

## TERMS OF BUSINESS AGREEMENT

### SUB- AGENCY BUSINESS



This agreement regulates the terms of business between

**Darwin Clayton (UK) Ltd** (“We” or “Us” or “Our”) and

**The Agent** (as detailed on page 9 of this agreement) (“You” or “Your”)

#### **Darwin Clayton (UK) Limited**

An Independent Insurance Broker, registered in England & Wales under Company Number 02783474. Our registered address is Darwin House, 20 Mount Ephraim Road, Tunbridge Wells, Kent. TN1 1ED

We are regulated and authorised by the Financial Conduct Authority, reference number 303990

#### **1. Definitions and Interpretation**

In this Agreement

**‘Appointed Representative’** has the meaning set out in section 39 of the FSMA.

**‘Client’** means a customer for whom insurance cover is currently placed by Darwin Clayton (UK) Limited on behalf of the Agent.

**‘Commission’** means the commission payable to the Agent by the Company in accordance with the terms of this Agreement.

**‘Commencement Date’** means the date shown in the Schedule to this Agreement.

**‘Enforcement Action’** means any formal action begun by the FCA, which involves the issue by the FCA of a warning notice, decision notice or final notice under FSMA.

**‘FCA’** means the Financial Conduct Authority (including where applicable the Financial Services Authority (FSA)).

**‘Rules’** means all rules made pursuant to the FCA including without limitation the rules on insurance selling and administration.

**‘FSMA’** means the Financial Services and Markets Act 2000.

**‘General Insurance Business’** means insurance business in respect of any of the classes specified in Schedule 1 Part 1 of the FCA (Regulated Activities) order 2001.

**‘Insurer’** means the risk carrier on whose behalf the Company is acting or with whom the risk is placed.

**‘IPT’** means Insurance Premium Tax at the prevailing rate.

Where expressions are not specifically defined and are capable of having a special meaning according to the usage or custom of the relevant business, such expressions are to be interpreted accordingly

References to a party shall mean either party to this agreement as the context dictates unless otherwise specified

The singular includes the plural and vice-versa and any words importing gender include the other gender.

## 2. Commencement and terms

- (a) This agreement shall come into force on the Commencement Date and replaces any other agency agreement or terms of business agreement issued by Us.
- (b) The appointment and continuance of the agency is strictly conditional upon You being authorised by the FCA for insurance selling and administration of General Insurance Business.
- (c) For the purposes of this agreement You shall, at all material times, be considered the agent of Your client(s) in respect of all insurance advice given, transactions effected and proposal forms completed and You have no authority to act on behalf of Us unless expressly stated.
- (d) We hereby agree that all insurance business transacted in performance of this agreement arises out of an agent/client relationship and acknowledge that the policyholders' goodwill rests with You.
- (e) You shall not appoint any sub agent to deal with the insurance business unless specifically authorised to do so by Us. The provisions of this agreement shall apply to any of Your Appointed Representatives and You shall be responsible as principal for Your Appointed Representatives' compliance with all regulatory requirements. You will procure Your Appointed Representatives' compliance with this agreement.
- (f) You shall not appoint any sub-agent or attempt to appoint, or act or attempt to act as the Product Producer to, any sub-agent in respect of any of its rights or obligations by virtue of its appointment under these Terms and Conditions.
- (g) The parties hereto may, by mutual consent, agree to vary the terms and conditions of this agreement at any time in writing. In the event of mutual consent not being attained, We reserve the right to give 30 days' written notice of variation to the conditions of this agreement.
- (h) You shall immediately advise Us in writing:-
  - (i) Of any changes in Your structure, location or domicile.
  - (ii) If the FCA initiate an investigation or if enforcement action is taken against You, Your employees, agents, Appointed Representatives, representatives or sub-contractors.
  - (iii) If a Terms of Business Agreement You have in place with an insurer is terminated stipulating the reason for the termination (excluding where due to lack of support).
- (i) You shall at all times maintain Professional Indemnity insurance in accordance with FCA requirements.
- (j) You shall indemnify Us against costs, loss, liability or any expense whatsoever which may be suffered by Us directly or indirectly as a result of any service performed or action taken by You under the agreement save to the extent that same is due to Our negligence wilful neglect or fraud.

## 3. Client Contact & Ownership

- (a) We acknowledge that ownership of the Client remains with You. We will not knowingly contact Your Client directly under any circumstance unless:
  - You have authorised Us to do so, or
  - You are not authorised by the FCA to transact business,
  - If the situation arises when an insurer seeks to void a policy for any reason.

## 4. Your Obligations

You agree:-

- (a) To comply with the Rules and to exercise reasonable standards of skill and care.
- (b) To ensure that the Client is made aware of the appointment of the Us in relation to the placement of a Client's risk.

- (c) To use Your reasonable endeavours to procure that all facts or circumstances which an Insurer would or may consider to be material to the decision whether to underwrite a Client's risk or to continue to do so on any given terms are accurately and completely disclosed by the Client to You, and by You to Us.
- (d) To use Your reasonable endeavours to procure that all changes in the facts or circumstances relating to a Client's risk obtained at the time or any relevant proposal which an Insurer would or may consider to be material to its decision whether or not to continue to underwrite any risk or to accept liability are promptly, fully and accurately disclosed by the Client to You, and by You to Us.
- (e) To review all information received from Us and to advise Us as soon as reasonably practicable if the details of the cover or the participating Insurers does not meet with approval or reflect the instructions given.
- (f) That You will only confirm the terms of the insurance cover effected through Us after having received written confirmation from Us that such insurance is in force and then only in accordance with such confirmation.
- (g) That the renewal of a Client's business shall be Your responsibility and that you will liaise with Us and the Client for such period of time prior to the renewal date as You shall consider necessary or appropriate in accordance with Rules to allow for the proper and timely interchange of information and the subsequent consideration of renewal terms.

## **5. Fair Presentation of the Risk**

As agent of the client You are responsible for ensuring that We are provided with a fair presentation of the risk. In the event of you becoming aware of any breach of the duty of fair presentation, You shall inform Us immediately.

As agent to the client, it is also Your responsibility, not Ours to ascertain and satisfy the client's insurance requirements.

We accept no responsibility for Your acts, errors or omissions.

## **6. Duty of Disclosure**

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.

Any breach of this duty of disclosure may entitle insurers to void the policy from inception and repudiate liability in respect of any claims under the policy.

We accept no responsibility for Your acts, errors or omissions.

## **7. Confirmation of Cover**

All details of the insurance contract must be confirmed with Insurers prior to inception. Once Your requirements have been satisfied, We will confirm this in writing and forward a cover note, policy or similar document as appropriate. You must examine these documents carefully and advise Us immediately if they are incorrect.

## **8. Remuneration**

Policies arranged through Us may be on a commission or net basis. You will be advised of the basis of any remuneration allowed by Us at the time of inception of the policy. You may deduct commission upon receipt of the premium.

Any remuneration to You will be subject to the following:-

- Your appointment as an Agent being in force.
- The business has been introduced and completed by You.
- The premium has been paid to Us in full, unless payment is via a direct debit facility in which case all necessary documentation has been completed, submitted and accepted by the Insurer.
- You continue to act for the Client.

In addition to the premiums charged by Insurers, We may make an additional charge to cover administration costs. Any charges will be advised to You before cover commences. For return premiums We deduct the commission repayable to the Insurer.

Remuneration to be received by You from Us will be agreed with You on a risk by risk basis.

## **9. Claims**

It is essential that We are advised immediately in writing of all incidents which has or may result in a claim under a policy whether the Client believes they are liable or not. Any letter of claim received by the Client must be passed to Us immediately. You are not empowered to enter into any negotiations on any claim, and Insurers will not be bound by the outcome of any such negotiations.

## **10. Confidentiality**

Both You and Us shall treat any information relating to the other party, its business and Clients as confidential (except to the extent that such information is known to that party other than as a result of any breach of this agreement).

Neither party shall disclose such information to any third party, nor use it for any purpose except as is necessary for the performance of this agreement or the enforcement of that party's right in law or contract. The provisions of this clause shall continue notwithstanding any termination of the agreement.

## **11. Client Monies**

This clause is subject to any legal or regulatory requirements or Rules to the contrary (including but not limited to any FCA regulations) or requirements and obligations arising by reason of any contractual arrangement or agency between the Us and You and any Insurer, which pre-dates this agreement.

When We receive any monies from You or hold money due to You, it will be held by Us in one of two ways

- (a) as agent for the Insurer concerned or
- (b) on Your behalf within a non-statutory trust client account.

If We receive monies (premiums or claims) as agent of the Insurers concerned, We hold it on their behalf. This means, for example, that if you pay a premium to Us, it is treated as having been received by the Insurer and You cannot be asked to pay again, for example if We do not pay it to the Insurer.

If We receive monies (premiums or claims) from or on behalf of Insurers with whom We do not hold risk transfer We will hold this money as "Client Money". "Client money" is money of any currency which We hold on behalf of Our Clients (including You).

We keep Client Money in a non-statutory trust account in accordance with the FCA client money rules, and also keep Client Money entirely separate from Our own money.

The Insurers of our Scheme Business allow Us risk transfer, and in these cases monies held by Us are deemed to be Insurer monies, as such there is no need for You to track monies via Us to the ultimate insurance entity. They also usually allow risk transfer to cascade down to you. However, they do not automatically grant cascaded risk transfer, and we will notify you should this facility not be granted to you.

In instances where risk transfer does cascade down to You, all premiums and claims monies received and held by You shall be held in a trust account on behalf of Insurers. Such trust account shall be maintained in accordance with FCA rules. Monies held by You on behalf of Insurers may be co-mingled with monies held on behalf of other customers. Insurers consent to their rights regarding their money held in the trust account being subordinated to those of the customer in accordance with CASS 5 of the FCA rulebook.

## **12. Responsibility for payment of premiums**

- (a) We will issue a debit note / invoice to You once premiums have been agreed.
- (b) Once You have confirmed inception, renewal or amendment of the Insured's insurance, You and the Client become jointly and severally responsible to Us for the payment of all and any premium which may be or may become due at any time relating to the insurance.
- (c) In the event that You fail to pay the premium to Us within the terms of credit allowed, We may without releasing You from Your responsibilities approach the Client direct for payment of outstanding premiums.
- (d) Notwithstanding any action taken in the event of any premium not being paid within the terms of the credit allowed, We may cancel the insurance and apply appropriate provisions of any premium payment warranties.
- (e) Our credit terms are within 30 days of the date of invoice.
- (f) We accept no liability to pay premium to Insurers in any circumstances unless cleared funds have been received.

## **13. Sub-Brokers Authority**

- (a) Nothing contained in this agreement authorises You to confirm the existence of insurance cover to the Client placed through Us without having received written confirmation of the existence of such cover from Us.
- (b) You are not empowered to issue or confirm cover, save as aforementioned. You must not present yourselves as Us or hold yourself out as the Insurer's original broker.

## **14. Business Relationship**

- (a) We recognise You as the intermediary for all the insurance business placed by You in accordance with Our agreement and agree not knowingly to prejudice Your interests in such insurance business.
- (b) We agree that for a period of one year after termination of a policy We will not directly solicit or seek to obtain business from Your Clients or pass on any information to a third party in respect of any business placed with Us. For clarification this only applies to business which has been on risk with Us and not to quotations given by Us.
- (c) Our obligations in respect of non-solicitation or seeking business shall not apply to those cases where We can show that We have sought or obtained business
  - i) by means of general advertising (not directed to the Client in particular)
  - ii) following an independent approach by the Client or an introduction to the Client by another agent.

## **15. Termination**

- (a) This agreement may be terminated by mutual agreement between both parties giving written confirmation to each other, or by either party giving 60 days' written notice to the other of their wish to terminate the agreement.
- (b) We may by notice to You terminate the contract forthwith if:-
  - (i) You shall commit any material breach of any of the terms of this agreement (including without limitation terms concerning the time for payment) provided that if such breach is remediable that We have previously given You notice thereof and the same has not been remedied within seven days thereafter.

- (ii) We have reason to suspect You of fraud, dishonesty or bad administration of the accounts so as to prejudice the interest of Clients.
- (iii) Being an individual, You shall die or have a receiving order made against You or commit any act of bankruptcy.
- (iv) You make any voluntary arrangement with Your creditors (within the meaning of the Insolvency Act 1986) or (being a Company) become subject to an administration order or goes into liquidation (otherwise and for the purpose of amalgamation or reconstruction).
- (v) You cease or threaten to cease to carry on business.
- (vi) You are unable to pay Your debts as defined in Section 123 of the Insolvency Act 1986.
- (vii) We are instructed to do so by any Regulatory Authority, or in the event that You cease to be authorised by the FCA.

In event of any such termination We reserve the right to deal directly with Clients, and any monies outstanding from You under that or any other contract shall become immediately payable.

## **16. Anti-Corruption / bribery**

Both You and We will

- (a)
  - (i) Have in place and operate adequate procedures to prevent bribery and corruption which may arise in the course of its business.
  - (ii) Not commit, authorise or permit any action which could contravene any bribery or other anti-corruption laws or regulations and will not offer, promise, or give to any person, or alternatively request, agree to receive or accept a financial or other advantage intended to induce the improper performance of a function or activity by any person.
- (b) You will notify Us immediately You become aware or have a suspicion that any improper action or activity referred to in 15 (a) above has taken or may take place.

## **17. Electronic Communications**

Both You and We agree that each may communicate with the other by electronic mail, sometimes attaching further electronic data, and that You and We by consenting to this method of communication accept inherent risks (including the security risks of interception or unauthorised access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices).

Both You and We will be responsible for taking all reasonable steps for checking viruses on all electronic communications sent to each other. Both parties will also be responsible for checking that messages received are complete.

In the event of a dispute neither of Us will challenge legally the evidential standing of an electronic document.

## **18. Complaints**

We will always endeavour to provide You with high standards of service, if however You have cause to make a complaint, it can be made verbally, or in writing to the Client Adviser, or in writing to The Compliance Officer at Our registered address of Darwin House, 20 Mount Ephraim Road, Tunbridge Wells, Kent. TN1 1ED.

A copy of Our complaints procedures may be obtained from Our Compliance Officer.

If any complaint cannot be resolved to satisfaction, You and/or Your Client may be entitled to refer it to the Financial Ombudsman Service. If You or Your Client take Your complaint to the Financial Ombudsman Service, they may wish to have access to the files that We hold in relation to Your Client's insurances.

Unless You request otherwise in writing, if We are requested by the Financial Ombudsman Service to provide any such files to them, We will pass on such files to them without further reference to You.

Subject to the Client's consent each party will keep each other advised of any complaint insofar as it affects the other.

#### **19. Intellectual Property Rights**

- (a) Both parties will retain ownership of all their respective rights, including intellectual property rights, in the products, data, databases, computer programmes, documents, materials, ideas or other information or any compilation thereof used in the performance of this agreement. The parties agree to do whatever is reasonably necessary to confirm or give effect to such ownership.
- (b) To the extent that any products, data, databases, documents, materials, ideas or other information constitute an original item developed by either party as a consequence of this agreement, each party agrees to do whatever is reasonably necessary to confirm or give effect to such rights vesting in the developing party.
- (c) Unless first agreed otherwise, each party has the right to use any jointly developed intellectual property for any purpose whatsoever.

#### **20. Entire Agreement**

This agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this agreement.

#### **21. Contracts (Rights of Third Parties) Act 1999**

Unless otherwise agreed between the parties no terms of this agreement is enforceable by a third party under the Contracts (Rights of Third Parties) Act 1999.

#### **22. Choice of Law**

This agreement is governed by the law of England and Wales, and if recourse to the courts becomes necessary the parties submit to the exclusive jurisdiction of the English courts.

#### **23. Change in Law / Regulation**

In the event of a change in law or regulation (including the Rules), which affect any of the parties' obligations under this agreement, the parties will co-operate in good faith to agree any necessary amendment(s) or variation(s) to the agreement.

#### **24. Errors and Omissions Insurance**

You undertake to maintain adequate Errors and Omissions insurance with a level of indemnity of at least that specified by the Financial Conduct Authority.

You agree within 7 days of Our request to produce evidence in writing of such cover confirming the limit of indemnity, the excess applicable and confirmation that it remains in force.

You must also notify Us of any circumstances which may lead to cancellation of any such policy of insurance or of actual cancellation within 7 days of such circumstances or cancellation occurring.

## **25. Financial Security of Insurers**

Whilst we endeavour to place business with providers who demonstrate an adequate level of financial solvency we cannot guarantee the solvency or continuing solvency of any provider. The financial position of any provider can change after cover has been incepted. We will not be liable for losses suffered by you or any Client in the event of the insolvency of any provider. The decision as to the suitability of any provider rests with You and Your Client.

In the event of Insurers' insolvency, Clients may still have a liability to pay premium.

## **26. Electronic Documentation**

In many cases Insurer documentation will be provided by electronic means only. It is Your responsibility to provide hard copies to Clients. If required, We will provide a hard copy free of charge, but any subsequent request will incur a charge of £ 35.00.

## **27. Limitation of Liability**

Unless we have otherwise agreed with You in writing, we shall treat Your instructions to us to place or renew insurances as acceptance of the limitation of Our liability to You and/or Your Clients, and to any other person with an interest in the insurance, as follows.

Other than in respect of any claim:-

- resulting from Our breach of FCA's rules; or
- resulting from Our fraudulent acts or any of Our acts which are deliberately contrary to Our agreement with You; or
- in relation to any liability for death or personal injury resulting from Our negligence; or
- in relation to any liability which cannot lawfully be excluded or limited

Our liability in contract, tort (including without limitation negligence) or otherwise will be limited to £ 10 million in respect of all services we provide over any twelve-month period.

## **28. Personal Data and Data Protection**

Both you and we acknowledge and agree that where either of us processes personal data, under or in connection with agreement it alone determines the purposes and means of such processing as a controller.

When processing personal data all parties

- Shall comply at all times with it's obligations under the data protection legislation
- 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
- Assist and co-operate fully with the other party to enable the other party to comply with their legal obligations under all relevant data protection legislation, including in respect of keeping personal data secure, dealing with personal data breaches and complying with the rights of data subjects.



All parties shall work together to ensure that all personal data is processed lawfully, fairly and in a transparent manner and in compliance with data protection legislation.

For the purposes of clause 28

“controller” means a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;

“data protection legislation” means all applicable statutes and regulations in any jurisdiction pertaining to the processing of personal data, including the privacy and security of personal data.

“data subject” means an identifiable natural living person to whom the personal data relates;

“personal data” means any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to an identifier;

“personal data breach” means a security incident that has affected the confidentiality, integrity or availability of personal data.

As the Agent of the Client, you must still ensure that our Client Privacy Notice is passed to the Insured &/or Policyholder within a reasonable period of policy inception or renewal, and no later than one month from the date when you obtained their personal data. This can be accessed at [Privacy Notice](#)

As an Agent, we also collect, process and store your personal data. Attached is our privacy notice detailing how and what we do [Darwin Clayton Partner Broker Privacy Policies](#)

## **29. Marketing**

We may use your personal data to send you marketing communications where we consider we have a legitimate basis to do so. You are free at any time to change opt out of such marketing. However, the consequence of this is that we may not be able to do certain things for you or provide you with important information on risk management or additional insurance covers or updates to existing scheme covers.

This could leave you &/or your business exposed to unnecessary risk as well as your clients.

Updating your Marketing Preferences.

You can update your marketing preference using the following hyperlink [Update Your Marketing Preferences](#)

IN WITNESS WHEREOF THE PARTIES HERETO have executed this Agreement on the date recorded below.

**The Company**

**Darwin Clayton (UK) Ltd.** FCA Reference No: 303990

Signed:

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Name (Please Print):

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Position:

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Date:

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**The Agent**

Name of Agent:

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Address:

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Signed:

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Name (Please Print):

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Position:

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Date:

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FCA Reference No:

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**Darwin Clayton (UK) Ltd is Authorised and Regulated by the Financial Conduct Authority**