

IN THE MATTER OF PHOENIX LIFE LIMITED

- and -

IN THE MATTER OF PHOENIX LIFE ASSURANCE LIMITED

- and -

IN THE MATTER OF NATIONAL PROVIDENT LIFE LIMITED

- and -

IN THE MATTER OF GUARDIAN ASSURANCE LIMITED

- and -

IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

SCHEME

for the transfer of certain long-term insurance business of
National Provident Life Limited, Phoenix Life Assurance Limited and Phoenix Life Limited
to
Guardian Assurance Limited



Ref: C1/CSR

Hogan Lovells International LLP, Atlantic House, Holborn Viaduct, London EC1A 2FG

CONTENTS

PARAGRAPH	PAGE
PART A - DEFINITIONS AND INTERPRETATION	1
1. DEFINITIONS AND INTERPRETATION	1
PART B - INTRODUCTION	9
2. INTRODUCTION	9
PART C - TRANSFER	10
3. TRANSFER OF BUSINESS	10
4. CONTINUITY OF PROCEEDINGS	11
5. RIGHTS AND OBLIGATIONS IN RELATION TO THE TRANSFERRED BUSINESS	12
6. RESIDUAL POLICIES	14
7. MANDATES AND OTHER PAYMENTS	15
8. DECLARATION OF TRUST BY THE TRANSFERORS	15
9. INDEMNITIES IN FAVOUR OF THE TRANSFERORS	15
10. WITHHOLDINGS OR DEDUCTIONS	16
PART D - MISCELLANEOUS PROVISIONS	17
11. TRANSFER DATE	17
12. MODIFICATION OR ADDITIONS	17
13. THIRD PARTY RIGHTS	18
14. GOVERNING LAW	18

PART A - DEFINITIONS AND INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 In this Scheme, unless the subject or context requires otherwise, the following expressions bear the meanings respectively set opposite them:

"**Actuary**" means the person appointed by the relevant insurer from time to time to perform the "actuarial function", as described in SUP 4.3.13R;

"**Business Services**" means the administration, custody, investment management and other services provided from time to time by any person to or for the benefit of the Transferors in relation to the Transferred Policies prior to the Transfer Date, together with any reinsurance agreements under which risk is transferred from a Transferor to another person;

"**Business Day**" means a day (other than a Saturday or a Sunday) on which banks are open for business (other than solely for trading and settlement in euro) in London;

"**Capital Policy**" means the capital policy adopted by the Guardian Board from time to time;

"**Cash**" means any cash or any cash deposit;

"**Court**" means the High Court of Justice in England and Wales;

"**Eligible Government Debt**" means negotiable, registered debt obligations issued by the government of the United Kingdom, but excluding:

- (a) principal only and interest only obligations;
- (b) undated gilts; and
- (c) inflation linked obligations;

"**Encumbrance**" means any mortgage, charge (fixed or floating), pledge, lien, option, right to acquire, right of pre-emption, assignment by way of security or trust arrangement for the purpose of providing security or other security interest of any kind (including any retention arrangement), or any agreement to create any of the foregoing;

"**Excluded Assets**" means any and all assets of any Transferor except for (i) an asset falling within paragraphs (a) to (d) of the definition of Transferred Assets or (ii) a Residual Asset, and such Excluded Assets shall include:

- (a) the rights of any Transferor under or relating to the provision of the Business Services, including the rights of any Transferor against any Service Provider in respect of the provision of the Business Services;
- (b) the rights of any Transferor under or relating to the Residual Policies or the Excluded Policies;
- (c) the rights of any Transferor to any defences, claims, counterclaims, defences to counterclaims and rights of set-off in respect of the Excluded Liabilities;
- (d) any tax reliefs or other assets in respect of Tax of the Transferors; and

- (e) any property of a Transferor that would be comprised in the Transferred Assets but where the relevant Transferor and Guardian agree in writing prior to the Transfer Date that it should not be transferred pursuant to the Scheme;

"Excluded Liabilities" means any and all liabilities of any Transferor except for (i) a liability of a Transferor under any of the Transferred Policies or Transferred Assets or (ii) a Residual Liability, and such Excluded Liabilities shall include:

- (a) any liabilities of any Transferor under or relating to the provision of the Business Services, including any liabilities of the Transferors owed to any Service Provider in respect of the provision of the Business Services;
- (b) any liabilities of any Transferor under or relating to the Residual Policies or the Excluded Policies;
- (c) any liabilities in respect of Tax of the Transferors other than those that are Residual Liabilities;
- (d) any liability of the Transferor arising from any fine, penalty, levy or other amount imposed on a Transferor by any regulatory or government authority (including the Regulators and Her Majesty's Revenue and Customs); and
- (e) any liability of a Transferor that would be comprised in the Transferred Liabilities but where the relevant Transferor and Guardian agree in writing prior to the Transfer Date that it should not be transferred pursuant to the Scheme;

"Excluded Policies" means any Policies which would otherwise be Residual Policies but for the fact that the Residual Policies Reinsurance Arrangement has terminated in accordance with paragraph 6.3;

"FSMA" means the Financial Services and Markets Act 2000;

"Group" means, in relation to a Transferor or Guardian:

- (a) that Transferor or Guardian, as applicable;
- (b) its holding companies from time to time;
- (c) its subsidiaries from time to time; and
- (d) the subsidiaries from time to time of any such holding company;

"Guardian" means Guardian Assurance Limited, a company incorporated in England and Wales with registered number 00038921 whose registered address is at Ballam Road, Lytham St. Annes, Lancashire FY8 4JZ;

"Guardian Actuary" means the Actuary of Guardian;

"Guardian Board" means the board of directors of Guardian from time to time;

"Guardian NPSF" means the non-profit sub-fund of Guardian;

"Initial Expense Reserve Assets" means the NPLL Initial Expense Reserve Assets, the PLA Initial Expense Reserve Assets and the PLL Initial Expense Reserve Assets;

"Long-Term Insurance Business" means the business of effecting or carrying out long-term insurance contracts as principal, being contracts falling within Part II of Schedule 1 to the RAO;

"Group Pension Contract" means a contract of insurance under which the relevant Transferor has rights and liabilities in respect of Transferred Policies and other Policies;

"NPLL" means National Provident Life Limited, a company incorporated in England and Wales with registered number 3641947 whose registered office is at 1 Wythall Green Way, Wythall, Birmingham, B47 6WG;

"NPLL Initial Expense Reserve Assets" means assets selected by NPLL, being Cash or Eligible Government Debt, having a value equal to £5.1 million on the Transfer Date;

"NPLL Policies" means the list of Policies in the form of a database listed in a file with filename "NPLL to Guardian Transfer 2013 Policy List.csv", as provided by NPLL to Guardian on or before the Transfer Date on a CD-ROM, which CD-ROM is physically labelled "NPLL Data and Cashflow Spreadsheet - Final Approved Version" and initialled on behalf of NPLL and Guardian (and for the avoidance of doubt, including any benefit attributable to such Policies but recorded under a different or replacement policy number);

"Order" means an order made by the Court pursuant to section 111 of FSMA sanctioning this Scheme and any order (including any subsequent order) in relation to this Scheme made by the Court pursuant to section 112 of FSMA;

"Parties" means NPLL, PLA, PLL and Guardian and **"Party"** means any one of them;

"PLA" means Phoenix Life Assurance Limited, a company incorporated in England and Wales with registered number 1419 whose registered office is at 1 Wythall Green Way, Wythall, Birmingham, B47 6WG;

"PLA Initial Expense Reserve Assets" means assets selected by PLA, being Cash or Eligible Government Debt, having a value equal to £23.3 million on the Transfer Date;

"PLA Policies" means the list of Policies in the form of a database listed in a file with filename "PLA to Guardian Transfer 2013 Policy List.csv", as provided by PLA to Guardian on or before the Transfer Date on a CD-ROM, which CD-ROM is physically labelled "PLA Data and Cashflow Spreadsheet - Final Approved Version" and initialled on behalf of PLA and Guardian (and for the avoidance of doubt, including any benefit attributable to such Policies but recorded under a different or replacement policy number);

"PLL" means Phoenix Life Limited, a company incorporated in England and Wales with registered number 1016269 whose registered office is at 1 Wythall Green Way, Wythall, Birmingham, B47 6WG;

"PLL Initial Expense Reserve Assets" means assets selected by PLL, being Cash or Eligible Government Debt, having a value equal to £49.3 million on the Transfer Date;

"PLL Policies" means the list of Policies in the form of a database listed in a file with filename "PLL to Guardian Transfer 2013 Policy List.csv", as provided by PLL to Guardian on or before the Transfer Date on a CD-ROM, which CD-ROM is physically labelled "PLL Data and Cashflow Spreadsheet - Final Approved Version" and initialled on behalf of PLL and Guardian (and for the avoidance of doubt, including any benefit attributable to such Policies but recorded under a different or replacement policy number);

"Policy" means a contract of insurance or the relevant part of a contract of insurance as the case may be;

"Proceedings" means any claim, counterclaim, complaint, petition, suit, appeal or other legal process (including other proceedings for the resolution of a dispute or claim (whether current or future) and 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 all documents, files and other records, whether in physical or electronic form, relating to the Transferred Policies which are in the possession of, or under the control of, a Transferor (excluding any documents, files and other records relating to Tax other than policyholder tax related matters);

"**Regulators**" means, as the context requires, the Financial Conduct Authority or the Prudential Regulation Authority or both, or such other governmental, statutory or other authority or authorities as shall from time to time carry out such functions in relation to Long-Term Insurance Business carried on in the United Kingdom as were at the date of this Scheme allocated to the Financial Conduct Authority and the Prudential Regulation Authority under FSMA;

"**Residual Assets**" means:

- (a) any property of a Transferor that would be comprised in the Transferred Business (including any right, benefit or power of a Transferor under any Transferred Policy) but in respect of which the Court has declined to order the transfer to Guardian under section 112(2) of FSMA at the Transfer Date; or
- (b) any property of a Transferor that would be comprised in the Transferred Business (including any right, benefit or power under a Transferred Policy) but where the relevant Transferor and Guardian agree in writing prior to the Transfer Date that its transfer should be delayed; or
- (c) any property of a Transferor that would be comprised in the Transferred Business but which 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; or
- (d) any property of a Transferor that would be comprised in the Transferred Business but which cannot be transferred to or vested in Guardian 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 Liabilities**" means:

- (a) any liability of a Transferor that would be comprised in the Transferred Liabilities but in respect of which the Court has declined to order the transfer to Guardian under section 112(2) of FSMA at the Transfer Date; or
- (b) any liability of a Transferor that would be comprised in the Transferred Liabilities but where the relevant Transferor and Guardian agree in writing prior to the Transfer Date that its transfer should be delayed; or

- (c) any liability of a Transferor that would be comprised in the Transferred Liabilities but which 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 any applicable jurisdiction or in respect of which further steps are necessary to effect the transfer pursuant to the laws of any applicable jurisdiction; or
- (d) any liability of a Transferor that would be comprised in the Transferred Liabilities but which cannot be transferred to or vested in Guardian on the Transfer Date for any other reason; or
- (e) any liability of a Transferor in respect of a Residual Asset or any liability arising from any liabilities referred to in paragraphs (a) to (d) of this definition, including any liability to Taxation;

"Residual Policies" means Policies comprised in the NPLL Policies, the PLL Policies and the PLA Policies under which any liability remains unsatisfied or outstanding at the Transfer Date:

- (a) written by a Transferor in the course of carrying on insurance business in the United Kingdom or any other EEA State, in respect of which:
 - (i) for the purpose of paragraph 1(3) of Schedule 12 to FSMA, an EEA State other than the United Kingdom is the State of the commitment; and
 - (ii) the appropriate Regulator has not prior to the making of the Order by which the Court sanctions this Scheme provided the certificate referred to in paragraph 4 of Schedule 12 to FSMA with respect to the relevant EEA State which is the State of the commitment;
- (b) written by a Transferor in an establishment situated in an EEA State other than the United Kingdom, in respect of which the appropriate Regulator has not prior to the making of the Order by which the Court sanctions this Scheme provided the certificate referred to in paragraph 3 of Schedule 12 to FSMA with respect to the relevant EEA State; or
- (c) written by a Transferor in the course of carrying on Long-Term Insurance Business but which are not otherwise capable of being transferred pursuant to FSMA at the Transfer Date,

but only until the termination of the Residual Policies Reinsurance Arrangement at which point any such Policies shall cease to be Residual Policies and shall become Excluded Policies;

"Residual Policies Reinsurance Arrangement" means the reinsurance arrangement entered into between the Transferors and Guardian described in paragraph 6.1 under which Guardian will provide reinsurance to the relevant Transferor in respect of the Residual Policies;

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

"Service Provider" means any person which provides or has provided Business Services in respect of the Transferred Business from time to time to or for the benefit of any of the Transferors, whether directly or by provision of services to another person who is responsible for providing them to the Transferors;

"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 or is to be transferred to Guardian namely:

- (a) 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 falls within paragraph (a), (c) or (d) of the definition of Residual Liabilities, the date on which any impediment to its transfer shall have been removed or overcome;
- (b) in respect of any Residual Asset falling within paragraph (b) of the definition of Residual Assets and of any Residual Liability which falls within paragraph (b) of the definition of Residual Liabilities, the date on which the relevant Transferor and Guardian agree the transfer should take effect; and
- (c) in respect of any Residual Asset falling within paragraph (e) of the definition of Residual Assets and of any Residual Liability which falls within paragraph (e) of the definition of Residual Liabilities, the Business Day selected by the relevant Transferor falling within 5 Business Days on which such Residual Asset or Residual Liability is received, earned or incurred (as applicable) by that Transferor;

"SUP" means the Supervision Manual issued by the Regulators;

"Tax" or **"Taxation"** means all forms of tax, duty, rate, levy, contribution, charge or other imposition, liability or withholding in the nature of tax whenever or by whatever authority imposed and whether of the United Kingdom or elsewhere, together with any interest, penalty or fine in connection with taxation;

"Transfer Date" means the time and date this Scheme becomes operative in accordance with paragraph 11;

"Transferor" means PLL or PLA or NPLL as the context requires and the **"Transferors"** means all of them;

"Transferred Assets" means:

- (a) the rights, benefits and powers of the Transferors under any of the Transferred Policies;
- (b) the Initial Expense Reserve Assets;
- (c) the Records, including all rights, title and interest of the Transferors in the Records; and
- (d) any other assets which the Parties agree in writing, whether before or after the Transfer Date, are to be transferred under this Scheme,

but excluding the Excluded Assets and, prior to each Subsequent Transfer Date, the relevant Residual Assets and any rights, benefits and powers under or relating to the Residual Policies;

"Transferred Business" means:

- (a) the Transferred Policies;
- (b) the Transferred Assets; and
- (c) the Transferred Liabilities,

and following each Subsequent Transfer Date, the relevant Residual Asset or Residual Liability;

"Transferred Liabilities" means all and any liabilities whatsoever of a Transferor under any of the Transferred Policies or Transferred Assets, but excluding the Excluded Liabilities and, prior to each Subsequent Transfer Date, the relevant Residual Liabilities; and

"Transferred Policies" means the PLA Policies, the PLL Policies and the NPLL Policies under which any liability remains unsatisfied or outstanding at the Transfer Date but excluding the Residual Policies and the Excluded Policies.

1.2 In this Scheme:

- (a) **"including"** or **"includes"** means including or includes without limitation;
- (b) **"liabilities"** includes duties and obligations of every description (whether present or future, actual or contingent);
- (c) **"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) 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;
- (d) **"transfer"** includes (as the context may require) "assign", "assignment" or "assignment", "dispose" or "disposal," or "convey" or "conveyance";
- (e) **"variation"** includes any amendment, modification, variation, supplement, deletion, replacement or termination, however effected;
- (f) 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;
- (g) 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 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 on or before the Transfer Date);
- (h) any reference to any rules or regulations issued by the Regulators shall be deemed to include a reference to such rules or regulations as at the date of this Scheme;
- (i) expressions used in this Scheme which have meanings under FSMA shall bear those meanings, including:
 - (i) **"State of the commitment"** which bears the meaning set out in paragraph 6, Part 1 of Schedule 12 to FSMA; and
 - (ii) **"EEA State"** which bears the meaning set out in paragraph 8, Part I of Schedule 3 to FSMA;

- (j) the expressions "**holding company**" and "**subsidiary**" shall have the same meanings as in the Companies Act 2006;
- (k) references to paragraphs or Parts are to paragraphs or Parts of this Scheme;
- (l) headings are inserted for convenience only and shall not affect the construction of this Scheme;
- (m) any reference to a person shall include a reference to a body corporate, a partnership, an unincorporated association or to a person's executors or administrators, and for the avoidance of doubt, shall include a trustee;
- (n) 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;
- (o) any reference to writing shall include any modes of reproducing words in a legible and non-transitory form; and
- (p) any reference to a board of directors of a company shall be deemed to include a reference to a duly constituted committee or duly authorised representative of that board of directors.

PART B - INTRODUCTION

2. INTRODUCTION

- 2.1 NPLL has a Part 4A permission under FSMA to carry on Long-Term Insurance Business in the United Kingdom in classes I, III and IV set out in Part II of Schedule 1 to the RAO.
- 2.2 PLA has a Part 4A permission under FSMA to carry on 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 to the RAO.
- 2.3 PLL has a Part 4A permission under FSMA to carry on 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 to the RAO.
- 2.4 Guardian has a Part 4A permission under FSMA to carry on Long-Term Insurance Business in the United Kingdom in classes I, II, III, IV, VI and VII as set out in Part II of Schedule 1 to the RAO.
- 2.5 The purpose of this Scheme is to effect the transfer to Guardian, subject to the terms of this Scheme, of certain Long-Term Insurance Business carried on by the Transferors. The majority of the assets held in respect of that Long-Term Insurance Business have already been transferred pursuant to the terms of reinsurance agreements between the Transferors and Guardian, but certain additional assets will be transferred under the terms of this Scheme.
- 2.6 The Transferors and Guardian have agreed that the Transferors shall only transfer to Guardian its rights and liabilities under Group Pension Contracts to the extent that they relate to the Transferred Policies, as described in paragraphs 5.5 and 5.6. Accordingly, the Transferors and Guardian shall, with effect from the Transfer Date, become co-insurers of the Group Pension Contracts with Guardian being the insurer of the Transferred Policies and the Transferors being the insurer of those parts of the Group Pension Contracts which are not Transferred Policies.

PART C - TRANSFER

3. TRANSFER OF BUSINESS

- 3.1 Each part of the Transferred Business, the Residual Assets and the Residual Liabilities shall be transferred to and be vested in Guardian in accordance with this Scheme, so that:
- (a) subject to paragraph 8, on and with effect from the Transfer Date each Transferred Asset and all the interest of the relevant Transferor in it shall, by the Order and without any further act or instrument, be transferred to and be vested in Guardian, subject to all Encumbrances (if any) affecting such asset in accordance with this Scheme;
 - (b) subject to paragraph 8, on and with effect from each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and all the interest of the relevant Transferor in it shall, by the Order and without any further act or instrument, be transferred to and be vested in Guardian, 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 Guardian in accordance with this Scheme and shall cease to be a liability of the relevant 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 Guardian in accordance with this Scheme and shall cease to be a liability of the relevant Transferor.
- 3.2 Nothing in this Scheme shall be construed as having the effect of transferring:
- (a) the liabilities of any Transferor under or relating to the provision of the Business Services; or
 - (b) the rights of any Transferor under or relating to the provision of the Business Services, including the rights of any Transferor to any defences, claims, counterclaims, defences to counterclaims and rights of set-off in respect of the liabilities identified in paragraph (a) above.
- 3.3 On and with effect from the Transfer Date, the relevant Transferor shall discharge on behalf of Guardian or, failing that, shall indemnify Guardian against any charges, costs and claims arising in respect of the Excluded Liabilities which are liabilities of that Transferor and in respect of which a third party brings a claim against Guardian, but on the basis that Guardian will use reasonable endeavours to mitigate any such charges, costs and claims and provided in any case that the indemnity given by any such Transferor pursuant to this paragraph 3.3 shall expire and that Transferor shall cease to have any liability under it on the date which is 18 calendar months from the Transfer Date but without prejudice to any specific claims on the indemnity notified in writing to the relevant Transferor prior to that date.
- 3.4 Guardian shall accept without investigation or requisition such title as the relevant Transferor shall have to the Transferred Assets at the Transfer Date and, at any Subsequent Transfer Date, to each Residual Asset then transferred.

3.5 On and with effect from the Transfer Date, Guardian shall:

- (a) succeed to all rights, liabilities and obligations of the Transferors in respect of any personal data which relates to the Transferred Business and which is subject to the Data Protection Act 1998;
- (b) become the data controller of any personal data which relates to the Transferred Business and which is subject to the Data Protection Act 1998 in place of the Transferors; and
- (c) in respect of any personal data which relates to the Transferred Business be under the same duty by virtue of any law as each of the Transferors was under to respect the confidentiality and privacy of any person in relation to that personal data and shall be bound by any specific notice or consent given, or request made by, the data subject which was binding on either a Transferor or Guardian and which required either a Transferor or Guardian not to use the personal data for marketing purposes,

and in any consent given by a data subject in respect of such data as is mentioned in this paragraph 3.5, any reference to a Transferor (or to any member of a Transferor's Group) shall be deemed to include a reference to Guardian (and to any member of the Guardian Group).

3.6 On and with effect from the Transfer Date the Transferred Business shall be allocated to the Guardian NPSF.

3.7 The Transferors shall retain the Excluded Assets and the Excluded Liabilities.

4. **CONTINUITY OF PROCEEDINGS**

4.1 On and with effect from the Transfer Date, any Proceedings issued, served, pending, threatened or otherwise (including future Proceedings not yet in contemplation) in connection with the Transferred Business or the Transferred Liabilities in respect of which a Transferor is a party (including as the plaintiff, claimant, applicant, defendant, respondent, pursuer, defender or petitioner), and including any such Proceedings commenced in error against a Transferor on or after the Transfer Date, shall be continued or commenced by or against Guardian and Guardian shall be entitled to all defences, claims, counterclaims, settlements, rights of set-off and any other rights that that would have been available to that Transferor in relation to the Transferred Business, the Transferred Liabilities and such Proceedings.

4.2 On and with effect from the Subsequent Transfer Date applicable thereto, any Proceedings issued, served, pending, threatened or otherwise (including future Proceedings not yet in contemplation) in connection with the Residual Assets or the Residual Liabilities which are to be transferred on such Subsequent Transfer Date in respect of which a Transferor is a party (including as the plaintiff, claimant, applicant, defendant, respondent, pursuer, defender or petitioner), and including any such Proceedings commenced in error against a Transferor on or after the relevant Subsequent Transfer Date, shall be continued or commenced by or against Guardian and Guardian shall be entitled to all defences, claims, counterclaims, settlements, rights of set-off and any other rights that would have been available to that Transferor in relation to the Residual Assets and the Residual Liabilities and such Proceedings. Until such Subsequent Transfer Date, the relevant Proceedings shall be continued by or against the relevant Transferor, provided that the relevant Transferor shall conduct such proceedings in accordance with Guardian's instructions and Guardian shall discharge on behalf of the relevant Transferor or, failing that, shall indemnify the relevant Transferor against any

charges, costs and claims in respect of such Proceedings but on the basis that the relevant Transferor will use reasonable endeavours to mitigate any such charges, costs and claims.

- 4.3 For the avoidance of doubt, any Proceedings to the extent issued or served which are not to be continued by Guardian pursuant to paragraph 4.1 or 4.2 shall be continued by the relevant Transferor and that Transferor shall remain entitled to all defences, claims, counterclaims, defences to counterclaims and rights of set-off that were or would have been available to it in relation to those Proceedings.

5. RIGHTS AND OBLIGATIONS IN RELATION TO THE TRANSFERRED BUSINESS

- 5.1 Without prejudice to the generality of paragraph 3.1(a), where the benefits of any Transferred Policy are held under the terms of a trust, such terms, together with the terms of any rules applicable to any pension scheme in the case of any pension scheme under which benefits are referable to a Transferred Policy, shall operate and be construed on 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 a Transferor is required under any such terms, the consent of Guardian shall, from the Transfer Date, instead be treated as required; and
- (b) where a power to appoint trustees under such terms is conferred on a Transferor, that power shall, from the Transfer Date, instead be treated as conferred on Guardian.

- 5.2 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 a Transferor relating to 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 a Transferor under any of the Transferred Policies or any other such agreement relating to the Transferred Business, to the same rights against Guardian (subject to the terms of this Scheme) as were available to him against that Transferor under such Policies or such other agreement relating to the Transferred Business.

- 5.3 All references relating to the Transferred Business in any Transferred Policy (and, in relation to any Transferred Policy comprised within a Group Pension Contract, all references in that Group Pension Contract when construing the Group Pension Contract in relation to the Transferred Policy) or any other agreement or document (including in a contract to which a Transferor is party, a contract to which a Transferor is not party or elsewhere and whether in writing or not) to a Transferor, its board of directors, its Actuary or any other officers, employees or agents of a Transferor shall from and after the Transfer Date be read as references to Guardian, the Guardian Board, the Guardian Actuary or any other officers, employees or agents of Guardian respectively, as appropriate. In particular, but without limitation, all rights and duties exercisable or expressed to be exercisable or responsibilities to be performed by a Transferor, its board of directors, Actuary or any other officers, employees or agents of that Transferor in relation to any Transferred Policy or other agreement or document relating, in each case, to the Transferred Business (including in a contract to which a Transferor is party, a contract to which a 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 Guardian, the Guardian Board, the Guardian Actuary or any other officers, employees or agents of Guardian respectively, as appropriate.

- 5.4 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.

5.5 On and with effect from the Transfer Date and without any further act or instrument, each Group Pension Contract shall be construed at all times so that:

- (a) Guardian has all rights and liabilities under that Group Pension Contract to the extent that those rights and liabilities relate to Transferred Policies; and
- (b) the relevant Transferor retains all other rights and liabilities under that Group Pension Contract,

provided that (i) Guardian shall only acquire such rights and liabilities referred to in paragraph 5.5(a) as are respectively Residual Assets or Residual Liabilities on the Subsequent Transfer Date relating thereto and (ii) Guardian shall in no event assume any liability as is referred to in paragraph 5.5(a) which is an Excluded Liability.

5.6 In accordance with, but without prejudice to the generality of, paragraph 5.5, each Group Pension Contract shall be construed, on and with effect from the Transfer Date, so that:

- (a) the relevant Transferor and Guardian are each a party to the Group Pension Contract, each in the capacity of insurer;
- (b) the relevant Transferor retains all rights and liabilities under the Group Pension Contract except to the extent that rights and liabilities thereunder relate to the Transferred Policies, in which case Guardian shall have those rights and liabilities (other than the Excluded Liabilities which shall be retained by the relevant Transferor);
- (c) the relevant Transferor shall (to the exclusion of Guardian) provide any services, information and documents required to be provided under the Group Pension Contract, other than services, information or documents relating to Transferred Policies, which shall be provided by Guardian (to the exclusion of the relevant Transferor), save that the relevant Transferor shall provide any such information relating to Excluded Liabilities;
- (d) the relevant Transferor shall (to the exclusion of Guardian) be responsible for receiving any information or instructions that may be given under the terms of the Group Pension Contract and for updating such information and implementing such instructions in accordance with, and subject to, the terms of the Group Pension Contract, save that Guardian shall (to the exclusion of the relevant Transferor) be responsible for receiving any information or instructions that may be given in relation to the Transferred Policies under the terms of the Group Pension Contract and for updating such information and implementing such instructions in relation to the Transferred Policies in accordance with, and subject to, the terms of the Group Pension Contract;
- (e) the relevant Transferor shall (to the exclusion of Guardian) retain any right, subject to the terms of the Group Pension Contract and all applicable regulatory requirements, to exercise any discretionary power or make any decision in relation to the administration of the Group Pension Contract, save to the extent that any

such rights relate to the Transferred Policies, in which case Guardian shall (to the exclusion of the Transferor) have that right;

- (f) the Transferor shall (to the exclusion of Guardian) retain any obligation to issue a new, replacement or additional policy required to be issued under the terms of any option or right under the Group Pension Contract, save to the extent that any such obligation related to the Transferred Policies, in which case Guardian shall (to the exclusion of the relevant Transferor) have that obligation (unless that obligation arises from an Excluded Liability);
- (g) the relevant Transferor and Guardian shall each have separate obligations as insurer under the Group Pension Contract as allocated pursuant to this Scheme and shall be neither jointly, nor jointly and severally, liable for the same obligation under the Group Pension Contract;
- (h) neither the relevant Transferor nor Guardian shall exercise any right, power or discretion to agree to any amendment to a Group Pension Contract which in any such case may have an effect on the other without the prior written consent of the other; and
- (i) without limitation to paragraph 5.6(h), the relevant Transferor shall not agree to any amendment, modification or variation, including, without limitation, any increment, being made to any Transferred Policy without the prior written consent of Guardian.

6. RESIDUAL POLICIES

6.1 Subject to paragraph 6.5, the Residual Policies shall not be transferred to Guardian by this Scheme and all liabilities attributable to the Residual Policies shall remain liabilities of the relevant Transferor and be fully reinsured with effect from the Transfer Date on the following basis:

- (a) all liabilities of the Transferors attributable to the Residual Policies shall be reinsured in their entirety by Guardian on and with effect from the Transfer Date;
- (b) the claims payable by Guardian to the relevant Transferor in connection with the provision of the reinsurance shall be payable on a monthly basis;
- (c) the liability of Guardian on the Transfer Date shall be such that it will cover the full liability of the Transferors in respect of the rights, benefits and powers provided to holders of Residual Policies; and
- (d) the premiums payable by a Transferor to Guardian 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 Guardian of the appropriate proportion of the Transferred Assets and the assets transferred under the reinsurance agreements in place between the Transferors and Guardian prior to the Transfer Date.

6.2 The Parties may agree in writing to amend the terms of the Residual Policies Reinsurance Arrangement in which event the provisions of this paragraph 6 shall be deemed to be amended accordingly, provided always that such amendments shall not prejudice the interests of any policyholder of a Residual Policy.

6.3 The Parties may agree in writing to terminate the Residual Policies Reinsurance Arrangement at any time, and the Residual Policies Reinsurance Arrangement shall terminate automatically on the date which is six calendar months from the Transfer Date

in the event that it has not been so terminated before then, any such termination being without prejudice to any rights and obligations which arose prior to the date of termination.

- 6.4 In the event that the Residual Policies Reinsurance Arrangement is terminated in accordance with paragraph 6.3 then the provisions of this paragraph 6 shall accordingly cease to apply and Guardian shall transfer to each relevant Transferor Cash equal to the present value of the liabilities of that Transferor, as agreed between the relevant Transferor and Guardian, in respect of the Policies of that Transferor which are covered by the Residual Policies Reinsurance Arrangement.
- 6.5 If at any time before the Residual Policies Reinsurance Arrangement is terminated in accordance with paragraph 6.3 all consents, orders, permissions or other requirements for the transfer or novation of a Residual Policy from the relevant Transferor to Guardian are obtained such Residual Policy shall, by the Order and without any further act or instrument, be transferred to Guardian, and shall thereafter be treated in all respects, as if it were a Transferred Policy and not a Residual Policy.

7. MANDATES AND OTHER PAYMENTS

- 7.1 Any mandate or other instruction in force on the Transfer Date as to the manner of payment of any sum payable by a Transferor under any of the Transferred Policies shall, on and from the Transfer Date, continue in force as an effective authority to Guardian.

8. DECLARATION OF TRUST BY THE TRANSFERORS

- 8.1 Each Transferor shall, in relation to any and all Residual Assets which are the property of such Transferor, 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 relevant Transferor and Guardian agree in writing 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 Guardian.
- 8.2 The Transferors shall be subject to Guardian's directions in respect of the Residual Assets from the Transfer Date until they are transferred to or otherwise vested in Guardian or disposed of (whereupon the relevant Transferor shall account to Guardian for the proceeds of sale thereof), and Guardian shall have authority to act as the attorney of each of the Transferors 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 a Transferor after the Transfer Date in respect of the Transferred Business, any Transferred Asset or any Residual Asset, that 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, or in accordance with the directions of, Guardian and Guardian shall indemnify the relevant Transferor on demand against any costs incurred in making any such payment or transfer.

9. INDEMNITIES IN FAVOUR OF THE TRANSFERORS

- 9.1 On and with effect from the Transfer Date, Guardian shall discharge on the relevant Transferor's behalf or, failing that, shall indemnify that Transferor against charges, costs and claims arising in respect of any Residual Liabilities which are liabilities of that Transferor until the relevant liability is transferred to or becomes a liability of Guardian, but on the basis that that Transferor will use reasonable endeavours to mitigate any such charges, costs and claims, and Guardian's obligations under this paragraph 9.1 shall not apply in respect of any liability, charge, cost or claim arising under any Residual Policy.

9.2 On and with effect from the Transfer Date, Guardian shall discharge on behalf of the Transferors or, failing that, shall indemnify each Transferor against any charges, costs and claims arising in respect of the Transferred Liabilities in respect of which a third party brings a claim against a Transferor, but on the basis that each Transferor will use reasonable endeavours to mitigate any such charges, costs and claims and provided in any case that the indemnity given by Guardian pursuant to this paragraph 9.2 shall expire and Guardian shall cease to have any liability under it on the date which is 18 calendar months from the Transfer Date but without prejudice to any specific claims on the indemnity notified in writing to Guardian prior to that date.

10. **WITHHOLDINGS OR DEDUCTIONS**

Any payment made by or due from Guardian to a Transferor pursuant to paragraph 8.3 or 9 shall be made free and clear of all deductions and withholdings whatsoever save only for any deductions or withholdings required by law. If any deductions or withholdings are required by law from a payment by or due from Guardian to the relevant Transferor pursuant to paragraph 8.3 or 9, Guardian shall be liable to pay to the recipient of that payment (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 8.3 or 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, the recipient shall pay an amount to Guardian 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 8.3 or 9 in the absence of any deductions or withholdings.

PART D - MISCELLANEOUS PROVISIONS

11. TRANSFER DATE

- 11.1 This Scheme shall become effective at 23.59 hrs (BST) on 30 September 2013 or such other time and date specified in the Order sanctioning the Scheme or such other time and date as may be agreed by the Parties (being a date and time falling after the making of the Order).
- 11.2 Unless this Scheme shall become effective in its entirety on or before 31 December 2013, or such later date and/or time as the Court may allow upon the application of the Parties, it shall lapse.

12. MODIFICATION OR ADDITIONS

- 12.1 The Transferors and Guardian may consent for and on behalf of all other persons concerned 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 paragraphs 12.4 and 12.5, at any time after the sanction of this Scheme, Guardian and the Transferors shall be at liberty to apply jointly to the Court for consent to amend its terms, provided that in any such case:
- (a) the Regulators shall be notified 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 actuary to the effect that in his opinion the proposed amendment will not adversely affect the fair treatment of the holders of Transferred Policies.
- 12.3 If such consent is granted, Guardian and the Transferors may amend the terms of this Scheme in accordance with such consent.
- 12.4 The consent of the Court shall not be required in relation to minor and/or technical amendments to the terms of this Scheme (including amendments to correct manifest errors) that may be agreed by Guardian and the Transferors in writing, provided that the Regulators have been notified of the same at least 28 days in advance of the amendment being made and have not objected (unless the Regulators have confirmed non-objection prior to that date).
- 12.5 The consent of the Court or the Regulators shall not be required in relation to the amendment or termination of the Residual Policies Reinsurance Arrangement provided that such amendment or termination shall be in accordance with the provisions of paragraph 6.

13. CAPITAL POLICY

The Capital Policy may only be amended by the Guardian Board if the Guardian Board satisfies itself that such amendment is appropriate:

- (a) having taken account of appropriate actuarial advice;
- (b) having consulted with the Regulators; and
- (c) having regard to its obligations to treat policyholders fairly.

14. **THIRD PARTY RIGHTS**

It is not intended that any 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.

15. **GOVERNING LAW**

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

Dated: 12 September 2013

**IN THE HIGH COURT OF JUSTICE No. 3199 OF 2013
CHANCERY DIVISION
COMPANIES COURT**

IN THE MATTER OF PHOENIX LIFE LIMITED

- and -

**IN THE MATTER OF PHOENIX LIFE ASSURANCE
LIMITED**

- and -

**IN THE MATTER OF NATIONAL PROVIDENT LIFE
LIMITED**

- and -

IN THE MATTER OF GUARDIAN ASSURANCE LIMITED

- and -

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

SCHEME

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

Hogan Lovells International LLP
Atlantic House
Holborn Viaduct
London EC1A 2FG

Ref: C1/CSR
Tel: +44 20 7296 2000