



# Terms of Business Agreement

## 1. DEFINITIONS & INTERPRETATION

1.1 In this Agreement the following terms have the meanings given to them below unless the context otherwise requires:

<b>"Agreement"</b>	means this terms of business agreement ,the Agency Appointment Letter and the Terms of Commission;
<b>"Agency Appointment Letter"</b>	means the letter provided to You accompanying this Agreement;
<b>"Applicable Rules and Regulations"</b>	means any rules, regulations, guidance, codes or principles, whether or not having the force of law issued by the FSA or any other competent regulatory authority and any legislation or other law (including without limitation the FSMA) which governs the conduct by You of any transaction or business contemplated by this Agreement;
<b>"Claim"</b>	means a claim made by a Policyholder under the terms of his policy with Us;
<b>"Event of Insolvency"</b>	<p>means in respect of a Party where: (i) a petition is presented for the bankruptcy of the Party; or</p> <p>(ii) a petition is presented (and not discharged within 30 days) or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up, voluntary liquidation or entry into administration of that Party; or</p> <p>(iii) a Court order is made for the winding up, administration or bankruptcy of that Party; or (iv) a notice of intention to appoint or a notice of appointment of an administrator is filed under Schedule B1 of the Insolvency Act 1986; or</p> <p>(v) a proposal is made for a voluntary arrangement under Part I or Part VIII of the Insolvency Act 1986 or a proposal is made for any other composition scheme or arrangement with (or assignment for the benefit of) that Party's creditors; or</p> <p>(vi) an application is made to the Court for an interim order pursuant to section 253 of the Insolvency Act by or on behalf of the Party; (vii) a Party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>(viii) a trustee in bankruptcy , supervisor, nominee, administrator, liquidator, provisional liquidator, receiver, administrative receiver, or similar officer is appointed in respect of that Party or all or any part of its, his or her business or assets; or</p> <p>(ix) that Party ceases to carry on business as a going concern; or</p> <p>(x) that Party suffers any event in a foreign jurisdiction analogous to or comparable with any of the foregoing;</p>
<b>"FSA"</b>	means the Financial Services Authority or any successor body from time to time;

<b>"FSMA"</b>	means the Financial Services and Markets Act 2000;
<b>"IPT"</b>	means Insurance Premium Tax;
<b>"MIIC"</b>	means the Motor Insurers Information Centre;
<b>"Policyholder"</b>	means a person who is insured by or who has effected a policy with Us through You in accordance with this Agreement and shall include any person who proposes to become insured whether or not he actually becomes insured;
<b>"System"</b>	means the hardware and software provided by a third party software house which You utilise to arrange General Insurance by means of electronic data interchange;
<b>"Terms of Commission"</b>	means the guide showing the commission due to You from Us and provided to You in accordance with clause 7.1;
<b>"General Insurance"</b>	means insurance business of any classes specified in schedule 1 part 1 of the FSMA (Regulated Activities) order 2001, as amended, save that it shall not include classes number 4 – railway stock, 5 – aircraft, 6 – ships, 11 – aircraft liability and 12 – liability for ships and shall at all times be limited to business situated in England, Scotland, Wales, Isle of Man and the Channel Islands unless otherwise agreed;
<b>"Party"</b>	means Us or You (as the context may require) and the expression Parties shall be construed accordingly;
<b>"We", "Us", "Our"</b>	means LV= and Liverpool Victoria are trade marks of Liverpool Victoria Friendly Society Limited and LV= and LV= and Liverpool Victoria are trading styles of the Liverpool Victoria group of companies. ABC Insurance is a registered trade mark and is a trading style of the Liverpool Victoria group of companies. Liverpool Victoria Insurance Company Limited (LVIC), registered in England and Wales number 3232514, is authorised and regulated by the Financial Services Authority, register number 202965. Highway is a trading style of the Liverpool Victoria group of companies. Highway Insurance Company Limited, registered in England and Wales number 3730662, is authorised and regulated by the Financial Services Authority, register number 202972. Registered address for both companies: County Gates, Bournemouth NH1 2NF. Tel: 01202 292333.
<b>"You", "Your"</b>	means the company, partners or individual(s) detailed in the accompanying Agency Appointment Letter;

- 1.2 A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment of it and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.3 Clause headings shall not affect the interpretation of this Agreement.
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to one gender shall include a reference to the other genders.
- 1.6 References to clauses are to the clauses of this Agreement

## **2. Scope**

- 2.1 This Agreement will apply, from a date separately notified in writing by Us to You, to the conduct of General Insurance by You as Our agent but limited to those classes of business and any related services which We agree with You from time to time.

## **3. Appointment**

- 3.1 You are not permitted to assign, subcontract or otherwise transfer Your rights or obligations under this Agreement to any other person, company or firm without Our prior written consent nor may You appoint a subagent without Our prior written consent.
- 3.2 During the term of this Agreement You will supply to Us a copy of Your latest annual accounts filed with Companies House, or if You are not incorporated as a company or as a limited liability partnership, you will provide us with a copy of Your management accounts upon request. You will also if required give any further information We may request in relation thereto.

## **4. Authority**

- 4.1 We may accept or decline at Our sole discretion any proposal for insurance, renewal of an existing policy or the continuance of an existing policy.
- 4.2 You shall comply with the Applicable Rules and Regulations in the conduct of Your business when acting on Our behalf under this Agreement. You will notify Us of any investigation by the FSA into any matter involving You or of any action or pending action of disciplinary nature by the FSA involving You.
- 4.3 You shall indemnify Us both before and after termination of this Agreement against any loss, costs, damages or expenses (including legal fees) incurred or suffered by Us arising as a result of a failure by You to comply with Your obligations under clause 4.2.
- 4.4 Other than where specifically authorised within this Agreement You may not bind Us in any way.
- 4.5 This Agreement does not allow You to settle, compromise or negotiate any Claim on Our behalf and all Claims must be notified to Us unless We have given express permission in writing for alternative procedures to apply.
- 4.6 Except as otherwise stated within this Agreement You are deemed to be the agent of the Policyholder or proposer for General Insurance and You will notify the Policyholder or proposer accordingly.

- 4.7 All material information notified to or received by You in respect of any risk or Policyholder must be notified to Us as soon as practicable.
- 4.8 You shall be and remain exclusively responsible for any advice and / or recommendations given by You to a proposer or Policyholder.
- 4.9 You will not use or display any advertisement or banner or any other promotional material which refers to Us or Our business without Our prior written consent. Without express agreement You will not provide quotations for Our products or bind Us to cover on the internet. We will not guarantee quotations from systems which We have not approved.

## **5. Issue of Cover**

- 5.1 You will use the System generated cover notes, certificates and schedules unless We have agreed separately, for certain classes of business, for printed cover notes to be issued. In all cases such documents will be issued in accordance with Our underwriting requirements as provided to You from time to time and with the Applicable Rules and Regulations timescales. If printed cover notes are issued a copy must be forwarded to Us immediately.
- 5.2 In the event of this Agreement being terminated all unused cover note books will be returned to Us immediately and use of System generated cover notes will cease from the date of termination. If any cover is given after that date it shall not be enforceable against Us.
- 5.3 Any discount claimed by a Policyholder for a no claim bonus must be evidenced in a form satisfactory to Us by proof from the previous insurer.
- 5.4 You will present information and proposals for insurance cover for new business in the form specified by Us from time to time or in the manner otherwise agreed between Us and You.

## **6. Information and Documentation**

- 6.1 All documentation issued by Us will be in good time to enable You to adhere to Your obligations under the Applicable Rules and Regulations including notification to the Policyholder in the event that We do not intend to renew cover or wish to impose revised terms.
- 6.2 You will not vary the terms and conditions of any document provided to You by Us and all quotations for insurance issued by You on Our behalf will be based on full, accurate details identical to those on the proposal form or statement of fact as applicable.
- 6.3 It is Your responsibility to prepare policies and other insurance documents in an accurate and proper fashion and to provide the Policyholder with complete and accurate details of the insurance policy in all respects including the cover provided, the premium payable and any other charges being made. Such documentation will be passed by You to the Policyholder promptly together with notification of any changes in the terms of the insurance in accordance with the Applicable Rules and Regulations.
- 6.4 In the event of policy cancellations or not taken up renewals You will return all relevant documentation to Us immediately. All new cover or changes in cover which fall within the terms of Our requirements set under the Applicable Rules and Regulations and by the MIIC must be notified to Us within the timescales We specify from time to time.
- 6.5 In the event of any loss or theft of cover notes, certificates of insurance or electronic cover facility You will notify Us immediately and inform the relevant authorities.

## **7. Commission**

- 7.1 You are entitled to commission and the levels are specified in a separate document named Terms of Commission a copy of which has been supplied to You and changes will be notified from time to time as appropriate. Any such change will be notified to You at least 30 days in advance of the effective date of such change.
- 7.2 Commission is payable as long as You retain direct control of the business and will become due and payable to You on collection of the premium from the Policyholder or on collection of the premium from any party funding the premium on behalf of the Policyholder.
- 7.3 In the event of any refund of all or part of a premium for risks not incurred the amount of commission proportionate to that refund will be repayable by You to Us.
- 7.4 If there is a dispute with another agent over entitlement to commission then You acknowledge that Our decision as to entitlement shall be final and binding.

## **8. Payments**

- 8.1 You are Our appointed agent for the purposes of collecting premiums and applicable IPT from Policyholders and receiving and holding premium refunds for onward transmission to the Policyholder.
- 8.2 You will collect such premiums, and applicable IPT, promptly from the Policyholder and will promptly forward any refund of premium to the Policyholder. If the policy, confirmation of renewal, certificates or other document or receipt is passed to the Policyholder without the premium being collected in full, You will be responsible for payment of the full premium.
- 8.3 Any request for cancellation of cover must be accompanied by the appropriate documentation or You will be held responsible for the premium.
- 8.4 All payments received by You as Our agent shall be Our property and held by You in trust for and on Our behalf. You will hold such money in a client bank account. Co-mingling with client money as defined in the FSA "Client Assets Sourcebook" is permitted. Other than the deduction of commission due to You such monies will not be utilised for any other purpose than for remittance to Us or to the Policyholder as appropriate. We confirm that Our right to any monies held by You on Our behalf is subordinate to any claim or claims made by your clients to their monies which are held in the same account. Any interest earned on monies held in such account shall belong to You and You shall be entitled to withdraw such interest at any time subject to the Applicable Rules and Regulations.
- 8.5 We will prepare a monthly statement of account detailing all premiums and IPT due to Us for the accounting period and any amounts overdue and commissions due to You. The total amount due to Us must be remitted by the due date as specified on the statement and payment must be for the full amount of the premium including IPT and other monies due to Us less commission properly due to You.
- 8.6 You must adhere to Our terms of credit notified to You and restated from time to time.

## **9. Customer Relationship**

- 9.1 We acknowledge that where the Policyholder has chosen to appoint You to advise on or arrange insurance on his behalf the Policyholder remains as Your client and We shall not solicit directly and knowingly such business away from You during the currency of this Agreement and for a period of five years following the termination of this Agreement, except:
- a) to the extent that termination is effected in the circumstances detailed in clause 10.1.3; or
  - b) to the extent that such client may have been a client of Us other than as a result of this Agreement; or
  - c) to the extent that such client may be included on a general database of names legitimately acquired by Us for the purpose of general direct marketing campaigns.
- 9.2 We also undertake not to pass to any third party any information supplied by You or Your client for the purpose of knowingly soliciting the business away from You except where You have given written consent.

## **10. Termination**

- 10.1 This Agreement may be terminated;
- 10.1.1 At any time by mutual consent of the Parties;
  - 10.1.2 By either Party by giving 30 days written notice to the other Party;
  - 10.1.3 By either Party without notice where:
    - a) There are reasonable grounds to suspect fraud or dishonesty by the other Party or in the event of bankruptcy, insolvency or liquidation of the other Party;
    - b) An Event of Insolvency occurs in relation of the other Party;
    - c) The authorisation by FSA to undertake any General Insurance regulated activities of the other Party is terminated;
    - d) Where a material breach of this Agreement has not been remedied by one Party within 30 days of a written request for remedy by the other Party.
    - e) Where the other Party commits a material breach of this Agreement which is not remediable.
    - f) If circumstances lead Us to believe the administration of the account by You is likely to prejudice the interests of Policyholders.
    - g) In the event that You are unable to carry on trading due to illness or incapacity or in the event of death.
- 10.2 Upon termination of this Agreement under 10.1.3 We will prepare a statement of account for monies due to Us and payment of this account must be made immediately and conversely if appropriate We will pay all monies due to You immediately.
- 10.3 Following termination of this Agreement in circumstances described in 10.1.1 or 10.1.2 We will cooperate with You for 12 months to enable You to arrange insurance cover for Policyholders with other insurer(s).
- 10.4 If the termination of this Agreement is due to circumstances detailed in 10.1.3 We reserve the right to contact Policyholders directly and to make alternative arrangements for the future handling of their business and to protect the interests of the Policyholders generally.

## **11. Audit and Access to records**

11.1 You will ensure that all computer software and customer records are maintained in a professional fashion and are available for inspection and audit by Us or Our authorised agents at any reasonable times and on reasonable notice to you. All material and information held by You on Our behalf should also be available for inspection for the purpose of monitoring and investigation of Your compliance with the terms of this Agreement or any other audit purpose We may require.

11.2 We, Our auditors or inspectors will have the right to take copies of any records reasonably required and You will make all reasonable efforts to supply additional information which We may request within a reasonable period of time.

## **12. Compliance**

12.1 You will maintain all necessary authorisations, permissions and consents to continue to perform Your obligations under this Agreement.

12.2 The Parties will work together to meet the requirements of the MIIC.

12.3 The Parties agree to comply with their respective obligations under the Data Protection Act 1998 and the Consumer Credit Act 2006. It is agreed and acknowledged that both You and We are Data Controllers (as such term is defined under the Data Protection Act 1998) in respect of our separate relationships with Policyholders and that You are Our Data Processor (as such term is defined under the Data Protection Act 1998) in respect of Your function as Our agent under this Agreement. You will indemnify Us both before and following termination of this Agreement against any loss, costs, damages or expenses (including legal fees) incurred by Us as a result of Your failure to comply with your obligations under this clause 12.3.

12.4 You will maintain and keep in force Your Professional Indemnity policy and ensure its compliance with the minimum standards set by the Applicable Rules and Regulations. On Our request You agree to provide a copy of the policy and proof that it is in force.

12.5 Any complaint made by a Policyholder to one of the Parties will be passed to the other Party for information purposes and copies of relevant documentation relating to the complaint will be retained and made available for a minimum of 6 years. Where original documentation is not retained, documentation will be preserved electronically in such a way that it can be reproduced and authenticated for the purposes of legal or other proceedings.

12.6 In the event of a complaint which You receive relating to any activities or functions for which We are responsible as insurers You will not make any statement or give any response on Our behalf without Our prior written approval. If You are acting as the agent of the Policyholder in respect of the complaint You will notify them of that fact accordingly. You will cooperate with Us at no cost to Us in the investigation and settlement of the complaint and if deemed necessary by Us We will deal directly with the Policyholder or proposer in respect of the complaint.

## **13. Dispute Resolution**

13.1 The Parties will, in the event of any dispute or claim arising under this Agreement, use reasonable endeavours to resolve the claim or dispute by way of discussion between the Parties' respective senior representatives.

13.2 In the event of a failure to resolve the dispute or difference under clause 13.1, the Parties will attempt to settle it by negotiation. A Party may not serve an Alternative Dispute Resolution (ADR) notice or commence court proceedings (other than for interim relief) until 21 days after it has made a written offer to the other Party to negotiate a settlement to the dispute.

13.3 If the Parties are unable to settle the dispute by negotiation within 21 days of such an offer the Parties will attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. To initiate mediation a Party must give notice in writing, an "ADR notice" to the other Party to the dispute requesting mediation in accordance with this clause. Neither Party may commence any court proceedings (other than for interim relief) in relation to any dispute arising out of this Agreement until the mediation has terminated.

#### **14. EDI Transacted Business**

14.1 We hereby authorise You to trade with Us via the System in accordance with the provisions of this Agreement and any related notifications. This Agreement applies in all respects to business transacted electronically and the following provisions in this clause 14 will also apply to such electronically transacted business.

##### 14.2 Procedures

14.2.1 You must operate within the procedures stipulated by Us from time to time.

14.2.2 We reserve the right to suspend or withdraw Your authority for the use of the System. Such suspension will be immediate upon delivery of notice in writing to this effect by Us to You.

14.2.3 We may modify or change the applications which We and/or You use in connection with electronic business and such change or modification shall be effective on the expiry of 30 days from receipt of written notice to this effect by Us to You.

14.2.4 The System is Your own responsibility and use of it is at Your own expense and risk.

14.2.5 You will adopt and maintain procedures to update the System with the latest releases of software received from the relevant software house by the effective date of such release. Failure to do so will invalidate any guarantees applying to the insurance risk.

14.2.6 The System holding the data relating to business underwritten by Us must be operated and maintained in good condition and in accordance with any instructions issued by the supplier.

##### 14.3 Security

14.3.1 Access to data relating to the business underwritten by Us must be restricted to persons who are in Your employment and who need to have access, or other persons specifically authorised by Us. The messages must be properly stored and all reasonable steps taken to ensure they are not altered lost or destroyed.

14.3.2 Any confidential information contained in messages must not be available to or disclosed to any unauthorised persons or be used by You other than for the purposes of the business transaction.

##### 14.4 Authenticity of Messages

14.4.1 Each message must identify the sender and recipient(s) and must include a means of verifying the authenticity of the message itself either through a technique used in the message itself or by some other means as provided for in the procedures laid down by Us.

14.4.2 By agreement the Parties may also use higher levels of authentication to verify any message.

14.4.3 Any breach of security related to any message or the procedures detailed in this Agreement must be notified to Us as soon as You are aware of the breach and all

reasonable steps should be taken to rectify the problem.

#### 14.5 Integrity of Messages

- 14.5.1 Each Party will ensure that any message sent to the other is complete, accurate and secure against being altered in the course of transmission; and subject to clauses 14.5.2 and 14.5.4 below the sender shall be liable to the other party for the direct consequence of any failure to perform its obligations under this clause.
- 14.5.2 The integrity of any message is accepted by both parties who agree to accord each message the same status as would apply to any document or to information sent by other than electronic means, unless such message can be shown to have been corrupted due to technical failure of any computer, computer system or transmission line.
- 14.5.3 Where there is evidence that a message has been corrupted or if any message is identified as incorrect it will be retransmitted by the sender as soon as possible with a clear indication that it is a corrected message.
- 14.5.4 Notwithstanding clauses 14.5.1 and 14.5.3 above the sender shall not be liable for the consequences of an incomplete or incorrect transmission if the error is or should be in all the circumstances, obvious to the recipient.

#### 14.6 Confirmation of Receipt of Messages

- 14.6.1 In circumstances where receipt of messages is not automatically confirmed We may ask for confirmation to be sent in which case the confirmation should be sent without delay.
- 14.6.2 Messages received by either Party shall be dealt with or processed in accordance with any response times specified by Us or the Software House or as We may separately agree. In the absence of such specification or agreement both Parties will deal with each message without delay.
- 14.6.3 Confirmation of receipt of any message does not confer on any person any rights or legal obligation or constitute acceptance of any offer contained or implied in such message.

#### 14.7 Data Storage

- 14.7.1 Transaction logs will be maintained by both Parties to verify messages received and sent without any modification.
- 14.7.2 The transaction log may be held on a computer or other suitable means providing the data is readily retrievable in a suitable format on request.

#### 14.8 Documentation

You will retain all documents related to policies transmitted by electronic means as long as the policy is current and for a further period of three years during which time the documentation must be readily available for query and audit purposes.

15. General

- 15.1 If Your business is a partnership the terms of this Agreement will apply to any new partner and at our sole discretion any change in Your partnership structure may be subject to a new Agreement. You will notify us promptly of any change in the partnership composition and confirm that in writing that any new partner is aware of and accepts the terms of this Agreement.
- 15.2 If at any time any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be unenforceable or invalid that outcome will not affect or impair the validity of enforceability of any other part of this Agreement.
- 15.3 No term of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.
- 15.4 The terms of this Agreement may be changed by Us provided We give no less than 30 days notice of such change. Such notification shall be deemed to be Our notice of termination of this Agreement pursuant to clause 10.1.2 in the event that You notify Us that You do not accept such a change.
- 15.5 Where You consist of two or more persons Your obligations will be joint and several.
- 15.6 With the exception of any representations made fraudulently, this Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations, proposals, understandings and agreements, whether written or oral relation to the subject matter of this Agreement.
- 15.7 No provision of this Agreement shall be deemed waived and no breach excused unless the waiver or consent is in writing and signed by an authorised representative of the Party who has waived the provision. Any waiver shall relate only to the breach to which it expressly relates and shall not apply to any subsequent or other breach.
- 15.8 This Agreement shall be governed and construed according to the laws of England and Wales and both parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.

THIS AGREEMENT had been entered into by the parties on the dates below.

Signed for and on behalf of  
LV= Broker

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.....  
P M Bunker, Managing Director

.....  
Date

Signed for and on behalf of  
[ ]

.....  
.....  
Name

.....  
Date