



THIS DEED is made this [DATE] by [NAME OF FIRM] ("the Firm") of [ADDRESS]

RECITALS

- (1)The Firm carries on business involving insurance mediation activity as defined in the Financial Services Authority's Handbook

- (2)To meet the requirements prescribed in Chapter 5 of the Client Assets Sourcebook forming part of that Handbook the Firm intends by this Deed to constitute with effect from 14 January 2005 (or, if later, the date of execution of this Deed) and set out the terms of a non-statutory client money trust on which any client money will be held by the Firm

- (3)This Deed when effective is the trust deed referred to in paragraph CASS 5.4.6R of that Client Assets Sourcebook

OPERATIVE PROVISIONS

- 1)In this Deed expressions defined in the Handbook as in force on the date of this Deed have those defined meanings. However, for the purposes of this Deed *money is client money* where:
 - a)in relation to an activity specified in CASS 5.2.3R(1)(a) to (c) the *insurance undertaking* has agreed that the Firm may treat *money* which it receives and holds as agent of the *undertaking as client money* and in accordance with the provisions of CASS 5.3 to 5.6. and
 - b)the agreement referred to in the previous sub-clause is in writing and adequate to show that the *insurance undertaking* consents to its interests under the trusts constituted by this Deed

being subordinated to the interests of the Firm's other *clients* (other than *clients* which are *insurance undertakings* when acting as such).

2) This Deed will become effective only on and with effect from 14 January 2005 or if later the date of execution of this Deed. [Until 14 July 2005 the Firm may (a) treat as its *client* any *insurance undertaking* (when acting as such) with whom the Firm conducts *insurance mediation activity* and which has not made any such agreement with the Firm as specified in CASS 5.1.5AR(1), and (b) keep in a *client bank account* any *money* held by the Firm in accordance with an agreement made with such an *insurance undertaking* under paragraph CASS 5.2.3R; and until the earlier of 14 July 2005 or it has made with the Firm an agreement complying with CASS 5.1.5AR(1) such an *insurance undertaking* shall be treated for the purposes of clause 4(2) as being a *client* which is not an *insurance undertaking*, and this Deed shall be construed and take effect accordingly]

3) As and from the date when this Deed becomes effective in accordance with the previous clause the Firm constitutes itself a trustee of the *client money* received and held by the Firm on the terms set out in this Deed and accordingly such *client money* shall be held on the trusts set out in this Deed separate from the Firm's money, the Firm for that purpose maintaining a *client bank account* at one or more *approved banks* (and, if the conditions in paragraph CASS 5.5.41R of the Client Assets Sourcebook are satisfied, at a bank which is not an *approved bank*) into which *client money* is to be paid. However, this trust does not apply to any *client money* received and held by the Firm in respect of any part of its business as to which the Firm has for the time being elected that paragraph CASS 5.3 of the Client Assets Sourcebook should be applicable, the Firm's election being declared [in a deed] [by the Firm in writing]

4) Any *money* (including any *designated investments*) which for the time being is held on the trusts of this Deed is held:

- a)for the purposes of and on the terms of (a) paragraphs CASS 5.4 and (so far as applicable as set out below) 5.5 of the Client Assets Sourcebook and (b) the *client money (insurance) distribution rules*;
- b)(subject to clause 4.cbelow) for (a) the *clients* (other than *insurance undertakings* when acting as such) for whom that *money* is held according to their respective interests in it, and (b) after all claims in sub-clause (a) have been met, for *clients* which are *insurance undertakings* according to their respective interests in it;
- c)on *failure* of the Firm, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with clause 4.babove); and
- d)after all valid claims and costs under clauses 4.b and 4.c above have been met, for the Firm itself
- 5)For the avoidance of any doubt the trust hereby constituted extends to, and makes subject to the trusts set out in the previous clause all *client money* subject to clause 3 above and also:
- a)the *money* which is for the time being held to the credit of any of the accounts opened by the Firm as a *client bank account* and used for segregating *client money* for the purposes of this Deed;
- b)any debt obligations which will arise if the Firm as trustee of the trust hereby constituted makes any advances to enable a client's *premium* obligations to be met before the *premium* is remitted to the Firm, or if the Firm allows claims and *premium* refunds to be paid to the client before receiving remittance of those *monies* from the *insurance undertaking*;
- c)the benefit of any letter of credit or unconditional guarantee provided by an approved bank on behalf of the Firm to satisfy any shortfall in the Firm's client money resource (as calculated under paragraph CASS 5.5.65R of the Client Assets Sourcebook) when compared with the Firm's client money requirement (as calculated under paragraph CASS 5.5.66R or as appropriate CASS 5.5.68R of the Client Assets Sourcebook) [; and
- d)any *designated investments* segregated in accordance with paragraph CASS 5.5.14R(1) of the Client Assets Sourcebook and Clause 11 below]

6)The Firm may not make advances of credit to itself out of the *client money* trust hereby constituted, and accordingly may not withdraw *commission* from the *client money* trust before it has received the *premium* from the *client* in relation to the *non-investment insurance contract* which generated the *commission*. Subject to this the Firm is authorised as trustee to make advances of credit to the Firm's *clients*, and as such trustee has power to make advances or give credit from *client money*. Further, the Firm may draw down *commission* from the *client bank account*, and may do so before payment of the *premium* to the *insurance undertaking*, if it has received the *premium* from the *client* and also the drawing down of the *commission* is consistent with the terms of business of the *insurance undertaking* to whom the *premium* is payable

7)The Firm has power to invest and in particular to take advantage of CASS 5.5.14R, but any funds subject to the trusts of this Deed which are to be invested must be managed with discretion by a *firm* which has the necessary *permission*

8)Any interest or investment returns earned on or derived from the Firm's holding of *client money* or segregated *designated investments* shall belong to the Firm which shall not be bound to account for the same to any other person. However this is subject and without prejudice to any other agreement which the Firm may make with any such other person, and in relation to any *retail customer* only applies either:

- a)in respect of any interest earned on *client bank accounts*, if the Firm has reasonable grounds to be satisfied that in relation to *insurance mediation activities* carried on with or for the *retail customer* the amount of interest will be not more than £20 per transaction, or
- b)if and to the extent that the *client's* informed consent has been obtained to that treatment of interest and/or investment returns

9)The Firm may at any time and from time to time by deed supplemental to this Deed amend the terms of this Deed to enable the trusts hereby constituted to continue to comply with the requirements for the time being set out in the Handbook as in force from time to time for a

non-statutory client money trust, PROVIDED that no amendment may be made after *failure* of the Firm and no amendment may be made which diminishes or materially affects adversely the existing beneficial interest of any *client* in any part of the funds for the time being subject to the trusts of this Deed

10) Save where expressly precluded from doing so by the terms of this Deed the Firm may exercise in relation to any property or assets for the time being subject to the trusts of this Deed any and all powers permitted in accordance with paragraphs CASS 5.4 and CASS 5.5 of the Client Assets Sourcebook, including in particular the power set out in paragraph 5.5.8R of segregating *client money* in a different currency from that of receipt

[11] In any case where the Firm decides to satisfy the requirement to segregate *client money* by segregating or arranging for the segregation of *designated investments* the Firm must take responsibility for meeting any *shortfall* in its *client money* resource which is attributable to falls in the market value of a segregated *investment*, and must take reasonable steps to ensure that the segregation is at all times in conformity with the range of permitted *investments*, general principles and conditions in CASS 5, Annex 1R.]

EXECUTED as a Deed [etc]

DATED 2004

[NAME OF FIRM]

Non-statutory client money trust

(Client Assets Sourcebook CASS 5.4)

Draft/

DEED OF TRUST

THE EXECUTION OF A NON-STATUTORY TRUST DEED (executed as a deed poll)

This is the procedure, which an English company must follow in order to execute a non-statutory trust deed (executed as a deed poll).

Section 36A of Companies Act 1985 set out the procedure for the execution of documents by companies.

1. Signatories

Section 36A(4) of Companies Act 1985 states that the attestation on the deed (deed poll) must be expressed (in whatever form of words) to be executed by the company. This will have the same affect as if the deed (deed poll) was executed under the common seal of the company. The deed (deed poll) must be signed and dated in the presence of a witness by 2 individuals being either:

- 1.1 a director and the secretary; or
- 1.2 2 directors.

2. Witnesses

- 2.1 Under section 1(2) of Law of Property (Miscellaneous Provisions) Act 1989, the deed (deed poll) must be signed and dated in the presence of a witness who attests the signatures. The witness must also fill in their occupation and address on the deed (deed poll).

3. Dates

- 3.1 When the directors/secretary and witness sign the deed (deed poll), they must ensure that they date the document.

4. Wording of the document

- 4.1 Under section 36A(5) of Companies Act 1985, a document executed by a company which makes it clear on its face that it is intended by the person or persons making it to be a deed (deed poll) has effect, upon delivery, as a deed (deed poll). Therefore, it is vital that the wording of the document makes it expressly clear that the document is a deed (deed poll).

5. Delivery

- 5.1 In order for a document to be executed as a deed (deed poll) it must be delivered. This does not necessarily mean physical delivery. It requires a demonstration of an intention to be bound. Therefore, wording should be used at the bottom of the deed (deed poll) before the schedules stating:

“IN WITNESS of which the Company has executed this Deed (Deed Poll) and has delivered it upon dating it.”

6. Authority

- 6.1 In accordance with section 35 of Companies Act 1985, a company must check in the objects clause of it's Memorandum of Association that it has the capacity to sign the trust deed (deed poll) and also that it has the capacity to set up a trust.