



## Terms of Business Agreement - Broker

### 1. Definitions and Interpretation

#### 1.1 In this Agreement

**'Client'** means a person or persons or a legal entity who or which is a Policyholder or a prospective Policyholder.

**'Client Money'** means client money as defined in the FCA Client Asset Sourcebook.

**'Commencement Date'** means the date on which this Agreement is signed by the Company.

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

**'Company'** means Yutree Insurance Ltd also trading as Yutree Underwriting of 15 Kings Court, Willie Snaith Road, Newmarket, Suffolk, CB8 7SG. Registered in England no. 7718776.

**'FCA'** means the Financial Conduct Authority.

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

**'ICOBS'** means the Insurance Conduct of Business rules.

**'Insurer'** means the risk carrier or their agent on whose behalf the Company is acting or with whom the risk is placed and shall include a reinsurer as the case may be.

**'Intermediary'** means the intermediary defined on the Schedule to this Agreement.

**'Intellectual Property Rights'** means copyright, database rights, trade marks, service marks, design rights (whether registered or unregistered), applications for any of them, trade secrets, rights of confidence and all other similar rights.

**'IPT'** means Insurance Premium Tax at the prevailing rate.

**'Policy'** means a contract of insurance between the Client and Insurer.

**'Quotation'** means written confirmation of premium, Policy terms and commission from the Company to the Intermediary.

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

### 2. Appointment

2.1 The Intermediary has been appointed by the Client to act as its insurance broker for the purpose of providing advisory and placement services in respect of its insurance requirements.

2.2 The Intermediary will instruct the Company in respect of the placement of the Client's risk. The Company agrees to take instructions only from the Intermediary in respect of the work it undertakes under this Agreement unless specifically authorised otherwise by the Intermediary.

### 3. Client Ownership and Non-Solicitation

The Company acknowledges that the Client is the client of the Intermediary. The Company will not knowingly solicit or contact the Client directly unless:

- a) the Intermediary has authorised the Company to do so; or
- b) the Intermediary is not authorised by the FCA to transact business; or
- c) the Intermediary dies or is seriously incapacitated where the Intermediary is a sole trader; or
- d) the Intermediary becomes insolvent, bankrupt, compounds with creditors, appoints a receiver, goes into run-off or ceases to be authorised by the FCA



#### **4. Status Disclosure**

The Intermediary shall make full disclosure to the Client as required by the FCA in accordance with ICOBS.

#### **5. Personal Recommendations and Demands and Needs Statements**

All documentation regarding the proposed contract of insurance required by the FCA under the provision of ICOBS shall be drafted in good time to permit compliance with FCA requirements and once agreed shall be sent to the Client by the Intermediary.

#### **6. The Company's Obligations**

The Company agrees:

- 6.1 To assimilate all underwriting information provided by the Intermediary for the placement of insurance risks.
- 6.2 To prepare documentation as required by the Insurer for the acceptance of the risk.
- 6.3 To advise the Intermediary of the warranties and endorsements that apply in addition to the standard Policy wording, particularly any premium payment warranty or condition, before instructions to bind cover are given.
- 6.4 To advise the Intermediary of the insurers or markets to be used prior to inception.
- 6.5 In the event that the Company is unable to match the Intermediary's requirements, to explain the significant differences between those requirements and the quotation being provided.
- 6.6 To present Quotations to the Intermediary detailing the gross premium and Commission payable to the Intermediary. For the avoidance of doubt this obligation does not prevent the Company charging a fee for such service and any such fee shall also be disclosed to the Intermediary.
- 6.7 Not to confirm the order to the Insurer until a written instruction is received from the Intermediary on behalf of the Client. The Company will provide the Intermediary with written confirmation that cover has been effected and of the terms of that cover as well as details of the Insurers involved normally within 14 days of the inception of the cover.
- 6.8 Not to agree endorsements or mid-term changes to the Policy wording except with the agreement of the Intermediary.
- 6.9 Not to accept a purported notice of cancellation, avoidance or reservation of rights by the Insurer or market and to send such notices to the Intermediary immediately following receipt.
- 6.10 To provide in timely fashion information reasonably requested by the Intermediary in relation to this Agreement or the renewal of any existing Policy on behalf of the Client.
- 6.11 To comply with the FCA rules.
- 6.12 To observe the duty of utmost good faith at all times.

#### **7. The Intermediary's Obligations**

The Intermediary agrees:

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- 7.1 To provide the Company with written instructions or where urgency necessitates verbal instructions promptly to confirm such verbal instructions in writing.
- 7.2 To comply with the FCA rules.
- 7.3 To ensure that contract certainty is achieved in line with industry guidance.
- 7.4 To ensure that the Client is fully aware of any terms of this Agreement insofar as they may affect such Client's rights, liabilities and obligations.
- 7.5 To use its reasonable endeavours to ensure that all facts and circumstances which may be material to an Insurer's decision whether to underwrite or to continue to underwrite the Client's risk on any given terms are accurately and completely disclosed by the Client to the Intermediary and by the Intermediary to the Company. Facts and circumstances are material if they would influence the mind or affect the judgment of a prudent Insurer in estimating the risk or if they would affect the judgment of an Insurer in deciding whether to accept the risk and setting the premium.
- 7.6 To use its reasonable endeavours to ensure that all changes in the facts or circumstances or risks relating to a Client which an Insurer 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 the Intermediary and by the Intermediary to the Company. The Intermediary acknowledges:
  - a) that the duty of disclosure arises when the insurance is first taken out and also on each subsequent renewal or amendment of it;
  - b) that the insurer may include an endorsement in the Policy to advise on changes through the term of the Policy; and
  - c) that the burden of disclosure falls upon the Intermediary as agent of the Client and that there is no duty on the Insurer or the Company to make enquiries.
- 7.7 That it will only confirm to the Client the terms of the insurance cover effected through the Company after having received written confirmation from the Company that such insurance is in force and then only in accordance with such confirmation.
- 7.8 To take sole responsibility for ensuring that cover has been effected on the correct terms and promptly to review all information upon receipt and to advise the Company immediately if any part of the cover or the participating Insurers do not meet its approval or do not reflect the instructions given to the Company and particularly if any required cover is excluded.
- 7.9 That the renewal of the Client's business shall be the Intermediary's responsibility and to liaise with the Company in accordance with ICOBS to allow for the proper and timely exchange of information and the subsequent consideration of renewal terms.
- 7.10 To ensure that where the Intermediary has been advised by the Company that it is under an obligation to an insurer to procure any premium due which is the subject of a premium financing arrangement entered into by the Client such premium in its entirety (but net of commission) is paid to the Company within credit terms as advised by the Company from time to time Client.
- 7.11 To notify the Company immediately in the event of any disciplinary action taken by the FCA against it, or any convictions or pending prosecutions or proceedings for offences of dishonesty or fraud or other offences under legislation relating to insurance, banking, financial services, data protection or consumer protection involving the Intermediary, its employees, officers or agents.
- 7.12 To use its reasonable endeavours to ensure that the Client:-

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- a) complies with any warranties (whether express or implied) contained within the Policy as any failure by the Client so to comply may result in the Company or the insurer terminating the Policy; and
- b) complies with any subjectivity as any failure by the Client so to comply may invalidate or otherwise prejudice the Policy.

7.13 Not to appoint a sub-agent without the Company's prior written consent.

7.14 To ensure that any sub-agent appointed by the Intermediary:

- a) is authorised to carry out insurance mediation activities; and
  - b) complies with all the terms and conditions of this Agreement as applicable to the Intermediary.
- The Intermediary acknowledges that it shall at all times be responsible for the acts and omissions of the sub-agent as if they were the Intermediary's acts and omissions.

## 8. Settlement Terms

8.1 The Intermediary is responsible for collecting all premiums and charges due from the Client including IPT between the Policy being concluded and the inception date of the Policy.

8.2 The Company will be responsible for issuing statements on a monthly basis detailing all new and renewal premiums and mid-term alterations. The Company will remit premiums to Insurers in accordance with the agreed terms of trade, assuming the Intermediary has passed the Company the full gross premium including IPT. The Intermediary will make payment within 25 days or such other period as the Company may specify from time to time.

8.3 The Company accepts no obligation to fund any premiums, duties, fees, or taxes on the Intermediary's behalf and has no responsibility for any loss which the Intermediary may suffer as a result of any Insurer cancelling any Policy or taking any other action as a result of any late payments attributable to the Intermediary.

8.4 The Intermediary undertakes promptly to pay all premiums. The Intermediary acknowledges that in certain circumstances the insurer may impose a specific Premium Warranty requiring payment of premium by a specified date any breach of which may enable the insurer to void the Policy from inception of the cover.

## 9 Risk Transfer

9.1 The Company do not cascade risk transfer to the Intermediary. Risk transfer occurs when the premium has been paid to the Company.

## 10. Fees and Commission

10.1 The Intermediary will be responsible for the collection of the premium and will account promptly to the Company for the premium and any Commission and fees.

10.2 The Intermediary's share of the total available commission will be allocated as set out in the Quotation as may be amended from time to time.

10.3 Insurance may be conducted on a gross premium or net premium basis as detailed in the Quotation.

10.4 The Intermediary will make the Client aware of all fees and charges, prior to inception of the contract of insurance and will be responsible for allocating such fees and charges from the premium income in accordance with the Quotation.



## 11. Markets

The intended market for any placement will be detailed in the Quotation and the Intermediary's instruction to bind cover will be considered to be agreement to the proposed market along with all other terms and conditions laid out in the quotation.

## 12. Claims

- 12.1 Claims, or circumstances which could give rise to a claim, are to be notified directly to the Insurers in accordance with the Policy.
- 12.2 The Company shall not be responsible for the wrongful non-payment or any delay in payment of any claim by an Insurer.
- 12.3 The Company will provide the Intermediary with such assistance as it may reasonably require with the claims process.
- 12.4 The Company will handle claims promptly and will keep the Intermediary informed of progress in a timely manner.

## 13. Complaints

- 13.1 Subject to the Client's consent each party will keep the other advised of any complaint insofar as it affects that other party. Should the Intermediary wish to register a complaint with the Company it should do so in writing.
- 13.2 The Company is a member of the Financial Services Compensation Scheme.

## 14. Cancellation

- 14.1 Each party will promptly advise the other of any notice of cancellation either from the Client or an Insurer and the parties will agree a response.
- 14.2 The Company may retain any return premium following cancellation proportional to its costs in arranging the insurance.

## 15. Termination

- 15.1 This Agreement may be terminated by either party giving at least 30 days written notice to the other party.
- 15.2 Either party may terminate this Agreement immediately on written notice to the other
  - a) if in respect of the other party any resolution is passed or order made for the winding up of the company or a receiver, administrator or administrative receiver is appointed over the assets, or any arrangement or composition is made with its creditors or a petition for bankruptcy or an administrative order is filed, or it is adjudged bankrupt;
  - b) where it has reasonable grounds for suspecting fraud or dishonesty by the other party or its employees or agents;
  - c) if the other party commits a material breach of any provision of this Agreement which is not remedied within 21 days from written notification of the breach.
- 15.3 The Company may suspend or terminate this Agreement forthwith if:



- a) the Intermediary ceases or threatens to cease to carry on business or suspend payments or is unable to pay its debts as they fall due;
- b) the Intermediary ceases to be authorised by the FCA;
- c) any director or partner of the Intermediary is convicted of a criminal offence;
- d) the Intermediary is acquired, amalgamated, controlled or administered by any other person, partnership, company, corporation or authority.

## 16. Consequences of Termination

- 16.1 The parties will agree the procedure for administering the insurance business current at the time of termination.
- 16.2 In the event that this Agreement is terminated by the Intermediary other than at the expiry of the relevant Policy period or at renewal, the Company may retain its share of any and all fees or brokerage (whether or not the same has been received by the Company and including for the avoidance of doubt any such sum due in respect of any outstanding instalment(s) of premium or in respect of any subsequent annual period forming part of an insurance agreed for a period in excess of one year) in relation to the relevant Policy (or any amendment thereto) placed by the Company prior to the date of termination.
- 16.3 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.

## 17. Errors and Omissions

Each party will maintain, at its own cost, errors and omissions insurance and shall, when requested produce confirmation of such insurance.

## 18. Indemnity

The Intermediary shall indemnify the Company and/or its Insurers from and against any loss, cost, liability, claim or damage which the Company and/or its Insurers might suffer or incur as a result of a default by the Intermediary of any of its obligations expressed or implied arising under or in connexion with this Agreement and for any acts carried out by the Intermediary outside the scope of the authorities given under this Agreement.

## 19. Confidentiality

- 19.1 Each of the parties will treat information received from the other in respect of this Agreement as confidential and will not disclose it to any other person not entitled to receive such information. Confidential information includes information received by the Company from Insurers in relation to Clients where the Company has been appointed by the Insurer to underwrite Policies on its behalf and the Intermediary has given authority in its capacity as agent of the Client. For the avoidance of doubt the Intermediary agrees that the Company shall be entitled to disclose and discuss such information where necessary with Insurers.
- 19.2 The obligations in clause 17.1 will not apply to information:
- a) which was rightfully in the possession of the party receiving the information prior to the Agreement;
  - b) which is already public knowledge or becomes so at a future date (otherwise that as a result of a breach of this clause) or which is trivial or obvious;
  - c) which is required to be disclosed by law or regulatory authority.

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## 20. Data Protection

- 20.1 The Intermediary confirms to the Company that the Intermediary has made the appropriate notifications and has complied with the Information Commissioner's Office (ICO) notification provisions under the Data Protection Legislation in respect of the Intermediary's obligations under this Agreement.
- 20.2 The Intermediary agrees that, where the Intermediary collects a Client's personal data, which the Intermediary may subsequently transfer to the Company, that:
- The Intermediary has collected such data fairly and lawfully; and
  - The disclosure of such data to the Company is fair and lawful; and
  - The Company's use of such personal data for the purposes of carrying out the Company's obligations under this Agreement will not breach the Data Protection Legislation.
- 20.2 The Intermediary shall, at all times, maintain appropriate technical and organisational measures intended to prevent unauthorised or unlawful processing of any personal data of the Client and accidental loss or destruction of, or damage to, any personal data of the Client, including but not limited to taking reasonable steps to ensure the reliability of employees having access to the Client's personal data. Such measures shall involve a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage of the Client's personal data and the nature of the Client's personal data to be protected.
- 20.3 The Intermediary acknowledge that in some circumstances the Intermediary is a joint controller with the Company of personal data processed under this agreement. To the extent that both parties are deemed to be joint data controllers, both parties shall comply with the Data Protection Legislation in respect of such personal data.
- 20.4 It is the Intermediaries responsibility to ensure that each Client and, where applicable, any other data subject is provided with a fair processing notice/privacy notice which gives them the transparency information required under Data Protection Legislation.
- 20.5 Each party shall notify the other promptly (and in any event within 48 hours) following receipt of any Client request to exercise their rights under Data Protection Legislation.
- 20.6 If the Intermediary or the Company receive a request for subject access, rectification or erasure of data, a data portability request or any notice signifying that the Client wishes to exercise any of their rights under Data Protection Legislation, the party receiving the request shall deal with it in accordance with the Data Protection Legislation. The other party shall do all things as are reasonably necessary to assist the party in receipt of the subject access request to perform their obligations.
- 20.7 The Intermediary shall cooperate with the Company and any other relevant party and use the Intermediary's best endeavours to assist the Company in all data reporting obligations in the event of a breach of the Data Protection Legislation in connection with this Agreement. Each party also undertakes to notify the other party of any breach of the Data Protection Legislation, this data protection clause or of any actual, suspected, threatened or 'near-miss' personal data breach which may have occurred in connection with this Agreement as soon as reasonably practicable (and in any event, within 24 hours) upon becoming aware of it, and implement any measures necessary to restore the security of compromised personal data; and assist the Company and any other relevant party to make any necessary notifications to the regulatory body and affected data subjects.

## Your personal data

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- 20.8 The Company have a legitimate interest to hold personal data about the Intermediary or any person employed by the Intermediary and relating to the Intermediary's dealings with the Company for the purpose of maintaining the Company's relationship with the Intermediary as set out in this agreement, including remunerating the Intermediary and ensuring regulatory compliance. The Company will use this personal data to manage the ongoing relationship, to provide the Intermediary with information and for administration purposes. The Company may carry out credit and/or reference checks on the Intermediary or any director, partner or employee of the Intermediary.
- 20.9 The Company will keep the Intermediary's personal data (including, any personal data of the Intermediary's employees or agents) while this agreement remains in place and for as long as necessary to administer the Company's relationship with the Intermediary and the business which the Intermediary introduces. This is likely to be at least six years after the latest expiry date of any insurance contract entered into by one of the Intermediary's customers. The Company may share this personal data with the Company's service providers, agents and with third parties such as auditors, underwriters, reinsurers, identity authentication agencies, other financial institutions and legal and regulatory bodies in the UK and abroad.
- 20.10 The Company may contact the Intermediary by mail, phone, fax, email or other electronic messaging with further offers, promotions and information about products and services which may be of interest to the Intermediary and, where necessary, the Company shall obtain the Intermediary's consent to do so. However, the Intermediary should contact the Company if, at any time, the Intermediary objects to the Company's use of the Intermediary's data for marketing purposes.
- 20.11 The Company may monitor and record phone calls and keep them for the purposes of training and quality assurance and to ensure that the Company has an accurate record of instructions.
- 20.12 To provide the services under this Agreement, it may be necessary to transfer the Intermediary's or the Intermediary's employees' personal data to countries that provide a different level of data protection from the UK. In such circumstances, the Company will ensure that the relevant country has an adequate level of protection as required by the current Data Protection Legislation.
- 20.13 The Intermediary must keep secure all security information which the Intermediary uses to access information provided by the Company, both on the Intermediary's systems and a third party's. Security information may include, but is not limited to, passwords, digital identifiers/certificates. The Intermediary must inform the Company as soon as the Intermediary becomes aware of anyone ceasing to be eligible to access any of the Company's or a third party's system to which the Intermediary has access.
- 20.14 Email communications are not necessarily secure and may be intercepted or changed after they are sent. The Company does not accept any liability where such communications are changed or are not delivered.
- 20.15 The Intermediary must ensure that the Intermediary has adequate security measures in place (including but not limited to any measures which the Company asks the Intermediary to take) and that the appropriate measures are in place to prevent harmful viruses being sent to the Company electronically.
- 20.16 Nothing in this agreement prevents a person about whom the Company holds personal data from exercising their rights under Data Protection Legislation, such as their right of access, rectification, erasure or their right to complain. Please see our Privacy Notice at <https://yutree.com/privacy-policy/> for further details.

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## **21. Intellectual Property Rights**

- 21.1 The terms of this Agreement do not affect the ownership by any party of any Intellectual Property Rights or other proprietary rights which are in existence and which are owned by any of them at the Commencement Date.
- 21.2 All Intellectual Property Rights, information and documentation disclosed by a party to another party in connection with this Agreement, shall remain the exclusive property of the disclosing party and may be used by the other party solely for the purposes of this Agreement.
- 21.3 The Intermediary shall not use the Company's name or logo or other trademark or similar device without the express written permission of the Company.

## **22. 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.

## **23. General**

- 23.1 This Agreement shall be governed by and interpreted in accordance with the laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts.
- 23.2 Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.
- 23.3 Neither party may assign this Agreement and the rights and obligations thereunder.
- 23.4 If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.