
MODEL AGENCY AGREEMENT

FOR

SELLING OF GENERAL INSURANCE

**General Insurance Council of
The Hong Kong Federation of Insurers
2011**

AGENCY AGREEMENT

DATED:

PARTIES:

("the Company")

("the Agent")

AGREEMENT:

1. Appointment

- 1.1 With effect from the date of registration with the Insurance Agents Registration Board ("IARB") as the Company's appointed insurance agent (as defined in the Insurance Companies Ordinance Cap. 41, Laws of Hong Kong ("the ICO")), the Agent shall act as the agent of the Company in Hong Kong for the purpose of introducing General Business as defined in the ICO to the Company during the continuance of this Agreement and subject to the terms hereof including any schedule hereto as from time to time varied and other instructions and directions given pursuant hereto.
- 1.2 The Agent shall act as the agent of the Company and shall not accept appointment as the agent of any other company or person for the introduction of insurance business of any class without the prior consent of the Company (such consent not to be unreasonably withheld).
- 1.3 It is understood and agreed that there is no employer-employee relationship either expressed or implied between the Company and the Agent and nothing contained herein shall be construed to create such relationship.
- 1.4 Without prejudice to the provisions of Clause 8.1 and Clause 8.2, the Company may by notice to the Agent discontinue either permanently or for such period as it shall think fit the acceptance of any new business of any class or classes (including the renewal of policies) by the Agent (where applicable) or discontinue either permanently or for such period as it shall think fit the acceptance of business introduced by the Agent to the Company and for the avoidance of doubt may discontinue for such period as the Company thinks fit all business of the Agent hereunder. Forthwith upon receipt of such notice, the Agent's authority (if any) to accept any risk or issue cover notes or policies in respect of the relevant class or classes of business shall cease. The Agent shall be entitled to continue to receive premiums in respect of existing business in the normal course and shall account for any premiums received as provided in Clause 4. The Agent shall not be entitled to any compensation for such discontinuance but shall remain entitled to receive commission in accordance with the provisions of Clause 5.

2. Duties of the Agent

- 2.1 The Agent shall faithfully and diligently promote the business of the Company and at all times act in accordance with the *Code of Practice for the Administration of Insurance Agents* (in particular the Conduct of Registered Persons for General Insurance Business and Restricted Scope Travel Business as set out in Part G and attached as **Annex 1** to this Agreement), all the Guidance Notes and guidelines issued by the Hong Kong Federation of

Insurers, IARB, the Office of the Commissioner of Insurance and the relevant regulator(s) and as may be amended from time to time.

- 2.2 The Agent shall at all times act strictly in accordance with and subject to the instructions, directions and conditions which may from time to time be given to it by the Company. The Agent shall consult with the Company and obtain its approval in respect of any risks or matter for which the Company has made no provision in its instructions.
- 2.3 The Agent shall in fulfilling its obligations hereunder use such forms, documents, materials and computer software programs (if any) as may from time to time be supplied to it by the Company for the purposes hereof and shall not amend or alter the same without the Company's prior consent. Any proposal form received by the Agent must be promptly forwarded to the Company. If the Agent is authorized to issue or receive cover notes, policies, or other documents in the name of the Company, all such documents issued or received by it shall be promptly copied to the Company.
- 2.4 Subject only to any authorization which may be given pursuant to Clause 3.1, nothing herein shall require the Company to accept any proposal for insurance of any person introduced by the Agent.
- 2.5 The Agent shall give immediate notice to the Company whenever it receives notice of any loss or claim made or to be made under a policy or any breach of any condition of or assignment of a policy, issued through its agency howsoever the Agent is aware thereof.

3. Limitations of authority of the Agent

- 3.1 Unless and to the extent that the Agent is otherwise authorized in writing by the Company, no authority is given to the Agent to accept risks on behalf of the Company, to issue cover notes or policies or bind the Company in any other manner to accept risks, to receive notice of termination or assignment of any policy or to waive breach of any condition of any policy and the Agent shall not represent to a proposed insured or any other person that it is so authorized or that any risk has been accepted or cover effected or policy issued by or on behalf of the Company (whether on an original proposal or on a renewal) unless the Company has so notified the Agent. If the Agent is authorized to accept risks or issue cover notes or policies, then the Agent shall at all times strictly comply with any limits thereon and agrees that such limits may at any time be amended by the Company and it shall not represent to any prospective insured or other person that it is authorized to accept risks or issue cover notes or policies in excess of the limits for the time being applicable.
- 3.2 The Agent shall not print, publish or distribute, or cause to be printed, published or distributed, any book, advertisement, pamphlet or other document containing the name of the Company or otherwise dealing, directly or indirectly, with the business of the Company or display, upload or otherwise use any of the Company's trademark(s) and/or logo(s) to or on the Agent's business website and business publications without the prior consent of the Company.
- 3.3 The Agent is not authorized and shall not represent to any person that it is authorized to accept notice of loss, negotiate terms of settlement, settle or pay any loss or claim save where it is expressly directed so to do by the Company.
- 3.4 The Agent shall not save as specifically otherwise herein provided incur any liability on behalf of the Company, pledge or purport to pledge the Company's credit or make any other contract binding upon the Company.
- 3.5 The Agent shall not give any warranty, representation or promise with reference to policies

issued by the Company save (or except) as authorized from time to time by the Company in writing.

4. Premium

4.1 The Agent shall collect all premiums on policies issued or renewed through its agency ("relevant policies") and notwithstanding any other provision hereof, shall account to the Company for an amount equal to all moneys received by the Agent in payment of any premium.

4.2 The Agent shall pay to the Company, in such manner as the Company may direct, an amount equal to each premium due on relevant policies from the person or company taking out such policy ("the Insured") within _____ () days of the end of the month in which such premium is due from the Insured. The Agent agrees to pay the premiums due on all relevant policies irrespective of whether or not the Agent receives payment from the Insured and to account therefor on the due date for payment by the Agent as aforesaid unless either:

(a) the Agent notifies the Company that the Insured has defaulted in payment of the premium and such notice is received prior to the due date for payment of such premium by the Agent as aforesaid; or

(b) if any policy is cancelled, as from its inception or thereafter, the Agent shall be liable to pay only such premium (if any) as may be due by reason of the cancellation of the policy but where the Agent shall have received a greater sum from the Insured in payment of premium, the Agent shall account for the same to the Company in accordance with Clause 4.2 or if so directed by the Company account to the Insured therefor.

4.3 Without prejudice to the provisions of Clause 4.2, whenever and howsoever it comes to the knowledge of the Agent that an outstanding premium may be doubtful or bad, the Agent shall so advise the Company but such advice shall not constitute notice of default under Clause 4.2 (a).

4.4 If the Agent fails to pay to the Company the premiums in accordance with Clause 4.2, the Agent shall on demand pay all expenses incurred (including but not limited to legal fees) by the Company in recovering any sum due from the Agent or the Insured or any relevant policies.

5. Commission

5.1 The Company shall pay to the Agent commission in respect of policies of the relevant class issued and renewed through its agency at such rate and calculated on such basis as are set out in the Schedule annexed hereto or as shall be decided upon by the Company from time to time and notified to the Agent or as may otherwise be specifically agreed prior to the issue of a policy in respect of any particular matter.

5.2 The Agent shall pay all costs and expenses incurred by it in the performance of its duties hereunder unless otherwise specifically agreed by the Company.

5.3 The Company will declare annually to the Inland Revenue Department the total commission paid to the Agent during the period 1st April in one year until 31st March the following year and the Agent will comply with and observe all ordinances, regulations and statutory instruments as may be currently in force in Hong Kong and shall have particular regard to the Prevention of Bribery Ordinance (Cap. 201). The Company shall be under no liability in

respect of the payment of any commissions received by the Agent other than those paid directly by the Company.

- 5.4 Any part of any commission or discount allowed to the Agent shall not be paid by the Agent to any director, partner or employee of any Insured as an inducement to place the business with the Company unless the prior agreement and approval of the Insured is received in writing. The Agent shall indemnify the Company for any loss, damage or expense resulting from any breach by the Agent of the provisions of this Clause 5.4.

6. Indemnity

- 6.1 The Agent shall indemnify the Company and hold it harmless against all loss, claims, demands, expenses and other liabilities incurred by the Company as a result of any breach of the terms of this Agreement by the Agent including without prejudice to the generality of the foregoing any representation made by the Agent which is not authorized hereunder or otherwise in writing by the Company.

7. Books, Records, Financial Statement and Audit Report (applicable to Corporate Agents)

- 7.1 The Agent shall keep full and proper books of account and other records in respect of and in such form as may from time to time be required by the Company for the purpose of showing all its transactions on behalf of the Company. Such books shall show any and all other matters and things in any way touching the business of the Agent pursuant to this Agreement.
- 7.2 The Company shall have the right at any time during normal business hours to examine such books and records by any officer or authorized representative of the Company (including its auditors) and the Agent shall afford all such facilities for inspection as may reasonably be required.
- 7.3 The Corporate Agent shall, at the request of the Company, deliver to the company an audited financial statement which shows a true and fair view of the financial position of the Corporate Agent (including but not limited to details with regards to the Corporate Agent's profit and loss) as at the end of the financial year.

8. Termination

- 8.1 The Company or the Agent may terminate the Agreement at any time and without giving any reason for so doing by giving _____ () days' notice to the other in writing.
- 8.2 This Agreement shall forthwith terminate without the need for any notice to be given by the Company if:
- (a) the Agent shall (being an individual) die or have a petition for a bankruptcy order to be made against him presented to Court or have a bankruptcy order made against him or any analogous proceedings in any other jurisdiction instituted against him or (being a company) pass a resolution to wind-up or have a petition for winding-up presented against it or any analogous proceedings instituted against it or take any such steps itself in Hong Kong or elsewhere for its winding-up or dissolution; or
 - (b) the Agent shall make a general assignment, composition or arrangement for the benefit of creditors or suspend the transaction of the Agent's usual business or any substantial part thereof, or admit in writing its inability to pay its debts as they become due; or

- (c) any judgement against the Agent shall be entered which for a period of thirty (30) days shall neither be satisfied nor stayed pending appeal ; or
- (d) any receiver or officer of any court or governmental authority shall be appointed or take possession or control of any substantial part of its assets or property or control over its affairs and obligations; or
- (e) in case the Agent is a partnership, if any of the above events shall occur in respect of the firm or any of the partners of the firm; or
- (f) the Agent is de-registered by IARB.

8.3 On termination:

- (a) all forms, documents, materials and computer software programs supplied by the Company to the Agent for arranging contracts of insurance with the Company and the copyright and other intellectual property rights of whatever nature in such forms, documents, materials and computer software programs are and shall remain the property of the Company and shall be returned as the Company may reasonably require at the expense of the Company;
- (b) the Company may if it thinks fit publish and/or circulate to any Insured such notice or notices of the termination of the Agent's appointment and the Company shall have power to carry on business with any such Insured notwithstanding termination of this Agreement;
- (c) the Agent shall account to the Company for all premiums due from it hereunder up to the date of termination and for any premiums received by it whether or not payment thereof to the Company would otherwise be due under Clause 4.2 and any premiums not paid may be deducted from the commission (if any) due to the Agent (but the Company shall not be obliged so to do);
- (d) the Agent shall be entitled to receive all commission accrued to the date of termination but shall not be entitled to any compensation in respect of termination or to commission on premiums due from any Insured after the date of termination; and
- (e) the Company shall if termination is for a cause relating to a breach of the *Code of Practice for the Administration of Insurance Agents* or Part X of the *ICO* notify the IARB of the relevant particulars and notify the Agent that it has so done.

9. Notices

- 9.1 Any consent or notice required to be given or sent hereunder must be in writing and signed by or on behalf of the Agent or the Company (as the case may be).
- 9.2 Any notice hereunder shall be deemed to have been sufficiently given if personally delivered or sent by courier, facsimile or prepaid post to the address of the Company or the Agent (as the case may be) as appearing herein or to such other address in Hong Kong as may from time to time be notified to the Company or the Agent by the other. Any notice so sent shall be deemed to have been served on the day following the date of posting if posted in Hong Kong and in proving such service it shall be sufficient to prove that the envelope containing the notice was properly addressed, stamped and posted. Notice served in any other manner shall be deemed received when in the ordinary course it may have been expected to be received.

10. General

- 10.1 Neither party shall divulge any information in relation to the affairs or business of the other of a confidential nature.
- 10.2 Waiver of any provision hereof or waiver of a breach of any term shall not constitute a waiver in the other provision or of any future breach or breach of any other provision or operate as a continuing waiver.
- 10.3 This Agreement shall not be amended except by written agreement signed by the parties hereto.
- 10.4 This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof as at the date hereof and supersedes any prior agreement or understanding.
- 10.5 The headings used in this Agreement are for convenience only and shall not form a part of this Agreement.

11. Law & Jurisdiction

- 11.1 This Agreement shall be construed in accordance with the laws of Hong Kong and the parties herein irrevocably agree to submit to the exclusive jurisdiction of the courts of Hong Kong.

IN WITNESS whereof the parties hereto have signed this Agreement on the date first before written.

SIGNED BY)
)
 for and on behalf of the Company)
 in the presence of:)

SIGNED by the Agent)
 in the presence of:)

Note: The term "Principal" in Annex 1 attached refers to the Company in this Agreement as that term has been defined in the Code of Practice for the Administration of Insurance Agents as *"means an insurer to whom Part X of the Ordinance applies. However, unless otherwise stated, persons collectively represented as a syndicate of Lloyd's shall be treated as one Principal for the purposes of any insurance business relating to the syndicate"*.

Conduct of Registered Persons for General Insurance Business and Restricted Scope Travel Business

74. A Registered Person shall at all times conduct business in good faith and with integrity.
75. In the event of a complaint concerning the conduct of a Registered Person, the Registered Person shall co-operate with the IARB and the Principal or insurance agent concerned to establish the facts. The complainant should be informed that he should in the first instance refer the complaint to the relevant Principal or insurance agent. If the complainant is still dissatisfied he may refer the matter to the IARB.
76. A Registered Person shall:-
- (a) ensure that he is registered with the IARB in respect of the Line of Insurance Business to be engaged in prior to conducting such business;
 - (b) identify himself as a Registered Person acting on behalf of the Principal(s) or insurance agent he represents prior to discussing insurance policies with any person;
 - (c) disclose his registration number if so requested and identify his registration number on his business cards if they are distributed;
 - (d) display his name and registration number on the name plate put in front of the service desk or counter if he is registered as engaging in the Restricted Scope Travel Business and provides face-to-face insurance service at service desk or counter;
 - (e) give advice only on those matters in which he is competent to deal with or otherwise seek advice from his Principal(s) or appointing insurance agent when necessary;
 - (f) explain the cover afforded by each policy recommended to ensure that the potential policy holder understands what he is buying;
 - (g) explain the specific differences to which he is referring when making comparisons with other types of policies;
 - (h) treat all information supplied by a potential policy holder as confidential and disclose such information only to the Principal(s) or appointing insurance agent to which the business is being offered, and otherwise comply at all times with the provisions of the Personal Data (Privacy) Ordinance (Cap. 486) when dealing with personal data provided by a potential or current policy holder;
 - (i) not make inaccurate or misleading statements about any Principals or appointing insurance agent or their policies, or any other intermediaries;
 - (j) not impose any charge in addition to the policy premium without disclosing the amount and purpose of such charge to the policy holder before the binding of the policy; and

(k) not pay any part of any commission or discount allowed to him to any director, partner or employee of any insured as an inducement to place the business with the Principal or appointing insurance agent, nor assist any other Registered Person to make such a payment, unless prior agreement and approval of the payment by the insured is received in writing.

77. In assisting a potential policy holder to complete the proposal or application form, a Registered Person shall:-

- (a) not influence the potential policy holder, and make it clear that the answers or statements given are the latter's own responsibility; and
- (b) explain the consequences of fraud, non-disclosure and inaccuracies to the potential policy holder and draw his attention to the relevant statements in the proposal form.