

Sentry

ONLINE INSURANCE SOLUTIONS



Insurer Tokio Marine & Nichido Fire Insurance Co., LTD
Incorporated in Japan ABN 80 000 438 291 AFS 246548



BROKER AGREEMENT

esentry.com.au



eSentry Underwriting Agency

Broker Agreement

Between

.....

and

eSentry Underwriting Pty Ltd



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Parties

eSentry Underwriting Pty Ltd

ABN 46 141 852 842

AFS Licence Number 402842

.....

ABN

AFS Licence Number

Background

A The Underwriting Agency is authorised to underwrite insurance products on behalf of the Insurers listed in SCHEDULE 3 for the classes of insurance listed in Schedule 1 pursuant to an agreement between the Underwriting Agency and the Insurer.

B The Broker is an Australian Financial Services licensee.

C The parties wish to regulate their relationship under the new regulatory regime for financial services on the terms set out in this agreement.

Operative provisions

1 Licence and registration

1.1 The Broker holds an AFS licence that authorises it to provide financial product advice and to deal in general insurance products.

1.2 The Underwriting Agency holds an AFS licence that authorises it to provide financial product advice and to deal in (by issuing) general insurance products as outlined in Schedule 1.

1.3 Each party must notify the other immediately in the event that its AFS licence is suspended or cancelled, or any authorisations on the licence are varied other than by the addition of authorisations, or, in the case of an exemption, the party is no longer entitled to the exemption.

2 Relationship

2.1 Unless and to the extent agreed otherwise, the Broker acts as agent for each of the Broker's clients, and not as agent for the Underwriting Agency or the Insurer, in providing financial advice or dealing in any financial product.

2.2 Nothing in this agreement creates a binder or a relationship of agency, partnership or employment between the parties or between the Broker and Underwriting Agency or the Insurer.

2.3 Unless expressly stated otherwise in this agreement, the Broker is not authorised to do anything as agent of the Underwriting Agency or the Insurer.

2.4 The Broker acknowledges that it has each of its client's authority to receive for that client all notices for an insured or intending insured under the Insurance Contracts Act and the Corporations Act.

2.5 The parties agree to act at all times in good faith in their dealings with each other.



3 Compliance obligations

3.1 The parties agree to comply, at all time, with all Legal Requirements.

4 Remuneration

4.1 The Underwriting Agency will pay the Broker commission on each Premium in accordance with Schedule 1.

4.2 The terms of Schedule 1 can be amended by the Underwriting Agency by providing 90 days written notice to the Broker.

4.3 The Underwriting Agency will notify the Broker of the commission payable on any policy of insurance that is not included in Schedule 1 and for specially quoted policies of insurance and agrees to pay that commission to the Broker.

4.4 The parties acknowledge that the Broker may also charge a fee in addition to or in absence of Commission to its clients, in addition to commission.

4.5 This clause survives termination.

5 Arranging insurance

Authority

5.1 The Underwriting Agency has authority from the Insurer to enter into this agreement.

Hold covered renewals

5.2 If the Underwriting Agency has offered renewal of any policy of insurance with a client of the Broker and that renewal has not been accepted before expiry of the policy of insurance, then the policy of insurance will not be renewed and all coverage shall cease as at the expiry date, unless other arrangements are made and confirmed in writing by the Underwriting Agency.

5.3 The cover referred to in clause 5.2, will end in accordance with section 38 of the Insurance Contracts Act.

Premium for hold covered policies

5.4 The Underwriting Agency may charge a minimum premium plus statutory charges and GST or as agreed and in writing between the Broker and Underwriting Agency.

6 Paying Premium and commission

6.1 The Broker must pay the Net Premium it has received for each insurance policy arranged through the Underwriting Agency, within 45 days of commencement of cover.

6.2 The Broker is entitled to retain the commission payable under clauses 4.1 and 4.3 at the time the Net Premium is paid to the Underwriting Agency under clause 6.1.

6.3 The Broker will retain all amounts earned on investment of the Premium before payment to the Underwriting Agency in accordance with clause 6.1.



7 Cancellation, variation or avoidance of policies of insurance

Underwriting Agency

7.1 Other than for instalment policies of insurance, if within 14 days of the expiry of the period referred to in clause 6.1, the Broker has not received the Premium from its client, the Underwriting Agency may, on behalf of the Insurer, (subject to the terms of the policy of insurance and the Insurance Contracts Act), cancel the relevant policy of insurance on behalf of the Insurer.

7.2 Subject to clause 7.3, the policy of insurance may be otherwise avoided or cancelled in accordance with the Insurance Contracts Act.

7.3 The Underwriting Agency must notify the Broker in writing of any intention by the Insurer to cancel or avoid any policy of insurance.

Refund of Premium

7.4 If a Premium refund is payable when a policy of insurance is varied, cancelled or avoided, the Underwriting Agency will refund the client through the Broker.

Refund of commission

7.5 If any policy of insurance is varied, cancelled or avoided, the Broker will refund to the Underwriting Agency that part of the amount due or paid to it by the Underwriting Agency under clause 4.1 that relates to the proportion of Premium refunded to the client (if any).

8 Claims

8.1 The Broker will provide all reasonable assistance to the Underwriting Agency and the Insurer with respect to all claims and will use reasonable endeavours to obtain any information required from the Broker's client promptly.

9 Documentation and promotional material

9.1 The Broker must not change printed material supplied by the Underwriting Agency to the Broker (including but not limited to marketing material such as brochures, advertisements, articles, editorials, posters, insurance documents such as proposals, policy wordings, certificates of insurance and certificates of currency) without the written consent of Underwriting Agency.

9.2 Where the material referred to in clause 9.1 has originated from the Underwriting Agency, such material remains the property of the Underwriting Agency and must be returned to the Underwriting Agency, unless already distributed, when requested.

9.3 Where the material referred to in clause 9.1 was originally supplied to the Broker by the Underwriting Agency, such material remains the property of the Underwriting Agency and must be returned to the Underwriting Agency, unless already distributed, when requested.



10 GST

10.1 Unless stated otherwise in this agreement, all amounts payable under or relating to this agreement are inclusive of GST.

10.2 Where one party makes a taxable supply to the other party pursuant to this agreement, the other party shall pay the first party an amount equal to the GST on that taxable supply.

10.3 A tax invoice will be issued (by the Broker) for the Premium and commission payable for the policy of insurance in accordance with SCHEDULE 2.

10.4 The parties acknowledge that the Broker does not guarantee or indemnify the Insurer or the Underwriting Agency for the payment of any taxes, statutory charges or levies applicable to any policy of insurance, even if the Broker administers the payment of such taxes, charges and levies.

10.5 Words in this clause 10 and in SCHEDULE 2 have the same meaning as any definition of those words in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

11 Confidential Information

11.1 Subject to clause 17, during and after termination of this agreement, each party must keep confidential and must not use, the other party's Confidential Information except as necessary to perform this agreement or as required by law.

11.2 If a government, regulatory authority or a court orders a party to disclose Confidential Information, that party will, to the extent permitted, immediately advise the other party and will disclose only such of the Confidential Information necessary to comply with the order.

11.3 Nothing in this clause 11 restricts the use or dissemination of Confidential Information obtained lawfully from a third party.

11.4 Each party authorises the other to disclose its Confidential Information to its (re)insurers, actuaries, auditors, professional agents and advisors and any related bodies corporate.

11.5 This clause survives termination.

12 Indemnity

12.1 The Broker indemnifies the Underwriting Agency for against all claims, damages, judgments, losses, costs and expenses to the extent that they arise out of or in connection with any breach by the Broker of its obligations under this agreement.

12.2 The Underwriting Agency indemnifies the Broker for all claims, damages, judgments, losses, costs and expenses to the extent that they arise out of or in connection with any breach by the Underwriting Agency of its obligations under this agreement.

12.3 This clause survives termination.

13 Dispute resolution

13.1 The parties must attempt in good faith to resolve any dispute between them in connection with this agreement by negotiation.

13.2 If any dispute cannot be resolved by negotiations between the parties within 10 days or such further period as the parties agree is appropriate, then within the following



10 days, the parties must seek to agree on procedural rules and a timetable for resolving the dispute through mediation by a mediator agreed upon by the parties, or if the parties cannot agree, a mediator appointed by the Australian Commercial Disputes Centre or any body which replaces it.

13.3 A party may not commence court proceedings or arbitration (other than an urgent interlocutory application) relating to any dispute arising from this agreement unless that party has complied with clauses 13.1 and 13.2.

14 Variation

14.1 This agreement may not be varied, other than as provided for specifically in this agreement, unless such variation is agreed upon by the parties and recorded in writing.

15 Assignment

15.1 Subject to clause 15.3, the Broker may not assign, change or otherwise deal with its rights and obligations under this agreement in any way without the prior written consent of the Underwriting Agency.

15.2 Subject to clause 15.3, the Underwriting Agency may not assign, change or otherwise deal with its rights and obligations under this agreement without the prior written consent of the Broker.

15.3 Either party may assign its rights and obligation under this agreement, without the consent of the other party, to a related body corporate (as defined in the Corporations Act), by providing 30 days written notice to the other party.

16 Termination

16.1 Either party may terminate this agreement, without cause, upon giving to the other not less than 90 days notice in writing.

16.2 This agreement will terminate with immediate effect, by either party by giving written notice to the other, if any of the following events occur:

16.2.1 Any officer or employee of the other party is guilty of malpractice or misconduct that will materially affect in any way the ability to transact general insurance.

16.2.2 The other party breaches any term of this agreement, which cannot be rectified.

16.2.3 The other party breaches any term of this agreement that is capable of being rectified and the party fails to rectify the breach within 14 days of written notice from the other Requiring it to rectify the breach.

16.2.4 The other party enters into any composition or arrangement with its creditors, has a receiver, a receiver and manager or an administrator appointed to it or is the subject of any resolution or petition for winding up (other than for the purpose of amalgamation or reconstruction while solvent) or becomes bankrupt.

16.2.5 The other party is subject to a change in its effective shareholding existing at the time of signing this agreement (whether occurring at one time or through a series of transfers or issues) altering the effective control of that party and the new controlling person(s) or entity is a direct or indirect competitor of the other party.

16.2.6 The other party fails to hold any authority or licence that allows it to carry on



the business covered by this agreement or such authority or licence is altered in such a manner as materially affects in any way the ability to transact general insurance or any activity contemplated in this agreement.

16.3 Termination of this agreement will not prejudice the rights of either party in connection with anything that occurred between them before its termination.

16.4 Termination of this agreement will not affect any rights of a party under any provisions of this agreement that are expressed, or by necessary intendment, are intended to survive termination.

16.5 As soon as practicable after termination of this agreement and, in any event, within 90 days:

16.5.1 each party must pay all money owed to the other, if any, after taking into account any adjustments required; and

16.5.2 the Broker must return (at its expense) all documents, stationery and materials supplied by the Underwriting Agency to the Broker.

17 Contact with clients

17.1 The Underwriting Agency will not, and will ensure that the Insurer does not, contact any client of the Broker during the term of this agreement other than for the following reasons

17.1.1 Promoting, marketing and selling its services or products to the general public or to groups of persons who are members of a specific industry, association, profession, club or ethnic community provided that in doing so it does not target any Insured specifically.

17.1.2 Negotiating to enter into and entering into any policy of insurance with any client who approaches the Underwriting Agency or Insurer directly or who is represented by another insurance intermediary;

17.1.3 Making any direct approach to any client in the following circumstances:

(a) prior to and after termination of this agreement, where the Underwriting Agency or Insurer are required to do so by law, but this does not apply to the provision of notices and information required by the Insurance Contracts Act unless the Insured is represented by another insurance intermediary;

(b) where the policyholder makes a claim under a policy of insurance, the Insurer may deal with the client in relation to that claim;

(c) where the policyholder directly requests the Underwriting Agency or Insurer to do something; or

(d) where the Broker has not provided or has not agreed to provide to the client any of the relevant notices and information required by the Insurance Contracts Act or other law to be provided by the Underwriting Agency or Insurer.

17.1.4 Approaching any client with the written consent of the Broker.

17.1.5 With respect to any workers compensation policy, where necessary to meet obligations under any workers compensation legislation or the terms of industry codes of conduct.

17.2 This clause survives termination.



18 Notices and change of address

18.1 Any notice under this agreement must be in writing and if sent to the last known address or facsimile number of the party, is deemed to be received:

18.1.1 three business days after the date of posting, if posted; and

18.1.2 the date of sending, if sent by facsimile; or

18.1.3 on the next succeeding business day, if received or deemed to be received on a day which is not a business day.

18.2 Each of the parties will give notice to the other of any change of address, telephone and facsimile numbers and the like as soon as practicable after such change.

19 Relevant law

19.1 This agreement is governed by the laws of the State of New South Wales.

20 Interpretation

20.1 In this agreement:

20.1.1 **Confidential Information** means all information, data, practices and techniques relating to a party, or a related body corporate, customers, competitors, business, Operations, strategies, computer systems, marketing systems and intellectual property or other property of which the other party becomes aware in negotiating or performing this agreement and the terms of this agreement and arranging or issuing policies of insurance.

Confidential Information does not include information that is in the public domain or later comes into the public domain (unless it came into the public domain by a breach of confidentiality or this agreement).

Confidential information does not include the commission rates set out in Schedule 1.

20.1.2 **Insurer** means Tokio Marine & Nichido Fire Insurance Co., Ltd. (ABN 80 000 438 291, AFSL 246548) in the list of SCHEDULE 3.

20.1.3 **Legal requirements** means any requirements or obligations under any statute, regulation or statutory instrument, including without limitation, the provisions of the Insurance Contracts Act 1984 (Cth), Corporations Act 2001 (Cth), the Trade Practices Act 1974 (Cth), and the Privacy Act 1988 (Cth).

20.1.4 **Premium** means the amount charged to a policyholder by the Insurer for general insurance including commission, fire service levies, stamp duty, GST and other government and statutory levies and charges.

20.1.5 **Net premium** means the Premium less commission calculated in accordance with clause 4.1.

20.1.6 A reference to a schedule of this agreement is a reference to the terms of the schedule as amended by the Underwriting Agency in accordance with this agreement.

20.1.7 A reference to an Act (or any provision of an Act) includes any subsequent amendment or its replacement by a corresponding enactment in force from time to time.

20.1.8 A reference to the singular includes the plural.



Execution and date

Executed as an agreement.

Date: _____

EXECUTED on behalf of the Underwriting Agency

This _____ day of _____

by _____

Signed _____

Position _____

EXECUTED on behalf of the Broker

This _____ day of _____

by _____

Signed _____

Position _____



SCHEDULE 1

Commission / Brokerage

Construction & Liability – is variable up to 15% based on broker selection.

Mobile Plant & Equipment – is variable up to 20% based on broker selection.

The agreed commission is a percentage of Gross Written Premium excluding Statutory Charges and GST.



SCHEDULE 2

Broker will issue tax invoices for Premium

Where the Underwriting Agency makes a taxable supply of a policy of insurance (or variation) to a client of the Broker, the Underwriting Agency authorises the Broker, and the Broker agrees to issue any tax invoice or adjustment note required in respect of that taxable supply as an agent of the Underwriting Agency.

The Broker must issue a tax invoice or adjustment note no later than the earlier of the following times:

- within 28 days of a request from the recipient of the supply whether the request is directly to the Broker or passed on from the Underwriting Agency; or
- 14 days after the end of the month in which the taxable supply was made or the adjustment event occurred.

The Broker is responsible to ensure that the tax invoice or adjustment note issued complies with rules for tax invoice design. The Broker will indemnify the Underwriting Agency for any fines, penalties or other costs incurred as a result of the Broker failing to issue complying documentation.

The Broker is responsible to ensure that all amounts disclosed in the tax invoice or adjustment note issued to the client are the same amounts included in the closing forwarded to the Underwriting Agency. The Broker will indemnify the Underwriting Agency for any fines, penalties or other costs incurred as a result of the Broker failing to provide the Underwriting Agency with matching documentation.

The Underwriting Agency and the Broker each agree they are GST registered when entering into this agreement and will notify the other if they cease to be registered.

The Underwriting Agency agrees to notify the Broker if it ceases to satisfy any of the requirements for issuing tax invoices.

The Broker agrees to notify the Underwriting Agency if it ceases to satisfy any of the requirements for issuing tax invoices.

The Broker agrees that as agent of the Underwriting Agency for the purposes set above, it will indemnify the Underwriting Agency and keep the Underwriting Agency indemnified for any liability for GST, or any related penalty or loss relating to GST that may arise from an understatement of the GST payable on any supply for which the Broker has issued a tax invoice.



SCHEDULE 3

The Insurer

Tokio Marine & Nichido Fire Insurance Co., Ltd.

Level 31, 9 Castlereagh Street, Sydney NSW 2000

ABN 80 000 438 291, AFSL 246548



eSentry Underwriting Bank Account Details

Terms of Trade: 45 Days

Bank Name: Commonwealth Bank of Australia

Account Name: eSentry Underwriting Pty Ltd

Account Number: 1411 8807

BSB Number: 062 000