

## UNIT 9 - Example of a fronting agreement

### FACULTATIVE REINSURANCE AGREEMENT

01<sup>st</sup> January 2022

("this Agreement")

between **XYZ Insurance Company Limited** and all subsidiary and Affiliated companies and their respective successors and assigns (collectively, the "Fronting **Company**"), and [**Guernsey Captive Insurance Ltd**] (the "**Reinsurer**").

**WHEREAS**, the Company is willing to cede to the Reinsurer certain insurance, written by the Company or assumed by it from Affiliated or non-Affiliated companies, under the terms and conditions hereinafter set forth and the Reinsurer is willing to reinsure such business on said terms and conditions:

**NOW, THEREFORE**, in consideration of their mutual obligations in relation to this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Company and the Reinsurer do hereby mutually agree upon the following:

#### **ARTICLE I – DEFINITIONS**

1.1 As used in this Agreement the following words shall have the following meaning:

"**Affiliate**" shall mean in relation to any Party, any direct or indirect subsidiary or parent company of that Party and any direct or indirect subsidiary of any such parent company.

"**Allocated Loss Expenses**" shall mean all expenses paid by the Company in the investigation, appraisal, adjustment, litigation and defence of claims, including court costs, lawyers' fees, fees paid to loss adjusters and any interest payable by the Company with respect to the foregoing, but excluding internal office expenses and salaries of the Company's employees.

"**Certificate**" means the Certificate of Reinsured Coverages, Certificate of Renewal of Reinsured Coverages, Binder of Reinsurance or Policy and Funding Schedule, which may be updated from time to time, as attached to and part of this Agreement.

"**Declaratory Judgment Expense**" means amounts paid by the Company in connection with the analysis, prosecution, defence, or resolution of an action or proceeding, whether for declaratory judgment or other action or proceeding, to determine the obligations as between the Company and the Original Insured under the Policies. Declaratory Judgment Expense shall include legal fees and court costs but exclude internal office expenses and salaries of the Company's employees.

“Excess Limits Liability” means any amount for which the Company would have been contractually liable to pay had it not been for the relevant limits of liability of the Policy.

“Extra Contractual Obligation” means those liabilities not covered under any other provision of this Agreement, for which the Company is liable to its insured or a third-party claimant, or that the Company paid as its share of a claim-related extra-contractual obligation awarded against one or more of its co-insurers.

“IBNR” (Incurred But Not Reported) shall mean a reserve for liability for future payment of Losses which have already occurred but have not yet been reported to the Company and shall also include expected future development of reserves for Losses and/or claims reported to the Company which are unpaid at any specified date.

“Insolvency Event” means if the Reinsurer shall at any time (i) become insolvent; or (ii) suffer any impairment of capital; or (iii) file a petition for bankruptcy; or (iv) go into liquidation or rehabilitation; or (v) have a receiver appointed; (vi) in relation to (i) to (v) any analogous procedure or step taken in any jurisdiction.

“Insurance Programme” shall mean the insurance programme implemented by the Company for the Original Insured in which the Company has agreed to issue or procure the issuance of Policies.

“Losses” shall mean payments or amounts payable by the Company as settlement or in satisfaction of claims for loss under the Policies including *ex gratia* and without prejudice payments and payments of Extra Contractual Obligations and Excess Limits Liability where such Extra Contractual Obligations and Excess Limits Liability are not finally adjudicated to be the result of gross negligence or fraud by the Company.

“Original Insured” shall mean [Name of the parent company which is shareholder of the captive] **ABC PLC** and/or its Affiliates and any other companies for whom ABC PLC may have the right or obligation to procure insurance falling within the Insurance Programme.

“Policies” shall mean each policy issued by the Company to the Original Insured as part of the Insurance Programme including any and all local underlying binders, policies and contracts of insurance accepted or held provisionally or otherwise as recorded in the Company's books and records.

1.2 Throughout this Agreement whenever required by context the use of the singular shall be construed to include the plural, and the use of the plural the singular.

- 1.3 Any reference in this Agreement to a Party shall either mean the Company or the Reinsurer and any reference to Parties shall mean both the Company and Reinsurer.
- 1.4 "Including" means "including without limitation" (with related words being construed accordingly) and other general words shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of assets, matters or things.

"SONIA" shall mean the Sterling Overnight Interest Index as determined by the Bank of England

## **ARTICLE II - CESSION AND ASSUMPTION OF REINSURANCE**

- 2.1 Subject to the terms and conditions set forth in this Agreement, whenever the Company agrees to cede to the Reinsurer, the Reinsurer shall accept one hundred percent (100%) of the Company's total liability under the Policies (including Losses and Allocated Loss Expenses) unless otherwise specifically agreed in writing between the Company and the Reinsurer in the Certificate.
- 2.2 Notwithstanding the preceding paragraph, whenever the Company (a) determines that it is obliged by law or it is otherwise customary to cede reinsurance other than to the Reinsurer or to retain a portion of the liability under the Policies for its own account, or (b) places other reinsurance that had been mutually agreed upon, or (c) other than in situations described in (a) of this Clause 2.2, retains a portion of the liability under the Policies for its own account with the agreement of the Reinsurer, it is understood that the reinsurance ceded to the Reinsurer shall be one hundred percent (100%) of the remaining liability (after the deduction of (a), (b) or (c)) under the Policies as reduced by the amount of such other reinsurance or retention.
- 2.3 The Agreement covers all risks attaching to any Policies written or renewed during the period of this Agreement.

## **ARTICLE III - PERIOD OF AGREEMENT**

Notwithstanding the period of any Policies, this Agreement shall be effective from 01<sup>st</sup> January 2022 and will continue in respect of each term of this Agreement, as covered by a Certificate, until terminated pursuant to Article XV or XVI of this Agreement.

## **ARTICLE IV - SCOPE OF AGREEMENT**

- 4.1 The Reinsurer's liability shall attach simultaneously with that of the Company and all reinsurances for which the Reinsurer shall be liable by virtue of this Agreement shall be subject in all respects to the same risks, terms, rates, conditions, interpretations,

assessments, waivers, and to the same modifications, alterations and cancellations, as the Policies to which such reinsurances relate, the true intent of this Agreement being that the Reinsurer shall follow the settlements and fortunes of the Company in every case to which this Agreement applies regardless of whether the governing law of the relevant Policy or Policies recognises a liability or liabilities which would not be recognised (or might be contrary to) the governing law of this Agreement, or whether the governing law of this Agreement applies (or would apply) a different interpretation from that applied by the governing law of the relevant Policies.

- 4.2 Notwithstanding any other provisions of this Agreement it is agreed that this Agreement shall apply as reinsurance of any Losses required by law (including statute, regulation or judicial decision) to be covered (or prohibited to be excluded) under the Policies reinsured hereunder. The Reinsurer agrees to follow the settlements and fortunes of the Company in the Reinsurer's agreed share of the Company's liability as stated in this Agreement in such event.

#### **ARTICLE V - PREMIUM**

- 5.1 The premium payable to the Reinsurer shall be in proportion to the liability under the Policies assumed by the Reinsurer pursuant to Article II of this Agreement less cancellations, returns and amounts specified in Clauses 5.2 and 5.3 of this Article.
- 5.2 The Reinsurer shall allow the Company an annual fronting fee under this Agreement; in an amount as set out in the Certificate.
- 5.3 In addition, the Reinsurer shall bear its proportionate share of the following:
- (a) bureau and board fees, fire brigade charges, stamp duties, premium taxes, or other taxes or charges imposed upon the Company and not recovered from the Original Insured;
  - (b) brokerage, agents' fees, countersignature fees, and any other acquisition costs incurred by the Company and not recovered from the Original Insured.
- 5.4 The Reinsurer will be responsible for meeting any levy that may be requested from the Company in relation to the Protection of Policyholders, including any levy requested by the Policyholders Protection Board or pursuant to the Financial Services Compensation Scheme or similar scheme on the premium ceded to the Reinsurer hereunder.
- 5.5 In the event of a levy being raised, the Company will advise the Reinsurer in writing of its share and the payment date, which will be the same date that the Insurer is itself required to settle any levy. The Reinsurer will settle any amount due in respect of any levy within thirty

(30) days of receipt of notice from the Insurer, or on the date specified in the prior sentence, whichever is the later.

## **ARTICLE VI – CLAIMS AND SETTLEMENTS**

- 6.1 The Company shall give the Reinsurer written notice as soon as reasonably practicable of any occurrence, accident, event, or circumstance that in the opinion of the Company will likely involve this Agreement. The Company's failure to provide such notice shall not provide the Reinsurer with a basis for non-payment of any Loss.
- 6.2 The Company in its sole discretion shall investigate, defend, resolve, adjust, settle or compromise claims or proceedings affecting this reinsurance. While the Reinsurer does not undertake to investigate or defend claims or proceedings, it shall nevertheless have the right and be given the opportunity, at its request and with the cooperation of the Company, to appoint representatives and to become associated, at its own expense, with the Company and the Company's representatives in the investigation or defence of any claims or proceedings involving this Agreement.
- 6.3 All payments arising from a judgment, settlement, compromise or adjustment of claims under the Policies, including Declaratory Judgment Expenses and those involving coverage issues and/or the resolution of whether such claims or losses are required by law, regulation or regulatory authority to be covered (or not to be excluded), shall be unconditionally binding on the Reinsurer in proportion to its participation regardless of whether such judgment, settlement, compromise or adjustment is in respect of a liability recognized by or contrary to the governing law of this Agreement. Such settlements, compromises, and adjustments shall be evaluated under a standard of good faith rather than a standard of all proper and business like steps. Such court or arbitration determination, settlement, compromise, or adjustment shall be considered a satisfactory proof of loss. Upon receipt of the Company's proof of Loss, the Reinsurer shall immediately pay its share of Loss and/or expense paid or due and payable by the Company.

In the event of a claim under any of the Policies, the Reinsurer agrees that, if requested by the Company, payment hereunder shall take place at the same time as settlement or advance of funds under the Policies. If the Company incurs an increased Loss amount and/or Allocated Loss Expenses because the Reinsurer fails promptly to pay any amount due under this Agreement, the cost of such increases shall be borne by the Reinsurer notwithstanding any other provision in this Agreement. Without limiting the foregoing, in the event the Reinsurer fails to remit the amount due to the Company within sixty (60) days of the date such payment is due, the Reinsurer will pay to the Company on demand an interest payment computed on the number of days delinquent under the terms of this Agreement at one month SONIA plus TBA per cent (TBA%).

- 6.4 The date on which any Extra Contractual Obligation and/or Excess Limits Liability is incurred by the Company will be deemed, in all circumstances, to be the date of the original Loss. Nothing in this Article shall be construed to create a separate or distinct loss apart from the original covered Loss that gave rise to the Extra Contractual Obligations and/or Excess Limits Liability discussed in the preceding paragraphs. The Reinsurer's liability as respects Extra Contractual Obligations and/or Excess Limits Liability under this Agreement will be in addition to the indemnification coverage set forth in this Agreement.
- 6.5 In the event there is no Loss other than Declaratory Judgment Expenses with respect to the Policies, such expenses shall be deemed Loss for purposes of this Agreement.
- 6.6 The Reinsurer will be paid or credited by the Company with its proportion of subrogation and/or salvage, namely, reimbursement obtained or recovery made by the Company, less the actual cost (excluding internal office expenses and salaries of the Company's employees) of obtaining such reimbursement or making such recovery. In any event, the Company and the Reinsurer shall share in the expenses of any unsuccessful subrogation or salvage efforts in the same proportion that the Company and the Reinsurer shared in Loss giving rise to such subrogation or salvage efforts.
- 6.7 Unless otherwise provided in this Agreement, the treatment of Allocated Loss Expenses shall follow form with the Policies. If expense is included within the limits of the Policies: (i) the Original Insured's retention shall be satisfied by Losses and/or Allocated Loss Expenses; and (ii) the reinsurance limit(s) stated herein, if any, shall be exhausted by Losses and/or Allocated Loss Expenses. If expense is payable in addition to the limits of the Policies: (i) the Original Insured's retention shall be satisfied only by Losses; (ii) the reinsurance limits shall be exhausted only by Losses; and (iii) Allocated Loss Expenses shall be payable by the Reinsurer in addition to the reinsurance limits. The Reinsurer shall pay the Company its proportionate share of all Loss and Allocated Loss Expenses.

## **ARTICLE VII - SETTLEMENT OF ACCOUNTS**

- 7.1 The Company shall render accounts to the Reinsurer as soon as practicable, and in no case no longer than 30 days following the quarter end, showing the following:
- (a) Premium credited to the Reinsurer;
  - (b) Taxes and other items, as provided in Article V, debited to the Reinsurer;

- (c) Losses paid debited to the Reinsurer;
- (d) Fronting Fee, as provided in Article V, debited to the Reinsurer;
- (e) Reserves as provided in Article X, due to or from the Reinsurer;
- (f) Any other amounts that may be properly debited or credited to either Party during the period for which the account is rendered.

7.2 In respect of those territories listed in the Schedule of Territories below, the Company agrees to remit premiums due to the Reinsurer not later than twenty-five (25) days after receipt of such premiums by the Company's office issuing the Policy.

Schedule of Territories

Australia	Hong Kong	Panama
Austria	Ireland	South Africa
Belgium	Italy	Spain
Denmark	Japan	Sweden
Finland	Malaysia	Switzerland
France	New Zealand	Thailand
Germany	Norway	United Kingdom
Netherlands	Puerto Rico	United States of America
Indonesia	Singapore	Canada

7.3 To the extent not prohibited by applicable law or regulation, thirteen (13) months from the date of the original settlement of premium, the Company shall also remit to the Reinsurer any premium reserves withheld in any of the territories listed above.

7.4 Such provision for payment to the Reinsurer will not apply under any circumstances in any of the listed territories in respect of:

- (a) The Reinsurer's agreed share of any salvage and/or recoveries for any Loss.
- (b) Any premium as may be paid which results in a net premium to the Reinsurer of less than GBP10,000.

7.5 In the event the Company fails to remit the amount due to the Reinsurer from any of the territories listed within the above-mentioned periods, and provided that confirmation of premium payment has been received by the Company from the Company's policy-issuing office, it is agreed that the Company will make its best efforts to remit balances due the

Reinsurer promptly thereafter. The Company will pay to the Reinsurer on demand an interest payment computed on the number of days delinquent under the terms of this Agreement based on the net amount due the Reinsurer at one month SONIA plus TBA per cent (TBA%).

- 7.6 Notwithstanding any other provisions herein, this Article VII will be automatically cancelled in whole or relevant part, territory by territory, without notice or compliance with the cancellation provisions of this Agreement, in the event that any restrictions are imposed by governmental bodies or any other authorities in such territory upon the free distribution of insurance or reinsurance premiums, premium balances or currency from the Company's policy-issuing office in such territory, from whatever cause, whether pre-existing or instituted subsequent to the effective date of this Agreement.
- 7.7 In respect of those territories not listed in the Schedule of Territories, the Company agrees to remit premiums due to the Reinsurer as soon as practicable after the Company's receipt of same.
- 7.8 The territories listed in the Schedule of Territories may be amended from time to time upon written notice to the Reinsurer or by operation of law.

#### **ARTICLE VIII - CURRENCY**

- 8.1 The Master Currency under this Agreement shall be British Pound Sterling.
- 8.2 Premiums due to the Reinsurer hereunder shall be paid in the Master Currency. In respect of premiums received by the Company in any other currency, the rate of exchange used for conversion into the Master Currency shall be that applying to the account into which the Company's administrator (as identified in the Certificate) receives that premium as at the date on which the administrator receives the premium.
- 8.3 Amounts due from the Reinsurer for any Loss shall, where necessary, be converted into the Master Currency at the same rate of exchange as was applied in the settlement of the Loss under the Policy. If no conversion was done at that time, the rate of exchange to be applied shall be that used by the Company's administrator in its own books either at the time of settlement of a Loss by the Reinsurer or in accordance with any subsequent adjustment thereto.
- 8.4 Amounts recovered by or on behalf of the Company and payable to the Reinsurer hereunder through salvage, subrogation or otherwise in respect of any Loss or damage, shall be paid in the Master Currency. Such amounts shall be converted into the Master Currency from the currency in which the Company receives such amounts at the rate of exchange applying to

the account into which the Company's administrator receives payment of that amount as at the date on which the administrator receives such amount.

- 8.5 Loss or gain arising from any fluctuation in exchange rate relating to any currency conversion shall be borne by and for the account of the Reinsurer.

#### **ARTICLE IX – SECURITY**

- 9.1 From time to time, at the Company's reasonable discretion (without prejudice to the generality and the unfettered nature of the aforesaid discretion of the Company) if the obligations of the Reinsurer under this Agreement (as determined by the Company in its sole discretion) exceed GBP 10,000,000 (Ten Million British Pounds Sterling) (the "Collateral Trigger") , within thirty (30) working days of the Reinsurer receiving written notice from the Company, the Reinsurer will provide a clean, unconditional and irrevocable Letter of Credit in a form acceptable to the Company (the "Letter of Credit"). Provided the Collateral Trigger has been met, the Company may at any time require that the Reinsurer increase the amount of the Letter of Credit to secure any increased amount of obligations of the Reinsurer under this Agreement. Such obligations shall include, but not be limited to, the Reinsurer's share of reserves for fully developed incurred Losses, Allocated Loss Expenses, unearned premiums and IBNR. The Reinsurer's duty to provide security as stated above will extend until the Company is satisfied that the Reinsurer's obligations under this Agreement have been met. The Reinsurer recognizes that this duty may continue after this Agreement terminates or is cancelled.
- 9.2 Not later than fifteen (15) working days' prior to any termination or expiration of a Letter of Credit, the Reinsurer will provide to the Company a substitute irrevocable Letter of Credit in a form and amount acceptable to the Company that will become effective immediately upon the termination or expiration of the prior irrevocable Letter of Credit. The Reinsurer will continue to provide such substitute irrevocable Letters of Credit in a form acceptable to the Company until the Company is satisfied that the Reinsurer's obligations under this Agreement have been met. If the Reinsurer shall fail to provide the Company with any such substitute irrevocable Letter of Credit, the Company will have the right to draw upon the full amount of the existing irrevocable Letter of Credit and to apply the proceeds thereof to secure the obligations of the Reinsurer under this Agreement.
- 9.3 From time to time, at its reasonable discretion and following not less than fifteen (15) working days written notice to the Reinsurer the Company may require that the Reinsurer provide a clean, unconditional and irrevocable Letter of Credit (the "Letter of Credit") if one has not been provided before or increase the amount of the Letter of Credit to secure any increased amount of obligations of the Reinsurer under this Agreement. Such obligations shall include,

but not be limited to, the Reinsurer's share of reserves for fully developed incurred Losses, Allocated Loss Expenses, unearned premiums and IBNR. The Reinsurer's duty to provide security as stated above will extend until the Company is satisfied that the Reinsurer's obligations under this Agreement have been met. The Reinsurer recognizes that this duty may continue after this Agreement terminates or is cancelled.

- 9.4 Not later than fifteen (15) working days' prior to any termination or expiration of the Letter of Credit, the Reinsurer will provide to the Company a substitute irrevocable Letter of Credit in a form and amount acceptable to the Company that will become effective immediately upon the termination or expiration of the prior irrevocable Letter of Credit. The Reinsurer will continue to provide such substitute irrevocable Letters of Credit in a form acceptable to the Company until the Company is satisfied that the Reinsurer's obligations under this Agreement have been met. If the Reinsurer shall fail to provide the Company with any such substitute irrevocable Letter of Credit, the Company will have the right to draw upon the full amount of the existing irrevocable Letter of Credit and to apply the proceeds thereof to secure the obligations of the Reinsurer under this Agreement.
- 9.5 Notwithstanding any other provision of this Agreement the Company shall have the right to draw down on the Letter of Credit at any time to satisfy any of the Reinsurer's obligations under this Agreement which are then due under this Agreement and are unpaid. The Letter of Credit may be drawn upon for such purpose by the Company or by any successor to the Company by operation of law, including, any liquidator, receiver or conservator of the Company.
- 9.6 If the Company or any successor to the Company by operation of law shall draw on the Letter of Credit or any successor Letter of Credit, the Company or such successor shall use and apply any and all proceeds of such Letter of Credit or successor Letter of Credit solely for the purpose of satisfying the Reinsurer's obligations hereunder.
- 9.7 The Reinsurer shall provide annually to the Company, upon request, a certified copy of the Reinsurer's latest financial statement as filed with the applicable financial regulatory authority in its domicile jurisdiction. The Company will keep such statement confidential and shall use it solely for the purpose of evaluating the amount of security required under this Agreement.

#### **ARTICLE X - RESERVES**

- 10.1 Upon request of the Company, the Reinsurer agrees to promptly deliver to the Company funds equal to the premium and Loss reserves as may be required by competent regulatory authorities. The funds shall be in the currency or collateral instrument such authority may require or customarily accept. It is understood and agreed that the term "competent regulatory authorities" includes such authorities in the Company's country of incorporation. The Company shall use its commercially reasonable efforts to release reserves as soon as possible. Reserves retained and released shall be debited/credited in accordance with Article

VII. The Company will pay to the Reinsurer interest on reserves retained, such interest to be computed at the rate equal to one month SONIA less half (TBA) of one percent as of the date such reserves are retained by the Company.

- 10.2 In the event of termination of this Agreement, the Company, to the extent permitted by law, shall utilize such retained reserves for payment of Losses before calling upon the Reinsurer to remit its share of said Losses.
- 10.3 The Reinsurer will show, upon request, that it is recording appropriate reserves on its books with respect to outstanding loss reserves, IBNR, Allocated Loss Expenses and unearned premium reserves.

#### **ARTICLE XI - ACCESS TO RECORDS**

- 11.1 The Reinsurer, or its duly authorised representative, shall upon written request have access at all reasonable times during and after the term of this Agreement, until such time as the obligations of the Company and the Reinsurer hereunder are fully and finally satisfied, to the books and records of the Company in connection with the reinsurance provided hereunder. Inspection of books and records under this Article shall be made during normal business hours following 15 days prior written notice, which notice shall include the details and initial scope of the inspection. Inspection shall be conducted without undue interference to the Company's business activities and in accordance with reasonable industry practices.
- 11.2 Notwithstanding anything to the contrary above, the Company reserves the right to withhold any documents from the Reinsurer that in the Company's judgement are protected by any applicable privileges and doctrines and will notify the Reinsurer in the event any such documents are withheld.
- 11.3 Promptly, but no later than thirty (30) calendar days after completion of its review, the Reinsurer shall consult with the Company with respect to any and all questions or issues raised by the inspection. If, as a result of the Reinsurer's inspection, any claim is denied, contested or disputed, the Reinsurer shall, upon the Company's request, promptly provide the Company with a copy of any reports or analysis completed by the Reinsurer or its representatives outlining the findings of the inspection and identifying the reasons for denying, contesting or disputing such claim.

#### **ARTICLE XII - ERRORS AND OMISSIONS**

Any inadvertent clerical delay(s), omission(s) or error(s) made shall not release either Party from any liability that would attach to it if such delay(s), omission(s) or error(s) had not been made, provided that such delay(s), omission(s) or error(s) are rectified as soon as practicable upon discovery.

### **ARTICLE XIII – ARBITRATION**

- 13.1 Any and all disputes or differences arising out of this Agreement, including its formation and validity, shall be submitted to binding arbitration under the provisions of this Article.
- 13.2 The seat of the arbitration shall be London, England, and the provisions of the English Arbitration Act 1996 (or any statutory modification or re-enactment thereof) shall apply.
- 13.3 The language of the arbitration shall be English.
- 13.4 The tribunal shall consist of three impartial arbitrators, one to be appointed by the claimant, one to be appointed by the respondent, and the third to be appointed by the first two arbitrators. The third arbitrator shall serve as chairman of the tribunal. The three (3) arbitrators shall be persons (including those who have retired) who, for not less than ten (10) years, have served as officers or executives of an insurer or Reinsurer and/or as lawyers or other professional advisers to the industry.
- 13.5 The arbitration proceeding shall be commenced upon delivery of a notice of arbitration from the claimant to the respondent(s). Within thirty (30) days of commencement, each Party shall provide the other Party with the identification of its appointed arbitrator, his or her address (including telephone, fax and e-mail information), and provide a copy of the arbitrator's curriculum vitae. If either Party fails to appoint an arbitrator within that thirty (30) day period, the non-defaulting Party will appoint an arbitrator for the defaulting Party. The third arbitrator shall be appointed by the first two arbitrators as soon as practical (but no later than thirty (30) days) after the appointment of the second arbitrator. Where the first two arbitrators have failed to reach agreement on the third arbitrator within the time specified above, each Party, within seven (7) days thereafter, shall propose to the other in writing the names of three barristers (otherwise qualified under this Article) for consideration as the third arbitrator; each Party, within seven days thereafter, shall strike two names from the other Party's list; and the third arbitrator shall then be selected by the drawing of lots. If either Party fails to propose the names of three barristers or to strike two names as required above, the non-defaulting Party will appoint the third arbitrator from its list.
- 13.6 Should a vacancy arise because any arbitrator dies, resigns, refuses to act, or becomes incapable of performing his functions, the vacancy shall be filled by the method by which that arbitrator was originally appointed and in accordance with the timetable (including applicable default procedures) set out above.

- 13.7 The tribunal shall have the power to order on an interim or provisional basis any relief which it would have power to grant in a final award. This shall include orders for the respondent to provide security (i) for some or all of the claimant's claim where the tribunal concludes that there is a substantial risk that the respondent will not be able to satisfy an arbitration award; or (ii) as provided under any other Article of this Agreement.
- 13.8 The tribunal shall make its award, in writing, within thirty (30) days of the completion of the arbitration hearing. Nonetheless, the tribunal shall not make a reasoned award unless requested by both Parties.
- 13.9 The Parties hereby agree to exclude any right of application or appeal to the English High Court on a preliminary point of law and/or a question of law arising out of an arbitration award, whether under Sections 45 or 69 of the English Arbitration Act 1996, or otherwise.
- 13.10 The English High Court shall have exclusive jurisdiction over any and all court proceedings (other than in respect of recognition or enforcement) that may arise from or in connection with the arbitration or arbitration award.

#### **ARTICLE XIV - INSOLVENCY**

- 14.1 If the Reinsurer shall become insolvent, the Reinsurer shall give or shall cause the liquidator or receiver or statutory successor of the Reinsurer to give immediate written notice of such insolvency to the Company. If the Reinsurer shall become insolvent, the Company shall have the right to offset any amounts (whether on account of premium, commissions or otherwise) that are owing to the Reinsurer from the Company under this Agreement or under any other agreement heretofore or hereafter entered into, against any and all amounts then owing to the Company from the Reinsurer.
- 14.2 If the Company shall become insolvent, reinsurance under this Agreement shall be payable by the Reinsurer on the basis of the liability of the Company or its liquidator, receiver, or statutory successor without diminution because of such insolvency, directly to the Company or its liquidator, receiver, or statutory successor, except as otherwise provided by law. The Reinsurer shall be given written notice of the pendency of each claim which may involve the reinsurance afforded by this Agreement within a reasonable time after such claim is filed in the insolvency proceedings. The Reinsurer shall have the right to investigate each such claim and interpose, at its own expense, in the proceedings where the claim is to be adjudicated, any defence which it may deem available to the Company or its liquidator, receiver, or statutory successor. The expense thus incurred by the Reinsurer shall be chargeable, subject to court approval, against the insolvent company as part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the Company solely as a result of the defence undertaken by the Reinsurer.

- 14.3 If the Reinsurer with the consent of the Original Insured assumes the obligations of the Company with respect to the Original Insured as direct obligations of the Reinsurer to the Original Insured and in substitution for the obligations of the Company to the Original Insured, the Reinsurer shall be entitled in such circumstances to remit the Reinsurer's share of Loss Payments and Allocated Loss Expenses directly to the Original Insured. The Reinsurer shall obtain a discharge jointly in the name of the Company and the Reinsurer to the extent of the amount paid and that such payment shall also discharge the liability of the Reinsurer to the Company to the extent of the amount paid.

#### **ARTICLE XV - TERMINATION**

- 15.1 Neither the Company nor the Reinsurer may terminate this Agreement while the Policy(ies) are in force; however, if such Policy(ies) are effectively terminated, then in that event this Agreement may be terminated by the Company simultaneously therewith.
- 15.2 As respects coverage hereunder, it is understood and agreed that upon termination of this Agreement, coverage will continue hereunder beyond such termination date until the natural expiration date, the cancellation date, or the date which the Company, as a matter of law, may terminate coverage under the Policies.
- 15.3 Should this Agreement terminate while a loss occurrence is in progress, the Reinsurer shall be liable to the extent of its interest, subject to the other conditions of this contract, for all Losses resulting from such loss occurrence whether such Losses arise before or after such termination.
- 15.4 Notwithstanding the above cancellation provisions, it is a condition of this Agreement that in the event of termination of this Agreement and, if subsequent thereto, either of the following occurs:
- (a) claims arising from the Policies which had been reported and closed prior to the termination of this Agreement are reopened; or
  - (b) claims arising from the Policies allegedly incurred within the period of insurance but not reported prior to the termination of this Agreement are made upon the Company within the time limitations contained in the Policies or the time limitations imposed by the laws of the country of the risk giving rise to the claims;

then this Agreement shall be automatically reinstated and shall continue in full force and effect until such claims have been closed.

## **ARTICLE XVI – SPECIAL TERMINATION**

- 16.1 Notwithstanding anything to the contrary in this Agreement, the Company shall have the right, but not the obligation, to terminate this Agreement immediately by giving the Reinsurer notice in writing:
- (a) if the Reinsurer is subject to an Insolvency Event;
  - (b) if the Reinsurer is acquired or becomes controlled by any entity not affiliated with it at the time this Agreement is entered into;
  - (c) If the performance of the whole or any part of this Agreement be prohibited or rendered impossible de jure or de facto in particular and without prejudice to the generality of the preceding words in consequence of any law or regulation which is or shall be in force in any country or territory or if any law or regulation shall prevent directly or indirectly the remittance of any or all or any part of the balance of payments due to or from the Reinsurer;
  - (d) In the event of the severance or obstruction of free and unfettered communication and/or normal commercial and/or financial intercourse between the country where the Original Insurer or the Reinsurer is incorporated and the country in which the Company is incorporated or has its principal office as a result of war, currency regulations, or any circumstances arising out of political, financial or economic emergency; or
  - (e) In the event that the Reinsurer fails to satisfy any obligation under this Agreement, including its obligation to provide collateral when requested, and does not cure such failure within thirty (30) days of the Company's notice to the Reinsurer of such failure.
- 16.2 If the Company terminates this Agreement in accordance with Clause 16.1, the Company will have the option of (i) immediate settlement of all of the Reinsurer's present and future obligations under this Agreement, or (ii) termination on a run-off basis and, in such event, the Reinsurer shall secure all present and future obligations under this Agreement through a trust account or letter of credit in accordance with Article IX. In the event of an immediate settlement of all present and future obligations, upon the Company's receipt of final payment, the Company and the Reinsurer shall execute a full and final commutation and mutual release of their respective liabilities under this Agreement. When requested by either Party an appraisal of IBNR shall be made by a disinterested actuary appointed by the Company. Should the parties proceed with such an actuarial evaluation, such evaluation shall assess which of the parties' two results is the more reasonable calculation in light of the evidence provided by both parties in support of their calculations. Thirty (30) days after the

commencement of this evaluation process, the disinterested actuary shall pick one and only one of the results from the two parties and this result shall be binding on both Parties.

## **ARTICLE XVII – NOTICES**

For any notice under this Agreement, including any notice of termination, the following addresses shall be used:

### **[Head of Global Fronting at the Company]**

[Name]

[Address]

Attention:

Telephone:

Email:

### **[Reinsurer]**

[Name]

[Address]

Attention:

Telephone:

Email:

## **ARTICLE XVIII – GOVERNING LAW**

18.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

18.2 The Reinsurer irrevocably appoints [NAME] of [ADDRESS] [FAX NUMBER] as its agent to receive on its behalf in England or Wales service of any proceedings under Clause 18.1 above. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Reinsurer and shall be valid until such time as the Company has received prior written notice from the Reinsurer that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Reinsurer shall forthwith appoint a substitute acceptable to the Company and deliver to the Company the new agent's name, address and fax number within England and Wales.

18.3 This Article shall not be read to conflict with or override the obligation of the Parties to arbitrate any and all disputes or differences arising out of this Agreement.

## **ARTICLE XIX – SEPARATE OBLIGATIONS**

The rights and obligations of each entity constituting the Company under this Agreement are several, not joint, and no breach by one entity shall affect the rights of any other entity under this Agreement.

## **ARTICLE XX - SEVERABILITY**

- 20.1 If any provision of this Agreement shall be rendered illegal or unenforceable by the laws, regulations or public policy of any jurisdiction, such provision shall be considered void in such jurisdiction, but this shall not affect the validity or enforceability of any other provision of this Agreement or the enforceability of such provision in any other jurisdiction.
- 20.2 The parties shall negotiate in good faith to attempt to agree to amend such provision so that it will comply with the law, regulations and public policy of the jurisdiction in which it was rendered illegal or unenforceable in order to effectuate the parties original intent.

## **ARTICLE XXI - ENTIRE AGREEMENT; INTERPRETATION**

This Agreement constitutes the entire agreement between the Parties, and there are no understandings or agreements between the Parties other than those expressed in this Agreement. Any change to or modification of this Agreement will be made by written amendment to this Agreement and signed by the Parties hereto. This Agreement is between sophisticated parties, each of which has reviewed the Agreement and is fully knowledgeable about its terms and conditions. The Parties therefore agree that this Agreement shall be construed without regard to the authorship of the language and without any presumption or rule of construction in favour or either of them.

## **ARTICLE XXII – OFFSET**

Each Party hereto shall have, and may exercise at any time and from time to time, the right to offset any undisputed balance or balances, whether on account of premiums or on account of Losses or otherwise under this Agreement. In the event of the insolvency of a Party hereto, offsets shall be allowed to the fullest extent of the provisions of applicable law. For purposes of this Article, balances will be considered “disputed” if one Party has contested the balance in writing to the other Party.

## **ARTICLE XXIII – MODE OF EXECUTION**

- 23.1 Unless otherwise required by law or regulation, this Agreement may be executed by:
- (a) an original written ink signature of the Agreement;
  - (b) an exchange of facsimile copies showing the original signature of the Agreement; or

- (c) electronic signature technology employing computer software and a digital signature or digitizer pen pad to capture a person's handwritten signature in such a manner that the signature is unique to the person signing, is under the sole control of the person signing, is capable of verification to authenticate the signature and is linked to the document signed in such a manner that if the data is changed, such signature is invalidated.

23.2 Unless otherwise required by law or regulation, the use of any one or a combination of these methods of execution shall constitute a legally binding and valid signing of this Agreement. This Agreement may be executed in one or more counterparts, each of which, when duly executed, shall be deemed an original.

#### **ARTICLE XXIV – CONFIDENTIALITY**

24.1. All terms and conditions of this Agreement and any materials provided in connection therewith (the "Material") shall be kept confidential by the Parties as against third parties for a period of three (3) years after all of the Parties' contractual obligations hereunder are fully and finally satisfied.

24.2 The Parties shall be permitted to disclose this Agreement and any Material to their consultants, attorneys, auditors and (in the case of the Reinsurer) retrocessionaires (collectively, "Representatives") provided the Parties advise their Representatives of the confidential nature of the Material, and their obligation to maintain its confidentiality. The Parties shall be responsible for any breach of this provision by any of its respective Representatives.

24.3 The Parties shall also be permitted to disclose Material that:

- (a) is properly in the possession of the Party at the time of disclosure without any obligation of confidentiality attaching thereto;
- (b) is or becomes available to the general public without breach of this Agreement;
- (c) is disclosed to the Party by another source that, to the knowledge of the receiving Party, is not in breach of any agreement with the other Party; or
- (d) is independently developed by the Party without use of or reliance upon the Material.

- 24.4 The Material provided by the one Party to the other Party or its Representatives and any reports derived therefrom shall be used by the Party and its Representatives only for purposes relating directly to the other Party's rights and obligations under this Agreement.
- 24.5 Nothing herein shall prohibit a Party from disclosing this Agreement and any Material provided in connection therewith pursuant to a court order or a governmental directive requiring disclosure. Such disclosure shall be limited, however, to the minimum disclosure necessary. In the event a Party is made aware of an effort by any entity to obtain a court order or governmental directive requiring disclosure of the Material, that Party shall promptly notify the other Party to the extent not prohibited by applicable law and afford it an opportunity, to the full extent possible and at the its expense, to make any objections or challenges to the disclosure sought as the Party may deem appropriate. If a Party objects to or challenges disclosure, the other Party will take reasonable measures to cooperate with the objecting Party, at the objecting Party's expense, in its efforts to resist such disclosure.
- 24.6 The Parties shall be entitled to seek equitable relief, including, without limitation, injunctive relief and specific performance, in the event of any breach of the provisions of this Article by the other Party or its Representatives, in addition to all other remedies available at law or in equity.

#### **ARTICLE XXV – NON WAIVER**

The failure of the Company or the Reinsurer to insist on compliance with this Agreement or to exercise any right or remedy hereunder shall not constitute a waiver of any right or remedy contained in this Agreement, prevent either Party from thereafter demanding full and complete compliance, or prevent either Party from exercising such right or remedy in the future.

#### **ARTICLE XXVI - SURVIVAL**

The provisions of this Agreement shall survive the termination or expiration of this Agreement.

#### **ARTICLE XXVII – DATA PROTECTION**

- 27.1 Unless the context otherwise requires, for the purpose of this clause, "Data Protection Law" means all applicable laws and regulations, in each case pertaining to the security, confidentiality, protection or privacy of personal data, as amended or re-enacted from time to time, including (without limitation and to the extent applicable) the European General Data Protection Regulation (Regulation (EU) 2016/679) (the "GDPR") and terms "controller," "processor," "processing/process," "personal data" and "data subject" shall be interpreted and construed by reference to Data Protection Law.

- 27.2 The Parties agree that, for the purposes of Data Protection Law, each Party (to the extent it processes personal data pursuant to or in connection with this Agreement) processes personal data as an independent data controller in its own right. Nothing in this Agreement (or the arrangements contemplated by it) is intended to construe either Party as the data processor of the other Party or as joint data controllers with one another with respect to personal data.
- 27.3 Each Party shall: (i) comply with its obligations under Data Protection Law; (ii) provide the other Party with such assistance and cooperation as is reasonably requested and agreed by the other Party in dealing with and responding to data subject requests, enquiries or complaints (including any request by a data subject to exercise their rights under Data Protection Law); and (iii) promptly (and without undue delay) notify the other Party in writing of any security incident affecting the personal data, including the unlawful or unauthorised processing of personal data, to the extent the security incident is likely to affect the other Party.
- 27.4 Without prejudice to clause 27.3, each party (the “Disclosing Party”) agrees that if it provides personal data to the other party (the “Receiving Party”), it shall ensure that it has provided all necessary information to, and obtained all necessary consents from, the data subjects of the personal data, in each case to enable the personal data to be disclosed for the purposes of this Agreement and in accordance with Data Protection Law.
- 27.5 In relation to the personal data it receives from the Disclosing Party, each Party shall at all times process the personal data in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical and organisational measures, and the measures shall, at a minimum, comply with the requirements of Data Protection Law, including Article 32 of the GDPR.
- 27.6 Where either Party transfers personal data outside the European Economic Area in order to fulfil their obligations under this Agreement, they shall put in place appropriate safeguards to protect the rights and freedoms of data subjects, such as standard model contract clauses approved by the European Commission or such other transfer mechanism approved by the European Commission.

**IN WITNESS WHEREOF**, the Parties, each by its duly authorised representative, have executed this Agreement as set forth below.

**GUERNSEY CAPTIVE INSURANCE LTD**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**XYZ INSURANCE COMPANY LIMITED**

By: \_\_\_\_\_ Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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