

# TERMS OF BUSINESS AGREEMENT



An agreement governing the conduct of Insurance Business between:

(1) **Breeze Underwriting Limited**, as agent of the insurer ("**BUL**"); and

(2) you and each of your Associated Bodies (the "**Broker**"),

each a "**Party**" and, collectively, the "**Parties**".

## DEFINITIONS

**Appointed Representative:** Has the meaning given to it in Section 39 of FSMA.

**BIPAR Principles:** A set of high level principles to follow when handling the placement of a risk with multiple insurers, agreed by BIPAR with the Directorate General for Competition.

**CASS:** the UK Regulator's Client Assets Sourcebook

**ICOBS:** The Financial Conduct Authority's ("FCA") Insurance Conduct of Business Sourcebook.

**Insured:** Any Party (not being the Insurer) entering into a contract of insurance which is subject to this Agreement.

**Insurer:** The insurer (or managing agent when placing Insurance Business into Lloyd's) with whom the Insurance Business is placed and for which BUL acts as agent.

**Insurance Business or Insurance:** Any insurances or reinsurances falling within the definition of "contract of insurance" in Article 3(1) of the FSMA (Regulated Activities) Order 2001 together with insurances concluded under any contracts for insurance arranged by BUL on behalf of the Insurer where the Broker is the Coverholder or the placing broker, but specifically excluding any outwards reinsurance business placed by the Broker as agent of the Insurer.

**Monies:** Premiums payable in respect of any Insurance Business and any other monies that are

required to be held by the Parties arising from the conduct of Insurance Business under this Agreement.

**Privacy Policy:** BUL's Privacy Policy available on the company website or as advised by BUL from time to time.

**Taxes:** All Insurance Premium Taxes ("IPT") and other para-fiscal charges which may be levied by overseas fiscal authorities on insurance premiums.

**UK Regulator:** The FCA and/or the Prudential Regulation Authority as appropriate, or any successor regulatory body or bodies to all or any of them.

## SCOPE

This Agreement sets out the rights and obligations of the Parties only in respect of matters addressed in the Agreement. The Broker agrees to and accept the terms of this agreement. The Broker shall ensure that each of your Associated Bodies will act on the basis that it is a Party to and bound by the agreement.

Under authority granted to it by the Insurer(s), BUL authorises the Broker to commit the Insurer(s) to provide insurance to the prospective policy holder and, in accordance with the below clauses, to collect and hold premium.

Each proposal for Insurance Business, renewal of existing Insurance Business or continuation of cover in respect of any existing Insurance Business will be accepted or declined by BUL at its sole discretion. The Broker is under no obligation to offer any proposal for Insurance Business or renewal of any existing Insurance Business to BUL.

BUL reserves the right to amend this agreement in the future where we are required to do so to comply with any legal or regulatory obligation. Details of any such changes will be notified to you.

Any other amendments by BUL will result in the Broker being notified in advance. The Broker will reserve the right to terminate this agreement within 20 business days of such notification.

### **REGULATORY STATUS**

The Broker warrants that it is authorised by the UK Regulator (or other EEA regulatory body) to conduct insurance mediation activities (as defined in the UK Regulator's Handbook) from the date of this Agreement or that it is an Appointed Representative of an insurance intermediary which is authorised by the UK Regulator (or other EEA regulatory body) and therefore properly exempt from the requirement to be authorised by the UK Regulator (or other EEA regulatory body).

BUL warrants that it is authorised by the UK Regulator to conduct insurance mediation activities (as defined in the UK Regulator's Handbook) from the date of this Agreement.

Each Party shall notify the other promptly in accordance with the below 'Notice' clause if at any time during the period of this Agreement the UK Regulator suspends, withdraws or alters its authorisation.

Each Party shall also notify the other if it becomes insolvent or an application for the winding up is made by it.

### **REMUNERATION**

Commission shall be agreed between the Parties and shall be set out in the relevant slip or recorded in writing by the Parties. The Broker may deduct commission upon receipt of the premium subject to the following:

- a) Where premium is payable in more than one instalment, the Broker will only deduct the proportion of commission that the instalment bears.
- b) The Broker shall only be entitled to commission in respect of any Insurance Business placed during the terms of the

Agreement and provides it remains agent to the Insured. In the event of any dispute by one or more broker in respect of commission due for the same Insurance Business then BUL may determine in its sole discretion in what shares that commission is to be paid.

### **HANDLING OF MONIES BY THE BROKER**

BUL is appointed to hold premiums as agent and trustee of the Insurer pursuant to CASS 5.2.3R and the Insurer agrees to cascade this risk transfer to the Broker. The Broker will be deemed to have authority to hold monies and the Broker may hold these as the agent and trustee of the Insurer. Monies must be held by the Broker in one of the following manners:

- a) in a client bank account as described in CASS 5.3 ("Statutory trust") or CASS 5.4 ("Non-Statutory Client Money Trust"), if the Broker is authorised by the UK Regulator to hold and control Client Money, in either of which cases the Insurer consents to such Monies being co-mingled with the Broker's other Client Money. In these circumstances the Insurer consents to its rights with regard to Monies held in the Broker's Client Money account being subordinated to those of the Broker's clients in accordance with CASS 5 and further agrees that any interest earned on the Monies in the said account shall accrue to the Broker; or
- b) in a bank account designated an Insurer Trust Account, in which case the UK Regulator's Client Money Rules shall not apply to the Insurer Monies.

### **HOW WE HANDLE YOUR MONEY**

BUL will hold Monies in a client bank account as described in CASS 5.4 ("Non-Statutory trust")

### **YOUR PREMIUM PAYMENT OBLIGATIONS**

Insurers require the Broker to pay premium at, or prior to, commencement of each policy, or as otherwise specified under the policy terms.

Provided the Broker shall itself have received the premium, the Broker must pay all monies due (net of Commission, but including Taxes) in cleared funds in accordance with the amounts and on or prior to the dates specified in our invoice(s).

The Broker shall notify BUL as soon as possible, and in any case within no more than 2 days, if the Insured has failed to pay the premium on the date that it becomes overdue. BUL reserves the right not to retain the insured on risk for a further period, or to cease cover thereafter. The Broker will comply with any instructions given by BUL, provided there shall be no obligation on BUL or the Broker to fund premium, IPT, or any part thereof, which has not been paid by the insured.

#### **COMPLIANCE**

Each Party will comply with their respective legal, licensing and regulatory requirement applicable to the production, placing, claims handling and premium and claims accounting of any Insurance Business which the Broker places with BUL under this Agreement.

The Broker will inform BUL, in relation to all Insurance Business, whether the Insured is classified as a consumer or a commercial customer for the purposes of ICOBS.

Each Party will conduct their business in accordance with the BIPAR Principles and will comply with and co-operate in respect of the observance of any applicable international economic, financial or trade sanctions legislation which bind the relevant customer, the Broker, BUL or the Insurer.

Each Party shall maintain professional indemnity insurance to the level required by the UK Regulator.

#### **ANTI-BRIBERY & CORRUPTION**

Each Party will ensure that at all time it complies with all applicable laws, statutes and regulations relating to anti-bribery and corruption. In particular, each Party shall comply with the

Bribery Act 2010 and the Foreign and Corrupt Practices Act 1977 and any other applicable legislation.

The Broker will ensure that it has in place and maintains adequate policies and procedures to prevent the Broker, and protect BUL from being exposed to a bribery or corruption event.

Current anti-money laundering regulations require BUL to obtain adequate "Know Your Client" information about the Broker. In order to prevent bribery, corruption or other financial crime, additional due diligence may be carried out. Further steps may be taken which include notification to the relevant authorities, status and credit checks using credit reference agencies, and other background checking, as deemed appropriate.

#### **DATA PROTECTION**

Each Party warrants to the other that where required by the legislation, it is and will remain registered under and will comply with the Data Protection Act 1998 (DPA) or equivalent legislation in the jurisdiction in which it carries on business.

The Broker warrants that it has adequately informed any Data Subject (as defined in the DPA) of the transfer to BUL of any personal Data obtained pursuant to this Agreement, prior to such transfer taking place.

Where either Party acts in the capacity of a Data Processor (as defined in the DPA) under this Agreement, it will comply with the instructions of the Data Controller (as defined in the DPA) and shall at all times perform its obligations under this Agreement in such a manner as not to cause the Data Controller in any way to be in breach of the DPA.

## **CONFIDENTIALITY**

Each of the Parties will treat information received from the other relating to this Agreement and to the Insurance Business as confidential and will not disclose it to any other person not entitled to receive such information except as may be necessary to fulfil their respective obligations in the conduct of Insurance Business under this Agreement, or as may be required by law or regulatory authority.

## **COMPLAINTS**

Each Party will notify the other in accordance with the rules of the UK of any complaint concerning the other Party relating to Insurance Business subject to this Agreement.

## **CONFLICTS OF INTEREST**

Each Party will adopt and/or maintain procedures to ensure that it has in place arrangements for the identification and management of any conflicts of interest that may arise in relation to any Insurance Business.

## **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.

## **TERMINATION OF THIS AGREEMENT**

Without prejudice to any rights that have accrued under this agreement or any other rights or remedies, either Party may terminate this agreement:

- a) by giving not less than 30 days' notice;
- b) immediately if the other Party enters into any form of liquidation, receivership, administration or bankruptcy; or
- c) immediately, without notice, should the Broker have any authority or permission granted to it by the UK Regulator withdrawn or altered in such a manner as materially to

affect in any way the Broker's ability to introduce, arrange or administer Insurance Business under this Agreement.

Notwithstanding anything else contained in this agreement, we are not under an obligation to act for you, or to continue to act for you if to do so could breach any laws, regulations or professional rules.

If we consider that we cannot act for you (or continue to act for you) because we reasonably believe that to do so could breach any laws, regulations or professional rules, we will be entitled to terminate our existing relationship with you with immediate effect and will not be responsible or liable to you for any direct or indirect loss which you or any other Party may suffer as a result.

## **CONSEQUENCES OF TERMINATION**

Following termination BUL's obligations under this Agreement shall cease and the authority granted to the Broker shall cease.

The Parties will agree the procedure for administering the Insurance Business current at the time of termination. The Broker will make reasonable efforts to provide BUL with contact details for any Insured or other Party with whom BUL has contracted in the conduct of Insurance Business

## **ASSIGNMENT**

This Agreement cannot be assigned or otherwise transferred by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

## **THIRD PARTY RIGHTS**

A person who is not Party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term contained in this agreement.

## **DISPUTE RESOLUTION**

The Parties to this Agreement are committed to resolving all disputes arising in relation to it without the need for litigation and to allow as far as possible for commercial relationships to remain unaffected by disputes and therefore the Parties 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 same.

If the matter is not resolved within three months, the Parties agree to resolve the dispute of claim through mediation with the assistance of a mediator agreed between the Parties or as recommended by the by the Centre for Dispute Resolution or such similar organisation.

If not resolved by mediation within six months of the initial notification of the dispute, or if either Party will not participate in a mediation procedure, the Parties will refer the dispute in accordance with the 'Governing Law and Jurisdiction' clause below.

## **NOTICES**

Notice shall be in writing and shall be delivered or mailed to the registered address of the other Party.

A notice shall be deemed to have been served (a) if posted, at the expiration of two business days after posting; or (b) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address.

## **FORCE MAJEURE**

Neither Party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. In the event of a force majeure the affected Party shall notify the other as soon as reasonably practicable.

## **GOVERNING LAW & JURISDICTION**

This TOBA, any associated letter/correspondence and our business relationship with you are governed by English law and are subject to the exclusive jurisdiction of the High Court in London.

## SCHEDULE 1 - DATA PROTECTION

### DEFINITIONS

**“Agreement”** means the terms of business agreement in existence between you and Breeze Underwriting Limited

**“Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”** and **“Process/Processing/Processed”** shall have the respective meaning given to them in the application Data Protection Legislation from time to time.

**“Data Protection Legislation”** means the EU Data Protection Directive 95/46/EC as implemented in the appropriate local territories of the European Union until 25<sup>th</sup> May 2018 and the General Data Protection Regulation (EU) 2016/679 on and from 25<sup>th</sup> May 2018 and/or all applicable laws, rules, regulatory guidance and regulatory requirements from time to time.

**“Supervisory Authority”** means any regulatory authority responsible for the enforcement of Data Protection Legislation

### GENERAL OBLIGATIONS DEFINITIONS

Each party shall comply with its obligations as Data Controller and/or Data Processor under the Data Protection Legislation.

Where you collect Personal Data which is transferred to BUL, you shall ensure that such Personal Data is:

- Adequate, relevant and limited to what is necessary in relation to the purposes for which the Personal Data is being Processed under the TOBA; and
- Accurate and, where necessary, up to date.

### SECURITY

Both parties shall implement appropriate technical and organisational measures, pursuant to Article 32 of the GDPR, to ensure a

level of security appropriate to the risk involved in agreement to:

- Protect all Personal Data from unauthorised use, alteration, access or disclosure, and loss, theft and damage, and to protect and ensure the confidentiality, integrity and availability of Personal Data; and
- Prevent a Personal Data Breach.

Each party shall keep an accurate record of the security measures which they have in place to protect Personal Data.

Each party shall notify the other promptly upon becoming aware of or reasonably suspecting a Personal Data Breach and shall provide the other party at the time of the notification with sufficient information which allows them to meet any obligations to report a Personal Data Breach under the Data Protection Legislation.

### RECORDS AND NOTIFICATION


Both parties shall keep a record of any Personal Data Processing carried out.

Both parties shall co-operate with each other, to the extent that is reasonably requested, in relation to:

- Any Data Subject requests or other communication from a Data Subject concerning the processing of their Personal Data; and
- Any communication from a Supervisory Authority concerning the processing of Personal Data, or compliance with the Data Protections Legislation.

Both parties agree that Personal Data held by each of them must be kept accurate and up to date. To that extent, should either party become aware that the Personal Data they hold about an individual is not accurate, that the parties will inform each other and make relevant updates to such Personal Data being held, as may be necessary.

**SIGNED FOR AND ON BEHALF OF BREEZE UNDERWRITING LIMITED**

<b>Signed</b>	
<b>Name of Signatory</b>	Ian Hamilton
<b>Position</b>	Managing Director
<b>Date</b>	25 March 2020

**SIGNED FOR AND ON BEHALF OF [THE INTERMEDIARY]**

<b>Signed</b>	
<b>Name of Signatory</b>	
<b>Position</b>	
<b>Date</b>	

This Agreement shall commence from the date that the Agreement has been signed by both Parties.