

Terms of Business Agreement (Wholesale)

This agreement is dated _____ and is made between

1 _____ (Company Number _____)
(the "Broker")

whose Registered Office is _____

and

2 Glemham Underwriting Limited (Company Number 5509907) whose Registered Office is c/o Turner & Ellerby, The Guildhall, Framlingham, Woodbridge, Suffolk, IP13 9AZ
(the "Company")

each a Party and collectively the Parties.

Whereas

- 1 The Company is authorised and regulated by the Financial Conduct Authority (established under the Financial Services and Markets Act 2000) and is a Lloyd's Coverholder underwriting Certificates of insurance on behalf of Lloyd's Underwriters.
- 2 The purpose of this Agreement is to allow the Broker, subject to the terms and conditions of this Agreement, to introduce commercial insurance customers to the Company.
- 3 This Agreement sets out the terms of business between the Broker and the Company, and regulates their dealings in respect of the insurance business introduced.

1 Definitions

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|-----|--------------------|--|
| 1.1 | Agreement | This agreement. |
| 1.2 | CASS | The FCA's Client Assets Sourcebook. |
| 1.3 | Certificate | A document which is or is to form the basis of either a contract for insurance or contract of insurance. A Certificate may incorporate details of administrative arrangements pertinent to the processing of the contract for or of insurance. |
| 1.4 | Commission | Commission receivable by the Broker at the rates and times (if any) set out in this Agreement. |
| 1.5 | FCA | The Financial Conduct Authority or any successor regulatory body. |
| 1.6 | 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. |
| 1.7 | ICOBS | The Insurance Conduct of Business Rules promulgated and issued from time to time by the FCA. |
| 1.8 | Insurance Business | Any insurances falling within the definition of "contract of insurance" in Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or as amended together with insurances concluded under any contracts for insurance made by the Company where the Broker is the coverholder or the placing broker. |
| 1.9 | Insured | Any Party (not being the Company) entering into a contract of insurance, which is subject to this Agreement. |

- 1.10 Records Anything on which any information of any description is recorded.
- 1.11 Sub-Broker Any other insurance broker, introducer, third party, sub-agent or Appointed Representative (as defined in the FCA's Handbook) on whose behalf the Broker offers commercial insurance customers to the Company.
- 1.12 Taxes All Insurance Premium Taxes (IPT) and other para-fiscal charges, which may be levied by fiscal authorities on insurance premiums.

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 Certificate, 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 coverholder.
- 2.2 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 Company, or the placing of any Insurance Business.
- 2.3 Subject to clause 2.5 below, the Parties agree that the terms herein shall apply to the conduct of any Insurance Business, which has been or may be transacted between the Parties 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. The terms of this Agreement shall apply from the date of the Agreement.
- 2.4 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 Company 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 Company.
- 2.5 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 Company 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 FCA to conduct insurance mediation activities (as defined in the FCA's Handbook) from the date of this Agreement. The Company warrants that it is also authorised to conduct insurance mediation activities from the date of this Agreement.
- 3.2 The Broker shall inform the Company immediately in writing if at any time during the period of this Agreement:
 - 3.2.1 The FCA suspends, withdraws or amends the Broker's authorisation; or
 - 3.2.2 The Broker otherwise ceases in anyway to be authorised by the FCA to undertake any activities in relation to any Insurance Business subject to this Agreement; or
 - 3.2.3 The Broker becomes insolvent.
 - 3.2.4 The Broker is otherwise unable to comply with any clause of this Agreement.
- 3.3 The Broker shall inform the Company immediately in writing if, at any time during the period of this Agreement, it has placed business with the Company on behalf of a Sub-Broker and:
 - 3.3.1 The FCA suspends, withdraws or amends such Sub-Broker's authorisation; or
 - 3.3.2 The Sub-Broker otherwise ceases in anyway to be authorised by the FCA to undertake any activities in relation to any Insurance Business subject to this Agreement; or

3.3.3 The Sub-Broker or introducer becomes insolvent.

3.3.4 The Broker is otherwise unable to comply with any clause of this Agreement as a result of the activities of a Sub-Broker.

3.4 The Company shall inform the Broker immediately if:-

3.4.1 The FCA suspends, withdraws or amends the Company's authorisation; or

3.4.2 The Company otherwise ceases to be authorised by the FCA to undertake any activities in relation to any Insurance Business subject to this Agreement; or

3.4.3 The Company becomes insolvent.

4 Authority

4.1 This Agreement sets out the basis on which the Company will accept Insurance Business from the Broker. The Company authorises the Broker to act as the agent of the Company for the sole purpose of receiving and holding premium, claims and other monies identified in clause 6.1 below.

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

4.3 Nothing in this Agreement shall affect the Broker's implied authority to "sign down" the Company's participation on any Insurance Business where cover is placed in excess of 100% of order in accordance with market practice.

4.4 Where the Company issues an Indication of Premium with subjectivities or a request for additional information, the Company will not bind the risk until they have confirmed in writing that they are prepared to bind cover at the terms indicated in the Indication of Premium or at such amended terms as they have communicated to the Broker in writing.

4.5 The Company acts as agents of insurers and Lloyd's Underwriters in underwriting and administering risks and has the authority to 'cascade' risk transfer to the Broker.

4.6 The authority provided under clause 4.5 may not be delegated to any Sub-Broker.

5 Remuneration

5.1 The Company will pay the Broker a Commission which will be a percentage of the premium net of Insurance Premium Tax in respect of Certificates issued in accordance with this Agreement:

15.0% for stand-alone Liability business;
17.5% for Combined Property and Liability business where the Liability proportion is in excess of 50% of the total premium;
20% for all Certificates containing a Professional Indemnity Section
20% for all other Certificates

or otherwise as agreed at the quotation stage

5.1.1 Such commission will not apply to taxes collected by the Company and the Broker on behalf of the taxation authorities.

5.2 The Broker may deduct the Commission upon receipt of cleared funds for the premium.

5.2.1 Where premium is payable to the Company 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 on a risk-by-risk basis between the Parties.

5.3 Where the Broker agrees a fee with the client, instead of receiving a Commission from the Company, the Certificate schedule shall be issued showing the premium net of Commission.

5.4 The Company reserves the right to charge an arrangement fee in consideration of the work that it performs. This work is separate from the contract of insurance between the Underwriter and the Insured and the fee will be in excess of and separate from the amount of premium (including Insurance Premium Tax) charged by Underwriters. The fee will be disclosed separately from the premium and Insurance Premium Tax to the Broker.

6 Premiums & Claims

6.1 Where the Broker holds

- (a) premium due to be paid to the Company;
- (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 Company for onward payment to agents of the Company in respect of claims adjustment, legal and similar professional fees

the Broker shall hold such monies as the agent of the Company. The Broker has no authority under this Agreement to permit any Sub-Broker to receive, hold, or pay any money on behalf of the Company, without the Company's consent.

6.2 The Company may ask, and within 7 days, the Broker shall advise the Company whether such premiums have been received.

6.3 Provided the Broker shall itself have received the premium, the Broker shall pay that premium (net of Commission, but including Taxes) to the Company in accordance with the terms of trade contained in Clause 8 of this Agreement.

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

6.5 Pending payment to the Company or client (as the case may be), the Broker shall hold the monies described in clause 6.1 above as the agent of the Company within its client monies account, which shall be a statutory or non-statutory trust account, established in accordance with CASS 5.4. The Company hereby consents to such monies being co-mingled with the Broker's other client monies. The Company 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. Where the Broker holds no client money, and does not, therefore, operate a client monies account in accordance with CASS 5.3 or CASS 5.4, the Broker is required to hold the monies described in clause 6.1 above in a properly constituted Trust Account as agent of the Company, such Trust to be established in line with BIBA's "Insurance Brokers Insurers' Trust Account" or equivalent. The Company reserves the right to inspect the Trust Deed creating the Trust and to inspect the records pertaining to this account. The Company agrees that any interest earned on the said account shall accrue to the Broker.

6.6 The Broker will also notify the Company immediately that the Insured has failed to pay the premium when due.

6.7 The Broker will notify the Company immediately it becomes aware that a Sub-Broker, on whose behalf it has placed insurance with the Company, has failed to pay the premium when due.

6.8 In the event of the cancellation of a contract of insurance, where the Company is obliged by law, regulation or the terms of the contract of insurance to refund gross premiums in respect of such contract of insurance, the Broker agrees to refund the relevant Commission (which shall not for the purpose of this clause include fees) received by the Broker which is attributable to the period following cancellation of the contract of insurance for which such contract of insurance would otherwise have remained in force. Unless otherwise obliged to, the Company shall refund premiums net of Commission.

7 Taxes

7.1 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 Company 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.

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

8 Terms of Trade

8.1 The Company grants thirty (30) days from the end of the month in which the Certificate of insurance inception for premiums to be remitted to the Company, net of the Broker's Commission ("Terms of Credit").

- 8.2 The Company's Certificates of insurance may contain a premium payment warranty and the failure to settle each item of the account within the prescribed period will render those Certificates for which the premium has not been paid void.
- 8.3 The Company will be responsible for the preparation of a Statement of Account (which may be in written or electronic form). The Company's Statement of Account will be the definitive basis of accounting transactions between the Company and the Broker.
- 8.4 The Statement of Account will be rendered by the Company to the Broker on a monthly basis. Payment of all monies due to the Company net of Commission must be received without set off or deduction (other than permitted deduction of Commission) by the Company in cleared funds within the Terms of Credit or as otherwise agreed in writing between the Broker and the Company. If payment is made via a guarantee provider the Company will require full payment inclusive of all commissions without set off or deduction and the Company will pay the Broker's commission element of the premium upon receipt of full payment unless otherwise agreed.
- 8.5 For the avoidance of doubt, the Broker's obligations will be unaffected by:
- 8.5.1 any arrangement whereby the Broker has allowed credit to the Client;
 - 8.5.2 any delay in crediting the Company with monies received or due from the Client because of delays within the Broker's accounting system.

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 Company.
- 9.2 It is the Brokers responsibility to communicate to its clients in a clear manner all Terms and Conditions of cover, including any Subjectivities, Warranties and Conditions and to ensure that the client is aware of any consequences of non compliance with any such Terms and Conditions.
- 9.3 The Broker will inform the Company 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 Insured's rights to cancel Insurance Business in all instances where such notices are required by Chapter 6 of ICOBS and in accordance with those rules.

10 Data Protection

- 10.1 The Parties shall comply with all applicable obligations imposed by, or made under requirements of the Data Protection Act 1998 ("DPA"), together with any other applicable regulations, orders or codes of practice.
- 10.2 Without prejudice to the generality of clause 10.1, where either Party (the "Disclosing Party") discloses Personal Data (as defined in the DPA) to the other (the "Recipient") in connection with the operation of this Agreement, the Disclosing Party will ensure that it obtains all necessary consents so that the Personal Data it provides to the Recipient can be lawfully used or disclosed by the Recipient in the manner and for the purposes anticipated by this Agreement.

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 Company with contact details for any Insured or other party with whom the Company has contracted in the conduct of Insurance Business where:-
 - 11.2.2.1 the Broker has acted as the agent of the Company; and
 - 11.2.2.2 where such information is reasonably required in order for the Company 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 Company 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 Company or the Insurance Business.
 - 12.1.1 All Records stated in 12.1 to be held in a format which is readily accessible to the Company
- 12.2 The Broker agrees to allow the Company, on reasonable notice, to inspect and to co-operate to provide copies in durable electronic format at cost 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 Certificate 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 Company 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 Company 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 Company and its representatives or agents:-
 - 12.3.1 The Broker accepts the Company'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 Company, 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 Company's documents in the Broker's possession in accordance with any regulatory requirements which apply to the Company 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 Company such documentation if requested

13 Confidentiality

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.

14 Complaints

Each Party will notify the other immediately and in writing in accordance with FCA Rules of any complaint concerning the other Party relating to Insurance Business subject to this Agreement. In this regard, e-mail is accepted as being in writing.

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 Variations & Assignment

This Agreement may be assigned or varied only after the agreement in writing of both 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 (3) 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 (6) 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 courts of England and Wales if appropriate.

21 Jurisdiction & 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 English Courts.

22 Enforceability

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, by facsimile or by e-mail 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, by hand, or by e-mail at the expiration of one business day after it was dispatched.

25 Force Majeure

Neither Party shall 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 of such Force Majeure Event and uses all reasonable endeavours to continue to perform its obligations under this Agreement. Either Party may terminate this Agreement if such Force Majeure Event continues for more than three (3) months.

26 Sub-Broking

The Broker shall advise the Company of the name and FCA number of any Sub-Broker used to introduce business under this Agreement.

27 Anti-Bribery Legislation

The Broker shall not accept, offer or facilitate payment, consideration, or any other benefit, which constitutes an illegal or corrupt practice contrary to any applicable anti-bribery legislation.

Furthermore, the Broker shall maintain on an ongoing basis appropriate systems, procedures and controls designed to prevent any breach of such legislation.

Signed for and on behalf of

The Company

By

Name _____

Signature _____

Date _____

Position _____

The Broker – To be signed by the Senior Director or Partner

By

Name _____

Signature _____

Date _____

Position _____