

## Terms of Business Agreement (TOBA)

### Terms and Conditions of Appointment

Intermediary's name

Intermediary's address

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#### 1. Definitions:

**1.1** "Intermediary" means the Insurance Intermediary appointed by Thomond Underwriting Ltd in writing subject to these Terms and Conditions

**1.2** "Thomond" means Thomond Underwriting Limited, t/a Thomond Underwriting. Regulated by the Central Bank of Ireland. Registration No: 46804. Registered address - 63 Fitzwilliam Square, Dublin 2. Thomond Underwriting Ltd is registered as an Insurance Intermediary with Principle Regulated Business Activities of Commercial General Insurance.

**1.3** "Proposer" means any person or entity introduced by the intermediary to Thomond for the purpose of proposing for Insurance

**1.4** "Policyholder" means any person or entity introduced by the intermediary to Thomond under this or any previous appointment from Thomond, and to whom Thomond has provided cover.

#### 2. Appointment:

Thomond hereby appoints the Intermediary as an Insurance Intermediary to Thomond subject to these Terms and Conditions in respect of such Insurance products and on such particular terms as may be notified in writing by Thomond to the intermediary from time to time.

#### 3. Term:

The appointment is effective from the date on which Thomond notifies the Intermediary in writing that it has been so appointed, and the appointment is subject to the Intermediary having signed and returned these Terms and Conditions to Thomond. The appointment shall continue until terminated by either party in accordance with Clause 17 below.

#### 4. Compliance:

The Intermediary will comply with their respective legal, licensing and regulatory requirements (namely the Financial Conduct Authority and other relevant legislation) applicable to the production of documentation and to the placing, claims handling and premium and claims accounting of any Insurance Business which the intermediary places with Thomond. At all times the Intermediary will act with due skill, care and diligence and use properly trained and competent staff.

## **5. Proposal Forms:**

The Intermediary shall forward every Proposal Form for insurance to Thomond as soon as practicable after the intermediary receives the completed Proposal Form. Proposal Forms must be duly completed and signed by the Proposer(s) where applicable.

## **6. Restrictions on Intermediary:**

The Intermediary shall not:

- 6.1 purport to bind Thomond by any written or verbal statement or purport to issue endorsements on any policies or issue cover for any risks on Thomond's behalf other than as expressly authorised in writing to do so by Thomond, and only to the extent expressly set out in such authority and in strict accordance with the terms of any underwriting or other appropriate criteria and guidelines issued by Thomond to the Intermediary from time to time:
- 6.1 endorse cheques, money orders, drafts, postal orders or other negotiable instruments made payable to Thomond. These drafts be forwarded immediately to Thomond who will credit the amount to the Intermediary's account with Thomond.

## **7. Policy Documentation:**

- 7.1 all insurance documentation (including policy documents, proposal forms and terms and conditions, motor certificates, receipts, discs and all marketing and promotional literature) used or issued by the Intermediary in connection with any proposal to place insurance with Thomond shall be provided by Thomond to the Intermediary or shall be in a form and format agreed and accepted in writing by Thomond. The Intermediary shall not use any other insurance documentation unless it has been so provided or otherwise approved in writing by Thomond, nor shall the Intermediary amend, add to or alter in any way without the prior written approval of Thomond any such documentation. The Intermediary shall not use Thomond's name, logos, trademarks or trade names other than as approved and authorised in writing by Thomond.
- 7.1 The Intermediary shall immediately or as soon as practical pass on all documentation which Thomond supplies for the Proposer or Policyholder or which any Proposer or Policyholder provides to the Intermediary in respect of any proposal or policy issued or to be issued by Thomond without amending, adding to or altering it in any way.
- 7.2 If the Intermediary becomes aware that any information provided by either the Intermediary or any Proposer or Policyholder to Thomond was or has become untrue or misleading, the Intermediary shall immediately inform Thomond giving full written details.
- 7.3 All insurance documentation relating to Proposers or Policyholders, in respect of whom premiums are unpaid, or policies not taken up, or policies cancelled must be returned to Thomond immediately. In the case of policies or mid-term adjustments which are not taken up, all insurance documentation must be returned to Thomond on or before the effective date thereof.

## **8. Client Premium:**

The Intermediary is expressly authorised to act as an agent for Thomond for the purpose of receiving from Proposers/Policyholders premium payments in connection with the issue, endorsement or renewal of any policy of insurance, and receiving and holding any premium refunds due to Policyholders. The Intermediary shall hold such payments in trust for and on behalf of Thomond in a separate account designated for that purpose.

When we receive your money (either premiums or claims), if insurers allows risk transfer, we hold it as their agent. This means that the insurer is deemed to have received those monies (such as premium paid by you) on the date upon which the monies are received by Thomond Underwriting.

Whether we hold your money as agent of the Insurer or not, all your money is held in our Client bank account, separate from Thomond's own money,

## **9. Claims:**

- 9.1 The Intermediary shall advise Thomond immediately or as soon as practical on receipt of notice of any claim or possible claims by any Policyholder or third party
- 9.2 Without prejudice to clause 9.3, The Intermediary shall be obliged to co-operate with and offer its reasonable assistance to Thomond in the processing of any claim or possible claim. The Intermediary shall, acting as Thomond's agent, pursue and use its reasonable endeavours to procure payment of any sums, including excess and/or VAT, due or payable to Thomond by any Policyholder under the terms of the relevant policy.
- 9.3 For the avoidance of doubt, the Intermediary is not authorised to admit liability or give the Policyholder any agreement on quantum whatsoever or to arrange any settlement in connection with any claim under any Thomond policy unless expressly authorised in writing to do so by Thomond and then only to the extent and on the terms so authorised.

## **10. Access to Records:**

- 10.1 The Intermediary will retain any of the records created or held by it in its capacity as agent of Thomond under the Agreement for such time as is appropriate and in line Data Protection Regulations.
- 10.2 The Intermediary agrees to allow Thomond, on reasonable written notice, to inspect and to take copies of the following:
  - 10.2.1 the accounting records pertinent to any Insurance Business including information relating to the receipt and payment of premiums and claims and documentation created under this Agreement such as any insurance contract or slip endorsements, addenda or bordereaux in the possession of the intermediary relating to the Insurance Business; and
  - 10.2.2 documents as may be in the possession of the Intermediary which were disclosed to Thomond by the Intermediary in respect of any Insurance Business including, but not limited to, documentation relating to the proposal for the Insurance Business, the placing thereof (including endorsements and reinstatements) and any claims thereunder.
- 10.3 In the event that Thomond requests the Intermediary to carry out any functions or duties on its behalf, such as the appointment of loss adjusters, lawyers or others, or the Intermediary otherwise acts as an intermediary between Thomond and its representatives or agents:
  - 10.3.1 the Intermediary accepts Thomond's appointment or instructions on the basis that the information received by it in respect of a claim made upon any Insurance Business is disclosable to the intermediary's client;
  - 10.3.2 all documentation and records created or received by the intermediary in the performance of such functions or duties shall be and remain the property of Thomond, other than documents over which the intermediary has a proprietary commercial interest;

- 10.3.3 the intermediary will take reasonable steps to retain, maintain and safeguard any of Thomond's documents in the intermediary's possession in accordance with any regulatory requirements which apply to Thomond and of which the intermediary has notice; and
- 10.3.4 on termination of this Agreement for whatever reason and on reasonable written notice the intermediary will deliver up to Thomond such documentation if requested.

#### **11. Statement of Account:**

- 11.1 Notwithstanding Clause 8, it is expressly agreed that the intermediary shall become liable to Thomond for premiums due on policies of insurance from the date that Thomond advises the intermediary that insurance cover is in place, and collection of those premiums shall be the sole responsibility of the intermediary. For the avoidance of doubt, premium include: new business premium, renewal premium and additional premium.
- 11.2 If the intermediary is unable to collect the premium from the policyholder, the intermediary shall notify Thomond promptly, and Thomond may, at its sole discretion, take steps to resolve the issue, which may include termination or a voidance of the relevant policy of insurance.
- 11.3 If no notification of the clients failure to pay is notified to Thomond, the intermediary becomes liable for the payment
- 11.4 Credit arranged by the Intermediary or the client will not extend credit terms
- 11.5 By the fifteenth day of each calendar month, Thomond shall prepare and send to the intermediary a statement of account showing:
  - 11.5.1 all premiums due from the intermediary to Thomond in the preceding calendar month
  - 11.5.2 all premium rebates, reductions or other refunds which became due to Policyholders in the preceding calendar month.

The net amount will become payable by the intermediary to Thomond (or vice versa), by netting off sums properly due to Thomond under Clause 11.5.1 against sums properly due by Thomond under Clause 11.5.2

- 11.6 All sums due as set out in the statement of account issued under Clause 11.5 shall become due and must be paid to Thomond by the intermediary on or before the 25<sup>th</sup> of the month in which the relevant statement of account is issued to the Intermediary under Clause 11.5

#### **12. Disclosure:**

The Intermediary shall notify Thomond immediately in writing of the following:

- 12.1 any change in the business address of the Intermediary;
- 12.2 any significant change in ownership of the Intermediary;
- 12.3 termination of an appointment by another insurer;
- 12.4 the intermediary becoming bankrupt, insolvent, entering into liquidation or entering into a composition or arrangement with its creditors or having a receiver, administrator or trustee appointed over all or any part of its assets or having an examiner appointed, or (in the case of a partnership) being dissolved;
- 12.5 if any owner, director, partner, controller or employee of the Intermediary becomes subject to disciplinary action instituted by any regulatory, statutory, professional or

- other competent body or authority, or is convicted of any criminal offence (car-parking and careless driving offences excepted);
- 12.6 the revocation of the Intermediary's authorisation by the Financial Conduct Authority, or receipt of notice of an intention to revoke, or the initiation of proceedings for revocation against the Intermediary;
  - 12.7 if the Intermediary becomes aware of any actual or pending compliance investigation by the Financial Conduct Authority into any matter in which the Intermediary is involved, or of any actual or pending disciplinary action by the Financial Conduct Authority involving the Intermediary;
  - 12.8 any claim against the Intermediary by any person, which claim is properly notifiable to the Intermediary's professional indemnity insurers;
  - 12.9 the lapse, expiry, cancellation or withdrawal for any reason of the Intermediary's professional indemnity insurance;
  - 12.10 any matter arising during the term of this appointment which would or might influence an insurance company in considering the continuance in force of this appointment or which may affect the Intermediary's ability to carry out its obligations under this agreement.

### **13. Variations to Terms and Conditions:**

Thomond reserves the right to amend or vary any or all of these Terms and Conditions at any time and shall notify same in writing to the Intermediary. Subject to the Intermediary's right to terminate as set out at Clause 17 below, all such changes shall become effective from the date of service of the said notice on the Intermediary.

### **14. No Sub-Brokers/Assignment:**

Unless Thomond has given its written consent, the Intermediary shall not:

- 14.1 assign, transfer or delegate, or attempt to assign, transfer or delegate, any of its rights or obligations arising by virtue of its appointment under these Terms and Conditions to any third party;
- 14.2 the Intermediary shall not appoint any sub-intermediary or attempt to appoint, or act or attempt to act as Product Producer to, any sub-intermediary in respect of any of its rights or obligations by virtue of its appointment under these Terms and Conditions.

### **15. Policyholder Instruction:**

Where a Policyholder instructs Thomond that he/she desires some other person to be regarded as Intermediary for the purposes of any cover issued to the Policyholder by Thomond, Thomond may transfer such insurance from the Intermediary. In the event that the Intermediary ceases to be the Policyholders Intermediary during the term of a Policy of Insurance, the Intermediary shall nevertheless be entitled to retain any commission already paid to the Intermediary.

- 16. The Intermediary's appointment shall not oblige Thomond to accept any proposal for insurance or to renew any existing policy of insurance or to maintain cover in respect of any existing Policy of insurance if it, in its sole discretion, decides not to do so.

### **17. Termination:**

- 17.1 This Agreement shall terminate:
  - 17.1.1 at any time by either Thomond or the intermediary giving 30 days notice in writing of termination to the other.

- 17.1.2 immediately, without notice, should the intermediary become the subject of voluntary or involuntary Scheme of Arrangement or liquidation proceedings (save for the purpose of amalgamation or solvent re-organisation) or become the subject of an action in bankruptcy or make or propose any composition with its creditors or otherwise acknowledge its insolvency;
  - 17.1.3 immediately, without notice, should the intermediary have any authority or permission granted to it by the Financial Conduct Authority withdrawn or altered by the Financial Conduct Authority in such a manner as to prohibit or materially restrict the relevant intermediary's ability to conduct regulated insurance activities.
- 17.2 Following termination:
- 17.2.1 Thomond and the intermediary will agree the procedure for administering Insurance Business current at the time of termination;
  - 17.2.2 should the intermediary become subject to insolvency proceedings, or the termination events described in 17.1.3 the intermediary will make all reasonable efforts to provide Thomond with contact details for any Insured or other party with which Thomond has contracted in the conduct of Insurance Business and for whom the intermediary has acted as agent, save where the intermediary's book of business has been transferred to another intermediary authorised by the Financial Conduct Authority and
  - 17.2.3 where permissible Thomond and the intermediary will remain liable to perform their obligations in accordance with the terms of this Agreement in respect of all Insurance Business subject to this Agreement until all Insurance Business has expired or has otherwise been terminated.

#### **18. Breaches or Misconduct:**

Thomond reserves the right (in the event of misconduct) to:

- 18.1 withhold documentation
- 18.2 deal directly with clients regarding its policies
- 18.3 take other necessary action to protect its interests

#### **19. Notices:**

Any notices to be given under this Agreement shall be sent in writing, by first class recorded delivery post, by hand, or facsimile to the registered office of the Party to be served. The notice shall be deemed to have been served, if posted, at the expiration of two business days after posting and if by facsimile, or by hand, at the expiration of one business day after it was dispatched.

#### **20. Data Protection Act:**

The Intermediary undertakes to comply with the provisions of the Data Protection Acts and the General Data Protection Regulation. The Intermediary and Thomond agree that where the intermediary or Thomond processes personal data under or in connection with the Agreement it alone determines the purposes and means of processing as a controller. Where Policyholder Data is supplied to Thomond by the Intermediary for the purposes of this agreement, Thomond shall be entitled to deem that data is obtained, used & retained in line with the Data Protection Acts & General Data Protection Regulation. All Data will be treated confidentially and will be used to provide and administer insurance products and financial services. Data may be shared in order to comply with legal obligations imposed on the firm.

**21. Conflict of Interest:**

Thomond at all times seek to avoid any conflict of interest when providing business services. If unavoidable, Thomond will advise of any such conflict prior to providing a business service.

**22. Complaints:**

Thomond, at all times strive to provide an excellent service. However in the event of dissatisfaction please contact your account executive in the first instance. All complaints will be dealt with in an efficient manner with a response given in a timely manner. Should this not be resolved to your satisfaction this then should be advised to John O'Driscoll, Managing Director and further escalated to Financial Services Ombudsman Bureau should the need arise.

**23. Jurisdiction and Choice of Law:**

This agreement shall be governed by and construed in all respects in accordance with the laws of England and Thomond and the Intermediary shall each submit to the non-exclusive jurisdiction of the English Courts.

I/We have read the Terms and Conditions of this Appointment and agree to abide by same.

I/We declare that all the statements and particulars given in the Application Form to Thomond are true and correct.

On this understanding and on the basis of the information set out in the Application Form and any information supplied to Thomond while this application is being considered, I/We hereby apply to Thomond for appointment as an Insurance Intermediary.

**Name of Authorised  
Signatory:**

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**Signed:**

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**Position:**

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**Date:**

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## Privacy Notice Customers

### WHO WE ARE

Thomond Underwriting Ltd with trading names Thomond Underwriting & Thomond Bonds is registered and regulated by the Central Bank of Ireland (Registration No. 46804). Our identity will always be displayed clearly in our correspondence with you and on our websites ([www.thomondunderwriting.ie](http://www.thomondunderwriting.ie) & [www.thomondbonds.ie](http://www.thomondbonds.ie)).

Thomond Underwriting Ltd respects and protects your privacy and collects, processes, and controls your personal information in accordance with this Privacy Notice and in compliance with the Data Protection Acts and General Data Protection Regulation. We only ask for information that is relevant and we only keep data for specified, explicit and lawful purposes. This privacy notice sets out how we collect, use and disclose personal and sensitive data.

We follow these principles relating to processing of personal data:

- a) We process data lawfully, fairly and in a transparent manner.
- b) We collect data for our specified, explicit and legitimate purposes only.
- c) We only process data that is adequate, relevant and limited to what is necessary for the purposes for which the personal data is processed.
- d) We keep data up to date and accurate. Any inaccuracies are erased or rectified without delay.
- e) We do not keep data for longer than is necessary for the purposes for which the personal data is processed.
- f) We process data in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

### WHAT INFORMATION THOMOND KEEP AND WHY

We obtain and keep personal data in order to provide an insurance underwriting and quotation service. The information is used to underwrite and offer insurance quotations.

We may use the personal data we hold about you if you have given us consent for the processing of your data or in the following ways:

<b>The reason we use your data</b>	<b>Our legal basis for its use</b>
Underwriting of the risk proposed	For the performance of the insurance contract between you and us.
The administration of policies at inception, mid term adjustments and renewal throughout the term of the policy	For the performance of the insurance contract between you and us.
Assessment or assistance or processing of any claims	For the performance of the insurance contract between you and us.
Compliance with regulatory, legal and tax laws and regulation	For any legal and regulatory obligations we are bound e.g. anti-money laundering, fraud and financial crime, taxation and business accounting.
Internal reporting and statistical purposes	Our legitimate business interests are to analyse historic activity.



## WHAT INFORMATION DO WE KEEP

The below is a list of the type of information we collect, share and keep

- Name
- Address
- Phone Numbers
- Date of Birth
- Email addresses
- CV's
- Occupation
- Medical History
- Net Worth Statements/Accounts
- Bankers Details
- Bank Balances/Overdrafts
- Fee Income
- Convictions

## WHO DO WE SHARE OR SEEK INFORMATION FROM

We may share details or seek information from a number of external parties such as:

- Person's acting on the customer behalf e.g. Insurance Intermediary, Loss Assessors, Solicitors and Executors
- Person's acting on the Insurers behalf e.g. Loss Adjusters, External Investigators, Medical Practitioners or Solicitors
- Insurance companies and Third Party Underwriters who we obtain quotations from
- Re-insurers
- Loss Adjusters, Repairers and other Claims Handling Agents
- Private investigators when we need to further investigate certain claims
- Personal Advisors and Consultants e.g. Surveyors for the purpose of surveying a risk
- Debt Collection and Tracing Agencies
- Financial Organisations
- The Financial Services Ombudsman, the Central Bank, the Financial Conduct Authority or any equivalent foreign supervisory body
- The Gardaí/Police, Revenue Commissioners/HMRC or any other persons authorised by law to access records
- Computer Network maintenance companies
- The Central Bank/Financial Conduct Authority

## TRANSFER OF PERSONAL INFORMATION OVERSEAS

It may sometimes be necessary to transfer personal information overseas. When this is needed information is only shared within the European Economic Area (EEA). Any transfers made will be in full compliance with all aspects of the Data Protection Act, Ombudsman and Regulatory authorities.

## DATA RETENTION & SECURITY

We only retain data as necessary and we keep personal and sensitive data safe and secure and ensure that appropriate security measures are taken against unauthorised access to, alteration, disclosure or destruction of personal/sensitive data.

Our retention periods for your data are as follows:

Data Type	Data Retention Period
Personal Data collected as part of a quotation process only - no further client relationship exists	15 months
Policyholder Personal Data - Liability Policy	Indefinitely
Policyholder Personal Data - Property Policy	7 years after the ending of the relationship
Policyholder Personal Data - Professional Indemnity Policy	7 years after the ending of the relationship
Policyholder Personal Data - Commercial Vehicle Policy	7 years after the ending of the relationship
Policyholder Personal Data - Personal Accident Policy	7 years after the ending of the relationship
Policyholder Personal Data -Contract Works & Contractors Plant & Equipment Policy	7 years after the ending of the relationship
Policyholder Personal Data - Travel Policies	7 years after the ending of the relationship
Policyholder Personal Data - Bonds	7 years after the ending of the relationship

## YOUR RIGHTS

You have certain rights under Data Protection regulation to include:

- Right of access to data
- Right of rectification
- Right of erasure
- Right to restrict processing
- Right to data portability
- Right to object

If you would like to exercise any of these rights please contact Jackie Gray at [jackie.gray@thomond.ie](mailto:jackie.gray@thomond.ie) who will review your requests in line with the General Data Protection Regulation and legislation.