

GUIDANCE NOTES APPLYING TO:

- LMA3113 BINDING AUTHORITY AGREEMENT (EXCLUDING U.S.A. & CANADA DOMICILED COVERHOLDERS)
- LMA3114 UNITED STATES OF AMERICA BINDING AUTHORITY AGREEMENT
- LMA3115 CANADA BINDING AUTHORITY AGREEMENT

Additional guidance for the U.S.A. and Canada are included under Appendix 1 and 2.

Introduction

The Lloyd's Market Association ("LMA") has issued an updated suite of **Model Binding Authority Agreements** ("model agreements"), dated 1 July 2013, with the aim of providing comprehensive pro-forma binding authority contracts in line with current regulatory requirements and good practice (available at www.lmalloyds.com or www.lloyds.com/coverholders). It is important to note that:

1. The new versions of the model agreements have been produced by an LMA working party comprising representatives of Managing Agents, Brokers, Lloyd's, the LMA and LIIBA, and incorporate legal input from a variety of sources. While issued as model agreements by the LMA, it should be recognised that these documents, as with all LMA documents, are purely illustrative and are established and distributed for the guidance of Managing Agents. Managing Agents are therefore free to use their own separate agreements subject to the requirements of the Intermediaries Byelaw (the 'Byelaw') and the Code of Practice for Delegated Underwriting (the 'Code'). In all cases Managing Agents are responsible for ensuring the terms of every binding authority they issue are appropriate.
2. The previous versions of the model agreements are 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 binding authority contract (the 'BA').
3. The previous Marine (LMA3021) and Non-Marine (LMA3019) versions of the model agreements have been combined to produce a Lloyd's model agreement that is fit for purpose for both the Marine and Non Marine sectors of the Market.
4. The following model agreements have been produced:
 - LMA3113 BINDING AUTHORITY AGREEMENT (excluding U.S.A. and Canada domiciled Coverholders)
 - LMA3114 UNITED STATES OF AMERICA BINDING AUTHORITY AGREEMENT
 - LMA3115 CANADA BINDING AUTHORITY AGREEMENT

In these guidance notes, unless specifically stated otherwise, reference to 'the BA' includes each of these agreements.

The BA is suitable for use where there is a Lloyd's Broker either acting as the intermediary or acting as the Coverholder. Where there is no Lloyd's Broker the BA must be amended by adding endorsement LMA5209 or a suitable equivalent.

5. A separate model wording and guidance is available in respect of Service Company binding authorities at the following link: www.lloyds.com/coverholders

These **Guidance Notes** are intended to assist Underwriters and Brokers when using the model binding authority agreements, by providing:

- an overview of the model agreement and guidance for the interaction of the **Market Reform Contract ('MRC')** and the model agreements, as well as general drafting guidance; and
- guidance on each specific section where it is consistent across the model agreements (see the table below); and

For the purposes of these guidance notes any reference to “territory(ies)” shall include country(ies) or province(s) or state(s) as applicable.

Interaction of the MRC and Model Agreements

The model agreements have been designed so that contract specific ‘variables’ are dealt with in the MRC Schedule. This is intended to speed up placement and finalisation of the BA, and help achieve contract certainty prior to inception which is for the benefit of all parties to the contract.

Use for Lloyd’s Binding Authorities

All the model agreements to which these guidance notes apply are drafted to be compliant with Lloyd’s requirements and cater for the granting of a registered binding authority to a Coverholder, issuing Lloyd’s policies/certificates (or policies in respect of the Canada BA) and underwritten by Lloyd’s syndicates only.

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 BA:

- Lloyd’s Intermediaries Byelaw and the Requirements made under the Byelaw - available at www.lloyds.com/coverholders
- Lloyd’s Code of Practice for Delegated Underwriting which prescribes the content of a binding authority and sets out what is regarded by Lloyd’s to be good practice - available at www.lloyds.com/coverholders
- Market Reform Contract templates and endorsement procedures for use with the model agreements - available at <http://www.londonmarketgroup.co.uk/>
- Other relevant guidance includes:
 - Market Reform Contract Completion Guidance, with supporting Market Reform Checklist: - available at <http://www.londonmarketgroup.co.uk/>
 - Contract Certainty Code of Practice, with Additional Guidance for Binding Authorities: - available at <http://www.londonmarketgroup.co.uk/> Lloyd’s QA Tool: - the minimum contract standards to meet Lloyd’s regulatory, fiscal and contract certainty requirements: - available at www.lloyds.com/qatool
 - Lloyd’s guidance on international legislative and reporting requirements for binding authorities: - available at www.lloyds.com/crystal

All of these documents are also available through www.lloyds.com/coverholders.

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

<p><u>Introduction</u></p>	<p>The reference to ‘table of security’ in the first paragraph of the INTRODUCTION to the new model Agreement is intended to refer to any or all of the following as applicable:</p> <ul style="list-style-type: none"> • The Security Page(s) of the MRC showing the written and signed lines; and/or • The Security List produced by Xchanging when signing a formal BA Agreement; and/or • The list of Security produced by the broker for attachment to the full MRC or the Agreement showing the signed lines; and/or • Any other form of Security Listing or page issued on behalf of the Underwriters that sets out the Security for the BA showing the signed lines.
<p><u>Agreement Number</u></p>	<p>The Agreement Number is the number by which the BA 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 and will include the Lloyd’s Broker number.</p> <p>If the handling broker changes during the term of a particular BA, the new broker must keep and use the old UMR. When the BA 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 BA, before a Coverholder is authorised to act on behalf of the Underwriters of a Lloyd’s syndicate (or syndicates), whether on a new binding authority or a renewal, the Slip Leader(s) (as identified in the MRC) must be in receipt of a copy of the BA signed by the Coverholder.</p> <p>The acceptance of the terms and conditions of the BA by the Coverholder can be evidenced to the Slip Leader(s) by one or more of the persons named in sub-section 3.1, or by any other person duly authorised by the Coverholder, signing and dating the Schedule (inclusive of any attachments identified in the Schedule).</p> <p>Where the BA delegates authority to more than one Coverholder (e.g. where there is a “tripartite” arrangement for instance where a binding authority grants authority to a wholesale Coverholder and one or more retail Coverholders) then each of those Coverholders needs to separately accept the terms of the BA (through being signed by their duly authorised persons).</p> <p>Where the BA references multiple offices (‘branch offices’) the acceptance of the terms of the BA must be by an individual duly authorised by the Coverholder to sign on behalf of all branch</p>

	<p>offices. If no such individual is authorised then a signature from a duly authorised representative from each branch office will be required.</p> <p>Sub-section 1.1 - “Signed by both Parties” - the simplest way to achieve this is to forward the fully agreed, 100% placed, “contract certain” Market Reform Contract (‘MRC’) to the Coverholder (via the Lloyd’s Broker if there is one involved in the placement) so that the Coverholder can sign the Schedule page. Once the Schedule page is signed by the Coverholder the Agreement is “Signed by both parties”; however, for the Agreement to become effective a copy of the Agreement signed by the Coverholder must be sent to the Slip Leader as identified in the Subscription Agreement of the MRC (‘Leader(s)’).</p> <p>For the sake of good order, and to be prudent, the sender of the fully signed Agreement should seek written acknowledgement from the Leader(s) that the signed Agreement has been received. If the acknowledgement is required to be by way of a physical signature then the signed Agreement should be presented to the Leader(s) for signing.</p>
<p><u>Section 2</u></p> <p><u>Period</u></p>	<p>The period of the BA should usually be for no more than 12 months from inception. However it is possible for the period of the BA 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 the default wording in the MRC states “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>
<p><u>Section 3</u></p> <p><u>Person(s) responsible for operation and control</u></p>	<p>The Schedule must identify the following:</p> <p>Sub-section 3.1: name(s) of the Coverholder’s director, partner or other senior individual who is directly responsible, on behalf of the Coverholder, for the overall operation and control of the BA;</p> <p>Sub-section 3.2: name(s) of the directors, partners or employees who will have authority to bind insurances under the BA;</p> <p>Sub-section 3.3: name(s) of the directors, partners or employees with overall responsibility to issue documents evidencing insurances bound under the BA (the term evidence of insurance covers both contract documentation and confirmation of cover mentioned in Section 20); and</p> <p>Sub-section 3.4: when the Coverholder is granted authority to handle, agree and/or settle claims, the name(s) of the person(s) so authorised should be shown. If the Coverholder is not granted any authority to handle,</p>

agree or settle claims, sub-section 3.4 of the Schedule should show “None” or “Not Applicable” or refer to the Procedure for the Handling and Settlement of Claims and Pursuit of Recoveries (Section 21).

Sub-section 3.5. Coverholders only need to notify underwriters if an absence is likely to impair performance of the Agreement. If there are suitably appointed alternative persons then the Coverholder does not need to make a notification.

If the same individual is named as having both underwriting and claims authority (under sub-sections 3.2 and 3.4) there may be risks of conflicts of interest. It will be important for the managing agent to understand the rationale behind the arrangements and consider how any conflicts are being managed. Please refer to Lloyd's Conflicts of Interest guidance referred to in Section 33 of this guidance. Link: http://www.lloyds.com/the-market/tools-and-resources/resources/code-of-practice-for-delegated-underwriting_new

Where Underwriters are granting authority under sub-sections 3.2 and 3.3 to a number of the Coverholder's staff, or when utilising its call centres or similar, rather than name all persons on the Schedule, it is permissible to identify the Underwriting Director/Call Centre Manager or Chief Underwriting Officer or other key staff and specifically state that they have overall responsibility and control of underwriting and document issuance and may delegate authority to other employees provided that such authority is to appropriate staff, agreed in writing by the Underwriters in advance and said authorities are made available to the Underwriters upon request.

Where the BA, or part of the BA, is “prior submit” sub-section 3.2 should still name an individual, or individuals, at the Coverholder who have responsibility to bind insurances that have been previously submitted to and quoted by underwriters. Sub-section 3.2 should NOT refer to the Slip Leader or show “Not applicable” because the Coverholder still has the ability to bind insurances with Underwriters' agreement. If the BA, or part of the BA, is “prior submit” then sub-sections 11.1 and 11.2 should state the process for submitting insurances to underwriters for a quote/approval prior to binding.

Section 4

Grant of Authority

This Section is the key provision that delegates authority to the 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).

The grant of authority in this Section is appropriate both for 'prior submit' binding authorities and for arrangements where the Coverholder is given authority to bind without reference to the Managing Agent. Where the BA is intended to be 'prior submit' the restrictions on the Coverholder's authority to bind should be stated clearly in Section 11.

Sub-section 4.1.2 - Please refer to Section 31 of this guidance document regarding holding of insurance monies and investments.

Sub-section 4.2 - If the Coverholder is to bind insurance over the internet or via other electronic means this should be agreed in writing by Underwriters (either in the MRC slip or separately).

Sub-section 4.3 - Notice periods for termination of the BA are to be addressed in accordance with Section 36.

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.

Section 5

Delegation of Authority

Sub-section 5.1 - The Byelaw prohibits the Coverholder from sub-delegating its authority to:

- **bind insurances, or**
- **issue documents evidencing insurances bound by the Coverholder.**

However, if the Underwriters wish to delegate such authority to an additional entity, such entity must be an Approved Coverholder (or a Restricted Coverholder in accordance with the terms of a Restricted Binding Authority) as defined in the Byelaw.

Once such additional entity is an Approved Coverholder or Restricted Coverholder the BA documentation will need to be as follows:

- EITHER: - the additional Coverholder must be named on its own MRC and have a separate BA contract;
- OR: - the additional Coverholder may be added to the existing BA contract by endorsement, which must set out the terms and conditions applicable and which is signed by the existing and the additional Coverholder(s). The endorsement should address every applicable section of the Schedule.

In either case, the additional Coverholder cannot bind any business nor issue any documents evidencing insurances bound until they have accepted the terms and conditions of the BA, and such acceptance has been received by the Slip Leader.

For the sake of clarity, this means that where there is a **series of wholesale or retail producers** in the chain who want to bind insurances and/or issue documents, Underwriters 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 Coverholder - see the Code for details on Electronic Trading.

Sub-section 5.2 - Other than binding insurances and issuing documents evidencing insurances bound, Underwriters may delegate **other responsibilities** under the BA to a third party e.g. typically claims handling and settlement. However, any such delegation must be in writing and the Underwriters must be a party to the contract of delegation. The Code provides further guidance on the terms and conditions that must be included in any such contract of sub-delegation and the LMA have a standard wording for a claims Third Party Administrator Agreement being LMA9008.

Outsourcing is becoming increasingly popular with Coverholders. If such outsourcing is sub-delegation of the Coverholders authority under the BA then such sub-delegation requires Underwriters written agreement and may require Lloyd's approval.

<p><u>Section 6</u></p> <p><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 of the individual insurances to be bound by the Coverholder. Instead, these should be dealt with in Section 20.</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 BA and that are not otherwise addressed elsewhere within the BA;</p> <p><u>OR</u></p> <p>any amendments to the BA (i.e. changes or amendments to the model agreement text). The section or sub-section numbers of the BA 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 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>
<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"> • be considered in conjunction with Section 8 which together allow flexibility to define the scope of the classes of business and coverages which may be bound under the BA. • contain a precise description of the nature or classification of the contracts of insurance that the Coverholder will be authorised to bind under the BA. • also make it clear whether the BA 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) on the MRC and any endorsements must be consistent with the Binding Authority Registration System, and the Coverholder’s Approval status on ATLAS.</p> <p>Any exclusions to the listed classes of business and coverages applicable to the whole BA must appear in sub-section 8.1.5.</p>

<p><u>Section 8</u></p> <p><u>Excluded Class(es) of Business and Coverage(s)</u></p>	<p>Sub-section 8.1.4 excludes ‘master policies issued to a group, association, organisation or club for the benefit of its members under a group or mass marketed program’. However, these may be agreed under binding authorities when permitted by law or regulation and with the prior agreement of Underwriters by deleting this exclusion under sub-section 6.1. Lloyd’s requirements regarding master policies are provided for in the Code and Underwriters agreement to delete this exclusion is required so that the Managing Agent is aware that the Coverholder may bind Master Policies and can put a suitable reporting structure in place so that the Managing Agent can register each Master Policy with Lloyd’s in line with the Code.</p> <p>Sub-section 8.1.5 of the Schedule must show only those exclusions relevant to the Authorised Class(es) of Business and Coverage(s) specified within sub-section 7.1 of the Schedule.</p> <p>Underwriters and Brokers should note that sub-section 8.1.5 of the Schedule is <u>not</u> the appropriate place to list or attach exclusion clauses for the individual insurances bound. Specific exclusion clauses for the individual insurances bound should be referred to in sub-section 20.1 of the Schedule.</p>
<p><u>Section 9</u></p> <p><u>Territorial Limitations</u></p>	<p>Sub-section 9.1 identifies the geographical location of risks (as applicable) which are acceptable under the BA.</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 9.2 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 BA should be listed in sub-section(s) 9.1 and 9.2 respectively.</p> <p>The stated territories on the MRC under sub-sections 9.1 and 9.2 must be consistent with the territories listed in the Binding Authority Registration System (‘BAR’), and must be in accordance with the Coverholder’s Approval status shown on ATLAS.</p> <p>For further guidance refer to the ‘Risk Locator Tool’ and ‘Crystal’ for location of risk definitions at the following links: http://www.lloyds.com/Crystal/Crystal.htm http://www.lloyds.com/the-market/tools-and-resources/tools-e-services/risk-locator/how-to-establish-the-risk-location</p> <p>Sub-section 9.3 deals with the geographical scope of the insurance coverage which may be granted under the individual insurances</p>

bound under the BA. This may be wider than the territories shown under sub-sections 9.1 and 9.2.

<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 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>Premiums, Deductibles and Excesses</u></p>	<p>Sub-section 11.1 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 BA.</p> <p>Sub-section 11.2 states any deductibles/excesses to apply to each individual insurance. If this information forms part of the rating schedule under 11.1, then it is acceptable to refer back to sub-section 11.1.</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 11.1 and/or 11.2 of the Schedule</p> <p>If the BA or part of the BA is to operate as a “prior submit” arrangement sub-sections 11.1 and/or 11.2 of the Schedule should show the manner in which individual insurances should be submitted to the Underwriters for rating.</p>
<p><u>Section 12</u></p> <p><u>Gross Premium Income Limit</u></p>	<p>The BA must contain a gross premium income limit as per sub-section 12.1 of the Schedule and the 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 12.2 of the Schedule.</p> <p>The Coverholder must not bind any insurance(s) that would mean it exceeds the limit shown in sub-section 12.1.</p>
<p><u>Section 13</u></p> <p><u>Period of Insurances Bound</u></p>	<p>Sub-section 13.1 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 13.3 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 BA’s cancellation notice period under Section 36.</p>

<p><u>Section 14</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 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 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 15</u></p> <p><u>Premium Finance Arrangements</u></p>	<p>Premium finance transactions do not form part of this BA and must not be entered into by the Coverholder or other entity on behalf of Underwriters or in Underwriters' name.</p> <p>The Coverholder and Insured's may have premium finance arrangements in place but these should form a separate contractual relationship between the applicable parties involved.</p>
<p><u>Section 16</u></p> <p><u>Commission(s)</u></p>	<p><u>Sub-section 16.1</u></p> <p>The Coverholder's Commission should be specified in sub-section 16.1 of the Schedule. This sub-section is for the total commissions allowed by Underwriters to the Coverholder, and will include any brokerage shared or fees or commissions paid by the Coverholder to others in connection with the acquisition of business.</p> <p>Any brokerage due to the London Broker is a Non Schedule item and is to be set out separately in the Broker Remuneration and Deductions section of the MRC.</p> <p><u>Sub-section 16.2</u></p> <p>In the event of the BA not being subject to Contingent or Profit Commission then "Not Applicable" should be shown in sub-section 16.2 of the Schedule.</p> <p>If there is a Contingent or Profit Commission applicable, sub-section 16.2 is to be completed with the full formula applicable to the calculation of any contingent or profit commission, including the date(s) on which it shall be calculated. If a separate Contingent or Profit Commission Clause is required then "as attached" should be stated in sub-section 16.2 of the Schedule and the full clause should be attached to the MRC.</p>

<p><u>Section 19</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 BA, this should be stated in sub-section 19.1 of the Schedule. Where the form is bespoke, it should be agreed by the Underwriters and identified in sub-section 19.1 of the Schedule as being attached to the BA.</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 19.1 of the Schedule.</p>
<p><u>Section 20</u> <u>Contract Documentation</u></p>	<p><u>Sub-section 20.1</u></p> <p>Sub-section 20.1 relates to the information and documentation that should be included in and/or attached to the policy/certificate documentation issued by the Coverholder and should not be confused with the format(s) of the wrapper/jacket as per sub-section 20.5 below.</p> <p>Sub-section 20.1 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 BA itself, as these should be specified under sub-section 6.1.</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 BA.</p> <p>The Byelaw and the Code prescribe certain minimum requirements applicable to all documents evidencing insurances bound issued by the Coverholder on behalf of the Underwriters, and each policy/certificate issued by the Coverholder must contain these minimum requirements as per sub-section 20.6 of the BA, which would include a suitable complaints notice as per sub-section 20.6.11.</p> <p><u>Sub-sections 20.2 to 20.4</u></p> <p>Sub-section 20.2 defines the term ‘contract documentation’ and sub-sections 20.3 and 20.4 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 20.5</u></p> <p>Sub-section 20.5 relates to the format(s) of the policy(ies) or certificate(s) to be issued by the Coverholder. This sub-section should not be confused with sub-sections 20.1 above and 20.6 below which deal with what should be included in and/or attached to the policy/certificate documentation issued by the Coverholder.</p>

The format(s) of the policy/certificate under sub-section 20.5 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 BA, this should be stated in sub-section 20.5 of the BA 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 BA.

Where there is a multi-territory BA 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 BA.

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

<http://www.lloyds.com/the-market/tools-and-resources/resources/lloyds-brand/brand-guidelines>

Sub-section 20.6.2

Sub-section 20.6.2 requires that the policy/certificate contains the UMR of the BA under which the policy/certificate is issued. In the event that a Coverholder issues one policy/certificate document across more than one BA then:

- a) such policy/certificate must contain the UMR(s) of all applicable BAs, and
- b) if the Lloyd's Syndicates Numbers are shown separately on the policy/certificate (rather than showing 100% Lloyd's) then the policy/certificate must contain a separate Security Schedule for each BA /UMR.

Sub-section 20.6.9

A Several Liability Notice must be identified in 20.6.9 of the Schedule, even if the individual insurances are issued as 100% Lloyd's placements. The Several Liability Notice to be used should be LSW1001, LMA5096 or other equivalent forms. Where there is non-Lloyd's security, refer to sub-sections 20.7, 20.8 and 20.9.

If LSW1001 is being used and both insurance and reinsurance are to be bound then both versions of the LSW1001 Several Liability Notice should be shown under sub-section 20.6.9 of the Schedule, or a combined clause may be used.

Where the Coverholder is the Lloyd's Broker and issues the MRC including LMA3333 instead of a policy/certificate, and the MRC includes all relevant information that a policy/certificate must contain for the territory concerned, then no further contract/policy/certificate documentation is required as per MRC

Guidance: <http://www.londonmarketgroup.co.uk>

In this event the LMA3333 is acceptable even if the BA states that the Several Liability Clause/Notice should be LSW1001, LMA5096 or other equivalent forms.

Sub-section 20.6.13

The requirement to add a statement in the policy/certificate to express that a “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.” Please see additional guidance for U.S. business in Appendix 1.

Sub-sections 20.7 to 20.9

These sub-sections cater for the procedures in bulletin Y4133 and should not be amended.

Lloyd’s permits the issuance of a single policy/certificate across multiple sections or multiple BAs if the Security on all such sections or BAs is 100% Lloyd’s Security. Where such a single Lloyd’s policy/certificate is issued it must be clear what the security is for each section of the policy.

Lloyd’s permits the issuance of Combined Certificates, i.e. a single policy/certificate that evidences a contract of insurance in which a proportion of the security is to be provided by insurers other than members of Lloyd’s (referred to as “Joint Certificate(s)” in previous Model BAs) and has set out certain rules regarding the format and content of such policies/certificates. These are set out in Chapter 2 of the Underwriting Requirements made under the Byelaw at paragraph 16 which can be accessed at the following link:

<http://www.lloyds.com/actsandbyelaws>

The decision on whether a Coverholder can issue Combined Certificates to policyholders is a matter for the Managing Agent(s) underwriting each BA, and agreement or otherwise should be referenced under sub-section 20.8 of the Schedule. It is the Managing Agent(s)’ responsibility to seek territory specific guidance as appropriate from the relevant Lloyd’s Representative or Country Manager if required.

Sub-section 20.8.4

An appropriate several liability clause must be incorporated in every Combined Certificate issued to a policyholder by the Coverholder and the LMA5096 has been developed for attachment to all Combined Certificates in place of the LSW1001 (which is only to be used where the security is 100% Lloyd’s)

	<p>The LMA5096 has been prepared in order to minimise the relevant legal and credit risks. However, no clause can entirely eliminate these risks and it must be for each Lloyd’s Managing Agent to determine on a BA by BA basis whether it is satisfied that it is appropriate for Combined Certificates to be issued.</p> <p><u>Sub-section 20.10</u></p> <p>The BA does not require the Coverholder to submit copies of the documentation issued unless requested by the Underwriters.</p> <p>If Underwriters request to see copies of the documentation the procedures appropriate for the submission of copy documents (sub-section 20.10) will differ from BA to BA and the Model BA cannot anticipate what might be appropriate in any particular case, so the default position is that no documents are sent to Underwriters unless specifically requested.</p>
<p><u>Section 21</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 Coverholder that local law(s) or regulation(s) do not prohibit the Coverholder or their employees performing such claims tasks/functions.</p> <p>Where Underwriters do not delegate claims authority to the Coverholder sub-section 21.1 should show “No” and words to express that all claims are to be advised by the 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 Coverholder, sub-section 21.1 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 Coverholder. However, the default wording can be replaced, amended or supplemented by adding a more detailed claims authority wording in sub-section 21.1 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 BA in replacement of Section 21, however, where the default wording as per Section 21 is used, the Schedule should be completed as follows:</p> <p>21.1.1 - show the total claim limit of authority delegated to the Coverholder; and</p> <p>21.1.6 - show the names and addresses of all adjusters, surveyors, lawyers or other third parties that the Coverholder is authorised to appoint on behalf of the Underwriters. If there are too many, this could be left to the discretion of the Coverholder, or the Schedule could state that all such entities must be appointed by Underwriters. Alternatively, sub-section 21.1.6 of the Schedule</p>

	<p>could state “as attached” and a schedule of adjusters, surveyors, lawyers and other third parties could be attached to the MRC.</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, and the Coverholder has no power to appoint such third party on Underwriters’ behalf.</p> <p>Where Underwriters appoint a TPA, 21.1 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 BA 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> <p>One significant area not covered by the default claims authority wording as per Section 21 is the establishment and operation of a Loss Fund with the 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 Coverholder and shown under sub-section 21.1.</p>
<p><u>Section 22</u> <u>Complaints or Proceedings</u></p>	<p>The Coverholder is required to promptly notify Underwriters of all complaints made in relation to the insurances bound under the BA and to implement and maintain procedures to ensure complaints can be dealt with promptly and reasonably.</p> <p>Additionally, the 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>Details of Lloyd’s requirements for complaints handling can be found at: http://www.lloyds.com/complaintshandling</p>
<p><u>Section 23</u> <u>Risks Written</u> <u>Bordereau(x)/Reporting and</u> <u>Aggregate Exposures</u></p>	<p>This Section is designed to offer Underwriters the opportunity to state contractually their reporting requirements in respect of:-</p> <ol style="list-style-type: none"> 1) Risks bound information, 2) Aggregates reporting information 3) Summary statistical information <p>Underwriters should control the business written under BAs by thorough and regular monitoring. Managing Agents have obligations to accurately report this business to Lloyd’s.</p> <p>The accounting and financial reports are dealt with under Section 24.</p>

	<p><u>Risks Written Bordereaux:</u></p> <p>Provision for Risks Written bordereaux, which includes any adjustments made to bound risks, has been added together with a provision to allow for online reporting. Risks Written bordereaux should specify the data required or provide a template in a format agreed by Underwriters. The reporting frequency should show clearly that reporting is collated from the end of each reporting period.</p> <p>In some specific cases Underwriters may take the view that there is no need for a separate risks written bordereaux or risk level data as the premium bordereaux/data contains all of the information needed at the required times. In this case both the 'reporting interval' and the 'maximum number of days for reporting' under 23.1.2 of the Schedule can be marked "Not applicable."</p> <p><u>Aggregate Exposures reporting:</u></p> <p>For classes of business with the potential for aggregation of losses:</p> <p>Sub-section 23.2.1 of the Schedule should clearly detail the basis of monitoring aggregate exposures (for example the perils of wind, earthquake, etc.);</p> <p>Sub-section 23.2.2 of the Schedule should specify such aggregate exposure reporting intervals;</p> <p>Sub-section 23.2.3 of the Schedule should specify the total aggregate limits the Coverholder is permitted to bind.</p> <p>For some classes of business aggregate reporting will not apply and the above sub-sections of the Schedule should show "Not Applicable".</p> <p><u>Summary Statistical information:</u></p> <p>Sub-section 23.3 is for details of the provision of regular information to Underwriters not covered elsewhere in the BA. The type of information to be supplied should be precisely specified and should not duplicate other sections of the BA.</p> <p>For example, if Underwriters choose to monitor the timely issuance of policies/certificates by the Coverholder by means of a periodic report then this is the area of the Schedule where the details would be shown.</p>
<p><u>Section 24</u></p> <p><u>Accounting Bordereau(x)/Reporting and Settlements</u></p>	<p>The provisions in the model wording permit Underwriters to specify (under sub-section 24.2) the intervals at which the paid premium bordereaux are provided.</p> <p>The method and/or format for reporting should specify the data required or provide a template in a format agreed by Underwriters.</p>

	<p>Lloyd's has published various market bulletins regarding Reporting Standards which need to be followed. The link to these Standards is:</p> <p>http://www.lloyds.com/the-market/operating-at-lloyds/insurance-information-standards/coverholder-reporting-standards</p> <p>Sub-section 24.4 of the Schedule should state the maximum number of days at the end of the bordereaux period that Underwriters expect the premium/accounting bordereaux or the data to be submitted, or made available, to them.</p> <p>Sub-section 24.6 of the Schedule should state the maximum number of days at the end of each bordereau period that monies should be received by Underwriters.</p> <p>The number of days for sub-sections 24.4 and 24.6 of the Schedule give the time by which the Underwriters or their service providers should receive the data/bordereau(x) and the settlement of the premiums respectively. If Underwriters wish to allow a broker further time to process and settle the premiums via Xchanging OR other service providers then this should be taken into consideration when agreeing the SDD (Settlement Due Date) in the Subscription Agreement of the MRC.</p> <p>If claims handling authority has not been granted under Section 21, then 'Format for Claims Bordereaux' in sub-section 24.3 of the Schedule should be completed 'Not Applicable'. Note that this should be consistent with sub-section 3.4. If claims handling authority has been granted then full details should be incorporated into the BA under Section 21. Additionally, sub-section 24.3 of the Schedule should be completed to show 'Yes' and the Claims Reporting Interval.</p>
<p><u>Section 25</u> <u>Records, Statistical Information and Audit/Inspection</u></p>	<p>The Code requires that the Coverholder maintains complete records relating to all insurances bound, and the BA requires that the Coverholder retain all such records for a minimum of 7 years or such longer period as required by the law. The Code and the BA also provide that Underwriters shall own all such records and shall have the right to access, inspect, audit and copy all such records.</p> <p>It is recognised that, in some circumstances, a Coverholder may also act as the agent of the Insured. Where this occurs, the Coverholder may maintain records and data, such as a placing file on behalf of the Insured (as opposed to the Underwriting file). To avoid any confusion or dispute, any records and data maintained by a Coverholder on behalf of an Insured should be maintained and identified separately to the records maintained on behalf of the Underwriters. If there are specific requirements (for example</p>

	<p>separate client and underwriting files) these should be stated in sub-section 6.1.</p>
<p><u>Section 26</u> <u>Advertising and Promotional Material</u></p>	<p>For more details on how Coverholders can use Lloyd’s brand, see: http://www.lloyds.com/the-market/tools-and-resources/resources/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 27</u> <u>Separate Bank Accounts</u></p>	<p>This Section deals with the manner in which Coverholders have to handle insurance monies (premiums, return premiums and claims). This is important to protect both underwriters and policyholders’ funds if the Coverholder becomes insolvent.</p> <p><i>Purpose of the section</i></p> <p>Where the 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 Coverholder, but may be co-mingled with insurance monies from other insurers. This Section allows the Coverholder to handle money in this way and is based upon LMA 5141 (which is the US Coverholder version of the Separate Bank Accounts Clause).</p> <p><i>Investments</i></p> <p>Sub-section 27.1.4.2 makes clear that the Coverholder cannot “invest” the monies held in the account. Accordingly any proposal to allow the Coverholder to invest such monies needs to be specifically agreed. A proposal that the Coverholder be permitted to sweep assets into overnight deposit should be expressly agreed by Underwriters and in particular should be subject to the 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 27 may not be suitable in all cases. In particular, a UK Coverholder that holds either a statutory or non-statutory trust account (under the FCA's CASS rules) may wish to deposit their Coverholder related insurance money in that trust account. <u>In this case the binding authority should be endorsed with LMA5142A to replace Section 27.</u> This is likely to be the case for UK Lloyd's brokers (who are Coverholders) and will allow them to invest the assets in accordance with FCA rules.</p> <p><i>Claims funds</i></p> <p>Where the 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 28</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 29</u> <u>Fees and Charges</u></p>	<p>This Section makes it clear that any fees or charges added by the 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 32</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 BA. 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 33</u> <u>Conflicts of Interest</u></p>	<p>This Section reflects the regulatory outsourcing requirements that apply to managing agents which require them to ensure that their outsourced providers (such as Coverholders) manage conflicts of interest.</p> <p>A key concern will be to ensure that the Coverholder has no actual or perceived conflicts of interest which may impair the Coverholder's performance of its obligations under the BA. Guidance on managing conflicts is included in the Code 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 34</u></p> <p><u>Compliance with the Law and Financial Crime</u></p>	<p>Coverholders need to ensure that they comply with all applicable laws for the proper handling of their binding authority business.</p> <p>Due to their relationship with Managing Agents, 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 implications but to also take account of money laundering and international sanctions. This Section is materially in similar terms to the Financial Crime Endorsements (LMA5173, 5174, LMA 5175, 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 35</u></p> <p><u>Data Protection</u></p>	<p>Coverholders will be required to use personal data supplied to them (either by the policyholder, managing agent or other third party) in order to manage their binding authority business and this Section is designed to ensure that both Coverholders and managing agents ensure they comply with all applicable laws for the proper processing of such data. In addition, this Section also helps managing agents’ compliance with their obligations (internal, statutory or otherwise) relating to data security breach procedures. Managing agents (as data controller) will be reliant on the Coverholders (as data processor) to notify them of any such issues and provide relevant information to enable them to take appropriate action.</p>
<p><u>Section 36</u></p> <p><u>Termination</u></p>	<p>This Section identifies the circumstances and the way in which the BA may be terminated. In general, where a party wishes to terminate the BA, a notice should be given and the BA will terminate at the end of the notice period. In certain circumstances, set out in sub-section 36.6, the Underwriters can terminate immediately by delivering a notice to the Coverholder. Sub-section 36.5 sets out the circumstances when the BA will terminate automatically without the need for a notice to be delivered.</p> <p>A notice period for termination must be negotiated at the time of placement and such period inserted in sub-section 36.1.1 of the Schedule.</p>

	<p>Sub-section 36.2.2 of the Schedule requires the inclusion of an address for the delivery of notices to Underwriters. Where there is more than one Slip Leader (for example where there are multiple sections) a separate address needs to be included for each Slip Leader so that the Coverholder can send any notice to each Slip Leader named in the BA.</p> <p>A list of addresses for Lloyd's Managing Agents can be found here: http://www.lloyds.com/the-market/directories/managing-agents</p> <p>The relevant Coverholder address is the address shown at the start of the Schedule. Notices should be sent directly to the Coverholder or the Underwriter (as appropriate) at the addresses shown. A copy of any notice of termination should be sent to the Lloyd's Broker, if there is one.</p> <p>This Section provides for service by physical delivery of the notice. If the parties wish to allow for electronic delivery then the wording should be amended (and it is recommended that Managing Agents and Coverholders seek their own legal advice).</p> <p>It is good practice when sending the termination notice to reference to UMR so that there is no misunderstanding as to which agreement is being terminated.</p> <p>It is recommended that any notice sent to the Coverholder is addressed for the attention of the first named person in sub-section 3.1 of the Schedule.</p> <p>This Section SHOULD NOT be used for the termination terms of the insurances bound by the Coverholder. This is dealt with in accordance with Section 20.</p> <p>The term "Termination" in Section 36 is used to cover all forms of termination, including cancellation by notice, automatic termination and non-renewal.</p>
<p><u>Section 37</u> <u>Effect of Termination or Non Renewal</u></p>	<p>Termination (including non-renewal) of the BA has the effect of placing the business into run-off and the Coverholder continues to be responsible for managing the run-off in accordance with the terms of the BA.</p> <p>Section 37 sets out various restrictions that apply to the Coverholder's authority to conduct the run-off following termination of the BA. The Section also gives the Underwriters additional rights to remove authority from the Coverholder.</p> <p>The term "Termination" in Section 37 is used to cover all forms of termination, including cancellation by notice, automatic termination and non-renewal.</p>

<p><u>Section 40</u> <u>Rights of Third Parties</u></p>	<p>This Section makes clear that the terms of the BA can only be enforced by the parties to the BA (i.e. the Underwriters and Coverholder), and that third parties whom the BA may benefit in some way do not have the right to enforce the contract.</p>
<p><u>Section 41</u> <u>Several Liability</u></p>	<p>This Section relates to the several liability of the Underwriters under the BA and is concerned with the obligations between the Coverholder and Underwriters. It makes it clear that the Underwriters are not responsible for the individual subscription of any co-subscribing underwriter or any other insurer or co-insurer who for any reason does not satisfy all or part of its obligations. Any insurance bound under the BA must include its own several liability clause (see sub-section 20.6.9).</p>
<p><u>Section 42</u> <u>Jurisdiction and Governing Law</u></p>	<p>This Section governs the applicable law and jurisdiction of the BA. 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 Coverholder is based outside of England and Wales, this Section gives Underwriters the option of pursuing proceedings in the local jurisdiction of the Coverholder. Changing the law and jurisdiction could materially alter the enforceability of the BA 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 Coverholder. This is dealt with in accordance with sub-section 20.6.4.</p>

APPENDIX 1

ADDITIONAL/REPLACEMENT GUIDANCE FOR USE IN CONJUNCTION WITH LMA3114 THE USA BA. THE GUIDANCE GIVEN BELOW IS ADDITIONAL TO THE MAIN GUIDANCE NOTES UNLESS STATED OTHERWISE.

U.S.A. BUSINESS

General Cover Conditions

1. General Cover Conditions must be attached to and form part of any binding authority agreements in respect of U.S. business, including where the Coverholder is based outside the U.S., and in other circumstances prescribed by Lloyd's (if any) and cannot be amended by Underwriters or Coverholders.
2. The U.S. General Cover Conditions (LMA5058A) are available for use in conjunction with the USA BA LMA3114. There is some duplication between the U.S. General Cover Conditions and the model USA BA. This is because the U.S. General Cover Conditions are endorsed by Lloyd's and must be applied to all USA BAs without amendment whereas the USA BA LMA3114 may be amended by Underwriters if they so decide.

<u>Section 6</u> <u>Other Conditions and/or amendments relating to the operation of the Agreement</u>	Sub-section 6.1 incorporates by reference the U.S. General Cover Conditions, which must be attached to all USA BA's.
<u>Section 8</u> <u>Excluded Class(es) of Business and Coverage(s)</u>	It should be noted that Section 6 incorporates by reference the U.S. General Cover Conditions. Accordingly, in addition to Section 7, Section 6 also will be subject to any additional exclusions or limitations provided in the U.S. General Cover Conditions.
<u>Section 9</u>	<u>Sub-section 9.2</u> In the U.S. the insured's domicile will be determined by their 'primary' residence, if they are an individual, or by the principal place of business for a commercial policyholder.
<u>Section 20</u> <u>Contract Documentation</u>	<u>Sub-section 20.1</u> It is of critical importance that any wordings, conditions or clauses to apply to a contract of insurance comply with relevant surplus lines requirements. Guidance may be found in Crystal. <u>Sub-section 20.6.13</u> The requirement to add a statement in the

	<p>policy/certificate to express that a “Coverholder acts as agent of the Underwriters in performing its duties under the Agreement” differs in the U.S. for a number of regulatory reasons. One of the reasons is that, as a matter of law, a surplus lines broker is typically presumed to be the agent of the insured, not the insurer. Where language to this effect is included in the policy/certificate it is suggested that the language reads: “The Coverholder acts as agent for Lloyd’s Underwriters in respect of binding coverage under this insurance”.</p>
<p><u>Section 21</u> <u>Procedure for the Handling and Settlement of Claims and Pursuit of Recoveries</u></p>	<p>It is recommended that particular care is taken when delegating claims authority in the U.S.A. (refer to the U.S. General Cover Conditions LMA5058A and the link below relating to the Unfair Claims Practices Act):</p> <p>http://www.naic.org/store/free/MDL-900.pdf</p>
<p><u>Section 28</u> <u>Licences and Taxes</u></p>	<p>Sub-section 28.1.2 - If the U.S. Model Agreement (LMA3114) is being used and the Coverholder has authority to write business in any territory outside the U.S.A. where tax is collectible for onwards transmission to the Underwriters then sub-section 28.1.2 of the model Agreement will need to be amended to include this additional responsibility. (Refer to Section 28 of the Binding Authority Agreement (LMA3113)).</p>
<p><u>Section 42</u> <u>Jurisdiction and Governing Law</u></p>	<p>This replaces the guidance for Section 42 in the main guidance notes.</p> <p>This Section provides that all matters in difference between the parties, in respect of the USA BA, shall be governed by the substantive laws of the “State” specified in the Schedule. If either party chooses to pursue their rights in a court of law, the matter must be submitted to a U.S. court sitting in the State specified in the Schedule. Whether the matters in difference are heard in federal or state court, the substantive laws of the “State” specified in the Schedule shall apply.</p> <p>This Section SHOULD NOT be used for the law and jurisdiction of the individual insurances bound by the Coverholder as this should be shown under sub-section 20.6.4 of the USA BA.</p>

APPENDIX 2

ADDITIONAL/REPLACEMENT GUIDANCE FOR USE IN CONJUNCTION WITH LMA3115 THE CAN BA. THE GUIDANCE GIVEN BELOW IS ADDITIONAL TO THE MAIN GUIDANCE NOTES UNLESS STATED OTHERWISE.

CANADIAN BUSINESS

1. Guidance on some of the more significant compliance obligations is contained in Crystal.
2. Canadian Automobile business is highly regulated and provincial laws govern matters such as:
 - rates and rate classification systems;
 - forms of application, policy/certificate, endorsement or renewal or continuation policy/certificate;
 - underwriting practices;
 - notice periods for non-renewal or a contract of insurance or change of its terms;
 - payments, or procedures for payment, of any claim or benefit under a contract of insurance;
 - procedures for dispute resolution.

“Automobile business” means any insurance classified as automobile by the laws and regulations of any Canadian province or territory.

<p><u>Section 6</u></p> <p><u>Other Conditions, Requirements and/or amendments relating to the operation of the Agreement</u></p>	<p>The CAN BA has LMA numbered endorsements for use in conjunction with it. These endorsements and the class(es) of insurance business to which they apply are as follows:</p> <ul style="list-style-type: none">• CANADIAN AUTOMOBILE INSURANCE SPECIFIC CONDITIONS ENDORSEMENT - LMA5032A - applies to all Canadian Automobile insurance business.• CANADIAN AUTOMOBILE AND ONTARIO COMMERCIAL LIABILITY INSURANCE SPECIFIC REPORTING ENDORSEMENT - LMA5144A - applies when LMA5031A is required to be attached to the CAN BA (please refer to Section 24 of this appendix) and LMA5144A applies to all Canadian Automobile and Ontario commercial liability insurance business.• ALBERTA RISK SHARING POOL ENDORSEMENT - LMA5035A - applies to all Alberta Automobile insurance business.• NEW BRUNSWICK RISK SHARING POOL ENDORSEMENT - LMA5037A - applies to all New Brunswick Automobile insurance business.• ONTARIO RISK SHARING POOL ENDORSEMENT - LMA5033A - applies to all Ontario Automobile insurance business.• QUEBEC PLAN DE RÉPARTITION DES RISQUES FACILITY ('P.R.R.') ENDORSEMENT - LMA5034A - applies to all Quebec Automobile insurance business. <p>If any endorsement is applicable to the class(es) of business which may be bound it must be specified in sub-section 6.1 of the Schedule and attached to the CAN BA.</p>
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<p>Section 14</p> <p><u>Automatic or Tacit Renewal of Insurances Bound</u></p>	<p>The Coverholder must comply with applicable regulatory laws which relate to the review of each insurance bound prior to its individual renewal date in order to offer renewal terms or decline the risk. Additionally, Lloyd’s may have agreed to conduct insurance business in accordance with certain Canadian insurance industry codes of practice and details of each current code Lloyd’s subscribes to can be found at www.lloyds.com and/or on the Lloyd’s Canada Portal (<i>Lineage</i>).</p>
<p>Section 15</p> <p><u>Premium Finance Contracts and Premium Payment Plan</u></p>	<p>This replaces the guidance for Section 15 in the main guidance notes.</p> <p>If the Underwriters permit and the Coverholder is allowed to arrange for premiums to be settled by instalments under the Premium Payment Plan operated by Lloyd’s Canada then sub-section 15.2 of the Schedule should show “Yes”. Furthermore, the applicable classes of business to which the Premium Payment Plan applies should be listed in the space provided. In the event the Premium Payment Plan is not applicable, or not required by the Coverholder, then sub-section 15.2 of the Schedule should show “No”, and the list of class(es) of business should show “Not applicable”.</p>
<p>Section 20</p> <p><u>Contract Documentation</u></p>	<p><u>Sub-section 20.1</u></p> <p>Only Wordings’ that have been approved by the applicable Regulator(s) for use by the Underwriters may be used for Automobile business.</p> <p><u>Sub-sections 20.7 to 20.9</u></p> <p>This replaces the guidance for Sub-sections 20.7 to 20.9 in the main guidance notes.</p> <p>Sub-section 20.8 of the Schedule must be used to identify whether or not the Coverholder can bind insurances on behalf of the Underwriters under a schedule of insurers participating in a ‘subscription policy’ in a lead or following capacity.</p> <p>If the Coverholder has been so authorised, the provisions that apply are set out in sub-section 20.8.</p>

	<p>Where a Coverholder subscribes to a subscription policy it should not also issue a stand-alone policy for its sole participation in respect of the same insurance.</p>
<p><u>Section 24</u> <u>Accounting Bordereau(x)/ Reporting and Settlements</u></p>	<p>This replaces the guidance for Section 24 in the main guidance notes.</p> <p>The Code requires that the Coverholder report by class or category in respect of all premiums, paid claims, outstanding claims and expenses in respect of all insurances bound.</p> <p>The CAN BA has three LMA numbered Bordereaux, Accounts and Accounting Settlements clauses for use in conjunction with it, being:</p> <p>a) BORDEREAUX, ACCOUNTS AND ACCOUNTING SETTLEMENTS (LINEAGE ACCOUNTING AND SETTLEMENT - PORTAL DATA ENTERED BY COVERHOLDER) - LMA5029A - applies when Lineage accounting and settlement data is entered on the portal (<i>Lineage</i>) by the Coverholder.</p> <p>b) BORDEREAUX, ACCOUNTS AND ACCOUNTING SETTLEMENTS (LINEAGE ACCOUNTING AND SETTLEMENT - PORTAL DATA ENTERED BY LLOYD'S CANADA) - LMA5030A - applies when Lineage accounting and settlement data is entered on the portal (<i>Lineage</i>) by Lloyds Canada, or when data entry is undertaken by the Coverholder and Lloyd's Canada (e.g. premiums entered by Lloyd's Canada and claims entered by Coverholder). If all or some of the data for premiums and/or claims is entered on the portal (<i>Lineage</i>) by Lloyd's Canada, Underwriters will need to consent to this and agree the means (whether for premiums and/or claims) to be used by Lloyd's Canada.</p> <p>c) BORDEREAUX, ACCOUNTS AND ACCOUNTING SETTLEMENTS (NON LINEAGE ACCOUNTING AND SETTLEMENT) - LMA5031A - applies to Non Lineage accounting and settlement processing.</p> <p>The CAN BA requires that only one clause above is selected by the parties and applies. This will be dependent upon the method of processing, Lineage accounting and settlement or Non Lineage accounting and settlement, and in respect of Lineage accounting and settlement processing, whether the portal (<i>Lineage</i>) data will be entered by the Coverholder and/or by Lloyd's Canada. The Schedule should show which Clause applies and the Schedule will need to be completed in respect of the selected Clause only in accordance with the following:</p> <ul style="list-style-type: none"> • PART (A) of the Schedule to be completed when Bordereaux, Accounts and Accounting Settlements

	<p>(Lineage accounting and settlement - Portal Data Entered By Coverholder) - LMA5029A has been selected. Sub-section 24.4 of the Schedule recognises the maximum period of remittance of premium and claims settlements, and typical premium and claim settlements terms of trade are 30 days, although 30 day multiples, for example 60 or 90 days can be specified for premiums.</p> <ul style="list-style-type: none">• PART (B) of the Schedule to be completed when Bordereaux, Accounts and Accounting Settlements (Lineage accounting and settlement - Portal Data Entered By Lloyd's Canada) - LMA5030A has been selected. Sub-section 24.4 of the Schedule recognises the maximum period of remittance of premiums and claims settlements, and typical premium and claim settlements terms of trade are 30 days, although 30 day multiples, for example 60 or 90 days can be specified for premiums.• PART (C) of the Schedule to be completed when Bordereaux, Accounts and Accounting Settlements (Non Lineage accounting and settlement) - LMA5031A been selected. Part (C) recognises that the Coverholder does not always produce claims bordereaux. If the Coverholder does not have responsibility for producing claims bordereaux, Sub-section 24.3 of the Schedule directs the parties to indicate that accordingly. Sub-section 24.4 of the Schedule recognises the maximum period of remittance of settlements, and these can be individually agreed by the Underwriters depending on the requirements of each BA. <p>If Part (C) has been selected the Coverholder should not deduct any taxes or levies as these are paid directly by Underwriters. Any other deductions are those deductions allowed by Underwriters, which may include servicing or inspection fees Underwriters have agreed the Coverholder may deduct, and these should be shown in sub-section 24.7 of PART (C) of the Schedule.</p>
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<p><u>Section 25</u></p> <p><u>Records and Statistical Information required by the Underwriters</u></p>	<p>The Coverholder shall provide all statistical and other information as to insurances bound under the CAN BA as may from time to time be required by the Attorney In Fact in Canada for Lloyd’s Underwriters, as per sub-section 30.6 of the CAN BA. Nonetheless, it should be noted that this provision predominately applies to Non Scheme Canada business.</p>
<p><u>Section 27</u></p> <p><u>Separate Bank Accounts</u></p>	<p>In respect of Canadian coverholders, there are specific requirements in the provinces/territories that relate to the manner in which insurance monies need to be held or are treated.</p> <p>A coverholder in Ontario must maintain trust funds for insurance monies (ie premiums and claims funds less agent/broker commission). Nova Scotia and Newfoundland have similar requirements in that a trust account must be maintained in their respective jurisdictions. However, the Coverholder will be exempt from such requirements so long as it maintains a trust account in Ontario and makes the necessary filings.</p> <p>Other provinces and territories do not have any requirement to maintain a trust account in their respective jurisdiction, although most (if not all) provincial and territorial insurance legislation across Canada include a provision that deems trust funds to be held in trust by agents and brokers regardless of whether or not they have specific requirements in respect of maintaining a trust account in the province/territory.</p>
<p><u>Section 31</u></p> <p><u>Business Continuity</u></p>	<p>Section 31 (in conjunction with sub-sections 36.6 and 36.7) has been drafted to comply with OSFI outsourcing regulations and any amendments to these sections would need to take into account those regulations.</p>
<p><u>Section 42</u></p> <p><u>Jurisdiction and Governing Law</u></p>	<p>Please note that the parties must not nominate Canadian law. Therefore the Model BA has been drafted to use Ontario law as the default law for all Canadian BAs. However the parties are free to choose an alternative law and jurisdiction if required. If the Coverholder is located in a province other than Ontario then you should consider whether Ontario law is appropriate.</p>