

GUIDANCE NOTES APPLYING TO MODEL SERVICE COMPANY UNDERWRITING AGREEMENT LMA3134

Introduction

The Lloyd's Market Association ("LMA") has issued an updated version of the Service Company Underwriting Agreement ("SCUA"), LMA3134 dated 7 September 2015, with the aim of providing a comprehensive model binding authority contract for a Service Company Coverholder being 100% aligned to its associated managing agent and which binds insurance only for its managed syndicates. Service Company Coverholders are Lloyd's approved Coverholders that have been classified as "Service Company Coverholders" by Lloyd's by reason of their close connection with a single managing agent. For the avoidance of doubt as they are Coverholders they cannot be a participant on a Line Slip either as the lead or follower as only a managing agent or an insurance company are permitted to write Line Slips.

Managing agents should therefore seek further guidance from Lloyd's where the Service Company Coverholder will also bind insurance for other syndicates or insurance carriers as the SCUA is not suitable for this type of arrangement.

This revised model agreement has been produced by an LMA working party and is in line with current regulatory requirements and good practice (available at www.lmalloyds.com or www.lloyds.com/coverholders).

While issued as a model agreement by the LMA, it should be recognised that this document, as with all LMA documents, is purely illustrative and is established and distributed for the guidance of Managing Agents. Managing Agents are therefore free to use their own separate agreement subject to the requirements of the Intermediaries Byelaw (the 'Byelaw') and the Service Companies Code of Practice (the 'Code'). In all cases Managing Agents are responsible for ensuring the terms of every binding authority they issue are appropriate.

The previous version of the model agreement is still available for use. However, it is recommended that Managing Agents carefully consider the current regulatory regime when deciding which model agreement to use on any new or renewal SCUA.

Definitions of "Service Company Coverholder" and "Service Company Underwriting Agreement" are contained in Lloyd's Definitions Byelaw.

These **Guidance Notes** are intended to assist Underwriters when using this model agreement, by providing an overview of the model agreement and guidance on specific sections as appropriate.

Relevant requirements and guidance

All binding authority practitioners should familiarise themselves with the following key documents which set out the key requirements necessary to consider when preparing a SCUA:

- Lloyd's Intermediaries Byelaw and the Requirements made under the Byelaw - available at www.lloyds.com/coverholders
- The 'Code' which prescribes the content of a SCUA and sets out what is regarded by Lloyd's to be good practice - available at www.lloyds.com/coverholders
- Lloyd's guidance on international legislative and reporting requirements for binding authorities: - available at www.lloyds.com/crystal

In addition, since Service Company Coverholders are treated by Lloyd's as in effect extensions of the managing agent itself, it follows that the applicable Lloyd's underwriting minimum standards which apply to managing agents will also apply to the Service Company Coverholders.

Please note that nothing in these Guidance Notes is intended to, or should be construed as, superseding, amending or derogating in any way from the terms of the SCUA itself.

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| <p><u>Agreement Number</u></p> | <p>The Agreement Number is the number by which the SCUA can be identified.</p> |
| <p><u>Unique Market Reference Number</u></p> | <p>The Unique Market Reference Number ('UMR') must be included even if the core part of the number is identical to the Agreement Number shown above. The UMR will be in a standard format.</p> <p>When the SCUA renews, a new UMR must be given.</p> |
| <p><u>Section 1</u> <u>Underwriters to Receive Agreement</u></p> | <p>Notwithstanding the <i>Inception Date</i> of the SCUA before a Service Company Coverholder is authorised to act on behalf of the Underwriters of a Lloyd's syndicate (or syndicates), whether on a new SCUA or a renewal, the Underwriter must have received written acceptance from the Service Company Coverholder of the terms and conditions of the SCUA. The SCUA cannot be registered at Lloyd's until this confirmation has been received.</p> <p>The acceptance of the terms and conditions of the SCUA by the Service Company Coverholder can be evidenced by one or more of the persons named in sub-section 3.1, or by any other person duly authorised by the Service Company Coverholder, signing and dating the Schedule (inclusive of any attachments identified in the Schedule).</p> <p>Where the SCUA delegates authority to more than one Service Company Coverholder then each of those Service Company Coverholders needs to separately accept the terms of the SCUA (through being signed by their duly authorised persons).</p> <p>Sub-section 1.1 - "Signed by both Parties" - the simplest way to achieve this is to forward the Underwriter signed SCUA to the Service Company Coverholder so it can sign the Schedule page. Once the Schedule page is signed by the Service Company Coverholder the Agreement is "Signed by both parties"; however, for the Agreement to become effective a copy of the Agreement signed by the Service Company Coverholder must be sent to the Underwriter. If there is more than one Service Company Coverholder named in the SCUA then each Service Company Coverholder must sign the Agreement.</p> |
| <p><u>Section 2</u> <u>Period</u></p> | <p>The period of the SCUA should usually be for no more than 12 months from inception. However, it is possible for the period of the SCUA to be any period up to a maximum of 18 months including any extension(s).</p> <p>In order to provide clarity on time zones when defining the SCUA period the default is;</p> <p>"the period is from [date] to [date], both days inclusive, any time zone". Alternatively it is permissible to state a specific time zone and time if desired.</p> |

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| <p><u>Section 3</u></p> <p><u>Person(s) responsible for operation and control</u></p> | <p>The allocation of responsibility for exercising the authority granted by the SCUA is key in controlling and managing Underwriters' exposure.</p> <p>The Schedule must identify the person(s) for the overall operation and control of the SCUA.</p> <p>Unlike other model binding authority wordings the SCUA only expressly refers to the person(s) with overall operation and control (and not others with underwriting, policy issuance and claims authority).</p> <p>However, where the Service Company Coverholder is granted authority to handle, agree and/or settle claims, it should be noted that Section 18 of the Schedule will need to set out the precise procedure for claims which may include naming the individuals with claims settling authority.</p> <p>Should Underwriters also wish to name other specific individuals (e.g. those who have underwriting or policy issuance authority then Section 6.1 of the Schedule could be used for this purpose).</p> <p>The managing agent must ensure that any potential conflicts of interest on the part of the Service Company Coverholder are properly managed. Please refer to Lloyd's Conflicts of Interest guidance referred to in Section 28 of this guidance. Link: www.lloyds.com/the-market/tools-and-resources/resources/code-of-practice-for-delegated-underwriting_new</p> |
| <p><u>Section 4</u></p> <p><u>Grant of Authority</u></p> | <p>This Section is the key provision that delegates authority to the Service Company Coverholder to act on behalf of Underwriters, to write business and to do those things which are ancillary to underwriting (such as receiving premium and issuing policies/certificates).</p> <p>Sub-section 4.1.2 - Please refer to Section 23 of this guidance document regarding holding of insurance monies and investments.</p> <p>Sub-section 4.2 - If the Service Company Coverholder is to bind insurance over the internet or via other electronic means this should be agreed in writing by Underwriters.</p> <p>Sub-section 4.3 - Notice periods for termination of the BA are to be addressed in accordance with Section 31.</p> <p>Sub-section 4.4.2 - The requirement to pay premium promptly has been added under sub-section 4.4.2. Details of exact premium payment terms have not been set here as it is felt that this will not always be necessary. If these are required they may be set in Section 6.1 of the schedule.</p> |

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| <p><u>Section 5</u> <u>Delegation of Authority</u></p> | <p>Sub-section 5.1 - A Service Company Coverholder may sub-delegate its authority to:</p> <ul style="list-style-type: none"> • bind insurances, or • issue documents evidencing insurances bound by the Coverholder. <p>to an additional entity, but only where the additional entity is itself is an Approved Coverholder as defined in the Byelaw.</p> <p>Once such additional entity is an Approved Coverholder in order for the Service Company Coverholder to appoint such additional approved Coverholder it will need to issue a separate binding authority agreement on its own MRC.</p> <p>The additional Coverholder cannot bind any business nor issue any documents evidencing insurances bound until they have accepted the terms and conditions of the binding authority agreement, and such acceptance has been received by the Service Company Coverholder.</p> <p>Where there is a series of wholesale or retail producers in the chain who want to bind insurances and/or issue documents, the Service Company Coverholder must directly contract with each party in the chain to do so, unless the wholesale or retail producers are using a proprietary system owned and controlled by the Service Company Coverholder.</p> |
| <p><u>Section 6</u> <u>Other Conditions, Requirements and / or Amendments relating to the operation of the Agreement.</u></p> | <p>Sub-section 6.1 of the Schedule SHOULD NOT be used to identify, add, or amend terms and conditions for contract documentation to be issued for the individual insurances bound by the Service Company Coverholder. Instead, these should be dealt with in Section 17.</p> <p>Therefore, sub-section 6.1 of the Schedule SHOULD ONLY be used to identify any:</p> <p>additional terms, conditions and/or requirements that are additional or supplementary to the SCUA and that are not otherwise addressed elsewhere within the SCUA;</p> <p><u>OR</u></p> <p>any amendments to the SCUA (i.e. changes or amendments to the model agreement text). The section or sub-section numbers of the SCUA which are the subject of amendment(s) must be shown together with the replacement text.</p> <p>The U.S. General Cover Conditions (LMA5058A) must be attached to and form part of any binding authority agreements in respect of U.S. business, <u>including where the Service Company Coverholder is based outside the U.S.</u>, and in other circumstances prescribed by Lloyd's (if any) and cannot be amended by Underwriters or Coverholders.</p> |

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| <p><u>Section 7</u></p> <p><u>Authorised Class(es) of Business and Coverage(s)</u></p> | <p>Sub-section 7.1 should:</p> <ul style="list-style-type: none"> • contain a precise description of the nature or classification of the contracts of insurance that the Coverholder will be authorised to bind under the SCUA. • also make it clear whether the SCUA allows the Coverholder to accept insurance business or reinsurance business or both (which is important for territorial licences and Coverholder approval); <p>The phrase 'All Risks' should not be used without proper qualification e.g. 'All Risks of Physical Loss or Damage'.</p> <p>The stated classes (including risk codes) must be consistent with the Binding Authority Registration System, and the Service Company Coverholder's Approval status and the managing agents syndicate business forecast for the appropriate year of account.</p> |
| <p><u>Section 8</u></p> <p><u>Territorial Limitations</u></p> | <p>Sub-section 8.1 identifies the geographical location of risks (as applicable) which are acceptable under the SCUA.</p> <p>Terms such as 'and contiguous...' should be avoided but where this term is used such contiguous areas should be listed for clarity.</p> <p>Sub-section 8.2 of the Schedule is used to identify where insureds are domiciled. The location of an insured's domicile is the location in which the insured lives, if the insured is a private individual or, if the insured is a company or other corporate body, in which it is established.</p> <p>Only the territories from which risks or insureds may be accepted under the SCUA should be listed in sub-section(s) 8.1 and 8.2 respectively.</p> <p>The stated territories under sub-sections 8.1 and 8.2 must be consistent with the territories listed in the Binding Authority Registration System ('BAR'), and must be in accordance with the Service Company Coverholder's Approval status.</p> <p>For further guidance refer to the 'Risk Locator Tool' and 'Crystal' for location of risk definitions at the following links: www.lloyds.com/crystal www.lloyds.com/the-market/tools-and-resources/tools-e-services/risk-locator/how-to-establish-the-risk-location</p> <p>Sub-section 8.3 deals with the geographical scope of the insurance coverage which may be granted under the individual insurances bound under the SCUA. This may be wider than the territories shown under sub-sections 8.1 and 8.2.</p> |

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| <p><u>Section 9</u></p> <p><u>Premiums, Deductibles and Excesses</u></p> | <p>Sub-section 9.1 states how premiums are to be calculated for each individual insurance. If a rating schedule is to apply, it can either be set out here or referenced here and attached to the SCUA.</p> <p>Sub-section 9.2 states any deductibles/excesses to apply to each individual insurance. If this information forms part of the rating schedule under 9.1, then it is acceptable to refer back to sub-section 9.1.</p> <p>In the event that the rating and/or any applicable deductibles and/or excesses are contained within a separate guide or manual or other document (including any electronic data), reference to such guide, manual or other document should be made within sub-sections 9.1 and/or 9.2 of the Schedule</p> <p>If the SCUA or part of the SCUA is to operate as a “prior submit” arrangement sub-sections 9.1 and/or 9.2 of the Schedule should show the manner in which individual insurances should be submitted to the Underwriters for rating.</p> |
| <p><u>Section 10</u></p> <p><u>Maximum Limits of Liability/Sums Insured</u></p> | <p>The maximum limits of liability or sums insured in respect of insurances bound by the Service Company Coverholder must be shown in sub-section 10.1 of the Schedule.</p> <p>If there is more than one class and coverage under sub-section 7.1 the maximum limits must be clearly stated for each class and coverage.</p> |
| <p><u>Section 11</u></p> <p><u>Gross Premium Income Limit</u></p> | <p>The SCUA must contain a gross premium income limit as per sub-section 11.1 of the Schedule and the Service Company Coverholder is required to notify the Underwriters if the premium income reaches the percentage of the overall limit which is to be shown in sub-section 11.2 of the Schedule.</p> <p>The Service Company Coverholder must not bind any insurance(s) that would mean it exceeds the limit shown in sub-section 11.1.</p> <p>The GPI limit for the SCUA is the maximum permitted for business whether accepted directly by the Service Company Coverholder or through any sub-Coverholders appointed. Therefore, any sub-Coverholder agreement should have regard to this in its GPI limit and its monitoring arrangements.</p> |
| <p><u>Section 12</u></p> <p><u>Period of Insurances Bound</u></p> | <p>Sub-section 12.1 of the Schedule allows for the standard and the maximum period(s) for insurances bound allowed by Underwriters for the relevant classes of business.</p> <p>Sub-section 12.3 of the Schedule must state the maximum number of days an insurance is allowed to be bound in advance of its inception date. This should not exceed the SCUA’s termination notice period under Section 31.</p> |

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| <p><u>Section 13</u></p> <p><u>Automatic Renewal of Insurances Bound</u></p> | <p>This Section makes it clear that no insurance shall be bound which provides for automatic/tacit renewal unless the Underwriters have agreed that the Service Company Coverholder may bind such risks or it is mandatory by law or regulation. If automatic / tacit renewal is NOT mandatory then express written permission from the Underwriters should be obtained and shown in sub-section 6.1 of the Schedule. If permission is granted by Underwriters or it is mandatory by law or regulation the Service Company Coverholder must comply with any applicable laws or regulation which relate to the review of each insurance bound prior to its individual renewal date in order to lapse the insurance or offer renewal terms.</p> |
| <p><u>Section 14</u></p> <p><u>Premium Finance Arrangements</u></p> | <p>Premium finance transactions do not form part of this SCUA and must not be entered into by the Service Company Coverholder or other entity on behalf of Underwriters or in Underwriters' name.</p> <p>If a Service Company Coverholder proposes to enter into a premium finance arrangement:</p> <p>a) prior advice should be sought from the Managing Agent's compliance department</p> <p>and</p> <p>b) this should form a separate contractual relationship between the applicable parties involved.</p> |
| <p><u>Section 15</u></p> <p><u>Remuneration</u></p> | <p><u>Sub-section 15.1</u></p> <p>The Service Company Coverholder's remuneration including any commission should be specified in sub-section 15.1 of the Schedule. This sub-section is for the total remuneration allowed by Underwriters to the Service Company Coverholder, and will include fees or commissions paid by the Service Company Coverholder to others in connection with the acquisition of business.</p> <p>Any remuneration or commission payable to the Service Company Coverholder will need to be disclosed to Lloyd's as part of the Related Party Declaration and Disclosure return.</p> |

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| <p><u>Section 16</u> <u>Applications or Proposal Forms</u></p> | <p>Where the application or proposal form carries a standard reference recognised by the parties to the SCUA, this should be stated in sub-section 16.1 of the Schedule. Where the form is bespoke, it should be agreed by the Underwriters and identified in sub-section 16.1 of the Schedule as being attached to the SCUA.</p> <p>In the event that the class(es) of business and coverage(s) does/do not require an application or proposal form then “Not Applicable” should be shown in sub-section 16.1 of the Schedule.</p> |
| <p><u>Section 17</u> <u>Contract Documentation</u></p> | <p><u>Sub-section 17.1</u></p> <p>Sub-section 17.1 relates to the information and documentation that should be included in and/or attached to the policy/certificate documentation issued by the Service Company Coverholder and should not be confused with the format(s) of the wrapper/jacket as per sub-section 17.5 below.</p> <p>Sub-section 17.1 of the Schedule SHOULD ONLY be used to identify Wordings, Conditions, Clauses, Endorsements, Warranties and Exclusions applicable to insurances bound and SHOULD NOT be used to identify, add, or amend terms and conditions of the SCUA itself, as these should be specified under sub-section 6.1 of the Schedule.</p> <p>The identification of the Wordings, Conditions, Clauses, Endorsements, Warranties and Exclusions should be made by unique reference number, but if ‘bespoke’ they should be attached to the SCUA.</p> <p>The Byelaw prescribe certain minimum requirements applicable to all documents evidencing insurances bound issued by the Service Company Coverholder on behalf of the Underwriters, and each policy/certificate issued by the Service Company Coverholder must contain these minimum requirements as per sub-section 17.6 of the SCUA, which would include a suitable complaints notice as per sub-section 17.6.11.</p> <p><u>Sub-sections 17.2 to 17.4</u></p> <p>Sub-section 17.2 defines the term ‘contract documentation’ and sub-sections 17.3 and 17.4 relate to Lloyd’s requirements for the timely issuance of the documentation, and the timescales within which Lloyd’s expect such documentation to be issued. These timescales can be shortened with Underwriters’ agreement but cannot be lengthened unless in accordance with the London Market Contract Certainty guidelines.</p> <p><u>Sub-section 17.5</u></p> <p>Sub-section 17.5 relates to the format(s) of the policy(ies) or certificate(s) to be issued by the Service Company Coverholder. This sub-section should not be confused with sub-sections 17.1 above and 17.6 below which deal with what should be included in and/or attached to the policy/certificate documentation issued by the Service Company Coverholder.</p> |

The format(s) of the policy/certificate under sub-section 17.5 is, in many cases, the form of the wrapper/jacket of the policy/certificate (including the Schedule or Declaration page) which will be prescribed by Lloyd's, or by the relevant regulator. Where the document carries a standard reference recognised by the parties to the SCUA, this should be stated in sub-section 17.5 of the SCUA Schedule.

Where the document is bespoke, it should follow the format of any appropriate Model/Standard Outline Policy/Certificate documentation for the territory concerned and should be agreed by Underwriters and attached to the SCUA.

Where there is a multi-territory SCUA and the format of the policies/certificates could be varied then it is acceptable to refer to policies/certificates being "based on NMA/LMA approved forms" and such forms do not need to be attached to the SCUA.

The Service Company Coverholder should also be made aware of the Lloyd's Branding rules. Please see the link below:

www.lloyds.com/the-market/tools-and-resources/brand-and-marketing/lloyds-brand/brand-guidelines

Sub-section 17.6.2

Sub-section 17.6.2 requires that the policy/certificate contains the UMR of the SCUA under which the policy/certificate is issued.

Sub-section 17.6.9

A Several Liability Notice must be identified in 17.6.9 of the Schedule, even if the individual insurances are issued as 100% Lloyd's placements.

Sub-section 17.6.13

The requirement to add a statement in the policy/certificate to express that a "Service Company Coverholder acts as agent of the Underwriters in performing its duties under the Agreement" can be met in many different ways, but words to this effect must be included in the policy/certificate. Where language to this effect is not included in the policy/certificate jacket one way to accommodate this requirement would be to add the words "The Coverholder acts as agent for Lloyd's Underwriters in respect of this insurance."

Sub-sections 17.7

The issuance of combined certificates is not permitted. If however Lloyd's has permitted combined certificates to be issued, then the requirements for combined certificates would need to be followed. [Refer to Market Bulletin Y4133].

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| | <p>There may be occasions where a Service Company Coverholder may put a line down on a slip or subscription policy. Assuming it is doing so only on behalf of its aligned syndicate and not for or on behalf of any other carrier then that would not breach the prohibition on issuance of combined certificates.</p> |
| <p><u>Section 18</u> <u>Procedure for the Handling and Settlement of Claims and Pursuit of Recoveries</u></p> | <p>Managing Agents should ensure when delegating claims authority to a Service Company Coverholder that local law(s) or regulation(s) do not prohibit the Service Company Coverholder or their employees performing such claims tasks/functions.</p> <p>Where Underwriters do not delegate claims authority to the Service Company Coverholder sub-section 18.1 should show "No" and words to express that all claims are to be advised by the Service Company Coverholder to the Underwriters for instructions as to their handling and settlement, should be added under the heading "Procedure for the Handling and Settlement of Claims...etc."</p> <p>Where authority to agree and/or settle claims has been delegated to the Service Company Coverholder, sub-section 18.1 should show "Yes". The wording contains a default wording for claims handling which provides contractual clarity and demonstrates the "minimum standard" of controls over any level of authority to be granted to the Service Company Coverholder. However, the default wording can be replaced, amended or supplemented by adding a more detailed claims authority wording in sub-section 18.1 of the Schedule.</p> <p>Lloyd's would encourage Managing Agents to consider the use of a more detailed claims authority wording bespoke to each SCUA in replacement of Section 18, however, where the default wording as per Section 18 is used, the Schedule should be completed as follows:</p> <p>18.1.1 - show the total claim limit of authority delegated to the Service Company Coverholder.</p> <p>If Underwriters wish to appoint a third party to agree and/or settle claims on their behalf this must be done by a separate Third Party Administration ('TPA') Agreement between the TPA and the Underwriters.</p> <p>If Underwriters require the Service Company Coverholder to appoint a TPA to handle claims on Underwriters behalf then this must be expressly stated in the SCUA.</p> <p>Where Underwriters appoint a TPA, 18.1 should show "No" and the details of the TPA should be shown under the heading "Procedure for the Handling and Settlement of Claims...etc." stating that all claims should be referred to the TPA. The TPA(s) associated with each SCUA must be notified in advance to Lloyd's in accordance with Lloyd's Bulletin Y4630 dated 1st November 2012 and Lloyd's must also be notified when each TPA relationship ceases.</p> |

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| | <p>One significant area not covered by the default claims authority wording as per Section 18 is the establishment and operation of a Loss Fund with the Service Company Coverholder, and because the operation of each Loss Fund will be different a detailed agreement will need to be in place between the Underwriters and the Service Company Coverholder and shown under sub-section 18.1.</p> |
| <p><u>Section 19</u> <u>Complaints or Proceedings</u></p> | <p>The Service Company Coverholder is required to promptly notify Underwriters of all complaints made in relation to the insurances bound under the SCUA and to implement and maintain procedures to ensure complaints can be dealt with promptly and reasonably.</p> <p>Additionally, the Service Company Coverholder is required to notify Underwriters of any matter which might give rise to litigation or result in a complaint to any regulatory authority.</p> <p>In many cases it may be appropriate for Underwriters to refer in this section to their own applicable complaints handling procedures.</p> <p>Details of Lloyd's requirements for complaints handling can be found at: www.lloyds.com/the-market/operating-at-lloyds/regulation/complaints/complaints-handling</p> |
| <p><u>Section 20</u> <u>Reporting</u></p> | <p>The model binding authority agreement for third party Coverholders contains a number of prescribed reporting requirements. The SCUA is less prescriptive given the risk profile of Service Company Coverholders and the nature of the relationship between the Service Company Coverholder and its associated managing agency. Instead this Section provides Underwriters with a generic ability to require from the Service Company Coverholder written reports in such form and containing such information as Underwriters require.</p> <p>Therefore, Underwriters need to consider exactly what type of reports they want their Service Company Coverholder to provide and make sure that they inform the Service Company Coverholder of those requirements.</p> <p>(Lloyd's guidance provides that the Service Company Coverholder should report by class or category in respect of all premiums, paid claims, outstanding claims and expenses in respect of all insurances bound.)</p> |

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| <p><u>Section 21</u></p> <p><u>Records, Statistical Information and Audit/Inspection</u></p> | <p>This section requires that the Service Company Coverholder maintains complete records relating to all insurances bound, and the SCUA requires that the Service Company Coverholder retain all such records for a minimum of 7 years or such longer period as required by the law. The SCUA also provides that Underwriters shall own all such records and shall have the right to access, inspect, audit and copy all such records.</p> |
| <p><u>Section 22</u></p> <p><u>Advertising and Promotional Material</u></p> | <p>For more details on how Service Company Coverholders can use Lloyd's brand, see:</p> <p>www.lloyds.com/the-market/tools-and-resources/brand-and-marketing/lloyds-brand/brand-guidelines.</p> <p>For more information on country specific legal and regulatory requirements relating to advertising see Crystal at www.lloyds.com/crystal or contact Lloyd's International Trading Advice at lita@lloyds.com. Note in particular that care is required in relation to US surplus lines risks where there are State restrictions on the solicitation of business.</p> |
| <p><u>Section 23</u></p> <p><u>Separate Bank Accounts</u></p> | <p>This Section deals with the manner in which Service Company Coverholders have to handle insurance monies (premiums, return premiums and claims). This is important to protect both underwriters and policyholders' funds if the Service Company Coverholder becomes insolvent.</p> <p><i>Purpose of the section</i></p> <p>Where the Service Company Coverholder handles 'monies in transmission' only (i.e. does not hold or retain monies, for example, in order to establish or maintain a claims fund) such monies must be held in a separate bank account set apart for insurance monies (i.e. premiums, return premiums and claims monies). For the sake of clarity, this means that it must be held separately from the general and operating accounts of the Service Company Coverholder, but may be co-mingled with insurance monies from other insurers. This Section allows the Service Company Coverholder to handle money in this way and is based upon LMA5141 (which is the US Coverholder version of the Separate Bank Accounts Clause).</p> <p><i>Investments</i></p> <p>Sub-section 23.1.4.2 makes clear that the Service Company Coverholder cannot "invest" the monies held in the account. Accordingly any proposal to allow the Service Company Coverholder to invest such monies needs to be specifically agreed. A proposal that the Service Company Coverholder be permitted to sweep assets into overnight deposit should be</p> |

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| | <p>expressly agreed by Underwriters and in particular should be subject to the Service Company Coverholder obtaining acknowledgement from its bank that it has no right of set-off or counterclaim against the assets held on deposit. Any other form of investment is likely to present much higher risks and therefore should not be agreed to other than with the express agreement of the managing agent's compliance or finance functions (who in turn should discuss the proposal with Lloyd's).</p> <p>Section 23 may not be suitable in all cases for example where the Service Company Coverholder may hold insurance money under other client protection arrangements permitted by local law.</p> <p><i>Claims funds</i></p> <p>Where the Service Company Coverholder holds or retains monies (for example to establish or maintain a claims fund), such monies must be held in accordance with the Lloyd's Premium Trust Deed. The provision of such a claims fund should be incorporated by using Section 21.</p> <p>Further guidance is provided in Lloyd's Market Bulletin Y4332 (13 November 2009) as well as the Code.</p> |
| <p><u>Section 24</u> <u>Licences and Taxes</u></p> | <p>For information regarding the regulatory and tax requirements that apply in each territory where Lloyd's is licensed see Crystal at www.lloyds.com/crystal or contact Lloyd's International Trading Advice at lita@lloyds.com.</p> |
| <p><u>Section 25</u> <u>Fees and Charges</u></p> | <p>This Section makes it clear that any fees or charges added by the Service Company Coverholder to the premium, i.e. policy, service or other charges, are to be disclosed to the Insured(s) and the Underwriters and shown on the documentation issued.</p> |
| <p><u>Section 27</u> <u>Confidentiality</u></p> | <p>This Section ensures that each party keeps confidential any information it obtains as a result of entering into or performing its duties under the SCUA. However, nothing in this Section is intended to prevent each party disclosing confidential information where they are legally obliged to do so e.g. under any "whistleblowing" laws.</p> |
| <p><u>Section 28</u> <u>Conflicts of Interest</u></p> | <p>Managing agents must ensure that their outsourced providers (which include Service Company Coverholders) manage conflicts of interest.</p> <p>A key concern will be to ensure that the Service Company Coverholder has no actual or perceived conflicts of interest which</p> |

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| | <p>may impair the Service Company Coverholder's performance of its obligations under the SCUA. Guidance on managing conflicts is included in the Code of Practice for Delegated Underwriting at the following link:</p> <p>http://www.lloyds.com/the-market/tools-and-resources/resources/code-of-practice-for-delegated-underwriting_new</p> |
| <p><u>Section 29</u> <u>Compliance with the Law and Financial Crime</u></p> | <p>Service Company Coverholders need to ensure that they comply with all applicable laws for the proper handling of insurances bound.</p> <p>Due to their relationship with Managing Agents, Service Company Coverholders (wherever they are worldwide) can pose a potential financial crime risk to Managing Agents as "associated persons" under the UK Bribery Act. This Section has been drafted to respond not only to bribery risks but to also take account of money laundering and international sanctions. This Section is materially in similar terms to the Financial Crime Endorsements (LMA5173, LMA5174, LMA5175, and LMA5176 and therefore those endorsements should not be added to this model wording.</p> <p>Although this Section represents a model wording, any amendments to it that make it materially less robust are unlikely to be acceptable.</p> <p>Lloyd's guidance for managing agents regarding financial crime risks can be found at:</p> <p>http://www.lloyds.com/the-market/communications/regulatory-communications-homepage/financial-crime-international-sanctions-and-regulatory-risk</p> |
| <p><u>Section 30</u> <u>Data Protection</u></p> | <p>Even though the Service Company Coverholder may hold data in accordance with group corporate data procedures it is nevertheless important that Underwriters are satisfied that data protection requirements are met in any applicable territory(ies) where the Service Company Coverholder is located or does business.</p> |
| <p><u>Section 31</u> <u>Termination</u></p> | <p>This Section identifies the circumstances and the way in which the SCUA may be terminated. In general, where a party wishes to terminate the SCUA, a notice should be given and the SCUA will terminate at the end of the notice period. In certain circumstances, set out in sub-section 31.5, the Underwriters can terminate immediately by delivering a notice to the Service Company Coverholder.</p> <p>A notice period for termination must be included at the time of placement and such period inserted in sub-section 31.2.1 of the Schedule.</p> <p>This Section SHOULD NOT be used for the termination terms of the</p> |

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| | <p>insurances bound by the Service Company Coverholder. This is dealt with in accordance with Section 17.</p> <p>The term “Termination” in Section 31 is used to cover all forms of termination, including cancellation by notice, automatic termination and non-renewal.</p> |
| <p><u>Section 32</u> <u>Effect of Termination or Non Renewal</u></p> | <p>Termination (including non-renewal) of the SCUA has the effect of placing the business into run-off and the Service Company Coverholder continues to be responsible for managing the run-off in accordance with the terms of the SCUA.</p> <p>Section 32 sets out various restrictions that apply to the Service Company Coverholder’s authority to conduct the run-off following termination of the SCUA. The Section also gives the Underwriters additional rights to remove authority from the Service Company Coverholder.</p> <p>The term “Termination” in Section 32 is used to cover all forms of termination, including cancellation by notice, automatic termination and non-renewal.</p> |
| <p><u>Section 35</u> <u>Rights of Third Parties</u></p> | <p>This Section makes clear that the terms of the SCUA can only be enforced by the parties to the SCUA (i.e. the Underwriters and Service Company Coverholder), and that third parties whom the SCUA may benefit in some way do not have the right to enforce the contract.</p> |
| <p><u>Section 36</u> <u>Several Liability</u></p> | <p>Every binding authority (including a SCUA) must include a clear statement that explains that subscribing underwriters’ liability is several and not joint. This applies whether or not the SCUA is subscribed to by one or more than one syndicate or other insurer and reflects the fact that the individual members of a Lloyd’s syndicate have several liability.</p> |
| <p><u>Section 37</u> <u>Jurisdiction and Governing Law</u></p> | <p>This Section governs the applicable law and jurisdiction of the SCUA. It provides that any disputes shall be resolved in accordance with English law and that, as a default, the Courts of England and Wales shall have exclusive jurisdiction. Where the Service Company Coverholder is based outside of England and Wales, this Section gives Underwriters the option of pursuing proceedings in the local jurisdiction of the Service Company Coverholder. Changing the law and jurisdiction could materially alter the enforceability of the SCUA so care should be taken when amending the law and jurisdiction.</p> <p>This Section SHOULD NOT be used for the Law and Jurisdiction of the insurances bound by the Service Company Coverholder. This is dealt with in accordance with sub-section 17.6.4.</p> |