



# Terms of Business Agreement

## Declaration

I/We have read the Terms of Business Agreement set out by Solar Insurance Services (Medway) Limited and I/We agree to be bound by them in our dealings with Solar Insurance Services (Medway) Limited

I/We warrant to Solar Insurance Services (Medway) Limited that the company named below has the appropriate FCA permissions to carry out Business and that any appointed representatives of the company named below have been appointed under a contract in compliance with the Financial Services and Markets Act 2000

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email address: \_\_\_\_\_

FCA Number: \_\_\_\_\_

Signed: .....

Date: .....

Name in Capitals: .....

Position: .....

A director or company secretary must sign on behalf of the company, and a partner in the case of a partnership.

**Please return this updated TOBA acceptance form which includes the new GDPR rules from 25<sup>th</sup> May 2018:**

By email: [enquiries@solarinsurance.co.uk](mailto:enquiries@solarinsurance.co.uk)

Or by post: Solar Insurance Services (Medway) Limited, The Studio, Cold Harbour Lane, Bobbing, Sittingbourne, Kent. ME9 8NN

## **Definitions and interpretation**

### **“Business” means**

Solar Insurance Services (Medway) Ltd & Solar Protect insurance contracts with Us which You and Us are empowered to transact.

### **“Client or Clients” mean**

Your client

### **“FCA and Rules” means**

The Financial Conduct Authority or its successors and/or its Rules or guidance or regulations as at 1<sup>st</sup> January 2010 and including subsequent additions, amendments and revisions made to them, or any replacement of them and any other regulatory or legal requirement which are binding on You and Us

### **“FSMA” means**

The Financial Services and Markets Acts 2000

### **“Data Protection & GDPR” means**

All applicable laws and regulations from time to time in force relating to data protection, the Processing of personal Data and privacy, including where applicable, the privacy and Electronic Communications Directive (2002/58/EC) and the laws implementing that Directive including the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and the GDPR);

A Regulatory, administrative, supervisory or governmental agency, body or authority (whether regional, national or supranational) with jurisdiction over the personal Data Processing activities contemplated by this Agreement, including the UK Information Commissioner acting through the information Commissioners Office and the European Data Protection Board.

The General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data.

### **“Insurance” means**

Any type of insurance contract as defined in Article 10 and Schedule 1, Part 1 of the Financial Services Markets Act 2000 (Regulated Activities) Order 2001 (excluding Marine and Aviation) for Business transacted between You and Us

**“Insurer”** Qdos Vantage and Certain Other Insurers offered by Solar Insurance Services (Medway) Ltd & the trading style Solar Protect.

The Schedules(s) to this Agreement form part of Our Agreement with You.

The headings in this Agreement are for ease of reference only and do not affect its interpretation.

Solar Insurance Services (Medway) Ltd. The Studio, Coldharbour Lane, Bobbing, Kent. ME9 8NN

## **1. CONDUCT OF BUSINESS**

**1.1 This Agreement governs the terms on which the company will accept the business from the broker.**

**1.2 The Broker agrees:**

**1.2.1 To Comply with FCA rules.**

**1.2.2 To observe the FCA Rules and to do nothing that may constitute a breach of FCA rules.**

**1.2.3 To ensure that any Client is fully aware of and accepts the terms of the Agreement so far as they may affect such clients' rights, liabilities and obligations.**

**1.2.4 To exercise, and to procure that its employees will exercise, the standards of skill**

**1.2.5 To procure that all facts or circumstances which the insurer would or may consider to be material to the decision whether to underwrite any risk or continue to do so on any given terms ("material facts") are accurately and completely disclosed by the Client and the Broker and by the client and the broker to the statement or omission may be misleading in connection with any Business**

**1.2.6 To procure that all changes in the facts or circumstances relating to a Client pertaining at the time of any relevant proposal which an insurer would or may consider to be material to its decision whether or not to continue to underwrite any risk or to accept liability are promptly, fully and accurately disclosed by the Client to the Broker and by the client and the broker to the company.**

**1.2.7 To ensure that all requirements of the Company or any insurer for any additional information or declaration or confirmation subsequent to the date of the first proposal are promptly, fully and accurately obtained by the Broker and provided to the Company.**

**1.2.8 To ensure that the Client is aware of their duty to comply with the requirements of utmost Good Faith and to make complete and accurate disclosure of all material facts in connection with and Business or the extension, variation of renewal of any business.**

**1.2.9 To present quotations to the Client only on the terms quoted to the Broker, unless previously agreed by the Company and confirmed in writing.**

**1.2.10 To promptly inform the company of any complaint or enquiry concerning which is received by the Broker.**

**1.3 The company shall not for any reason be bound to accept any enquiry or proposal for business or any extension variation or renewal from the Broker.**

**1.4 The company will not be bound to incept cover of the insurance until a written instruction is received to commence cover from the broker on behalf of the client.**

**1.5 The company acts only on the instructions of the broker unless we have authorisation from the broker to deal with the client directly on their behalf. The broker warrants to the**

company that all such instructions are correct, complete and appropriate and agrees fully and effectively on demand to indemnify the company against any costs claims, damages or losses suffered or incurred by the broker or client as a result of the reliance by the company or any other party on such instructions or by reason of any error or omission in those instructions.

**1.6 This Agreement is effective from the date as stated in 'Effective Date of this Agreement' and applies to the conduct of Business for Insurance we are authorised to place with certain Lloyds syndicates and other insurers (whether new or renewal or existing) which may be transacted between You and Us on or after this date including any related services notified and any classes of Insurance or related services We may subsequently agree with you.**

**1.7 This Terms of Business Agreement replaces all previous Agreements**

**1.8 You will not offer to Us any business sub-brokered by You and/or for which You do not have a direct relationship or direct contact with the Client described as being the Proposer(s) or Insured(s) or assured(s) for the purpose of any Business unless otherwise agreed by Us in writing.**

**1.9 Nothing in this Agreement shall create or be deemed to create a partnership or the relationship of employer or employee between You and Us.**

**1.10 Nothing in this Agreement shall override either your duty to place the interests of the Client above all other considerations or both you and our legal or regulatory obligations concerning the Business and in particular to enable the Client to make an informed decision about the Insurance.**

**1.11 You will always act in the Customers best interests and comply with the Rules on suitability and ensure all communications with Customers are clear, fair and not misleading in compliance with the FCA Rules.**

**1.12 You will ensure the customers are advised in accordance with the Insurance Act 2015 and / or the Consumer Insurance (Disclosure and Representation) Act 2012 where it applies to their policy or potential cover including subject such as duty of the insured to make a fair presentation of risk, duty to take reasonable care not to make misrepresentation and the consequences of misrepresentation or non-disclosure (whether deliberate or reckless or not) and the consequences of a breach of any warranties, subjectivities, clauses, endorsements and policy limitations.**

**1.13 The territorial limits of this Agreement apply to England, Wales, Scotland, Northern Ireland, Channel Islands and the Isle of Man.**

## **2. Authority**

**2.1 You are the agent of the Client except as stated otherwise in this Agreement.**

**2.2 You may only act for Us within the terms of this Agreement or any supplemental agreement and have no authority to bind Us in any way or assign or delegate any of Your responsibilities under this Agreement to any third party without Our written agreement.**

- 2.3 You agree that nothing in this Agreement shall require Us to accept any proposal for Insurance or renew any existing policy or maintain cover for any existing policy if in Our absolute discretion we decide otherwise.**
- 2.4 You may not sign documents on behalf of Us or make markings of any kind on policies issued by Us without our written permission.**
- 2.5 You may not advertise on Our behalf, use our name, brand or trade names, trade marks or logos without our written permission.**
- 2.6 You have no authority to settle, negotiate or compromise claims on Our behalf and agree to immediately notify Us in writing of any loss or incident which may give rise to claim under any insurance covered by this Agreement, or to notify the insurer direct where agreed by the insurer concerned and you will not correspond or converse with any client in respect of any claim for any purpose except to acknowledge the claim and will not enter into negotiation unless specifically authorised in writing to do so by the insurer.**
- 2.7 You agree that notification of any claim, information or fact by the client to you does not constitute notification of the same to Us.**

### **3. Commission, Fees and Charges**

**In respect of any business We will quote you a Gross premium which shall include our commission where the following applies:**

- 3.1 Where we quote a Gross Premium, the rate of commission due to You in respect of Business is varied depending on the product type and you will be invoiced on a net premium basis.**
- 3.2 The commission is only allowed on premiums and not any taxation, fees or charges.**
- 3.3 Where we quote a Gross premium you shall be entitled to commission on our receipt of cleared funds. Wholesaling Brokers & Brokers using our broker portal system to transact business will withdraw the commission due to You once the premiums have been received by You from Your customer. You will then pass onto Us the declared net premium plus the gross Insurance Premium Tax when You receive the monthly Bordereaux Statement from Us.**
- 3.4 Any additional fees and charges over and above any premium that are required by Us will be separately shown on Our quotation at the time of placement of each individual risk or any subsequent renewal, mid-term, alteration or cancellation. You undertake to disclose these to the Client in accordance with the FCA rules.**
- 3.5 We undertake to give you one month's notice of any addition or changes to Our fees or charges.**
- 3.6 You agree that We may recover from You the relevant amount of commission on cancelled policies or where an adjustment has resulted in a return premium; we may recover commission from You on a pro-rata basis.**
- 3.7 Where we need to recover commission from You we shall be entitled to deduct such commission from the commission due to you.**

**3.8 Please note in respect of business handled by ourselves we may bind under a Binding Authority granted by Insurers. Furthermore a profit commission might be paid to ourselves depending on the overall profitability of the business bound there under.**

#### **4. Information and Documentation**

**4.1 You agree to promptly notify Us in the form or manner prescribed by Us of all material information. You receive from the Client in respect of any Insurance and if you are in any doubt about whether a fact is material, it should be disclosed.**

**4.2 We will, where within Our authority to do so, prepare and issue all documentation such as policy documents and renewal documents to You in good time for You to comply with Your obligations under the FCA Rules and any other relevant statutory regulations. Otherwise We will use Our best endeavours to issue all documentation such as policy documentation and renewal documentation to You in good time for You to comply with your obligations under FCA rules and any other relevant statutory regulations.**

**4.3 All policies quoted, put on risk and renewed on the broker portal will enable You to issue the relevant documents directly and in this instance, the policy renewal and policy issue documents should be made available in good time by You so You can comply with your obligations under FCA rules and any other relevant statutory regulations.**

**4.4 You will promptly pass such policy documentation to the Client and bring to the clients attention all terms and conditions (particularly any significant exclusions or restrictions) taking due care and attention to accuracy and being in compliance with FCA Rules or any other relevant statutory regulations.**

**4.5 You will on demand return to Us all relevant policy documentation for both early policy cancellation or cancelled renewal confirmation by the last working day of the month following the policy confirmation or renewal date except for policies which include Employer's liability Insurance, where confirmation and certificates must be returned within 30 days of cancellation or renewal date.**

**4.6 Where We do not wish to renew or require to impose more onerous terms and conditions on your Clients insurance, we will use Our best endeavours to advise you in good time prior to renewal date for You to comply with Your obligations under FCA Rules and any other relevant statutory regulations and where a risk is not to be renewed We will use Our best endeavours to provide You with the necessary information to place cover elsewhere.**

**4.7 You will immediately notify Us of any changes in your name or trading name or the control of You.**

#### **5. Credit and payment**

**5.1 You will account to Us for all moneys due under this Agreement and We will allow you a maximum period of 30 (thirty) days credit on such payments from the date of inception.**

**5.2 If there are any items on the statements that are in dispute, you must contact us prior to the premium becoming overdue in order that the account can be paid in full. Failure to do so could lead to the cover being terminated.**

**5.3 No allowance will be made for any delays due to deficiencies in Your own accounting systems.**

**5.4 We reserve the right at any time during the currency of this Agreement to make credit searches against you through credit checking agencies or other relevant organisations regarding your credit status and/or any directors or partners of you.**

**5.5 If you allow credit to the client you will remain liable for payment of the full premium in accordance with the terms of this agreement and will comply with the FCA rules where you have written authority to control the clients assets (e.g. direct debit instruction or hold credit card details)**

## **6. Responsibility for Premiums**

**6.1 You undertake to promptly collect all premiums due from the client (including new business, renewals and adjustments) in respect of all Business.**

**6.2 We will use our best endeavours to agree a final premium for insurance and where We cannot agree a premium at the time of inception of cover. We may at Our option issue a Provisional adjustment made after the correct premium is agreed we will issue a debit note and you will make payment in accordance with the paragraph 5.1 above.**

**6.3 We reserve the right to suspend this Agreement and make arrangements to collect outstanding premiums direct from the Client and if necessary to arrange the issue of renewal invitations direct to the Client in the event of:**

**6.3.1 Fraud by you;**

**6.3.2 Civil or criminal charges made against You material to the operation of the Business under the terms of this Agreement;**

**6.3.3 You ceasing to hold Part IV permission under FCA Rules;**

**6.3.4 Us considering that there are convincing grounds that the interests of the Client have been prejudiced by Your administration or by Your breach of this agreement;**

**6.3.5 And in all such circumstances where possible we will undertake to give you notice of such action and the reasons for it and if alternative arrangements are not in place for the Client We will advise what alternative arrangements need to be taken by Us to protect the interests of the Client.**

**6.4 Where an insurer has paid a claim before we receive the full premium due, including any adjustments You will be responsible for payments to Us of that premium**

**6.5 We confirm that:**

**1) Where we place Business under Delegated Authorities held with us, Insurers have acknowledged Risk Transfer (i.e. premiums for the Client received by us are deemed to be paid to the Insurer concerned)**

**6.6 Where we place business with other Underwriting Agencies or Insurers, Risk Transfer takes place. We undertake to hold such moneys on Trust in a separate Insurers and Client bank account (as may be approved by the Insurers from time to time and meeting FCA Rules) and such moneys are easily identifiable as being held on Trust for the Insurer concerned and shall not be part of Our assets and shall be subject to any charge, set off or lien.**

**6.7 The company and all FCA approved sub agents have been appointed as agents of the insurers for the purposes of receiving premiums including IPT from Clients in respect of business transacted. Both parties have also been appointed to act as agents of the insurers for the purpose of receiving and holding premium refunds due to clients prior to payment being made to clients. In respect of this appointment, the company has been given consent from the insurers to cascade risk transfer to Brokers of the Company and this will be in place once the Customer has paid the premium to the Broker.**

**Insurers have agreed that the Broker must either:**

- 6.7.1 Open and operate a segregated bank account with an approved bank as defined by the Financial Conduct Authority (FCA) for the banking of all its premium (and refund of premium) monies, including such insurance monies that relate to other Insurers that may have agreed to Risk Transfer, or**
- 6.7.2 Co-Mingle monies relating to this agreement with Client money (maintained in statutory or non statutory trust client money bank account) as permitted by FCA Client Money Rules (set out in CASS 5). The insurers consent to the Co-Mingling of monies collected under the agreement of Risk transfer, with client money (statutory or non-statutory trust client money bank accounts) and agrees that such monies will be subordinated to the prior claims of clients whose money is subject to such trusts.**

**The company has agreement from the insurers that they accept subordination of their rights to money held in accordance with the rules of the FCA.**

## **7 Client relationship**

- a. We undertake that during the currency of this agreement we will not directly and knowingly solicit business away from You or pass to any third party any information supplied to You in respect of the Client for the purpose of knowingly soliciting Business away from You other than under the circumstances set out in provisions of paragraph 6.3 or 10 Termination of this Agreement.**
- b. We undertake not to make any arrangements to communicate directly with any Client during the currency of this Agreement or for a period of 24 (twenty four) months after the termination of this agreement other than under the circumstances set out in provisions of paragraph 6.3 or 10 Termination of this Agreement.**

## **8 Compliance**

- a. You are responsible for complying with the FSMA and the FCA rules to which You are subject in respect of the conduct of Business for Your insurance mediation activities and in particular but not limited to Your obligations under the FCA insurance Conduct of Business Rules and CASS Rules as the broker in direct contact with the client.**
- b. You will notify Us in writing of any changes to Your FCA authorisation or exempt status.**
- c. You will immediately refer any complaint relating to Us in respect of the Business detailing the exact nature of the complaint together with copies of any relevant**



correspondence and if required by Us to provide any assistance necessary in resolving the complaint.

- d. You and we will both comply with any legal and regulatory requirements as are from time to time applicable to Our obligations under this agreement and will co-operate fully with each other in an open manner to ensure compliance with same.
- e. We reserve the right to suspend this Agreement or take such action as we deem appropriate if You are in breach of your legal or regulatory obligations.
- f. You agree to incept and maintain cover in respect of Professional Indemnity Insurance in compliance with the FCA Rules and on demand by Us provide confirmation of such cover.
- g. Any notice required by this Agreement is to be given by either party to the other either by hand or sent by first class prepaid post to its last known address.
- h. You shall maintain adequate records to demonstrate compliance with the terms of this agreement.

## **9 Data Protection (GDPR)**

9.1 The Parties acknowledge and agree that where a Party processes Personal Data under or in connection with this Agreement it alone determines the purposes and means of such processing as a Controller.

9.2 In respect of the Personal Data a Party processes under or in connection with this Agreement, the Party:

- (a) shall comply at all times with its obligations under the Data Protection Law;
- (b) shall notify the other Party without undue delay after, and in any event within 24 hours of, becoming aware of a Personal Data Breach; and
- (c) shall assist and co-operate fully with the other Party to enable the other Party to comply with their obligations under Data Protection Law, including but not limited to in respect of keeping Personal Data secure, dealing with Personal Data Breaches, complying with the rights of Data Subjects and carrying out data protection impact assessments.

9.3 The Parties shall work together to ensure that each of them is able to process the Personal Data it processes under or in connection with this Agreement for the purposes contemplated by this Agreement lawfully, fairly and in a transparent manner and in compliance with the Data Protection Law. This shall include but not be limited to entering into such other written agreements as may be required from time to time to enable each Party to comply with the Data Protection Law.

9.4 For the purposes of this clause 9:

“Controller” means the person which, alone or jointly with others, determines the purposes and means of the processing of Personal Data;

**“Data Protection Law” means all applicable statutes and regulations in any jurisdiction pertaining to the processing of Personal Data, including but not limited to the privacy and security of Personal Data;**

**“Data Subject” means the identified or identifiable natural living person to whom the Personal Data relates;**

**“Personal Data” means any information relating to the Data Subject; and**

**“Personal Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.**

## **10 Anti-Bribery and Anti-Corruption**

- a. **Neither party shall be involved in the offering, promising or giving of any financial or other advantage to any person in breach of any law against bribery (including without prejudice to the generality of the foregoing the Bribery Act 2010). The Parties shall insofar as required to do so, and whether or not either party is an associated person of the other for the purposes of the Bribery Act 2010, maintain on an ongoing basis its own anti-corruption/bribery policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to prevent corruption/bribery offences and will enforce them where applicable.**

## **11 Termination**

- a. **This Agreement shall be terminated by you or Us**
  - i. **By mutual agreement at any time; or**
  - ii. **By either party on the expiry of 30 (thirty) days written notice delivered by recorded delivery of registered post to Your last known address; or**
  - iii. **Immediately by Us if we have reasonable grounds to suspect fraud, or in the event of bankruptcy, insolvency or liquidation of You, or on the approval by creditors of You of a voluntary arrangement or on the making of an Administration order in relation to You, or**
  - iv. **Immediately by Us if You cease to hold a Part IV permission under FCA Rules or following any proposed or actual disciplinary proceedings for any failure to comply with the Rules; or**
  - v. **If you fail to remedy any other breach of this Agreement, or any unsatisfactory conduct, within a reasonable period of Us notifying You in writing of the same.**
- b. **For a period of 12 (twelve) months following termination of this Agreement, other than for termination as set out in paragraph 10.1.3, 10.1.4 and 10.1.5 above we will cooperate with You in providing information for placing business elsewhere**
- c. **Upon termination of this Agreement we will prepare a statement of account which will be settled by way of payment of the net amount due to either You or Us within 30 (thirty) days of issue and any other known premiums for which you are liable under**

this Agreement and not included in this statement of account must be paid at the same time.

- d. At our request You will immediately return to Us any property or relevant documentation belong to Us or the insurer.

## **12 Variation**

- a. We may at any time vary the terms of this Agreement by written notice to You at Your last known address.

## **13 Severability**

- 13.1 If any term under this Agreement is or becomes illegal, invalid or unenforceable that terms shall be severed from this Agreement and shall not in any way affect the legality, validity or enforceability of any other term under this Agreement.

## **14. Waiver**

- 14.1 The rights of You and Us under this Agreement may be waived only in writing and specifically and no failure or delay in exercising any right will operate as a waiver of it.
- 14.2 Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any provision thereof.

## **15. Rights of Third Parties**

- 15.1 No term of this Agreement is enforceable under this Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement

## **16. Dispute Resolution**

- 16.1 Both You and Us are committed to resolve any dispute over this Agreement whether such dispute arises before or after its termination and will use our best endeavours to avoid the need for litigation and continue our good relationship. Therefore where We need to resolve a dispute, our respective authorised senior officials will negotiate and settle any dispute in good faith to the satisfaction of You and Us. If the matter has not been resolved within 3 (three) months if the notification of the dispute we will use the services of a mediator agreed by both You and Us such as that recommended by the Centre for Effective Dispute Resolution at joint cost. If neither You and Us are willing to resolve the dispute by mediation or enter into this mediation procedure within 6 (six) months of the notification of the dispute then the dispute may be referred in accordance with paragraph 16 jurisdiction as is necessary.
- 16.2 Both You and Us agree that we will provide to each other any assistance necessary to resolve the dispute in an amicable manner and if agreed by both parties allow access to relevant files or records and/or meetings in our respective offices as required.
- 16.3 This Dispute Resolution procedure does not preclude that right of either You or Us to seek the immediate protection or assistance of the High Court of England and Wales.

## **17. Complaints**

**17.1 If You or a Client has any cause for complaint concerning the Business then they should in the first instance contact in writing to the Managing Director or any other person We may subsequently advise to You. If the matter is not resolved to the satisfaction of the complaint then the complaint may be taken up by You with the Insurer. We will provide You with full details of the appropriate contact at the Insurer.**

**18. Jurisdiction**

**18.1 This Agreement shall be construed according to English Law and You and Us submit to the exclusive jurisdiction of the English Courts.**

**18.2 If any provision of this Agreement is held in court of other competent authority to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.**