

MARKET BULLETIN

REF: Y4332

Title	Guidance on various Binding Authority clauses
Purpose	To provide guidance to the market regarding - <ol style="list-style-type: none"> i. the use of new model LMA clauses (UK and US) for binding authorities relating to holding insurance monies. ii. the use of a model "no-set off" letter that may be used by coverholders with their banks. iii. The use of new model wording to address TUPE issues and to inform the market of the updated Delegated Authority Code of Practice
Type	
From	Peter Montanaro, Head of Delegated Authorities
Date	13/11/2009
Deadline	
Related links	http://www.lloyds.com/Lloyds_Market/Tools_and_reference/Lloyds_trust_deeds_2/Premiums_trust_deeds.htm http://fsahandbook.info/FSA/html/handbook/CASS/5 http://fsahandbook.info/FSA/html/handbook/Glossary/ http://www.lloyds.com/Lloyds_Market/Market_participants/Coverholders/Coverholder+reference+information.htm

The Delegated Underwriting Committee has recently discussed with Lloyd's certain issues which may be relevant to managing agents when establishing the terms of binding authorities.

Certain model clauses have been prepared and this bulletin provides associated guidance. In addition, Lloyd's has taken this opportunity to re-issue its Code of Practice for managing agents which provides, amongst other things, guidance regarding contract certainty for binding authorities.

I. Coverholders – Insurance Monies Clauses / “No set off” letters

Managing agents need to ensure that coverholders to whom they have delegated authority handle insurance monies (i.e. premiums, return premiums and claims) in a prudent and appropriate manner and in accordance with the relevant provisions of the [Lloyd's Premium Trust Deeds](#).

In addition, in the context of UK coverholders they will also need to comply with the relevant client money rules (set out in the [FSA handbook at CASS 5](#))

Each of the LMA model binding authority wordings include clauses that are designed to ensure that insurance monies are properly held. However, it is clear that those clauses may not be suitable in all occasions. In particular, as currently drafted they do not -

- a) in the case of UK coverholders, who are permitted by the managing agent to hold PTF money as “client money”, expressly reference the relevant CASS rules;
- b) do not allow for co-mingling of insurance assets even in circumstances where such co-mingling would otherwise be appropriate.

Accordingly, Lloyd's has worked closely with the LMA and LIIBA as a result of which LMA has produced two model “separate bank account” clause wordings for use in conjunction with the relevant LMA binding authority agreements. It is likely that these wordings will be especially relevant where the coverholder in question is also a broker and may therefore wish to handle insurance monies both in respect of binding authority and open market business. However, managing agents should note that they are free to use their own bespoke wording so long as it complies with relevant Lloyd's and FSA requirements.

Where a managing agent allows a coverholder to hold and maintain a separate “claims fund” then it must be held in a separate trust account in the name of the trustees of the relevant premium trust fund (unless Lloyd's agrees otherwise).

The two clauses are for use in respect of UK and US coverholders. In the event that there is sufficient demand for equivalent clauses for other jurisdictions consideration will be given to producing other model clauses.

We have also produced a model “no-set off” letter that non- FSA regulated coverholders may wish to use with their banks to acknowledge the status of the account. (FSA coverholders already have a set of industry model bank letters)

Guidance Notes

1. UK Separate Bank Account Clause

- 1.1. Attached as Annex 1 to this bulletin is a copy of the new model LMA revised separate bank account clause wording (LMA 5142).
- 1.2 This clause assumes that the insurance monies, although PTF moneys, are being held as “client money” and accordingly deposited into a client bank account held in accordance with terms of CASS 5.
- 1.3 This clause makes clear that the funds are received by the coverholder as assets of the Lloyd’s PTD and that they must be deposited immediately into a client bank account held by the coverholder on statutory or the non-statutory trust basis. This clause provides that underwriters are to be treated by the coverholder as its “clients” and that underwriters’ interests are to be subordinated to the coverholder’s policyholders.
- 1.4 Accordingly, where the coverholder holds either a statutory or non-statutory trust account (under CASS) for “client money” (likely to be the case where it also acts as broker) and the coverholder is to be permitted to deposit monies relating to the binding authority into that account (along with other client money) then LMA 5142 may be used. However, where the coverholder operates solely under a risk transfer arrangement this clause will not be suitable.
- 1.5 Under CASS rules an intermediary may be permitted to invest client moneys. However, if the managing agent thinks appropriate it may wish to prevent such investments by including the following sub-clause:-

33.5 No client money shall be invested by the Coverholder pursuant to CASS 5.5.14R in any designated investments (and for the purpose of this section “[client money](#)” and “[designated investments](#)” have the meanings given in the FSA Handbook Glossary).

2. USA Separate Bank Account Clause

- 2.1 Attached as Annex 2 to this bulletin is a copy of the new model LMA revised separate bank account clause wording (LMA 5141).
- 2.2 This clause has been prepared to cover the arrangement where a managing agent believes it prudent and appropriate to allow a US coverholder to co-mingle their insurance monies with other insurance monies (but not with any office monies).
- 2.3 This clause expressly states that the insurance monies are received by the coverholder as assets to the Lloyd’s PTD (or in the case of the US\$ denominated business as assets to the underwriters Lloyd’s dollar trust fund). In addition, clauses 33.2-33.4 provide details of the practical manner by which the coverholder shall hold the insurance monies and the purpose for which those monies may be used.

3. “No set-off” letters

- 3.1 Industry model “no set-off letters” already exist which are used with banks of UK intermediaries to put them on notice as to the status of the bank account being used to hold client money. These model letters provide that the bank has no right of set-off or counter-claim against those assets.
- 3.2 Lloyd's believes that use of such letters by all coverholders worldwide is a prudent and appropriate step in order to mitigate the risk that banks seek to claim moneys held in the premium account. Accordingly Lloyd's strongly recommends that managing agents should request that all their coverholders worldwide should undertake a similar exchange of letters with their banks. To assist this a pro-forma model wording has accordingly been produced for use in respect of non-FSA regulated business (Annex 3). Managing agents may of course work with their coverholders to produce other suitable wordings. However, it is hoped that the attached model no set-off letter will provide a useful basis for such an exchange of letters with the coverholder's bank.
- 3.3 It is however recognised that it would be administratively inconvenient for a coverholder to arrange for separate exchanges of letters to take place for the benefit of each managing agent with whom it holds a binding authority. For that reason it has been agreed with the LMA that only the “sponsoring” managing agent should request the exchange of letters. The letter itself however is addressed to “Lloyd's Underwriters” and therefore will be for the benefit of all managing agents.
- 3.4 Once the bank letter has been received signed it should be provided to Lloyd's Delegated Authorities Department who will hold that letter centrally. Therefore, further exchanges of letter should only need to take place if the coverholder changes its bank.
- 3.5.1 All new coverholder applications will be expected to include the bank letter. For existing coverholders sponsoring managing agents should arrange for the exchange to happen at the earliest convenient opportunity.

II. Transfer of Undertakings (Protection of Employment) Regulations 2006 – ‘TUPE’

In preparing contracts of delegation, managing agents may wish to consider the potential impact of the Transfer of Undertakings (Protection of Employment) Regulations 2006. In particular, to consider its implications for the possible consequent transfer of employees between coverholders and / or between coverholders and managing agents.

Draft wordings that may be incorporated into binding authorities have been attached for managing agents' consideration, together with guidance notes which explain the purpose and effect of the various provisions.

Two alternatives have been attached (Annex 4), which, broadly speaking, can be summarised as the “transfer of employees on expiry / termination of agreement approach” (Option 1) and the “no transfer of employees on expiry / termination of agreement approach” (Option 2).

Managing agents are advised to take their own legal advice when considering the application of these model wordings.

III. Code of Practice

[The Delegated Authority Code of Practice](#) has been updated to incorporate the various changes to process and oversight that have occurred since the previous version was written: in particular, to include more reference to the Standards, Service Companies and Atlas.

Questions

Questions in respect of this bulletin may be referred to Peter Montanaro, Head of Delegated Authorities (peter.montanaro@lloyds.com or 020 7327 5971).

Questions regarding LMA clause 5141 and 5142 may be referred to Adrian Graham at the LMA (Adrian.Graham@lloyds.com or 020 7327 8378).

Annex 1

SEPARATE BANK ACCOUNTS CLAUSE (UK)

(For use in conjunction with LMA Binding Authority Agreements)

SECTION 33 is amended to read as follows:

SEPARATE BANK ACCOUNTS

All monies received by the Coverholder under this Agreement, in respect of premium from insureds, reinsureds or their brokers or from the Underwriters in respect of claims and premium refunds shall be deemed to be received by the Coverholder on behalf of and at the risk of the Underwriters and:

- 33.1 shall be received by the Coverholder as assets of the Underwriters' Lloyd's Premiums Trust Funds (or, in the case of US Dollar denominated business as assets of the Underwriters' Lloyd's Dollar Trust Funds) and
- 33.2 shall on receipt be deposited immediately into a client bank account held by the Coverholder on the statutory trust or the non-statutory trust in accordance with CASS 5.3 or CASS 5.4 respectively of the FSA's Client Assets Sourcebook for the purposes there set out and on the basis that the Underwriters are to be treated by the Coverholder as its clients for purposes of CASS 5.3 to CASS 5.6 and that their interests under the trusts in CASS 5.3.2 R or CASS 5.4.7 R are to be subordinated to the Coverholder's clients who are not insurance undertakings.
- 33.3 This Section provides authority from the Underwriters for the Coverholder to retain for its own use and benefit any interest which shall accrue, in accordance with the terms of the Agreement, to the account described in 33.2 above.
- 33.4 Each of the Underwriters hereby consents to the co-mingling by the Coverholder in the said client bank account of all funds received by the Coverholder and paid by or due to the Underwriters in accordance with the Agreement with other monies received by the Coverholder from or on behalf of other insurers and policyholders.

LMA5142

9 October 2009

Annex 2

SEPARATE BANK ACCOUNTS CLAUSE (USA)

(For use in conjunction with LMA Binding Authority Agreements)

SECTION 33 is amended to read as follows:

SEPARATE BANK ACCOUNTS

All monies received by the Coverholder in a fiduciary capacity from or on behalf of the Underwriters:

- 33.1. shall be received by the Coverholder as assets of the Underwriters' Lloyd's Premiums Trust Funds (or, in the case of US Dollar denominated business as assets of the Underwriters' Lloyd's Dollar Trust Funds) and
- 33.2. shall on receipt be deposited immediately by the Coverholder into a premium account with assets standing to the credit of that account being held in a fiduciary capacity on behalf of the Underwriters (and/or other insurers or policyholders) for the purpose of the onwards transmission of those monies (for the purposes set out at 33.3.2) and the monies shall not be otherwise held or retained;
- 33.3. the premium monies account referred at 33.2 shall be held at a Federal Deposit Insurance Corp (FDIC) insured bank ("the bank"), shall be operated in accordance with any applicable local laws or regulatory requirements and
 - 33.3.1 shall be clearly identified to the bank as a premium monies account;
 - 33.3.2 may not be used by the Coverholder for any purpose other than for the purpose of settling accounts with the Underwriters (or other insurers with whom the Coverholder does business) or the payment of commissions, premium refunds or claims to clients or any other transactions where expressly authorised by the Underwriters;
 - 33.3.3 the assets held in the premium monies account may not be commingled with assets in respect of the Coverholder's general or operating account.
- 33.4. shall be identified in the Coverholder's book of account, separately from other funds similarly held by the Coverholder for other insurers and / or the Underwriters, such book of account to be reconciled on a regular basis, not less than monthly, with records being retained for inspection by the Underwriters or their representatives, who shall have the right at any time, without restriction or limitation to inspect and audit such records, and to make copies or extracts of any such records;
- 33.5. the Coverholder shall take all reasonable steps as may be requested by the Underwriters to put the bank on notice as to the nature of the premium monies account and that the bank is not to be entitled to, any charge, encumbrance or lien, or right of set-off, combination,

compensation or retention against monies standing to the credit of the premium monies account;

- 33.6. where required by any statute, law, or regulation, this Section shall also provide authority from the Underwriters for the Coverholder to retain for their own use and benefit any interest which shall accrue, in accordance with the terms of the Agreement, to the account described in 33.2 above.

LMA5141

9 October 2009

Annex 3

DRAFT NO SET-OFF LETTER (NON-FSA)

Model wording where industry model FSA letters not applicable

On bank headed paper

To Lloyd's Underwriters
c/o [Lead Managing Agent]
[Coverholder]

Date:

List all relevant accounts as follows

A/c No.

A/c Name: eg "[] Client money account"

ABC Bank ("the Bank") confirms that XYZ ("the Coverholder") maintains the above [current][checking] and/or [deposit]/[sweep account[s]] ("the Accounts") at the Bank.

The Bank confirms that:

- (a) the Bank is aware that the Coverholder holds moneys standing to the credit of [each of] the Account[s] in a fiduciary capacity on behalf of its clients and/or insurers; and
- (b) the Bank is not to be entitled to, any charge, encumbrance or lien, or right of set-off, combination, compensation or retention against moneys standing to the credit of [any of] the Account[s] [without the written consent of the Managing Agent¹].

The Bank also confirms that to the best of its knowledge there are at the date hereof no charges, encumbrances or liens over any of the Accounts and undertakes, so far as is within its power, not to permit the creation in favour of any person any charge, encumbrance or lien without the prior written consent of the Managing Agent.

Yours sincerely

Officer of the Bank

¹ Some banks may refuse to open any account unless they can recoup their charges and any indemnity from it. These should preferably be paid out of/secured on an office account of the Coverholder at the same bank.

Annex 4

LLOYD'S MARKET ASSOCIATION

UK BINDING AUTHORITIES

GUIDANCE NOTES FOR PROPOSED EMPLOYMENT PROVISIONS

OPTION 1

Option 1 proceeds on the basis that there will be no TUPE transfer of employees on commencement of the provision of services under a Binding Authority. However, Option 1 does provide for there being a TUPE transfer of employees from one Coverholder to a replacement Coverholder (or to the relevant Managing Agent, if the Managing Agent takes back responsibility for the work previously carried out by the Coverholder) on expiry or termination of the relevant Binding Authority.

The following comments are intended as a brief explanation of the purpose and/or effect of each provision.

Please note that although the drafting proceeds on the basis of there being no transfer of employees on commencement of the provision of services under a particular Binding Authority, as a matter of law, there may be a transfer. Accordingly, should the DUC require, we can provide drafting which would be appropriate for use in circumstances where the Underwriters consider that it would be appropriate for there to be a transfer of employees on commencement.

Clause 2 - Commencement

Clause 2.1 sets out the basic statement that the parties agree that there will be no transfer of employees on commencement of the provision of services by a Coverholder.

Notwithstanding the general statement set out in Clause 2.1, the provisions of Clause 2.2 set out the provisions which will apply in the event that there is an allegation or finding that there has actually been a transfer of employees from the Underwriters to the Coverholder under the TUPE Regulations.

The provisions state that in such circumstances each party is obliged to notify the other as soon as it becomes aware of such finding or allegation. They go on to set out the process for the Underwriter to make an offer of employment to re-employ the "transferring employee", together with an indemnity from the Underwriters in favour of the Coverholder in respect of any costs arising from a need to terminate the employment of the "transferring employee" by the Coverholder.

This provision proceeds on the basis that because the parties intended that there should be no transfer of employees then the equitable position is that any people who do transfer should return to employment with the Underwriter and the Coverholder is protected from any costs which it incurs as a result of having to terminate the employment of an employee for whom it has either no need or no wish to employ.

If the services which are the subject of a Binding Authority are ones which have previously been carried out by another Coverholder, the new Coverholder may request that this provision be extended to deal with possible transfers from the outgoing Coverholder.

Also, the Underwriters should be aware that if this provision is included and reviewed by the Coverholder's lawyers, it is likely that they may seek a wider indemnity to cover costs of

employment between the purported transfer date and date of termination of employment by the Coverholder, together with an indemnity against any other liabilities arising out of such termination (the latter being intended to protect the Coverholder against any other costs which it may incur as a result of not wishing to follow appropriate procedures prior to terminating the employment of the "transferring employee", such as unfair dismissal claims).

It would be a matter for commercial negotiation whether such requests would be accepted. The position as drafted is intended to be as favourable as possible to the Underwriters while still offering some degree of comfort to the Coverholder.

Clause 3 - Coverholder Personnel

Clause 3 sets out provisions which entitle the Underwriters to require the Coverholder to remove any employees whom the Underwriters deem to be inappropriate or otherwise unacceptable to the Underwriters or employees whose performance or conduct has been unsatisfactory or unacceptable. These type of provisions are often included where the party in the Underwriters' position is keen to maintain a significant degree of control over the service provision, to avoid damage being done to its business by unacceptable behaviour or poor performance. Thus the justification for their inclusion is more of a practical or commercial one than a legal one.

Clause 3.3 contains a general statement to the effect that no employees of the Coverholder shall become employees of the Underwriters.

Clause 3.4 is again an optional clause and provides that Coverholder employees should be required to sign confidentiality agreements prior to commencing work on the services.

Clause 4 - Key Personnel

This clause has been included in square brackets as it may not be appropriate to include it in all circumstances.

The Underwriters should consider whether or not there are any key employees involved in the services being provided under a particular Binding Authority, over whom the Underwriters would want to exercise a greater degree of control.

In addition, Clause 4.2 contains provisions which provide the Underwriters with a significant degree of control over the Coverholder's ability to replace key employees, including giving the Underwriters a general right to approve or disapprove the recruitment or assignment of a candidate nominated by the Coverholder.

Clause 5 - Provision of Information

This clause specifies what information the Coverholder shall give to the Underwriters either during the term of the agreement or prior to the termination of the Binding Authority. The clause is split into two parts. The first contains an obligation to provide generic information during the term of the Binding Authority, with additional more specific information being given immediately prior to termination in the second part of the clause.

In any given situation, the Underwriters should confirm whether all of the information is required or whether something less would be sufficient. For example, Clause 5.1 could be limited to the number of employees and aggregate employment costs.

The intention is to put the Underwriters in a position to be able to share as much information as possible with the potential replacement Coverholder to assist with matters such as planning for taking over the services and costing the provision of the services if employees are to transfer.

Clause 6 - Termination Provisions

Clause 6.2 sets out provisions which impose on the Coverholder restrictions on its ability to make changes to terms and conditions of employment, including salary and benefits during a restricted period prior to the expiry or termination of the Binding Authority. The purpose of these is to ensure that the outgoing Coverholder does not award substantial salary increases or generous contractual benefits which the replacement Coverholder would then have to honour, as the employees would transfer with a continued right to the increase or benefit. Similarly the provisions impose on the Coverholder restrictions on its ability to move employees in and out of scope. In other words they are intended to avoid the Coverholder cherry-picking the best employees engaged in providing the services under the Binding Authority, and putting its poorer employees onto that account so that they then transfer to the replacement Coverholder. In any given scenario not all provisions may be necessary, but the drafting provides a strong starting point from which to negotiate if it would be appropriate to accept lesser protection.

Clause 6.3 is drafted in the alternative and provides that the parties agree that TUPE may or will apply on expiry or termination of the Binding Authority (where the parties agree up front that TUPE will definitely apply on expiry or termination then Clause 6.3(d) may be deleted).

As there can be no certainty at the time of entering into a Binding authority as to what the correct legal position on termination/ expiry will be, a typical compromise is to adopt the position that if TUPE applies the employees transfer and if not the Coverholder has to bear dismissal costs (as set out in the proposed drafting).

In certain circumstances the parties may wish to agree that employees will transfer regardless of whether TUPE applies.

Clause 6.5 is similar to Clause 2.2 in that it applies when too many employees have transferred. In brief, it provides that where too many employees transfer to the replacement Coverholder then that replacement Coverholder may terminate the employment of the excess employees and the outgoing Coverholder provides an indemnity in favour of the incoming Coverholder in respect of any claims which may arise in respect of the termination of that individual's employment or the employment of that individual until the termination date.

Clause 6.6 is an optional provision and would typically only be used where there is a desire on the part of the parties for employees to transfer regardless of whether TUPE applies. In essence it provides a mechanism for transferring the employees whom the parties wish to transfer if it is found or alleged that TUPE did not in fact apply.

Clause 7 - Termination Indemnities

Clause 7.1 sets out a series of indemnities from the outgoing Coverholder in favour of the Underwriters and the incoming Coverholder in respect of any claims which relate to the period prior to the transfer of employment, including any liabilities relating to a failure to inform and consult employees as required by TUPE.

As an optional clause (see Clause 7.2), we have also included an obligation on the Underwriters to procure that an incoming Coverholder will indemnify the outgoing Coverholder in respect of any employment related claims which relate to the period post-transfer of employment, including any liabilities arising from a failure on the part of the incoming Coverholder to comply with its obligations in respect of informing and consulting the transferring employees pursuant to TUPE. If it is not included, it is likely that the Coverholder will try to negotiate similar provisions into the Binding Authority, so the view is often taken that it is better to offer a reasonable position (which the suggested drafting does) at the outset.

As this provision would have to be included at the commencement of the agreement and therefore a considerable period of time before it is known whether the Underwriters would be able to obtain

such an indemnity from the incoming Coverholder, if it is included care will have to be taken in negotiating the agreement with the replacement Coverholder to ensure that appropriate indemnification is obtained.

Clauses 8 and 9

These provisions contain boilerplate language relating to the provision of assistance and conduct of claims in the event that the indemnities under the other provisions have to be enforced, together with a provision entitling the incoming Coverholder to enforce any rights granted on it (i.e. indemnification from the outgoing Coverholder).

OPTION 2

Option 2 proceeds on the basis that the parties agree that there will be no transfer of employees on commencement of the provision of services under the Binding Authority, nor will there be a transfer of employees on expiry or termination of service provision under the relevant Binding Authority.

Clause 2 - Commencement

Clause 2.1 sets out a general statement that the parties agree that there shall be no transfer of employees on commencement.

Notwithstanding the general statement set out in Clause 2.1, Clause 2.2 sets out the provisions which will apply in the event that there is a finding or allegation that an employee has actually transferred to the Coverholder from the Underwriters. (See comments in relation to Clause 2 of Option 1 above for more detail).

Clause 3 - Coverholder Personnel and Clause 4 - Key Personnel

These provisions mirror the equivalent provisions in Option 1 and we would refer you to the comments in relation to those provisions.

Clause 5 - Termination Provisions

As the intention under this drafting is that there would be no transfer of employees on expiry or termination, a shorter set of termination provisions is included.

In brief, these contain a general statement that the parties agree that there will be no transfer of employees on expiry or termination and a broadly drafted indemnity is provided by the outgoing Coverholder in favour of the Underwriters and the replacement Coverholder in respect of all claims which any employees who have been engaged in the provision of the services under the relevant Binding Authority may bring.

Clauses 6 and 7

These provisions reflect the provisions of Clauses 8 and 9 of the drafting in Option 1 and we would refer you to the comments in relation to those provisions for further explanation.

EMPLOYMENT PROVISIONS - OPTION 1

1. DEFINITIONS

In this Schedule, the following terms shall have the following meanings:

"Coverholder Assigned Personnel"	means those of the Coverholder Personnel who are assigned from time to time to perform the Services for all of or the substantial part of their time;
"Coverholder Personnel"	means the Coverholder's employees and any other individual who provides services to the Coverholder from time to time;
"Contracts Act"	means the Contracts (Rights of Third Parties) Act 1999;
"Effective Date"	means the date and time on which the Coverholder commences the Services pursuant to this Agreement;
"Employment Law"	means all and any laws, including, without limitation, directives, statutes, secondary legislation, orders, codes of practice, contractual obligations and other common law rights, whether of the European Community, United Kingdom or other relevant authority, relating to or connected with: (1) the employment and dismissal of employees (including their health and safety at work); and (2) the engagement, use and termination of individuals other than employees who provide services (including their health and safety at work);
"Employment Liabilities"	means all actions, proceedings, costs (including legal costs), losses, damages, fines, penalties, compensation, awards, demands, orders, expenses and liabilities connected with or arising from Employment Law;
"Key Personnel"	means those of the Coverholder Personnel who hold Key Positions;
"Key Positions"	means such roles as are critical to aspects of the Services at particular periods of time and are designated as such by the Underwriters;
"Replacement Coverholder"	means any entity (including the Underwriters where relevant) which provides the Replacement Services;
"Replacement Services"	means all or part of the Services or services substantially similar to all or part of the Services which are provided by an entity other than the Coverholder following the termination of this Agreement (or the relevant part of this Agreement);
"Restricted Period"	means the period commencing on the earlier of: (1) the date six months prior to the expiry of this Agreement;

	and (2) the date on which either the Underwriters or the Coverholder gives notice of termination of this Agreement or part of it, and ending on the date on which this Agreement or the relevant part terminates;
"Return Date"	means the date on which the Replacement Coverholder begins to provide the Replacement Services on the termination of this Agreement or part thereof;
"Returning Employees"	means those Coverholder Personnel who are employees of the Coverholder and who are assigned to the provision of the Services or a relevant part of the Services for the purposes of the Transfer Regulations;
"Services"	means the services to be provided by the Coverholder pursuant to this Agreement;
"Termination Costs"	means such of the following costs as may be paid to an employee in respect of a dismissal: (1) statutory redundancy payments; (2) redundancy payments made pursuant to contractual obligations which applied immediately prior to the Effective Date; and (3) payments in lieu of any contractual notice period which applied immediately prior to the Effective Date;
"Transfer Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time.

2. COMMENCEMENT

- 2.1 The Underwriters and the Coverholder agree that the arrangements anticipated by this Agreement and any associated arrangements shall not constitute a relevant transfer for the purposes of the Transfer Regulations, and accordingly no person's employment shall transfer to the Coverholder as a result of the commencement of the provision of the Services by the Coverholder.
- 2.2 If it is found or alleged that the employment of any employee of the Underwriters does transfer to the Coverholder after the Effective Date pursuant to the Transfer Regulations as a result of the arrangements anticipated by this Agreement and any associated arrangements:
- (a) the Coverholder shall notify the Underwriters and the Underwriters shall notify the Coverholder of that finding or allegation as soon as reasonably practicable after becoming aware of it;
 - (b) the Underwriters may within [7 days] after becoming aware of that allegation or finding offer to employ or engage that person on such terms as the Underwriters shall determine and the Coverholder shall give all reasonable assistance requested by Underwriters to persuade that person to accept the offer; and
 - (c) within [28 days] after becoming aware of that finding or allegation (whether or not an offer of employment is made) the Coverholder may dismiss that person and the Underwriters shall indemnify and keep indemnified the Coverholder against all Termination Costs which the Coverholder may suffer or incur in relation to that

dismissal and the employment of the person up to the date of the dismissal in each case PROVIDED the Coverholder takes all reasonable steps to minimise those Termination Costs.

3. COVERHOLDER PERSONNEL

3.1 On request of the Underwriters, the Coverholder shall at its own cost promptly replace any Coverholder Personnel assigned to the Services if at any time during the performance of any Services:

- (a) in the Underwriters' [reasonable] opinion such Coverholder Personnel is not appropriate or otherwise not acceptable to the Underwriters; or
- (b) the Underwriters [reasonably] consider that the performance of such Coverholder Personnel is unsatisfactory;
- (c) such Coverholder Personnel has been involved in a [serious] breach of the Underwriters' health and safety rules, conduct which in the Underwriters' [reasonable] opinion is unacceptable, a breach of confidentiality or a [serious] breach of Underwriters' security arrangements.

3.2 The exercise by the Underwriters of its rights under Clause [3.1] shall not relieve the Coverholder of any of its obligations under this Agreement.

3.3 The Coverholder acknowledges that, unless otherwise agreed in writing, no member of Coverholder Personnel shall become an employee of the Underwriters, and the Underwriters shall not have any obligation to pay any such member of Coverholder Personnel's salary, national insurance, social security or any other amounts required by law or by contract to be paid to or in respect of any such Coverholder Personnel by his or her employer.

3.4 [The Coverholder shall ensure that before each member of the Coverholder Personnel commences performance of any Services, he has signed a Confidentiality Agreement in a form acceptable to the Underwriters.]

4. [KEY PERSONNEL

4.1 The Coverholder will not transfer, reassign, reduce the involvement in the Services of or otherwise redeploy any of the Key Personnel without the Underwriters' prior approval (not to be unreasonably withheld or delayed).

4.2 Where a replacement for any Key Position is required, the Coverholder shall use all reasonable endeavours to fill such Key Position with a suitable replacement prior to any transfer, or the termination of employment of the existing Key Personnel and in any event as soon as reasonably possible. The Coverholder will provide curriculum vitae for all candidates nominated to fill Key Positions, and introduce such candidates to the Underwriters and provide the Underwriters with an opportunity to interview them. The Underwriters will have the right to approve or disapprove the recruitment or assignment of a candidate nominated to fill a Key Position and the right to withdraw its approval of any Key Personnel, provided that the Underwriters may not exercise this discretion to approve, disapprove or withdraw approval in a manner contrary to Employment Law or otherwise unreasonably.

4.3 The provisions of Clause [4.1] shall not apply in the case of death, retirement, illness, resignation or termination of employment of any of the Key Personnel, or in the event of maternity, parental or adoption leave, or where any, transfer, reduction of

involvement reassignment or redeployment of such Key Personnel is reasonably necessary in order to comply with Employment Law.]

5. PROVISION OF INFORMATION

5.1 [At any time during the term of this Agreement] OR [At least [once every three months] during the term of this Agreement commencing on the Effective Date] OR [Within the Restricted Period] the Coverholder shall within [14 days] of receiving a written request from the Underwriters provide the Underwriters with:

- (a) a list of the names of such of the Coverholder Personnel who are assigned for any percentage of their time to the provision of any part of the Services; and
- (b) the following information provided anonymously in respect of such of the Coverholder Personnel who are assigned for any percentage of their time to the provision of any part of the Services, (and shall procure that such information is true and accurate in all material respects):
 - (i) the number of individuals broken down by grade, location and department and the average time spent by each such individual on the Services;
 - (ii) the average salary cost broken down by grade;
 - (iii) the average age broken down by grade;
 - (iv) the average length of service broken down by grade;
 - (v) the average total staff costs broken down by grade and category of cost (e.g. showing the various benefits, allowances and supplements separately);
 - (vi) any standard terms and conditions of employment or engagement;
 - (vii) a description of the duties performed;
 - (viii) the number of Coverholder Personnel (broken down by grade, location and department) who are temporarily engaged in, or temporarily disengaged from, the provision of the Services for any reason and, in each case, providing the reason for the temporary engagement or disengagement and confirmation of whether those Coverholder Personnel have been included within the information provided pursuant to this Clause [5.1] and, if not, and if requested by the Underwriters, providing corresponding information in respect of those Coverholder Personnel; and
 - (ix) the number of Coverholder Personnel who are not employees broken down by grade, location, department, duties and details of their material terms of engagement.

5.2 At any time during the Restricted Period and within [14 days] of receiving a written request from the Underwriters and subject to any applicable legislation relating to the use of personal data, the Coverholder shall provide in writing to the Underwriters or, if so requested, any Replacement Coverholder or potential Replacement Coverholder, an accurate and complete list of the names of the Coverholder Assigned Personnel together with the following information (which shall be true and accurate in all material respects) in respect of the Coverholder Assigned Personnel:

- (a) employer's name;

- (b) place(s) of work;
- (c) age;
- (d) employment commencement date (including continuous employment for statutory purposes);
- (e) date on which he became materially involved in the provision of the Services;
- (f) job title and/ or grade;
- (g) salary (including the interval at which paid);
- (h) other [material] remuneration and benefits, including entitlement to pension (including confirmation of whether a contracting-out certificate applies to the Coverholder Assigned Personnel employment), holidays, public holidays and holiday pay;
- (i) [material] terms and conditions of employment, including notice periods (and for Coverholder Assigned Personnel employed on temporary or fixed term contracts, the date on which the employment is due to end), incapacity for work and sick pay and any terms applicable to Coverholder Assigned Personnel required to work outside the United Kingdom for more than one month at a time;
- (j) a copy of the disciplinary rules and procedures and grievance procedures applicable to the Coverholder Assigned Personnel and details of any disciplinary procedure taken against a member of the Coverholder Assigned Personnel in the two years prior to the Return Date, and details of any internal grievance raised by a member of the Coverholder Assigned Personnel in the two years prior to the Return Date and in respect of which the Employment Act 2002 (Dispute Resolution) Regulations 2004 applies;
- (k) existing, threatened or likely contractual, statutory or other outstanding employment-related claims or complaints; existing collective or recognition agreements with representatives of Coverholder Assigned Personnel (written or otherwise); requests which have been received for such recognition; and
- (l) any change to the foregoing which has been made since the commencement of the Restricted Period.

5.3 The Coverholder shall as soon as reasonably practicable:

- (a) inform Underwriters of any material change to any information provided pursuant to Clause [5.1] or [5.2];
- (b) use its reasonable endeavours to clarify any matter on which clarification is reasonably requested by the Underwriters; and
- (c) use its reasonable endeavours to co-operate with any other reasonable requests made by the Underwriters for information concerning such of the Coverholder Personnel who are assigned to the provision of any part of the Services.

5.4 The Coverholder shall provide to the Replacement Coverholder upon request and in such form as the Replacement Coverholder may reasonably require all information relating to the Returning Employees reasonably necessary for the Replacement Coverholder to comply with its obligations, and exercise its rights, pursuant to the Transfer Regulations. The

Coverholder shall procure that all such information provided to the Replacement Coverholder shall be accurate in all material respects.

5.5 The Coverholder shall not later than 28 days following the termination of the Agreement or a part of the Agreement, provide to the Underwriters and/ or to the Replacement Coverholder updated payroll information and relevant tax and statutory details following the final payroll run in relation to any Returning Employee.

5.6 The Coverholder acknowledges that the Underwriters shall have the right to pass the information received in accordance with Clauses [5.1, 5.2, 5.3, 5.4, 5.5 and 5.6] to potential Replacement Coverholders and Replacement Coverholders subject, in either case, to such persons entering into a confidentiality agreement with the Underwriters in a form acceptable to the Underwriters and the Underwriters shall and procure that any Replacement Coverholders or potential Replacement Coverholders shall restrict the disclosure of that information to such employees and advisers of Underwriters, the Replacement Coverholders, and potential Replacement Coverholders as is reasonably necessary to undertake due diligence and prepare to employ staff on termination of this Agreement or part of the Services and shall not and shall procure that the Replacement Coverholders or the potential Replacement Coverholders shall not use that information for any other Purpose, or hold it for any longer than reasonably necessary for that purpose.

6. TERMINATION PROVISIONS

6.1 On expiry or termination of this Agreement, the terms of Clauses [6] to [8] will apply.

6.2 Within the Restricted Period or at any time in contemplation of the expiry or termination of all or part of this Agreement the Coverholder shall not without the prior written consent of the Underwriters (which shall not be unreasonably withheld):

- (a) [materially] vary the salary, remuneration, benefits or other terms and conditions of any Coverholder Assigned Personnel's contract;
- (b) recruit or assign any personnel to the provision of the Services or vary the duties undertaken by any Coverholder Personnel or the time spent by any Coverholder Personnel in the provision of the Services to the extent that the individual becomes a Coverholder Assigned Personnel;
- (c) dismiss any Coverholder Assigned Personnel who is assigned to the Services save on grounds of gross misconduct;
- (d) remove any Coverholder Assigned Personnel from the provision of the Services, or vary the duties undertaken by any Coverholder Assigned Personnel or the time spent by any Coverholder Assigned Personnel in the provision of the Services to the extent that the individual ceases to be a Coverholder Assigned Personnel or otherwise [materially] vary the duties undertaken by any Coverholder Personnel in relation to the Services;
- (e) increase the number of Coverholder Assigned Personnel [save in the ordinary course of business as determined by reference to the needs of the Underwriters and the past practice of Coverholder in relation to the Services];
- (f) increase the aggregate cost of employing or engaging the Coverholder Assigned Personnel (including salary and all other contractual benefits) [save in the ordinary course of business as determined by reference to the needs of the Underwriters and the past practice of Coverholder in relation to the Services].

6.3 The Underwriters and the Coverholder agree that:

- (a) the provision of Replacement Services by the Replacement Coverholder [will] [may] constitute a relevant transfer for the purposes of the Transfer Regulations;
 - (b) if such provision does constitute a relevant transfer the employment of the Returning Employees shall transfer to the Replacement Coverholder in accordance with the Transfer Regulations with effect from the Return Date; and
 - (c) if such provision does constitute a relevant transfer, the Coverholder shall, and the Underwriters shall procure that the Replacement Coverholder shall comply with their respective obligations under the Transfer Regulations in respect of that transfer[; and
 - (d) if such provision does not constitute a relevant transfer, the Coverholder shall procure that the employment of Coverholder Personnel shall not transfer to the Replacement Coverholder, the Coverholder shall be responsible for the redeployment or dismissal as appropriate of any Coverholder Personnel, and the Coverholder shall indemnify the Underwriters and the Replacement Coverholder in respect of any claim by any Coverholder Personnel, including any claim that their employment should have transferred to the Replacement Coverholder].
- 6.4 The Coverholder shall also ensure that on the Return Date all of the Coverholder's obligations with respect to all outgoing and accrued liabilities in respect of the Returning Employees have been met, including payment of wages, contractual bonuses, commission, holiday remuneration, payments of tax, social security and national insurance contributions or other relevant national statutory deductions.
- 6.5 If it is found or alleged that the employment of any person other than any Returning Employee transfers to the Replacement Coverholder on or after the Return Date pursuant to the Transfer Regulations:
- (a) the Coverholder shall notify the Underwriters and the Underwriters shall procure that the Replacement Coverholder shall notify Coverholder of that finding or allegation as soon as reasonably practicable after becoming aware of it;
 - (b) the Coverholder shall within [7 days] of becoming aware of that allegation or finding offer to employ or engage that person on such terms as the Coverholder shall determine; and
 - (c) within [28 days] after becoming aware of that finding or allegation (whether or not an offer of employment is made) the Replacement Coverholder may dismiss that person and the Coverholder shall indemnify and keep indemnified the Replacement Coverholder against all Employment Liabilities which the Replacement Coverholder may suffer or incur in relation to that dismissal and the employment of that person up to the date of that dismissal.
- 6.6 [If it is found or alleged that any Returning Employee remains an employee of the Coverholder after the Return Date:
- (a) the Coverholder shall notify the Underwriters and the Underwriters shall procure that the Replacement Coverholder shall notify the Coverholder of that finding or allegation as soon as reasonably practicable after becoming aware of it;
 - (b) the Replacement Coverholder may within [7 days] after becoming aware of that finding or allegation make that Returning Employee a written offer of

employment on such terms as the Replacement Coverholder may determine; and

- (c) the Coverholder may within [28 days] after becoming aware of that allegation or finding dismiss the Returning Employee with immediate effect and the Underwriters shall procure that the Replacement Coverholder shall indemnify and keep indemnified the Coverholder against all Termination Costs which the Coverholder may suffer or incur in respect of that dismissal.]

7. TERMINATION INDEMNITIES

7.1 The Coverholder shall indemnify and keep indemnified the Underwriters and the Replacement Coverholder against all Employment Liabilities which the Underwriters or the Replacement Coverholder may suffer or incur in connection with:

- (a) any Returning Employee which arises from any act or omission of the Coverholder (or for which the Coverholder is liable) on or prior to the Return Date, including, for the avoidance of doubt, liability arising from the Coverholder's failure to comply with Regulation 13 of the Transfer Regulations (save to the extent that the failure is due to the Replacement Coverholder's failure to comply with Regulation 13(4) of the Transfer Regulations); and
- (b) any Coverholder Personnel other than a Returning Employee which arises from any act or omission of Coverholder (or for which Coverholder is liable).
- (c) any negligent or deliberate act or omission of the Coverholder Personnel which (directly or indirectly) give rise to claims by the Underwriters personnel or the Replacement Coverholder's personnel or any third party against the Underwriters or the Replacement Coverholder.

7.2 [The Underwriters shall procure that the Replacement Coverholder shall indemnify and keep indemnified the Coverholder against all Employment Liabilities which the Coverholder may suffer or incur in connection with:

- (a) any Returning Employee which arises from any act or omission of the Replacement Coverholder (or for which the Replacement Coverholder is liable) after the Return Date; and
- (b) the Replacement Coverholder's failure to comply with Regulation 13(4) of the Transfer Regulations.]

8. INDEMNITY ASSISTANCE, CONDUCT OF CLAIMS AND EQUITABLE REMEDY

8.1 The indemnities given in this Schedule are subject to the indemnified party:

- (a) giving to the indemnifying party, on request, express authority to conduct or control the defence, settlement or other disposal of all claims and proceedings in respect of which the indemnifying party has given an indemnity (subject to: (i) the terms of any settlement being sufficient to release the indemnified party from any and all future claims relating to the subject matter of the particular claim or proceeding; and (ii) consideration by the indemnifying party of any reasonable request made by the indemnified party if the indemnified party may suffer adverse publicity in respect of those claims or proceedings); and
- (b) providing the indemnifying party with such information and assistance as the indemnifying party may reasonably request.

9. THIRD PARTY RIGHTS

- 9.1 For the purposes of the Contracts Act it is intended that the Replacement Coverholder shall have the right to enforce any rights conferred on it by this Schedule and to that extent the Replacement Coverholder shall have the same rights against the Coverholder as would be available if the Replacement Coverholder was a party to this Agreement.
- 9.2 Notwithstanding the rights conferred by Clause [9.1], the parties may by agreement, rescind this Agreement or vary it in any way without the consent of the Replacement Coverholder.

EMPLOYMENT PROVISIONS - OPTION 2

10. DEFINITIONS

In this Schedule, the following terms shall have the following meanings:

"Coverholder Personnel"	means the Coverholder's employees and any other individual who provides services to the Coverholder from time to time;
"Contracts Act"	means the Contracts (Rights of Third Parties) Act 1999;
"Effective Date"	means the date and time on which the Coverholder commences the Services pursuant to this Agreement;
["Employment Law"	means all and any laws, including, without limitation, directives, statutes, secondary legislation, orders, codes of practice, contractual obligations and other common law rights, whether of the European Community, United Kingdom or other relevant authority, relating to or connected with: (1) the employment and dismissal of employees (including their health and safety at work); and (2) the engagement, use and termination of individuals other than employees who provide services (including their health and safety at work);]
["Key Personnel"	means those of the Coverholder Personnel who hold Key Positions;]
["Key Positions"	means such roles as are critical to aspects of the Services at particular periods of time and are designated as such by the Underwriters;]
"Replacement Coverholder"	means any entity (including the Underwriters where relevant) which provides the Replacement Services;
"Replacement Services"	means all or part of the Services or services substantially similar to all or part of the Services which are provided by an entity other than the Coverholder following the termination of this Agreement (or the relevant part of this Agreement);
"Services"	means the services to be provided by the Coverholder pursuant to this Agreement;

"Termination Costs"	means such of the following costs as may be paid to an employee in respect of a dismissal: (1) statutory redundancy payments; (2) redundancy payments made pursuant to contractual obligations which applied immediately prior to the Effective Date; and (3) payments in lieu of any contractual notice period which applied immediately prior to the Effective Date;
"Transfer Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time.

11. COMMENCEMENT

- 11.1 The Underwriters and the Coverholder agree that the arrangements anticipated by this Agreement and any associated arrangements shall not constitute a relevant transfer for the purposes of the Transfer Regulations, and accordingly no person's employment shall transfer to the Coverholder as a result of the commencement of the provision of the Services by the Coverholder.
- 11.2 If it is found or alleged that the employment of any employee of the Underwriters does transfer to the Coverholder after the Effective Date pursuant to the Transfer Regulations as a result of the arrangements anticipated by this Agreement and any associated arrangements:
- (a) the Coverholder shall notify the Underwriters and the Underwriters shall notify the Coverholder of that finding or allegation as soon as reasonably practicable after becoming aware of it;
 - (b) the Underwriters may within [7 days] after becoming aware of that allegation or finding offer to employ or engage that person on such terms as the Underwriters shall determine and the Coverholder shall give all reasonable assistance requested by Underwriters to persuade that person to accept the offer; and
 - (c) within [28 days] after becoming aware of that finding or allegation (whether or not an offer of employment is made) the Coverholder may dismiss that person and the Underwriters shall indemnify and keep indemnified the Coverholder against all Termination Costs which the Coverholder may suffer or incur in relation to that dismissal and the employment of the person up to the date of the dismissal in each case PROVIDED the Coverholder takes all reasonable steps to minimise those Termination Costs.

12. COVERHOLDER PERSONNEL

- 12.1 On request of the Underwriters, the Coverholder shall at its own cost promptly replace any Coverholder Personnel assigned to the Services if at any time during the performance of any Services:
- (a) in the Underwriters' [reasonable] opinion such Coverholder Personnel is not appropriate or otherwise not acceptable to the Underwriters; or
 - (b) the Underwriters [reasonably] consider that the performance of such Coverholder Personnel is unsatisfactory;

- (c) such Coverholder Personnel has been involved in a [serious] breach of the Underwriters' health and safety rules, conduct which in the Underwriters' [reasonable] opinion is unacceptable, a breach of confidentiality or a [serious] breach of Underwriters' security arrangements.
- 12.2 The exercise by the Underwriters of its rights under Clause [3.1] shall not relieve the Coverholder of any of its obligations under this Agreement.
- 12.3 The Coverholder acknowledges that, unless otherwise agreed in writing, no member of Coverholder Personnel shall become an employee of the Underwriters, and the Underwriters shall not have any obligation to pay any such member of Coverholder Personnel's salary, national insurance, social security or any other amounts required by law or by contract to be paid to or in respect of any such Coverholder Personnel by his or her employer.
- 12.4 [The Coverholder shall ensure that before each member of the Coverholder Personnel commences performance of any Services, he has signed a Confidentiality Agreement in a form acceptable to the Underwriters.]
- 13. [KEY PERSONNEL]
 - 13.1 The Coverholder will not transfer, reassign, reduce the involvement in the Services of or otherwise redeploy any of the Key Personnel without the Underwriters' prior approval (not to be unreasonably withheld or delayed).
 - 13.2 Where a replacement for any Key Position is required, the Coverholder shall use all reasonable endeavours to fill such Key Position with a suitable replacement prior to any transfer, or the termination of employment of the existing Key Personnel and in any event as soon as reasonably possible. The Coverholder will provide curriculum vitae for all candidates nominated to fill Key Positions, and introduce such candidates to the Underwriters and provide the Underwriters with an opportunity to interview them. The Underwriters will have the right to approve or disapprove the recruitment or assignment of a candidate nominated to fill a Key Position and the right to withdraw its approval of any Key Personnel, provided that the Underwriters may not exercise this discretion to approve, disapprove or withdraw approval in a manner contrary to Employment Law or otherwise unreasonably.
 - 13.3 The provisions of Clause [4.1] shall not apply in the case of death, retirement, illness, resignation or termination of employment of any of the Key Personnel, or in the event of maternity, parental or adoption leave, or where any, transfer, reduction of involvement reassignment or redeployment of such Key Personnel is reasonably necessary in order to comply with Employment Law.]
- 14. TERMINATION PROVISIONS
 - 14.1 The Underwriters and the Coverholder agree that:
 - (a) the provision of Replacement Services by the Replacement Coverholder will not constitute a relevant transfer for the purposes of the Transfer Regulations;
 - (b) the Coverholder shall procure that the employment of Coverholder Personnel shall not transfer to the Replacement Coverholder, the Coverholder shall be responsible for the redeployment or dismissal as appropriate of any Coverholder Personnel, and the Coverholder shall indemnify the Underwriters and the Replacement Coverholder in respect of any claim by any Coverholder Personnel, including any claim that their employment should have transferred to the Replacement Coverholder.

15. INDEMNITY ASSISTANCE, CONDUCT OF CLAIMS AND EQUITABLE REMEDY

15.1 The indemnities given in this Schedule are subject to the indemnified party:

- (a) giving to the indemnifying party, on request, express authority to conduct or control the defence, settlement or other disposal of all claims and proceedings in respect of which the indemnifying party has given an indemnity (subject to: (i) the terms of any settlement being sufficient to release the indemnified party from any and all future claims relating to the subject matter of the particular claim or proceeding; and (ii) consideration by the indemnifying party of any reasonable request made by the indemnified party if the indemnified party may suffer adverse publicity in respect of those claims or proceedings); and
- (b) providing the indemnifying party with such information and assistance as the indemnifying party may reasonably request.

16. THIRD PARTY RIGHTS

16.1 For the purposes of the Contracts Act it is intended that the Replacement Coverholder shall have the right to enforce any rights conferred on it by this Schedule and to that extent the Replacement Coverholder shall have the same rights against the Coverholder as would be available if the Replacement Coverholder was a party to this Agreement.

16.2 Notwithstanding the rights conferred by Clause [7.1], the parties may by agreement, rescind this Agreement or vary it in any way without the consent of the Replacement Coverholder.