

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

WILLIS OF ARIZONA, INC.; and  
WILLIS TOWERS WATSON  
INSURANCE SERVICES WEST,  
INC.,

Petitioners,

v.

EIGHTH JUDICIAL DISTRICT  
COURT, CLARK COUNTY,  
NEVADA; THE HONORABLE  
ELIZABETH GONZALEZ,

Respondents,

AND

HAKKASAN USA, INC.;  
ENDURANCE AMERICAN  
SPECIALTY INSURANCE  
COMPANY; and SOMPO  
INTERNATIONAL HOLDINGS,  
LTD.,

Real Parties in Interest.

Supreme Court Case No.:

District Court Case No. EA 20-816115-1  
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**PETITIONERS' APPENDIX – VOLUME II**

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**PETITIONERS' APPENDIX  
VOLUME II**

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Opposition to Motion to Strike Plaintiff's Jury Demand as to its Claim Against the Willis Defendants or, in the alternative, to Compel Arbitration	2/25/2021	P0141 – 0227
Reply Memorandum in support of Willis's Motion to Strike Plaintiff's Jury Demand or, in the alternative, to Compel Arbitration	3/8/2021	P0228 – 0283
Order re: Willis Defendants' Motion to Strike Plaintiff's Jury Demand as to its Claim Against the Willis Defendants or, in the alternative, to Compel Arbitration	3/25/2021	P0284 – 0286

DATED this 23<sup>rd</sup> day of April, 2021.

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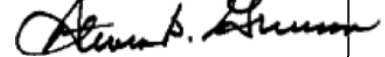
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DISTRICT COURT  
CLARK COUNTY, NEVADA

HAKKASAN USA INC.,

Plaintiff,

vs.

ENDURANCE AMERICAN SPECIALTY  
INSURANCE COMPANY; SOMPO  
INTERNATIONAL HOLDINGS, LTD.;  
WILLIS OF ARIZONA, INC.; and WILLIS  
TOWERS WATSON INSURANCE  
SERVICES WEST, INC.,

Defendants.

CASE NO. A-20-816145-B  
Dept. No.: XI

**OPPOSITION TO MOTION TO STRIKE  
PLAINTIFF'S JURY DEMAND AS TO  
ITS CLAIMS AGAINST THE WILLIS  
DEFENDANTS OR, IN THE  
ALTERNATIVE, TO COMPEL  
ARBITRATION**

Date of Hearing: March 15, 2021  
Time of Hearing: 9:00 a.m.



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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 Plaintiff Hakkasan USA, Inc. (“Hakkasan”) respectfully submits this opposition to Defendants  
3 Willis of Arizona, Inc. and Willis Towers Watson Insurance Services West, Inc.’s (collectively,  
4 “Defendants” or “Willis”) motion to strike Plaintiff’s jury demand as to its claims against the Willis  
5 Defendants or, in the alternative, to compel arbitration (the “Motion”).

6 **I. INTRODUCTION**

7 Willis seeks to deprive Hakkasan of its constitutional right to a jury trial on Hakkasan’s *tort*  
8 claims by relying on a nondescript clause buried within the thirteenth section of a lengthy, single-  
9 space, form document entitled “Brokerage Terms, Conditions & Disclosures” (the “T&Cs”) that on its  
10 face applies only to *Willis’s purchase of insurance* on behalf of Hakkasan. As such, the T&Cs do not  
11 apply to acts extraneous to that transaction. Because Hakkasan’s tort claims for civil conspiracy,  
12 constructive fraud, negligence, and intentional interference with contractual relations arise from  
13 actions that Willis committed long after it purchased insurance on Hakkasan’s behalf, and because  
14 those claims arise from independent duties of care that can be adjudicated without any reference to the  
15 T&Cs, the T&Cs’ purported jury waiver clause does not apply to Hakkasan’s present claims against  
16 Willis. For that same reason, Hakkasan’s claims are not subject to binding arbitration under the  
17 T&Cs, either.

18 Moreover, even if Hakkasan alleged contract claims against Willis in this case (it did not), the  
19 purported jury trial waiver cannot be enforced under Nevada law. Willis transmitted the T&Cs at  
20 issue along with an insurance proposal (the “Proposal”) to Hakkasan just one business day before  
21 Hakkasan’s existing insurance policies were set to expire—despite Hakkasan’s request that Willis not  
22 wait until the eve of the policy deadlines, as it had done in the past, to provide Hakkasan with  
23 comprehensive insurance proposal documents. Given the time pressure attendant to the renewal  
24 created by Willis, Hakkasan had to select from the coverage options that Willis provided on March 29,  
25 2019, lest it suffer a lapse in coverage and expose its global business portfolio to potential uninsured  
26 losses. As a result, Hakkasan did not knowingly, voluntarily, and intentionally waive its right to try its  
27 claims against Willis to a jury. Indeed, Willis never disclosed this provision in the T&Cs to  
28 Hakkasan, and this provision had not existed in prior versions of the T&Cs that Willis had provided to

1 Hakkasan and affiliated companies before 2019 in connection to Willis’s purchase of insurance on  
2 behalf of Hakkasan and the prior affiliated companies. Willis’s motion to strike should be denied.

## 3 II. STATEMENT OF FACTS

4 Hakkasan is a Las Vegas-based hospitality company that operates premier restaurants and  
5 entertainment venues worldwide. Hakkasan’s business portfolio includes Hakkasan Nightclub at  
6 MGM Grand Hotel and Casino, Omnia Nightclub at Caesars Palace, Wet Republic Pool and Level Up  
7 and MGM Grand, Jewel Nightclub and Liquid Pool at Aria Resort and Casino, Searsucker restaurants  
8 in Las Vegas and San Diego, Herringbone restaurants in Santa Monica, La Jolla, and Waikiki, and  
9 Hakkasan’s namesake restaurants in Las Vegas, San Francisco, New York, and Miami.

10 On March 29, 2019, Hakkasan’s insurance broker, Willis, transmitted a proposal (the  
11 “Proposal”) to renew, *inter alia*, Hakkasan’s existing commercial property policy, which was set to  
12 expire ***just one business day later*** on April 1, 2019. Ex. A, Decl. of Brandon Roos (“Roos Decl.”)  
13 ¶ 6. The Proposal included 55 pages of detailed proposed renewal terms for Hakkasan’s existing  
14 policies covering commercial property, general liability, automobiles, workers’ compensation and  
15 employer’s liability, business travel, and excess liability. Mot., Ex. B at 1–55. The Proposal also  
16 compared terms offered by Travelers Property Casualty Company of America (“Travelers”) and  
17 Defendants Endurance American Specialty Insurance Company and Sompo International Holdings,  
18 Ltd (collectively, “Sompo”) for Hakkasan’s commercial property policy. *Id.* at 7, 17–24. Buried in  
19 the Proposal was a sentence which read: “This proposal is presented in conjunction with the  
20 Brokerage Terms, Conditions & Disclosures for US Property & Casualty Retail Accounts which is  
21 enclosed.” *Id.* at 12. The Proposal itself did not contain any reference to the fact that Hakkasan  
22 would be required to waive its right to a jury trial against Willis in order to timely renew its policies  
23 nor did it require any separate execution by Hakkasan.

24 Attached to the end of the Proposal was a dense schedule of “Brokerage Terms, Conditions &  
25 Disclosures” (previously defined as the “T&Cs”) purporting to govern Willis’s procurement and  
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27  
28

1 purchase of insurance on Hakkasan's behalf. *Id.*, T&Cs, 1–9.<sup>1</sup> In Section 1.13 on page 4 of the T&Cs  
2 is an inconspicuous provision that purports to deprive Hakkasan of its right to a jury trial under the  
3 Nevada Constitution for claims related to Willis's *procurement and purchase of insurance policies*.  
4 According to Hakkasan's records, Willis did not always provide T&Cs with its annual renewal  
5 Proposals,<sup>2</sup> and prior versions of the T&Cs that Willis transmitted to Hakkasan (and prior affiliated  
6 companies) in connection with other proposals for insurance in past years did **not** include this  
7 purported jury waiver clause. Roos Decl., Exs. B–G. Contrary to the suggestions on page 4 of  
8 Willis's Motion, the clause is neither bolded, underlined, nor emphasized in any way. Mot., Ex. B.,  
9 T&Cs at 3–4. These boilerplate provisions were not negotiated or even signed by any representative  
10 of Hakkasan. *Id.*, T&Cs at 1–9. And, Willis did not disclose its addition of a purported jury waiver  
11 clause to the T&Cs that had not existed in prior years. Roos Decl. ¶¶ 12, 14.

12 Months before the meeting on March 29, 2019, Hakkasan requested that Willis provide  
13 information related to its upcoming coverage renewals, and it asked to meet with Willis sufficiently in  
14 advance of the April 1, 2019 deadline so that it had enough time to properly assess its renewal options.  
15 *Id.* ¶ 8. In response, Willis scheduled a conference to occur at the Hakkasan office on January 31,  
16 2019 entitled "Hakkasan 4/1 Renewal Strategy Meeting." *Id.* ¶ 9. However, Willis actually met with  
17 Hakkasan on January 30, 2019. *Id.* Unfortunately, despite Hakkasan's request, Willis did not provide  
18 many substantive details regarding Hakkasan's upcoming policy renewals. *Id.* Instead, Hakkasan did  
19 not learn key details regarding its coverage options for the 2019–20 policy term until its meeting with  
20 Willis on March 29, 2019. *Id.* ¶¶ 6, 10, 12. Because Willis did not transmit its April 1, 2019 policy  
21 renewal proposal to Hakkasan until Willis handed out the 55-page Proposal document during the  
22 March 29, 2019 meeting, Willis left Hakkasan in the untenable position of either selecting coverage  
23 that day or risking a lapse of coverage on its global business portfolio, which totaled about  
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25 <sup>1</sup> In its Motion, Willis uses alternative pagination to cite to the T&Cs. Contrary to Willis's  
26 citations, the pages of the T&Cs are not numbered 56–64 consecutively from the last page of the  
27 Proposal. *See* Mot., Ex. B at 1–55. Rather, the T&Cs constitute a separate document with its own  
28 pagination (1–9). Thus, for clarity, Hakkasan cites to the actual pagination of the T&Cs using the  
format "Mot., Ex. B, T&Cs, at \_\_\_\_."

<sup>2</sup> Roos. Decl. ¶ 21.

1 \$356,175,700 in insurable property value at the time. *Id.* ¶ 11; Mot., Ex. B, at 17.<sup>3</sup> During the  
2 meeting, Hakkasan orally selected its coverage options and authorized Willis to bind coverage,  
3 including coverage with Sompo under a Commercial Property Surplus Lines Insurance Policy (the  
4 “Policy”) at premium of \$325,000. Roos Decl. ¶ 13; Mot., Ex. C. Later that day, Willis memorialized  
5 Hakkasan’s selections in an “Order to Bind,” which Willis prepared and delivered to Hakkasan via  
6 email. Mot., Ex. C. The Order to Bind attached as Exhibit C to the Motion was not included in the  
7 Proposal delivered during the March 29, 2019 meeting. Roos Decl. ¶ 13. Instead, the Order to Bind  
8 was sent to my colleague, Veronica Stiles, via email later in the evening on March 29, 2019, with the  
9 coverages that Hakkasan had selected earlier in the day already populated by Willis into the Order to  
10 Bind. *Id.* On the one-page Order to Bind document Hakkasan signed and submitted to Willis, there  
11 was no mention of a jury trial waiver, let alone the Willis T&Cs. Mot., Ex. C.

12 Due to the COVID-19 outbreaks in the immediate vicinity of its restaurants and venues, and  
13 the corresponding governmental responses to the outbreaks in various locations, Hakkasan suffered  
14 extensive property damage, clean-up costs, cancellations, and business interruption expenses, among  
15 other losses. Amd. Compl. ¶ 51. In late February 2020, Hakkasan informed Willis that it likely would  
16 need to submit a large business interruption claim to Sompo pursuant to the Policy that inceptioned on  
17 April 1, 2019. *Id.* ¶ 55. The Policy provided a \$350 million general limit per loss occurrence, without  
18 any sub-limit for losses covered by the Special Time Element Cancellation coverage in the Policy. *Id.*  
19 ¶¶ 32, 38. Willis internally analyzed the Policy and determined that Hakkasan’s losses were covered  
20 by the Policy and specifically by the Special Time Element Cancellation coverage and the full \$350  
21 million policy limit applied to Hakkasan’s impending claim. *Id.* ¶ 57.

22 Out of concern for its lucrative business relationship with Sompo, and without notifying  
23 Hakkasan or obtaining approval from Hakkasan, Willis contacted Sompo to inform Sompo of  
24 Hakkasan’s impending business interruption claim for which there was no stated sublimit in the  
25 Policy. *Id.* ¶ 58. In response, on March 9, 2020, Sompo sent Willis a backdated endorsement to the

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27 <sup>3</sup> A lapse in coverage would also have exposed Hakkasan to general liability claims arising  
28 from the ongoing operation of nightclubs, dayclubs and restaurants, which were covered up to  
\$75,000,000 at the time. Mot., Ex. B at 27, 42, 44–47.

1 Policy purporting to add a \$1.5 million sublimit to the Special Time Element Cancellation coverage as  
2 of April 1, 2019 (the “Endorsement”). *Id.* ¶ 60. Even though the Endorsement was plainly against  
3 Hakkasan’s interest, Willis did not tell Hakkasan about the Endorsement and purported to “accept” the  
4 Endorsement on Hakkasan’s behalf without Hakkasan’s knowledge or consent.. *Id.* ¶ 66. Only after  
5 receiving the Endorsement from Sompo did Willis submit Hakkasan’s claim. *Id.* ¶ 71. Despite having  
6 received an endorsement to the Policy that, if effective, purported to change the applicable Policy  
7 limits from \$350 million per occurrence to \$1.5 million, and knowing that a claim had already been  
8 made that would have been affected by the Endorsement, Willis did not provide the Endorsement or  
9 any notice of the Endorsement to Hakkasan until May 26, 2020—when Hakkasan became aware of its  
10 possible existence and demanded the document from Willis. *Id.* ¶ 72.

11 After Hakkasan submitted its claim, but before disclosing the Endorsement and its role in  
12 obtaining it, Willis reached out to Hakkasan and suggested that Willis could facilitate a settlement of  
13 Hakkasan’s claim with Sompo for \$1,500,000—the purported “limit” of coverage under the  
14 Endorsement in Willis’s possession that was unknown to Hakkasan at the time. *Id.* ¶ 77. Hakkasan  
15 declined. Eventually, Sompo took the position that the claim was subject to the \$1,500,000 sublimit  
16 provided in Endorsement. *Id.* ¶ 90. To date, Sompo has refused to pay Hakkasan’s claims over \$1.5  
17 million, and continues to rely on the invalid and fraudulent Endorsement to avoid its coverage  
18 obligations. *Id.* ¶ 95. Instead, Sompo continues to engage in a pattern of delay and obfuscation in  
19 order to deprive Hakkasan of the benefits of its Policy during a time of great crisis, unemployment,  
20 and financial distress for the company. *Id.* ¶ 96.

21 As a result, Hakkasan was required to bring this lawsuit to hold Willis accountable for its post-  
22 placement tortious acts. Hakkasan specifically contends that Willis is liable to Hakkasan for civil  
23 conspiracy, constructive fraud, negligence, and intentional interference with contractual relations—  
24 conduct which took place more than ten months after the Policy was purchased and which is related to  
25 Hakkasan’s claim for coverage and not its purchase of the Policy. *Id.* ¶¶ 136–188. Notably with  
26 regard to this Motion, Hakkasan has not brought claims for breach of the parties’ brokerage agreement  
27 or any other contractual claims against Willis arising out of that agreement, the Proposal, the T&Cs, or  
28 the Order to Bind.

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### III. ARGUMENT

**A. The Purported Jury Waiver Clause Does Not Apply To Hakkasan's Tort Claims Against Willis Because Section 1.13 Of The T&Cs Only Covers Claims Arising Out Of Hakkasan's Purchase Of Insurance Through Willis.**

By their own terms, the T&Cs “set out the complete and exclusive statement of agreement and understanding between the parties, which supersedes and excludes all prior or contemporaneous proposals, understandings, agreements or representations, whether oral or written, *with respect to your purchase of insurance.*” Mot., Ex. B, T&Cs § 1.11 (emphasis added). The preamble of the T&Cs also makes this limitation clear: “Your decision *to purchase insurance coverages, products, and/or services* through Willis Towers Watson is subject to the following terms and conditions” *Id.*, T&Cs at 1 (emphasis added). Finally, Section 1.13 is specifically limited to “*disputes arising out of or in connection with the services provided* under these Terms, Conditions & Disclosures” *Id.*, T&Cs at 3 (emphasis added). Here, the service Willis provided to Hakkasan pursuant to these T&Cs was the *purchase* of insurance on Hakkasan's behalf, as memorialized in the Order to Bind. Mot., Ex C.

Article I, section 3 of the Nevada Constitution provides: “The right of trial by Jury shall be secured to all and remain inviolate forever; but a Jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law . . . .” In light of this constitutional guarantee, “jury waivers are to be narrowly construed and any ambiguity is to be decided against the waiver.” *Phoenix Leasing Inc. v. Sure Broad., Inc.*, 843 F. Supp. 1379, 1388 (D. Nev. 1994); *see also Vision Bank v. Algernon Land Co., LLC*, No. CIV.A.10-00172-N, 2010 WL 3803277, at \*3 (S.D. Ala. Sept. 23, 2010) (“In cases . . . that involve contractual waivers, we give the text of the waiver a narrow and strict construction, in deference to the constitutional guarantee of the right to a jury trial.”). Thus, a contractual clause purporting to waive the right to a jury trial must be construed narrowly in order to ensure that its scope only extends to categories of claims that the contracting parties actually intended to cover. *See Phoenix Leasing*, 843 F. Supp. at 1388. Moreover, unless the clause is “entered into knowingly, voluntarily and intentionally,” it cannot be enforced under Nevada law. *See Lowe Enterprises Residential Partners, L.P. v. Eighth Judicial Dist. Court*, 118 Nev. 92, 100, 40 P.3d 405, 410 (2002).



1 Likewise, “public policy . . . limit[s] the scope of operation of a jury waiver agreement to those  
2 controversies directly related to and arising out of the terms and provisions of the overall agreement  
3 containing the jury waiver provisions.” *Mall, Inc. v. Robbins*, 412 So. 2d 1197, 1200 (Ala. 1982).<sup>4</sup>  
4 Where a contractual clause restricts a party’s ability to try claims in a particular forum, or as in this  
5 case, before a particular fact-finder, a court should first “focus on ‘the intention of the parties reflected  
6 in the wording of particular clauses and the facts of [the] case,’” to determine whether that clause  
7 covers a particular claim. *See Tuxedo Int’l Inc. v. Rosenberg*, 127 Nev. 11, 25, 251 P.3d 690, 699  
8 (2011) (assessing whether contract’s forum-selection clause applied to certain claims).

9 Section 1.13 of the T&Cs only covers “disputes arising out of or in connection with the  
10 services provided under these Terms, Conditions & Disclosures.” Mot., Ex. B, T&Cs at 3. Notably,  
11 Section 1.13 does *not* broadly apply to *any* controversy between Hakkasan and Willis. *Cf. Vision*  
12 *Bank*, 2010 WL 3803277, at \*3 (explaining that a jury waiver clause covering claims “arising out of,  
13 or based upon,” an agreement should be construed more narrowly than a jury waiver clause covering  
14 “any dispute or controversy whatsoever between [the parties]”). Hakkasan’s claims against Willis  
15 also do not “aris[e] out of” nor are “in connection with” its purchase of insurance through Willis  
16 because each of those claims can be resolved without reference to the Proposal and the T&Cs attached  
17 thereto. *See Mall*, 412 So. 2d at 1200 (holding that jury waiver clause applied to “any matters  
18 whatsoever arising out of or in any way connected with” a lease did not apply to plaintiff’s fraud  
19 claim because “the agreement, out of which the relationship of these parties as lessor and sublessee  
20 arose, ha[d] no application to the relief sought in this case, which is based upon a claim independent  
21 and outside of the lease”). Willis conspired with Sompo to concoct the backdated Endorsement long  
22 after Willis had purchased the Policy from Sompo on Hakkasan’s behalf. Willis’s decisions to alert  
23 Sompo to Hakkasan’s planned claim before it was made, to accept the backdated Endorsement from  
24 Sompo without providing Hakkasan an opportunity to object, and to attempt to secure a settlement

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26 <sup>4</sup> The Supreme Court of Nevada has cited *Mall* as persuasive authority in cases analyzing  
27 contractual jury waiver clauses. *See Club Vista Fin. Servs., L.L.C. v. Eighth Judicial Dist. Court*,  
28 128 Nev. 889, 381 P.3d 602 (2012); *Casey v. Third Judicial Dist. Court*, 281 P.3d 1160 (Nev.  
2009); *Lowe*, 118 Nev. at 98 n.16, 40 P.3d at 409 n.16.

1 from Hakkasan equal to the fabricated sub-limit on the backdated Endorsement were entirely outside  
2 the scope of services that Willis agreed to provide Hakkasan under the Proposal, *i.e.*, the purchase of  
3 the insurance on Hakkasan's behalf. Thus, Hakkasan's claims for civil conspiracy, constructive fraud,  
4 negligence, and intentional interference with contractual relations<sup>5</sup> do not "aris[e] out of" and are not  
5 "in connection with" the services Willis provided Hakkasan pursuant to the Proposal, and Section 1.13  
6 does not preclude Hakkasan from trying those claims before a jury. *See Vision Bank*, 2010 WL  
7 3803277, at \*4 (holding that jury waiver clause applying to "any civil action arising out of, or based  
8 upon," a guaranty agreement did not apply to plaintiff's tort claims because they "[did] not require a  
9 reference to, or a construction of,' the Guaranty Agreement at issue in this litigation").

10 Hakkasan's claims against Willis also do not require the interpretation of any clause in the  
11 Proposal or the T&Cs. *See Phoenix Leasing*, 843 F. Supp. at 1388; *see also Tuxedo Int'l*, 127 Nev. at  
12 25, 251 P.3d at 699 ("[I]f the issue cannot be resolved through . . . textual analysis, the next step is to  
13 determine whether resolution of the tort-based claims pleaded by the plaintiff relates to the  
14 interpretation of the contract, and if they are, then the claims are within the scope of the . . . clause.").  
15 Hakkasan does not contend that Willis breached its agreement to procure the Policy on Hakkasan's  
16 behalf pursuant to the Proposal and Hakkasan's Order to Bind. Rather, Hakkasan contends that Willis  
17 committed independently actionable torts against Hakkasan nearly a year after Willis purchased the  
18 Policy on Hakkasan's behalf. Regardless of whether it was also involved in placing the coverage at  
19 issue, Willis would still be liable for conspiring with Sampo to create the fraudulent Endorsement.

20 Moreover, as Hakkasan's insurance broker, Willis breached its fiduciary duty and duty of care  
21 to Hakkasan, notwithstanding the language of the Proposal or the T&Cs, based on its conduct long  
22 after the Policy was purchased, including by intentionally withholding the backdated Endorsement and  
23 attempting to obtain a settlement from Hakkasan in an amount equal to the purported limits set by the  
24 fraudulent Endorsement. Hakkasan's claim alleging tortious interference with contractual relations "is  
25 even more independent from the contract, because it does not deal with the contract formation  
26

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27 <sup>5</sup> The contract at issue in the contractual interference claim is the Policy between Sampo and  
28 Hakkasan—not any agreement between Willis and Hakkasan.

1 whatever.” *Vision Bank*, 2010 WL 3803277, at \*4. The legal effect of the Proposal and T&Cs is  
2 immaterial to Willis’s liability for civil conspiracy, constructive fraud, negligence, and intentional  
3 interference with contractual relations.

4 Finally, Hakkasan’s tort claims against Willis do not involve the “same operative facts” as any  
5 parallel contract claims that Hakkasan could have brought against Willis under the Proposal and  
6 T&Cs. *See Tuxedo Int’l*, 127 Nev. at 25, 251 P.3d at 699. All of Hakkasan’s tort claims against  
7 Willis depend upon independent duties of care Willis owed Hakkasan—not the formation of the  
8 Proposal, the T&Cs, or the Order to Bind, or the enforcement of any clause in those documents. The  
9 facts underlying Hakkasan’s claims concern independent torts Willis committed long *after* the parties  
10 completed the insurance renewal transaction.

11 In sum, the T&Cs expressly only govern Willis’s purchase of insurance on Hakkasan’s behalf.  
12 The purported jury trial waiver in Section 1.13 of the T&Cs does not extend to Hakkasan’s tort claims  
13 against Willis, as those claims can be resolved independently without reference to Willis’s Proposal or  
14 the T&Cs, and they concern facts extraneous to Willis’s purchase of insurance for Hakkasan. *See*  
15 *Mall*, 412 So. 2d at 1200 (holding that jury waiver clause was inapplicable to tort claim “because the  
16 agreement, out of which the relationship of these parties . . . arose, ha[d] no application to the relief  
17 sought in this case, which is based upon a claim independent of and outside of the [agreement].”).  
18 Hence, Willis’s Motion should be denied.

19 **B. Hakkasan Did Not Knowingly, Voluntarily, And Intentionally Waive Its**  
20 **Constitutionally-Guaranteed Right To Try Its Claims Against Willis To A**  
**Jury.**

21 Willis’s motion also fails because Hakkasan did not “knowingly, voluntarily and intentionally”  
22 waive its constitutionally-guaranteed right to try its claims against Willis to a jury, and for that reason,  
23 the purported jury trial waiver in Section 1.13 of the T&Cs cannot be enforced. *See Lowe*, 118 Nev. at  
24 100, 40 P.3d at 410. Willis never mentioned a jury trial waiver—let alone any clause of the T&Cs—  
25 before Hakkasan executed the Order to Bind. Roos Decl. ¶¶ 12, 14. The purported jury trial waiver  
26 clause is buried deep within nine pages of fine print, in the thirteenth section of a document with over  
27 fifty distinct sections and sub-sections. Mot., Ex. B, T&Cs § 1.13. The purported waiver is neither  
28 bolded, underlined, capitalized, italicized, set aside, or emphasized in any way. *Id.* Rather, it is

1 submerged within a sea of black, single-spaced, 9-point font, under an inconspicuous heading that  
2 does not refer to a jury waiver. *Id.* There is no reason to belabor the analysis on this point; the  
3 purported jury waiver provision here falls well short of the kind of prominence indicative of a party's  
4 knowing, voluntary and intentional waiver of a constitutional right.

5       Setting aside the inconspicuous nature of the waiver language, the T&Cs were presented with  
6 the Proposal on an adhesive, take-it-or-leave-it basis and transmitted to Hakkasan just one business  
7 day before Hakkasan's existing insurance policies were set to expire. Roos Decl. ¶¶ 6–7, 10.  
8 Hakkasan never signed or initialed any part of the T&Cs,<sup>6</sup> and on the only document that Hakkasan  
9 did sign—the Order to Bind—there is no reference to a jury trial waiver or the T&Cs. Mot., Ex C.

10       Moreover, Hakkasan had purchased insurance through Willis for many years prior to the 2019  
11 policy placement year. Roos Decl. ¶ 5. Past iterations of the T&Cs that Willis had included with is  
12 previous renewal proposals did not include purported jury trial waiver clauses. *Id.* Exs. B–G. Adding  
13 a jury waiver clause to the fine print of a dense and lengthy form agreement without disclosing or  
14 attempting to disclose to Hakkasan that the T&Cs had been revised to include a waiver of a  
15 constitutional right is exactly the kind of hidden waiver that Nevada law rejects. These facts establish  
16 that the purported jury trial waiver in Section 1.13 of the T&Cs cannot be enforced against Hakkasan  
17 under Nevada law.

18       “The fundamental nature of a due process right to a jury trial demands that it be protected from  
19 an unknowing and involuntary waiver.” *Malan Realty Investors, Inc. v. Harris*, 953 S.W.2d 624, 627  
20 (Mo. 1997) (per curiam). “The factors to consider in determining whether a contractual waiver of the  
21 right to jury trial was entered into knowingly and voluntarily include: (1) the parties' negotiations  
22 concerning the waiver provision, if any, (2) the conspicuousness of the provision, (3) the relative  
23 bargaining power of the parties and (4) whether the waiving party's counsel had an opportunity to  
24 review the agreement.” *Lowe*, 118 Nev. at 101, 40 P.3d at 410–11. Willis's argument fails on each of  
25 these factors.

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28       <sup>6</sup> Mot., Ex. B, T&Cs; Roos Decl. ¶ 12.

1       **First**, Hakkasan and Willis never negotiated the purported jury waiver clause in Section 1.13,  
2 and in any event, the T&Cs were not presented to Hakkasan as negotiable. Roos Decl. ¶ 12.  
3 Hakkasan was not even aware of the purported jury waiver provision in Section 1.13 when it executed  
4 the Order to Bind, and the parties never discussed the waiver or any provision of the T&Cs during  
5 their meeting on March 29, 2019. *Id.* ¶¶ 12, 14. Prior versions of the T&Cs that Willis sent Hakkasan  
6 in connection to other proposals did not include jury waiver clauses. Roos Decl., Exs. B–G. As the  
7 preamble of the T&Cs provided: “Your decision to purchase insurance coverages, products, and/or  
8 services through Willis Towers Watson **is subject** to the following terms and conditions” (emphasis  
9 added). Mot., Ex. B, T&Cs at 1. New Oxford American Dictionary (3d ed. 2010) defines “subject” in  
10 this context as “dependent or conditional upon.” Indeed, modification of the T&Cs was not presented  
11 as an option. Roos Decl. ¶ 12. Further indicating that Hakkasan did not review or assent to the T&Cs  
12 or the purported jury waiver provision, Hakkasan’s name is not mentioned once in the T&Cs, and  
13 there are no initials, signatures, or markings on the T&Cs indicating that Hakkasan intended to be  
14 bound to them. Mot., Ex. B, T&Cs; Roos Decl. ¶ 12. The *only* document containing Hakkasan’s  
15 signature is the Order to Bind—which includes no reference to the T&Cs or the purported jury waiver  
16 clause. Mot., Ex. C. Because Willis unilaterally imposed the T&Cs without negotiation, even if the  
17 T&Cs were to apply to this dispute (and they do not), the T&Cs cannot establish that Hakkasan  
18 knowingly, voluntarily, and intentionally waived its right to a jury trial. *See Zi Beauty, Inc. v. General*  
19 *Growth Properties*, No. A-16-744558-B, Order Denying Defs.’ Mot. to Bifurcate Trial and Partially  
20 Stay Disc. and Mot. to Strike Jury Demand on Order Shortening Time, at 3 (Nev. D. Ct. Mar. 15,  
21 2018), *aff’d*, *GGP, Inc. v. Eighth Judicial Dist. Court*, 437 P.3d 178 (Nev. 2019) (table decision)  
22 (holding that a jury trial waiver was unenforceable where it “was never the subject of discussion or  
23 negotiation between Plaintiffs and Defendants and Plaintiff was unaware of the provision until being  
24 served with the Motion to Strike Jury Demand”); *Lenoir v. Fred’s Stores of Tennessee, Inc.*, No.  
25 1:15CV214-SA-DAS, 2016 WL 3265451, at \*2 (N.D. Miss. June 14, 2016) (holding that jury trial  
26 waiver was unenforceable where terms “were laid out unilaterally” by one party); *Dreiling v. Peugeot*  
27 *Motors of Am., Inc.*, 539 F. Supp. 402, 403 (D. Colo. 1982) (holding that jury trial waiver on a  
28 standardized form drafted by one party was unenforceable where there was no evidence “the waiver

1 provision was a bargained for term of the contract, was mentioned during negotiations, or was even  
2 brought to the plaintiffs' attention").

3       **Second**, the purported jury waiver clause is fatally inconspicuous. Unlike the clearly identified  
4 jury waiver clauses that Nevada courts have found to be enforceable, the purported jury waiver clause  
5 in the T&Cs lacks any kind of emphasis that might draw a reader's attention to it. In *Club Vista*, 128  
6 Nev. 889, 381 P.3d 602, the court held that a jury waiver clause in "bold and uppercase letters,  
7 directly above the signature line, located in a concise agreement, and titled "'WAIVER OF JURY  
8 TRIAL'" was sufficiently conspicuous to be enforceable.<sup>7</sup> **None** of those facts are present here: the  
9 purported jury waiver clause in Section 1.13 is neither bold nor in upper-case letters, it is entirely  
10 absent from the Order to Bind document that Hakkasan signed, it is buried deep within over fifty  
11 discrete sections and sub-sections of fine print, and it is accompanied by no heading or title indicating  
12 a jury waiver clause. Mot., Ex. B., T&Cs at 3–4; Mot., Ex. C. In short, this is a textbook case "where  
13 the waiver language is 'buried in the text' of a voluminous document." *Fuoroli v. Westgate Planet*  
14 *Hollywood Las Vegas, LLC*, No. 2:10-CV-2191 JCM GWF, 2014 WL 131668, at \*4 (D. Nev. Jan. 14,  
15 2014). Moreover, prior iterations of the T&Cs that Willis had submitted to Hakkasan in connection  
16 with earlier insurance proposals **lacked** clauses purporting to limit Hakkasan's right to a jury trial—  
17 making the inconspicuousness of the purported jury wavier clause in the T&Cs submitted on March  
18 29, 2019 even more egregious. Roos Decl., Exs. B–G. For all of these reasons, the purported jury  
19 waiver clause in Section 1.13 is unenforceable. *See Zi Beauty*, No. a-16-744558-B, at 3 (holding that  
20 an un-highlighted jury waiver clause at the end of a non-descript paragraph was unenforceable); *Nat'l*  
21 *Equip. Rental, Ltd. v. Hendrix*, 565 F.2d 255, 258 (2d Cir. 1977) (holding that a jury waiver provision  
22 "literally buried in the eleventh paragraph of a fine print, sixteen clause agreement" was  
23 unenforceable); *Dreiling*, 539 F. Supp. at 403 ("A constitutional guarantee so fundamental as the right

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24       <sup>7</sup> *See also Casey*, 281 P.3d 1160 (finding that a jury waiver clause that was "properly titled as  
25 such, . . . not buried in the . . . Agreement, and . . . bolded and the same size as the font found in the  
26 rest of the document" was conspicuous); *Malan*, 953 S.W.2d at 627 (finding that a jury wavier clause  
27 that was "not buried in the [agreement] [and] was prominently displayed as the only and last  
28 paragraph on the last page immediately above the signature lines" was conspicuous); *Mall*, 412 So. 2d  
at 1199 (finding that a jury waiver clause clearly labeled "Waiver of Trial by Jury: Tenant Not To  
Counterclaim" was conspicuous).

1 to jury trial cannot be waived unknowingly by mere insertion of a waiver provision on the twentieth  
2 page of a twenty-two page standardized form contract.”).

3       **Third**, given that Willis submitted the Proposal just one business day before Hakkasan’s  
4 existing insurance policies were set to expire—even after Hakkasan had specifically instructed Willis  
5 **not** to wait until the last minute to transmit voluminous proposal documents—Hakkasan’s bargaining  
6 power was severely handicapped. If for whatever reason Hakkasan declined Willis’s Proposal, its  
7 existing insurance policies would lapse the following business day, and the security of Hakkasan’s  
8 global entertainment enterprise would be put in jeopardy. Roos. Decl. ¶ 11. For Hakkasan to expose  
9 itself to uninsured losses for even one day constituted a risk that no reasonable business would  
10 accept—and Willis knew it. Not only did Willis put Hakkasan into a position of vulnerability by  
11 delaying until the eve of the renewal deadline to submit the Proposal, it exploited that vulnerability by  
12 conditioning Hakkasan’s renewal upon an exhaustive list of lopsided terms and conditions that Willis  
13 unilaterally imposed. In short, Willis’s delay in transmitting the Proposal put Hakkasan in an  
14 impossible bargaining position where Willis held all of the proverbial cards. Under the circumstances,  
15 Hakkasan had no choice but to renew its existing policies through Willis—regardless of what lurked  
16 in the fine print of the T&Cs. *Id.* Such a Hobson’s choice cannot predicate a knowing, voluntary, and  
17 intelligent waiver of a constitutionally-protected right. *See Nat’l Equip. Rental*, 565 F.2d at 258  
18 (holding that a jury waiver was unenforceable against a party who “did not have any choice but to  
19 accept the . . . contract as written if he was to get badly needed funds”); *Lenoir*, 2016 WL 3265451, at  
20 \*2 (holding that a jury waiver was unenforceable against a party who “was left with the unsavory  
21 decision of either agreeing to the employer’s terms post hoc or facing possible termination”); *Dreiling*,  
22 539 F. Supp. at 403 (holding that a jury waiver clause was unenforceable where there was no evidence  
23 “plaintiffs had any choice other than to accept the contract as written”).

24       **Fourth**, because Willis had submitted the Proposal just one business day before Hakkasan’s  
25 existing policies were to expire, Hakkasan’s in-house counsel, Brandon Roos, had to select the  
26 appropriate policy coverages for Hakkasan that day and, in fact, did select all of the coverages during  
27 the March 29, 2019 meeting. Roos. Decl. ¶¶ 10, 13. Thus, the primary concern and the entire focus of  
28 the March 29, 2019 meeting and presentation lead by Willis was to review the specific policies and

1 coverages available to Hakkasan under the Proposal and to make coverage selections. *Id.* ¶ 12. While  
2 Willis explained to Mr. Roos the details of the Proposal and the coverage options available thereunder  
3 on March 29, 2019, it never referred to the T&Cs once nor informed Mr. Roos of their contents. *Id.*  
4 This is not a case where counsel specifically advised a party to waive its right to a jury trial,<sup>8</sup> nor is it  
5 one where counsel had ample time to “carefully review[]” a contract and request revisions before it  
6 was executed. *See In re Reggie Packing Co., Inc.*, 671 F. Supp. 571, 574 (N.D. Ill. 1987). Thus, Mr.  
7 Roos’ involvement in selecting Hakkasan’s insurance coverages does not suggest that Hakkasan  
8 knowingly, voluntarily, and intentionally waived its right to try its claims against Willis to a jury.

9 In conclusion, Willis unilaterally imposed the T&Cs without negotiation, buried the purported  
10 jury waiver clause deep within multiple layers of fine print, severely compromised Hakkasan’s  
11 bargaining power, and deprived Hakkasan’s counsel of a meaningful opportunity to review the T&Cs.  
12 Together, these facts overwhelmingly demonstrate that Hakkasan did not knowingly, voluntarily, and  
13 intentionally waive its constitutional right to a jury trial.

14 **C. If The Court Holds That The Purported Jury Waiver Clause Of Section 1.13**  
15 **Is Unenforceable, Hakkasan’s Tort Claims Should Not Be Compelled To**  
16 **Arbitration Because Section 1.13 Only Covers Claims Arising Out Of**  
**Hakkasan’s Purchase Of Insurance Through Willis.**

17 Perhaps anticipating that the Court will not countenance the underhanded jury waiver clause  
18 hidden deep within the T&Cs, Willis argues that if the clause is deemed unenforceable, the Court  
19 should nonetheless compel Hakkasan’s tort claims against Willis to arbitration. Mot. at 8. Willis  
20 contends this is appropriate because Section 1.13 provides that if the jury waiver clause is held to be  
21 unenforceable, the parties should be compelled to binding arbitration instead. *Id.* Willis’s argument  
22 must fail because it is founded upon the false assumption that Section 1.13 applies to *any* dispute  
23 between Willis and Hakkasan, when in reality, it only covers disputes “arising out of or in connection  
24 with the services provided under these Terms, Conditions & Disclosures,” *i.e.*, Willis’s purchase of  
25 insurance on Hakkasan’s behalf. Mot., Ex. B., T&Cs at 3.

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27 <sup>8</sup> *See Lowe*, 118 Nev. at 94, 40 P.3d at 406 (enforcing jury waiver clause where party waived  
28 right to jury trial “WITH AND UPON THE ADVICE OF COMPETENT COUNSEL”).



1 “By its terms, the [Federal Arbitration Act (“FAA”)] applies to contracts ‘evidencing a  
2 transaction involving [interstate] commerce.’” *U.S. Home Corp. v. Michael Ballesteros Tr.*, 134 Nev.  
3 180, 186, 415 P.3d 32, 38 (2018). Because the insurance policies Willis purchased for Hakkasan  
4 cover Hakkasan’s assets and operations across multiple states,<sup>9</sup> the FAA governs Section 1.13 of the  
5 T&Cs. *See id.* at 187, 415 P.3d at 39.

6 “Notwithstanding the federal policy favoring it, ‘arbitration is a matter of contract and a party  
7 cannot be required to submit to arbitration any dispute which he has not agreed so to submit.’” *Tracer*  
8 *Research Corp. v. Nat’l Envtl. Servs. Co.*, 42 F.3d 1292, 1294 (9th Cir. 1994). Therefore, “the phrase  
9 ‘arising under’ in an arbitration agreement should be interpreted narrowly.” *Cape Flattery Ltd. v.*  
10 *Titan Mar., LLC*, 647 F.3d 914, 921 (9th Cir. 2011). “[U]nder an arbitration agreement covering  
11 disputes ‘arising under’ the agreement, only those disputes ‘relating to the interpretation and  
12 performance of the contract itself’ are arbitrable.” *Id.* at 924. “[W]hen a tort claim constitutes an  
13 ‘independent wrong from any breach’ of the contract it ‘does not require interpretation of the contract  
14 and is not arbitrable.’” *Id.* Further, “a tort claim is not arbitrable just because it would not have arisen  
15 ‘but for’ the parties’ agreement.” *Id.*

16 As explained in Section III.A., *supra*, Section 1.13 of the T&Cs does not apply to Hakkasan’s  
17 claims against Willis for civil conspiracy, constructive fraud, negligence, and intentional interference  
18 with contractual relations because those claims can be tried without reference to the Proposal, the  
19 T&Cs, or the Order to Bind, and they concern events separate from Willis’s purchase of insurance for  
20 Hakkasan and long after that transaction was completed. “If proven, [Willis’s involvement in creating  
21 the fraudulent Endorsement] would constitute an independent wrong from any breach of the  
22 [Proposal, the T&Cs, or the Order to Bind].” *Tracer*, 42 F.3d at 1295. Because Hakkasan’s present  
23 claims against Willis “do[] not turn on an interpretation of any clause in the contract,” nor “do[] the[y]  
24 . . . turn on [Willis’s] performance under the contract,” but rather are tort claims based upon  
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27 <sup>9</sup> Mot., Ex. B at 15–16 (listing Hakkasan business locations in Nevada, New York,  
28 California, Texas, and Hawaii).

1 independent duties of care, Hakkasan's claims are not subject to arbitration under Section 1.13 of the  
2 T&Cs. *See Cape Flattery*, 647 F.3d at 921.

3 Despite Willis's reliance on *Phillips v. Parker*, 106 Nev. 415, 794 P.2d 716 (1990), that case is  
4 inapposite. In *Phillips*, Messrs. Parker and Philips agreed to start a mail sorting business and executed  
5 a contract memorializing their obligations to each other. *Id.* at 416, 794 P.2d at 717. Several months  
6 after the company had formed, Mr. Phillips fired Mr. Parker and removed him from the board of  
7 directors. *Id.* Mr. Parker sued Mr. Phillips, alleging in his amended complaint that Mr. Phillips  
8 fraudulently mismanaged the company. *Id.* Mr. Phillips moved to compel arbitration of Mr. Parker's  
9 claims on the basis of an arbitration clause in the parties' contract covering "[a]ny controversy [sic] or  
10 claim arising [sic] out of, or relating to this agreement, or the breach thereof." *Id.* The Supreme  
11 Court of Nevada held that Mr. Parker's claims were subject to the arbitration clause because "some, if  
12 not all, of Parker's causes of action depend on his status as a minority shareholder in a closely held  
13 corporation with accompanying statutory and common law rights," and "Parker's only documentary  
14 evidence of stock ownership is the agreement itself." *Id.* at 418, 794 P.2d at 718. Here, neither the  
15 Proposal, the T&Cs, nor the Order to Bind are pieces of evidence that Hakkasan must rely upon to  
16 prevail on its tort claims against Willis. And unlike the contract in *Phillips*, which governed the  
17 parties' continuing obligations to each other and their company, the T&Cs only apply to Hakkasan's  
18 purchase of insurance policies for Hakkasan—a transaction which finished long before Willis  
19 conspired with Sampo to create the illegitimate Endorsement.

20 In sum, the T&Cs which form the basis of Willis's instant Motion are immaterial to  
21 Hakkasan's claims against Willis for civil conspiracy, constructive fraud, negligence, and intentional  
22 interference with contractual relations. Because those tort claims do not "aris[e] out of or in  
23 connection with" Willis's purchase of insurance on Hakkasan's behalf, Hakkasan's claims are not  
24 subject to mandatory arbitration under Section 1.13 of the T&Cs.

#### 25 IV. CONCLUSION

26 For the aforementioned reasons, Willis's motion to strike Plaintiff's jury demand as to its  
27 claims against the Willis Defendants, or, in the alternative, to compel arbitration, should be denied.  
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DATED this 25th day of February, 2021

SANTORO WHITMIRE, LTD.

By           /s/ James E. Whitmire            
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the 25th day of February, 2021, a true and correct copy of Plaintiff Hakkasan USA, Inc.’s **OPPOSITION TO MOTION TO STRIKE PLAINTIFF’S JURY DEMAND AS TO ITS CLAIMS AGAINST THE WILLIS DEFENDANTS OR, IN THE ALTERNATIVE, TO COMPEL ARBITRATION** was filed with the Clerk of Court using the Eighth Judicial District Court’s eFileNV system and served electronically to the persons identified on such system.

/s/ James E. Whitmire  
James E. Whitmire  
An employee of SANTORO  
WHITMIRE

# **EXHIBIT A**

1 **DECL**

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28 *Attorneys for Plaintiff*  
HAKKASAN USA, INC.

DISTRICT COURT  
CLARK COUNTY, NEVADA

HAKKASAN USA INC.,

Plaintiff,

vs.

ENDURANCE AMERICAN SPECIALTY  
INSURANCE COMPANY; SOMPO  
INTERNATIONAL HOLDINGS, LTD;  
WILLIS OF ARIZONA, INC.; and WILLIS  
TOWERS WATSON INSURANCE  
SERVICES WEST, INC.,

Defendants.

CASE NO. A-20-816145-B  
Dept. No.: XI

**DECLARATION OF BRANDON E. ROOS  
IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO MOTION TO STRIKE  
PLAINTIFF'S JURY DEMAND AS TO  
ITS CLAIMS AGAINST THE WILLIS  
DEFENDANTS OR, IN THE  
ALTERNATIVE, TO COMPEL  
ARBITRATION**

1 I, Brandon E. Roos, declare as follows:

2 1. I am a member in good standing of the State Bar of Nevada, and I am General Counsel  
3 to Plaintiff Hakkasan USA, Inc. (“Hakkasan”). In that capacity, I have personal knowledge of the  
4 facts stated below. I submit this declaration in support of Hakkasan’s Opposition to Motion to Strike  
5 Plaintiff’s Jury Demand as to its Claims Against the Willis Defendants or, in the Alternative, to  
6 Compel Arbitration.

7 2. I have been employed as in-house counsel for Hakkasan since January 2015, initially in  
8 the role of Vice President of Legal Affairs and thereafter as Executive Vice President and General  
9 Counsel.

10 3. Prior to Hakkasan’s 2018–2019 insurance renewal, Jan Marks (former Chief Financial  
11 Officer of Hakkasan) was principally responsible for coordinating the purchase of insurance for the  
12 company and selecting appropriate coverages. Veronica Stiles (Hakkasan’s Corporate Risk Manager)  
13 and I provided material assistance to Mr. Marks and participated in the purchase and selection of  
14 coverages for Hakkasan’s 2015–16, 2016–17 and 2017–18 insurance renewals. Mr. Marks left  
15 Hakkasan in or about October 2017.

16 4. Since Hakkasan’s 2018–2019 insurance renewal, I have been principally responsible  
17 for coordinating the purchase of insurance for the company and selecting appropriate coverages with  
18 the assistance of my colleague Ms. Stiles.

19 5. Upon information and belief, Defendants Willis of Arizona, Inc. and Willis Towers  
20 Watson Insurance Services West, Inc. (collectively, “Defendants” or “Willis”) have acted as  
21 Hakkasan’s insurance broker since 2014. Willis has procured a variety of insurance policies and  
22 coverages for Hakkasan over the years, including for commercial property, general liability,  
23 automobiles, workers’ compensation and employer’s liability, business travel, excess liability,  
24 professional liability, and cyber liability.

25 6. On Friday, March 29, 2019, Willis met with Hakkasan to present a proposal (the  
26 “Proposal”) to renew Hakkasan’s existing insurance policies, which were set to expire on Monday,  
27 April 1, 2019. Attached to the Proposal was a document entitled “Brokerage Terms, Conditions &  
28

1 Disclosures” (14 February 2019 version) (the “T&Cs”). I attended the meeting with my colleague,  
2 Ms. Stiles.

3 7. Willis provided the Proposal to Hakkasan for the first time on March 29, 2019 as a  
4 handout during the renewal meeting that same day.

5 8. Months before the March 29, 2019 meeting, I informed Willis that I did not want to  
6 receive voluminous proposal documents on the eve of policy renewal deadlines, and I asked that  
7 Willis provide substantive information regarding the renewal sufficiently in advance of April 1, 2019  
8 to provide Hakkasan with time to meaningfully review its renewal options and required  
9 documentation.

10 9. In response to my request, Willis scheduled a conference to occur at Hakkasan’s office  
11 on January 31, 2019 entitled “Hakkasan 4/1 Renewal Strategy Meeting.” Instead, Chuck Halsey of  
12 Willis met with Ms. Stiles and me on January 30, 2019 to discuss Hakkasan’s upcoming policy  
13 renewal options. Willis did not discuss many substantive details of the upcoming renewal options at  
14 that meeting or provide a draft of the Proposal or T&Cs. In fact, the discussion provided little  
15 meaningful information as related to Hakkasan’s policy renewal decisions.

16 10. Despite my request, Willis had again waited until the eve of the policy expiration date  
17 to submit its Proposal. Given that Hakkasan’s existing insurance coverages were set to lapse on April  
18 1, 2019 absent renewal, I was asked by Willis on March 29, 2019 to review and select Hakkasan’s  
19 policy renewal options during the meeting on March 29, 2019, and I selected the coverages on behalf  
20 of Hakkasan during that meeting.

21 11. In my judgment, the risk of allowing Hakkasan’s existing coverages to lapse on April  
22 1, 2019 would have exposed Hakkasan’s ongoing business to an unacceptable level of risk. Given  
23 that Willis had submitted its Proposal on the last business day before policies expired on April 1,  
24 2019, I felt that Hakkasan had to renew its insurance policies on March 29, 2019 with Willis before  
25 the coverages lapsed.

26 12. Willis lead the March 29, 2019 meeting, which focused entirely on the coverages  
27 contained in the Proposal and Willis’s request that Hakkasan select its coverage options that day.  
28 During the meeting on March 29, 2019, Hakkasan and Willis did not discuss—let alone negotiate—



1 the T&Cs attached to the Proposal, nor did Willis mention that the T&Cs contained a clause  
2 purporting to waive Hakkasan's right to a jury trial. Willis concluded the meeting without any  
3 mention of the T&Cs and did not offer to negotiate any clause of the T&Cs. I did not review, mark,  
4 initial, sign, or acknowledge the T&Cs included with the Proposal.

5 13. I orally selected Hakkasan's insurance coverages for the 2019–20 policy term on  
6 March 29, 2019, which Willis later asked to be memorialized in the one-page Order to Bind. The  
7 Order to Bind attached as Exhibit C to Willis's Motion was not included in the Proposal delivered  
8 during the March 29, 2019 meeting. Instead, the Order to Bind was sent to my colleague Ms. Stiles  
9 via email later in the evening on March 29, 2019, with the coverages that I had selected earlier that  
10 day already populated by Willis into the document and prepared for my signature. I was not aware of  
11 the Order to Bind until April 3, 2019 when Ms. Stiles handed me the Order to Bind, stating that Willis  
12 needed the document signed. I signed the Order to Bind that day.

13 14. When I selected Hakkasan's insurance coverages on March 29, 2019 and ordered  
14 Willis to bind coverage accordingly, I was not informed by Willis that the T&Cs appended to the  
15 Proposal introduced a new clause purporting to restrict Hakkasan's right to a jury trial.

16 15. Attached as **Exhibit B** is a true and correct copy of Willis's "Standard Terms and  
17 Conditions for Willis North America Retail Accounts" (1 April 2011 version), transmitted by Willis to  
18 AMG Management, LLC ("AMG")<sup>1</sup> on April 1, 2011.

19 16. Attached as **Exhibit C** is a true and correct copy of Willis's "Standard Terms and  
20 Conditions for Willis North America Retail Accounts" (01 January 2012 version), transmitted by  
21 Willis to AMG on March 28, 2012.

22 17. Attached as **Exhibit D** is a true and correct copy of Willis's "Standard Terms and  
23 Conditions for US Property & Casualty Retail Accounts" (01 January 2013 version), transmitted by  
24 Willis to AMG on April 23, 2013.

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27 <sup>1</sup> AMG used to manage entertainment and hospitality venues around Las Vegas before key  
28 members of the AMG executive management team became the management team for Hakkasan in  
2014.

18. Attached as **Exhibit E** is a true and correct copy of “Willis Standard Terms and Conditions” (30 July 2014 version), transmitted by Willis to Hakkasan on March 31, 2015.

19. Attached as **Exhibit F** is a true and correct copy of Willis's "Standard Terms & Conditions," transmitted by Willis to Hakkasan on March 28, 2016.

20. Attached as **Exhibit G** is a true and correct copy of Willis's "Standard Terms and Conditions for U.S. Property & Casualty Retail Accounts" (15 July 2016 version), transmitted by Willis to Hakkasan on March 29, 2017.

21. According to Hakkasan's records, Willis did not attach its standard terms and conditions to its renewal proposal for the 2018-19 policy term.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

EXECUTED this 25th day of February, 2021, in Las Vegas, Nevada

By

Brandon E. Roos

# **EXHIBIT B**



## **Standard Terms and Conditions for Willis North America Retail Accounts**

Please note the following terms and conditions related to your decision to utilize Willis to purchase insurance coverage, products and/or services:

### **Services and Responsibilities**

The services we provide to you will rely in significant part on the facts, information and direction provided by you or your authorized representatives. In order to make our relationship work, we must each provide the other with accurate and timely facts, information and direction as is reasonably required. You must provide us with complete and accurate information regarding your loss experience, risk exposures, and changes in the analysis or scope of your risk exposures and any other information reasonably requested by us or insurers. It is important that you advise us of any material changes in your business operations that may affect our services or the insurance coverages we place for you. A factor or circumstance is material if it would influence the judgment of a prudent insurer in determining premium and whether or not they would underwrite the risk. Therefore, all information which is material to your coverage requirements or which might influence insurers in deciding to accept your business, finalizing the terms to apply and/or the cost of cover, must be disclosed. Failure to make full disclosure of material facts might potentially allow insurers to avoid liability for a particular claim or to void the contract. This duty of disclosure applies equally at renewal of your existing coverage and upon placement of new lines of coverage. Willis will not be responsible for any consequences which may arise from any delayed, inaccurate or incomplete information.

We will assess the financial soundness of the insurers we recommend to provide your coverages based on publicly available information, including that produced by well-recognized rating agencies. Upon request, we will provide you with our analysis of such insurers. We cannot, however, guarantee or warrant the solvency of any insurer or any intermediary that we may use to place your coverage.

If you have a multi-year policy, it is important that you understand the limitations associated with the coverage options and the possibility that the financial strength of the carrier may change throughout the term of the policy. We recommend that you review the insurer's ratings for any downgrades during the term of this multi-year policy.

The final decisions with respect to all matters relating to your insurance coverages, risk management, and loss control needs and activities are yours. We will procure the insurance coverage chosen by you, prepare or forward insurance binders, and review and transmit policies to you.

If your insurance risks are in more than one jurisdiction, we, where required, will liaise between you and insurers to agree how to apportion the premium between applicable jurisdictions, and the amount of insurance premium tax payable in each jurisdiction. In providing such services, Willis is acting in its capacity as an insurance broker. You



should seek your own advice in relation to such tax laws where you consider it necessary. We will not be liable to you should the apportionment of premium or amount of tax payable under the policy be challenged by any tax authority. In addition, we will not be liable to you should the insurers fail, or refuse, to collect and pay such insurance premium tax to the relevant authorities.

We will review all binders, policies and endorsements for the purpose of confirming their accuracy and conformity to negotiated specifications and your instructions and advise you of any errors in, or recommended changes to, such policies. You agree that you will also review all such documents and advise us of any questions you have or of any document or provision which you believe may not be in accordance with your instructions as soon as possible, and in no event longer than two weeks, after you receive them. Your coverage is defined by the terms and conditions detailed in your insurance policies and endorsements. Your review of these documents, and any review you may seek from outside legal counsel or insurance consultants, is expected and essential.

We will meet, as requested by you, with your representatives to explain coverage and policies. We will promptly respond to your requests for coverage information, analysis of changing market conditions, and assistance in reporting subsequent changes in information to insurance companies and service providers.

In our capacity as insurance brokers, we do not provide legal or tax advice. We encourage you to seek any such advice you want or need from competent legal counsel or tax professionals.

### **Confidentiality**

We will treat information you provide us in the course of our professional relationship as confidential and will use it only in performing services for you. We may share this information with third parties as may be required to provide services. We may also disclose this information to the extent required to comply with applicable laws or regulations or the order of any court or tribunal. Records you provide us will remain your property and will be returned to you upon request, although we will have the right to retain copies of such records to the extent required in the ordinary course of our business or by law. You will treat any information we provide to you, including data, recommendations, proposals, or reports, as confidential, and you will not disclose it to any third parties. You may disclose this information to the extent required to comply with applicable laws or regulations or the order of any court or tribunal. We retain the sole rights to all of our proprietary computer programs, systems, methods and procedures and to all files developed by us.

### **Carrier Quotes**

The quotes we have provided to you are based upon the information that you have provided to us. If you discover that previously submitted information is inaccurate or



incomplete, please advise us immediately so that we can attempt to revalidate terms with insurers.

A carrier quote is an offer to provide coverage. Offers can be modified or withdrawn prior to your acceptance through your order to bind coverage. The quote itself is not a legally binding commitment or a confirmation of actual coverage. Should you choose to bind coverage, we will secure a formal commitment, typically in the form of a binder on a form issued or approved by the carrier(s) at issue.

### **Compensation and Conflicts of Interest**

Your Willis Client Bill of Rights includes a promise that we will disclose to you all compensation received by Willis in connection with your insurance placement.

To the extent Willis is compensated by commissions paid to us by insurers, they will be earned for the entire policy period at the time we place policies for you. We will be paid the commission percentage stated for the placement of your insurance as indicated, and will receive the same commission percentage for all subsequent renewals of this policy unless we negotiate a different commission percentage with you.

Prior to its merger with Willis, HRH accepted contingent compensation on certain of its clients' accounts. Many of these contingent arrangements have been eliminated and all contingent arrangements will be eliminated no later than October 1, 2011. No contingents are accepted on any new clients or business generated after Willis' October 1, 2008 acquisition of HRH.

Where permitted by applicable law, Willis may assess a policy service fee. The fee is on a per-policy basis and is calculated on the premium amount, per the schedule below:

<u>Premium Amount</u>	<u>Policy Service Fee</u>
<= \$5,000	\$10
\$5,001 - \$10,000	\$50
\$10,001 - \$25,000	\$100
>= \$25,001	\$250

The policy service fee is compensation to Willis for such value-added services and resources including dedicated industry practices, technical resources, placement support and our strategic outcomes practices. The fee is not required by any insurer or regulator, nor is it included in the premium charged. It will be listed separately on your invoice. It is not necessary to procure a policy to obtain many of these and other services on a consultancy basis for a separate fee.

In some cases the use of a wholesale broker may be beneficial to you. We will not directly or indirectly place or renew your insurance business through a wholesale broker



unless we first disclose to you in writing any compensation we or our corporate parents, subsidiaries or affiliates will receive as a result.

If wholesalers, underwriting managers or managing general agents have a role in providing insurance products and services to you, they will also earn and retain compensation for their role in providing those products and services. If any such parties are corporate parents, subsidiaries or affiliates of ours, any compensation we or our corporate parents, subsidiaries or affiliates will receive will be included in the total compensation we disclose to you. If such parties are not affiliated with us, and if you desire more information regarding the compensation those parties will receive, please contact us and we will assist you in obtaining this information.

In the ordinary course of business we may also receive and retain interest on premiums you pay from the date we receive the funds until we pay them to the insurers or their intermediaries, or until we return them to you after we receive such funds.

Commission schedules and other compensation arrangements related to our services on your behalf may change over time and may not always be congruent with your specific policy period. Willis will provide you with accurate information to the best of our knowledge when information is presented to you, but it is possible that compensation arrangements may change over time. We will update you on any changes to our compensation prior to your renewal, and will do so at any time upon your request.

As an insurance intermediary, we normally act for you. However, we or our corporate parents, subsidiaries or affiliates may provide services to insurers for some insurance products. These services may include (a) acting as a managing general agent, program manager or in other similar capacities which give us binding authority enabling us to accept business on their behalf and immediately provide coverage for a risk; (b) arranging lineslips or similar facilities which enable an insurer to bind business for itself and other insurers; or (c) managing lineslips for insurers. Contracts with these insurers may grant us certain rights or create certain obligations regarding the marketing of insurance products provided by the insurers.

We may place your insurance business under such a managing general agent's agreement, binding authority, lineslip or similar facility when we reasonably consider that these match your insurance requirements/instructions. When we intend to do so, we shall inform you and disclose the compensation payable to Willis in connection with the placement of the insurance coverage.

We may also provide reinsurance brokerage services to insurers with which your coverage is placed pursuant to separate agreements with those insurers. We may be compensated by the insurers for these services in addition to any commissions we may receive for placement of your insurance coverages.

Subsidiaries of Willis North America Inc are members of a major international group of companies. In addition to the commissions received by us from insurers for placement of



your insurance coverages, other parties, such as excess and surplus lines brokers, wholesale brokers, reinsurance intermediaries, underwriting managers and similar parties (some of which may be owned in whole or in part by our corporate parents or affiliates), may earn and retain usual and customary commissions for their role in providing insurance products or services to you under their separate contracts with insurers or reinsurers.

The insurance market is complex, and there could be other relationships which are not described in this document which might create conflicts of interest. Notwithstanding any possible conflict which might exist, we will act in your best interests at all times in providing services to you. If a conflict arises for which there is no practicable way of complying with this commitment, we will promptly inform you and withdraw from the engagement, unless you wish us to continue to provide the services and provide your written consent. Please let us know in writing if you have concerns or we will assume that you understand and consent to our providing our services pursuant to these terms.

#### **Premium Financing**

You may choose to use a premium finance company, property appraiser, structured settlement firm or other similar service provider in connection with the insurance coverages we place for you or the services we provide to you. Premium finance options are not always available, but where they are, Willis currently works with industry leading finance providers for this service. Where permitted by law, we receive a fee for the administrative services we provide those companies. These services include processing the premium finance applications and marketing and sales support they do not have. If you would like more information about the fee we receive, please let us know.

#### **Premium Payment/Handling of Funds**

You agree to provide immediately available funds for payment of premiums by the payment dates specified in the insurance policies, invoices or other payment documents. Failure to pay premium on time may prevent coverage from incepting or result in cancellation of coverage by the insurer. We will not be responsible for any consequences that may arise from any delay or failure by you to pay the amount payable by the indicated date.

We will handle any premiums you pay through us and any funds which we receive from insurers or intermediaries for payment or return to you in accordance with the requirements and restrictions of applicable state and federal insurance laws and regulations and state unclaimed property laws. In some cases we may transfer your funds directly to insurers. In other cases we may be required to transfer your funds to third parties such as wholesale brokers, excess and surplus lines brokers, or managing general agents for carrying out transactions for you.





### **Surplus Lines Placements**

If a surplus lines, non-admitted and/or non-licensed insurer was used to quote your coverage, their premium rates, coverage terms and policy forms are not regulated by your home state. Their premium is subject to a surplus lines premium tax which is in addition to the premium. In the event of insolvency you will not be indemnified by any state guaranty fund for unpaid claims.

### **Claims**

We will inform you of the reporting requirements for claims, including where claims should be reported and the method of reporting to be used, if applicable. Please carefully review any claims-reporting instructions or information we provide. Failure to timely and properly report a claim may jeopardize coverage for the claim. In addition, you should retain copies of all insurance policies and coverage documents as well as claims-reporting instructions after termination of the policies because in some cases you may need to report claims after termination of a policy.

### **Ethical Business Practice**

We do not tolerate unethical behavior either in our own activities or in those with whom we seek to do business. We will comply with all applicable laws, regulations, and rules.

### **Sanctions**

The sanctions profile of different business(es) may differ on the basis of a number of complex factors. Whether a sanctions program applies to you depends on a number of factors, including your ownership structure, control, location, and the nationality of your employees. In certain circumstances, the United States and other countries prohibit or restrict companies from conducting business in certain jurisdictions (e.g. Cuba), and can sanction companies who conduct such business. We cannot advise on the applicability of sanctions programs either to you or to insurers nor can we guarantee or otherwise warrant the position of any insurer under existing or future sanctions programs. You should take legal advice as you deem appropriate in this regard.

We will comply with all applicable sanctions programs and you are advised that, where obliged by law, we may have to take certain actions, including freezing of funds held on behalf of parties and individuals as required by sanctions programs.

### **Intellectual Property**

Willis shall own and retain all right, title, and interest in and to the following (collectively, "Willis Property"): (i) all software, hardware, technology, documentation, and information provided by Willis in connection with the Claim and Risk Control Services; (ii) all ideas, know-how, methodology, models and techniques that may be developed, conceived, or invented by Willis during its performance under this



Agreement; and (iii) all worldwide patent, copyright, trade secret, trademark and other intellectual property rights in and to the property described in clauses (i) and (ii) above. Accordingly, all rights in the Willis Property are hereby expressly reserved.

### **Electronic Communication**

We agree that we may communicate with each other from time to time by electronic mail, sometimes attaching further electronic data as and when the circumstances require attachments. By consenting to this method of communication you and we accept the inherent risks (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). We each agree, however, that we will employ reasonable virus checking procedures on our computer systems, and we will each be responsible for checking all electronic communications received for viruses. You will also be responsible for checking that messages received are complete. In the event of a dispute neither of us will challenge the legal evidentiary standing of an electronic document, and the Willis system shall be deemed the definitive record of electronic communications and documentation.

Please note that our system blocks certain file extensions for security reasons, including, but not necessarily limited to, .rar, .text, .vbs, .mpeg, .mp3, .cmd, .cpl, .wav, .exe, .bat, .scr, .mpq, .avi, .com, .pif, .wma, .mpa, .mpg, .jpeg. Emails with such files attached will not get through to us; and no message will be sent to tell you they have been blocked. If you intend to send us emails with attachments, please verify with us in advance that our system will accept the proposed form of attachment.

### **Other Agreements**

To the extent there is a conflict between these terms and conditions and a separately negotiated and signed agreement between you and Willis, the relevant portions of the signed agreement will control.

### **Severability**

The provisions of this agreement shall be severable and, in the event any provision or portion of any provision shall be construed by any court of competent jurisdiction to be invalid, the same shall not invalidate any other provision of this agreement or the remainder of the enforceable portion of the provision.

### **Termination**

In the event of termination, we will be entitled to receive and retain any commissions payable under the terms of our commission agreements with the insurers in relation to policies placed by us, whether or not the commissions have been received by us.



Our obligation to render services under the agreement ceases on the effective date of termination of the agreement. Nevertheless, we will process all remaining deposit premium installments on policies in effect at the time of termination. Claims and premium or other adjustments may arise after our relationship ends. Such items are normally handled by the insurance broker serving you at the time the claim or adjustment arises. However, it may be mutually agreed that we will provide services in these areas after the termination of our relationship for mutually agreed additional compensation. The obligations set forth under “Confidentiality” above shall survive any termination of the agreement.

#### **Choice of Law**

Our agreement for services shall be governed by and construed in accordance with the laws of the state in which our office is located.

#### **Inquiries and Complaints**

Your satisfaction is important to us. If you have questions or complaints, please inform the person who handles your account or contact the head of our office. Alternatively, you may call 1-866-704-5115, the toll free number we have set up exclusively for client feedback and complaints.

# **EXHIBIT C**

### **Standard Terms and Conditions for Willis North America Retail Accounts**

Please note the following terms and conditions related to your decision to utilize Willis to purchase insurance coverage, products and/or services:

#### **Services and Responsibilities**

The services we provide to you will rely in significant part on the facts, information and direction provided by you or your authorized representatives. In order to make our relationship work, we must each provide the other with accurate and timely facts, information and direction as is reasonably required. You must provide us with complete and accurate information regarding your loss experience, risk exposures, and changes in the analysis or scope of your risk exposures and any other information reasonably requested by us or insurers. It is important that you advise us of any material changes in your business operations that may affect our services or the insurance coverages we place for you. A factor or circumstance is material if it would influence the judgment of a prudent insurer in determining premium and whether or not they would underwrite the risk. Therefore, all information which is material to your coverage requirements or which might influence insurers in deciding to accept your business, finalizing the terms to apply and/or the cost of cover, must be disclosed. Failure to make full disclosure of material facts might potentially allow insurers to avoid liability for a particular claim or to void the contract. This duty of disclosure applies equally at renewal of your existing coverage and upon placement of new lines of coverage. Willis will not be responsible for any consequences which may arise from any delayed, inaccurate or incomplete information.

We will assess the financial soundness of the insurers we recommend to provide your coverages based on publicly available information, including that produced by well-recognized rating agencies. Upon request, we will provide you with our analysis of such insurers. We cannot, however, guarantee or warrant the solvency of any insurer or any intermediary that we may use to place your coverage.

If you have a multi-year policy, it is important that you understand the limitations associated with the coverage options and the possibility that the financial strength of the carrier may change throughout the term of the policy. We recommend that you review the insurer's ratings for any downgrades during the term of this multi-year policy.

The final decisions with respect to all matters relating to your insurance coverages, risk management, and loss control needs and activities are yours. We will procure the insurance coverage chosen by you, prepare or forward insurance binders, and review and transmit policies to you.

If your insurance risks are in more than one jurisdiction, we, where required, will liaise between you and insurers to agree how to apportion the premium between applicable jurisdictions, and the amount of insurance premium tax payable in each jurisdiction. In providing such services, Willis is acting in its capacity as an insurance broker. You

should seek your own advice in relation to such tax laws where you consider it necessary. We will not be liable to you should the apportionment of premium or amount of tax payable under the policy be challenged by any tax authority. In addition, we will not be liable to you should the insurers fail, or refuse, to collect and pay such insurance premium tax to the relevant authorities.

We will review all binders, policies and endorsements for the purpose of confirming their accuracy and conformity to negotiated specifications and your instructions and advise you of any errors in, or recommended changes to, such policies. You agree that you will also review all such documents and advise us of any questions you have or of any document or provision which you believe may not be in accordance with your instructions as soon as possible, and in no event longer than two weeks, after you receive them. Your coverage is defined by the terms and conditions detailed in your insurance policies and endorsements. Your review of these documents, and any review you may seek from outside legal counsel or insurance consultants, is expected and essential.

We will meet, as requested by you, with your representatives to explain coverage and policies. We will promptly respond to your requests for coverage information, analysis of changing market conditions, and assistance in reporting subsequent changes in information to insurance companies and service providers.

In our capacity as insurance brokers, we do not provide legal or tax advice. We encourage you to seek any such advice you want or need from competent legal counsel or tax professionals.

### **Confidentiality**

We will treat information you provide us in the course of our professional relationship as confidential and will use it only in performing services for you, except as directed by you or stated herein. We may share this information with third parties as may be required to provide our services. We may also disclose this information to the extent required to comply with applicable laws or regulations or the order of any court or tribunal. We may share this information with other affiliated Willis companies in order to help provide our services and for matters connected with the management, development or operation of our and their business, and to the extent we do so, any such affiliated Willis companies will also keep your information confidential subject to our agreement with you. By providing us with data, you agree and represent that you are fully authorized to possess that data and to provide it to us, and further that we are fully authorized to obtain, maintain, process and transfer such data in a commercially reasonable manner and as we reasonably deem advisable in order to provide our services. You also agree that we may aggregate and anonymise your information and may disclose to third parties certain anonymised or industry-wide statistics or other information which may include information relating to you, but that we will not, without your consent, reveal any information specific to you other than on an anonymised basis and as part of an industry or sector-wide comparison. In our use of the information that you provide us, we agree that we will comply with all applicable privacy laws, and that we have implemented and

will maintain commercially reasonable and appropriate security measures in order to protect sensitive information from unauthorized use or disclosure. Records you provide us will remain your property and will be returned to you upon request, although we will have the right to retain copies of such records to the extent required in the ordinary course of our business or by law. You will treat any information we provide to you, including data, recommendations, proposals, or reports, as confidential, and you will not disclose it to any third parties. You may disclose this information to the extent required to comply with applicable laws or regulations or the order of any court or tribunal. We retain the sole rights to all of our proprietary computer programs, systems, methods and procedures and to all files developed by us.

Willis represents and warrants that, with respect to the personal information of any Massachusetts resident, (1) it has and is capable of maintaining appropriate security measures to protect Personal Information consistent with 201 CMR 17.00 and any applicable federal regulations; and (2) as of the Agreement Effective Date, it has and will at all times during the term of this Agreement, maintain a comprehensive written information security program that complies with applicable privacy and data security laws. Willis's information security program shall contain at least the following:

- Reasonable restrictions upon physical access to records containing personal information and storage of such records and data in locked facilities, storage areas or counters.
- Regular monitoring to ensure that the comprehensive information security program is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of personal information; and upgrading information safeguards as necessary to limit risks.
- Reviewing the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing personal information.
- Documenting responsive actions taken in connection with any incident involving a breach of security, and mandatory post-incident review of events and actions taken, if any, to make changes in business practices related to protection of personal information.

### **Carrier Quotes**

The quotes we have provided to you are based upon the information that you have provided to us. If you discover that previously submitted information is inaccurate or incomplete, please advise us immediately so that we can attempt to revalidate terms with insurers.



A carrier quote is an offer to provide coverage. Offers can be modified or withdrawn prior to your acceptance through your order to bind coverage. The quote itself is not a legally binding commitment or a confirmation of actual coverage. Should you choose to bind coverage, we will secure a formal commitment, typically in the form of a binder on a form issued or approved by the carrier(s) at issue.

### **Compensation and Conflicts of Interest**

Your Willis Client Bill of Rights includes a promise that we will disclose to you all compensation received by Willis in connection with your insurance placement.

To the extent Willis is compensated by commissions paid to us by insurers, they will be earned for the entire policy period at the time we place policies for you. We will be paid the commission percentage stated for the placement of your insurance as indicated, and will receive the same commission percentage for all subsequent renewals of this policy unless we negotiate a different commission percentage with you.

Despite Willis' objections, many insurance carriers have imposed volume-based compensation in certain parts of the US employee benefits business. To continue to serve its clients in this business, Willis has no viable option but to accept this compensation, which it fully discloses, in medical lines only. Contingent commission agreements that Willis inherited with the acquisition of HRH expire in 2011. Willis may accept contingent compensation when it serves as an intermediary to another insurance producer.

WillPLACE, a proprietary online tool, provides Willis brokers with access to global placement information so that we can seek to develop solutions for you with appropriate markets at competitive prices and terms. Some insurers pay Willis an Administration and Maintenance Fee for reporting on their book of business. Some of these insurers pay Willis an additional fee equal to 1% of the premium cost for placements matched through the WillPLACE system. Any insurer payments related to the WillPLACE system will not increase the cost of your insurance.

Willis develops panels of insurers in certain market segments. Participating insurers are reviewed on a variety of factors. Commission rates on panel placements may be higher than rates paid on business placed outside of the panel process. Willis discloses its commission rates to clients on quotes obtained through the panel process prior to binding the coverage. In some instances, insurers pay an administration fee to participate in the panel process. Your Willis broker will provide you with additional information on Willis Panels upon request.



Where permitted by applicable law, Willis may assess a policy service fee. The fee is on a per-policy basis and is calculated on the premium amount, per the schedule below:

<u>Premium Amount</u>	<u>Policy Service Fee</u>
<= \$5,000	\$10
\$5,001 - \$10,000	\$50
\$10,001 - \$25,000	\$100
>= \$25,001	\$250

The policy service fee is compensation to Willis for such value-added services and resources including dedicated industry practices, technical resources, placement support and our strategic outcomes practices. The fee is not required by any insurer or regulator, nor is it included in the premium charged. It will be listed separately on your invoice. It is not necessary to procure a policy to obtain many of these and other services on a consultancy basis for a separate fee.

In some cases the use of a wholesale broker may be beneficial to you. We will not directly or indirectly place or renew your insurance business through a wholesale broker unless we first disclose to you in writing any compensation we or our corporate parents, subsidiaries or affiliates will receive as a result.

If wholesalers, underwriting managers or managing general agents have a role in providing insurance products and services to you, they will also earn and retain compensation for their role in providing those products and services. If any such parties are corporate parents, subsidiaries or affiliates of ours, any compensation we or our corporate parents, subsidiaries or affiliates will receive will be included in the total compensation we disclose to you. If such parties are not affiliated with us, and if you desire more information regarding the compensation those parties will receive, please contact us and we will assist you in obtaining this information.

In the ordinary course of business we may also receive and retain interest on premiums you pay from the date we receive the funds until we pay them to the insurers or their intermediaries, or until we return them to you after we receive such funds.

Commission schedules and other compensation arrangements related to our services on your behalf may change over time and may not always be congruent with your specific policy period. Willis will provide you with accurate information to the best of our knowledge when information is presented to you, but it is possible that compensation arrangements may change over time. We will update you on any changes to our compensation prior to your renewal, and will do so at any time upon your request.

As an insurance intermediary, we normally act for you. However, we or our corporate parents, subsidiaries or affiliates may provide services to insurers for some insurance products. These services may include (a) acting as a managing general agent, program manager or in other similar capacities which give us binding authority enabling us to

accept business on their behalf and immediately provide coverage for a risk; (b) arranging lineslips or similar facilities which enable an insurer to bind business for itself and other insurers; or (c) managing lineslips for insurers. Contracts with these insurers may grant us certain rights or create certain obligations regarding the marketing of insurance products provided by the insurers.

We may place your insurance business under such a managing general agent's agreement, binding authority, lineslip or similar facility when we reasonably consider that these match your insurance requirements/instructions. When we intend to do so, we shall inform you and disclose the compensation payable to Willis in connection with the placement of the insurance coverage.

We may also provide reinsurance brokerage services to insurers with which your coverage is placed pursuant to separate agreements with those insurers. We may be compensated by the insurers for these services in addition to any commissions we may receive for placement of your insurance coverages.

Subsidiaries of Willis North America Inc are members of a major international group of companies. In addition to the commissions received by us from insurers for placement of your insurance coverages, other parties, such as excess and surplus lines brokers, wholesale brokers, reinsurance intermediaries, underwriting managers and similar parties (some of which may be owned in whole or in part by our corporate parents or affiliates), may earn and retain usual and customary commissions for their role in providing insurance products or services to you under their separate contracts with insurers or reinsurers.

The insurance market is complex, and there could be other relationships which are not described in this document which might create conflicts of interest. Notwithstanding any possible conflict which might exist, we will act in your best interests at all times in providing services to you. If a conflict arises for which there is no practicable way of complying with this commitment, we will promptly inform you and withdraw from the engagement, unless you wish us to continue to provide the services and provide your written consent. Please let us know in writing if you have concerns or we will assume that you understand and consent to our providing our services pursuant to these terms.

### **Premium Financing**

You may choose to use a premium finance company, property appraiser, structured settlement firm or other similar service provider in connection with the insurance coverages we place for you or the services we provide to you. Premium finance options are not always available, but where they are, Willis currently works with industry leading finance providers for this service. Where permitted by law, we receive a fee for the administrative services we provide those companies. These services include processing the premium finance applications and marketing and sales support they do not have. If you would like more information about the fee we receive, please let us know.

### **Premium Payment/Handling of Funds**

You agree to provide immediately available funds for payment of premiums by the payment dates specified in the insurance policies, invoices or other payment documents. Failure to pay premium on time may prevent coverage from incepting or result in cancellation of coverage by the insurer. We will not be responsible for any consequences that may arise from any delay or failure by you to pay the amount payable by the indicated date.

We will handle any premiums you pay through us and any funds which we receive from insurers or intermediaries for payment or return to you in accordance with the requirements and restrictions of applicable state and federal insurance laws and regulations and state unclaimed property laws. In some cases we may transfer your funds directly to insurers. In other cases we may be required to transfer your funds to third parties such as wholesale brokers, excess and surplus lines brokers, or managing general agents for carrying out transactions for you.

### **Surplus Lines Placements**

If a surplus lines, non-admitted and/or non-licensed insurer was used to quote your coverage, their premium rates, coverage terms and policy forms are not regulated by your home state. Their premium is subject to a surplus lines premium tax which is in addition to the premium. In the event of insolvency you will not be indemnified by any state guaranty fund for unpaid claims.

### **Claims**

We will inform you of the reporting requirements for claims, including where claims should be reported and the method of reporting to be used, if applicable. Please carefully review any claims-reporting instructions or information we provide. Failure to timely and properly report a claim may jeopardize coverage for the claim. In addition, you should retain copies of all insurance policies and coverage documents as well as claims-reporting instructions after termination of the policies because in some cases you may need to report claims after termination of a policy.

### **Ethical Business Practice**

We do not tolerate unethical behavior either in our own activities or in those with whom we seek to do business. We will comply with all applicable laws, regulations, and rules.

### **Sanctions**

The sanctions profile of different business(es) may differ on the basis of a number of complex factors. Whether a sanctions program applies to you depends on a number of factors, including your ownership structure, control, location, and the nationality of your employees. In certain circumstances, the United States and other countries prohibit or



restrict companies from conducting business in certain jurisdictions (e.g. Cuba), and can sanction companies who conduct such business. We cannot advise on the applicability of sanctions programs either to you or to insurers nor can we guarantee or otherwise warrant the position of any insurer under existing or future sanctions programs. You should take legal advice as you deem appropriate in this regard.

We will comply with all applicable sanctions programs and you are advised that, where obliged by law, we may have to take certain actions, including freezing of funds held on behalf of parties and individuals as required by sanctions programs.

### **Intellectual Property**

Willis shall own and retain all right, title, and interest in and to the following (collectively, "Willis Property"): (i) all software, hardware, technology, documentation, and information provided by Willis in connection with the Claim and Risk Control Services; (ii) all ideas, know-how, methodology, models and techniques that may be developed, conceived, or invented by Willis during its performance under this Agreement; and (iii) all worldwide patent, copyright, trade secret, trademark and other intellectual property rights in and to the property described in clauses (i) and (ii) above. Accordingly, all rights in the Willis Property are hereby expressly reserved.

### **Electronic Communication**

We agree that we may communicate with each other from time to time by electronic mail, sometimes attaching further electronic data as and when the circumstances require attachments. By consenting to this method of communication you and we accept the inherent risks (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). We each agree, however, that we will employ reasonable virus checking procedures on our computer systems, and we will each be responsible for checking all electronic communications received for viruses. You will also be responsible for checking that messages received are complete. In the event of a dispute neither of us will challenge the legal evidentiary standing of an electronic document, and the Willis system shall be deemed the definitive record of electronic communications and documentation.

Please note that our system blocks certain file extensions for security reasons, including, but not necessarily limited to, .rar, .text, .vbs, .mpeg, .mp3, .cmd, .cpl, .wav, .exe, .bat, .scr, .mpq, .avi, .com, .pif, .wma, .mpa, .mpg, .jpeg. Emails with such files attached will not get through to us; and no message will be sent to tell you they have been blocked. If you intend to send us emails with attachments, please verify with us in advance that our system will accept the proposed form of attachment.

### **Other Agreements**

To the extent there is a conflict between these terms and conditions and a separately negotiated and signed agreement between you and Willis, the relevant portions of the signed agreement will control.

### **Severability**

The provisions of this agreement shall be severable and, in the event any provision or portion of any provision shall be construed by any court of competent jurisdiction to be invalid, the same shall not invalidate any other provision of this agreement or the remainder of the enforceable portion of the provision.

### **Termination**

In the event of termination, we will be entitled to receive and retain any commissions payable under the terms of our commission agreements with the insurers in relation to policies placed by us, whether or not the commissions have been received by us.

Our obligation to render services under the agreement ceases on the effective date of termination of the agreement. Nevertheless, we will process all remaining deposit premium installments on policies in effect at the time of termination. Claims and premium or other adjustments may arise after our relationship ends. Such items are normally handled by the insurance broker serving you at the time the claim or adjustment arises. However, it may be mutually agreed that we will provide services in these areas after the termination of our relationship for mutually agreed additional compensation. The obligations set forth under "Confidentiality" above shall survive any termination of the agreement.

### **Choice of Law**

Our agreement for services shall be governed by and construed in accordance with the laws of the state in which our office is located.

### **Inquiries and Complaints**

Your satisfaction is important to us. If you have questions or complaints, please inform the person who handles your account or contact the head of our office. Alternatively, you may call 1-866-704-5115, the toll free number we have set up exclusively for client feedback and complaints.

# **EXHIBIT D**



## **Standard Terms and Conditions for US Property & Casualty Retail Accounts**

Please note the following terms and conditions related to your decision to utilize Willis to purchase insurance coverage, products and/or services:

### **Services and Responsibilities**

The services we provide to you will rely in significant part on the facts, information and direction provided by you or your authorized representatives. In order to make our relationship work, we must each provide the other with accurate and timely facts, information and direction as is reasonably required. You must provide us with complete and accurate information regarding your loss experience, risk exposures, and changes in the analysis or scope of your risk exposures and any other information reasonably requested by us or insurers. It is important that you advise us of any material changes in your business operations that may affect our services or the insurance coverages we place for you. A factor or circumstance is material if it would influence the judgment of a prudent insurer in determining premium and whether or not they would underwrite the risk. Therefore, all information which is material to your coverage requirements or which might influence insurers in deciding to accept your business, finalizing the terms to apply and/or the cost of cover, must be disclosed. Failure to make full disclosure of material facts might potentially allow insurers to avoid liability for a particular claim or to void the contract. This duty of disclosure applies equally at renewal of your existing coverage and upon placement of new lines of coverage. Willis will not be responsible for any consequences which may arise from any delayed, inaccurate or incomplete information.

We will assess the financial soundness of the insurers we recommend to provide your coverages based on publicly available information, including that produced by well-recognized rating agencies. Upon request, we will provide you with our analysis of such insurers. We cannot, however, guarantee or warrant the solvency of any insurer or any intermediary that we may use to place your coverage.

If you have a multi-year policy, it is important that you understand the limitations associated with the coverage options and the possibility that the financial strength of the carrier may change throughout the term of the policy. We recommend that you review the insurer's ratings for any downgrades during the term of this multi-year policy.

The final decisions with respect to all matters relating to your insurance coverages, risk management, and loss control needs and activities are yours. We will procure the insurance coverage chosen by you, prepare or forward insurance binders, and review and transmit policies to you.

If your insurance risks are in more than one jurisdiction, we, where required, will liaise between you and insurers to agree how to apportion the premium between applicable jurisdictions, and the amount of insurance premium tax payable in each jurisdiction. In providing such services, Willis is acting in its capacity as an insurance broker. You



should seek your own advice in relation to such tax laws where you consider it necessary. We will not be liable to you should the apportionment of premium or amount of tax payable under the policy be challenged by any tax authority. In addition, we will not be liable to you should the insurers fail, or refuse, to collect and pay such insurance premium tax to the relevant authorities.

We will review all binders, policies and endorsements for the purpose of confirming their accuracy and conformity to negotiated specifications and your instructions and advise you of any errors in, or recommended changes to, such policies. You agree that you will also review all such documents and advise us of any questions you have or of any document or provision which you believe may not be in accordance with your instructions as soon as possible, and in no event longer than two weeks, after you receive them. Your coverage is defined by the terms and conditions detailed in your insurance policies and endorsements. Your review of these documents, and any review you may seek from outside legal counsel or insurance consultants, is expected and essential.

We will meet, as requested by you, with your representatives to explain coverage and policies. We will promptly respond to your requests for coverage information, analysis of changing market conditions, and assistance in reporting subsequent changes in information to insurance companies and service providers.

In our capacity as insurance brokers, we do not provide legal or tax advice. We encourage you to seek any such advice you want or need from competent legal counsel or tax professionals.

### **Confidentiality**

We will treat information you provide us in the course of our professional relationship as confidential and will use it only in performing services for you, except as directed by you or stated herein. We may share this information with third parties as may be required to provide our services. We may also disclose this information to the extent required to comply with applicable laws or regulations or the order of any court or tribunal. We may share this information with other affiliated Willis companies in order to help provide our services and for matters connected with the management, development or operation of our and their business, and to the extent we do so, any such affiliated Willis companies will also keep your information confidential subject to our agreement with you. By providing us with data, you agree and represent that you are fully authorized to possess that data and to provide it to us, and further that we are fully authorized to obtain, maintain, process and transfer such data in a commercially reasonable manner and as we reasonably deem advisable in order to provide our services. You also agree that we may aggregate and anonymise your information and may disclose to third parties certain anonymised or industry-wide statistics or other information which may include information relating to you, but that we will not, without your consent, reveal any information specific to you other than on an anonymised basis and as part of an industry or sector-wide comparison. In our use of the information that you provide us, we agree that we will comply with all applicable privacy laws, and that we have implemented and



will maintain commercially reasonable and appropriate security measures in order to protect sensitive information from unauthorized use or disclosure. Records you provide us will remain your property and will be returned to you upon request, although we will have the right to retain copies of such records to the extent required in the ordinary course of our business or by law. You will treat any information we provide to you, including data, recommendations, proposals, or reports, as confidential, and you will not disclose it to any third parties. You may disclose this information to the extent required to comply with applicable laws or regulations or the order of any court or tribunal. We retain the sole rights to all of our proprietary computer programs, systems, methods and procedures and to all files developed by us.

Willis represents and warrants that, with respect to the personal information of any Massachusetts resident, (1) it has and is capable of maintaining appropriate security measures to protect Personal Information consistent with 201 CMR 17.00 and any applicable federal regulations; and (2) as of the Agreement Effective Date, it has and will at all times during the term of this Agreement, maintain a comprehensive written information security program that complies with applicable privacy and data security laws. Willis's information security program shall contain at least the following:

- Reasonable restrictions upon physical access to records containing personal information and storage of such records and data in locked facilities, storage areas or counters.
- Regular monitoring to ensure that the comprehensive information security program is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of personal information; and upgrading information safeguards as necessary to limit risks.
- Reviewing the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing personal information.
- Documenting responsive actions taken in connection with any incident involving a breach of security, and mandatory post-incident review of events and actions taken, if any, to make changes in business practices related to protection of personal information.

### **Carrier Quotes**

The quotes we have provided to you are based upon the information that you have provided to us. If you discover that previously submitted information is inaccurate or incomplete, please advise us immediately so that we can attempt to revalidate terms with insurers.



A carrier quote is an offer to provide coverage. Offers can be modified or withdrawn prior to your acceptance through your order to bind coverage. The quote itself is not a legally binding commitment or a confirmation of actual coverage. Should you choose to bind coverage, we will secure a formal commitment, typically in the form of a binder on a form issued or approved by the carrier(s) at issue.

### **Compensation and Disclosure**

Willis is an insurance producer licensed to do business worldwide, including in all 50 states and the District of Columbia. Insurance producers are authorized by their license to work with insurance purchasers and discuss the benefits and terms and conditions of insurance contracts; to offer advice concerning the substantive benefits of particular insurance contracts; to sell insurance; and to obtain insurance for purchasers. The role of an insurance producer in any particular transaction involved one or more of these activities.

Upon request, Willis will provide you with additional information about the compensation Willis expects to receive based in whole or in part on your purchase of insurance, and (if applicable) the compensation expected to be received based in whole or in part on any alternative quotes presented to you.

To the extent Willis is compensated by commissions paid to us by insurers, they will be earned for the entire policy period at the time we place policies for you. We will be paid the commission percentage stated for the placement of your insurance as indicated, and will receive the same commission percentage for all subsequent renewals of this policy unless we negotiate a different commission percentage with you.

Willis negotiates commission rates with certain insurers on a corporate level. If the rate on your placement is lower than the negotiated rate, Willis will collect the difference directly from the insurer. These payments will not increase the cost of your insurance or otherwise impact your premium or rates. These negotiated rates are detailed at: : [http://www.willis.com/About\\_Willis/The\\_Willis\\_Way/Commission\\_Rates/](http://www.willis.com/About_Willis/The_Willis_Way/Commission_Rates/).

WillPLACE, a proprietary online tool, provides Willis brokers with access to global placement information so that we can seek to develop solutions for you with appropriate markets at competitive prices and terms. Some insurers pay Willis an Administration and Maintenance Fee for reporting on their book of business. Some of these insurers pay Willis an additional fee equal to 1% of the premium cost for placements matched through the WillPLACE system. Any insurer payments related to the WillPLACE system will not increase the cost of your insurance.

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The insurance market is complex, and there could be other relationships which are not described in this document which might create conflicts of interest. If a conflict arises for which there is no practicable way of complying with this commitment, we will promptly inform you and withdraw from the engagement, unless you wish us to continue to provide the services and provide your written consent. Please let us know in writing if you have concerns or we will assume that you understand and consent to our providing our services pursuant to these terms.

### **Premium Financing**

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### **Premium Payment/Handling of Funds**

You agree to provide immediately available funds for payment of premiums by the payment dates specified in the insurance policies, invoices or other payment documents. Failure to pay premium on time may prevent coverage from incepting or result in cancellation of coverage by the insurer. We will not be responsible for any consequences



that may arise from any delay or failure by you to pay the amount payable by the indicated date.

We will handle any premiums you pay through us and any funds which we receive from insurers or intermediaries for payment or return to you in accordance with the requirements and restrictions of applicable state and federal insurance laws and regulations and state unclaimed property laws. In some cases we may transfer your funds directly to insurers. In other cases we may be required to transfer your funds to third parties such as wholesale brokers, excess and surplus lines brokers, or managing general agents for carrying out transactions for you.

### **Surplus Lines Placements**

If a surplus lines, non-admitted and/or non-licensed insurer was used to quote your coverage, their premium rates, coverage terms and policy forms are not regulated by your home state. Their premium is subject to a surplus lines premium tax which is in addition to the premium. In the event of insolvency you will not be indemnified by any state guaranty fund for unpaid claims.

### **Claims**

We will inform you of the reporting requirements for claims, including where claims should be reported and the method of reporting to be used, if applicable. Please carefully review any claims-reporting instructions or information we provide. Failure to timely and properly report a claim may jeopardize coverage for the claim. In addition, you should retain copies of all insurance policies and coverage documents as well as claims-reporting instructions after termination of the policies because in some cases you may need to report claims after termination of a policy.

### **Ethical Business Practice**

We do not tolerate unethical behavior either in our own activities or in those with whom we seek to do business. We will comply with all applicable laws, regulations, and rules.

### **Sanctions**

The sanctions profile of different business(es) may differ on the basis of a number of complex factors. Whether a sanctions program applies to you depends on a number of factors, including your ownership structure, control, location, and the nationality of your employees. In certain circumstances, the United States and other countries prohibit or restrict companies from conducting business in certain jurisdictions (e.g. Cuba), and can sanction companies who conduct such business. We cannot advise on the applicability of sanctions programs either to you or to insurers nor can we guarantee or otherwise warrant the position of any insurer under existing or future sanctions programs. You should take legal advice as you deem appropriate in this regard.

We will comply with all applicable sanctions programs and you are advised that, where obliged by law, we may have to take certain actions, including freezing of funds held on behalf of parties and individuals as required by sanctions programs.

### **Intellectual Property**

Willis shall own and retain all right, title, and interest in and to the following (collectively, "Willis Property"): (i) all software, hardware, technology, documentation, and information provided by Willis in connection with the Claim and Risk Control Services; (ii) all ideas, know-how, methodology, models and techniques that may be developed, conceived, or invented by Willis during its performance under this Agreement; and (iii) all worldwide patent, copyright, trade secret, trademark and other intellectual property rights in and to the property described in clauses (i) and (ii) above. Accordingly, all rights in the Willis Property are hereby expressly reserved.

### **Electronic Communication**

We agree that we may communicate with each other from time to time by electronic mail, sometimes attaching further electronic data as and when the circumstances require attachments. By consenting to this method of communication you and we accept the inherent risks (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). We each agree, however, that we will employ reasonable virus checking procedures on our computer systems, and we will each be responsible for checking all electronic communications received for viruses. You will also be responsible for checking that messages received are complete. In the event of a dispute neither of us will challenge the legal evidentiary standing of an electronic document, and the Willis system shall be deemed the definitive record of electronic communications and documentation.

Please note that our system blocks certain file extensions for security reasons, including, but not necessarily limited to, .rar, .text, .vbs, .mpeg, .mp3, .cmd, .cpl, .wav, .exe, .bat, .scr, .mpq, .avi, .com, .pif, .wma, .mpa, .mpg, .jpeg. Emails with such files attached will not get through to us; and no message will be sent to tell you they have been blocked. If you intend to send us emails with attachments, please verify with us in advance that our system will accept the proposed form of attachment.

### **Other Agreements**

To the extent there is a conflict between these terms and conditions and a separately negotiated and signed agreement between you and Willis, the relevant portions of the signed agreement will control.



### **Severability**

The provisions of this agreement shall be severable and, in the event any provision or portion of any provision shall be construed by any court of competent jurisdiction to be invalid, the same shall not invalidate any other provision of this agreement or the remainder of the enforceable portion of the provision.

### **Termination**

In the event of termination, we will be entitled to receive and retain any commissions payable under the terms of our commission agreements with the insurers in relation to policies placed by us, whether or not the commissions have been received by us.

Our obligation to render services under the agreement ceases on the effective date of termination of the agreement. Nevertheless, we will process all remaining deposit premium installments on policies in effect at the time of termination. Claims and premium or other adjustments may arise after our relationship ends. Such items are normally handled by the insurance broker serving you at the time the claim or adjustment arises. However, it may be mutually agreed that we will provide services in these areas after the termination of our relationship for mutually agreed additional compensation. The obligations set forth under "Confidentiality" above shall survive any termination of the agreement.

### **Choice of Law**

Our agreement for services shall be governed by and construed in accordance with the laws of the state in which our office is located.

### **Inquiries and Complaints**

Your satisfaction is important to us. If you have questions or complaints, please inform the person who handles your account or contact the head of our office. Alternatively, you may call 1-866-704-5115, the toll free number we have set up exclusively for client feedback and complaints.

# **EXHIBIT E**



Please note the following terms and conditions related to your decision to utilize Willis to purchase insurance coverage, products and/or services:

### **Services and Responsibilities**

The services we provide to you will rely in significant part on the facts, information and direction provided by you or your authorized representatives. In order to make our relationship work, we must each provide the other with accurate and timely facts, information and direction as is reasonably required. You must provide us with complete and accurate information regarding your loss experience, risk exposures, and changes in the analysis or scope of your risk exposures and any other information reasonably requested by us or insurers. It is important that you advise us of any material changes in your business operations that may affect our services or the insurance coverages we place for you. A factor or circumstance is material if it would influence the judgment of a prudent insurer in determining premium and whether or not they would underwrite the risk. Therefore, all information which is material to your coverage requirements or which might influence insurers in deciding to accept your business, finalizing the terms to apply and/or the cost of cover, must be disclosed. Failure to make full disclosure of material facts might potentially allow insurers to avoid liability for a particular claim or to void the contract. This duty of disclosure applies equally at renewal of your existing coverage and upon placement of new lines of coverage. Willis will not be responsible for any consequences which may arise from any delayed, inaccurate or incomplete information.

We will assess the financial soundness of the insurers we recommend to provide your coverages based on publicly available information, including that produced by well-recognized rating agencies. Upon request, we will provide you with our analysis of such insurers. We cannot, however, guarantee or warrant the solvency of any insurer or any intermediary that we may use to place your coverage.

If you have a multi-year policy, it is important that you understand the limitations associated with the coverage options and the possibility that the financial strength of the carrier may change throughout the term of the policy. We recommend that you review the insurer's ratings for any downgrades during the term of this multi-year policy.

The final decisions with respect to all matters relating to your insurance coverages, risk management, and loss control needs and activities are yours. We will procure the insurance coverage chosen by you, prepare or forward insurance binders, and review and transmit policies to you.

If your insurance risks are in more than one jurisdiction, we, where required, will liaise between you and insurers to agree how to apportion the premium between applicable jurisdictions, and the amount of insurance premium tax payable in each jurisdiction. In providing such services, Willis is acting in its capacity as an insurance broker. You

should seek your own advice in relation to such tax laws where you consider it necessary. We will not be liable to you should the apportionment of premium or amount of tax payable under the policy be challenged by any tax authority. In addition, we will not be liable to you should the insurers fail, or refuse, to collect and pay such insurance premium tax to the relevant authorities.

We will review all binders, policies and endorsements for the purpose of confirming their accuracy and conformity to negotiated specifications and your instructions and advise you of any errors in, or recommended changes to, such policies. You agree that you will also review all such documents and advise us of any questions you have or of any document or provision which you believe may not be in accordance with your instructions as soon as possible, and in no event longer than two weeks, after you receive them. Your coverage is defined by the terms and conditions detailed in your insurance policies and endorsements. Your review of these documents, and any review you may seek from outside legal counsel or insurance consultants, is expected and essential.

We will meet, as requested by you, with your representatives to explain coverage and policies. We will promptly respond to your requests for coverage information, analysis of changing market conditions, and assistance in reporting subsequent changes in information to insurance companies and service providers.

In our capacity as insurance brokers, we do not provide legal or tax advice. We encourage you to seek any such advice you want or need from competent legal counsel or tax professionals.

#### **Confidentiality**

We will treat information you provide us in the course of our professional relationship as confidential and will use it only in performing services for you, except as directed by you or stated herein. We may share this information with third parties as may be required to provide our services. We may also disclose this information to the extent required to comply with applicable laws or regulations or the order of any court or tribunal. We may share this information with other affiliated Willis companies in order to help provide our services and for matters connected with the management, development or operation of our and their business, and to the extent we do so, any such affiliated Willis companies will also keep your information confidential subject to our agreement with you. By providing us with data, you agree and represent that you are fully authorized to possess that data and to provide it to us, and further that we are fully authorized to obtain, maintain, process and transfer such data in a commercially reasonable manner and as we reasonably deem advisable in order to provide our services. You also agree that we may aggregate and anonymise your information and may disclose to third parties certain anonymised or industry-wide statistics or other information which may include information relating to you, but that we will not, without your consent, reveal any information specific to you other than on an anonymised basis and as part of an industry or sector-wide comparison. In our use of the information that you provide us, we agree that we will comply with all applicable privacy laws, and that we have implemented and

will maintain commercially reasonable and appropriate security measures in order to protect sensitive information from unauthorized use or disclosure. Records you provide us will remain your property and will be returned to you upon request, although we will have the right to retain copies of such records to the extent required in the ordinary course of our business or by law. You will treat any information we provide to you, including data, recommendations, proposals, or reports, as confidential, and you will not disclose it to any third parties. You may disclose this information to the extent required to comply with applicable laws or regulations or the order of any court or tribunal. We retain the sole rights to all of our proprietary computer programs, systems, methods and procedures and to all files developed by us.

Willis represents and warrants that, with respect to the personal information of any Massachusetts resident, (1) it has and is capable of maintaining appropriate security measures to protect Personal Information consistent with 201 CMR 17.00 and any applicable federal regulations; and (2) as of the Agreement Effective Date, it has and will at all times during the term of this Agreement, maintain a comprehensive written information security program that complies with applicable privacy and data security laws. Willis's information security program shall contain at least the following:

- Reasonable restrictions upon physical access to records containing personal information and storage of such records and data in locked facilities, storage areas or counters.
- Regular monitoring to ensure that the comprehensive information security program is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of personal information; and upgrading information safeguards as necessary to limit risks.
- Reviewing the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing personal information.
- Documenting responsive actions taken in connection with any incident involving a breach of security, and mandatory post-incident review of events and actions taken, if any, to make changes in business practices related to protection of personal information.

#### Carrier Quotes

The quotes we have provided to you are based upon the information that you have provided to us. If you discover that previously submitted information is inaccurate or incomplete, please advise us immediately so that we can attempt to revalidate terms with insurers.

A carrier quote is an offer to provide coverage. Offers can be modified or withdrawn prior to your acceptance through your order to bind coverage. The quote itself is not a legally binding commitment or a confirmation of actual coverage. Should you choose to bind coverage, we will secure a formal commitment, typically in the form of a binder on a form issued or approved by the carrier(s) at issue.

### **Compensation and Disclosure**

Willis is an insurance producer licensed to do business worldwide, including in all 50 states and the District of Columbia. Insurance producers are authorized by their license to work with insurance purchasers and discuss the benefits and terms and conditions of insurance contracts; to offer advice concerning the substantive benefits of particular insurance contracts; to sell insurance; and to obtain insurance for purchasers. The role of an insurance producer in any particular transaction involved one or more of these activities.

The compensation that will be paid to Willis will vary based on the insurance contract it sells. Depending on the insurer and insurance contract you select, compensation may be paid by the insurer selling the insurance contract or by another third party. Such compensation may be contingent and may vary depending on a number of factors, including the insurance contract and insurer you select. In some cases, other factors such as the volume of business Willis provides to the insurer or the profitability of insurance contracts Willis provides to the insurer also may affect compensation. Willis may accept this compensation in locations where it is legally permissible, and meet standards and controls to address conflicts of interest. Because insurers account for contingent payments when developing general pricing, the price you pay for your policies is not affected whether Willis accepts contingent payments or not. If you prefer that we not accept contingent compensation related to your policy, we will request that your insurer(s) exclude your business from their contingent payment calculations.

Upon request, Willis will provide you with additional information about the compensation Willis expects to receive based in whole or in part on your purchase of insurance, and (if applicable) the compensation expected to be received based in whole or in part on any alternative quotes presented to you.

To the extent Willis is compensated by commissions paid to us by insurers, they will be earned for the entire policy period at the time we place policies for you. We will be paid the commission percentage stated for the placement of your insurance as indicated, and will receive the same commission percentage for all subsequent renewals of this policy unless we negotiate a different commission percentage with you.

Willis negotiates commission rates with certain insurers on a corporate level. If the rate on your placement is lower than the negotiated rate, Willis will collect the difference directly from the insurer. These payments will not increase the cost of your insurance or otherwise impact your premium or rates. These negotiated rates are detailed at: [http://www.willis.com/About\\_Willis/The\\_Willis\\_Way/Commission\\_Rates/](http://www.willis.com/About_Willis/The_Willis_Way/Commission_Rates/).

WillPLACE, a proprietary online tool, provides Willis brokers with access to global placement information so that we can seek to develop solutions for you with appropriate markets at competitive prices and terms. Some insurers pay Willis a fee for annual reporting on their book of business. Some of these insurers also pay Willis an additional fee for more detailed reporting on placements matched through the WillPLACE system. Any insurer payments related to the WillPLACE system will not increase the cost of your insurance.

Willis develops panels of insurers in certain market segments. Participating insurers are reviewed on a variety of factors. Commission rates on panel placements may be higher than rates paid on business placed outside of the panel process. Willis discloses its commission rates to clients on quotes obtained through the panel process prior to binding the coverage. In some instances, insurers pay an administration fee to participate in the panel process, or for additional reporting. Your Willis broker will provide you with additional information on Willis Panels upon request.

Where permitted by applicable law, Willis may assess a policy service fee. The fee is on a per-policy basis and is calculated on the premium amount. The policy service fee is compensation to Willis for such value-added services and resources including dedicated industry practices, technical resources, placement support and our strategic outcomes practices. The fee is not required by any insurer or regulator, nor is it included in the premium charged. It will be listed separately on your invoice. It is not necessary to procure a policy to obtain many of these and other services on a consultancy basis for a separate fee.

In some cases the use of a wholesale broker may be beneficial to you. We will not directly or indirectly place or renew your insurance business through a wholesale broker unless we first disclose to you in writing any compensation we or our corporate parents, subsidiaries or affiliates will receive as a result.

If wholesalers, underwriting managers or managing general agents have a role in providing insurance products and services to you, they will also earn and retain compensation for their role in providing those products and services. If any such parties are corporate parents, subsidiaries or affiliates of ours, any compensation we or our corporate parents, subsidiaries or affiliates will receive will be included in the total compensation we disclose to you. If such parties are not affiliated with us, and if you desire more information regarding the compensation those parties will receive, please contact us and we will assist you in obtaining this information.

In the ordinary course of business we may also receive and retain interest on premiums you pay from the date we receive the funds until we pay them to the insurers or their intermediaries, or until we return them to you after we receive such funds.

Commission schedules and other compensation arrangements related to our services on your behalf may change over time and may not always be congruent with your specific

policy period. Willis will provide you with accurate information to the best of our knowledge when information is presented to you, but it is possible that compensation arrangements may change over time. We will update you on any changes to our compensation prior to your renewal, and will do so at any time upon your request.

As an insurance intermediary, we normally act for you. However, we or our corporate parents, subsidiaries or affiliates may provide services to insurers for some insurance products. These services may include (a) acting as a managing general agent, program manager or in other similar capacities which give us binding authority enabling us to accept business on their behalf and immediately provide coverage for a risk; (b) arranging lineslips or similar facilities which enable an insurer to bind business for itself and other insurers; or (c) managing lineslips for insurers. Contracts with these insurers may grant us certain rights or create certain obligations regarding the marketing of insurance products provided by the insurers.

We may place your insurance business under such a managing general agent's agreement, binding authority, lineslip or similar facility when we reasonably consider that these match your insurance requirements/instructions. When we intend to do so, we shall inform you and disclose the compensation payable to Willis in connection with the placement of the insurance coverage.

We may also provide reinsurance brokerage services to insurers with which your coverage is placed pursuant to separate agreements with those insurers. We may be compensated by the insurers for these services in addition to any commissions we may receive for placement of your insurance coverages.

Subsidiaries of Willis North America Inc are members of a major international group of companies. In addition to the commissions received by us from insurers for placement of your insurance coverages, other parties, such as excess and surplus lines brokers, wholesale brokers, reinsurance intermediaries, underwriting managers and similar parties (some of which may be owned in whole or in part by our corporate parents or affiliates), may earn and retain usual and customary commissions for their role in providing insurance products or services to you under their separate contracts with insurers or reinsurers.

The insurance market is complex, and there could be other relationships which are not described in this document which might create conflicts of interest. If a conflict arises for which there is no practicable way of complying with this commitment, we will promptly inform you and withdraw from the engagement, unless you wish us to continue to provide the services and provide your written consent. Please let us know in writing if you have concerns or we will assume that you understand and consent to our providing our services pursuant to these terms.

The Foreign Account Tax Compliance Act (FATCA) is a U.S. law aimed at foreign financial institutions and other financial intermediaries (including insurance companies and intermediaries such as brokers) to prevent tax evasion by U.S. citizens and residents

through offshore accounts. FATCA only applies if you are a U.S. company or individual or a non-U.S. company paying premium through a U.S. insurance broker to a non-U.S. insurer. In order to comply with FATCA, insurance companies and intermediaries must meet certain legal requirements. Insurance placed with an insurance company that is not FATCA compliant may result in a 30% withholding tax on your premium. Where FATCA is applicable to you, in order to avoid this withholding tax, Willis will only place your insurance with FATCA-compliant insurers and intermediaries for which no withholding is required unless you instruct us to do otherwise and provide your advance written authorization to do so. If you do instruct Willis to place your insurance with a non-FATCA compliant insurer or intermediary, you may have to pay an additional amount equivalent to 30% of the premium covering U.S.-sourced risks to cover the withholding tax. If you instruct us to place your insurance with a non-FATCA compliant insurer but you do not agree to pay the additional 30% withholding if required, we will not place your insurance with such insurer. Please consult your tax adviser for full details of FATCA.

#### **Premium Financing**

You may choose to use a premium finance company, property appraiser, structured settlement firm or other similar service provider in connection with the insurance coverages we place for you or the services we provide to you. Premium finance options are not always available, but where they are, Willis currently works with industry leading finance providers for this service. Where permitted by law, we receive a fee for the administrative services we provide those companies. These services include processing the premium finance applications and marketing and sales support they do not have. If you would like more information about the fee we receive, please let us know.

#### **Premium Payment/Handling of Funds**

You agree to provide immediately available funds for payment of premiums by the payment dates specified in the insurance policies, invoices or other payment documents. Failure to pay premium on time may prevent coverage from incepting or result in cancellation of coverage by the insurer. We will not be responsible for any consequences that may arise from any delay or failure by you to pay the amount payable by the indicated date.

We will handle any premiums you pay through us and any funds which we receive from insurers or intermediaries for payment or return to you in accordance with the requirements and restrictions of applicable state and federal insurance laws and regulations and state unclaimed property laws. In some cases we may transfer your funds directly to insurers. In other cases we may be required to transfer your funds to third parties such as wholesale brokers, excess and surplus lines brokers, or managing general agents for carrying out transactions for you.

### **Surplus Lines Placements**

If a surplus lines, non-admitted and/or non-licensed insurer was used to quote your coverage, their premium rates, coverage terms and policy forms are not regulated by your home state. Their premium is subject to a surplus lines premium tax which is in addition to the premium. In the event of insolvency you will not be indemnified by any state guaranty fund for unpaid claims.

### **Claims**

We will inform you of the reporting requirements for claims, including where claims should be reported and the method of reporting to be used, if applicable. Please carefully review any claims-reporting instructions or information we provide. Failure to timely and properly report a claim may jeopardize coverage for the claim. In addition, you should retain copies of all insurance policies and coverage documents as well as claims-reporting instructions after termination of the policies because in some cases you may need to report claims after termination of a policy.

### **Ethical Business Practice**

We do not tolerate unethical behavior either in our own activities or in those with whom we seek to do business. We will comply with all applicable laws, regulations, and rules.

### **Sanctions**

The sanctions profile of different business(es) may differ on the basis of a number of complex factors. Whether a sanctions program applies to you depends on a number of factors, including your ownership structure, control, location, and the nationality of your employees. In certain circumstances, the United States and other countries prohibit or restrict companies from conducting business in certain jurisdictions (e.g. Cuba), and can sanction companies who conduct such business. We cannot advise on the applicability of sanctions programs either to you or to insurers nor can we guarantee or otherwise warrant the position of any insurer under existing or future sanctions programs. You should take legal advice as you deem appropriate in this regard.

We will comply with all applicable sanctions programs and you are advised that, where obliged by law, we may have to take certain actions, including freezing of funds held on behalf of parties and individuals as required by sanctions programs.

### **Intellectual Property**

Willis shall own and retain all right, title, and interest in and to the following (collectively, "Willis Property"): (i) all software, hardware, technology, documentation, and information provided by Willis in connection with the Claim and Risk Control Services; (ii) all ideas, know-how, methodology, models and techniques that may be developed, conceived, or invented by Willis during its performance under this



Agreement; and (iii) all worldwide patent, copyright, trade secret, trademark and other intellectual property rights in and to the property described in clauses (i) and (ii) above. Accordingly, all rights in the Willis Property are hereby expressly reserved.

#### **Electronic Communication**

We agree that we may communicate with each other from time to time by electronic mail, sometimes attaching further electronic data as and when the circumstances require attachments. By consenting to this method of communication you and we accept the inherent risks (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). We each agree, however, that we will employ reasonable virus checking procedures on our computer systems, and we will each be responsible for checking all electronic communications received for viruses. You will also be responsible for checking that messages received are complete. In the event of a dispute neither of us will challenge the legal evidentiary standing of an electronic document, and the Willis system shall be deemed the definitive record of electronic communications and documentation.

Please note that our system blocks certain file extensions for security reasons, including, but not necessarily limited to, .rar, .text, .vbs, .mpeg, .mp3, .cmd, .cpl, .wav, .exe, .bat, .scr, .mpq, .avi, .com, .pif, .wma, .mpa, .mpg, .jpeg. Emails with such files attached will not get through to us; and no message will be sent to tell you they have been blocked. If you intend to send us emails with attachments, please verify with us in advance that our system will accept the proposed form of attachment.

#### **Other Agreements**

To the extent there is a conflict between these terms and conditions and a separately negotiated and signed agreement between you and Willis, the relevant portions of the signed agreement will control.

#### **Severability**

The provisions of this agreement shall be severable and, in the event any provision or portion of any provision shall be construed by any court of competent jurisdiction to be invalid, the same shall not invalidate any other provision of this agreement or the remainder of the enforceable portion of the provision.

#### **Termination**

In the event of termination, we will be entitled to receive and retain any commissions payable under the terms of our commission agreements with the insurers in relation to policies placed by us, whether or not the commissions have been received by us.

Our obligation to render services under the agreement ceases on the effective date of termination of the agreement. Nevertheless, we will process all remaining deposit premium installments on policies in effect at the time of termination. Claims and premium or other adjustments may arise after our relationship ends. Such items are normally handled by the insurance broker serving you at the time the claim or adjustment arises. However, it may be mutually agreed that we will provide services in these areas after the termination of our relationship for mutually agreed additional compensation. The obligations set forth under "Confidentiality" above shall survive any termination of the agreement.

#### **Choice of Law**

Our agreement for services shall be governed by and construed in accordance with the laws of the state in which our office is located.

#### **Inquiries and Complaints**

Your satisfaction is important to us. If you have questions or complaints, please inform the person who handles your account or contact the head of our office. Alternatively, you may call 1-866-704-5115, the toll free number we have set up exclusively for client feedback and complaints.

# **EXHIBIT F**

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**STANDARD TERMS & CONDITIONS**

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Please note the following terms and conditions related to your decision to utilize Willis Towers Watson to purchase insurance coverage, products and/or services:

**Services and Responsibilities**

The services we provide to you will rely in significant part on the facts, information and direction provided by you or your authorized representatives. In order to make our relationship work, we must each provide the other with accurate and timely facts, information and direction as is reasonably required. You must provide us with complete and accurate information regarding your loss experience, risk exposures, and changes in the analysis or scope of your risk exposures and any other information reasonably requested by us or insurers. It is important that you advise us of any material changes in your business operations that may affect our services or the insurance coverages we place for you. A factor or circumstance is material if it would influence the judgment of a prudent insurer in determining premium and whether or not they would underwrite the risk. Therefore, all information which is material to your coverage requirements or which might influence insurers in deciding to accept your business, finalizing the terms to apply and/or the cost of cover, must be disclosed. Failure to make full disclosure of material facts might potentially allow insurers to avoid liability for a particular claim or to void the contract. This duty of disclosure applies equally at renewal of your existing coverage and upon placement of new lines of coverage. Willis Towers Watson will not be responsible for any consequences which may arise from any delayed, inaccurate or incomplete information.

We will assess the financial soundness of the insurers we recommend to provide your coverages based on publicly available information, including that produced by well-recognized rating agencies. Upon request, we will provide you with our analysis of such insurers. We cannot, however, guarantee or warrant the solvency of any insurer or any intermediary that we may use to place your coverage.

If you have a multi-year policy, it is important that you understand the limitations associated with the coverage options and the possibility that the financial strength of the carrier may change throughout the term of the policy. We recommend that you review the insurer's ratings for any downgrades during the term of this multi-year policy.

The final decisions with respect to all matters relating to your insurance coverages, risk management, and loss control needs and activities are yours. We will procure the insurance coverage chosen by you, prepare or forward insurance binders, and review and transmit policies to you.

If your insurance risks are in more than one jurisdiction, we, where required, will liaise between you and insurers to agree how to apportion the premium between applicable jurisdictions, and the amount of insurance premium tax payable in each jurisdiction. In providing such services, Willis Towers Watson is acting in its capacity as an insurance broker. You should seek your own advice in relation to such tax laws where you consider it necessary. We will not be liable to you should the apportionment of premium or amount of tax payable under the policy be challenged by any tax authority. In addition, we will not be liable to you should the insurers fail, or refuse, to collect and pay such insurance premium tax to the relevant authorities.

We will review all binders, policies and endorsements for the purpose of confirming their accuracy and conformity to negotiated specifications and your instructions and advise you of any errors in, or recommended changes to, such policies. You agree that you will also review all such documents and advise us of any questions you have or of any document or provision which you believe may not be in accordance with your instructions as soon as possible, and in no event longer than two weeks, after you receive them. Your coverage is defined by the terms and conditions detailed in your insurance policies and endorsements. Your review of these documents, and any review you may seek from outside legal counsel or insurance consultants, is expected and essential.

We will meet, as requested by you, with your representatives to explain coverage and policies. We will promptly respond to your requests for coverage information, analysis of changing market conditions, and assistance in reporting subsequent changes in information to insurance companies and service providers.

In our capacity as insurance brokers, we do not provide legal or tax advice. We encourage you to seek any such advice you want or need from competent legal counsel or tax professionals.

### **Confidentiality**

We will treat information you provide us in the course of our professional relationship as confidential and will use it only in performing services for you, except as directed by you or stated herein. We may share this information with third parties as may be required to provide our services. We may also disclose this information to the extent required to comply with applicable laws or regulations or the order of any court or tribunal. We may share this information with other affiliated Willis Towers Watson companies in order to help provide our services and for matters connected with the management, development or operation of our and their business, and to the extent we do so, any such affiliated Willis Towers Watson companies will also keep your information confidential subject to our agreement with you. By providing us with data, you agree and represent that you are fully authorized to possess that data and to provide it to us, and further that we are fully authorized to obtain, maintain, process and transfer such data in a commercially reasonable manner and as we reasonably deem advisable in order to provide our services. You also agree that we may aggregate and anonymise your information and may disclose to third parties certain anonymised or industry-wide statistics or other information which may include information relating to you, but that we will not, without your consent, reveal any information specific to you other than on an anonymised basis and as part of an industry or sector-wide comparison. In our use of the information that you provide us, we agree that we will comply with all applicable privacy laws, and that we have implemented and will maintain commercially reasonable and appropriate security measures in order to protect sensitive information from unauthorized use or disclosure. Records you provide us will remain your property and will be returned to you upon request, although we will have the right to retain copies of such records to the extent required in the ordinary course of our business or by law. You will treat any information we provide to you, including data, recommendations, proposals, or reports, as confidential, and you will not disclose it to any third parties. You may disclose this information to the extent required to comply with applicable laws or regulations or the order of any court or tribunal. We retain the sole rights to all of our proprietary computer programs, systems, methods and procedures and to all files developed by us.

Willis Towers Watson represents and warrants that, with respect to the personal information of any Massachusetts resident, (1) it has and is capable of maintaining appropriate security measures to protect Personal Information consistent with 201 CMR 17.00 and any applicable federal regulations; and (2) as of the Agreement Effective Date, it has and will at all times during the term of this Agreement, maintain a comprehensive written information security program that complies with applicable privacy and data security laws. Willis Towers Watson's information security program shall contain at least the following:

- Reasonable restrictions upon physical access to records containing personal information and storage of such records and data in locked facilities, storage areas or counters.
- Regular monitoring to ensure that the comprehensive information security program is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of personal information; and upgrading information safeguards as necessary to limit risks.
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## **Carrier Quotes**

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To the extent Willis Towers Watson is compensated by commissions paid to us by insurers, they will be earned for the entire policy period at the time we place policies for you. We will be paid the commission percentage stated for the placement of your insurance as indicated, and will receive the same commission percentage for all subsequent renewals of this policy unless we negotiate a different commission percentage with you.

Willis Towers Watson negotiates commission rates with certain insurers on a corporate level. If the rate on your placement is lower than the negotiated rate, Willis Towers Watson will collect the difference directly from the insurer. These payments will not increase the cost of your insurance or otherwise impact your premium or rates. These negotiated rates are detailed at:

[http://www.willis.com/About Willis/The Willis Way/Commission Rates/](http://www.willis.com/About%20Willis/The%20Willis%20Way/Commission%20Rates/).

WillPLACE, a proprietary online tool, provides Willis Towers Watson brokers with access to global placement information so that we can seek to develop solutions for you with appropriate markets at competitive prices and terms. Some insurers pay Willis Towers Watson a fee for annual reporting on their book of business. Some of these insurers also pay Willis Towers Watson an additional fee for more detailed reporting on placements matched through the WillPLACE system. Any insurer payments related to the WillPLACE system will not increase the cost of your insurance.

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Where permitted by applicable law, Willis Towers Watson may assess a policy service fee. The fee is on a per-policy basis and is calculated on the premium amount. The policy service fee is compensation to Willis Towers Watson for such value-added services and resources including dedicated industry practices, technical resources, placement support and our strategic outcomes practices. The fee is not required by any insurer or regulator, nor is it included in the premium charged. It will be listed separately on your invoice. It is not necessary to procure a policy to obtain many of these and other services on a consultancy basis for a separate fee.

In some cases the use of a wholesale broker may be beneficial to you. We will not directly or indirectly place or renew your insurance business through a wholesale broker unless we first disclose to you in writing any compensation we or our corporate parents, subsidiaries or affiliates will receive as a result.

If wholesalers, underwriting managers or managing general agents have a role in providing insurance products and services to you, they will also earn and retain compensation for their role in providing those products and services. If any such parties are corporate parents, subsidiaries or affiliates of ours, any compensation we or our corporate parents, subsidiaries or affiliates will receive will be included in the total compensation we disclose to you. If such parties are not affiliated with us, and if you desire more information regarding the compensation those parties will receive, please contact us and we will assist you in obtaining this information.

In the ordinary course of business we may also receive and retain interest on premiums you pay from the date we receive the funds until we pay them to the insurers or their intermediaries, or until we return them to you after we receive such funds.

Commission schedules and other compensation arrangements related to our services on your behalf may change over time and may not always be congruent with your specific policy period. Willis Towers Watson will provide you with accurate information to the best of our knowledge when information is presented to you, but it is possible that compensation arrangements may change over time. We will update you on any changes to our compensation prior to your renewal, and will do so at any time upon your request.

As an insurance intermediary, we normally act for you. However, we or our corporate parents, subsidiaries or affiliates may provide services to insurers for some insurance products. These services may include (a) acting as a managing general agent, program manager or in other similar capacities which give us binding authority enabling us to accept business on their behalf and immediately provide coverage for a risk; (b) arranging lineslips or similar facilities which enable an insurer to bind business for itself and other insurers; or (c) managing lineslips for insurers. Contracts with these insurers may grant us certain rights or create certain obligations regarding the marketing of insurance products provided by the insurers.

We may place your insurance business under such a managing general agent's agreement, binding authority, lineslip or similar facility when we reasonably consider that these match your insurance requirements/instructions. When we intend to do so, we shall inform you and disclose the compensation payable to Willis Towers Watson in connection with the placement of the insurance coverage.

We may also provide reinsurance brokerage services to insurers with which your coverage is placed pursuant to separate agreements with those insurers. We may be compensated by the insurers for these services in addition to any commissions we may receive for placement of your insurance coverages.

Subsidiaries of Willis North America Inc are members of a major international group of companies. In addition to the commissions received by us from insurers for placement of your insurance coverages, other parties, such as excess and surplus lines brokers, wholesale brokers, reinsurance intermediaries, underwriting managers and similar parties (some of which may be owned in whole or in part by our corporate parents or affiliates), may earn and retain usual and customary commissions for their role in providing insurance products or services to you under their separate contracts with insurers or reinsurers.

The insurance market is complex, and there could be other relationships which are not described in this document which might create conflicts of interest. If a conflict arises for which there is no practicable way of complying with this commitment, we will promptly inform you and withdraw from the engagement, unless you wish us to continue to provide the services and provide your written consent. Please let us know in writing if you have concerns or we will assume that you understand and consent to our providing our services pursuant to these terms.

The Foreign Account Tax Compliance Act (FATCA) is a U.S. law aimed at foreign financial institutions and other financial intermediaries (including insurance companies and intermediaries such as brokers) to prevent tax evasion by U.S. citizens and residents through offshore accounts. FATCA only applies if you are a U.S. company or individual or a non-U.S. company paying premium through a U.S. insurance broker to a non-U.S. insurer. In order to comply with FATCA, insurance companies and intermediaries must meet certain legal requirements. Insurance placed with an insurance company that is not FATCA compliant may result in a 30% withholding tax on your premium. Where FATCA is applicable to you, in order to avoid this withholding tax, Willis Towers Watson will only place your insurance with FATCA-compliant insurers and intermediaries for which no withholding is required unless you instruct us to do otherwise and provide your advance written authorization to do so. If you do instruct Willis Towers Watson to place your insurance with a non-FATCA compliant insurer or intermediary, you may have to pay an additional amount equivalent to 30% of the premium covering U.S.-sourced risks to cover the withholding tax. If you instruct us to place your insurance with a non-FATCA compliant insurer but you do not agree to pay the additional 30% withholding if required, we will not place your insurance with such insurer. Please consult your tax adviser for full details of FATCA.



### **Premium Financing**

You may choose to use a premium finance company, property appraiser, structured settlement firm or other similar service provider in connection with the insurance coverages we place for you or the services we provide to you. Premium finance options are not always available, but where they are, Willis Towers Watson currently works with industry leading finance providers for this service. Where permitted by law, we receive a fee for the administrative services we provide those companies. These services include processing the premium finance applications and marketing and sales support they do not have. If you would like more information about the fee we receive, please let us know.

### **Premium Payment/Handling of Funds**

You agree to provide immediately available funds for payment of premiums by the payment dates specified in the insurance policies, invoices or other payment documents. Failure to pay premium on time may prevent coverage from incepting or result in cancellation of coverage by the insurer. We will not be responsible for any consequences that may arise from any delay or failure by you to pay the amount payable by the indicated date.

We will handle any premiums you pay through us and any funds which we receive from insurers or intermediaries for payment or return to you in accordance with the requirements and restrictions of applicable state and federal insurance laws and regulations and state unclaimed property laws. In some cases we may transfer your funds directly to insurers. In other cases we may be required to transfer your funds to third parties such as wholesale brokers, excess and surplus lines brokers, or managing general agents for carrying out transactions for you.

### **Surplus Lines Placements**

If a surplus lines, non-admitted and/or non-licensed insurer was used to quote your coverage, their premium rates, coverage terms and policy forms are not regulated by your home state. Their premium is subject to a surplus lines premium tax which is in addition to the premium. In the event of insolvency you will not be indemnified by any state guaranty fund for unpaid claims.

### **Claims**

We will inform you of the reporting requirements for claims, including where claims should be reported and the method of reporting to be used, if applicable. Please carefully review any claims-reporting instructions or information we provide. Failure to timely and properly report a claim may jeopardize coverage for the claim. In addition, you should retain copies of all insurance policies and coverage documents as well as claims-reporting instructions after termination of the policies because in some cases you may need to report claims after termination of a policy.

### **Ethical Business Practice**

We do not tolerate unethical behavior either in our own activities or in those with whom we seek to do business. We will comply with all applicable laws, regulations, and rules.

## **Sanctions**

The sanctions profile of different business(es) may differ on the basis of a number of complex factors. Whether a sanctions program applies to you depends on a number of factors, including your ownership structure, control, location, and the nationality of your employees. In certain circumstances, the United States and other countries prohibit or restrict companies from conducting business in certain jurisdictions (e.g. Cuba), and can sanction companies who conduct such business. We cannot advise on the applicability of sanctions programs either to you or to insurers nor can we guarantee or otherwise warrant the position of any insurer under existing or future sanctions programs. You should take legal advice as you deem appropriate in this regard.

We will comply with all applicable sanctions programs and you are advised that, where obliged by law, we may have to take certain actions, including freezing of funds held on behalf of parties and individuals as required by sanctions programs.

## **Intellectual Property**

Willis Towers Watson shall own and retain all right, title, and interest in and to the following (collectively, "Willis Towers Watson Property"): (i) all software, hardware, technology, documentation, and information provided by Willis Towers Watson in connection with the Claim and Risk Control Services; (ii) all ideas, know-how, methodology, models and techniques that may be developed, conceived, or invented by Willis Towers Watson during its performance under this Agreement; and (iii) all worldwide patent, copyright, trade secret, trademark and other intellectual property rights in and to the property described in clauses (i) and (ii) above. Accordingly, all rights in the Willis Towers Watson Property are hereby expressly reserved.

## **Electronic Communication**

We agree that we may communicate with each other from time to time by electronic mail, sometimes attaching further electronic data as and when the circumstances require attachments. By consenting to this method of communication you and we accept the inherent risks (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). We each agree, however, that we will employ reasonable virus checking procedures on our computer systems, and we will each be responsible for checking all electronic communications received for viruses. You will also be responsible for checking that messages received are complete. In the event of a dispute neither of us will challenge the legal evidentiary standing of an electronic document, and the Willis Towers Watson system shall be deemed the definitive record of electronic communications and documentation.

Please note that our system blocks certain file extensions for security reasons, including, but not necessarily limited to, .rar, .text, .vbs, .mpeg, .mp3, .cmd, .cpl, .wav, .exe, .bat, .scr, .mpq, .avi, .com, .pif, .wma, .mpa, .mpg, .jpeg. Emails with such files attached will not get through to us; and no message will be sent to tell you they have been blocked. If you intend to send us emails with attachments, please verify with us in advance that our system will accept the proposed form of attachment.

## **Other Agreements**

To the extent there is a conflict between these terms and conditions and a separately negotiated and signed agreement between you and Willis Towers Watson, the relevant portions of the signed agreement will control.

**Severability**

The provisions of this agreement shall be severable and, in the event any provision or portion of any provision shall be construed by any court of competent jurisdiction to be invalid, the same shall not invalidate any other provision of this agreement or the remainder of the enforceable portion of the provision.

**Termination**

In the event of termination, we will be entitled to receive and retain any commissions payable under the terms of our commission agreements with the insurers in relation to policies placed by us, whether or not the commissions have been received by us.

Our obligation to render services under the agreement ceases on the effective date of termination of the agreement. Nevertheless, we will process all remaining deposit premium installments on policies in effect at the time of termination. Claims and premium or other adjustments may arise after our relationship ends. Such items are normally handled by the insurance broker serving you at the time the claim or adjustment arises. However, it may be mutually agreed that we will provide services in these areas after the termination of our relationship for mutually agreed additional compensation. The obligations set forth under "Confidentiality" above shall survive any termination of the agreement.

**Choice of Law**

Our agreement for services shall be governed by and construed in accordance with the laws of the state in which our office is located.

**Inquiries and Complaints**

Your satisfaction is important to us. If you have questions or complaints, please inform the person who handles your account or contact the head of our office. Alternatively, you may call 1-866-704-5115, the toll free number we have set up exclusively for client feedback and complaints.

# **EXHIBIT G**

**Standard Terms and Conditions for U.S. Property & Casualty Retail Accounts**

Please note the following terms and conditions related to your decision to utilize Willis Towers Watson to purchase insurance coverage, products and/or services:

**Services and Responsibilities**

The services we provide to you will rely in significant part on the facts, information and direction provided by you or your authorized representatives. In order to make our relationship work, we must each provide the other with accurate and timely facts, information and direction as is reasonably required. You must provide us with complete and accurate information regarding your loss experience, risk exposures, and changes in the analysis or scope of your risk exposures and any other information reasonably requested by us or insurers. It is important that you advise us of any material changes in your business operations that may affect our services or the insurance coverages we place for you. A factor or circumstance is material if it would influence the judgment of a prudent insurer in determining premium and whether or not they would underwrite the risk. Therefore, all information which is material to your coverage requirements or which might influence insurers in deciding to accept your business, finalizing the terms to apply and/or the cost of cover, must be disclosed. Failure to make full disclosure of material facts might potentially allow insurers to avoid liability for a particular claim or to void the contract. This duty of disclosure applies equally at renewal of your existing coverage and upon placement of new lines of coverage. Willis Towers Watson will not be responsible for any consequences which may arise from any delayed, inaccurate or incomplete information.

We will assess the financial soundness of the insurers we recommend to provide your coverages based on publicly available information, including that produced by well-recognized rating agencies. Upon request, we will provide you with our analysis of such insurers. We cannot, however, guarantee or warrant the solvency of any insurer or any intermediary that we may use to place your coverage.

If you have a multi-year policy, it is important that you understand the limitations associated with the coverage options and the possibility that the financial strength of the carrier may change throughout the term of the policy. We recommend that you review the insurer's ratings for any downgrades during the term of this multi-year policy.

The final decisions with respect to all matters relating to your insurance coverages, risk management, and loss control needs and activities are yours. We will procure the insurance coverage chosen by you, prepare or forward insurance binders, and review and transmit policies to you.

If your insurance risks are in more than one jurisdiction, we, where required, will liaise between you and insurers to agree how to apportion the premium between applicable jurisdictions, and the amount of insurance premium tax payable in each jurisdiction. In providing such services, Willis Towers Watson is acting in its capacity as an insurance

broker. You should seek your own advice in relation to such tax laws where you consider it necessary. We will not be liable to you should the apportionment of premium or amount of tax payable under the policy be challenged by any tax authority. In addition, we will not be liable to you should the insurers fail, or refuse, to collect and pay such insurance premium tax to the relevant authorities.

We will review all binders, policies and endorsements for the purpose of confirming their accuracy and conformity to negotiated specifications and your instructions and advise you of any errors in, or recommended changes to, such policies. You agree that you will also review all such documents and advise us of any questions you have or of any document or provision which you believe may not be in accordance with your instructions as soon as possible, and in no event longer than two weeks, after you receive them. Your coverage is defined by the terms and conditions detailed in your insurance policies and endorsements. Your review of these documents, and any review you may seek from outside legal counsel or insurance consultants, is expected and essential.

We will meet, as requested by you, with your representatives to explain coverage and policies. We will promptly respond to your requests for coverage information, analysis of changing market conditions, and assistance in reporting subsequent changes in information to insurance companies and service providers.

In our capacity as insurance brokers, we do not provide legal or tax advice. We encourage you to seek any such advice you want or need from competent legal counsel or tax professionals.

### **Confidentiality**

We will treat information you provide us in the course of our professional relationship as confidential and will use it only in performing services for you, except as directed by you or stated herein. We may share this information with third parties as may be required to provide our services. We may also disclose this information to the extent required to comply with applicable laws or regulations or the order of any court or tribunal. We may share this information with other affiliated Willis Towers Watson companies in order to help provide our services and for matters connected with the management, development or operation of our and their business, and to the extent we do so, any such affiliated Willis Towers Watson companies will also keep your information confidential subject to our agreement with you. By providing us with data, you agree and represent that you are fully authorized to possess that data and to provide it to us, and further that we are fully authorized to obtain, maintain, process and transfer such data in a commercially reasonable manner and as we reasonably deem advisable in order to provide our services. You also agree that we may aggregate and anonymise your information and may disclose to third parties certain anonymised or industry-wide statistics or other information which may include information relating to you, but that we will not, without your consent, reveal any information specific to you other than on an anonymised basis and as part of an industry or sector-wide comparison. In our use of the information that you provide us, we agree that we will comply with all applicable privacy laws, and that we have

implemented and will maintain commercially reasonable and appropriate security measures in order to protect sensitive information from unauthorized use or disclosure. Records you provide us will remain your property and will be returned to you upon request, although we will have the right to retain copies of such records to the extent required in the ordinary course of our business or by law. You will treat any information we provide to you, including data, recommendations, proposals, or reports, as confidential, and you will not disclose it to any third parties. You may disclose this information to the extent required to comply with applicable laws or regulations or the order of any court or tribunal. We retain the sole rights to all of our proprietary computer programs, systems, methods and procedures and to all files developed by us.

Willis Towers Watson represents and warrants that, with respect to the personal information of any Massachusetts resident, (1) it has and is capable of maintaining appropriate security measures to protect Personal Information consistent with 201 CMR 17.00 and any applicable federal regulations; and (2) as of the Agreement Effective Date, it has and will at all times during the term of this Agreement, maintain a comprehensive written information security program that complies with applicable privacy and data security laws. Willis Towers Watson's information security program shall contain at least the following:

- Reasonable restrictions upon physical access to records containing personal information and storage of such records and data in locked facilities, storage areas or counters.
- Regular monitoring to ensure that the comprehensive information security program is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of personal information; and upgrading information safeguards as necessary to limit risks.
- Reviewing the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing personal information.
- Documenting responsive actions taken in connection with any incident involving a breach of security, and mandatory post-incident review of events and actions taken, if any, to make changes in business practices related to protection of personal information.

### **Carrier Quotes**

The quotes we have provided to you are based upon the information that you have provided to us. If you discover that previously submitted information is inaccurate or incomplete, please advise us immediately so that we can attempt to revalidate terms with insurers.

A carrier quote is an offer to provide coverage. Offers can be modified or withdrawn prior to your acceptance through your order to bind coverage. The quote itself is not a legally binding commitment or a confirmation of actual coverage. Should you choose to bind coverage, we will secure a formal commitment, typically in the form of a binder on a form issued or approved by the carrier(s) at issue.

### **Compensation and Disclosure**

Willis Towers Watson is an insurance producer licensed to do business worldwide, including in all 50 states and the District of Columbia. Insurance producers are authorized by their license to work with insurance purchasers and discuss the benefits and terms and conditions of insurance contracts; to offer advice concerning the substantive benefits of particular insurance contracts; to sell insurance; and to obtain insurance for purchasers. The role of an insurance producer in any particular transaction involved one or more of these activities.

The compensation that will be paid to Willis Towers Watson will vary based on the insurance contract it sells. Depending on the insurer and insurance contract you select, compensation may be paid by the insurer selling the insurance contract or by another third party. Such compensation may be contingent and may vary depending on a number of factors, including the insurance contract and insurer you select. In some cases, other factors such as the volume of business Willis Towers Watson provides to the insurer or the profitability of insurance contracts Willis Towers Watson provides to the insurer also may affect compensation. Willis Towers Watson may accept this compensation in locations where it is legally permissible, and meet standards and controls to address conflicts of interest. Because insurers account for contingent payments when developing general pricing, the price you pay for your policies is not affected whether Willis Towers Watson accepts contingent payments or not. If you prefer that we not accept contingent compensation related to your policy, we will request that your insurer(s) exclude your business from their contingent payment calculations.

Upon request, Willis Towers Watson will provide you with additional information about the compensation Willis Towers Watson expects to receive based in whole or in part on your purchase of insurance, and (if applicable) the compensation expected to be received based in whole or in part on any alternative quotes presented to you.

To the extent Willis Towers Watson is compensated by commissions paid to us by insurers, they will be earned for the entire policy period at the time we place policies for you. We will be paid the commission percentage stated for the placement of your insurance as indicated, and will receive the same commission percentage for all subsequent renewals of this policy unless we negotiate a different commission percentage with you.

Willis Towers Watson negotiates commission rates with certain insurers on a corporate level. If the rate on your placement is lower than the negotiated rate, Willis Towers Watson will collect the difference directly from the insurer. These payments will not



increase the cost of your insurance or otherwise impact your premium or rates. These negotiated rates are detailed at:

[http://www.willis.com/About Willis/The Willis Way/Commission Rates/](http://www.willis.com/About%20Willis/The%20Willis%20Way/Commission%20Rates/).

WillPLACE, a proprietary online tool, provides Willis Towers Watson brokers with access to global placement information so that we can seek to develop solutions for you with appropriate markets at competitive prices and terms. Some insurers pay Willis Towers Watson a fee for annual reporting on their book of business. Some of these insurers also pay Willis Towers Watson an additional fee for more detailed reporting on placements matched through the WillPLACE system. Any insurer payments related to the WillPLACE system will not increase the cost of your insurance.

Willis Towers Watson develops panels of insurers in certain market segments. Participating insurers are reviewed on a variety of factors. Commission rates on panel placements may be higher than rates paid on business placed outside of the panel process. Willis Towers Watson discloses its commission rates to clients on quotes obtained through the panel process prior to binding the coverage. In some instances, insurers pay an administration fee to participate in the panel process, or for additional reporting. Your Willis Towers Watson broker will provide you with additional information on Willis Towers Watson Panels upon request.

Where permitted by applicable law, Willis Towers Watson may assess a policy service fee. The fee is on a per-policy basis and is calculated on the premium amount. The policy service fee is compensation to Willis Towers Watson for such value-added services and resources including dedicated industry practices, technical resources, placement support and our strategic outcomes practices. The fee is not required by any insurer or regulator, nor is it included in the premium charged. It will be listed separately on your invoice. It is not necessary to procure a policy to obtain many of these and other services on a consultancy basis for a separate fee.

In some cases the use of a wholesale broker may be beneficial to you. We will not directly or indirectly place or renew your insurance business through a wholesale broker unless we first disclose to you in writing any compensation we or our corporate parents, subsidiaries or affiliates will receive as a result.

If wholesalers, underwriting managers or managing general agents have a role in providing insurance products and services to you, they will also earn and retain compensation for their role in providing those products and services. If any such parties are corporate parents, subsidiaries or affiliates of ours, any compensation we or our corporate parents, subsidiaries or affiliates will receive will be included in the total compensation we disclose to you. If such parties are not affiliated with us, and if you desire more information regarding the compensation those parties will receive, please contact us and we will assist you in obtaining this information.

In the ordinary course of business we may also receive and retain interest on premiums you pay from the date we receive the funds until we pay them to the insurers or their intermediaries, or until we return them to you after we receive such funds.

Commission schedules and other compensation arrangements related to our services on your behalf may change over time and may not always be congruent with your specific policy period. Willis Towers Watson will provide you with accurate information to the best of our knowledge when information is presented to you, but it is possible that compensation arrangements may change over time. We will update you on any changes to our compensation prior to your renewal, and will do so at any time upon your request.

As an insurance intermediary, we normally act for you. However, we or our corporate parents, subsidiaries or affiliates may provide services to insurers for some insurance products. These services may include (a) acting as a managing general agent, program manager or in other similar capacities which give us binding authority enabling us to accept business on their behalf and immediately provide coverage for a risk; (b) arranging lineslips or similar facilities which enable an insurer to bind business for itself and other insurers; or (c) managing lineslips for insurers. Contracts with these insurers may grant us certain rights or create certain obligations regarding the marketing of insurance products provided by the insurers.

We may place your insurance business under such a managing general agent's agreement, binding authority, lineslip or similar facility when we reasonably consider that these match your insurance requirements/instructions. When we intend to do so, we shall inform you and disclose the compensation payable to Willis Towers Watson in connection with the placement of the insurance coverage.

We may also provide reinsurance brokerage services to insurers with which your coverage is placed pursuant to separate agreements with those insurers. We may be compensated by the insurers for these services in addition to any commissions we may receive for placement of your insurance coverages.

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The insurance market is complex, and there could be other relationships which are not described in this document which might create conflicts of interest. If a conflict arises for which there is no practicable way of complying with this commitment, we will promptly inform you and withdraw from the engagement, unless you wish us to continue to provide the services and provide your written consent. Please let us know in writing if

you have concerns or we will assume that you understand and consent to our providing our services pursuant to these terms.

The Foreign Account Tax Compliance Act (FATCA) is a U.S. law aimed at foreign financial institutions and other financial intermediaries (including insurance companies and intermediaries such as brokers) to prevent tax evasion by U.S. citizens and residents through offshore accounts. FATCA only applies if you are a U.S. company or individual or a non-U.S. company paying premium through a U.S. insurance broker to a non-U.S. insurer. In order to comply with FATCA, insurance companies and intermediaries must meet certain legal requirements. Insurance placed with an insurance company that is not FATCA compliant may result in a 30% withholding tax on your premium. Where FATCA is applicable to you, in order to avoid this withholding tax, Willis Towers Watson will only place your insurance with FATCA-compliant insurers and intermediaries for which no withholding is required unless you instruct us to do otherwise and provide your advance written authorization to do so. If you do instruct Willis Towers Watson to place your insurance with a non-FATCA compliant insurer or intermediary, you may have to pay an additional amount equivalent to 30% of the premium covering U.S.-sourced risks to cover the withholding tax. If you instruct us to place your insurance with a non-FATCA compliant insurer but you do not agree to pay the additional 30% withholding if required, we will not place your insurance with such insurer. Please consult your tax adviser for full details of FATCA.

### **Premium Financing**

You may choose to use a premium finance company, property appraiser, structured settlement firm or other similar service provider in connection with the insurance coverages we place for you or the services we provide to you. Premium finance options are not always available, but where they are, Willis Towers Watson currently works with industry leading finance providers for this service. Where permitted by law, we receive a fee for the administrative services we provide those companies. These services include processing the premium finance applications and marketing and sales support they do not have. If you would like more information about the fee we receive, please let us know.

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You agree to provide immediately available funds for payment of premiums by the payment dates specified in the insurance policies, invoices or other payment documents. Failure to pay premium on time may prevent coverage from incepting or result in cancellation of coverage by the insurer. We will not be responsible for any consequences that may arise from any delay or failure by you to pay the amount payable by the indicated date.

We will handle any premiums you pay through us and any funds which we receive from insurers or intermediaries for payment or return to you in accordance with the requirements and restrictions of applicable state and federal insurance laws and regulations and state unclaimed property laws. In some cases we may transfer your funds

directly to insurers. In other cases we may be required to transfer your funds to third parties such as wholesale brokers, excess and surplus lines brokers, or managing general agents for carrying out transactions for you.

### **Surplus Lines Placements**

If a surplus lines, non-admitted and/or non-licensed insurer was used to quote your coverage, their premium rates, coverage terms and policy forms are not regulated by your home state. Their premium is subject to a surplus lines premium tax which is in addition to the premium. In the event of insolvency you will not be indemnified by any state guaranty fund for unpaid claims.

### **Claims**

We will inform you of the reporting requirements for claims, including where claims should be reported and the method of reporting to be used, if applicable. Please carefully review any claims-reporting instructions or information we provide. Failure to timely and properly report a claim may jeopardize coverage for the claim. In addition, you should retain copies of all insurance policies and coverage documents as well as claims-reporting instructions after termination of the policies because in some cases you may need to report claims after termination of a policy.

### **Ethical Business Practice**

We do not tolerate unethical behavior either in our own activities or in those with whom we seek to do business. We will comply with all applicable laws, regulations, and rules.

### **Sanctions**

The sanctions profile of different business(es) may differ on the basis of a number of complex factors. Whether a sanctions program applies to you depends on a number of factors, including your ownership structure, control, location, and the nationality of your employees. In certain circumstances, the United States and other countries prohibit or restrict companies from conducting business in certain jurisdictions (e.g. Cuba), and can sanction companies who conduct such business. We cannot advise on the applicability of sanctions programs either to you or to insurers nor can we guarantee or otherwise warrant the position of any insurer under existing or future sanctions programs. You should take legal advice as you deem appropriate in this regard.

We will comply with all applicable sanctions programs and you are advised that, where obliged by law, we may have to take certain actions, including freezing of funds held on behalf of parties and individuals as required by sanctions programs.

### **Anti-money Laundering**

To comply with applicable anti-money laundering regulations there are times when we may ask clients to confirm (or reconfirm) their identity. We may need to do this at the time you become a client or have been one for some time or for example, when checking details on proposal forms and transferring claims payments. This information may be shared with other subsidiaries of Willis Towers Watson PLC and where we deem necessary with regulatory or law enforcement bodies. Please note that we are prohibited from disclosing to you any report we may make based on knowledge or suspicion of money laundering, including the fact that such a report has been made.

We have systems that protect our clients and ourselves against fraud and other crime and we may utilize the **services of third parties in order to identify and verify clients**. Client information can be used to prevent crime and trace those responsible. We may check your details against financial crime databanks. If false or inaccurate information is provided, we may be obliged to pass such details to relevant regulatory agencies that may use this information.

### **Intellectual Property**

Willis Towers Watson shall own and retain all right, title, and interest in and to the following (collectively, "Willis Towers Watson Property"): (i) all software, hardware, technology, documentation, and information provided by Willis Towers Watson in connection with the Claim and Risk Control Services; (ii) all ideas, know-how, methodology, models and techniques that may be developed, conceived, or invented by Willis Towers Watson during its performance under this Agreement; and (iii) all worldwide patent, copyright, trade secret, trademark and other intellectual property rights in and to the property described in clauses (i) and (ii) above. Accordingly, all rights in the Willis Towers Watson Property are hereby expressly reserved.

### **Electronic Communication**

We agree that we may communicate with each other from time to time by electronic mail, sometimes attaching further electronic data as and when the circumstances require attachments. By consenting to this method of communication you and we accept the inherent risks (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). We each agree, however, that we will employ reasonable virus checking procedures on our computer systems, and we will each be responsible for checking all electronic communications received for viruses. You will also be responsible for checking that messages received are complete. In the event of a dispute neither of us will challenge the legal evidentiary standing of an electronic document, and the Willis Towers Watson system shall be deemed the definitive record of electronic communications and documentation.

Please note that our system blocks certain file extensions for security reasons, including, but not necessarily limited to, .rar, .text, .vbs, .mpeg, .mp3, .cmd, .cpl, .wav, .exe, .bat, .scr, .mpq, .avi, .com, .pif, .wma, .mpa, .mpg, .jpeg. Emails with such files attached will not get through to us; and no message will be sent to tell you they have been blocked. If you intend to send us emails with attachments, please verify with us in advance that our system will accept the proposed form of attachment.

### **Other Agreements**

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The provisions of this agreement shall be severable and, in the event any provision or portion of any provision shall be construed by any court of competent jurisdiction to be invalid, the same shall not invalidate any other provision of this agreement or the remainder of the enforceable portion of the provision.

### **Termination**

In the event of termination, we will be entitled to receive and retain any commissions payable under the terms of our commission agreements with the insurers in relation to policies placed by us, whether or not the commissions have been received by us.

Our obligation to render services under the agreement ceases on the effective date of termination of the agreement. Nevertheless, we will process all remaining deposit premium installments on policies in effect at the time of termination. Claims and premium or other adjustments may arise after our relationship ends. Such items are normally handled by the insurance broker serving you at the time the claim or adjustment arises. However, it may be mutually agreed that we will provide services in these areas after the termination of our relationship for mutually agreed additional compensation. The obligations set forth under “Confidentiality” above shall survive any termination of the agreement.

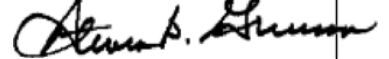
### **Choice of Law**

Our agreement for services shall be governed by and construed in accordance with the laws of the state in which our office is located.

### **Inquiries and Complaints**

Your satisfaction is important to us. If you have questions or complaints, please inform the person who handles your account or contact the head of our office. Alternatively, you may call 1-866-704-5115, the toll free number we have set up exclusively for client feedback and complaints.





**RPLY**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

HAKKASAN USA, INC., a Delaware  
Corporation,

Plaintiff,

v.

ENDURANCE AMERICAN SPECIALTY  
INSURANCE COMPANY, a Delaware  
Corporation; SOMPO INTERNATIONAL  
HOLDINGS, LTD., a Bermuda Corporation;  
WILLIS OF ARIZONA, INC., an Arizona  
Corporation; and WILLIS TOWERS  
WATSON INSURANCE SERVICES WEST,  
INC., a California Corporation,

Defendants.

Case No. A-20-816145-B

Dept. No. XI

**REPLY MEMORANDUM IN SUPPORT  
OF WILLIS'S MOTION TO STRIKE  
PLAINTIFF'S JURY DEMAND OR, IN  
THE ALTERNATIVE, TO COMPEL  
ARBITRATION**

///

///

1 As detailed in Willis’s opening brief, Willis, as Hakkasan’s insurance broker performed  
2 various brokerage services for Hakkasan. The performance of those services was governed by  
3 Brokerage Terms agreed to by both parties. Among other things, those Brokerage Terms include a  
4 mandatory mediation provision, and the parties participated in a mediation in November, 2020 as  
5 ordered by this Court. Although the Brokerage Terms also include a jury waiver provision,  
6 Hakkasan is seeking a jury trial. Accordingly, Willis filed the present motion seeking to strike  
7 Hakkasan’s jury demand.<sup>1</sup> Hakkasan’s opposition to this motion (the “Opposition”) fails to show  
8 any valid reason why this Court should not enforce the jury waiver provision. The Opposition rests  
9 primarily on arguments—regarding the general inapplicability of the Brokerage Terms to  
10 Hakkasan’s claims in this case—that were already rejected by this Court when Hakkasan sought to  
11 avoid the Brokerage Terms’ mandatory mediation provision. Therefore, this Court should again  
12 reject these arguments and enforce the jury waiver provision.

13 **A. The Dispute Resolution Provision In The Brokerage Terms Is Not Limited To**  
14 **Claims Concerning The Procurement Of Insurance**

15 Hakkasan first tries to avoid the jury waiver provision to which it agreed per the Brokerage  
16 Terms by arguing that (a) the Brokerage Terms apply only to issues relating to the procurement of  
17 insurance; and (b) the issues in this case do not involve the procurement of insurance. Hakkasan is  
18 wrong on both arguments.

19 First, Hakkasan blatantly misrepresents that the Brokerage Terms, and therefore the jury  
20 waiver provision, are limited to claims and issues regarding the purchase of insurance. (*See*  
21 *Opposition* at p. 6.) The Brokerage Terms provide that they apply to the purchase of insurance *and*  
22 to any “services” supplied to Hakkasan by Willis. (Motion at Ex. B.) Further, the jury waiver  
23 provision itself plainly states that it applies to “disputes arising out of or in connection with the  
24 *services* provided under these [Brokerage Terms].” *Id.* (Emphasis added.)

25 ///

26 \_\_\_\_\_  
27 <sup>1</sup> The Brokerage Terms also provide that the parties must resolve their dispute through arbitration  
28 if the jury waiver is found to be unenforceable under applicable state law. Although the jury waiver  
provision here is enforceable under Nevada law, the present motion seeks to compel arbitration in  
the event the jury waiver provision is found to be unenforceable.



1 Further, Hakkasan also blatantly misrepresents that the actual services Willis was to provide  
2 to Hakkasan in the 2020-21 policy year were limited to the procurement of insurance. In this regard,  
3 Hakkasan simply ignores the express terms and numerous references to Willis's claims handling  
4 and renewal-related services set forth in both the Proposal and the Brokerage Terms.

5 Among other things, Appendix B to the Proposal is a document entitled "Claims  
6 Information" which describes Willis's unique "Claims Advocacy Center," provides contact  
7 information for the Claims Center, identifies the types of claims to be reported to Willis's Claims  
8 Center (including property claims), and identifies the types of claims that should be reported  
9 directly to the insurance carrier. (*See* Motion at Ex. B.) Further, page 3 of the Proposal identifies  
10 Hakkasan's "Service Team and Claim Contact Information" and provides contact information to  
11 Hakkasan for the two individuals—Christine Lawson and John Ritter—in Willis's "Risk Control  
12 & Claims Advocacy" department assigned to Hakkasan's account. (*See id.*)

13 The claims and renewal services provided by Willis as Hakkasan's insurance broker are  
14 also referenced in several sections of the Brokerage Terms. For instance, Section 2.1, in part,  
15 provides:

16 **You must provide us with complete and accurate information**  
17 **regarding your loss experience, risk exposures, and changes in**  
18 **analysis or scope of your risk exposures and any other**  
19 **information reasonably requested by us or insurers.** It is  
20 important that you advise us of any changes in your business  
21 operations that may affect our services or your insurance coverages.  
22 Therefore, **all information which is material to your coverage**  
23 **requirements or which might influence insurers in deciding to**  
24 **accept your business, finalizing the terms to apply and/or the**  
**cost of cover, or deciding to pay a claim, must be disclosed.**  
Failure to make full disclosure of material facts might potentially  
allow insurers to avoid liability for a particular claim or to void the  
policy. This **duty of disclosure applies equally at renewal** or  
modification of your existing coverage and upon placement of new  
lines of coverage.

25 (*See* Motion at Ex. B, Brokerage Terms, p. 5.) (Emphasis added.) This provision expressly advises  
26 Willis's clients, including Hakkasan, that they must furnish Willis with accurate information about  
27 their loss experience because it might need to be provided to an insurer in connection with the  
28 renewal process or when the insurer is "deciding to pay a claim." Willis would not be alerting its

1 clients to this duty of disclosure to Willis with regard to renewals and claims handling if those  
2 services were not within the scope of the services provided under the Brokerage Terms.

3 Similarly, Section 2.7 of the Brokerage Terms states that “[Willis] will inform [Hakkasan]  
4 of the reporting requirements for claims, including where claims should be reported and the method  
5 of reporting to be used, if applicable.” (*Id.*, Brokerage Terms, p. 6.) Lastly, Section 2.17 addresses  
6 Willis’s obligations upon termination of the parties’ agreement and, in part, provides: “Claims and  
7 premium or other adjustments may arise after our relationship ends, and we have no responsibility  
8 to handle these things after our relationship ends. Such items are normally handled by the insurance  
9 broker serving you at the time the claim or adjustment arises.” (*Id.*, Brokerage Terms, p. 7.)

10 Hakkasan’s allegations against Willis in this case concern Willis’s efforts to assist Hakkasan  
11 with both the renewal process (i.e., the procurement of insurance) and reporting its insurance claim  
12 to Sampo. Hakkasan’s business began to be impacted by COVID-19 during the renewal process in  
13 late February/early March 2020. As a result, Willis’s role included both providing Sampo with  
14 accurate information it received from Hakkasan about the impact of COVID-19 to Hakkasan’s  
15 ongoing business operations while Sampo was considering the terms upon which to renew  
16 Hakkasan’s coverage at the end of the month, and eventually submitting the claim to Sampo (as  
17 instructed by Hakkasan). Accordingly, whether characterized as claims handling or renewal  
18 services (i.e., procurement for the next policy year), Hakkasan’s allegations against Willis plainly  
19 arise “out of or in connection with the services provided under [the Brokerage Terms]” and, thus,  
20 the Brokerage Terms’ jury waiver provision is applicable to the claims asserted against Willis in  
21 this case. *See, e.g., Tuxedo Int’l Inc. v. Rosenberg*, 127 Nev. 11, 22, 251 P.3d 690, 697 (2011)  
22 (finding a forum selection clause applicable to the parties’ dispute based on the intent of the parties  
23 discerned through a “thorough and detailed review of the language of th[e] [subject] provision”).

24 **B. Hakkasan’s Claims Against Willis Are Related To The “Procurement Of Insurance”**  
25 **For The 2020-21 Policy Year**

26 Even if the Brokerage Terms apply only to issues regarding the procurement of insurance  
27 (which it plainly does not), Willis’s communications with Sampo regarding the impact of COVID-  
28 19 to Hakkasan’s ongoing business operations fell squarely within the scope of Willis’s

1 procurement services for the 2020-21 policy year. Indeed, Willis was obligated to, and did  
2 following discussion with Hakkasan, disclose to Sompō in early March of 2020 the information it  
3 received from Hakkasan regarding the impact of COVID-19 on Hakkasan’s ongoing business  
4 operations because, at the time, Willis was working on renewing Hakkasan’s property insurance  
5 policy, which was set to expire on March 31, 2020. (*See* Second Declaration of Kristen Garcia,  
6 attached hereto as **Exhibit A** (“Ex. A”), at ¶ 12.) If Willis had not informed Sompō regarding the  
7 impact of COVID-19 on Hakkasan’s ongoing business operations during the renewal process,  
8 Willis could have jeopardized both Hakkasan’s 2020-21 property coverage as well as the claim,  
9 and Sompō could potentially have been able to void the 2020-21 policy once it learned that  
10 Hakkasan had failed to disclose circumstances causing business operation losses that preexisted the  
11 renewal policy. (*Id.*)

12 Ultimately, because the Brokerage Terms—to which Hakkasan agreed by its purchase of  
13 insurance through Willis in April 2019—remained in effect at the time of Willis’s procurement of  
14 insurance for Hakkasan in March of 2020, Hakkasan’s allegations in this case clearly “aris[e] out  
15 of or in connection with the services provided under [the Brokerage Terms].” (Motion at Ex. B,  
16 Brokerage Terms § 1.13.) Accordingly, this Court should reject Hakkasan’s argument that the  
17 Brokerage Terms are inapplicable to its claims against Willis in this case and enforce the Brokerage  
18 Terms’ jury waiver provision, which appears in the sentence immediately following the mandatory  
19 mediation requirement that has already been enforced by this Court, and strike Hakkasan’s jury  
20 demand.

21 **C. Hakkasan’s Assertions That Its General Counsel Was Somehow Deceived Into**  
22 **Accepting The Jury Waiver Provision, Or That He Agreed To The Brokerage Terms**  
23 **Under Duress, Are Factually Inaccurate and Legally Inconsequential**

24 Hakkasan argues it did not “knowingly, voluntarily, and intentionally” agree to the jury  
25 waiver provision in the Brokerage Terms because (1) its General Counsel did not understand that  
26 he could attempt to negotiate the Brokerage Terms without Willis affirmatively presenting that as  
27 an option, (2) the jury waiver provision—which was set forth under a “Dispute Resolution” heading  
28 in a nine-page document and in the same size font as all of the other provisions in the document—

1 was “hidden” from Hakkasan’s General Counsel, (3) Hakkasan was in an “impossible bargaining  
2 position” given the timing of the Proposal even though Hakkasan had been communicating with  
3 Willis about it for several months, and (4) Hakkasan’s General Counsel did not have time to review  
4 the nine-page Brokerage Terms despite the fact that five days elapsed between the time the Proposal  
5 was presented to Hakkasan and when Mr. Roos executed the Order to Bind. These are nothing more  
6 than transparent after-the-fact attempts to avoid the consequences of the jury waiver in this case.

7 Initially, it is important to note that at no time after Willis presented the Brokerage Terms  
8 to Hakkasan **in March of 2019** did Hakkasan object to a single provision in the document. (*See* Ex.  
9 A at ¶ 10.) In fact, Hakkasan and its General Counsel, Mr. Roos, were presented with the *exact*  
10 *same* Brokerage Terms and jury waiver provision a year later, **in March of 2020**, when it renewed  
11 its insurance through Willis and, again, at no time objected to the jury waiver clause. (*Id.* At ¶ 13;  
12 **Exhibits J and K** attached hereto.) Either Hakkasan had no concern about the jury waiver provision  
13 until it was raised by Willis in this case or Hakkasan failed to read the Brokerage Terms at any  
14 point after they were twice presented to Hakkasan (in 2019 **and** 2020). Neither is a valid basis to  
15 invalidate the enforceability of the jury waiver provision.<sup>2</sup>

16 Likewise, Hakkasan’s assertions that the jury waiver provision was not entered into  
17 “knowingly, voluntarily, and intentionally,” are similarly without merit. First, Hakkasan claims it  
18 did not enter into the Brokerage Terms voluntarily because “the [Brokerage Terms] were not  
19 presented to Hakkasan as negotiable” and “modification of the [Brokerage Terms] was not  
20 presented as an option.” (Opposition at p. 11.) The suggestion that Hakkasan’s General Counsel,  
21 Mr. Roos, required Willis to inform him that he could negotiate the Brokerage Terms if he wanted  
22 to do so is non-sensical. Mr. Roos is the General Counsel of “a worldwide hospitality company that  
23 operates a diverse collection of restaurant, nightlife and daylife brands, including seven high-end  
24 establishments located in Las Vegas, Nevada” (Amended Compl. At ¶ 1). He is the epitome of a  
25

26 <sup>2</sup> Hakkasan’s reference to prior versions of the Brokerage Terms is irrelevant to whether Hakkasan  
27 agreed to the jury waiver provision in 2019. If anything, the fact that Hakkasan knew Willis  
28 previously presented its Brokerage Terms with the Proposal further undermines Hakkasan’s claim  
that it was somehow surprised by the timing of Willis’s furnishing of the Brokerage Terms in 2019.

sophisticated insurance purchaser and knew, or should have known, that he could have raised any concerns he had regarding the Brokerage Terms. He simply did not do so.<sup>3</sup>

Second, while the “conspicuousness of the provision” is a factor to consider in determining whether a jury trial waiver was entered into “knowingly, voluntarily, and intentionally,” *see Lowe Enterprises Residential Partners, L.P. v. District Ct. ex rel. Cty. Of Clark*, 118 Nev. 92, 101, 40 P.3d 405, 410-11 (2002), contrary to Hakkasan’s assertion, the jury waiver provision at issue in this case is sufficiently conspicuous to be enforceable.<sup>4</sup> The jury waiver language in the Brokerage Terms was neither “hidden” nor “buried . . . deep within multiple layers of fine print” as suggested by Hakkasan. (*See* Opposition at pp. 12, 14.) On the contrary, the jury waiver provision appeared

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<sup>3</sup> The only Nevada case cited by Hakkasan for its suggestion that a jury waiver provision must be made the subject of negotiation between the parties for it to be enforceable is *Zi Beauty, Inc. v. General Growth Properties, Inc.*, No. A-16-744558-B (Nev. D. Ct. Mar. 15, 2018), an unpublished District Court Order which declined to enforce a jury waiver provision for several reasons, including because the “sentence is found at the end of a non-descript paragraph with no heading on page 26 of a 31-page lease. Each full page in the lease contains approximately 80 single-spaced lines of small font text.” *Id.* at p. 3. The cases cited by Hakkasan from other jurisdictions bear absolutely no resemblance to the facts or law at issue here. *See Lenoir v. Fred’s Stores of Tennessee, Inc.*, No. 1:15CV214-SA-DAS, 2016 WL 3265451, at \*2 (N.D. Miss. June 14, 2016) (declining to enforce a jury waiver provision where there was a “gross disparity in bargaining power” between a pharmacy technician employee and her “large corporate entity” employer and where the provision at issue was “laid out unilaterally in an employee handbook” that the plaintiff signed months after her employment started); *Dreiling v. Peugeot Motors of America, Inc.*, 539 F. Supp. 402, 403 (D. Colo. 1982) (finding jury waiver provision invalid by applying an entirely different legal standard—that “courts will indulge every reasonable presumption against waiver”—than the “presumptively valid” standard applicable under Nevada law).

<sup>4</sup> Hakkasan cites several cases to support its argument that Willis’s jury waiver language is not conspicuous enough to be enforceable. However, those cases, all of which found the subject jury waiver provisions enforceable, were decided on several factors, did not articulate any requirement as to how jury waiver provisions must be presented, and, in most instances, did not involve jury waiver language that appeared in a materially-different way than it is set forth in the Brokerage Terms. *See Club Vista Fin. Services, L.L.C. v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 128 Nev. 889, 381 P.3d 602 (2012) (finding jury waiver enforceable due to a multitude of factors, including the location and font of the jury waiver language and because the party challenging the waiver was a “sophisticated businessman . . . [who] was represented by counsel and had substantial bargaining power”); *Casey v. Third Judicial Dist. Court*, 281 P.3d 1160 (2009) (finding jury waiver enforceable due to several factors, including the conspicuousness of the language, which was “not buried in the agreement” and was in bolded font that was “the same size as the font found in the rest of the document,” and the party’s “substantial bargaining power”); *Malan Realty Investors, Inc. v. Harris*, 953 S.W.2d 624, 627-28 (Mo. 1997) (holding jury waiver provision enforceable where it was “was not buried in the lease,” the “print size of the waiver provision was the same size as that found throughout the lease,” there was no evidence of a bargaining disadvantage, and the signatory was represented by counsel); *see also The Mall, Inc. v. Robbins*, 412 So.2d 1197, 1199 (Ala. 1982) (holding that a conspicuous jury waiver provision was inapplicable because the controversy “arose outside and beyond the operative effect of the lease”).

1 exactly where one would expect it to be, under the “Dispute Resolution” heading in the document.  
2 It was also not concealed in any respect; it appeared in the same font as the rest of the provisions  
3 in the nine-page Brokerage Terms document and in the sentence immediately following the  
4 mandatory mediation provision that has already been enforced by this Court. The cases cited by  
5 Hakkasan finding jury waiver provisions unenforceable are easily distinguishable. *See Zi Beauty*,  
6 No. A-16-744558-B, at 3 (unpublished District Court Order declining to enforce jury waiver where  
7 the “sentence is found at the end of a non-descript paragraph with no heading on page 26 of a 31-  
8 page lease. Each full page in the lease contains approximately 80 single-spaced lines of small font  
9 text”); *Nat’l Equip. Rental, Ltd. V. Hendrix*, 565 F.2d 255, 258 (2d Cir. 1977) (applying a different  
10 standard—a “presumption exists against [jury] waiver”—than the “presumptively valid” standard  
11 applicable in Nevada and finding jury waiver unenforceable where it was presented to a “layman”  
12 who had a “gross inequality in bargaining power” in a clause that was “set deeply and  
13 inconspicuously in the contract”); *Dreiling*, 539 F. Supp. At 403 (applying different legal  
14 standard—that “courts will indulge every reasonable presumption against waiver”—than the  
15 “presumptively valid” standard applicable in Nevada).

16 Third, Hakkasan’s suggestion that Willis put it in a precarious bargaining position by  
17 presenting the Proposal and Brokerage Terms at the eleventh hour is a serious mischaracterization  
18 of the facts. As an initial matter, insurance decisions are typically made quickly due to the nature  
19 of the insurance industry. (*See* Ex. A at ¶ 11.) Insurers’ quotes are usually valid for short periods  
20 of time because they are dependent on rapidly changing events and market conditions. (*Id.*) For  
21 example, the terms of an insurance quote can be rendered stale and meaningless in a moment’s  
22 notice by a natural disaster, terrorist attack, or some other catastrophic event.

23 Moreover, Willis and Hakkasan had been conferring about Hakkasan’s 2020-21 insurance  
24 renewal **for months** by the time their final meeting took place on March 29, 2019. (Ex. A at ¶¶ 3-  
25 9.) For example:

- 26 • On January 2, 2019, Willis sent Mr. Roos and another Hakkasan employee,  
27 Veronica Stiles, an email asking them to “take a look at this initial overview on  
28 coverages, loss scenarios, pricing, etc.” and they then had a meeting two days later,  
on January 4, 2019 (*Id.* At ¶ 3; **Exhibits B and C** attached hereto);

- On January 14, 2019, Willis sent Hakkasan various coverage recommendations for the upcoming policy year and Mr. Roos responded: “This is a great start and really appreciate all of the work that went into this project from the Willis team and Veronica!” (*Id.* At ¶ 4; **Exhibit D** attached hereto);
- Chuck Halsey, an Executive Vice President with Willis, met with Mr. Roos and Ms. Stiles for breakfast on January 30, 2019 (*Id.* At ¶ 5; **Exhibit E** attached hereto);
- On January 31, 2019, Mr. Roos and Ms. Stiles attended an in-person meeting with a team of five Willis employees for an “April 1, 2019 Renewal Strategy Meeting.” (*Id.* At ¶ 6; **Exhibit F** attached hereto);
- On February 1, 2019, Willis sent Hakkasan information on its “year over year premiums” (*Id.* At ¶ 7; **Exhibit G** attached hereto);
- On March 6, 2019, Willis sent Hakkasan a document entitled “Hakkasan Insurance Renewals 4/1/19 Overview” and Mr. Halsey again met with the Hakkasan team that day (*Id.* at ¶ 8; **Exhibit H** attached hereto);
- Immediately following Mr. Halsey’s March 6, 2019 meeting with Hakkasan, he reported back to the Willis team that Hakkasan had decided to move its property insurance policy from Travelers Insurance Company to Sompco for the April 1, 2019 renewal (*Id.* at ¶ 9; **Exhibit I** attached hereto).

Based on the above sampling of the parties’ communications, it is erroneous for Hakkasan to suggest that Willis presented insurance options at the last-minute such that Hakkasan was put “into a position of vulnerability” where it “had no choice but to renew its existing policies through Willis.” (Opposition at p. 13.) The truth is that Hakkasan had decided to place its property insurance with Sompco as of March 6, 2019, after months of discussions with Willis, and the March 29, 2019 meeting was a final meeting to discuss and confirm Hakkasan’s insurance portfolio that had already been thoroughly vetted.<sup>5</sup>

<sup>5</sup> The cases relied upon by Hakkasan for its argument that it lacked bargaining power vis-à-vis Willis have no relevance to this case. *See National Equip. Rental*, 565 F.2d 255 at 258 (applying an entirely different standard—a “presumption exists against [jury] waiver”—than the “presumptively valid” standard applicable in Nevada and finding jury waiver unenforceable where it was presented to a “layman,” who had a “gross inequality in bargaining power,” in a clause that was “set deeply and inconspicuously in the contract”); *Lenoir*, 2016 WL 3265451, at \*2 (declining to enforce a jury waiver provision where there was a “gross disparity in bargaining power” between a pharmacy technician employee and her “large corporate entity” employer and where the provision at issue was “laid out unilaterally in an employee handbook” that the plaintiff signed months after her employment started); *Dreiling*, 539 F. Supp. at 403 (finding jury waiver invalid by applying completely different legal standard—that “courts will indulge every reasonable presumption against waiver”—than the “presumptively valid” standard applicable under Nevada law).



1 Hakkasan's assertion that Mr. Roos did not have sufficient time to review the Brokerage  
2 Terms because "Willis had submitted the Proposal just one business day before Hakkasan's existing  
3 policy coverage were to expire" is another distortion of the facts. (*See* Opposition at p. 13.) As  
4 noted above, Mr. Roos was not presented with the information in the Proposal for the first time on  
5 March 29, 2019, such that he was scrambling to determine Hakkasan's coverages at the last-minute  
6 and could not have been expected to review the Brokerage Terms as suggested by Hakkasan.  
7 Moreover, Mr. Roos did not execute the Order to Bind until April 3, 2019, five days after the  
8 meeting with Willis (*see* Motion at Ex. C), and therefore had plenty of time to review the nine-page  
9 Brokerage Terms document. Hakkasan's suggestion that Mr. Roos did not review the Brokerage  
10 Terms because of a supposed time crunch rings especially hollow given that he showed no interest  
11 in questioning the Brokerage Terms when the same terms were presented to him for the 2020-21  
12 policy renewal year. Of course, if Mr. Roos truly had any concern about the jury waiver provision  
13 (or any other provision) he could have raised that concern at any time after the insurance went into  
14 effect in an effort to amend the Brokerage Terms or to have changes made to the Brokerage Terms  
15 the following year. Mr. Roos did neither and this clearly demonstrates that Hakkasan had no  
16 objection to the jury waiver provision.<sup>6</sup>

17 Accordingly, and for the reasons set forth in Willis's Motion, Hakkasan agreed to the jury  
18 waiver provision in the Brokerage Terms "knowingly, voluntarily, and intentionally" and its jury  
19 demand as to its claims against Willis should be stricken by this Court.

20 **D. Hakkasan Fails to Assert That Any Grounds Exist For The Revocation Of The**  
21 **Arbitration Provision**

22 Arbitration agreements are "valid, enforceable and irrevocable except . . . upon a ground  
23 that exists at law or in equity for revocation of a contract." NRS 38.219(1). Despite this clear  
24 standard, Hakkasan does not even attempt to argue that grounds exist to revoke the Brokerage  
25 Terms agreement as it relates to the arbitration requirement in the event the jury waiver provision  
26 is found to be unenforceable. (*See* Opposition at pp. 14-16.) Instead, Hakkasan argues, as it does

27 \_\_\_\_\_  
28 <sup>6</sup> It should also be noted that the jury waiver provision is reciprocal and not a unilateral constraint  
placed solely on Hakkasan.

with regard to the jury waiver provision, that the Brokerage Terms are inapplicable to Hakkasan's claims in this case because the claims do not arise out of the services provided by Willis pursuant to the Brokerage Terms. This argument fails for the same reasons it was previously unsuccessful when Hakkasan attempted to avoid the Brokerage Terms' mandatory mediation provision and for the reasons set forth in Sections A and B above. Given Nevada's "strong public policy favoring contractual provisions requiring arbitration as a dispute resolution mechanism" and the fact that "arbitration clauses are to be construed liberally in favor of arbitration," *see Phillips v. Parker*, 106 Nev. 415, 417, 794 P.2d 716, 718 (1990) (citing *Exber, Inc. v. Sletten Constr. Co.*, 92 Nev. 721, 730, 558 P.2d 517, 522 (1976)), there can be no question that the Brokerage Terms' arbitration provision is enforceable here.

### CONCLUSION

For the foregoing reasons, and those set forth in Willis's initial memorandum, Hakkasan's demand for jury trial should be stricken by the Court or, in the alternative, this case should be compelled to arbitration.

DATED this 8th day of March, 2021.

/s/ Patrick J. Reilly

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**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rule of Civil Procedure 5(b), I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing **REPLY MEMORANDUM IN SUPPORT OF WILLIS'S MOTION TO STRIKE PLAINTIFF'S JURY DEMAND OR, IN THE ALTERNATIVE, TO COMPEL ARBITRATION** was served by submitting electronically for filing and/or service with the Eighth Judicial District Court's Odyssey eFileNV Electronic Filing system and serving all parties with an email address on record, as indicated below, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. on the 8th day of March, 2021, to the addresses shown below:

James E. Whitmire, III  
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Athena Dalton  
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dtodd@fgppr.com

*Attorneys for Plaintiff Hakkasan USA, Inc.*

*Attorneys for Sompo International Holdings  
Ltd. and Endurance American Specialty  
Insurance Company*

/s/ Mary Barnes  
An employee of Brownstein Hyatt Farber Schreck, LLP

A

1 **DECL**

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[zachary.berk@saul.com](mailto:zachary.berk@saul.com)

*Attorneys for Defendants Willis of Arizona, Inc.  
and Willis Towers Watson Insurance Services West, Inc.*

15 **DISTRICT COURT**  
16 **CLARK COUNTY, NEVADA**

17 HAKKASAN USA, INC., a Delaware  
18 Corporation;

19 Plaintiff,

20 vs.

21 ENDURANCE AMERICAN SPECIALTY  
22 INSURANCE COMPANY, a Delaware  
23 Corporation;  
24 SOMPO INTERNATIONAL HOLDINGS,  
25 LTD., a Bermuda Corporation;  
26 WILLIS OF ARIZONA, INC., an Arizona  
27 Corporation; and WILLIS TOWERS WATSON  
28 INSURANCE SERVICES WEST, INC., a  
California Corporation

Defendants.

CASE NO: A-20-816145-C

**SECOND DECLARATION OF**  
**KRISTEN GARCIA IN SUPPORT OF**  
**THE WILLIS DEFENDANTS'**  
**MOTION TO STRIKE JURY DEMAND**  
**OR, IN THE ALTERNATIVE, TO**  
**COMPEL ARBITRATION**

1 I, Kristen Garcia, CIS, CISR, declare as follows:

2 1. I am an Account Executive for Willis Towers Watson Insurance Services West,  
3 Inc. (formerly known as Willis of Arizona, Inc.) (“Willis”) and have worked in that capacity since  
4 June of 2019. In March and April of 2019, I was employed by Willis as a Senior Client Manager.  
5 I have been employed by Willis for twenty-four years and have been a licensed insurance agent  
6 since 2006. I make this declaration in support of the Motion to Strike Plaintiff’s Jury Demand As  
7 To Its Claims Against The Willis Defendants Or, In The Alternative, To Compel Arbitration and  
8 to place before the Court documents necessary for the determination of the motion. The facts  
9 stated herein are based on my personal knowledge.  
10

11 2. I began working on the Hakkasan account for Willis at the end of 2014. Over the  
12 years, I had frequent communications with Hakkasan, including with Veronica Stiles, who was a  
13 Risk Manager for Hakkasan, and its General Counsel, Brandon Roos. In the months leading up to  
14 Hakkasan’s policy renewals, I would typically communicate with Ms. Stiles dozens of times a  
15 week, by email or phone, and also have contact with Mr. Roos a few times a month after he took  
16 over the lead role for Hakkasan with regard to its insurance portfolio. I would also attend the  
17 three in-person renewal meetings that the Willis team typically had with Hakkasan each year.  
18

19 3. Willis began communicating with Hakkasan about its 2019-20 insurance renewals  
20 no later than early January 2019. By way of example, on January 2, 2019, Willis Executive Vice  
21 President, Chuck Halsey, sent Mr. Roos and Ms. Stiles an email, to which I was cc’d, asking them  
22 to “take a look at this initial overview on coverages, loss scenarios, pricing, etc.” and they then  
23 had a meeting two days later, on January 4, 2019. True and accurate copies of Mr. Halsey’s  
24 January 2, 2019 email and January 4, 2019 email concerning the meeting are attached hereto as  
25 **Exhibit B** and **Exhibit C**, respectively.  
26  
27  
28

1           4.       On January 14, 2019, Willis sent Hakkasan various coverage recommendations for  
2 the upcoming policy year and Mr. Roos responded “This is a great start and really appreciate all  
3 of the work that went into this project from the Willis team and Veronica!” A true and accurate  
4 copy of the relevant email chain dated January 15, 2019 is attached hereto as **Exhibit D**.

5  
6           5.       Mr. Halsey met with Mr. Roos and Ms. Stiles for breakfast on January 30, 2019. A  
7 true and accurate copy of an email dated January 30, 2019 concerning the breakfast meeting is  
8 attached hereto as **Exhibit E**.

9  
10          6.       On January 31, 2019, Mr. Roos and Ms. Stiles attended an in-person meeting with  
11 a team of five Willis employees, including me, for an “April 1, 2019 Renewal Strategy Meeting.”  
12 A true and accurate copy of the January 31, 2019 Meeting Agenda is attached hereto as **Exhibit**  
13 **F**.

14          7.       On February 1, 2019, I sent Ms. Stiles an email with information on its “year over  
15 year premiums.” A true and accurate copy of my February 1, 2019 email to Ms. Stiles is attached  
16 hereto as **Exhibit G**.

17          8.       On March 6, 2019, Mr. Halsey sent Hakkasan a document entitled “Hakkasan  
18 Insurance Renewals 4/1/19 Overview” and Mr. Halsey again met with the Hakkasan team that  
19 day. A true and accurate copy of Mr. Halsey’s March 6, 2019 email to Ms. Stiles and the  
20 corresponding attachment are attached hereto as **Exhibit H**.

21  
22          9.       Following Mr. Halsey’s March 6, 2019 meeting with Hakkasan, he reported back  
23 to the Willis team by email that Hakkasan had decided to move its property insurance policy from  
24 Travelers Insurance Company to Sampo for the April 1, 2019 renewal. A true and accurate copy  
25 of the aforementioned March 6, 2019 email is attached hereto as **Exhibit I**.

26          10.       Willis’s Brokerage Terms, Conditions & Disclosures (the “Brokerage Terms”) was  
27 provided to Hakkasan with the Proposal during an in-person meeting on March 29, 2019, which I  
28



1 attended, and I sent it again that same day by email after the meeting concluded. At no time  
2 thereafter did Hakkasan object to a single provision in the Brokerage Terms document.

3 11. There was nothing unusual about the fact that we had a final meeting with  
4 Hakkasan about its 2019-20 insurance renewals shortly before the date that its existing policies  
5 were set to expire. While extensive planning and work is done in advance, final decisions about  
6 insurance are typically made quickly by the nature of the insurance industry because insurers'  
7 quotes are usually only valid for short periods of time because they are dependent on changing  
8 facts and market conditions.

9  
10 12. In connection with Willis's efforts to renew Willis's property policy with Somp  
11 in 2020, Willis informed Hakkasan in early March 2020 that it had to disclose the impact of  
12 COVID-19 on Hakkasan's ongoing business operations to Somp's underwriter. Willis thereafter  
13 notified Somp's underwriter of the impact of COVID-19 on Hakkasan's ongoing business  
14 operations while it was procuring Hakkasan's next policy because, otherwise, Willis would have  
15 jeopardized both Hakkasan's 2020-21 property coverage and the claim, and Somp could  
16 potentially have been able to void the 2020-21 policy once it learned that Hakkasan had  
17 undisclosed circumstances causing business operation losses that preexisted the new policy.

18  
19 13. On March 17, 2020, in connection with Hakkasan's 2020-21 auto and general  
20 liability insurance renewals, I again emailed Mr. Roos and Ms. Stiles a copy of Willis's  
21 Brokerage Terms, which contained the same jury waiver provision that was present in the  
22 Brokerage Terms I provided in March 2019. A true and accurate copy of my March 17, 2020  
23 email transmitting the Brokerage Terms to Hakkasan with the corresponding Brokerage Terms is  
24 attached hereto as **Exhibit J**. I also sent a letter to Mr. Roos concerning Hakkasan's 2020-21  
25 property insurance renewal on March 30, 2020, which stated that "This proposal is presented in  
26 conjunction with the Brokerage Terms, Conditions & Disclosures for US Property & Casualty  
27  
28

1 Retail Accounts which was previously sent to you.” A true and accurate copy of my March 30,  
2 2020 letter to Mr. Roos is attached hereto as **Exhibit K**.

3 14. Hakkasan proceeded to renew its insurance policies for the 2020-21 policy year  
4 through Willis and never objected to the jury waiver clause in the Brokerage Terms.

5  
6 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing  
7 is true and correct.  
8

9 EXECUTED on March 8th, 2021, in Scottsdale, Arizona.

10  
11   
12 KRISTEN GARCIA

**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rule of Civil Procedure 5(b), and Section IV of the District of Nevada Electronic Filing Procedures, I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing **SECOND DECLARATION OF KRISTEN GARCIA IN SUPPORT OF THE WILLIS DEFENDANTS' MOTION TO STRIKE JURY DEMAND OR, IN THE ALTERNATIVE, TO COMPEL ARBITRATION** was served via electronic service on the 8th day of March, 2021, to the addresses shown below:

Danielle L. Gilmore (admitted *pro hac vice*)  
daniellegilmore@quinnemanuel.com  
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Allison Huebert (admitted *pro hac vice*)  
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10100 W. Charleston Blvd. #250  
Las Vegas, Nevada 89135

*Attorneys for Plaintiff Hakkasan USA, Inc.*

/s/

\_\_\_\_\_  
An employee of Brownstein Hyatt Farber Schreck, LLP

**B**

Message

**From:** Halsey, Chuck [chuck.halsey@willistowerswatson.com]  
**Sent:** 1/2/2019 7:46:20 PM  
**To:** Veronica Stiles (vstiles@hakkasan.com) [vstiles@hakkasan.com]; Brandon Roos [broos@hakkasan.com]  
**CC:** Garcia, Kristen [kristen.garcia@willistowerswatson.com]; Needham, Charles [charles.needham@willistowerswatson.com]  
**Subject:** FW: Hakkasan Update  
**Attachments:** Loss Scenarios and Quote comparison.xlsx

Veronica and Brandon, Happy New Year.

I sent you an earlier email about meeting on Friday to go over coverages to consider for Hakkasan. We are working in the marketplace now to get this moving along. Please take a look at this initial overview on coverages, loss scenarios, pricing, etc. Click to open Loss Scenarios and quote comparison for more information.

Are there more loss scenarios we need to add to this attachment/gap analysis for your consideration/overview? Still need input from K&R and Cyber if you want to include in this analysis.

I sent you an earlier email on meeting on Friday and determine our next steps on placing of coverage, a visit with underwriters, a visit by Charles Needham here in LV, etc? Can I see you in your offices on Friday for a meeting around 11m?

Thanks and call me anytime to discuss,

Charles Halsey  
Executive VP

Willis Towers Watson  
702-432-7111 (w)  
702-496-2833 (c)  
[Chuck.Halsey@WillisTowersWatson.com](mailto:Chuck.Halsey@WillisTowersWatson.com)

---

**From:** Needham, Charles  
**Sent:** Wednesday, December 19, 2018 9:32 AM  
**To:** Halsey, Chuck; Garcia, Kristen  
**Cc:** Peters, Wendy; McCane, Erin  
**Subject:** RE: Hakkasan Update

Hi Chuck and Kristen,

See the scenarios on the first tab. I'm sure we'll need to continue editing this – but I wanted to send it over for you to look at. Always happy to discuss the covers.

It's important to note that Active Shooter is not terrorism cover per se because these policies do not make a distinction as to the political/ideological motives of the assailant: active shooter policies are triggered by the intent (which is to harm/kill). And since Active Shooter responds as primary insurance, it wouldn't matter if the attack was eventually deemed a certified terrorism event by the government. Just wanted to point this out as we labeled 'certified acts' as covered.

We can keep adding on scenarios, but I think this covers a broad range.

The second tab will continue to be updated as indications come in. I was promised full indications from New Paradigm today (I've been pushing). And Hiscox UK is working on the global loss of revenue indications.

More soon,  
Charlie

**Charles Needham**  
Associate  
Financial Solutions - Terrorism & Political Violence Practice

**Willis Towers Watson**  
Willis North America | 200 Liberty Street | New York, NY 10281  
T – 212 915 8018  
[charles.needham@willistowerswatson.com](mailto:charles.needham@willistowerswatson.com)  
[willistowerswatson.com](http://willistowerswatson.com)

C



Message

**From:** Halsey, Chuck [chuck.halsey@willistowerswatson.com]  
**Sent:** 1/4/2019 11:36:06 AM  
**To:** Needham, Charles [charles.needham@willistowerswatson.com]; Garcia, Kristen [kristen.garcia@willistowerswatson.com]  
**Subject:** FW: Hakkasan Update  
**Attachments:** Loss Scenarios and Quote comparison.xlsx; image001.gif

Charles, good morning.

I am meeting with Hakkasan today at around 11:30am to go over this information. Can I ring you in, not a conference call, to discuss where we are with the overall program? Best number.

This is just a discussion with some details they have questions on and then we will finalize the proposal in the next few weeks.

Thanks,

**Charles Halsey**  
Executive VP

**Willis Towers Watson**  
702-432-7111 (w)  
702-496-2833 (c)  
[Chuck.Halsey@WillisTowersWatson.com](mailto:Chuck.Halsey@WillisTowersWatson.com)

---

**From:** Needham, Charles  
**Sent:** Wednesday, December 19, 2018 9:32 AM  
**To:** Halsey, Chuck; Garcia, Kristen  
**Cc:** Peters, Wendy; McCane, Erin  
**Subject:** RE: Hakkasan Update

Hi Chuck and Kristen,

See the scenarios on the first tab. I'm sure we'll need to continue editing this -- but I wanted to send it over for you to look at. Always happy to discuss the covers.

It's important to note that Active Shooter is not terrorism cover per se because these policies do not make a distinction as to the political/ideological motives of the assailant: active shooter policies are triggered by the intent (which is to harm/kill). And since Active Shooter responds as primary insurance, it wouldn't matter if the attack was eventually deemed a certified terrorism event by the government. Just wanted to point this out as we labeled 'certified acts' as covered.

We can keep adding on scenarios, but I think this covers a broad range.

The second tab will continue to be updated as indications come in. I was promised full indications from New Paradigm today (I've been pushing). And Hiscox UK is working on the global loss of revenue indications.

More soon,  
Charlie

**Charles Needham**  
Associate

**D**

Message

**From:** Halsey, Chuck [chuck.halsey@willistowerswatson.com]  
**Sent:** 1/15/2019 12:26:57 PM  
**To:** Brandon Roos [broos@hakkasan.com]; Veronica Stiles [vstiles@hakkasan.com]  
**CC:** Garcia, Kristen [kristen.garcia@willistowerswatson.com]; Needham, Charles [charles.needham@willistowerswatson.com]  
**Subject:** RE: Updated Hakkasan doc & Recommendations  
**Attachments:** image001.gif

If you think good to go, okay for us, let us know if you need anything.

Charles Halsey  
Executive VP

Willis Towers Watson  
702-432-7111 (w)  
702-496-2833 (c)  
[Chuck.Halsey@WillisTowersWatson.com](mailto:Chuck.Halsey@WillisTowersWatson.com)

---

**From:** Brandon Roos [mailto:broos@hakkasan.com]  
**Sent:** Tuesday, January 15, 2019 9:48 AM  
**To:** Halsey, Chuck; Veronica Stiles  
**Cc:** Garcia, Kristen; Needham, Charles  
**Subject:** RE: Updated Hakkasan doc & Recommendations

I think this is ready for internal review at this point. I will provide additional comments if changes need to be made for BOD review. This is a great start and really appreciate all of the work that went into this project from the Willis team and Veronica!

Brandon Roos  
General Counsel

---

HAKKASAN \* GROUP

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NV 89118  
Office 00 (1) 702 212 8804  
Direct 00 (1) 702 247 8968  
Cell 00 (1) 702 370 0782  
Fax 00 (1) 702 964 1424  
[broos@hakkasan.com](mailto:broos@hakkasan.com)  
[hakkasongroup.com](http://hakkasongroup.com)

---

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---

**From:** Halsey, Chuck <Chuck.Halsey@WillisTowersWatson.com>  
**Sent:** Tuesday, January 15, 2019 9:46 AM  
**To:** Brandon Roos <broos@hakkasan.com>; Veronica Stiles <vstiles@hakkasan.com>  
**Cc:** Garcia, Kristen <kristen.garcia@WillisTowersWatson.com>; Needham, Charles

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P0253

<Charles.Needham@WillisTowersWatson.com>

**Subject:** RE: Updated Hakkasan doc & Recommendations

We need to go over this with you to get your input on what is best for the BOD to review. Simplify or more?

The GAP analysis with loss scenarios is good for review and the last attachment with recommendations on the best programs to consider should be looked at.

We will complete a formal proposal for these placements and we can put this together for you now; it will include quotes on the proposed programs. Not certain the Board will want to look at the specific quotes or a high-level overview on these programs?

Can we talk later today on this and go over on what might be best for the BOD to have in hand?

**Charles Halsey**  
Executive VP

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702-432-7111 (w)  
702-496-2833 (c)  
[Chuck.Halsey@WillisTowersWatson.com](mailto:Chuck.Halsey@WillisTowersWatson.com)

---

**From:** Brandon Roos [<mailto:broos@hakkasan.com>]  
**Sent:** Tuesday, January 15, 2019 8:53 AM  
**To:** Halsey, Chuck; Veronica Stiles  
**Cc:** Garcia, Kristen; Needham, Charles  
**Subject:** RE: Updated Hakkasan doc & Recommendations

Is this in a format that is ready for distribution to our BOD?

Brandon Roos  
General Counsel

---

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[hakkasangroup.com](http://hakkasangroup.com)

---

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---

---

**From:** Halsey, Chuck <[Chuck.Halsey@WillisTowersWatson.com](mailto:Chuck.Halsey@WillisTowersWatson.com)>  
**Sent:** Monday, January 14, 2019 10:45 AM  
**To:** Veronica Stiles <[vstiles@hakkasan.com](mailto:vstiles@hakkasan.com)>; Brandon Roos <[broos@hakkasan.com](mailto:broos@hakkasan.com)>  
**Cc:** Garcia, Kristen <[kristen.garcia@WillisTowersWatson.com](mailto:kristen.garcia@WillisTowersWatson.com)>; Needham, Charles

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P0254

<[Charles.Needham@WillisTowersWatson.com](mailto:Charles.Needham@WillisTowersWatson.com)>

**Subject:** FW: Updated Hakkasan doc & Recommendations

Here are the coverage documents to go over. Just leaving my house so will stop by after my other meeting at 11am.

Last attachment is our recommendations on what to consider.

See you shortly.

**Charles Halsey**  
Executive VP

**Willis Towers Watson**  
702-432-7111 (w)  
702-496-2833 (c)  
[Chuck.Halsey@WillisTowersWatson.com](mailto:Chuck.Halsey@WillisTowersWatson.com)

---

**From:** Needham, Charles  
**Sent:** Friday, January 11, 2019 9:46 AM  
**To:** Garcia, Kristen  
**Cc:** Halsey, Chuck; Peters, Wendy; McCane, Erin  
**Subject:** Updated Hakkasan doc & Recommendations

Hi team,

Please see the attached. I did my best to add in some of things to the Loss Scenario tab (including some definitions that we discussed on the call). I took out a couple rows that the team found redundant (ie. Workplace violence).

See the last tab for the recommendations. Caution that we can't obtain a global Active Assailant/Malicious Attack program without physical damage values. The Loss of Attraction program recommendation is Loss of Attraction resulting from a terrorist attack -- with the values used for writing being the SOV of global revenue.

I hope this helps -- I hope that if they are interested we can get more quotes closer to their interests (ie. Global Threat cover).

Kind regards,  
Charlie

**Charles Needham**  
Associate  
Financial Solutions - Terrorism & Political Violence Practice

**Willis Towers Watson**  
Willis North America | 200 Liberty Street | New York, NY 10281  
T - 212 915 8018  
[charles.needham@willistowerswatson.com](mailto:charles.needham@willistowerswatson.com)  
[willistowerswatson.com](http://willistowerswatson.com)

---

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**E**

Message

**From:** Halsey, Chuck [chuck.halsey@willistowerswatson.com]  
**Sent:** 1/30/2019 1:38:59 PM  
**To:** Garcia, Kristen [kristen.garcia@willistowerswatson.com]  
**CC:** Veronica Stiles (vstiles@hakkasan.com) [vstiles@hakkasan.com]  
**Subject:** RE: Hakkasan 4/1 Property Renewal

Yes, eating at Egg place today with Brandon and Veronica. And tomorrow!

Yes, on breakfast also at 10am with you, three times in two days!! Yummy!!

**Chuck Halsey**  
Executive VP

**Willis Towers Watson**  
1980 Festival Plaza Drive, #300  
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702-432-7111 (w)  
702-496-2833 (c)  
[Chuck.Halsey@WillisTowersWatson.com](mailto:Chuck.Halsey@WillisTowersWatson.com)

---

**From:** Garcia, Kristen  
**Sent:** Wednesday, January 30, 2019 11:32 AM  
**To:** Halsey, Chuck; Geraghty, Kevin  
**Subject:** RE: Hakkasan 4/1 Property Renewal

Must be all the protein from the egg place. Speaking of, want to meet up for breakfast before the meeting tomorrow?  
Maybe 10am?

**Kristen K. Garcia, CIC, CISR**  
Senior Client Manager

**Willis Towers Watson**  
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F +1 602 787 8040  
[kristen.garcia@willistowerswatson.com](mailto:kristen.garcia@willistowerswatson.com)  
<http://willistowerswatson.com>

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**F**

# Hakkasan – Willis Towers Watson

*January 31, 2019 Meeting Agenda*

*April 1, 2019 Renewal Strategy Meeting*

## Attendees:

Brandon Roos- General Counsel  
Veronica Stiles – Corporate Risk Manager  
Kim Schioldan- VP of Security- Compliance & Risk Mgt.  
Chuck Halsey - WTW – Client Advocate  
Kristen Garcia - WTW– Senior Client Manager  
Kevin Geraghty – WTW – Senior Vice President, Western Property Region (Phone)  
Terry Crull – WTW – Senior Vice President, Senior Casualty Broker (Phone)

## Updates on Programs

### Property

- 1- Introduction to Kevin Geraghty, Property Resource
- 2- State of Property marketplace
- 3- Exposure Comparison 2018 vs. 2019
- 4- Property Claims

### Casualty

- 1- Update on Casualty markets
- 2- Exposure Comparison 2018 vs. 2019
- 3- General Liability Claims

G

Message

**From:** Garcia, Kristen [kristen.garcia@willistowerswatson.com]  
**Sent:** 2/1/2019 4:21:59 PM  
**To:** Veronica Stiles [vstiles@hakkasan.com]  
**Subject:** FW: Year over year premiums  
**Attachments:** risk mitigation chart.docx; 2018 quotes received & declinations.pdf

Veronica,

Here are the 2018-2019 premiums:

Property – Travelers: \$404,822  
General Liability – Navigators: \$869,762.49  
Umbrella/Excess: \$574,121  
Workers' Comp – Employers/Meadowbrook/HEMIC: \$1,270,310 – Did you want to include the Hawaii WC or no?  
Without Hawaii it is \$1,234,426.

2016 Hawaii WC premium: \$42,663 after audit  
2017 Hawaii WC premium: \$115,682 (audit in process)

Thank you.

**Kristen K. Garcia, CIC, CISR**  
Senior Client Manager

**Willis Towers Watson**  
Willis of Arizona, Inc. | 16220 N. Scottsdale Rd, Suite 600 | Scottsdale, AZ 85254

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M +1 602 300 7992  
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[kristen.garcia@willistowerswatson.com](mailto:kristen.garcia@willistowerswatson.com)  
<http://willistowerswatson.com>

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**From:** Halsey, Chuck  
**Sent:** Friday, February 01, 2019 1:22 PM  
**To:** Garcia, Kristen  
**Subject:** FW: Year over year premiums

**Chuck Halsey**  
Executive VP

**Willis Towers Watson**  
1980 Festival Plaza Drive, #300  
Las Vegas, Nevada 89135  
702-432-7111 (w)  
702-496-2833 (c)  
[Chuck.Halsey@WillisTowersWatson.com](mailto:Chuck.Halsey@WillisTowersWatson.com)

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**From:** Veronica Stiles [mailto:vstiles@hakkasan.com]  
**Sent:** Friday, February 01, 2019 12:15 PM

CTRL00003068

P0262

**To:** Halsey, Chuck

**Subject:** Year over year premiums

Please go over this with me

Veronica Stiles  
Corporate Risk Manager

---

HAKKASAN \* GROUP

6385 S RAINBOW BLVD  
SUITE 800  
LAS VEGAS  
NV 89118  
T 00 (1) 702 212 8804  
M 00 (1) 702 906 9448  
[vsfiles@hakkasan.com](mailto:vsfiles@hakkasan.com)  
[hakkasangroup.com](http://hakkasangroup.com)

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or disclose its contents.

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CTRL00003068

P0263

H

Message

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**From:** Halsey, Chuck [chuck.halsey@willistowerswatson.com]  
**Sent:** 3/6/2019 1:11:31 PM  
**To:** Veronica Stiles (vstiles@hakkasan.com) [vstiles@hakkasan.com]; Garcia, Kristen [kristen.garcia@willistowerswatson.com]  
**Subject:** Review  
**Attachments:** HAKKASAN INSURANCE RENEWALS.docx 1.docx

Attached.

**Chuck Halsey**  
Executive VP

**Willis Towers Watson**  
1980 Festival Plaza Drive, #300  
Las Vegas, Nevada 89135  
702-432-7111 (w)  
702-496-2833 (c)  
[Chuck.Halsey@WillisTowersWatson.com](mailto:Chuck.Halsey@WillisTowersWatson.com).

CTRL00003860

P0265

## **HAKKASAN INSURANCE RENEWALS**

### **4/1/19 OVERVIEW**

#### **1- Primary General Liability**

- a. Review of proposal information.
- b. Quote received from Navigators is unacceptable, still working on it.
- c. Several markets have declined due to concentration of patrons at a venue, class of business, and aftermath of the 10/1 shooting. Fear.
- d. Other markets still considering and quotes expected in 7-10 days.

#### **2- Umbrella/Excess Liability**

- a. We have gone to market and are looking to reduce/better the primary GL proposal to reduce cost of the program.

#### **3- Property Program**

- a. Review of proposal information.
- b. Travelers has not quoted yet. They are looking for rate increase.
- c. Working with other markets; Sompo quoted this morning and their rate is below expiring.

#### **4- Cyber/E&O Programs**

- a. Working with ACE/Chubb as the incumbent
- b. Have approached other markets and expect an answer in 10-12 days.
- c. Beazley may be another option here.

#### **5- D&O/EPLI Programs**

- a. Meeting set with Beazley in London on 3/11 to discuss current status of Hakkasan and future plans.
- b. For worldwide D&O/EPLI Beazley is best option to continue with due to prior acts date, closures of locations and changes in company.
- c. Beazley will price their program post-London meeting and once primary EPLI is quoted.
- d. Expect AIG EPLI program quote in 7-10 days. Concerns are closure of locations and California exposures.
- e. Beazley is an option on the US EPLI program but their appetite is based on status of AIG's renewal offering.



**6- Crime/International/other**

- a. In the market now and will have all completed in 10-12 days.

**7- Worldwide Programs**

- a. We collectively will meet the WTW London team on 3/11.
- b. We will meet with Hakkasan UK staff/Eric Cliff on 3/12 to provide introductions of team and explain what we are doing with programs worldwide. Similar to D&O/EPLI/Cyber/etc programs.
- c. We are in need of the Broker of Record Letters executed when we visit London. Drafted and in the hands of Hakkasan.
- d. The current programs in place for London/Shanghai will be marketed by WTW staff and then placed in coordination with the domestic programs.
- e. When renewed on 5/31/19 we will look to have an anniversary date on the placements of 4/1.

I

Message

**From:** Halsey, Chuck [chuck.halsey@willistowerswatson.com]  
**Sent:** 3/6/2019 7:57:49 PM  
**To:** Geraghty, Kevin [kevin.geraghty@willistowerswatson.com]  
**CC:** Garcia, Kristen [kristen.garcia@willistowerswatson.com]  
**Subject:** RE: 4/1 Hakkasan USA, Inc. - Property Proposal

Client says move it; we need to see what Sompso does with the primary GL.....let's talk tomorrow.

*Chuck Halsey*  
Executive VP

*Willis Towers Watson*  
1980 Festival Plaza Drive, #300  
Las Vegas, Nevada 89135  
702-432-7111 (w)  
702-496-2833 (c)  
[Chuck.Halsey@WillisTowersWatson.com](mailto:Chuck.Halsey@WillisTowersWatson.com).

---

**From:** Geraghty, Kevin  
**Sent:** Wednesday, March 06, 2019 4:15 PM  
**To:** Halsey, Chuck  
**Cc:** Garcia, Kristen  
**Subject:** Fwd: 4/1 Hakkasan USA, Inc. - Property Proposal

How did the meet go ?

Travelers very expensive.

See below. Based on USD 25k he is USD 75k more than Sompso.

What do u want me to do ???

AIG should be coming back.

All roads lead to Sompso although they are Non Admitted so there will be Surplus Lines Taxes. Not that much tho.

Sent from my iPhone

Begin forwarded message:

**From:** "Rolfe,Tony" <[TROLFE@travelers.com](mailto:TROLFE@travelers.com)>  
**Date:** March 6, 2019 at 2:49:21 PM PST  
**To:** "Geraghty, Kevin" <[Kevin.Geraghty@WillisTowersWatson.com](mailto:Kevin.Geraghty@WillisTowersWatson.com)>  
**Cc:** "Hewitt,Vickie E" <[VHEWITT@travelers.com](mailto:VHEWITT@travelers.com)>  
**Subject:** 4/1 Hakkasan USA, Inc. - Property Proposal

Kevin,

Thank you for your submission and collaboration on this year's renewal.

We arrived at an account rate of .1117/100 on total values of \$356,215,700 for annual premium of \$397,809. This figure is inclusive of 15% commission and a \$11,400 TRIA allocation. This quote is dependent on a \$25,000 AOP deductible. If the insured would prefer to retain a \$10,000 deductible, annual premium would be \$443,219, a rate of .1244/100.

Several factors are impacting pricing. As we discussed, we wrote this account for a number of years claim free. As the account began to change, so did our loss experience. Since 2014, our loss experience has been unfortunate. The current 5 year average annual loss expectancy is \$295k. We're deep in the

**J**

**From:** [Garcia, Kristen](#)  
**To:** [Brandon Roos](#); [Veronica Stiles](#)  
**Cc:** [Halsey, Chuck](#)  
**Subject:** Proposal - Hakkasan Auto & General Liability - Effective 4/1/2020  
**Date:** Tuesday, March 17, 2020 6:46:48 PM  
**Attachments:** [2020 04 MULTI PRO Hakkasan Proposal Primary Only with Brokerage Terms and Conditions.pdf](#)  
[2020 Hakkasan Auto Quote RLI.pdf](#)  
[2020 Hakkasan GL Quote Navigators.pdf](#)  
[2020 Hakkasan GL Quote James River.pdf](#)  
[Navigators TRIA Form.pdf](#)

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Brandon and Veronica,

Attached is our proposal for the auto and general liability renewals. Navigators agreed to lower the SIR for Hakkasan nightclubs from \$75K to \$50K for no additional premium.

We look forward to receiving your order to bind coverage.

Thank you.

Kristen K. Garcia, CIC, CISR  
Account Executive

Willis Towers Watson  
Willis of Arizona, Inc. | 16220 N. Scottsdale Rd, Suite 600 | Scottsdale, AZ 85254  
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kristen.garcia@willistowerswatson.com<<mailto:kristen.garcia@willistowerswatson.com>>  
<http://willistowerswatson.com><<http://willistowerswatson.com>>

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## Brokerage Terms, Conditions & Disclosures

Your decision to purchase insurance coverages, products, and/or services through Willis Towers Watson is subject to the following terms and conditions.

### 1. General Terms and Conditions

- 1.1. **Fees Exclusive of Taxes.** Any fees or rates quoted or estimated will be exclusive of income tax or of any sales, ad valorem, value added tax or any similar tax unless such tax is required to be included pursuant to a statutory requirement. If required, we will add the relevant tax to the invoice, separately stated, and remit such tax to the appropriate authority.

- 1.2. **Our Responsibilities.** We will provide the services in a professional manner with reasonable skill and care and in accordance with all laws and regulations applicable to us. We will assign to the project team, members of our staff with adequate education, training and experience to perform the tasks assigned to them. We will use reasonable endeavors to meet any agreed timetable.

The work product we produce in the course of providing the services (the "**Work Product**") will not infringe any intellectual property right of any third party. Unless otherwise expressly agreed in writing, we do not accept any fiduciary or trust responsibilities or related liability in connection with the performance of the services. We do not provide legal, accounting or tax advice.

- 1.3. **Your Responsibilities.** You will provide us, in a timely manner, with all documentation, information, access to your personnel, access to your premises (if applicable) and cooperation reasonably required to provide the services. Any delay or failure to provide such documentation, information, access to your personnel or cooperation may result in: (a) a revision to any agreed timetable; and (b) if we are required to perform any additional work as a result, in additional fees being charged. We will rely on the documentation and information provided by you or your representatives and we do not take responsibility for verifying the accuracy or completeness of it. You may rely only upon our final Work Product and not on any drafts or oral statements made by us in the course of performing the services.

- 1.4. **Intellectual Property Rights and Work Product.** You will retain ownership of all original data and materials provided to us by you or your representatives, and the intellectual property rights in that data and materials. You will have the right to use, reproduce and adapt the copies of the Work Product for internal purposes within your organization. We will retain the intellectual property rights in the Work Product, and the skills, know-how and methodologies used or acquired by us during the course of providing any of the services.

The services, including the Work Product, are provided solely for the intended purpose, and may not be referenced or distributed to any other party without our prior written consent. You may distribute the Work Product to your affiliates, provided that you ensure that each such affiliate complies with these Terms, Conditions, & Disclosures, as if it were a party to them, and you remain responsible for such compliance.

You will not refer to us or include any of the Work Product in any shareholder communication or in any offering materials (or fairness opinion provided by your professional advisers) prepared in connection with the public offering or private placement of any security, unless otherwise agreed in writing.

- 1.5. **Confidentiality and Data Privacy.** Each party (the "**Recipient**") will protect all confidential information which the other party (the "**Discloser**") provides to it (whether orally, in writing or in any other form) ("**Confidential Information**") using the same standards as the Recipient applies to its own comparable confidential information, but in no event less than reasonable measures. Confidential Information will not include information that is: (a) already known to the Recipient at the time of disclosure; (b) in the public domain or publicly available; (c) provided to it by a third party who is under no such obligation of confidentiality; (d) independently developed by it; or (e) is required to be disclosed by court order, regulatory authority or other legal process, provided that prior to disclosing any Confidential Information, the Recipient will, if permitted by law, notify, and cooperate with the Discloser, at Discloser's expense, to lawfully limit and/or obtain appropriate protective orders with respect to such portion(s) of the Confidential Information which is the subject of any such required disclosure. Each party may disclose Confidential

Information to its legal advisers to protect its own legitimate interests or to comply with any legal or regulatory requirements.

In the course of providing the services, the parties acknowledge that you may provide us with information about an identifiable individual or information which relates to a natural person and allows that person to be identified, including your customer or employee information ("**Personal Data**"). It is further acknowledged that we are a global business and that we may transmit your information, including Personal Data, within our global network of offices to our affiliates and providers of IT outsourcing who will be subject to appropriate data protection standards. You represent that Willis Towers Watson is authorized to receive and possess any such Personal Data and that you have obtained any necessary consents from third parties, including the individual to which such Personal Data relates, that may be required for us to use the Personal Data for the purposes of providing the services. Irrespective of where we receive or hold Personal Data on your behalf, we will take appropriate technical, physical and organizational/administrative measures to protect it against accidental or unlawful destruction or accidental loss or unauthorized alteration, disclosure or access. Each party will comply with the provisions and obligations imposed on it by applicable data privacy legislation and regulations.

You agree that we may maintain, process and transfer your Confidential Information and Personal Data in order to perform the services, and for other reasonable ancillary purposes, unless you instruct otherwise.

In addition, you hereby grant us permission to use data we receive from you or your representatives in the course of the services for use in industry benchmarking studies, trend analyses and research. We may use the results of these studies, analyses and research for various purposes, including articles and studies for distribution to our other clients and prospects. Any such articles or studies will not disclose your participation or mention the inclusion of your information to any other party. Any findings from these studies that may show individual participant results will be on a blinded basis, and not attribute any finding to a specific participant.

- 1.6. **Nonconforming Services.** If the services do not conform to the requirements agreed between the parties, you will notify us promptly and we will re-perform any non-conforming services at no additional charge or, at our option, refund the portion of the fees paid with respect to such non-conforming services. The re-performance of the services or refund of the applicable fees is intended to provide an adequate remedy for any failure on our part to adhere to the requirements agreed between the parties for the performance of services.
- 1.7. **Indirect Damages.** In no event shall we or any of our affiliates and our and their respective employees, directors, officers, agents and subcontractors be liable for any incidental, special, punitive, or consequential damages of any kind (including, without limitation, loss of income, loss of profits, or other pecuniary loss), except to the extent such liability may not be excluded as a matter of law.
- 1.8. **Joint Liability.** Where we are jointly liable to you with another party, we will to the extent permitted by law only be liable for those losses that correspond directly with our share of responsibility for the losses in question.
- 1.9. **Third Parties.** We accept no responsibility for any consequences arising from any third party relying on the Work Product. If we agree to provide the Work Product to a third party, you are responsible for ensuring that the third party is made aware of the fact that they are not entitled to rely upon it. You agree to reimburse us for all costs (including reasonable legal fees) that we incur in responding to any requests or demands from third parties, pursuant to legal process or otherwise, for data or information related to the services.
- 1.10. **Force Majeure.** Neither party will be liable for any delay or non-performance of its obligations caused by an event beyond its control (a "**Force Majeure Event**") provided that the party affected gives prompt notice in writing to the other party of such Force Majeure Event and uses all reasonable endeavors to continue to perform its obligations. Either party may terminate any Statement of Work or Service Agreement by written notice to the other with immediate effect if such Force Majeure Event continues for more than 3 months.
- 1.11. **Miscellaneous.** These Term, Conditions & Disclosures, together with any signed agreement between us applicable to the same services, set out the complete and exclusive statement of agreement and

understanding between the parties, which supersedes and excludes all prior or contemporaneous proposals, understandings, agreements or representations, whether oral or written, with respect to your purchase of insurance. To the extent there is a conflict between these Terms, Conditions & Disclosures and a separately negotiated and signed agreement between you and Willis Towers Watson for the same services, the relevant portions of the signed agreement will control. Any modifications of or amendments to any MSA, Statement of Work, a Service Agreement, or a change to the services must be in writing and agreed by the parties. Should any provisions of an MSA, Statement of Work, Service Agreement, or any of the Terms, Conditions, & Disclosures be declared void, illegal or otherwise unenforceable, the remainder will survive unaffected.

Neither party may assign or delegate any of its rights or obligations to any third party without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign or delegate any of its rights and obligations to an affiliate. We reserve the right to employ subcontractors to assist in providing services and to pass to them any information and materials they need to perform their work. Where we use affiliates or subcontractors to provide the services, we will remain ultimately responsible for the provision of the services.

Neither party will have any liability in respect of any statement (except in the case of fraud where the liability of each party to the other will be unlimited) made by such party or on its behalf to the other party which is not contained in an applicable Statement of Work, Service Agreement, or these Terms, Conditions, & Disclosures and each party acknowledges that it has not entered into an any Statement of Work, or Service Agreement or will enter into a Statement of Work or Service Agreement, in reliance on any representation by the other party which is not contained in the MSA, the applicable Statement of Work, Service Agreement, or these Terms, Conditions & Disclosures.

We do not tolerate unethical behavior either in our own activities or in those with whom we seek to do business. We will comply with applicable laws, regulations, and rules.

- 1.12. **Sanctions and Export Control.** Sanctions and export control laws from the EU, United States, Canada, and other government authorities prohibit companies, including Willis Towers Watson, from conducting business in certain jurisdictions or with certain individuals. The restrictions may differ based on your business activity, ownership structure, and the location or nationality of your employees. Please inform us of any insurance or service requirements you have which touch upon goods, countries, entities or individuals subject to any sanctions or export controls. We will comply with all applicable sanctions and export control laws, and we are not responsible for actions taken by third parties based on their own sanctions or export control constraints.

To comply with applicable anti-money laundering regulations there are times when we may ask clients to confirm (or reconfirm) their identity. We may need to do this at the time you become a client or have been one for some time or for example, when checking details on proposal forms and transferring claims payments. This information may be shared with other subsidiaries of Willis Towers Watson PLC and where we deem necessary with regulatory or law enforcement bodies. Please note that we are prohibited from disclosing to you any report we may make based on knowledge or suspicion of money laundering, including the fact that such a report has been made.

We have systems that protect our clients and ourselves against fraud and other crime and we may utilize the services of third parties in order to identify and verify clients. Client information can be used to prevent crime and trace those responsible. We may check your details against financial crime databanks. If false or inaccurate information is provided, we may be obliged to pass such details to relevant regulatory agencies that may use this information.

- 1.13. **Dispute Resolution.** The parties agree to work in good faith to resolve any disputes arising out of or in connection with the services provided under these Terms, Conditions & Disclosures. If a dispute cannot be resolved it will be submitted to non-binding mediation to be conducted by Judicial Arbitration and Mediation Services (JAMS) before either party pursues other remedies hereunder. If the mediation does not resolve the dispute and a party or both parties wish to pursue other remedies, the parties agree that their legal dispute will be resolved without a jury trial and agree not to request or demand a jury trial. To the fullest extent permitted by applicable law, the parties hereby irrevocably waive any right they may have to demand a jury trial.



To the extent the foregoing jury trial waiver is not enforceable under the governing law, except as provided below, any dispute arising out of or in connection with these Terms, Conditions & Disclosures which the parties are unable to resolve between themselves or through mediation as provided above, will be resolved by binding arbitration in the state as provided for in paragraph 14 below, or other mutually agreed location, before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Under these circumstances, the arbitration proceeding will be the sole and exclusive means for resolving any dispute between the parties, except for any dispute involving the ownership or use of work product or intellectual property, provided that either party may seek an injunction or other equitable relief if such action is necessary to avoid irreparable damage or to preserve the status quo. Each party will have the right to select one of the arbitrators and the two arbitrators so selected will agree on the choice of the third arbitrator. Each party will bear the expenses of the arbitrator it selects and one-half of the expenses of the third arbitrator and other costs related to the arbitration. Judgment on the award rendered by the arbitrators will be final and binding, and may be entered in any court having jurisdiction thereof. The arbitration proceeding will be confidential.

- 1.14. **Governing Law.** Any controversy, dispute or claim of any kind between the parties will be governed by and interpreted in accordance with the laws of the jurisdiction where the Willis Towers Watson office principally responsible for providing the services to you under the particular Statement of Work is located, without regard to any provisions governing conflicts of laws; provided that if such office is located outside of Canada or the US, the governing law will be that of the State of New York, without regard to any provisions governing conflicts of laws.
- 1.15. **Additional Provisions Applicable Only to Health and Benefits Services.**
  - 1.15.1. If and to the extent that any portion of Willis Towers Watson's compensation is to be paid by or on behalf of any employee health or other welfare benefit plan ("Plan"), including commissions derived from Plan assets, then you will secure the approval of the applicable Plan fiduciaries for such portion of our compensation. You, and if applicable, the Plan fiduciaries, and not Willis Towers Watson, will determine whether any payment utilizing, or deriving from, Plan assets is appropriate. Willis Towers Watson will provide details concerning its charges to enable you, and if applicable, the Plan fiduciaries to make such determinations, but any information that Willis Towers Watson provides to you with its invoices or otherwise should not be construed as advice regarding the appropriate use of Plan assets. You, and if applicable, the Plan fiduciaries are encouraged to consult with legal counsel regarding such matters. Unless you tell us otherwise, in providing our services we will assume that the employee welfare benefits you provide to your employees and with respect to which we provide services have been wrapped into a single Plan. To the extent that you or your Plan enter into an Administrative Services Only contract with a Third party Administrator pursuant to which Willis Towers Watson receives a directed fee, you represent that all administrative fees are paid by you out of your general assets and will not be charged to the Plan.
  - 1.15.2. Willis Towers Watson is not being engaged as a fiduciary or to provide investment advice and does not and will not perform or assume any fiduciary or trust responsibilities or liability in connection with the performance of the services. You agree that the services to be performed by Willis Towers Watson under an applicable Statement of Work are ministerial and not fiduciary in nature, that Willis Towers Watson has no discretionary authority or control with respect to the management or administration of your employee benefit plan(s) or any Plan assets, that Willis Towers Watson is not providing any advice with respect to products that may have an investment component, and that Willis Towers Watson's compensation has not been set at levels intended to compensate it for assuming fiduciary liability. You retain full responsibility for decisions to purchase or not purchase insurance policies, all claims for benefits against the Plan and any other discretionary decisions by the Plan or any fiduciary, trustee, Plan administrator, or Plan committee.
  - 1.15.3. You agree that any enrollment or census data provided to Willis Towers Watson shall be provided by you in your role as an employer. You agree that you are responsible for your own access to and use of employee data, and that all persons whom you direct or request Willis Towers Watson to share employee data with are authorized to receive the employee data.
  - 1.15.4. In the event that you and/or any of the employee benefit plans sponsored by you need to enter into business associate agreements with Willis Towers Watson to satisfy the requirements of the

Health Insurance Portability and Accountability Act, the regulations implementing that Act (the "Standards for Privacy of Individually Identifiable Health Information," codified at 45 C.F.R. parts 160 and 164), or any other similar law, the parties will execute an agreement in compliance with these requirements.

## **2. Brokerage Terms and Conditions**

- 2.1. The services we provide to you will rely in significant part on the facts, information and direction provided by you or your authorized representatives. In order to make our relationship work, we must each provide the other with accurate and timely facts, information and direction as is reasonably required. You must provide us with complete and accurate information regarding your loss experience, risk exposures, and changes in the analysis or scope of your risk exposures and any other information reasonably requested by us or insurers. It is important that you advise us of any changes in your business operations that may affect our services or your insurance coverages. Therefore, all information which is material to your coverage requirements or which might influence insurers in deciding to accept your business, finalizing the terms to apply and/or the cost of cover, or deciding to pay a claim, must be disclosed. Failure to make full disclosure of material facts might potentially allow insurers to avoid liability for a particular claim or to void the policy. This duty of disclosure applies equally at renewal or modification of your existing coverage and upon placement of new lines of coverage. You agree that Willis Towers Watson will not be responsible for any consequences arising from any delayed, inaccurate or incomplete information.
- 2.2. An insurer quote is an offer to provide coverage. Offers can be modified or withdrawn prior to your acceptance through your order to bind coverage. The quote itself is not a legally binding commitment or a confirmation of actual coverage. Should you choose to bind coverage, we will secure a formal commitment, typically in the form of a binder on a form issued or approved by the insurer(s) at issue. The quotes we will provide to you are based upon the information that you have provided to us. If you discover that previously submitted information is inaccurate or incomplete, please advise us immediately so that we can attempt to revalidate terms with insurers.
- 2.3. At the time of binding, we review the financial soundness of the insurers we recommend to provide your coverages based on publicly available information, including that produced by well-recognized rating agencies. Upon request, we will provide you with our analysis of such insurers. We do not guarantee or warrant the solvency of any insurer or any intermediary that we may use to place your coverage.
- 2.4. If you have a multi-year policy, it is important that you understand the limitations associated with the coverage options and the possibility that the financial strength of the insurer may change throughout the term of the policy. We recommend that you review the insurer's ratings for any downgrades during the term of this multi-year policy.
- 2.5. The final decisions with respect to all matters relating to your insurance coverages, risk management, and loss control needs and activities are yours. We will procure the insurance coverage chosen by you, including the limits you choose, prepare or forward insurance binders, if applicable, and review and transmit policies to you.
- 2.6. We will review all binders, policies and endorsements to confirm their accuracy and conformity to negotiated specifications and your instructions and advise you of any errors in, or recommended changes to, such documents. You agree that you will also review all such documents and promptly advise us of any questions you have or of any document or provision which you believe may not be in accordance with your instructions as soon as possible, and in no event longer than two weeks, after you receive them. Your coverage is defined by the terms and conditions detailed in your insurance policies and endorsements. Your review of these documents, and any review you may seek from outside legal counsel or insurance consultants, is expected and essential.
- 2.7. We will inform you of the reporting requirements for claims, including where claims should be reported and the method of reporting to be used, if applicable. Please carefully review any claims-reporting instructions or information we provide. Failure to timely and properly report a claim may jeopardize coverage for the claim. In addition, you should retain copies of all insurance policies and coverage documents as well as claims-reporting instructions after termination of the policies because in some cases you may need to report claims after termination of a policy.

- 2.8. Our compensation may be revised if you request a change in the coverages and/or services during the term of this Agreement and we enter into a written agreement documenting any change in coverages, services and compensation.
- 2.9. If your insurance risks are in more than one jurisdiction, we, where required, will work with you and insurers to determine the allocation of premium between applicable jurisdictions, and the amount of insurance premium tax payable in each jurisdiction. In providing such services, Willis Towers Watson is acting in its capacity as an insurance broker, not as your tax advisor. You should seek your own advice in relation to such tax laws where you consider it necessary. We will not be liable to you should the apportionment of premium or amount of tax payable under the policy be challenged by any tax authority. In addition, we will not be liable to you should the insurers fail, or refuse, to collect and pay such insurance premium tax to the relevant authorities.
- 2.10. You will provide immediately available funds to pay premiums by the dates specified in the insurance policies, invoices, or other payment documents. Failure to pay premium on time may prevent coverage from incepting or result in cancellation of coverage by the insurer. You agree that we are not responsible for any consequences arising from any delay or failure by you to pay the amount due by the indicated date.
- 2.11. You may use a premium finance company, property appraiser, structured settlement firm or other similar service provider in connection with the insurance coverages we place for you. Premium finance options are not always available, but where they are, Willis Towers Watson currently works with industry leading finance providers for this service. Where permitted by law, we receive a fee for the services we provide those companies. These services include, but are not limited to, processing the premium finance applications and marketing and sales support they do not have. If you would like more information about the fee we receive, please let us know.
- 2.12. We will handle any premiums you pay through us and any funds which we receive from insurers or intermediaries for payment or return to you in accordance with applicable province/territory, state and federal insurance laws and regulations and province/territory and state unclaimed property laws. We may transfer your funds directly to insurers or to third parties such as wholesale brokers, excess and surplus lines brokers, or managing general agents to carry out transactions for you.
- 2.13. Where we collect funds from you, you agree that we may receive and retain interest on such funds from the date we receive the funds until we pay them to the insurers, intermediaries, or other third parties in the course of providing services, or until we return them to you after we receive such funds.
- 2.14. The following may be applicable where U.S. risks are insured with or through a foreign insurer or intermediary. The Foreign Account Tax Compliance Act (FATCA) is a U.S. law aimed at foreign financial institutions and other financial intermediaries (including insurance companies and intermediaries such as brokers) to prevent tax evasion by U.S. citizens and residents through offshore accounts. In order to comply with FATCA, insurance companies and intermediaries must meet certain legal requirements. Insurance placed with an insurance company that is not FATCA compliant may result in a 30% withholding tax on your premium. Where FATCA is applicable to you, in order to avoid this withholding tax, Willis Towers Watson will only place your insurance with FATCA-compliant insurers and intermediaries for which no withholding is required unless you instruct us to do otherwise and provide your advance written authorization to do so. If you do instruct Willis Towers Watson to place your insurance with a non-FATCA compliant insurer or intermediary, you may have to pay an additional amount equivalent to 30% of the premium covering U.S.-sourced risks to cover the withholding tax. If you instruct us to place your insurance with a non-FATCA compliant insurer but you do not agree to pay the additional 30% withholding if required, we will not place your insurance with such insurer. Please consult your tax adviser for full details of FATCA.
- 2.15. Unless otherwise provided in writing, you agree that we may use your company name and logo in marketing materials and for internal Willis Towers Watson use.
- 2.16. Unless otherwise agreed in writing, in the event of termination, we will be entitled to receive and retain any commissions payable under the terms of our commission agreements with the insurers in relation to policies placed by us, whether or not the commissions have been received by us.

- 2.17. Our obligation to render services under the agreement ceases on the effective date of termination of the agreement. Nevertheless, we will take reasonable steps to assist in the orderly transition of matters to you or to a new insurance broker. Claims and premium or other adjustments may arise after our relationship ends, and we have no responsibility to handle these things after our relationship ends. Such items are normally handled by the insurance broker serving you at the time the claim or adjustment arises. However, we will consider providing such services after the termination of this agreement for mutually agreed additional compensation. Nevertheless, we will process all remaining deposit premium installments on the policy(ies) in effect at the time of change.
- 2.18. The insurance market is complex, and there could be other relationships which are not described in this document which might create conflicts of interest. If a conflict arises for which there is no practicable way of complying with this commitment, we will promptly inform you and withdraw from the engagement, unless you wish us to continue to provide the services and provide your written consent. Please let us know in writing if you have concerns or we will assume that you understand and consent to our providing our services pursuant to these Terms, Conditions & Disclosures.

### **3. Brokerage Disclosures**

- 3.1. If a Willis Towers Watson affiliate or office located outside of Canada or the United States serves as an intermediary in the placement of your coverages, it will also earn and retain compensation for providing those services, which compensation may not be included in the fee.
- 3.2. The compensation that will be paid to Willis Towers Watson will vary based on the insurance contract it sells. Depending on the insurer and insurance contract you select, compensation may be paid by the insurer selling the insurance contract or by another third party. Such compensation may be contingent and may vary depending on a number of factors, including the insurance contract and insurer you select. In some cases, other factors such as the volume of business Willis Towers Watson provides to the insurer or the profitability of insurance contracts Willis Towers Watson provides to the insurer also may affect compensation. Willis Towers Watson may accept this compensation in locations where it is legally permissible, and meets standards and controls to address conflicts of interest. Whether or how much insurers may pay in such compensation does not play any role in Willis Towers Watson's placement recommendations on behalf of its clients. If you prefer that we not accept this compensation related to your policy, please notify us in writing and we will request that your insurer(s) exclude your business from their payment calculations.
- 3.3. Upon request, Willis Towers Watson will provide you with additional information about the compensation Willis Towers Watson expects to receive based in whole or in part on your purchase of insurance, and (if applicable) the compensation expected to be received based in whole or in part on any alternative quotes presented to you.
- 3.4. To the extent Willis Towers Watson is compensated by commissions paid to us by insurers, they will be earned for the entire policy period at the time we place policies for you. We will be paid the commission percentage stated for the placement of your insurance as indicated, and will receive the same commission percentage for all subsequent renewals of this policy unless a different commission percentage is disclosed to you, or unless the insurer changes its commission rates, in which case the new commission rate will be disclosed to you before placement of the policy.
- 3.5. Willis Towers Watson may place your insurance or other business with members of a panel of insurers or other vendors. Willis Towers Watson develops panels of insurers and vendors in certain market segments. Participating insurers and vendors are reviewed on a variety of factors. Commission or fee rates on panel placements may be higher than rates paid on business placed outside of the panel process. Willis Towers Watson discloses its commission rates to clients on quotes obtained through the panel process prior to binding the coverage. In some instances, insurers or vendors pay an administration or management fee to participate in the panel process or for additional reporting. In some instances, Willis Towers Watson may earn a referral fee for referring your business to certain vendors.
- 3.6. In some cases the use of a wholesale broker may be beneficial to you. We will not directly or indirectly place or renew your insurance business through a wholesale broker unless we first disclose to you in writing any compensation we or our corporate parents, subsidiaries or affiliates will receive as a result.



- 3.7. If wholesalers, underwriting managers or managing general agents have a role in providing insurance products and services to you, they will also earn and retain compensation for their role in providing those products and services. If any such parties are corporate parents, subsidiaries or affiliates of ours, any compensation we or our corporate parents, subsidiaries or affiliates will receive will be included in the total compensation we disclose to you. If such parties are not affiliated with us, and if you desire more information regarding the compensation those parties will receive, please contact us and we will assist you in obtaining this information.
- 3.8. Commission schedules and other compensation arrangements related to our services on your behalf may change over time and may not always be congruent with your specific policy period. Willis Towers Watson will provide you with accurate information to the best of our knowledge when information is presented to you, but it is possible that compensation arrangements may change over time. We will update you on any changes to our compensation prior to your renewal, and will do so at any time upon your request.
- 3.9. As an insurance intermediary, we normally act for you. However, we or our corporate parents, subsidiaries or affiliates may also provide services to insurers for which we may earn compensation. These services may include, for example, (a) acting as a managing general agent, program manager or in other similar capacities which give us binding authority enabling us to accept business on their behalf and immediately provide coverage for a risk; (b) arranging lineslips or similar facilities which enable an insurer to bind business for itself and other insurers; (c) managing lineslips for insurers; or (d) providing third party administration and other services to insurers. Contracts with these insurers may grant us certain rights or create certain obligations regarding the marketing of insurance products provided by the insurers. We may place your insurance business under such a managing general agent's agreement, binding authority, lineslip or similar facility when we reasonably consider that these match your insurance requirements/instructions. When we intend to do so, we will inform you and disclose that we will receive compensation related to these services. In addition, these services may include providing services to insurers as a client. For example, we or they may provide consulting, brokerage, outsourced administration, or reinsurance services to insurer clients. In such cases, we or they will be compensated separately for the services provided to those insurer clients. Some of these insurer clients may happen to be insurers with whom we place your insurance coverages. The services provided to you and the services provided to our insurer clients are separate and any compensation earned for the services provided to insurer clients are separate from and in addition to the compensation we earn for the services we provide you under this Agreement.
- 3.10. We are members of a major international group of companies. In addition to the commissions received by us from insurers for placement of your insurance coverages, other parties, such as excess and surplus lines brokers, wholesale brokers, reinsurance intermediaries, underwriting managers and similar parties (some of which may be owned in whole or in part by our corporate parents or affiliates), may earn and retain usual and customary commissions for their role in providing insurance products or services to you under their separate contracts with insurers or reinsurers.

#### **4. Disclosures Applicable Only to Property and Casualty Placements (Not applicable to Health and Benefits Placements)**

- 4.1. Willis Towers Watson negotiates commission rates with certain insurers on a corporate level. If the rate on your placement is lower than the negotiated rate, Willis Towers Watson will collect the difference directly from the insurer. These payments will not increase the cost of your insurance or otherwise impact your premium or rates. Details of these arrangements where there is compensation beyond the base compensation detailed in your Quote Proposal can be found at: [http://www.willis.com/About\\_Willis/The\\_Willis\\_Way/Commission\\_Rates](http://www.willis.com/About_Willis/The_Willis_Way/Commission_Rates).
- 4.2. A separate business unit within the Willis Towers Watson Group, FINMAR Market Services, provides a wide range of services direct to certain insurers that write business for FINEX Global clients. A separate fee is paid to FINMAR Market Services by insurers for the delivery of these services to them. This fee is calculated within a range of 2.75% and 7.5% (plus VAT, if applicable) of the overall premiums placed depending on the scale of services provided. Unless otherwise stated, premiums paid by the clients of FINEX Global will not be increased as a result of these arrangements.
- 4.3. If a surplus lines insurer (sometimes referred to as an excess lines insurer, non-admitted insurer, or non-licensed insurer) was used to quote your coverage, its premium rates, coverage terms and policy forms

are not regulated by your home state, province or territory, as applicable, and you will be required to pay an additional surplus lines premium tax which is on top of the premium. Also, in the event of the insurer's insolvency you will not be indemnified by any government guaranty fund for unpaid claims.

4.4. In addition to any other terms governing the use of your information as provided herein or in any other master services agreement, statement of work, or other agreement, you agree that we may use your information and, if applicable, receive remuneration for such use, as described below. We may:

4.4.1. aggregate and anonymise your information and may disclose to third parties certain anonymized or industry-wide statistics or other information which may include information relating to you, but that we will not, without your consent, reveal any information specific to you other than on an aggregated and anonymized basis and as part of an industry or sector-wide comparison;

4.4.2. use your information to engage certain insurers in periodic discussions to gauge insurers' capabilities and interest in potentially quoting your business at a future date. Such discussions could be specific to your account or part of a discussion about a portfolio of accounts and typically increase the effectiveness and efficiency of our future marketing efforts on your behalf when you desire alternative bids;

4.4.3. share information concerning your insurance arrangement with insurers or their agents where this is necessary to enable insurers to decide whether to participate in insuring your risk or to participate in any arrangement made by Willis Towers Watson whereby participating insurers agree to insure (wholly or partly) a portfolio of risks without necessarily making underwriting decisions on a case by case basis for individual risks within such portfolio;

4.4.4. use any information you provide, without further notice to you, for the purpose of: (1) prospecting facultative reinsurance business from prospective insurer clients; (2) placing facultative reinsurance on behalf of our insurer clients; (3) marketing facultative reinsurance with prospective reinsurers on behalf of our insurer clients.

## **5. Language**

5.1. It is the express wish of the parties that this Agreement and any related documents be drawn up in the English language. Les parties confirment qu'il est leur volonté expresse et réciproque que ce contrat et tout document qui s'y rattache soient rédigés en anglais.

## **6. Inquiries and Complaints**

6.1. Your satisfaction is important to us. If you have questions or complaints, please inform the person who handles your business or contact the head of our office. Alternatively, you may call toll free 1-866-704-5115.

**K**

March 30, 2020

Brandon Roos  
General Counsel  
Hakkasan Group  
6385 S Rainbow Blvd, Suite 800  
Las Vegas, NV 89118

RE: Hakkasan Property Renewal  
April 1, 2020 to April 1, 2021

Dear Brandon:

Thank you for the opportunity to market your insurance requirements. We are pleased to provide the results of these efforts in accordance with your instructions to provide you a quote for Hakkasan's Property renewal.

The results of our negotiations are outlined in the attached Coverage Comparison. Upon request, we will gladly provide you with copies of all quotes and indications we sought and received.

We would like to bring the following exclusions, subjectivities and warranties to your attention:

1. Signed Terrorism Disclosure Form prior to binding
2. The premium increase shown above is due to a claim submitted to us under the Special Time Element Cancellation Coverage
3. This is subject to no other insurance carrier participating on this program, with the exception of Flood, Earthquake and Windstorm
4. We want to inspect the exposures at the following locations:
  - a. The Omnia Nightclub at 454 6th Ave, San Diego, CA
  - b. 1 Kearny Street, San Francisco, CA
  - c. 311 W. 43rd Street, Suite 203, NYC, NY
  - d. the exposures at 3799 S Las Vegas Blvd, Las Vegas, NV
  - e. the Omnia Nightclub at 3570 S Las Vegas Blvd, Las Vegas, NV and
  - f. 2330 Kalakaua Ave, #316, Honolulu, HI

In our review of the quotation, we have found differences from your expiring program that include:

- Please refer to the attached Coverage Comparison.

In our review of the quotation, we have found differences from the coverage you requested that include:

- Please refer to the attached Coverage Comparison.

This quote expires on 4/1/2020, after which insurers may withdraw or vary it.

Willis Towers Watson negotiates commission rates with certain insurers on a corporate level. If the rate on your placement is lower than the negotiated rate, Willis Towers Watson will collect the difference directly from the insurer. These payments will not increase the cost of your insurance or otherwise impact your premium or rates. Details of these arrangements where there is compensation beyond the base compensation detailed in your Quote Proposal can be found at:

[http://www.willis.com/About\\_Willis/The\\_Willis\\_Way/Commission\\_Rates/](http://www.willis.com/About_Willis/The_Willis_Way/Commission_Rates/).



Payment of premium is due within 60 days of the effective date of coverage. You will receive the invoice directly from our National Accounting Center.

Claims Reporting Instructions: Please report your claims to the Willis Towers Watson Claims Center as they are available 24/7/365. Their email address is [claimwest@willistowerswatson.com](mailto:claimwest@willistowerswatson.com).

This proposal is presented in conjunction with the Brokerage Terms, Conditions & Disclosures for US Property & Casualty Retail Accounts which was previously sent to you.

Please review this proposal and advise of any changes or questions you may have. You have already requested coverage be bound on December 10, 2018. Please sign the attached Order to Bind Coverage page.

Sincerely,

**Kristen K. Garcia, CIC, CISR**  
Account Executive

**ORDR**

JAMES E. WHITMIRE (NV Bar No. 6533)

**SANTORO WHITMIRE**

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*Attorneys for Plaintiff Hakkasan USA, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

HAKKASAN USA, INC., a Delaware  
Corporation;

Plaintiff,

vs.

ENDURANCE AMERICAN SPECIALITY  
INSURANCE COMPANY, a Delaware  
Corporation; SOMPO INTERNATIONAL  
HOLDINGS, LTD., a Bermuda Corporation;  
WILLIS OF ARIZONA, INC., an Arizona  
Corporation; and WILLIS TOWERS WATSON  
INSURANCE SERVICES WEST, INC., a  
California Corporation

Defendants.

Case No.: A-20-816145-B

Dept. No.: ● XI

(Business Court)

~~PROPOSED~~ ORDER RE WILLIS  
DEFENDANTS' MOTION TO STRIKE  
PLAINTIFF'S JURY DEMAND AS TO  
ITS CLAIMS AGAINST THE WILLIS  
DEFENDANTS OR, IN THE  
ALTERNATIVE, TO COMPEL  
ARBITRATION

1 Defendants WILLIS OF ARIZONA, INC. AND WILLIS TOWERS WATSON  
2 INSURANCE SERVICES WEST, INC.'S MOTION TO STRIKE PLAINTIFF'S JURY  
3 DEMAND AS TO ITS CLAIMS AGAINST THE WILLIS DEFENDANTS OR, IN THE  
4 ALTERNATIVE, TO COMPEL ARBITRATION ("Willis Defendants' Motion to Strike") was  
5 fully briefed and, pursuant to Administrative Order 21-03, decided without oral argument.  
6 Having reviewed the Motion filed by Defendants on February 11, 2021, the Opposition filed by  
7 Plaintiff on February 25, 2021, and the Reply in support of the Motion filed on March 8, 2021,  
8 the Court DENIES the Willis Defendants' Motion to Strike.  
9

10 On March 29, 2019 Defendants Willis of Arizona, Inc. and Willis Towers Watson  
11 Insurance Services West, Inc. (collectively, "Willis") presented a proposal to Hakkasan to  
12 procure various insurance policies for the 2019–20 policy term (the "Proposal"). The Proposal  
13 included a nine-page document entitled "Brokerage Terms, Conditions & Disclosures" (the  
14 "T&Cs"). Section 1.13 of the T&Cs reads as follows:  
15

16 **Dispute Resolution.** The parties agree to work in good faith to  
17 resolve any disputes arising out of or in connection with the  
18 services provided under these Terms, Conditions & Disclosures. If  
19 a dispute cannot be resolved it will be submitted to non-binding  
20 mediation to be conducted by Judicial Arbitration and Mediation  
21 Services (JAMS) before either party pursues other remedies  
22 hereunder. If the mediation does not resolve the dispute and a  
23 party or both parties wish to pursue other remedies, the parties  
24 agree that their legal dispute will be resolved without a jury trial  
25 and agree not to request or demand a jury trial. To the fullest  
26 extent permitted by applicable law, the parties hereby irrevocably  
27 waive any right they may have to demand a jury trial.  
28

To the extent the foregoing jury trial waiver is not enforceable  
under the governing law, except as provided below, any dispute  
arising out of or in connection with these Terms, Conditions &  
Disclosures which the parties are unable to resolve between  
themselves or through mediation as provided above, will be  
resolved by binding arbitration in the state as provided for in  
paragraph 14 below, or other mutually agreed location, before a  
panel of three arbitrators in accordance with the Commercial  
Arbitration Rules of the American Arbitration Association. . . .

Willis contends that the foregoing section of the T&Cs precludes Hakkasan from trying its present claims for civil conspiracy, constructive fraud, negligence, and intentional interference with contractual relations against Willis to a jury. Willis further contends that Hakkasan's claims against Willis in this case should be compelled to arbitration in accordance with the T&Cs if the jury waiver provision is not enforceable under Nevada law. In response, Hakkasan argues *inter alia* the T&Cs only govern Hakkasan's purchase of insurance through Willis, and Hakkasan's present tort claims do not "aris[e] out of or in connection with" that transaction. The Court agrees with Hakkasan and concludes that Hakkasan's present claims against Willis for civil conspiracy, constructive fraud, negligence, and intentional interference with contractual relations are outside the scope of the Dispute Resolution clause in Section 1.13 of the T&Cs.

For the aforementioned reasons, IT IS HEREBY ORDERED that the Willis Defendants' Motion to Strike is DENIED.

Dated this 25th day of March, 2021.

  
DISTRICT COURT JUDGE

Respectfully Submitted By:

Approved as to form by:

**SANTORO WHITMIRE**

**BROWNSTEIN HYATT FARBER  
SCHRECK, LLP**

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