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M12 - Termination / Automatic Suspension and Non-Renewal

‘Example of a Simple Continuous Agreement’

Embedded Variables - are indicated in red non-bold

**Referenced Objects** - are indicated in blue bold

Defined Terms - are black non-bold with all words that are part of the term capitalised.

Clause Variations - If a clause has been selected from a number of variations the clause number will be highlighted for example 12.11.1

Optional and Conditional Clauses – Optional and Conditional Clauses that are included are shown in darkest grey.

## Module 12 – Termination / Automatic Suspension

**Module 12 – Synopsis**

This Module concerns the rights and obligations of the Insurers and the Coverholder in the case of:

* Automatic Suspension of the entire Agreement
* Termination of the entire Agreement, either by exercising a right of Immediate Termination or Termination with Notice

While certain amendments to the Coverholder’s authority during any notice or run-off period are included within this Module, any further amendments must be made in accordance with the provisions in **Module 2 – Contract Status**.

**General Provisions**

12.1 Any rights to terminate or automatically suspend the Agreement, together with any obligations emanating from such rights, must be enacted in accordance with applicable law and regulation.

12.2 Any instruction given, by the Lead Insurer to the Coverholder, to cease offering terms or quotations or binding or amending policies, or to act partially or fully as the Insurers’ agent, must be made in good faith, and for reasonable business, legal or regulatory purposes.

12.3 The Coverholder and Insurers must comply with any direction, condition or requirement, including any direction to terminate or automatically suspend the Agreement and / or the Coverholder’s authority, given by any Regulatory Body with jurisdiction over the Insurers or the Coverholder.

12.4 The Coverholderor Lead Insurer, as appropriate,will inform the other promptly upon becoming aware of any of the events set out in **Automatic Suspension** and / or **Right of Immediate Termination**. Any failure by the Coverholder or the Lead Insurer to inform will not affect the Termination or Automatic Suspension of the Agreement or the rights and obligations under this Module.

12.5 Unless specifically stated by applicable law and regulation to the contrary, or otherwise agreed by the Lead Insurer, where it is a requirement that notice of termination or automatic suspension or intention to terminate or automatically suspend the Agreement and / or the Coverholder’s authority is to be provided to a Regulatory Body, the Lead Insurer will be responsible, for ensuring that all necessary steps are taken to address any notification actions, including meeting relevant timeframes and the Coverholder must follow any instructions from the Lead Insurer to ensure this requirement is met.

12.6 The Coverholder and Lead Insurer must take reasonable steps to identify and mitigate potential detriment to policyholders when considering termination or automatic suspension of the Agreement.

**Survivorship**

12.X1 Upon termination or automatic suspension of the Agreement, the Coverholder and Insurers agree that all rights, obligations, and liabilities under the Agreement must survive for the duration of the Runoff Period, unless any applicable law or regulation provides otherwise.

12.X2 In no event must the Runoff Period exceed 6 years from the effective date of termination or automatic suspension of the Agreement, unless any necessary extension is agreed by the Lead Insurer.

**Communication**

12.8 However the Agreement is terminated (either by right of immediate termination or termination with notice) or automatically suspended, for transparency, and to avoid disputes, there must be a clear communication, between the Coverholder and the Insurers:

12.8.1 Specifying the event(s) or decision that triggered the termination or automatic suspension.

12.8.2 Specifying the date on which the termination or automatic suspension takes effect.

12.9 Any communication must be in writing, and communicated either:

12.9.1 By email (where legally acceptable); or

12.9.2 By post (via a pre-paid tracked delivery service), where email is not legally accepted; or

12.9.3 In person.

12.10 Any communication will be deemed to have been received:

12.10.1 If sent by email, at the time of sending, unless the sender receives a notice of failure of delivery, irrespective of whether receipt has been acknowledged; or

12.10.2 If sent by pre-paid tracked delivery service, at the time and date of delivery, as recorded by the delivery service; or

12.10.3 If delivered by hand, on signature of a delivery receipt, or at the time the communication is left at the address.

12.11 In the case of communication to the Coverholder, sent to:

12.11.1 John Smith, via john.smith@domain.com and / or at 100 Example Street, London, UK.

12.12 In the case of communication to the Insurers, sent to:

12.12.1 Jane Smith via [jane.smith@mail.com](mailto:jane.smith@mail.com) and / or at 20 Example Road, London, UK.

12.13 The Lead Insurer will ensure that copies of any notice of termination or automatic suspension are provided to any other interested parties, where appropriate, associated with the Agreement, for information purposes.

12.13.1 The Coverholder will assist the Lead Insurer in ensuring that any other interested parties are appropriately advised, in accordance with the Lead Insurer’s instruction(s).

**Automatic Suspension / Termination of the Agreement**

**Automatic Suspension**

12.15 The Coverholder and Insurers agree, unless specifically agreed to the contrary in writing, by the Lead Insurer, the Agreement will be automatically suspended, with immediate effect, if any of the following events are triggered in respect of the Coverholder or the Lead Insurer:

12.15.1 Become the subject of voluntary or involuntary rehabilitation or liquidation proceedings.

12.15.2 Become the subject of an action in bankruptcy.

12.15.3 Make or propose any composition with its creditors or make any assignment for the benefit of its creditors or otherwise acknowledge its insolvency.

12.15.4 Have imposed, by a court of competent jurisdiction, the appointment of an administrator or administrative receiver or equivalent office holder.

12.15.5 Have a receiver or equivalent office holder appointed for the whole or any part of its business.

12.15.6 Being a partnership, be dissolved by agreement between the partners or by operation of law.

12.15.7 Cease, for whatever reason, to be regulated by their Regulatory Body or has any relevant licence or authority to conduct business suspended, removed or impaired by any order or decree of any judicial authority or Regulatory Body having jurisdiction over the Coverholder and Insurers.

12.15.8 Cease to continue its business for any other reason.

12.15.9 Cease to be able to operate the Agreement for any other reason.

12.16 During any period of Automatic Suspension, unless specifically agreed by the Lead Insurer, the Coverholder will have **NO authority** to:

12.16.1 Extend the period of any existing policy.

12.16.2 Cancel, and then replace under the Agreement, any existing policy.

12.16.3 Offer any new or renewal terms and / or quotations, and / or bind any new policies or renew any existing policies, other than where terms or quotations have been issued and the quotation period is still valid (or are due to be issued imminently) and / or the Coverholder is legally obliged to honour.

12.16.4 Make any amendments to any existing policy, which will, in effect, increase or extend the Insurers’ risk exposure.

12.17 Where such an event is triggered for the Coverholder, without prejudice to the provisions in **Communication** and **General Provisions**,the Lead Insurer will provide clear instructions to the Coverholder detailing any actions (including required time limits) the Coverholder needs to take, where such actions are possible, for reinstatement of the Agreement or any reinstatement or partial reinstatement of the Coverholder’s authority.

12.17.1 For the purposes of clarity, it is noted that any proposed change to the Coverholder will require the Agreement to end and a new Agreement to be established.

12.18 Where such an event is triggered for the Lead Insurer, without prejudice to the provisions in **Communication** and **General Provisions**, the Coverholder will provide clear instructions to the Lead Insurer detailing any actions (including required time limits) the Lead Insurer needs to take, where such actions are possible, for reinstatement of the Agreement.

12.18.1 For the purposes of clarity, it is noted that any proposed change to the Lead Insurer will require the Agreement to end and a new Agreement to be established.

12.19 If the issue(s) leading to the Automatic Suspension is (are) not resolved within the specified period to the Lead Insurer’s or the Coverholder’s satisfaction, dependant on the party triggering the event, or, where such actions are not possible, the Lead Insurer or the Coverholder will invoke their **Right of Immediate Termination** of the Agreement.

**Right of Immediate Termination**

12.20 The Insurers and the Coverholder agree that the Lead Insurer or the Coverholder may terminate the Agreement at any time with immediate effect by giving written notice, in accordance with the provisions in **Communication**, upon the occurrence or reasonable anticipation of the occurrence of any of the following events:

12.20.1 An Automatic Suspension triggering event where the issue(s) leading to the Automatic Suspension is (are) not resolved, in accordance with the provisions in **Automatic Suspension**.

12.20.2 Either the Insurers or the Coverholder fail to comply with any material provisions of the Agreement (where materiality is defined by the aggrieved Agreement Party) and is unable to rectify the failure, to the aggrieved Agreement Party’s satisfaction, within 30 business days of being notified of the failure, unless an alternative timeframe for remediation is agreed, in writing.

12.20.3 Either the Insurers or the Coverholder (or any director, officer or partner of the entity) or any individual named in the Agreement:

12.20.3.1 Is convicted of a criminal offence.

12.20.3.2 Where the Insurers become aware that the Coverholder (or any director, officer or partner thereof) had been convicted of a criminal offence prior to the commencement of the Agreement which had not been disclosed by the Coverholder.

12.20.3.3 Causes either the Insurers or the Coverholder to be subject to any criminal sanction.

12.20.3.4 For the purposes of this provision only, the criminal offence is one that involves fraud, dishonesty, financial crime or is any other criminal offence that may materially affect the operation of the Agreement.

12.20.4 Either the Insurers or the Coverholder is:

12.20.4.1 Merged with, acquired by or otherwise absorbed by any individual, corporation or other business entity or organisation of any kind.

12.20.4.2 Subject to a change in control, including, without limitation, the sale, transfer, or other disposition of a majority of the voting shares or equity interests, or any transaction or series of transactions whereby another party obtains, directly or indirectly, the power to direct or cause the direction of the management, policies, or operations to change.

12.20.4.2.1 For the avoidance of doubt, reorganisations or restructurings wholly within the same group will not be deemed a change in control for the purposes of this Agreement.

12.20.5 Either the Insurers or the Coverholder fails to comply with any applicable law or regulation, specifically in relation to the operation of the Agreement, in the jurisdiction in which it is located or in any other jurisdiction in which it does business.

12.20.6 Instructions to immediately terminate the Agreement are given to either the Insurers or the Coverholder by any Regulatory Body with jurisdiction over the Insurers or the Coverholder.

12.20.7 Any circumstances where the Coverholder’s main source of business to the Agreement ceases or is substantially modified in a manner that impacts the performance or scope of business under the Agreement and, where such source of business cannot be readily replaced.

12.20.8 Any circumstances that are likely to adversely impact the reputation of the Insurers or the Coverholder.

12.20.9 The Coverholder materially and / or consistently fails to comply with ongoing oversight related requirements and is unable to rectify the failure, to the Lead Insurer’s satisfaction, within 30 business days of being notified of the failure, unless an alternative timeframe for remediation is agreed, in writing.

12.20.10 The Coverholder materially and / or consistently fails to address any audit related recommendations, to the Lead Insurer’s satisfaction, within the timeframes stipulated when the audit recommendations are provided to the Coverholder.

**Termination with Notice**

12.21 Without prejudice to the provisions specified in **Communication**, the Agreement may be terminated at any time by either the Coverholder or the Lead Insurer giving notice to the other which is not less than:

12.21.1 30 business days; or

12.21.2 Such longer period as may be required by applicable law or regulation.

**Effect of Termination – What happens during any notice period**

12.22 In the event that notice of termination of the Agreement is served, in accordance with provisions in **Communication**, the Coverholderand the Insurers agree that at any time during the notice period:

12.22.1 The Coverholder will have **NO authority**, without the prior written consent of the Lead Insurer, to:

12.22.1.1 Cancel, and then replace under the Agreement, any existing policy.

12.22.1.2 Offer any new or renewal terms and / or quotations, and / or bind any new policies or renew any existing policies, other than where terms or quotations have been issued and the quotation period is still valid (or are due to be issued imminently) and / or the Coverholder is legally obliged to honour.

12.22.1.3 Make any amendments to any existing policy, which will, in effect, increase or extend the Insurers’ risk exposure.

12.22.1.4 Extend the period of any existing policy.

12.22.2 The Coverholder will **have authority**, unless specifically agreed otherwise by the Lead Insurer, to:

12.22.2.1 Cancel any existing policies when instructed to do so by the policyholder.

12.22.2.2 Service existing policies, including making any amendments which do not have the effect of increasing or extending the Insurers’ risk exposure.

12.22.2.3 Utilise any existing production methods, electronic or otherwise, for the ongoing production of policy documentation and other documents evidencing cover, to effect any authorised amendments to existing policies.

**Effect of Termination / Automatic Suspension – What happens once the Agreement has ended / suspended**

12.23 Once the Agreement has ended / suspended:

12.23.1 The Coverholder will have **NO authority,** without the prior written consent of the Lead Insurer, to:

12.23.1.1 Cancel, and then replace under the Agreement, an existing policy.

12.23.1.2 Offer any new or renewal terms or quotations and / or bind any new or renewing policies.

12.23.1.3 Make any amendments to an existing policy, which will, in effect, increase or extend the Insurers’ risk exposure.

12.23.1.4 Extend the period of an existing policy.

12.23.2 The Coverholder will **have authority**, unless specifically agreed otherwise by the Lead Insurer, to:

12.23.2.1 Cancel any existing policies, when instructed to do so by the policyholder.

12.23.2.2 Service existing policies, including making any amendments which do not have the effect of increasing or extending the Insurers’ risk exposure.

12.23.2.3 Utilise any existing production methods, electronic or otherwise, for the ongoing production of policy documentation and other documents evidencing cover, to effect any authorised amendments to existing policies.

12.24 At the request of the Lead Insurer, the Coverholder must co-operate with the Lead Insurer, to ensure that where any existing policies are non-cancellable and / or have perpetual obligations on the Insurers:

12.24.1 Such policies are clearly identified.

12.24.2 Where appropriate, policies are transferred to alternative Insurers, with all policyholder communication requirements and applicable law and regulation fully complied with.

12.24.3 Except for any circumstances where such policies are not affected by the termination of the Agreement and will continue to run, unless cancelled on the instruction of the policyholder.

12.25 The Coverholder and Insurers will continue to perform their respective obligations, in accordance with the terms and conditions of the Agreement, until:

12.25.1 Every policy bound has expired, or has been cancelled or transferred.

12.25.2 Any claims arising under such policies, whether the Coverholder has claims related authority or not, have been paid or otherwise resolved.

12.26 Once every policy bound has expired or has been cancelled or transferred, the Coverholder will ensure that any access to policy documentation related electronic production ceases and, where any unused documentation has been made available as paper stocks, these are returned to the Lead Insurer or their nominated representative, or destroyed on the instruction of the Lead Insurer.

12.27 Where the Agreement has terminated, following an event noted in **Automatic Suspension**, and / or because the Coverholder otherwise ceases to have the required authorisation (or any relevant exemption therefrom), the Coverholder will:

12.27.1 No longer be under a duty to perform its obligations under the Agreement, if such obligations would, if performed, cause it to be in breach of any applicable law or regulation.

12.27.2 Be under a duty to co-operate with and implement all reasonable instructions from the Lead Insurer to effect the transfer of servicing of the policies bound by the Coverholder to the Lead Insurer or to such parties as the Lead Insurer may appoint.

12.28 The Coverholder and / or the Insurers rights to receive monies due in respect of policies bound, or otherwise under this Agreement, as detailed in **Module 11 – Management of Monies** and / or **Module 6 – Remuneration**, will not be impaired by any of the provisions of the **Effect of Termination / Automatic Suspension** and each Agreement Party agrees not to challenge these rights, based upon the provisions of this Module;

12.29 If the Insurers collect monies directly from insurance brokers or other insurance intermediaries, policyholders or others from whom monies may be due in respect of policies bound, the Insurers will give the Coverholder credit for such sums in account, in accordance with **Module 6 – Remuneration**, provided always that this obligation will not apply to the extent that the Insurers are legally or regulatorily prohibited, restricted, or prevented (including by reason of applicable sanctions, anti-money laundering laws, or similar requirements) from making or recognising such collection or payment.

12.29.1 Where such prohibition, restriction, or prevention applies, the Insurers will:

12.29.1.1 Notify the Coverholder as soon as reasonably practicable.

12.29.1.2 Use reasonable endeavours, consistent with applicable law and regulation, to identify and implement an alternative lawful mechanism to give effect to the intent of this provision.