

CLAYTON UTZ

Transfer Agreement

Progressive Direct Insurance Company
PDIC

and

The Hollard Insurance Company Pty Limited
Hollard

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Transfer Agreement dated 26 September 2017

Parties **Progressive Direct Insurance Company ABN 28 140 389 528** of Level 2,
697 Burke Road, Camberwell VIC 3124 (PDIC)

The Hollard Insurance Company Pty Limited ABN 78 090 584 473 of
Level 12, 465 Victoria Avenue, Chatswood NSW 2067 (Hollard)

Background

- A. PDIC and Hollard are each authorised under the Insurance Act to carry on insurance business in Australia.
- B. PDIC is a registered foreign company under the Corporations Act, owned by its ultimate US parent, The Progressive Corporation, incorporated in Ohio, USA, which is seeking to transfer the Progressive Australia branch business in respect of motor vehicle insurance (being its only insurance business in Australia) to Hollard, in order to facilitate an orderly exit from the Australian market.
- C. PDIC wishes to be relieved of its liabilities and obligations and to relinquish its entitlements under all contracts of motor vehicle insurance that it has issued, underwritten or assumed as insurer in the course of carrying on insurance business in Australia, to enable it to apply to APRA to have its authorisation to carry on insurance business in Australia under the Insurance Act revoked.
- D. PDIC wishes to transfer to Hollard:
 - (a) all rights, benefits, and obligations of PDIC under and in respect of the Insurance Contracts; and
 - (b) the Business Assets.
- E. Hollard wishes to have transferred to it PDIC's rights and benefits under and in respect of the Insurance Contracts and the Business Assets and is willing to assume the Assumed Liabilities.
- F. This Scheme is to be based on an actuarial report prepared by Tim Andrews at Finity Consulting.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this agreement:

Unless the context otherwise requires, words defined in:-

- (a) the proforma Scheme Document set out in Schedule 1 have the same meaning when used in this agreement until Court Confirmation and thereafter have the same meaning as contained in the confirmed Scheme Document; and
- (b) the Implementation Deed or the Business Assets Sale Agreement have the same meaning when used in this agreement provided, however, that in the event that a word is defined in both the Scheme Document, on the one hand, and either the Implementation Deed or the Business Assets Sale Agreement, on the other hand, the definition in the Scheme Document will govern.

Agreement means this agreement.

Business Assets Sale Agreement means the Business Assets Sale Agreement dated 8 March 2017 between PDIC, PDIA and Hollard and completed 31 March 2017.

Business Day means:

- (a) for receiving a Notice under this agreement, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the Notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria and Sydney, New South Wales.

Conditions means the conditions precedent to the transactions contemplated by this agreement which are set out in clause 2.1.

Court Confirmation means confirmation of the Scheme by order of the Court under Division 3A of Part III of the Insurance Act.

Effective Time means the time ordered by the Court at which the Scheme is to become effective. It is contemplated to be a time outside Business Hours on or about 12am on 4 November 2017 (or another time agreed by the parties) that facilitates the migration of Customer Information from PDIC's systems to Hollard's systems and PDIA's systems.

GPS means an APRA general insurance prudential standard.

Implementation Deed means the Implementation Deed dated 8 March 2017 between PDIC, PDIA, Hollard and others to facilitate the transfer of PDIC's Australian motor vehicle insurance business to Hollard.

Major Change means a change to the Scheme, the Scheme Document or its manner of implementation that:

- (a) increases the Supporting Asset Payment in respect of the Transaction Documents by more than \$1,000,000 compared to the Estimated Supporting Asset Payment;
- (b) increases the other obligations of a party in respect of the Transaction Documents and the monetary value of those increases (as valued by the parties) is more than \$100,000 compared to the parties' current expectations.

PDIA means PD Insurance Agency Pty Ltd ABN 28 615 752 193.

Personal Information means personal information, as defined in the *Privacy Act 1988* (Cth), that has been received by PDIC or Hollard or by an officer, employee, agent or contractor of PDIC or Hollard in connection with an Insurance Contract.

Scheme Document means the document that embodies the terms on which the Scheme is to be implemented and which is to be the subject of Court Confirmation.

Subsidiaries, Related Entities and Related Bodies Corporate have the meanings given in section 50 of the *Corporations Act 2001* (Cth).

Supporting Asset Payment has the same meaning as contained in the proforma Scheme Document set out in Schedule 1 except that until Court Confirmation:

- (a) in paragraph (a) of that definition, the reference to "75%" is a reference to "75% (or such higher percentage as may be required by APRA or the Federal Court for the purposes of the Scheme Transfer)"; and
- (b) in paragraph (c) of that definition, the reference to "the Transfer Agreement" is a reference to "the Transaction Documents",

and after Court Confirmation has the same meaning as contained in the confirmed Scheme Document.

Transaction Document is defined in the Business Assets Sale Agreement.

1.2 Interpretation

In this agreement headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, a regulatory authority, an incorporated or unincorporated association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document or a provision of a document is to that document or provision as varied, novated, ratified or replaced from time to time;
- (g) a reference to this agreement is a reference to this agreement as varied, novated, ratified or replaced from time to time;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) a reference to a statute includes any regulations or other instruments made under it (delegated legislation) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to \$ or dollar is to Australian currency; and
- (k) this agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Conditions

2.1 Conditions precedent

The transactions provided for in clauses 3 and 4 of this agreement are conditional upon:

- (a) Court Confirmation; and
- (b) the Minister or his or her delegate making a go-ahead decision with respect to the transactions under this agreement which are trigger proposals under the *Insurance Acquisitions and Takeovers Act 1991* (Cth) and, if made on conditions, on such conditions as are acceptable to both PDIC and Hollard.

2.2 Conduct of the parties

Each party must use all reasonable endeavours within its own capacity to ensure that the Conditions are fulfilled as soon as reasonably practicable.

2.3 Failure of condition

Any party may terminate this agreement by giving notice in writing to the other party if the Conditions are not fulfilled on or before 28 February 2018 or another date agreed by the parties in writing.

2.4 Condition precedent to formation

For the avoidance of doubt, the Condition contained in clause 2.1(b) is a condition precedent to the formation of any agreement, arrangement or understanding to give effect to the Scheme other than an agreement to give effect to this clause 2. Until the Condition contained in clause 2.1(b) has been satisfied, no party will be under any obligation to enter into any agreement, arrangement or understanding to give effect to the Scheme.

3. Transfer of the Insurance Business and Business Assets

3.1 Agreement to transfer

PDIC agrees to sell and transfer and Hollard agrees to purchase and accept the transfer of:

- (a) all rights, benefits and entitlements of PDIC under and in respect of the Insurance Contracts; and
- (b) the Business Assets,

from PDIC, including all right, title, interest, benefit and powers that have arisen, or may in the future arise under or from any of the above in accordance with the Scheme Document.

3.2 Implementing Scheme

Each party must do everything reasonably required by the other party for the purpose of implementing the Scheme including, without limitation:

- (a) appointing and providing written authorisation of the party to Clayton Utz and MacKenzie Thomas to liaise with APRA regarding the Scheme and carriage of the proceedings for Court Confirmation (the parties acknowledge that Clayton Utz will have primary carriage of liaison with APRA and the proceedings for Court Confirmation);
- (b) appointing the Actuaries to provide the usual actuarial services associated with a report by an actuary in respect of a Court Confirmation and to do, in accordance with the Transaction Documents, all things that this agreement, the Scheme Document the Transaction Documents contemplate will be done by the Actuaries;
- (c) submitting to APRA a copy of this agreement, a draft Actuarial Report and a draft Scheme summary (**APRA Submission Documents**) and seeking APRA's comment on, and approval of, the Scheme and the APRA Submission Documents (**APRA's Approval**);
- (d) liaising with APRA in respect of APRA's Approval (including, without limitation, providing APRA with such information as APRA lawfully requires);
- (e) filing originating process in the Court for Court Confirmation;
- (f) doing all things reasonably required by the Actuaries, Clayton Utz and MacKenzie Thomas for the prosecution of the proceedings for Court Confirmation in accordance with the rules of the Court (including, without limitation, providing such information and evidence as may be necessary for those proceedings and doing all things required by the rules of the Court in respect of those proceedings) provided that a party will not be obliged to do anything that would constitute a Major Change;

- (g) liaising with one another regarding the proceedings for Court Confirmation in accordance with the rules of the Court (including, without limitation, acting reasonably in deciding whether Court Confirmation is impracticable, in which case:
 - (i) this agreement is to be rescinded by mutual agreement of the parties; and
 - (ii) such rescission shall constitute a Scheme Transfer Failure as that term is used in, and with the consequences in the Transaction Documents described in, the Implementation Deed); and
- (h) doing all things reasonably required by the Actuaries, Clayton Utz, MacKenzie Thomas or the other party for the purpose of complying with the timetable for the Scheme set out in the Implementation Deed (as varied from time to time as the parties mutually agree) and achieving Court Confirmation on a target date of 4 November 2017 (or such other date as the parties agree) provided that a party will not be obliged to do anything that would constitute a Major Change.

The parties acknowledge that, if a step contemplated in this clause 3.2 is satisfied before this agreement has been executed or before the Condition contained in clause 2.1(b) has been satisfied, the requirements of this clause 3.2 will be deemed to have been satisfied even though its satisfaction is before an agreement, arrangement or understanding has been formed.

3.3 Scheme Changes

If APRA, the Court or the Actuaries propose a change to the Scheme, the Scheme Document or its manner of implementation (**Proposed Change**):

- (a) the parties must act reasonably in considering the Proposed Change and negotiate for changes to the Scheme, the Scheme Document, or its manner of implementation, or the Transaction Documents that minimise the impact on the party or parties adversely affected by the Proposed Change (**Transaction Change**);
- (b) a party will not be obliged to agree to a Transaction Change if the Transaction Change would result in a Major Change in respect of the party; and
- (c) if a Proposed Change or a Transaction Change would result in a Major Change in respect of a party and the party does not agree to a Transaction Change, any party may terminate this agreement by giving notice in writing to the other party, in which case such termination shall constitute a Scheme Transfer Failure as that term is used in, and with the consequences in the Transaction Documents described in, the Implementation Deed.

4. Consideration

- (a) In consideration of the assumption by Hollard of the Assumed Liabilities under the Scheme, PDIC must pay to Hollard the Supporting Asset Payment in immediately available funds in Australian dollars as follows:
 - (i) as to the Estimated Supporting Asset Payment, if the Effective Time falls on a Business Day, during Business Hours on that Business Day, or if not, on the immediately preceding Business Day; and
 - (ii) as to the balance of the Supporting Asset Payment, within 14 days of the final calculation of the Supporting Asset Payment.
- (b) For the avoidance of doubt, if the Estimated Supporting Asset Payment is greater than the Supporting Asset Payment, Hollard must refund the difference within 14 days of the final calculation of the Supporting Asset Payment.
- (c) The parties must use reasonable endeavours to agree the Supporting Asset Payment as soon as practicable after the Effective Time. If the parties do not agree the

Supporting Asset Payments within 45 days of the Effective Time (or such later date as the parties agree), either party may instruct the Actuaries to calculate the Supporting Asset Payment and the following applies:

- (i) the Actuaries act as an expert and not as an arbitrator and the determination of the Actuaries is final and binding on all parties;
- (ii) the Actuaries must allow each party to make submissions to the Actuaries on the determination;
- (iii) the Actuaries must give each party a draft written determination for comment and give them not less than 7 days to comment on the draft determination before making a final determination;
- (iv) the Actuaries' fees and expenses are to be paid by the parties equally unless the Actuaries consider that, in all the circumstances, it is appropriate for a particular party to pay a greater proportion of the Actuaries' fees and expenses having regard to the submissions and comments made by them regarding the process of determination; and
- (v) each party must give (and procure its associated entities to give) the Actuaries all reasonable assistance in carrying out the determination as requested by the Actuaries.

5. Privacy

In relation to Personal Information, PDIC and Hollard agree:

- (a) to comply with all applicable laws in respect of the use, disclosure and storage of personal information (privacy laws), including without limitation the *Privacy Act 1988* (Cth);
- (b) to not do anything that will cause the other to breach any privacy laws;
- (c) to take all reasonable steps to ensure that the Personal Information is protected against misuse and loss, unauthorised access, modification and disclosure; and
- (d) only to use the Personal Information, and to only provide access to the Personal Information to their officers, employees, agents or contractors who need to access the Personal Information, to fulfil their respective obligations or to exercise their respective rights:
 - (i) in implementing the Scheme; and
 - (ii) under this agreement.

6. Goods and Services Tax

6.1 Consideration GST exclusive

Unless otherwise expressly stated in this agreement, all consideration to be provided under or in connection with this agreement is exclusive of GST. -

6.2 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply made under or in connection with this agreement, the party providing the consideration for the supply must pay to the supplier an additional amount equal to the amount of GST payable on that supply (GST Amount).

- (b) Subject to the earlier receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.

6.3 Adjustment events

If an adjustment event arises for a supply made under or in connection with this agreement, the GST Amount must be recalculated to reflect that adjustment, the supplier or the recipient (as the case may be) must make any payments necessary to reflect the adjustment and the supplier must issue an adjustment note.

6.4 Reimbursements

Any payment, reimbursement, indemnity or similar payment that is required to be made under this agreement which is calculated by reference to an amount paid by another party shall be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 6.2 will apply to the reduced payment.

6.5 Interpretation

For the purposes of this clause 6, unless the contrary intention appears, any words and phrases which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning when used in this clause 6.

7. Warranties

7.1 Warranties by each party

Each party warrants to the other as follows:

- (a) that it has full power and authority to enter into and perform this agreement and that this agreement constitutes valid and binding obligations on it, in accordance with its terms; and
- (b) that subject to clause 2.1, the execution and delivery of, and performance by it of its obligations under this agreement will not breach any provisions of its constitutive documents or result in a breach of any legislation or order, judgment or decree of any court, governmental agency or regulatory body by which it is bound.

8. Notices and other communications

8.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post, facsimile or electronic mail to the recipient's address for Notices specified in clause 8.3, as varied by any Notice given by the recipient to the sender.

8.2 Effective on receipt

A Notice given in accordance with clause 8.1 takes effect when taken to be received (or at a later time specified in it) and is taken to be received:

- (a) if hand delivered, on delivery;

- (b) if sent by prepaid post, two Business Days after the date of posting (or seven Business Days after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile or electronic mail, when the sender's facsimile or electronic mail system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

8.3 Addresses

PDIC

Name: Progressive Direct Insurance Company
 Address: Level 2, 697 Burke Road, Camberwell VIC 3124
 Fax: (03) 9811 0899
 Email: Simon_G_Lindsay@Progressive.com
 For the attention of: Simon Lindsay

With a copy to: The Progressive Group of Insurance Companies
 6300 Wilson Mills Road, Box N72A
 Mayfield Village, Ohio 44140
 United States
 Fax number: +1 440 395 3678
 Email: LAURIE_F_HUMPHREY@progressive.com
 For the attention of Laurie Humphrey

Hollard

Name: ^{THE} Hollard Insurance Company Pty Limited
 Address: Level 12, 465 Victoria Avenue, Chatswood NSW 2067
 Fax: (02) 9253 6699
 Email: Richard.Heilig@Hollard.com.au
 For the attention of: Richard James Heilig

Handwritten: D vs. CARM [Signature]

9. Miscellaneous

9.1 Alterations

This agreement may be altered only in writing signed by the parties.

9.2 Assignment

A party may only assign this agreement or a right under this agreement with the prior written consent of the other party.

9.3 Costs

Any costs and expenses incurred in connection with the drafting and implementation of this agreement and the Scheme will be shared equally by PDIC and Hollard (including, without limitation, the costs and disbursements of the Actuaries, Clayton Utz, MacKenzie Thomas, and any other taxes or duties payable (other than income taxes) on or in connection with this agreement or the Scheme.

9.4 Counterparts

This agreement may be executed in counterparts. All executed counterparts constitute one document. In proving this document is binding on a party, it will be sufficient to produce a counterpart of this document signed by that party.

9.5 Entire agreement

Except as provided by this agreement, the Transaction Documents, this agreement and the Scheme Document constitute the entire Agreement between the parties in connection with their subject matter and supersede all previous Agreements or understandings between the parties in connection with their subject matter.

9.6 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transactions contemplated by it.

9.7 Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the term of this agreement continue in force.

9.8 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

9.9 Confidentiality

A party may only use confidential information of any other party for the purposes of this agreement, and must keep the existence and the terms of this agreement and any confidential information of another party confidential except where:

- (a) the information is public knowledge (but not because of a breach of this agreement) or the party has independently created the information;
- (b) disclosure is required by law or a regulatory body (including a relevant stock exchange) or for the purposes of obtaining any regulatory or judicial approval;
- (c) disclosure is made to a person who must know for the purposes of this agreement on the basis that the person keeps the information confidential; or
- (d) this agreement is made available for public inspection and copy pursuant to the requirement under APRA's Prudential Standard GPS 410.

9.10 Governing law and jurisdiction

This agreement is governed by the law of New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts and registries of courts in New South Wales.

Schedule 1 - Proforma Scheme Document

INSURANCE ACT 1973

(PART III DIVISION 3A)

**SCHEME FOR THE TRANSFER OF THE
INSURANCE BUSINESS OF PROGRESSIVE DIRECT INSURANCE COMPANY
TO THE HOLLARD INSURANCE COMPANY PTY LIMITED**

Background

- A. PDIC and Hollard are each authorised under the Insurance Act to carry on insurance business in Australia.
- B. PDIC is a registered foreign company under the Corporations Act, owned by its ultimate US parent, The Progressive Corporation, incorporated in Ohio, USA, and is seeking to transfer its entitlements and liabilities under all contracts of motor vehicle insurance that it has issued, renewed, underwritten or assumed as insurer in Australia (being its only insurance business in Australia) to Hollard, in order to facilitate an orderly exit from the Australian market.
- C. PDIC wishes to be relieved of its liabilities and obligations and to relinquish its entitlements under all contracts of motor vehicle insurance that it has issued, renewed, underwritten or assumed as insurer in the course of carrying on insurance business in Australia, to enable it to apply to APRA to have its authorisation to carry on insurance business in Australia under the Insurance Act revoked.
- D. PDIC wishes therefore to transfer to Hollard:
 - (a) all rights, benefits, and obligations of PDIC under and in respect of the Insurance Contracts; and
 - (b) the Business Assets.
- E. Hollard wishes to have transferred to it PDIC's rights and benefits under and in respect of the Insurance Contracts and the Business Assets and is willing to assume the Assumed Liabilities.
- F. This Scheme is based on an actuarial report prepared by Tim Andrews at Finity Consulting.

1. Definitions and Interpretation

1.1 Definitions

In this Scheme, unless the context requires otherwise:

Actuarial Report means the report dated 8 June 2017 and letter dated 15 September 2017 prepared by the Actuaries, upon which this Scheme is based.

Actuaries means Finity Consulting, the actuarial firm appointed by PDIC and Hollard for the purpose of this Scheme in accordance with the Insurance Act.

APRA means the Australian Prudential Regulation Authority.

Assumed Liabilities means all of the liabilities and obligations of PDIC under or arising from the Insurance Contracts, being the Insurance Liabilities, and the Specified Liabilities, in each case as at the Effective Time.

Branch means the Australian Branch of PDIC.

Business means the business of marketing, issuing and administering Motor Insurance Contracts conducted by PDIC but only to the extent conducted by it in Australia.

Business Assets means each of the following items, to the extent that they are used by PDIC exclusively in the Business but in each case excluding the Excluded Assets:

- (a) the goodwill of or relating to the Business;
- (b) all rights under all Insurance Contracts (regardless of when issued, renewed or entered into, including, without limitation, before or after the Effective Time and whether those Insurance Contracts have expired or terminated);
- (c) all Records;
- (d) all Recovery Rights (regardless of when arising, including, without limitation, before or after the Effective Time and whether those Recovery Rights relate to contracts that have expired or terminated);
- (e) all Confidential Information;
- (f) all books and records of or in respect of the items described in paragraphs (a) through (d) above that are not required by law to be retained by PDIC (other than those relating to Excluded Assets); and
- (g) all the legal right, title and interest of PDIC in and to any of the above.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria or Sydney, New South Wales.

Business Hours means from 9:00 am to 5:00pm Australian Eastern Standard Time on a Business Day.

Capital means the value of shareholder's equity attributable to the shareholders of PDIC as reported to APRA by the Branch in compliance with GPS 115 and any other applicable GPS and includes Minimum Capital.

Claim includes, without limitation, any action, dispute, claim, counter-claim, demand, investigation, inquiry, prosecution, litigation, proceedings, arbitration, mediation or dispute resolution process.

Confidential Information means:

- (a) Customer Information; and
- (b) all information contained in any Database,

other than information which is generally available in the public domain except as a result of a disclosure in breach of any obligation on any person, and known to PDIC, to keep the information confidential.

Corporations Act means the *Corporations Act 2001 (Cth)*.

Court means the Federal Court of Australia.

Customer Information means the following, to the extent owned by PDIC and in its possession or control:

- (a) the identity of all PDIC Customers;
- (b) all files of, or relating to, the affairs of PDIC Customers (and information contained in them); and
- (c) all other books and records in respect of PDIC Customers (and information contained in them).

Databases means all customer lists and all other databases (and information contained in them) owned by PDIC and used by PDIC exclusively in respect of the Business provided, however, that Databases does not include any database or information owned by a third party and used by PDIC pursuant to a license agreement granted by such third party.

Effective Time means 12am Australian Eastern Standard Time on 4 November 2017

Estimated Supporting Asset Payment means \$500,000 being the amount estimated by the parties (and reviewed by the Actuaries) as the likely Supporting Asset Payment as at the Effective Time.

Excluded Assets means:

- (a) all cash and investments held in respect of the Business;
- (b) all bank accounts of PDIC;
- (c) the goodwill (whenever created) in respect to the trade marks used by PDIC in the Business and the name "Progressive Direct Insurance Company," including the goodwill in respect of such trade marks and name in relation to services claimed from time to time in the trade marks and any other goods and services in respect of which goodwill exists in relation to such trade marks and such name in Australia from time to time;
- (d) all records of PDIC related to its APRA authorisation and its compliance with such authorisation, including, without limitation, regulatory filings and communications between PDIC (or its legal counsel) and APRA;
- (e) all rights of PDIC in and under, and any Claims of PDIC related to, the Transaction Documents other than the Transfer Agreement; and
- (f) all other books and records related to any of the foregoing.

Excluded Liabilities means Claims, losses, liabilities, costs or expenses of any kind relating to any Excluded Asset or being otherwise unrelated to the Insurance Contracts and the Business Assets, including, without limitation, Claims, losses, liabilities, costs or expenses arising from or in connection with:

- (a) any violation by PDIC prior to the Effective Time of a law relating to the conduct by or on behalf of PDIC of the Business including, without limitation, PDIC's authorisation, registration or licensing in connection with the Business (including, without limitation, PDIC's authorisation under the Insurance Act and Australian financial services licence);
- (b) any tax, duty, levy or other mandatory amount imposed on PDIC with respect to its carrying on the Business prior to the Effective Time (including any tax, duty, levy or other mandatory amount directly applicable to the issue or renewal of an Insurance Contract by PDIC prior to the Effective Time) and in any event income tax on PDIC's income;

- (c) any membership or other fees payable by PDIC to any industry association or group;
- (d) any accounting, audit or legal fees payable by PDIC provided that any obligations of PDIC or Hollard under any Transaction Document will be unaffected; and
- (e) a breach of PDIC's obligations under this Scheme.

GPS means an APRA general insurance prudential standard.

Hollard means The Hollard Insurance Company Pty Limited ABN 78 090 594 473.

Increased Insurance Loss means each of the following:

- (a) an amount payable by PDIC or Hollard as insurer under or in connection with an Insurance Contract that is greater than the amount that would have been payable if there were no Defect (as defined in the definition of Recovery Rights); or
- (b) an amount payable to PDIC or Hollard as insurer under or in connection with an Insurance Contract that is less than the amount that would have been payable if there were no Defect (as defined in the definition of Recovery Rights).

For example, if, before the Effective Time, a motor vehicle repairer did not properly repair a motor vehicle insured under an Insurance Contract and, after the Effective Time, Hollard is obliged under an Insurance Contract to rectify the repair, the cost of rectification is an Increased Insurance Loss.

Insurance Act means the *Insurance Act 1973 (Cth)*.

Insurance Business has the meaning given in section 3 of the Insurance Act.

Insurance Contracts means all Motor Insurance Contracts issued or renewed by PDIC (including all right, title and benefit including any entitlement to receive or recover any money or property under or in relation to those insurance contracts entered into) in the conduct of the Business and being (with the exception of the Reinsurance Treaty):

- (a) all Motor Insurance Contracts of insurance issued, renewed, entered into or assumed by PDIC as insurer prior to the Effective Time;
- (b) any agreement to insure or reinsure issued, renewed, entered into or assumed by PDIC prior to the Effective Time where the insurance or reinsurance is to commence or does commence on or after the Effective Time;
- (c) any offer to insure or reinsure issued, renewed, entered into or assumed by PDIC prior to the Effective Time and capable of acceptance after the Effective Time; and

- (d) expired or terminated Motor Insurance Contracts issued, renewed, entered into or assumed by PDIC as insurer or reinsurer prior to the Effective Time.

Insurance Contracts do not include such items in respect of risks located outside of Australia.

Insurance Liabilities means Claims, losses, liabilities, costs or expenses of any kind under the Insurance Contracts, which have arisen and remain unsatisfied or which may arise in the future or which are prospective or contingent and whether or not the amount of the liability is ascertained or ascertainable and includes any insurance liability described in GPS 320.

Minimum Capital means the minimum amount of capital required as the Branch's prescribed capital amount in accordance with GPS 110.

Motor Insurance Contracts has the meaning in Part 5, Division 1 of the *Insurance Contracts Regulations 1985*, namely, contracts that provide insurance cover (whether or not the cover is limited or restricted in any way) in respect of one or more of the following:

- (a) loss of, or damage to, a motor vehicle; or
- (b) liability for loss of, or damage to, property caused by or resulting from impact of a motor vehicle with some other thing,

except that there is no requirement that the insured, or one of the insureds, is a natural person.

PDIC means Progressive Direct Insurance Company (Australia branch business) ABN 28 140 389 528.

PDIC Customer means a person to whom PDIC issued, renewed or entered into, or offered to issue, a Motor Insurance Contract at any time.

Post-Effective Time Insurance Contract means any contract of insurance inadvertently or mistakenly issued, renewed or entered into by or on behalf of the Branch as insurer in the 3 months after the Effective Time. Each Post Effective Time Insurance Contract is deemed to be a contract between Hollard as insurer and the insured rather than a contract between PDIC as insurer and the insured.

Records means all records owned by PDIC in respect of Insurance Contracts (regardless of when issued, renewed or entered into, including, without limitation, before or after the Effective Time and whether those Insurance Contracts have expired or terminated) and in PDIC's possession or control as at the Effective Time, including, without limitation, databases and lists of insureds and their personal details, insurance proposals and applications, policy documents, insurance premium receipts, payments records, Claims records, correspondence and file notes, and all policy data necessary for accurate pricing, servicing and historical record

referencing in respect of Insurance Contracts, whether recorded on paper, electronically or otherwise.

Recovery Rights means all rights that PDIC has, or but for this Scheme would have had, to make a Claim against any person (**Provider**) where each of the following applies:

- (a) at any time (regardless of when provided, including, without limitation, before or after the Effective Time), the Provider provided or provides goods or services to PDIC or PDIA in connection with, or a claimant under, an Insurance Contract;
- (b) the goods or services were, or are, defective or the provision of the goods or services did not, or do not, comply with the obligations of the Provider to PDIC or PDIA or a claimant under an Insurance Contract (including, without limitation, under law relating to contract, tort, equity, statute or legal doctrine) (**Defect**); and
- (c) at any time (regardless of when provided, including, without limitation, before or after the Effective Time), PDIC or Hollard suffers or incurs any Increased Insurance Loss in connection with the Defect.

Recovery Rights do not include the proceeds of Claims for Increased Insurance Losses suffered by PDIC that were actually recovered by PDIC before the Effective Time.

Reinsurance Treaty means the Reinsurance Agreement between PDIC and Hollard executed on 8 March 2017 and effective as of 31 March 2017.

Scheme means this document which embodies a Scheme pursuant to Part III, Division 3A of the Insurance Act 1973.

Specified Liabilities means Claims, losses, liabilities, costs or expenses relating to the Business Assets (other than the Insurance Contracts) which have arisen and remain unsatisfied or which may arise in the future or which are prospective or contingent and whether or not the amount of the liability is ascertained or ascertainable other than the Insurance Liabilities and the Excluded Liabilities. Specified Liabilities do not include Claims, losses, liabilities, costs or expenses arising from a breach of PDIC's obligations under this Scheme nor from any contract, arrangement or understanding to which PDIC is a party that is not an Insurance Contract.

Supporting Asset Payment means the amount required to support (in accordance with all applicable laws and APRA prudential standards) all Insurance Liabilities and all Specified Liabilities (if any) as at the Effective Time. The amount must:

- (a) take account of actual experience of claims under the Insurance Contracts up to the Effective Time and include reserves required under any GPS including, without limitation, for incurred but not reported claims, policy administration expenses,

allowance for claims handling, risk margin, and have a probability of adequacy of 75% that the Insurance Liabilities, when finally settled, will not exceed the total value of assets transferred from PDIC to Hollard to meet those liabilities;

- (b) reconcile accounting liabilities and cash payments;
- (c) exclude any double counting between the calculation of the Supporting Asset Payment and the obligations of PDIC and Hollard contemplated in the Transfer Agreement; and
- (d) exclude Capital required to support such liabilities (to the intent that Hollard will provide its own capital support for the Assumed Liabilities).

For the avoidance of doubt, the Supporting Asset Payment may be such amount as agreed by PDIC and Hollard or, failing agreement, will be as determined by the Actuaries. PDIC, Hollard and, if applicable, the Actuaries must ensure that the Supporting Asset Payment is calculated within 90 days after the Effective Time.

Transfer Agreement means the Transfer Agreement dated [insert date] between PDIC and Hollard for the sale and transfer of the Insurance Contracts and Business Assets to Hollard and the implementation of this Scheme.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply in this Scheme unless the context requires otherwise:

- (a) The singular includes the plural and conversely.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (d) A reference to a clause or schedule is a reference to a clause of or a schedule to, this Scheme.
- (e) A reference to an agreement or document (including, without limitation, a reference to this Scheme) is to the agreement or document as amended, varied, supplemented, novated or replaced except to the extent prohibited by this Scheme or that other agreement or document.

- (f) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

2. Transfer of Insurance Contracts and Business Assets

- (a) With effect at the Effective Time, PDIC transfers and Hollard accepts the transfer of:
- (i) all rights, benefits and entitlements of PDIC under and arising from the Insurance Contracts; and
 - (ii) the Business Assets,
- from PDIC, including all right, title, interest, benefit and powers that have arisen, or may in the future arise under or from any of the above.
- (b) For the avoidance of doubt, Hollard is entitled to enforce all those rights, title, interest, and benefits and to exercise all those powers in Hollard's own name and without the need to join PDIC as a party to any proceedings or to obtain any consent or approval from PDIC.

3. Assumption of Liabilities

- (a) With effect at and from the Effective Time:
- (i) all rights, benefits and entitlements of PDIC under the Insurance Contracts and the Business Assets are assumed by Hollard;
 - (ii) Hollard is substituted for PDIC in respect of all Assumed Liabilities (including, without limitation, as if each Insurance Contract had been entered into by Hollard as insurer and not by PDIC as insurer); and
 - (iii) PDIC ceases to be liable to any person for the Assumed Liabilities except to Hollard as expressly set out in this Scheme.
- (b) From the Effective Time, Hollard must indemnify and keep PDIC indemnified from and against all Claims under or arising from the Assumed Liabilities.
- (c) With effect at and from the time at which each Post-Effective Time Insurance Contract is issued, renewed or entered into by PDIC:
- (i) the Post-Effective Time Insurance Contract is deemed to be entered into by Hollard as insurer and not by PDIC as insurer;

- (ii) without the need for any other document, Hollard is substituted for PDIC in those contracts and assumes liability as insurer under those contracts; and
- (iii) PDIC ceases to be liable to any person for the liabilities of the insurer under or arising from those contracts except to Hollard as expressly set out in this Scheme.

4. Consideration

- (a) In consideration of the assumption by Hollard of the Assumed Liabilities, PDIC must pay to Hollard the Supporting Asset Payment in immediately available funds in Australian dollars as follows:
 - (i) as to the Estimated Supporting Asset Payment, if the Effective Time falls on a Business Day, during Business Hours on that Business Day, or if not, on the immediately preceding Business Day; and
 - (ii) as to the balance of the Supporting Asset Payment, within 14 days of the final calculation of the Supporting Asset Payment.
- (b) For the avoidance of doubt, if the Estimated Supporting Asset Payment is greater than the Supporting Asset Payment, Hollard must refund the difference within 14 days of the final calculation of the Supporting Asset Payment.
- (c) PDIC remains liable for, and must pay, any tax, duty, levy or other mandatory amount directly applicable to the issue or renewal of an Insurance Contract by PDIC prior to the Effective Time.

5. Proceedings

At and from the Effective Time:

- (a) Hollard is deemed substituted for PDIC in respect of all proceedings brought by or against PDIC under or in connection with the Insurance Contracts, the Insurance Liabilities, all other Business Assets or the Specified Liabilities; and
- (b) PDIC is deemed to be relieved from such proceedings.

6. Confirmation of Scheme

Upon confirmation of this Scheme by the Court:

- (a) this Scheme becomes binding on all persons;

- (b) this Scheme has effect in spite of anything in the constitution of any body corporate affected by this Scheme; and
- (c) PDIC ceases to:
 - (i) have any liabilities under and in respect of the Insurance Contracts; and
 - (ii) be liable for the Assumed Liabilities.

7. Further Assurance

PDIC and Hollard must do all such things and execute all such deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Scheme.

8. Costs of the Scheme

All costs and expenses incurred in connection with this Scheme, including the cost and expenses associated with preparing and filing the Actuarial Report must be borne by PDIC and Hollard in equal portions and at no cost to the policyholders of either PDIC or Hollard.

9. Rights and Obligations of Insureds

- (a) This Scheme will not change the terms of any Insurance Contract, or affect any Claim in respect of any Insurance Contract, issued, renewed or entered into by PDIC other than, with effect at and from the Effective Time, Hollard will become the insurer in place of PDIC.
- (b) Policyholders under the Insurance Contracts will continue to have the same rights and obligations under or in respect of any Insurance Contract or Claim but, with effect at and from the Effective Time, with Hollard as the insurer.
- (c) With effect at and from the Effective Time:
 - (i) all outstanding Claims-related rights and liabilities of PDIC in respect of the Insurance Contracts are transferred to Hollard such that any Claims arising or outstanding as at the Effective Time under or in connection with any Insurance Contract must be made or pursued against Hollard;
 - (ii) all premiums and other amounts payable to or recoverable by PDIC as at the Effective Time under the Insurance Contracts are payable to and recoverable by Hollard instead of PDIC;
 - (iii) Hollard is entitled to enforce all rights and remedies which but for this Scheme would have been enforceable by PDIC under or in respect of the Insurance Contracts (including, without limitation, any Claims by way

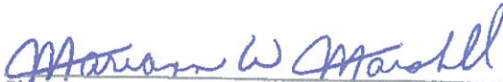
of subrogation, contribution, outstanding premium and any other recoveries related directly or indirectly to any Insurance Contracts);

- (iv) any misrepresentations or breaches of the duty of disclosure made to PDIC constitute misrepresentations or breaches likewise made to Hollard and Hollard is entitled to all defences to Claims that PDIC could have enforced despite misrepresentation was to PDIC rather than Hollard; and
- (v) any policyholder under an Insurance Contract or other person who has a Claim on or obligation to PDIC under or in respect of an Insurance Contract, has the same Claim on or obligation to Hollard in substitution for the policyholder's Claim on or obligation to PDIC irrespective of when such Claim or obligation arose.

- (d) Policyholders are not required to take any action before or as a result of this Scheme.
- (e) In the event of any inconsistency between this clause 9 and any other provision of this Scheme, this clause 9 prevails to the extent of the inconsistency.

Signed as an Agreement.

Executed by Progressive Direct Insurance Company in accordance with the laws of the jurisdiction in which it is incorporated:


Signature

MARIANN W. MARSHALL
(Print) Full Name

Vice President
Officer Title


Signature

DANIEL M TRUDGEN
(Print) Full Name

WITNESS
Witness

Executed by The Hollard Insurance Company Pty Limited by its duly authorised Attorney under Power of Attorney dated 2 March 2017 who states that he has no notice of revocation of the said Power of Attorney in the presence of:


Signature of Witness

VEENA SRIKANANDARAJAH
(Print) Full Name of Witness


Signature of Attorney

BAYNE CARPENTER
(Print) Full Name of Attorney