

# 3XD Terms of Business Agreement |

## General Insurance Intermediary



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## **1 Purpose of this Agreement**

1.1 This **agreement** sets out:

1.1.1 the trading terms between **you** and **us**,

1.1.2 the entire understanding of the contractual arrangements between **you** and **us** and supersedes all previous letters, contracts and understandings in relation to such matters.

## **2 Introductory Clauses**

2.1 In this **agreement**, words importing the singular shall include the plural and vice versa.

2.2 Headings are included for convenience only and shall be ignored when interpreting this **agreement**.

2.3 Wherever and whenever **we** refer to **you**, **your** or **yourself** in this **agreement**, it shall at all times include **your** business, company, agents, representatives and employees.

2.4 Unless the context otherwise requires, references in this **agreement** to any statute or statutory provision includes any statute or statutory provision which amends or replaces it and shall include any subordinate legislation made under the relevant statute.

2.5 This **agreement** shall not override the **rules** or the terms and conditions of any **policy**.

## **3 Interpretation & Definitions**

Throughout this entire **agreement**, the following words and expressions shown in **bold type** (whether in upper or lower case) shall, save where the context otherwise requires, have the definitions set against them:

**Agreement:** means the terms stated in this document.

**Authorised firm:** means any person or legal entity that is directly authorised by the **FCA** to conduct non-investment (general insurance) business in accordance with the **FSMA**.

**Client:** means any person who is a **policyholder** or a prospective **policyholder**.

**CMA:** means the Competition and Markets Authority.

**Commission:** means any monies payable to **you** in respect of live **policies**.

**Complaint:** means any verbal or written expression of dissatisfaction made by a **client** (whether it be justified or not) about the **regulated activities** of either **party**.

**FCA:** means the Financial Conduct Authority or any regulatory body preceding or succeeding to all or any of its responsibilities.

**FSMA:** means the Financial Services and Markets Act 2000 or any Act amending it or used in the substitution of it.

**Insurer:** means the Insurance Company or Lloyd's Syndicate that underwrites the **policy**.

**Intellectual property:** means all intellectual and industrial property rights anywhere in the world.

**On-line:** means accessed via **our** website on the Internet.

**Party:** means **you** and/or **us** (as applicable to the context).

**Policy:** means any **product we** have placed on risk with the **insurer**.

**Policyholder:** means any person who has purchased a **policy** and pays the appropriate **premium**.

**Premium:** means the amount payable by the **policyholder** for insurance under a **policy** (including any additional refund or adjustment amounts).

**Product:** means the insurance schemes made available by **us** from time to time (as detailed on **our on-line** quotation/application facility).

- Proposal:** means the **client's on-line** application for a **policy**.
- Regulated activities:** means the regulatory functions **we** are directly permitted to perform by the **FCA** together with the regulatory functions **you are** permitted to perform, either directly by the **FCA**, or as an Appointed Representative of another **authorised firm**.
- Rules:** means the current laws and regulations including, but not limited to, the requirements of the **FSMA, CMA** and any regulations contained within the **FCA** handbook together with any such amendments thereto or replacements thereof.
- We/Us/Our:** means 3XD Limited.
- You/Your/Yourself:** means the person or legal entity entering into this **agreement**.

#### **4 Your Warranties**

- 4.1 By entering into this **agreement** and submitting **proposals** to **us**, **you** warrant that:
- 4.1.1 the information **you** have provided to **us** about **you**, is complete, truthful and accurate,
  - 4.1.2 **you** have the necessary **FCA** authorisation to conduct **regulated activities**,
  - 4.1.3 **you** have the authority to enter into this **agreement** and agree to be bound by its terms,
  - 4.1.4 **you** are registered with the Information Commissioner's Office,
  - 4.1.5 **you** are not in breach of any obligations **you** owe to any other person or legal entity,
  - 4.1.6 **you** are not (and never have been) in breach of the **rules**,
  - 4.1.7 **you** are assessed as being solvent amongst other things, in accordance with the **rules**,
  - 4.1.8 **you** shall maintain adequate control over **your regulated activities** and also provide adequate resources to monitor **your** compliance with the terms of this **agreement**.

#### **5 Commencement & Term**

- 5.1 Subject to **your** warranties (as detailed in clause 4) and **your** acceptance of these contractual terms, this **agreement** shall commence on the date confirmed in writing to **you** by **us** (the **start date**).
- 5.2 This **agreement** shall remain in force and effect until it is either terminated or cancelled in accordance with the termination rights set out in clause 15.

#### **6 Recitals & Relationship**

- 6.1 **We** are an **authorised firm**.
- 6.2 **You** are authorised to conduct **regulated activities**.
- 6.3 Subject to the above clause 5, **we** hereby permit **you** to sell **our products** in accordance with the terms of this **agreement** and **you** hereby agree to accept **our** permission under the said terms.
- 6.4 **You** are only permitted to quote **policy premiums** and submit new **proposals** to **us** through the correct use of **our on-line** quotation/application facility.
- 6.5 Unless otherwise agreed by **us** in writing, **you** hereby agree, that **we** are solely responsible for all aspects of **policy** administration relating to **our products** (except for claims handling) including, but not limited to, issuing **policy** documents, collecting **premiums**, renewing **policies** and processing mid term adjustments.
- 6.6 **You** are solely responsible for the sale of **our products**. **We** shall take all reasonable steps to support **you** by providing **on-line product** guidelines, email information and telephone support.
- 6.7 Nothing in this **agreement** shall be construed as creating any partnership, joint venture or relationship of employer and employee between **you** and **us** and **you** hereby agree not to represent that there is any such form of relationship between **you** and **us**.

6.8 **You** hereby acknowledge that the intellectual property rights in respect of **our** quotation/application facility, administration procedures, **products** and arrangements with the **insurer** shall at all times belong to **us**.

6.9 Under the terms of this **agreement**, **we** do not accept any responsibility for **your regulated activities**.

## **7 Our Obligations**

7.1 **We** shall, as far as **we** reasonably can:

7.1.1 comply with the **rules** that relate to **our regulated activities**,

7.1.2 provide **you** with access to the **products**,

7.1.3 provide **you** with access to **our on-line** quotation/application facility.

7.2 Notwithstanding clauses 7.1.2 and 7.1.3, **we** may restrict **your** access to the **products** and **our on-line** quotation/application facility, if **we** have reasonable grounds to believe that **you** have knowingly breached the **rules**, or the terms of this **agreement**.

## **8 Your Obligations**

8.1 **You** shall, at all times:

8.1.1 use **your** reasonable endeavours to procure the sale of **our products**,

8.1.2 adhere to the procedures laid down in the **rules** in respect of **your regulated activities**,

8.1.3 retain **your** authority to conduct **regulated activities**,

8.1.4 keep a full and accurate record of all **product** sales in accordance with the **rules**,

8.1.5 comply with the terms of this **agreement** (including any amendments thereto or replacements thereof) and any other lawful directions, instructions or restrictions issued by **us**,

8.1.6 carry out **your** responsibilities and obligations under this **agreement** in such a manner as to best protect **our** interests, business reputation and regulatory status.

8.2 **You** shall notify **us** immediately, if **you**:

8.2.1 have provided any information to **us** that is incomplete, untrue or inaccurate,

8.2.2 breach any of the **rules**,

8.2.3 are no longer authorised to conduct **regulated activities**,

8.2.4 are convicted of any offence involving fraud or dishonesty,

8.2.5 are aware of any change in **your** circumstances that could adversely affect **your** ability to meet **your** obligations under this **agreement**,

8.2.6 are aware of any circumstance that may give rise to a claim being made against **you** or **us** (other than a claim being made on a **policy**),

8.2.7 become insolvent, or appoint an administrator, receiver or liquidator over **your** business,

8.2.8 change the controlling interest in **your** business (as defined by the Companies Act 2006).

## **9 Your Restrictions**

9.1 **You** shall not, at any time:

9.1.1 unless otherwise agreed by **us** in writing, handle **premiums** (and shall immediately return any **premiums you** have received),

9.1.2 quote **policy premiums** and submit new **proposals** to **us**, other than through the correct use of **our on-line** quotation/application facility,

9.1.3 give any misleading information to **clients** about **us**, or any of **our products**,

- 9.1.4 make unfair criticism about any similar insurance scheme offered by another provider,
  - 9.1.5 accept any form of payment, inducement or other benefit to promote any one insurance scheme in preference to another similar insurance scheme,
  - 9.1.6 profess or purport **yourself** to be an employee of the **insurer** or **us**.
- 9.2 **You** shall have no authority to:
- 9.2.1 admit **our** liability, pledge or engage **our** credit or enter into a contract on **our** behalf (other than arranging **client policies**) that has not been pre-approved by **us** in writing,
  - 9.2.2 pledge or otherwise agree to settle any **policy** claim on behalf of a **client**,
  - 9.2.3 make any representation or warranty to **clients** that is not contained in the wording of the terms and conditions applicable to each individual **product**,
  - 9.2.4 publish, issue, write or circulate any advertising materials, websites, promotion letters, emails or electronic messages relating to **us** or otherwise connected with this **agreement** that has not been pre-approved by **us** in writing,
  - 9.2.5 appoint any person or legal entity to benefit from the terms of this **agreement** unless that person or legal entity has been pre-approved by **us** in writing.
- ## 10 Handling Complaints
- 10.1 Each **party** shall immediately notify the other **party** if they receive a **complaint** about the other **party**.
  - 10.2 **We** are responsible for handling and resolving any **complaint** about the administration of **our products**.
  - 10.3 **You** shall not attempt to resolve any **complaint** about **us** on **our** behalf and **you** should immediately refer any such **complaint** to **us**.
  - 10.4 **You** are responsible for handling and resolving any **complaint** about the sale of **our products** and for any advice that **you** have given to a **client**.
  - 10.5 **You** agree to handle all **complaints** about **you** in accordance with the **rules** and hereby accept that **you** are solely responsible for any compensation due to **clients** in respect of **your regulated activities**.
  - 10.6 Irrespective of whether or not the **FCA**, Financial Ombudsman Service or other regulatory body instigates a **complaint**, both **parties** agree to cooperate in dealing with any **complaint** and to provide the other **party** with any such information, assistance and documentation as shall be required to resolve the **complaint**.
- ## 11 Data Protection
- 11.1 Both **parties** shall duly observe all the requirements of the General Data Protection Regulation (**GDPR**).
  - 11.2 **We** are registered with the Information Commissioner's Office. As well as holding information relating to **clients**, **you** agree and accept that **we** shall hold personal and financial information about **you** on file (as may be required).
  - 11.3 **You** shall maintain **your** own registration throughout the life of this **agreement**. Subject to **your** confirmed registration, it is agreed that both **parties** may process **client** information.
  - 11.4 **You** pledge that any **client** data **you** provide to **us** has been obtained with the full knowledge and consent of the **client** and that the **client** is fully aware of the purpose for which the data is required, as detailed within **our** Privacy Notice. We may amend **our** Privacy Notice from time to time to keep it up to date or to comply with legal requirements. The latest version of this Privacy Notice can be found at [3xd.co.uk/privacy](http://3xd.co.uk/privacy).
- ## 12 Indemnities
- 12.1 **You** shall, at **your** own expense, arrange and maintain suitable Professional Indemnity Insurance cover to adequately protect **us** against:
    - 12.1.1 all liabilities, claims, losses, damages, penalties, fines, costs or any other expenditure as shall be incurred by **us** in respect of, arising out of, or otherwise connected with, any breach or failure by **you** to observe or comply with the **rules**, the **GDPR** or any terms of this **agreement**,

12.1.2 any levy or contribution **we** are required to pay to, or at the direction of, the **FCA** in respect of any activity **you** have undertaken pursuant to this **agreement**.

### **13 Payment of Commission**

13.1 **You** shall be entitled to receive **commission** on all live **policies** **we** have placed on risk with the **insurer** as a result of **you** selling **our products** to **your clients**.

13.2 The calculation of any **commission** **we** pay **you** shall at all times be in accordance with the rates contained in the **commission** page of **our on-line** quotation/application facility.

13.3 Any indemnity **commission** **we** pay **you** shall at all times be in accordance with the terms contained on the **commission** page of **our on-line** quotation/application facility.

13.4 **We** reserve the right to offset any **commission** clawback, fees, charges or other legitimate deductions from any **commission** payment due to **you** from **us**.

13.5 All **commission** payments shall, to the fullest extent permitted by law, be made gross without deduction of income tax, national insurance contributions or any other taxes, levies or sums for which **you** may be liable to account for.

13.6 All **commission** payments are personal to **you** and the rights to any **commission** cannot be transferred to another person or legal entity if it has not been pre-approved by **us** in writing.

13.7 **We** reserve the right, at **our** sole discretion, to amend **our commission** rates, but any such amendment shall not affect **policies** that are currently in force.

13.8 **We** shall be under no obligation to pay interest.

### **14 Repayment of Commission**

14.1 **You** shall repay the **commission** **we** have paid **you** in respect of any **premium** **we** are obliged to refund to a **policyholder** due to one (or more) of the following events:

14.1.1 the **policyholder** cancels their **policy**,

14.1.2 **we** (or the **insurer**) agree to make a **premium** refund,

14.1.3 **we** are required to make a **premium** refund as a result of a **complaint**,

14.1.4 **we** are required to make a **premium** refund by law or any regulatory authority.

14.2 **You** shall repay the indemnity **commission** **we** have paid **you** in respect of any **premium** **we** are unable to collect because the **policy** has been cancelled.

14.3 If **you** receive a **commission** statement from **us** that shows a negative balance, then the negative balance shall be construed as being a debt due from **you** to **us** and shall immediately become payable without delay or further demand.

### **15 Termination**

15.1 Either **party** may terminate this **agreement** (without any cause) by giving the other **party** not less than 30 days written notice of any such termination.

15.2 **We** reserve the right to terminate this **agreement** with immediate effect if **you**:

15.2.1 commit any material breach of this **agreement** that is not capable of remedy or, if the breach is remediable, **you** fail to remedy that breach within the 14-day period immediately following receipt of the written notice from **us** providing **you** with details of the breach together with **our** request for **you** to remedy the said breach,

15.2.2 are convicted of any offence involving fraud or dishonesty,

15.2.3 are no longer considered (in **our** reasonable opinion) to be of good repute,

15.2.4 breach the **rules**, or cease to be authorised to conduct **your regulated activities**,

15.2.5 fail to maintain adequate Professional Indemnity Insurance cover (as detailed in clause 12),

- 15.2.6 become insolvent, or appoint an administrator, receiver or liquidator over **your** business,
- 15.2.7 change the controlling interest in **your** business (as defined by the Companies Act 2006) if such an action is considered (in **our** reasonable opinion), to be against **our** commercial interests,
- 15.2.8 give misleading information to **clients** about **our products**, or commit any other action that brings the **insurer** or **us** into disrepute, howsoever caused,
- 15.2.9 are a sole trader and **you** die.
- 15.3 This **agreement** shall terminate with immediate effect if **we** cease to be an **authorised firm**.
- 15.4 Termination of this **agreement** shall be without prejudice to any of the rights or remedies each **party** is entitled to under law and shall not affect any such accrued rights or liabilities of either **party**.
- 16 Consequences of Termination**
- 16.1 Following the termination of this **agreement**, **you** shall immediately:
- 16.1.1 stop selling **our products** (**we** shall not accept any new **proposals** from **you**),
- 16.1.2 stop accessing **our on-line** quotation/application facility,
- 16.1.3 stop using any of **our** proprietary marks, logos or trading names.
- 16.2 Always provided, that termination of this **agreement** is not brought about by clause 15.3, **we** shall:
- 16.2.1 continue to pay **you commission**,
- 16.2.2 immediately become responsible for the onward servicing of **your clients** (unless both **parties** have agreed in writing to subrogate the servicing rights to another person or legal entity),
- 16.2.3 act at all times in what **we** consider to be the best interests of the **policyholder**.
- 16.3 Notwithstanding clause 16.2.1, no **commission** shall be payable:
- 16.3.1 for any new **policies** transacted after the termination date of this **agreement**,
- 16.3.2 if **we** terminate this **agreement** because **you** have breached any clause contained in 15.2,
- 16.3.3 if **you** breach clause 15.2.2, 15.2.5, 15.2.6, 15.2.7, 15.2.8 or 15.2.9 at any time following the termination of this **agreement**.
- 16.4 **We** shall prepare a statement of account and any amounts **you** owe **us** shall immediately become payable without delay or further demand. Without prejudice to any other rights **we** may have, **we** shall be entitled to set off the amount due to **us** (whether under this **agreement** or not) against any sum due to **you**.
- 16.5 Where **you** have received an advance payment of indemnity **commission** from **us**, then upon termination, any unearned part of the indemnity **commission** **you** have received shall be construed as being a debt due from **you** to **us** and shall immediately become payable without delay or further demand.
- 16.6 Termination of this **agreement** shall not automatically give rise to any claim for compensation.
- 16.7 Clauses 8.2.4, 8.2.6, 8.2.7, 8.2.8, 9.1.6, 9.2.4, 9.2.5, 10, 11.1, 12, 13.4, 13.5, 13.6, 13.7, 13.8, 14, 17 and 18 shall be deemed to survive termination of this **agreement**.
- 16.8 If termination of this **agreement** is brought about by the circumstance detailed in clause 15.3, **you** shall be entitled to act in whatever way **you** consider to be in the best interest of **your clients**.
- 17 Service of Notices**
- 17.1 All notices served by **you** under this **agreement** shall be sent to **our** registered address. All notices served by **us** shall be sent to **your** last known address.
- 17.2 Notices may be served on the other **party** by hand, pre-paid postage or facsimile transmission:

- 17.2.1 notices served by hand, shall be considered to have been served and to take full effect at the time it is delivered and accepted,
- 17.2.2 notices served by pre-paid postage, shall be considered to have been served and to take full effect 48 hours after posting and it is sufficient to prove that the letter containing the notice was properly addressed, stamped and posted,
- 17.2.3 notices served by facsimile transmission, shall be considered to have been served and to take full effect at the time evidenced by a 'successful transmission' machine receipt.

## **18 Confidentiality**

- 18.1 Both **parties** shall treat information relating to the other **party** and its business as confidential.
- 18.2 Clause 18.1 shall not apply to information that:
  - 18.2.1 is necessary for either **party** to fulfil its respective obligations under this **agreement**,
  - 18.2.2 is required to be disclosed by law or any regulatory authority,
  - 18.2.3 is already public knowledge or becomes so at a future date (other than as a result of a breach of this clause) or which is trivial or obvious,
  - 18.2.4 was rightfully in the possession of either **party** prior to this **agreement**.

## **19 Intellectual Property Rights**

**You** hereby acknowledge, that **our intellectual property** rights shall include, but not be limited to, any invention, patent, design or utility model rights, any copyright and trade marks, service marks, database rights, topography rights, commercial or confidential information, know how or trade secrets.

## **20 Copyright, Advertising & Marketing**

**You** shall not use any trade name, trademark, logo belonging to **us** that has not been pre-approved by **us** in writing and acknowledge that nothing contained in the terms or operation of this **agreement** allows **you** the right to acquire, assign, transfer or vest **our intellectual property** rights.

## **21 Client Contact**

- 21.1 All **clients** introduced by **you** shall remain **your clients** and **we** shall not contact any such **clients** for the purpose of cross selling any of **our** other **products** without **your** prior consent.
- 21.2 Notwithstanding clause 21.1, **we** shall not be restricted from offering other **products** to **clients** if **we** are required to do so by any law or regulatory authority or, in **our** reasonable opinion, **we** consider it to be in the best interests of the **policyholder**.

## **22 Dispute Resolution**

- 22.1 **We** are committed to resolving all disputes (whether such dispute arises before or after termination of this **agreement**) without the need for either **party** to instigate any litigation and allow as far as it is reasonably possible, the commercial relationships to remain unaffected by such disputes.
- 22.2 **We** shall attempt in all good faith to resolve any dispute or claim promptly through negotiations between the respective senior executives of each **party** provided such have authority to settle the same.
- 22.3 Notwithstanding clauses 22.1 and 22.2, **we** reserve the right to seek the immediate protection or assistance of the High Court if appropriate.

## **23 Governing Law & Jurisdiction**

The construction, validity and performance of this **agreement** shall be governed in all respects by English Law and any proceedings arising out of or connected with this **agreement**, shall be subject to the exclusive jurisdiction of the English Courts.

## **24 Rights of Third Parties**

A person who is not a **party** to this **agreement** has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this **agreement**. This clause shall not affect any right or remedy of a Third Party, which exists or is available apart from that Act.



## **25 Variations & Assignment**

- 25.1 This **agreement** shall only be assigned if both **parties** agree to any such assignment in writing.
- 25.2 The terms of this **agreement** shall only be varied if both **parties** agree to any such variation in writing.
- 25.3 Notwithstanding clause 25.2, **we** reserve the right to vary the terms of this **agreement** if **we** are required to do so by any law or regulatory authority.

## **26 Severability & Waivers**

- 26.1 If any Court, or administrative body of competent jurisdiction, finds any provision of this **agreement** to be invalid or unenforceable, then such invalidity or unenforceability shall not affect the other provisions of this **agreement**, which shall remain in full force and effect.
- 26.2 No failure or delay (whether express or implied) in the exercising of any right or remedy under the terms of this **agreement** shall constitute a waiver thereof.

## **27 Force Majeure**

- 27.1 **We** shall not be held liable or be in default for any delay or failure to perform **our regulated activities** if such a delay or failure is caused by an event beyond **our** control (a **force majeure event**).
- 27.2 If a **force majeure event** should occur that is likely to result in any delay or failure in **us** performing **our regulated activities**, **we** shall give **you** prompt notice in writing and take all reasonable steps to continue performing **our** obligations under this **agreement**.

## **28 Default Clause**

- 28.1 If **we** are prevented from performing **our regulated activities** by any act, omission or failure by **you** to perform **your** obligations under this **agreement**, **we** shall, without limiting **our** other rights or remedies, have the right to suspend **our regulated activities** to **you** until **you** remedy any such default.
- 28.2 **We** shall not be liable for any costs or losses sustained or incurred by **you** arising directly or indirectly from **our** failure or delay to perform **our regulated activities** as a result of any such default on **your** part.

## **29 Bribery Act & Financial Crime**

Both **parties** shall not accept, offer or facilitate payment, consideration or any other benefit that constitutes an illegal or corrupt practice that is contrary to any applicable anti-bribery legislation and agree to maintain appropriate systems, procedures and controls to prevent the risk of bribery activity occurring.

## **30 Errors & Omissions**

Any inadvertent errors or omissions on **our** part shall not be held to relieve **you** from any liability under this **agreement**, if **we** rectify such error or omission immediately upon discovery.