

# **Terms of Business Agreement – Private Health**

Lockton Companies Australia Pty Ltd –17 July 2023 (Version 3.1)

## INTRODUCTION

Lockton Companies Australia Pty Ltd (“Lockton”) is an insurance intermediary and risk advisory firm approved to provide private health insurance broking and advisory services in Australia by the Private Health Insurance Intermediaries Association (“the Association”). Lockton is a member of the Private Health Intermediaries Association and is a signatory to The Private Health Insurance Intermediaries Code of Conduct which approves us to advise and deal in private health 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 private health insurance broking and advisory 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

### Private Health Insurance Services

We will discuss with you and your representatives your organisational private health insurance requirements, including the scope of services to be provided by us. Upon receipt of your instructions, whether written or oral, we will use all reasonable endeavours to implement your requirements, subject to available terms and conditions of private health insurers. 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.

### 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.

### Change in Circumstances

It is vital that you advise us of any departure from your "normal" form of business (i.e. that which has already been conveyed to your insurers). For example, acquisitions, changes in occupation or location, new products, or new overseas activities. In order to ensure proper protection, please consult with us if you are in any doubt as to whether your insurer should or should not be told of certain changes.

### Renewals

We will give you at least 14 days' notice of expiry of an employer funded private health insurance program which we arranged or last renewed for you. At that time, we will send you an offer to renew the insurance program. In some circumstances we may be able to arrange for the insurer to cover you temporarily before payment is received, but we cannot guarantee this. We will notify you when renewal has been affected. If you arranged or renewed insurance directly with an insurer or through another broker, we will not be responsible for notifying you of expiry or arranging renewal unless you ask us to do so. For an employee funded private health insurance program, premiums increase annually effective 1 April in line with the annual private health insurance premium round increase. The appointed insurer/s will notify each member of their applicable premium increase in line with the industry-developed Private Health Insurance Code of Conduct.

### Remuneration

Our remuneration for the services we provide you will be either brokerage commission, which is a percentage of the insurance premium paid by you and allowed to us by the insurer, with whom your insurance contract is placed or a fee as agreed with you. In some circumstances, we may receive a fee and brokerage. You agree that brokerage and fees are fully earned by us once a policy of insurance is placed for the period of the contract and we shall be entitled to retain all remuneration in respect of the full period of the insurance contract placed by us, notwithstanding if you decide to withdraw our appointment mid-term. We shall disclose the form and amount of remuneration we will earn in accordance with regulations.

### *Introducers (Referrers) and Distributors*

It may be appropriate (and for your benefit) for us to use other third parties such as introducers, distributors or other insurance intermediaries. These parties may also earn and retain commission for their role in providing products and services for you or in recognition of services they provide to us in relation to your business. Where a percentage of our remuneration is shared with a third party, we confirm that the overall remuneration has not been increased to allow for any such sharing.

### Terms & Method of Payment

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.

### 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.

### Complaints & Dispute Resolution

If you are not fully satisfied with our services, please contact our Complaints/Disputes Manager and tell them about your complaint or dispute (for further information, please refer to: <https://global.lockton.com/au/en/complaints-process>). We will acknowledge your complaint/dispute in writing within two business days of receipt and endeavour to resolve your problem within 15 business days.

If your complaint cannot be resolved by us to your satisfaction, you have the right to refer the matter to the Commonwealth Ombudsman Private Health Insurance. A person may submit a complaint by using Commonwealth Ombudsman Private Health Insurance online form, writing to the Commonwealth Ombudsman or by contacting the Commonwealth Ombudsman by telephone (1300 362 072). By submitting a complaint, the complainant is deemed to have agreed to have the complaint considered under the rules. See [www.ombudsman.gov.au](http://www.ombudsman.gov.au) for further information.

### 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.

## 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 specialised 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.

## BUSINESS PRINCIPALS

### 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, subject to the duties of confidence set out in this document, ownership of all intellectual property rights in any Placing Documents vests in and remains with us. We grant you a non-exclusive, perpetual, royalty-free licence to use and reproduce the Placing 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.

### Privacy and Data Protection

We are committed to protecting your privacy in accordance with the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth) ("Privacy Amendment Act") 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. A copy of our privacy policy is available here <https://global.lockton.com/au/en/privacy-notice> and a copy of your file is available on request.

### Confidentiality

Lockton will keep all information received from you confidential and use it solely for the purpose of performing our services. Lockton may disclose a client's confidential information to third parties, 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 immediately 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. However, Lockton may retain in its files copies of such documents and other materials to the extent required by, or to comply with, any applicable legal or regulatory obligations or pursuant to an internal electronic back-up policy.

### Limit of Liability

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, 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 \$10,000,000. 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;
- breach of intellectual property rights; or
- breach of privacy laws.

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

Lockton has professional indemnity (PI) insurance 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 PI insurance in accordance with s.912B of the *Corporations Act 2001* (Cth) (as amended). 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 Australian Financial Services Licence ("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 Corrupt 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.

### **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.

### **Termination**

Our services may be terminated either by us or you upon the giving of 30 days' notice in writing to the other party 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.

### **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 and 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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