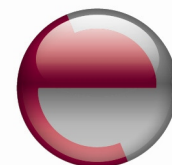


# Terms of Business Agreement Changes Document

June 2011

Delivering quality insurance solutions



**equity**  
REDSTAR

## **REVISED TERMS OF BUSINESS AGREEMENT – CHANGES JUNE 2010**

*This document details and explains the changes to the Equity Syndicate Management Limited Terms of Business Agreement (TOBA) applying to all existing agencies as at 1<sup>st</sup> June 2011. Only those sections which have changed are listed. Explanation notes are in **bold** text and are not part of the wording of the TOBA.*

*Throughout the new TOBA, all references to the Financial Services Authority are amended to read “Financial Services Authority or any successor body”, ahead of the introduction of the new UK regulators.*

### **2.0 SCOPE**

- 2.3 This Agreement shall apply only to you. You therefore cannot assign any rights or obligations under this Agreement without our express prior written consent. For the avoidance of doubt, you must not grant sub-agency arrangements in relation to our products or services or permit an Appointed Representative to act in relation to any of our products or services without our prior written consent.

**We do not permit wholesaling activity unless we give written consent. We also need to know about your Appointed Representatives, who will normally be required to hold their own agencies with us unless all their business and claims will be transacted through your agency. Both of these activities will also have to be approved by Lloyd’s.**

- 2.4 If we enter into a Binding Authority Agreement, Claims Handling Agreement or Delegated Administration Agreement with you (either now or in the future) and there is a conflict between its terms and those of this Agreement then the applicable term of the Binding Authority, Claims Handling Agreement or Delegated Administration Agreement will prevail over the relevant term of this Agreement to the extent of any conflict and in respect of the business that is the subject of such Binding Authority, Claims Handling Agreement or Delegated Administration Agreement, but not for any other business.

**Clause amended to include Claims Handling Agreements, where these exist.**

### **3.0 AUTHORITY**

- 3.1 You must ensure that any policy falls within the risk acceptance criteria that we have issued to you (as revised by us from time to time) and at the rates set by us from time to time. You may only act in accordance with our current underwriting requirements as notified to you by us from time to time. Notification by us to you for these purposes may be through incorporation of the relevant information in your software house quotation system.
- 3.2 Where a client wishes to purchase cover that falls outside our risk acceptance criteria, our standard rates and/or our current underwriting requirements, you may not issue insurance cover but you may seek specific authority from us in relation to the relevant proposal. Where we grant such specific authority it shall

be subject to you following any requirements we make in relation to terms, rates, procedures or any other matter.

**This clause has been amended to meet the requirements of Lloyd's byelaws on Restricted Coverholders. If it becomes necessary for you to hold another Coverholder status with Lloyd's, we will inform you and guide you through the application process.**

3.4 You are not authorised to offer any cover or quotation, nor provide information about our policy cover or premiums, via an internet site, website, aggregator site, price comparison site, cover comparison site or other electronic means, without our prior written agreement. Under no circumstances will we guarantee any quotations produced from non approved systems.

**Equity Red Star does not permit any trading of its products through any internet site unless we give express written agreement. This includes offering quotations on our products through aggregator / price comparison sites. If you are trading our products in this way, please stop immediately and refer to us.**

#### **4.0 COMPLIANCE**

4.1 You must be authorised by the Financial Services Authority or any other successor body as may arise from time to time, and continue so to be authorised and comply with all rules of that regulator at all times.

**The Government have announced that they will be introducing a new regulatory regime for general insurance. All Equity agents must be authorised by, and comply with the rules of the new regulator(s).**

4.3 You and we will each comply with our legal, licensing and regulatory Requirements and guidelines including compliance with Data Protection, Bribery Act legislation and consumer credit regulations.

**The forthcoming Solvency II regulation requires us to be specific about our requirement that you must comply with these laws and regulations.**

4.5 You must fulfil the accreditation requirements that we make of you from time to time. This may include (but not limited to) the provision of financial information, business data, regulatory returns, proof of insurance cover and documents proving regulatory approval / registration.

**This is intended to make it clearer what information may be requested by Equity in the course of providing agency facilities.**

4.6 You must ensure that you conduct proper diligence on all clients and that you do not transact any business with any individual or firm listed on the HM Treasury Sanctions List.

**This requirement supports the FSA's requirement that all financial services firms engage in the fight against financial and other crime.**

- 4.7 You must have adequate contingency plans to deal with emergency situations, business disruptions and loss of data to ensure continuous compliance with the terms of this Agreement.

**This requirement comes from the forthcoming Solvency II regulation.**

## **5.0 COMMISSION AND POLICY FEES**

- 5.2 You must pay premium received from clients into a client or broking trust bank account as specified in section 8.6. You may withdraw from such an account commission owing to you from the premium received but not before the expiry of 24 hours after the relevant premium has cleared in the client or broking bank trust account.

**We require all Equity premiums to be held in trust accounts, whether you operate statutory or non-statutory trusts and whether or not you hold client money. This is reiterated in section 8.**

- 5.3 If we accept an application for a credit instalment plan to pay a premium, commission must not be claimed from the client or broking trust account as specified in section 5.2. Commission will be credited to your next statement of account on acceptance and set up of the policy following receipt of all legal documentation required to set up the credit agreement.

**This new section explains how we will credit commission to your account on policies paid by Equity instalment plans. Commission cannot be taken as per section 5.2 on these policies.**

- 5.4 Details of any charges you make to the client in addition to the policy premium must be disclosed to the client in accordance with the Financial Services Authority or any successor body's regulations. These may include administration fees and charges for additional benefits and services provided by you. The costs for such services must be shown separately from the gross premium charged by us or on our behalf. Where applicable, you are responsible for the collection and payment of Value Added Tax, Insurance Premium Tax or any other taxes due on your fees and charges and making any declarations to us that may be necessary in the calculation and payment of these taxes.

**This change covers the recent change in law where certain broker fees are subject to IPT. If you are collecting fees that may be subject to IPT, please declare these to Equity immediately.**

## **6.0 PROCESSING BUSINESS**

- 6.7 Where it is not possible for all relevant details of the insurance to be obtained within 24 hours of the date of commencement of the insurance cover, you shall request from the insured client a provisional premium representing an approximation of the full annual premium to be levied. You must make clear to

the insured client that the premium is an approximation and that additional premium may become payable. The provisional premium must be paid by you within the period of credit specified in section 8. Any provisional premium so collected shall be dealt with in the same way as other premiums under this Agreement. When the final premium has been calculated this will be adjusted and settled in accordance with section 8.

**Change provides clarification on the required process for provisional premiums.**

- 6.8 If there is a dispute as to the premium rate quoted, you will raise a query as soon as possible with our underwriting department in good faith with a view to agreeing the premium to be charged. You will provide a full and adequate explanation for each query. All premiums must be settled under the terms of credit specified under section 8. For the avoidance of doubt, any items that meet the criteria specified in section 8.7 are not considered to be disputed premiums.

**Changes provide clarification of our required process for accounts queries. Queries must be properly raised with our relevant underwriting department.**

- 6.16 You will notify us that an insurance policy is to be renewed within 24 hours following the renewal date.
- 6.17 In relation to Motor classes, if you do not receive instruction by the renewal date, you must immediately return the Certificate of Motor Insurance to us by either first class mail, or next day courier service for lapsing.

**Changes necessary to meet the requirements of the Motor Insurance Database.**

**7.0 CLAIMS HANDLING**

- 7.5 In the event of the notification of a claim by the insured either at inception of a policy or during the period of insurance, you shall not without our express prior written consent;
- 7.5.1 pass the details of any third party claimant to any entity other than us;
  - 7.5.2 use any information in relation to the third party claimant, except to pass this information to us;
  - 7.5.3 accept any payment or fee in relation to the transfer or use of any information relating to a third party claimant;
  - 7.5.4 directly or indirectly for any form of remuneration approach or solicit third party claimants with a view to introducing them to car hire or repair firms or other bodies providing services in relation to the claim which are our responsibility to provide under the terms of the insured's policy.

**Equity cannot permit any of these activities without prior written consent. In our view, some of these activities are a breach of agency law and FSA principles, and**

**result only in increased claims costs which ultimately have to be passed back to our policyholders. If you are undertaking any of these activities, you must inform us immediately.**

- 7.6 You must ensure that any claims settlement cheques passed by us to you for the insured client (or any third party) are treated with you in accordance with the requirements of the Financial Services Authority or any successor body including by passing such cheques immediately to the insured client (or any third party).
- 7.7 You shall provide us with any information we reasonably request regarding your procedures, systems and controls in relation to claims under our insurance policies.

**New section to clarify our rights to audit claims on our policies.**

## **8.0 CREDIT AND PAYMENT**

- 8.2 The statement of account will be rendered by us to you on a monthly basis and payment of all monies due to us must be received by us by electronic settlement in cleared funds within thirty days of the date of the statement of account.

**We require account settlement to be made by electronic means as cheques will be phased out, and electronic settlement alleviates numerous problems.**

- 8.5 If there is any premium dispute we require payment of the amount considered by us to be due with any balance adjusted once the item has been clarified. Premiums that have been collected from insured clients on our behalf and held in trust for us must be declared and settled to us when due and not withheld for any reason.

**Items under query must be settled at the indicated premium and then queried for adjustment. As risk transfer is granted in section 8.6, it is not acceptable for any agent to withhold monies collected.**

## 8.6 *Risk transfer, Co-Mingling and Subordination of Interests*

When acting as our agent, monies you receive from the insured client will be deemed as paid to us when you receive them and monies due to the insured client from us will be deemed as paid to the insured client when received by them from you. Monies due to the insured client, but not yet paid by us to you, may be offset against monies held by you on our behalf. All premiums must be held in trust for us in a client or broking trust bank account at a major UK clearing bank and may be co-mingled with other insurer/client monies for as long as the Financial Services Authority or any successor body's rules permit. You must have suitable systems in place to enable you to identify the amount of money that you hold in trust for us at any time. Where premiums are co-mingled with other insurer/client monies in a client money bank account, which must be held under trust in accordance with Financial Service Authority or any successor body's requirements, our interests are subordinated to the interests of your clients (other than insurance undertakings).

You will ensure that the bank shall have no rights by way of charge (whether fixed or floating), encumbrance, lien or right of set-off, compensation or retention against monies standing to the credit of the account at any time. We reserve the right to request a copy of your bank's confirmation that they have no rights in these regards over monies held in the client or broking trust bank account.

**Please note that this section was last amended in 2008, and is intended to answer many and frequent queries on our policy regarding risk transfer, co-mingling, subordination of interests and our requirements for holding our premiums in trust accounts. We reserve the right to ask you to provide adequate confirmation that the bank has no rights over the trust account you use to hold Equity premiums, and that the trust deed has been properly executed.**

8.7 Settlements shall be made in accordance with section 8.2. For the avoidance of doubt, your obligations shall be unaffected by:

- 8.7.1 any failure to obtain monies from the insured client, (subject to section 9.1);
- 8.7.2 any delay in crediting us with monies received or due from the insured client because of delays within your accounting system; or
- 8.7.3 any arrangement whereby you have allowed credit to the insured client. This includes any arrangement where finance for payment of the premium has been arranged through a third party.

**Section 8.7.3 is clarified. All premiums must be settled to us within your credit terms even if you have not received payment from a third party premium finance provider.**

## 9.0 RESPONSIBILITY FOR PREMIUMS

- 9.2 If you do not expect to collect the premium from the client by the end of the credit period, you must notify us immediately. We will then inform you that we will either remain on risk for a further period or that the policy will be cancelled. If we agree to remain on risk at your request, you remain liable for settlement of the premium and we reserve the right to seek your confirmation of this in writing. Your responsibility for premium shall not affect our right to cancel the policy, whether for non-payment of premium or for any other reason. Where we cancel a policy and make a premium charge to the client in respect of the time on risk, your responsibility for premium shall be limited to the premium charge for the time on risk.

**Equity does not accept liability for payment of premium if we remain on risk following notification of non-payment by the client.**

- 9.5 For the avoidance of doubt, any arrangements between the policyholder and you, or any party other than us, for the giving of credit in respect of, or the provision of finance or the extension of time for payment of premium, shall be at your or other third party's risk and shall not affect your responsibility to us for the payment of the premium within the specified credit period.

**You are responsible for payment of premiums funded by premium credit arrangements within the credit period.**

- 9.6 Where we accept an application for credit to pay a premium, you will ensure that:
- 9.6.1 You hold a valid Consumer Credit Licence that permits you to perform credit brokerage and any credit intermediary duties and services.
  - 9.6.2 You fulfil all legal obligations as specified under the relevant Consumer Credit law.
  - 9.6.3 All documentation required to lawfully conclude the credit agreement is completed in accordance with our instructions and guidelines.

We reserve the right to decline any application for credit. We will inform you of any application where we are unable to provide credit in respect of a premium and responsibility for payment of the premium shall remain with you as per section 9.1. Where an application for credit has been declined due to information received from a Credit Reference Agency, we will inform you and the insured client and provide contact details for the Credit Reference Agency where legally obliged to do so.

**Equity only offers premium credit in limited circumstances and you should not take this section as an offer of premium credit facilities. This section is required to meet new Consumer Credit legislation.**

- 9.7 Notwithstanding the above, we reserve the right to contact a client directly to request settlement of premiums (including charges for time on risk) where you have categorically advised us that you are unable to collect the premium and

have not made settlement in accordance with Section 9.1. We will notify you in writing before taking any such action and we reserve the right to engage the services of third party organisations to collect these premiums. In these circumstances, you will forego the right to any commission or payment from us calculated on these premiums.

**If you have confirmed that you are unable to collect a premium from a client, we reserve the right to pursue outstanding premiums (including time on risk charges) ourselves. This may involve the engagement of a third party debt recovery agency. If we do this, you will not be entitled to commission (or any other payment) on the premium / time on risk charge you have not paid to Equity.**

## **11.0 TERMINATION**

11.3 We may terminate this Agreement with immediate effect by notifying you of our decision to do so in any of the following events:

11.3.1 you are in material breach of this Agreement;

11.3.2 any of your owners, directors, partners or other approved persons are convicted of any criminal offence by any Court of competent jurisdiction;

11.3.3 we have reason to suspect fraud on your part, or if the administration of the account by you is, in our reasonable opinion, such as to prejudice the interests of any insured client;

11.3.4 you are merged with, acquired by or otherwise taken over by any individual, corporation or other business entity or organisation of any kind, unless we agree that such termination is unnecessary;

11.3.5 you become the subject of an action in bankruptcy, a winding up order or petition;

11.3.6 you become insolvent, go into liquidation, make a composition with your creditors or an administrator or receiver is appointed or some other analogous event;

11.3.7 you, being a partnership, are dissolved by agreement between the partners or by operation of law;

11.3.8 you become the subject of voluntary or involuntary rehabilitation.

**Changes have been made to this section to provide clarification. We need to know about winding up orders or petitions issued against your firm.**

11.4 You must notify us immediately, in writing, of any event giving rise to our right of termination under section 11.3 and also of any of the following events:

- 11.4.1 any compliance or regulatory issues arise in connection with your Financial Services Authority or any successor body authorisation, particularly those identified as a result of any Financial Services Authority or any successor body's visit or audit, or any regulatory return;
- 11.4.2 you change your Approved Persons and/or Senior Managers, your trading name, your address or other contact details;
- 11.4.3 your professional indemnity cover ends or fails to meet the requirements of the Financial Services Authority or any successor body;
- 11.4.4 where you make any notification to the Financial Services Authority or any successor body in the event of a serious failing of your systems and controls, or because of any breach of Financial Services Authority or any other successor body's threshold conditions;
- 11.4.5 where the Financial Services Authority or any successor body initiates an Investigation or Enforcement Action taken in respect of your business (or its employee, agents, Appointed Representatives, representatives or sub-agents);
- 11.4.6 you change or terminate the terms of any agreements with any Appointed Representative.
- 11.4.7 you are unable to comply with any new laws or regulations applying to you, or if your ability to meet the terms of this Agreement would be materially affected by such changes to laws or regulations.

**The requirement in 11.4.7 comes from the forthcoming Solvency II regulation.**

- 11.5 In the event of your death, (where you are a sole trader), this Agreement shall remain in force with such persons as may be agreed (if allowed by your trade or regulatory body) to carry on your business.

**Section renumbered.**

## **14.0 ACCESS TO RECORDS**

- 14.1 We, or the Financial Services Authority or any successor body, or any external auditor properly appointed by us or the Financial Services Authority or any successor body shall have the right, upon reasonable notice, to inspect and audit without restriction or limitation any records relating to insurances placed with us. We shall have the right to make copies or extracts of any such records. Our right to inspect or audit shall continue notwithstanding termination of this Agreement.

**Solvency II regulations will require us to ensure you permit the regulator to audit you, and also that the use of external auditors is permitted. Equity does not currently use external auditors for broker audits.**

- 14.2 You must accept your responsibility to ensure the confidentiality at all times of property, information and documentation belonging to us and to your clients, and

your responsibility to be able to identify and isolate this property, information and documentation at all times.

**This requirement comes from the forthcoming Solvency II regulations.**

## **17.0 COMPLIANCE WITH RELEVANT REQUIREMENTS**

17.1 You shall:

- a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- b) comply with our Ethics, Anti-bribery and Anti-corruption Policies as advised from time to time and any relevant industry code of practice, in each case as we or the relevant industry body may update them from time to time (Relevant Policies).
- c) have and shall maintain in place throughout the term of this agreement your own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies, and will enforce them where appropriate;
- d) immediately notify us if a foreign public official becomes an officer or employee of you or acquires a direct or indirect interest in you (and you warrant that you have no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);
- e) ensure that all persons associated with you or other persons who are performing services in connection with this agreement comply with this clause 17; and
- f) within 6 months of the date of this agreement, and annually thereafter, certify to us in writing signed by an officer of you, compliance with this clause 17 by you and all persons associated with it and all other persons for whom you are responsible under clause 17.1(e). You shall provide such supporting evidence of compliance as we may reasonably request.

17.2 Breach of this clause 17 shall be deemed a material breach under clause 11.3.1.

17.3 For the purpose of this clause 17, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 17 a person associated with you includes but is not limited to any subcontractor of you.

**This new clause follows recent legislation. Subsequent clauses have been renumbered.**