of interest in relation to the appointment, is not disqualified for any of the reasons set out in clauses 6.4.1.1 to 6.4.1.5 and consents to act as Actuarial Adjudicator. A replacement Scheme Adjudicator or Actuarial Adjudicator appointed in the event of a conflict of interest shall only act for the purpose of dealing with the disputed matters which are the subject of the conflict of interest.

- 6.3.2 In respect of the matter on which the conflict arises, the relevant time periods in clause 2.11 shall be suspended while the process described in clause 6.3.1 is carried out and shall restart on the date that such alternate or replacement Scheme Adjudicator or Actuarial Adjudicator is appointed.

## 6.4 Vacation of office by a Scheme Adjudicator or the Actuarial Adjudicator

6.4.1 The office of Scheme Adjudicator or Actuarial Adjudicator shall be vacated forthwith if:

- 6.4.1.1 a Termination Event occurs in relation to the appointee;
- 6.4.1.2 the appointee resigns his or its office, as the case may be, by giving 90 days' notice in writing to the Scheme Manager or such shorter period of notice as may be agreed by the Scheme Company;
- 6.4.1.3 the appointee is removed for good cause (which shall include, in relation to the Actuarial Adjudicator, leaving the firm in which he was an Employee at the date on which he became Actuarial Adjudicator) by the Scheme Manager;
- 6.4.1.4 the appointee becomes an Employee of the Scheme Company or of the Scheme Manager or (excluding for this purpose the current role of the person considered) of any of a Scheme Adjudicator or Actuarial Adjudicator; or
- 6.4.1.5 in the case of the Actuarial Adjudicator only, the appointee ceases to be a Fellow of an actuarial body which is affiliated to the International Actuarial Association.



## **6.5 Appointment of replacement Scheme Adjudicator or Actuarial Adjudicator**

6.5.1 In the event that the office of Scheme Adjudicator or Actuarial Adjudicator is vacated, the provisions of clause 6.3.1.1 and 6.3.1.2 with regard to the replacement of the Scheme Adjudicator or Actuarial Adjudicator as the case may be, shall apply.

6.5.2 The relevant time periods in clause 2.11 shall be suspended until the date such replacement is appointed.

## **6.6 Appointment of additional Scheme Adjudicator or Actuarial Adjudicator**

In the event that in the view of the Scheme Manager, the Scheme Adjudicator or the Actuarial Adjudicator is unlikely to be able to complete the Adjudication of one or more matters referred to him within the required timescale, the Scheme Manager may appoint an additional Scheme Adjudicator or Actuarial Adjudicator, as the case may be, in accordance with the provisions of clauses 6.3.1.1 and 6.3.1.2. Such additional Adjudicator shall only act in respect of the Disputed Claims referred to him by the Scheme Manager.

## **7. COMPLETION AND GENERAL PROVISIONS**

### **7.1 Validity of acts of the Released Parties**

7.1.1 Subject to any applicable provision of the Companies Act or the Insolvency Act and so far as the law permits, no Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done by the Released Parties in connection with the Scheme and/or (where appropriate) the Creditors' Meetings and the Released Parties shall not be liable for any loss suffered by any Scheme Creditor or third party, unless such loss is attributable to their fraud or dishonesty. Accordingly, no Scheme Creditor shall bring or institute any Proceedings, claims or complaints against the Released Parties save with respect to any such fraud or dishonesty.

7.1.2 Notwithstanding a subsequent discovery that a Released Party was not eligible for his role pursuant to or in connection with the provisions of the Scheme, all acts done by them or any of them prior to such discovery shall be valid as if every such person was so eligible.

7.1.3 For the avoidance of doubt, the provisions of clauses 7.1.1 and 7.1.2 apply to alternate, additional and replacement Released Parties.

### **7.2 Notice of impending completion on the Website**

When it believes that the Scheme has been implemented in accordance with its terms and that the provisions of clauses 2 and 3 have been complied with, the Scheme Manager shall, at least 56 days' prior to the date on which it is proposed that the Scheme be declared complete, cause to be posted on the Website, a notice stating the

date on which it is proposed that the Scheme will be declared complete. On such date the Scheme Manager shall certify in writing to the Scheme Company that the Scheme has been implemented in accordance with its terms and the Scheme will thereupon be complete and the provisions of clause 7.3 shall then apply to it.

### 7.3 **Completion of the Scheme**

7.3.1 Upon the issue of a written certificate pursuant to clause 7.2, the Scheme shall be complete and so far as the law permits, all obligations and Liabilities of the Released Parties in connection with or pursuant to the Scheme shall cease and be released absolutely. Any such obligation which has not been fulfilled in accordance with the Scheme by the Completion Date shall nonetheless be deemed to have been correctly and fully performed and no Scheme Creditor shall have any claim in respect of it or any loss arising from it.

7.3.2 Following the Completion Date, no Scheme Creditor shall be entitled to any claim on, recovery from, or interest in, any Security, guarantee or indemnity in respect of a Scheme Claim or otherwise to make any claim or receive payment in respect of a Scheme Claim.

7.3.3 The Scheme Manager shall display any notice of completion on the Website from the date on which it was issued until the date 12 months after the issue of the notice of completion pursuant to clause 7.2.

7.3.4 Notwithstanding any other provisions of the Scheme:

7.3.4.1 Scheme Creditors shall, if so requested by the Scheme Company, following the Completion Date execute a Deed of Release of the

obligations of any guarantor of the Scheme Company's obligations to pay Scheme Claims; and

7.3.4.2 each Scheme Creditor hereby authorises the Scheme Company to execute a Deed of Release in the form of that at Appendix G, on its behalf in the event that the Scheme Company does not receive one within 21 days of requesting it pursuant to clause 7.3.4.1.

7.3.5 The benefit of the right to call for a Deed of Release under clause 7.3.4, and the benefit of the rights to enforce the provisions of clause 7.3.2, insofar as they relate to claims or recoveries from guarantors, shall be held on trust by the Scheme Company for each guarantor of its obligations to pay Scheme Claims. These rights shall be enforceable by the beneficiaries of such trust as well as the trustee. The beneficiary shall have sole and irrevocable power to replace the trustee.

#### 7.4 **Insolvency Event**

The occurrence of an Insolvency Event shall have no effect on the operation of the Scheme which shall, so far as permitted by law, continue in full force and effect until completed in accordance with clause 7.3 save that the obligation to make payments under clause 3.5 shall be replaced by an obligation to make such payments as shall be permitted in the insolvency of the Scheme Company and Scheme Creditors shall, insofar as the law permits, be bound by the calculation of their Net Ascertained Claim or Net Debt as the case may be.

## 7.5 **Co-operation between parties**

The Scheme Creditors, Scheme Manager, Scheme Adjudicator, Actuarial Adjudicator and the Scheme Company shall co-operate with each other and provide such assistance and information as any of them may reasonably require in connection with the Scheme and the enforcement of obligations owed to the Scheme Company pursuant to the Scheme including, but not limited to, the provision of information and documents in connection with Scheme Claims and the operation of the Scheme. Each Scheme Creditor is deemed to acknowledge that its obligations under the Scheme shall continue in the event that it becomes a Net Debtor.

## 7.6 **Prohibited payments**

7.6.1 For the avoidance of doubt, where the Scheme Company is prevented by any law or regulation imposing international sanctions or prohibitions promulgated by any jurisdiction to which the Scheme Company is subject, from making a payment to a Scheme Creditor or otherwise complying with any term of the Scheme, the requirements of such law or regulation shall override the terms of the Scheme and for the avoidance of doubt, compliance with such law or regulation will constitute full discharge of such Scheme Creditor's Scheme Claims under the Scheme.

7.6.2 Any Blocked Monies shall be applied by the Scheme Company in accordance with the requirements of such law or regulation or the instructions of the relevant authority. The Scheme Company shall be under no obligation to make any application to the relevant authority for a waiver of such law or regulation in any particular case.

7.6.3 In the event that the applicable law or regulation does not contain provisions as to how to deal with Blocked Monies, the Scheme Company shall, prior to the Completion Date, hold them in an account with a United Kingdom clearing bank until such time prior to the Completion Date as the Scheme Company is instructed by the relevant authority as to how to deal with the Blocked Monies or it becomes legal to pay them to the relevant Scheme Creditor. Any interest earned on such account shall be applied at the discretion of the Scheme Company. In the event that no such instruction is received prior to the Completion Date, the Blocked Monies shall be paid to the Charity as soon as reasonably practicable following the Completion Date and the relevant Scheme Creditor shall cease to have any entitlement to them. The Scheme Claim in respect of which such Blocked Monies would otherwise have been payable shall be deemed to be cancelled and the Scheme Creditor shall have no rights in respect of it.

## 7.7 Notices

7.7.1 All notices and other written communications and documents required to be sent pursuant to the provisions of the Scheme may be sent by E-mail or by facsimile unless otherwise specifically provided in the Scheme.

7.7.2 Save where otherwise agreed, notices, written communications and documents to be sent to the Scheme Manager and/or a Scheme Company shall be sent by Post to Whittington Insurance Services Limited, 33 Creechurch Lane, London EC3A 5EB marked for the attention of the CUAL Account Manager or such other address as may be notified on the Website from time to time. Where the

Scheme Manager agrees in writing with a Scheme Creditor that a notice, written communication or document to be sent to the Scheme Manager may be sent by facsimile, they shall be sent to +44 (0) 20 7743 0901 or such other facsimile number as may be notified on the Website from time to time and such facsimile transmission shall be clearly marked for the attention of The CUAL Account Manager.

7.7.3 Notices, written communications and documents to be sent to Scheme Creditors may be sent to such address, E-mail address or facsimile number as they notify to the Scheme Manager following the Effective Date and, failing such notification, to such address as may be shown in the Scheme Company's records, or to any other address being the last known address of the Scheme Creditor which the Scheme Manager may reasonably believe is appropriate.

7.7.4 Notices, written communications and documents to be sent to a Scheme Adjudicator by Scheme Creditors shall be addressed to such address as may be notified on the appointment of such Scheme Adjudicator.

7.7.5 Notices, written communications and documents to be sent to the Actuarial Adjudicator may be sent by Post to David Hindley, Deloitte LLP, Hill House, 1 Little New Street, London EC4A 3TR, United Kingdom or sent by facsimile to +44 (0) 207 303 2846, marked for the attention of David Hindley, or sent by E-mail to [dhindley@deloitte.co.uk](mailto:dhindley@deloitte.co.uk), or sent to such other address, fax number or E-mail address as may be notified on the Website from time to time

7.7.6 Notices and any other written communications or documents sent in hard copy by Post to Scheme Creditors pursuant to the Scheme shall be deemed, in the

absence of evidence to the contrary, to have been received by the relevant Scheme Creditor on the second Business Day after despatch, where the Scheme Creditor's address is in the United Kingdom, and on the seventh Business Day after despatch in all other cases, and references to the receipt by a Scheme Creditor of any such notice, communication or document shall be construed accordingly.

- 7.7.7 Any notice or other communication or document sent to a Scheme Creditor by E-mail shall be deemed to have been received twenty-four hours after it is sent, provided the sender has no reasonable grounds for believing it has not been received.
- 7.7.8 Any notice or other communication or document sent to a Scheme Creditor by fax in accordance with clause 7.7.1 shall be deemed to have been received on delivery provided that the sender has no reasonable grounds for believing it had not been delivered.
- 7.7.9 References to a Scheme Creditor's address in this clause are to that Scheme Creditor's address as established in accordance with clause 7.7.2. Notice periods laid down by the Scheme are to be calculated by reference to clear days from the date on which the notice concerned, where applicable, was sent by Post or E-mail in accordance with the terms of the Scheme.
- 7.7.10 A sworn statement by a member of the Scheme Manager's staff or an Adjudicator that an E-mail was sent or that an envelope containing a notice was sent by Post shall be conclusive evidence that the notice was given.



## 7.8 **The Website**

Scheme Creditors shall be bound by, and shall be deemed to accept, the contents of the Legal Disclaimer on the Website relating to its contents and use.

## 7.9 **Modification of the Scheme**

The Scheme Company may, at any hearing by the Court to sanction the Scheme, consent on behalf of the Scheme Creditors to any addition or amendment to the Scheme, including any terms or conditions which the Court may think fit to approve or impose, provided that any such addition or alteration would not materially adversely affect the rights of any Scheme Creditor pursuant to the Scheme.

## 7.10 **Law and jurisdiction**

7.10.1 The Scheme shall be governed by, and construed in accordance with, English law and Scheme Creditors hereby agree that the Court shall (save as provided in clause 7.10.2 and subject to the terms of the Scheme) have exclusive jurisdiction to hear and determine any dispute or Proceedings arising out of the Scheme and the Scheme Creditors hereby submit to the exclusive jurisdiction of the Court for such purposes.

7.10.2 Notwithstanding the provisions of clause 7.10.1, the Scheme Company and the Scheme Manager retain the right to bring Proceedings, in the name of the Scheme Company or otherwise, in the courts of any other country having jurisdiction under its own laws to hear such Proceedings.

7.10.3 In the event of any inconsistency between the terms of the Scheme and any statutory provision, so far as the law permits, the terms of the Scheme shall prevail.

7.10.4 For the avoidance of doubt, nothing in this clause 7.10 shall affect the validity of provisions determining the governing law and jurisdiction which, as between the Scheme Company and any Scheme Creditor, are applicable to the construction of an Insurance Contract.

## APPENDIX A

### SCOPE OF SCHEME - LIABILITIES CONSTITUTING SCHEME CLAIMS

#### 1. THE CUAL POOL

Camomile Underwriting Agencies Limited ("CUAL") was incorporated in the United Kingdom in April 1977. Its principal objects were to carry on the business of insurance agents and brokers, underwriting agents and underwriters. Its principal activity was that of insurance underwriting agent. CUAL ceased underwriting on 31 December 1995, and was subsequently dissolved.

On behalf of the Scheme Companies, CUAL wrote both direct and reinsurance business in the London Market, collectively known as CUAL business, in a pooling arrangement from 1978 to 1995. The business written by the CUAL Pool was predominantly small lines of both direct and facultative non marine business through London Market brokers. The Pool wrote some proportional and excess of loss treaty business. It is believed that all of the Pool business was written in the London Market.

**Sovereign Marine & General Insurance Company Limited ("Sovereign") participated in the CUAL Pool during the period 1989 to 1991. Sovereign is now insolvent. No business written by Sovereign, whether through CUAL or otherwise, is included in the Scheme.**

#### 2. INSURANCE CONTRACT

An Insurance Contract is a contract of insurance, reinsurance or retrocession of any kind entered into before the Effective Date by or on behalf of the Scheme Company or in accordance with which the Scheme Company has assumed a Liability and **(save in the case of Sovereign in respect of which no business written by it, whether through CUAL or otherwise is included in the Scheme and which is included at 3(e) below for information purposes only)** which is within the description of business in paragraph 3 below.

#### 3. SCHEME BUSINESS

Direct and reinsurance business underwritten for, and reinsurance or retrocession of, the Scheme Company during the years set out below by its name, as part of the CUAL Pool.

- (a) Compagnie d'Assurances Maritimes Aeriennes et Terrestres ("CAMAT") (now Allianz Global Corporate & Specialty (France)) – **1978 to 1995;**
- (b) Delvag Luftfahrtversicherungs-AG – **1978 to 1983;**
- (c) Assurances Générales de France I.A.R.T. ("AGF") (now Allianz IARD) – **1980 to 1983;**
- (d) Nürnberger Allgemeine Versicherungs-AG – **1980 to 1983;** and

**(e) Sovereign Marine & General Insurance Company Limited 1989 to 1991.**

**No business written by Sovereign whether through CUAL or otherwise is included in the Scheme.**

The underwriting stamps used for policies written by the CUAL Pool together with the dates on which it is understood they operated from, include those set out below. The Scheme Company is not aware of any other stamps used for the CUAL Pool.

(An underwriting stamp is a facility by which a Scheme Company or number of Scheme Companies agreed to accept a proportion of the liability arising from an insurance contract.)

<b>STAMP</b>						
<b>Code</b>	<b>Period</b>	<b>CAMAT</b>	<b>Delvag</b>	<b>AGF</b>	<b>Nürnberg</b>	<b>Sovereign</b>
C8000	1978-1983	50%	50%			
C8018	1978-1995	100%				
C8026	1980-1983	25%	50%	25%		
C8034	1980-1983	25%	30%	25%	20%	
C8042	1980-1983	50%	30%		20%	
C8067	1989-1991	75%				25%
C8075	1989-1991					100%

## APPENDIX B

**SPECIMEN CLAIM FORM**

in relation to

**THE CUAL SCHEME**

**ALLIANZ GLOBAL CORPORATE & SPECIALTY (FRANCE)**  
**("CAMAT")**

**(known as Compagnie d'Assurances Maritimes Aeriennes et Terrestres**  
**("CAMAT") when writing in the CUAL Pool)**

**ALLIANZ IARD ("AGF")**

**(known as Assurances Générales de France I.A.R.T. ("AGF") when writing**  
**in the CUAL Pool)**

**DELVAG LUFTFAHRTVERSICHERUNGS-AG ("DELVAG")**

**NÜRNBERGER ALLGEMEINE VERSICHERUNGS-AG**  
**("NÜRNBERGER")**

**(THE "SCHEME COMPANIES")**

**Please complete and return this Claim Form together with appropriate supporting evidence to Whittington Insurance Services Limited ("Whittington"), marked for the attention of The CUAL Account Manager. Please contact Whittington if you have any queries regarding the completion or submission of this form. This form may be returned to Whittington:**

**(i) by Post to Whittington Insurance Services Limited, 33 Creechurch Lane, London EC3A 5EB, United Kingdom, or**

**(ii) by E-mail, with an attachment in pdf format showing a scanned image of the completed Claim Form, to [CUAL-Scheme@Whittingtoninsurance.com](mailto:CUAL-Scheme@Whittingtoninsurance.com) or**

**(iii) by facsimile to +44(0) 207 743 0901.**

**Please note that a scanned signature is required if E-mail is the method adopted.**

**Any telephone queries regarding the Claim Form, its completion or submission should be directed to Whittington on +44(0) 207 743 0903.**

**Claim Forms and supporting evidence (as at a date not earlier than 31 December 2008) must be received by the Scheme Manager by no later than the Final Claims Submission Date, after which no new or revised Claim Form will be admitted. The Final Claims Submission Date is 11.59 pm, London Time on 21 February 2011 or, if later, on the first Business Day falling 180 days after (and not including) the Effective Date.**

## GENERAL NOTES AND GUIDANCE FOR COMPLETION OF THE CLAIM FORM

Please note that defined terms used within the Claim Form bear the same meanings as given to them in the Scheme.

- (A) For each Scheme Claim arising under an Insurance Contract in relation to which you are a Scheme Creditor, please complete this Claim Form following the instructions on the following pages. **You should read the instructions carefully.** The numbers in the brackets correspond to the numbered instructions contained on pages 96 to 100 of this form.

**Please complete a separate table for each currency. Use photocopied pages as required.**

### SEE PAGES 96 TO 100 FOR INSTRUCTIONS FOR COMPLETION OF THE CLAIM FORM

- (B) **The Claim Form must be supported by appropriate supporting evidence as at a date not earlier than 31 December 2008.** Supporting evidence must be returned to the Scheme Manager by Post, facsimile or E-mail in accordance with the Scheme by the Final Claims Submission Date. Revised or further supporting evidence will not be accepted after this date, unless it is supplied in response to a request from the Scheme Manager, the Actuarial Adjudicator or a Scheme Adjudicator.
- (C) Scheme Creditors should have regard to the Actuarial Methodology at Appendix D to the Scheme when providing evidence in support of their Scheme Claims. In general, the amount of evidence needed to support large Scheme Claims will be greater than that which is required for smaller Scheme Claims.

For each Insurance Contract on the Claim Form to which a Scheme Creditor adds values it should supply a list of the losses that it is asserting against that Insurance Contract, the values of which should add up to the values asserted for that Insurance Contract on the Claim Form. This list of losses should show, for each loss, the data outlined below:

- CUAL and/or Scheme Creditor policy references which should tie up to the reference that is shown on the Claim Form for the relevant policy.
- For Direct Policies, the loss name or for reinsurance policies, the name of the Original Insured
- Scheme Creditor's Claim Number
- Loss Type
- Date of Loss
- Description of Loss
- Unpaid Claims
- Undiscounted Outstanding
- Undiscounted IBNR

In preparing their supporting evidence Scheme Creditors should have regard to Attachment G of the Actuarial Methodology ("Suggested Supporting Documentation") and they should specify the policy(s) and individual claim(s) or claim types that the supporting evidence refers to.

If Scheme Creditors are unsure as to what evidence to provide in relation to their Scheme Claims, they should contact the Scheme Manager as soon as possible. Section 3 of the Actuarial Methodology gives guidance as to the type of supporting evidence that the Actuarial Adjudicator will require to reach a determination in respect of a Disputed Claim referred to him.

A detailed list of the supporting evidence required is provided in Attachment G of the Actuarial Methodology. Failure to supply such supporting evidence is likely to make it harder for the Scheme Manager to reach agreement as to the value of your claim, making it more likely to become a Disputed Claim. Furthermore, failure to supply sufficient supporting evidence may result in a Disputed Claim being valued at a lower amount by the Actuarial Adjudicator, possibly at zero, and may result in a costs award being made against you by the Actuarial Adjudicator or a Scheme Adjudicator.

Scheme Creditors should give clear justification for the methodology which they have used and the assumptions selected in calculating the value of their Scheme Claims. If Scheme Creditors are unsure as to what evidence to provide in relation to their Scheme Claims, they should contact the Scheme Manager as soon as possible.

- (D) **CLAIMS AND SUPPORTING EVIDENCE MUST BE SUBMITTED AT POLICY LEVEL.**
- (E) Please be aware that the schedule accompanying your Claim Form can also be supplied electronically in Microsoft Excel format by the Scheme Manager. You are strongly encouraged to request this and to enter your data on the Excel spreadsheet, where possible, because this should be easier for you than entering it on the paper spreadsheet. Alternatively, if you so wish, a blank schedule can be downloaded in Microsoft Excel from the Website at [www.CUAL-scheme.co.uk](http://www.CUAL-scheme.co.uk). If you enter your data on the Excel spreadsheet, this should be submitted as described on page 89 of this document, along with the forms on pages 92 to 94 of this document. Please ensure that all documents submitted are marked with the relevant Scheme Creditor name and Creditor Reference.

**Any queries regarding the Claim Form, its completion or submission should be addressed to The CUAL Account Manager, Whittington Insurance Services Limited, 33 Creechurch Lane, London EC3A 5EB, United Kingdom, by phone to +44 (0)20 7743 0903 or by email to [CUAL-Scheme@Whittingtoninsurance.com](mailto:CUAL-Scheme@Whittingtoninsurance.com).**

1. SCHEME CREDITOR'S DECLARATION

**Note:** If you are the duly authorised agent and/or attorney of a Scheme Creditor or a number of Scheme Creditors, please complete a separate Claim Form in respect of each Scheme Creditor which you represent (photocopying the form as many times as necessary), and provide evidence (which must be satisfactory to the Scheme Manager) of your authority to execute the Claim Form on each Scheme Creditor's behalf.

**To the best of my knowledge and belief, the information on this Claim Form as completed, and all supporting evidence and information which I have supplied, including evidence and information supplied or may in future supply in connection with it, is correct and fair.**

Signed: .....

Name: .....

Position/Capacity: .....

For and on behalf of: .....

*(Scheme Creditor name)*

Creditor Reference: ..... *(to be quoted in all future correspondence)*

Date: ..... E-mail: .....

Telephone: ..... Fax: .....

Scheme Creditor Address: .....

.....

.....

**(Note:** On pre-populated forms, the name and address of the Scheme Creditor will have been entered by the Scheme Manager. Please amend if incorrect. Alternatively, where a broker or agent of the Scheme Creditor is completing this form, please enter the name and address of the Scheme Creditor, together with all former names, in block capitals.)



## 2. NET VALUATION STATEMENTS AND CURRENCY ELECTION

<b>Scheme Creditor Name:</b>	<b>Creditor Reference No:</b>
<p><b>Note:</b> Unless you indicate below that you wish to receive a separate Net Valuation Statement from each Scheme Company, you will receive a single Combined Net Valuation Statement, which may result in the setting off of amounts owing from you to one or more Scheme Companies against amounts owing to you by one or more Scheme Companies. If you do tick the box, you will receive separate Net Valuation Statements from the Scheme Companies, and a single payment in respect of the aggregate of the Net Ascertained Claims on such Net Valuation Statements.</p> <p><input type="checkbox"/> <b>Please tick here if you DO NOT wish to receive a Combined Net Valuation Statement, i.e. you wish to receive a separate Net Valuation Statement from each Scheme Company.</b></p> <p><b>Note:</b> You may elect below for your Net Ascertained Claim or Net Debt to be denominated and (in the case of a Net Ascertained Claim) paid in a single Scheme Currency. If you do not do so, it will be denominated and paid in US Dollars or, at the discretion of the Scheme Manager, another Scheme Currency.</p> <p><b>Please indicate with a tick in the relevant box below the Scheme Currency in which you want your Net Ascertained Claim or Net Debt to be denominated and (in the case of a Net Ascertained Claim) paid:</b></p> <p><b>(Please select one currency only)</b></p> <p>CANADIAN DOLLARS    <input type="checkbox"/>    EUROS    <input type="checkbox"/></p> <p>POUNDS STERLING    <input type="checkbox"/>    US DOLLARS    <input type="checkbox"/></p>	

3. **FORM OF PAYMENT**

<b>Scheme Creditor Name:</b>	<b>Creditor Reference No:</b>
<p><b>Note:</b> Payments will be made by bank transfer, at the expense of the Scheme Company, unless you request payment by cheque, or the Scheme Manager considers the cost of making payment by bank transfer to be prohibitively expensive. Please insert a tick in the relevant box below to indicate your preference for payment by bank transfer or by cheque, and provide the requested details to enable the Scheme Manager to make payment in the requested form.</p> <p><input type="checkbox"/> <b>Please make payment by bank transfer to the following account:</b></p> <p>Name of Bank: _____</p> <p>Address of Bank: _____ _____ _____</p> <p>Account in the name of: _____</p> <p>IBAN: _____</p> <p>SWIFT BIC: _____</p> <p>Bank Sort Code: _____</p> <p><input type="checkbox"/> <b>Please make payment by cheque sent by Post:</b></p> <p>Cheque payable to: Name of Addressee: Address: _____ _____</p>	

**CLAIM FORM**

**Scheme Creditor Name**

Creditor Reference:

Address Line 1  
 Address Line 2  
 Address Line 3  
 Address Line 4  
 Address Line 5  
 Address Line 6

① Reference Date: .....

② Currency: .....

Description										Unpaid and Outstanding Claims			IBNR Claims		Total
Class (3)	UW Yr (4)	CUAL Contract Ref(5)	Stamp Code (6)	Stamp Split (8)	(9) Limit Narrative (10) (11) Limit & Excess	Inception & Expiry (12)	Original Insured (13)	Broker Name & Broker Reference 1 Broker Reference 2 (14)	Order & Signed Line(15)	Unpaid Claims (16)	Undiscounted Outstanding Claims (17)	Discounted Outstanding Claims (18)	Undiscounted IBNR Claims (19)	Discounted IBNR Claims (20)	
(7) Signing Number															
<b>Total Number of Contracts = 0</b>										<b>Please Insert Totals</b>					

Stamp Split Key: C = CAMAT, D = DELVAG,  
 A = AGF, N = NURNBERGER

Website: www.cual-scheme.co.uk

Available to Creditor in Excel

02 December 2009

Page 1 of 1

## INSTRUCTIONS FOR COMPLETION OF THE CLAIM FORM

### CLAIMS AND SUPPORTING EVIDENCE MUST BE SUBMITTED AT POLICY LEVEL.

Please note that the terms used within these instructions and in the Claim Form bear the same meanings as given to them in the Scheme.

Scheme Creditors should note that any estimates of the value of their Scheme Claim made on, and evidence provided in connection with, a Claim Form may not be protected by privilege and may be discoverable, for example at the instance of a third party with a claim against the Scheme Creditor, in any action or proceedings to which the Scheme Creditor might be a party. Scheme Creditors should consult their own professional advisers as to the consequences of furnishing such particulars.

Please be aware that the schedule accompanying your Claim Form can also be supplied electronically in Microsoft Excel format by the Scheme Manager. You are strongly encouraged to request this and to enter your data on the Excel spreadsheet, where possible, because this should be easier for you than entering it on the paper spreadsheet. Alternatively, if you so wish, a blank schedule can be downloaded in Microsoft Excel from the Website at [www.CUAL-scheme.co.uk](http://www.CUAL-scheme.co.uk). If you enter your data on the Excel spreadsheet, this should be submitted as described on page 89 of this document, along with the forms on pages 92 to 94 of this document. Please ensure that all documents submitted are marked with the relevant Scheme Creditor name and Creditor Reference.

Please complete your Claim Form in accordance with the following instructions. The numbers below refer to the numbers in brackets on the spreadsheet. Please note that Scheme Claims may be submitted in one or more of the four Scheme Currencies or, if different, the currency of the original contract.

(1) **Reference Date**

The "as at date" of the calculation of your Scheme Claim, being a date not earlier than 31 December 2008.

(2) **Currency**

Please enter the currency in which your claims are submitted. Scheme Claims may be submitted in one or more Scheme Currencies (US Dollars, Euros, Canadian Dollars and Pounds Sterling), or, if different, the currency of the original contract. Please use a different form for each currency in which you wish to submit claims.

(3) **Class**

This is the class of business used by CUAL to record policies in its books.

If you are adding policies please define the class of business using the following table:

<b>Abbreviation</b>	<b>Class</b>
Fire	Fire policies
CAR/EAR	Construction All Risks/ Erection All Risks policies
Liab.	Liability policies
All Risks	All Risk policies
P.A.	Personal Accident policies
Crime	Crime policies
Cont.	Contingency policies
Livestock	Livestock policies
Treaty	Proportional policies

**(4) U/W Year**

The policy underwriting year.

**(5) CUAL Contract Reference**

The CUAL reference number on the Insurance Contract under which any claim(s) not referred to in the accompanying schedule, if applicable, arises.

If you do not have the CUAL reference number, please specify your reference number on the Insurance Contract under which the claim(s) arises and provide a copy of the policy schedule or cover note and the schedule of insurers with particulars of each claim in supporting schedules (where applicable). If you do not have a record of these numbers please obtain them from your broker.

**(6) Stamp Code**

The London Market Underwriting Code for the relevant Insurance Contract.

**(7) Signing Number**

The London Market Signing Date and Number allocated by Xchanging to the original premium when it was processed through the bureau.

**(8) Stamp Split**

The Stamp Split represents the percentage line underwritten or assumed by the relevant Scheme Company under the Insurance Contract.

If only one Scheme Company underwrote the Insurance Contract then enter the appropriate initial to represent that company (using the "Stamp Split Key" shown below and on the policy schedule that accompanied the Claim Form) followed by 100%, for example, for a risk underwritten by just CAMAT you should enter C 100%. However, where more than one Scheme Company participated on the same Insurance Contract, please insert the percentage allocated to each Scheme Company to apportion the value of each of your Insurance Contracts between the Scheme Companies, for example, a risk where the CUAL line was split 25% to CAMAT, 25% to AGF, 30% to Delvag and 20% to Nürnberger should be entered as: C 25%, A 25%, D 30% and N 20%.

Stamp Split Key: C = CAMAT (Allianz Global), D = Delvag, A = AGF (Allianz IARD), N = Nürnberger

(9) **Limit Narrative**

Details or information (not contained in the other columns) which may assist with the identification of the Insurance Contract.

(10) **Limit**

The maximum amount payable under the Insurance Contract, either overall or with reference to a particular section of the Insurance Contract.

(11) **Excess**

The amount or proportion of some or all losses arising under the Insurance Contract that you must bear.

(12) **Inception and Expiry**

The date when each Insurance Contract commenced and expired (i.e. the policy period). In the case of continuous Insurance Contracts or Insurance Contracts of more than 12 months plus odd time, each annual renewal will be shown as a separate Insurance Contract.

(13) **Original Insured**

The name of the original insured under the Insurance Contract.

(14) **Broker Name and Broker Reference**

The name of the London broking company which placed the Insurance Contract.

If you are adding or amending the form and, if the London placing broker is not known, please specify any other broking company or intermediary (if known) who acted on your behalf in relation to the Insurance Contract, and enter, in addition, either "placing broker" or "other" as applicable.

There is also space to enter two broker's contract references for each Insurance Contract. There are two spaces available for each contract because London brokers

will often quote two references when placing business and these will help the Scheme Manager to identify any contracts you have added. If you do not have a record of these references please obtain them from your broker.

**(15) Order and Signed Line**

The percentage of the Insurance Contract which was placed in the London Market and the line underwritten by the CUAL Pool.

**WHEN ENTERING INFORMATION IN RESPECT OF AN INSURANCE CONTRACT NOT ALREADY LISTED, PLEASE DO SO IN THE SAME FORMAT AS THE PRE-POPULATED FORM ATTACHED, IN ACCORDANCE WITH THE NOTES ABOVE.**

**(16) Unpaid Claims**

The value of a Scheme Claim which is valid and due having been agreed by the Scheme Creditor and the party to which it is due and paid or discharged by the Scheme Creditor, but which has not been paid or discharged by the Scheme Company.

If you consider that any values shown in respect of Unpaid Agreed Claims (defined in the paragraph below) in the accompanying schedule are incorrect, state the amounts which you have arising under each Insurance Contract.

An Unpaid Agreed Claim is any claim arising under or balance in relation to an Insurance Contract which, as at the Effective Date, is valid and due having been agreed by or on behalf of the Scheme Company and the party to which it is due, but which has not been paid or discharged by the operation of set-off or otherwise.

**(17) Undiscounted Outstanding Claims**

Enter the undiscounted value, as at the Reference Date selected by you, in respect of losses notified to you for which you assert that an amount will become due for payment to you by the Scheme Company as a Scheme Claim, excluding any amounts already included in Unpaid Claims.

**(18) Discounted Outstanding Claims**

Enter the value of the losses in column (17) following the application of a discount to reflect the time value of money. Please refer to Appendix E of the Scheme for the Scheme discount percentage for each claim type and apply the relevant discount percentages to each claim type making up the overall discounted value. Alternatively, you may apply your own discount percentage, in which case you are requested to provide documentation supporting your discount percentage.

**(19) Undiscounted IBNR Claims**

Enter the undiscounted value, as at the Reference Date selected by you, of Scheme Claims in respect of losses which have been incurred by you, but not notified to you, for which you assert that an amount will become due for payment to you by the

Scheme Company as a Scheme Claim, excluding any amounts already included in columns (16) or (18) and provide particulars of your estimates in supporting schedules.

**(20) Discounted IBNR Claims**

Enter the value of the losses in column (19) following the application of a discount to reflect the time value of money. Please refer to Appendix E of the Scheme for the Scheme discount percentage for each claim type and apply the relevant discount percentages to each claim type making up the overall discounted value. Alternatively, you may apply your own discount percentage, in which case you are requested to provide documentation supporting your discount percentage.

**(21) Total**

Enter the total of columns 16, 18 and 20.



## APPENDIX C

## SAMPLE NET VALUATION STATEMENT

**CUAL Pool Scheme [Combined] Net Valuation Statement**

SCHEME CREDITOR:	pre-populated name
REF:	pre-populated
Date Issued:	dd/mm/yyyy

**[You have opted to receive a single Net Valuation Statement from the Scheme Companies, therefore you are being sent a Combined Net Valuation Statement, aggregating the amounts due to and from you in respect of the Scheme Companies' CUAL business. This may result in the setting off of amounts owing from you to one or more Scheme Companies against amounts owing to you by one or more Scheme Companies.]**

**You will receive a single payment from the Scheme Companies in the amount of the aggregate Net Ascertained Claim shown on your Combined Net Valuation Statement in full and final settlement of the amounts payable pursuant to the Schemes of each of the relevant Scheme Companies.]**

***OR***

**[You have opted to receive a separate Net Valuation Statement from each Scheme Company, therefore you are being sent a separate Net Valuation Statement in respect of each Scheme Company against which you have submitted Scheme Claims.]**

**You will receive a single payment from the Scheme Companies from which you have received a Net Valuation Statement, in the amount of the total of the Net Ascertained Claims shown on the Net Valuation Statements, in full and final settlement of the amounts payable pursuant to the Schemes of each of the relevant Scheme Companies. For the avoidance of doubt, Net Debts will not be set off against this amount and will remain due.]**

Capitalised terms not defined in this [Combined] Net Valuation Statement have the meaning defined in the Scheme.

**Substantive Disputes:** You may dispute any of the amounts set out on this [Combined] Net Valuation Statement, other than the amounts set out in Table 1 and in rows 1 to 3 of Table 2, on substantive grounds by sending notice in writing to be received by the Scheme Manager **within 21 days of the date of this [Combined] Net Valuation Statement.** This written notice must set out the matters which are not agreed and the reasons for failing to agree such matters and provide any relevant additional available evidence.

**Manifest Error**: You may also dispute any item on the [Combined] Net Valuation Statement on the basis of Manifest Error, in which case the dispute must be notified **within 14 days of the date of this [Combined] Net Valuation Statement**, setting out such details of the Manifest Error as are necessary for the Scheme Manager to investigate and correct it.

**If no notice disputing the [Combined] Net Valuation Statement is received by the Scheme Manager within 21 days of the date of the [Combined] Net Valuation Statement or, (if applicable), within 14 days of the revised [Combined] Net Valuation Statement, it will be deemed to be accepted by you and will become final and binding on both you and the Scheme Company in accordance with the Scheme.**

Please send any notice disputing a [Combined] Net Valuation Statement to the Scheme Manager, marked for the attention of "The CUAL Account Manager" either:

- By Post: Whittington Insurance Services Limited, 33 Creechurch Lane, London EC3A 5EB United Kingdom, or
- By E-mail: [CUAL-Scheme@Whittingtoninsurance.com](mailto:CUAL-Scheme@Whittingtoninsurance.com)

**CUAL Pool Scheme Combined Net Valuation Statement**

RELEVANT SCHEME COMPANIES	pre-populated names
SCHEME CREDITOR:	pre-populated name
REF:	pre-populated
Date Issued:	dd/mm/yyyy
Relevant Currency:	pre-populated

Note: positive values are in your favour; negative values (in brackets) are in favour of the Scheme Companies.

<b><u>Table 1: Agreed Claims</u></b>			
<b><u>Policy/Claim ref.</u></b>	<b><u>Description</u></b>	<b><u>Currency</u></b>	<b><u>Agreed Claim</u></b>
<b><u>Total Agreed Claims</u></b>			

Please note that the values set out in Table 1 can be disputed only on the basis of Manifest Error.

Please refer to the guidance notes attached for further information as to each item in Table 2 (the numbers in the left hand column of the table refer to the relevant number in the guidance notes.)

<b>Table 2: Application of set-off and other adjustments to Agreed Claims</b>				
<b><u>Note no.</u></b>	<b><u>Item</u></b>	<b><u>Description</u></b>	<b><u>Currency</u></b>	<b><u>Amount</u></b>
1)	Total Undiscounted Agreed Claims			
2)	Amount of Discount			
<b>3)</b>	<b>Total Agreed Claims (1+2)</b>			
<b>4)</b>	<b>Total Scheme Debts</b>			
5)	Set-off			
6)	Security			
7)	Adjudicators' fees and expenses			
8)	Advance payments			
9)	Tax adjustments			
10)	Other adjustments			
<b>11)</b>	<b>Sub total (of 5+6+7+8+9+10)</b>			
12)	<b><u>Net Ascertained Claim or Net Debt</u></b> (3+4+11, in the Relevant Currency)			

Signed by the Scheme Manager: .....

Date: .....

**Whittington Insurance Services Limited**

**CUAL Pool Scheme Net Valuation Statement**

SCHEME COMPANY	pre-populated name
SCHEME CREDITOR:	pre-populated name
REF:	pre-populated
Date Issued:	dd/mm/yyyy
Relevant Currency:	pre-populated

Note: positive values are in your favour; negative values (in brackets) are in favour of the Scheme Company.

<b><u>Table 1: Agreed Claims</u></b>			
<b><u>Policy/Claim ref.</u></b>	<b><u>Description</u></b>	<b><u>Currency</u></b>	<b><u>Agreed Claim</u></b>
<b><u>Total Agreed Claims</u></b>			

Please note that the values set out in Table 1 can be disputed only on the basis of Manifest Error.

Please refer to the guidance notes attached for further information as to each item in Table 2 (the numbers in the left hand column of the table refer to the relevant number in the guidance notes.)

<b>Table 2: Application of set-off and other adjustments to Agreed Claims</b>				
<b><u>Note no.</u></b>	<b><u>Item</u></b>	<b><u>Description</u></b>	<b><u>Currency</u></b>	<b><u>Amount</u></b>
1)	Total Undiscounted Agreed Claims			
2)	Amount of Discount			
<b>3)</b>	<b>Total Agreed Claims (1+2)</b>			
<b>4)</b>	<b>Total Scheme Debts</b>			
5)	Set-off			
6)	Security			
7)	Adjudicators' fees and expenses			
8)	Advance payments			
9)	Tax adjustments			
10)	Other adjustments			
<b>11)</b>	<b>Sub total (of 5+6+7+8+9+10)</b>			
12)	<b><u>Net Ascertained Claim or Net Debt</u></b> (3+4+11, in the Relevant Currency)			

Signed by the Scheme Manager: .....

Date: .....

**Whittington Insurance Services Limited**



### **CUAL Pool Scheme Valuation Statement Guidance Notes**

<b>Note no.</b>	<b>Comment</b>
1)	<p><b><u>Total Undiscounted Agreed Claims</u></b></p> <p>The total of the Scheme Creditor's Undiscounted Agreed Claims. Please note this amount can only be disputed on the basis of Manifest Error.</p> <p>(Clause 3.2.1.1 of the Scheme)</p>
2)	<p><b><u>Amount of Discount</u></b></p> <p>The amount of the discount to be applied to the total Undiscounted Agreed Claims to arrive at the total Agreed Claims. Please note this amount can only be disputed on the basis of Manifest Error.</p> <p>(Clause 3.2.1.2 of the Scheme).</p>
3)	<p><b><u>Total Agreed Claims</u></b></p> <p>The aggregate amount of the Scheme Creditor's Agreed Claims in the Relevant Currency. Please note this amount can only be disputed on the basis of Manifest Error.</p> <p>(Clause 3.2.1.3 of the Scheme)</p>
4)	<p><b><u>Total Scheme Debts</u></b></p> <p>The aggregate amount of the Scheme Creditor's Scheme Debts (if any), in the Relevant Currency.</p> <p>(Clause 3.2.1.4 of the Scheme)</p>
5)	<p><b><u>Set-off</u></b></p> <p>The amount of adjustments reflecting payments by or to the Scheme Company or transactions effecting netting off or set-off in respect of a Scheme Creditor's Agreed Claims prior to the date of the Net Valuation Statement.</p> <p>(Clause 3.2.1.5 of the Scheme)</p>
6)	<p><b><u>Security</u></b></p> <p>The amount of any Scheme Claims which have been satisfied by the application of Security since the Effective Date and the amount of any Security to be deducted from the total of such Scheme Creditor's Agreed Claims with the intention that the Scheme Creditor will draw down or realise the Security in that amount.</p> <p>(Clause 3.2.1.6 of the Scheme)</p>
7)	<p><b><u>Adjudicators' fees and costs</u></b></p> <p>The amount of any sums in respect of the Actuarial Adjudicator's or a Scheme Adjudicator's unpaid remuneration, costs and expenses pursuant to clause 2.13.4 to be deducted from the total of such Scheme Creditor's Agreed Claims.</p> <p>(Clause 3.2.1.7 of the Scheme)</p>

Note no.	Comment
8)	<p><b><u>Advance payments</u></b></p> <p>The amount of any advance payment treated as having been received by the Scheme Creditor for the purposes of clause 4.1.2 or 4.1.3 which is to be deducted from the total of such Scheme Creditor's Agreed Claims.</p> <p>(Clause 3.2.1.8 of the Scheme)</p>
9)	<p><b><u>Tax adjustments</u></b></p> <p>Any amounts which are required to be deducted or withheld by the Scheme Company for or on account of Tax in respect of Admissible Interest.</p> <p>(Clause 3.2.1.9 of the Scheme)</p>
10)	<p><b><u>Other adjustments</u></b></p> <p>Any other amounts in relation to Scheme Claims or Scheme Debts not expressly referred to above which the Scheme Manager considers ought to be taken into account for the purpose of calculating the Scheme Creditor's Net Ascertained Claim or Net Debt, as the case may be.</p> <p>(Clause 3.2.1.10 of the Scheme)</p>
11)	<p><b><u>Sub-Total</u></b></p> <p>The sum of 5+6+7+8+9+10 above.</p>
12)	<p><b><u>Scheme Creditor's Net Ascertained Claim or Net Debt</u></b></p> <p>The final balance following aggregation of the amounts referred to above, which shall be the Scheme Creditor's Net Ascertained Claim or Net Debt, as the case may be. Where, for the purpose of aggregating the amounts referred to above, the Scheme Manager is required to set off amounts denominated in different currencies, the amounts to be set off shall be converted into the Relevant Currency at the Scheme Rate.</p> <p>(Clause 3.2.1.11 of the Scheme)</p>

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## 1. **Purpose**

The purpose of this Appendix is to outline the process to be applied by the Actuarial Adjudicator where a Scheme Claim (or part thereof) has been referred to him as a Disputed Claim in accordance with clause 2.10.1. In particular, it describes the methodologies that may be used by the Actuarial Adjudicator and provides a guide to the evidence that a Scheme Creditor will be expected to provide to support its Disputed Claim.

Scheme Creditors are advised to read this Appendix in its entirety. If any Scheme Creditor is in doubt as to any aspect of this Appendix or as to the action they should take, then they should consider seeking appropriate professional actuarial or other advice.

The Actuarial Adjudicator will use an Enhanced Discounted Best Estimate basis as defined in the Scheme for the purpose of reaching his determination in respect of Disputed Claims that are referred to him.

Capitalised terms defined in the Scheme bear the same meanings within this Appendix, except where indicated otherwise. Attachment H contains a list of terms defined within the Actuarial Methodology.

## 2. **Actuarial Adjudication Process**

### 2.1 **Introduction**

This section describes the process to be applied by, and the methodologies that may be used by the Actuarial Adjudicator, where a Scheme Claim (or part thereof) has been referred to him as a Disputed Claim in accordance with clause 2.10.1.

This section focuses mainly on IBNR Claims and Outstanding Claims with a contingent element as it is expected that these will be the most common types of claims that might be referred to the Actuarial Adjudicator. However, it should be noted that a Scheme Claim (or part thereof) that has been referred to the Actuarial Adjudicator as a Disputed Claim may involve claims other than IBNR Claims and Outstanding Claims with a contingent element.

### 2.2 **Review Process Adopted by the Actuarial Adjudicator for Disputed Claims**

The Actuarial Adjudicator will apply the processes described in this section in a consistent way for all Disputed Claims that are referred to him. In particular, the methodology and assumptions applied by the Actuarial Adjudicator will, all other things being equal, be the same across the same claim types for different Scheme Creditors where a Disputed Claim has been referred to him.

The following steps will be applied to all Disputed Claims referred to the Actuarial Adjudicator:

- (a) The Actuarial Adjudicator will review the information provided to him by the Scheme Manager pursuant to clause 2.9.6. This information should include copies of all supporting evidence provided by the relevant Scheme Creditor in

relation to its Scheme Claim (other than any information which the Scheme Creditor has stated on its Dispute Notice does not need to be supplied to the Actuarial Adjudicator) and the Scheme Manager's submissions and evidence in relation to the Disputed Claim.

- (b) The Actuarial Adjudicator will review any further written responses to the submissions in paragraph (a) (if any) which he receives from the Scheme Creditor and the Scheme Manager, pursuant to clause 2.9.8, provided they are received within the time limits stipulated in such clause.
- (c) The Actuarial Adjudicator will ascertain which element of the Scheme Claim (if not all of it) requires review by him as the Disputed Claim based on the Dispute Notice (e.g. some part of the Scheme Claim may be agreed between the Scheme Manager and the Scheme Creditor, whilst certain elements may not).
- (d) Where a Disputed Claim contains elements of fact or law which have previously been referred to a Scheme Adjudicator and determined by him, the Actuarial Adjudicator will be bound by the decision of the Scheme Adjudicator and shall apply that decision when making his own determination.
- (e) Where a Disputed Claim contains elements of fact or law and the Scheme Creditor and Scheme Company have not objected to these matters being determined by the Actuarial Adjudicator alone, then the Actuarial Adjudicator will follow the process described in section 2.4.
- (f) If deemed necessary by the Actuarial Adjudicator, he may request in writing from the Scheme Manager, the Scheme Company and/or the relevant Scheme Creditor such further supporting evidence as he may reasonably require in accordance with clause 2.11.2.
- (g) The Actuarial Adjudicator will review any further supporting evidence and any written responses he receives from the Scheme Manager, the Scheme Company and/or the relevant Scheme Creditor in accordance with clause 2.11.2, providing they are received within the time limits detailed in such clause.
- (h) The steps in paragraphs (f) and (g) may form part of an iterative process if deemed necessary by the Actuarial Adjudicator. For example, the further supporting evidence provided may lead to the need for the Actuarial Adjudicator to request additional supporting evidence.
- (i) Taking into account all of the supporting evidence and written responses received from the Scheme Manager, the Scheme Company and/or the relevant Scheme Creditor, the Actuarial Adjudicator will reach his determination in respect of the Disputed Claim. The methodologies that the Actuarial Adjudicator will apply to review and reach a determination in relation to a Disputed Claim are described further in section 2.3 and in Attachments A to F. In reaching his determination, the Actuarial Adjudicator will assess the reasonableness of the methodology and assumptions employed by the Scheme

Creditor in estimating the disputed part of its Scheme Claim. The process the Actuarial Adjudicator will use to assess the reasonableness of the methodology and assumptions employed by the Scheme Creditor is described further in section 2.5. Depending on the Actuarial Adjudicator's assessment of the reasonableness of the Scheme Creditor's methodology and assumptions, the Actuarial Adjudicator will then reach his determination based on either:

- (i) Accepting or modifying the Scheme Creditor's methodology and assumptions; or
  - (ii) Combining estimates produced by the application of the Scheme Creditor's methodology (with perhaps differing assumptions to those used by the Scheme Creditor), and estimates produced by the application of the relevant methodology in this Appendix; or
  - (iii) Solely applying a methodology outlined in the relevant part of this Appendix D.
- (j) The Actuarial Adjudicator will, within 119 days of the matter being referred to him, notify the Scheme Manager and the relevant Scheme Creditor in writing of his determination in respect of the Disputed Claim, pursuant to clause 2.11.3.

If a particular Disputed Claim does not readily fall into one of the categories of claim type for which a methodology is described in Attachments A to F, then the Actuarial Adjudicator will apply an appropriate methodology, modifying any of the methods described in the Attachments as appropriate, based on his experience and judgement.

The Actuarial Adjudicator will, if he deems it appropriate, seek external input from other experts in accordance with clause 2.11.1.3. These experts, may, for example, be asked to give input on certain legal matters.

Where the Actuarial Adjudicator considers that there are further issues of fact or law in relation to a Disputed Claim which have not been determined by a Scheme Adjudicator prior to the referral to the Actuarial Adjudicator, and where either the Scheme Creditor or the Scheme Company have objected to the Disputed Claim being determined by the Actuarial Adjudicator alone, then in accordance with clause 2.11.1.4, the Actuarial Adjudicator will request that the Scheme Manager refers such matters to a Scheme Adjudicator.

If a Scheme Creditor's Disputed Claim is affected by a particular market settlement agreement, then the Actuarial Adjudicator will take this into account in considering the Scheme Creditor's Disputed Claim. However, the Actuarial Adjudicator will not be obliged to abide by this settlement where the relevant Scheme Company is not bound by the settlement agreement.

Where a Scheme Creditor has made settlement agreements with other insurers, then, where relevant, the Actuarial Adjudicator will take these agreements into account when reviewing the Scheme Creditor's Disputed Claim.

### 2.3 Estimation Methodologies to be Applied to Disputed Claims by the Actuarial Adjudicator

This section provides a summary of the methodologies that the Actuarial Adjudicator may apply to review and reach a determination in relation to a Disputed Claim. Further details by claim type are given in Attachments A to F. In general terms, the Actuarial Adjudicator will take into account all the relevant information provided to him by the Scheme Creditor and the Scheme Manager, as referred to in section 2.2, and apply the most appropriate methodology to each claim type. In addition, he will also take into account his relevant general knowledge and experience of the insurance industry.

A brief summary of the methodologies that will be used by the Actuarial Adjudicator, by claim type, is given in the table below. When reference is made to the Scheme Creditor's policies below, this means the policies or contracts that the Scheme Creditor has with the Scheme Company, equivalent to the defined term, "Insurance Contract".

Claim Type	Summary of Methodologies
U.S. and Non U.S. Asbestos, Environmental Pollution and Health Hazard ("APH") – Direct and Facultative reinsurance (" <b>Direct</b> ")	<p>Ground-up exposure-based analysis, allowing for estimation of total claim amounts, allocated across years of coverage and to the Scheme Creditor's policies. See Attachments A (U.S. Asbestos Direct), B (U.S. Asbestos Treaty), C (U.S. Pollution Direct), D (U.S. Pollution Treaty) and E (Health Hazards and other Toxic Torts) for further details.</p> <p>Or, if suitable data are not available, then application of appropriate benchmark Burn Factors, Paid Survival Ratios and/or IBNR-to-Outstanding Claims Ratios and/or Ultimate to Paid or Incurred Claim Ratios.</p> <p>The methodology for non-U.S. asbestos and pollution direct will be very similar to the descriptions in Attachments A and C respectively, modified to reflect the specific circumstances of the relevant territory.</p>
U.S. and Non-U.S. APH - Excess of Loss and Proportional Reinsurance and Retrocession (" <b>Treaty</b> ")	<p>Exposure-based projection of individual underlying direct loss estimates (as they affect the underlying direct or reinsurance policies written by the Scheme Creditor) aggregated appropriately and then applied to relevant Scheme Creditor's policies.</p> <p>Or, if suitable data are not available (e.g. due to the remoteness of the Scheme Creditor's policies from the original assureds, as is sometimes the case with reinsurance/retrocession business), then application of appropriate benchmark Burn Factors, Paid Survival Ratios and/or IBNR-to-Outstanding Claims Ratios</p>

	<p>and/or Ultimate to Paid or Incurred Claim Ratios.</p> <p>See Attachments B (U.S. Asbestos Treaty), D (U.S. Pollution Treaty) and E (Health Hazards and other Toxic Torts) for further details.</p> <p>The methodology for non-U.S. asbestos and pollution treaty will be very similar to the descriptions in Attachments B and D respectively, modified to reflect the specific circumstances of the relevant territory.</p>
Direct and Treaty Non-APH	<p>Appropriate development factors (and/or loss ratios) will be derived by application of standard actuarial techniques, such as the Link Ratio (or Chain Ladder) method to claims development triangles. These factors will either be derived from relevant data supplied by the Scheme Creditor, or from other appropriate data for the relevant classes of business.</p> <p>For individual loss events (e.g. individual catastrophes) the approach above will be modified to either:</p> <ul style="list-style-type: none"> <li>(a) Projection to ultimate of the Scheme Creditor's underlying gross loss development for each event, the results of which are then applied to the relevant Scheme Creditor's policies; or</li> <li>(b) Projection to ultimate of the loss development for each event as it affects the relevant Scheme Creditor's policies (i.e. projection of the paid and/or incurred claims for each event that are recoverable under the Scheme Creditor's policies).</li> </ul> <p>Or, if suitable data is not available, then:</p> <ul style="list-style-type: none"> <li>(c) Application of benchmark factors for each event to the Scheme Creditor's data for that event (e.g. benchmark Ultimate to Paid/Incurred Claims Ratio and/or IBNR-to-Outstanding Claims Ratios for that event multiplied by the Paid/Incurred and/or Outstanding Claims for that event under the relevant Scheme Creditor's policies).</li> </ul> <p>In some cases, the above approach may be modified, to consider:</p>



	<p>(a) Details of known individual claims, including consideration of associated loss adjuster or attorney reports; and</p> <p>(b) Loss emergence patterns (e.g. number and amount of claims that have emerged in the past for the relevant or lower layer policies).</p>
--	---

Further details of the methodologies that the Actuarial Adjudicator will apply to reach a determination in relation to a Disputed Claim for each claim type are given in Attachments A to F. Although Attachments A to D inclusive relate to U.S. exposures to asbestos and pollution, the methodology that will be used for non-U.S. exposures to asbestos and pollution is likely to be very similar to the descriptions in these Attachments, modified to reflect the specific circumstances of the relevant territory.

Where the Disputed Claim contains claims of different types (e.g. asbestos and pollution) then the relevant methodology described in this Appendix for each claim type will be applied separately by claim type.

The principal source of data and information that the Actuarial Adjudicator will use in order to apply the above methodologies will be information supplied by the Scheme Creditor, supplemented by information supplied by the Scheme Manager. The Actuarial Adjudicator will have the discretion to use his wider market knowledge and information where he deems it appropriate to use such information. In addition, the Actuarial Adjudicator will, if he deems it appropriate, seek external input from other experts in accordance with clause 2.11.1.3.

For all claim types, the methodologies described in this Appendix may need to be adapted by the Actuarial Adjudicator depending on the data and information provided by the Scheme Manager and/or the Scheme Creditor. In particular, if the Scheme Creditor has applied a different methodology to that outlined in the relevant part of this Appendix, then the Actuarial Adjudicator will consider whether he can also adopt a similar or the same methodology, with perhaps differing assumptions to those used by the Scheme Creditor. Further details are provided in section 2.5.

For all claim types, where the required data is not available, the Actuarial Adjudicator will use his judgement in deciding on the most appropriate methodology to apply in order to reach his determination for the Disputed Claim.

In situations where there is uncertainty surrounding one or more of the assumptions to be used by the Actuarial Adjudicator, then an approach that involves the use of probabilities, assigned to different assumptions, may be utilised. In such cases, the Actuarial Adjudicator may consult with and take advice from appropriate experts, including legal experts and advisers, as the Actuarial Adjudicator may deem appropriate. As part of its submissions to the Actuarial Adjudicator, the Scheme Creditor will have the opportunity to provide input to these probabilities, if it so wishes, and on any other aspects of the uncertainty surrounding its Disputed Claim. The Actuarial Adjudicator will also take into account any corresponding information provided by the Scheme Manager.

The above table, and Attachments A to F, describe the methodology to be used to derive the undiscounted claim estimates. These estimates will then be discounted on an Enhanced Discounted Best Estimate basis.

## 2.4 **Issues of Fact and Law**

When, in accordance with clause 2.9.5.1, a Disputed Claim is referred to the Actuarial Adjudicator and that Disputed Claim contains an element of fact or law which is in dispute, the Actuarial Adjudicator will proceed as follows in relation to the relevant part of the Disputed Claim:

- (a) Review all information provided by the Scheme Manager and/or the relevant Scheme Creditor, pursuant to clauses 2.9.6 and 2.9.8.
- (b) Following the expiry of the time periods given in clause 2.9.8, be entitled to request in writing additional supporting information from the Scheme Manager, the Scheme Company and/or the relevant Scheme Creditor, if deemed necessary, in accordance with clause 2.11.2.
- (c) Based on this supporting information, determine the possible range of interpretations of the particular fact or law matters that are in dispute.
- (d) Determine possible alternative values for the relevant part of the Scheme Creditor's Disputed Claim, using the range of possible interpretations determined in (c) above.
- (e) Determine possible probability weights to assign to each of these alternative values.
- (f) In reaching the determinations in the previous three steps, the Actuarial Adjudicator may seek relevant legal or other expert advice, as he deems necessary in accordance with clause 2.11.1.3.
- (g) If such legal or other expert advice is obtained and results in the need for additional information to be obtained from the Scheme Manager, the Scheme Company and/or the relevant Scheme Creditor, then the Actuarial Adjudicator will request such additional information, and take this information into account when determining the alternative values and/or probability weights, as appropriate.
- (h) Determine his estimate for the relevant part of the Scheme Creditor's Disputed Claim by combining the alternative values and their associated probability weights.

## 2.5 **Review of Scheme Creditors' Methodology by the Actuarial Adjudicator**

In reviewing a Scheme Creditor's methodology and assumptions in relation to a Disputed Claim, the Actuarial Adjudicator's judgement of its reasonableness will include consideration of whether the methodology and assumptions comply with the following principles:

- The methodology should normally be a recognised approach used by actuaries and other reserving practitioners to estimate general insurance claims liabilities. Such methods include claim-based methods, such as loss development factor methods (e.g. using past claims development data), and exposure-based methods. Uses of other, less recognised approaches should be justified by the Scheme Creditor in its supporting evidence.
- Selected assumptions should be based on a rational and unbiased analysis (of the Scheme Creditor's own, and where appropriate relevant wider market information), and not simply set at the extremes of possible ranges for those assumptions.
- The valuation of each Scheme Creditor's Scheme Claim shall be on an Enhanced Discounted Best Estimate basis, as defined in the Scheme.
- Where estimates are based on selected proportions of the relevant insurance cover (e.g. 50% of limits) then these proportions should be supported by analysis to justify the selected values. For example, the proportions could be based upon projections of reported losses, using specific information relating to those individual losses.
- In situations where there is uncertainty surrounding the assumptions used within a Scheme Creditor's own methodology, then an approach that involves the use of probabilities, assigned to different assumptions, may be utilised. In such cases, the selected probabilities should be justified, and, wherever possible, be backed up with expert (e.g. legal) opinion.

In all cases, the evidence supporting the application of a Scheme Creditor's own methodology and assumptions, including the calculations, should be as comprehensive as possible, to allow the Actuarial Adjudicator to verify the validity of the assumptions and understand the rationale for the implied results.

It should be noted that specific principles apply to the situation where there is limited or no claims history associated with one or more claim types included in the Scheme Creditor's Disputed Claim, but where the Scheme Creditor has submitted a claim for IBNR in respect of those claim types. These principles are covered in section 2.6, below.

## 2.6 Policies with Claim Types Having Limited or No Claims History

This section relates to policies with claim types that have limited or no claims history at the date of submission of claims under the Scheme, but where a Scheme Creditor's Disputed Claim includes IBNR for those claim types.

The Actuarial Adjudicator will first consider which of the following two categories the claim falls under:

1. Direct or reinsurance policies where there are one or more known underlying losses, which when projected to their estimated ultimate level can be shown to affect the relevant policies. An example might be higher-layer direct or treaty

policies, where the claims are estimated to increase such that they will affect these layers.

2. All other direct or reinsurance policies, where there are no specific known underlying losses that can be projected. An example might be direct policies where there are no reported losses of the relevant type in any year.

For the first category, the approach outlined in section 2.3 and in the appropriate Attachment for the relevant claim type(s) will be used by the Actuarial Adjudicator to estimate the relevant losses to the policies.

For the second category, the Actuarial Adjudicator will initially review the reasonableness of the Scheme Creditor's methodology and assumptions. In considering the reasonableness of such methodology, and hence the amount of any IBNR claimed, the Actuarial Adjudicator will apply the following principles to test for reasonableness:

- For direct insurance exposures (as opposed to reinsurance), there should be a demonstrable link between the claim type(s) being claimed and the business activities of the Scheme Creditor. Scheme Creditors should supply details linking their business activities with the claim type(s) being claimed (e.g. details of products manufactured by Scheme Creditors, and the types of claim that may be associated with these products). For reinsurance exposures, there should similarly be a link between the business activities of the entity(ies) insured by the Scheme Creditor and the claim type(s) being claimed.
- The selected assumptions should be based on a rational and unbiased analysis of the Scheme Creditor's own, and where appropriate relevant wider market information, and not simply set at the extremes of possible ranges for those assumptions.
- Where an exposure-based approach has been used, then, in the case of personal-injury based direct claims, it should begin with reasonable assumptions regarding the population of exposed persons, the proportion that will ultimately claim and the likely value of those claims.
- Exposure to selected claim types or sources of claim should be based on recognised sources.
- When the results are "grossed-up" to be at an industry or country-wide level, they should be plausible, based on current known information. In other words, if we take the estimates for the Scheme Creditor's policies and divide them by an appropriate market share percentage, then the resulting industry or country-wide figure should be plausible.

If possible, the Actuarial Adjudicator will use the Scheme Creditor's methodology and assumptions (possibly with some modifications). Failing that the Actuarial Adjudicator will use some form of bespoke exposure-based approach reflecting the specific circumstances of the Disputed Claim. By way of an example of a bespoke approach, in the early years after asbestos was identified as affecting certain

defendants, but where there was limited or no claims history, it was possible to review the exposed population (e.g. based on the number of people employed by a defendant, or otherwise affected by their activities, over a specified period) and estimate the ultimate number of asbestos-related claims that might arise in future from each defendant (e.g. by assuming what proportion of this population will ultimately claim based on experience from other similar product or premises-related sources). Costs of individual claims could similarly be estimated using costs associated with claims arising from other similar product or premises-related sources.

### **3. Supporting Evidence for Disputed Claims Referred to the Actuarial Adjudicator**

#### **3.1 Evidence to Support Claims**

This section provides a guide to the supporting evidence that Scheme Creditors will be expected to submit to support their Disputed Claims that are referred to the Actuarial Adjudicator. Failure to provide such supporting evidence may result in a Disputed Claim being valued at a lower amount by the Actuarial Adjudicator, possibly at zero.

Scheme Creditors should give clear justification for the methodology which they have used and the assumptions selected in calculating the value of their Disputed Claims, and provide relevant supporting evidence, to minimise the need for additional evidence or documents to be requested by the Actuarial Adjudicator at a later stage.

The Scheme Creditor should advise the Actuarial Adjudicator of the "as at date" of all of the supporting evidence provided.

#### **3.2 Non-IBNR Elements of Disputed Claims**

Supporting evidence for the non-IBNR elements of Disputed Claims should be in the same or substantially the same form as is customary for the insured/reinsured to send to the broker or the CUAL run-off manager in the normal course of business and, where applicable, should state the relevant Scheme Company's or Companies' policy references and percentage share of the relevant policy(ies). For example, a schedule (such as a spreadsheet) may be provided detailing all inwards claims to the Scheme Creditor that have contributed towards the Scheme Creditor's Disputed Claim, together with details of the calculation which shows how these inwards claims to the Scheme Creditor result in the Disputed Claim. The Actuarial Adjudicator reserves the right to ask for additional underlying supporting evidence to support the inwards claims to the Scheme Creditor, if deemed necessary, in accordance with clause 2.11.2.

Where components of the non-IBNR elements of Disputed Claims are materially uncertain, the requirements below regarding supporting evidence for the IBNR elements of Disputed Claims are equally applicable.

#### **3.3 IBNR Elements of Disputed Claims**

Supporting evidence for the IBNR elements of Disputed Claims should include details of the following:

- the policies in respect of which the IBNR in dispute is being asserted;

- the amount of the IBNR in dispute by policy;
- details of each underlying individual loss (where known), loss type and amount of claim(s) for each policy in respect of which the IBNR in dispute is being asserted; and
- details supporting the methodology, assumptions and calculations used to estimate the value of the IBNR which is in dispute.

Where the assumptions used are based, partly or wholly, on external data (i.e. not the Scheme Creditor's own data) then that data, and the associated analysis and rationale behind the selected assumptions, should also be supplied by the Scheme Creditor.

As a guide to the sort of information required by the Actuarial Adjudicator to support the IBNR element of a Disputed Claim; it would be helpful to provide evidence consistent with the requirements of relevant actuarial standards.

Scheme Creditors are not required to provide an actuarial report in relation to the IBNR element of a Disputed Claim; however provision of such a report is likely to be helpful to the Actuarial Adjudicator, particularly where Scheme Creditors are claiming large amounts of IBNR.

Claims assessors' reports or lawyers' reports might also be helpful in supporting the IBNR element of a Scheme Creditor's Disputed Claim. In addition, where relevant, it might also be appropriate to refer to other reports or analyses, relating, for example, to economic or demographic issues that are likely to affect future claim development.

In considering the supporting evidence to be supplied to the Actuarial Adjudicator, Scheme Creditors are advised to consider the description of the methodologies that will be used by the Actuarial Adjudicator to value Disputed Claims which are referred to him (see section 2 and Attachments A to F of this Appendix).

In particular, where a Scheme Creditor's Disputed Claim includes IBNR for claim types which have limited or no claims history at the date of submission of claims under the Scheme, the Scheme Creditor should, when preparing any supporting evidence to be supplied to the Actuarial Adjudicator, consider the approach which the Actuarial Adjudicator will adopt in such situations, as described in section 2.6.

A detailed list of the supporting evidence required by the Actuarial Adjudicator by claim type is provided in Attachment G.

### 3.4 **Discounting of Disputed Claims**

Scheme Creditors are required to discount the Outstanding and IBNR elements of their undiscounted Disputed Claims in accordance with Appendix E to allow for the time value of money. Scheme Creditors should provide supporting evidence to justify the discount factors applied to their Outstanding and IBNR elements of their undiscounted Disputed Claims, if these discount factors are different to those detailed in Appendix E. The supporting evidence should include details of any payment patterns, mean terms and interest rates assumed. Further details of the supporting

evidence that Scheme Creditors should provide to support any alternative discount factors can be found in Appendix E.

## **Attachment A U.S. Asbestos Direct**

### **A.1 Introduction**

For each Scheme Creditor where asbestos direct claims are referred to the Actuarial Adjudicator, either one or a combination of both of the following two approaches will be used:

1. A detailed ground-up exposure approach.
2. A simpler, benchmark-based approach.

The detail of the approach used by the Actuarial Adjudicator will vary depending on the availability of data, the type of business written by the Scheme Creditor and the information supplied by the Scheme Creditor.

The Actuarial Adjudicator will use a ground-up exposure-based approach where suitable data and information is available. Where the data and information needed to apply a more detailed ground-up exposure-based approach is not available, it will be necessary for the Actuarial Adjudicator to use a simpler benchmark-based approach (described below in section A.8).

The approach to be used is very dependent on the data and information supplied by the Scheme Creditor, since, for example, it will be very difficult for the Actuarial Adjudicator to apply a detailed exposure-based method without details of the known and/or potential claims affecting the Scheme Creditor. It will be in the relevant Scheme Creditor's interest to provide as much detailed information as possible to enable the Actuarial Adjudicator to apply the detailed exposure-based approach where appropriate. In the absence of such information, the Actuarial Adjudicator will need to use the simpler benchmark approach which may result in a different amount being derived by the Actuarial Adjudicator, compared to that derived from application of the detailed exposure-based approach.

Without evidence to the contrary, claims arising from exposure to asbestos will be treated as products-related claims.

Sections A.2 to A.7 describe the ground-up exposure approach and section A.8 describes the benchmark-based approach that may be used by the Actuarial Adjudicator where asbestos direct claims are referred to him.

### **A.2 Ground-up Exposure Approach**

Ultimate Claims will be derived by allocating an estimated ultimate ground-up asbestos indemnity and expense amount to the Scheme Creditor's policies using a "ground-up" exposure-based methodology. This amount will be determined from the Scheme Creditor's paid asbestos claims to date plus an estimate of future claims associated with pending and unasserted asbestos claims.

The methodology described below in sections A.3 to A.7 will be modified depending upon the data and information that is supplied by the Scheme Creditor (e.g. for estimating ultimate ground-up indemnity and/or expense, the Scheme Creditor may



have access to additional specific information that will allow a more accurate ultimate to be estimated).

### A.3 Scheme Creditor's Ground-up Indemnity and Expense

A frequency/severity approach will be used to estimate the future claims associated with pending and unasserted asbestos claimants. Specifically, an average indemnity cost per claim (possibly split by disease-type, if suitable data is available) is multiplied by a projected number of settled claims to estimate the future amount of indemnity claims. An expense-to-indemnity ratio is then applied to the future indemnity claims to include a provision for expenses. A separate estimate is calculated for each future annual period. The average severity for each future year is trended to include a provision for expected future claims and expense inflation/deflation.

The analysis considers products and non-products (i.e. premises and operations) claims separately. Generally, it will be assumed that for products claims, available insurance coverage will be eroded vertically, due to the presence of products aggregate limits. For non-products claims, appropriate assumptions will be made regarding the definition of an "occurrence", based on the particular situation of each Scheme Creditor. The various definitions of "occurrence" employed will lead to different allocation strategies for non-products claims.

The following describes the parameters incorporated in the frequency/severity approach. The parameters will be selected based on available information supplied by the Scheme Creditor and/or on other information that might be available to the Scheme Manager/Actuarial Adjudicator, such as attorney reports.

The process is similar for both pending claims and unasserted claims, with the exception that the number of claims filed is known for those pending.

***Number of Claims Filed*** – The number of claims filed relate to the asbestos claims filed against the Scheme Creditor. The number of future claims filed is estimated separately for each future calendar year by selecting the number of claims filed in the current year and using a projection model to calculate the number of claims filed in subsequent years. The number of claims filed in the current year is selected judgmentally based on the historical number of claim filings against the Scheme Creditor in recent years (allowing for the possible distorting effect of claim file surges or backlogs in historical data and specific factors affecting the Scheme Creditor, such as the impact of being a recently targeted defendant). The projection method relies on asbestos claim emergence patterns derived from generally accepted epidemiological studies of the exposed working population. An appropriate emergence pattern (or "**curve**") will be selected for each relevant Scheme Creditor (e.g. one of the "Stallard" curves based on Manville data). Based on the number of claims projected by the selected curve, a decay rate will be derived. In other words, the shape of the selected curve will be applied to the selected current year filings to derive a filing rate for each future year.

***Dismissal Rate*** – The dismissal rate represents the percentage of claims filed that are expected to close without payment. The complement of the dismissal rate is applied

to the number of claims filed to estimate the number of claims filed that will settle with payment. The selected dismissal rate is based on the Scheme Creditor's historical number of claims closed without payment divided by the total number of claims closed. Appropriate allowance will be made for anomalies in this historical dismissal rate, for example caused by large bulk dismissals, or a less aggressive dismissal philosophy. Any relevant reforms in State level legislation that might affect future dismissal rates compared to historical rates will also be taken into account. Relevant information supplied by the Scheme Creditor and/or attorney reports that might be available to the Scheme Manager/Actuarial Adjudicator will be used to assess whether any such anomalies might exist.

***Settlement Distribution*** – The settlement distribution relates to the assumed payment pattern profile of a newly filed or pending asbestos claim and reflects the number of years between the filing date and the settlement date of a claim. The number of claims settled in a given year is determined by applying the settlement distribution to the number of claims filed and not dismissed in the current and prior years. Unless there is evidence (e.g. as might be supplied by the Scheme Creditor) that an alternative should be used, the settlement distribution will be assumed to be uniformly spread over the four years following the filing date.

***Indemnity Severity*** – The indemnity severity represents the average indemnity costs expected for each claim settled at cost and is selected based on the Scheme Creditor's historical average indemnity cost per settled claim. Consideration will be given to the historical average indemnity severity for all settled claims and those settled in more recent years.

***Severity Trend*** – The severity trend represents an expected annual increase in indemnity and expenses associated with settled claims in future years. The severity trend will be impacted by a number of effects. Firstly, average claim sizes will increase over time due to general cost inflation. This trend may be affected by the changing mix of claim-types over time. Further, the average age of claimants will become higher, potentially reducing the part of the claim related to future earnings and/or costs of care. The Actuarial Adjudicator will select an appropriate severity trend for a particular Disputed Claim, taking into account relevant factors at the time of the analysis, including any allowance for changes in legislation that may affect the severity trend.

***Expense-to-Indemnity Ratio*** – The expense-to-indemnity ratio is applied to the projected indemnity costs for each future year to determine a provision for expenses. The expense-to-indemnity ratio is selected based on the Scheme Creditor's historical ratios of expenses to indemnity payments. Consideration will be given to the historical ratios for settled claims in appropriate groups of past years. Additional consideration is given to changes in the Scheme Creditor's defence strategy and the Scheme Creditor's maturity as an asbestos defendant.

#### **A.4 Coverage**

Information will be requested, if not already supplied, from the Scheme Manager and/or the Scheme Creditor to ascertain each Scheme Creditor's insurance coverage block. Where this information is not available, the Actuarial Adjudicator will

consider whether appropriate assumptions can be made, possibly based on the experience of other similar assureds (that may not necessarily be Scheme Creditors). In some cases, the absence of coverage information might lead to a simpler approach necessarily being adopted, which may result in a lower overall value being assessed for the Disputed Claim than if such coverage information were available.

#### **A.5 Exposure of the Scheme Creditor's Policies**

Using the information supplied by the Scheme Creditor and the Scheme Manager, the Actuarial Adjudicator will make an assumption as to which of the relevant Scheme Creditor's policies have potential exposure to asbestos-related claims.

#### **A.6 Allocation of Scheme Creditor's Ground-up Claims to the Scheme Creditor's Policies**

The allocation used will conform to the applicable governing law, and may also take into account information provided by the Scheme Creditor.

In respect of any issues concerning the applicable choice of law or the applicable allocation approach which have been referred to a Scheme Adjudicator, the Actuarial Adjudicator shall be bound by the decision of the Scheme Adjudicator, shall apply such decision when making his determination and if necessary and permitted by the Scheme, shall modify the approaches described below accordingly.

In situations where there is no known choice of law and/or no known applicable allocation approach, or where they are in dispute or cannot otherwise be determined, and where the Scheme Creditor and Scheme Manager have not objected to these matters being determined by the Actuarial Adjudicator alone, the Actuarial Adjudicator will use a "fallback" allocation process outlined below. In applying the fallback allocation process, the Actuarial Adjudicator will modify its application if the policy language and/or coverage defences justify doing so. In addition, the Actuarial Adjudicator may, if he considers it necessary, obtain expert (e.g. legal) opinion where the applicable choice of law or the applicable allocation approach is uncertain and, if necessary and permitted by the Scheme, modify the approaches described below accordingly.

Where it is deemed appropriate to allocate claims based on actual exposure across the relevant years (e.g. a "bell-curve" type approach) but where Scheme Creditor-specific historical data is not available to derive the allocation, then consideration will be given to using an exposure profile for similar assureds (that may not necessarily be Scheme Creditors).

It should be noted that, regardless of what allocation is deemed appropriate, under no circumstances will any policy be able to respond to claims beyond that of its individually stated limits as per the policy wording (e.g. products-related claims will only be capable of possible recovery under the products section of the relevant policy and non-products claims under the relevant non-products section of the policy).

Where there are a range of possible allocation methods, the Actuarial Adjudicator will select appropriate probability weightings between the possible methods.

### ***All-Sums Allocation***

In some cases, a Scheme Creditor may make a claim using an "All-Sums" basis in a State where the choice of law implies that this basis is appropriate. In accordance with clauses 4.7.1, 4.7.2 and 4.7.3 of the Scheme, where part or all of a Scheme Claim is asserted using an "All Sums" basis, or an Adjudicator determines that such a basis is appropriate, the Actuarial Adjudicator will modify the amount so claimed using as a form of proxy for this basis - "**All-Sums Net of Contribution Rights**" or "**ASCOR**", to the extent that this has not already been applied.

### ***Fallback Allocation***

The fallback allocation process will be as follows:

- Develop the ground-up ("**GU**") asbestos ultimate indemnity and expense estimate for the Scheme Creditor, as described above.
- If the total GU estimate is less than the sum of the available primary layer coverage over all years, Approach 1 (described below) is adopted, otherwise Approach 2 is adopted. The GU estimate here will either include or exclude expenses, depending on whether expenses are included within the primary limits or in addition.

#### Approach 1:

- Divide the GU estimate by the number of years in the coverage block, to derive an amount per year, taking into account the relevant facts relating to the Scheme Creditor (e.g. when the product or agent causing the exposure was produced).
- Apply the yearly amount to the insurance programme, using the following steps:
  - If the primary layer is not exhausted for any one year, then the process is complete.
  - If the primary layer is exhausted for one or more years, then sum the additional amounts for these years and allocate these amounts to the primary layers which still have unexhausted limits. This additional amount is allocated equally between the years with spare capacity.
  - If, at this second iteration, the additional allocation causes some of these primary layers to be exhausted, then further iterations of the previous step are carried out until all the GU estimate is allocated within the primary layers.

#### Approach 2:

- First, the primary layers across all relevant years are all fully exhausted.

- The sum of the primary layer recoveries is deducted from the GU estimate to derive an amount that needs to be allocated through the excess layers. Expenses are either included or excluded at this stage, according to the policy wording.
- Divide the total excess layer amount by the number of years in the coverage block, to derive an amount per year.
- For each year, compare the allocated amount per year with the amount of available excess layer cover in that year and allow recovery up to a maximum of the available excess layer cover.

Consideration will also be given to the treatment of expenses for each layer in the Scheme Creditor's coverage block. Information will be obtained regarding the expense treatment by layer from the coverage and other information provided by the Scheme Creditor and/or Scheme Manager.

Without specific information to the contrary, the Actuarial Adjudicator will assume that for primary layers, expenses are in addition to limits and for excess layers expenses are included within limits.

#### *Allocation to Scheme Creditor's Policies*

After the allocation of the indemnity and expenses to each coverage year is complete, the share of the estimated ultimate indemnity and expense (excluding solicitor costs and attorney fees paid directly by the Scheme Companies) covered by the Scheme Creditor's policies will be calculated as the summation of the ultimate signed line under the Scheme Creditor's policies (on each layer on which the Scheme Companies participated) multiplied by the allocated claims to that layer.

#### **A.7 Asbestos Values in Respect of the Scheme Creditor's Policies**

If the sum of the ultimate asbestos indemnity and expense amounts (where they are included within limits) and the ultimate non-asbestos-products claims is higher than the limit on the Scheme Creditor's policy, then the ultimate asbestos amount will be reduced such that the total asbestos ultimate plus the ultimate non-asbestos products claims is no higher than the limit on the Scheme Creditor's policy.

If information is not available on the nature of any non-asbestos claims, then it will be assumed that all non-asbestos claims covered by Scheme Creditor's policies that are associated with the Scheme Creditor are products-related, except for pollution claims.

The asbestos indemnity and expense amounts representing claims paid by the Scheme Company under the Scheme Creditor's policies, excluding solicitor and attorney fees paid directly by the Scheme Companies, are subtracted from the ultimate indemnity and expense estimate under Scheme Creditor's policies to determine the asbestos Reserves for each Scheme policy.

Similarly, the asbestos IBNR Claims for each Scheme Creditor's policy are determined by subtracting the known Outstanding Claims from the asbestos Reserves for that Scheme Creditor's policy.

## **A.8 Benchmark Approach**

In circumstances where the ground-up exposure based approach cannot be applied (e.g. due to data constraints) in whole or part, or where, in the opinion of the Actuarial Adjudicator, the size of the Disputed Claim does not justify such a detailed approach, then a simpler benchmark approach will be used. This will involve one or more of the following:

- Gathering information on the current and prior historical development of asbestos paid and incurred claims to each policy under review for the particular Scheme Creditor.
- Selection of appropriate benchmark factors such as IBNR-to-Outstanding Claims Ratios, Ultimate to Paid or Incurred Claims and/or Paid Survival Ratios or Burn Factors.
- Application of those benchmark factors to the Scheme Creditor's data to derive alternative estimates for the Disputed Claim.
- Determination of the final Disputed Claim estimate.

## **Attachment B U.S. Asbestos Treaty**

### **B.1 Introduction**

For each Scheme Creditor where asbestos treaty claims are referred to the Actuarial Adjudicator, either one or a combination of both of the following two approaches will be used:

1. A detailed ground-up exposure approach.
2. A simpler, benchmark-based approach.

The detail of the approach used by the Actuarial Adjudicator will vary depending on the availability of data, the type of business written by the Scheme Creditor and the information supplied by the Scheme Creditor.

For facultative reinsurance, a ground-up exposure-based approach (as for asbestos direct) will be used where suitable data and information is available. The description of the relevant methodologies can be found in Attachment A. This will be modified to reflect the application of the relevant facultative reinsurance contracts.

For first tier (i.e. reinsurance of direct business) excess of loss reinsurance and proportional reinsurance, a form of treaty exposure-based approach (described below) will be used, again where suitable data and information is available. For all other reinsurance types (e.g. London Market cedants or retrocession-type business), it is highly likely that it will be necessary to use a simpler benchmark-based approach (described below in section B.3), because the data and information needed to apply a more detailed ground-up exposure-based approach is unlikely to be available.

The approach to be used is very dependent on the data and information supplied by the Scheme Creditor, since, for example, it will be very difficult for the Actuarial Adjudicator to apply a detailed exposure-based method without details of underlying direct exposures, which he would not otherwise have access to from wider sources. It will be in the relevant Scheme Creditor's interest to provide as much detailed information as possible to enable the Actuarial Adjudicator to apply the detailed exposure-based approach where appropriate. In the absence of such information, the Actuarial Adjudicator will need to use the simpler benchmark approach which may result in a different amount being derived by the Actuarial Adjudicator, compared to that derived from application of the detailed exposure-based approach.

Without evidence to the contrary, claims arising from exposure to asbestos will be treated as products-related claims.

Section B.2 describes the first-tier reinsurance exposure-based approach and section B.3 describes the benchmark-based approach that may be used by the Actuarial Adjudicator where asbestos treaty claims are referred to him.

### **B.2 First-tier Reinsurance Exposure-based Approach**

For Scheme Creditors who themselves wrote direct insurance of asbestos defendants (i.e. first-tier reinsurers), a form of exposure-based approach will be used where

suitable data and information is available. The required data and information is described in the relevant section of Attachment G.

The overall approach will be as follows:

- (a) Identify all relevant underlying direct assureds, and the coverage written by the Scheme Creditor for each of those assureds.
- (b) Estimate ultimate losses to the Scheme Creditor arising from each of those assureds.
- (c) Apply the relevant Scheme policy terms to the ultimate loss to estimate the losses from each assured to the Scheme Creditor's policies.

These steps are described in more detail below.

(a) **Identify underlying direct assureds**

These assureds will be those that have either already impacted upon policies under which the Scheme Creditor is claiming, or those which the Scheme Creditor is able to show are likely to impact such policies in the future. Assuming that the Scheme Creditor has conducted their own underlying direct exposure-analysis, then it will be necessary to determine which of the totality of assureds are likely to expose the Scheme Creditor's policies, based, for example, on exposed years and the likely size of direct loss to the Scheme Creditor.

(b) **Estimate ultimate claims to the Scheme Creditor from each assured**

The appropriate methodology to use here will be similar to that outlined in Attachment A for asbestos direct. It will result in estimated ultimate claims to each year from each assured.

If part of the Scheme Creditor's Scheme Claim relates to one or more settlements between the Scheme Creditor and their underlying assureds, then it will be necessary for the Scheme Creditor to show that these settlements are validly collectable from the Scheme Company.

(c) **Estimate claims to Scheme Creditor's Policies**

This will involve applying the estimated loss from each assured for each year, to the terms (i.e. layers, shares etc.) of the Scheme Creditor's policies in each year. Appropriate allowance will need to be made for expenses that may be in addition to the layer limits. In areas of doubt, expenses will be assumed to be included within the policy limits.

Where applicable, the number of reinstatements will be determined from the Scheme Manager's and/or Scheme Creditor's data. Where there is no data on reinstatements, and there is no evidence to the contrary, then the Actuarial Adjudicator will assume that there are zero reinstatements.



Scheme Creditors will need to provide reasonable evidence that there is known or potential exposure arising under relevant policies to specific underlying assureds.

The result of the above analysis will be an ultimate loss selection for each underlying defendant for each relevant policy for the Scheme Creditor under review by the Actuarial Adjudicator. Depending on the information available, the Actuarial Adjudicator will consider whether it is appropriate to add any additional loadings to allow for:

- Non-products claims
- Unreported defendants.

#### *Non-products*

If Scheme Creditors can clearly demonstrate exposure to non-products losses on their treaty policies, including how, and under which contract clauses, claims aggregate to expose the treaty policies, then the Actuarial Adjudicator will take this into account in forming his estimates. Without evidence to the contrary from the Scheme Creditor, the Actuarial Adjudicator will assume no exposure to non-products claims.

#### *Unreported Defendants*

If the Actuarial Adjudicator believes that the above analysis requires an additional loading for unreported asbestos defendants, then he will add such a loading. If, for example, there is evidence of exposure to other specific defendants, or there is an observed historical emergence of new defendants, then such a loading might be appropriate. However, this loading will be zero unless the Scheme Creditor has supplied information to demonstrate that the above analysis does not adequately capture the unreported defendants that the policies are likely to be exposed to in the future.

### **B.3 Benchmark Approach**

In circumstances where the ground-up exposure based approach cannot be applied (e.g. due to data constraints) in whole or part, or where, in the opinion of the Actuarial Adjudicator, the size of the Disputed Claim does not justify such a detailed approach, then a simpler benchmark approach will be used. This will involve one or more of the following:

- Gathering information on the nature of the inwards business written by the Scheme Creditor, and on the Scheme Creditor's underlying inwards asbestos paid, incurred and IBNR claims.
- Gathering information on the current and prior historical development of asbestos paid and incurred claims to each policy under review for the particular Scheme Creditor.

- Selection of appropriate benchmark factors such as IBNR-to-Outstanding Claims Ratios, Ultimate to Paid or Incurred Claims and/or Paid Survival Ratios or Burn Factors.
- Application of those benchmark factors to the Scheme Creditor's data to derive alternative estimates for the Disputed Claim.
- Determination of the final Disputed Claim estimate.

## **Attachment C U.S. Pollution Direct**

### **C.1 Introduction**

For each Scheme Creditor where pollution direct claims are referred to the Actuarial Adjudicator, either one or a combination of both of the following two approaches will be used:

1. A detailed ground-up exposure approach.
2. A simpler, benchmark-based approach.

The detail of the approach used by the Actuarial Adjudicator will vary depending on the availability of data, the type of business written by the Scheme Creditor and the information supplied by the Scheme Creditor.

The Actuarial Adjudicator will use a ground-up exposure-based approach where suitable data and information is available. Where the data and information needed to apply a more detailed ground-up exposure-based approach is not available, it will be necessary for the Actuarial Adjudicator to use a simpler benchmark-based approach (described below in section C.3).

The approach to be used is very dependent on the data and information supplied by the Scheme Creditor, since, for example, it will be very difficult for the Actuarial Adjudicator to apply a detailed exposure-based method without details of the known and/or potential claims affecting the Scheme Creditor. It will be in the relevant Scheme Creditor's interest to provide as much detailed information as possible to enable the Actuarial Adjudicator to apply the detailed exposure-based approach where appropriate. In the absence of such information, the Actuarial Adjudicator will need to use the simpler benchmark approach which may result in a different amount being derived by the Actuarial Adjudicator, compared to that derived from application of the detailed exposure-based approach.

Section C.2 describes the ground-up exposure approach and section C.3 describes the benchmark-based approach that may be used by the Actuarial Adjudicator where pollution direct claims are referred to him.

### **C.2 Ground-up Exposure Approach**

Ultimate Claims will be determined by allocating an estimated ultimate pollution indemnity and expense amount by site to the Scheme Creditor's policies using a "ground-up" exposure-based methodology. This amount will be calculated from the Scheme Creditor's paid pollution claims to date plus an estimate of future pollution claims associated with relevant sites to which the Scheme Creditor can demonstrate they have exposure.

The methodology described below will be modified depending upon the data and information that is supplied by the Scheme Creditor (e.g. for estimating ultimate clean-up costs for particular sites, the Scheme Creditor may have access to additional specific information that will allow a more accurate ultimate to be estimated).

The environmental pollution ground-up exposure-based approach takes into account the following items:

- information on Potentially Responsible Parties ("**PRPs**") by site;
- estimates on clean-up costs and PRP expenses for the relevant pollution sites;
- alternative event triggers dependent on the site and State. Where an "All-Sums" basis is appropriate, the Actuarial Adjudicator will use the ASCOR approach described in section A.6.

The actuarial exposure-based model used by the Actuarial Adjudicator will consider all National Priority List ("**NPL**") sites and significant non-NPL sites to which, based on current information, each relevant Scheme Creditor can demonstrate they are exposed. Each site will be treated as a separate occurrence. The steps involved in estimating an individual Scheme Creditor's liability are as follows:

- the period(s) over which the Scheme Creditor was involved at each site is identified;
- the costs over the period for each site are allocated to each PRP in accordance with its appropriate share (as set out in the Record of Decision for that site, as provided by the relevant court in the U.S.) or an estimate of the appropriate share based on knowledge of the time for which a PRP participated in a site, or usage that it made of that site, compared to the time or usage related to other PRPs at that site;
- the Scheme Creditor's ultimate cost for each site is allocated across years using the appropriate methodology;
- the policy profile is applied to each Scheme Creditor's estimated claims on a year-by-year basis;
- legal coverage issues involved in determining the validity of the claim are taken into account when determining final estimates of liability; and
- a cost per policy is developed after taking account of any further aspects of liability (e.g. PRP expenses).

Additional details on the following key components of this approach are given in the remaining sections of this Attachment, covering the following items:

- (a) Costs and expenses
- (b) PRP shares
- (c) Types of site
- (d) Choice of Law
- (e) Trigger

- (f) Allocation
- (g) Prior settlement agreements
- (h) Missing information
- (a) **Costs and expenses associated with each pollution site**

There are several different types of costs associated with a particular site, for which PRPs might seek recovery from their insurer. The main categories of cost are discussed below. Where possible, the ratio of historical paid costs (excluding and including expenses) to future costs will be used to assess the reasonableness of future cost estimates (made by the Scheme Creditor, Scheme Manager and/or Actuarial Adjudicator).

***Clean-up/remediation costs:*** These are the property-damage non-products related costs associated with cleaning up or remediating hazardous waste sites. There are a number of sub-categories of such costs, including emergency response, remedial investigation/feasibility, selection and design of remediation option and the actual remediation costs. The Actuarial Adjudicator will take into account all relevant categories of costs, where sufficient evidence is available to justify their inclusion. In submitting data to the Actuarial Adjudicator, Scheme Creditors should use undiscounted estimates of clean-up costs. However, in some cases, if an attorney report has been used as the source for clean-up costs, then if these are already discounted for the time value of money, the Actuarial Adjudicator will consider whether the implied discounting factor is appropriate for the purpose of determining the Disputed Claim value under the Scheme policies. Where it is appropriate to make projections of future clean-up costs, then the Actuarial Adjudicator will assume, without firm evidence to the contrary, that any impact of inflation is offset by improvements in clean-up technology that will help reduce clean-up costs.

***Natural Resource Damages (NRD):*** These relate to costs associated with compensating public authorities for natural resources (e.g. plants and animals) that were either lost at a particular site or that need to be replaced as a result of the remediation process. NRD costs will be assumed to be zero, without firm evidence to the contrary.

***Bodily injury costs:*** These relate to, for example, bodily injury caused to persons living near to polluted sites. Bodily injury costs will be assumed to be zero, without firm evidence to the contrary.

***Products-related costs:*** These relate, for example, to third-party liability costs associated with damage to crops caused by certain agricultural products. Products-related costs will be assumed to be zero, without firm evidence to the contrary.

***Resource Conservation and Recovery Act (RCRA):*** The Actuarial Adjudicator will assume that liability for RCRA sites will be zero, without firm evidence to the contrary.

***Scheme Creditor Defence costs:*** These are costs incurred by the Scheme Creditor in defending claims against them for pollution-related indemnity amounts. The relevant policy wording will be used to determine whether these costs are covered and within limits or in addition to policy limits (with the default being within limits, where there is no firm evidence to the contrary). Where there is limited information on the size of these costs, the Actuarial Adjudicator will select an appropriate proportion of indemnity amounts.

(b) **PRP shares at each site**

Shares of PRPs at particular sites is a particularly difficult area, where such proportions have not already been determined. In the absence of information regarding a particular Scheme Creditor's share at a particular site, the Actuarial Adjudicator will assume an even share of the costs amongst the known PRPs at a particular site, with an adjustment where it is believed (e.g. due to identified uncertainty around the specific and/or number of PRPs that are involved at a particular site) that further PRPs will be identified in the future.

(c) **Types of site**

Only sites where the Scheme Creditor has a known involvement will be included as part of the Actuarial Adjudicator's calculation of the Disputed Claim value. Such sites can either be on the National Priority List (NPL) or not. Speculative inclusion of further sites where the Scheme Creditor might have an involvement either currently or in the future will not be included as part of the calculation. Scheme Creditors are therefore advised to supply as full information as possible to document their known exposure at relevant sites (e.g. engineers' reports).

(d) **Choice of Law**

The assumptions used for trigger and allocation will depend on which State's law is to be used for each site. In respect of any issues concerning the applicable choice of law which have been referred to a Scheme Adjudicator, the Actuarial Adjudicator shall be bound by the decision of the Scheme Adjudicator and shall apply such decision when making his determination. In the absence of any evidence or factors to the contrary, the Actuarial Adjudicator will assume that the location of each site will determine the jurisdiction, unless the Scheme Creditor or the Scheme Manager can justify an alternative. In addition, the Actuarial Adjudicator may, if he considers it necessary, obtain expert (e.g. legal) opinion where the applicable choice of law is uncertain and, if necessary and permitted by the Scheme, take that into account when reaching his determination in respect of the Disputed Claim.

**(e) Trigger**

The appropriate trigger will be determined by the choice of law. The most common trigger is the continuous trigger, whereby all policies are triggered from the start of the Scheme Creditor's involvement at the site to the date when the damage is discovered or upon receipt of formal notification of liability by means of a PRP letter from the relevant State or federal agency. However, other triggers, such as manifestation, exposure and injury-in-fact are valid alternatives. Where there is uncertainty within a State, a probability weighted average of different triggers may be adopted.

**(f) Allocation**

The appropriate allocation methodology will be determined by the choice of law.

In respect of any issues concerning the applicable choice of law or the applicable allocation approach which have been referred to a Scheme Adjudicator, the Actuarial Adjudicator shall be bound by the decision of the Scheme Adjudicator, shall apply such decision when making his determination, and, if necessary and permitted by the Scheme, shall modify the approaches described below accordingly.

In situations where the choice of law and/or the applicable allocation approach is uncertain and where the Scheme Creditor and Scheme Manager have not objected to these matters being determined by the Actuarial Adjudicator, the Actuarial Adjudicator may adopt a probability weighted average approach. The weights will be derived from estimated probabilities that can be applied to each possible methodology, perhaps based on expert (e.g. legal) opinion, if the Actuarial Adjudicator considers this necessary. In addition, the Actuarial Adjudicator may, if he considers it necessary, obtain expert (e.g. legal) opinion where the applicable choice of law or the applicable allocation approach is uncertain and, if necessary and permitted by the Scheme, modify the approaches described below accordingly.

The two most common allocation methodologies are Pro-Rata and All-Sums. The Pro-Rata allocation methodology will spread each site's cost evenly across the triggered years from the ground up. Under an All-Sums allocation, the All-Sums Net of Contribution Rights approach will be used, as described in section A.6.

**(g) Prior settlement agreements**

In some cases, PRPs may have settled with other insurers, either on an individual site or group of known-sites basis ("**known sites release**"), or across all known and potential sites where the PRP has an involvement ("**full pollution release**"). Where these agreements affect Scheme policies, and have not already been processed as Paid Claims by the Scheme Company, then the Actuarial Adjudicator will consider whether it is appropriate to follow these agreements when estimating the Disputed Claim for each relevant

Scheme policy. In deciding whether these agreements should be followed, the Actuarial Adjudicator will review the underlying assumptions behind the settlement for reasonableness.

(h) **Missing information**

For most sites, we would expect to source information from reports and information supplied by the Scheme Creditor. In addition, for some sites, the Actuarial Adjudicator may be able to make use of publicly available information, for example, on estimated clean-up costs (e.g. for NPL sites, the Record of Decision available from the Environmental Protection Agency gives some information on estimates of clean-up costs for certain sites).

However, for large numbers of pollution sites, particularly non-NPL sites, it is likely that there will be limited publicly available information relating to items such as costs, years of operation, PRP shares etc., that the Actuarial Adjudicator can use to estimate the associated amount applicable to each Scheme policy. In such cases, the Actuarial Adjudicator will use his judgement to select appropriate assumptions based on other sites where such information is known. In general terms, non-NPL sites will be assumed to have lower associated costs than NPL sites.

Scheme Creditors are strongly advised to supply detailed information (e.g. engineers' reports) for each relevant site, to avoid the need for the Actuarial Adjudicator to use publicly available data and information.

### **C.3 Benchmark Approach**

In circumstances where the ground-up exposure based approach cannot be applied (e.g. due to data constraints) in whole or part, or where, in the opinion of the Actuarial Adjudicator, the size of the Disputed Claim does not justify such a detailed approach, then a simpler benchmark approach will be used. This will involve one or more of the following:

- Gathering information on the current and prior historical development of pollution paid and incurred claims to each policy under review for the particular Scheme Creditor.
- Selection of appropriate benchmark factors such as IBNR-to-Outstanding Claims Ratios, Ultimate to Paid or Incurred Claims and/or Paid Survival Ratios or Burn Factors.
- Application of those benchmark factors to the Scheme Creditor's data to derive alternative estimates for the Disputed Claim.
- Determination of the final Disputed Claim estimate.



## Attachment D U.S. Pollution Treaty

### D.1 Introduction

For each Scheme Creditor where U.S. pollution treaty claims are referred to the Actuarial Adjudicator, either one or a combination of both of the following two approaches will be used:

1. A detailed ground-up exposure approach.
2. A simpler, benchmark-based approach.

It should be noted that in all cases, it will be necessary for the Scheme Creditor to have already shown (prior to the submission to the Actuarial Adjudicator for the claim to be reviewed) that pollution claims can be validly collected under the relevant Scheme Creditor's policies. In addition, if part of the Scheme Creditor's Scheme Claim to the Scheme policies relate to one or more settlements between the Scheme Creditor and their underlying assureds, then it will be necessary for the Scheme Creditor to show that these settlements are validly collectable from the Scheme policies (as certain types of pollution settlements may not be covered by the wording of the Scheme policies).

The detail of the approach used by the Actuarial Adjudicator will vary depending on the data available, the type of business written by the Scheme Creditor and the information supplied by the Scheme Creditor under the Scheme.

For facultative reinsurance, a ground-up exposure-based approach (as for pollution direct) will be used where suitable data and information is available. The description of the relevant methodologies can be found in Attachment C. This will be modified to reflect the application of the relevant facultative reinsurance contracts.

For first tier (i.e. reinsurance of direct business) excess of loss reinsurance and proportional reinsurance, a form of the treaty exposure-based approach (described below) will be used, again where suitable data and information is available. For all other reinsurance types (e.g. London Market cedants or retrocession-type business), it is highly likely that it will be necessary to use a simpler benchmark-based approach (described below in section D.3), because the data and information needed to apply a more detailed ground-up exposure-based approach is unlikely to be available.

The approach to be used is very dependent on the data and information supplied by the Scheme Creditor, since, for example, it will be very difficult for the Actuarial Adjudicator to apply a detailed exposure-based method without details of underlying direct exposures, which he would not otherwise have access to from wider sources. It will be in the relevant Scheme Creditor's interest to provide as much detailed information as possible to enable the Actuarial Adjudicator to apply the detailed exposure-based approach where appropriate. In the absence of such information, the Actuarial Adjudicator will need to use the simpler benchmark approach which may result in a different amount being derived by the Actuarial Adjudicator, compared to that derived from application of the more detailed exposure-based approach.

Section D.2 describes the first-tier reinsurance exposure-based approach and section D.3 describes the benchmark-based approach that may be used by the Actuarial Adjudicator where pollution treaty claims are referred to him.

## **D.2 First-tier Reinsurance Exposure-based Approach**

For Scheme Creditors who themselves wrote direct insurance of pollution assureds (i.e. first-tier reinsurers), a form of exposure-based approach will be used where suitable data and information is available. The required data and information is described in the relevant section of Attachment G.

The overall approach will be as follows:

- (a) Identify all relevant underlying direct assureds (and associated pollution sites), and the coverage written by the Scheme Creditor for each of those assureds.
- (b) Estimate ultimate losses to the Scheme Creditor arising from each of those assureds/sites.
- (c) Apply the relevant Scheme Creditor's policy terms to the ultimate loss to estimate the losses from each assured/site to the Scheme Creditor's policies.

Without evidence to the contrary, the method of aggregation to policies will be per-site/per-assured/per-year.

These steps are described in more detail below.

### **(a) Identify underlying direct assureds and pollution sites**

These assureds/sites will be those that have either already impacted Scheme Creditor's policies under which the Scheme Creditor is claiming, or those which the Scheme Creditor is able to show are likely to impact such policies in the future. Assuming that the Scheme Creditor has conducted their own underlying direct exposure-analysis, then it will be necessary to determine which of the totality of assureds/site combinations are likely to expose the Scheme Creditor's policies, based, for example, on exposed years and likely size of the direct loss to the Scheme Creditor.

### **(b) Estimate ultimate claims to the Scheme Creditor from each assured/site**

The appropriate methodology to use here will be similar to that outlined in Attachment C for pollution direct. It will result in estimated ultimate claims to each year from each assured/site combination.

If part of the Scheme Creditor's Scheme Claim relates to one or more settlements between the Scheme Creditor and their underlying assureds, then it will be necessary for the Scheme Creditor to show that these settlements are validly collectable from the Scheme Company.

(c) **Estimate claims to Scheme Creditor's Policies**

This will involve applying the estimated loss from each site/assured for each year, to the terms (i.e. layers, shares etc.) of the Scheme Creditor's policies in each year. Appropriate allowance will need to be made for expenses that may be in addition to the layer limits. In areas of doubt, expenses will be assumed to be included within the policy limits.

Where applicable, the number of reinstatements will be determined from the Scheme Manager's and/or Scheme Creditor's data. Where there is no data on reinstatements, and there is no evidence to the contrary, then the Actuarial Adjudicator will assume that there are zero reinstatements.

Where there is any doubt about potential exposure of certain policies to certain underlying assureds/sites, and without evidence to the contrary, it will be assumed that such policies will not be exposed to claims from those assureds/sites.

### **D.3 Benchmark Approach**

In circumstances where the ground-up exposure based approach cannot be applied (e.g. due to data constraints) in whole or part, or where, in the opinion of the Actuarial Adjudicator, the size of the Disputed Claim does not justify such a detailed approach, then a simpler benchmark approach will be used. This will involve one or more of the following:

- Gathering information on the nature of the inwards business written by the Scheme Creditor, and on the Scheme Creditor's underlying inwards pollution paid, incurred and IBNR claims.
- Gathering information on the current and prior historical development of pollution paid and incurred claims to each policy under review for the particular Scheme Creditor.
- Selection of appropriate benchmark factors such as IBNR-to-Outstanding Claims Ratios, Ultimate to Paid or Incurred Claims Ratios and/or Paid Survival Ratios or Burn Factors.
- Application of those benchmark factors to the Scheme Creditor's data to derive alternative estimates of the Disputed Claim.
- Determination of the final Disputed Claim estimate.

## **Attachment E Health Hazards and Other Toxic Torts: Direct and Treaty**

### **E.1 Introduction**

For each Scheme Creditor where health hazards and other toxic torts ("HHOTT") claims are referred to the Actuarial Adjudicator, either one or a combination of both of the following two approaches will be used:

1. A detailed ground-up exposure approach.
2. A simpler, benchmark-based approach.

The detail of the approach used by the Actuarial Adjudicator will vary depending on the availability of data, the type of business written by the Scheme Creditor and the information supplied by the Scheme Creditor.

The Actuarial Adjudicator will use a ground-up exposure-based approach where suitable data and information is available. Where the data and information needed to apply a more detailed ground-up exposure-based approach is not available, it will be necessary for the Actuarial Adjudicator to use a simpler benchmark-based approach (described below in section E.3).

Without evidence to the contrary, claims arising from HHOTT will be treated as products claims.

Section E.2 describes the ground-up exposure approach and section E.3 describes the benchmark-based approach that may be used by the Actuarial Adjudicator where HHOTT claims are referred to him.

### **E.2 Ground-up Exposure Approach**

Given the range of possible claim categories here, we cannot describe in any detail the approach to be adopted. However, the general characteristics of the approach are similar to those outlined in Attachment A for U.S. asbestos direct.

### **E.3 Benchmark Approach**

In circumstances where the ground-up exposure based approach cannot be applied (e.g. due to data constraints) in whole or part, or where, in the opinion of the Actuarial Adjudicator, the size of the Disputed Claim does not justify such a detailed approach, then a simpler benchmark approach will be used. This will involve one or more of the following (for each separate category of HHOTT, if possible):

- For treaty business, gathering information on the nature of the inwards business written by the Scheme Creditor, and on the Scheme Creditor's underlying inwards HHOTT paid, incurred and IBNR claims (for each separate category of HHOTT if possible).
- Gathering information on the current and prior historical development of HHOTT paid and incurred claims to each policy under review for the particular Scheme Creditor.

- Gathering information on the current non-HHOTT products-related paid, incurred and ultimate claims to each Scheme Creditor's policy under review for the particular Scheme Creditor.
- Selection of appropriate benchmark factors such as IBNR-to-Outstanding Claims Ratios, Ultimate to Paid or Incurred Claims Ratios and/or Paid Survival Ratios or Burn Factors.
- Application of those benchmark factors to the Scheme Creditor's data to derive alternative estimates of the Disputed Claim.
- Determination of the final Disputed Claim estimate.

## **Attachment F Non-APH Claims: Direct and Treaty**

### **F.1 Direct and Treaty Summary**

For these claim types, appropriate development factors by class of business will be derived by application of standard actuarial techniques, such as the Link Ratio (or Chain Ladder) method to claims development triangles. These factors will either be derived from relevant data supplied by the Scheme Creditor, or from other appropriate data for the relevant classes of business.

The Link Ratio method is based on deriving trends in the progression of cumulative paid claims and cumulative incurred claims from the past data and projecting this pattern into the future. This process implicitly assumes that the development pattern is stable through time. The overall approach is to examine the experience pattern for all origin periods together so as to obtain a broad measure of consistency. Any individual origin periods which show unusual departures from this pattern are then examined in more detail.

In some cases, the above approach may need modifying, to consider:

- (a) Details of known individual claims, including consideration of associated loss adjuster or attorney reports.
- (b) Loss emergence patterns (i.e. number and amount of claims that have emerged in the past for the relevant policies).

### **F.2 Individual Events**

For large individual events (e.g. catastrophe claims), the Actuarial Adjudicator will proceed as follows:

- (a) Where the Scheme Creditor's underlying gross loss development is available for each event, project that development to ultimate using paid and/or incurred Link Ratio/curve-fitting methods, and then apply that gross loss estimate to the relevant Scheme Creditor's policies.
- (b) Alternatively, if loss development data for the relevant Scheme Creditor's policies themselves for that event are available, then these will be projected to ultimate in a similar way to the gross claims in a) above.
- (c) If development data is not available, then appropriate benchmark factors for each of the relevant events will be applied to the Scheme Creditor's data for that event. For example, an appropriate benchmark IBNR-to-Outstanding Claims Ratio, or Ultimate to Paid/Incurred Claims Ratio for the event might be multiplied by the Outstanding Claims or Paid/Incurred claims respectively, for that event under the relevant Scheme Creditor's policies.
- (d) Policy limits will need to be considered in the above approach, taking into account erosion from all claim types.

For certain events where a particular approach has been adopted by the Scheme Creditor for valuing such claims due to special circumstances relating to the event (e.g. those where there are specific issues surrounding the original market loss), the Actuarial Adjudicator will consider whether it is appropriate to take this approach into account when applying the above approach. Without evidence to the contrary, it is likely that the Actuarial Adjudicator will follow the Scheme Creditor's approach for such claims.

## Attachment G Suggested Supporting Documentation

### G.1 Introduction

This Attachment sets out a detailed list of the supporting evidence that Scheme Creditors will be expected to submit to support their Disputed Claims by claim type and is additional to the guidance provided in section 3 of this Appendix.

In considering the supporting evidence to be supplied, Scheme Creditors are advised to consider the description of the methodologies that will be used by the Actuarial Adjudicator to value Disputed Claims which are referred to him, which are provided in section 2 and Attachments A to F.

Claim Type	Summary of examples of supporting information
1. U.S. Asbestos Direct	<p>1.1 A list showing:</p> <ul style="list-style-type: none"> <li>● all relevant policy, claim and attorney references/IDs and policy type (e.g. primary/excess/umbrella);</li> <li>● inception and expiry dates of cover;</li> <li>● policy excess (i.e. attachment point) and limits (including details of aggregate and/or per-occurrence combined single limits and if, relevant, details of separate bodily injury and property damage single limits);</li> <li>● full coverage chart;</li> <li>● Scheme Company's share of each policy;</li> <li>● details of whether expenses are in addition or included in policy limits;</li> <li>● information on underlying primary layers and self-insured retentions;</li> <li>● paid and incurred claims for each policy, split into asbestos-related, other products-related and non-products related; and</li> <li>● other relevant policy information, such as details of exclusions.</li> </ul> <p>1.2 Underlying data and details of method and calculation of ultimate claims used by the Scheme Creditor to estimate IBNR Claims,</p>



	<p>across all relevant years and policies, split into products and non-products claims. Justification of all assumptions used should also be supplied.</p> <p>1.3 Choice of law that is relevant to the claims being made, including justification for that choice, together with the Scheme Creditor's interpretation of how it applies to their submitted claim.</p> <p>1.4 Trigger and allocation bases used, including rationale for their use.</p> <p>1.5 Historical asbestos claim numbers and amount information, and a description of the methodology used for estimating future/projected numbers and amounts (split by indemnity and expense). This information should include the number of newly reported claims, settled claims and dismissed claims and their associated payments by month (or failing that, by quarter), for at least the last 24 months (where available). A breakdown by disease type and jurisdiction should be given.</p> <p>1.6 Details of treatment of specific issues affecting estimation of future claims (e.g. treatment of non-products exposures).</p> <p>1.7 Copies of relevant internal and/or external actuarial or other reports.</p> <p>1.8 Copies of any relevant attorney reports prepared for the Scheme Creditor, and an explanation as to how these reconcile by policy to any IBNR Claims submitted by the Scheme Creditor and the basis for any differences in approach adopted by the Scheme Creditor compared to the attorney report(s).</p> <p>1.9 A summary of the corporate history of the Scheme Creditor, the products manufactured and the years of production.</p> <p>1.10 Or, if other, simpler methods have been used, then:</p> <ul style="list-style-type: none"> <li>● Basis/rationale for selection of factors (e.g. IBNR to Outstanding Claims Ratios or Paid Survival Ratios or Ultimate to Paid/Incurred Claims Ratios or Burn</li> </ul>
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		<p>Factors).</p> <ul style="list-style-type: none"> <li>Data on underlying losses (paid, incurred, IBNR claims, etc by year group)</li> </ul>
2. U.S. Asbestos Treaty	2.1	<p>Where a full exposure-based method has been used, the supporting information should consist of:</p> <ul style="list-style-type: none"> <li>List of all known underlying assureds, including details of method and rationale for selection of estimated gross ultimates to the Scheme Creditor (plus the same information for those assureds, as for asbestos direct).</li> <li>Details of the calculation of the recoveries of gross losses for each known assured to each of the Scheme Creditor's policies, allowing for the Scheme Company's share.</li> <li>In the case of "pure IBNR" if an element of the claim relates to new assureds, then evidence of continued emergence of newly reported assureds should be provided to justify the pure IBNR claimed.</li> </ul>
	2.2	<p>Or, if other, simpler methods have been used, then:</p> <ul style="list-style-type: none"> <li>Basis/rationale for selection of factors (e.g. IBNR to Outstanding Claims Ratios or Paid Survival Ratios or Ultimate to Paid/Incurred Claims Ratios or Burn Factors).</li> <li>Underlying data on gross losses (paid, incurred, IBNR claims, etc by year group)</li> </ul>
	2.3	<p>In either case, relevant internal and/or external actuarial reports and attorney reports should also be supplied.</p>
3. U.S. Pollution Direct	3.1	<p>A list showing:</p> <ul style="list-style-type: none"> <li>all relevant policy, claim and attorney references/IDs and policy type (e.g. primary/excess/umbrella);</li> </ul>

	<ul style="list-style-type: none"> <li>● inception and expiry dates of cover;</li> <li>● policy excess (i.e. attachment point) and limits (including details of aggregate and/or per-occurrence combined single limits and if, relevant, details of separate bodily injury and property damage single limits);</li> <li>● full coverage chart;</li> <li>● Scheme Company's share of each policy;</li> <li>● details of whether expenses are in addition or included in policy limits;</li> <li>● information on underlying primary layers and self-insured retentions;</li> <li>● paid and incurred claims for each relevant policy; and</li> <li>● other relevant policy information, such as details of exclusions.</li> </ul> <p>3.2 Details of each site where a claim is being made, showing:</p> <ul style="list-style-type: none"> <li>● site reference codes;</li> <li>● site names and locations (city, State);</li> <li>● full details of each site, including number of years that the site was active, number of other PRPs at the site and their time using/usage of that site;</li> <li>● basis for each assured's (i.e. PRP) share at each site and estimated non-products property damage clean-up costs, bodily injury costs, Natural Resource Damages (NRD), agricultural or other products costs and defence costs by site (including detailed description of the approach to estimating these costs by type of cost). This should include details of any assumed inflation assumptions and whether clean-up costs are present-value or not, and whether or not they include ongoing monitoring or feasibility study costs, and if so, the basis for estimation of</li> </ul>
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	<p>such cost;</p> <ul style="list-style-type: none"> <li>● Source information on costs estimates, including copies of Records of Decisions (RODs) and engineering reports (the latter being particularly relevant for non-NPL sites) splitting costs between the past and the future;</li> <li>● full details of any relevant coverage-in-place agreements (showing whether the agreement represents a full pollution release or a known sites release).</li> </ul> <p>3.3 Underlying data and details of method and calculation of ultimate losses used by the Scheme Creditor across all relevant years (by site, if exposed to more than one site) and policies. Justification of all assumptions used should also be supplied.</p> <p>3.4 Choice of law that is relevant to the claims being made, including justification for that choice, together with the Scheme Creditor's interpretation of how it applies to their submitted claim.</p> <p>3.5 Trigger and allocation bases used, including rationale for their use.</p> <p>3.6 Details of treatment of all specific issues affecting estimation of claims, including win factors.</p> <p>3.7 Relevant internal and/or external actuarial or other reports.</p> <p>3.8 Relevant internal or external engineering or other expert's reports relating to specific pollution sites.</p> <p>3.9 Copies of any relevant attorney reports prepared for the Scheme Creditor, and an explanation as to how these reconcile by policy to any IBNR amounts submitted by the Scheme Creditor and the basis for any differences in approach adopted by the Scheme Creditor compared to the attorney report (e.g regarding adjustments made by the attorneys for win factors).</p> <p>3.10 A brief summary of the corporate history of the</p>
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	<p>Scheme Creditor and the details of their association with the relevant sites.</p> <p>3.11 Or, if other, simpler methods have been used, then:</p> <ul style="list-style-type: none"> <li>● Basis/rationale for selection of factors (e.g. IBNR to Outstanding Claims Ratios or Paid Survival Ratios or Ultimate to Paid/Incurred Claims Ratios or Burn Factors).</li> <li>● Data on underlying losses (paid, incurred, IBNR claims, etc by year group)</li> </ul>
4. Pollution Treaty	4.1 As U.S. Asbestos Treaty (modified, so that direct information relates to that listed under pollution direct).
5. U.S. Health Hazard and Non-U.S. Asbestos, Pollution or Health Hazard claims	<p>5.1 As per U.S. asbestos or pollution direct and/or treaty, as appropriate, modified to reflect the particular details of the claim.</p> <p>5.2 For non-U.S. asbestos or pollution or health hazard claims, details of the territories of the underlying exposure.</p>
6. Direct and Treaty Non-APH	<p>6.1 Quarterly or annual historical paid and incurred claims development by year for each class of business - Gross to the Scheme Creditor and to each of the Scheme Creditor's policies on which IBNR is being claimed. Large claims should be shown separately.</p> <p>6.2 Full details of method and calculations used to derive IBNR Claims to each policy, including choice of development factors, curve fitting, recoveries from layers etc.</p> <p>6.3 If the claim relates to a specific underlying cause/event/incident, then full details of that should be supplied, including any associated loss adjuster and or attorney reports/opinions.</p> <p>6.4 Relevant internal and/or external actuarial reports.</p> <p>6.5 For some direct policies, it is accepted that the only relevant information might be individual loss adjuster/attorney reports for reported claims</p>

	and/or claim emergence trends.
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## **Attachment H Definitions**

### **H.1 Definitions**

The terms defined below are those capitalised terms used within the Actuarial Methodology alone. Other capitalised terms, as defined in the Scheme, bear the same meaning within this Appendix.

#### **Burn Factor**

The expected ultimate loss to a layer of coverage as a percentage of the 100% limit of the layer.

#### **Chain Ladder Approach**

This approach involves using link ratios in two stages:

- (a) Selection of smoothed link ratios for those periods where sufficient development data are available.
- (b) Estimation of link ratios for periods where the development data available are sparse or non-existent.

The first stage involves examining various weighted averages of past development and the selection of representative estimates to be applied to future years. The second stage involves fitting curves to the ratios selected in the first stage and using these curves to project ratios for the tail of the development.

These ratios are then applied to the latest cumulative Paid and/or Incurred Claim amounts, separately for each period of origin, to project ultimate claims.

#### **IBNR Claims**

The value, at the Reference Date, in respect of losses which have been incurred by a Scheme Creditor but not yet reported to the Scheme Creditor, for which the Scheme Creditor asserts on a Claim Form that an amount will become due for payment to it by the Scheme Company.

#### **IBNR-to-Outstanding Claims Ratio**

This is defined as:

IBNR Claims / Outstanding Claims.

#### **Incurred Claims**

This equals cumulative Paid Claims plus Outstanding Claims at the Reference Date.

#### **Link Ratio / Development Factor**

A "Link Ratio" / "Development Factor" is the name given to the ratios formed for each origin period by taking:

Cumulative claims to period of development T  
Cumulative claims to period of development T – 1

**Outstanding Claims**

The value, at the Reference Date, in respect of losses reported to the Scheme Creditor for which Scheme Creditor asserts on a Claim Form that an amount will become due for payment to it by the Scheme Company.

**Paid Claims**

The value of cumulative claims and allocated loss adjustment expenses arising under an Insurance Contract that have been booked as paid claims by the Scheme Creditor at the Reference Date.

**Paid Survival Ratio**

This is defined as:

Current Reserve / Average historical amount paid per annum.

**Reference Date**

The "as at date" of the Scheme Creditor's calculation of its Scheme Claim. This date should not be earlier than 31 December 2008.

**Reserve**

Outstanding Claims plus IBNR Claims.

**Ultimate Claims**

The sum of Incurred Claims and IBNR Claims (including ultimate indemnity and expense amounts, where appropriate). It also equals Paid Claims plus Reserve.

**Ultimate Claims to Paid/Incurred Claims Ratio**

This is defined as:

Ultimate Claims / Paid Claims or Incurred Claims as appropriate.



## APPENDIX E

### DISCOUNTING METHODOLOGY

#### 1. Introduction and Summary

The purpose of this Appendix is to explain how discounting for the time value of money (i.e. to produce a net present value) will be allowed when the Scheme Manager is valuing Scheme Creditors' Scheme Claims. It also serves as a guide to Scheme Creditors as to how they should allow for investment income when submitting their Scheme Claims.

In summary, Scheme Creditors' Scheme Claims will be valued on an Enhanced Discounted Best Estimate basis.

This is explained as follows.

- First, the undiscounted estimate of the Outstanding and IBNR Claims relating to the relevant Scheme Creditor's Insurance Contract shall be derived on a Best Estimate basis. Best Estimate is defined in the Scheme.
- Second, in order to derive the discounted equivalent value of this figure, the undiscounted estimate will be reduced by the relevant discount factors, as shown in the tables on page 159 to 160. As can be seen from the tables, these discount factors are based on using less than the relevant term-dependent interest rates, which are based on the rates for U.S. Treasury securities on 30 October 2009. Hence, the resulting Scheme Claims will be larger than they would be if the full (i.e. unadjusted) interest rates had been used. In other words, the resulting Scheme Claims contain a margin above a pure discounted Best Estimate (hence the term "**Enhanced Discounted Best Estimate**").

The discount factors shown in the tables on page 159 to 160 may be modified by the Scheme Manager if the Scheme Creditor provides appropriate supporting information to justify using different discount factors.

The remainder of this Appendix is broken down into the following sections:

Section 2 – Items that will be discounted;

Section 3 – Claims development patterns;

Section 4 – Rates of interest, including an adjustment to produce the discount factors commensurate with an Enhanced Discounted Best Estimate basis; and

Section 5 – Discount factors as at 30 October 2009.

#### 2. Items that will be discounted

Both Outstanding Claims and IBNR Claims will be discounted to the Reference Date (unless the Scheme Manager determines that a different date should be used).

The discount factors to be applied depend on the assumed:

- claims development (i.e. payment) patterns; and
- rates of interest.

These are discussed further below.

### **3. Claims development (i.e. payment) patterns**

Table 1 shows the assumed average time to settlement for each claim type ("mean terms"). In determining the actual mean terms to use for a particular Scheme Creditor's Scheme Claim, the Scheme Manager may modify these assumed mean terms, by taking into account any information supplied by the Scheme Creditor and/or otherwise available to the Scheme Manager, relating to payment patterns that the Scheme Manager considers relevant to the Scheme Creditor's Scheme Claim and which would have a material impact on the discount factors to be used. For example, in some cases it might be appropriate to allow for pre-agreed instalment payment dates as part of a settlement agreement.

### **4. Rates of Interest**

The rates of interest will vary by claim type, based on the estimated mean term for that claim type. The unadjusted interest rates shown in the tables overleaf (i.e. before the reduction described above to produce the Enhanced Discounted Best Estimate) for each mean term are based on the rates for U.S. Treasury securities on 30 October 2009 for terms that reflect the range of mean terms of the different claim types.

The adjusted interest rates to be used for the purposes of discounting will be lower than the unadjusted interest rates resulting in the discounted Scheme Claim being above that implied by a pure discounted Best Estimate.

The actual rates of interest used (and hence discount factors) can be modified by the Scheme Manager, taking into account any information supplied by the Scheme Creditor and/or otherwise available to the Scheme Manager, relating to the relevant interest rates that should be used (e.g. as might be implied if mean terms that are different to the default values have been deemed appropriate) and which would have a material impact on the discount factors to be used. Notwithstanding this, the Scheme Manager will only use a higher rate of interest for each claim type than the adjusted rates shown in the tables overleaf either to reflect an increase in rates for the relevant U.S. Treasury securities at the time at which the discounting calculations are carried out or because claims development patterns indicate that a higher rate is appropriate. In carrying out these calculations, the Scheme Manager will take into account the requirements of the Enhanced Discounted Best Estimate basis.

### **5. Discount Factors as at 30 October 2009**

Table 1 overleaf shows the discount factors by claim type as at 30 October 2009. These factors will be used unless the Scheme Manager deems it appropriate to adjust either the claims development patterns or interest rates, as described above. Such

adjustments could include allowing for the fact that the as-at date for the calculation of the Scheme Creditor's Scheme Claim may be different to 30 October 2009.

Table 2 below shows the discount factors for a range of alternative mean terms.

An explanation of the key columns in this table is as follows:

**Mean Term:** The assumed average time to settlement, as explained in Section 3 above.

**Unadjusted Interest Rate:** The term-dependent rate of interest, as described in Section 4 above.

**Adjusted Interest Rate:** The interest rate used to derive the discount factor, after applying a reduction to the Unadjusted Interest Rate, as described above.

**Discount Factor:** The percentage reduction that will be applied to the undiscounted estimate of future claims (that is Outstanding Claims and IBNR Claims). This is derived using the Mean Term and the Adjusted Interest Rate.

**Table 1**

**Table of Discount Factors as at 30 October 2009 – Specific Claim Types**

<b>Claim Type Category</b>	<b>Mean Term (Yrs)</b>	<b>Unadjusted Interest Rate</b>	<b>Adjusted Interest Rate</b>	<b>Discount Factor</b>
US Asbestos	12	3.57%	2.9%	29%
US Pollution	9	3.27%	2.4%	19%
US Health Hazard	9	3.27%	2.4%	19%
Non-APH – US and other	4 years or less	Various	0%	0%

For claim types not specified here (e.g. Non-U.S. Asbestos, Pollution and Health Hazard), appropriate factors will be selected by the Scheme Manager, possibly based on the factors given in Table 2 below.

**Table 2**

**Table of Discount Factors as at 30 October 2009 – Specific Mean Terms**

<b>Mean Term (Yrs)</b>	<b>Unadjusted Interest Rate</b>	<b>Adjusted Interest Rate</b>	<b>Discount Factor</b>
4 years or less	Various	0%	0%
5	2.31%	0.8%	4%
6	2.65%	1.4%	8%
7	2.98%	1.9%	12%

8	3.12%	2.2%	16%
9	3.27%	2.4%	19%
10	3.41%	2.7%	23%
11	3.49%	2.8%	26%
12	3.57%	2.9%	29%
13	3.64%	3.1%	32%
14	3.72%	3.2%	36%
15	3.80%	3.3%	39%

## APPENDIX F

### REMUNERATION OF ACTUARIAL ADJUDICATOR AND SCHEME ADJUDICATOR

A Scheme Adjudicator's and the Actuarial Adjudicator's remuneration, costs and expenses shall be determined in accordance with the details of this Appendix and clause 2.13 of the Scheme. Ordinarily, the Scheme Company or, if more than one is party to the same dispute, the relevant Scheme Companies, will be responsible for the remuneration, costs and expenses of a Scheme Adjudicator or the Actuarial Adjudicator.

However, a Scheme Adjudicator and the Actuarial Adjudicator shall be entitled to direct that some or all of the remuneration, costs and expenses incurred by him (including, without limitation, the costs of any advisers or experts) be payable by the relevant Scheme Creditor in the event that the relevant Adjudicator considers that the relevant Scheme Creditor had acted in bad faith etc. (per clause 2.13.2.1) or otherwise unreasonably failed to indicate on a Dispute Notice the supporting evidence that does not need to be supplied to the Adjudicator (per clause 2.13.2.2) or unreasonably failed to provide relevant supporting evidence with his Claim Form (per clause 2.13.2.3).

Settlement must be made within 28 days of the request for payment.

#### **Actuarial Adjudicator remuneration:**

David Hindley of Deloitte LLP will be the first Actuarial Adjudicator in accordance with clause 6.1.1 of the Scheme.

The method of charging will be based on Deloitte LLP's applicable standard hourly rates from time to time (for the avoidance of doubt, these rates will be the same for any time costs allocated to the relevant Scheme Company and the Scheme Creditor).

Costs and expenses properly incurred will also be charged.

#### **Scheme Adjudicator remuneration:**

There is no named Scheme Adjudicator; however, there are provisions within the Scheme for a Scheme Adjudicator to be appointed if required (clause 6.2.)

Where a Scheme Adjudicator is appointed, the remuneration, costs and expenses will be advised to the Scheme Company and the Scheme Creditor on a case-by-case basis.

**APPENDIX G**  
**FORM OF DEED OF RELEASE**

**[SCHEME COMPANY]**

and

**[SCHEME CREDITOR] / [THE SCHEME CREDITORS]**  
(as defined herein)

and

[            ]

---

**DEED OF RELEASE**

---

**THIS DEED OF RELEASE** is made on the            day of            [●]

**BETWEEN:**

- (1) [SCHEME COMPANY] (the "**Company**");
- (2) [EACH] / [NAME OF SCHEME CREDITOR, BEING A] **SCHEME CREDITOR** of the Company, acting by the Company acting as agent pursuant to the authority conferred upon it by the Scheme Creditors under clause 7.3.4 of the Scheme; and
- (3) [            ] (the "**Released Party**")

**WHEREAS**

The Company entered into a scheme of arrangement pursuant to Part 26 of the Companies Act 2006 in relation to the business underwritten on its behalf by Camomile Underwriting Agencies Limited ("**CUAL**") (the "**Scheme**"). The Scheme became effective as between the Company and its Scheme Creditors (as defined in the Scheme) on [*insert Effective Date*]. Pursuant to clause 7.3.4 of the Scheme and following the Completion Date of the Scheme, each Scheme Creditor of the Scheme Company has authorised the Company to enter into and execute and deliver this Deed of Release on its behalf in the event that the Scheme Creditor has failed to execute and return a Deed of Release within 21 days of the Company having requested its execution and return pursuant to clause 7.3.4.1 of the Scheme.

The Released Party has agreed to enter into and execute and deliver this Deed on its own behalf.

**NOW THIS DEED WITNESSES** as follows:

1.     **Definitions**

Unless otherwise stated, terms defined in the Scheme shall have the same meaning in this Deed.

2.     **Background**

- 2.1    The Company has been authorised by the Scheme to execute this Deed on behalf of the Scheme Creditor[s].
- 2.2    The Scheme has become final and binding on the Scheme Creditors following the making of the Court Order by the High Court of Justice in England and the delivery of such order to the Registrar of Companies.
- 2.3    The Scheme has been certified as complete by the issuance of a written certificate by the Scheme Manager pursuant to clause 7.2 of the Scheme.

3.     **Release**

[Each/The] Scheme Creditor, acting by the Scheme Company pursuant to clause 7.3.4 of the Scheme, hereby releases the Released Party absolutely and unconditionally

from any and all Liability that the Released Party may have to [each/the] Scheme Creditor under or in respect of any guarantee of the Scheme Company's obligations to pay Scheme Claims.

4. **Rights of third parties**

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

5. **Counterparts**

This Deed may be executed in any number of counterparts, each of which when executed and delivered is an original and all of which taken together constitute one and the same deed.

6. **Assignment**

This Deed shall not be assignable.

7. **Governing law and jurisdiction**

This Deed shall be governed by and construed in accordance with the laws of England and Wales. The parties to this Deed irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Deed.

**IN WITNESS WHEREOF** this Deed has been executed by the parties hereto and it is intended to be and is hereby delivered on the date hereof.



Signed as deed by [Scheme Company]

acting by [*name of director*], a director, in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Director

*Name:*

*Occupation:*

*Address:*

Signed as deed by [Scheme Company]

**For and on behalf of the SCHEME CREDITOR[S]**

acting by [*name of director*], a director, in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Director

*Name:*

*Occupation:*

*Address:*

Signed as deed by [Released Party]

acting by [*name of director*], a director, in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Director

*Name:*

*Occupation:*

*Address:*