



BISHOPSGATE INSURANCE BROKERS LIMITED

TERMS OF BUSINESS AGREEMENT FOR DIRECT CLIENTS (BUSINESS INSUREDS)

September 2020

Bishopsgate Insurance Brokers Limited is a Lloyd's broker and is authorised and regulated by the Financial Conduct Authority

1. General

- 1.1 This document sets out the terms on which Bishopsgate Insurance Brokers Limited (“Bishopsgate”, “we”, “us”, or “our”) agrees to act for you, our client, and it contains details of our regulatory and statutory responsibilities. Please read the document carefully and contact us immediately if there is anything which you do not understand.
- 1.2 These Terms of Business apply to all instances where you instruct Bishopsgate to obtain cover with insurers on your behalf as an insured who is buying insurance wholly or mainly for purposes related to their trade, business or profession (Business Insured).
- 1.3 You have consented to working with us on these terms if, having received these Terms of Business, you continue to do business with us. By so doing you warrant that you have authority to do so on behalf of your organisation.
- 1.4 This document supersedes and replaces all previous Terms of Business Agreements (“TOBAs”) between us. It remains in force unless and until we and you agree in writing to amend its terms, to replace it with another agreement, or until it is terminated in accordance with the ‘Termination’ clause below.
- 1.5 This document sets out the basis on which we will provide you with services in relation to each contract of insurance which we arrange on your behalf, unless there is a more specific agreement in writing in place between us (which shall prevail to the extent of any conflict).
- 1.6 Nothing in this TOBA shall oblige us to transact any insurance business if we decline to do so, or oblige you to offer us business.
- 1.7 Reference throughout this document to “insurance”, “insurers” and “insureds” is also to “reinsurance”, “reinsurers” and “reinsureds”.

2. Who we are

- 2.1 We are Bishopsgate Insurance Brokers Limited, an independent insurance intermediary and Lloyd’s Broker. We are part of the Ardonagh group of companies (the “Group”) (www.ardonagh.com).
- 2.2 Our business address and contact details can be found on our website www.bishopsgateinsurance.co.uk.
- 2.3 We are registered in England and Wales under company number 00149526, registered office: 2 Minster Court, Mincing Lane, London, England, EC3R 7PD

3. Regulation

- 3.1 We are authorised and regulated by the Financial Conduct Authority (FCA), and our FCA Firm Reference number is 308327. This information can be checked on the FCA Register at their website <https://www.fca.org.uk/firms/financial-services-register>

4. Our Role & Services

- 4.1 As an independent insurance intermediary, we act as your agent unless we tell you otherwise.
- 4.2 Our services may include advising you on your general insurance needs, arranging insurance cover with insurers to meet your requirements, issuing insurance policy documentation to you in a timely manner and helping you with any ongoing changes you wish to make to your insurance. We may also help you make a claim against your insurance policy. Upon receipt of your instructions, we will place your insurance with insurers.
- 4.3 We will explain the main features of the products and services we offer you including details of the insurer, main details of cover and benefits, any unusual restrictions or exclusions, any significant conditions or obligations which you must meet and the period of cover.

- 4.4 According to your demands and needs we will seek indications from one or a number of insurers selected based on our knowledge and experience of the market. You will then need to decide how to proceed. When we receive your instructions as to how to proceed, we will endeavour to arrange insurance in accordance with those instructions. If we are unable to do so, we will advise you and discuss with you.
- 4.5 We may place your insurance with a single insurer and/or a group of subscribing insurers acting on a co-insurance basis, according to our knowledge and experience of the market.
- 4.6 In relation to certain classes of insurance, we may operate 'lineslip' facilities. These are facilities whereby cover may be bound by one or more insurers on behalf of a number of other participating insurers. Where we place cover on such a facility we will advise you.
- 4.7 We may also have authority from insurers to act as a 'coverholder'. This is where we have delegated authority from insurers to bind certain classes of insurance on their behalf under a facility known as a binding authority. Should we intend to place your insurance under such an arrangement, we will specifically advise you. If we place your insurance under a binding authority where we are the coverholder, in dealing with the underwriting and administration of that insurance, we will be acting on behalf of insurers.
- 4.8 Where we consider it appropriate, it may be necessary for us to instruct another more localised or specialist sub-broker to assist us in arranging or administering an insurance contract. For example, where we need to comply with any local regulatory requirements governing the right to place insurance with insurers in that jurisdiction.

5. Selection of insurers

- 5.1 We place insurance only with insurers which meet our financial security criteria, unless we receive specific instructions from you to the contrary. However, we cannot and do not guarantee or accept responsibility for the financial standing or performance, including solvency or continuing solvency, of any insurer used. Please note that the financial position of an insurer can change after cover has inceptioned.
- 5.2 You must promptly check the security evidenced in the documentation we send you, and advise us immediately if you have any concerns.

6. Conflicts of interest

- 6.1 We are committed to acting in the best interests of you, our client. In certain circumstances, we may act for and owe duties of care to other parties. We will take all reasonable steps to mitigate any possible conflict of interest and will advise you if we feel that such a conflict is material, and discuss with you the best approach to removing or mitigating the conflict. We recognise that in some circumstances you may wish to employ the services of another intermediary to assist with resolution.

7. Our Remuneration

- 7.1 Unless otherwise agreed with you, the remuneration we receive in respect of your insurance policy will be either the fee we have agreed and notified to you and/or brokerage which is a proportion of the premium determined by insurers on the insurance placed, and is included within it. Details of our brokerage will be disclosed at your request. Where we are remunerated by means of brokerage, we take our brokerage on receipt of premium. We will be entitled to retain all remuneration in respect of the full contract period in relation to contracts placed by us including any brokerage resulting from any additional premium payable during the contract period.
- 7.2 We may be instructed by an insurer subscribing to an insured's contract to place reinsurance on the insurer's behalf. Such a reinsurance is a separate contract from the insured's contract. In such circumstances, the insurer is our client and any related remuneration is outside of the scope of our arrangements with you.

- 7.3 In the event that a sub-broker is instructed, the sub-broker may be remunerated by way of a fee agreed with us or brokerage set by insurers. Please note that the basis of remuneration for a sub-broker may be different to the basis of our remuneration in relation to the insurance.
- 7.4 In addition to our brokerage and/or agreed fees, we may also benefit from:
- Additional payments or fees from insurers for services we undertake on their behalf, which are unconnected with any specific client transaction.
 - Administrative fees or commissions for other services provided to insurers, including commissions contingent on the profitability of facilities arranged by us for ease of placement or certainty of market.
 - Additional income from premium finance companies for our administration costs in setting up premium instalment facilities.
- 7.5 We will advise you separately about the type and source of remuneration we have received from placing your insurance policy.

8. Instructions

- 8.1 All instructions must be given in writing in order to avoid any ambiguity or misunderstanding. In cases that we consider to be urgent, we will accept oral instructions, but request that they be confirmed in writing immediately. We will only accept instructions from certain people in your organisation, as agreed with us.
- 8.2 As there is no certainty of the completeness or receipt of an email, if an instruction is given by email, a confirmatory reply must be received for your instruction to be effective. If you do not promptly receive such a confirmation, please raise the matter with your usual contact.
- 8.3 We accept no responsibility if information sent by you to us by email is incomplete or corrupted.
- 8.4 We are entitled to act upon any instruction from you received by email which reasonably appears to have been sent by you.
- 8.5 We do not accept instructions by alternative media such as text message, instant messaging or via social media.

9. Emails

- 9.1 We scan our outgoing emails for viruses but you must make your own security checks. We accept no responsibility for loss or damage arising from the receipt of emails from our system. We reserve the right to monitor all incoming and outgoing emails.
- 9.2 As we use third party service providers we do not guarantee the confidentiality of information sent to or by us electronically. For the avoidance of doubt this provision overrides any separate agreement as to confidentiality of business information.

10. Duty of Disclosure and Fair Presentation

- 10.1 Under UK law, it is your duty to make a **fair presentation** of the risk to be insured, by ensuring that:
- The information provided by you (or on your behalf), including in any proposal form, is accurate and discloses to your insurers all “**Material Facts**” which you know, or ought to know:
 - A matter or circumstance is a “Material Fact” if it would influence a prudent insurer’s acceptance or assessment of the risk, your proposal for insurance or the terms of any insurance offered (including the premium charged).
 - You are obliged to disclose all “Material Facts”, whether or not such matter or circumstance is the subject of a specific question in any proposal form.
 - You should also ensure that you disclose to insurers any:

- special or unusual facts relating to the risk;
 - any particular concerns which led you to seek insurance; and
 - matters which you suspect may be Material Facts, but where you have not pursued your enquiries.
- You have carried out a reasonable search of information available to you to reveal all “Material Facts”. This will include “Material Facts” known to:
 - Senior managers in your organisation, which means those individuals who play significant roles in the making of decisions about how your activities are to be managed or organised, and will include but is not limited to your Board of Directors;
 - any persons responsible for arranging this insurance (including any risk manager or risk management team you may have); and
 - any third parties outside your organisation (for example, subsidiary or group companies, agents, third party experts appointed on your behalf, consultants, co-insureds or joint venture partners).
 - The information you provide to insurers is clear and accessible.
- 10.2 If there is any doubt as to whether or not an item of information is material, it should be disclosed. Individual insurance contract terms may stipulate stricter requirements.
- 10.3 The duty to make a fair presentation continues during the policy period and at any subsequent renewal. The duty also applies to the claims process and to any situations during the period of the contract in which you are required, under the terms of the contract or otherwise, to provide information to insurers. This includes an extension or amendment to the contract.
- 10.4 If any material information is omitted or misrepresented, insurers may have the right to impose different terms, proportionately reduce the amount of any claim payable, or, in some circumstances, to avoid the insurance contract from inception and, in this event, claims under the contract would not be paid.
- 10.5 This is the position under the laws of England and Wales, Scotland and Northern Ireland and the disclosure requirements, and consequences of failing to meet them, may differ where the insurance contract is governed by the laws of another jurisdiction.
- 10.6 For insureds whose insurance contract is governed by the laws of another jurisdiction, please ensure you have disclosed to the insurer all material information concerning the subject of this insurance. This information should be disclosed before your cover is placed, when it is renewed and any time that it is varied. Your insurance policy wording may also provide that information should continue to be disclosed for the duration of the insurance policy. If you are in any doubt about whether something is likely to be considered material we recommend that it is disclosed. Failure to do so may prejudice your cover and any claims under it may not be paid.
- 10.7 You shall provide us with all relevant information in relation to your business to enable us to provide the services. Such information must be provided in a format which allows us to provide a clear presentation to insurers. We can rely on any information provided to us by you.

11. Confirmation of Cover

- 11.1 When we have bound cover, we will notify you in writing to that effect, and confirm the names of the insurers with whom it has been placed. You should not assume that any cover has been placed, or any amendment agreed to (even if the intended inception date has passed), unless and until you have received written confirmation from us to that effect.
- 11.2 You must promptly check all documents you receive from us or insurers to make sure there are no mistakes or misunderstandings. You must immediately tell your regular contact about any mistakes or anything which you do not think is in line with your instructions. It is important that you keep your documents in a safe place while the contract remains open to make a claim.

- 11.3 Particular attention should be paid to any policy conditions, exclusions, warranties and claims provisions, as failure to comply may invalidate your coverage.
- 11.4 Warranties are important provisions contained in your insurance policy and must be exactly complied with at all times. Under English Law, a breach of a warranty may suspend your insurance policy. Insurers may have no liability to pay losses occurring or attributable to something happening during any such period of suspension. The period will continue until the breach has been remedied (if it is capable of remedy). If your policy is governed under other law, a breach of warranty may cause the policy to be voided from the date of breach or ab initio. A warranty may exist in the policy using other terminology and without reference to the word 'warranty'.
- 11.5 Please also take particular note of any conditions precedent that appear in the policy. If a condition precedent to the validity of this policy or to the commencement of the risk is not complied with, the insurer will not come on risk. If a condition precedent to the insurer's liability under a policy is not complied with, the insurer may not be liable for the loss in question. A condition precedent may exist in the policy using other terminology and without reference to the words 'conditions precedent'.
- 11.6 If there is any doubt about any policy conditions, exclusions, warranties and claims provisions, immediate advice should be sought from us. You should not rely on any summary of cover that we provide.

12. Claims

- 12.1 It is very important that you familiarise yourself with any specific claim requirements in the contract of insurance, as they can vary substantially from policy to policy.
- 12.2 If the notification requirement is expressed in terms of a condition, suspensive condition, condition precedent or warranty, it must be strictly complied with. We are not the agents of insurers for this purpose: it is the date when insurers themselves receive notification of the claim that determines whether a time limit has been complied with, and we must therefore be advised by you in good time to enable us to comply with such time limits on your behalf.
- 12.3 It is essential that you notify immediately, in accordance with the policy terms, any claim or a circumstance which may give rise to a claim, providing all available information, as failure to do so may entitle insurers to deny liability for the claim. Notification should be as required by the specific terms of the policy and to your usual Bishopsgate contact.
- 12.4 In the ordinary course of managing a claim, we may be asked and are then entitled to engage and liaise with claims experts on behalf of insurers. Please advise us in writing if you have an objection to this in respect of any specific claim.
- 12.5 We will not pay claims to you until such time as we have received the relevant payment from insurers.
- 12.6 We do not accept liability for any delayed or unpaid claims by an insurer.
- 12.7 For some policies, insurers may give us authority to act on their behalf in settling claims. In these circumstances, and in recognition of a potential conflict of interest, we will seek your permission for us to deal with such a claim.

13. Paying premium to us

- 13.1 In order for us to meet the premium payment terms of the Insurers, premiums must be settled to us in cleared funds by the payment date(s) which we will notify to you.
- 13.2 In certain circumstances, insurers may include a premium payment condition or warranty as a term of the insurance. Failure to comply in full with the terms of such a clause may, according to the specific policy terms, result in insurers issuing notice of cancellation or their obligations under the contract either being suspended for the period of breach or terminating absolutely.
- 13.3 If we have not received the premium from yourselves, we are under no obligation to pay premium by the payment date to insurers on your behalf.

- 13.4 Insurance contract monies should be and normally are settled on an individual Debit Note or Credit Note basis. Statements of Account are issued periodically where there are monies due for payment to us and we may have monies in account which are owing to you.
- 13.5 *Wire Transfer:*
All payments to us should be made by wire transfer to our appropriate bank accounts in accordance with the details provided, together with a remittance advice transmitted promptly to your usual Bishopsgate's accounts contact showing the item(s), our transaction number(s) and the amount(s) being paid. This will enable us to identify, upon receipt of the payment, to which insurers we are to remit funds. Wire transfers should be payable to Bishopsgate Insurance Brokers Limited and the relevant bank and account number quoted.
- 13.6 *Alternative payment methods:*
Where a wire transfer is not appropriate or available, alternative payment methods may be agreed with you upon application to your usual Bishopsgate contact.
- 13.7 Should you pay by an alternative payment method you must allow sufficient time for the payment to clear before the due date.
- 13.8 Payment must be made in the currency invoiced, unless otherwise agreed by us in advance.
- 13.9 Payment must include any taxes and/or other similar charges which insurers or we are obliged to collect in respect of the contract of insurance. We do not accept responsibility for accounting for taxes or for other similar charges unless we have a legal duty imposed in a specific jurisdiction or we have formally agreed to do so in advance.
- 13.10 We do not accept expectation of a receipt of return premiums or paid claims as a basis for us to pay premium.
- 13.11 We will not make a payment to insurers in circumstances where the funds we receive have come from a third party (i.e. they have not been transmitted to us by you) and we have not agreed to this in advance, having satisfied our anti-financial crime due diligence requirements.
- 13.12 Accounting arrangements in the London insurance market may give rise to an automatic deduction of premium from our broker account on your behalf. If that occurs when you have not paid the premium to us, you agree to refund that amount to us without delay.
- 13.13 It is imperative you comply with all of the payment terms above and any such other terms issued by insurers in your insurance contract. For the avoidance of doubt, we have no obligation to fund any such monies on your behalf (unless we have agreed in writing to do so in respect of a specific payment) in which case this payment is a loan to you repayable to us on demand. We have no responsibility for any loss which may be suffered as a result of insurers cancelling the policy or taking any other prejudicial steps as a result of the late payment of any monies due, if such delay is substantially attributable to you.

14. Client Money – Holding premiums and other funds

- 14.1 Normally premiums, returned premiums and claims funds that we receive in the course of carrying on insurance mediation on behalf of our clients will be held by us as agent of those clients under a non-statutory trust ("Client Money") separate from our own money. When we hold Client Money under this non-statutory trust we owe certain fiduciary duties to those clients which will not be discharged until the client money is deemed to have reached the insurer or product provider or on paying the money to the client, to ourselves, or to another third party at the client's instruction.
- 14.2 In some cases, funds we receive may be held by us as agent for the insurer, depending on the Terms of Business in place at the time between the relevant insurer and us. Where we are holding money as an agent of the insurer this money will be held as Client Money under the non-statutory trust.
- 14.3 We hold Client Money either:
- in segregated non-statutory trust accounts, held with approved banks and established and maintained under Chapter 5 of the client assets rules of the FCA. Chapter 5 of this regime permits us to use monies from these accounts for cross-funding of premium and

claims settlements on behalf of any client. We are not entitled to use client money to pay commissions before we receive the relevant premium from the client. We will retain interest earned on Client Money, and will not account to clients for profits earned on Client Money; or

- in separately and FCA-permitted designated investments with a value at least equivalent to the money that would otherwise have been paid into a client bank account, in which case we will be responsible for any shortfall which is attributable to falls in the market value of a segregated investment. Any investment returns will be retained by us.
- 14.4 We may hold Client Money in accounts in other currencies. Whilst we may choose to bear reasonable currency exchange losses, we reserve the right to recover from you any loss relating to exchange differences or otherwise arising from payments made in a currency different to that stated in the documentation provided to you by us.
- 14.5 We may transfer client money to another person, such as another intermediary or agent, for the purpose of carrying out a transaction. This may include intermediaries or agents outside the UK. You should notify us if you do not wish your money to be passed to a person in a particular jurisdiction.

15. Financial Crime & Know Your Client

- 15.1 We are committed to the fight against financial crime and we are obliged to comply with UK legislation and FCA regulations.
- 15.2 In providing our services to you, we will not engage in any activity which would breach any applicable financial crime law, statute or regulation including but not limited to those relating to financial and economic sanctions, the facilitation of tax evasion, anti-bribery and corruption, anti-money laundering and/or combatting the financing of terrorism.
- 15.3 In order to meet our obligations, we require due diligence information from you about your organisation before entering into a business relationship or transacting business with you (commonly known as "Know Your Client"). We therefore ask that this information is provided promptly upon request. Any non-standard element to a transaction, such as a payment to or from a third party to the transaction, is likely to require additional due diligence information from you before we can proceed further. You acknowledge that we will not proceed further without such information which we request.

- 15.4 We have no tolerance for bribery or corruption and this policy extends to all employees throughout the company for all its dealings and transactions in all countries in which we operate. You agree that you will be conscious of our position in this regard and that you have adequate procedures in place to prevent such activities. You acknowledge that we are obliged to report immediately to the UK National Crime Agency (NCA) any evidence or suspicion of financial crime and we may be prohibited from disclosing any such report to our clients and counterparties.

16. Sanctions

- 16.1 In order to comply with sanctions legislation to which we or our parent companies are subject, we agree to place insurance business on your behalf only on the following terms:
- the business we are asked to conduct does not in our opinion involve a risk of breach of any UK, EU, UN, US or other applicable sanctions legislation;
 - you will immediately notify us should you become aware of any actual or potential breach of such legislation arising from the business you ask us to conduct;
 - any policy we place for you must contain the following sanctions clause or an equivalent wording unless otherwise confirmed by us:
"No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America."
 - We bear no responsibility for the freezing of premiums or claims monies by a bank for sanctions reasons.
 - If, having accepted a risk, insurers subsequently amend or terminate the contract for any reasons involving applicable sanctions legislation, you agree that no liability shall attach to us for that change or termination of coverage.
 - Should we be involved in what is in our opinion a breach of applicable sanctions legislation through acting as your agent we will have no obligation, whether contractual or otherwise, to continue to act as your agent in such circumstances and you agree to indemnify us and hold us harmless in respect of any and all losses caused by a breach of sanctions legislation to which either you or your client (and/or their client) is subject.
 - Should we become aware or have reasonable cause to suspect that you are involved in any actions which in our opinion may breach any UK, EU, UN, US or other applicable sanctions legislation or which may cause us to be in breach, we may withdraw our services immediately without notice and without liability to you; and
 - You recognise that we are not experts in sanctions legislation and that you should not rely on our understanding of it but rather seek relevant expert advice.

17. Use of your information and data protection

- 17.1 To enable us to provide you with the right product or service to meet your needs (or to handle a claim on your behalf) we may collect and process personal information about your employees where applicable to the requested insurance coverage. This information will be collected from you as it is considered necessary for a legitimate insurance purpose and in order to meet contractual and regulatory obligations that arise from the provision of insurance products and services to you.
- 17.2 Bishopsgate Insurance Brokers Limited is the Data Controller and Data Processor of the information provided to us. Bishopsgate is part of The Ardonagh Group of companies, and we may share your information within The Ardonagh Group (see <http://www.ardonagh.com/> for details).

- 17.3 In addition to using the information provided to us to assess and provide the products or services that you have requested, we may also, if relevant, use this personal information to:
- Communicate with you.
 - Develop new products and services.
 - Undertake statistical analysis.
 - Contact you about products that are closely related to those you already hold with us.
- 17.4 We follow strict security procedures in the storage and disclosure of personal information in line with industry practices.
- 17.5 Further information is contained in our Privacy and Fair Processing Notice, full details of which can be found here <http://www.bishopsgateinsurance.co.uk/privacy-and-fair-processing-notice/>. This explains who we are, the types of information we hold, how we use it, who we share it with, how long we keep it for and informs you of certain rights you and other data subjects (i.e. your employees) have regarding their personal information. If you are unable to access this website, details can be obtained by contacting the address or telephone number indicated in any recent correspondence or emails you have received from us.
- 17.6 You can also contact us for general data protection queries via email to DataProtection@ardonagh.com or in writing to The Data Protection Officer, Bishopsgate Insurance Brokers Limited, 7th Floor, 2 Minster Court, Mincing Lane, London, EC3R 7BB.

18. Advertising, Marketing and Promotion

- 18.1 If either of us wish to engage in any advertising, marketing or promotion that names the other, or uses any of its brands, logos or other trademarks (together, "IP"), each of us must first seek the prior written consent of the other in advance. Where either party consents (the "Consenting Party"), the other will only use the Consenting Party's IP in compliance with the Consenting Party's publicity and/or brand management policies to the extent they are supplied or communicated to the requesting party.

19. Complaints

- 19.1 We are committed to providing you with a high standard of service at all times. However, if at any time, you have a complaint regarding a contract of insurance or our service, you should, in the first instance, contact your usual contact in writing, by email or by telephone. Alternatively, please contact our Complaints Officer at our business address or at complaints@bishopsgateinsurance.co.uk
- 19.2 A copy of our full Complaints Procedure is available and upon request.
- 19.3 If, having received our final response you are unhappy with the outcome of the complaint or you are unhappy with the way we handled it, or if we do not complete our investigation within 8 weeks, you may be entitled to refer the matter to the Financial Ombudsman Service (FOS). Further information on the FOS and whether you would be eligible to refer your complaint to them can be found at www.financial-ombudsman.org.uk, or alternatively you can write to FOS at: Financial Ombudsman Service, South Quay Plaza, 183 Marsh Wall, London E14 9SR, United Kingdom
- 19.4 **Lloyd's Policy Holders**
If your insurance is provided by Underwriters at Lloyd's, and you are unhappy with our response, you may be entitled to refer the matter to the complaints team at Lloyd's. Lloyd's will investigate the matter and provide a final response. Full details of Lloyd's complaints procedures are available at www.lloyds.com/complaints

20. Compensation Schemes

- 20.1 If an insurer is unable to pay valid claims against it, or if we are unable to meet our financial obligations to you, you may be entitled to compensation from the Financial Services Compensation Scheme (FSCS) which acts as the UK's compensation fund of last resort for private individuals, small businesses and policyholders of a UK compulsory class of insurance. Full details of the FSCS and whether you would be eligible can be found at www.fscs.org.uk or by writing to Financial Services Compensation Scheme, 10th Floor, Beaufort House, 15 St Botolph Street, London, EC3A 7QU, United Kingdom.

21. Limitation of Liability

- 21.1 We will not be liable for any direct or indirect losses, damages, costs or expenses resulting from the services we provide or any failure to provide services unless arising directly from our negligence, wilful default or fraud (or that of our directors, officers or employees). We shall not be liable for consequential or special damages, loss of profit or loss of goodwill, howsoever arising.
- 21.2 If we are liable in circumstances where you have incurred a loss which is caused partly by us and partly by contributory actions or omissions by you or others acting for you, then our total combined liability to you will not exceed our proportionate responsibility for the loss having regard to the proportionate responsibility for the loss of you and others acting for you, as agreed, or if not agreed, as decided by a court or a tribunal.
- 21.3 We shall not be liable for any partial or non-performance of our obligations by reason of any cause beyond our control, including without limitation any breakdown, malfunction or failure of transmission, communication or computer facilities, industrial action, acts and regulations of any government bodies or authorities or the failure of any relevant third party, for any reason, to perform its obligations to us.
- 21.4 Without prejudice to any other provision of this Limitation of Liability clause, if you suffer or incur losses, damages, costs or expenses as a result of or in connection with the services that we provide or any failure to provide services otherwise than as a result of our wilful default or fraud, then our total liability for such losses shall not exceed a sum equal to £1,000,000 or 10 times the amount of annual brokerage or fee paid or due to us relating to our services, whichever is the greater.
- 21.5 Nothing in this TOBA will limit, or will be construed as limiting, our liability for death or personal injury resulting from our negligence.

22. Termination and Amendments

- 22.1 This TOBA for us to act as your broker may be cancelled by either us or you at any time, by written advice to the other party.
- 22.2 Although we provide post-placement and claims handling services for you for as long as you remain our client, we reserve the right to charge a reasonable fee for such services when you cease to be a client but still wish us to act for you (and we are prepared to do so). Otherwise you will arrange and we will facilitate the prompt transfer of the run-off of your existing business and related claims to a successor broker or to you.
- 22.3 We reserve the right to make amendments to these Terms of Business that are required to reflect a change of applicable law or regulation.

23. Severability

- 23.1 If any provision of these Terms of Business is found to be invalid or unenforceable in whole or in part, the wording of other provisions of these Terms of Business and the remainder of the provision in question will not be affected.
- 23.2 If any part of this TOBA is found to be in breach of any rule of the FCA, that part of the TOBA will be construed in such a manner as to prevent such breach.

24. Third Party Rights

- 24.1 No term of this TOBA is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this TOBA.

25. Law and Jurisdiction

- 25.1 This TOBA shall be governed by and construed in accordance with English law. In relation to any legal action or proceedings arising out of or in connection with this TOBA all parties irrevocably submit to the exclusive jurisdiction of the English courts, unless otherwise agreed between you and us in writing.

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