



# **TERMS OF BUSINESS AGREEMENT**

## About Markerstudy Insurance Company Limited (MICL)

Based in Gibraltar, Markerstudy Insurance Company Limited is an authorised insurance company licensed in 2001 and is a company within the Markerstudy Insurance Group of companies. MICL is regulated by the Gibraltar Financial Services Commission and is subject to a limited regulation by the Financial Conduct Authority in respect of underwriting business in the UK (No. 206322).

All correspondence relating to this Agreement should be sent to our service provider:

**Markerstudy Limited, Markerstudy House, 108 – 112 Main Road, Sundridge, Sevenoaks, Kent TN14 6ES** unless otherwise stated.

## This Agreement is between

1. MARKERSTUDY INSURANCE COMPANY LIMITED (Company Number 78789) whose registered address is at 846-848 Europort, Gibraltar ("MICL"/ "The Insurer"/ "We"/ "Us"/ "Our"), and
2. THE PERSON OR ORGANISATION whose details are set out in the Schedule ("The Intermediary"/ "You"/ "Your")

**Whereas The Intermediary** is an insurance intermediary authorised and regulated by the Financial Conduct Authority (or other equivalent body) in respect of its insurance mediation activities, and has applied to The Insurer to act as an intermediary to quote for and introduce insurance risks in respect of insurance policies on behalf of The Insurer, subject to the conditions set out in this Agreement.

## IT IS AGREED as follows:

### 1. INTERPRETATION

- 1.1. In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

**'FCA'**— The Financial Conduct Authority (or subsequent body), or any equivalent regulatory body if the Financial Conduct Authority does not regulate the jurisdiction where The Intermediary is based.

**'ML'**— Markerstudy Limited, an outsourced service provider / third party administrator registered in England and Wales No. 03969511 whose registered address is Markerstudy House, 108-112 Main Road, Sundridge, Sevenoaks, Kent TN14 6ES. ML is authorised and regulated by the Financial Conduct Authority (No. 312214).

**'Markerstudy Insurance Group'** - shall be defined as including all subsidiaries of Markerstudy Holdings Limited, including Markerstudy Limited, Markerstudy Insurance Company Limited, Zenith Insurance PLC, Zenith Insurance Management UK Limited.

**'IPT'**— Insurance Premium Tax in accordance with the applicable legislation from time to time.

**'Premium'**— the total insurance premium (including IPT and before the deduction of Your commission) to be charged for an insurance policy as determined by a Quotation System, or as agreed with Us from time to time. Where the intended meaning is the total insurance premium including IPT, but after the deduction of Your commission, **'Net Premium'** will be used.

**'Service Provider'**— unless otherwise stated (by the usage of the words "authorised representative" rather than Service Provider), ML, or any other successor firm appointed by Us at any time for the purpose of providing services the same or similar to those performed by ML, and communicated to You accordingly.

**'Underwriting Guide'**— Our parameters for the acceptance of risks and/or interpretation as to cover as notified by Us from time to time.

**'Quotation System'**—any proprietary or bespoke electronic system to which You have access and which provides details of current Premiums and underwriting criteria as updated by Us from time to time.

### 2. PREAMBLE

- 2.1. This Agreement regulates the terms of business between You and Us whether You are a sole trader, partnership or body corporate. From time to time We may instruct other companies, including those within the Markerstudy Insurance Group, to issue instructions with regard to this Agreement on Our behalf.
- 2.2. Nothing in this Agreement shall require Us to accept any proposal for insurance or renewal of any existing policy or to maintain cover in respect of any existing policy.
- 2.3. Until otherwise instructed in writing by Us and unless otherwise specified in this Agreement You should address all communications to Us through Our Service Provider regarding the delivery of and the provisions contained within this Agreement. Notification to Our Service Provider is deemed as being notice to Us.
- 2.4. This Agreement shall be deemed to have commenced on the date signed by You and shall continue unless and until terminated in accordance with Section 27 (Termination).

### 3. SCOPE AND TERRITORIAL LIMITS

- 3.1. The terms of this Agreement shall apply to the conduct of any insurance business transacted between You and Us.
- 3.2. This Agreement only permits You to place specific risks (currently motor vehicle risks only, unless otherwise agreed in future between Us and You) where the risk is domiciled in England, Wales, Scotland, Northern Ireland and the Channel Islands unless otherwise agreed between Us and You.
- 3.3. Nothing in this Agreement and no action taken by Us or You under this Agreement shall constitute a partnership, association, offer of employment, joint venture or other co-operative entity between Us and You.
- 3.4. You shall not issue any policy for any period greater than 12 months plus odd time, not exceeding 14 months in all.

### 4. ASSIGNMENT AND SUB-CONTRACTING

- 4.1. You must not enter into any agency or sub-agency arrangements on Our behalf. We expressly preclude Our consent to any such arrangement under the terms of this agreement.

### 5. COMPLIANCE

- 5.1. It is a condition of this Agreement that You maintain the relevant FCA authorisation to meet Your obligations under this Agreement, and that You comply with FCA rules and principles as they apply to the conduct of your business when acting on our behalf under this Agreement or under any additional authority that may be agreed between us.

- 5.2. You must comply with the FCA capital and solvency requirements at all times. You must notify us immediately if you fall below these requirements or become aware of any other matter material to your solvency. You must notify us immediately upon receipt of any notice from the FCA regarding any breach of FCA rules or if the FCA commences any investigation or enforcement action against You, Your employees, agents or appointed representatives, or if there is any change to Your regulatory status.
- 5.3. You must inform Us immediately if You cease to maintain authorisation specified in Sub-Section 5.1, or of any changes, or likely changes to Your regulatory status, including actual or potential regulatory disciplinary proceedings being brought against You.
- 5.4. You shall ensure that any documentation, advertising or promotional material that You produce or commission independently without our written agreement or approval complies with the FCA regulations.
- 5.5. In the event that You infringe FCA regulations, or are the subject of regulatory action by the FCA, We reserve the right to treat any such infringement or action as a material breach of this Agreement which may result in termination in accordance with Sub-Section 27.2.
- 5.6. You shall take out and maintain professional indemnity insurance in accordance with regulatory requirements. This may be audited upon request. You must inform Us immediately if such cover is cancelled, voided, not renewed or otherwise becomes insufficient.
- 5.7. If any fine or penalty is imposed on Us / Our Service Provider by any regulatory authority, and this was a consequence of Your acts or omissions relating to the performance of this Agreement, We shall seek reimbursement from You of any sums incurred by Us. This includes delays in submissions to the Motor Insurance Database, within parameters as set by the MIB from time to time, where the delay was caused by You.
- 5.8. You agree to co-operate fully with Us, Our Service Provider, HM Revenue and Customs and any other tax authority in relation to IPT or any other tax issue relating to business placed under this Agreement. For the avoidance of doubt, We will submit IPT returns in respect of business placed, and will be responsible for the payment of IPT.
- 5.9. If requested to do so by Us or Our Service Provider, You will provide Us with details of any policy, service or other fees or charges applied by You in respect of Our insurance policies and in compliance with Legislation remit separately to Us any IPT incurred as a result of fees You have charged to the policyholder.

## **6. PERFORMANCE OF OBLIGATIONS**

- 6.1. You shall act on Our behalf in connection with this Agreement to the best of Your abilities and in Our best interests in conformity with the highest standards of practice of an insurance intermediary carrying on similar business. This includes providing appropriately experienced, competent and trained personnel to carry out Your obligations under this Agreement.
- 6.2. You will retain for the duration of this Agreement and for a period of at least 7 years following termination, adequate and complete records of business transacted with Us, held in a manner that is easily retrievable.
- 6.3. You must maintain in place suitable disaster recovery procedures to comply with Your obligations under this Agreement.
- 6.4. You will ensure that access to records and information made pursuant to this Agreement is appropriately controlled, and use Your best efforts and act in good faith fully to disclose to Us / Our Service Provider all material information and historical data necessary for Us / Our Service Provider to properly consider and review any insurance policy.

## **7. INTRODUCING AND PROCESSING**

7.1. ACCEPTABILITY - You shall not issue cover on any insurance policy more than 30 days in advance of its inception date.

### **7.2. QUOTATIONS**

- 7.2.1 You shall provide quotations, receive submissions, proposals and applications for insurance policies, sign and issue cover notes, collect premiums and decline or accept risks strictly in accordance with current underwriting requirements (as amended by Us from time to time), regulations and instructions contained in the procedure guides and used in conjunction with Your Quotation System, and any other instructions as advised in writing by Us.
- 7.2.2 Failure to comply with such regulations and instructions in Sub-Section 7.2.1 may at Our discretion result in the suspension or termination of this Agreement with immediate effect. If We authorise You to issue certificates of insurance or endorsements or to process renewals or cancellations relating to insurance policies You shall adhere strictly to any limitations to such authority imposed by Us and shall indemnify Us in respect of all costs, liabilities and expenses that We may suffer or incur in relation to You acting outside the scope of any such limitations.
- 7.2.3 Our Premium rates are revised periodically and these are reflected in the individual Premium calculation processes, which are built into Your Quotation System. If You are authorised to transact Scheme business, the individual Premium calculation will be notified to You in writing.

### **7.3. DOCUMENTATION**

- 7.3.1 You will be responsible for supplying to the Insured, at/prior to point of sale, information and all terms and conditions applying to Our insurance policies as stipulated and/or provided by Us from time to time.
- 7.3.2 Cover notes must be issued sequentially. The top copy of all spoiled cover notes should be returned to Our Service Provider as they occur. All cover note books must be returned to Our Service Provider when exhausted. Where cover notes are laser printed, You are to maintain an audit trail, which must be submitted to Our Service Provider immediately upon request. If We reissue the cover note books You must return the obsolete book(s) when they are requested.
- 7.3.3 We will use Our best endeavours to ensure that the transmission of documentation to You is accurate. You are responsible for informing Us of any errors upon its receipt, prior to passing any policy documentation to the policyholder.
- 7.3.4 Where You are authorised by Us to use self-issue documentation (and are consequently responsible for the layout and content of such documentation), We will occasionally communicate updates to such documentation to You. You will be responsible for:
  - meeting Our requirements as well as statutory and regulatory responsibilities in respect of the technical content of this documentation;
  - ensuring updates are applied to all appropriate documentation in a timely manner, and confirm any changes to Your documentation with Us where the change affects Us or Your description of Us prior to it being released; and
  - passing samples of this self-issued documentation to Our Service Provider on request.
- 7.3.5 If You engage in financial promotions or marketing activities which make reference to Us or Our Intellectual Property, or base any of the aforesaid promotions or activities on Our rates (e.g. money-saving claims), these must be signed-off by Us prior to being used.

## **8. NOTIFICATION TO US**

- 8.1. You will present information and proposals/ statements of fact where applicable relating to any insurance cover in respect of new business,

renewals, amendments and cancellations, requested in the form specified by Us or agreed in writing between Us and You, within the timescales prescribed to enable us to comply with Motor Insurance Database ("MID") regulations. Failure to provide policy data that leads to us not complying with MID regulations may result in Sub-Section 27.1 being invoked.

- 8.2. You will use Your best endeavours to ensure that all relevant details of the insurance are notified to Us before or at the latest on the effective date of the commencement, amendment or termination date of the insurance cover, to allow Us to adhere to the requirements of the Motor Insurers' Information Centre in respect of updates to the Motor Insurance Database.
- 8.3. If the proposer is claiming a no claims bonus, evidence of that bonus must be obtained in every case. If proof of bonus cannot be provided, You should collect the full annual Premium (without application of any no claims bonus discount) unless otherwise agreed by Us and You.
- 8.4. All Premiums for policy adjustments should be gross of any adjustment fee We may require. You shall only charge Premiums to policyholders in accordance with the Quotation System calculated Premium or Underwriting Guide (if applicable). Any additional fees or charges (e.g. Your administration fees for policy set-up or mid-term amendments) should be provided in writing to the policyholder separate from the Premium.
- 8.5. Where applicable to the business channel the Insurer Guarantee will be withdrawn if the premium quoted is less than 70% of the cheapest quote from an alternative panel insurer regardless of the channel, including Aggregator and Web site facilities in the case of a broker using these distribution channels.
- 8.6. If any amendments or further information is notified to You by the policyholder, You undertake to pass to Us promptly any material information in accordance with the terms of the insurance contract. You remain, for this purpose, the agent of the policyholder and notification to You by the policyholder will not be deemed as notification to Us.
- 8.7. You shall not issue, bind or confirm cover on Our behalf unless We specifically authorise You to do so. If We enter into a binding authority agreement/delegated deal agreement with You and there is a conflict between its terms and those of this Agreement then the applicable terms of the binding authority agreement will prevail over the relevant terms of this Agreement to the extent of any conflict and in respect of any business that is the subject of such binding authority agreement, but not for any other business.
- 8.8. You are not authorised to offer any cover or quotation, nor provide information about Our policy cover or premiums, via an internet site, website or other electronic means without Our prior written agreement
- 8.9. You are responsible for the proper and accurate preparation of proposal forms or statements of fact where applicable, cover notes (provided You are expressly authorised to do so) and all other documentation strictly in accordance with our guidelines and approved forms, and for the prompt despatch of such documentation to Your client. We reserve the right to refuse any such business, including business offered through any electronic process. You will seek and supply any further information should We need it to determine whether the risk is acceptable to Us.
- 8.10. We will underwrite each proposal on individual merit and reserve the right to increase premiums, modify terms or to decline any proposal. We may notify You periodically of procedural changes and You should act on the most recent advice given on any particular issue.
- 8.11. You must pass promptly to Your client all certificates and other documents to which Your client is entitled under the terms of the legislation applicable to the general insurance business We underwrite.
- 8.12. Unless We agree in writing that You may do so, You must not vary in any way the terms or conditions of any of Our policies or other documentation.

## **9. CANCELLATIONS**

- 9.1. You may, at Our request, cancel a policy by giving 7 days written notice to the policyholder's last known address. This letter must be non-conditional. If the policyholder lives in Northern Ireland You should also send notice to the Department of the Environment for Northern Ireland.
- 9.2. If the policyholder takes advantage of the 14 days cooling-off period, You will be responsible for the payment of any time on risk charge (plus any administration charges made by Us), whether or not a claim has been made.
- 9.3. You must ensure that upon cancellation of an insurance policy, You collect the Certificate of Motor Insurance from the policyholder. In the case of a Certificate of Motor Insurance issued by electronic means You must obtain an endorsed copy of this document or an electronic surrender declaration from the policyholder in accordance with the Motor Vehicle (Electronic Communication of Certificates of Insurance) Order 2010 before cancellation can take effect.

## **10. RENEWALS**

- 10.1. Upon renewal, You will pass promptly to the policyholder Our renewal notice and all other accompanying documentation relating to the contract of insurance and will advise the policyholder of any change in the terms and conditions applying to the insurance contract.
- 10.2. Where We do not intend to renew, or wish to impose more onerous terms than previously, We will endeavour to notify You in a timely manner prior to the renewal date, including, where appropriate, the revised terms. If We have decided not to invite renewal, We will co-operate in providing information necessary for placing the cover elsewhere.
- 10.3. You will use Your best endeavours to notify Us that an insurance policy is to be renewed or lapsed on the renewal date. In accordance with the requirements of the Motor Insurers' Information Centre, You should immediately notify Us, of the renewal status at the latest on the effective date of this renewal or lapse. Our Service Provider will monitor on Our behalf adherence to the Motor Insurers' Information Centre requirements and may take action to remedy any non-compliance with Our terms.

## **11. CLAIMS HANDLING**

- 11.1. You must notify Us or Our Service Provider or authorised representative within 1 working hour of You being made aware of a claim by a policyholder or a third party. This will enable Our Service Provider or authorised representative to provide first notification of loss services to the policyholder or a third party. If You fail to notify Us in a timely manner We reserve the right to invoke Section 27.2 of this Agreement. (Contact details for notifying claims can be found in Our insurance policies). If We incur any financial loss whatsoever as a result of Your failure to comply with this condition We will seek reimbursement from You. Unless expressly agreed in writing by Us You will not enter into any negotiations on Our behalf with policyholders or any third party in relation to any claims made by or against Our policyholders.

## **12. COMPLAINTS/LEGAL ACTION**

- 12.1. Our aim is to prevent problems developing into formal complaints. We require You to help in this process and We will give You whatever assistance We can.
- 12.2. You must:

- Be aware of Our complaints procedure as detailed in Our insurance policies;
- Notify Us of all complaints about Our insurance policies; Our or Our Service Provider's quality of service; or any unresolved complaint about You that You are unable to resolve in a timely manner;
- Notify Us, if any enquiry or complaint about Our insurance policies involves the press or the media;
- Notify Us of any actual, potential or threatened legal action relating to Our insurance policies or the service provided by You, Us, or Our Service Provider.

12.3. We reserve the right to recover the costs incurred in handling and resolving a complaint resulting from any action (or inaction) on Your part.

12.4. We do not accept responsibility for any legal action, disciplinary proceedings or complaints arising from misconduct by You unless otherwise specifically agreed in writing with Us.

### **13. PREMIUMS, COMMISSIONS AND PAYMENT**

#### **13.1. BANKING OF PREMIUMS**

13.1.1 We grant You risk transfer as Our Intermediary for the collection of Premiums and for Premium refunds. This means that Premiums paid by clients are deemed as having been paid to Us when they have been received by You and that Premium refunds are not deemed as being paid until they have been received by the client.

We do not grant You risk transfer for any claims monies unless You have been granted authority by Us to handle claims under Section 11 of this Agreement.

13.1.2 All monies including IPT, which You hold on Our behalf, are deemed to be insurer money. You must either hold this money in:

- (a) an Insurance Broker's Trust Account (or another generic trust account of a similar name e.g. an IBA account). This account should be used to hold insurer risk transfer monies. We will however allow Our insurer monies to be co-mingled with monies from other insurers who have granted You risk transfer, provided You maintain strict accounting controls that will permit Us to identify the exact money held on Our behalf at any given time; or
- (b) a client money trust account set up in line with FCA CASS rules. This account can either be a statutory client money account or a non-statutory trust account.

We will allow You to keep any interest earned on Premiums held on Our behalf unless We specify otherwise in writing.

You may take Your commission at the point at which the Premiums have been received into the account and cleared, rather than the point when monies are transferred to Us.

13.1.3 If You decide to hold monies in a statutory or non-statutory client money account then We:

- (a) will allow You to co-mingle Our monies with that of other insurers or Your other clients, provided You maintain strict accounting controls that will permit Us to identify the exact money held on Our behalf at any given time;
- (b) agree to Our interests being sub-ordinated against those of Your other clients.

13.2. You must present to Us in the form We specify, or in such manner as We may agree in writing between us, information or proposals/statements of fact where applicable relating to insurance cover in respect of new business, renewals, amendments and cancellations within the timescales prescribed to enable Us to comply with Motor Insurance Database ('MID') regulations. Failure to provide policy data that leads to Us not complying with MID regulations may result in Sub-Section 27.2 being invoked.

13.3. The rates of commission are set out in the attached schedule together with the schemes available to you (as amended from time to time), or as specifically negotiated on any individual insurance policy. We reserve the right to amend Our general commission terms by giving You a minimum of one month's notice in writing.

13.4. If a policy is cancelled, You shall be responsible for refunding to Us the proportionate amount of commission received.

13.5. You must notify policyholders at the outset of any charges You make which are in addition to the premium payable. These include charges for additional benefits and services such as uninsured loss recovery. The costs for such benefits/services must never be included as part of Our premium unless We agree in writing beforehand. They must at all times be shown separately from the gross premium We charge and be clearly identified on all letters, documents and communications issued to clients.

13.6. Commission on any business will become due and payable to You when You have collected the premium from Your client or when You have collected the premium from any party funding the premium on behalf of Your client.

#### **13.7. RESPONSIBILITY FOR PREMIUMS**

13.7.1 You undertake not to issue any insurance policy, receipt, confirmation of renewal or endorsement to a policyholder unless the relevant Premium has been paid, otherwise You will remain liable for payment of the Net Premium to Us. All renewal invitations, endorsements and other documents for which You have not received a Premium must be returned to Us immediately, otherwise You will be responsible for the payment of Net Premium, for the time on risk charge (as applicable) to Us.

13.7.2 If You fail to cancel the insurance policy correctly and We subsequently agree to reinstate cover and/or settle a claim under the insurance policy, You will be responsible for the full Net Premium due.

#### **13.8. CREDIT AND PAYMENT**

13.8.1 Our Service Provider will be responsible for the preparation of a statement of account, which shall be the basis of Our accounting transactions with You and will be rendered to You in written form, on disk, tape, direct on-line communication to a computer terminal, or any other form of communication we may agree between us. You must reconcile the statement and return it to Us, together with a remittance in settlement of the account, no later than 25 calendar days after the date that appears on the statement. In certain circumstances there will be alternatives in place but only where these have been agreed between us. You must also bring to Our attention any items not appearing on the statement for which You have collected premium.

Our Service Provider will send / transmit this statement of account to You each calendar month.

13.8.2 You are responsible for payment of all Net Premiums due to Us. These payments must be paid to the credit of Markerstudy Insurance Company Limited and forwarded to Our Service Provider.

13.8.3 Our Credit Terms are strictly 25 days from the end of the month to which the statement of account relates.

- 13.8.4 In all circumstances in which You have issued cover on Our behalf to a policyholder, You will be responsible to Us for payment of the Net Premium. Your obligations shall be unaffected by:
- (a) any credit arrangement You have allowed to the policyholder. Any extension of credit by You to a policyholder beyond that allowed under the insurance policy will be at Your expense and risk.
  - (b) any delay in crediting Us with monies received or due from the policyholder because of delays within Your accounting system;
  - (c) Your inability to obtain monies from the policyholder; or
  - (d) any rules of statutory trust which prevent advances of credit. In accordance with this Sub-Section, and CASS 5.3.3G where the Premium has not been received by You such payments must be paid from Your own funds.
- 13.8.5 You shall not enter, or permit others to enter, into Premium finance arrangements in the name of, or on behalf of Markerstudy Insurance Company Limited or any other company within Our group. We will not accept responsibility for any such Premium finance agreements.
- 13.8.6 If there is any dispute over the Net Premium due to Us for an insurance policy, Our Service Provider will resolve this with You on Our behalf. They will require a copy of Your Net Premium calculation and an explanation as to why You disagree with the Net Premium.
- 13.8.7 In the event of dispute, You must pay Us the Net Premium We consider due and showing on the statement until the dispute is resolved. Any balance will be adjusted once the Premium has been agreed between Us and You.
- 13.8.8 Failure to adhere to the terms of payment will lead to interest being charged at Bank of England base rate plus 4% on the outstanding balance. Repeated failure to settle accounts in accordance with Section 13.8.3 will be considered to be a material breach of this Agreement which may result in termination in accordance with Section 27. In addition, We reserve the right to reduce / not pay Your commission and / or recover from You any financial loss incurred by Us as a result of any such failings.

#### **14. COMMISSION AND POLICY FEES**

- 14.1. We will pay You commission as set out in the attached Commission Appendix, or as specifically negotiated, such commission to be calculated by reference to Premium less IPT. Commission payable will be shown on Your statement of account. We reserve the right to change the amount of commission We pay You at any time by giving You a minimum of 30 days notice, or less with Your agreement. We will do this by sending You a new Commission Appendix, with a later effective date, which will always be the latest version.
- 14.2. We refer to Sub-Section 13.1.2 as to when You are able to take Your commission.
- 14.3. We will not pay commission where an additional Premium is due from the policyholder, but it has not been collected by You (for example a misrepresentation on a claim where the additional Premium is offset against the claims settlement amount).

#### **15. FINANCIAL REQUIREMENTS**

- 15.1. You must inform Us immediately, if You are aware that Your solvency falls below, or is likely to fall below, FCA capital and solvency requirements at any time.
- 15.2. You must supply Our Service Provider with a copy of Your FCA Retail Mediation Activities Return (RMAR) upon request and a copy of Your latest Bank account Trust letter.
- 15.3. Upon their request, You must supply Our Service Provider with a full copy of Your latest financial accounts, (audited if applicable), including a profit and loss statement and balance sheet. We shall have the right to make copies or extracts of any such records. Our right to inspect or review shall continue notwithstanding termination of this Agreement until all insurance policies have been run off or replaced.

#### **16. DATA PROTECTION**

- 16.1. For the purposes of the Data Protection Act 1998 the data controller in relation to the information relating to Our insurance policies is Our Service Provider, Markerstudy Limited. We may also hold or control data under the Gibraltar Data Protection Act 2004.
- 16.2. By signing this Agreement, You hereby confirm that You are registered as a data controller, have advised Our Service Provider of Your registration number and that You have written procedures available for Your staff and Our representatives to inspect upon request. You will process personal data in compliance with relevant Data Protection Laws.
- 16.3. We or Our Service Provider may pass information about the policyholder contained in the policy and supporting documentation to other companies within Our group or to other insurance companies (or insurance authorised representatives with whom We either reinsure Our business or who are dealing with a claim made under the policy). These companies may include Insurance Database Services Limited in respect of the Claims and Underwriting Exchange, as well as other counter-fraud organisations and claims suppliers. These companies may be located in countries outside the UK but within the European Economic Area ("EEA").
- 16.4. If a data subject wishes to access information held by Us or Our Service Provider about themselves, You must inform Us of this promptly. If We or Our Service Provider require information from You to meet requirements of the Information Commissioner, You must provide this information promptly.
- 16.5. You will at Our / Our Service Provider's request allow access to Your facilities for processing Personal Data under this Agreement for audit against Your obligations under this Section.
- 16.6. You shall indemnify Us for any cost, charge, damage, expense or loss whether direct, indirect or consequentially incurred by Us arising out of Your breach of Section 16.

#### **17. PROCEEDS OF CRIME**

- 17.1. By signing this Agreement, You hereby confirm that You:
- (a) meet regulatory requirements in respect of proceeds of crime
  - (b) will inform Us of any suspected or actual criminal activity pertaining to any of Our insurance policies
  - (c) will assist Us in any investigatory work We or Our Service Provider should require in relation to proceeds of crime.

#### **18. SECURITY & FRAUD**

- 18.1. Each party agrees to inform the other as soon as reasonably practicable upon becoming aware that fraud or another activity is taking place, which is undermining the security of the other party's systems, processes, administrative policies or business. The parties shall cooperate in investigating such activities.

## **19. ACCESS TO RECORDS**

- 19.1. We, Our Service Provider or an Authorised Representative agreed by Us shall have the right, upon reasonable notice, to inspect and audit without restriction or limitation:
- (a) all of Your records relating to insurance policies placed with Us.
  - (b) other records as may be required. This includes evidence of Your professional indemnity insurance, sales and claims handling processes, employee training, data protection and proceeds of crime administrative policies, and trust status of Your bank accounts. We shall have the right to make copies or extracts of any such records. Our right to inspect or audit shall continue notwithstanding termination of this Agreement until all insurance policies have been run off or replaced.

## **20. INSURER PROPERTY**

- 20.1. All documentation, materials, computer software and hardware belonging to Us but under Your custody control and in Your possession shall at all times be available for inspection. These items must be subject to the appropriate security to prevent unauthorised access and use. If requested by Us, You shall with immediate effect return or destroy such items, and if applicable ensure that any electronic production of them ceases.
- 20.2. You acknowledge that the accounts, books and records prepared and maintained by You relating to this Agreement are Our property, and that such accounts, books and records will be kept separate from all other records relating to any other business carried on by You. You shall ensure that such accounts, books and records are stored in such a way that they are capable of being retrieved and converted into a form which is readable by Us. You shall be responsible for all costs of preparing and maintaining such accounts, books and records, and shall be responsible for all costs of providing them to Us in a form which is readable and with copies of any such accounts, books and records as We may request.
- 20.3. In the event of the loss or theft of cover note books, EDI hardware or EDI software You must notify Our Service Provider of the circumstances of such loss or theft within 24 hours. Where appropriate You should provide details of the police station to which the theft has been reported and the crime reference number.
- 20.4. If this Agreement is terminated or notice of termination given, You must immediately return all cover note books, documents and computer software and hardware to Our Service Provider, unless otherwise agreed in writing by Us. A cover note book may be kept for adjustment purposes only at Our discretion and may only be kept for an agreed timescale, which will be stated in writing.

## **21. INTELLECTUAL PROPERTY**

- 21.1. Each party acknowledges that it does not obtain or hold any interest in any intellectual property of the other party and shall only be given the rights to use the other's intellectual property as explicitly provided in this Agreement.
- 21.2. You shall not display or reproduce any of Our logos, trade marks or service marks in any form (printed, electronic, broadcast or otherwise) save to the extent that they appear in Our materials unless prior written consent is given. You shall not publish (including on the internet) or distribute or issue any promotional material or literature (including but not limited to brochures, leaflets, advertisements and articles) nor any documentation in relation to insurance policies making reference to Our name or logo without Our prior written agreement.

## **22. CONFIDENTIALITY**

- 22.1. For the avoidance of doubt, We acknowledge that the policyholder is Your client and that We have no proprietary interest in the goodwill associated with Your clients, unless this Agreement is terminated by Us in accordance with Section 27.1 (c-e).
- 22.2. Each party will ensure that all confidential information of the other party is kept confidential, and will not make or cause or permit to be made any use or disclosure of any such confidential information except to the extent permitted under or otherwise required for the performance of this Agreement.
- 22.3. Each party shall be permitted to disclose client data and/or confidential information of the other party to the extent that it is required to do so by law (including public, governmental, supervisory or regulatory authorities or by any legally binding order of any court or tribunal).
- 22.4. Each party will ensure that all of its employees and other bodies to which confidential information or client data is disclosed are aware prior to receiving the confidential information or client data in question of the relevant party's obligations pursuant to this Section and to their obligations under the Data Protection Act.

## **23. INDEMNITIES**

- 23.1. You shall indemnify Us throughout the duration of this Agreement and following termination of this Agreement from and against all loss (including loss of revenue and loss of opportunity), damage and liability suffered (including managerial and similar costs) and expenses (including legal expenses) incurred by Us resulting from any and all fraudulent or negligent acts or omissions or breaches of this Agreement by You or Your employees, whether past or present.
- 23.2. Without in any way limiting the generality of Section 23.1 if You or Your employees purport to commit Us to cover or to any insurance policy in breach of this Agreement and We decide at our absolute discretion We are obliged to ratify such insurance policy and pay compromise or otherwise settle any Claim arising under such Policy You shall indemnify and keep Us indemnified to the extent contemplated by Section 23.

## **24. VETTING**

- 24.1. We / Our Service Provider will make such checks as deemed reasonable and necessary, including as a minimum a search of Your company with one or more credit reference agencies. We / Our Service Provider may also make enquiries about Your principal directors with one or more credit reference agencies. These searches may occur as part of Your application process, and as part of Our ongoing relationship with You, for Intermediary trading facilities with Us. Credit agencies used will keep a record of such searches and will share that information with other businesses.
- 24.2. On an ongoing basis, and pursuant to this Agreement, We / Our Service Provider will monitor and record information in relation to Your trade credit performance, and such records relating to You and Your principal directors will be made available to, and may be shared with, other organisations, insurers and trade associations to assess applications for credit, for the recovery of debts, for the purposes of Agency management, fraud prevention and the tracing of debtors. These organisations may be resident in the United Kingdom or overseas.

## **25. VARIATION**

- 25.1. Any variation to the terms of this Agreement must be confirmed in writing by Us or Our Service Provider on Our behalf. Notification will be in the form of an addendum that should be retained with this Agreement and will form part of it.

- 25.2. You should notify Us immediately in writing if:
- (a) Your business name or trading title changes,
  - (b) Your business address or registered office address changes,
  - (c) Your ownership, shareholders, controllers, partners, directors, shadow directors or senior management changes,
  - (d) You are placed into administration, become bankrupt, insolvent, go into liquidation, enter into an arrangement with any creditors, or have a receiver appointed or You cease to carry on Your business.

## **26. ENTIRE AGREEMENT**

- 26.1. We and You acknowledge that this Agreement, including the Commission Appendix attached hereto contains the entire understanding and Agreement between You and Us in relation to the matters referred to herein and supersedes any prior agreement between You and Us.
- 26.2. Each of the parties acknowledges that it has not relied upon or been induced to enter into this Agreement by any representation other than a representation expressly set out in this Agreement and neither party shall be liable to the other in equity, contract, tort, under the Misrepresentation Act 1967 or in any other way for any representation not expressly set out in this Agreement. Any such representations are excluded. Nothing in this Agreement shall limit a party's liability in respect of any fraudulent misrepresentation.

## **27. TERMINATION**

- 27.1. This Agreement may be terminated by either You or Us:
- (a) at any time by mutual Agreement; or
  - (b) on the expiry of 30 day's written notice; or
  - (c) forthwith if either party has reason to suspect fraud, or the administration of the business or insurance policies is such as to prejudice the interests of policyholders, or
  - (d) immediately if either party commits a material breach of this Agreement; or
  - (e) if any party to this Agreement should cease to be authorised by the relevant regulatory authority to transact the classes of general insurance business covered by this Agreement.
- 27.2. We have the right to cancel this Agreement without notice if any term, Section or part of this Agreement is breached or not adhered to.
- 27.3. In the event of Your death (if a sole trader), this Agreement shall remain in force with such persons as may be agreed (and if allowed by Your trade or regulatory body) to carry on Your business. Otherwise, the Agreement will be terminated.
- 27.4. Following termination of this Agreement (other than in circumstances set out in Sub-Section 27.1(c) ), We will cooperate with You during a period of 12 months from the date of termination in providing information necessary for placing the business or insurance policies elsewhere.
- 27.5. Upon termination of this Agreement under this Section 27.1 and within 14 days You shall at Your cost:
- (a) provide Us with complete and accurate details of all existing insurance policies placed by You pursuant to this Agreement and of Premium and monies whether outstanding to You or received by You and outstanding to Us under those insurance policies;
  - (b) all subsequent statements of account must be paid as rendered and You must remit all monies due to Us;
  - (c) discontinue selling of Our products with immediate effect.
- 27.6. Unless otherwise agreed in writing by Us, You shall remain liable to perform Your obligations in accordance with the terms and conditions of the Agreement in respect of all Policies placed by You and accepted on Our behalf prior to the termination becoming effective until every such insurance policy has expired or has otherwise been terminated or replaced.
- If this Agreement is terminated by Us in accordance with Section 27.1 (c) through to (e), we reserve the right to take over the performance of Your obligations. This includes the right to issue renewal invitations direct to Our policyholders or to appoint another Intermediary to perform such obligations in Your place (including the transfer of Our policyholders and insurance policies to this alternative intermediary where We consider such action is necessary to properly administer any insurance policy and for the protection of policyholders' interests). In such circumstances You will continue to extend full cooperation to Our Service Provider and/or Our appointed intermediary, including providing access to all information and records in respect of the insurance policies issued by You on behalf of Us.
- 27.7. You shall have no claim against Us for compensation for loss of trading facilities, profits or goodwill or otherwise except for unpaid commission due under the Agreement. You shall not be entitled to commission on any insurance policy which is renewed with Us after the date of termination of this Agreement.
- 27.8. We are not obliged to give reasons for any termination. The termination of this Agreement shall not affect any rights or obligations of either party accrued prior to termination or expiry or the continuance if in force of any provision of this Agreement which is expressly or by implication intended to stay in force after such expiry or termination.

## **28. APPLICABLE LAW**

- 28.1. This agreement is governed by English Law. Any disputes arising under it shall be determined exclusively in the courts of England and Wales or by such means of arbitration or form of mediation agreed between the parties.

## **29. NOTICES AND COMMUNICATIONS**

- 29.1. Any notice served by Us on You shall be sent to the address set out in the schedule, unless You have notified Us accordingly of a change in details.
- 29.2. Any notice served by You on Us should be sent to: The Chief Executive Officer, Markerstudy Insurance Company Limited, 846-848 Europort, Gibraltar. Fax: 00350 200 59845.  
All notices shall be in writing and shall be sent by fax to the number above, or by air-mail.
- 29.3. All other communications relating to the conduct of this Agreement or any other changes to Your business should be notified in writing to Our Service Provider. Please send all general correspondence to: Agency Department, Markerstudy Limited, Markerstudy House, 45 Westerham Road, Bessels Green, Sevenoaks, Kent, TN13 2QB.