



**PEN UNDERWRITING
PRODUCING BROKER**

TERMS OF BUSINESS AGREEMENT

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An agreement governing the conduct of Insurance Business between:

- 1) **Pen Underwriting Ltd ("Pen")**
- 2) You and each of your Associated Bodies (the "**Broker**"),

each a "**Party**" and, collectively, the "**Parties**".

1. Interpretation

1.1 Definitions

Agreement: This Terms of Business Agreement, any attached Schedules or Appendices or the Insurer List and the Acceptance Receipt.

Appointed Representative: Has the meaning given to it in Section 39 of FSMA.

Associated Bodies: In relation to a company or other body corporate, its parent and subsidiary undertakings (as each term is defined in section 1162 of the Companies Act, 2006 (as amended)), and any company which is a parent and subsidiary undertaking (whether directly or indirectly) of each such parent and subsidiary, as the case may be.

CASS: The UK Regulator's Client Assets Sourcebook.

Claims Service Provider: Shall mean the individual or company appointed by Pen or the Insurer from time to time to process and manage claims, as notified by Pen to the Broker from time to time.

Client Money: Means client money, as defined in CASS.

Client Money Rules: The rules set out in CASS 5.1 to 5.8.

Commencement Date: Has the meaning set forth on the signature page.

Commission: Commission payable to the Broker (if any) in respect of that Insurance Business which shall be at the rates and dates set out in a relevant Slip or schedule of commissions or agreed at placement.

Data Protection Legislation: Means all data protection and privacy legislation, regulations and guidance applicable in respect of a party from time to time including, without limitation as applicable Regulation (EU) 2016 / 679 (the "General Data Protection Regulation" or the "GDPR"), the UK Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 the GDPR as it forms part of the domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018; and any applicable guidance or codes of practice issued by Working Party 29, the UK Information Commissioner, the European Data

Protection Board or any applicable Data Protection Regulator from time to time (all as amended, updated or re-enacted from time to time).

Data Protection Regulator: Means a countries privacy regulator .

Electronic System(s): Means such electronic system (s) which Pen provides the Broker access to for the purposes of entering and retrieving data and proposals in connection with the Insurance Business, whether provided by a website or any other means.

FSMA: The Financial Services and Markets Act 2000.

ICOBs: The Financial Conduct Authority's ("**FCA**") Insurance Conduct of Business Sourcebook.

Insured: Any party (not being the Insurer) entering into a contract of insurance which is subject to this Agreement.

Insurer: The insurer (or managing agent when placing Insurance Business into Lloyd's) with whom the Insurance Business is placed and for which Pen acts as agent.

Insurance Business or Insurance: Any insurances or reinsurances falling within the definition of "contract of insurance" in Article 3(1) of the FSMA (Regulated Activities) Order 2001 together with insurances concluded under any contracts for insurance arranged by Pen on behalf of the Insurer where the Broker is the coverholder or the placing broker, but specifically excluding any outwards reinsurance business placed by the Broker as agent of the Insurer.

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 (to which this Agreement is subject) which has the force of law or compliance with which is in accordance with the general practice of such jurisdiction.

Monies: Premiums payable in respect of any Insurance Business and any other monies that are required to be held by the Parties arising from the conduct of Insurance Business under this Agreement.

Personal Data: Has the meaning given in Data Protection Legislation .

Pen Portal: Means the portal made available to the Broker from time to time.

PERG: Means the UK Regulator's Perimeter Guidance Manual

Previous TOBA: Any terms of business agreement which is in place prior to the date of this Agreement for the placing of Insurance Business between Pen, and the Broker.

Principal: Means a principal as defined in PERG.

Privacy Policy: Pen's Privacy Policy available at <https://www.penunderwriting.co.uk/Privacy-Policy> or such other website as advised by Pen from time to time.

Records: Anything on which any information of any description is recorded.

Regulatory Requirements: All applicable statutes, statutory instruments, orders, regulations and codes of practices in force from time to time and including without limitation the rules and guidance made by the UK Regulator and all other instruments and regulations made pursuant to FSMA.

List of Insurers: Means the List of Insurers/ Managing Agents made available at <https://www.penunderwriting.co.uk/-/media/Files/Pen-Underwriting/Agency-Pen-Insurer-Partners--July-2020.pdf> referred to in clause 6 which shall be incorporated in and form part of this Agreement.

Slip: Any document containing the particulars of a risk proposed for Insurance held in whatsoever form which is or is to form the basis of either a contract for or of insurance. A Slip may incorporate details of administrative arrangements pertinent to the processing of the contract for or of insurance.

Taxes: All Insurance Premium Taxes ("IPT") and other para-fiscal charges which may be levied by overseas fiscal authorities on insurance premiums.

The Broker Group: In relation to the Broker, means any entity which, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a party to this agreement, where "control" (inclusive of the terms "controlled by" and "under common control with") has the meaning attributed to it under section 450 of the Corporation Tax Act 2010 its parent and subsidiary undertakings (as each term is defined in section 1162 of the Companies Act, 2006), and any company which is a parent and subsidiary undertaking (whether directly or indirectly) of each such parent and subsidiary, as the case may be.

The Pen Group: In relation to Pen, means any entity which, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a party to this agreement, where "control" (inclusive of the terms "controlled by" and "under common control with") has the meaning attributed to it under section 450 of the Corporation Tax Act 2010 its parent and subsidiary undertakings (as each term is defined in section 1162

of the Companies Act, 2006), and any company which is a parent and subsidiary undertaking (whether directly or indirectly) of each such parent and subsidiary, as the case may be.

UK Regulator: The FCA and/or the Prudential Regulation Authority as appropriate, or any successor regulatory body or bodies to all or any of them.

1.2 This Agreement shall commence on the Commencement Date.

1.3 A reference to a statute or statutory provision (including for the avoidance of doubt a reference to a UK Regulator's rule) is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.4 Access to the products and services under this agreement are provided at the sole discretion of Pen.

2 Scope

2.1 This Agreement sets out the rights and obligations of the Parties only in respect of the matters specifically addressed in the Agreement. Any matters relating to the relationship between the Parties which are not expressly addressed in this Agreement, 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 shall apply to the exclusion of any equivalent terms in any binding authority agreement placed between the Parties as coverholder, 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 Subject to clause 2.9 below, the Parties agree that the terms set out in this Agreement shall apply to the conduct of any Insurance Business and shall supersede the terms of any Previous TOBA. All Insurance Business which was placed under any Previous TOBA(s) continues to be governed by such Previous TOBA(s) until such Insurance Business is renewed or terminated. All monies held by the Broker as agent and trustee of the Insurer(s) under such Previous TOBA(s) shall continue to be held by the Broker as agent and trustee of the Insurer(s) until such monies are paid by the Broker to the relevant party.

2.3 Under authority granted to it by the Insurer(s), Pen authorises the Broker to perform the following functions only:

2.3.1 commit the Insurer(s) to provide insurance to the prospective policy holder via the Electronic System(s) accessed by the Broker which facilitate(s) the confirmation of Insurance Business; and

2.3.2 subject to and in accordance with the provisions of clause 6 of this Agreement, collect and hold premium.

- 2.4 Except to the extent stated in clauses 6.1, 10.2 and 16.3, 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.
- 2.5 Subject to clause 16 (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, Pen, the Insurer, or the placing of any Insurance Business.
- 2.6 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 Pen 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 Pen.
- 2.7 Save where it is in the best interests of the Insured to do so and permitted under the terms of the Insurance, the Broker shall not knowingly, either directly or by instructing an agent or other person to do so on its behalf, use Personal Data (as defined in the Data Protection Legislation) or any confidential information obtained as a result of this Agreement to solicit, induce or encourage any Insured, or assist or facilitate any other person to solicit, induce or encourage any Insured, to cancel an Insurance policy or transfer any Insurance policy to any insurer other than the Insurer, save to coincide with the natural expiry of the Insurance.
- 2.8 Pen will not knowingly, either directly or by instructing an agent or other person to do so on its behalf, solicit the custom of the Broker's clients in relation to the Insurance Business during the currency of this Agreement and for a period of three years following termination of this Agreement. However, the Broker agrees that Pen may contact the Broker's clients if it is reasonable to do so. The Broker further agrees that, if the Broker's client makes an unsolicited direct or indirect approach, Pen will not be prohibited from dealing with them.
- 2.9 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 Pen 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.
- 2.10 Pen reserves the right to vary this Agreement upon giving thirty (30) days' notice to the Broker in writing except in circumstances where the variation is required in order to comply with changes in the Regulatory Requirements in which case no notice period is required. In respect of varying the List of Insurers, clause 6.5 shall apply. If Pen wishes to amend this Agreement for any other reason, the Broker shall have the right to terminate this Agreement by giving Pen thirty (30) days' written notice in accordance with clause 28.
- 2.11 The Broker shall comply with all reasonable requests or requirements made in writing by Pen in relation to the operation of this Agreement, the Insurances bound under the Agreement or the claims arising thereunder.
- 2.12 Where Pen has agreed that the Broker may receive notice of a claim from the Broker's client the Broker shall immediately advise Pen or the third party Claims Service Provider as notified by Pen, of the claim. The Broker shall provide, both for the benefit of the Insured and Pen, such cooperation, information and assistance in relation to any claim as may be reasonably requested without creating a conflict of interest.
- 2.13 Where Pen provides the Broker with access to an Electronic System, the Broker agrees to comply with the provisions of Schedule 1.
- ### 3 Regulatory Status
- 3.1 The Broker warrants that it is authorised by the UK Regulator, or other competent regulator, to conduct insurance mediation activities (as defined in the UK Regulator's Handbook) from the date of this Agreement or that it is an Appointed Representative of an insurance intermediary which is authorised by the UK Regulator and therefore properly exempt from the requirement to be authorised by the UK Regulator. Pen warrants that it is authorised by the UK Regulator (or to conduct insurance mediation activities (as defined in the UK Regulator's Handbook) from the date of this Agreement.
- 3.2 Each Party shall notify the other promptly in writing in accordance with clause 28 if at any time during the period of this Agreement:
- 3.2.1 The UK Regulator, or other competent regulator, suspends, withdraws or alters its authorisations; or
- 3.2.2 where permitted by the Regulator to make such notification, it becomes the subject of an enforcement or disciplinary action by the UK Regulator, or other competent regulator.
- 3.2.3 it otherwise ceases in any way to be authorised by the UK Regulator, or other competent regulator, to undertake any activities in relation to any Insurance Business subject to this Agreement; or
- 3.2.4 it ceases to be an Appointed Representative and properly exempt from the requirement to be authorised by the UK Regulator, or other competent regulator, or
- 3.2.5 It becomes insolvent or an application for the winding up is made by it.

4 Authority

- 4.1 This Agreement sets out the basis on which Pen may 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 Pen's behalf without Pen's prior written consent, and/or commit Pen in any way.

5 Remuneration

- 5.1 Commission shall be agreed between the Parties and shall be set out in the relevant Slip or, as appropriate, recorded in writing by the Parties.
- 5.2 Subject to clause 5.3 below, the Broker may deduct the Commission upon receipt of the premium
- 5.3 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 and recorded in writing on a risk-by-risk basis between the Parties.
- 5.4 The Broker shall only be entitled to commission in respect of any Insurance Business placed during the term of the Agreement and provided it remains agent to the Insured. In the event of any dispute by one or more broker in respect of commission due for the same Insurance Business then Pen may determine in its sole discretion in what shares that commission is to be paid.
- 5.5 Pen shall be entitled to administration charges for the administration of insurance policies (for instance, a charge for cancelling a policy). Where Pen requires the Broker to inform the Broker's client that an administration charge is to be applied the Broker shall ensure that it communicates the same to its client without undue delay.

6 Handling of Monies by the Broker

- 6.1 The relevant Pen entity is appointed to hold Monies as agent and trustee of Insurer pursuant to CASS 5.2.3R and typically the Insurer agrees the authority granted to such Pen entity is extended to the Broker. Except in those instances specified in the List of Insurers where risk transfer is not cascaded to the Broker, or if the Broker is advised at the time of placement prior to binding, the Broker will be deemed to have authority to hold Monies ("**Insurer Monies**") and the Broker may hold Insurer Monies as the agent and trustee of the Insurer. Monies must be held by the Broker in one of the following manners:
- (i) in a client bank account as described in CASS 5.3 ("**Statutory trust**") or CASS 5.4 ("**Non-Statutory Client Money Trust**"), if the Broker authorised by the UK Regulator to hold and control Client Money, in either of which cases the Insurer consents to such Monies being co-mingled with the Broker's other Client Money. The relevant Pen entity further confirms that in these circumstances the Insurer consents to its rights with regard to Monies held in the Broker's Client Money

account being subordinated to those of the Broker's clients in accordance with CASS 5 and further agrees that any interest earned on the Monies in the said account shall accrue to the Broker; or

- (ii) in a bank account designated a trust account, in which case the UK Regulator's Client Money Rules shall not apply to the Insurer Monies. For the purpose of this clause 6.1(ii), the Broker must write to the bank requesting the bank to acknowledge to the Broker in writing ("**Bank's Written Acknowledgement**") that all Monies standing to the credit of the trust account are held by the Broker as trustee of the Insurer(s) (or if relevant in Scotland, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against Monies in that account in respect of any sum owed to it on any other account belonging to the Broker, and that the title of the account sufficiently distinguishes that account from any account containing other money belonging to the Broker, and is in the form requested by the Broker.

- 6.2 In those instances specified in the List of Insurers where risk transfer is not cascaded to the Broker, or if the Broker is advised at the time of placement prior to binding, Monies must be held by the Broker in one of the following manners:

- (i) in a Statutory trust or a Non-Statutory Client Money Trust if the Broker is authorised by the FCA to hold and control Client Money; or
- (ii) the Broker must establish and maintain procedures to ensure that Monies received will be in the form of either cheques direct from the client's account made payable to the relevant Pen entity, via that relevant Pen entity's direct debit facility, via BACS payment or by credit card to the relevant Pen entity.

- 6.3 The Broker, if it is an Appointed Representative, must establish and maintain procedures which it has agreed in writing with its Principal to ensure that Monies are handled in accordance with this clause 6 and the UK Regulator's Client Money Rules relating to the handling of Monies by Appointed Representatives.

- 6.4 On Pen's written request, the Broker shall send a copy of the Bank's Written Acknowledgement to Pen as soon as reasonably practicable to the address set out in clause 28.

- 6.5 Pen will notify the Broker of any Insurer added to or changes to existing Insurers on the List of Insurers where in respect of such Insurer risk transfer will not be cascaded to the Broker. Such notice will have immediate effect upon receipt by the Broker. Save as set out above, the List of Insurers may be updated from time to time by Pen without notice.

7 Handling of Monies by Pen

- 7.1 Pen will hold Insurer Monies in one of the following

manners, in each case subject to such conditions and/or restrictions as the Insurer(s) may impose:

- 7.1.1 in a Non-Statutory Client Money Trust, pursuant to the UK Regulator's Client Money Rules. Monies shall be paid into a client bank account as described in CASS 5.4; or
- 7.1.2 in a bank account which is designated an "**Insurer Trust Account**", in which case the UK Regulator's Client Money Rules shall not apply to the Insurer(s) Monies so held.

8 Accounting

- 8.1 In respect of Monies held under this Agreement, the Broker, in accordance with clause 28, shall advise Pen within seven (7) days of receipt of any request from Pen, whether it has received any specified premiums. The Broker shall notify Pen as soon as possible, and in any case within no more than 2 days, if the Insured has failed to pay the premium (or as the case may be, any provisional premium) on the date that it becomes overdue.
- 8.2 On receipt of a notification in accordance with clause 8.1, Pen reserves the right not to retain the Insured on risk for a further period, or to cease cover thereafter, in each case, by notifying the Broker. The Broker will comply with any instructions given by Pen, provided that there shall be no obligation on Pen or the Broker whatsoever to fund premium, IPT, or any part thereof, which has not been paid by the Insured, or by any third party funding the premium on behalf of the Insured.
- 8.3 Notwithstanding clause 8.2 above, the Broker will be responsible to Pen for the premium due (including Taxes) if the Broker requests Pen (or the Insurer, as applicable) to pay a claim before payment to Pen of the premium due in respect of the Insurance. No payment in respect of a claim will be made unless and until all premium due has been paid by the Insured or by any third party funding the premium on behalf of the Insured.
- 8.4 Provided the Broker shall itself have received the premium but subject always to clause 8.3 above, the Broker shall pay such premium (net of Commission, but including Taxes) to Pen 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 Pen and the Broker. 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 Pen as soon as reasonably possible.
- 8.5 Unless otherwise agreed, the Broker shall remain liable to Pen for premiums and Taxes where Section 53(1) and Section 53(2) of the Marine Insurance Act 1906 apply.
- 8.6 In the event of the cancellation or avoidance of a contract of Insurance, where Pen 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). Unless otherwise obliged to by Law, regulation or terms of the contract of Insurance, Pen shall refund premiums net of Commission.

- 8.7 As part of paying the Broker's client's claim, Pen may be required to deduct the value of sums due (such as premiums or instalments under a credit scheme) before sending the balance of any claims payment to the Broker for onward transmission to the Broker's client.

9 Currency conversion

- 9.1 Pen may have to convert funds to another currency in order to settle amounts due to the Insurer. If a repayment of funds is due to or requested by the Broker or the Insured after the currency is converted, any such payment will be made in the currency into which the funds have been converted. Any shortfall arising from currency exchange differences remains the liability of the party requesting such repayment.
- 9.2 If the Broker pays a premium in a different currency or to a bank account in a different currency from that requested, Pen may, at its discretion, either return the funds to the Broker 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 currency exchange differences remaining the Broker's liability.
- 9.3 Any surplus arising from currency exchange differences will be retained by Pen.

10 Taxes

- 10.1 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 Pen or the Insurer 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.
- 10.2 Where the Broker, under the authority granted to it by the Insurer, processes and pays Taxes on behalf of Pen, which Taxes are related to premium in respect of any Insurance Business, the Broker will hold such Monies in accordance with clause 6 for Pen and account to Pen for amounts received by the Broker in respect of such liability for Tax which Pen may have in respect of that Insurance Business.

11 Compliance

- 11.1 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 Pen under this Agreement.
- 11.2 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.

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

11.4 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. Such notices shall be forwarded to Pen in accordance with clause 28.

11.5 Each Party shall comply with and co-operate in respect of the observance of, any applicable international economic, financial or trade sanctions legislation which bind the relevant customer, the Broker, Pen or the Insurer.

12 Data Protection

12.1 Each Party warrants to the other that where required by the legislation, it is and will remain registered under (if relevant) and will comply with the Data Protection Legislation.

12.2 The Broker warrants to Pen that it will process any Personal Data (as defined in the Data Protection Legislation) acquired for or pursuant to this Agreement in accordance with the Data Protection Legislation. Where the broking of Insurance Business or other activity involves the processing of any Personal Data supplied by the Broker whether directly or through any third party, in whatever form, the Broker, in respect of any such Personal Data supplied by it will:

12.2.1 ensure that the Personal Data has been or will be obtained in accordance with the Data Protection Legislation; including where required by, and in accordance with, the Data Protection Legislation, obtaining the consent of the data subjects: (i) to the transfer of the Personal Data to Pen; and (ii) to enable Pen to Process the Personal Data; and (iii) as may otherwise be required in order for Pen to carry out all other activities associated with the provision of the Insurance Business in accordance with the Data Protection Legislation;

12.2.2 ensure that the Personal Data can be lawfully processed by Pen, or by any Pen Associate Body, in the manner anticipated;

12.2.3 ensure that the Personal Data is accurate and up to date;

12.2.4 ensure that all amendments to any Personal Data necessary to comply with Data Protection Legislation are notified to Pen promptly; and

12.2.5 refer to Pen any request from a data subject for access or changes to the Personal Data under the Data Protection Legislation.

12.3 The Broker warrants that it has adequately informed

any Data Subject (as defined in the Data Protection Legislation) of the transfer to Pen and to any Pen Associated Body of any Personal Data obtained pursuant to this Agreement, prior to such transfer taking place, including but not limited to making available Pen's Privacy Policy, that can be found at <https://www.penunderwriting.co.uk/Privacy-Policy>

12.4 The Broker will at all times during and after the subsistence of this Agreement, indemnify Pen and any Pen Associated Body against any proceedings, losses, costs, claims, demands, fines or expenses which Pen or such Pen Associated Body suffers or incurs arising out of or in connection with the failure of the Broker or of any third party who has supplied Pen or any Pen Associated Body with Personal Data on behalf of the Broker to comply with the provisions of the Data Protection Legislation and the data protection provisions contained in this Agreement.

12.5 Pen is the data controller of any personal data that the Broker provides to Pen. Pen collects and processes personal data in order to offer and provide insurance services and policies and to process claims. Personal data is also used for business purposes such as fraud prevention and detection, financial management, to generate risk modelling, conduct analytics including to advise, improve and develop our products and services and to comply with our legal and Regulatory Requirements. This may involve sharing information with, and obtaining information from, Pen Group and third parties such as (re)insurers, other brokers, loss adjusters, credit reference agencies, service providers, professional advisors, our regulators or fraud prevention agencies.

12.6 Pen may record telephone calls to help Pen monitor and improve the service it provides as well as for regulatory purposes.

12.7 Pen's Privacy Notice is available for the Broker to further understand how Pen uses the Broker's or the Broker's client's personal data, which includes information as to how such data is used, shared, disclosed and retained, rights in relation to the Broker's or the Brokers' client's personal data and how to contact Pen's Data Protection Officer. Additionally, Pen, from time to time may make important updates to its Privacy Notice and these may in turn affect the way Pen uses and handles personal data. The Broker accepts this and to ensure it is aware of any changes that may affect the Broker of the Broker's client, the Broker shall periodically review Pen's Privacy Notice.

13 Management Information

If agreed between the Parties, the Broker shall provide Pen with management information containing such information, at such intervals and by such method as may be agreed between the Parties from time to time.

14 Termination

14.1 This Agreement shall terminate:

14.1.1 At any time by one Party giving 30 days' written notice of termination to the other Party, such notice to be given in accordance

- 14.1.2 Immediately, without notice, should either Party become the subject of voluntary or involuntary rehabilitation or liquidation proceedings (save for the purposes of a malgamation 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;
- 14.1.3 Immediately, without notice, should the Broker have any authority or permission granted to it by the UK Regulator withdrawn or altered by the UK Regulator in such a manner as materially to affect in any way the Broker's ability to introduce, arrange, conclude, administer, perform or otherwise be involved with any Insurance Business which is carried out between the Parties under this Agreement.
- 14.2 Following termination:
- 14.2.1 Subject to clause 14.3, the authority granted to the Broker under clause 2.3 shall cease and the Broker shall not undertake any activities on behalf of the Insurer or Pen under this Agreement except where expressly stated to the contrary.
- 14.2.2 The Parties will together decide on the procedure for administering the Insurance Business current at the time of termination.
- 14.2.3 The Broker will make all reasonable efforts to provide Pen with contact details for any Insured or other party with whom Pen has contracted in the conduct of Insurance Business where:
- 14.2.3.1 The Broker has acted as the agent of Pen; and/or
- 14.2.3.2 Such information is where permissible the Parties will remain liable to perform their respective 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.
- 14.3 Termination of this Agreement shall not affect the continuance in force of express or implied rights and obligations accrued including in respect of Commission, profit Commission and Monies due in respect of policies administered under this Agreement.
- 14.4 Pen will not be responsible or liable to the Broker and/or the Broker's client for any direct or indirect loss which the Broker, the Broker's client or any other party may suffer as a result of termination of this agreement.
- 15 Professional Indemnity and Liability**
- 15.1 Each Party shall maintain professional indemnity insurance to the level required by the UK Regulator.
- 15.2 If Pen or any of the Pen Group are liable to the Broker, in respect of any losses, liabilities, damages, costs, expenses or claims arising out of or in connection with the services (collectively "Losses") and (subject to the following paragraph) any other person is liable to the Broker in respect of some or all of the same Losses (on any basis), Pen's liability and that of the Pen Group in respect of such Losses shall be limited so as to be proportionate to the relative contribution of Pen and the Pen Group having regard to the extent of responsibility of such other person for those Losses.
- 15.3 In determining the existence and extent of the responsibility of such other person for Losses for the purposes of clause 15.2, no account should be taken of any agreement limiting the amount of damages payable by such person or of any actual or possible shortfall in recovery of this amount (whether this is due to settling or limiting claims, or any other reason).
- 15.4 To the extent permissible under applicable laws, regulations or rules, the aggregate liability of Pen and the Pen Group to the Broker you and the Broker Group in respect of all Losses however caused, including arising as a result of breach of contract or statutory duty, negligence or any other act or omission or breach of duty shall be limited to £10 million (ten million pounds), or such other amount in US \$ or any other currency that is specifically agreed with you in writing.
- 15.5 Notwithstanding clause 15.4, Pen and the Pen Group shall not be liable to the Broker and the Broker Group companies, whether as a result of breach of contract or statutory duty, negligence or any other act or omission or breach of duty, for any loss of profit or any special, indirect or consequential Losses arising under or in connection with the services provided. The Broker agrees that Pen and the Pen Group have a legitimate interest in limiting the exposure of Pen and the Pen Group directors, officers and employees to litigation and that the Broker will not bring or assist in bringing any claim against any of the Pen or Pen Group directors, officers or employees in their personal capacity arising out of or in connection with the services provided.
- 15.6 The Broker will be held liable for any loss sustained by Pen or the Insurer in respect of any errors, omissions or acts of the Broker, its employees, agents or representatives, including to the extent the Broker or its employees, representatives or agent exceeds the scope of the authorities granted to it by Pen (or the Insurer, as applicable).
- 15.7 Pen may at any time, without notice to the Broker, set off any liability of the Broker to Pen against any liability of Pen to the Broker, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement.
- 15.8 If the liabilities to be set off, as set out in clause 15.4, are expressed in different currencies, Pen may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Pen of its rights under this clause will not limit or affect any other rights or remedies available to us under this Agreement or otherwise..

16 Access to Records

- 16.1 The Broker will retain all of the Records created or held by it in its capacity as agent of Pen 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 (6) years and in any event the minimum periods required by Law or any regulatory body with jurisdiction over the Broker, Pen or the Insurance Business.
- 16.2 The Broker agrees to allow Pen, on reasonable notice of not more than thirty (30) days, to inspect, conduct periodic auditing checks and/or to take copies of the following:-
- 16.2.1 The accounting records pertinent to any Insurance Business, including, but not limited to, 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
- 16.2.2 Documents as may be in the possession of the Broker which were disclosed to Pen 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.
- 16.3 In the event that Pen requests the Broker to carry out any functions or duties on its behalf, such as the appointment of loss adjusters, lawyers or other professional adviser, or the Broker otherwise acts as an intermediary between Pen and its representatives or agents:
- 16.3.1 The Broker accepts Pen's appointment or instructions on the basis that the information received by the Broker in respect of a claim made upon any Insurance Business is disclosable to the Broker's client.
- 16.3.2 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 Pen, other than documents over which the Broker has a proprietary commercial interest.
- 16.3.3 The Broker will take reasonable steps to retain, maintain and safeguard any of Pen's documents in the Broker's possession in accordance with any Regulatory Requirements which apply to Pen and of which the Broker has notice.
- 16.3.4 On termination of this Agreement for whatever reason and on reasonable notice the Broker will deliver up to Pen all such documentation, if requested.
- 16.3.5 Pen reserves the right to conduct periodic auditing checks on any activities carried out by the broker on behalf of Pen

17 Confidentiality

- 17.1 During the course of this agreement the Parties shall both provide the other with information (other than personal information) and each party will treat Information received from the other relating to this Agreement 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 relation to this agreement and except as may be required by applicable 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.
- This section will not apply to information which was rightfully in the possession of such party prior to this agreement or which is already public knowledge/ becomes so at a future date (otherwise than as a result of a breach of this section) or which is trivial or obvious.

18 Complaints

- 18.1 Each Party will notify the other within 48 hours and in accordance with the rules of the UK Regulator of any complaint concerning the other Party relating to Insurance Business subject to this Agreement. Please refer to our complaints policy at <https://www.penunderwriting.co.uk/Complaints>

19 Protection of Reputation

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

20 Conflicts of Interest

- 20.1 Each Party will adopt and/or maintain procedures to ensure that it has in place arrangements for the identification and management of any conflicts of interest that may arise in relation to any Insurance Business.

21 Disclosure

- 21.1 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.

22 Anti-Bribery, Corruption and Sanctions

- 22.1 The Broker shall ensure that at all times it complies with all laws, statutes and regulations that apply to the Broker relating to anti-bribery and corruption, including the UK Bribery Act 2010 and (if it applies to the Broker or any of the Broker Group) the US Foreign and Corrupt Practices Act 1977. Accordingly, if you accept gifts or hospitality offered to you by us or any of our group of companies, we will deem the acceptance to be in accordance with any gifts and hospitality policy/ies the Broker may have.

- 22.2 Pen is required to obtain adequate “Know Your Client” information about the Broker. In order to prevent bribery, corruption, fraud or other financial crime, we may take further steps, including notification to the relevant authorities, carrying out status and credit checks using credit reference agencies, and other screening background checking as appropriate.
- 22.3 To comply with financial crime or trade and financial sanction (“sanctions”) requirements, Pen may be prohibited from providing broking or risk consulting services, including placement and claims handling services; may be required to take actions such as freezing the funds in which parties subject to Sanctions have an interest; or may make regulatory notifications or licence applications as required or appropriate in accordance with Sanctions. Insurers and other third parties we deal with, such as financial institutions, may also apply their own policies or restrictions.
- 22.4 The Broker agrees and accepts that Pen is or may be restricted from providing insurance, broking, claims handling or other services that relate to Cuba and Iran, including because of significant difficulties in processing payments and other commercial and reputational considerations.
- 22.5 The Broker acknowledges and agree that Pen reserves the right to take steps to comply with financial crime or Sanctions (and Pen will not be liable to the Broker, or the Broker’s client, for this or for similar steps taken by third parties).
- 22.6 The Broker must inform Pen of all of the countries connected to the (re)insurance that it’s client requires. Pen reserves the right not to perform obligations under this agreement to the extent that this would be contrary to Pen’s commercial risk appetite or where performance would be impracticable including because of bank policies restricting the processing of premiums, claims funds or fees related to such countries or related parties.
- 22.7 Each Party will conduct appropriate due diligence and screening against applicable financial sanctions target lists (UK, EU, UN and US), and have systems and controls in place to prevent participation in activities which would place the Broker and/ or Pen in breach of financial sanctions legislation. Insurance cover and the parties involved in its provision or arrangement, may be, or may become subject to sanctions legislation. In such circumstances, insurance cover, associated payments and transactions may be prohibited or subject to restrictions. The Broker remains responsible for maintaining effective systems and controls to ensure it does not participate in activity which breaches financial sanctions legislation. The Broker will be aware that some policies may include clauses specifically dealing with sanctions imposed on states/ entities/individuals. The Broker should pay particular attention to such clauses as they may affect cover under the policy.

23 Assignment and Novation

- 23.1 Subject to clause 23.2 below, this Agreement cannot be assigned or otherwise transferred by either Party without the prior written consent of the other Party,

such consent not to be unreasonably withheld or delayed.

- 23.2 The Broker herein consents to the automatic novation of Pen’s rights and obligations under this Agreement to any company within the Pen Group, on such date as may be notified by Pen to the Broker in writing (the “**Novation Date**”). Pen warrants that such Pen Group company shall assume all of Pen’s rights and obligations under this Agreement from the Novation Date and both Parties accept, in the event of such novation, that Pen’s liabilities under this Agreement shall be limited to Pen’s activities pursuant to this Agreement prior to the Novation Date only.

24 Rights of Third Parties

- 24.1 A person who is not party to this Agreement has no right under the Contracts (Rights of Third Parties) Act

25 Dispute Resolution

- 25.1 The Parties to this Agreement are committed to resolving all disputes arising under it or otherwise touching 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:
- 25.1.1 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;
- 25.1.2 will attempt in good faith, if the matter is not resolved through negotiation within three months of one Party receiving written notice from the other, 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
- 25.1.3 only if the matter has not been resolved by mediation within six (6) months of the initial notification of the dispute, or if either Party will not participate in a mediation procedure, the Parties will refer the dispute in accordance with clause 30.

- 25.2 Notwithstanding the above, either Party may, at its own discretion, seek the immediate protection or assistance of the High Court of England and Wales by way of application for the injunctive or interim relief.

26 Severability

- 26.1 The invalidity, illegality or unenforceability of any of the provisions of this Agreement (or any part thereof) shall not affect the validity, legality or enforceability of the remaining provisions in this Agreement.

27 General Interpretation of this Agreement

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

28 Notices

- 28.1 If notice is given to Pen under this Agreement, it shall be in writing and sent to the relevant Pen entity and marked for the attention of the Company Secretary at the following address:

The Walbrook Building
25 Walbrook
London
EC4N 8AW

- 28.2 Pen shall be entitled to give the Broker a notice under or in connection with this Agreement (a) at the Broker's registered address (if a company or limited liability partnership) or at their last known address (in any other case) or (b) by email to the email address provided by the Broker on the Pen Portal.
- 28.3 A notice shall be deemed to have been served (a) if posted, at the expiration of two business days after posting; (b) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address; and (c) if by email at the expiration of 24 hours after the time of sending.

29 Force Majeure

- 29.1 Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. In the event of a force majeure the affected Party shall notify the other as soon as reasonably practicable.

30 Governing Law and Jurisdiction

- 30.1 This Agreement shall be construed according to English Law and any disputes arising under it shall, subject to the provisions of clause 25, be determined in the Law Courts of England and Wales.

31 Counterparts

- 31.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each Party has executed at least one counterpart.

32 Intellectual property rights

- 32.1 Pen (or its licensors) will retain all ownership, title, copyright and other intellectual property rights in all materials developed, designed or created by Pen before or during the provision of services to the Broker including systems, methodologies, software, know-how and working papers. Pen will also retain

all ownership, title, copyright and other intellectual property rights in all reports, written advice or other materials provided by Pen to the Broker. Pen shall grant the Broker a royalty - free licence to use those materials, but only for the purposes for which they are created under this Agreement and only for as long as this Agreement remains in force.


SCHEDULE 1

ELECTRONIC SYSTEM(S)

- 1 Pen will provide nominated staff of the Broker with usernames and passwords, use of which will give restricted access to the Electronic System(s).
- 2 Access will be restricted to;
 - 2.1 completion and amendment of risk submissions to Pen;
 - 2.2 completion and submission of proposed amendments in relation to the Broker's Policies which were originally brokered by use of the Electronic System(s); and
 - 2.3 view access to all the Broker's risk submissions regardless of outcome.
- 3 If Pen becomes aware or suspects that any unauthorised person has obtained or has attempted to obtain access to the Electronic System(s) then Pen shall notify the user whose account was used for that attempt and shall immediately disable that account until a full investigation has been undertaken.
- 4 The Broker undertakes not to;
 - 4.1 attempt to obtain access to, use or interfere with data of Pen or data relating to matters other than those risks submitted by the Broker;
 - 4.2 permit the disclosure of any user account details by any individual user to any other person, including but not limited to other employees of the Broker; or
 - 4.3 input anything obscene, offensive or defamatory.
- 5 The Broker shall indemnify Pen against any loss, damage or liability which Pen may sustain or incur as a consequence of the Broker failing to comply with the above undertaking.
- 6 The Broker shall ensure that;
 - 6.1 passwords are kept secure and that each member of the Broker's staff keep their password confidential at all times; and
 - 6.2 the Broker uses and processes any Personal Data contained in the Electronic System(s) only in accordance with the provisions of the Data Protection Legislation.
- 7 Pen shall use reasonable endeavours to maintain the Electronic System(s) in operation 24 hours per day, save for (i) scheduled maintenance outside normal business hours in the UK or (ii) emergencies requiring or resulting in the unavailability of the Electronic System(s), but Pen makes no warranties as to the availability of the Electronic System(s).

- 8 Notwithstanding the above Pen reserves the right to;
 - 8.1 withdraw all or any part of the Electronic System(s) at any time with immediate effect;
 - 8.2 alter the areas of the Electronic System(s) to which the Broker has the right of access; and
 - 8.3 stipulate further terms of use of the Electronic System(s) on the Electronic System(s) from time to time.
- 9 Pen shall not be liable for any loss or damage sustained or incurred by the Broker as a result of any use, failure or breakdown of the Electronic System(s).
- 10 In the event that any of the Broker's staff that has been provided with a username and password to access the Electronic System(s) leaves the Broker's employment during the term of this Agreement, the Broker shall, without undue delay, notify Pen of the same.

Signed for and on behalf of Pen Underwriting Limited,

Signed	
Name of Signatory	Tom Downey
Position	Chief Executive of Pen Underwriting Limited
Date	01 April 2021

This Agreement shall be deemed to have been signed by both Parties on the date that you (on behalf of the Broker) electronically submit to Pen via the Pen Portal acceptance to be bound by the Agreement.

Once electronic acceptance has been submitted by you (on behalf of the Broker) to Pen, an acceptance of terms and signature receipt ("**Acceptance Receipt**") will be sent to you via e-mail and also available to you on the Pen Portal which shall be deemed to be the Commencement Date of this Agreement.

This Agreement shall be read in conjunction with your Acceptance Receipt, which forms part of this Agreement.

Pen Underwriting Ltd is authorised and regulated by the Financial Conduct Authority. Registered in England and Wales under Company Number 5172311.

Registered Office (The Walbrook Building, 25 Walbrook, London, EC4N 8AW.