

TERMS OF BUSINESS AGREEMENT...

This Terms of Business Agreement is made on (“Commencement Date”) Between Somerville Market Solutions Limited, Buzzards Hall, Sudbury, Suffolk CO10 2AA (hereinafter referred to as “SMS”) And (hereinafter referred to as the “Broker”) Of

This Terms of Business Agreement replaces any other terms of business with SMS with effect from the commencement date. This Agreement reflects the terms of business under which all general insurance business is transacted between SMS and the Broker from the Commencement Date.

GENERAL TERMS...

1.1 The Broker warrants that it is authorized to conduct the regulated activities by this Agreement in accordance with the Financial Services and Markets Act 2000 (“FSMA”) and undertakes to comply at all times with the regulatory requirements applicable to it or which become applicable to it under FSMA, including without limitation all rules and requirements of the Financial Services Authority (“FSA”). In the event of any of the Broker’s permissions being varied or terminated the Broker must notify SMS immediately in writing.

1.2 For purposes of the Agreement the Broker is, at all times, acting as the agent of its clients and not SMS. The Broker has no authority to act on behalf of SMS, unless otherwise expressly stated. For the avoidance of doubt the Broker is solely responsible for the advice which it gives to its clients. The Broker shall be acting as the agent of its clients, not SMS in relation to the preparation of all proposal forms, statements of fact, cover notes and other documentation relating to any insurance underwritten or placed by SMS.

1.3 The parties acknowledge that the clients whose business is referred to SMS by the Broker are the clients of the Broker. Accordingly, SMS undertakes not directly or knowingly to solicit the clients of the Broker away from the Broker during the currency of this Agreement subject to clause 8.3 and 8.5 of this Agreement.

1.4 The Broker shall not appoint any sub-agent to deal with the insurance business of SMS, unless expressly agreed in writing and strictly subject to any terms imposed by SMS.

1.5 The Broker and SMS may, by mutual written consent, agree to vary the terms and conditions of this Agreement at any time.

1.6 The Broker shall immediately advise SMS in writing of any changes in the regulatory status, structure, location or domicile of the Broker and/or if a company its directors or if a partnership, any of its partners as applicable.

1.7 The Broker shall at all times maintain professional indemnity insurance in accordance with applicable regulatory requirements. The Broker will fully and effectively indemnify SMS against any costs, loss, liability or any expense whatsoever which may be suffered by SMS directly or indirectly as a result of any service performed or action taken or omitted to be taken by the Broker, save to the extent that the same is due to SMS's negligence, willful default or defraud.

1.8 The Broker expressly agrees that nothing in this Agreement obligates SMS to accept any proposal for insurance or renewal of any existing policy or to maintain cover of any existing policy.

1.9 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 non-exempt financial promotion on SMS's behalf, and/or commit SMS in any way.

1.10 The Broker may not advertise on behalf of SMS in any manner whatsoever without having first obtained SMS's written authorization.

DOCUMENTATION, PROPOSALS AND RENEWALS...

2.1 The Broker must ensure that all proposal forms and statement of facts are properly and accurately prepared and must dispatch such documentation promptly to the client and/or SMS as appropriate. SMS reserves the right to refuse to accept any business introduced, including business offered through any electronic process for any failure to comply with the obligations of this clause.

2.2 The Broker must provide promptly to SMS any material information provided by the client in respect of any insurance underwritten or proposed to be underwritten by SMS on behalf of insurers. In the event of the Broker being aware of non-disclosure of material information by the client, the Broker must either inform SMS of such non-disclosure or decline to act on behalf of that client in undertaking any general insurance business with SMS.

2.3 Unless otherwise agreed, SMS shall issue renewal documentation to the Broker for those insurance policies for which SMS is prepared to offer renewal. The Broker shall send the appropriate renewal documentation to the client concerned promptly and advise the client of any changes to the terms applicable to that client. If the client does not renew the relevant insurance policy the Broker must inform SMS in writing within 15 days of the due date for renewal and destroy all renewal documentation issued by SMS held by the Broker. Where under regulation a mandatory timetable exists for the issue of renewal documentation by either SMS or the Broker that timetable must be adhered to. If SMS is not prepared to offer renewal for a policy the Broker will be notified accordingly.

2.4 The Broker must give to its client promptly and in accordance with the applicable legislation all certificates and other documents which those clients are required to obtain under the terms of the legislation in relation to general insurance business placed by

SMS on behalf of insurers. The Broker must read and check the documents carefully and ensure they are suitable for their client's needs.

2.5 Where a client terminates an insurance policy prior to normal expiry, the Broker shall use reasonable endeavours to return to SMS all relevant documentation no later than 7 days after notice of termination has been given. In the case of motor insurance, the policy can only be terminated when the client has surrendered the current Certificate of Motor Insurance. The Certificate of Motor Insurance must be returned to SMS immediately. Refunds will depend upon the specific terms of the contract in force.

2.6 The Broker must retain all documents and electronic records relating to the insurance transactions covered by this Agreement for the currency of the cover and for a minimum period of 3 years thereafter.

COMMISSION...

3.1 SMS shall pay commission to the Broker in accordance with the Schedule subject to any individual case being negotiated separately at the time of placement as stated on the quotation.

3.2 SMS may alter the provisions of the Schedule by giving one month's notice in writing to the Broker.

3.3 Commission shall only be payable if:

- 3.3.1.** The Broker can (if requested) produce written evidence that the policyholder recognizes the Broker as his agent, and
- 3.3.2.** The premium has been paid to and retained by SMS.

3.4 In the event of a mid term adjustment or of a policy being cancelled for any reason, the Broker must repay to SMS any commission received in respect of any part of the premium repaid by SMS to the client concerned and SMS may set-off any commission due to the Broker, against such repayment.

ACCOUNTING...

4.1 A Debit Note will be issued to the Broker once premiums have been agreed. In the event of protracted negotiations SMS may issue a debit note for a deposit premium. The Broker will pay all premiums within 15 days of receipt of the Debit Note or in accordance with the credit terms stated on the Debit Note if different.

4.2 In the event of the Broker allowing his client to pay the premium under an installment arrangement with a premium finance company, the premium payment conditions of this agreement continue to apply.

4.3 SMS agrees that the Broker may treat such monies as if they were client monies for the purpose of complying with the FSA CASS rules and may co-mingle such monies with the Broker's other client monies.

4.4 SMS consents to the right of the Insurers with regard to monies held in the Broker's client monies account being subordinated to the right of the Insured.

RESPONSIBILITY FOR PREMIUMS...

- 5.1** The Broker shall hold monies received from their client on behalf of SMS in a statutory or non-statutory trust in accordance with, as a minimum standard, the requirements of the FSA Rules and/or any other relevant regulatory body.
- 5.2** SMS will act as agent of the insurer for the holding of all premiums and claims money. Risk Transfer will not be passed back to the Broker unless specifically stated.
- 5.3** The Broker and his client shall be jointly and severally liable to SMS for the payment of all sums which may be due or may become due at any time arising from the insurance placed on the behalf of the client under this Agreement.
- 5.4** In the event of the failure of the Broker to pay premiums debited to him within the terms of credit allowed, SMS may without releasing the Broker from his responsibilities approach the client for payment of the outstanding premiums.
- 5.5** Notwithstanding any action taken in the event of any premium not being paid within the terms of credit allowed SMS may cancel the insurance and apply the appropriate provisions of any premium payment warranties.
- 5.6** The Broker hereby appoints SMS as its agent and attorney with full authority from the Broker in its name to institute and prosecute any legal proceedings against the client as SMS may consider necessary or expedient in the event of non-payment of premiums to SMS provided always that SMS shall not be obliged to do so nor shall this provision relieve the Broker from any of its obligations hereunder.
- 5.7** If renewal confirmation documents are held by the Broker for more than 15 days after the relevant renewal date, then the Broker shall be responsible to SMS for the premium due, even though the premium may not have been paid to the Broker.

COMPLIANCE...

- 6.1** The Broker's obligations to comply with the FSMA and all regulatory requirements applicable under FSMA include:
- 6.1.1.** Treating clients fairly
 - 6.1.2.** Having appropriate systems in place which reflect the nature, scale and complexity of its business
 - 6.1.3.** Conducting its business with due skill, care and diligence
- 6.2** The Broker shall immediately notify SMS on receiving a complaint from a client which relates to SMS's regulated activities and will promptly provide copies of all relevant information and documentation to SMS.
- 6.3** The Broker is responsible for the technical training and competence of their staff and ensuring that they adhere to the requirements of the FSA regulations.
- 6.4** The Broker and SMS undertake to comply with the provisions of the Data Protection Act 1998 and all other data protection legislation from time to time in respect of personal information.

6.5 The Broker shall obtain all such consents and provide all such information as may be necessary to ensure that processing of personal data by SMS and the Broker are in full compliance with the legislation.

6.6 The Broker must at all times maintain appropriate licences under the Consumer Credit Act.

6.7 SMS may carry out an audit of all the Broker's books and records, including compliance procedures relating to the business transacted between SMS and the Broker.

6.8 Both parties shall comply with all applicable laws, codes of practice, statutory requirements and any applicable guidance by regulators or industry bodies.

CLAIMS...

7.1 The Broker must advise SMS immediately upon receipt of notice of a claim. The Broker has no authority to act on behalf of SMS in respect of claims, and in particular, is not authorized to commit SMS in any way or to arrange a claim settlement.

TERMINATION...

8.1 Either party may terminate this Agreement by giving the other party not less than 30 days written notice.

8.2 In the event of such termination the Broker may either:

8.2.1. Commencing not more than 30 days after notice of termination, take 12 months to place existing business elsewhere, as policies fall due for renewal. In such case the parties shall cooperate during this period to achieve such objective and SMS shall provide, if appropriate, the information reasonably necessary to the Broker to place the business elsewhere: **OR**

8.3 Either party may terminate this Agreement on written notice to the other party with immediate effect if:

8.3.1. Either party has reasonable grounds for suspecting the other party, or its employees, agents, independent contractors are guilty of fraud, dishonesty or bad administration;

8.3.2. Either party has materially breached any of the provisions of the Agreement and has failed to remedy such breach within 15 days of receiving written notice requiring such breach to be remedied from the party not in breach;

8.3.3. Either party's permission under Part IV of FSMA is terminated;

8.3.4. Either party become the subject of voluntary or involuntary rehabilitation or liquidation proceedings or become the subject of an action in bankruptcy or make or propose any composition with its creditors or otherwise acknowledge its insolvency;

8.3.5. Either party suspends payments or is unable to pay its debts in accordance with the Insolvency Act 1986.

8.3.6. SMS may terminate this Agreement by written notice with immediate effect if:

- 8.3.6.1.** The Broker takes up residence or becomes domiciled outside the UK;
- 8.3.6.2.** If the Broker fails to pay or account for any sum due to SMS under this Agreement within the time permitted for such payments;
- 8.3.6.3.** The Broker being a sole trader dies.
- 8.3.6.4.** The business of the Broker is acquired, amalgamated, controlled or administered by any other person, partnership, company, corporation or authority;
- 8.3.7.** SMS in its absolute discretion decides if it is unable to continue this Agreement as a result of the appointment of a director or partner of the Broker;
- 8.3.8.** The Broker's permission under Part IV of FSMA is terminated or has been varied and such variation is likely to cause prejudice to Customers or if the FSA exercise any of the powers which it has under FSMA in relation to the Broker (including in particular any powers available to the FSA under Part II of FSMA).
- 8.3.9.** Being an individual any arrangement or composition is made with the Broker's creditors or a petition for bankruptcy or an administrative order is filed or the Broker is adjudged bankrupt or if being a partnership, the Broker dissolves; **or**
- 8.3.10** The Broker ceases or threatens to cease to carry on business.

8.4 On termination of the Agreement:

- 8.4.1.** SMS shall not accept proposals for new business from the Broker and the Broker shall not issue renewal invitations;
- 8.4.2.** All rights to commission cease from the date of termination;
- 8.4.3.** All books, papers, records and other property of SMS must be returned immediately to SMS;
- 8.4.4.** The Broker must immediately provide to SMS with full details of all transactions being carried out by the Broker in the course of the Agreement at the date of termination;
- 8.4.5.** All monies outstanding to SMS become immediately due and payable;
- 8.4.6.** Where at the date of termination premiums are due from policyholders for cover issued before termination, SMS may collect the premium direct and retain the commission in respect of all monies owed by the Broker to SMS;
- 8.4.7.** SMS shall, at the request of the Broker, provide reasonable access to its records relating to the clients of the Broker for the purposes of placing insurance business relating to those clients with other insurers. SMS may advise any specific procedures required for administering current business at the time of termination; and
- 8.4.8.** The Agreement shall continue in effect in respect of all insurance business written prior to the date of termination (other than for the renewal of such business following the dates of termination) and all such sums due from either party to the other shall be paid in accordance with the terms of this agreement.

8.5 Where SMS has terminated the Agreement for any reason under Clause 8.3 then SMS reserves the right to deal directly with clients and in such circumstances the Broker will not be entitled to any payment for goodwill which may arise from such arrangements neither will SMS be under any duty to account to the Broker in respect of such arrangements in any way whatsoever.

CONFIDENTIALITY...

9.1 Each party shall at all times during the continuance of this Agreement and after its termination keep all Confidential Information that it may acquire in relation to the business or affairs of the other party. Neither party shall use the other party's Confidential Information for any purpose than to perform its obligations under this Agreement. Each party shall ensure that its officers and employees comply with the provisions of this clause.

9.2 The obligations set out above shall not apply to any information which:

- 9.2.1.** Is publicly available or becomes publicly available through no act or omission of that party; or
- 9.2.2.** A party is required to disclose by order of a court of competent jurisdiction or regulatory authority.
- 9.2.3.** Was lawfully in the possession of either party or the disclosure of which was not in breach of any obligation of confidentiality or other duty or restriction.

GENERAL...

10.1 This Agreement shall be governed by and interpreted in accordance with the laws of England and both parties hereto agree to submit to the exclusive jurisdiction of the English Courts.

10.2 Any waiver by either party of a breach of any provisions of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.

10.3 This agreement is personal to the parties and the benefits and obligations may not be assigned or delegates in whole or in part without SMS's written consent.

10.4 Waiver of a breach of any terms if this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement. The rights and remedies provided by this Agreement are cumulative and (subject as otherwise to this Agreement) are not exclusive of any rights or remedies provided by law.

10.5 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which will remain in full force and effect.

10.6 Any variations to the terms of this Agreement must be confirmed in writing and signed by both parties thereto.

10.7 The Broker will maintain procedures to ensure that they have in place arrangements for the identification and management of any conflict of interest that may arise in relation to any Insurance Business.

11.1 Either party shall not be liable for any delay or 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 and used all reasonable endeavours to continue to perform its obligations under the Agreement.

Signed on behalf of Broker.....

Name.....

Position.....

Date.....FSA Number of Firm.....

Signed on behalf of SMS.....

Name.....

Position.....

Date.....FSA Number of Firm.....