

Terms of business agreement

Qlaims Limited and

Date:

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Terms of Business Agreement (Risk Transfer)

An agreement dated [Insert Date] governing the conduct of Insurance Business between: Qlaims Limited (10650346) whose Registered Office is at Level 4 42-44 Bishopsgate, London, England, EC2N 4AH (the MGA); and

- (a) **[Enter Full Legal Name of Broker] (Company number),**
Whose registered address is at **[Insert registered address here]**
FCA Firm Registration No: **[Insert FRN No:]**

(collectively the **Parties** and each a **Party**).

1 Definitions and Interpretation

- 1.1** In this Agreement, where appropriate, reference to a statutory provision includes a reference to the same as modified, re-enacted or both from time to time before or after the date of this Agreement and any subordinate legislation made under the same before or after the date of this Agreement.
- 1.2** Agreement refers to this agreement, the "Terms of Business Agreement (Risk Transfer)".
- 1.3** Applicable Requirements means all applicable statutes, rules, laws, regulations, instruments and provisions in force from time to time, including (without limitation) the rules, codes of conduct, codes of practice (including the Code of Ethics) stipulated by any authority or body including any Relevant Regulatory Body, to which a Party is subject from time to time.
- 1.4** CASS means the FCA's Client Assets Sourcebook.
- 1.5** Code of Ethics means the code for MGAA Members adopted on 19 February 2019 by the MGAA (or as amended from time to time).
- 1.6** Commission means commission due to the Broker at the rates and times (if any) as set out in writing between the Parties in respect of that Insurance Business.
- 1.7** Data Controller means the person which, alone or jointly with others, determines the purposes and means of the processing of Personal Data.
- 1.8** Data Protection Law means all applicable statutes and regulations in any jurisdiction pertaining to the processing of Personal Data, including but not limited to the privacy and security of Personal Data.
- 1.9** Data Subject means the identified or identifiable natural living person to whom the Personal Data relates.
- 1.10** Delegated Claims Administrator means the entity appointed by the Insurer or the MGA to handle and/or pay claims.
- 1.11** FCA means the Financial Conduct Authority, or any successor regulatory bodies.
- 1.12** Force Majeure Event means an event beyond a Party's control.
- 1.13** Group has the meaning given to it in section 474 of the Companies Act 2006.



- 1.14 ICOBS means the FCA's Insurance Conduct of Business Sourcebook.
- 1.15 Insurance Business means any insurances or reinsurances falling within the description of a "contract of insurance" in Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 under any contracts for insurance made by the MGA on behalf of the Insurer where the Broker is the single producing broker and the insured risk relates to UK business.
- 1.16 Insurer means an insurer of any Insurance Business under this Agreement.
- 1.17 MGAA means the Managing General Agents' Association.
- 1.18 Personal Data means any information relating to the Data Subject.
- 1.19 Personal Data Breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.
- 1.20 Policyholder means the person entering or proposing to enter into any Insurance Business subject to this Agreement as an insured.
- 1.21 Records means any medium on which any information of any description is recorded and includes all books, records, correspondence whether electronic or otherwise in respect of the Insurance Business.
- 1.22 Relevant Regulatory Body means the FCA or other body with the authority in the United Kingdom to authorise a person to conduct Insurance Business.
- 1.23 Taxes means 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 to set out the rights and obligations of the Parties in respect of the matters specifically addressed in this Agreement. Any matters between the Parties not expressly addressed in this Agreement remain unaffected and unaltered by this Agreement.
- 2.2 Nothing in this Agreement will be construed as creating a partnership or joint venture of any kind between the Parties. Neither Party will have the authority to bind the other Party to a contract in its name for any purpose except to the extent expressly stated in clauses 8.1, 9.2 and 13.3. In particular, the Broker will not create or allow any duty of care, contractual duty or any other duty to be created between the MGA and any Policyholder, other than as expressly created by any Applicable Requirements.
- 2.3 Subject to clause 12, nothing in this Agreement overrides the Broker's duty to place the interests of its Policyholder before all other considerations, nor will this Agreement override any Applicable Requirement which may apply to the Broker, the MGA, or the placing of any Insurance Business.
- 2.4 Subject to clause 2.6 below, the Parties agree that the terms in this Agreement will apply to the conduct of any Insurance Business inception or renewed on or after the date of this Agreement, and will supersede the terms of any other terms of business agreement (TOBA) already in place between the Parties for such Insurance Business. Such TOBA(s) will continue



to apply to Insurance Business transacted between the Parties before the date of this Agreement until its natural expiry date.

- 2.5 Each proposal for Insurance Business, renewal of existing Insurance Business or continuation of cover will be accepted or declined by the MGA at its sole discretion. The MGA acknowledges that the Broker is under no obligation to offer any proposal for Insurance Business or renewal of any existing Insurance Business to the MGA. The Broker acknowledges that the MGA is under no obligation to provide a quotation in respect of any proposal for Insurance Business, or mid-term adjustment or variation.
- 2.6 Prior to or at the time of placement of any Insurance Business, the Broker and the MGA may agree separately and in writing provisions relating to the conduct of that Insurance Business.

3 Regulatory Status

- 3.1 The Broker warrants that it is authorised by a Relevant Regulatory Body to conduct all insurance distribution activities relevant to the Insurance Business from the date of this Agreement. The MGA warrants that it is authorised to carry out and underwrite for Insurers the Insurance Business from the date of this Agreement.
- 3.2 The Broker will inform the MGA immediately in writing if at any time during the period of this Agreement:
- (a) a Relevant Regulatory Body suspends or withdraws its authorisation; or
 - (b) the Broker ceases to be authorised by a Relevant Regulatory Body in relation to any Insurance Business subject to this Agreement; or
 - (c) the Broker becomes insolvent; or
 - (d) there is a material change to the Broker's ownership i.e. more than 20% of the shares, voting rights or business assets are transferred to a new owner.
- 3.3 The MGA will inform the Broker if:
- (a) a Relevant Regulatory Body suspends or withdraws its authorisation or imposes any conditions which materially affect this Agreement; or
 - (b) the MGA otherwise ceases to be authorised by a Relevant Regulatory Body to undertake any activities in relation to any Insurance Business subject to this Agreement; or
 - (c) the MGA becomes insolvent.



4 Authority

- 4.1 This Agreement sets out the basis on which the MGA, acting on behalf of any Insurer, will accept Insurance Business from the Broker.
- 4.2 Except as expressly provided in this Agreement or on the express written authority of the MGA, the Broker will have no authority to bind, accept, commit to, amend, alter or vary Insurance Business, settle, negotiate or compromise claims, alter any document or policy, make any financial promotion on the MGA's or the Insurer's behalf and/or commit the MGA in any way without the MGA's or the Insurer's (as the case may be) prior written consent.
- 4.3 Unless otherwise agreed in writing with the MGA, notification of a claim by a Policyholder to the Broker will not be notification of the claim to the MGA or the Insurer. It will be the Broker's sole responsibility to notify and present such claim fully in accordance with policy terms.

5 MGA Obligations

- 5.1 Where the MGA is authorised to handle claims by an Insurer, the MGA will promptly notify the Broker of any material change to those claims handling arrangements.
- 5.2 If there is to be a change of an Insurer underwriting the Insurance Business, the MGA will notify the Broker of the change of Insurer in good time before the change of Insurer takes effect.

6 Broker Obligations

- 6.1 The Broker will promptly forward to the Policyholder, all requests for information and documentation as the MGA (for itself or for the Insurer) may reasonably require.
- 6.2 The Broker will present to the MGA promptly following receipt from the Policyholder, in such form as the MGA will reasonably require, all proposals and all material information which the Policyholder has made and/or provided in connection with the proposed Insurance Business. If the Broker becomes aware that the Policyholder has not made a fair presentation of the risk, the Broker will immediately notify the MGA.
- 6.3 The Broker will promptly seek and provide any further information which the MGA may require in order to underwrite or service the Insurance Business.
- 6.4 The Broker will pass all documentation from the MGA relating to Insurance Business (including any renewal documentation) to the Policyholder as soon as practicable but always in compliance with the Applicable Requirements.
- 6.5 The Broker will notify the MGA, the Insurer or any appointed Delegated Claims Administrator (as the case may be) promptly of all claims under any Insurance Business as agent of its Policyholder and in accordance with insurance policy terms and conditions.



7 Remuneration

- 7.1 This Agreement contemplates that the Broker will be remunerated on the basis of Commission and, if separately agreed between the Parties, other payments made by the MGA. If the Broker is to charge the Policyholder a fee in addition to or in lieu of Commission, the prior written agreement of the MGA should be obtained.
- 7.2 Unless otherwise stated in writing by the MGA or the Insurer, Commission may be deducted by the Broker from the premium when the premium to which the Commission relates is received by the Broker.
- 7.3 Where the premium is payable in instalments, 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.
- 7.4 Where the MGA is required to return or procure the return of any part of the premium to the Policyholder (or where applicable to a third party on behalf of the Policyholder) the Broker will immediately repay to the MGA the equivalent proportion of any Commission, unless the Broker is required by law to repay that equivalent proportion of any Commission to another person.

8 Premium and Claims

- 8.1 Where the Broker holds:
- (a) premium due to be paid to the MGA or the Insurer;
 - (b) return premium due to be paid to the Policyholder;
 - (c) claims monies due to be paid to the Policyholder; or
 - (d) monies for onward payment to agents or representatives of the MGA or Insurer in respect of claims adjustment, legal or similar professional fees, as authorised by the MGA.

the Broker will hold such monies as agent and trustee of the Insurer until properly paid to the relevant party. The Broker has no authority under this Agreement to permit any third-party, sub-agent, or appointed representative (as defined in the relevant rules of the Regulatory Body) to receive, hold, or pay any money on behalf of the Insurer, without the MGA's prior written consent.

- 8.2 The Broker will pay premiums (net of Commission as permitted under Clause 7.2, but including Taxes) due to the MGA (or Insurer if directed by the MGA) within [30] days of the end of the calendar month in which the Insurance Business was written, or as otherwise agreed between the Parties. If the Broker receives the premium, after the time permitted for the Policyholder to pay such premium, and subject to the relevant contract of insurance not being cancelled, then the premium will be paid (net of Commission as permitted under Clause 7.2, but including Taxes) as soon as reasonably practicable and in any event no later than 7 working days (or other period -as agreed in writing by the MGA) from the date of receipt.



- 8.3 The Broker will hold the monies described in clause 8.1 above within its client monies account, established and maintained in accordance with CASS 5. The MGA acting on the Insurer's behalf consents to such monies being co-mingled with the Broker's other client monies. The MGA also acting on the Insurer's behalf further consents to its rights with regard to monies held in the Broker's client monies account being subordinated to those of its clients, in accordance with CASS 5 and further agrees that any interest earned on the said account will accrue to the Broker.
- 8.4 The Broker will advise the MGA, on the MGA's request, as to whether it has received any specified premiums. The Broker will also promptly notify the MGA if the Policyholder has failed to pay the premium within the time permitted for the Policyholder to pay such premium in respect of any Insurance Business.
- 8.5 In the event of the cancellation or avoidance of a contract of insurance, and where the MGA or the Insurer is obliged by law or the terms of the insurance contract to refund the premiums, the Broker agrees to repay its portion of the relevant Commission. Such repayment will, in the case of cancellation, be only in respect of Commission received by the Broker, which is attributable to that part of the premium repaid.

9 Taxes

- 9.1 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 MGA or the Insurer 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 will continue.
- 9.2 Where the Broker processes and pays Taxes on behalf of the MGA related to premium in respect of any Insurance Business, the Broker will hold such monies in accordance with clause 8.3 above. The Broker will then account to the MGA (or the Insurer if the MGA so directs) for amounts received by the Broker in respect of such liability for Tax, which the MGA or the Insurer may have in respect of that Insurance Business.

10 Compliance

- 10.1 The Broker warrants and undertakes that it will comply with all Applicable Requirements and have and maintain, at no lesser terms and conditions than those required by law or Applicable Regulation, appropriate professional indemnity insurance cover.
- 10.2 The Broker will forward promptly notices of Policyholder's rights to cancel Insurance Business in all instances where such notices are required to meet Applicable Requirements.
- 10.3 The Broker will act honestly, fairly and professionally in accordance with the best interests of its clients, in compliance with ICOBS 2.5.-1 of the FCA Handbook (as subsequently amended or replaced).
- 10.4 Each Party shall pay due regard to, and co-operate in respect of the observance of, any applicable financial crime and international economic financial or trade sanctions laws and regulations which bind the relevant Customer, the Broker or the MGA.



- 10.5 It is agreed by the parties that the Broker is solely responsible for the appropriate financial sanctions checks to be carried out in relation to the potential policyholders; prior to the risk being presented to the MGA.

11 Data Protection

- 11.1 The Parties acknowledge and agree that where a Party processes Personal Data under or in connection with this Agreement it alone determines the purposes and means of such processing as a Controller.
- 11.2 In respect of the processing of Personal Data, each Party:
- (a) **will always comply with its obligations under the Data Protection Law;**
 - (b) will notify the other Party without undue delay after, and in any event within 24 business hours of, becoming aware of a Personal Data Breach; and
 - (c) will assist and co-operate fully with the other Party to enable the other Party to comply with their obligations under Data Protection Law, including but not limited to in respect of keeping Personal Data secure, dealing with Personal Data Breaches, complying with the rights of Data Subjects and carrying out data protection impact assessments.
- 11.3 The Parties will work together to ensure that each of them is able to process the Personal Data it processes under or in connection with this Agreement for the purposes contemplated by this Agreement lawfully, fairly and in a transparent manner and in compliance with the Data Protection Law. This will include but not be limited to entering into such other written agreements as may be required from time to time to enable each Party to comply with the Data Protection Law.

12 Termination

- 12.1 This Agreement will terminate:
- (a) at any time by one Party giving at least [30] days written notice of termination to the other, or earlier by mutual agreement;
 - (b) immediately, without notice, should either Party become insolvent or enter any insolvency, administration or receivership procedures; or
 - (c) immediately, without notice, should either Party have any authority granted to it by a Relevant Regulatory Body or, where relevant the requisite authority and/or licence in any other territory where business, the subject of this Agreement, is being undertaken, withdrawn or altered in such a manner as materially to affect in any way either Party's ability to be involved with any Insurance Business which is carried out between the Parties under this Agreement.



12.2 Following termination:

- (a) the Parties will agree the procedure for administering the Insurance Business current at the time of termination including if required the orderly run-off of the Insurance Business;
- (b) the Broker will co-operate with the MGA and/or Insurer in providing information (including contact details for any Policyholder or other party with whom the MGA has contracted in the conduct of Insurance Business) reasonably required to achieve an orderly and proper run-off of the business in accordance with the law where such information is required in order for the Insurer and/or the MGA to carry out its obligations in relation to Insurance Business concluded in accordance with this Agreement;
- (c) the MGA will prepare a statement of account showing the amount owed and due as between the Broker and the MGA and/or Insurer. The statement of account will be settled by the Party who owes the balance on the statement of account. If thereafter any further amounts are identified by the MGA and/or Insurer as being owed they will be paid immediately by the Broker upon demand;
- (d) the Broker will cease using and return to the MGA any Records which the Broker holds on the MGA's behalf in any form;
- (e) the Broker will cease to exercise all rights and authorities granted under this Agreement;
- (f) the Broker will continue to account to the MGA (or Insurer as the case may be) for all premiums (including instalment premiums) due in relation to Insurance Business accepted under this Agreement, but received after the statement of account set out in sub-clause (c) above;
- (g) the MGA reserves the right, subject to Applicable Requirements, to deal directly with, or to appoint a third party to deal directly with, the Policyholders for the purpose of administering and maintaining the Policyholder's insurance cover and dealing with any claims arising under such cover; and
- (h) where permissible and/or required under the Applicable Requirements, the Parties will remain liable to perform their obligations in relation to relevant Insurance Business subject to this Agreement in accordance with the terms of this Agreement until such time as such obligations will cease, all such Insurance Business has expired or has otherwise been terminated and to this purpose the clauses of this Agreement in relation to such relevant Insurance Business, whether the subject of renewal, adjustment, amendment, claims or otherwise, will continue.



13 Access to Records

- 13.1 The Broker will:
- (a) maintain complete and accurate copies of all Records which the Broker issues in connection with the Broker's obligations under this Agreement, together with such Records as are sufficient to demonstrate that it has complied with its obligations to the MGA under this Agreement;
 - (b) keep all such Records securely stored at all times; and
 - (c) keep all such Records for not less than three (3) years from the date of expiry or cancellation of Insurance Business to which they relate or the date of filing of any proposal for Insurance Business which is declined or is not taken up by the Policyholder, or if longer the minimum periods required by the Applicable Requirements.
- 13.2 The Broker agrees that the MGA, any third party acting on the MGA's behalf, the MGA's internal and external auditors, or any Relevant Regulatory Body or its appointees and representatives, will, on reasonable notice, be given access to inspect and to take copies of the Records. The Broker will procure that its officers and employees provide such information and explanations as the MGA's internal and external auditors (including Insurer auditors) reasonably consider necessary for the performance of their duties as auditors of the MGA.
- 13.3 Where the MGA (or the Insurer (as applicable)) requests the Broker to carry out any functions on its behalf, such as the appointment of loss adjusters, lawyers or others, or the Broker otherwise acts as an intermediary between the MGA (or the Insurer (as applicable)) and its representatives or agents:
- (a) the Broker accepts the appointment or instructions on the basis that any information received by it in respect of a claim made upon any Insurance Business is disclosable to the Policyholder;
 - (b) all documentation and Records created or received by the Broker in the performance of such functions or duties will be and remain the property of the MGA and/or the Insurer, other than documents over which the Broker has a proprietary commercial interest; and
 - (c) the Broker will take reasonable steps to retain, maintain and safeguard any of the MGA and/or the Insurer's documents in the Broker's possession in accordance with Applicable Requirements.

14 Confidentiality

- 14.1 Each Party will treat information received from the other relating to this Agreement (each as Recipient) as confidential and will not disclose it to any other person not entitled to receive such information except as may be necessary to comply with the Applicable Requirements, or as required by the Insurer.
- 14.2 Where applicable and to fulfil its rights and/or obligations under this Agreement each Recipient will be entitled to disclose such information where necessary to its insurers or reinsurers, third party service providers, sub-contractors, actuaries, auditors, professional agents, regulators, advisers and, if applicable, another company in its group.



- 14.3** Clause 14.1 will not apply to information which:
- (a) was rightfully in the possession of such Recipient prior to this Agreement;
 - (b) is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause); or
 - (c) is trivial or obvious.

15 Right of set-off

The MGA will be entitled but not obliged at any time or times without notice to the Broker to set off any liability the Broker owes the MGA or the Insurer against any liability that MGA or the Insurer (as the case may be) owes to the Broker. Any exercise by the MGA of its rights under this clause 15 will be without prejudice to any other rights or remedies available to the MGA or the Insurer under this Agreement or otherwise.

16 Complaints

Each Party will notify the other of any complaint concerning the other Party or an Insurer relating to Insurance Business subject to this Agreement.

17 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.

18 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.

19 Disclosure

The Broker will comply with all law regarding disclosure of all forms of remuneration from any arrangements it may have for remuneration in connection with the Insurance Business.

20 Variation and Assignment

This Agreement may be assigned or varied only in writing by duly authorised representatives of the Parties.

21 Rights of Third Parties

Except as reserved to the Insurer under the terms of this Agreement, 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 21 will not affect any right or remedy of a third party which exists or is available apart from that Act.



22 Dispute Resolution

- 22.1 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:
- (a) 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 dispute or claim;
 - (b) will attempt in good faith, if the matter is not resolved through negotiation within three months of the dispute arising to resolve the dispute or claim through mediation with the assistance of a mediator agreed between the Parties or such similar organisation as the Parties may agree; or
 - (c) if the matter has not been resolved by mediation within three (3) 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 clause 23 below.
- 22.2 Notwithstanding the above, either Party may seek the immediate protection or assistance of the High Court of England and Wales if appropriate.
- 22.3 Nothing in this clause 22 will prevent or restrict the Broker or the MGA from terminating this Agreement under clause 12.1.

23 Jurisdiction and Choice of Law

This Agreement will be construed according to English law and any disputes arising under it will, subject to the provisions of clause 22 above, be determined in the Law Courts of England and Wales.

24 Counterparts

This Agreement may be executed in two or more counterparts by the Parties to it, each of which will be deemed an original and all of which together will constitute one instrument.

25 Enforceability and Waiver clause

- 25.1 If any portion of this Agreement is found to be invalid or unenforceable, the remainder will remain in full force and effect.
- 25.2 The failure to exercise or delay in exercising a right or remedy under this Agreement or at law does not constitute a waiver of such right or remedy or of any other rights or remedies. Further, no single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of such right or remedy or of other rights or remedies.



26 Service of Notices

Any notices to be given under this Agreement will be sent by first class recorded delivery post, by hand, or email to the compliance officer of the relevant Party at the registered office of the Party to be served, or to such other email address as the relevant Party may notify the other Party (in accordance with this clause 26) from time to time. The notice will be deemed to have been served, if posted, at the expiration of two business days after posting, if by hand at the expiration of one business day after it was dispatched and if by email, on receipt of an automated delivery receipt or confirmation of receipt from the relevant server.

27 Force Majeure

Neither Party will be liable for any delay or non-performance of its obligations under this Agreement caused by 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 with immediate effect if such Force Majeure Event continues for more than 3 months.

**This Agreement has been duly signed and entered into
by the authorised representatives of the parties:
Execution page**

Signed:

duly authorised for and
on behalf of Qlaims Limited

Authorised signatory

Print name

Signed

I hereby confirm that I am
an officer of the company
have the necessary authority
to enter into this agreement,
on behalf of [BROKER]."

Authorised signatory

Print name

NB. Please note, you are not authorised to distribute, market or make our products available until such time as we have provided you with a countersigned copy of this agreement, reflecting both the completion of our due diligence and the commencement date of this agreement.

For clarity, our due diligence will include the verification of the IP address from which this application was sent.