

These terms of business are effective from 1 July 2017 and supersede all previous agreements, understandings and negotiations between One Underwriting Pty Ltd ABN 50 006 767 540 AFSL 236653 (**One Underwriting, We and Our**) and any Australian Financial Service Licensed Insurance Broker (**Retail Broker, You or Your**) in relation to the subject matter set out below (**Agreement**).

## Background

Thank you for engaging One Underwriting to provide, advise and deal, as appropriate, in relation to general insurance products and services for your clients (Services) pursuant to the terms of this Agreement. By continuing to instruct us, you are taken to have accepted this Agreement (as amended from time to time), unless otherwise agreed in writing with you.

## Licence and Registration

The Retail Broker and One Underwriting each hold an Australian Financial Service Licence (AFSL) that authorises them to provide financial product advice and to deal in general insurance products to either retail or wholesale clients (or both). Each party will notify the other immediately if its AFSL is suspended or cancelled, or any authorisation on the licence is varied other than by the addition of authorisations, or in the case of an exemption, the party is no longer entitled to an exemption.

## Relationship

The Retail Broker acts as agent for each of its clients, and not as agent for One Underwriting or any insurer, in providing any financial advice or dealing in any financial product under its own AFSL.

One Underwriting acts as agent for insurers, unless otherwise notified.

One Underwriting and the Retail Broker are and remain independent contractors at all times and for all purposes. Except as expressly provided for in this Agreement, neither One Underwriting nor the Retail Broker has authority to act on behalf of or represent the other and shall not purport to have such authority.

The Retail Broker is responsible for the acts, defaults and negligence of its authorised representatives, agents, employees and contractors.

Nothing in this Agreement creates a binder or relationship of agency, joint venture, partnership or employment between the parties.

## Variation and Termination

One Underwriting may change this Agreement from time to time by providing the Retail Broker with 30 days' written notice.

Either party may terminate this Agreement, without cause, upon giving to the other not less than 30 days' notice in writing. Otherwise, this Agreement may be terminated by a party with immediate effect by either party giving written notice to the other if any of the following occur:

- the other party breaches any term of this Agreement, which cannot be rectified;
- the other party breaches any term of this Agreement that is capable of being rectified and the party fails to rectify the breach within 14 days of written notice from the other requiring it to rectify the breach;
- the other party enters into any composition or arrangement with its creditors, has a receiver, a receiver and manager or an administrator appointed to it or is the subject of any resolution or petition for winding up (other than for the purpose of amalgamation or reconstruction while solvent) or becomes bankrupt; or
- the other party fails to hold any authority or licence that allows it to carry on the business covered by this Agreement or such authority or licence is altered in such a manner as materially affects in any way the ability to transact general insurance or any activity contemplated in this Agreement.

Termination of this Agreement will not:

- prejudice the rights of either party in connection with anything that occurred between them before its termination; or
- affect any rights of a party under any provisions of this Agreement that are expressed, or by necessary intendment are intended, to survive termination.
- As soon as practicable after termination of this Agreement and, in any event, within 90 days:
- each party must pay all money owed to the other, if any, after taking into account any adjustments required; and
- the Retail Broker must return (at its expense) all documents, stationery and materials supplied by the One Underwriting to the Retail Broker.

## Arranging Insurance

The Retail Broker must, in relation to any new business, alteration, variation or renewal:

- prepare the underwriting information sought by the insurer(s) based solely on information provided by its client;
- provide all necessary advice about the insured's duty of disclosure under the Insurance Contracts Act 1984 (Cth) (**ICA**) and the consequences of breaching that duty including the insurer(s) remedies for non-disclosure and misrepresentation under the ICA;
- procure its client's approval of all underwriting information before it is provided to One Underwriting;
- provide all necessary professional and financial product advice to its client in connection with the insurances sought to be arranged through One Underwriting, including advice in relation to:
  - the terms and conditions of the relevant policy;
  - the adequacy and suitability of cover for that client's circumstances; and
  - the suitability of the price and the security of the cover;
- provide all necessary assistance to enable One Underwriting to arrange the insurances sought, including obtaining the information required by the insurer(s) from the Retail Broker's client within the time period required by One Underwriting; and
- declare and disclose all commissions, fees, charges and other remuneration to its client as required by law. One Underwriting makes the remuneration and benefits disclosures as set out in One Underwriting's Financial Services Guide which can be accessed at <http://www.oneunderwriting.com.au/OneUnderwriting/media/Documents/one-underwriting-financial-services-guide.pdf> (**One Underwriting FSG**).

The Retail Broker acknowledges that it has each of its client's authority to receive for that client all notices for an insured or intending insured under the ICA and Corporations Act 2001 (Cth) (**Corporations Act**).

## Closings and Hold Covered

If the Retail Broker wants to incept or renew (as relevant) an insurance product through One Underwriting, the Retail Broker must, no later than 14 days before the contract of insurance inception date (or an alternate timeframe permitted by One Underwriting in writing), provide written instructions to One Underwriting to accept the contract of insurance, together with all proposal forms (where applicable) and closing instructions from the insured.

If One Underwriting does not receive written acceptance instructions from the Retail Broker in accordance with the above, the insurance product will not be incepted or renewed (as applicable) and in the case of a renewal product, all coverage will cease at the expiry date of that product, unless other arrangements are made and confirmed in writing by One Underwriting.

If One Underwriting becomes liable to any insurer arising out of failure to give notice of expiry in accordance with Section 58 of the ICA, and such failure is due in whole or in part to the failure of the Retail Broker to send the renewal notice to their client as required by any applicable laws after receipt by the Retail Broker of a renewal notice, the Retail Broker must indemnify One Underwriting for any Damage<sup>1</sup> suffered by One Underwriting as a result provided that the Retail Broker has received the renewal notice within sufficient time for it to be able to reasonably comply with its requirements under this section. The indemnity is reduced proportionally to the extent that One Underwriting has caused or contributed to any such Damage.

## Claims

The Retail Broker is responsible for all claims notification for its clients. At the request of the Retail Broker, One Underwriting must provide reasonable assistance to the Retail Broker in notifying the insurer(s) of a claim. The parties acknowledge that One Underwriting has no authority to admit liability on behalf of the insurer, nor to deal with or settle a claim.

## Invoices and GST

The Retail Broker must pay any tax invoices for Premium<sup>2</sup> and any administrative or other charges within 30 days from the date of the invoice issue date.

One Underwriting will pay the Retail Broker commission on Premium written on a gross basis as agreed in writing between the parties in which case any Retail Broker commission and other charges will be identified on the relevant tax invoice. Where it is otherwise agreed that Premium is written on a net basis, the Retail Broker will remit Premium on a net of commission basis. Any change to the Retail Broker commission must be communicated by providing at least 30 days' written notice to the Retail Broker.

Please note that all remuneration referred to in this agreement or in any invoice, unless clearly stated otherwise, is to be treated as exclusive of GST. If anything supplied under or in connection with this Agreement constitutes a taxable supply for the purposes of A New Tax System (Goods and Services Tax) Act 1999 (Cth) (**GST Act**), the recipient of the supply must, subject to receiving a proper tax invoice, pay to the supplier an additional amount equal to that GST.

## Recipient Created Tax Invoice (RCTI)

One Underwriting may issue recipient created tax invoices (**RCTI**) to the Retail Broker in accordance with the GST Act in respect of commission payable under this Agreement to that other party (the **Supplier**) and the Supplier must not issue a tax invoice in respect of such supply. One Underwriting agrees to:

- retain an original or copy of the RCTI (and any adjustment note); and
- set out the Supplier's ABN in the RCTI (and any adjustment note).

## Remuneration

The Retail Broker acknowledges and agrees that One Underwriting will:

- be paid a commission by the relevant insurer(s) on placement of insurance under this Agreement as set out in the One Underwriting FSG; and
- also be entitled to receive a policy administration charge for policy invoicing, Premium collection and remittance and for issuing policies and other administrative work as set out in the relevant tax invoice issued by One Underwriting to the Retail Broker.

The Retail Broker acknowledges and agrees that One Underwriting fully earns its wholesale broker commission, fee and any other remuneration at the time of placement of the relevant insurance and may retain in full all such remuneration in the event of any mid-term cancellation of a policy or future downward adjustment of Premium, unless it has agreed with the Retail Broker to another arrangement in writing. The Retail Broker also agrees that One Underwriting and the insurer may offset such remuneration from any Premium refund the Retail Broker is entitled to.

## Refund of Retail Broker Commission – Where insurance is varied, cancelled or avoided

If any policy of insurance is varied, cancelled or avoided, the Retail Broker will refund to One Underwriting that part of the Retail Broker commission for payment to the insurer(s) that relates to the proportion of Premium refunded to the client (if any).

## Retail Broker not to approach insurer directly

During the currency of this Agreement and for thirteen (13) months after its termination, the Retail Broker must not approach any insurer to which One Underwriting has brokered or placed a risk at the request of the Retail Broker to solicit, create or develop any arrangement for the Retail Broker to broke and place the insurance product covered by this Agreement other than through One Underwriting.

## Ownership of Insurance Business

During the currency of this Agreement and for thirteen (13) months after its termination, One Underwriting will not make any direct approach to any insured for whom a contract of insurance has been arranged pursuant to this Agreement for the purpose of selling or issuing any insurance business and will only directly contact an insured where:

- One Underwriting is required to do so by law;
- the Retail Broker fails to give any notice or disclosure document to the insured that is required by law;
- the person makes a claim under the contract of insurance, in which case One Underwriting may liaise with the insured about the claim;
- the insured requests One Underwriting do something, in which case One Underwriting may comply with that request,
- the Retail Broker is no longer the insurance intermediary for the insured; or
- where the insured has advised the Retail Broker in writing that it wishes to deal directly with One Underwriting.

Nothing in this Agreement prevents One Underwriting from marketing its business or products to the general public.

## Indemnity

The Retail Broker indemnifies One Underwriting for and against all claims, damages, judgments, losses, costs and expenses which are directly or indirectly caused by any act or omission or breach of this Agreement. This clause survives termination.

## Confidentiality

Each party acknowledges that the other party's confidential information is valuable to that other party and must, to the extent it is within its control and except as otherwise required by this Agreement, keep the other party's confidential information secret and preserve its confidential nature. Each party authorises the other to disclose its confidential information to its (re)insurers, actuaries, auditors, professional agents and advisors and any related bodies corporate. Confidential information does not include information:

- which is in or becomes part of the public domain other than through breach of this Agreement or an obligation of confidence owed to the discloser; which the recipient can prove by contemporaneous written documentation was:
  - already known to it at the time of disclosure by the discloser (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality);
  - independently developed by the recipient without reference to the confidential information of the discloser; or
  - which the recipient acquires from a source other than the discloser or any of its representatives where such source is entitled to disclose it on a non-confidential basis. This clause survives the termination of this Agreement.

## Intellectual Property

The parties agree that nothing in this Agreement transfers ownership in, or otherwise grants any rights in, any intellectual property rights of a party. This clause survives the termination.

## Privacy

Each party agrees to comply with the Privacy Act 1988 (Cth) (**Privacy Act**) and any other applicable privacy or data protection laws regulating the collection, storage, use and disclosure of "personal information" as defined under the Privacy Act, including the Spam Act 2003 (Cth) and Do Not Call Register Act 2006 (Cth) and do all that is reasonably needed on each of our parts to enable the other to comply with them.

The Retail Broker must ensure that it has obtained all necessary consents so that all personal information disclosed by the Retail Broker to the One Underwriting may be collected, collated, used and distributed in accordance with this Agreement and One Underwriting's Privacy Policy (<http://www.oneunderwriting.com.au/privacy-policy.aspx>).

## Electronic Communication

One Underwriting may correspond with the Retail Broker by electronic communications unless you instruct us not to do so. Electronic communications are not always secure and may be read, copied, lost or interfered with in transit. One Underwriting is not responsible for any of the risks associated with electronic communication, including loss of data.

## Dispute Resolution

The parties must attempt in good faith to resolve any dispute between them in connection with this Agreement by negotiation.

If any dispute cannot be resolved by negotiations between the parties within 10 days or such further period as the parties agree is appropriate, then within the following 10 days, the parties must seek to agree on procedural rules and a timetable for resolving the dispute through mediation by a mediator agreed upon by the parties, or if the parties cannot agree, a mediator appointed by the Australian Commercial Disputes Centre or any body which replaces it.

A party may not commence court proceedings or arbitration (other than an urgent interlocutory application) relating to any dispute arising from this Agreement unless that party has complied with the above.

## Foreign Account Tax Compliance Act

The Foreign Account Tax Compliance Act (FATCA) applies to insurance premiums in respect of placements that contain U.S. risk. The Retail Broker acknowledges and agrees, and must ensure that its client acknowledges and agrees, that One Underwriting will not be responsible for issues arising from the withholding of 30% (or any other amount) of premium payments in connection with FATCA requirements. One Underwriting provides its withholding tax certificate to the Retail Broker via Aon.com. The Retail Broker agrees with and accepts delivery of such form via Aon.com. The parties agree to work together to provide information required to meet their respective FATCA obligations.

## International Trade Sanctions

One Underwriting follows a global policy regarding compliance with international trade sanctions laws (the TS Policy) including those administered in the United States by the Office of Foreign Asset Control (OFAC). Compliance with the TS Policy is mandatory for all One Underwriting staff worldwide, and no exceptions to the TS Policy are permitted under any circumstances. In summary, the TS Policy may apply to certain transactions related to countries including Cuba, Syria, Crimea, Sudan, Iran, North Korea and Myanmar (Burma) (collectively known as Restricted Territories), restrictions under Australian sanctions regimes or designated or sanctioned parties, including OFAC Specially Designated Nationals (SDNs). The Restricted Territories under the TS Policy may be subject to change in line with international trade restrictions.

If the Retail Broker becomes aware that any of its business dealings connected with this Agreement:

- involve a Restricted Territory;
- involve a designated or sanctioned party (including a SDN or a

designated person or entity under Australian law); or

- are otherwise subject to trade restrictions under Relevant Laws,

the Retail Broker must tell us immediately. Where One Underwriting becomes aware that a transaction is contrary to the TS Policy, then One Underwriting may not act with respect to a part of the transaction (whether it involves a placement, renewal, variation of an insurance contract, payment, processing or any other service) or at all.

## Bribery and Corruption

Each party agrees to maintain appropriate policies and procedures designed to ensure that no acts of bribery or corruption take place. Any breach of Relevant Laws by either party will entitle the other party to terminate this Agreement immediately.

## General

- Both parties agree to comply with all Relevant Laws .
- Each party must not change printed material supplied by the other party (including but not limited to marketing material such as brochures, advertisements, articles, editorials, posters, insurance documents such as proposals, policy wordings, certificates of insurance and certificates of currency) without the written consent of that party.
- If any part of the Agreement is or becomes invalid, unlawful or unenforceable, it will be read down or interpreted and enforced to the extent permissible or if this is not possible, it will be severed and the remainder of the Agreement will remain unaffected.
- New South Wales law governs our agreement and the New South Wales courts have exclusive jurisdiction.
- No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, the Agreement or any part of it.
- Neither party can assign, charge or otherwise deal with its rights and obligations under this Agreement without the prior written consent of the other party (except to a “related body corporate” (as defined in the Corporations Act) by providing 30 days written notice to the other party).
- Any notice under this Agreement must be in writing and if sent to the last known address, facsimile number or e-mail address of the party. Each of the parties will give notice to the other of any change of address, telephone and facsimile numbers and e-mail address as soon as practicable after such change.

## About One Underwriting

One Underwriting Pty Ltd is a leading provider of insurance and risk services and is part of the Aon Group which is a global leader in the design and provision of insurance, reinsurance, risk and employee benefit services.

If you have any questions about our services or anything in this document, please contact us on (03) 9211 3700.

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Level 50, 80 Collins Street, Melbourne VIC 3000  
ABN 50 006 767 540, Australian Financial Services Licence no 236653  
Phone (03) 9211 3700