

Dated [●] 2022

- (1) **TOKIO MARINE & NICHIDO FIRE  
INSURANCE CO., LTD. AS TRANSFEROR**
- (2) **NRG VICTORY REINSURANCE LIMITED  
AS TRANSFEREE**

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**SCHEME**

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**MAYER | BROWN**

**LONDON**

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## 1. INTERPRETATION

1.1 In this insurance business transfer scheme, unless the context otherwise requires the following words or phrases have the following meanings:

**"Act"** means the Financial Services and Markets Act 2000 together with the rules and regulations implemented pursuant to that act;

**"Data Protection Laws"** means the UK GDPR, the UK Data Protection Act 2018 and to the extent applicable, the data protection or privacy laws of any other country including EU Data Protection Laws;

**"Effective Date"** means the time and date on which this Scheme shall become effective in accordance with Clause 8 of this Scheme;

**"EU Data Protection Laws"** means the GDPR, as implemented or supplemented into domestic legislation of each EEA Member State;

**"Excluded Policies"** means contracts in respect of which the Transferor is the insurer or reinsurer, which form part of the London Branch Business, under which any liability (whether current or future, actual or contingent) remains unsatisfied or outstanding at the Effective Date and which the Court for any reason determines shall not be transferred by virtue of the Scheme or the Order.

**"Framework Agreement"** means the framework agreement dated 9 October 2018 between the Transferor, NICO, the Transferee and Resolute Management Limited as amended from time to time;

**"GDPR"** means EU General Data Protection Regulation 2016/679;

**"Insurance Regulator"** means, as the context requires, the Prudential Regulation Authority and/or the Financial Conduct Authority and/or any relevant successor regulator of UK insurance companies;

**"Legacy Portfolio"** means all policies, certificates, binders, cover notes and/or contracts that comprise all classes of non-life, marine and non-marine international business:

- (i) directly written by the former International Reinsurance Department of TMF for 2000 and prior years; and
- (ii) written by the former Reinsurance Department and Marine Department of NFM for 2003 and prior years,

which was classified as reinsurance business when written and which excludes any aviation business unless incidentally written. The Legacy Portfolio has been managed by the Global Division, Commercial Lines Marketing Department of TMNF (renamed the International Business Development Department of TMNF with effect from 1 April 2022) since the Merger and it includes, but is not limited to, the policies recorded in the Spreadsheet as at the date of this Scheme, a copy of which has been provided by the Transferor to the Transferee.

**"London Branch"** means the branch of the Transferor, which is registered in England and Wales with company number BR023462 and registered office C/O Resolute Management Limited 4th Floor, 8 Fenchurch Place, London, EC3M 4AJ;

**"London Branch Business"** means the business of the London Branch, which is comprised of the Legacy Portfolio, excluding the Retained Policies;

**"LPT Agreement"** means the reinsurance agreement entered into between the Transferor as the Reinsured and NICO as the Reinsurer dated 31 December 2014;

**"NICO"** means National Indemnity Company;

**"NFM"** means Nichido Fire & Marine Insurance Co., Ltd;

**"Order"** means an order made by the Court sanctioning this Scheme pursuant to s.111 of the Act, including any subsequent order relating to the Scheme pursuant to s.112 of the Act;

**"Proceedings"** means any judicial, quasi-judicial, or arbitration proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim in relation to the Transferor that are current, pending, threatened or in contemplation at the Effective Date or any other claims or complaints which may be brought in the future including those that are not yet in contemplation;

**"Retained Policies"** means policies in the Legacy Portfolio issued by TMNF to cedants located in Iran, Cuba, North Korea, Syria, Russia and Venezuela, which policies are not included in the Transferring Business;

**"Scheme"** means the Scheme in its original form or with or subject to any modification, addition or condition that may be approved or imposed by the Court;

**"Spreadsheet"** means the spreadsheet entitled "TMNF HO AS400 Contract List"

**"TMF"** means Tokio Marine & Fire Insurance Co., Ltd.;

**"Transferee"** has the meaning given in paragraph 2.2;

**"Transferor"** has the meaning given in paragraph 2.1;

**"Transferring Assets"** means all rights and powers of the Transferor under or by virtue of the Transferring Policies; the LPT Agreement; and the Transferring Outwards Reinsurance Contracts;

**"Transferring Business"** means the Transferring Assets and the Transferring Liabilities;

**"Transferring Liabilities"** means all liabilities whatsoever (whether current or future, certain or contingent) of the Transferor arising in connection with or in relation to the Transferring Policies (excluding any liabilities in relation to mis-selling); the LPT Agreement; and/or the Transferring Outwards Reinsurance Contracts as at the Effective Date;

**"Transferring Outwards Reinsurance Contracts"** means any outwards reinsurance contracts to the extent that they protect the Transferring Policies for the benefit of the Transferor, including any common account reinsurances relating thereto for the benefit of the Transferor;

**"Transferring Policies"** means, other than the Retained Policies and any Excluded Policies, all policies, contracts, certificates, binders and cover notes of insurance and reinsurance issued by the Transferor (formerly TMF and NFM) in respect of the Legacy Portfolio under which any liability (whether current or future, actual or contingent) remains unsatisfied or outstanding at the Effective Date.

**"UK GDPR"** means the GDPR, as it forms part of the laws of England and Wales; and

The terms **"Controller"**, **"Data Subject"**, and **"Personal Data"**, shall have the same meaning as in the UK GDPR and cognate terms shall be construed accordingly.

- 1.2 In this Scheme (save where otherwise stated or where the context otherwise requires):
- 1.2.1 **"property"** or **"asset"** includes (without limitation) property, assets, cash, rights and powers of every description (whether present or future, actual or contingent and, in the case of rights, howsoever arising) and includes property held on trust, rights under any contract, deed or other instrument and any interest in any of the foregoing and "assets" shall be construed accordingly;
  - 1.2.2 **"liabilities"** include all liabilities, obligations and duties whatsoever, whether present or future, actual or contingent or otherwise, including, without limitation, any cost, expense, liability, damage or loss of any kind, and "liability" shall be construed accordingly;
  - 1.2.3 **"transfer"** includes (as the context may require) **"assign"**, **"assignment"** or **"assignment"**, **"dispose"** or **"disposal"** or **"convey"** or **"conveyance"**, and **"transferring"** and **"transferred"** shall be construed accordingly;
  - 1.2.4 **"reinsurance"** includes (as the context may require) **"retrocession"**, and **"reinsure"** and **"reinsurer"** shall be construed accordingly;
  - 1.2.5 any word in the singular shall include the plural and vice versa;
  - 1.2.6 any reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted except to the extent that the liability of either Transferor or Transferee is thereby increased or extended;
  - 1.2.7 any reference to an agreement or document is to the same as amended from time to time;
  - 1.2.8 any reference to a **"person"** shall include a reference to a body corporate, a partnership, an unincorporated association, a joint venture and a person's executors or administrators (whether or not having separate legal personality), and shall include a trustee;

1.2.9 the Schedules form part of this Scheme and shall have the same force and effect as if expressly set out in the body of this Scheme, and any reference to this Scheme shall include the Schedules; and

1.2.10 all headings in this Scheme are inserted for convenience only and do not affect the interpretation of this Scheme.

## 2. INTRODUCTION TO THE PROPOSED SCHEME

2.1 Tokio Marine & Nichido Fire Insurance Co., Ltd. (the "**Transferor**") is a subsidiary of Tokio Marine Holdings, Inc., which subsidiary undertakes non-life insurance products, including fire, marine, accident and automobile liability in Japan and internationally. The Transferor was formed in 2004 by the merger of TMF and NFM, both of which are long-established insurers. The Transferor is authorised to carry out insurance and reinsurance in Japan. The London Branch of the Transferor is authorised to carry out contracts of insurance and reinsurance in the UK.

2.2 NRG Victory Reinsurance Limited (the "**Transferee**") is a non-life insurance and reinsurance company registered in England (with company number 00157508 and registered office at 4th Floor, 8 Fenchurch Place, London, EC3M 4AJ).

2.3 The Transferor no longer writes any international commercial reinsurance business and therefore, the Legacy Portfolio does not align with the Transferor's future strategic business plan. The Legacy Portfolio has been reinsured by NICO under the LPT Agreement since 2014. The Transferor now intends to transfer the London Branch Business, to the Transferee, an affiliate of NICO, by way of an insurance business transfer under Part VII of the Financial Services and Markets Act 2000.

2.4 For the avoidance of doubt, the Retained Policies are being retained by the Transferor in Japan and therefore, are not included in the Transferring Business.

2.5 It is intended that, subject to the sanction of the court, the transfer will take effect on the Effective Date.

2.6 The Transferee has agreed to undertake by Counsel: (i) to be bound by the Order; (ii) that it will not contest the effectiveness of the Order in any jurisdiction; and (iii) that it will be bound by any judgment relating to the Order.

## 3. TRANSFER OF THE TRANSFERRING BUSINESS

3.1 From and including the Effective Date:

3.1.1 the Transferring Assets and all the estate and interest of the Transferor in the Transferring Assets shall, by the Order and without any further act or instrument, be transferred to and vested in the Transferee in accordance with and subject to the terms of this Scheme. The Transferee shall accept without investigation such title as the Transferor shall have to the Transferring Assets as at the Effective Date;

3.1.2 the Transferring Liabilities shall, by the Order and without any further act or instrument, be transferred to and shall become liabilities of the Transferee and

shall cease to be liabilities of the Transferor. The Transferee shall accept such liabilities (whether any contract pursuant to which such liabilities arise is governed by English law or the laws of another jurisdiction);

- 3.1.3 in any document evidencing or constituting a Transferring Policy, references to the Transferor and/or to the rights, powers, duties and/or obligations imposed upon the Transferor, its board of directors or other officers, employees or agents shall be read, construed and treated as references to the Transferee and/or to rights, powers, duties and/or obligations imposed upon the Transferee, its board of directors or other officers, employees or agents.
- 3.2 From and including the Effective Date, the LPT Agreement and the Transferring Outwards Reinsurance Agreements shall continue in force with the Transferee substituted into each of those agreements in place of the Transferor upon the same terms which applied under each of those agreements as at the Effective Date. All references in the LPT Agreement, and the Transferring Outwards Reinsurance Agreements to the Transferor shall be read, construed and treated as references to the Transferee.
- 3.3 From and including the Effective Date, the Transferor shall transfer to the Transferee any sums paid to the Transferor in respect of the Transferring Business.
- 3.4 The Transferor and the Transferee shall, as and when required, execute such documents and perform any such acts as may be required to effect or perfect the transfer of the Transferring Business under this Scheme.
- 3.5 Unless and to the extent otherwise provided in the Order, the transfer of the Transferring Business or any other matter provided for by the Scheme shall not:
  - 3.5.1 invalidate or discharge any agreement, document, instrument or other thing;
  - 3.5.2 constitute a breach of, or default under, or require any obligation to be performed sooner or later than would otherwise have been the case under, any agreement, document, instrument or other thing to which the Transferor or the Transferee is a party or is bound;
  - 3.5.3 allow any party to any agreement, document, instrument or other thing to terminate that document, agreement or instrument or other thing when that party would not otherwise have been able to do so;
  - 3.5.4 entitle any party to the agreement, document, instrument or other thing to which either of the Transferor or the Transferee is a party or is bound to vary the terms of that agreement, document, instrument or other thing when that party would not otherwise have been able to do so; or
  - 3.5.5 cause the imposition of any greater or lesser obligation on any party to any such agreement, document, instrument or other thing when that greater or lesser obligation would not otherwise have been imposed including the release of any obligation or liability of any party which would not have otherwise been released or release such liability or obligation sooner or later than would have otherwise been the case.

#### **4. TRANSFER OF BUSINESS AND CONTINUITY OF PROCEEDINGS**

- 4.1 From and including the Effective Date, each holder of a Transferring Policy, shall become entitled as a substitute for, and to the exclusion of, any rights that it may have had against the Transferor under the Transferring Policies or any other agreements relating to the Transferring Business, to the same rights against the Transferee (subject to the terms of this Scheme) as were available to it against the Transferor under the Transferring Policies or other such agreement relating to the Transferring Business pursuant to which premiums or other sums attributable thereto continued to be payable and shall, from and including the Effective Date, account to the Transferee with regards to any future premium or additional premiums or other sums attributable thereto as and when they become due and payable. The Transferee shall be entitled to any and all defences, claims, counterclaims and rights of set-off that were available to the Transferor in relation to the Transferring Policies or agreements relating to the Transferring Business.
- 4.2 From and including the Effective Date, any Proceedings relating to the Transferring Business by or against the Transferor shall without further order be continued by, or against, the Transferee and the Transferee shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to the Transferor in relation to such proceedings. From and including the Effective Date, the Transferor shall have no liability in relation to such proceedings and the Transferee shall have absolute discretion to discontinue any Proceedings brought by the Transferor relating to the Transferring Business.
- 4.3 From and including the Effective Date, any Proceedings relating to the Transferring Business shall be commenced against the Transferee. Any Proceedings which are commenced in error, after the Effective Date, against the Transferor, shall be continued against the Transferee without the requirement for a further order, whether for the substitution of the parties or otherwise. The Transferee shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to the Transferor in relation to such proceedings.
- 4.4 From and including the Effective Date, any judgment, settlement, order or award which is obtained by or against the Transferor in respect of the Transferring Business and not fully satisfied before the Transfer Date shall, to the extent to which it was enforceable by or against the Transferor immediately prior thereto, become enforceable by or against the Transferee.

#### **5. PREMIUMS, MANDATES AND OTHER INSTRUCTIONS**

- 5.1 Any and all premiums and other amounts in force on the Effective Date and payable to the Transferor under or in respect of any Transferring Policy shall be payable to the Transferee.
- 5.2 Any direct debit mandate, standing order or other instruction or authority in force on the Effective Date (including any instructions given to a bank by a customer in the form of a direct debit or standing order and provides for a payment by the bank or an intermediary of premiums or other sums due to the Transferor under or in respect of a Transferring Policy) shall be payable to the Transferee.



## **6. POLICIES EXCLUDED FROM THE SCHEME**

- 6.1 The Excluded Policies shall not be transferred to the Transferee by this Scheme and the liabilities under the Excluded Policies shall remain liabilities of the Transferor.
- 6.2 If any person exercises any right or option granted under the terms of an Excluded Policy which provides for a new, additional or replacement policy to be issued such person shall be entitled to require that the obligation thereby arising shall be satisfied by the issue by the Transferor of a policy which complies with the terms of such right or option. Any new policy issued by the Transferor pursuant to this paragraph 6.2 shall be treated as an Excluded Policy.
- 6.3 Without prejudice to the right of a person set out in paragraph 6.2 to have a right or option satisfied by the issue of a policy by the Transferor, the Transferor shall be entitled to procure that the Transferee shall offer to such person a policy which complies with the terms of such right or option.
- 6.4 If the novation of any Excluded Policy to the Transferee is procured, the rights and liabilities relating to such policy shall, to the extent not previously transferred, be transferred to the Transferee and such policy shall thereafter be dealt with by the Transferee under the provisions of this Scheme in all respects as if such Excluded Policy were a Transferring Policy.

## **7. INDEMNITIES IN FAVOUR OF THE TRANSFEROR**

- 7.1 From the Effective Date, the Transferee shall observe and perform the Transferor's obligations under the Excluded Policies to the greatest extent permitted thereunder and shall indemnify and keep the Transferor fully and effectively indemnified and hold the Transferor harmless on a continuing basis and on demand against and from any liability, loss, cost or expense incurred by, or demand or claim made against, the Transferor in respect of any Excluded Policy.

## **8. EFFECTIVE DATE**

- 8.1 This Scheme shall become operative on 20 July 2022 or such other date as may be specified in the Order or as the Court may allow upon the application of the Transferor and the Transferee.
- 8.2 If the Transferor and the Transferee agree that the Scheme should become effective after 20 July 2022 or the date specified in the Order, the Transferor shall apply to the Court, for a further order specifying such time and date upon which, subject to the consent of the Court, the Scheme will become operative, provided that in such case:
- 8.2.1 the Insurance Regulators shall be notified in advance and as soon as reasonably practicable of, and shall have the right to be heard at, any hearing of the Court at which such application is considered; and
- 8.2.2 such application shall be accompanied by a supplementary report, as appropriate, from an independent actuary to the effect that in his or her opinion the proposed amendment will not materially adversely affect policyholders.

8.3 If the Scheme does not become operative on or before 20 July 2022 or such other date as the Court may allow upon the application of the Transferor, it shall lapse.

## 9. **COSTS AND EXPENSES**

9.1 Any costs and expenses incurred in relation to the preparation and effecting of the Scheme between the date of the Framework Agreement and the Effective Date shall be borne by whichever party incurred the costs and expenses unless otherwise agreed between the parties.

## 10. **PERSONAL DATA**

10.1 From and including the Effective Date the Transferee shall:

10.1.1 succeed to any rights, liabilities and obligations of the Transferor in respect of any Personal Data which relates to the Transferring Business and which is subject to Data Protection Laws;

10.1.2 shall be substituted for the Transferor as the Controller of any Personal Data which relates to the Transferring Business and which is subject to Data Protection Laws to the extent that, on the Effective Date, the Transferor is the Controller of such Personal Data;

10.1.3 in respect of any Personal Data relating to the Transferring Business, be under the same duty by virtue of any law, including Data Protection Laws, which was applicable to the Transferor in relation to the confidentiality and privacy of any person in relation to that data, including any restriction on the transfer of Personal Data outside of the UK or European Union, and shall be bound by any specific notice given or request made by any Data Subject which was binding upon the Transferor and which required that the Transferor not use the data for marketing purposes; and

10.1.4 without prejudice to 10.1.3 above, in any consents provided by a Data Subject be substituted for any references to the Transferor.

## 11. **MODIFICATIONS OR ADDITIONS**

11.1 The Transferee and the Transferor may, as required, agree on behalf of all persons concerned (other than the Insurance Regulators) to any modification or addition to this Scheme, or to any further condition or provision affecting the same which, prior to its sanction of the Scheme, the Court may approve or oppose.

11.2 Subject to paragraph 11.3, at any time after the sanction of this Scheme, the Transferor and the Transferee shall be at liberty to apply to the Court for consent to amend its terms, provided that:

11.2.1 the Insurance Regulators shall be given written notice of the proposed amendment at least 28 days prior to the making of the application to the Court and shall have the right to be heard at any hearing of the Court at which such application is considered; and

11.2.2 such application shall be accompanied by a certificate or updated independent expert's report, as appropriate, from an independent actuary to the effect that in his or her opinion the proposed amendment will not materially adversely affect policyholders (being all groups of potentially affected policyholders) when taking account of all possible impacts of the proposed amendments.

11.3 The consent of the Court shall not be required in respect of amendments to the Scheme that may be agreed by the Transferor and the Transferee in writing, and which are:

11.3.1 minor and/or technical amendments to the terms of this Scheme (including amendments to correct manifest errors);

11.3.2 necessary to comply with such of the requirements of any applicable law, rule or regulation which have or will have any implications for the Transferor or Transferee in relation to the terms or operation of this Scheme;

11.3.3 necessary to reflect any changes in generally accepted actuarial practices relating to the management of the Transferring Policies; or

11.3.4 required to protect the rights and reasonable expectations of the policyholders of the Transferring Policies,

provided that the Insurance Regulators have been notified of the same at least 28 days in advance of the amendment being made and have not objected (unless the Insurance Regulators have confirmed non-objection prior to that date).

## 12. **THIRD PARTY RIGHTS**

12.1 Any person who is not a party to this Scheme may not enforce any term of this Scheme pursuant to, or by virtue of, the Contracts (Rights of Third Parties) Act 1999.

## 13. **SUCCESSORS AND ASSIGNS**

13.1 The Scheme shall bind any successors and assigns of the Transferor and Transferee.

## 14. **GOVERNING LAW**

14.1 The Scheme is governed by and construed in accordance with English law.