

TERMS OF BUSINESS AGREEMENT (TOBA) BROKERS - AGENTS (RISK TRANSFER)

This is an Agreement governing the conduct of Insurance Business between County Insurance Services Limited on its own behalf (the **Coverholder**) and the **Broker** conducting insurance business with County Insurance Services Limited (collectively the “Parties” and each of them a “Party”)

1. Definitions

- 1.1 **Agreement:** This Agreement.
- 1.2 **CASS:** The UK Regulator’s Client Assets Sourcebook.
- 1.3 **Commission:** Commission receivable by the Broker at the rates and times (if any) set out in respect of that Insurance Business.
- 1.4 **Group:** Has the meaning given to it either in section 421 of the Financial Services and Markets Act 2000 or section 474 of the Companies Act 2006.
- 1.5 **ICOBS:** The Insurance Conduct of Business Rules sourcebook promulgated and issued from time to time by the UK Regulator.
- 1.6 **Insured:** Any Party (not being the Coverholder) entering into a contract of insurance which is subject to this Agreement.
- 1.7 **Insurance Business:** Any insurances or reinsurances falling within the definition of “contract of insurance” in Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or as amended together with insurances concluded under any contracts for insurance made by the Coverholder and the placing broker.
- For the avoidance of doubt, Insurance Business does not include any outwards reinsurance business placed by the Broker as agent of the Coverholder.
- 1.8 **Records:** Anything on which any information of any description is recorded.
- 1.9 **Taxes:** All Insurance Premium Taxes (IPT) and other para-fiscal charges which may be levied by overseas fiscal authorities on in
- 1.10 **UK Regulator:** The Financial Conduct Authority (FCA) and/or the Prudential Regulation Authority (PRA) as appropriate, or any successor body or bodies to both or either of them.

2. Scope

- 2.1 The purpose of this Agreement is solely to set out the rights and obligations of the Parties only in respect of the matters specifically addressed in the Agreement. To the extent that any matters relating to the relationship between the Parties are not expressly addressed in this Agreement, they remain unaffected and unaltered by this Agreement. This Agreement shall not override the terms of any underlying contract for or of Insurance Business, save the Parties agree that clause 6.5 shall apply to the exclusion of any equivalent terms in any binding authority agreement placed between Parties as Coverholder.
- 2.2 Subject to clause 11 (which is to be given a free and unfettered interpretation) nothing in this Agreement overrides the Broker's duty to place the interests of its client before all other considerations nor shall this Agreement override any legal or regulatory requirements (whether obligatory or advisory) which may apply to the Broker, the Coverholder, or the placing of any Insurance Business.
- 2.3 Subject to clause 2.5 below, the Parties agree that the terms herein shall apply to the conduct of any Insurance Business which has been or may be transacted between the Parties on or after the date of this Agreement. The terms of this Agreement supersede the terms of any other terms of business agreement (TOBA) already in place between the Parties. The terms of this Agreement shall apply from the date of the Agreement.
- 2.4 Each proposal for Insurance Business, renewal of existing Insurance Business or continuation of cover in respect of any existing Insurance Business will be accepted or declined by the Coverholder at its sole discretion. The Broker is under no obligation to offer any proposal for Insurance Business or renewal of any existing Insurance Business to the Coverholder.
- 2.5 Prior to or at the time of placement of any Insurance Business (or as otherwise agreed separately in writing between the Parties), the Broker and the Coverholder may agree provisions relating to the conduct of that Insurance Business. These provisions may include (but are not limited to) roles and responsibilities relating to administration of the Insurance Business and the handling of claims and processes by which amendments to the risk may be agreed, and so forth. This Agreement shall be subject to any provisions so agreed, and does not seek to address such provisions.

3. Regulatory Status

- 3.1 The Broker warrants that it is authorised by the UK Regulator to conduct insurance mediation activities (as defined in the UK Regulator's Handbook) from the date of this Agreement. The Coverholder warrants that it is authorised to conduct Insurance Business from the date of this Agreement.
- 3.2 The Broker shall inform the Coverholder immediately in writing if at any time during the period of this Agreement:
- 3.2.1 The UK Regulator [*or other EEA regulatory body*] suspends or withdraws the Broker's authorisation; or
 - 3.2.2 The Broker otherwise ceases in anyway to be authorised by the UK Regulator [*or other EEA regulatory body*] to undertake any activities in relation to any Insurance Business subject to this Agreement; or
 - 3.2.3 The Broker becomes insolvent.
- 3.3 The Coverholder shall inform the Broker immediately if:
- 3.3.1 The UK Regulator suspends or withdraws the Coverholder's authorisation; or

3.3.2 The Coverholder otherwise ceases to be authorised by the UK Regulator [*or other EEA regulatory body*] to undertake any activities in relation to any Insurance Business subject to this Agreement; or

3.3.3 The Coverholder becomes insolvent.

4. Authority

4.1 This Agreement sets out the basis on which the Coverholder will accept Insurance Business from the Broker. The Coverholder authorises the Broker to act as the agent of the Coverholder for the sole purpose of receiving and holding premium, claims and other monies identified in clause 6.1 below.

4.2 Nothing in this Agreement shall grant the Broker authority to accept, amend, or vary Insurance Business, settle, negotiate or compromise claims, alter any document or policy, make any non-exempt financial promotion on the Coverholder's behalf, and/or commit the Coverholder in any way.

4.3 Nothing in this Agreement shall affect the Broker's implied authority to "sign down" the Coverholder's participation on any Insurance Business where cover is placed in excess of 100% of order in accordance with market practice.

5. Remuneration

5.1 Commission shall be agreed between the parties and shall be set out in correspondence as accepted in accordance with clause **25. Service of Notices** below.

5.2 The Broker may deduct the Commission upon receipt of the premium.

5.2.1 Where premium is payable in more than one instalment, the Broker will only deduct the proportion of Commission that the instalment premium bears to the premium as a whole, unless otherwise agreed on a risk-by-risk basis between the Parties.

6. Premiums and Claims

6.1 Where the Broker holds:

- premium due to be paid to the Coverholder;
- return premium due to be paid to the Broker's client; or
- claims monies due to be paid to the Broker's client; or
- money received by the Broker from the Coverholder for onward payment to agents of the Coverholder in respect of claims adjustment, legal and similar professional fees

the Broker shall hold such monies as the agent of the Coverholder. The Broker has no authority under this Agreement to permit any third-party, sub-agent, or Appointed Representative (as defined in the UK Regulator's Handbook) to receive, hold, or pay any money on behalf of the Coverholder, without the Coverholder's consent.

6.2 The Broker shall advise the Coverholder within 7 days of receipt of any request from the Coverholder, whether it has received any specified premiums.

6.3 Provided always that the Broker shall itself have received the premium, the Broker shall, unless the Broker raises a dispute with the Coverholder as to the premium or terms of trade in accordance with the relevant Slip in good faith (a "Dispute"), pay that premium (net of Commission, but including Taxes) to the Coverholder within the time permitted for the Insured to pay such premium in accordance with the terms of trade incorporated in the relevant Slip or otherwise as agreed between the Coverholder and the Insured. In the event the Broker receives the premium after the time permitted for the Insured to pay the premium and provided the relevant contract of insurance has not been validly cancelled, the

Broker shall pay that premium (net of Commission, but including Taxes) to the Coverholder as soon as reasonably possible. Where there is a Dispute between the Coverholder and Broker, once resolved, and provided the relevant contract of insurance continues to be in place and has not been validly cancelled, the Broker shall pay the relevant premium (net of Commission, but including Taxes) as soon as reasonably possible.

- 6.4 Unless otherwise agreed, the Broker shall remain liable to the Coverholder for premiums where Section 53 (i) and Section 53 (ii) of the Marine Insurance Act 1906 apply.
- 6.5 Pending payment to the Coverholder or client (as the case may be), the Broker may hold the monies described in clause 6.1 above as the agent and trustee of the Coverholder: (i) within its client monies account, which shall be a non-statutory trust account established in accordance with CASS 5.4; or (ii) a Coverholder trust account. In respect of a client non-statutory trust account, the Coverholder hereby consents to such monies being co-mingled with the Broker's other client monies, and the Coverholder further consents to its rights being subordinated to those of the Broker's clients, in accordance with CASS 5. In respect of a Coverholder trust account, the Coverholder hereby consents to such monies being co-mingled with the Broker's other Coverholder monies. The Coverholder further agrees that any interest earned on the said account (whether a non-statutory trust account or a Coverholder trust account) shall accrue to the Broker.
- 6.6 The Broker will notify the Coverholder, within such time as may be agreed between the Parties, that the insured has failed to pay the premium (or, as the case may be, any provisional premium).
- 6.7 In the event of the cancellation or avoidance of a contract of insurance, where the Coverholder is obliged by law, regulation or the terms of the contract of insurance to refund gross premiums in respect of such contract of insurance, the Broker agrees to repay the relevant Commission (which shall not for the purpose of this clause include fees by the Insured) Such repayment shall, in the case of cancellation, be only in respect of Commission received by the Broker which is attributable to that part of the premium repaid. Unless otherwise obliged to by law, regulation or terms of the contract of insurance, the Coverholder shall refund premiums net of Commission and any charges.
- 6.8 Settlement of all Net Premium and IPT in relation to Policies must be made within 14 days of the date of the statement dispatched by County Insurance Services Limited each calendar month.

7. Claims notifications

- 7.1 You must notify us as soon as possible of any loss, claim or circumstance which falls within the notification provisions of your insurance contract. Failure to notify insurer(s) within 30 days of the loss or damage may entitle them to reject your claim. You should not admit liability or agree to any course of action, other than emergency measures carried out to minimise the loss, or in the interests of health and safety, until you have obtained agreement from your insurer.

8. Claims procedures

- 8.1 Unless otherwise instructed, we will act as your representative in negotiations with insurers and will endeavour to ensure prompt and equitable settlement of all valid claims.
- 8.2 However, where we have been granted authority by an insurer to negotiate and settle claims under a delegated authority, we will act on behalf of the insurer. We will make you aware of any claims that will be dealt with by us in this capacity, rather than as your agent. You should be aware that we may perform a limited service for insurer(s) by relaying instructions, disseminating reports and collecting fees or other disbursements, for insurer(s)' advisors (e.g. surveyors, adjusters and lawyers) where we consider this does

not create a conflict of interest. If we consider a conflict of interest may arise, we will refrain from performing any (further) services for insurer(s), unless you otherwise agree in writing.

- 8.3 In the event that an insurer delays making settlement of a claim for any reason, we do not accept liability to pay such amounts, until and unless the insurer has paid the claim to us in cleared funds.

9. Taxes

- 9.1 Except where required by law or regulatory authority or by the terms of this Agreement, the Parties agree that the Broker will not be expected to act as guarantor to the Coverholder with regard to the payment of any taxes relating to any Insurance Business. Where at the date of this Agreement it is market practice that the Broker administratively arranges payment of taxes, that practice shall continue.

- 9.2 Where the Broker processes and pays Taxes on behalf of the Coverholder related to premium in respect of any Insurance Business, the Broker will hold such monies in accordance with clause 6.5 above for the Coverholder and account to the Coverholder for amounts received by the Broker in respect of such liability for tax which the Coverholder may have in respect of that Insurance Business.

10. Compliance

- 10.1 Each Party will comply with their respective legal, licensing and regulatory requirements applicable to the production, placing, claims handling and premium and claims accounting of any Insurance Business which the Broker places with the Coverholder under this Agreement.

- 10.2 The Parties will pay due regard to the Contract Certainty Code of Practice published by the London Market Group (or successor body) in issue at the time of placing the Insurance Business.

- 10.3 The Broker will inform the Coverholder in relation to all Insurance Business whether the Insured is classified as a consumer or a commercial customer for the purposes of ICOBS.

- 10.4 The Broker will forward promptly notices of Insureds' rights to cancel Insurance Business in all instances where such notices are required by Chapter 7 of ICOBS and in accordance with those rules.

- 10.5 Each Party will pay due regard to the BIPAR Principles. (The BIPAR Principles means the set of high level principles to follow when handling the placement of a risk with multiple Coverholders, agreed with DG Competition by BIPAR, the European Federation of Insurance Intermediaries).

- 10.6 Each Party shall pay due regard to, and co-operate in respect of the observance of, any applicable financial crime and international economic financial or trade sanctions law and regulations which bind the relevant customer, the Broker or the Managing Agent.

- 10.7 Neither Party shall take any action which facilitates the evasion of taxes anywhere in the world or which is contrary to any related financial crime legislation (including without prejudice to the generality of the foregoing the Criminal Finances Act 2017).

- 10.8 Neither Party shall be involved in the offering, promising or giving of any financial or other advantage to any person in breach of any law against bribery (including without prejudice to the generality of the foregoing the Bribery Act 2010).

- 10.9 The Parties shall, insofar as required to do so, and whether or not either Party is an associated person of the other for the purposes of the Bribery Act 2010, the Criminal Finances Act 2017 or any relevant legislation, maintain on an ongoing basis appropriate systems, procedures and controls designed to prevent any breach of paragraphs 10.6 to 10.8 above.

11. Data Protection

11.1 The Parties acknowledge and agree that where a Party processes personal data under or in connection with this Agreement it alone determines the purposes and means of such processing as a controller.

11.2 In respect of the personal data a Party processes under or in connection with this Agreement, the party:

- shall comply at all times with its obligations under the data protection legislation;
- shall notify the other Party without undue delay after, and in any event within 24 hours of, becoming aware of a personal data breach; and
- assist and co-operate fully with the other Party to enable the other Party to comply with their obligations under all relevant data protection legislation, including in respect of keeping personal data secure, dealing with personal data breaches, complying with the rights of data subjects and carrying out data protection impact assessments.

11.3 The Parties shall work together to ensure that each of them is able to process the personal data it processes under or in connection with this Agreement for the purposes contemplated by this Agreement lawfully, fairly and in a transparent manner and in compliance with the data protection legislation. This shall include entering into such other written agreements as may be required from time to time to enable each Party to comply with the data protection legislation.

11.4 For the purposes of this clause:

“controller” means the person which, alone or jointly with others, determines the purposes and means of the processing of personal data;

“data protection legislation” means all applicable statutes and regulations in any jurisdiction pertaining to the processing of personal data, including the privacy and security of personal data;

“data subject” means the identified or identifiable natural living person to whom the personal data relates;

“personal data” means any information relating to the data subject; and

“personal data breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.

12. Termination

12.1 This Agreement shall terminate:

12.1.1 by the Coverholder serving the Broker notice in writing of the termination no less than 180 days before the termination is to take effect;

12.1.2 by the Broker giving written notice of termination to the Coverholder;

12.1.3 immediately, without notice, should either Party become the subject of voluntary or involuntary rehabilitation or liquidation proceedings (save for the purposes of amalgamation or solvent re-organisation) or become the subject of an action in bankruptcy or make or propose any composition with its creditors or otherwise acknowledge its insolvency.

12.1.4 immediately, without notice, should the Broker have any authority or permission granted to it by the UK Regulator withdrawn or altered by the UK Regulator in such a manner as materially to affect in any way the Broker's ability to introduce, arrange, conclude, administer, perform or otherwise be involved with any Insurance Business which is carried out between the Parties under this Agreement.

12.2 Following termination:

12.2.1 the Parties will agree the procedure for administering the Insurance Business current at the time of termination;

12.2.2 the Broker will make all reasonable efforts to provide the Coverholder with contact details for any Insured or other Party with whom the Coverholder has contracted in the conduct of Insurance Business where:

- the Broker has acted as the agent of the Coverholder; and
- where such information is reasonably required in order for the Coverholder to carry out its obligations in relation to Insurance Business concluded in accordance with this Agreement.

12.2.3 Where permissible the Parties will remain liable to perform their obligations in accordance with the terms of this Agreement in respect of all Insurance Business subject to this Agreement until all Insurance Business has expired or has otherwise been terminated.

13. Access to Records

13.1 The Broker will retain all of the Records created or held by it in its capacity as agent of the Coverholder and all Records received by the Broker for the purposes of the introduction, arranging, concluding, administration or performance of the Insurance Business for a minimum of six years and in any event the minimum periods required by law or any regulatory body with jurisdiction over the Broker, the Coverholder or the Insurance Business.

13.2 The Broker agrees to allow the Coverholder, on reasonable notice, to inspect and to take copies of the following:

13.2.1 the accounting records pertinent to any Insurance Business including information relating to the receipt and payment of premiums and claims and documentation such as any insurance contract or Slip endorsements, addenda or bordereaux in the possession of the Broker relating to the Insurance Business; and

13.2.2 documents as may be in the possession of the Broker which were disclosed to the Coverholder by the Broker in respect of any Insurance Business including, but not limited to, documentation relating to the proposal for the Insurance Business, the placing thereof (including endorsements and reinstatements) and any claims thereunder.

13.3 In the event that the Coverholder requests the Broker to carry out any functions or duties on its behalf, such as the appointment of loss adjusters, lawyers or others, or the Broker otherwise acts as an intermediary between the Coverholder and its representatives or agents:

13.3.1 The Broker accepts the Coverholder's appointment or instructions on the basis that the information received by it in respect of a claim made upon any Insurance Business is disclosable to the Broker's client.

- 13.3.2 All documentation and records created or received by the Broker in the performance of such functions or duties shall be and remain the property of the Coverholder, other than documents over which the Broker has a proprietary commercial interest.
- 13.3.3 The Broker will take reasonable steps to retain, maintain and safeguard any of the Coverholder's documents in the Broker's possession in accordance with any regulatory requirements which apply to the Coverholder and of which the Broker has notice.
- 13.3.4 On termination of this Agreement for whatever reason and on reasonable notice the Broker will deliver up to the Coverholder such documentation if requested.

14. Confidentiality

Each of the Parties will treat information received from the other relating to this Agreement and to the Insurance Business as confidential and will not disclose it to any other person not entitled to receive such information except as may be necessary to fulfil their respective obligations in the conduct of the Insurance Business and except as may be required by law or regulatory authority. For the avoidance of doubt each party shall be entitled to disclose such information where necessary to its Coverholders or reinsurers, actuaries, auditors, professional agents and advisers and other Group companies. This clause will not apply to information which was rightfully in the possession of such party prior to this Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is trivial or obvious.

15. Complaints

Each Party will notify the other in accordance with the UK Regulator rules of any complaint concerning the other Party relating to Insurance Business subject to this Agreement

16. Protection of Reputation

Each Party agrees it will not, without the written authority of the other Party, make use of the other Party's corporate or trading names or logos and trademarks.

17. Conflicts of Interest

The Parties will adopt and/or maintain procedures to ensure that each has in place arrangements for the identification and management of any conflicts of interest that may arise in relation to any Insurance Business.

18. Disclosure

The Broker will comply with relevant regulatory, fiduciary and legal requirements regarding disclosure of all forms of remuneration from any arrangements it may have for remuneration in connection with Insurance Business.

19. Variation and Assignment

This Agreement may be assigned or varied only in writing by duly authorised representatives of the Parties.

20. Rights of Third Parties

A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause shall not affect any right or remedy of a third party which exists or is available apart from that Act.

21. Dispute Resolution

21.1 The Parties to this Agreement are committed to resolving all disputes arising under it (and whether such dispute arises before or after termination of this Agreement) without the need for litigation and to allow as far as possible for commercial relationships to remain unaffected by disputes and therefore the Parties:

21.1.1 will attempt in good faith to resolve any dispute or claim promptly through negotiations between respective senior executives of the Parties who have authority to settle the same;

21.1.2 will attempt in good faith, if the matter is not resolved through negotiation within three months of the dispute arising to resolve the dispute or claim through mediation with the assistance of a mediator agreed between the Parties or as recommended to the Parties by the Centre for Dispute Resolution or such similar organisation as the Parties may agree; or

21.1.3 if the matter has not been resolved by mediation within six months of the dispute arising, or if either Party will not participate in a mediation procedure, the Parties will refer the dispute in accordance with the *Jurisdiction and Choice of Law Clause* below.

21.2 Notwithstanding the above, either Party may seek the immediate protection or assistance of the High Court of England and Wales if appropriate.

22. Jurisdiction and Choice of Law

This Agreement shall be construed according to English law and any disputes arising under it shall, subject to the provisions of clause 21 above, be determined in the English Courts.

23. Enforceability Clause

In the event any portion of this Agreement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

24. General Interpretation of this Agreement

In this Agreement, words importing the singular shall include the plural and vice versa. Headings are included for ease of reference and convenience only and shall not affect the interpretation of the Agreement.

25. Service of Notices

Any notices to be given under this Agreement shall be sent by first class recorded delivery post, by hand, electronic mail (email) or facsimile to the Compliance Officer at the registered office of the Party to be served. The notice shall be deemed to have been served, if posted, at the expiration of two business days after posting and if by facsimile, electronic mail (email) or by hand, at the expiration of one business day after it was dispatched.

26. Force Majeure

Neither Party shall be liable for any delay or non-performance of its obligations under this Agreement caused by an event beyond its control (a "Force Majeure Event") provided that the Party affected gives prompt notice in writing to the other part of such Force Majeure Event and uses all reasonable endeavours to continue to perform its obligations under the Agreement. Either Party may terminate this Agreement if such Force Majeure Event continues for more than 3 months.

27. Non-Solicitation

27.1 In order to protect the legitimate business interests of the Broker, the Coverholder shall not, during the term of this Agreement and for a period of 1 year after its termination or expiry, directly or indirectly solicit, entice away or attempt to solicit or entice away from the Broker any Restricted Client of the Broker. For the purposes of this clause, "Restricted Client" shall mean any firm, company, person or other client entity who is, or has: (i) at any time during the term; or (ii) following expiry or termination of this Agreement, in the immediately preceding 1 year, been introduced to the Coverholder by the Broker.

27.2 In order to protect the legitimate business interests of the Broker, the Coverholder shall not during the term of this Agreement and for a period of 12 months after its termination or expiry, directly or indirectly solicit, entice away, or attempt to solicit or entice away from the Broker any Restricted Employee of the Broker. For the purposes of this clause, "Restricted Employee" shall mean any firm, company, contractor or person employed or engaged by the Broker above a junior level (including but not limited to officers and directors), with whom the Coverholder has had material contact or who could materially damage the business interests of the Broker by virtue of their employment or engagement by the Coverholder (i) during the term; or (ii) following expiry or termination of this Agreement, in the immediately preceding 12 months. The foregoing shall not restrict any Restricted Employee's rights to approach the Coverholder where it has conducted a national advertising campaign open to all-comers and not specifically targeted at any officers or staff engaged by or contractors of the Broker (but without prejudice to any restrictive covenants or similar non-solicitation or non-compete provisions in any employment agreement or similar of such officer, staff or contractors).

Signed for and on behalf of the Coverholder		Signed for and on behalf of the Broker	
Name:		Name:	
Position:		Position:	
Company Name:		Company Name:	
FCA Reg. No.		FCA Reg. No.	
Date:		Date:	

County Insurance Services Limited

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Authorised and regulated by the Financial Conduct Authority (FCA) (FRN: 597267)