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# **TERMS OF BUSINESS AGREEMENT**

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INSURANCE MADE TO MEASURE

**LARK**



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This Agreement is between 'You' the client or potential client 'You, Your' and Lark (Group) Limited 'We, Us, Our', and applies to all work that We carry out on Your behalf. Please read this Agreement carefully and contact Us if there is anything in this Agreement with which You disagree or do not understand.

We specifically draw Your attention to 17. Client Money.

### **1. INTRODUCTION**

We are an independent intermediary and are authorised and regulated by the Financial Conduct Authority (FCA) and bound by its rules in respect of insurance mediation activities. Our Financial Services register number is 307663. You can check this on the Financial Services Register by visiting the FCA's website <https://register.fca.gov.uk> or by contacting the FCA on 0800 111 6768.

We are not tied to any insurer. However Hiscox Underwriting Limited holds a 20% shareholding in Our ultimate holding company. We do not have any holdings or voting rights in any insurer.

### **2. OUR SERVICE TO YOU**

We will normally provide advice to You on the basis of a fair analysis of the market, as distinct from using only a single or limited number of insurance undertakings (details of which can be provided on request). Where Our service differs to this We will advise You accordingly.

We will provide You with details of the cover effected on Your behalf, including the insurer(s) who are underwriting the risk, and where We make a personal recommendation to You We will clarify the scope of the advice given and explain the reasons. This will be provided in a durable medium (hard copy). Although Our letter/ report will set out key aspects of the cover, this is not intended to be a substitute to the insurer(s) policy wording, which will take precedent in setting out the terms of the cover. We will use Our best endeavours to place cover on Your behalf, but We do not guarantee to be able to do so.

### **3. CONFLICTS OF INTEREST**

We undertake not to transact business for You in which We or one of Our other clients or any director/partner/employee has a known interest, or We become aware that these interests conflict with Yours, unless that interest is first disclosed to You and Your written consent is obtained. We will agree with You how to address such conflict which will usually result in different individuals within Lark dealing with the different respective interests.

### **4. SECURITY**

Whilst We make every effort to ensure that cover is placed with financially strong companies We do not guarantee the solvency of any insurer We place business with. If a participating insurer becomes insolvent You may still be liable for the premium, whether in full or pro-rata. We shall not be responsible for any losses that

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You may incur as a result of any solvency difficulties experienced by insurers.

## **5. YOUR OBLIGATIONS**

When instructing Us to place or to renew insurances, Your obligations will differ depending on whether You are classed as either a consumer or a commercial client.

If You are a consumer (defined by the FCA as; any natural person acting for purposes outside his trade, business or profession) You must use all reasonable care not to make a misrepresentation when providing information to insurers.

If You are a commercial client, You must make a fair presentation of the risk to insurers. This requires that You fully disclose in a clear and accessible manner, any facts known, or which ought to be known, to You (a Material Fact) likely to influence an insurer's decision in connection with the risk, having made a reasonable search of information available to You. This duty continues throughout the term of Your insurance. You should familiarise Yourself with Our Insurance Act guide for further information about Your obligations and insurer remedies.

All answers or statements given on a proposal form, claim form or other document relevant to Your insurances will be Your responsibility and You should always check the accuracy of the information You provide to Us and/or insurers. Misrepresentation or non-

disclosure of information provided to Us and/or Insurers may entitle insurers to decline claims and may lead to Your policy being completely 'invalidated'.

You should seek Our advice if You are in any doubt as to Your obligations.

When a policy is issued, You must check this carefully to confirm that this meets Your needs. If You are in any doubt over any of the policy terms and conditions please seek Our advice promptly.

## **6. RENEWALS**

Once Lark has arranged a policy to which You have agreed, the placement of that policy will not automatically be reviewed at each renewal unless You request it and/or We deem it necessary.

Whilst We will make every effort to contact You prior to renewal to obtain Your instructions, if for whatever reason We are not in receipt of Your instructions by Your renewal date, in order to protect Your position, We may at our absolute discretion renew Your policy on the basis of Our recommendation. Such renewal will be based on the information You have already provided to Us, and You should therefore advise Us of any changes. However We reserve the right not to renew Your policy if We do not receive Your instructions by the renewal date, and We will not be held liable for any loss You may suffer if You fail to provide the necessary instructions in sufficient time before renewal.

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## **7. CLAIMS**

You must tell Us as soon as reasonably possible of any incident which may result in a claim under any insurance arranged by Us and of all relevant facts relating to the incident. This does not over-ride any additional obligations imposed by insurers, details of which will be set out in the policy wording. We will advise insurers in accordance with the circumstances notified by You. You will be required to give all necessary information and assistance required by insurers in order to deal with Your claim.

## **8. LANGUAGE OF COMMUNICATIONS**

All communications between You and Us including all communication of terms and conditions will be in English unless otherwise agreed in writing.

## **9. ELECTRONIC COMMUNICATIONS**

Both parties may communicate with each other using electronic mail and attachments. Both parties accept the inherent risks of using such means of communication. Electronic mail will be considered to have been received by the other party when actively acknowledged by them. Both parties are responsible for checking that messages received are complete and both agree that in the event of a dispute neither will dispute the legal evidential standing of an electronic document. Any agreement reached using electronic mail will be binding on both parties.

Although We have in place virus protection software You should use Your own virus protection software as We accept no responsibility for viruses that may enter Your system or data by these or other means.

We are unable to accept instructions from You by means of text messages or other electronic messages or messages received other than via Our corporate e-mail addresses.

## **10. TELEPHONE COMMUNICATIONS**

Both parties may communicate by telephone but it is agreed that no instructions that require action will be left on any messaging service since neither party can guarantee that they will be received or actioned. Telephone conversations may be recorded for training purposes.

## **11. BRIBERY ACT**

We fully comply with the Bribery Act 2010, and will not accept any form of payment, gift or service, the intention of which could be considered to result in the improper performance of Our obligations to You. If We reasonably believe that You have attempted to offer a bribe We will terminate Our agreement with You.

## **12. SANCTIONS**

Every business in the UK is subject to the provisions of Government sanctions and is therefore prohibited from dealing with 'embargoed' entities, for example certain foreign states or 'terrorist' organisations.

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However, where Your insurer is based in the United States of America, or has an American owner, then the provisions of their insurance policies are also subject to US Government sanctions as set out by the 'Office of Foreign Assets Control' of the US Government. US sanctions are not necessarily the same as UK or EU sanctions, and any breach by You of any US sanctions would entitle insurers to avoid claims in relation to any dealing with 'embargoed entities'. If You have any concerns about this You are advised to familiarise Yourself with US sanctions by visiting the Office of Foreign Assets Control pages on [www.treasury.gov](http://www.treasury.gov).

### **13. DATA PROTECTION**

We are committed to keeping Your data confidential and process all information in accordance with the Data Protection Act 1998. The information You supply is used to enable Us to fulfil Our role in relation to Your insurance cover, and where We use third parties to undertake functions on Our behalf We will share relevant information with such third parties. This will include: insurers; loss adjusters and loss assessors; incident management firms; professional advisors.

Information may also be supplied to professional regulatory bodies if required by them and to other parties if required or permitted by law. We do not sell, rent or trade Our mailing lists, phone numbers or email addresses. Companies within Lark (Group) Limited may contact You about

products and services which may be of interest to You. If You do not wish Your data to be used in this way You should write to the Compliance Officer, Lark (Group) Limited, Wigham House, Wakering Road, Barking, Essex, IG11 8PJ, or e-mail Us at; [mailbox@larkinsurance.co.uk](mailto:mailbox@larkinsurance.co.uk).

Unless specifically instructed by You in writing, it is Our policy to retain documents and data for business effected on Your behalf in electronic or paper format for a minimum of seven years after which time these may be destroyed without notice to You. You should therefore retain all documentation issued to You.

### **14. COMPLAINTS**

It is always Our intention to provide You with a quality service. However should You have cause to complain please refer this to the Compliance Officer, Lark (Group) Limited, Wigham House, Wakering Road, Barking, Essex, IG11 8PJ. Your complaint will be acknowledged within five working days advising who will be handling the complaint. You will then receive a detailed response within four weeks, unless We write to You advising that this will be delayed.

If You are not satisfied with Our response You may be eligible to refer Your complaint to the Financial Ombudsman Service (FOS), which is an independent complaints resolution service. A full copy of Our complaints procedure is available on request.

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You acknowledge and agree that You shall only be entitled to make a claim against Us, and not against any individual employee of Ours.

### **15. COMPENSATION**

We are covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the scheme should We be unable to meet Our obligations. This depends on the type of business and the circumstances of the claim. Insurance advising and arranging is currently covered for 90% of the claim, without any upper limit. For compulsory classes of insurance, insurance advising and arranging is covered for 100% of the claim, without any upper limit. Further information about compensation scheme arrangements is available from FSCS.

### **16. PAYMENT OF PREMIUM AND OTHER MONIES**

Unless payment is made direct to the insurer or to a premium finance company, You must pay Us all amounts due in accordance with the terms and the payment date specified on Our invoice or other documentation. If payment is made to a premium finance company, You must return all the necessary documentation by the required date. As We are under no obligation to fund premium to insurers on Your behalf, failure to pay the monies due by the payment date may lead to insurers cancelling Your policy.

We reserve the right to make charges, in

addition to any insurance premiums, for the arranging, amending, renewing and cancelling any policy of insurance, however you will not incur a liability to pay a fee unless we have given you prior notice of this.

### **17. CLIENT MONEY**

We, in the course of carrying on insurance mediation, handle client money in accordance with the FCA Client Assets Sourcebook (CASS) rules, which are designed to protect You. A copy of these rules are available on request.

We handle client money in either one of the following ways:

- i. it is held on Your behalf in a segregated bank account that is subject to a non-statutory trust; or
- ii. it is held by Us as agent of the relevant insurer (“risk transfer”)

### **Non-Statutory Trust**

The aim of the trust is to protect You in the event of Our failure, or the failure of the bank or a third party at which the money may be held. In such a circumstance, Our general creditors should not be able to make claims on client money as it will not form part of Our property. The fact that We will hold money on trust gives rise to fiduciary duties which will be owed to You until the client money reaches the insurer.



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By holding client money subject to a non-statutory trust, We are entitled to and may make advances of credit from the trust to enable a client's premium obligation to be met before the premium is remitted to Us. Similarly, it allows claims and premium refunds to be paid from the trust to a client before receiving remittance of those monies from the insurer.

### **Risk Transfer**

Client money will only be held by Us as agent of a relevant insurer in accordance with a written agreement with that insurer. The written agreement will specify the extent to which risk transfer will apply and whether it includes all items of client money or is restricted for example, to the receipt of premiums.

Where risk transfer applies, You will be protected to the extent that any premiums We receive from You are treated as having been received by the insurer. Where the agreement extends to premium refunds and/or claims; any premium refunds or claims will be treated as received by You only when they are actually paid to You. Risk transfer will apply to client money unless We notify You otherwise.

### **Segregation of Bank Accounts**

Client money is kept separate from Our own money. Client money will be deposited into a client bank account with an authorised UK clearing bank. Any interest earned

on client money that is subject to a non-statutory trust will be retained by Us.

### **Segregation of Designated Investments**

We may also arrange to hold client money, that is subject to a non-statutory trust, in separately permitted designated investments with a value at least equivalent to the money that would otherwise have been paid into a client bank account. If We undertake this, We will be responsible for meeting any shortfall in Our client money resource which is attributable to falls in the market value of a segregated investment. Any investment returns on any segregated designated investments will be retained by Us.

### **Commission**

We can only withdraw commission from the client bank account.

i. when We actually receive the premium as cleared funds from You (or from a third party premium finance provider on Your behalf);

*and*

ii. at the point at which the commission becomes due and payable to Us for Our own account. Until that point commission will remain client money.

Commission will become due and payable to Us for Our own account immediately on

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receipt of the premium, provided this is consistent with the terms of business of the insurer to whom the premium is payable.

For Commercial clients, prior to the conclusion of each insurance contract, or upon renewal, We will remind You of Your right to be advised of the level of commission, which We receive from underwriters. You are entitled at any time to request information regarding any commission, which We may have received as a result of placing Your insurance business.

### **Payment to Third Parties**

We may transfer client money to another person, such as another intermediary, for the purpose of effecting a transaction through that person. Where We transfer client money that is subject to a non-statutory trust, to another person, We will not automatically discharge Our duties to You as trustee.

### **18. GOVERNING LAW**

This Agreement is governed by and construed in accordance with the laws of England and Wales. If there is a dispute, it will be subject to the jurisdiction of the courts of England and Wales.

### **19. THIRD PARTY RIGHTS**

No other person has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement other than other member companies of Lark Group Limited. This provision shall not

affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

### **20. AMENDMENT TO TERMS**

We may amend the Terms of the Agreement at any time by giving You fourteen days notice in writing.

### **21. DURATION**

This Agreement shall commence from the date that You appoint Us to act as Your intermediary or You instruct Us to arrange insurances on Your behalf whichever of these dates is the earlier. This Agreement shall then continue until cancelled in accordance with the Termination Clause below.

### **22. TERMINATION**

You or Lark may terminate this Agreement by giving seven days notice in writing. Termination will also be deemed to have occurred in the event that policies arranged by Us for You are terminated or are not renewed.

In the event of termination by You, We will be entitled to receive all fees or brokerage payable (whether or not these have been received by Us) in relation to policies placed by Us prior to termination.

Either party may terminate this Agreement immediately, by giving notice in writing, if the other party;

- is in material, or repeated, breach of this
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Agreement, and if such breach is capable of remedy does not rectify such breach within 30 days of written notice of it,

- in the event, or suspicion, of fraud, non-disclosure, or misrepresentation, or dishonesty
- immediately, without notice, should either party become the subject of voluntary or involuntary liquidation or administration proceedings or (if applicable) become the subject of an action in bankruptcy or make or propose any composition with creditors or otherwise acknowledge its insolvency, suspends its activities or upon a resolution being passed or an order made for its winding up

In the event that this Agreement is terminated, We will cease to be Your agent. As a consequence of this We will no longer provide You with any services, including claims handling where this service is provided to You prior to termination, except where We are required to continue handling Your claim under the terms of Our delegated authority from certain insurers. Any commission or fee is considered to be fully earned when Your insurance(s) incept and any unpaid commission or fee will be due and payable to Us upon termination. Any unpaid fees may also be due and payable prior to inception of Your insurance(s) subject to the terms of the relevant fee agreement.

If You still require services from Us these will be subject to a new written Agreement and We reserve the right to make an additional charge for these services, however there is no obligation on Us to agree to perform such services.

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