

# Terms of Business Agreement

## Commencement and term

- 1) This Terms of Business Agreement shall apply with effect from the date that we provided it to you and shall be deemed to be the basis upon which we conduct business with you. It will continue until terminated in accordance with paragraph 65, by virtue of paragraph 66, or until terminated by either party upon three months written notice to the other. Any termination of this Agreement shall not affect any rights, obligations or continuing duties that existed prior to the termination.
- 2) Please read this Agreement carefully as it sets out our respective obligations. It also contains information that the Financial Services Authority ("FSA") requires us to provide.

## Definitions

- 3) In this Agreement, reference to "insurers" shall be construed to be a reference to insurers (or, where applicable, re-insurers), underwriters, markets or managing agents with whom we place insurance business.
- 4) Words in the singular shall include the plural where the context requires and vice versa.

## Status Disclosure

- 5) OAMPS (UK) Ltd is authorised and regulated by the Financial Services Authority. Our FSA Firm reference number is 302649. Our grant of permission is displayed on our website. You can verify our name, address and statutory status on the FSA's website at [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register). The FSA's telephone number is 0845 606 1234 (+44 (0) 20 7066 1000 from overseas).
- 6) OAMPS (UK) Ltd is a subsidiary of Wesfarmers Insurance Investments Ltd who in turn are a subsidiary of Wesfarmers Ltd.
- 7) You warrant that you are (a) authorised and regulated by the FSA to conduct insurance business or (b) an Appointed Representative or (c) an exempt professional firm regulated by your designated professional body. You will remain so authorised or an Appointed Representative or an exempt professional firm during the whole term of this Agreement and warrant that you shall comply with the Regulations and Rules of the FSA. In the event that your FSA Authorisation or Appointed Representative or Exempt Professional Firm status is revoked or suspended you will as soon as is reasonably practicable inform us in writing.
- 8) We have arrangements with some insurers whereby we are given what we consider are preferred terms and conditions for certain insurance products. In many cases those insurers grant us authority to accept business on their behalf. As a specialist scheme intermediary we generally place your business under one of these arrangements as
  - a) we consider that to do so would match your requirements or instructions;
  - b) we provide terms exclusively from those insurers for the type of business that you require.
- 9) You acknowledge that the use of these arrangements may not represent a fair analysis of the market. In these circumstances you may request a list of the insurance undertakings from whom we select in respect of those products.
- 10) In certain circumstances we may place your clients insurances away from our normal scheme insurers, if this is the case, we will advise you in our quotation letter whether we have carried out a limited or whole of market marketing exercise or whether we have approached a single insurer
- 11) You agree that this Agreement does not encompass all of our respective rights, obligations, and duties and these may be set forth in a supplementary agreement and maybe amended from time to time.

## Mode of conduct

- 12) Following receipt of your specific enquiries we will normally issue a quotation of terms and premium based on the information supplied to us. Such a quotation is not confirmation that coverage has been obtained nor is it a warranty that we will be able to complete your order. Coverage can only be relied upon when we have confirmed in writing that the risk is bound.
- 13) As you are responsible for all dealings with your client it is your responsibility to communicate in writing to your client the terms and conditions of insurance and the due date(s) for payment of premiums.
- 14) It is noted that requests for cover do not constitute an agreement that cover is in place until such time as it is confirmed by us in writing.

## Financial security of insurers

- 15) As insurance intermediaries, we review and assess the financial status of the insurers with whom we place business. To do so, we use public information including that produced by credit rating agencies. We do not, in any circumstances guarantee or warrant the solvency of any insurers. The decision as to the suitability of particular insurers rests with you and your client. If you have any concerns about the insurers please let us know as soon as possible.
- 16) In the event of insurers' insolvency, policy holders may still have a liability to pay premium.

## Complaints procedure

- 17) We greatly value our business relationship with you. Our aim is that you should benefit from our commitment to a high quality service for our clients, our experience and breadth of insurance broking expertise.
- 18) As part of our commitment to provide a high quality service we have developed a formal complaints procedure. We will always endeavour to give you the highest standards of service but please be aware that should you ever have cause to make a complaint, it can be made orally, by e-mail, telephone or in writing to The Compliance Officer at our usual address, or alternatively by email at the following address Email: [complaints@OAMPS.co.uk](mailto:complaints@OAMPS.co.uk)

- 19) You may also obtain a copy of our written complaints procedures from the Compliance Department. If you cannot settle your complaint with us, you and/or your client may be entitled to refer it to the Financial Ombudsman Service.
- 20) 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.

## Financial Services Compensation Scheme

- 21) The FSA operates a compensation scheme known as the Financial Services Compensation Scheme. We are covered by this scheme, which is designed to respond in the case of intermediary (or insurer) insolvency. Your client may be entitled to compensation from the scheme if we cannot meet our financial obligations. Whether your client will be entitled to compensation depends on the type of business your client placed and your client's circumstances.

## Duty of disclosure

- 22) Insurers must be presented with a fair and complete statement of the nature of any risk submitted to them. The omission of material facts in the presentation to insurers, whether intentional or accidental, may lead to insurers avoiding any insurance coverage arranged. A circumstance is material if it would influence the judgment of a prudent insurer in calculating the premium or assessing whether he would accept the risk. Accordingly, it is your duty to provide us with all the facts material to such submission and to update this information where relevant between initial enquiry and attachment of any cover and during the term of any policy. It is your duty to ensure that the facts and information received from your client are correct, complete and up to date. This applies equally to new orders, adjustments, renewals, extensions of cover and endorsements. For certain classes of business your client may be required to complete a proposal form, or questionnaire. Your client must satisfy himself of the contents of the proposal form or questionnaire. Please note that your client's obligation to provide material information to insurers is an overriding obligation. That insurers do not request specific information within a proposal form or questionnaire does not mean that such information is not material. If you or your client are in any doubt as to whether information is material you should disclose it.

## Policy Documentation

- 23) The terms and conditions of insurance contracts arranged will be evidenced to you in writing. Please check these documents and advise us without delay if the terms of the coverage arranged are not in accordance with your requirements. Please pay special attention to the claims notification provisions and to any warranties and conditions as any failure to comply, may invalidate your client's coverage.
- 24) It is our current practice to retain client information for at least 6 years. After this period, this information may be destroyed at our discretion without notice to you.

## Premium payment

- 25) We require you to settle premiums in accordance with the terms provided in the relevant invoice/debit note/statement, unless agreed otherwise in writing.
- 26) In circumstances where premium due to insurers cannot, for whatever reason, be collected from the insured and insurers will not waive all or some of the amount due, you will be responsible to us for payment of the full amount outstanding in respect of premium and our share of the brokerage. OAMPS accept no liability to pay premium to insurers in any circumstances unless cleared funds have been received.
- 27) Other than deduction of your own brokerage, no deductions (such as claims monies or return premium due to your clients) are to be made from the gross premium due to insurers when making payment to us.
- 28) Insurers may impose time limits within which premium has to be paid. It may be a condition or warranty of the policy that if payment is not made to insurers by a certain date, cover will not continue, or the insurer may be able to treat the contract as at an end from inception. Insurers may also require that your client pays a premium in relation to time on risk. It is therefore very important that your client meets all payment dates.

## Client Money

- 29) When we receive any monies from you or for payment to you, they will be held by us on one of two bases
  - 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). The FSA rules require us to keep client money in one of two types of account:

- a) Statutory trust account; or
- b) Non-statutory trust account.

Both types of account have to be with an FSA-approved bank and we must keep client money entirely separate from our own money. We opt to keep all client monies received from you or on your behalf within a non statutory trust client account and will be governed by the FSA client money rules.

- 30) Unless we advise you to the contrary as part of our quotation letter, all quotations issued by ourselves will be with insurers for whom we hold risk transfer, accordingly all monies held by ourselves are deemed to be insurer monies, as such there is no need for you to track monies via us to the ultimate insurance entity

- 31) We are also required to keep client money separate from our own money. We normally do this by holding money in a client bank account. However, under a non-statutory trust client account, we may also hold certain approved investments with a value at least equivalent to the money that would otherwise have been held in a client bank account. If we do this we will be responsible for meeting any shortfall in our client account, which is attributable to falls in the market value of an investment. Any investments we hold in this way will be kept separate from our other investments. In the unlikely event of OAMPS being placed into administrative receivership, administration or any other form of liquidation (whether voluntary or otherwise), the segregation of client and our own money is important for the effective operation of the trust that is created to protect client money. The aim is to clarify the difference between client money and general creditors' entitlements. In the event of the failure of OAMPS and a shortfall arising, the total of monies held in the non-statutory trust client account, would then be split amongst clients in proportion to the amount of client money owed to each of them.

### Premium Funding

- 32) Our policy is not to fund premium on your behalf to insurers, unless you or your client agrees to enter into a specific premium funding arrangement with us. It is also not our policy to fund claims to you or your clients due from insurers.
- 33) Should you enter into a premium funding arrangement with us, we will supply the terms and conditions of that arrangement when negotiating the terms.
- 34) You acknowledge that any funded amount not included with a specific funding agreement, whether arising as a result of a payment by us or a deduction by you from amounts payable to us is to be refunded to us as soon as is reasonably practicable, and that for the duration of any funding such funded amounts are not considered to be a gift from us. We reserve the right to charge interest on any such funded items from the date the funding commenced to date of payment.

### Risk Transfer

- 35) In accordance with our agreements with our insurers, we are able to cascade risk transfer to you in accordance with the following paragraphs

**The following statement applies to business written under our Non Motor Scheme underwritten by QBE Insurance (Europe) Ltd only.**

- 36) As the clients intermediary, you shall hold premium received from the client to be paid to the insurer, or return premiums due from the company to be paid to the client as the agent of **QBE Insurance (Europe) Ltd** (The Company)
- 37) It is a condition of this agreement to grant "Risk Transfer" that you shall hold such monies in a trust account maintained in accordance with the rules defined in CASS 5 of the FSA Client Asset Sourcebook. The company consents to such monies being treated as client monies and being comingled with other client monies. The company further consents to its rights with regard to such monies held in the broker 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.

**The following statement applies to business written under our Motor Scheme underwritten by Zurich Insurance Ltd only.**

- 38) If you as an insurance intermediary hold a Zurich Insurance agency in your own right. Then you shall hold premium received from the client to be paid to the insurer, or return premiums due from the company to be paid to the client as the agent of **Zurich Insurance Ltd** (The Company).
- 39) It is a condition of this agreement to grant "Risk Transfer" that you shall hold such monies in a trust account maintained in accordance with the rules defined in CASS 5 of the FSA Client Asset Sourcebook. The company consents to such monies being treated as client monies and being comingled with other client monies. The company further consents to its rights with regard to such monies held in the broker client monies account being subordinated to those of the brokers' clients in accordance with CASS 5 and further agrees that any interest earned on the said account shall accrue to the broker.

### Client ownership and transfer mandates

- 40) 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 FSA to transact business,
  - If the situation arises when an insurer seeks to void a policy for any reason.

In this latter case we reserve the right to inform the insured direct of the fact by recorded delivery letter.

- 41) In the event that you become insolvent, bankrupt, compound with creditors, appoint a receiver, go into run off or become unauthorised by the FSA we reserve the right to approach the client directly to protect their best interests.
- 42) In line with standard market practice we accept Letters of Appointment on cases from Brokers who have an agency with us and where no outstanding issues remain. We will not accept a Letter of Appointment that is submitted to us during the period beginning the date we issue renewal terms to the existing broker and ending on the date we receive payment of the renewal premium.
- 43) In the case of new business to us, we will not accept a Letter of Appointment that is submitted to us during the period beginning the date we log the quotation request on our internal systems and ending on the date we receive payment of the insurance premium.
- 44) New business is quoted on an exclusive basis, based on a "first come first served" approach.

### Placing business on behalf of other intermediaries

- 45) We do not permit intermediaries to place cover on behalf of other intermediaries, thereby creating a chain, unless this has been disclosed to us in advance and we have specifically agreed this course of action in writing.

## Non Solicitation

- 46) We agree that for the duration of this agreement and for a period of one year after termination of a policy we will not directly solicit or seek to obtain business from 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.
- 47) Our obligations in respect of non solicitation or seeking business shall, for the avoidance of doubt, not apply in those cases where we can show that we have sought or obtained business by either of the following messages.
  - a) By means of general advertising, such advertising being not directed at the client in particular
  - b) Following an independent approach by the client or an introduction to the client by another intermediary.

## Brokerage and Commission

- 48) Unless we agree with you otherwise, we are remunerated on the basis of brokerage or commission determined by the insurers. We may have agreed to act for a fee in lieu of brokerage. In the event that a policy is cancelled mid term or another insurance intermediary is appointed to act on your client's behalf during the currency of a policy, we are entitled to retain all remuneration in respect of the full policy period.
- 49) The net brokerage/commission which may be retained by you and the net brokerage/commission and/or fees payable to us shall be either agreed on a contract by contract basis or evidenced within a separate agreement.
- 50) We do not earn income from insurers under volume based agreements; however we do earn income from insurers based on the profitability of our account as a whole.

## Claims notification and agreement

- 51) It is your client's duty to notify all claims and/or circumstances that may give rise to a claim promptly, and within the terms and conditions of any claims notification clauses/provisions of the policy of insurance.
- 52) It is your client's responsibility to prove their loss, they will therefore be required to provide to insurers all documentation and information in order to substantiate their claim under the policy.
- 53) Unless agreed otherwise, we will provide you with assistance in submitting a claim and seeking to obtain reimbursement from insurers. However, should any insurer become insolvent we have no legal responsibility for any shortfall in amounts due to you or your client as a consequence.
- 54) In the event that we are acting for insurers under a delegated settlement authority, and a conflict of interest arises, we will advise you as soon as is reasonably practicable and seek your instructions.
- 55) When claims payments have been received on your behalf, they will be remitted to you promptly.

## Audit

- 56) OAMPS is entitled to audit you in connection with its obligations under this Agreement provided reasonable notice is given to you. You will not unreasonably withhold access to any of your offices from our representatives.
- 57) You will co-operate fully with any such audit and supply such information and documentation which we consider reasonable. We will be entitled to request copies of such information, documentation, data and records and you will comply promptly with a reasonable request from us for such information relating to your duties, obligations and compliance with this Agreement.

## Confidentiality

- 58) We agree to keep any information obtained from you confidential, and only use it for the purposes of placing insurance, handling claims or as specifically agreed with yourselves. We may therefore have to pass it to insurers or their agents.
- 59) Each party shall only use the confidential information disclosed to it by the other for the purposes of this Agreement. Each party shall not disclose to any third party other than its employees or agents who need to know the same for the proper performance of their duties any confidential information disclosed to it by the other.

## Intellectual property rights

- 60) You shall not acquire by reason of this Agreement or otherwise any right to or interest in any of our intellectual property rights.

## Errors and omissions

- 61) You must maintain an adequate Errors and Omissions Professional Indemnity policy with reputable insurers. If requested by us in writing, you must within 7 days of our request 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.
- 62) You will advise us as soon as is reasonably practicable if you are or become aware of any circumstances which may give rise to a claim being made against you and/or us by any person whatsoever relating to any insurances placed by us on your behalf.
- 63) We will advise you as soon as is reasonably practicable that we are or become aware of any circumstances which may give rise to a claim being made against you by any person whatsoever relating to any insurances placed by us on your behalf.
- 64) Each party will indemnify the other (and the other's directors officers agents employees permitted successors and permitted assigns) from and against all losses including direct costs claims demands expenses (including legal expenses) proceedings and liabilities incurred through its negligent act or omission.

## Termination

- 65) Either party may terminate this Agreement forthwith by written notice to the other if:
- the other party shall be unable to pay its debts as and when they fall due within the meaning of Section 123 of the Insolvency Act 1986 other than due to a failure to pay a sum or amount demanded in respect of a written demand which is vexatious; or
  - an order is made or an effective resolution is passed or a petition is presented (other than a vexatious petition or one which is withdrawn within 21 days of service) for the winding-up of the other party, otherwise than for the purpose of amalgamation or reconstruction upon terms previously approved in writing by both parties; or
  - the other party shall convene a meeting or propose or enter into any arrangement or composition with its creditors; or
  - any distress or execution or other process is levied or enforced upon or sued out against any part of the other party's assets and is not paid out or discharged within 28 days; or
  - a receiver, administrative receiver, or manager is appointed of the whole or any material part of the assets or activities of the other party; or
  - directed to do so by any Regulatory Authority or in the event that either party's authorisation by the FSA to conduct insurance mediation activities, or Appointed Representative status is revoked or suspended; or
  - the other commits a material breach of any term of this Agreement and, except in the case of a breach not capable of being remedied, such breach has not been remedied within thirty (30) days of a written request to remedy the breach.
- 66) In the event that we no longer place insurances for your client and if we continue to handle your client's claims, we may seek to agree a fee for this future work. In the event that you cease to be regulated and authorised to conduct intermediary business by the FSA for any reason whatsoever, this Agreement and its terms and conditions will automatically cease. Election by OAMPS to effect this termination at this point is unnecessary. If termination of the Agreement pursuant to this clause occurs, the following actions may take place:
- OAMPS will be obliged to contact your client (the "Insured") to advise of the above;
  - OAMPS will provide the Insured with assistance and advice regarding the Insured's ongoing requirements;
  - OAMPS will seek to ensure (but can not guarantee) that the Insured's insurance policies are not prejudiced by such termination. The above is not an exhaustive list of actions which may occur if such termination occurs.

## Data Protection

- 67) Both parties shall comply at all times with the Data Protection Act 1998 (the "DPA") and any regulations made under the DPA and in particular with the data protection principles set out in the DPA and with all relevant guidelines and guidance notes issued from time to time by the Information Commissioner, as applicable to each of those parties.
- 68) Where personal data is supplied or disclosed by one party to the other, the other party will ensure that such personal data is only used for purposes for which appropriate consent has been given by the data subject; and notify the disclosing party of any request it receives from data subjects for subject access or changes to such personal data under the DPA or any correspondence with the Information Commissioner in relation to such personal data.

## Miscellaneous

- 69) Any and all prior understandings, arrangements, agreements or practices relating to insurance business which OAMPS or any of its subsidiaries or associates place are replaced by this Agreement which is to be construed as containing all the terms and conditions between the parties.
- 70) No amendment to this Agreement shall be of any force or effect unless in writing and signed or executed by both parties.
- 71) This Agreement may not be assigned by either party without the express written consent of the other party.
- 72) Any failure of either party to take advantage of a breach of this Agreement by the other party shall not be deemed to constitute a waiver of any rights to enforce the terms and conditions of this Agreement whether arising by virtue of that breach or otherwise.
- 73) Nothing in this Agreement shall be construed as an obligation on the part of OAMPS to accept or otherwise handle any new or renewal insurance business enquiries which you may make of us nor shall there be any obligation on our part to provide a quote for any insurance business which you may have such matters being and remaining at our complete discretion.
- 74) The parties agree to exclude the application to this Agreement of the Contract (Rights of Third Parties) Act 1999.
- 75) This Agreement shall be governed by and construed according to Law of England and Wales and any disputes in relation hereto may be determined by the Courts of England and Wales.

There is no need for you to sign and return this document, we have retained details of when it was issued to you. Placing business with us will be deemed as evidence of your agreement to these terms and conditions. Should you have any queries with respect to this agreement, please contact our compliance officer; Adam Croot, OAMPS (UK) Ltd, Windsor House, High St, Esher, Surrey, KT10 9RY

Agreed by:

For and on behalf of: OAMPS (UK) Ltd



Adam Shefras  
Director