

Terms of Business Agreement



TERMS AND CONDITIONS

This agreement (the “Agreement”) regulates the terms of business between:

- (1) NIG policies are underwritten by U K Insurance Limited trading as NIG (“NIG”); and
- (2) THE INTERMEDIARY (“Intermediary”), (together “the parties”)

whose details are set out in the Terms of Business Application.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

“**ABI**” means the Association of British Insurers;

“**Appointed Representative**” has the meaning set out in section 39 of the Financial Services & Markets Act (FSMA);

“**Approved Persons**” means a person to whom the PRA, FCA or both has given its prior approval for the performance of a controlled function as defined under section 59 of the FSMA;

“**CASS Rules**” means all rules made by the FCA in respect of client assets, as amended from time to time;

“**Commission**” means the commission payable to the Intermediary by NIG in accordance with the terms of this Agreement and the Terms of Commissions agreed between the parties;

“**Confidential Information**” means, without limitation, all commercial or proprietary information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly and whether disclosed before or after the date of this Agreement) by the disclosing party (“Disclosing Party”) to the receiving party (“Receiving Party”) including without limitation information relating to the Disclosing Party’s know-how, trade secrets and business affairs and including (in relation to Confidential Information disclosed by NIG) NIG’s or its associated companies’ underwriting models, cost data, rating engines and network and claims management processes;

“**Effective Date**” means the date on which the Intermediary receives the Notice of Acceptance;

“**EDI**” has the meaning given in clause 11.1;

“**Enforcement Action**” means any formal action begun by the Regulator which involves the issue by the Regulator of a warning notice, decision notice or final notice under FSMA including but not limited to any: disciplinary action; action to cancel a part IV permission; action to withdraw approval from an Approved Person; action to vary a part IV permission at the Regulator’s own initiative; prohibition order procedures; or market abuse proceedings;

“**PRA**” means the Prudential Regulation Authority

“**FCA**” means the Financial Conduct Authority;

“**Regulator**” means either the PRA, FCA or both

“**FCA Rules**” means all rules made pursuant to the FSMA including, without limitation, the rules on insurance selling and administration;

“**FSMA**” means the Financial Services and Markets Act 2000;

“**General Insurance Business**” means insurance business in respect of any of the classes specified in Schedule 1 Part 1 of the FSMA (Regulated Activities) Order 2001, as amended, save that it shall not include classes numbered 4 – railway rolling 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;

“**imarket**” means the e-commerce portal accessed by intermediaries registered with imarket which provides these intermediaries with a full range of services on individual insurer extranets, including an online quote and buy facility from multiple insurers for numerous commercial insurance products;

“**Investigation**” means any investigation carried out by or on behalf of the Regulator under part XI of FSMA;

“**Insured(s)**” means any individual or business insured as policyholder under a policy underwritten by NIG in accordance with this Agreement;

“**IPT**” means Insurance Premium Tax at the prevailing rate;

“**Notice of Acceptance**” means a written notice from NIG advising the Intermediary that its Terms of Business Application has been accepted;

“**Senior Manager**” has the meaning given to the term in the Glossary to the Regulator’s Handbook of Rules and Guidance;

“**Supplemental Agreement**” means any written agreement governing the conduct of General Insurance Business and associated business transacted between the parties over and above that governed by this Agreement;

“**Terms of Business Application**” means the ‘Terms of Business Application’ attached at the front of this Agreement and forming part of this Agreement: and

“**Terms of Commission**” means the terms of commission enclosed with the Notice of Acceptance or such other terms of commission as are updated by NIG and provided to the Intermediary from time to time.

1. Terms of Business Agreement

- 1.2 Except as expressly stated, references to a statute or any section of any statute include any statutory amendment, modification or re-enactment and instruments and regulations under it in force from time to time. References to regulatory rules include any amendments or revisions to such rules from time to time; references to regulatory authorities refer to any successor regulatory authorities.
- 1.3 Where expressions are not specifically defined and are capable of having a special meaning according to the usage or custom of the relevant business, such expressions are to be interpreted accordingly. References to a party shall mean either party to this Agreement as the context dictates unless otherwise specified.
- 1.4 The singular includes the plural and vice versa and any words importing gender include the other gender.
- 1.5 The headings in this Agreement are for convenience only and shall not affect its interpretation.

2. APPOINTMENT

- 2.1 This Agreement will come into force on the Effective Date.
- 2.2 NIG hereby appoints the Intermediary (which appointment the Intermediary accepts) to undertake General Insurance Business on behalf of NIG subject to the terms and conditions of this Agreement. The scope of business which the Intermediary may transact on NIG's behalf from time to time under this Agreement shall be restricted to General Insurance Business and NIG reserves the right to extend or restrict the classes of General Insurance Business which the Intermediary is authorised to undertake by written notice to the Intermediary. This Agreement shall apply to the conduct of any General Insurance Business transacted between the Intermediary and NIG subject to the terms and conditions of any existing or future Supplemental Agreement.
- 2.3 Nothing in this Agreement requires NIG to accept any proposal for insurance or offer renewal of any existing policy if in its sole discretion NIG declines to do so.
- 2.4 The Intermediary shall not grant any sub-agency arrangements or place any business with NIG which has come to the Intermediary via another intermediary unless it has obtained NIG's prior written consent. For the avoidance of doubt any Appointed Representative of the Intermediary is not a sub-agent for the purposes of this Agreement.
- 2.5 The Intermediary will comply with all instructions given by NIG regarding this Agreement and shall act in the utmost good faith to NIG in connection with the collection and remittance of all monies due to NIG.
- 2.6 NIG reserves the right to make enquiries through credit forums or credit checking agencies or other insurance companies regarding the Intermediary's credit status irrespective of whether the Intermediary is an individual, sole trader, partnership or incorporated company. Such enquiries may include credit checks against individuals involved in the Intermediary's business and the Intermediary shall procure that such individuals are aware of the possibility of such enquiries.
- 2.7 The Intermediary shall forward the latest copy of its annual accounts filed with Companies House/Inland Revenue (as applicable) and/or its management accounts to NIG immediately upon request and shall cooperate and assist with any enquiries NIG may have in relation thereto.
- 2.8 The Intermediary shall procure that all staff engaged by it shall offer an efficient and courteous service to the public, Insureds and prospective Insureds and act in accordance with the highest standards of honesty and integrity at all times in the operation of this Agreement.
- 2.9 The Intermediary shall maintain at all times the highest professional standards of quality, skill and service in providing services and carrying out General Insurance Business on behalf of NIG to the Insureds and prospective Insureds and in connection with the performance of its obligations hereunder.

3. AUTHORITY

- 3.1 Other than as expressly stated in this Agreement, the Intermediary agrees that it alone is responsible for any advice it gives (or should give) to, or arrangements it makes (or should make) for, its clients relating to general insurances provided by NIG and that no agency arises in respect of these activities. The Intermediary accepts that NIG is not responsible for any such advice and/or arrangements and the Intermediary agrees to ensure that its clients are properly informed of the nature of the services that it will provide.
- 3.2 Other than as expressly stated in this Agreement or any Supplemental Agreement, no authority is given to the Intermediary to bind NIG on cover in any way or settle, negotiate or compromise claims or to give any pledge of credit on NIG's behalf. Credit granted by the Intermediary to the Insured shall be at the Intermediary's risk and not that of NIG.
- 3.3 The Intermediary agrees to promptly pass to NIG any information notified to it, including without limitation any information known to it which would or could reasonably be expected to influence NIG's decision regarding insuring any risk. For this purpose the Intermediary remains the agent of the prospective Insured or the Insured and notification to the Intermediary of such information does not constitute notification to NIG.
- 3.4 Save as expressly agreed in writing by NIG the Intermediary is not empowered to vary in any way the terms or conditions of any of NIG's policies or other documentation. Where, with the prior written agreement of NIG, the Intermediary uses its own form of documentation, such documentation must reserve to it the right to terminate insurance cover, NIG hereby reserves the right to require the Intermediary to exercise such rights of termination in NIG's absolute discretion.
- 3.5 The Intermediary is not authorised to handle claims on NIG's behalf unless otherwise agreed in writing. Notice of a claim to the Intermediary by the Insured does not constitute notification to NIG. If an Insured makes a claim or notifies the Intermediary of an intention to make a claim the Intermediary shall:

- 3.5.1 immediately notify NIG; and
- 3.5.2 not make any admittance of liability, agreement or compromise in relation to the relevant claim without NIG's prior written consent.
- 3.6 The Intermediary shall not use, display or cause to be displayed an advertisement or banner or any other promotional material which refers to NIG or NIG's General Insurance Business without NIG's prior written consent.
- 3.7 Save as expressly agreed in writing by NIG (and as necessary in order to facilitate any EDI, imarket or other software system services agreed with the Intermediary under clause 11.1), the Intermediary is not authorised in any way to provide quotations on the Internet or bind NIG for General Insurance Business on the Internet. NIG will not under any circumstances guarantee quotations from systems it has not approved.

4. ISSUING OF COVER

- 4.1 The Intermediary shall issue cover in accordance with instructions contained in the latest versions of the various rating/user guides, the Online Cover Note generator available via NIG Network and the 4th Motor Insurance Directive timescales and requirements issued by NIG from time to time.
- 4.2 The Intermediary will always use the original printed NIG certificates or schedules or (where permitted) the electronically produced cover notes, certificates and schedules via NIG Network, and in each case in the latest form approved by NIG.
- 4.3 The Intermediary will send a copy of each cover note to NIG immediately on issue to the prospective Insured unless otherwise agreed with NIG.
- 4.4 The Intermediary will ensure that every cover note is properly completed including (but not limited to) policy cover and where applicable drivers' details and use in addition to any other special conditions and excess. Any further information required by NIG will be promptly sought and supplied by the Intermediary.
- 4.5 Where the Intermediary has access to a computer system or software permits the preparation of cover notes by an electronic process, use of that facility will cease from the date of termination of this Agreement. No cover given subsequent to the termination of this Agreement shall be enforceable against NIG.

5. PAYMENTS

The Intermediary acts as agent for NIG for the purposes of receiving and holding premiums from Insureds and for receiving and holding premium refunds prior to transmission to Insureds and/or former Insureds (as the case may be) entitled to the premium refunds in question.

- 5.2 The Intermediary undertakes to promptly collect the premium (including IPT) due in respect of each NIG policy from the prospective Insured. The Intermediary further undertakes to collect from each Insured all premiums (including IPT) and other monies due to NIG in respect of all renewals and mid-term adjustments.
- 5.3 All premiums, and other monies received by the Intermediary pursuant to this Agreement shall be the property of NIG, and shall be held by the Intermediary as agent for NIG in trust for and on behalf of NIG. The Intermediary shall hold such monies in a bank account at a major UK clearing bank ("the Account") in accordance with the provisions of this clause and shall ensure at all times that such monies are easily identifiable as being held on trust for NIG. Subject to the foregoing, NIG hereby consents to such monies being held in any one of the following ways:
 - 5.3.1 in a separate bank account designated as a trust account;
 - 5.3.2 in a client bank account in accordance with the FCA CASS Rules; or
 - 5.3.3 in a trust account which may also be used to hold premium and refund of premium monies which the Intermediary holds as agent for other insurers and which are separately held on trust for each such other insurers.

In the event that monies are held in accordance with clause 5.3.2 NIG further consents to its interests in the monies held in the Intermediary's client bank account being subordinated to the interests of the Intermediary's clients (as defined in the FCA Handbook Glossary). For these purposes, the term "client" does not include any other insurance undertaking on whose behalf the Intermediary also hold monies as agent.

Subject to clause 5.10 and deduction of Commission properly due to the Intermediary, all such monies shall not be applied for any other purpose than for remittance to NIG.

- 5.4 The Intermediary shall procure that the bank shall have no rights by way of charge (whether fixed or floating), encumbrance, lien or right of set-off, compensation or retention against monies standing to the credit of the Account at any time. Where monies are held in accordance with clause 5.3.3 then the Intermediary shall ensure that the bank is aware that the monies are held on trusts for a number of identified insurers (including NIG). In addition, The Intermediary shall keep accurate and up to date records of all monies in the Account, which shall contain sufficient detail to identify which monies are held on trust for which insurer.
- 5.5 A monthly statement of account will be issued by NIG showing the aggregate amount due from the Intermediary to NIG together with the amount of Commission payable to the Intermediary. The total amount due from the Intermediary to NIG must be remitted to NIG by the date stipulated on each monthly statement and the Intermediary acknowledges that time is of the essence for payment. All payments remitted must be for the full amount of the premium (including IPT) and any other monies due to NIG less Commission properly due to the Intermediary but otherwise without deduction, or set-off.
- 5.6 The Intermediary shall comply with any credit limits and terms of credit that NIG may specify from time to time.
- 5.7 In the event that the credit terms specified under clauses 5.5 or 5.6 are not complied with, NIG reserves the right to withhold renewal or other policy documentation and to correspond with Insureds without reference to the Intermediary and/or to terminate this Agreement.

- 5.8 NIG reserves the right to amend its requirements in relation to payment of the premiums and to withdraw any payment facility offered from time to time. Any changes will be notified to the Intermediary in writing.
- 5.9 Save as required under the FCA Rules, no policy, confirmation of renewal, certificates or other document or receipt shall be handed to a proposed Insured or Insured unless the premium has been paid in full or the Insured or proposed Insured has entered into a binding agreement to pay by instalment. Any policy documents in the Intermediary's possession for which the premium is unpaid must be returned to NIG immediately, otherwise the Intermediary will be responsible for payment of the full premium. Any request for cancellation of any policy must be accompanied by the appropriate documentation otherwise the Intermediary will be deemed to have accepted liability for such premium.
- 5.10 The Intermediary shall promptly forward any refunds of premium due to the Insured and/or former Insured (as the case may be).

6. COMMISSION

- 6.1 The Intermediary is entitled to Commission in accordance with the Terms of Commissions a copy of which has been supplied to the Intermediary and such Commission will be deducted by the Intermediary from premium and other monies received and due to NIG in respect of all renewals and mid-term adjustments provided that:
 - 6.1.1 the Intermediary has received instructions from the Insured to act on his or her behalf in relation to the particular General Insurance Business policy and/or renewal; and
 - 6.1.2 this Agreement has not terminated.
- 6.2 Commissions payable as set out in the Terms of Commissions may be varied by NIG on thirty (30) days' written notice.
- 6.3 Other than the Commission, the Intermediary will not be entitled to any other payment, fees or expenses from NIG. The Commission shall be held to cover all expenses, including but not limited to postages, that the Intermediary may incur and shall be payable only upon the premiums received (less any deduction, bonus or returns allowed by NIG to the Insured) and retained by NIG in respect of policies placed or renewed by the Intermediary through this Agreement.
- 6.4 If NIG allow a refund of any premium (or part thereof) to an Insured the Intermediary shall repay to NIG immediately on demand the amount of Commission paid thereon.
- 6.5 In the event of Commission being claimed by more than one agent in respect of the same business NIG's decision as to which agent (if any) should receive the Commission shall be binding and final.
- 6.6 NIG reserves the right to set-off and deduct from any Commission due to the Intermediary from time to time any monies due to NIG from the Intermediary on any account whatsoever.

7. INTERMEDIARY/CLIENT RELATIONSHIP

NIG hereby acknowledges and agrees that insofar as the Insured has chosen to appoint the Intermediary to advise upon and arrange insurance for the Insured, the Insured remains the client of the Intermediary. NIG shall not directly and knowingly solicit such insurance business away from the Intermediary during the currency of this Agreement and for a period of five (5) years following termination of same, except in the circumstances detailed in clause 8.4 of this Agreement. Furthermore, NIG shall not, without the prior written consent of the Intermediary, make use of, or pass to any third party, any information supplied by the Intermediary or his client, for the purpose of knowingly soliciting insurance business away from the Intermediary.

8. TERMINATION

- 8.1 Either party may terminate this Agreement on thirty (30) days' written notice to the other party.
- 8.2 In addition either party may terminate this Agreement immediately on written notice to the other in the following circumstances:
 - 8.2.1 where the other party has a receiver, administrative receiver, manager or administrator 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 if such an order is made in respect of it; if it is unable to pay its debts when they become due within the meaning of s123 of the Insolvency Act 1986; on dissolution of partnership;
 - 8.2.2 where one party has reasonable grounds for suspecting fraud, or dishonesty by the other party its staff or agents, or any Appointed Representatives or independent contractors engaged by the other party;
 - 8.2.3 where one party has failed to remedy a breach of this Agreement (other than payment of monies due to NIG in respect of which clause 5 applies) within thirty (30) days' of a written request from the party not in breach to do so;
 - 8.2.4 the other party commits a material breach of any provision of this Agreement which is not remediable.
- 8.3 NIG may terminate this Agreement immediately on written notice to the Intermediary if:
 - 8.3.1 the Intermediary is in breach of clause 2.4;
 - 8.3.2 the Intermediary is in breach of clause 13.1 (to include without limitation where the Intermediary has been authorised by the PRA, FCA or both for insurance selling and administration of General Insurance Business and this authorisation is either lapsed, varied or terminated for whatever reason);
 - 8.3.3 the administration of the account is being operated by the Intermediary in a manner causing or likely to cause prejudice to Insureds;
 - 8.3.4 where the Intermediary is a sole trader and is unable to carry on trading due to illness or other incapacity or in the event of death.

- 8.4 During the continuance of the Agreement provided the Intermediary has complied with its obligations under this Agreement, NIG agrees that it will not contact or offer any service direct to any Insured introduced by the Intermediary other than with the prior consent of the Intermediary. Where this Agreement is terminated as described in clause 8.5 NIG shall be entitled to deal directly with all NIG Insureds or former Insureds without reference to the Intermediary.
- 8.5 Where this Agreement is terminated by NIG pursuant to clauses 8.2 or 8.3 or the Intermediary has failed to satisfy any of the conditions specified in clause 13.1 then in each case (but not otherwise) NIG shall be entitled to deal directly with all NIG Insureds or former Insureds without reference to the Intermediary or to make whatever alternative arrangements for the future conduct of the existing business as it determines necessary in the best interests of the Insured.

9. CONSEQUENCES OF TERMINATION

- 9.1 Subject to clause 9.2, upon termination of this Agreement:
- 9.1.1 no further commission shall be payable other than in respect of completed business introduced by the Intermediary up to and including the date of termination;
- 9.1.2 all monies payable to NIG pursuant to this Agreement shall become immediately due and payable by the Intermediary;
- 9.1.3 interest shall be charged in respect of any amount remaining outstanding not paid on demand at a rate per annum equal to 3% above The Royal Bank of Scotland's base rate from time to time such interest to accrue daily and to be paid both before and after judgment;
- 9.1.4 the Intermediary shall immediately return to NIG all of NIG's books, papers, cover notes and other property and documentation regarding this Agreement.
- 9.2 NIG may authorise the Intermediary in writing to continue to administer the NIG policies of any Insureds following termination, provided that in each case:
- 9.2.1 the Insured's NIG policy is current as at the date of termination;
- 9.2.2 such administration shall include attending to cancellations and mid-term adjustments (in respect of which Commission shall be payable in accordance with the terms of this Agreement) and shall be carried out in accordance with the relevant provisions of this Agreement, which provisions shall continue to apply pursuant to clause 9.3;
- 9.2.3 such authorisation does not extend to the renewal of an Insured's policy with NIG;
- 9.2.4 the Intermediary shall be entitled to retain such of NIG's books, papers, cover notes and other property and documentation regarding this Agreement as is necessary to carry out such administration, until such time as all NIG policies current as at the date of termination have expired or been cancelled, at which time clause 9.1.4 shall apply without qualification;
- 9.2.5 the Intermediary shall be subject to any reasonable limitations and/or instructions as advised by NIG in writing from time to time following termination.
- 9.3 Any termination of this Agreement shall not affect any accrued rights or liabilities of either party nor will it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination including, without limitation, clauses 4.5, 7, 8.5, 9.1.2-9.1.4, 9.2, 9.3, 10, 14, 15 and 16.

10. INDEMNITY

The Intermediary shall indemnify and keep indemnified NIG from and against all losses, liabilities, costs and expenses NIG incurs as a result of the Intermediary (or its employees, agents, Appointed Representatives, representatives or sub-contractors) exceeding the limit of its authority in any way under this Agreement and/or in respect of any risk assumed by the Intermediary (or its employees, agents, Appointed Representatives, representatives or sub-contractors) in NIG's name outside the scope of the Intermediary's authority set out in this Agreement.

11. ELECTRONIC TRADING

- 11.1 With NIG's prior written consent the Intermediary may choose to trade with NIG electronically through the Electronic Data Interchange software system ("EDI") or other such software system agreed in writing between the parties.
- 11.2 NIG hereby gives its consent for the Intermediary to trade with it through imarket, provided the Intermediary remains an imarket member and complies with the relevant terms and conditions imposed on imarket members.
- 11.3 The Intermediary agrees to comply with NIG's terms and conditions in relation to EDI (or other such software system as may be agreed in writing between the parties) including those set out in Schedule 1 of this Agreement or as varied by NIG from time to time. All software must be operated in accordance with NIG's directions or approved software house user manuals provided by NIG to the Intermediary.
- 11.4 NIG reserves the right to withdraw the EDI facility from the Intermediary at any time in whole or in part and to modify or change the software and applications used in relation to EDI.
- 11.5 All equipment and software used by the Intermediary in connection with EDI shall be at the Intermediary's sole risk and expense and NIG accepts no liability in relation thereto.
- 11.6 In the event NIG withdraws the EDI facility or the electronic cover note and proposal form facility the Intermediary will cease to use the facility immediately. In addition the Intermediary shall co-operate to permit the facility to be disabled and allow access to and co-operate with NIG's authorised representative to disable the facility.

- 11.7 The Intermediary will keep safe all information provided by NIG for the purpose of electronic trading. The Intermediary shall make such information available only to those members of its staff who have a need to know it and ensure that all access to its computer systems is password controlled.
- 11.8 In the event of any part of its computer systems being stolen the Intermediary will notify NIG immediately it becomes aware of the theft.
- 11.9 The Intermediary is required to backup its computer systems as recommended in the ABI/InStep Motor Insurance Point of Sale Procedure Guide or as directed by NIG from time to time.
- 11.10 The Intermediary agrees to promptly make available to NIG or its agents or representatives all records of data held on NIG's behalf and all documents issued from the EDI system on NIG's behalf upon request.

12. NOTIFICATIONS

- 12.1 The Intermediary shall notify NIG immediately in writing if:
 - 12.1.1 any of the events set out in clauses 8.2 or 8.3 occur;
 - 12.1.2 there is any change to the Approved Persons and/or the Senior Managers of the Intermediary; 12.1.3 the Regulator initiates an Investigation or Enforcement Action is taken in respect of the Intermediary (or its employees, agents, Appointed Representatives, representatives or sub-contractors);
 - 12.1.3 the Regulator initiates an Investigation or Enforcement Action is taken in respect of the Intermediary (or its employees, agents, Appointed Representatives, representatives or sub-contractors);
 - 12.1.4 there is any proposed change to the Intermediary's address; and where the Intermediary is incorporated, any change in the directors of the company and/or the shareholders, and where the intermediary is a partnership any change in the members of the partnership;
 - 12.1.5 there are any material occurrences relating to this Agreement, including without limitation those relating to the insurance policies, clients, Insureds and the Intermediary's carrying out of General Insurance Business activities under this Agreement; or
 - 12.1.6 there are any threatened or actual litigation in connection with any claim or dispute under an insurance policy or the Intermediary's General Insurance Business activities carried out pursuant to this Agreement.
- 12.2 The Intermediary shall promptly notify NIG in writing:
 - 12.2.1 of any agreements it has in place with Appointed Representatives from time to time, the terms of such agreements and any significant alterations to and/or termination of such agreements; or
 - 12.2.2 if a terms of business agreement it has in place with another insurer is terminated, stipulating the reason for the termination.

13. COMPLIANCE

- 13.1 The Intermediary's appointment under this Agreement is subject to the following conditions:
 - 13.1.1 the Intermediary shall prepare and file all applications, reports, statements, declarations, returns and other documents or information necessary for it to qualify or otherwise obtain approval to do or continue to perform its obligations under this Agreement;
 - 13.1.2 the Intermediary shall ensure it is, from the Effective Date, authorised by the Regulator for insurance selling and administration of General Insurance Business and shall comply at all times with the requirements of the regulatory Rules;
 - 13.1.3 the Intermediary shall maintain in force at all times Professional Indemnity insurance in accordance with regulatory requirements;
 - 13.1.4 the Intermediary shall maintain minimum capital requirements in accordance with regulatory requirements;
 - 13.1.5 the Intermediary shall comply at all times with all applicable legislation regulations and directives applicable to its business including without limitation the Data Protection Act 1998 and the Consumer Credit Act 1974 as amended;
 - 13.1.6 notwithstanding clause 13.1.2 above, so as to protect the interest of Insureds the Intermediary will not unduly limit the number of insurers it is able to use and at all times will act independently and impartially placing the interests of the Insureds before all other consideration.
- 13.2 The provisions of this Agreement shall apply to any Appointed Representative of the Intermediary and the Intermediary shall be responsible as principal for its Appointed Representative's compliance with the regulatory Rules. The Intermediary will procure its Appointed Representative's compliance with this Agreement.

14. COMPLAINTS

- 14.1 For the purposes of this Agreement a complaint arises when, in the Insured's opinion, the Intermediary or NIG has not performed to the standard of service the Insured is reasonably entitled to expect. A complaint includes anything that relates to expressions of dissatisfaction about financial loss, material distress and material inconvenience.
- 14.2 Subject to clause 14.3, the Intermediary shall handle any complaint received in accordance with the FCA Complaint Handling Rules. NIG will provide the Intermediary with any necessary assistance in dealing with the complaint.

- 14.3 The Intermediary shall refer any complaint relating to NIG, and its conduct to NIG by the next working day after receipt for NIG to handle in accordance with the FCA Complaint Handling Rules. The Intermediary will provide NIG with any necessary assistance in dealing with the complaint.
- 14.4 The Intermediary shall ensure that appropriately competent and trained employees with the relevant level of authority to resolve complaints handle every complaint. The Intermediary shall also ensure that any person who is the subject of the complaint does not handle the complaint.

15. AUDIT AND PROCEDURES

- 15.1 The Intermediary shall maintain adequate and relevant records of all of its General Insurance Business activities and any other matters required by the Regulator including, without limitation, records relating to any FCA reportable complaints received by the Intermediary relating to General Insurance Business transacted under this Agreement for a period of three (3) years or if greater such period required by the FCA.
- 15.2 The Intermediary shall allow NIG and/or the Regulator to access the premises of the Intermediary and any agents, representatives or subcontractors used pursuant to this Agreement to inspect, review and or copy without limitation all records, documents, files, audio and video tapes, computer databases, information stored electronically and any other material or information that NIG or the Regulator may require which relate to the Intermediary's obligations under this Agreement and/or the regulatory regime for General Insurance Business.
- 15.3 The Intermediary shall ensure that any Appointed Representative agreement that the Intermediary has in place contains a clause permitting rights to audit such Appointed Representatives in similar terms and effect as clause 15.2 and that Appointed Representatives will cooperate in accordance with clause 15.4.
- 15.4 The Intermediary undertakes to ensure that it and its employees shall co-operate with the Regulator and NIG and assist the Regulator and NIG in providing information and explanations in response to requests for information during monitoring and investigations by the Regulator.

16. CONFIDENTIALITY

- 16.1 During the term of this Agreement the Receiving Party shall:
 - 16.1.1 keep any Confidential Information confidential and secure;
 - 16.1.2 not disclose any Confidential Information to any third party other than its officers, employees, servants, agents and professional advisers to the extent reasonably necessary to enable it to perform or enforce any of its rights or obligations under this Agreement and who in each case of disclosure shall be made aware of the obligations of confidence of the Receiving Party under this clause 16 and shall be required to observe the same restrictions of use of the Disclosing Party's Confidential Information;
 - 16.1.3 not use any Confidential Information for any purpose other than the performance of its obligations under this Agreement.
- 16.2 Clause 16.1 shall not apply to any Confidential Information:
 - 16.2.1 to the extent that the Confidential Information is, except as a result of breach of confidentiality by the receiving party, public knowledge at the time of disclosure;
 - 16.2.2 which is lawfully in the possession of the Receiving Party having been acquired from a third party not under any obligation of confidence to the Disclosing Party;
 - 16.2.3 to the extent that the Confidential Information is required to be disclosed by law or pursuant to any requirement of any competent governmental, official or regulatory body.
- 16.3 The provisions of this clause 16 shall survive and continue to apply notwithstanding the expiration or termination of this Agreement howsoever caused.

17. GENERAL

- 17.1 In the case of a partnership, the terms of this Agreement will be binding on any person becoming a member of the partnership. The Intermediary shall procure that each member of the partnership, if required by NIG, enters into a new agreement with NIG following any such change.
- 17.2 This Agreement is personal to the parties and may not be assigned, novated or otherwise transferred to any other person, firm or company without the prior written agreement of the other, provided that NIG may assign the benefit of this Agreement to any company in its group of companies.
- 17.3 This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
- 17.4 No failure by either party in enforcing any of its rights shall prejudice its rights to do so in the future.
- 17.5 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 which shall remain in full force and effect. In such event the parties shall negotiate in good faith with a view to replacing the invalid or unenforceable provision with a legal and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

- 17.6 Any notice served by one party upon the other under or in connection with this Agreement shall be in writing and shall be delivered personally or by first class prepaid letter or be sent by facsimile. Such notice or document shall be deemed to have been received when delivered in the case of personal delivery or 48 hours after posting (in the case of a first class prepaid letter), or if sent by facsimile on the day following that on which the facsimile was sent, provided that the party serving such notice shall post a copy (first class prepaid) within 24 hours of sending the notice. Such notice shall be addressed to the relevant party at its address set out on the Terms of Business Application (or at such other address designated in writing by the relevant party).
- 17.7 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 17.8 Unless otherwise stated in this Agreement, NIG may vary the terms of this Agreement at any time and the changes will be effective thirty (30) days' from notification.
- 17.9 Neither party shall issue any announcement and/or any information or statement to any person (including, but not limited to, the press) relating to this Agreement or any part of it without the prior written consent of the other party, provided no such consent shall be required in the case of disclosure to a regulatory body pursuant to a statutory obligation.

18. DISPUTE RESOLUTION

- 18.1 The parties shall attempt to resolve any dispute, controversy or claim arising out of or in connection with this Agreement amicably and promptly by negotiation between the parties. If such dispute is not resolved by such negotiations either party may give the other party a written notice of dispute. Within fourteen (14) working days' after delivery of such notice, a senior management representative nominated by each party with the authority to settle such dispute shall meet at a mutually acceptable time and place and thereafter as long as they deem reasonably necessary to attempt to resolve the dispute.
- 18.2 In the event of a failure under clause 18.1 to resolve the dispute within thirty (30) days' of the dispute arising (or any agreed extended period) the parties shall attempt to resolve the dispute or difference by mediation in accordance with the Centre for Dispute Resolution (CEDR) model mediation procedure ("the Mediation Procedure") before pursuing any other remedies available to them.
- 18.3 If the matter has not been resolved by the Mediation Procedure within one hundred and twenty (120) days' of the dispute arising either party may refer the dispute to the courts pursuant to clause 19 below.
- 18.4 Nothing in this clause 18 shall prevent either party from seeking urgent provisional or similar interlocutory relief (together "Interlocutory Relief") from the competent Courts before the processes described in clauses 18.1 to 18.3 have been completed, but only those steps necessary to obtain, or to challenge the grant or continuation of, such Interlocutory Relief shall be taken and the parties shall otherwise still be required to act in accordance with this clause 18 as if no application for Interlocutory Relief had been made.

19. GOVERNING LAW

This Agreement shall be governed by and construed in all respects in accordance with the laws of England, and both parties agree to submit to the exclusive jurisdiction of the English courts subject to clause 18.



SCHEDULE 1

ELECTRONIC TRADING (“EDI”)

INTERCHANGE AGREEMENT – TERMS AND CONDITIONS

1. DEFINITIONS

“Adopted Protocol”

The accepted method for the interchange of Messages based on the UN/EDIFACT/UNGTDI standard for the presentation and structuring of the transmission of Messages specified in the applicable User Manual, as amended from time to time.

“ABI” Association of British Insurers.

“Data Log”

The complete record of data interchanged representing the Messages between NIG and the Intermediary.

“Message”

Data structured for presentation in a human readable form and/or data structured in accordance with the Adopted Protocol and transmitted electronically between NIG and the Intermediary, including where the context admits any part of such data.

“User Manual”

The commercial and technical procedures and rules and legal requirements which are applicable to the transmission of Messages as amended from time to time. NIG shall specify the applicable User Manual to be used by the Intermediary.

2. SCOPE

2.1 These Terms and Conditions shall apply to all Messages between NIG and the Intermediary and it is agreed that all such Messages shall be transmitted in accordance with the provisions of the User Manual.

2.2 NIG reserves the right to vary or replace or terminate these Terms and Conditions on thirty (30) days' notice in writing to the Intermediary.

3. SECURITY OF DATA

3.1 The Intermediary shall:

3.1.1 take all appropriate steps and establish and maintain all appropriate procedures so as to ensure that as far as reasonably practicable Messages are properly stored, are not accessible to unauthorised persons, are not altered, lost or destroyed, and are capable of being retrieved only by properly authorised persons;

3.1.2 ensure that any Messages containing confidential information is maintained in confidence and is not disclosed to any unauthorised person or used by the Intermediary other than for the purposes of the business transaction to which it related. Messages shall not be regarded as containing confidential information to the extent that such information is in the public domain, or the Intermediary is already in receipt of it prior to transmission or receives the information from a third party entitled to disclose it. Any authorised disclosure to another person shall be on the same terms as to confidentiality as contained in this clause;

3.1.3 upon becoming aware of any breach of security in relation to any Message or in relation to the procedures implemented under this clause, immediately inform NIG and shall use all reasonable endeavours to rectify the cause of such a breach as soon as possible.

3.2 Where permitted by law, NIG and the Intermediary may apply special protection to Messages by encryption or by other agreed means including those set out in the User Manual. Unless NIG and the Intermediary otherwise agree, the recipient of a Message so protected shall use at least the same level of protection for any other transmission of the Message.

4. AUTHENTICITY OF MESSAGES

All Messages must identify the sender and recipient(s) and must include a means of verifying the authenticity of the Message either through a technique used in the Message itself or by some other means provided for in the User Manual.

5. INTEGRITY OF MESSAGE

- 5.1 The Intermediary shall ensure that all Messages are complete, accurate and secure against being altered in the course of transmission by him and, subject to clauses 5.2 and 5.4 shall be liable to NIG for the direct consequences of any failure to perform its obligations under this clause.
- 5.2 The Intermediary accepts the integrity of all Messages and agrees to accord these the same status as would be applicable to a document or to information set other than by electronic means, unless such Message can be shown to have been corrupted as a result of technical failure on the part of machine, system or transmission line.
- 5.3 Where there is evidence that a Message has been corrupted or if any Message is identified or capable of being identified as incorrect it shall be re-transmitted by the sender as soon as practicable with a clear indication that it is a corrected Message.
- 5.4 Notwithstanding clauses 5.1 and 5.3, the sender will not be liable for the consequences of an incomplete or incorrect transmission if the error is or should in all the circumstances be reasonably obvious to the recipient.

6. CONFIRMATION OF RECEIPT OF MESSAGES

- 6.1 Except where receipt of a Message is automatically confirmed the sender of a Message may request the recipient to confirm receipt of that Message.
- 6.2 When the recipient has received such a request for or where the User Manual require a confirmation that party must send it without unreasonable delay.
- 6.3 Each party shall process or deal with Messages received by it in accordance with any response times specified in the User Manual, or as NIG and the Intermediary may agree or, in the absence of specification or agreement, without unreasonable delay.
- 6.4 Confirmation of receipt in accordance with this clause 6 is intended merely to denote that a Message has been received and shall be deemed not to give rise to any legal obligation, or confer any right on any person, or constitute acceptance of any offer contained in any such Message.

7. STORAGE OF DATA

- 7.1 Each party shall maintain one or more Data Logs without modification.
- 7.2 Subject to any requirements of the national law in the country of the party maintaining a Data Log or any requirements contained in the User Manual, NIG and the Intermediary may agree a period during which the Data Log must be stored unchanged.
- 7.3 The Data Log may be maintained on computer media or other suitable means provided that the data can be readily retrieved and presented in readable form.

8. INTERMEDIARIES

If the Intermediary uses the services of a third party in order to transmit, log or process Messages, the Intermediary shall be liable to NIG for any acts, failures or omissions by such agent in its provision of the said services as though they were its own acts, failure or omissions.

9. INTERPRETATION OF THE USER MANUAL

Any question relating to the interpretation of the User Manual may be referred by NIG and the Intermediary to ABI acting as experts and not arbitrators, whose decision shall be final and binding on NIG and the Intermediary making the reference.