



BISHOPSGATE INSURANCE BROKERS LIMITED

Compass London Markets is a trading name of Bishopsgate Insurance Brokers Limited

TERMS OF BUSINESS AGREEMENT FOR WHOLESALE BUSINESS

April 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 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 for your clients.
- 1.3 By instructing us you are warranting that you have authority to do so on behalf of your client and that you are not acting in breach of any local law or regulation.
- 1.4 You have consented to working with us on these terms if, having received these terms of business, you continue to do business with us. 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 ‘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). 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.
- 1.6 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 (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>
- 3.2 You warrant at all times in dealing with us that you are appropriately licensed as an insurance intermediary and you undertake to inform us of any material adverse change to that status.

4. Placing your business

- 4.1 According to your demands and needs we may 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.
- 4.2 We may place business 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.
- 4.3 In relation to certain classes of business, 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.

- 4.4 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 business on their behalf under a facility known as a binding authority. Should we intend to place business under such an arrangement, we will specifically advise you. If we place business under a binding authority where we are the coverholder, in dealing with the underwriting and administration of that business, we will be acting on behalf of insurers.
- 4.5 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. For example, where we need to comply with any local regulatory requirements governing the right to place insurance with insurers in that jurisdiction. Where we use the services of a sub-broker, we will advise you.
- 4.6 For the avoidance of doubt, the renewal of your client's business shall be your responsibility and you will liaise with us to allow for the proper and timely interchange of information and the subsequent consideration of renewal terms.

5. Selection of insurers

- 5.1 We place business 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 been accepted.
- 5.2 If you or your client are domiciled outside of the UK or coverage is provided for risks located outside the UK, you must satisfy yourself that the participation of the insurers is permitted by the relevant authorities and that the participation of the insurers is not subject to any specific conditions including with regard to taxation.
- 5.3 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, as well as in the best interests of the policyholder.
- 6.2 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.
- 6.3 You also agree to adopt and maintain procedures to ensure that any conflicts of interest that may arise in relation to the performance of your obligations under this TOBA are identified, openly resolved and clearly understood by all parties.

7. Our Remuneration

- 7.1 Unless otherwise agreed with you, the remuneration we receive in respect of placing your business will be either the fee we have agreed with you and/or brokerage set by insurers, details of which we will disclose 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. You must make your client aware of all fees and charges, in addition to remuneration, prior to you giving us instructions to bind the contract of insurance.

- 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 commission 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 We may receive compensation from insurers for services provided by us which are unconnected with any specific client transaction. We may receive administrative fees or commissions for services provided to insurers, including commissions contingent on the profitability of facilities arranged by us for ease of placement or certainty of market.

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.
- 9.2 We reserve the right to monitor all incoming and outgoing emails.
- 9.3 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, if your client is an insured who is buying insurance wholly or mainly for purposes related to their trade, business or profession ("Business Insured") it is the duty of your client, and you as your client's agent, to make a **fair presentation** of the risk to be insured, by ensuring that:
- The information provided by your client (or on their behalf), including in any proposal form, is accurate and discloses to its insurers all "**Material Facts**" which your client knows, 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 client's proposal for insurance or the terms of any insurance offered (including the premium charged).
 - Your client is obliged to disclose all "Material Facts", whether or not such matter or circumstance is the subject of a specific question in any proposal form.
 - Your client should also ensure that they disclose to insurers any:

- special or unusual facts relating to the risk;
 - any particular concerns which led your client to seek insurance; and
 - matters which your client suspects may be Material Facts, but where your client has not pursued their enquiries.
- Your client has carried out a reasonable search of information available to them to reveal all “Material Facts”. This will include “Material Facts” known to:
 - Senior managers in their organisation, which means those individuals who play significant roles in the making of decisions about how your clients’ activities are to be managed or organised, and will include but is not limited to their Board of Directors;
 - any persons responsible for arranging this insurance (including any risk manager or risk management team your client may have); and
 - any third parties outside your client’s organisation (for example, subsidiary or group companies, agents, third party experts appointed on their behalf, consultants, co-insureds or joint venture partners).
 - The information your client provides 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 your client is 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 Under UK law, if your client is an individual buying insurance wholly or mainly for purposes unrelated to their trade, business or profession (“Consumer Insured”), it is the duty of your client, and you as their agent, to take reasonable care not to make a misrepresentation. This includes answering the insurer’s questions fully and accurately and ensuring that any information that they volunteer is not misleading. This duty exists before their cover is placed, when it is renewed and at any time that it is varied, and their policy wording may provide that it continues for the duration of the policy. If they do not do this, their insurer may be able to impose different terms on their cover, may charge them a higher premium or, in some circumstances, may be able to avoid their policy from inception and any claims under it would not be paid.
- 10.6 For both Business and Consumer Insureds, this is the position under the laws of England and Wales, Scotland and Northern Ireland. The disclosure requirements, and consequences of failing to meet them, may differ where the insurance contract is governed by the laws of another jurisdiction.
- 10.7 For insureds whose insurance contract is governed by the laws of another jurisdiction, please ensure your client has disclosed to the insurer all material information concerning the subject of this insurance. This information should be disclosed before your client’s cover is placed, when it is renewed and any time that it is varied. Your client’s insurance policy wording may also provide that information should continue to be disclosed for the duration of the insurance policy. If you or your client 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 client’s cover and any claims under it may not be paid.
- 10.8 It is your responsibility to make your client aware of the duty of disclosure and fair presentation and we do not accept any responsibility to make your client aware of this duty.

10.9 You shall provide us with all relevant information in relation to your client's 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. 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 will only confirm the terms of the insurance cover effected through us to your client after having received written confirmation from us that such insurance is in force and then only in accordance with such confirmation.

11.3 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 or your client do not think is in line with your or your client's instructions. It is important that you advise your client to keep their insurance documents in a safe place while the contract remains open in order to make a claim.

11.4 We assume that you, as an insurance professional, understand the terms, scope and effect of the insurance contract unless you inform us to the contrary. It is your responsibility to ensure that the requirements of your client are met by the coverage you instruct us to obtain and to explain to your client the key features of the insurance, including any significant or unusual restrictions. It is particularly important that you understand and explain to your client the obligations imposed by terms expressed as subjectivities, conditions precedent, warranties or similar terms; failure to comply with which may result in the insurance contract being suspended or to a claim being rejected. The foregoing shall not be our responsibility, even in situations where we may have some direct contact with your client.

12. Claims

12.1 It is very important that you familiarise yourself with any specific claim requirements in the contract of insurance and advise your client accordingly, as requirements 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 and you must advise your client accordingly. 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 your responsibility to ensure your client 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 by you 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 or your client 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 You accept full and entire responsibility to us for the settlement of all premiums, taxes and policy fee(s).
- 13.3 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. It is your responsibility to make your client aware of any premium payment condition or warranty and we do not accept any responsibility to make your client aware of this.
- 13.4 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.
- 13.5 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.
- 13.6 *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.
- 13.7 *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.
- 13.8 Should you pay by an alternative payment method you must allow sufficient time for the payment to clear before the due date.
- 13.9 Payment must be made in the currency invoiced, unless otherwise agreed by us in advance.
- 13.10 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.
- 13.11 We do not accept expectation of a receipt of return premiums or paid claims as a basis for us to pay premium.
- 13.12 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.
- 13.13 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.
- 13.14 It is imperative that you comply with all of the payment terms above and any such other terms issued by insurers in your client's insurance contract.
- 13.15 For the avoidance of doubt, we have no obligation to fund any such monies on yours or your client's 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). Any credit extended by you to your client or others shall be at your risk only. 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 or your client.

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, or the terms of any relevant contractual arrangement between the insurer and you or us (a risk transfer agreement). 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.
- 14.6 You warrant that, if you are an intermediary authorised and regulated by the FCA, you hold your clients' funds in accordance with the FCA's client money rules and that you will make the disclosures required by the client money rules, including those set out above, in contracts with your clients. Otherwise you warrant that you hold money in compliance with the regulatory regime and laws and regulations that apply to you.
- 14.7 Should Bishopsgate Insurance Brokers Limited discover that, following the integration date of Compass London Markets Limited into Bishopsgate Insurance Brokers Limited, payments under this agreement relating to Compass London Markets Limited have erroneously been made to it instead of Bishopsgate Insurance Brokers Limited, such monies will be passed on to Bishopsgate Insurance Brokers Limited on your behalf. Should Bishopsgate Insurance Brokers Limited discover that payments under this agreement relating to Compass London Markets Limited have erroneously been made to it instead of Bishopsgate Insurance Brokers Limited at any point, such monies will be passed on to Bishopsgate Insurance Brokers Limited on your behalf.

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, both parties (we and you) agree they 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. This includes neither party taking any action which facilitates the evasion of taxes anywhere in the world or which is contrary to any related and applicable financial crime legislation (including without prejudice to the generality of the foregoing the Criminal Finances Act 2017 where applicable to your jurisdiction). Both parties shall maintain on an ongoing basis appropriate systems, procedures and controls designed to prevent any such activities.

- 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 You also agree to carry out due diligence on all prospective and new clients to ensure anti-money laundering regulation and legislation is met.
- 15.5 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. Neither party shall be involved in the offering, promising or giving of any financial or other advantage to any person in breach of any applicable law against bribery (including without prejudice to the generality of the foregoing the Bribery Act 2010 where applicable to your jurisdiction). Both parties shall maintain on an ongoing basis appropriate systems, procedures and controls designed to prevent any such activities.
- 15.6 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:
- You 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 laws and regulations;
 - 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 We collect information about you and your insurance placements, their structure and the markets that consider and provide coverage to you. This information may be shared with our group companies and used to provide various services to our clients and/or to insurers including, but not limited to, market-making, benchmarking and price comparison. We regard your provision to us of information for insurance placement or claims purposes as evidencing your consent to the use of that information also for the above purposes.
- 17.2 We may hold information provided by you in an electronic format as well as or as an alternative to hard copy; and information provided by you, whether for placing or claims purposes, may be provided to insurers electronically, by email or by way of a relevant market repository in line with current market practice.
- 17.3 We will take reasonable steps to maintain the security of your confidential documents and information which is in our possession. If documentation related to you is necessarily lodged with, or communicated by or through a market repository, we will take all reasonable care to ensure it is true, fair and complete.
- 17.4 To the extent that any information that you provide to us or that we provide to you in connection with this TOBA constitutes or contains personal data:
- The Parties (we and you) acknowledge and agree that where a Party processes personal data under or in connection with this TOBA it alone determines the purposes and means of such processing as a controller.
 - In respect of the personal data a Party processes under or in connection with this TOBA, the Party:
 - a) shall comply at all times with its obligations under the data protection legislation;
 - b) shall notify the other Party, without undue delay and as soon as reasonably possible, after becoming aware of a personal data breach; and
 - c) 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.
 - 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 TOBA for the purposes contemplated by this TOBA 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.
 - For the purposes of this data protection 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.

- 17.5 If you or your clients require further information on how we may use personal data, please refer to our Privacy and Fair Processing Notice on our website at <http://www.bishopsgateinsurance.co.uk/privacy-and-fair-processing-notice/>

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 or your client has 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

20. Limitation of Liability

- 20.1 We will not be liable to you or your client 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 to you or your client for consequential or special damages, loss of profit or loss of goodwill, howsoever arising.
- 20.2 If we are liable to you or your client in circumstances where you or your client have incurred a loss which is caused partly by us and partly by contributory actions or omissions by you or your client or others acting for either of you, then our total combined liability to you and your client will not exceed our proportionate responsibility for the loss having regard to the proportionate responsibility for the loss of you, your client and others acting for either of you, as agreed, or if not agreed, as decided by a court or a tribunal.
- 20.3 We shall not be liable to you or your client 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.
- 20.4 Without prejudice to any other provision of this Limitation of Liability Clause, if you or your client 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 to you and your client 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.

20.5 Nothing in this TOBA will limit, or will be construed as limiting, our liability for death or personal injury resulting from our negligence.

21. Termination and Amendments

21.1 This TOBA for us to act as your agent may be cancelled by either us or you at any time, by written advice to the other party.

21.2 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.

21.3 We reserve the right to make amendments to these Terms of Business that are required to reflect a change of applicable law or regulation.

22. Severability

22.1 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.

22.2 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.

23. Third Party Rights

23.1 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.

24. Law and Jurisdiction

24.1 These terms of business 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 these terms of business 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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