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## **SEACURUS LTD - TERMS OF BUSINESS AGREEMENT (OCTOBER 2011)**

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### **TERMS OF BUSINESS AGREEMENT**

Seacurus (SEAC) is committed to providing its clients with the highest quality standards when dealing with their affairs. This document sets out the terms on which SEAC agrees to act for you as its client.

You should read these terms of business carefully, as they set out our undertakings to you about our conduct, including limitations on our liability, and identify your own responsibilities both to us and to insurers, plus our regulatory and statutory obligations (e.g. pursuant to the Financial Services, Money Laundering and Data Protection legislation). If your business relationship with us is as a broker rather than the ultimate policyholder then, in addition, we draw your attention to the following section:

#### For Broker Clients Only (page 2)

Please contact us immediately if there is anything in these terms of business which you do not understand or with which you disagree, as if you instruct us to proceed with any insurance placement or to undertake any other insurance-related service, we will be doing so on these terms alone and they will have contractual effect between us.

Please note that any references we make to insurance and insurers shall always be deemed to include reinsurance and reinsurers. These terms meet the standards required of us by all our regulators. They can only be varied by a specific agreement in writing between both parties.

### **Information about Seacurus Limited**

Seacurus Limited of Suite 3, Level 3, Baltic Place West, Baltic Place, South Shore Road, Gateshead NE8 3BA is an accredited Lloyd's cover holder and independent broker, authorised and regulated by the Financial Services Authority (FSA). Our permitted business is arranging general insurance contracts and our FSA reference number is 435893.

These details can be verified on the FSA's Register by visiting the FSA's website [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register) or by contacting the FSA on 0845 606 1234 (UK) or +44 20 7066 1000 (overseas).

### **SEAC's Role**

As an independent insurance intermediary, we act as your agent. We are subject to the law of agency, which imposes various duties on us. However, in certain circumstances, we may act for and owe duties of care to other parties.

For example, if in our business relationship with you we act as an intermediary in relation to a Binding Authority held by us as a Coverholder then, in addition to our agency duties to you, we may have certain obligations to those insurers who have delegated underwriting authority to us and these terms of business should be read subject to those obligations. When circumstances of this sort occur, we will do all that we can to manage any possible conflict of interest fairly, so as to avoid prejudice to any party.

We will keep you adequately informed about the nature of our services to you and we shall take all reasonable steps to ensure that our communications with you are clear, fair and not misleading. We will explain the main features of products and services we are offering, including all important details of cover and benefits, together with significant exclusions, conditions and other obligations.

We will only advise you after we have assessed your requirements. It is very important, therefore, that your circumstances and objectives are clearly identified to us in order that we may seek the appropriate cover you require.

We will provide full information of any risk quoted, together with a statement of demands and needs, if appropriate, before it is bound. We will only place your insurance when we have your instructions to do so. We will advise you of any inability to place your insurance.

We are required to comply with the FSA regulations applicable to us as an insurance intermediary.

These include the following:

- We must conduct our business with integrity and pay due regard to your interests and treat you fairly.
- We must conduct our business with due skill, care and diligence.
- We must pay due regard to your information needs and communicate information to you in a way which is clear, fair and not misleading.
- We must manage conflicts of interest fairly, both between ourselves and you as our client and between you and another client.
- If we hold client money then we must meet certain specified conditions.
- We must take reasonable care to establish and maintain such systems and controls as are appropriate to our business.

### **For Broker Clients Only**

Our terms of business have been compiled to cover the direct relationship between SEAC and the ultimate policyholder. In those cases where our client is another broker, these terms of business should be read in conjunction with, and subject to, the following amendments and points of clarification:

1. You will be a “commercial customer” as defined in the FSA regulations and so any duties we owe you, particularly those set out in ICOB (the Insurance Conduct of Business), shall be assessed to that standard only and all matters set out in these terms of business, adjusted accordingly.

2. In the event that you, as our broker client, are subject to FSA regulation, we will then expect you to conduct yourself at all times with the due skill, care and diligence required of you by the FSA and, in particular, ICOB. These terms of business and all the points set out below are subject to this overriding requirement.

3. Whilst our duties will be solely to you as our broker client, you in turn, will owe duties of care, either to the ultimate policyholder or another intermediate party. It is for you alone to discharge those duties and you may not rely upon us to do so for you. In all cases, you must ensure that you have full authority to instruct us.

4. It is your obligation to ensure that your client is aware of all the terms of any insurance policy obtained by us on your instructions. In particular, we look solely to you to explain to your client the meanings and importance of their duties (and your duties to them), including but not limited to the duties of disclosure and utmost good faith, the preparation of proposal forms and questionnaires, compliance with warranties, subjectivities, cancellation clauses, premium payments and notification of claims.

5. Any reference throughout these terms of business to “your insurance” and to “your policy documents”, or similar, should be read as “your client’s”, as the context requires. Nonetheless, SEAC looks to you, as our broker client, as being solely responsible for compliance with all the matters here set out in these terms of business and SEAC, in turn, owes duties only to you.

## **Security**

SEAC cannot and does not guarantee the solvency of any insurer it places business with, nor does it rate, assess or approve security. However, it does monitor the financial strength ratings provided by specialist rating agencies such as, Standard & Poor’s and A.M. Best. Based on the information they provide, we may ask you for specific approval of the proposed security. The authorisation requirements can be explained in more detail by the individual responsible for your account.

A liability for premium, whether in full or pro rata, may arise under policies where a participating insurer becomes insolvent. Such liability will be yours alone, although we will be able to offer advice if requested. Similarly, claims or return premiums may be due to you where a participating insurer becomes insolvent or is delaying settlements. Whilst in those circumstances we cannot, and do not, accept liability for any unpaid amount(s), we will provide you with assistance in submitting a claim and seeking to obtain reimbursement for you.

## **Confirmation of Cover and Policy Documentation**

Our aim is to provide you with a cover note setting out the terms, conditions and participating insurers, in a timely manner. You should examine any insurance documents we send you very carefully to ensure that they do meet with your requirements. If you think they are incorrect, if you are dissatisfied with the insurance security or the documents do not meet with your requirements in any way, please advise us immediately. Otherwise, we will assume that the documentation is in order.

You will be provided with renewal terms, in writing, in good time before expiry of the policy, or notified that renewal is not being invited. Attached to the renewal terms will be a statement of any changes to the terms of the policy and any changes to information required to be given to you under EU Directives relating to insurance, statement of price and information about cancellation. If renewal is not being offered, you will still be notified in good time before expiry of the policy. Mid-term changes to your policy will, where possible, be provided in good time, prior to the change taking effect.

It is our policy to retain documents for business effected on your behalf in electronic or paper format, in line with market practice. For some types of insurance cover it is possible that a claim may be made under a policy long after its expiry date and it is, therefore, important that you keep your insurance documents safely.

## **Premiums**

The obligation to pay premium is yours. On business where debit notes are sent, they will show the premium due dates. It is important that payment in full is made to our bank account, as specified on our documentation, so that we hold all necessary monies in cleared funds before the due date.

We draw your attention to the significant time taken for non-Sterling cheques to clear and we, therefore, recommend that all non-Sterling payments be made by electronic transfer.

Failure to pay by the due date may result in the cancellation of an insurance contract, possibly back to its intended inception date, or being cancelled forthwith by us or by insurers giving notice of cancellation, as per the Cancellation Clause below.

Where insurers have specified that the premium must be received by a certain date, failure to comply can result in the automatic termination of your insurance contract.

## **Currency**

When conducting business we may have to convert funds to another currency in order to settle amounts due to insurers. If a repayment of funds is due to you or is requested by you after conversion then any such repayment will be made in the currency the funds have been converted to.

If you pay a premium in a different currency or to a bank account in a different currency from that requested, we may at our discretion either return the funds to you or convert the money to the required currency. In the latter case the converted funds will be applied against the amount due with any shortfall arising from exchange differences remaining your liability.

## **Client Money**

Client money is money of any currency that we receive and hold in the course of carrying on insurance mediation on behalf of our clients, or which we treat as client money in accordance with the FSA's client money rules. A copy of these rules is available on request.

As your agent, we have no discretionary powers over the money we hold on your behalf, unless specifically agreed with you in writing.

Client money will be held by SEAC in one of the following ways:

(a) Subject to a non-statutory trust, in accordance with the FSA Client Asset Sourcebook (CASS).

(b) On behalf of insurers and co-mingled with monies held in the non-statutory trust accounts.

You should be aware that if an insurer who has granted 'risk transfer' to SEAC becomes insolvent, any related premiums we hold for that insurer are deemed to have been paid to them and will not be returnable to you.

Similarly, claims money held by us will also be returnable to the insurer or its liquidator.

Client money will only be held on behalf of an insurer or underwriter in accordance with a written agency agreement. You will be notified if this will affect your policy.

### **Non-Statutory Trust Bank Accounts**

The aim of the trust is to protect clients in the event of the failure of the insurance intermediary, bank or other third party who may hold client money. In such circumstance, the insurance intermediary's general creditors should not be able to make claims on client money, as it will not form part of the insurance intermediary's property.

The fact that we will hold money on trust gives rise to fiduciary duties which will be owed to you until the client money reaches the insurer or product provider. We hold client money, subject to a non-statutory trust. This means that we are entitled to and may use client money held on behalf of one client to pay another client's premium before the premium is received from that other client, and to pay claims and premium refunds to another client before we receive payment from the insurer. However, we are not entitled to use client money to pay commissions before we receive the relevant premium from the client.

### **Segregation of Designated Investments**

We keep client money separate from our own money. We may do this by paying it into a client bank account. However, we may also do this by arranging to hold separately permitted designated investments with a value at least equivalent to the money that would otherwise have been paid into a client bank account. If we do this we will be responsible for meeting any shortfall in our client money resource, which is attributable to falls in the market value of a segregated investment.

### **Interest on Client Money**

Any interest earned on client money held by us and any investment returns on any segregated designated investments will be retained by us for our own use, rather than paid to you.

### **Payment to Third Parties**

We may transfer client money to another person, such as another broker or settlement agent, for the purpose of effecting a transaction on your behalf through that person. This may include brokers and settlement agents outside the UK. The legal and regulatory regime applying to a broker or settlement agent outside the UK, may be different from that of the UK and, in the event of a failure of the broker or settlement agent, this money may be treated in a different manner from that which would apply if the money were held by a broker or settlement agent in the UK.

You may notify us if you do not wish your money to be passed to a person in a particular jurisdiction. These terms of business are not intended to nor do they confer a benefit or remedy on any third party, whether by virtue of the Contract (Rights of Third Parties) Act

1999 or otherwise. Further, we may rescind or vary these terms of business as they apply to you, whether in whole or in part without the consent of any third party.

### **Our Approved Bank Accounts**

Client money will be deposited in a general client account with Lloyds TSB. Our selection of approved bank may be subject to change in the future. However, any additions will be in accordance with the FSA client money regulations.

On occasion, it may be necessary to hold client money with a bank which is not an approved bank. In such circumstances, the legal and regulatory regime applying to the bank, with which the client money is held, will be different from that of the UK and, in the event of a failure of the bank, the client money may be treated differently from the treatment which would apply if the client money were held by an approved bank in the UK.

Where client money is held in a bank which is not an approved bank, such money will be held in a designated bank account. This means that it is not pooled with money held in any other account. We will not hold client money in a bank which is not an approved bank, any longer than is necessary to effect the transaction.

We may hold client money in a client bank account outside the UK. In such circumstances, the legal and regulatory regime applying to the bank will be different from that of the UK and, in the event of a failure of the bank, your money may be treated in a different manner from that which would apply if the client money were held by a bank in the UK. You may notify us if you do not wish your money to be held in a particular jurisdiction.

### **Premium Warranties**

Where insurers have specified a premium payment warranty, insurers must receive premium due by that date. We will advise you as soon as possible of these terms and request that premium is paid to us in sufficient time to allow us to pass cleared funds to insurers. If you do not think you will be able to comply with the premium warranty, please contact us immediately, as failure to comply can result in the automatic termination of your insurance.

### **Warranties/Subjectivities**

You should familiarise yourself with all the terms of an insurance contract that you purchase. In particular, you must treat Warranties and Subjectivities seriously and comply with such terms whether express or implied contained in it. Failure to comply will entitle the insurer to terminate your insurance contract.

Further, the existence of a Subjectivity in an insurance contract may lead to that contract being invalidated or coverage prejudiced if the Subjectivity remains outstanding. Whilst we will advise you of such terms, we will look to you promptly to comply and to confirm that the Subjectivity has been satisfied, thus enabling it to be removed.

### **Your Duty of Disclosure/Utmost Good Faith**

You, and any agent acting on your behalf, are required to act with utmost good faith towards both ourselves and insurers at all times and you must disclose to insurers, via ourselves before the contract is finalised, all information which is known to you (or which ought to be

known to you) in the ordinary course of your business and which is material to the risk. Information is material if it would influence the judgement of a prudent insurer in fixing the premium or determining whether he would take the risk.

If there is any doubt as to whether information is material, it must be disclosed to insurers. The duties of utmost good faith and full disclosure apply before the contract is concluded, during the contract period, at renewal and on extension or amendment of the contract. In addition, the duties also apply to the claims' process and to any situations during the period of the contract where you are required to provide information to insurers.

The accuracy of all statements, information and answers required by insurers is your sole responsibility and we are entirely reliant upon you to discharge it fully. Breach of these duties may entitle insurers to avoid the contract with effect from inception and to repudiate liability in respect of all claims under the contract. We have an obligation to you to explain the above duties of disclosure and the consequences of any non-compliance by you and so, if you are unsure whether information may be material, or if you have any other query regarding your duties towards either SEAC or insurers, please do not hesitate to discuss matters with your contact at SEAC.

### **Your Liability for Tax**

SEAC is not a tax adviser and, consequently, makes no representation to you as to your liability, or otherwise, for tax on any sums that may be paid to you under a contract of insurance. It is your obligation alone to make declarations in respect of and to account to any relevant revenue authority for all insurance proceeds.

In respect of any global or multi-national insurance contract (being an insurance contract having an exposure in more than one country), Lloyd's and, potentially, other insurers will have regulatory and tax reporting obligations to a number of overseas countries. The application of those obligations may be complex and you may be required to pay premium, gross, without credit for any local tax already paid by you, or for relief or other exemptions you may consider you have.

Further, we may be required to collect tax amounts from you in addition to the gross premium. Unfortunately, you must make an application for such rebate or relief to which you consider you are entitled, to the relevant fiscal authority subsequently.

### **Remuneration**

Our normal means of remuneration is from commission or brokerage earned on insurances placed, or by way of a fee negotiated and agreed with you. We will not impose on you, any fees or additional charges, without prior notification or discussion with you. Brokerage and fees are earned for the policy period on placement and we will be entitled to retain all fees and brokerage in respect of the full policy period in relation to policies placed by us. As a customer, you may at any time ask us to disclose to you the commission we receive for placing your business.

We may also act as a reinsurance broker and/or service provider to insurers with whom we have placed your insurances and receive remuneration by way of administrative fees or commissions for services so provided to underwriters. Some insurers will also pay additional amounts to insurance intermediaries, usually at the end of their accounting period and normally on a contract by contract basis, in recognition of profitability (sometimes called "profit commissions"), prompt payment or based on a volume incentive. These are neither a Placement Service Agreement (PSA) nor a Market Service Agreement (MSA). We do not operate PSAs or MSAs for any service we provide to insurers.

## **Services we may provide to others**

During the submission and consideration of any claim that you may have under an insurance contract we may provide, and be separately remunerated for, limited services to your insurers, such as, relaying instructions from those insurers to surveyors, adjusters, lawyers and other third parties appointed by the insurers, distributing reports and arranging the collection and payment of fees or disbursements on behalf of insurers.

In performing these services we will always use reasonable endeavours to avoid a conflict of interest. However, should we consider that a conflict has arisen we shall take no further action on behalf of the insurer unless you agree, in writing, that we may proceed. In addition, there may be situations where we receive a commission from a third party, for example, when arranging guarantees on your behalf. Such commissions will be retained by SEAC in recognition of the additional services provided.

## **Cancellation Clause**

A cancellation clause may be inserted into an insurance contract. It emphasises your obligation to pay the premium promptly and in full. In the event that you or your agents fail to pay SEAC the premium or any instalment thereof by the due date, the insurance contract may be cancelled forthwith by us or by insurers, in accordance with any cancellation clause in the policy.

Insurers may return pro rata premium to us from the date of notice or from such date of cancellation as may be required in that notice. Where applicable, and where the relevant details have been passed to us, any other party with an interest in the insurance contract will be advised of any non-payment of premium and given the opportunity to pay the outstanding amounts. However, as our client, we will consider the primary duty to make payment to remain with you.

You should be aware that once our remuneration is earned in the event the insurance is later cancelled after inception, usually no return of brokerage/our fee will be given.

## **Claims**

You must notify us of all details of any incidents that could give rise to a claim without delay and provide us with all material information in order for us to inform insurers and to comply with the terms of your insurance contract. We will provide you with advice of the insurer's decision about the claim promptly upon receipt from that insurer. In the event that the insurer accepts your claim, we will remit claims' payments to you as soon as possible after they have been received by us on your behalf. In the event that an insurer rejects your claim, we will inform you promptly upon receiving that information, together with any explanation of that insurer's reasons.

Should an insurer become insolvent or delays making settlement, we do not accept liability for any unpaid amounts.

We will provide a claims' handling service for you as long as you remain a client of SEAC, providing you with reasonable guidance in pursuing a claim under your insurance contract. We will handle such a claim fairly and promptly, exercising the duty of care, skill and diligence as is required by the FSA, keeping you informed of the claim's progress. We reserve the right to charge a reasonable fee for our services if, for whatever reason, you

cease to be our client but request us to handle any claim on your behalf and we agree to do so.

## **Complaints**

SEAC will handle all complaints fairly and promptly. The SEAC Complaints Procedure complies with applicable regulatory requirements and is available upon request. All complaints should be addressed to “The Compliance Officer, Seacurus Limited, Suite 3, Level 3, Baltic Place West, Baltic Place, Gateshead Tyne & Wear NE8 3BA” and will be acknowledged within five working days.

## **Compensation**

We are covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the FSCS if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim. Full details and further information on the Scheme are available from the FSCS at 7th Floor, Lloyd’s Chambers, 1 Portsoken Street, London, E1 8BN.

## **Confidentiality and Security**

Information provided by you to SEAC will remain confidential and will only be disclosed in the normal course of negotiating, maintaining or renewing your insurance policies, unless you have consented otherwise. Disclosure may also be made to our regulator to fulfil its regulatory function, or where we are legally obliged to disclose the information. We shall be pleased, in appropriate circumstances, to enter into a specific Confidentiality Agreement with you, should you deem it appropriate.

## **Money Laundering and Bribery & Corruption**

We have a regulatory obligation to guard against the risks of financial crime. To assist us to achieve this objective, we need to obtain evidence of the identity of clients for whom we act at the start of a business relationship, or in respect of certain transactions. For UK companies and foreign corporations (other than listed ones), evidence of identity will usually comprise a copy of the most recent set of audited accounts for example from Companies House or evidence of governmental regulation for example from the FSA Register .

For individuals, we will require a certified photocopy or other image of your passport signature page or we may access information from a credit reference agency to confirm your identity. Alternatively, for companies and individuals, with permission, we may obtain evidence from a regulated institution, such as your bank, that it has already carried out satisfactory checks.

We are obliged to report to the Serious Organised Crime Agency, any evidence or suspicion of money laundering at the first opportunity and we are prohibited from disclosing any such report to you.

In order to satisfy company procedures, but also because of our responsibilities under Money Laundering legislation, claims’ payments will be made in favour of you. If, however, you request a payment to be made to a third party, we will ask you to confirm in writing the

required payee name and details and explain the reason for your request before the payment can be made.

Effective from 1 July 2011, SEAC is legally bound by the terms of the UK Bribery Act 2010 ("the Act"). SEAC has adopted robust procedures to counter against instances of bribery and corruption (the details of our procedures are available on request) and requires that you adhere to the principles of adequate procedures under the Act.

### **Adherence to Financial and Trade Sanctions**

We require that you, at all times, adhere to any applicable international financial and trade sanctions legislation which might from time to time be issued by the United Nations Security Council or by the governments and regulators of the United Kingdom, the United States of America and the EEA.

### **Data Protection**

We are registered under the Data Protection Act 1998 and we undertake to comply with the Act in all our dealings with your personal data. We will keep your personal information secure.

### **Termination of our Services**

Whilst our wish is to retain the business and goodwill of our clients, you may terminate our services by giving us notice in writing. Similarly, we may also terminate the services that we provide to you by giving you notice in writing.

In the event that our services are terminated by you, other than at the expiry of a relevant policy period, we will still be entitled to retain (or to receive if the same has not yet been paid), any and all remuneration due in respect of any insurance policies placed by us on your behalf. In the event you require transfer of your business to another intermediary, brokerage arrangements will be subject to agreement between the insurance intermediaries.

### **Governing Law**

These terms of business and any accompanying or associated letter and our business relationship with you shall be governed by and construed solely in accordance with English Law and the High Court in London shall have exclusive jurisdiction to settle any disputes that may arise out of or in connection with them.

### **Acceptance of these Terms of Business**

If, having received these terms of business, you continue to do business with us, we will assume that you have given us your consent to transact business with us on the terms outlined above.