

## **Terms of Business Agreement**

### **INTRODUCTION**

Lockton Companies Australia Pty Ltd ("Lockton") is a risk advisory and insurance intermediary authorising to provide financial services in Australia by the Australian Securities and Investments Commission. Lockton holds an Australian Financial Services Licence ("AFSL") No. 291 954 under the *Corporations Act 2001* (Cth) ("Corporations Act") authorizing it to advise, issue and deal in general and life insurance products to wholesale and retail clients, acting as our clients' agent.

The purpose of this Terms of Business Agreement ("the Agreement") is to set out the terms on which Lockton undertakes to act for you, our client. It includes important information about:

- our regulatory and statutory obligations;
- the services we provide to you;
- how we and our representatives are remunerated;
- our internal and external resolution procedures and how you can access them; and
- your responsibilities both to us and to insurers.

If you are responsible for procuring our services on behalf of a business which is a company, trust or partnership, we assume that you are authorised to accept these terms on behalf of the business, unless we are notified otherwise in writing. Where you are the person responsible for procuring our services on behalf of a company, these terms bind the company and each of the group companies if they also receive the benefit of our services.

These are our standard terms and can only be varied with our written consent. Please contact us immediately if there is anything in this document which you do not understand or with which you disagree.

If you continue to do business with us and we do not hear from you, this will serve as your consent to working with us on the terms set out in this Agreement. In the absence of an agreement, this document sets out the terms upon which we provide risk management services to you.

In this document "we", "us" and "our" means Lockton. References to "you" or "your" mean the company, each of your group companies or the business, and include your respective employees, officers and agents (where appropriate).

*Despite any attestation clauses set out in this Agreement, this Agreement will come into full force and effect as between the parties on the appointment by you of Lockton and shall continue in full force and effect thereafter unless or until terminated by mutual agreement of the parties or by either party giving at least 30 days' written notice to the other.*

### **OUR SERVICES**

#### **Risk Advisory and Management Services**

We will discuss with you and your representatives your risk management requirements. Prior to us agreeing to provide the Services to you, you must inform us in writing of any timetable, subjectivities or deadline relevant to the provision of the Services.

#### **Claims Advisory and Administration Services**

Where agreed with us by you, we will provide our claims administration services during the period of our appointment. These services can be continued beyond our appointment by mutual agreement and may be subject to a separate fee. Our claims services include, upon receiving the required information from you, the notification of the claim or circumstances to insurers, representing you in the resolution of the claim and arranging the collection and/or settlement of the claim in accordance with market practice and your policy terms and conditions. Where claims are to be dealt with by you with insurers directly, we will provide advice and support as requested. We may use third party claims services, however, where we intend to do so we shall inform you prior to the inception of the insurance contract.

#### **Additional Services**

If requested, available and appropriate, we may agree to provide you with additional services which fall outside our core service provision. Such services may be subject to the agreement of additional remuneration. We do not offer advice in relation to tax, accounting, regulatory or legal matters (including sanctions) and you should seek separate advice as you consider necessary regarding such matters.

## BUSINESS PRINCIPALS

### Remuneration & Terms of Trade

Our remuneration for the services we provide you will be by a service fee as agreed with you. You must pay us within 14 days of the date of the invoice. You can choose to pay by credit card, electronic funds transfer (EFT), cheque and/or cash.

#### *CPI Increase*

You acknowledge and agree that our fees under this Agreement will be subject to an annual increase in accordance with the increase in the consumer price index ("CPI") for the previous 12 months.

#### *Premium Funding*

If we facilitate premium funding for you, we will receive a commission and/or fee from the premium funder. This commission is typically calculated as a percentage of your insurance premium, which includes stamp duty, emergency/fire services levy, GST, and any other applicable government charges, taxes, or fees. We earn the commission and/or fee once you authorise us to arrange or issue a financial product. Additionally, premium funders may pay an annual distribution fee for the loan business Lockton introduces.

### Other Benefits

From time to time our Associates may receive certain hospitality benefits (such as tickets to sporting events, movies, meals, bottles of wine, hampers). The receipt of these benefits is not based upon the volume of business placed with the provider but is more of an ad hoc reward received in the normal course of duty and are in compliance with our policies in relation to conflict of interest, bribery and corruption. You have the right to request further information in relation to the remuneration, the range or rates of remuneration and soft dollar benefits received by the licensee and/or representatives.

### Electronic Communications

We may communicate by electronic mail with each other and with other parties with whom we need to communicate, to provide services to you, sometimes attaching further electronic data. We will also use hyperlinks to provide you with information and disclosure documents. By agreeing for us to provide services to you, you agree to receive communications by email, including updated versions of this document. By engaging in this method of communication, we and you accept the inherent risks (including the security risks of interception of or unauthorised access to such communications, the risks of corruption of such communications, and the risks of viruses or other harmful devices). Notwithstanding that we have reasonable virus checking procedures on our system, you will be responsible for virus checking all electronic communications sent to you. You will also be responsible for checking that messages received are complete and legitimate. In the event of a dispute neither of us will challenge the legal evidential standing of an electronic document and our system shall be deemed the definitive record of electronic communications and documentation.

### Complaints & Dispute Resolution

If you are not fully satisfied with our services, please contact your Lockton representative and inform them of your complaint or the dispute. The Lockton representative will pass on your complaint to Lockton's Complaints/Disputes Manager. We will acknowledge your complaint/dispute in writing within two business days of receipt and endeavour to resolve your problem as soon as possible and otherwise within 30 business days.

If your complaint cannot be resolved by us to your satisfaction, Lockton is a member of the Australian Financial Complaints Authority ("AFCA") and you have the right to refer the complaint to AFCA. You may submit a complaint by using AFCA's online form, writing to AFCA or by contacting AFCA by telephone. By submitting a complaint, the complainant is deemed to have agreed to have the complaint considered under the AFCA rules. AFCA can be contacted as follows:

- Phone: 1800 931 678;
- Online: [www.afca.org.au](http://www.afca.org.au); or
- Post: GPO Box 3, Melbourne, VIC 3001.

### Provision of Information & Ownership

All activities undertaken by us as outlined in this document are provided for your exclusive use and all data, recommendation, proposals, reports, and other information provided by us in connection with our services are for your sole use. You agree not to permit access by any third party to this information without our express written permission, which must not be unreasonably withheld, other than if such access is required by law or for the purposes of obtaining advice (legal, financial, other). While you retain ownership of all physical insurance contract documents, slips and any other documents created by us for you in the performance of the services ("Documents"), subject to the duties of confidence set out in this document, ownership of all intellectual property rights vests in and remains with us. We grant you a non-exclusive, perpetual, royalty-free licence to use and reproduce the Documents for your own internal business purposes, subject to the provisos in this document. We reserve our right to take action to protect proprietary information.

## **Confidentiality**

Lockton will keep all information received from you confidential and use it solely for the purpose of performing our services. Lockton may disclose to third parties a client's confidential information where:

- i) disclosure is required to satisfy Lockton's legal obligations or regulatory requirements;
- ii) disclosure is reasonably required to carry out the services; or
- iii) such information is, other than, as a result of a breach of any obligation of confidentiality owed by any person to the client, in the public domain or rightfully in Lockton's possession.

Lockton will as soon as practicable provide, destroy, return or cause the provision or return of all documents and other materials in Lockton's possession, custody or control which contain, relate to, or concern the client (including any material created or developed by Lockton or any Lockton personnel) on the client's written demand.

## **Privacy and Data Protection**

We are committed to protecting your privacy and will apply reasonable endeavours to comply with the *Privacy Act 1988* (Cth) and the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth) and where applicable the European General Data Protection Regulations (2018) and any further amendments. We use the information you provide to advise about and assist with your insurance and risk management needs. We will apply reasonable endeavours to keep any personal information in our possession or control secure from loss or specialised access, modification or disclosure, and will return such information on request, and notify you if there are any data breaches in relation to the information. Further details as to how we will collect, hold, use and disclose your personal information are contained in our privacy policy available here <https://global.lockton.com/au/en/privacy-notice>. A copy of your file is available on request.

## **Third Party Rights**

Unless otherwise agreed between us in writing, and to the extent permitted by applicable law, no term of this Agreement is enforceable by a third party, except by members of Lockton Companies LLP.

## **Restraint**

You may not, without prior written consent of Lockton, during and for a term of thirteen months after termination or expiry of this agreement, directly or indirectly solicit or offer employment or otherwise engage any former employee or contractor of Lockton with whom you or any of your personnel have come into contact during the course of negotiating for, or in the provision of, the Services provided by Lockton. If, for your own benefit or the benefit of another organisation related to your entity, you directly, or indirectly solicit or induce, or endeavour to solicit or induce, any employee or contractor of Lockton to terminate their arrangements with Lockton for the purposes of transferring these service arrangements to yourself or another associated organisation or entity (as defined under the Corporations Act), we reserve the right to injunctive and equitable relief.

## **Limit of Liability**

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total aggregate liability of Lockton to the client and anyone claiming by or through the client, for any and all claims, losses, costs or damages of any nature whatsoever related to the services or the Agreement, from any cause or causes, shall not exceed \$1,000,000. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law. The cap should not apply to loss caused by us with regards to:

- fraud, criminal offence, wilful default or wilful misconduct or gross negligence;
- personal injury to, or illness or death of any person;
- damage to, or loss of destruction of, a third party's property;

Where you agree, or have agreed, a separate limitation of liability in any other agreement with us or any of the Lockton group companies, including for services not covered by this Agreement, the higher limit of liability set out in any of such agreements shall apply as the total overall liability of Lockton Companies LLP and the Lockton Group Companies under all agreements you have entered into with us and all other Lockton Group Companies, collectively, ("Total Limit of Liability") and the limits of liability set out in such other agreements will not serve to increase our or any Lockton Group Companies liability above such Total Limit of Liability. Any amount paid by us or any Lockton Group Companies under any agreement with you shall be taken into account against any such Total Limit of Liability to reduce such Total Limit of Liability available accordingly.

## **What Arrangements Do We Have in Place to Compensate Clients for Losses?**

Lockton has a professional indemnity ("PI") insurance policy in place. The PI insurance covers us and our Associates for claims made against us and our Associates by clients as a result of the conduct of us or our Associates in the provision of financial services. Lockton confirms that it has arrangements in place to ensure it continues to maintain Professional Indemnity insurance in accordance with s.912B of the Corporations Act. In particular, our PI insurance, subject to its terms and conditions, provides sufficient indemnity to the Sum Insured and our representatives and employees in respect of our authorisations and obligations under our AFSL. This insurance will continue to provide such coverage for any representative or employee who has ceased work with Lockton or work done whilst engaged with us.

### **Financial Crimes Prevention**

As a financial service provider, we have an obligation under the *Anti-Money Laundering and Counter Terrorism Finance Act 2006* (Cth) to verify your identity and the source of any funds. This means that we will ask you to present identification documents such as a passport and driver's licence. We will also retain copies of this information in accordance with our privacy policy. We assure you that this information will be held securely. We cannot provide you with services if you are unwilling to provide this information. We will comply with all applicable laws, regulations, rules, codes and sanctions relating to financial crimes of jurisdictions that we do business in (including but not limited to the Australian Criminal Code, the UK Bribery Act, UK Criminal Finance Bill and the US Foreign Corruption Practices Act) and shall not engage in any activity, practice or conduct which would constitute an offence or breach of any relevant requirements.

### **Conflicts of Interest**

Circumstances may arise where we may find we have a conflict of interest or otherwise have a material interest in or related to a matter in respect of which we are acting. We have conflict management procedures and we seek to avoid conflicts of interest, but where a conflict is unavoidable, we will explain the position fully and manage the situation in such a way as to avoid prejudice to any party. The insurance market is complex and there could be other relationships not described here which might create conflicts of interest. Whatever the circumstances, we will act in your best interests and, if a conflict arises from which there is no practicable solution, we will withdraw unless you wish us to continue to act for you and provide us with your written consent to that effect.

### **Ethical Business Practice**

We do not tolerate unethical behaviour either in our own activities or in those with whom we seek to do business. We will comply with all applicable laws, rules, regulations and accounting standards.

### **Termination**

Our services may be terminated either by us or you upon the giving of 30 days' notice in writing to the other or as otherwise agreed. In the event our services are terminated by you, we will be entitled to receive any and all fees or brokerage payable in accordance with the terms of "Remuneration" set out above. If such remuneration has not been received by us in full at the time notice of termination becomes effective, you agree to pay us any outstanding amount within 7 days of the effective termination date and thereafter on demand.

### **How Can We Be Contacted?**

You can provide us with instructions in person, by telephone or email or in writing. Our contact details are at the end of this document.

### **Amendments – Changes to this TOBA**

Information in this document may change from time to time. You agree that we have a right to amend this document and any changes after notice is given may take effect either immediately or at such later date as the notice may specify.

[www.locktonaustralia.com.au](http://www.locktonaustralia.com.au)

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