



TERMS OF BUSINESS AGREEMENT (TOBA) (Non-Risk Transfer)

THIS AGREEMENT (Ref:) is made the

BETWEEN

Matrix Underwriting Management Ltd
Hornigals, Little Tey Road, Feering, Colchester, CO5 9RS
("We, Us, Our")

and

of

("You, Your")

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1. DEFINITIONS

- "We, Us, Our" includes any person or legal entity to which **We** may:
- (a) Assign or transfer the business of; or
 - (b) Grant a Licence or Agency to conduct the day to day running of **Our** business and whose identity shall have previously been notified to **You** in Writing.
- "You", "Your" includes any subsidiary or holding company of **Yours** if it is an incorporated body.
- 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.
- CASS:** The UK Regulator's Client Assets Sourcebook
- "Client"/
"Insured" means any person, firm or company who effects or proposes insurance of any kind whatever through, by or with **Us** and whose agent for the purpose of arranging, negotiating or effecting such insurance is or was **You**.
- "ICOBs" UK Regulator's Insurance Conduct of Business Sourcebook.
- "Premium(s)" means the sums paid or payable by any **Client** for insurance of any kind effected through, by or with **Us** and includes Insurance Premium Tax (IPT) and any Policy Fee charged by **Us**.
- "Gross Premium" means **Premium** before the addition of IPT and Policy Fees
- "Policy" means the Policy or Certificate of Insurance issued by **Us** on behalf of Underwriters.
- "F.C.A." means the Financial Conduct Authority in the United Kingdom.
- "F.S.M.A." means the Financial Services and Markets Act.
- "Rules" mean the rules of the F.C.A.

- 2. STATUS OF THE PARTIES TO THIS AGREEMENT**
- 2.1 **You** shall act and be deemed to be acting as agent for the **Client**.
- 2.2 **You** have no authority to act as an agent for **Us** (other than in respect of the collection of the Insurance Premium).
- 2.3 **You** have no authority to accept Insurance cover for or on **Our** behalf.
- 2.4 **You** have no authority to accept, reject, compromise or settle claims made by any **Client**.
- 2.5 **You** will not use **Our** name, trade names, trademarks or logo's or data or any part of them in advertising, including **Your** web-sites and links from **Your** web-sites without **Our** prior written agreement.
- 2.6 **We** are agents for Underwriters in all respects operating under binding authorities placed with certain Underwriters. **We** will notify **You** if there is any deviation.
- 2.7 **You** may not introduce any business to **Us** that has been introduced to **You** by another intermediary or agent without in each and every case notifying **Us** at the time **You** seek a quotation and obtaining **Our** express agreement.
- 2.8 **You** are directly authorised by the F.C.A.
- 2.9 Nothing in this Agreement shall create a partnership or joint venture between **You** and **Us**.
- 3. DUTY OF DISCLOSURE**
- 3.1 **You** undertake to advise **Us** of all material facts (including claims experience) in respect of every risk submitted for quotation and before the contract is finalised. If there is any doubt as to whether information is material, it must be disclosed. This duty of disclosure also applies at renewal and throughout the term of the **Policy**. If **You** are unable to inform **Us** of any material fact because of any instructions to the contrary by the **Client** **You** shall decline to act for the **Client** in any insurance dealings with **Us**.
- 3.2 Any breach of this duty of disclosure may entitle Underwriters to void the **Policy** from inception and repudiate liability in respect of any claims under the **Policy**.
- 3.3 **We** accept no responsibility for any act, error or omission on **Your** part.
- 3.4 **You** 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.
- 4. QUOTATIONS**
- 4.1 **We** will provide quotations based upon the information supplied by **You**. Such quotation will include any variation in the terms and conditions of **Our Policy** form upon which the quote is based and where information is missing any assumptions made by **Us** in order to provide the quote. It is **Your** duty to check with the **Client** to ensure that they are fully aware of all the terms and conditions of the quote and of all the facts provided or assumed in order to provide the quote. Full details of **Our Policy** forms are available at www.matrixUnderwriting.co.uk.
- 5. CONFIRMATION OF COVER**
- 5.1 **We** will prepare a Declaration to be signed and returned by the **Client** within 30 days.
- 5.2 **You** must examine all documentation produced by **Us** and will advise **Us** immediately if any of the terms and conditions do not accurately meet the **Client's** instructions.
- 5.3 **You** must pass all **Policy** Documentation, including all endorsements, conditions and clauses applying to the **Policies**, to the **Client** immediately on receipt from **Us**. Failure to do so could expose **You** to an errors and omissions claim.
- 6. RENEWALS**
- 6.1 **We** undertake to produce renewal invitations or decline to renew:
- a) in respect of Private contracts at least three weeks prior to renewal date.
- b) in respect of Commercial contracts in good time for renewal date.
- It is **Your** responsibility to ensure that **Our** Invitation is passed on to the **Client** and that all material facts and amendments are requested from the **Client** and these are disclosed promptly to **Us**.
- 6.2 Policies are not automatically renewed, cover ceases at the expiry date of the prior year's **Policy** and is only renewed upon confirmation by **You**.
- 6.3 **We** will withhold Employers Liability Certificates until such time as **You** confirm the **Policy** is to be renewed.
- 7. TERMINATION OF POLICY**
- 7.1 Where a **Client** terminates their **Policy** prior to expiry date **You** shall use all reasonable endeavours to return any relevant documentation to **Us** no later than 10 days after notice of termination has been given. If **You** are unable to return an Employers Liability Certificate **We** may retain the **Premium** relating to that section of the **Policy**.
- 8. PAYMENT OF PREMIUMS / RISK TRANSFER**
- 8.1 All **Premiums** received by **You** from **Clients** and all rebates or refunds of **Premium** paid by **Us** to **You** are deemed to be held by **You** on behalf of the **Client**.
- 8.2 The money referred to in paragraph 8.1 is to be held by **You** in a Statutory or Non-Statutory Trust account in accordance with the **Rules** until paid to **Us** in accordance with paragraph 8.5 or to the **Client** as the case may be.
- 8.3 **You** are entitled to any Interest or Investment income earned on the monies held in accordance with paragraphs 8.1 and 8.2.
- 8.4 **You** shall be liable as principal to **Us** for any **Premium** payable by any **Client** (whether paid to **You** or not) once a risk has been placed on cover and **You** shall pay the same to **Us** in accordance with paragraph 8.5. Nothing contained herein shall prevent any action by **Us** against any **Client** for non-payment of **Premium** due to **Us** where **We** have reason to believe that the **Client** has not paid the **Premium** to **You**.
- 8.5 **You** shall pay to **Us** within 30 days of the end of the month in which a
1. renewal is due,

2. **Policy** incepts or
 3. debit note is issued to You (in the case of an adjustment).
- 8.6 Should **You** fail to pay **Us** in accordance with paragraph 8.5 **We** may:
- a) inform the **Client** of that fact,
 - b) require **You** to pay **Us** interest on the unpaid sum at the rate applicable from time to time under the Late Payment of Commercial Debts (interest) Act 1998, entitlement to interest at such rate to apply both before and after any judgment,
 - c) consider this to be a material breach of this Agreement and subject to termination in accordance with paragraph 11.2.
- 8.7 **You** shall notify **Us** in writing within 30 days of the commencement of cover for new business and renewals or within 30 days of the debiting of any adjustments if **You** fail to obtain the full **Premium** from the **Client**. **We** shall then be entitled to cancel the **Policy** Ab-Initio or if the **Premium** has been part paid by giving notice under the cancellation provision of the **Policy** by writing directly to the **Client**.
- 8.8 Where **You** make use of Third Party Premium Finance **You** shall ensure that the **Premium** is received in adequate time to pay **Us** under the terms of paragraph 8.5. Failure to do so will give **Us** the right to cancel the **Policy** for non-payment of **Premium**.
- 8.9 Where **You** use **Your** own funds to finance the **Premium** payment the full **Premium** is to be paid into a trust account on **Our** behalf at the commencement of the finance agreement and shall be paid to **Us** in accordance with paragraph 8.5.
- 8.10 Where the **Premium** is being collected under a premium finance agreement arranged by **Us** responsibility for the collection of instalments rests solely with **Us**. In the event of the **Client** defaulting on an instalment **We** may cancel the **Policy**.
- 8.11 Where **We** have cancelled a **Policy** in accordance with the cancellation provisions contained therein **We** will give a pro rata rebate directly to the **Client** and debit **Your** account with the commission element of the refund which shall be repaid to **Us** by **You** in accordance with paragraph 8.5.
- 8.12 Where it is not possible to agree the full **Premium** within 15 days after commencement or renewal of cover, **You** shall (if **We** require) request from the **Client** a provisional **Premium** representing an approximation of the full **Premium** applicable. **We** shall charge and **You** shall pay the amount of this provisional **Premium** in accordance with the terms of paragraph 8.5. Any provisional **Premium** shall be treated in the same way as other **Premiums** are treated under this Agreement.. The final **Premium** to be paid by the **Client** and any change in the terms and conditions of the insurance are to be confirmed as soon as possible. If there are any adjustment to be made after **You** have collected any provisional **Premium**, a debit note will be issued as an adjustment to be paid in accordance with the terms of paragraph 8.5.

9. COMMISSION

- 9.1 **We** will pay **You** commission upon the **Gross Premiums** for insurance placed by **You** with **Us**. Where more than one party claims entitlement to commission then it shall be at **Our** sole discretion to determine how the commission shall be apportioned between such parties.
- 9.2 Commission on any business will become due and payable to **You** on collection of the **Premium** from the **Client** concerned or on collection of the **Premium** from any third party funding the **Premium** on behalf of the **Client** .
- 9.3 The rate of commission will be fixed by **Us** giving notice in writing to **You** of the rate of commission. The rate of commission may be varied by **Us** giving to **You** 30 days notice in writing.
- 9.4 **You** are authorised to deduct **Your** commission fixed in accordance with the provision of paragraph 9.2 from **Premiums** payable.
- 9.5 Where for any reason the **Client** is entitled to a refund of **Premium** **You** shall repay to **Us** commission at the rate paid within 30 days of the end of the month in which a debit note is issued to **You**.
- 9.6 Where any fees are added by **You** to the amount invoiced by **Us** this must be shown separately and clearly on the invoice to the **Client** as being **Your** charges and not **Ours** and are additional to the **Premium** charged by Underwriters.

10. CLAIMS

- 10.1 **You** shall act as agent for the **Client** in all aspects of the handling of claims including the receipt of payment of any claim.
- 10.1 It is essential that **We** are advised immediately of all incidents which may result in a claim under a **Policy**, whether the **Client** believes they are liable or not.. Any letter or claim received by the **Client** must be passed to **Us** immediately. Failure to report a claim immediately may result in Underwriters rights being prejudiced and lead to the claim being declined.
- 10.2 **We** shall have the option of paying a claim by cheque, Direct Credit or Bank transfer.
- 10.3 **You** shall forthwith pass to the **Client** any cheque sent to **You** in settlement of the **Client's claim**.

11. TERMINATION

- 11.1 This Agreement may be terminated by either party by giving at least 30 days notice in writing to the other at the last known address.
- 11.2 Either party may terminate this Agreement by notice in writing to the other in the following circumstances:
- a) where one party has reasonable grounds for suspecting fraud or dishonesty by the other party's employees, agents or independent contractors;
 - b) where one party reasonably holds the opinion that, either the regulatory status of the other party has changed, or that administration of the account is being operated by the other, in a manner causing or likely to cause, prejudice to them or the **Client**;
 - c) where the other has failed to remedy a breach of this Agreement within 30 days of a written request from the party not in breach to do so;
 - d) where the other has committed an irredeemable breach of this Agreement:
 - e) where the other has a receiver appointed over the whole or part of its undertaking or assets; enters into voluntary arrangement under Part 1 of the Insolvency Act 1986 or otherwise makes any composition with creditors; if a petition for

a winding up or an administration order is presented against it or either of these orders is made against it; if a petition for a bankruptcy order is presented against it or if such an order is made in respect of it; if it is unable to pay its debts in accordance with Insolvency Act 1986 S123; on dissolution of partnership;

- 11.3 This Agreement will terminate automatically if **Your** Part IV permission is cancelled by the **F.C.A.**,
- 11.4 **We** may terminate this Agreement if **Your** Part IV permission is varied by the **F.C.A.**
- 11.5 If **You** are a sole trader, **We** will terminate any Agreement with **You** with immediate effect in the event of **Your** death in order to protect the **Clients** interest.
- 11.6 Any termination in accordance with paragraph's 11.2 to 11.5 inclusive shall have immediate effect and where appropriate, suitable arrangements for the servicing of the **Clients** will be made by **Us**.
- 11.7 Save as provided in this Agreement, termination of this Agreement shall be without prejudice to any rights or obligations accruing prior to such termination.

12. FINANCIAL CONDUCT AUTHORITY

- 12.1 **We** are authorised and regulated by the **F.C.A.** (Firm FSA Ref No: 537923)
- 12.2 **You** warrant that **You** are authorised by the UK Regulator (or other EEA regulatory body) to conduct insurance mediation activities (as defined in the UK Regulator's Handbook) from the date of this Agreement.
- 12.3 **You** shall comply with the **F.S.M.A.** and all rules to which **You** are subject including all requirements relating to authorisation and supervision in respect of **Your** insurance mediation activities. **You** shall notify **Us** immediately if there is a change in **Your** regulatory status.
- 12.4 **We** shall comply with the **F.C.A.**'s rules as they apply to **Us** and provide **You** with the necessary information and documentation in a timely manner to enable **You** to comply with the **F.C.A.**'s rules as they apply to **You**.
- 12.5 **You** shall provide annual financial statements and/or management accounts, or a declaration that you continue to satisfy the capital requirements as set out in MIPRU4 of the Financial Services Authority's Handbook .
- 12.6 If **You** cease to be authorised by the **F.C.A.** **We** may at **our** option either:
 - a) deal direct with the **Client** or
 - b) transfer the **Client** to another intermediary authorised by the **F.C.A.**
- 12.7 **You** undertake to notify **Us** in writing immediately in the following circumstances:
 - a) variation or cancellation of **Your** Part IV permission by the **F.C.A.**;
 - b) variation or cancellation by the **F.C.A.** of the Part IV permission of your agents or sub-agents;
 - c) initiation of **F.C.A.** disciplinary or investigative action in relation to **You** or **Your** Staff or **Your** agents or sub-agents;
 - d) any material change in **Your** Approved Persons or the Approved Persons appointed by **Your** agents or sub-agents.
- 12.8 **You** shall be responsible as Principal for all regulatory requirements in relation to **Your** Appointed Representatives or **Your** Introducer Appointed Representatives. For the avoidance of doubt, the provisions of this Agreement shall apply in full to **Your** Appointed Representatives and **Your** Introducer Appointed Representatives in relation to all matters covered by this Agreement.

13. COMPLIANCE

- 13.1 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 **You** place with **Us** under this Agreement.
- 13.2 The Parties will pay due regard to the Contract Certainty Code of Practice published by the London Market Group (or successor body) in issue at the time of placing the Insurance Business.
- 13.3 **You** will inform **Us** in relation to all Insurance Business whether the Insured is classified as a consumer or a commercial customer for the purposes of ICOBS.
- 13.4 **You** 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.
- 13.5 Each Party will pay due regard to the BIPAR Principles.
- 13.6 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, **You** or **Us**.
- 13.7 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).
- 13.8 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).
- 13.9 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 13.6 to 13.8 above.

14. AUDIT

- 14.1 **We** may carry out an audit of **Your** compliance procedures and relevant trust accounts in respect of **Our** General Insurance business and **You** shall allow **Us** or **Our** agents access to **Your** premises, files and documents in relation to this Agreement on reasonable notice for this purpose.

15. BROKER/CLIENT RELATIONSHIP

- 15.1 For the duration of this Agreement and for a period of five years thereafter, **We** will not intentionally use customer information supplied to **Us** by **You** in respect of **Policies** placed with **Us**, or quotations requested from **Us**, for the purposes of soliciting, directly or indirectly, that business away from **You**. This restriction will not apply where **We** terminate this Agreement in accordance with paragraph's 11.2 to 11.5 inclusive.

16. POLICY FEES

16.1 In addition to the **Premium** charged by Underwriters, **We** may make an additional charge. Any charges will be advised to **You** at the time of quotation.

17. CONFIDENTIALITY

17.1 Each of the parties 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.

18. COMPLAINTS

18.1 Each Party will notify the other in accordance with the rules of the UK Regulator (or other EEA regulatory body) of any complaint concerning the other Party relating to Insurance Business subject to this Agreement.

19. CHANGE IN CIRCUMSTANCES

19.1 **You** shall immediately notify **Us** in writing of any material change in **Your** owners, directors, partners and controllers, including all changes in **Your** name or trading name.

20. GOVERNING LAW

20.1 This Agreement and any accompanying or associated documentation shall be governed by and construed solely in accordance with English Law.

21. NO WAIVER

21.1 No waiver by **Us** of any breach by **You** of any terms of this Agreement shall be construed as a waiver of any subsequent breach.

22. NOTICES

22.1 Notice under this Agreement or any arrangement under it shall be sent either by pre-paid post to the last known address of the other party, or by facsimile or by hand delivery and shall be deemed served, in the case of posting within 72 hours of posting; in the case of facsimile, on confirmation of successful transmission to the last known facsimile number of the receiving party and in the case of hand delivery, on delivery to the last known address of the receiving party.

23. ASSIGNMENT

23.1 Agreement between **Us** and any benefit or obligation of it may only be assigned or sub contracted with Our prior written consent.

24. SEVERABILITY

24.1 If any provision of this Agreement shall be found by any Court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. Both parties agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

25. FORCE MAJEURE

25.1 Neither **You** nor **Us** shall be liable for any breach of our respective obligations, acts or omissions hereunder resulting from causes beyond our reasonable control, including (but not limited to) fires, insurrection, riots, embargoes, shortages, delays in transportation, inability to obtain supplies, the requirements or regulations of any civil or military authority but not including strikes or other forms of industrial action (an 'Event of Force Majeure'). If an Event of Force Majeure occurs, the party whose obligations are suspended by virtue of the Event of Force Majeure shall use all reasonable endeavours to mitigate the effect of such circumstances and carry out such obligations or duties hereunder in such other way as may be reasonably practicable in all the circumstances.

25.2 Both parties agree to give notice to the other as soon as is reasonably practicable after becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

25.3 In the event of **either party** receiving notice from the other in accordance with paragraph 24.2, both parties shall within 14 days of the notice jointly determine what measures, if any, can be put in place to prevent the occurrence (where possible) or mitigate the effect of the Event of Force Majeure.

25.4 If a default due to an Event of Force Majeure shall continue for more than 4 weeks after expiry of the 14 day period provided for in paragraph 24.3, the party not in default shall be entitled to terminate the Agreement by giving written notice to the other. Neither party shall have any liability to the other in respect of the termination of the Agreement as a result of an Event of Force Majeure, but rights and liabilities which have accrued prior to termination shall subsist.

26. RIGHTS OF THIRD PARTIES

26.1 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 but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

27. DATA PROTECTION

- 27.1 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.
- 27.2 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.
- 27.3 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.
- 27.4 For the purposes of this clause 27:
 - “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.

28. CONFLICTS OF INTEREST

- 28.1 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.

29. VARIATIONS TO THIS AGREEMENT

- 29.1 We may vary the terms of this Agreement at any time by sending to **You Our** revised Agreement and the changes shall be effective 30 days from notification.

30. PREVIOUS AGREEMENTS

- 30.1 This Agreement supersedes any prior Agreements between the parties whether written or oral.

By signing below, **You** confirm that **You**:

- 1. agree to abide by the terms and conditions of this Agreement,
- 2. that **You** have the authority to sign this Agreement and
- 3. **You** have not made any amendments to this Agreement

Signed on behalf of **KEYBOARD**(Broker)

Date

Name

Position Held

Signed for and on behalf **Matrix Underwriting Management Ltd**

Stephen Haynes F.C.I.I. Chartered Insurer
Director