

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMPANIES COURT (ChD)**

IN THE MATTER OF PINNACLE INSURANCE PLC

-and-

IN THE MATTER OF EIFLOW INSURANCE LIMITED

-and-

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

SCHEME

pursuant to Part VII of the Financial Services and Markets Act 2000 for the
transfer of certain general insurance business of Pinnacle Insurance Plc to EIFlow Insurance Limited

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PART A – DEFINITIONS

1. INTERPRETATION

In this Scheme, unless the subject or context otherwise requires, the following words and phrases have the following meanings:

Affiliate means, in relation to a person, a subsidiary or a holding company of that person and any other subsidiaries of such holding companies from time to time (and for the purposes of this Scheme **subsidiary** and **holding company** shall have the meanings ascribed to them in the Companies Act 2006);

Applicable Law means at any time and in respect of either Party, any and all of the following as applicable to that Party and in force at that time:

- (a) legislation (including enactments, statutes, statutory instruments, treaties, regulations, orders, directives, by-laws and decrees where binding on a Party), common law and equitable principles;
- (b) rules, regulations, guidance and requirements of any governmental, regulatory, supervisory or administrative body which are binding on the Transferee or the Transferor (as the case may be) or with which a firm in the position of the Transferee or the Transferor (as the case may be) is customarily expected to comply (whether or not having the force of law) including the FS Handbook; and
- (c) binding judgments, resolutions, decisions, orders, directions, notices, demands or other requirements of a competent court, tribunal or applicable regulator;

Board means the board of directors of the relevant Party from time to time;

BST means British Standard Time;

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in London and Gibraltar;

Business Reinsurance means any reinsurance policy (or part of such reinsurance policy) under which the Transferor is reinsured in respect of a Policy, other than the Transferor Quota Share Treaty;

Business Services Agreements means any contract or agreement to which the Transferor is or has been a party under which any third party provides administration or other services to the Transferor in connection with the Transferred Policies (whether or not continuing at the Transfer Date);

Chief Actuary means the person or persons approved by the PRA in respect of SIMF20 in relation to the Transferor;

Complaint means any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a Policyholder of the Transferred Policies about the provision by the Transferor of, or failure by the Transferor to provide, a financial service prior to the Transfer Date and which relates to a Transferred Liability or a Transferred Asset;

Court means the High Court of England and Wales;

Data Protection Laws means any law, enactment, regulation, rule or order concerning the processing of data relating to living persons including:

- (a) the General Data Protection Regulation 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland, by virtue of section 3 of the European Union (Withdrawal) Act 2018;
- (b) the UK Data Protection Act 2018;
- (c) the General Data Protection Regulation 2016/679 as it forms part of the law of Gibraltar, by virtue of section 6 of the European Union (Withdrawal) Act 2019; and
- (d) the Gibraltar Data Protection Act 2004,

each to the extent applicable to the respective activities or obligations of the Transferor and Transferee pursuant to this Scheme;

Data Subject Request means a request made by a Policyholder to exercise their rights under Data Protection Laws in respect of Transferred Personal Data;

DISP means the Dispute Resolution: Complaints chapter of the FCA's Handbook of Rules and Guidance;

DVD means a DVD-ROM identified as the [●] and signed by or on behalf of the Transferor and the Transferee for the purposes of identification;

Encumbrance means any option, right to acquire, mortgage, charge, pledge, lien or other form of security or encumbrance and any agreement to create any of the foregoing, save for any such right conferred by one party in favour of the other party or any lien routinely imposed on securities in a relevant clearing system;

Excluded Assets means any and all assets of the Transferor other than the Transferred Assets and the Residual Assets, and such Excluded Assets shall include:

- (a) the rights of the Transferor to any defences, claims, counterclaims, defences to counterclaims and rights of set-off to the extent related to the Excluded Liabilities;
- (b) the rights of the Transferor under or relating to the Excluded Policies;
- (c) any tax reliefs or other assets in respect of Tax of the Transferor; and
- (d) any property of the Transferor that would be comprised in the Transferred Assets but where the Transferor and the Transferee agree in writing prior to the Transfer Date that it should not be transferred pursuant to this Scheme;

Excluded Liabilities means:

- (a) any Losses which arise out of or in connection with acts or omissions of the Transferor or any member of the Transferor's Group (or any of their directors, officers, employees, contractors, agents or appointed representatives, or any person for whose acts or omissions the Transferor may be, become or have been, liable) during the period prior to the Scheme Effective Date and which acts or omissions are identified within a period of 18 months after the Scheme Effective Date, comprising any Losses arising out of or in connection with:
 - (i) any breach of the Transferred Policies;

- (ii) any breach of Applicable Law in respect of any Transferred Policy;
 - (iii) any penalty or fine in respect of any Transferred Policy; or
 - (iv) any legal or administrative proceedings or steps including arbitration, mediation, any other dispute resolution procedure, any judicial, quasi-judicial, administrative or regulatory review or process, any investigations or reviews or requests or similar carried out at the direction or requirement of any Regulator, or any complaint or claim to any ombudsman in connection with limbs (i), (ii) or (iii) above;
- (b) any liabilities of the Transferor under or arising from the Scheme;
 - (c) save as expressly agreed in writing between the Parties prior to the Scheme Effective Date, any Losses of the Transferor in respect of Taxation or any Taxation arising in relation to the Policies which arise on or prior to the Scheme Effective Date;
 - (d) any Losses that would be comprised in the Transferred Liabilities but which the Parties agree in writing, prior to the date on which the Court grants an Order which sanctions the Scheme, shall not be transferred to the Transferee;
 - (e) any Losses arising as a result of, or in connection with, any fraud by the Transferor or any member of the Transferor's Group or any of their directors, officers, employees, contractors, agents or appointed representatives;
 - (f) any Mis-Selling Liabilities identified within a period of 18 months after the Scheme Effective Date and any costs and expenses in relation to the same;
 - (g) any and all liabilities of the Transferor under or relating to the Excluded Policies;
 - (h) any and all liabilities of the Transferor under or relating to any Business Services Agreements which arise on or prior to the Scheme Effective Date; and
 - (i) any and all liabilities of the Transferor under or relating to any Business Reinsurance which arise on or prior to the Scheme Effective Date;

Excluded Policies means Policies comprised in the Transferred Policies under which any liability remains unsatisfied or outstanding at the Transfer Date which are not otherwise capable of being transferred pursuant to FSMA at the Transfer Date;

Excluded Policies Reinsurance Arrangement means the reinsurance arrangement entered into between the Transferor and the Transferee described in paragraph 6.1;

FCA means the Financial Conduct Authority of the United Kingdom, or such other authority as shall from time to time carry out the functions carried out by it in the United Kingdom as at the date of this Scheme;

FCA Handbook means the handbook which contains the rules made by the FCA that apply to FCA-authorized firms and which is, at the date of this Scheme, available online at <http://www.handbook.fca.org.uk>;

FOS means the United Kingdom's Financial Ombudsman Service;

FSA19 means the Financial Services Act 2019 of Gibraltar (as amended from time to time);

FSMA means Financial Services and Markets Act 2000 (as amended from time to time);

FS Handbook means the FCA handbook of rules and guidance (including the FCA Handbook) and the PRA handbook of rules and guidance (including the PRA Rulebook) issued from time to time;

General Insurance Business has the meaning set out in the Glossary;

GFSC means the Gibraltar Financial Services Commission;

Glossary means the glossary to the PRA Rulebook;

Group means, in respect of a person, that person and its Affiliates;

Independent Expert means the independent expert appointed pursuant to Section 109 of FSMA in relation to the Scheme;

Long-Term Insurance Business has the meaning set out in the Glossary;

Losses means:

- (a) all direct losses (including for the avoidance of doubt, direct loss of profits), liabilities (including any settlement payment irrespective of whether legal liability has been admitted or determined), damages, penalties, costs (including costs relating to disciplinary actions, fines and legal fees) and expenses, but excluding consequential or indirect loss (such as, for the avoidance of doubt, indirect loss of profits or loss of goodwill); and
- (b) all costs and expenses (including third party professional fees) properly incurred as a result of investigating, defending or settling a claim or in connection with any threatened, pending or actual proceeding;

Marketing Preference means:

- (a) a consent given by a data subject for use of personal data to market directly to him by any means;
- (b) an indication (by act or omission, as appropriate) by the data subject that such consent is withheld, or that the data subject has exercised their rights to object to receiving direct marketing; or
- (c) a record of the fact that a data subject has not so exercised their rights;

Mis-selling Liability means any liability which:

- (a) results from or arises in connection with any Proceeding brought by, or on behalf of, any Policyholder or group of Policyholders of the Transferred Policies whether as a result of any judgment of any court, any arbitration, any decision of any regulator or any agreed settlement or compromise;
- (b) results from or arises in connection with the Transferor failing to comply with Applicable Law, or with rules, regulations, directions or guidance (whether formal or informal) set by any regulator;

in each case, to the extent that such liabilities are incurred in connection with the marketing or sale by the Transferor (or any of its or their respective agents, brokers, representatives or other intermediaries for whose acts or omissions the Transferor or any member of the Transferor's Group is or was liable), of any Transferred Policy;

Order means an order made by the Court pursuant to section 111 of FSMA sanctioning the Scheme and any order (including, without limitation, any subsequent order) in relation to this Scheme made by the Court pursuant to section 112 of FSMA;

Parties means the parties to this Scheme, each being a **Party**;

Policy and **Policyholder** each have the meaning, as appropriate, set out in section 424(2) of FSMA and regulation 2 of the Financial Services and Markets Act 2000 (Meaning of “Policy” and “Policyholder”) Order 2001 (SI 2001/2361);

PRA means the Prudential Regulation Authority of the United Kingdom, or such other authority as shall from time to time carry out the functions carried out by it in the United Kingdom as at the date of this Scheme;

PRA Rulebook means the rulebook which contains the rules made by the PRA that apply to PRA-authorized firms and which is, at the date of this Scheme, available online at <http://www.prarulebook.co.uk>;

Proceedings means any claim, counterclaim, Complaint, petition, suit, appeal or other legal process (including any application), whether intended to have interim or final legal effect in relation to its subject matter, before any court, governmental authority, regulatory authority, tribunal, arbitration panel, ombudsman or other body subsisting or empowered by law or regulation or by the provisions of an agreement;

RAO means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544);

Records means copies of all documents, files and other records, in electronic form, relating to the Transferred Business, Transferred Personal Data, Transferred Policies, Transferred Assets, Residual Assets, Transferred Liabilities and Residual Liabilities which are in the actual possession of, or under the control of, the Transferor (excluding any documents, files or other records solely relating to Tax);

Residual Assets means:

- (a) any property of the Transferor that would be comprised in the Transferred Business (including any right, benefit or power of the Transferor under any Transferred Policy) but for a refusal by the Court to order the transfer of such property to the Transferee under section 112 of FSMA at the Transfer Date;
- (b) any other property of the Transferor that would be comprised in the Transferred Business (including any right, benefit or power under a Transferred Policy) but for any agreement between the Transferor and the Transferee prior to the Transfer Date that its transfer should be delayed;
- (c) any property of the Transferor that would be comprised in the Transferred Business but for the fact that it is outside the jurisdiction of the Court or in respect of which the transfer pursuant to an order of the Court is not recognised by the laws of the jurisdiction in which the property is situated or in respect of which further steps are necessary to effect the transfer pursuant to the laws of the jurisdiction in which such property is situated;
- (d) any property of the Transferor that would be comprised in the Transferred Business (including any right, benefit or power under a Transferred Policy) but which cannot be transferred to or vested in the Transferee on the Transfer Date for any other reason; or

- (e) any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, or any other property or rights earned or received from time to time after the Transfer Date but prior to any relevant Subsequent Transfer Date in respect of any such property referred to in paragraphs (a) to (d) of this definition;

Residual Liability means any liability of the Transferor:

- (a) that is attributable to or connected with a Residual Asset (including any right, benefit or power under any Transferred Policy) and arises at any time before the Subsequent Transfer Date applicable to that Residual Asset;
- (b) that would be comprised in the Transferred Business but for the refusal by the Court to order the transfer to the Transferee under section 112 of FSMA on the Transfer Date;
- (c) that would be comprised in the Transferred Business but for the fact that it cannot be transferred to or vested in the Transferee for any other reason on the Transfer Date; or
- (d) that would be comprised in the Transferred Business (including any right, benefit or power under a Transferred Policy) but for any agreement between the Transferor and the Transferee prior to the Transfer Date that its transfer should be delayed;

but, for the avoidance of doubt, excluding the Excluded Liabilities;

Scheme means this scheme made pursuant to Part VII of FSMA in its original form with or subject to any modification, addition or condition which may be approved or imposed in accordance with paragraph 12;

Subsequent Transfer Date means in relation to any Residual Asset or Residual Liability, the date (and each date) after the Transfer Date on which such Residual Asset or Residual Liability is transferred to the Transferee, namely:

- (i) in respect of any Residual Asset falling within paragraph (a), (c) or (d) of the definition of Residual Assets, and of any Residual Liability which is attributable to or connected with that Residual Asset or which falls within paragraph (b) or (c) of the definition of Residual Liability, the date on which any impediment to its transfer shall have been removed or overcome;
- (ii) in respect of any Residual Asset falling within paragraph (b) of the definition of Residual Assets and of any Residual Liability falling within paragraph (d) of the definition of Residual Liability which is attributable to or connected with that Residual Asset, the date on which the relevant Transferor and Transferee agree the transfer should take effect; and
- (iii) in respect of any Residual Asset falling within paragraph (e) of the definition of Residual Assets, the Business Day after the date on which such Residual Asset is received by the Transferee in accordance with paragraph 8.3.

Tax or Taxation means any kind of tax, impost, duty, or levy or any similar charge, contribution or withholding, whether or not similar to any in force at the date of this Agreement, and whether of the United Kingdom or elsewhere, and any related fine, penalty, interest or charge in respect thereof;

Transfer Date means the date on which the Scheme takes effect in accordance with paragraph 11;

Transferee means EIflow Insurance Limited, a company registered in Gibraltar, with registered number 106676 whose registered office is at 5/5 Crutchetts Ramp, Gibraltar, GX11 1AA;

Transferor means Pinnacle Insurance Plc, a company registered in England and Wales, with registered number 01007798 whose registered office is at Pinnacle House, A1 Barnet Way, Borehamwood, Hertfordshire, WD6 2XX;

Transferor Quota Share Treaty means the intragroup quota share reinsurance treaty between the Transferor in the capacity of cedant and Darnell DAC in the capacity of reinsurer dated 4 March 2022 pursuant to which the Transferor is reinsured in respect of the Transferred Business;

Transferred Assets means:

- (a) the rights, benefits and property of the Transferor under or by virtue of or otherwise arising in connection with the Transferred Policies;
- (b) the Records, including all rights, title and interest of the Transferor in the Records;
- (c) the rights, benefits and property of the Transferor under the Business Services Agreements;
- (d) the rights, benefits and property of the Transferor under or by virtue of or otherwise arising in connection with the Business Reinsurance;
- (e) any other assets which the Parties agree are to be transferred under this Scheme; and
- (f) the rights of the Transferor to any defences, claims, counterclaims, defences to counterclaims, settlements and rights of set-off and any other rights that would have been available to the Transferor in respect of the Transferred Liabilities, Transferred Assets as set out in (a) to (e) above and Transferred Policies,

but excluding the Excluded Assets and, prior to the applicable Subsequent Transfer Date, the Residual Assets;

Transferred Business means:

- (a) the Transferred Policies;
- (b) the Transferred Assets;
- (c) the reserves held in respect of the Transferred Business in the amount determined pursuant to the Business Transfer Agreement between the Transferor and the Transferee;
- (d) the Transferred Liabilities; and
- (e) following each Subsequent Transfer Date, the relevant Residual Asset or Residual Liability;

Transferred Liabilities means:

- (a) any and all liabilities of the Transferor under or in respect of the Transferred Policies;
- (b) any and all liabilities of the Transferor under or in respect of the Business Reinsurance; and
- (c) any and all Mis-Selling Liabilities which are identified after a period of 18 months of the Scheme Effective Date and any costs and expenses in relation to the same,

but excluding the Excluded Liabilities and, prior to each Subsequent Transfer Date, the Residual Liabilities;

Transferred Personal Data has the meaning given in paragraph 3.4(b);

Transferred Policies means the general insurance policies included in a file in the form of a database having the filename “[●]”, as provided by the Transferor to the Transferee on or before the Transfer Date and included on the DVD but excluding any Excluded Policies; and

United Kingdom means the United Kingdom of Great Britain and Northern Ireland.

1.1 In this Scheme:

- (a) any reference to a **person** includes a body corporate, firm, unincorporated association of persons (including a partnership, joint venture or consortium), government, state, agency, local or municipal authority, government body, organisation and any other entity whether or not having separate legal personality, and an individual, his estate and personal representatives;
- (b) any reference to a **party** to this Scheme includes the successors and assigns (immediate or otherwise) of that party;
- (c) the words **including** and **include** shall mean including without limitation and include without limitation, respectively;
- (d) any reference to **liabilities** includes duties and obligations of every description (whether present or future, actual or contingent);
- (e) any reference to **property** or **assets** includes property (including real property and charges registered at the Land Registry within England and Wales and at the Registers of Scotland in Scotland and elsewhere and unregistered real property and charges), assets, cash, Encumbrances, causes of action, rights (including contingent rights as to the repayment of tax) benefits and powers of every description (whether present or future, actual or contingent) and includes property held on trust and securities, benefits, income or interest accrued but unpaid, powers of any description and any interest whatsoever in any of the foregoing;
- (f) any reference to **transfer** includes (as the context may require) “assign”, “assignment” or “assignment”, “dispose” or “disposal”, or “convey” or “conveyance”;
- (g) any reference to **variation** includes any amendment, modification, variation, supplement, deletion, replacement or termination, however effected;
- (h) any reference to the singular shall include a reference to the plural and vice versa and any reference to the masculine shall include a reference to the feminine and neuter and vice versa;
- (i) any reference in this Scheme to a statute, a statutory provision or any subordinate legislation shall be deemed to include a reference to that statute, statutory provision or subordinate legislation as amended, replaced or re-enacted from time to time on or before the Transfer Date and any reference to a statute or statutory provision shall be deemed to include a reference to any subordinate legislation made thereunder (as amended, replaced or re-enacted from time to time on or before the Transfer Date);

- (j) expressions used in this Scheme which have meanings under FSMA shall bear those meanings (unless the context otherwise requires);
- (k) any references to paragraphs or Parts are to paragraphs or Parts of this Scheme (unless the context otherwise requires);
- (l) headings are inserted for convenience only and shall not affect the construction of this Scheme;
- (m) if a period of time is specified from a given day or date or from the day or date of an actual event, it shall be calculated exclusive of that day or date;
- (n) any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- (o) any reference to an amount shall be exclusive of any applicable value added or other Tax (unless the context otherwise requires); and
- (p) the words "to the extent that" are used to indicate an element not degree and are not synonymous with the word "if".

PART B – INTRODUCTION

2. BACKGROUND

- 2.1 The Transferor is authorised under FSMA to effect and carry out contracts of (i) General Insurance Business in the United Kingdom in classes I, II, III, VI, VII, VIII, IX, X, XII, XIII, XIV, XV, XVI, XVII and XVIII set out in Part I of Schedule 1 of the RAO; and (ii) Long-Term Insurance Business in the United Kingdom in classes I, II, III, IV, VI and VII set out in Part II of Schedule 1 of the RAO.
- 2.2 The Transferee is authorised under the FSA19 to effect and carry out contracts of General Insurance Business in Gibraltar in classes I to III, V to XIV and XVI to XVIII of general insurance in Part V of Schedule 2 to the FSA19. The Transferee is passporting in to the United Kingdom on a services basis and is authorised to effect and carry out contracts of general insurance falling within classes III, V to VII, IX to XIV and XVII in Part 1 of Schedule I of the RAO.
- 2.3 The purpose of this Scheme is to effect the transfer to the Transferee, subject to the terms of this Scheme, of certain General Insurance Business carried on by the Transferor. The reserves held in respect of the Transferred Business are to be transferred pursuant to the terms of the Business Transfer Agreement between the Transferor and the Transferee

PART C – TRANSFER OF THE BUSINESS

3. TRANSFER OF THE BUSINESS, ASSETS AND LIABILITIES

- 3.1 Each part of the Transferred Business, the Residual Assets and the Residual Liabilities shall be transferred to and vested in the Transferee in accordance with this Scheme, so that:
- (a) on and with effect from the Transfer Date, each Transferred Asset and all the interest and property of the Transferor in it shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee, subject to all Encumbrances (if any) affecting such asset in accordance with this Scheme;
 - (b) on and with effect from each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and all the interest and property of the Transferor in it shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee, subject to all Encumbrances (if any) affecting such asset in accordance with this Scheme;
 - (c) on and with effect from the Transfer Date, each Transferred Liability shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee in accordance with this Scheme and shall cease to be a liability of the Transferor; and
 - (d) on and with effect from each Subsequent Transfer Date, each Residual Liability to which such Subsequent Transfer Date applies shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee in accordance with this Scheme and shall cease to be a liability of the Transferor.
- 3.2 Nothing in this Scheme shall be construed as having the effect of transferring the Excluded Assets or the Excluded Liabilities and no Excluded Assets or Excluded Liabilities will be transferred to or vested in the Transferee under or by virtue of the terms of this Scheme.
- 3.3 The Transferee shall accept without investigation or requisition such title as the Transferor shall have to the Transferred Assets at the Transfer Date and, at any Subsequent Transfer Date, to each Residual Asset then transferred.
- 3.4 Data Protection
- (a) In this paragraph 3.4, terms shall be construed in accordance with the definitions in the Data Protection Laws.
 - (b) On and with effect from the Transfer Date, and as between the Transferor and the Transferee, in respect of all personal data comprised in the Transferred Business in respect of which the Transferor was the controller immediately before the Transfer Date (the **Transferred Personal Data**):
 - (i) the Transferee shall become a controller in relation to the Transferred Personal Data, provided that the Transferor may retain a copy of and process the Transferred Personal Data as an independent controller, for the purposes of responding to any complaints and/or enquiries made by Policyholders of the Transferred Policies after the Transfer Date in respect of matters occurring prior to the Transfer Date in relation to the Transferred Policies;

- (ii) any information made available to, or consent obtained or request or other notice received from, any data subject by or on behalf of the Transferor will be deemed to have been made available to, obtained or received by the Transferee; and
 - (iii) any reference to the Transferor in any such information, consent, request, Marketing Preference or other notice will be deemed to include a reference to the Transferee and any reference to the Transferor Group will be deemed to include a reference to the Transferee Group.
- (c) Where, prior to the Transfer Date, a data subject of Transferred Personal Data has provided Marketing Preferences to each of the Transferor and the Transferee, the Transferee's record of the Marketing Preference shall be deemed to apply with respect to the relevant Transferred Policy on and with effect from the Transfer Date whether or not it is the same as any Marketing Preference given by the relevant data subject to the Transferor.
 - (d) As between the Transferor and the Transferee, where a data subject of the Transferred Personal Data has made a Data Subject Request to the Transferor before the Transfer Date and the Transferor has not responded with a copy of the Transferred Personal Data held by it in accordance with the Data Protection Laws before the Transfer Date, upon the Transferor's written request, the Transferee may respond to the request on behalf of the Transferor, in accordance with the Data Protection Laws, including by providing copies of the Transferred Personal Data held by the Transferor immediately before the Transfer Date.
 - (e) As between the Transferor and the Transferee, where a data subject of the Transferred Personal Data has made a Data Subject Request to the Transferee before the Transfer Date and the Transferee has not responded in accordance with the Data Protection Laws before the Transfer Date, the Transferee may exclude Transferred Personal Data transferred as a consequence of the Scheme from its response thereafter.
 - (f) Nothing in this paragraph 3.4 shall be deemed to transfer any right to process Transferred Personal Data or send any direct marketing communication to the extent it would be unlawful under, or inconsistent with the Data Protection Laws.

3.5 Neither the transfer of the Transferred Business nor this Scheme nor anything done or omitted to be done in connection with the transfer of the Transferred Business or this Scheme shall, in relation to the Transferred Business or any Transferred Policies, Transferred Assets, Transferred Liabilities, Residual Assets, Residual Liabilities or any other asset, property, liability or business of any member of the Transferor's Group whether before or after the Transfer Date (or where applicable, the Subsequent Transfer Date applicable to Residual Assets or Residual Liabilities):

- (a) invalidate, discharge or result in the termination of any Policy, agreement, instrument, trust deed, indenture, Encumbrance, right, interest, benefit, power, obligation or title;
- (b) constitute a breach of or default, event of default, potential event of default, termination event, mandatory prepayment event, enforcement event, perfection event or other similar event or condition (however described) under, or allow any person to terminate, any Policy, agreement, instrument, trust deed, indenture, Encumbrance, right, interest, benefit, power, obligation or title;
- (c) require any registration, re-registration or filing or any amendment to any existing registration or filing in respect of any Policy, agreement, instrument, trust deed, indenture, Encumbrance, right, interest, benefit, power, obligation or title;

- (d) require any person to perform any new or additional obligation or take any new or additional step or action, including the giving of any notice, the obtaining of any consent, approval or determination, the accession to any agreement, the payment of any fee, cost, expense, interest or other amount, the granting of any new or additional Encumbrance or the transfer of any asset or property;
- (e) entitle or require any person to exercise any right or remedy, to reduce, suspend, delay, alter or discharge its rights or obligations, to accelerate, terminate, suspend, delay, alter or discharge the performance of any rights or obligations or otherwise to vary, amend, disclaim, repudiate or terminate any Policy, agreement, instrument or Encumbrance; or
- (f) affect the enforceability, priority or ranking of any Encumbrance.

4. CONTINUITY OF PROCEEDINGS

- 4.1 On and with effect from the Transfer Date, any Proceedings (or relevant part thereof) issued, served, pending, threatened, commenced or continued by or against the Transferor (including future Proceedings (or relevant part thereof) which may be brought in the future including those not yet in contemplation) in connection with the Transferred Policies, Transferred Assets or the Transferred Liabilities in respect of which the Transferor is a party (including as the plaintiff, claimant, applicant, defendant, respondent, pursuer, defender or petitioner), and including any such Proceedings (or relevant part thereof) commenced in error against the Transferor on or after the Transfer Date, shall be continued or commenced by or against the Transferee and the Transferee shall be entitled to all defences, claims, counterclaims, defences to counterclaims, settlements, rights of set-off and any other rights that would have been available to the Transferor in relation to the Transferred Policies, Transferred Assets or the Transferred Liabilities in such Proceedings (or relevant part thereof).
- 4.2 On and with effect from the Subsequent Transfer Date applicable thereto, any Proceedings or relevant part thereof) issued, served, pending, threatened, commenced or continued by or against the Transferor in connection with the Residual Assets or the Residual Liabilities which are to be transferred on such Subsequent Transfer Date in respect of which the Transferor is a party (including as the plaintiff, claimant, applicant, defendant, respondent, pursuer, defender or petitioner), and including any such Proceedings (or relevant part thereof) commenced in error against the Transferor on or after the relevant Subsequent Transfer Date, shall be continued or commenced by or against the Transferee and the Transferee shall be entitled to all defences, claims, counterclaims, defences to counterclaims, settlements, rights of set-off and any other rights that would have been available to the Transferor in relation to the Residual Assets and the Residual Liabilities and such Proceedings (or relevant part thereof). Until such Subsequent Transfer Date, the relevant Proceedings (or relevant part thereof) shall be continued by or against the Transferor, provided that such Proceedings or relevant part thereof) shall be conducted by the Transferor in accordance with the instructions of (and at the expense of) the Transferee in relation to such Proceedings (or relevant part thereof).
- 4.3 For the avoidance of doubt, any Proceedings (or relevant part thereof) to the extent issued or served which are not to be continued by or against the Transferee pursuant to paragraph 4.1 or 4.2 shall be continued by or against the Transferor and the Transferor shall remain entitled to all defences, claims, counterclaims, settlements, rights of set-off and any other rights that were or would have been available to it in relation to those Proceedings (or relevant part thereof).
- 4.4 On and with effect from the Transfer Date, any judgment, settlement, order or award which is obtained by or against the Transferor in respect of the Transferred Policies, Transferred Assets or the Transferred Liabilities not fully satisfied before the Transfer Date shall, to the extent to which it was enforceable by or against the Transferor immediately prior thereto, become enforceable by or against the Transferee.

- 4.5 On and with effect from the Subsequent Transfer Date, any judgment, settlement, order or award which is obtained by or against the Transferor in respect of the Residual Assets or the Residual Liabilities and not fully satisfied before the Subsequent Transfer Date shall, to the extent to which it was enforceable by or against the Transferor immediately prior thereto, become enforceable by or against the Transferee.
- 4.6 In relation to any Complaint continued or commenced against the Transferee in accordance with Clause 4.1 or 4.2 which is within the jurisdiction of FOS under the provisions of DISP, the Transferee undertakes to comply with:
- (a) the relevant provisions of DISP which relates to complaints handling procedures to be followed by an insurer in dealing with Complaints arising from General Insurance Business; and
 - (b) with any direction or award made by the FOS and any settlement made in relation to any such Complaint;

to the extent that such compliance is compatible with any rules or regulations issued by the GFSC that are applicable to the Transferee.

5. RIGHTS AND OBLIGATIONS IN RELATION TO THE TRANSFERRED BUSINESS

- 5.1 On and with effect from the Transfer Date, subject to the terms of this Scheme, the Transferee shall become entitled to all the rights, benefits and property of the Transferor whatsoever subsisting on the Transfer Date under the Transferred Business including the Transferred Assets and the Transferred Policies.
- 5.2 Without prejudice to the generality of paragraph 5.1 above, where the benefits of any Transferred Policy are held under the terms of a trust, such terms, shall operate and be construed on and with effect from the Transfer Date on a basis which is consistent with the transfer of such Transferred Policy in accordance with the provisions of this Scheme. For the avoidance of doubt:
- (a) where the consent of the Transferor is required under any such terms, the consent of the Transferee shall, from the Transfer Date, instead be treated as required; and
 - (b) where a power to appoint trustees under such terms is conferred on the Transferor, that power shall, from the Transfer Date, instead be treated as conferred on the Transferee.
- 5.3 Every person who is a holder of any of the Transferred Policies or is a party to, or has the benefit of, any other agreement with the Transferor which forms part of the Transferred Business shall, on and with effect from the Transfer Date, become entitled, in succession to, and to the exclusion of, any rights which he may have had against the Transferor under any of the Transferred Policies or any other such agreement relating to the Transferred Business, to the same rights against the Transferee (subject to the terms of this Scheme) as were available to him against the Transferor under such Transferred Policies or such other agreement which forms part of the Transferred Business.
- 5.4 All references in any Transferred Policy or any other agreement or document evidencing title to or the benefit or burden of the Transferred Business (including in a contract to which the Transferor is party, a contract to which the Transferor is not party or elsewhere and whether in writing or not) to the Transferor, its Board, its Actuary or any other officers, employees or agents of the Transferor shall from and after the Transfer Date be read as references to the Transferee, the Transferee's Board, the Transferee's Actuary or any other officers, employees or agents of the Transferee respectively, as appropriate. In particular, but without limitation, all rights and duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor, its Board, its

Actuary or any other officers, employees or agents of the Transferor in relation to any Transferred Policy or other agreement or document evidencing title to or the benefit or burden of the Transferred Business relating, in each case, to the Transferred Business (including in a contract to which the Transferor is party, a contract to which the Transferor is not party or elsewhere and whether in writing or not) shall, from and after the Transfer Date, be exercisable or required to be performed by the Transferee, the Transferee's Board, the Transferee's Actuary or any other officers, employees or agents of the Transferee respectively, as appropriate.

- 5.5 The transfer of any rights, benefits, liabilities and obligations under or in connection with any Transferred Policy, Transferred Asset, Residual Asset, Transferred Liability or Residual Liability pursuant to this Scheme shall take effect and shall be valid and binding on all Parties having any interest in the same notwithstanding any restriction on transferring, assigning or otherwise dealing with the same and such transfer shall be deemed to take effect on the basis that it does not contravene any such restriction and does not give rise to any right to terminate, modify, acquire or claim an interest or right, or to treat an interest or right as terminated or modified.

6. EXCLUDED POLICIES

- 6.1 Subject to paragraph 6.2 below, liabilities under Excluded Policies shall remain liabilities of the Transferor and be fully reinsured by the Transferee without limit in time or amount with effect from the Transfer Date on the terms set out in an Excluded Policies reinsurance agreement which will include the following terms (the **Excluded Policies Reinsurance Arrangement**):

- (a) all liabilities of the Transferor attributable to Excluded Policies which would have been Transferred Liabilities had the relevant impediment to transfer not applied, shall be reinsured by the Transferee on and with effect from the Transfer Date;
- (b) the liability of the Transferee on the Transfer Date shall be such that it will cover the full liability of the Transferor in respect of the rights, benefits and powers provided to holders of Excluded Policies which would have been Transferred Liabilities had the relevant impediment to transfer not applied;
- (c) the premiums payable by the Transferor to the Transferee in connection with the provision of the reinsurance described in this paragraph 6.1 shall be deemed to have been satisfied by the transfer to the Transferee of the appropriate proportion of the Transferred Assets; and
- (d) the Transferee shall be responsible for administering the Excluded Policies and shall do so as if they were Transferred Policies subject to cooperation from the Transferor.

- 6.2 The Parties may agree in writing to amend the terms of the Excluded Policies Reinsurance Arrangement in which event the provisions of this paragraph 6.2 shall be deemed to be amended accordingly.

- 6.3 If all consents, orders, permissions or other requirements for the transfer or novation of an Excluded Policy from the Transferor to the Transferee are obtained, such Excluded Policy shall be transferred to the Transferee, and shall thereafter be treated in all respects, as if it were a Transferred Policy on the terms of this Scheme and not an Excluded Policy.

7. MANDATES AND OTHER PAYMENTS

- 7.1 All premiums payable on and after the Transfer Date (or, if relevant, Subsequent Transfer Date) in respect of the Transferred Policies, if any, shall be payable to the Transferee.

7.2 Any direct debit mandate, standing order or other instruction or authority in force at the Transfer Date (or if relevant, Subsequent Transfer Date) (including, without limitation, any instructions given to a bank by its customer in the form of direct debit or standing order) that provides for the payment by a bank or other intermediary of premiums or other amounts payable to the Transferor under any Transferred Policy or Transferred Asset shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.

7.3 Any mandate or other instruction in force on the Transfer Date (or if relevant, Subsequent Transfer Date) as to the manner of payment of any sum payable by the Transferor under any of the Transferred Policies or Transferred Assets shall, on and from the Transfer Date, continue in force as an effective authority to the Transferee.

8. DECLARATION OF TRUST BY THE TRANSFEROR

8.1 The Transferor shall, in relation to any and all Residual Assets, from the Transfer Date (but save to the extent that giving effect to such a trust would require a consent or waiver which has not been obtained or that such a trust would not be recognised by any Applicable Law or that the Transferor and the Transferee agree not to give effect to such a trust for any reason), hold any such Residual Asset, together with any proceeds of sale or income or other right accrued or return arising in respect thereof, as trustee for the Transferee.

8.2 The Transferor shall be subject to the Transferee's directions in respect of any property referred to in paragraph 8.1 above from the Transfer Date until the relevant property is transferred to or otherwise vested in the Transferee or is disposed of (whereupon the Transferor shall account to the Transferee for the proceeds of sale thereof), and the Transferee shall have authority to act as the attorney of the Transferor in respect of such property for all such purposes.

8.3 In the event of any payment being made to, property being received by, or right being conferred upon the Transferor after the Transfer Date in respect of the Transferred Business or any part of it (including for the avoidance of doubt, any asset referred to in paragraph 8.1 above), the Transferor shall, as soon as is reasonably practicable after its receipt, pay over the full amount of such payment or (to the extent to which it is able to do so) transfer such property or right to the Transferee, and the Transferee shall reimburse the Transferor's costs reasonably incurred in making any such payment or transfer upon receipt of reasonable supporting evidence thereof.

9. INDEMNITIES IN FAVOUR OF THE TRANSFEROR AND THE TRANSFEE

9.1 On and from the Transfer Date, the Transferee shall in respect of the Transferred Liabilities and all Residual Liabilities, indemnify the Transferor against any and all Losses incurred by the Transferor which arise in respect of:

(a) the Residual Liabilities until the relevant liability is transferred to or becomes a liability of the Transferee, save to the extent that such Residual Liability has arisen or increased as a result of a failure by the Transferor to comply with any directions given by the Transferee under paragraph 8.2; and

(b) the Transferred Liabilities, provided that the Transferor shall consult with the Transferee prior to taking any action in respect of any Transferred Liabilities and shall not agree or settle or indicate an intention to agree or settle any Transferred Liabilities without the written consent of the Transferee.

9.2 For the avoidance of doubt, the indemnity in Clause 9.1 shall not apply to any liabilities for which cover is provided under the Excluded Policies Reinsurance Arrangement.

- 9.3 If the Transferor becomes aware of a matter which constitutes or which would be reasonably likely to give rise to a claim under the indemnity in 9.1 (a **Transferor Claim**), the Transferor shall:
- (a) as soon as practicable, give notice to the Transferee of the matter;
 - (b) provide to the Transferee such information and documents as are within the reasonable power or control of the Transferor and as the Transferee may reasonably request for the purposes of investigating the matter subject to the preservation of any form of privilege or Applicable Law;
 - (c) act reasonably and consult with the Transferee prior to taking any action in respect of the Transferor Claim, taking account of any reasonable representations it receives from the Transferee, in deciding whether and how to take any action to avoid, dispute, resist, appeal, compromise, defend, remedy or mitigate the Transferor Claim; and
 - (d) not agree or settle or indicate an intention to agree or settle any potential Transferor Claim without the written consent of the Transferee.
- 9.4 On and from the Transfer Date, the Transferor shall in respect of all Excluded Assets and Excluded Liabilities, indemnify the Transferee against any and all Losses arising in respect of all Excluded Assets and Excluded Liabilities. If the Transferee becomes aware of a matter which constitutes or which or might give rise to a claim under this indemnity (a **Transferee Claim**), the Transferee shall:
- (a) as soon as practicable, give notice to the Transferor of the matter;
 - (b) provide to the Transferor such information and documents as are within the reasonable power or control of the Transferee and as the Transferor may reasonably request for the purposes of investigating the matter subject to the preservation of any form of privilege or Applicable Law;
 - (c) act reasonably and consult with the Transferor prior to taking any action in respect of the Transferee Claim, taking account of any reasonable representations it receives from the Transferor, in deciding whether and how to take any action to avoid, dispute, resist, appeal, compromise, defend, remedy or mitigate the Transferee Claim; and
 - (d) not agree or settle or indicate an intention to agree or settle any potential Transferee Claim without the written consent of the Transferor.

10. WITHHOLDINGS AND DEDUCTIONS

- 10.1 Any payment made by or due from the Transferee to the Transferor or vice versa pursuant to paragraph 9 shall be made free and clear of all deductions and withholdings whatsoever save only for any deductions or withholdings required by Applicable Law. If any deductions or withholdings are required by Applicable Law from a payment pursuant to paragraph 9, the payer shall be liable to pay to the recipient such further sums as shall be required to ensure that the net amount received by the recipient will equal the full amount which would have been received under the relevant provisions of paragraph 9 in the absence of any such deductions or withholdings and if the recipient obtains and utilises a tax credit, or obtains a tax repayment, which the recipient determines (acting in good faith) as being attributable to any increased payment made pursuant to this paragraph 10.1, the recipient shall pay an amount to the payer which the recipient (acting in good faith) determines will leave it with such amount that the recipient would have received under the relevant provisions of paragraph 9 in the absence of any deductions or withholdings.

PART D – MISCELLANEOUS

11. TRANSFER DATE

- 11.1 This Scheme shall become effective at 00:01 (London time) on 31 December 2024 or such other time and date as may be agreed by the Parties.
- 11.2 If the Transferor and the Transferee agree that the transfer to the Transferee of the Transferred Business should become effective after 00:01 (London time) on 31 March 2025, the Transferor and Transferee must apply to the Court for a further order, specifying any time and date after 00:01 (London time) on 31 March 2025 which, subject to the consent of the Court, shall then become the Transfer Date for the purposes of this Scheme and this Scheme shall then become operative on and from the time and date so specified, provided that:
- (a) the Transferor and the Transferee shall consider how the Policyholders of the Transferred Policies are informed of the new Transfer Date, including whether individual policyholder notifications are appropriate;
 - (b) the PRA and the FCA shall be notified in advance and as soon as reasonably practicable, and shall have the right to be heard at, any hearing of the Court at which such application is considered;
 - (c) such application shall be accompanied by a certificate from the Independent Expert to the effect that the proposed amendment will not materially adversely affect the Policyholders of the Transferred Policies or existing policyholders of the Transferor or the Transferee, including as to their benefit expectations;
 - (d) the Independent Expert shall be provided with the most up-to-date financial information (audited and/or unaudited, as may be appropriate) available to the Transferor and the Transferee in respect of that party; and
 - (e) a notice of the making of such order is published on the website of the Transferor within five (5) Business Days of the making of such further order.

12. MODIFICATION OR ADDITIONS

- 12.1 The Transferor and the Transferee may consent for and on behalf of all other persons concerned (other than the PRA and the FCA) to any modification of or addition to this Scheme or to any further condition or provision affecting the same which, prior to its sanction of this Scheme, the Court may approve or impose.
- 12.2 Subject to paragraph 12.4, at any time after the sanction of this Scheme, the Transferee and the Transferor shall be at liberty to apply jointly to the Court for consent to amend its terms, provided that in any such case:
- (a) the PRA and the FCA shall be given at least 28 Business Days notice of, and have the right to be heard at, any hearing of the Court at which such application is considered; and
 - (b) such application shall be accompanied by a certificate from an independent expert, approved for the purpose by the PRA (having consulted with the FCA), to the effect that in their opinion (having considered all of the possible impacts of the proposed amendments), the proposed amendments to the Scheme will not have a material adverse effect on the Policyholders of the Transferee, including by reference to:

- (i) the effect of the proposed amendments to the Scheme on the security of those Policyholders' contractual rights, including the likelihood and potential effects of the insolvency of the Transferee;
- (ii) the likely effects of the proposed amendments to the Scheme on matters such as investment management, new business strategy, administration, governance, expense levels and valuation bases in so far as they may affect (x) the security of those Policyholders' contractual rights; (y) the level of service provided to those Policyholders; or (z) the reasonable benefit expectations of those Policyholders; and
- (iii) the cost and tax effects of the proposed amendments to the Scheme, including in so far as they may affect the security of those Policyholders' contractual rights or their reasonable benefit expectations,

and, taking account of any relevant regulatory guidance applicable to modifications of insurance business transfer schemes under Part VII of FSMA (or its successors).

- 12.3 If such consent is granted, the Transferee and the Transferor may amend the terms of this Scheme in accordance with such consent.
- 12.4 The consent of the Court or the PRA and the FCA shall not be required in relation to the amendment or termination of the Excluded Policies Reinsurance Arrangement.
- 12.5 Notwithstanding paragraph 12.2, any amendment to this Scheme will not require Court approval where such amendment is:
- (a) a minor and/or technical amendment to terms (including amendments to correct manifest errors) that may be agreed by the Transferee and the Transferor;
 - (b) required to reflect any change in Applicable Law which has or will have any implications for the Transferor or Transferee in relation to the terms or operation of this Scheme;
 - (c) necessary to reflect any changes in the actuarial practices relating to, or techniques for the management of, the Transferred Policies; or
 - (d) required to protect the rights and reasonable expectations of the Policyholders of the Transferred Policies,

provided that the PRA and the FCA have been given at least 28 Business Days' notice (from the date that the PRA and the FCA acknowledged the notice) of the amendment and have indicated that they do not object thereto prior to the amendment taking effect.

13. THIRD PARTY RIGHTS

No person who is not a party to this Scheme may enforce any of its terms, whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

14. GOVERNING LAW

This Scheme and any non-contractual obligations arising out of or in connection with this Scheme shall be governed by, and interpreted in accordance with, English law.

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND
PROPERTY COURTS
OF ENGLAND AND WALES
COMPANIES COURT (ChD)** **CR-2024-000834**

**IN THE MATTER OF PINNACLE INSURANCE
PLC**

-and-

**IN THE MATTER OF EIFLOW INSURANCE
LIMITED**

-and-

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

SCHEME

pursuant to Part VII of the Financial Services
and Markets Act 2000

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