

IN THE MATTER OF PHOENIX LIFE LIMITED

- and -

IN THE MATTER OF REASSURE LIMITED

- and -

IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

SCHEME

for the transfer of certain long-term insurance business of
Phoenix Life Limited
to
ReAssure Limited



Ref: C1EJ/CSR

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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 approved to perform the "Chief Actuary function" on behalf of an insurer in accordance with the Insurance – Senior Insurance Managers Regime part of the PRA Rulebook;

"Business" means the business of carrying out the Phoenix Policies;

"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, United Kingdom;

"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 Phoenix in relation to the Transferred Policies prior to the Transfer Date, including any rights and obligations under the Reinsurance Agreement (to the extent accrued or relating to any breaches which have occurred prior to the Transfer Date and in respect of any claim for reinsurance thereunder, only to the extent that Phoenix has made the corresponding payments under the relevant Transferred Policies);

"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; and
- (b) undated gilts;

"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 Phoenix 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 Phoenix under or relating to the provision of the Business Services, including the rights of Phoenix against any Service Provider in respect of the provision of the Business Services;
- (b) the rights of Phoenix under or relating to the Residual Policies or the Excluded Policies;
- (c) the rights of Phoenix 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 Phoenix; and

- (e) any property of Phoenix that would be comprised in the Transferred Assets but where Phoenix and ReAssure 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 Phoenix except for (i) a liability of Phoenix under any of the Transferred Policies or Transferred Assets or (ii) a Residual Liability, and such Excluded Liabilities shall include:

- (a) any liabilities of Phoenix under or relating to the provision of the Business Services, including any liabilities of Phoenix owed to any Service Provider in respect of the provision of the Business Services;
- (b) any Mis-selling Liabilities;
- (c) any liabilities of Phoenix under or relating to the Residual Policies, the Excluded Policies or the Excluded Assets;
- (d) any liabilities in respect of Tax of Phoenix other than those that are Residual Liabilities;
- (e) any liability of Phoenix arising from a breach of any statutory or regulatory duty prior to the Transfer Date including any fine, penalty, levy or other amount imposed on Phoenix by any regulatory or government authority (including the Regulators and Her Majesty's Revenue and Customs);
- (f) any liability of Phoenix that would be comprised in the Transferred Liabilities but where Phoenix and ReAssure agree in writing prior to the Transfer Date that it should not be transferred pursuant to the Scheme; and
- (g) to the extent any claim for reinsurance under the Reinsurance Agreement has been paid by RLL under the terms of the Reinsurance Agreement, the corresponding payments under the relevant Transferred Policies;

"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;

"Financial Ombudsman Service" means the the scheme provided under Part XVI of FSMA (The Ombudsman Scheme) under which certain disputes may be resolved by an independent person;

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

"Group" means, in relation to Phoenix or ReAssure:

- (a) Phoenix or ReAssure, 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;

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

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

"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;

"Mis-selling Liabilities" means any liabilities, losses, costs and/or expenses (whether incurred as a result of any agreed settlement or compromise (including any ex gratia payment) or otherwise and including the costs of investigating, dealing with, challenging or defending any matter from time to time) in respect of the promotion, marketing, arrangement or sale of any Transferred Policies (or any policies or options whose proceeds were used, wholly or in part, to pay the premium for a Transferred Policy) by or on behalf of Phoenix (including advice provided by or on behalf of Phoenix and whether in written, electronic or other form), including liabilities, losses, costs and/or expenses arising from:

- (a) any complaint, claim, legal action or proceedings (including arbitration, mediation or any other dispute resolution procedure) brought against Phoenix by or on behalf of any person or group of persons, including pursuant to the Financial Ombudsman Service or any successor thereto or replacement thereof;
- (b) Phoenix complying with (or failing to comply with) applicable law or with rules, regulations, directions, guidance or industry practice (whether formal or informal) set by or given by any regulatory authority;
- (c) Phoenix complying with (or failing to comply with) the Code of Conduct on Retirement Options of the Association of British Insurers or any other code of conduct in relation to the exercise of the open market option in respect of the Transferred Policies; or
- (d) any penalty or fine levied, or which results from or arises in connection with any disciplinary action undertaken, by any regulatory authority;

"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 Phoenix and ReAssure and **"Party"** means any one of them;

"Phoenix" 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;

"Phoenix Policies" means the list of Policies in the files with filenames "[•]", "[•]" and "[•]", as provided by Phoenix to ReAssure on or before the Transfer Date on a CD-ROM, which CD-ROM is physically labelled "[Phoenix Data and Cashflow Spreadsheet - Final Approved Version]" and initialled on behalf of Phoenix and ReAssure (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;

"PRA" means the Prudential Regulation Authority of the United Kingdom or such other governmental, statutory or other authority as shall from time to time carry out such functions in relation to insurance companies as are allocated to the PRA under FSMA;

"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);

"ReAssure" means ReAssure Limited, a company incorporated in England and Wales with registered number 00754167 whose registered address is at Windsor House, Telford Centre, Telford, Shropshire TF3 4NB;

"ReAssure Chief Actuary" means the Actuary of ReAssure from time to time;

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

"ReAssure Non-Profit Fund" means the non-profit sub-fund of ReAssure;

"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, Phoenix (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;

"Regulatory Requirements" means all applicable laws, statutes, regulations, rules, orders, directives, requirements, guidance, standards, guidelines and industry codes of practice in each case having legal effect stipulated by any legal, governmental or regulatory body with powers of direction over the relevant entity, including the rules of any stock exchange or listing authority, in each case existing and in force from time to time, where relevant in the context;

"Reinsurance Agreement" means the reinsurance agreement entered into by Phoenix and RLL and dated 31 July 2014 as amended from time to time;

"Residual Assets" means:

- (a) any property of Phoenix that would be comprised in the Transferred Business (including any right, benefit or power of Phoenix under any Transferred Policy) but in respect of which the Court has declined to order the transfer to ReAssure under section 112(2) of FSMA at the Transfer Date; or
- (b) any property of Phoenix that would be comprised in the Transferred Business (including any right, benefit or power under a Transferred Policy) but where

Phoenix and ReAssure agree in writing prior to the Transfer Date that its transfer should be delayed; or

- (c) any property of Phoenix 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 Phoenix that would be comprised in the Transferred Business but which cannot be transferred to or vested in ReAssure 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 Phoenix that would be comprised in the Transferred Liabilities but in respect of which the Court has declined to order the transfer to ReAssure under section 112(2) of FSMA at the Transfer Date; or
- (b) any liability of Phoenix that would be comprised in the Transferred Liabilities but where Phoenix and ReAssure agree in writing prior to the Transfer Date that its transfer should be delayed until after the Transfer Date; or
- (c) any liability of Phoenix 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 Phoenix that would be comprised in the Transferred Liabilities but which cannot be transferred to or vested in ReAssure on the Transfer Date for any other reason; or
- (e) any liability of Phoenix in respect of a Residual Asset or any liability arising from any liabilities referred to in paragraphs (a) to (d) of this definition, which arises after the Transfer Date but prior to any relevant Subsequent Transfer Date, including any liability to Taxation;

"Residual Policies" means Policies comprised in the Phoenix Policies under which any liability remains unsatisfied or outstanding at the Transfer Date:

- (a) which were concluded in an EEA State other than the United Kingdom for the purposes of paragraph 1(2A) of Schedule 12 to FSMA and 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 3A of Schedule 12 to FSMA with respect to the relevant EEA State;

- (b) written by Phoenix 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 Phoenix and ReAssure described in paragraph 6.1 under which ReAssure will provide reinsurance to Phoenix in respect of the Residual Policies;

"RLL" means Reassure Life Limited (formerly called Guardian Assurance Limited), a company incorporated in England and Wales with registered number 00038921 whose registered address is at Windsor House, Telford Centre, Telford, Shropshire, TF3 4NB;

"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 Phoenix, whether directly or by provision of services to another person who is responsible for providing them to Phoenix;

"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 ReAssure 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 Phoenix and ReAssure 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 Phoenix falling within 5 Business Days on which such Residual Asset or Residual Liability is received, earned or incurred (as applicable) by Phoenix;

"Swiss Re" means Swiss Reinsurance Company Limited a company incorporated in Switzerland, whose registered office is at Mythenquai 50/60, Zurich, 8022, Switzerland;

"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;

"Transferred Assets" means:

- (a) the rights, benefits and powers of Phoenix under any of the Transferred Policies;
- (b) the Initial Expense Reserve Assets;
- (c) the rights, benefits and powers of Phoenix under the Reinsurance Agreement;
- (d) the Records, including all rights, title and interest of Phoenix in the Records; and
- (e) 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 Reinsurance Agreement;
- (c) the Transferred Assets; and
- (d) 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 Phoenix 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 Phoenix 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 debts, liabilities, duties and obligations whether direct or indirect, accrued or unaccrued, liquidated or to become liquidated 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 of Schedule 12 to FSMA; and
 - (ii) "**EEA State**" which bears the meaning set out in paragraph 8 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 Phoenix 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.
- 2.2 ReAssure has a Part 4A permission under FSMA to carry on General Insurance in the United Kingdom in classes 1 and 2 as set out in Part I of Schedule 1 to the RAO and 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.
- 2.3 On 31 July 2014, Phoenix and RLL entered into an agreement providing for the sale and transfer of the Business to RLL. However, following the completion of the acquisition of the entire issued share capital of RLL on 6 January 2016 by a member of the Swiss Re Group, Phoenix, RLL and ReAssure have agreed that the Business will instead be transferred to ReAssure under this Scheme.
- 2.4 The purpose of this Scheme is to effect the transfer to ReAssure, subject to the terms of this Scheme, of the Business carried on by Phoenix. The majority of the assets held in respect of the Business have already been transferred pursuant to the terms of the Reinsurance Agreement. The rights and obligations of Phoenix under the Reinsurance Agreement will transfer to ReAssure under this scheme.
- 2.5 Phoenix and ReAssure have agreed that Phoenix shall only transfer to ReAssure 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, Phoenix and ReAssure shall, with effect from the Transfer Date, become co-insurers of the Group Pension Contracts with ReAssure being the insurer of the Transferred Policies and Phoenix 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 ReAssure 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 Phoenix in it shall, by the Order and without any further act or instrument, be transferred to and be vested in ReAssure, 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 Phoenix in it shall, by the Order and without any further act or instrument, be transferred to and be vested in ReAssure, 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 ReAssure in accordance with this Scheme and shall cease to be a liability of Phoenix; 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 ReAssure in accordance with this Scheme and shall cease to be a liability of Phoenix.

3.2 Nothing in this Scheme shall be construed as having the effect of transferring:

- (a) the liabilities of Phoenix under or relating to the provision of the Business Services; or
- (b) the rights of Phoenix under or relating to the provision of the Business Services, including the rights of Phoenix to any defences, claims, counterclaims, defences to counterclaims and rights of set-off in respect of the liabilities identified in paragraph 3.2(a) above.

3.3 On and with effect from the Transfer Date, Phoenix shall discharge on ReAssure's behalf or, failing that, shall indemnify ReAssure against any Excluded Liabilities, including any charges, costs and expenses arising in respect of such Excluded Liabilities, in respect of which a third party brings a claim against ReAssure, but on the basis that ReAssure will use reasonable endeavours to mitigate any such Excluded Liabilities, including any charges, costs and expenses and provided in any case that the indemnity given by Phoenix pursuant to this paragraph 3.3 shall expire and Phoenix 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 Phoenix prior to that date and without prejudice to Phoenix's liability in relation to the Excluded Liabilities.

3.4 ReAssure shall accept without investigation or requisition such title as Phoenix 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, ReAssure shall:

- (a) succeed to all rights, liabilities and obligations of Phoenix 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 Phoenix; 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 Phoenix 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 Phoenix or ReAssure and which required either Phoenix or ReAssure 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 Phoenix (or to any member of Phoenix's Group) shall be deemed to include a reference to ReAssure (and to any member of ReAssure's Group).

3.6 On and with effect from the Transfer Date the Transferred Business shall be allocated to the ReAssure Non-Profit Fund.

3.7 Phoenix 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 Phoenix is a party (including as the plaintiff, claimant, applicant, defendant, respondent, pursuer, defender or petitioner), and including any such Proceedings commenced in error against Phoenix on or after the Transfer Date, shall be continued or commenced by or against ReAssure and ReAssure shall be entitled to all defences, claims, counterclaims, settlements, rights of set-off and any other rights that would have been available to Phoenix 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 Phoenix is a party (including as the plaintiff, claimant, applicant, defendant, respondent, pursuer, defender or petitioner), and including any such Proceedings commenced in error against Phoenix on or after the relevant Subsequent Transfer Date, shall be continued or commenced by or against ReAssure and ReAssure shall be entitled to all defences, claims, counterclaims, settlements, rights of set-off and any other rights that would have been available to Phoenix 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 Phoenix, provided that Phoenix shall conduct such Proceedings in accordance with ReAssure's instructions and ReAssure shall discharge on behalf of Phoenix or, failing that, shall indemnify Phoenix against any charges, costs and claims in respect of such Proceedings

but on the basis that Phoenix 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 ReAssure pursuant to paragraph 4.1 or 4.2 shall be continued by Phoenix and Phoenix 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 Phoenix is required under any such terms, the consent of ReAssure shall, from the Transfer Date, instead be treated as required; and
- (b) where a power to appoint trustees under such terms is conferred on Phoenix, that power shall, from the Transfer Date, instead be treated as conferred on ReAssure.

- 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 Phoenix 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 Phoenix under any of the Transferred Policies or any other such agreement relating to the Transferred Business, to the same rights against ReAssure (subject to the terms of this Scheme) as were available to him against Phoenix 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 Phoenix is party, a contract to which Phoenix is not party or elsewhere and whether in writing or not) to Phoenix, its board of directors, its Actuary or any other officers, employees or agents of Phoenix shall from and after the Transfer Date be read as references to ReAssure, the ReAssure Board, the ReAssure Chief Actuary or any other officers, employees or agents of ReAssure respectively, as appropriate. In particular, but without limitation, all rights and duties exercisable or expressed to be exercisable or responsibilities to be performed by Phoenix, its board of directors, Actuary or any other officers, employees or agents of Phoenix 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 Phoenix is party, a contract to which Phoenix 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 ReAssure, the ReAssure Board, the ReAssure Chief Actuary or any other officers, employees or agents of ReAssure 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) ReAssure has all rights and liabilities under that Group Pension Contract to the extent that those rights and liabilities relate to Transferred Policies; and

(b) Phoenix retains all other rights and liabilities under that Group Pension Contract,

provided that (i) ReAssure 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) ReAssure 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) Phoenix and ReAssure are each a party to the Group Pension Contract, each in the capacity of insurer;

(b) Phoenix 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 ReAssure shall have those rights and liabilities (other than the Excluded Liabilities which shall be retained by Phoenix);

(c) Phoenix shall (to the exclusion of ReAssure) 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 ReAssure (to the exclusion of Phoenix), save that Phoenix shall provide any such information relating to Excluded Liabilities;

(d) Phoenix shall (to the exclusion of ReAssure) 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 ReAssure shall (to the exclusion of Phoenix) 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) Phoenix shall (to the exclusion of ReAssure) 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 ReAssure shall (to the exclusion of Phoenix) have that right;

(f) Phoenix shall (to the exclusion of ReAssure) 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 ReAssure shall (to the exclusion of Phoenix) have that obligation (unless that obligation arises from an Excluded Liability);

- (g) Phoenix and ReAssure 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 Phoenix nor ReAssure 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), Phoenix 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 ReAssure.

6. RESIDUAL POLICIES

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

- (a) all liabilities of Phoenix attributable to the Residual Policies shall be reinsured in their entirety by ReAssure on and with effect from the Transfer Date;
- (b) the claims payable by ReAssure to Phoenix in connection with the provision of the reinsurance shall be payable on a monthly basis;
- (c) the liability of ReAssure on the Transfer Date shall be such that it will cover the full liability of Phoenix in respect of the rights, benefits and powers provided to holders of Residual Policies; and
- (d) the premium payable by Phoenix to ReAssure 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 ReAssure of the appropriate proportion of the Transferred Assets and the assets transferred under the Reinsurance Agreement 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 ReAssure shall transfer to Phoenix Cash equal to the present value of the liabilities of Phoenix, as agreed between Phoenix and ReAssure, in respect of the Policies of Phoenix which are covered by the Residual Policies Reinsurance Arrangement

and such Policies shall be retained by Phoenix and shall not transfer to ReAssure under this Scheme.

- 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 Phoenix to ReAssure are obtained, such Residual Policy shall, by the Order and without any further act or instrument, be transferred to ReAssure, 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

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

8. DECLARATION OF TRUST BY PHOENIX

- 8.1 Phoenix shall, 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 Phoenix and ReAssure agree in writing not to give effect to such a trust for any reason), hold any Residual Asset, together with any proceeds of sale or income or other right accrued or return arising in respect thereof, as trustee for ReAssure.

- 8.2 Phoenix shall be subject to ReAssure's directions in respect of the Residual Assets from the Transfer Date until they are transferred to or otherwise vested in ReAssure or disposed of (whereupon Phoenix shall account to ReAssure for the proceeds of sale thereof), and ReAssure shall have authority to act as Phoenix's attorney 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 Phoenix after the Transfer Date in respect of the Transferred Business, any Transferred Asset or any Residual Asset, Phoenix 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, ReAssure and ReAssure shall indemnify Phoenix on demand against any costs incurred in making any such payment or transfer.

9. INDEMNITIES IN FAVOUR OF PHOENIX

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

- 9.2 On and with effect from the Transfer Date, ReAssure shall discharge on behalf of Phoenix or, failing that, shall indemnify Phoenix against any liability of Phoenix, including any charges, costs and expenses, arising from a third party claim brought against Phoenix in respect of any Transferred Liabilities, but on the basis that Phoenix will use reasonable endeavours to mitigate any such liability including any charges, costs and expenses and provided in any case that the indemnity given by ReAssure pursuant to this paragraph 9.2

shall expire and ReAssure 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 ReAssure prior to that date.

10. **WITHHOLDINGS OR DEDUCTIONS**

Any payment made by or due from ReAssure to Phoenix 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 ReAssure to Phoenix pursuant to paragraph 8.3 or 9, ReAssure shall be liable to pay Phoenix such further sums as shall be required to ensure that the net amount received by Phoenix 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 Phoenix obtains and utilises a tax credit, or obtains a tax repayment, which Phoenix determines (acting in good faith) as being attributable to any increased payment made pursuant to this paragraph 10, Phoenix shall pay an amount to ReAssure which Phoenix (acting in good faith) determines will leave it with such amount that Phoenix 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 23.58 hrs (GMT) on 31 December 2016 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 March 2017 it shall lapse.

12. MODIFICATION OR ADDITIONS

- 12.1 Phoenix and ReAssure may consent 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, ReAssure and Phoenix 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 materially adversely affect the security or reasonable expectations of the policyholders of ReAssure including the holders of the Transferred Policies and Residual Policies.
- 12.3 If such consent is granted, ReAssure and Phoenix 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 ReAssure and Phoenix 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.
- 12.6 Nothing in this Scheme shall at any time prevent ReAssure from:
- (a) establishing and maintaining other funds or sub-funds relating to its Long-Term Insurance Business and writing in, or reinsuring into, any such other funds or sub-funds any new Long-Term Insurance Business;
 - (b) allocating or reallocating a Transferred Policy (or any policy issued pursuant to a right or option thereunder) to a fund or sub-fund other than the ReAssure Non-Profit Fund; and

- (c) ceasing to maintain a fund or sub-fund in respect of its Long-Term Insurance Business,

subject, in each case, to compliance with Regulatory Requirements.

13. **COSTS**

Except as otherwise agreed in writing, Phoenix and ReAssure shall bear their own costs and expenses in relation to the preparation and carrying into effect of this Scheme.

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: [•] 2016

**IN THE HIGH COURT OF JUSTICE CR-2016-002983
CHANCERY DIVISION
COMPANIES COURT**

IN THE MATTER OF PHOENIX LIFE LIMITED

- and -

IN THE MATTER OF REASSURE 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)

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