

## **Terms of Business Agreement & Financial Services Guide**

### NOT INDEPENDENT

While we will always seek to act in our clients' best interests, we do not fall within the strict definitions of "independent", "unbiased" or "impartial" under section 923A of the *Corporations Act 2001* (Cth) ("Corporations Act"). The reason we may not fall within these definitions is because some third parties may pay us commissions for the services that we provide and / or offer to our clients rather than for our clients to pay us directly. Further information about these benefits and how we manage our conflicts of interest is set out in this Terms of Business Agreement and Financial Services Guide ("FSG") ("Agreement").

### INTRODUCTION

Lockton Companies Australia Pty Ltd ("Lockton") is an insurance intermediary authorised 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 authorizing us 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 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;
- information when purchasing a financial insurance product recommended by us; 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 enter into this Agreement 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, this Agreement binds the company and each of the group companies if they also receive the benefit of our services.

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

These Terms of Business supersede and replace any previous Terms of Business you may have received from us. If you continue to do business with us and we do not hear from you, or receive an instruction or confirmation of an order to arrange cover on your behalf, 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 your appointment 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

### Insurance & Risk Advisory Services

We will discuss with you and your representatives your risk and insurance requirements, including the scope of cover, the limits to be sought and cost. Upon receipt of your instructions, whether written or oral, we will use all reasonable endeavours to implement your insurance programme, subject to available insurers, before the intended date of inception, renewal or extension of cover (whichever is appropriate). If you have not provided specific instructions, you authorise us to take such steps as are reasonably necessary to ensure continuity of insurance coverage including placement or extensions and agree to pay all premiums, fees, charges and penalties that may arise from such placement, extension or later alteration thereof.

### Claims Administration Services

Where agreed with us by you, we will provide our claims administration services during the period of our appointment for the policies placed by us. 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.

### Claims Preparation Services

In addition to claims advisory and administration services which are outlined above we also provide claim preparation services which is at an additional cost, but which will be funded by Underwriters (usually with their permission / agreement) under the "Claims Preparation" cover included within your policy.

The intention of this cover and the service is to make available to the business and the management team expert claim resources to efficiently navigate the claim process, prepare and document best practice claim(s) in accordance with the available cover, and to engage where required with Underwriters and their appointed experts and loss adjusters to obtain timely interim payments and responses to claim(s) as they are provided.

A formal letter of engagement will be provided which will set out the available Claims Preparation cover and costs associated with the specific insured incident / event.

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 (including Claims Preparation Services referred to above) may be subject to the agreement of additional remuneration. Such services may include catastrophe or analytical modelling services in which case a separate Limit of Liability will apply – please see further below. 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.

## YOUR RESPONSIBILITIES & KEY INSURANCE INFORMATION

### Insurance Contracts Act

By virtue of the *Insurance Contracts Act 1984* (Cth) ("Insurance Contracts Act"), we are obliged to advise you of certain duties and limitations which apply to your policy. The following statements pertaining to disclosure and non-disclosure are in the form as prescribed in the Regulations insofar as they concern contracts of insurance.

The words "before you enter into a contract of insurance" hereunder include:

- the initial contract;
- an interim contract of insurance such as a placing slip or cover note;
- the making of an agreement by the parties to a contract of insurance to renew, extend or vary the contract; and
- the reinstatement of a previous contract of insurance.

The *Marine Insurance Act 1909* (Cth) ("Marine Insurance Act") governs policies which are classed as marine insurance policies and takes precedent over the Insurance Contracts Act. Some examples of policy classes which are subject to the Marine Insurance Act include (but are not limited to) Marine Hull & Machinery Insurance, Cargo Insurance and Transit & Storage Insurance.

### Disclosure of Information

#### *General and Life insurance contracts*

Before you enter into an insurance contract, you have a duty to tell the insurer anything that you know, or could reasonably be expected to know, that may affect the insurer's decision to insure you and on what terms. You have this duty until the insurer agrees to cover your risk. You have the same duty before you renew, extend, vary, or reinstate an insurance contract.

You do not need to tell the insurer anything:

- that reduces the risk they insure you for; or
- is common knowledge; or
- they know or should know as an insurer; or
- they waive your duty to tell them about.

### *Eligible contracts - consumer insurance contracts*

Eligible contracts are those where a natural person is purchasing including: Motor Vehicle, Home, Contents, Accident & Sickness, Consumer Credit or Travel insurance and as defined by the Insurance Contracts Act. Before you enter into these insurance contracts, you are required by the Insurance Contracts Act to exercise reasonable care to avoid misrepresenting information to the insurer (your obligation). If the insurer asks you questions that are relevant to the insurer's decision to insure you and on what terms, you must tell them anything that you know and that a reasonable person in the circumstances would include in answering the questions. To fulfil your duty, your responses must be truthful, accurate and complete. Also, the insurer may give you a copy of anything you have previously told them and ask you to tell them if it has changed. If they do this, you must tell them about any change or tell them that there is no change. If you do not tell them about a change to something you have previously told them, you will be taken to have told them that there is no change. You have this duty until the insurer agrees to insure you extend, vary or renew the contract.

### *Non - disclosure - if you do not tell the insurer*

If you do not tell the insurer something you are required to, they may cancel your contract or reduce the amount they will pay you if you make a claim, or both. If your failure to tell them is fraudulent, they may refuse to pay. If you are unclear about your Duty of Disclosure or Duty not to misrepresent or require more information about how to comply please contact your Lockton representative for assistance.

### **Your Insurance Policy**

You are responsible for reviewing the evidence of insurance cover to confirm that it accurately reflects the cover, conditions, limits and other terms that you required. Particular attention should be paid to any policy conditions, subjectivities and warranties, as failure to comply may invalidate your coverage and the claims notification provisions. If there are any discrepancies, you should consult us immediately. Further, you should review the insurance premium payment terms provided to you. All premium payment terms must be met on time or your insurers may have the right to affect a notice of cancellation for non-payment of premium. We shall also advise of any charges which are additional to the insurance premium. We will send you any policy documents, if applicable, and any amendments or endorsements to your policy as soon as reasonably practicable.

### **Retail Client Notice – General Advice Warning**

Under the Corporations Act and associated Regulations, retail clients are provided with additional levels of protection from other insurance purchases. The Corporations Act defines "retail clients" as:

- individuals or a small manufacturing business employing less than 100 people or any other business employing less than 20 people; and
- that are being provided a financial service or product that relates to the following insurance covers: motor vehicle (under 2 tonne), home building, contents, personal and domestic, personal accident or sickness, travel, consumer credit and other classes as prescribed by regulations.

If you are a retail client and a Statement of Advice ("SoA") or further information is not provided to you with your invoice, then the advice that you have been given related to that transaction is general advice. "General advice" is advice that has been prepared *without* considering your current objectives, financial situation and needs. Therefore, before acting, you should consider the appropriateness of the advice having regard to your current objectives, financial situation and needs. If we recommend the purchase of a particular financial product, we will also give you a Product Disclosure Statement ("PDS") at that time, which sets out details specific to that product and the key benefits and risks in purchasing the product.

### **Change in Circumstances/Variations**

You should carefully monitor and review that your insurance contract is adequate to cover your assets or business activities and 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.

If you want to vary any cover, e.g. by increasing the sum insured or adding other property, business activities etc., please provide us with details of the changes you require and any other information you need to disclose to the insurer. We will arrange the variation with the insurer and provide you with written confirmation. Please consult with us if you are in any doubt as to whether your insurer should or should not be told of certain changes.

### **.Claims**

You are responsible for notifying claims or potential circumstances that may give rise to a claim in accordance with the terms and conditions of your insurance contract. To ensure full protection under your policy or similar documentation you should immediately familiarise yourself with the coverage conditions or other procedures relating to claims and to the notification of those claims. Failure to adhere to the notification requirements, particularly timing, as set out in the policy or other coverage document, may entitle insurers to deny payment of your claim. In presenting a claim it is your responsibility to disclose all facts which are material to the claim.

Where we collect claims payments, they will be remitted to you as quickly as possible. However, we will not remit claims monies to you before we have received them from insurers.

Claims may be made against certain policies long after they have expired. It is important, therefore, that you keep your policy documents in a secure place. It is generally the case that claims may become unenforceable by way of legal proceedings (or in some jurisdictions, completely extinguished) if they are not pursued by legal proceedings commenced within the relevant limitation period applying to your claim in the jurisdiction in question. It is your responsibility to monitor the position on limitation periods applying to your claims and to commence legal proceedings in relation to your claims where this is necessary. It is also your responsibility to enter into "standstill" or "tolling" agreements in order to suspend the application relevant limitation periods, where this is desirable. We will not commence legal proceedings or enter into

standstill/tolling agreements on your behalf, nor will we advise you if and when to do so. On these issues we recommend you take your own legal advice.

### **Renewals**

We will give you at least 14 days' notice of expiry of any insurance contract which we arranged or last renewed for you. At that time, we will send you an offer to renew the insurance contract and in time invoice you for the cost of renewal. If you want to change the details of the cover, contact us as soon as you receive the renewal offer. If you wish us to renew the contract on your behalf, you must provide us with written instructions to do so and pay the premium and other charges before the date shown on the invoice. We will notify you when renewal has been affected. If necessary, we will automatically renew your existing policy with your current insurer as per expiring policy details, to make sure that you remain protected in circumstances where we are unable to contact you to obtain instructions.

### **Sums Insured – Average and Co-Insurance**

Some insurance contracts require you to bear a proportion of each loss or claim if the sum insured is inadequate to cover the amount of the loss. These provisions are called 'average' or 'co-insurance' clauses. If you do not want to bear a proportion of any loss, when you arrange or renew your contract of insurance, you must ensure that the amount for which you insure is adequate to cover the full potential of any loss. If you insure on a new for old basis, the sum insured must be sufficient to cover the new replacement cost of the property.

### **Interests of Other Parties**

Some insurance contracts do not cover the interest in the insured property or risk of anyone other than the person named in the contract. Common examples are where property is jointly owned or subject to finance but the contract only names one owner or does not name the financier. Please tell us about everyone who has an interest in the property insured so that we can ensure that they are noted on the contract of insurance.

### **Cancellation/Alteration**

We cannot cancel a contract of insurance:

- without written instructions from a person(s) who is authorised to represent each of the parties who are named as insureds in the contract of insurance; or
- which is subject to the Marine Insurance Act.

If there is a refund of premium owed to you as a result of a cancellation or alteration to a policy, we will retain any fee we have charged you. We may also retain commission depending on our arrangements with the relevant insurer.

### **Cooling off Period**

If you decide that you do not need a contract of retail insurance which has been arranged on your behalf, you have a minimum of 14 days from the earlier of the date you receive confirmation of the contract and the date it was arranged to change your mind. You must tell the insurer in writing that you wish to return the insurance contract and have the premium repaid. If you do so, the insurance contract will be terminated from the time you notified the insurer, and the premium will be returned. The insurer may retain its reasonable administration and transaction costs and a short-term premium. You cannot return the contract of insurance if it has already expired or if you have made a claim under it.

### **Standard Covers**

The Regulations to the Insurance Contracts Act set out standard terms for the cover which is provided by motor vehicle, home buildings, home contents, sickness and accident, consumer credit and travel insurance (including a minimum amount of insurance). If an insurer wants to alter these terms or offer less than the minimum amount of insurance, they must clearly inform you in writing that they have done so. They can do this by providing you with a Product Disclosure Statement or a copy of the insurance contract.

### **Claims Made Policies**

Some kinds of liability policies (including professional indemnity, directors & officers and trustees' liability) are usually issued on a "claims made" basis. This means that (subject to the other terms of the policy) the policy covers claims made against you during the period of insurance. Under section 40(3) of the Insurance Contracts Act, if your policy is a "claims made" policy, and if you give notice in writing to the insurer of facts that might give rise to a claim against you as soon as is reasonably practicable after you become aware of those facts but before the period of insurance expires, the policy will cover (subject to the other terms of the policy) any subsequent claim against you that arises from those facts, even if that claim is not made until after the period of insurance has expired. (If you presently have a "claims made" policy, please consider whether there are any facts that should be notified to your present insurer before that policy expires). If your policy is a "claims made" policy, and if it has a "retroactive date", it will not cover any claim that arises from any act, error, omission or conduct that occurred before that date.

### **Waiver of Rights (Subrogation)**

You may prejudice your rights with regard to a claim if, without prior agreement from your insurers, you enter into an agreement with a third party that prevents the insurer from recovering the loss from another party. Your policies contain provisions which allow the insurer to recover their liability from the responsible party. Any agreement you enter into that excludes or limits your rights to recover damages from another party in relation to any loss, damage or destruction, contravenes these provisions. If you have any such agreements, we may be able to negotiate with your insurer to permit them and therefore we request you to advise us of their existence. Examples of such agreements are the "hold harmless" clauses, which are often found in lease agreements, maintenance and supply contracts and in repair contracts.

### **Unauthorised Foreign Insurer**

Some insurance contracts may have been placed wholly or partly with a foreign insurer that is not authorised under the *Insurance Act 1973* (Cth) ("Insurance Act") to conduct insurance business in Australia ("Unauthorised Foreign Insurer" or "UFI"). Such insurers are not subject to the provisions of Insurance Act which establishes a system of financial supervision of insurers in Australia that is monitored by the Australia Prudential

Regulation Authority ("APRA") and the Financial Claims Scheme for insolvent insurers. As the insurer is not subject to Australian law you may have to resolve any dispute in a foreign jurisdiction.

### **Who Is Responsible for the Financial Services Provided?**

As your insurance broker, we act for you, as your agent, unless we tell you otherwise. At times Lockton issues insurance through a binder or agency with an insurer. When we do this, we are acting as the agent of the insurer. We will always tell you when the product we are recommending or arranging is being done through a binder.

### **Payment of Premium**

You agree to provide settlement with cleared funds of all monies due in accordance with the payment date(s) specified in our debit note or other relevant payment documentation ("Payment Date"). Failure to meet the Payment Date may lead to insurers cancelling your policy particularly where payment is a condition or warranty of a contract. We are under no obligation to pay premium by the Payment Date to insurers on your behalf. You agree that we may retain all insurance credits on your account and utilise those funds to offset any current outstanding debit amounts unless you advise otherwise. If there are no outstanding debit amounts on your account, please provide your EFT / bank deposit slip details via email as soon as possible, so we may remit funds back to you.

### **Misstatement of Premium**

We make every effort to correctly determine the premium and statutory charges that apply to your insurance, however, occasional unintentional errors can occur. If an amount has been misstated, we reserve the right to correct the amount. Where permitted by law, you shall not hold us responsible for any loss that you may suffer as a result of any such misstatement.

### **How Will I Pay for the Services Provided?**

For each insurance product the insurer will charge a premium that includes any relevant taxes, charges, and levies. We often receive a payment based on a percentage of this premium (excluding relevant taxes, charges and levies) called "commission", which is paid to us by the insurers. However, in some cases we will also charge you a broker administration fee. All fees charged will be shown on the invoice that we send you and for retail clients we will also disclose the dollar amount of any commission earned. Alternatively, we may rebate all commissions to you and charge you a fee based upon the nature of the service we provide. Commission and fees are earned for the policy period, and we will be entitled to retain all commission and fees in respect of the full policy period.

### **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 that you decide to withdraw our appointment mid-term. We shall disclose the form and amount of remuneration we will earn in accordance with regulations.

#### *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.

#### *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.

#### *Interest Earned on Trust Account*

When you pay us your premium it will be banked into our trust account. We retain the commission from the premium you pay us and remit the balance to the insurer in accordance with our arrangements with the insurer. We will earn interest on the premium while it is in our trust account, or we may invest the premium and earn a return. We will retain any interest or return on investment earned on the premium.

#### *Other Revenue*

We provide services to insurers that are not directly related to the services provided to you and we receive usual and customary remuneration in recognition for those services. This remuneration may be a work transfer, management or administration fee. These payments recognise the services we provide to the insurer over that given period. It may be appropriate and for your benefit for us to use a member of Lockton Companies LLP or another intermediary to assist us in fulfilling your insurance requirements. These companies may receive usual and customary remuneration for the services they provide. If any such parties are part of Lockton Companies LLP, we will disclose the form of compensation they will earn before insurance is purchased. Where we have used an electronic data interface ("Sunrise") to process your policy, we may receive an additional commission amount of between 1.0 - 2.5% for utilising this system. This amount is included in our commission earned and is not an additional charge to you.

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.

Any premium funding arrangement will be subject to a separate agreement between you and the premium funder.

### **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.

### **How Are Commissions, Fees or Other Benefits Calculated for Providing Financial Services?**

Commission will be calculated based on the following formula:  $X = Y\% \times P$ . In this formula: X = our commission, Y% = the percentage commission paid to us by the insurer. Our commission earned varies between 0% and 30%, P = the amount you pay for any insurance policy (less any government fees or charges included in that amount). Our charges include GST. Some of our charges may be tax deductible.

### **How Are Our Associates Paid?**

Our Associates that assist you with your insurance needs will be paid in two ways – salary and a bonus or incentives.

### **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 is 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.

### **Insurers We Use**

When we recommend an insurance policy for you, we will usually only consider the policies offered by the insurers or insurance providers whose security has been examined and approved by our Market Security Committee. In giving you advice about the costs and terms of recommended product or policy, we have not compared those policies to all other policies available in the market. We undertake a review of all insurers with which we deal with on an annual basis.

### **Market Security**

The purpose of market security monitoring and evaluation is to ensure, as far as possible, that risk is transferred to (re)insurers with the resources to bear that risk when the insurance policy is placed. However, Lockton does not guarantee the performance of any insurer or intermediary with which we place your business.

### **Underwriting Agents & Wholesale Brokers**

In some cases, we use the services of an underwriting agent and wholesale brokers (insurance intermediary) to access products that are not available to us directly from the underwriter. You can identify where we have used an insurance intermediary as the invoice and schedule will show that the policy is placed via another insurance intermediary. This situation usually arises where the insurance intermediary has developed a specialised product and competitive pricing for risks that are not commonly available directly but via the insurance intermediary. All insurance intermediaries that we deal with are required to hold an AFSL and to place all client funds received into a Trust Account and are required to meet the same high standards in the delivery of the services that apply to us. Importantly all claims will be the ultimate responsibility of and paid for by the insurer. In such cases should you wish to access the FSG of the Underwriting Agency or Broker please contact us and we will arrange to have a copy sent out to you.

### **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.

### **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.

## 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.

If you have a complaint about a policy that we arranged under a Lloyd's Coverholder binder authority that cannot be resolved to your satisfaction by us, you have the right to refer the matter to Lloyd's Australia Limited who can be contacted as follows:

- Phone: (02) 8298 0783;
- Email: [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com); or
- Post: Suite 1603/ 1 Macquarie Place, Sydney, NSW 2000.

## BUSINESS PRINCIPLES

### Provision of Information & Ownership

All activities undertaken by us as outlined in this Agreement 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 ("Placing Documents"), 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.

### 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.

### 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:

- i) where disclosure is required to satisfy Lockton's legal obligations or regulatory requirements; or
- ii) where disclosure is reasonably required to carry out the services; or
- iii) where 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 endeavors 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.

### 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 \$10,000,000. It is intended that this limitation will 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;
- personal injury to, or illness or death of any person; or

- 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.

### **Limit of Liability for Analytical Services**

If we are retained to provide any catastrophe or analytical modelling services, our total liability for those services will be AUD\$1 million.

### **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 PI 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 ceased work performed 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.

Further, our claims services will cease where we are satisfied that you have appointed another broker or adviser to act as your agent. If a loss adjustor is appointed, we shall, with your permission, pass on your contact details and co-ordinate meetings. In the case of a major loss, we can attend the initial meeting with the loss adjustor if you wish us to. We will promptly forward to you all claims documentation, insurance company settlement cheques and other information. If any claims are outstanding when you terminate our appointment as your insurance broker, we will provide details of the claim(s) to your new insurance broker so that they may continue to negotiate settlement on your behalf.

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

Information in this Agreement may change from time to time. You agree that we have a right to amend this Agreement 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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