



**servca**

# Terms of Business Agreement

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May 2017



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## 1. Servca Ltd

- 1.1. Servca Ltd (also referred to as “Servca”, “the Company”, “we”, “us” or “our”) is an English limited liability partnership. As such it is a body corporate which has “members”. Our registered address is 106 Leadenhall Street, 4th Floor, London, EC3A 4AA
- 1.2. We are a Lloyd’s broker and are authorised and regulated by the Financial Conduct Authority (FCA) to conduct general insurance activities. This can be verified by checking the Financial Services Register on the FCA’s website or by contacting the FCA by telephone on 0300 500 0597, or if dialing from outside of the United Kingdom on +44 (0) 207 066 1000. You can contact us by telephone on +44 (0) 20 70143205 or find out more about us by visiting: [www.servca.com](http://www.servca.com)

## 2. This TOBA

- 2.1. This TOBA and its schedules set out the terms on which Servca agrees to act for you. You should read this document carefully, for as well as setting out the terms of our relationship it contains details of our regulatory and statutory responsibilities.
- 2.2. We particularly draw your attention to the following sections of the TOBA:
  - a) the exclusions and limitations of liability applicable to Servca, our directors and our employees, as detailed in this TOBA, including without limitation at clause 4 and Schedule A;
  - b) the client money disclosures at clause 9;
  - c) your disclosure obligations to insurers at clause 11 and (if applicable) Schedule B;
  - d) our remuneration arrangements at clause 14 and Schedule C;
  - e) the handling of conflicts at clause 15;
  - f) the complaints procedure at clause 17; and
  - g) our sanctions position at clause 20.
- 2.3. Please contact us immediately if there is anything in this TOBA that you disagree with or do not understand.
- 2.4. In this TOBA, references to:
  - a) “insurance” and “insurers” includes reinsurance and reinsurers;
  - b) “your” means you or, if you are an intermediary, your client(s);
  - c) “director” shall mean a director of Servca;
  - d) “employee” shall mean a person (other than a partner) who is an employee, office holder, contractor or consultant of the Partnership;
  - e) “Data Protection Laws” means: the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any laws or regulations implementing Council Directive (EC) 95/46 (Data Protection Directive) or any similar or equivalent laws, regulations or rules relating to information or data about individuals in any jurisdiction outside the United Kingdom; and
  - f) “data controller”, “data processor”, “data subject”, “personal data”, and

“processing” shall have the meanings given to them in the Data Protection Act 1998.

- 2.5. If you instruct us to proceed with any insurance placement or to undertake any other insurance related service we will be doing so on these terms alone and they will have contractual effect between you and us. It is deemed that you consent to working with us based on the terms of this TOBA if, having received this TOBA, you instruct us and/or continue to do business with us.
- 2.6. From time to time, it may be necessary for us to amend or supersede these terms by new terms which will be communicated to you in writing.

### **3. Our Service to You**

- 3.1. We will provide insurance broking services and/or insurance consultancy services (“the Services”) with reasonable care and skill. In providing any insurance broking element of the Services, we will:
- a) explain the main features of products and the services we are offering to you;
  - b) provide you with information about any risk quoted, before it is bound;
  - c) place your insurance only when you instruct us to, and we will advise you if we are unable to complete the placement; and
  - d) provide claims services to you, as further described in clause 16.
- 3.2. We do not offer or provide advice in relation to tax, accounting, regulatory, legal or other specialist matters (including in relation to sanctions and/or in relation to your obligations where your policy is subject to a law other than that of England and Wales) and you should take separate advice as you consider necessary regarding such matters.
- 3.3. We normally act as your agent when providing the Services. However, in some cases, we may act as agent of the insurer in various capacities which are explained further in clause 14.5. Clause 9 explains how client money will be held when we act as either your agent or agent of the insurer.

### **4. Exclusions and Limitations of Liability**

- 4.1. The Services are provided solely and exclusively by us, acting through its directors and employees. No director or employee assumes any personal responsibility to you, and accordingly no director or employee shall owe you any personal duty of care.
- 4.2. It is agreed and understood that no director or employee shall be liable to you and you will not bring any claim against any director or employee for any loss or damage howsoever arising as a consequence of the acts or omissions of such director or employee (including negligent acts or omissions), save where such loss or damage is caused by fraud on the part of such director or employee, or cannot otherwise be lawfully excluded. The Company itself shall be liable to you to the same extent as it would have been in the absence of this exclusion, and the Company undertakes not to rely upon any matter by way of defence if and to the extent that such matter would not have been available to it in the absence of this exclusion.

- 4.3. The extent to which any loss or damage will be recoverable by you from us will also be limited so as to be in proportion to our contribution to the overall fault for such loss or damage, taking into account any contributory negligence by you and any negligence by your other advisers and/or any third party responsible to you and/or liable in respect of such loss or damage.
- 4.4. Servca's aggregate liability for breach of contract, negligence, breach of statutory duty or other claim arising out of or in connection with this Agreement or the Services shall be limited as follows:
- a) in respect of personal injury or death caused by Servca's negligence, GBP 1 million;
  - b) in respect of any matter where liability cannot be excluded by law, GBP 1 million;
  - c) in respect of any fraudulent acts (including theft or conversion) or willful default by Servca, GBP 1 million;
  - d) in respect of claims other than under (a), (b) and (c) above, the total aggregate liability of Servca shall be limited to the sum of GBP 5 million; and
  - e) subject to (a), (b) and (c) above, in respect of the following losses: loss of revenue; loss of opportunity; loss of reputation; loss of profits; loss of anticipated savings; increased costs of doing business; or any other indirect or consequential loss, Servca will have no liability in any circumstances.
- 4.5. Both you and we agree that the foregoing exclusions and limitations are reasonable, based on the level of risk assumed by us in connection with the Services we provide and the fees and/or commission or brokerage earned under this TOBA.
- 4.6. The terms of this clause 4 shall be enforceable by directors and employees.

## **5. Market Security**

- 5.1. We check the financial strength ratings provided by specialist agencies for each participating insurer and, based on these, we may seek your specific approval of some proposed security. We do not assess or guarantee the solvency of any insurer.
- 5.2. We do not accept any and you agree that we shall not have any liability to you for any unpaid amounts in respect of claims or return premiums due to you from a participating insurer who becomes insolvent or delays settlement.

## **6. Evidence of Cover and Policy Documentation**

- 6.1. We will promptly send you evidence of cover in the form of an insurance policy, a certificate of insurance, a copy of our placing slip, or an insurer or Servca produced insurance document. You should examine any insurance documents very carefully to ensure that they meet your requirements. If the documents do not meet your requirements, if you feel they are incorrect, if you do not understand them, or if you are dissatisfied with the insurance security, please advise us immediately. Otherwise, we will assume that the documentation meets your requirements. In any event, it is important for you to keep your insurance documents safe.

- 6.2. Unless you advise us otherwise in writing, we will treat any paper documents that you provide to us as copy documents. Such documents may ultimately be destroyed by us in accordance with our document retention policy. Please let us know if you require any further information.
- 6.3. Any original placing slip evidencing insurance placed by us on your behalf belongs to and remains the property of Servca.

## **7. Non-Payment of Premium**

- 7.1. You agree to pay all premiums and other charges on or before the due date as set out in our invoice or debit note or any evidence of cover, as applicable.
- 7.2. Should you or your agents fail to pay the premium or any instalment of it in full with cleared funds in the invoiced currency by the due date, the insurance contract may be cancelled by us or by insurers in accordance with any cancellation clause in the policy.
- 7.3. We will advise you if insurers have imposed a premium payment warranty or condition. Where insurers have specified a premium payment warranty, they must receive the premium due by that date. If you do not think you will be able to comply with the premium warranty please contact us immediately.
- 7.4. Where applicable, any other party with an interest in the insurance contract will be advised of any non-payment of premium and given the opportunity to pay the outstanding amounts.

## **8. Currency**

- 8.1. When conducting your business we may have to convert funds to another currency in order to settle amounts due to insurers. If a repayment of funds is due to you or is requested by you after conversion, then any such repayment will be made in the currency to which the funds have been converted. Any shortfall arising from exchange differences remains your liability.
- 8.2. If you pay a premium in a different currency or to a bank account in a different currency from that requested, we may, at our discretion, either return the funds to you or convert the money to the required currency. In the latter case, the converted funds will be applied against the amount due with any shortfall arising from exchange differences remaining your liability.

## **9. Client money**

- 9.1. We will hold premium monies received from you, and claims and return premium monies received from insurers which are due to you either:
  - a) as your agent; or
  - b) as agent of your insurers (termed "risk transfer").
- 9.2. We will hold and co-mingle all premiums, claims monies and return premiums in non-statutory trust bank accounts in accordance with the FCA's Client Money rules. Where the monies are also subject to risk transfer, we have agreed with insurers that such monies will be treated as client money and that the insurers' interest in those monies are subordinated to the interests of our clients. Therefore, in the unlikely event of our failure, all monies held in

our non-statutory trust bank accounts will be available to clients ahead of insurers and other creditors. As the trust bank account protects money held on either basis, we will not usually inform you on which basis we hold the money we have received from you or for you.

9.3. We are permitted, in the normal course of business, to use client money held on behalf of one party to pay another party's premium or claim or return premium. We may not use client money to pay ourselves commissions before we receive the premium. Upon receipt of premium, the commission will be retained by us.

9.4. Notwithstanding the operation of the trust bank account as described above, it is not our policy to:

- a) fund premium on your behalf to insurers; or
- b) fund claims to you due from insurers.

However, in the event that we elect to fund premium on your behalf, you acknowledge that any funded amount, whether arising as a result of a payment by us or a deduction by you from amounts payable to us, is to be refunded to us immediately, and that for the duration of any funding, such funded amounts are not considered to be a gift from us. We reserve the right to charge interest on any such funded items from the date the funding commenced to the date of payment.

9.5. Any interest earned on your money held by us and any investment returns on any segregated designated investments will be retained by us for our own use, rather than paid to you.

We may hold separately permitted designated investments with a value at least equivalent to the money that would otherwise have been paid into the non-statutory trust account. If we do so, we are responsible for any resultant shortfall in your money held by us.

9.6. Your money will normally be deposited in client accounts with banks which have been approved by the relevant regulatory authority. In the unlikely event that the bank is not approved, it will still be held in a designated bank account. We may transfer your money to other banks or intermediaries, including those outside the UK, where the legal and regulatory regime will be different. In the event of their failure this money may be treated in a different manner.

9.7. Where you do not wish your money to be passed to a particular bank, intermediary or jurisdiction, you should tell us.

## **10. Warranties and Subjectivities**

10.1. It is very important that you familiarise yourself with all the terms of any insurance contract that you purchase. In particular, you must treat all warranties seriously and comply strictly with them. Failure to do so may entitle the insurer to decline a claim under the policy. If you are aware that you are in breach of a warranty, you should keep a record of when the breach occurred and when the breach was remedied. You should always remedy a breach as quickly as possible. If the breach is not capable of remedy, you should tell us as soon as possible. If you have any doubts or reservations, you should tell us.

10.2. A subjectivity in your insurance contract may lead to the contract being invalidated or

coverage prejudiced if the subjectivity remains outstanding. It is very important that you promptly satisfy any subjectivity so that it can be removed.

## **11. Disclosure to the Insurer**

- 11.1. If your insurance policy is subject to the laws of England, Wales, Scotland or Northern Ireland, the duty to disclose to insurers, via us, all information which is known or ought to be known to you in the ordinary course of business and which is material to the risk will remain in force until 11 August 2016. From 12 August 2016, your duty (a) where you are a producing broker client and you act for a consumer insured, not to make a misrepresentation or (b) where you are, or act for, a non-consumer insured, to make a fair presentation of the risk, are set out in Schedule B. For us to be able to arrange insurance to meet your requirements, you and any agent acting on your behalf, must comply with the appropriate duty depending on your profile as a consumer/non-consumer insured. Please read Schedule B carefully. If you fail to comply with the appropriate duty it could result in the denial of your claim or avoidance of your insurance policy – please see further paragraph 4 of Schedule B.
- 11.2. Your duty of disclosure will be different if your policy is subject to a law other than that of England, Wales, Scotland or Northern Ireland. However, all material facts which are relevant to the risk we are placing for you should be disclosed to insurers. You agree that we shall provide the Services in reliance on the information and data provided by you. You should take care to complete claims and proposal forms or questionnaires required by insurers fully and accurately.

If you become aware that you have omitted material information, or that material information that you have supplied before your insurance policy is finalised is incorrect or has been omitted, you should tell us immediately. If you fail to comply with the applicable duty of disclosure it could result in the denial of your claim or avoidance of your insurance policy. You may wish to seek appropriate legal advice about the specific disclosure requirements of the applicable law of your insurance policy.

## **12. Insurance Act 2015 - Contracting Out**

- 12.1. This clause only applies to insurance policies which are subject to the laws of England, Wales, Scotland or Northern Ireland.
- 12.2. The Insurance Act 2015 allows non-consumer insureds and insurers to contract out of certain provisions. However, any “disadvantageous term” (that which puts an insured in a worse position than the default regime under the Insurance Act 2015) must meet certain “transparency requirements”.
- 12.3. We will not provide advice in respect of any proposed contracting out of the Insurance Act 2015 unless specifically instructed by you and we agree to do so.

## **13. Your Liability for Tax**

- 13.1. Unless there is a legal requirement for us to do so, it is your obligation to make declarations in respect of and to account for any applicable tax on all insurance transactions.

#### **14. Remuneration**

- 14.1. We are normally remunerated by commission or brokerage earned on insurances placed, or by a fee negotiated and agreed with you. If appropriate, and with your consent, we may receive a fee and commission/brokerage. As this remuneration is earned on placement, we will be entitled to retain it (or to receive it where unpaid) even if policies placed by us are cancelled. Where we place multi-year policies we will be entitled to retain all commission/brokerage or fees upon placement even if such policies are cancelled.
- 14.2. If you wish us to carry out any task beyond the services you initially require, these will be subject to an additional fee and/or brokerage. That may include where we will incur higher costs of claims handling for significant claims. We will not impose any fees or additional charges on you without prior notification or discussion.
- 14.3. In a limited number of situations, it may be appropriate (and for your benefit) for us to use other parties such as wholesale brokers, excess and surplus lines brokers, underwriting managers, managing general agents or reinsurance intermediaries in the placement of your insurances. These parties may also earn and retain commissions for their role in providing products and services for you.
- 14.4. We may receive remuneration from premium finance companies where insurances we place are subject to premium finance arrangements. From time to time, in advising you in relation to your insurance arrangements, we may introduce the services of other providers who, should you elect to use their services, may agree to pay to Servca a referral fee.
- 14.5. We may have contracts with various insurers under which we provide certain services, such as those under binding authorities, managing general agency and lineslip arrangements (for example, providing statements of the business accepted and the issuance of certificates of insurance cover). We may also provide reinsurance broking services to insurers. We may also enter into service agreements with certain insurers, for a range of consultancy services, some of which may assist the development of insurance products for our clients. Under these arrangements we may be paid by the insurers for the services we provide to them in addition to any fees or commissions we may receive for placing your insurance cover. These arrangements are detailed further in Schedule C.
- 14.6. You may ask us at any time to disclose the commission we receive for placing your insurance business.

#### **15. Conflicts**

- 15.1. This TOBA will not prevent us from acting for other clients who may be your competitors or with whom you may have business dealings. You acknowledge and agree that this will prevent us from advising you of information which has come into our possession by virtue of us acting for another client.
- 15.2. In the event that we identify a conflict of interest in our providing the services to you, we will immediately notify you and, where we are able to do so, will agree how to continue to provide the services.

- 15.3. During the submission and consideration of any claim that you may have under an insurance contract, we may provide, and be separately remunerated for, limited services to your insurers. In performing these services we will always use reasonable endeavours to avoid a conflict of interest. Should we consider, however, that a conflict has arisen, then we shall take no further action on behalf of the insurer without your written approval.

## 16. Claims

- 16.1. You must carefully read the terms and conditions of your insurance contract with regard to your obligations to notify claims and/or potential claims to your insurers. You must provide us with all material information concerning such claims or potential claims in order for us to assist you to comply with the terms of your insurance contract. Failure to properly notify a claim or potential claim in a timely manner, as required by your insurance contract, may give insurers the right to avoid payment or reduce payment of your claim.
- 16.2. We will promptly inform you of the acceptance or denial of your claim, and in the case of any denial of a claim, we will provide to you the insurer's reasons for such denial.
- 16.3. We will provide a claims broking service for you as long as you remain a client of Servca. However, if you cease to be our client but request us to continue to service any claim(s) on your behalf, we reserve the right to charge a specified fee to you for such claims broking services.

## 17. Complaints

- 17.1. Our complaints procedure is available upon request. All complaints should be addressed to:  
Head of Compliance  
  
Servca  
One Aldgate  
4th Floor  
London EC3N 1RE
- 17.2. In the unlikely event that we are unable to resolve your complaint to your satisfaction, if you are eligible, you may be entitled to refer your complaint for an independent review by the Financial Ombudsman Service (FOS). The FOS is an independent service in the UK for settling disputes between customers and businesses providing financial services. You can register your complaint and/or find more information on the FOS, including eligibility criteria, at [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk) or by calling 0800 023 4567.
- 17.3. If your insurance policy has been underwritten at Lloyd's, and if you are eligible, you may also be entitled to refer your complaint to Lloyd's for its review.
- 17.4. If we receive a complaint from you, we will provide you with a copy of our complaint handling procedure, which will provide you with details of how we will handle your complaint, as well as details of how to refer your complaint to Lloyd's and/or the Financial Ombudsman Service. This procedure is also available upon request.

- 17.5. It may be the case that you are entitled to compensation through the Financial Services Compensation Scheme (FSCS) if we cannot meet our obligations. Further information about the FSCS is available from its website, [www.fscs.org.uk](http://www.fscs.org.uk).

## **18. Confidentiality and Data Protection**

- 18.1. We will at all times treat all confidential information we hold about you as private and confidential and protect it in the same way we would protect our own confidential information. We will not disclose any confidential information we hold about you to others without your prior consent except: (a) in the normal course of negotiating, maintaining or renewing your insurance policies; (b) to the extent we are required to do so by law or a regulator; (c) to insurers, surveyors, loss adjustors, IT service providers, administrative support service providers, and other like persons to the extent necessary to provide our Services to you in a timely manner; (d) to loss assessors, lawyers, and other like persons to the extent necessary to enable such third parties to provide information or services you have requested; (e) to premium finance companies to the extent necessary to enable them to provide you with greater choice in making premium payments; and (f) to other group companies to the extent necessary to facilitate the effective management, administration, or operation of those businesses.
- 18.2. By way of exception to the foregoing, you agree that we may: (a) use any information you provide to create anonymised industry or sector-wide statistics which may be shared with third parties, on the condition that unless we have obtained your consent, information specific to you will not be revealed other than on an anonymised basis and as part of an industry or sector-wide comparison; (b) share information concerning your insurance arrangement with insurers where this is necessary to enable insurers to decide whether to participate in any arrangement made by Servca whereby participating insurers agree to automatically insure (wholly or partly) a portfolio of risks by delegating their authority to bind individual risks within such portfolio to the lead insurer or Servca; (c) share anonymised information concerning payment or settlement of your insurance claims with third parties to assist our other clients with payment, negotiation and settlement of their claims with the same or different insurers; and (d) share information about your insurance placements, which may include client names, types of policy, premium and renewal dates, with insurers to enable them to provide and improve their services to you.
- 18.3. If you wish, we shall be pleased to enter into a specific confidentiality agreement with you.
- 18.4. You and we agree to comply with the Data Protection Laws applicable in respect of any personal data processed under this TOBA. If you provide us with any information which constitutes "personal data" (including any "sensitive personal data"), we will treat such information at all times in accordance with Data Protection Laws in the manner described within our privacy notice, which can be found online at: [www.servca.com/terms-and-conditions](http://www.servca.com/terms-and-conditions). For personal data received from you relating to you or your clients, you shall be the data controller and we shall be the data processor. You warrant that you have made all necessary registrations in accordance with Data Protection Laws. You acknowledge and agree that: (a) we are reliant on you for direction as to the extent

to which we are entitled to use and process the personal data and (b) we shall not be liable for any claim brought by a data subject arising from any action or omission by us, to the extent that such action or omission resulted directly from your instructions. You agree that we and other Servca companies may hold and process such information: (i) in order to provide the Services; (ii) to facilitate the effective management, development or operation of the Servca companies; and (iii) in any country – including countries outside the European Economic Area, which may not have comparable data protection laws.

- 18.5. You agree that you will not provide any information which constitutes personal data (including any sensitive personal data) to us unless you have ensured that you have obtained all necessary consents and provided any required notices (in particular informing data subjects that their personal data will be anonymised and used for analysis purposes), or that you are otherwise permitted to provide such information to us, so that such information you provide to us can be lawfully used or disclosed in the manner and for the purposes anticipated by this TOBA. You will also ensure that any such information you do provide to us is relevant for such purposes, and is reliable for its intended use, accurate, complete and current.
- 18.6. It is our policy to only email information to our clients to their company email addresses, and not to personal email accounts. The security of a personal email account is less than that offered by company email addresses, which increases the risk of external unauthorised access and abuse of clients' personal, sensitive and/or confidential information. If, however, you express to us that you want to communicate with us via a personal email address, or you have initiated contact with us using a personal email address, instead of a company e-mail address, we will communicate with you via your personal email address, on the basis that we have made you aware of the increased security risk and that you will not hold Servca responsible or liable for any external or unauthorised access to any personal, sensitive and/or confidential information, as a result of using your personal email address.
- 18.7 We shall:
- a) implement appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, personal data to ensure a level of security appropriate to:
    - i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
    - ii) the nature of the personal data to be protected, having regard to the state of technological development and the cost of implementing any measures; and
  - b) take reasonable steps to ensure compliance with those measures.

## 19. Money Laundering

- 19.1. We are obliged by UK money laundering regulations to undertake customer due diligence measures to verify the identity of clients, and to seek further information from you if you request us to make any payments to a third party.

## **20. Sanctions**

- 20.1. The sanctions profile of business(es) may differ on the basis of a number of complex factors, which may include ownership, structure, control, location, the nationality of employees and domicile of the risk. We are unable in any circumstances to give advice on the applicability or implications of sanctions regimes either to you or to insurers nor can we guarantee or otherwise warrant the position of any insurer under existing or future sanctions regimes. As a consequence, you are reminded that applicable sanctions remain a matter for you and you should take such legal advice as you deem appropriate in this regard. You should inform us of any insurance requirements you have which touch upon or are linked to sanctioned territories.
- 20.2. We will comply with all sanctions regimes and legislation which affect us and you are advised that, where obliged by applicable sanctions or other related requirements, we may have to take certain actions which include, but may not be limited to, an inability to provide Services to you (such as placing a risk on your behalf, being unable to act for you in the performance of your policy, effecting monetary transactions in respect of risks that we have arranged for you or collecting a claim for you because funds have been frozen and are thus unavailable). We reserve the right to terminate our business relationship, in accordance with clause 22, in the event that the 'snap back' provisions of the Joint Comprehensive Plan of Action are, at any time, implemented.
- 20.3. We cannot be held responsible for the actions of third parties (including but not limited to banks and exchange institutions) who may have their own sanctions policy restrictions and constraints. This also includes insurers who may, as a result of sanctions, not be able to continue to provide cover to you or be able to process a claim under your policy, and, irrespective of any sanctions exclusion clause in your policy, may have to cancel or terminate your policy or be unable to settle your claim. We cannot be held liable for any funds held up by banks or other financial institutions.
- 20.4. The applicability of the Export Control legislation to certain transactions may differ on the basis of a number of complex factors and our obligations may be different from yours depending on the nature of the insurance, structure of the product and place of incorporation of the insured or geographical cover provided. The nature of the risks insured may also have a bearing on our position and the position of other parties within the market. We cannot provide you with legal advice, however we advise that where we are required to make licence applications or notifications to undertake any other activity as a matter of law Servca will comply with applicable law.

## **21. Compliance**

- 21.1. We will pay due regard to, and you agree to co-operate with us to ensure compliance with, any legislative and regulatory requirements relating to the provision of the Services.

- 21.2. As a consequence, Servca undertakes client due diligence and verification in order to satisfy ourselves and demonstrate that we undertake business with entities that are of good repute and are not subject to any global sanctions regimes. As such, we will ask you to provide, to us, information about your entity and your banking arrangements, which enables us to facilitate future payments to you.
- 21.3. We will also be obliged to verify the accuracy of your bank details, either from an independent senior officer at your firm or a mandate from your bank. This will be undertaken by the due diligence team within our Compliance department.
- 21.4. We will not 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 the Bribery Act 2010). We are required to maintain anti-corruption/bribery policies and procedures which seek to prevent corruption/bribery offences and so we may take, or omit to take, any action where reasonably necessary to comply with such policies and procedures.
- 21.5. Servca is compliant with the United States of America Foreign Account Tax Compliance Act 2010 (FATCA). A copy of Servca's W-8IMY form is available at [www.servca.com](http://www.servca.com), upon request to your Servca representative or upon request to [FATCA@servca.com](mailto:FATCA@servca.com)
- 21.6. If we place a US risk on your behalf, as part of our FATCA requirements, as a client of Servca you will receive a copy of the relevant FATCA documentation with each applicable risk. Servca will only place risks with insurers who have declared their compliance with the FATCA regime.

## **22. Termination of our Services**

- 22.1. Whilst our wish is to retain the business and goodwill of our clients, you may terminate the Services by giving us notice in writing. Similarly, we may also terminate the Services that we provide to you by giving you notice in writing. Where notice of termination is given, such termination will take effect from the date specified in such notice.
- 22.2. With effect from the date of termination, we shall have no further obligation to perform any of the Services and all sums payable by you shall become due and payable. We may consider continuing to service claims on insurance contracts we have placed for you at your request, but only if we are able to do so and can agree with you an appropriate remuneration.

## **23. Third party rights**

- 23.1. This TOBA is not intended to and it does not confer a benefit or remedy on any third party, whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, save for the employees' and partners' right to enforce the terms of clause 4. Further, we may rescind or vary this TOBA, in accordance with its terms, as it applies to you, whether in whole or in part without the consent of any third party.
- 23.2. You agree that should we receive a request for information pursuant to the Third Party (Rights Against Insurers) Act 2010, we will be obliged to respond to that request and provide the requested information even if that information is confidential to you; this includes where you instruct us not to provide the requested information or you fail to respond to any

communication between us in respect of the request. You also accept and acknowledge that we are not obliged to confirm that you are a Relevant Person (i.e. you are subject to insolvency proceedings, as more fully defined in the Third Party (Rights Against Insurers) Act 2010) or that you are liable to the third party and that we are obliged to comply with the request regardless.

**24. No Joint Venture**

24.1. Neither this TOBA nor any actions taken by either you or us pursuant to this TOBA will create or be construed as creating a partnership association, joint venture or other cooperative entity between you and us.

**25. Language**

25.1. Unless otherwise agreed with you in writing, all evidence of cover and other documentation provided to you, and any discussion with you, will be in English. Unless we have agreed otherwise with you, please ensure that any documentation and/or instructions that you provide to us are always in English.

**26. Intellectual property**

26.1. We shall retain all title, copyright, patents and other intellectual property rights to all methodologies and documents used in our provision of the Services to you.

**27. Authority to give instructions**

27.1. Unless instructed otherwise, we shall assume that all of your employees, directors and officers who give us instructions are authorised to do so and that we may act on oral instructions.

**28. No Assignment or Waiver**

28.1. A failure at any time by either of us to enforce any right or obligation shall not be deemed to be a continuing waiver of such right or obligation. You may not assign your rights or obligations without our prior written consent. We may assign, novate or subcontract any of the Services or any other insurance broking, insurance administration and/or insurance consulting services without your prior consent.

**29. Governing Law and Jurisdiction**

29.1. This TOBA, any associated letter/correspondence and our business relationship with you are governed by English law and are subject to the exclusive jurisdiction of the High Court in London.

**30. Severability**

- 30.1. If any term of this TOBA, or any part of such term, is or becomes illegal, invalid or unenforceable in any respect, then such term shall to that extent be deemed not to form part of this TOBA and the remainder of the TOBA will remain valid and enforceable.

**31. Entire Agreement**

- 31.1. This TOBA, including Schedules A, B and C, constitutes the entire agreement between both you and us with regard to our engagement and supersedes all proposals, prior discussions and representations, oral or written, between us relating to the Services.

**32. Force Majeure**

- 32.1. We shall not be liable to you if we are unable to perform the Services as a result of any cause beyond our reasonable control. In the event of any such occurrence affecting us we shall notify you as soon as reasonably practicable.

## Terms of Business Agreement – Schedule A Sections applicable in special circumstances

### **A1. To the extent that you are a broker client:**

- A1.1. Our duties are solely to you as our client, though you in turn will owe duties of care either to the ultimate policyholder or to another intermediate party. In all cases you must ensure that you have full authority to instruct us. It is your obligation to ensure that your client is aware of all the terms of any insurance policy obtained by us on your instructions. It is also your obligation to ensure that you hold and comply with all necessary licences.
- A1.2. You understand and agree that we do not assume a responsibility or a duty of care to the ultimate policyholder and that you undertake to explain this to the ultimate policyholder.
- A1.3. If your client enters into an insurance contract subject to English, Welsh, Scottish or Northern Irish law, your client will be subject to the disclosure obligations set out at Schedule B. Please read this section carefully.

### **A2. To the extent that you select insurers:**

- A2.1. If you instruct us to place all or part of a risk with a specific insurer, in addition to the conditions set out at clause 5 of this TOBA, you will be warranting that this is a lawful placement. This means that the insurer is able to underwrite the risk lawfully and that the placement complies with all applicable insurance or other regulations.
- A2.2. If it is not a lawful placement, then you agree that you expressly release us from any liability arising out of the placement and that you will indemnify us for any damage, expense or fines we may sustain or incur.

### **A3. To the extent that US direct procurement applies:**

- A3.1. Some US states have “direct procurement” laws. These allow otherwise unauthorised insurers to provide valid cover for entities or risks domiciled in the state, and may also prescribe or limit the roles of local and out of state brokers in the placement process.
- A3.2. If any placement of a US domiciled entity or risk is presented to us as directly procured, you warrant that it is a lawful placement under such direct procurement laws. This means that the insurer is able to underwrite the risk lawfully and that the roles of local and out of state brokers in the placement process comply with all applicable insurance or other regulations.
- A3.3. If it is not a lawful placement, then you agree that you expressly release us from any liability arising out of the placement and that you will indemnify us for any damage, expense or fines we may sustain or incur.
- A3.4. We will process separately, from any other business we conduct for you, any element of a placement that falls within the scope of direct placement laws and negotiated directly with you.

## Terms of Business Agreement – Schedule B

Disclosure to the insurer – your duty (a) not to make a misrepresentation or (b) to make a fair presentation of the risk

**B1. Producing broker client acting for a consumer insured:** Where you are procuring insurance on behalf of a consumer (that is, an individual entering into an insurance contract wholly or mainly for purposes unrelated to a trade, business or profession), you must take reasonable care not to make a misrepresentation to the insurer. This means that you must answer insurers' questions honestly, but are not obliged to disclose anything that is not expressly asked by insurers. You will be deemed to have made a misrepresentation without taking reasonable care if you deliberately, recklessly or carelessly answer insurers' specific questions incorrectly. This could result in the insurance contract being rendered void (so that there would be no cover and claims would not be paid), the terms of the insurance contract being amended, or insurers reducing any claim that is paid in proportion to the increased premium that would have been charged had the true position been known. Insurers may also have the right to recover claim payments or part of claim payments already made.

**B2. Where you are, or act on behalf of, a non-consumer insured:** The duty to disclose to insurers, via us, all information which is known or ought to be known to you in the ordinary course of business and which is material to the risk will remain in force until 11 August 2016. From 12 August 2016, where you are procuring insurance as a non-consumer (that is, you are not an individual who is entering into an insurance contract wholly or mainly for purposes unrelated to your trade, business or profession) you, and any agent acting on your behalf, must make a fair presentation of the risk to insurers. That means you must:

B2.1. disclose to insurers every material circumstance (that is, information that would influence the judgement of a prudent insurer in establishing the premium or determining whether to underwrite the risk and/or on what terms it will underwrite the risk) that you know or ought to know.

Examples of things which may be material circumstances are:

- a) special or unusual facts relating to the risk;
- b) any particular concerns that led you to seek insurance cover for the risk; and
- c) anything that those concerned with the class of insurance and field of activity in question would generally understand as being something that should be dealt with in a fair presentation of risks of the type in question.

If there is any doubt as to whether information is material, it should be disclosed.

If you inadvertently do not disclose every circumstance, you must give the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries in order to reveal material circumstances;

B2.2. make the disclosure in B2.1 in a reasonably clear and accessible way. A fair presentation need not be contained in only one document or oral presentation, but will need to be

structured, indexed and signposted, as appropriate, so that your insurers can assess whether the information you have provided is sufficient for their purposes or whether they need to make further enquiries of you, via us; and

**B2.3.** ensure that every material representation as to a matter of fact is substantially correct, and that every material representation as to a matter of expectation or belief is made in good faith.

**B3.** For the purposes of clauses B2 above, you are expected to know or ought to know the following:

**B3.1.** if you are an individual, what is known to you and anybody responsible for arranging your insurance;

**B3.2.** if you are not an individual, what is known to anybody who is part of your senior management (meaning those individuals who play significant roles in the making of decisions about how the insured's activities are to be managed or organised) or anybody who is responsible for arranging your insurance (this includes anyone who participates on behalf of the insured in the process of procuring the insured's insurance both inside and outside of the insured entity (whether the individual does so as the insured's employee or agent, as an employee of the insured's agent or in any other capacity));

**B3.3.** whether you are an individual or not, what should reasonably have been revealed by a reasonable search of information available to you. You cannot turn a blind eye or deliberately withhold information (this may amount to a breach of the duty of fair presentation even if the insurer had sufficient information to ask questions and did not do so). The information may be held within your organisation, or by any third party (including but not limited to subsidiaries, affiliates, your insurance broker (including us), or any other person who will be covered under the insurance). If you are insuring subsidiaries, affiliates or other parties, the insurer will expect you to have included them in your enquiries and that you will inform the insurer if you have not done so. The reasonable search can be conducted by making enquiries or by any other means. We recommend that you document what searches have been undertaken and by whom to ensure that you are able to demonstrate the parameters of your search.

**B4.** If you fail to comply with the duty of fair presentation, it could result in your insurance contract being rendered void (so that there would be no cover and your claims would not be paid), the terms of your insurance contract being amended, or insurers reducing any claim that is paid in proportion to the increased premium that would have been charged had the true position been known. Insurers may also have the right to recover claim payments or part of claim payments already made.

**B5.** You acknowledge and agree that we will not be required to provide you or the insurer with any information that we have received from anyone including you or your agent that is not directly in connection with the particular contract of insurance we are placing for you. For the avoidance of doubt this includes:

**B5.1.** in the case of reinsurance and where we are also the broker for the direct insurance, knowledge that we obtain in the course of placing the direct insurance;

B5.2. where we place other insurances for you; and

B5.3. where we are approached by more than one producing broker in respect of the same risk.

**B6. Applicable to both consumer and non-consumer insureds:** You agree that we shall provide the Services in reliance on the information and data provided by you. You should take care to complete claims and proposal forms or questionnaires required by insurers fully and accurately and in accordance with your duty not to misrepresent if you are a producing broker client acting on behalf of a consumer or your duty to make a fair presentation of the risk if you are a non-consumer. If you become aware that relevant information that you have supplied before the contract of insurance is finalised was incorrect or has been omitted, you should tell us immediately.

**B7.** Your duty not to make a misrepresentation or your duty to make a fair presentation, as outlined above, will arise:

B7.1. **Before the insurance contract is entered into:** If you become aware that information that you have supplied prior to confirmation of your insurance cover was incorrect or incomplete, you should tell us immediately; and

B7.2. **After the insurance contract is entered into:** The duty not to misrepresent for consumer insureds and to make a fair presentation for non-consumer insureds is re-imposed when there are changes or variations in cover, when the insurance contract is renewed or extended and when making a claim in respect of the subject matter of that claim. If you are aware of any changes in respect of your insurance, you should advise us immediately so that we can advise your insurers.

## Terms of Business Agreement – Schedule C Remuneration for services provided to insurers

As mentioned in clause 14.5, we may be paid by insurers for the services we provide to them, in addition to any fees or commissions we may receive for placing your insurance cover. These arrangements may include the following:

- C1.** We may receive additional amounts, usually at the end of an insurer's accounting period and normally on a contract-by-contract basis, in recognition of prompt payment, and/or profitability.
- C2.** We may operate a number of "facilities" (Binders, Lineslips, Programmes, MGAs, Panels and other arrangements) under which we undertake a number of tasks, some of which are purely for the benefit of our clients, others are services that an insurer would be expected to perform. Our remuneration may reflect this multi-beneficiary approach with a charge that covers the cost of those activities. That charge is separate to the fee or commission that we receive for placement of your insurance cover.
- C3.** A fee for the provision to insurers of a range of consultancy services. Such services may include, without limitation: placement and claims reporting on insurers' books of business; analytics and data services; assistance with strategic and risk appetite assessment and management; business engagement and planning; and product development. The provision of these services may assist us in developing solutions which satisfy your needs. Insurers will agree that they will bear this fee as part of their operating costs and not to increase premiums payable by our clients.
- C4.** We may develop facilities which offer underwriting capacity for specialised risks and under which we provide a range of services to participating insurers. Such a facility may include where participating insurers agree to automatically insure (wholly or partly) a portfolio of risks by delegating their authority to bind individual risks within such portfolio to the lead insurer or Servca. A separate fee is paid by such insurers for the delivery of these services to them. Insurers will agree that they will bear this fee as part of their operating costs and not to increase premiums payable by you.
- C5.** We may add subscription market brokerage where we place business into subscription markets, to reflect increased infrastructure costs and the additional administrative, regulatory, accounting and support functions we perform in order to complete subscription market placements.
- C6.** Unless agreed otherwise with you, we may earn additional remuneration by way of claims collecting commission on all amounts collected by us from insurers for the additional claims services provided. Claims collecting commission will be earned by us as a reflection of the level of work undertaken and additional support provided in the negotiation and settlement of a loss.