

Terms of Business Agreement (Non Risk Transfer)

An Agreement dated _____ governing the conduct of Insurance Business between:

For Non-EEA business:

Orwell Transport and Marine Underwriting (OTMU) a Trading Name of CSInsurance Brokers Limited. With offices located 6th Floor Dukes House, 32-38 Dukes Place, London, EC3A 7LP. Authorised and Regulated by the Financial Conduct Authority (FRN 789792) ('OTMU')

and

Enter full legal name and address of Broker (the Broker)

(collectively the "Parties" and each of them a "Party")

1. Definitions and Interpretation

- 1.1 **Agreement:** Refers to this agreement, the "Terms of Business Agreement (Non Risk Transfer)".
- 1.2 **CASS:** The UK Regulator's Client Assets Sourcebook.
- 1.3 **Commission:** Commission receivable by the Broker which shall be at the rates and times (if any) set out in a relevant Slip 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:** UK Regulator's Insurance Conduct of Business Sourcebook.
- 1.6 **Insured:** Any Party (not being OTMU) 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 together with insurances concluded under any contracts for insurance made by OTMU where the Broker is the coverholder or the placing broker.

- 1.8 **Records:** Anything on which any information of any description is recorded.
- 1.9 **Slip:** Any document held in whatsoever form which is or is to form the basis of either a contract for insurance or contract of insurance. A Slip may incorporate details of administrative arrangements pertinent to the processing of the contract for or of insurance.
- 1.10 **Taxes:** All Insurance Premium Taxes (IPT) and other para-fiscal charges which may be levied by overseas fiscal authorities on insurance premiums.
- 1.11 **UK Regulator:** The Financial Conduct Authority (FCA) and/or the Prudential Regulation Authority (PRA) as appropriate, or any successor regulatory body or bodies to both or either of them.
- 1.12 **BIPAR Principles:** A set of high level principles to follow when handling the placement of a risk with multiple insurers, agreed with DG Competition by BIPAR, the European Federation of Insurance Intermediaries.
- 1.13 Any reference to "law" or "legal requirements" includes any applicable, common or customary law and any treaty, constitution, statute, legislation, decree, rule, regulation, code of practice, judgement, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which has the force of law or compliance with which is in accordance with the general practice of such jurisdiction.
- 1.14 In this Agreement where appropriate, reference to a statutory provision (including for the avoidance of doubt a reference to a rule of the UK Regulator) includes a reference to the same as modified, re-enacted or both from time to time before or after the date of this Agreement and any subordinate legislation made under the same before or after the date of this Agreement.

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 this 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 or the terms of any Slip, save the Parties agree that clause 6.6 shall apply to any monies held by the Broker as a coverholder of OTMU, where the binding authority agreement in question does not make provision for monies to be held in accordance with CASS or in a segregated trust account.
- 2.2 Except to the extent stated in clauses 6.2, 7.2 and 11.3 nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the Parties or as

appointing either Party as agent of the other Party for any purpose and neither Party shall have the authority to bind the other Party or to contract in its name for any purpose.

- 2.3 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, OTMU, or the placing of any Insurance Business.
- 2.4 Subject to clause 2.6 below, the Parties agree that the terms herein shall apply to the conduct of any Insurance Business 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 for such Insurance Business. Such TOBA(s) shall continue to apply to Insurance Business transacted between the Parties before the date of this Agreement. All monies held by the Broker as agent and trustee of OTMU under such previous TOBA(s) shall continue to be held by the Broker as agent and trustee of OTMU until such monies are paid by the Broker to the relevant Party.
- 2.5 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 OTMU 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 OTMU.
- 2.6 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 OTMU 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 its home regulator (or other regulatory body) to conduct insurance mediation activities from the date of this Agreement. OTMU warrants that it is authorised to conduct Insurance Business from the date of this Agreement.
- 3.2 The Broker shall inform OTMU immediately in writing in accordance with clause 23 if at any time during the period of this Agreement:-
- 3.2.1 The Regulator (or other regulatory body) suspends or withdraws the Broker's authorisation; or
- 3.2.2 The Broker otherwise ceases in any way to be authorised by the Regulator (or other 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 OTMU shall inform the Broker immediately if:

3.3.1 The UK Regulator suspends or withdraws OTMU's authorisation; or

3.3.2 OTMU otherwise ceases to be authorised by the UK Regulator to undertake any activities in relation to any Insurance Business subject to this Agreement; or

3.3.3 OTMU becomes insolvent.

4. Authority

4.1 This Agreement sets out the basis on which OTMU will accept Insurance Business from the Broker.

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 financial promotion on OTMU's behalf without OTMU's prior written consent, and/or commit OTMU in any way.

5. Remuneration

5.1 Commission shall be agreed between the Parties and shall be set out in the relevant Slip.

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.

5.3 In the event of termination of this Agreement, no commission shall be payable to the broker in respect of Insurance Business conducted after the date of termination.

6. Premiums and Claims

6.1 Except where stated in 6.2, where the Broker holds:

(a) premium due to be paid to OTMU,

(b) return premium due to be paid to the Broker's client; or

(c) claims monies due to be paid to the Broker's client

the Broker shall hold such monies as agent of the client. 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 OTMU, without OTMU's consent.

6.2 Where the Broker holds monies:

- (a) for onwards payment to agents or representatives of OTMU in respect of claims adjustment, legal and similar professional fees,
- (b) on behalf of OTMU by reason of any legal or regulatory requirements or if specified in the relevant Slip

then the Broker shall hold such monies as agent and trustee of OTMU.

- 6.3 In respect of monies held under clause 6.2, the Broker shall advise OTMU within 7 days of receipt of any request from OTMU, whether it has received any specified premiums and notify OTMU, 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).
- 6.4 Provided the Broker shall itself have received the premium (including Taxes) or part thereof, the Broker shall pay such premium (net of Commission, but including Taxes) or part thereof to OTMU 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 OTMU 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 OTMU as soon as reasonably possible.
- 6.5 Unless otherwise agreed, the Broker shall remain liable to OTMU for premiums where Section 53 (i) and Section 53 (ii) of the Marine Insurance Act 1906 apply.
- 6.6 Pending payment to OTMU, a third party or the Broker's client (as the case may be), the Broker shall hold the monies described in clause 6.2 above within its client monies account, which shall be a trust account, established and maintained in accordance with CASS 5. OTMU hereby consents to such monies being co-mingled with the Broker's other client monies. OTMU further consents to its rights with regard to monies held in the Broker's client monies account being subordinated to those of the Broker's clients, in accordance with CASS 5, and further agrees that any interest earned on the said account shall accrue to the Broker.
- 6.7 In the event of the cancellation or avoidance of a contract of insurance, where OTMU is obliged by law, regulation or the terms of the contract of insurance to repay 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 paid 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, OTMU shall refund premiums net of Commission.

7. Taxes

- 7.1 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 OTMU 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.

7.2 Where the Broker processes and pays Taxes on behalf of OTMU related to premium in respect of any Insurance Business, the Broker will hold such monies in accordance with clause 6.6 above for OTMU and account to OTMU for amounts received by the Broker in respect of such liability for Tax which OTMU may have in respect of that Insurance Business.

8. Compliance

8.1 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 OTMU under this Agreement.

8.2 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.

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

8.4 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.

8.5 Each Party will pay due regard to the BIPAR Principles.

8.6 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 laws and regulations which bind the relevant customer, the Broker or OTMU.

8.7 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 laws and regulations (including without prejudice to the generality of the foregoing the Criminal Finances Act 2017).

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

8.9 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 other relevant laws and regulations, maintain on an ongoing basis appropriate systems, procedures and controls designed to prevent any breach of paragraphs 8.6 to 8.8 above.

9. Data Protection

- 9.1 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.
- 9.2 In respect of the Personal Data a Party processes under or in connection with this Agreement, the Party:
- (a) shall comply at all times with its obligations under the Data Protection Law;
 - (b) 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
 - (c) shall assist and co-operate fully with the other Party to enable the other Party to comply with their obligations under Data Protection Law, including but not limited to 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.
- 9.3 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 Law. This shall include but not be limited to entering into such other written agreements as may be required from time to time to enable each Party to comply with the Data Protection Law.
- 9.4 For the purposes of this clause 9:
- “Controller” means the person which, alone or jointly with others, determines the purposes and means of the processing of Personal Data;
- “Data Protection Law” means all applicable statutes and regulations in any jurisdiction pertaining to the processing of Personal Data, including but not limited to 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.

10. Termination

- 10.1 This Agreement shall terminate:-
- 10.1.1 at any time by mutual agreement or one Party giving 30 days written notice of termination to the other;
 - 10.1.2 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;

10.1.3 immediately, without notice, should the Broker have any authority or permission granted to it by the Regulator (or other regulatory body) withdrawn or altered by the Regulator (or other regulatory body) 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.

10.2 Following termination:-

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

10.2.2 the Broker will make all reasonable efforts to provide OTMU with contact details for any Insured or other party with whom OTMU has contracted in the conduct of Insurance Business where:-

10.2.2.1 the Broker has acted as agent of OTMU; or

10.2.2.2 where such information is reasonably required in order for OTMU to carry out its obligations in relation to Insurance Business concluded in accordance with this Agreement.

10.2.3 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.

11. Access to Records

11.1 The Broker will retain all of the Records created or held by it in its capacity as agent of OTMU 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, OTMU or the Insurance Business.

11.2 The Broker agrees to allow OTMU, on reasonable notice, to inspect and to take copies of the following:-

11.2.1 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

11.2.2 documents as may be in the possession of the Broker which were disclosed to OTMU 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.

11.3 In the event that OTMU 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 OTMU and its representatives or agents:-

11.3.1 The Broker accepts OTMU'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.

11.3.2 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 OTMU, other than documents over which the Broker has a proprietary commercial interest.

11.3.3 The Broker will take reasonable steps to retain, maintain and safeguard any of OTMU's documents in the Broker's possession in accordance with any regulatory requirements which apply to OTMU and of which the Broker has notice.

11.3.4 On termination of this Agreement for whatever reason and on reasonable notice the Broker will deliver up to OTMU such documentation if requested.

12. 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 insurers 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.

13. Complaints

Each Party will notify the other in accordance with the rules of the UK Regulator of any complaint concerning the other Party relating to Insurance Business subject to this Agreement. Each party agree to co-operate fully in the investigation and resolution of any complaint and to take reasonable steps to identify and remedy any of Your systemic or operational failings that may have led to a complaint or series of complaints being made.

14. 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 trade marks.

15. 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. The Broker must report to us any conflicts of Interests identified between them, their Customers or between one Customer and another.

16. 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.

17. Variation and Assignment

This Agreement may be assigned or varied only in writing by duly authorised representatives of the Parties. We reserve the right to vary this Agreement at any time, by giving no less than 30 days written notice.

18. 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.

19. Dispute Resolution

19.1 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:-

19.1.1 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;

19.1.2 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

19.1.3 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.

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

20. 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 19 above, be determined in the Law Courts of England and Wales.

21. Enforceability Clause

In case any one or more of the provisions contained in the Agreement shall, for any reason, be held to be unenforceable, the remainder shall remain in full force and effect. This Agreement shall be constructed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein, unless such a construction would be unreasonable.

22. 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 this Agreement.

23. Service of Notices

Any notices to be given under this Agreement shall be sent by first class recorded delivery post, by hand, 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, or by hand, at the expiration of one business day after it was dispatched.

24. 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 Party of such Force Majeure Event and uses all reasonable endeavours to continue to perform its obligations under this Agreement.

Signed for and on behalf of

OTMU

By

Position

The Broker

By

Position
