

# Terms of Business Agreement

An Agreement dated \_\_\_\_\_ governing the conduct of Insurance Business between:

**Unicorn Underwriting Limited** whose registered office / principal place of business is at **107 Leadenhall Street, London EC3A 4AF** as agent of the Insurer (the **MGA**)

and

whose registered office / principal place of business is at

(the **Broker**)

(collectively the "**Parties**" and each of them a "**Party**")

## 1. Definitions and Interpretation

**1.1 Agreement:** This Terms of Business Agreement (Risk Transfer) and any attached Schedules or Appendices.

**1.2 Appointed Representative:**

Has the meaning given to it in Section 39 of the Financial Services and Markets Act 2000.

**1.3 BIPAR Principles:**

A set of high level principles to follow when handling the placement of a risk with multiple insurers, agreed with DG Competition by BIPAR, the European Federation of Insurance Intermediaries.

**1.4 Business Day:**

Means any day (other than a Saturday, Sunday or public holiday) when banks in the City of London are open for business.

**1.5 CASS:** The UK Regulator's Client Assets Sourcebook.

**1.6 Commission:** Commission receivable by the Broker which shall be at the rates and times (if any) set out in a relevant Slip in respect of that Insurance Business.

**1.7 Group:** Has the meaning given to it either in section 421 of the Financial Services and Markets Act 2000 or section 474 of the Companies Act 2006.

**1.8 ICOBS:** The Insurance Conduct of Business Sourcebook promulgated and issued from time to time by the UK Regulator.

**1.9 Insured:** Any party (not being the MGA) entering into a contract of insurance which is subject to this Agreement.

**1.10 Insurer:** The insurer (or Managing Agent when placing Insurance Business into Lloyd's) with whom the Insurance Business is placed and for which the MGA acts as agent.

**1.11 Insurance Business or Insurance:**

Any insurances or reinsurances falling within the definition of “contract of insurance” in Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 together with insurances concluded under any contracts for insurance made by the MGA where the Broker is the coverholder or the placing broker.

For the avoidance of doubt Insurance Business does not include any outwards reinsurance business placed by the Broker as agent of the MGA.

**1.12 Law / Legal Requirements:**

Any reference to “law” or “legal requirements” includes any applicable, common or customary law and any treaty, constitution, statute, legislation, decree, rule, regulation, code of practice, judgement, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which has the force of law or compliance with which is in accordance with the general practice of such jurisdiction.

**1.13 Records:** Anything on which any information of any description is recorded.

**1.14 Slip:** A document which is or is to form the basis of either a contract for insurance or contract of insurance. A Slip may incorporate details of administrative arrangements pertinent to the processing of the contract for or of insurance.

**1.15 Statutory Provisions:**

In this Agreement where appropriate, reference to a statutory provision (including for the avoidance of doubt a reference to a FCA rule) includes a reference to the same as modified, re-enacted or both from time to time before or after the date of this Agreement and any subordinate legislation made under the same before or after the date of this Agreement.

**1.16 Taxes:** All Insurance Premium Taxes (“IPT”) and other para-fiscal charges which may be levied by overseas fiscal authorities on insurance premiums.

**1.17 Regulator:** The Financial Conduct Authority (“FCA”), the Prudential Regulation Authority (“PRA”), or any equivalent local/home state regulatory body as the context so requires and any successor(s) to such regulatory body.

**1.18 UK Regulator:** The Financial Conduct Authority (FCA) and/or the Prudential Regulation Authority (PRA) as appropriate, or any successor body or bodies to both or either of them.

## 2. Scope

- 2.1** The purpose of this Agreement is solely to set out the rights and obligations of the Parties only in respect of the matters specifically addressed in the Agreement. To the extent that any matters relating to the relationship between the Parties are not expressly addressed in this Agreement, they remain unaffected and unaltered by this Agreement. This Agreement shall not override the terms of any underlying contract for or of Insurance Business or the terms of any Slip, save the Parties agree that clause 6.5 shall apply to the exclusion of any equivalent terms in any binding authority agreement placed between Parties as cover holder.
- 2.2** Nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the Parties or, except to the extent stated in clauses 6.1, 8.2 and 12.3, as appointing either Party as agent of the other Party for any purpose and neither Party shall have the authority to bind the other Party or to contract in its name for any purpose.
- 2.3** Subject to clause 12 (which is to be given a free and unfettered interpretation) nothing in this Agreement overrides the Broker's duty to place the interests of its client before all other considerations nor shall this Agreement override any legal or regulatory requirements (whether obligatory or advisory) which may apply to the Broker, the MGA, or the placing of any Insurance Business.
- 2.4** Subject to clause 2.6 below, the Parties agree that the terms herein shall apply to the conduct of any Insurance Business on or after the date of this Agreement. The terms of this Agreement supersede the terms of any other terms of business agreement ("**TOBA**") already in place between the Parties for such Insurance Business. Such TOBA(s) shall continue to apply to Insurance Business transacted between the Parties before the date of this Agreement.

All monies held by the Broker as agent and trustee of the MGA under such previous TOBA(s) shall continue to be held by the Broker as agent and trustee of the MGA until such monies are paid by the Broker to the relevant party.

- 2.5** Each proposal for Insurance Business, renewal of existing Insurance Business or continuation of cover in respect of any existing Insurance Business will be accepted or declined by the MGA at its sole discretion. The Broker is under no obligation to offer any proposal for Insurance Business or renewal of any existing Insurance Business to the MGA.
- 2.6** Prior to or at the time of placement of any Insurance Business (or as otherwise agreed separately in writing between the Parties), the Broker and the MGA Agent may agree provisions relating to the conduct of that Insurance Business. These provisions may include (but are not limited to) roles and responsibilities relating to administration of the Insurance Business and the handling of claims and processes by which amendments to the risk may be agreed, and so forth. This Agreement shall be subject to any provisions so agreed, and does not seek to address such provisions.

### **3. Regulatory Status**

- 3.1** The Broker warrants that it is authorised by the UK Regulator to conduct insurance mediation activities (as defined in the UK Regulator's Handbook) from the date of this Agreement. The MGA warrants that it is authorised by the FCA to conduct Insurance Business from the date of this Agreement.
- 3.2** The Broker shall inform the MGA immediately in writing if at any time during the period of this Agreement:
  - 3.2.1** The UK Regulator suspends or withdraws the Broker's authorisation; or
  - 3.2.2** The Broker otherwise ceases in any way to be authorised by the UK Regulator to undertake any activities in relation to any Insurance Business subject to this Agreement; or
  - 3.2.3** The Broker becomes insolvent.
- 3.3** The MGA shall inform the Broker immediately in writing if at any time during the period of this Agreement:
  - 3.3.1** The UK Regulator suspends or withdraws the MGA's authorisation; or
  - 3.3.2** The MGA otherwise ceases to be authorised by the UK Regulator to undertake any activities in relation to any Insurance Business subject to this Agreement; or
  - 3.3.3** The MGA Agent becomes insolvent.

### **4. Authority**

- 4.1** This Agreement sets out the basis on which the MGA will accept Insurance Business from the Broker.
- 4.2** Nothing in this Agreement shall grant the Broker authority to accept, amend, or vary Insurance Business, settle, negotiate or compromise claims, alter any document or policy, make any financial promotion on the MGA's behalf without the MGA's prior written consent, and/or commit the MGA in any way.
- 4.3** Nothing in this Agreement shall affect the Broker's implied authority to "sign down" the MGA's participation on any Insurance Business where cover is placed in excess of 100% of order in accordance with market practice.

### **5. Remuneration**

- 5.1** Commission shall be agreed between the Parties prior to the inception date of any Insurance Business arranged for the Insured.
- 5.2** The Broker may deduct the Commission upon receipt of the premium.
- 5.3** Where premium is payable in more than one instalment, the Broker will only deduct the proportion of Commission that the instalment premium bears to the premium as a whole, unless otherwise agreed and recorded on a risk-by-risk basis between the Parties.
- 5.4** A schedule of Commissions will be issued by the MGA to the Broker from time to time and any changes to Commission will be subject to three (3) months' notice being provided to the Broker by the MGA.

## **6. Premiums and Claims**

### **6.1** Where the Broker holds:

- (a) premium due to be paid to the MGA;
- (b) return premium due to be paid to the Broker's client; or
- (c) claims monies due to be paid to the Broker's client; or
- (d) money received by the Broker from the MGA for onward payment to agents of the Insurer in respect of claims adjustment, legal and similar professional fees;

The Broker shall hold such monies as the agent of the MGA.

The Broker has no authority under this Agreement to permit any third-party, sub-agent, or Appointed Representative to receive, hold, or pay any money on behalf of the Insurer, without the MGA's consent as agent of the Insurer.

### **6.2** The Broker shall advise the MGA within 7 days of receipt of any request from the MGA whether it has received any specified premiums and notify the MGA, within such time as may be agreed between the Parties, that the Insured has failed to pay the premium (or as the case may be, any provisional premium).

### **6.3** Provided the Broker shall itself have received the premium, the Broker shall pay such premium (net of Commission, but including Taxes) to the MGA within the time permitted for the Insured to pay such premium in accordance with the Terms of Credit given in clause 7 or otherwise as agreed between the MGA and the Insured. In the event the Broker receives the premium after the time permitted for the Insured to pay the premium and provided the relevant contract of insurance has not been validly cancelled, the Broker shall pay that premium (net of Commission, but including Taxes) to the MGA as soon as reasonably possible.

### **6.4** Unless otherwise agreed, the Broker shall remain liable to the MGA for premiums where Section 53 (i) and Section 53 (ii) of the Marine Insurance Act 1906 apply.

### **6.5** Pending payment to the MGA, the Insurer, a third party or the Broker's client (as the case may be), the Broker shall hold the monies described in clause 6.1 above within a segregated trust account or within its client monies account, which shall be a trust account, established and maintained in accordance with CASS 5. The MGA hereby consents to such monies being co-mingled with the Broker's other client monies. The MGA further consents to its rights with regard to monies held in the Broker's client monies account being subordinated to those of the Broker's clients, in accordance with CASS 5 and further agrees that any interest earned on the said account shall accrue to the Broker.

### **6.6** In the event of the cancellation or avoidance of a contract of insurance, where the MGA is obliged by law, regulation or the terms of the contract of insurance to repay gross premiums in respect of such contract of insurance, the Broker agrees to repay the relevant Commission (which shall not for the purpose of this clause include fees paid by the Insured).

Such repayment shall, in the case of cancellation, be only in respect of Commission received by the Broker which is attributable to that part of the premium repaid. Unless otherwise obliged to by law, regulation or terms of the contract of insurance, the MGA Agent shall refund premiums net of Commission.

**6.7** The Broker will notify the Managing Agent, within such time as may be agreed between the Parties, that the insured has failed to pay the premium (or, as the case may be, any provisional premium).

## **7. Credit and Accounting**

**7.1** Unless otherwise agreed, the MGA's Terms of Credit are strictly 30 days.

**7.2** The MGA will be responsible for the preparation of a Statement of Account, which may take the form of but not limited to paper, disk, tape, electronic mailing, Excel and Word documents and this statement, unless otherwise agreed, will be the basis of accounting transactions between the Parties.

**7.3** The Statement of Account will be rendered to the Broker on a monthly basis by the MGA. Payment of all monies due (net of Commission, but inclusive of Taxes) must be settled on or before the last working day of the month following the month in which the entries are debited/credited, other than when the Insurer stipulates that payment must be made outside of these standard Terms of Credit.

**7.4** Failure to settle accounts in accordance with clause 7.3 shall be seen as a material breach of this Agreement and will be treated as such.

**7.5** Settlements shall be made in accordance with clause 7.3, but for the avoidance of doubt, the Broker's obligations shall be unaffected:

- i) if the Broker has, without MGA's prior consent, allowed credit to its client.
- ii) if the Broker has obtained extended deferment periods from any premium finance house.
- iii) if the Broker has delays within its own accounting systems.

**7.6** Without releasing the Broker from its obligation to make payment to the MGA for any premiums which are due, the MGA may, after providing at least 7 days written notice of its intention to do so, approach the client directly to obtain payment of any outstanding sums due for payment to the MGA in accordance with this Agreement.

## **8. Taxes**

**8.1** Except where required by law or regulatory authority or by the terms of this Agreement, the Parties agree that the Broker will not be expected to act as guarantor to the MGA with regard to the payment of any Taxes relating to any Insurance Business. Where at the date of this Agreement it is market practice that the Broker administratively arranges payment of Taxes, that practice shall continue.

**8.2** Where the Broker processes and pays Taxes on behalf of the MGA related to premium in respect of any Insurance Business, the Broker will hold such monies in accordance with clause 6.5 above for the Managing Agent and account to the MGA for amounts received by the Broker in respect of such liability for Tax which the MGA may have in respect of that Insurance Business.

## **9. Compliance**

**9.1** Each Party will comply with their respective legal, licensing and regulatory requirements applicable to the production, placing, claims handling and premium and claims accounting of any Insurance Business which the Broker places with the MGA under this Agreement.

- 9.2** The Parties will pay due regard to the Contract Certainty Code of Practice published by the London Market Group (or successor body) and the FCA's Treating Customers Fairly principles in issue at the time of placing the Insurance Business.
- 9.3** The Broker will inform the MGA in relation to all Insurance Business whether the Insured is classified as a consumer or a commercial customer for the purposes of ICOBS.
- 9.4** The Broker will forward promptly notices of Insureds' rights to cancel Insurance Business in all instances where such notices are required by Chapter 7 of ICOBS and in accordance with those rules.
- 9.5** Each Party will pay due regard to the BIPAR Principles. (The BIPAR Principles means the set of high level principles to follow when handling the placement of a risk with multiple insurers, agreed with DG Competition by BIPAR, the European Federation of Insurance Intermediaries).
- 9.6** Each Party shall pay due regard to, and co-operate in respect of the observance of, any applicable financial crime and international economic, financial or trade sanctions laws and regulations which bind the relevant customer, the Broker or the Managing Agent.
- 9.7** Neither Party shall take any action which facilitates the evasion of taxes anywhere in the world or which is contrary to any related financial crime laws and regulations (including without prejudice to the generality of the foregoing the Criminal Finances Act 2017).
- 9.8** Neither Party shall be involved in the offering, promising or giving of any financial or other advantage to any person in breach of any laws and regulations against bribery (including without prejudice to the generality of the foregoing the Bribery Act 2010).
- 9.9** The Parties shall insofar as required to do so, and whether or not either Party is an associated person of the other for the purposes of the Bribery Act 2010, the Criminal Finances Act 2017 or any other relevant laws and regulations, maintain on an ongoing basis appropriate systems, procedures and controls designed to prevent any breach of paragraphs 9.1 to 9.4 above.

## **10. Data Protection**

- 10.1** The Parties acknowledge and agree that where a Party processes Personal Data under or in connection with this Agreement it alone determines the purposes and means of such processing as a Controller.
- 10.2** In respect of the Personal Data a Party processes under or in connection with this Agreement, the Party:
  - (a) shall comply at all times with its obligations under the Data Protection Law;
  - (b) shall notify the other Party without undue delay after, and in any event within 24 hours of, becoming aware of a Personal Data Breach; and
  - (c) shall assist and co-operate fully with the other Party to enable the other Party to comply with their obligations under Data Protection Law, including but not limited to in respect of keeping Personal Data secure, dealing with

Personal Data Breaches, complying with the rights of Data Subjects and carrying out data protection impact assessments.

**10.3** The Parties shall work together to ensure that each of them is able to process the Personal Data it processes under or in connection with this Agreement for the purposes contemplated by this Agreement lawfully, fairly and in a transparent manner and in compliance with the Data Protection Law. This shall include but not be limited to entering into such other written agreements as may be required from time to time to enable each Party to comply with the Data Protection Law.

**10.4** For the purposes of this clause 10:

“Controller” means the person which, alone or jointly with others, determines the purposes and means of the processing of Personal Data;

“Data Protection Law” means all applicable statutes and regulations in any jurisdiction pertaining to the processing of Personal Data, including but not limited to the privacy and security of Personal Data;

“Data Subject” means the identified or identifiable natural living person to whom the Personal Data relates;

“Personal Data” means any information relating to the Data Subject; and

“Personal Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

## **11. Termination**

**11.1** This Agreement shall terminate:

**11.1.1** At any time by one Party giving written notice of termination to the other;

**11.1.2** Immediately, without notice, should either Party become the subject of voluntary or involuntary rehabilitation or liquidation proceedings (save for the purposes of amalgamation or solvent re-organisation) or become the subject of an action in bankruptcy or make or propose any composition with its creditors or otherwise acknowledge its insolvency;

**11.1.3** Immediately, without notice, should the Broker have any authority or permission granted to it by the FCA withdrawn or altered by the FCA in such a manner as materially to affect in any way the Broker’s ability to introduce, arrange, conclude, administer, perform or otherwise be involved with any Insurance Business which is carried out between the Parties under this Agreement.

**11.2** Following termination:

**11.2.1** The Parties will agree the procedure for administering the Insurance Business current at the time of termination;

**11.2.2** The Broker will make all reasonable efforts to provide the MGA with contact details for any Insured or other party with whom the MGA has contracted in the conduct of Insurance Business where:

**11.2.1.1** The Broker has acted as the agent of the MGA; or



**11.2.1.2** Such information is reasonably required in order for the MGA to carry out its obligations in relation to Insurance Business concluded in accordance with this Agreement.

**11.2.3** Where permissible the Parties will remain liable to perform their obligations in accordance with the terms of this Agreement in respect of all Insurance Business subject to this Agreement until all Insurance Business has expired or has otherwise been terminated.

## **12. Access to Records**

**12.1** The Broker will retain all of the Records created or held by it in its capacity as agent of the MGA and all Records received by the Broker for the purposes of the introduction, arranging, concluding, administration or performance of the Insurance Business for a minimum of six years and in any event the minimum periods required by law or any regulatory body with jurisdiction over the Broker, the MGA or the Insurance Business.

**12.2** The Broker agrees to allow the MGA, on reasonable notice, to inspect and to take copies of the following:

**12.2.1** The accounting records pertinent to any Insurance Business including information relating to the receipt and payment of premiums and claims and documentation such as any insurance contract or endorsements, addenda or bordereaux in the possession of the Broker relating to the Insurance Business; and

**12.2.2** Documents as may be in the possession of the Broker which were disclosed to the MGA by the Broker in respect of any Insurance Business including, but not limited to, documentation relating to the proposal for the Insurance Business, the placing thereof (including endorsements and reinstatements) and any claims thereunder.

**12.3** In the event that the MGA requests the Broker to carry out any functions or duties on its behalf, such as the appointment of loss adjusters, lawyers or others, or the Broker otherwise acts as an intermediary between the MGA and its representatives or agents:

**12.3.1** The Broker accepts the MGA's appointment or instructions on the basis that the information received by it in respect of a claim made upon any Insurance Business is disclosable to the Broker's client.

**12.3.2** All documentation and records created or received by the Broker in the performance of such functions or duties shall be and remain the property of the MGA, other than documents over which the Broker has a proprietary commercial interest.

**12.3.3** The Broker will take reasonable steps to retain, maintain and safeguard any of the MGA's documents in the Broker's possession in accordance with any regulatory requirements which apply to the MGA and of which the Broker has notice.

**12.3.4** On termination of this Agreement for whatever reason and on reasonable notice the Broker will deliver up to the MGA such documentation if requested.

### **13. Confidentiality**

Each Party will treat information received from the other relating to this Agreement and to the Insurance Business as confidential and will not disclose it to any other person not entitled to receive such information except as may be necessary to fulfil their respective obligations in the conduct of the Insurance Business and except as may be required by law or regulatory authority. For the avoidance of doubt each Party shall be entitled to disclose such information where necessary to its insurers or reinsurers, actuaries, auditors, professional agents and advisers and other Group companies. This clause will not apply to information which was rightfully in the possession of such Party prior to this Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is trivial or obvious.

### **14. Complaints**

Each Party will notify the other in accordance with the UK Regulator rules of any complaint concerning the other Party relating to Insurance Business subject to this Agreement.

### **15. Protection of Reputation**

Each Party agrees it will not, without the written authority of the other Party, make use of the other Party's corporate or trading names or logos and trademarks.

### **16. Conflicts of Interest**

The Parties will adopt and/or maintain procedures to ensure that each has in place arrangements for the identification and management of any conflicts of interest that may arise in relation to any Insurance Business.

### **17. Disclosure**

The Broker will comply with relevant regulatory, fiduciary and legal requirements regarding disclosure of all forms of remuneration from any arrangements it may have for remuneration in connection with Insurance Business.

### **18. Variation and Assignment**

This Agreement may be assigned or varied only in writing by duly authorised representatives of the Parties.

### **19. Rights of Third Parties**

A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause shall not affect any right or remedy of a third party which exists or is available apart from that Act.

### **20. Dispute Resolution**

**20.1** The Parties to this Agreement are committed to resolving all disputes arising under it (and whether such dispute arises before or after termination of this Agreement) without the need for litigation and to allow as far as possible for commercial relationships to remain unaffected by disputes and therefore the Parties:

**20.1.1** Will attempt in good faith to resolve any dispute or claim promptly through negotiations between respective senior executives of the Parties who have authority to settle the same;

**20.1.2** Will attempt in good faith, if the matter is not resolved through negotiation within three months of the dispute arising to resolve the dispute or claim

through mediation with the assistance of a mediator agreed between the Parties or as recommended to the Parties by the Centre for Dispute Resolution or such similar organisation as the Parties may agree; or

**20.1.3** If the matter has not been resolved by mediation within six months of the dispute arising, or if either Party will not participate in a mediation procedure, the Parties will refer the dispute in accordance with the Jurisdiction and Choice of Law clause below.

**20.2** Notwithstanding the above, either Party may seek the immediate protection or assistance of the High Court of England and Wales if appropriate.

## **21. Jurisdiction and Choice of Law**

This Agreement shall be construed according to English law and any disputes arising under it shall, subject to the provisions of clause 20 above, be determined in the Law Courts of England and Wales.

## **22. Enforceability Clause**

In the event any portion of this Agreement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

## **23. General Interpretation of this Agreement**

In this Agreement, words importing the singular shall include the plural and vice versa. Headings are included for ease of reference and convenience only and shall not affect the interpretation of the Agreement.

## **24. Service of Notices**

Any notices to be given under this Agreement shall be sent by first class recorded delivery post, by hand, or facsimile to the Compliance Officer at the registered office of the Party to be served. The notice shall be deemed to have been served, if posted, at the expiration of two Business Days after posting and if by facsimile, or by hand, at the expiration of one Business Day after it was dispatched.

## **25. Force Majeure**

Neither Party shall be liable for any delay nor non-performance of its obligations under this Agreement 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 endeavours to continue to perform its obligations under this Agreement.

**Signed for and on behalf of:**

**The MGA**

By:

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Name:

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Position:

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Date:

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**The Broker**

By:

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Name:

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Position:

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Date:

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