

# Terms of Business Agreement (TOBA)

## Parties

1. Markham Special Risks - MSR (a division of Markham Private Clients Limited), St. John's Innovation Centre, Cowley Road, Cambridge, CB4 0WS, United Kingdom
2. Producing Broker or Agent:

## Definitions and Interpretation

**Policyholder** means a person or legal entity or entities to whom a special contingency policy of insurance has or had been issued by American International Group UK Limited.

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

In this Agreement unless otherwise specified, the following words and expressions shall have the following meanings:

**Client** means a person or legal entity or entities that are a Client of the Producing Broker or Agent.

**FCA** means the UK Financial Conduct Authority or any successor regulatory body or bodies.

**Insurance Business** means any special contingency policy of insurance which a Producing Broker or Agent refers to MSR.

**Producing Broker or Agent** is the entity or person named in Parties 2.

## Term

1. The Agreement shall commence upon receipt of the signed Agreement by the **Producing Broker or Agent** and, subject to clauses 19 to 23 (inclusive) of this Agreement, shall continue unless terminated by either party giving not less than 30 calendar days written notice to the other.

## Relationship

2. The **Producing Broker or Agent** shall refer **Insurance Business** to MSR on behalf of the **Producing Broker or Agent's** American International Group UK Limited special contingency business. For the avoidance of doubt, this Agreement does not authorize or permit the **Producing Broker or Agent** to carry out Insurance Mediation Activities (as defined in the **FCA Handbook**) in the United Kingdom, unless the **Producing Broker or Agent** already has prior approval from the **FCA** to carry out such Insurance Mediation Activities.
3. MSR shall have the right to decline the **Insurance Business** with the prior approval of American International Group UK Limited at any time without any requirement for American International Group UK Limited to give a reason. For the avoidance of doubt, MSR is not authorized to bind American International Group UK Limited, issue special contingency policies of insurance or endorsements or defend, dispute or settle claims unless expressly authorized to do so in writing by American International Group UK Limited.
4. MSR has the right to alter the terms of this Agreement subject to the notice period and to the requirement to seek the prior written consent of American International Group UK Limited.
5. The **Producing Broker or Agent** must disclose to **Policyholders** and potential **Policyholders**, prior to the conclusion of the special contingency policy of insurance, that MSR is a tied agent of American International Group UK Limited.
6. The **Producing Broker or Agent** does not have the authority (and shall not hold itself out as having such authority) to:
  - a) conclude contracts in the name of MSR or in the name of American International Group UK Limited; or

- b) Agree to any alterations to offers or quotations issued by MSR on behalf of American International Group UK Limited.

#### Processing of business

7. The **Producing Broker or Agent** will provide promptly to MSR and to American International Group UK Limited (either directly or via MSR) all material information notified to the **Producing Broker or Agent** by its **Client** or which is otherwise in the possession of the **Producing Broker or Agent** in relation to the **Insurance Business**.
8. The **Producing Broker or Agent** will provide promptly to the **Client** all necessary documentation relating to the **Insurance Business** to ensure each **Client** is fully aware of all the terms and conditions of the **Insurance Business**, in compliance with **FCA** and any other legal requirements.
9. If a renewable policy is not to be renewed, the **Producing Broker or Agent** shall notify MSR on or before the renewal date.

#### Client money

10. MSR will ensure that all **Client** and insurer monies are held by MSR in a non-statutory trust bank account in accordance with **FCA** regulatory requirements.

**Client** money is held as agent of American International Group UK Limited under an agreement which specifies that premiums and claims monies held by MSR are held as agent for American International Group UK Limited. This is termed 'Risk Transfer'.

#### Commission and costs

11. During the term of the Agreement, it is agreed that following receipt of an invoice **Clients** will pay premiums to MSR in accordance with the payment terms and conditions specified on the invoice and/or policy of insurance.
12. The **Producing Broker or Agent** agrees to repay upon demand to MSR an appropriate proportion of any Commission received if this becomes repayable in full or part by MSR to any other party.
13. The **Client** is solely responsible and primarily liable for the payment of all premiums in respect of **Insurance Business** placed pursuant to this Agreement.
14. For every **Policyholder** MSR will issue the **Producing Broker or Agent** with an invoice showing details of the payments required from the **Policyholder** and the timeframes in which payment is required. The **Producing Broker or Agent** shall be responsible for sending the invoice to the **Policyholder**.
15. MSR shall be entitled to treat any failure by the **Policyholder** to settle all or any invoiced amounts on time in accordance with clause 11 as a material breach of this Agreement and to notify American International Group UK Limited accordingly. For the avoidance of doubt the **Producing Broker or Agents** shall be unaffected by any failure to obtain monies from its **Client** or any arrangements whereby the **Producing Broker or Agent** has allowed credit to the **Client**. Without prejudice to its other rights under this Agreement, MSR reserves the right to suspend this Agreement for late payment and charge interest on the sum outstanding at the rate applicable from time to time under the Late Payment of Commercial Debts (Interest) Act 1998.
16. In respect of **Insurance Business** where instructions to proceed are received from the **Producing Broker or Agent** but are subsequently revoked, a "Time on Risk" charge will be made by MSR or American International Group UK Limited which must be settled by the **Producing Broker or Agent** unless otherwise agreed.
17. Upon termination of this Agreement the **Producing Broker or Agent** will be entitled to Commission in respect of brokerage earned for **Insurance Business** placed prior to the date of termination on behalf of each **Client** introduced by the **Producing Broker or Agent**.
18. The **Producing Broker or Agent** shall be responsible for all its expenses incurred in placing **Insurance Business** with MSR.

## Termination

19. This Agreement may be terminated immediately by either party by written notice to the other party if:
  - a) either party fails to remedy a breach of any of its obligations under this Agreement within 30 calendar days after receiving written notice requiring it to do so.
  - b) either party becomes insolvent or suspends payment of its debts or enters into any arrangement with its creditors or ceases or threatens to cease to carry on its business.
  - c) either party enters into liquidation whether voluntary or compulsory (except for the purpose of and followed by amalgamation or reconstruction) or has a receiver appointed.
  - d) Either party is directed to do so by the Financial Conduct Authority.
20. This Agreement may be terminated immediately by the **Producing Broker or Agent** by written notice to MSR if MSR ceases to be authorized to conduct insurance mediation business in accordance with the Financial Services and Markets Act 2000 or such other relevant legislation as may vary or replace that Act.
21. Any termination shall take effect without prejudice to the rights and obligations of the parties which may have accrued at the date of such termination.
22. Following termination MSR and the **Producing Broker or Agent** will remain liable to perform their obligations in accordance with the terms of this Agreement in respect of all **Insurance Business** subject to this Agreement until all such business has expired or has been cancelled.
23. Should the agreement between MSR and American International Group UK Limited be terminated this Agreement shall also be terminated by written notice to the **Producing Broker or Agent**.

## Compliance and access to records

24. The **Producing Broker or Agent** acknowledges the **FCA's** requirement that MSR is obliged to satisfy itself as to the suitability of the **Producing Broker or Agent** to act as a broker of **Insurance Business** and agrees to provide MSR, its advisors and any other third parties (including the **FCA**) with all information reasonably requested to enable MSR to comply with its obligations pursuant to this clause 24.
25. The **Producing Broker or Agent** agrees to allow MSR, Insurers and its advisors, on reasonable notice, to inspect and take copies of all relevant documents relating to the **Insurance Business** and the **Clients** including, but not limited to:
  - a) the accounting records pertinent to any **Insurance Business** including information relating to the receipt and payment of premiums and claims and documentation created under this Agreement such as any insurance contract or slip endorsements, addenda or bordereaux in the possession of the **Producing Broker or Agent** relating to the **Insurance Business**; and
  - b) documents as may be in the possession of the **Producing Broker or Agent** which were disclosed to MSR or Insurers by the **Producing Broker or Agent** 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.
26. The **Producing Broker or Agent** will otherwise keep confidential all information relating to any **Client's Insurance Business**.
27. The **Producing Broker or Agent** shall pay due regard and co-operate in respect of, the observance of any applicable international economic, financial or trade sanctions legislation which could bind any party or insurer.
28. The **Producing Broker or Agent** shall 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) and shall maintain (whether or not the Parties are associated persons for the purpose of the Bribery Act 2010) on an on-going basis its own anti-corruption and bribery policies and procedures to prevent corruption and bribery offences and will enforce them where applicable.

## Data Protection

29. The **Producing Broker or Agent** and the Company shall comply with all applicable obligations imposed by or made under requirements of the Data Protection Law (DPL), together with any Regulations and Orders made under it from time to time and any applicable Codes of Practice.
30. Without prejudice to the generality of Clause 29, whether the **Producing Broker or Agent** or the Company (the "Disclosing Party") discloses data to the other (the "Recipient") in connection with the operation of this Agreement:
  - (a) the Disclosing Party will ensure that it obtains all necessary consents so that the personal data that it provides to the Recipient can be lawfully used or disclosed by the Recipient in the manner and for the purposes anticipated by this Agreement; and
  - (b) the Recipient will ensure that such personal data is only used for purposes anticipated by this Agreement.
31. The Parties shall work together to ensure that each of them is able to process the Personal Data it processes under or in connection with this Agreement for the purposes contemplated by this Agreement lawfully, fairly and in a transparent manner and in compliance with the Data Protection Law. This shall include but not be limited to entering into such other written agreements as may be required from time to time to enable each Party to comply with the Data Protection Law.
32. If either Party holds any information collected pursuant to this Agreement as a data processor, it undertakes to protect that data as if it were a data controller for the purposes of the seventh data protection principle in Schedule 1 to the DPL.
33. The **Producing Broker or Agent** will at all times during and after the subsistence of this Agreement, indemnify MSR against any proceedings, losses, costs, claims, demands, fines or expenses which MSR suffers or incurs arising out of or in connection with the failure of the **Producing Broker or Agent** or any third party who has supplied the **Producing Broker or Agent** with personal data to comply with the provisions of the Data Protection Legislation.
34. For the purposes of the clause 'Controller' means the person which, alone or jointly with others, determines the purposes and means of the processing of Personal Data. "Data Protection Law" means all applicable statutes and regulations in any jurisdiction pertaining to the processing of Personal Data, including but not limited to the privacy and security of Personal Data; "Data Subject" means the identified or identifiable natural living person to whom the Personal Data relates; 'Personal Data' means any information relating to the 'Data Subject' and "Personal Data Breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

## Complaints

35. Any complaints in relation to the **Insurance Business** placed pursuant to this Agreement should be made in writing to:
- Giles Greenfield.  
MSR - Markham Special Risks  
St. John's Innovation Centre,  
Cowley Road,  
Cambridge,  
CB4 0WS,  
United Kingdom
36. The **Producing Broker or Agent** must immediately notify MSR of any complaint received from a **Client** in relation to the **Insurance Business**.

## Intellectual Property Rights

37. The **Producing Broker or Agent** shall not acquire by reason of the Agreement or otherwise any right or interest in any intellectual property rights of MSR or any associated company.

## General

38. Neither party is entitled to assign or subcontract all or any of its obligations under this Agreement without the other party's prior written consent (such consent not to be unreasonably withheld).
39. MSR and the **Producing Broker or Agent** will execute and do such acts, deeds and things that may be necessary for the purpose of carrying into effect all the provisions of this Agreement.
40. The **Producing Broker or Agent** 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 the **Insurance Business**.
41. Any notice required to be given under this Agreement must be in writing to the email address held on file or sent by recorded delivery post to the registered office for the time being of the party to which it is addressed. A notice will be deemed to be given at the time of delivery if delivered in hand or email and 48 hours after posting if posted.
42. If any court or competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.
43. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this Agreement.
44. This Agreement will be governed by and construed in accordance with the laws of England and the Courts of England have exclusive jurisdiction to determine any disputes.
45. A right is included under the Contracts (Rights of Third Parties) Act 1999 that American International Group UK Limited may enforce any term of this Agreement against the **Producing Broker or Agent**.

Continued...

SIGNED on the date set out below by authorized representatives of the parties hereto:

<b>On behalf of MSR</b>	<b>On behalf of the Company, Producing Broker or Agent.</b>
Signature:	Signature:
Name:	Name:
Title / Position:	Title / Position:
Address:	Address:
Postcode:	Postcode:
Date:	Date:

Please attach a photo of one of the following:

- Copy of Passport
- Identity Card

(If you are not able to provide a photo, please provide a scanned copy)

Please retain a copy of both for future reference and scan and return the signed Agreement by email to **Gabriella.Suarez@aig.com**

Or by post to our office:

Gabriella Suarez  
MSR – Markham Special Risks  
St. John's Innovation  
Centre, Cowley Road,  
Cambridge, CB4 0WS,  
United Kingdom

# Markham Special Risks

Company/Sole Trader Information (fill as appropriate)

(TOBA)

Company Name/ Sole Trader Name:	
Year Founded:	
Previous Names:	
Company/Sole Trader Registration Number:	
Country of Incorporation:	
Principal Business Activities:	
Director Names:	
Company Secretary (if applicable)	
Date of Last Accounts:	
Registered Address:	