



Kay International
Insurance & Reinsurance

Broker at **LLOYD'S**

TERMS OF BUSINESS AGREEMENT

For General Insurance

Between

KAY INTERNATIONAL PLC

and

..... INSURANCE COMPANY

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DATE OF TERMS OF BUSINESS AGREEMENT:

PARTIES

- (1) (Registration number) whose registered office is at (hereinafter referred to as "We" "Our" and "Us")
- (2) **Kay International Plc** (FCA registration number **300468**) whose principal place of business is at **25 Lime street, London EC3M 7HR** (hereinafter referred to as "You"or"Your")

INTRODUCTION:

- (A) We are an insurance company authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority (FCA) & the Prudential Regulation Authority (PRA) to conduct insurance business and to carry on certain regulated activities pursuant to the Financial Services and Markets Act (Regulated Activities) Order 2001 (as amended) in relation to Contracts of General Insurance (defined below)
- (8) We have permission amongst other things to carry on regulated activities including, arranging, advising on, entering into, administering and performing and agreeing to carry on any of these activities in relation to Contracts of General Insurance
- (C) You carry on the business of, amongst other things, dealing in Contracts of General Insurance as agent, arranging, advising on, assisting in the administration and performance of, and agreeing to carry on any of these activities in relation to Contracts of General Insurance
- (D) You have hereby agreed to carry on the activities in (C) above in relation to the placing of Contracts of General Insurance with Us, including amendments to and renewals of the same, in accordance with and subject to the terms of this Agreement (defined below).

IT IS AGREED THAT:

1. Interpretation
- 1.1 In this Agreement the following expressions shall, where the context so admits, have the following meanings:

"Agreement"	means these Terms of Business Agreement;
"Appointed Representative"	shall be as defined in the glossary to the FCA Handbook of rules and guidance;
"Bribery Legislation"	Means all applicable rules, regulations and legislation, whether now in effect or implemented in the future in relation to the prevention of bribery and corruption, including, without limitation, the Bribery Act 2010 and the provisions of SYSC 3.2.6R, SYSC 6.1.1 Rand PRIN 2.1.1 R, and any re-enactment or replacement of or extension to any such rules, regulations and legislation;
"Contract Certainty"	means the complete and final agreement of all terms between Us and the Insured before inception of the contract of insurance
"CASS Rules"	shall mean the FCA Client Money Rules as set out in Chapter 5 of the Client Assets Sourcebook;
"Customer"	An individual or organization for whom We may provide insurance;

"Data Protection Legislation"	means all legislation relating to the transfer and use of people's data whether now in effect or implemented in the future, including, without limitation, the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any re-enactment or replacement of or amendment or extension to such legislation;
"Financial Promotion"	as defined in the glossary to the FCA Handbook of rules and guidance;
"FCA"	means the Financial Conduct Authority in the United Kingdom;
"FSMA"	means the Financial Services and Markets Act 2000;
"General Insurance"	means insurance business which is defined as Non Marine and Marine. as specified in Part 1, Schedule 1 of the RAO;
"The "Insured"	means Our policyholder;
"Money Laundering Rules"	Means all applicable rules, regulations and legislation, whether now in effect or implemented in the future in relation to the prevention of money laundering, including, without limitation, the Money Laundering Regulations 2007 and the provisions of SYSC 3.2.6A - J and SYSC 6.3, and any re-enactment or replacement of or extension to any such rules, regulations and legislation;
"Rules"	means the FCA Handbook and any other rules, guidance or regulations issued by the FCA and all other rules, guidance or regulations to which either You or We are subject in undertaking General Insurance business;
"Scheme Agreement"	means any agreement which includes the regulation of General Insurance and associated business between Us over and above that governed by this Agreement;
"Staff"	means Your directors, partners, employees and any other persons engaged under a contract for services or contract of service by You;
"TCF Principles"	means the FCA Treating Customers Fairly principles, including the Consumer Outcomes;
"Unauthorised Person"	means a person who is not authorised by the FCA; and,
"Working Days"	means any day other than a Saturday, Sunday or public holiday

- 1.2 If We collect premium from the Insured, the following clauses or parts of clauses shall not apply: 3.2, 4.5, 4.6, second sentence 014.7, 5, 7.1, 7.2, 7.3, 8, 9,10.3,10.4 and 13.3.
- 1.3 If You are an Exempt Professional Firm and are subject to regulations that define Your regulated activities, in the event of a conflict, the applicable rule of Your Designated Professional Body's relevant applicable regulations shall be deemed to have precedence over the conflicting term or terms of this Agreement.
- 1.4 If You are an Appointed Representative the following clauses or parts of clauses shall not apply: 7.4(f), 10.1, 10.13, 10.14, 11.3(f), 11.5, 12.1 (b), 12.3, 14.3(a), 14.3(b) and 25.2(1).
- 1.5 References in this Agreement to any statutory provision or the Rules shall include a reference to such provision or Rules as from time to time are re-enacted, amended, extended or replaced.
- 1.6 In this Agreement unless expressly provided otherwise or the context otherwise requires: Capitalised words and phrases the definitions of which are not within this Agreement but are contained in the Glossary of the FCA Handbook shall, unless the context otherwise requires, be construed as having the meaning ascribed to them by the Glossary of the FCA Handbook;

We and You together are referred to as "We Both", "Our", "Us" and "Your" have corresponding meanings as the context requires;

No term in this Agreement shall override any provision in the Rules which shall have precedence at all times;

All appendices and schedules to this Agreement form part of this Agreement;

This Agreement (together with all of the other documents to be entered into pursuant to it and any appointed representative agreement as appropriate) sets out the entire agreement and understanding between the parties relating to the matters contemplated by this Agreement and supersedes all prior written or oral agreements, arrangements and understandings between them relating to the Agreement's subject matter; and,

You acknowledge that, in entering into this Agreement, You have not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty made or given, or purportedly made or given, by Us (whether made negligently or innocently) other than as expressly set out in this Agreement.

2 **Scope**

- 2.1 We Both agree that this Agreement shall apply to the conduct of any General Insurance business transacted between You and Us subject to the terms and conditions of any existing or future Scheme Agreement entered into in writing between You and Us. The scope of business which We permit You to enter into transactions on Our behalf from time to time shall be notified to You in writing and We may vary this from time to time by notifying You in writing, such variations having immediate effect. You shall remain for all purposes the agent of the Insured except to the extent expressly stated to the contrary in this Agreement or any Scheme Agreement.
- 2.2 You shall use your best endeavours to develop a book of business with Us that We consider in Our sole discretion is acceptable. Nothing in this Agreement requires Us to accept any proposal for insurance or renewal of any existing policy or to maintain cover in respect of any existing policy if We in Our sole discretion decline to do so.
- 2.3 You have no authority to accept or amend insurances, settle, negotiate or compromise claims on Our behalf or to alter any receipt, document or policy that relates to any General Insurance business

transacted between You and Us or to commit Us in any way. Any exceptions must be authorised in advance in writing by Us. If We authorise You to issue insurance cover on Our behalf You shall only do so in accordance with the Rules and Our underwriting requirements which apply from time to time and which shall be notified to You.

- 2.4 You shall pass to Us promptly any material information provided to You by the proposer or by the Insured together with any information that We directly request as a result of having been provided that material information. In the event of You being aware of any non-disclosure of material information by a proposer or an Insured, You shall either inform Us or decline to act on behalf of that proposer or Insured in undertaking any General Insurance business with Us. In the event of You being aware of any non-disclosure of material information by a proposer or an Insured, should you continue to act on behalf of that proposer or Insured without informing us of that non-disclosure, you now agree that you will indemnify us immediately on demand and on a continuing basis against any and all claims and or losses that may be suffered by us as a result of your so doing. You remain for these purposes the Insured's agent and notification by the Insured to You shall not constitute notification to Us.
- 2.5 You have no authority to receive notice of claims on Our behalf and notification of a claim to You does not constitute notification of a claim to Us, unless otherwise agreed by Us in writing. You shall notify the insured of this provision in writing each time you enter into any sort of General Insurance transaction with Us.
- 2.6 You shall not advertise, market or issue any press release on Our behalf or which contains reference to Our business without Our prior written consent. You shall not use Our name, trade names, trade marks or logos or data or any part of them in advertising and marketing materials, including Your web-sites and links from Your web-sites, on Your own behalf or for any other reason without Our prior written consent. You shall not display or provide details or quotations relating to Our General Insurance policies on Your web-sites or links from Your web-sites or to any third-party website, without Our prior written consent. If You are an Unauthorised Person, You shall not issue a Financial Promotion unless FSMA or the Rules permit You to do so or We have given You prior consent in writing.
- 2.7 Unless otherwise expressly stated within this Agreement, We may vary the terms of this Agreement at any time by sending to You Our current version and the changes shall be deemed to be effective by your continuing to direct General Insurance business to Us following notification of the changes to You. Where appropriate, We may also issue Scheme Agreements and procedural standards and manuals in relation to those schemes. These shall all form part of this Agreement and, similarly, your continuing to direct General Insurance business to Us following issuance of such Scheme Agreements and procedural standards shall constitute your acceptance of them. Where there is any conflict between this Agreement and any Scheme Agreement, the terms of the Scheme Agreement shall take precedence.
- 2.8 Where We have agreed telephone based trading arrangements We reserve the right to monitor and record telephone calls made between Us.

3 Commission

- 3.1 You shall be entitled to commission on Gross Premiums (meaning premiums chargeable to the Insured including provisional premiums and time on risk premiums, less any applicable Insurance Premium Tax) for General Insurance business which You place with Us (after deducting any return premiums) and on renewals of such business (subject to the same deductions) as long as any agreement with You remains in force and premiums due have all been paid to Us in accordance with these terms. You shall not be entitled to commission in respect of renewals or other events occurring after the date of termination (however arising) of any agreement with You. Commission shall only be paid once on each Gross Premium obtained for one of Our General Insurance policies. Where more than one party claims entitlement to such commission the amount we pay in commission will not increase and it shall be in Our sole discretion to determine how commission shall be apportioned (if at

all) between such parties.

- 3.2 You shall pay us all Gross Premium plus Insurance Premium Tax received from Insureds at or before the end of the period of credit (referred to in clause 7.1), after deduction of the commission element. You shall hold the commission element that you retain of each Gross Premium on trust for Us until the end of Your period of credit at which point You are entitled, subject to clause 3.3, to have all rights to the commission element that you retained in respect of premiums You have paid to Us in accordance with these terms. We may at any time provide you notice that we require You to pay Us Gross Premiums rather than Net Premiums, in which case You shall immediately implement changes your systems so that you immediately pay Us Gross Premiums plus any Insurance Premium Tax payable within Your period of credit and We shall pay You commission on Gross Premiums paid to Us subject to clauses 3.1 to 3.3.
- 3.3 We may recover from You the relevant portion of commission on cancelled, terminated or avoided policies which have resulted in premiums being returned or in respect of policies where an adjustment results in a refund of premiums. We shall be entitled to deduct such return commission from commission due to You. We may recover commission from You prorata on any unpaid premium instalments either: directly; or, as a deduction from commission that would otherwise have been due to You and which you would otherwise have retained (or have been paid) in commission.
- 3.4 A schedule of commissions payable is contained in Appendix A. We may vary these rates, commission and/or Your period of credit for each specific policy by sending You notification of the changes, and by continuing to direct General Insurance business to Us you shall be deemed to have indicated your acceptance of those changes which shall be effective 30 days from notification.
- 3.5 Commission is not due or payable on the handling charge in respect of instalment payments or on any element of Insurance Premium Tax.

4 New Business and Amendments to Existing Business

- 4.1 You shall present information and proposals relating to any General Insurance cover requested in the form which We specify from time to time or as otherwise agreed. You shall retain for a minimum period of three (3) years, unless specified elsewhere in this Agreement or the Rules, any documents or information which validate the details upon which We agree to underwrite the risk and provide the General Insurance policy and these shall be available to Us immediately on request. If You record telephone calls between You and the Insured You shall also make such recordings immediately available to Us on request for claims and application verification purposes. However, this does not apply where the subject matter of any such telephone call is confidential or subject to privilege.
- 4.2 You shall promptly seek and provide to us any further information which We require in order to confirm the acceptability of the risk or to confirm the continued acceptability of the risk including any adjustment to the price of the premium. You shall notify Us immediately of any material facts which come into Your knowledge which may affect the acceptability of the risk or the continued acceptability of the risk when those facts come into your possession, or You shall decline to act for that proposer.
- 4.3 You shall notify to the Insured and obtain their agreement before inception upon all terms and conditions relating to the insurance, together with details of items covered and any other information that You are obliged to provide them on Our (or Your own) behalf in order that You and We are acting fully in accordance with the Rules. You shall notify to the Insured details of Gross Premium or Net Premium (as appropriate) payable (distinguishing this clearly from any other charge being made).
- 4.4 We shall issue the policy and other relevant documentation promptly and in any event within thirty (30) days of inception for commercial business and five (5) Working Days for retail business following the conclusion of the contract. You shall pass to the Insured, promptly and accurately, all relevant documentation (ensuring always that the premium has first been collected) required by these terms and the Rules. In respect of motor insurance business, You shall use Your best endeavours to ensure that all relevant details of the insurance are notified to Us within five (5) days (or such other period as

We may stipulate) of the date of the commencement or amendment of the insurance cover bearing in mind, in the case of motor insurance, the requirements of the Motor Insurers' Database (MID). We shall each comply with Our own responsibilities under the Rules. Further, We both agree that Appendix B to this Agreement shall apply to the conduct of any such motor insurance business transacted between You and Us.

- 4.5 Where it is not possible for all relevant details of the insurance to be obtained within five (5) days after commencement of cover, You shall (if We require) request from the Insured a provisional premium representing an approximation of the full premium applicable. We shall charge and You shall pay the amount of this provisional premium within the period of credit specified in clause 7.1 below.
- 4.6 Any provisional premium which You collect shall be treated in the same way as other premiums are treated under this Agreement.
- 4.7 We Both shall ensure that the final premium to be charged is confirmed as soon as possible. If there is any adjustment to be made after You have paid Us the amount of any provisional premium or after You have collected any provisional premium, this shall be accounted for when We Both agree it and in accordance with any credit terms applying to You, and your commission shall be similarly amended pro rata.
- 4.8 Any post-inception amendments shall be documented and agreed as endorsements.
- 4.9 Where an Insured terminates an insurance policy prior to normal expiry of the policy, You shall use all reasonable endeavours to return any relevant documentation (including any documentation specifically required by Us) to Us no later than thirty (30) days after notice of termination has been given. In respect of motor insurance or employers' liability business, You shall use all reasonable endeavours to return any relevant documentation to Us within ten (10) days (or such other period as We stipulate) after notice of termination has been given, bearing in mind, in the case of motor insurance, the requirements of the MID and the Rules.
- 4.10 In respect of any employers' liability policy, You shall use Your best endeavours to ensure that all relevant details of the insurance, including without limitation the Employer Reference Number and details of each employer covered by the policy, are notified to Us within fifteen (15) days of the start of the month following the date of the commencement or amendment of the insurance cover (or such other period as We may stipulate) bearing in mind the requirements of the Employers' Liability Database (ELD). We shall each comply with Our own responsibilities under the Rules.
- 4.11 We shall each collect and maintain data on our respective Contract Certainty performance at individual contract level.

5 **Renewals**

- 5.1 We shall both use best endeavours to observe the principles of Contract Certainty.
- 5.2 You shall pass promptly to the Insured all Our renewal documentation relating to the Insured's policy no later than fourteen (14) days prior to the date of renewal. You shall advise the Insured of and obtain their agreement before inception upon all terms and conditions relating to the renewal of the insurance, together with details of items covered. You shall clearly and promptly advise the Insured of and obtain their express written agreement before inception upon any change in the applicable terms and conditions and items covered or no longer covered (as appropriate).
- 5.3 We shall issue renewal documentation to You to enable You to comply with the Rules. Where We do not intend to renew, or wish to impose more onerous terms than previously applied, We shall notify You in good time before the renewal date, including, where relevant, the revised terms. If We have decided not to invite renewal, We shall co-operate in providing information necessary for placing the cover elsewhere.

- 5.4 If the Insured does not wish to renew, You shall return any relevant documentation (including any documentation specifically required by Us) to Us no later than thirty (30) days after the renewal date. In respect of motor insurance and employers' liability business, if You do not receive an instruction from the Insured to renew You should return any relevant documentation to Us within ten (10) days (or such other period as We stipulate) after the renewal date, bearing in mind, in the case of motor insurance, the requirements of the MID.
- 5.5 If You notify Us that an insurance policy is to be renewed on the expiry of the current period of cover but are unable on the Insured's behalf to agree the amount of renewal premium which We have quoted within fifteen (15) days after renewal date, We may charge a provisional premium representing an approximation of the full premium to be levied and in that event You shall pay the amount of this provisional premium within the credit period specified in clause 7.1 below.
- 5.6 Any provisional premium which You collect under this clause shall be dealt with in the same way as other premiums under this Agreement.
- 5.7 We Both shall ensure that the final premium to be charged is confirmed as soon as possible. If there is any adjustment to be made after You have paid Us the amount of any provisional premium, this shall be accounted for when We Both agree it and in accordance with the credit terms applying to You, and your commission shall be similarly amended and retained in accordance with clauses 3.3 and 4.7.

6 Claims and Premium Refunds

- 6.1 All claims will be handled by Us. You have no authority to admit liability, agree quantum, settle, negotiate, compromise claims or otherwise to act on Our behalf in relation to claims unless You are expressly authorised by Us to do so in writing. If You are so authorised by Us You shall inform the Insured that You are acting as Our agent only for this purpose.
- 6.2 We shall bear the credit risk in relation to claims monies and premium refunds paid by Us to You and You shall pass such monies promptly to the Insured. All claims monies and premium refunds shall be held by You as Our agent in a separate trust account for Our benefit (which You may also use for other client monies provided always that You comply with the CASS Rules) and shall ensure that the monies in that account shall not be held out by you to any third party as an asset that you have any equitable title to, and you shall ensure that is never subject to any charge, set off or lien. We shall be entitled to approve the operation and form of such trust account(s) immediately on request from time to time. You shall be entitled to any investment income earned in relation to the trust account(s) which contains monies You are holding as Our agent.
- 6.3 Where You hold claims monies or premium refunds as Our agent You must ensure that You inform those of Your clients whose transactions may be affected by the arrangement in writing (whether in Your terms of business, client agreements or otherwise in writing) that You hold such money as Our agent and the extent of such agency.

7 Credit and Payment

- 7.1 We shall allow You the period of credit notified to You by Us for payment of premiums due. This period of credit shall be calculated from the 71st day of the billing month shown on Your statement of account (i.e. the month in which We debit the accounting entry to You) in the case of new policies, endorsements or renewals. An endorsement varying terms at renewal shall for these purposes be treated as a renewal and the period of credit allowed calculated accordingly. Where adjustment premiums become due on policies subject to declaration, the relevant period of credit shall be calculated from the 7th day of the billing month in which We debit the adjustment premium to You.
- 7.2 You shall account to Us for monies due by the date specified in Your statement of account within the credit period referred to in clause 7.1 above and, except as set out in clause 8, You shall pay such monies to Us at Our nominated offices, or by direct credit to Our nominated bank account.

- 7.3 We Both reserve the right to charge each other interest in respect of the late payment of any sum due under this Agreement (before as well as after judgment) at the rate of two percent (2%) per annum above the base rate from time to time of Barclays Bank Pic from the due date for payment of such sum until the date of actual payment of that sum.
- 7.4 We reserve the right immediately to withdraw the credit arrangements set out above and set out below a non-exhaustive list of the circumstances where We may do so:
- (a) Where We reasonably believe there to be or have been, fraud, dishonesty or a deliberate lack of transparency in respect of any Insured by You or by Your employees, agents or independent contractors;
 - (b) Where there are or have been civil or criminal charges against You, Your employees, agents or independent contractors which We reasonably believe to be material to the operation of Our account with You;
 - (c) If in Our reasonable opinion We think that You are administering Our account with You in a manner which may prejudice the interests of Our Insureds;
 - (d) If You have failed without cause to remedy unsatisfactory behaviour of which We have already advised You in writing;
 - (e) If You have failed to remedy a breach of any agreement with Us within thirty (30) days of Our written notice to You requiring remedy of that breach;
 - (f) If having been authorised by the FCA with a Part IV permission for any insurance mediation activities, that permission is varied or cancelled by the FCA;
 - (g) If You are an Appointed Representative and We terminate any Appointed Representative agreement that We have with You.

8 **Settlement**

- 8.1 We shall prepare a statement of account (which may be in writing, on disk, tape, direct online communication to computer terminal, email or any other medium or method of communication which We Both agree). This statement shall be the basis of accounting transactions between You and Us.
- 8.2 You shall pay Us the full amount of premium in respect of policies, subject only to deduction of any commission which You are entitled to hold under the terms of any agreement with Us subject always to the provisions of clause 3 of this Agreement.
- 8.3 Settlements shall be made by the date specified in the statement of account and reconciled to Our last statement of account for the relevant period. Your obligations in respect of settlements are not affected by:
- (a) any credit arrangements which You may have made with the Insured;
 - (b) any delays in crediting to us monies received or due from the insured because of delays within Your accounting system; and,
 - (c) your inability to obtain monies from the Insured (except where clause 9 applies).

9 **Responsibility for Premiums**

- 9.1 You shall notify Us in writing within thirty (30) days after commencement of cover for new business and renewals or within thirty (30) days of the debiting date for endorsements if You fail to obtain the

premium from the Insured (including the provisional premium). We shall then inform You in writing either that We shall remain on risk for a further period or that the policy shall be cancelled unless You accept responsibility for payment of the premium or provisional premium. If You fail to notify Us as set out above, You shall be responsible for payment to Us of the premium due (including any provisional premium and any applicable Insurance Premium Tax) beyond that thirty (30) day period after the commencement of cover, for the duration of the time that the policy is not cancelled. You shall promptly comply with any instructions which We give and shall be deemed to have accepted responsibility for payment of the premium (including the provisional premium and any applicable Insurance Premium Tax) if You do not comply with these instructions.

- 9.2 You shall be responsible for payment to Us of the premium (including any provisional premium and any applicable Insurance Premium Tax) due in accordance with the period of credit (if applicable) set out in clause 7.1 where You release from Your possession (other than to Us) any policy, certificate of insurance, endorsement or other confirmation of new business or renewal cover relating to compulsory classes of insurance.

10 **Compliance**

- 10.1 You shall comply with FSMA and all Rules to which You are subject including all requirements relating to authorisation and supervision in respect of Your insurance mediation activities and you shall do nothing that could cause Us to be in breach of the Rules or that would mean we were not in compliance with FSMA. You shall notify Us immediately if there is any change in Your regulatory status.
- 10.2 We Both shall comply with the TCF Principles, the Money Laundering Rules and the Bribery Legislation.
- 10.3 We shall at all times comply in full with FSMA and the Rules insofar as they apply to Our business.
- 10.4 From conclusion of any contracts of General Insurance with Us, We shall bear the credit risk in relation to premiums that are held by You. This provision applies to premiums (including provisional and adjustment premiums) that are paid to You. All such monies shall be held by You as Our agent in a separate trust account in the manner described within clause 6.2 for Our benefit and shall not be subject to any charge, set off or lien. We shall be entitled to approve the operation and form of such trust account(s) from time to time. In all other circumstances, where You are the agent of the Insured, We shall not bear the credit risk and You shall hold all such Client Monies in accordance with the Rules.
- 10.5 Where You hold premium monies as Our agent You must ensure that You inform those of Your clients whose transactions may be affected by the arrangement (whether in Your terms of business, client agreements or otherwise in writing) that You hold such money as Our agent and the extent of such agency.
- 10.6 You shall be entitled to any investment income earned in relation to the trust account(s) which contains monies You are holding as Our agent.
- 10.7 You shall be responsible to Us for all premiums due to Us which have been collected from Insureds by any agent or sub-agent appointed by You.
- 10.8 You shall notify Us immediately on receiving a complaint from an Insured which relates to Our regulated insurance mediation activities and provide Us promptly with copies of any relevant information and documentation, the originals of which You shall retain for at least three (3) years. You shall provide us with all reasonable cooperation and assistance regarding the investigation of any such complaint
- 10.9 We shall notify You immediately on receiving a complaint from an Insured which relates to Your regulated activities and provide You promptly with copies of any relevant information and

documentation, the originals of which We shall retain for at least 3 years, You shall provide us with all reasonable cooperation and assistance regarding the investigation of any such complaint.

- 10.10 Each party, shall at all times, comply with all applicable Data Protection Legislation from time to time.
- 10.11 Each of Us shall ensure that all processing of Customer data under this Agreement is fair and lawful and that all appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of Customer data and against accidental loss or destruction of or damage to the Customer data.
- 10.12 You accept that Customer data will include Personal Data (and is likely to contain Sensitive Personal Data) (as defined by the Data Protection Legislation). Where you provide such Personal Data to Us or where we are given access to such Personal Data you will:
- (a) have obtained express written permission from the Customers, that they are willing to share the Personal Data that they share with you, with Us, on terms that are substantially the same as those within our Privacy Statement, which is available on Our website, and which are in accordance with the Data Protection Legislation;
 - (b) not carry out any processing of any Personal Data except in accordance with the Data Protection Legislation;
 - (c) assist Us in complying with Our obligations under the Data Protection Legislation and do nothing which shall put us in breach of such obligations;
 - (d) take any and all measures as may be required to enable You to comply with all of your obligations under the Data Protection Legislation;
 - (e) ensure that any subcontractor that you appoint to whom you will disclose or who will have access to the Personal Data will only have such access or disclosure of the Personal Data in order that they are able to perform their services to You, which must be necessary for the purposes that the Personal Data was provided to You; and,
 - (f) ensure that you and any subcontractor that you appoint will each keep any and all Personal Data secure within both the physical building at which your business(es) are located and by means of the appropriate organizational and technical security measures so as to counter pirates, hackers, viruses and other forms of malicious or otherwise troublesome code. To the extent that you do not fully comply with your obligations under this clause 10.10 you now indemnify us on demand and on a continuing basis against any and all losses, costs (including reasonable legal costs and disbursements), expenses, claims and or damages that we may suffer as a result of such failure.
- 10.13 Each party shall notify the other immediately if they become aware of any actual, threatened or potential breach of security of the Personal Data. You shall, if a breach of security occurs, immediately take all reasonable steps necessary to remedy such breach or protect the Personal Data against any breach or threat and prevent an equivalent breach in the future.
- 10.14 As soon as reasonably practicable You shall provide Us with full details (using such reporting mechanisms as may be specified by Us from time to time) of any actual, potential or threatened breach and the steps taken in respect of such breach;
- 10.15 Upon request, You shall provide a written description of the technical and organisational methods You employ for processing Personal Data
- 10.16 You shall ensure the reliability of Your personnel by vetting staff appropriately who have access to the Personal Data
- 10.17 You shall immediately inform Us of any breach of clause 10.

- 10.18 Without prejudice to the generality of clause 10.1 to 10.9 inclusive, We each shall comply with all applicable laws, codes of practice, statutory requirements and regulatory requirements and guidance including guidance issued by the Association of British Insurers and any regulatory authority or industry body.
- 10.19 We may carry out an audit of Your compliance procedures and relevant trust accounts in respect of Our General Insurance business and You shall allow Us or Our agents access to Your premises, files and documents in relation to this Agreement on reasonable notice for this purpose.
- 10.20 Subject always to the Rules, nothing in this Agreement overrides Your duty to place the interests of the Insured before all other considerations.
- 10.21 You undertake to notify Us in writing immediately in the following circumstances:
- (a) variation or cancellation of Your Part IV permission by the FCA;
 - (b) variation or cancellation by the FCA of the Part IV permission of Your agents or sub- agents;
 - (c) initiation of FCA disciplinary or investigative action in relation to You or Your Staff or Your agents or sub-agents;
 - (d) any change in Your Approved Persons or the Approved Persons appointed by Your agents or sub-agents.
- 10.22 You shall be responsible as Principal for all regulatory requirements in relation to Your Appointed Representatives or Your Introducer Appointed Representatives. For the avoidance of doubt, the provisions of this Agreement shall apply in full to Your Appointed Representatives and Your Introducer Appointed Representatives in relation to all matters covered by this Agreement.

11 Termination

- 11.1 Any agreement with Us or any part of it may be terminated by either You or Us at any time by mutual agreement.
- 11.2 Either You or We may terminate any agreement or any part of it by giving 30 days written notice to the other.
- 11.3 Either You or We may terminate any agreement or any part of it by notice in writing to the other in the following circumstances:
- (a) where one party has reasonable grounds for suspecting fraud or dishonesty by the other or by the other's employees, agents or independent contractors;
 - (b) where one party reasonably holds the opinion that, either the regulatory status of the other party has changed, or that administration of the account is being operated by the other, in a manner causing or likely to cause, prejudice to the Insured, Us or You, as the case may be;
 - (c) where the other has failed to remedy a breach of this Agreement (other than payment of monies due to Us) within thirty (30) days of a written request from the party not in breach to do so;
 - (d) where the other has committed an irredeemable breach of this Agreement;
 - (e) where the other has a receiver appointed over the whole or part of its undertaking or assets; enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986 or otherwise makes any composition with creditors; if a petition for a winding up or an administration

order is presented against it or either of these orders is made against it; if a petition for a bankruptcy order is presented against it or if such an order is made in respect of it; if it is unable to pay its debts in accordance with Insolvency Act 1986 S123; on dissolution of partnership;

- (f) where a notifiable circumstance specified in clause 10.13(a)-(d) above occurs;
- (g) where You are an Appointed Representative and We terminate any Appointed Representative agreement that We have with You.

Any such termination shall have immediate effect and where appropriate, suitable arrangements for the direct servicing of Our Insureds will be made by Us in our sole discretion.

11.4 We may terminate any agreement or any part of it by notice in writing with immediate effect if You have failed to pay any monies due to Us under the aforementioned agreement despite a written reminder from Us specifying a date by which monies must be received by Us, and by which date payment has not been made.

11.5 This agreement will terminate automatically and with immediate effect if Your Part IV permission is cancelled by the FCA.

11.6 This agreement will terminate automatically and with immediate effect in the event of Your death where You are also a sole trader.

12 **Suspension**

12.1 We may by giving notice in writing suspend You immediately from acting pursuant to this Agreement in the event that:

- (a) one of the circumstances set out in clause 11.3 occurs;
- (b) Your Part IV permission is varied by the FCA; or,
- (c) We become aware, by notification or otherwise, of any of the events specified in this clause 12.1.

12.2 During any period of suspension You and Your Staff shall only conduct General Insurance business in accordance with Our directions and shall not arrange, renew or terminate any General Insurance without Our knowledge and written approval. You and Your Staff shall not contact or communicate with any Insured or prospective Insured and shall only perform such acts and execute such documents as We reasonably will require in the interests of the Insured. For the avoidance of doubt, We may require You to pass Gross Premium to Us during any period of suspension.

12.3 If Your Part IV permission is varied or cancelled by the FCA You shall immediately cease to receive commission in respect of Your entire General Insurance business or specific products, as appropriate. Any commissions which relate to transactions arranged prior to the suspension will be withheld by Us.

12.4 Suspension in accordance with this Agreement shall not prejudice Our ability to terminate this Agreement as detailed under clause 11 of this Agreement.

13 **Consequences of Termination**

13.1 Following suspension or termination of any agreement with You, We shall not accept any new business proposed by You and shall not issue renewal invitations to You in respect of that agreement.

13.2 Following termination of any agreement with You in circumstances set out in clause 11.1 and 11.2 above, We shall co-operate with You during the period of 12 months from the date of termination in

providing information necessary for You to place business elsewhere. We shall advise You of the procedure for administering current business in writing at the time of termination.

13.3 On termination of any agreement with You We shall prepare a statement of account as between You and Us. Subject to clause 9, settlement of this account shall be made by either party paying the balance due as shown in the statement of account to the other party immediately. You shall also pay to Us immediately all known premiums not included in the statement of account.

13.4 If termination is in respect of only some, rather than all, arrangements under any agreement with You, this Agreement shall continue to apply to all such arrangements not terminated.

13.5 On termination of any agreement with You in order to protect the interests of Our Insureds You shall provide Us with all relevant details to allow Us to contact Our Insureds within the period of notice or within 2 working days in the case of variation or cancellation of Your Part IV permission by the FCA.

14 **Information**

14.1 You shall notify Us within thirty (30) days in writing or as otherwise agreed of any change in Your owners, directors, partners, controllers or compliance officers, including all changes in Your name or trading name, and we shall have the right to immediately terminate this agreement if at our sole discretion.

14.2 You shall immediately notify Us in writing or as otherwise agreed of any circumstances in which termination takes place under similar agreements with other Insurers as set out in clause 11.3 above as soon as You become aware of them.

14.3 You shall notify Us in writing or as otherwise agreed immediately:

- (a) of any changes to Your FCA Part IV permission or any changes to Your affiliation to, membership of, or status within, any organisation whose purpose is the regulation of all or any elements of General Insurance business; or
- (b) if any of Your owners, directors, partners or controllers is or becomes the subject of any disciplinary proceedings or FCA investigation from time to time; or
- (c) if there is any change to Your regulatory status.

14.4 You shall notify Us as soon as possible if one of the events set out in clause 11.3 occurs.

15 **Our Property**

15.1 All Our books, documents, computer hardware and software and anything else belonging to Us and in Your possession shall be available at all reasonable times to Us for inspection.

15.2 On termination of any agreement with Us (however arising) all Our property in respect of that agreement shall be delivered to Us by You immediately.

16 **No Waiver**

No waiver by Us of any breach by You of any terms of this Agreement shall be construed as a waiver of any subsequent breach.

17 **Jurisdiction**

This Agreement shall be construed according to English law and any disputes arising in respect of them shall be determined in English courts unless We Both agree otherwise.

18 **Notices**

Any notice to be given by either You or Us under any agreement between Us or any arrangement under it shall be sent either by recorded delivery to the last known address of the other party, or by facsimile or by hand delivery and shall be deemed served; in the case of recorded delivery within 72 hours of posting; in the case of facsimile, on confirmation of successful transmission to the last known facsimile number of the receiving party and in the case of hand delivery, on delivery to the last known address of the receiving party.

19 **Assignment**

This agreement shall be assignable only with Our prior written consent. Nothing herein contained shall be deemed to restrict Our entitlement in any case to require a proposed assignee to enter into an agreement directly with Us.

20 **Indemnity**

20.1 You shall indemnify Us for any claim demand expense or loss for which We are liable or for which We deem it necessary to accept liability which arises as a result of a breach of contract or a negligent or intentional act by You or any third party with whom you have a contractual relationship.

20.2 In the event that You or any third party with whom you have a contractual relationship purport to bind Us to effect a risk outside the terms of authority of any agreement with Us and We decide in Our absolute discretion to ratify the effect of such risk and payor otherwise deal with any claim arising thereunder (notwithstanding Your lack of authority to so bind Us and the fact that We may not be contractually liable) You shall indemnify and keep Us indemnified on an ongoing basis in the manner aforesaid.

20.3 Where You are a partnership each partner shall be jointly and severally liable to Us for the indemnities set out in clause 20.1 and 20.2.

20.4 Conditions 20.1,20.2 and 20.3 shall survive the termination of any agreement with Us until You (and all of Your partners where you are a partnership) are released from this obligation by Us.

21 **Status**

Nothing in this Agreement shall create a partnership or joint venture between You and Us.

22 **Severability**

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. We Both agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

23 **Force Majeure**

23.1 Neither You nor Us shall be liable for any breach of either of our respective obligations (not including non-payment by You of any sums owed to Us under this Agreement), acts or omissions hereunder resulting from causes beyond either of our reasonable control, including (but not limited to) the following sorts of cause: fires, insurrection, riots, embargoes, third-party delays in transportation, the requirements or regulations of any civil or military authority but not including strikes or other forms of industrial action (other than by Your employees) (an "Event of Force Majeure"). If an Event of Force Majeure occurs, the party whose obligations are suspended by virtue of the Event of Force Majeure shall use all reasonable endeavours to mitigate the effect of such circumstances and carry out such

obligations or duties hereunder in such other way as may be reasonably practicable in all the circumstances.

- 23.2 We Both agree to give notice to the other as soon as is reasonably practicable after becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 23.3 In the event of You or Us receiving notice from the other pursuant to clause 23.2, We Both shall within fourteen (14) days of the notice jointly determine what measures, if any, can be put in place to prevent the occurrence (where possible) or mitigate the effect of the Event of Force Majeure.
- 23.4 If a default due to an Event of Force Majeure shall continue for more than 4 weeks after expiry of the fourteen (14) day period provided for in Clause 23.3, the party not in default shall be entitled to terminate any agreement between Us by giving written notice to the other. Neither You nor Us shall have any liability to the other in respect of the termination of any agreement between Us as a result of an Event of Force Majeure, but rights and liabilities which have accrued prior to termination shall subsist.

24 **Rights of Third Parties**

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 terms of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

25 **Broker/Client Relationship**

- 25.1 Insofar as the Insured has chosen to appoint You to advise upon and arrange his insurance, the Insured remains Your client. We undertake not directly and knowingly to solicit such insurance business away from You during the currency of this Agreement and for a period of five (5) years following termination of the same, except in the circumstances detailed in clause 25.2 below. Furthermore, We should not, without Your prior written consent, make use, or pass to any third party, any information supplied by You or Your client, for the purpose of knowingly soliciting insurance business away from You.
- 25.2 Notwithstanding clause 25.1, We shall be entitled to deal directly with the Insured and may make suitable arrangements and take whatever action is necessary in the interests of the Insured in the following circumstances:
- (a) where We have reasonable grounds for suspecting fraud, dishonesty or a deliberate lack of transparency by You, by Your employees, agents or independent contractors;
 - (b) where there are or have been civil or criminal charges against you, Your employees, agents or independent contractors which We reasonably believe to be material to the operation of Our account with You;
 - (c) where We reasonably hold the opinion that, either Your regulatory status has changed, or that administration of the account is being operated by You in a manner causing or likely to cause prejudice to the Insured;
 - (d) where you have failed to remedy a breach of any agreement with Us within thirty (30) days of Our written notice to You requiring remedy of that breach;
 - (e) where You have a receiver appointed over the whole or part of Your undertaking or assets; enter into a voluntary arrangement under Part 1 of the Insolvency Act 1986; or otherwise make any composition with creditors; if a petition for a winding up or an administration order is presented against You or either of these orders is made against You; if a petition for a bankruptcy order is presented against You or if such an order is made in respect of You; if

You are unable to pay Your debts in accordance with Insolvency Act 1986 5123; on dissolution of partnership;

- (f) where You have been authorised by the FCA with a Part IV permission for any insurance mediation activities and that permission is varied or cancelled by the FCA including without limitation issuing renewal notices, policies or other documents to the Insured.

26 Co-mingling of Client Money & Risk Transfer

26.1 Where under the Terms of Business Agreement You hold:
Premiums (including provisional and adjustment premiums) to be paid to Us; or
Return Premiums due to be paid to Your client; or
Claims monies due to be paid to Your client; or
Money received by You from Us for onward payment to Our agents in respect of claims adjustment, legal and similar professional fees

All such monies shall be held by You as Our agent.

26.2 Pending payment to Us or to Your client (as the case may be), You shall hold the monies as defined in a trust account in accordance with clause 6 for Our benefit and shall not be subject to any charge, set off or lien. We hereby consent to such monies being co-mingled with Your other client monies, provided always that You comply with the CASS Rules. We further consent to Our interests with regard to monies held in Your client monies account being subordinated to those of Your clients. We further agree that You shall be entitled to any interest earned on the said account.

Signature:.....

Date:.....

SIGNED byfor and on behalf of

.....

Position Held:

Signature:.....

Date:.....

SIGNED by Brian Salmanpour
for and on behalf of KAY INTERNATIONAL PLC
Position Held: Chairman