Sub-Broking Agreement

A general principle of the law of agency is that an agent must carry out his duties personally and has no general powers to delegate his duties. The appointment of a sub-agent or sub-broker will be in breach of this duty unless permitted by the law, expressed or implied agreement, or by the custom or usage of the market in which the agent or broker operates.

Best practice dictates that it would be preferable when appointing a sub-broker to obtain the written consent of the client.

The Agreement is made between:

Parties

Name of Lead Broker .......................................................... (The “Broker”)

Name of Sub-Broker .......................................................... (The “Sub-Broker”)

Effective date and duration of Agreement ...........................................

Name of insured or reinsured .......................................................... (“Client”)

Description of Business .......................................................... (“Business”)

1. Agreement

The Broker has been appointed by the Client to act as its reinsurance/insurance broker for the purposes of providing advisory and placement services in respect of the above described Business.

With the consent of the Client the Broker has appointed the Sub Broker) to assist the Broker in connection with the placement of the Client’s insurance/reinsurance risks in respect of the Business. The Sub-Broker agrees to take instructions only from the Broker in respect of the work undertaken by it.

2. Client Contact

Except with the prior consent of the Broker, the Sub-Broker will not contact the Client directly, including for the purposes of making a status disclosure under clause 3 below.
3. **Status Disclosure**

If so required by the FSA under the provisions of ICOBS each party is responsible for making its own status disclosure to the Client.

4. **Personal Recommendations and Demands and Needs Statements**

All documentation regarding the proposed contract of (re)insurance required by the FSA under the provision of ICOBS shall be drafted in good time to permit compliance with FSA requirements and once agreed shall be sent to the Client by ……..

5. **Obligations** (the obligations set out below are guidelines only which the parties could use or amend in accordance with their own circumstances)

The Sub-Broker agrees:

- To assimilate all underwriting information relating to the placement and/or claims collection for presentation to the (re)insurance market;
- To prepare the broking slips or such other documentation as is required by the (re)insurers for the acceptance of the placement and or claims collection and shall ensure that such broking slips or documentation shall acknowledge the Sub-Broker’s appointment, if required;
- To advise the Broker of the warranties and conditions, particularly any premium payment warranty or condition before instructions to bind cover are given and that it is under no obligation to accept, other than with the Brokers’ consent, any premium payment warranty or condition in respect of the Client’s (re)insurance risks;
  That it will agree with the Broker that the (re)insurers or markets to be used prior to inception and that the Broker will be kept informed of the progress of the work carried out by the Sub-Broker;
- To present quotations to the Broker only on the terms quoted to the sub-broker by (re)insurers quoting the gross premium, without amendment, alteration, rider enhancement unless previously agreed by the Broker on behalf of the client and confirmed in writing to the Sub-Broker;
- It will not confirm the order to the (re)insurer to market until a written instruction is received from the Broker on behalf of the Client to commence cover;
- To obey the instructions of the Broker as are necessary for the Broker to comply with the FSA Rules;
• Not to agree endorsements or mid-term variations to the slip or policy wording except with the written agreement of the Broker;

• Not to accept a purported notice of cancellation, avoidance or reservation of rights by the (re)insurer or market and to send such notices to the Broker immediately following receipt;

• To provide in a timely fashion information reasonably requested by the Broker in relation to this Agreement without limitation information regarding the renewal of any existing (re)insurance policy on behalf of the Client;

• To comply with the FSA Rules; and

• To exercise the standards of skill and care reasonably expected from a broker of the Sub-Broker’s expertise and to observe the duty of utmost good faith in all its dealings and in particular to ensure and procure that is staff will ensure that all material information is passed to the Broker without delay.

The Broker agrees

• To comply with the FSA Rules, as they may affect such Client's rights, liabilities and obligations;

• To ensure that the Client is fully aware of and accepts the terms of the Agreement in so far as they may affect such Client's rights, liabilities and obligations;

• To use its reasonable endeavours to procure that all facts and circumstances which an insurer/reinsurer would or may consider to be material to the decision whether to underwrite the Client’s risk or to continue to do so on any given terms are accurately and completely disclosed by the Client to the Broker and by the Broker to the Sub-Broker;

• To use its reasonable endeavours to procure that all changes in the facts or circumstances relating the Client obtained at the time or any relevant proposal which an insurer or reinsurer would or may consider to be material to its decision whether or not to continue to underwrite any risk or to accept liability are promptly, fully and accurately disclosed by the client to the Broker and by the Broker to the Sub-Broker;

• That it will only confirm the terms of the insurance or reinsurance cover effected through the Sub Broker after having received written confirmation from the Sub Broker that such insurance or reinsurance is in force and then only in accordance with such confirmation and

• That the renewal of the Client’s Business shall be the Broker’s responsibility who will liaise with the Sub-Broker to
allow for the proper and timely interchange of information and the subsequent consideration of renewal terms.

6. Client Monies

This clause is subject to any legal or regulatory requirements to the contrary (including but not limited to any FSA regulations or requirements and obligations arising by reason of any contractual arrangement or agency between the broker or sub-broker and any insurer which pre-dates this agreement)."

The Broker will hold all regulated Client and where permitted (re)insurer monies in a (non)statutory trust in accordance with the FSA Rules

(In the United Kingdom)
The Sub-Broker will hold all Client and (re)insurer monies in a (non)statutory trust in accordance with the FSA Rules

(In another EEA Member State)
The Sub-Broker will hold Client and insurer monies in accordance with any rules laid down by the home supervisory authority

(Outside the EEA)
The Sub-Broker will hold client and insurer monies in accordance with any rules laid down by the Home supervisory authority. Where no such regulations exist, the Sub-Broker will hold such funds in a segregated account separate from any other account but not specific to this Agreement, in an amount at least equal to the premiums and return premiums, net of commissions, received by him and unpaid to the persons entitled thereto.

The Sub-Broker will confirm to the Broker in a timely manner when Client monies have been paid to (re)insurers in order to satisfy CASS 5.5.81(4)

Where the Sub-Broker accepts a role during the term of this Agreement under a delegated underwriting authority he shall advise the Broker that he is accepting Client money as agent of the insurer. The Broker will advise his Client accordingly

7. Remuneration

The party responsible for the collection of the premium will account promptly to the other party for that party’s share of the commission/fee.

The percentage/share of the total available commission/fee will be allocated as follows:
8. **Fees and Charges**

The Client will be made aware of all fees and charges, in addition to remuneration, prior to inception of the contract of (re)insurance and the party preparing the accounting documentation will be responsible for allocating such fees and charges from the premium income in accordance with clause 7 above.

9. **Market Security**

All markets (including those on any in-house facilities) used on each placement are to be mutually agreed by the parties before being used on a placement.

10. **Letters of Undertaking**

Requests for letters of undertaking are to be discussed by the parties and a common course of action agreed on.

11. **Requests for Disclosure of Commissions**

Requests by Clients for disclosure of commissions are to be discussed by the parties and a common course of action agreed on, provided always that a prompt and accurate response will always be given to the Client in accordance with the FSA Rules.

12. **Fulfilment of Subjectivities**

Notification to markets (and suitable acknowledgement) or fulfilment of subjectivity to be made by…………….

13. **Claims**

Upon receipt of any claim or notification from the Client of any claim or circumstances that may give rise to a claim each party will advise the other and give assistance to the other upon request in the negotiation and settlement of any difficult or contentious claims.

Claims to be notified to markets and handled and serviced by [.

14. **Complaints**

Subject to the client’s consent each party will keep each other advised of any complaint in so far as its affects.
15. **Cancellation**

Each party will promptly advise the other of any notice of cancellation either from the Client or an (re)insurerer and then both parties will mutually agree a course of action.

16. **Errors and Omissions**

Each party will each have and maintain, at its own cost, errors and omissions insurance, and shall when requested to do so produce confirmation of such insurance.

18. **Confidentiality**

Both parties will treat information received from the other relating to this Agreement and to the Client’s Business as confidential and will not disclose it to any other person not entitled to receive it except as may be necessary to fulfil their respective obligations in the conduct of the Business and except as may be required by law or regulatory authority.

19. **Intellectual Property Rights**

Both parties will retain ownership of all their respective rights, including intellectual property rights, in the products, data, databases, computer programmes, documents, materials, ideas or other information or any compilation thereof used in the performance of the services. The Parties agree to do whatever is reasonable necessary to confirm or give effect to such ownership.

To the extent that any products, data, databases, documents, materials, ideas or other information constitute an original item developed by either party as a consequence of performing the Services, each Party agrees to do whatever is reasonably necessary to confirm or give effect to such rights vesting in the developing party.

Unless first agreed otherwise, each party has the right to use any jointly developed intellectual property for any purpose whatsoever.

20. **Entire Agreement**

This Agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement.
21. **Contracts (Rights of Third Parties) Act 1999**

Unless otherwise agreed between the parties no term of this Agreement is enforceable by a third party under the Contracts (Rights of Third Parties) Act 1999

22. **Choice of Law**

This Agreement is governed by English law, and if recourse to the courts becomes necessary the parties submit to the exclusive jurisdiction of the English courts.

23. **Change in Law/Regulation**

In the event of a change in law or regulation (including FSA Rules), which affect any of the parties’ obligations under this Agreement, the parties will co-operate in good faith to agree any necessary amendment(s) or variation(s) to the Agreement.

IN WITNESS WHEREOF THE PARTIES HERETO have executed this Agreement on the date recorded below

**Signed**

For and on behalf of

For and on behalf of

Dated