

# Terms of business

## About this statement

These Terms of Business shall be effective as from 1 November 2011 and shall apply to all Business placed on or after that date with any of the entities defined below as the Company.

## 1. Definitions

'Act' means the Financial Services and Markets Act 2000, as amended or re-enacted from time to time.

'Appointed Representative' has the meaning given to it in Section 39(2) of the Act.

'Business' means all long-term insurance business (as defined in Schedule 1 Part II of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 SI 2001/544), collective investment scheme business (as defined in Section 235 of the Financial Services and Markets Act 2000), individual savings account business (as defined in the Individual Savings Account Regulations 1998 - SI 1998/1870) and any other products and services offered by the Company at any time.

'Client' means the applicant for Business and, where appropriate, shall also mean the policyholder.

'Company' means all and any of the following: Guardian Assurance Ltd, Guardian Pensions Management Ltd and Guardian Linked Life Assurance Ltd.

'FSA' means the Financial Services Authority and any successor organisation.

'Intermediary' means the authorised financial adviser to whom these terms of business apply.

## 2. Scope

- 2.1 These Terms of Business set out the conditions upon which the Company will accept Business from Intermediaries.
- 2.2 The Intermediary is the agent of the Client and not of the Company in relation to all aspects of any Business placed or serviced by the Intermediary. This does not detract from the obligations of the Company and the Intermediary to each other assumed in these Terms of Business.
- 2.3 The Company reserves the right, at its discretion, not to accept any item of Business from an Intermediary.

- 2.4 The Company reserves the right to make direct contact with the Client of the Intermediary where considered appropriate whether pursuant to the requirements of legislation or the rules of the FSA or otherwise. The Company also reserves the right to send, direct to the Client, information regarding the Client's policy, in which case the Company will send generally, and where appropriate, a copy of the information to the Intermediary.
- 2.5 For group personal pension and group stakeholder policies the Company shall, where employer contributions are being paid into employees' policies, be entitled to accept a letter of authority signed for and on behalf of the employer as sufficient authority for it to change the Intermediary acting under all such employees' policies without seeking any further authority from the individual employee. This shall not detract from the ability of the individual employee to give to the Company contrary instructions for his or her own policy.

## **3. Commission**

### **3.1 Commission payment**

- 3.1.1 The Company will credit or pay commission on all Business submitted to the Company by the Intermediary and accepted by the Company, except where the Intermediary has confirmed to the Company that the Intermediary does not require commission to be paid.
- 3.1.2 The Company may publish detailed commission terms at any time which will apply to all Business placed after publication and which are available on request. This shall not detract from the ability of the Company to provide bespoke commission terms in any circumstances that it deems appropriate.
- 3.1.3 The Company may vary such commission terms and any discount rate applicable to commission payable on indemnity terms as it sees fit without notice of any such variation to the Intermediary.
- 3.1.4 Where the Company's commission terms provide for a choice of different commission options, the Intermediary will, at the time of submitting an item of Business, advise the Company of the basis on which the Intermediary requires commission to be paid for that item of Business. Where no such advice is given by the Intermediary, the Company will pay commission on such basis as it considers appropriate in the circumstances.
- 3.1.5 Initial commission will only be paid once in respect of any Business submitted. If two or more Intermediaries claim commission in respect of the same piece of Business, the commission will normally be paid to the Intermediary recognised by the Client as his or her agent at the time when the application for Business is completed or the increment to the policy is submitted to the Company.
- 3.1.6 The Company reserves the right not to pay commission to the Intermediary where the applicant for Business or the policyholder is the Intermediary, an Appointed Representative of the Intermediary, an employee of the Intermediary, a relative of the Intermediary, a relative of an employee of the Intermediary or otherwise as the Company may determine.

### **3.2 Indemnity commission terms**

- 3.2.1 On application by the Intermediary (and subject to the prior written agreement of the Company), the Company will pay initial commission on indemnity terms in accordance with the Company's indemnity terms applicable from time to time, details of which are available on request.

- 3.2.2 Where the Company has granted indemnity terms to the Intermediary, the Company will, on request by the Intermediary, pay the total amount of initial commission, discounted in accordance with the Company's indemnity terms applicable from time to time, on acceptance of the Business and on receipt of the first premium and when premiums are increased to a level higher than ever previously paid.
- 3.2.3 Commission paid on indemnity terms is paid conditionally upon it being earned and in the event that premiums cease (other than on death) or the premium reduces during an initial period relating to the whole or part of the premium then the said commission will, in whole or in part, be deemed not to have been earned. In such circumstances the Intermediary shall repay, or the Company shall otherwise recover from the Intermediary, the unearned commission calculated in accordance with the Company's indemnity terms from time to time.
- 3.2.4 The Company will give notice to the Intermediary of a non-payment of premium as soon as it is practicable to do so. If the unearned commission is not repaid within three months of this notice, the Intermediary is required to pay interest on the debt at the rate of at least 0.67% a month compound, or at such other rate which the Company deems appropriate from time to time, from the date on which premiums ceased being paid.
- 3.2.5 Where Business is reinstated, the Company will pay any commission resulting from the reinstatement to the Intermediary whose advice or actions, in the sole discretion of the Company, was instrumental in leading to the reinstatement.
- 3.2.6 The Company reserves the right to withdraw indemnity commission terms and pay non-indemnity commission whenever the amount of the Intermediary's unearned indemnity commission liability exceeds such sum as the Company may deem appropriate or otherwise as the Company may determine from time to time.

### **3.3 Establishment commission terms**

- 3.3.1 On application by the Intermediary (and subject to the prior written agreement of the Company), the Company will pay establishment commission in accordance with the Company's establishment commission terms applicable from time to time, details of which are available on request.
- 3.3.2 Commission paid on establishment commission terms is paid conditionally upon it being earned and in the event that premiums cease (other than on death) or the premium reduces during an initial period relating to the whole or part of the premium then the said commission will, in whole, be deemed not to have been earned. In such circumstances the Intermediary shall repay, or the Company shall otherwise recover from the Intermediary, the unearned commission calculated in accordance with the Company's establishment commission terms from time to time.
- 3.3.3 The Company will give notice to the Intermediary of a non-payment of premium as soon as it is practicable to do so. If the unearned commission is not repaid within three months of this notice, the Intermediary is required to pay interest on the debt at the rate of at least 0.67% a month compound, or at such other rate which the Company deems appropriate from time to time, from the date on which premiums ceased being paid.
- 3.3.4 Where Business is reinstated, the Company will pay any commission resulting from the reinstatement to the Intermediary whose advice or actions, in the sole discretion of the Company, was instrumental in leading to the reinstatement.
- 3.3.5 The Company reserves the right to withdraw establishment commission terms whenever the amount of the Intermediary's unearned commission liability exceeds such sum as the Company may deem appropriate or otherwise as the Company may determine from time to time.

### **3.4 Single premium commission**

- 3.4.1 The Company will pay commission to the Intermediary in respect of certain single premium Business placed by the Intermediary conditionally upon the single premium Business remaining in force for a specified period of time. In the event that the Business does not remain in force for the specified period of time then the said commission will, in whole or in part, be deemed not to have been earned. In such circumstances the Intermediary shall repay, or the Company shall otherwise recover from the Intermediary, the unearned commission calculated in accordance with the Company's single premium terms from time to time.
- 3.4.2 If the unearned commission is not repaid within three months of this notice, the Intermediary is required to pay interest on the debt at the rate of at least 0.67% a month compound, or at such other rate which the Company deems appropriate from time to time, from the date on which the single premium Business ceased to remain in force.

### **3.5 Appointed representatives**

If the Intermediary appoints an agent or Appointed Representative, commission will be paid to the Intermediary and the Intermediary will be liable to repay any commission due to the Company under 3.2 above. This also applies where the Company pays monies to the order of the Intermediary. It is agreed that the Company will have no direct contractual relationship with such agent or Appointed Representative.

### **3.6 Premium payment**

All premiums must be remitted to the Company without deduction of commission.

### **3.7 Termination of commission payment**

- 3.7.1 The Company will cease paying to the Intermediary renewal commission and any type of phased commission including level commission, fixed percentage of contribution and fund/surrender value related commission in the undernoted circumstances:
- (a) The death of the Intermediary if a sole trader
  - (b) Termination of this agreement by the Company or the Intermediary
  - (c) The entry of the Intermediary into a voluntary arrangement with its creditors, the commencement of bankruptcy or winding-up proceedings against the Intermediary or the appointment of a receiver or of an administrative receiver over the assets of the Intermediary or the entry of the Intermediary into liquidation (where voluntary or compulsory)
  - (d) The Intermediary ceasing to be authorised pursuant to the Act or otherwise becomes, in the opinion of the Company, unable to provide ongoing advice in connection with the Company's policies or contracts to which the commission payment relates
  - (e) Where, in the opinion of the Company, the Intermediary is no longer the agent of the Client even though the Intermediary may still be authorised
  - (f) No notification of a change of Intermediary will be accepted by the Company unless it is given in writing
- 3.7.2 Where the Company, having regard to the particular circumstances relating to any case or cases, considers that it is appropriate to continue paying commission to an Intermediary who has ceased to be the agent of the Client in terms of the above paragraphs then, at the Company's sole discretion, it may do so based on such terms and conditions as it shall deem appropriate at the time.

- 3.7.3 If individual policies/contracts are transferred from the Intermediary's account at the Client's request, the Intermediary will remain liable for any commission clawback on those contracts in relation to Business submitted by the Intermediary.

### **3.8 Transfer of clients**

If the Intermediary either ceases to be authorised or informs the Company that the Business is to be transferred, the Intermediary is expected to arrange for another intermediary to give advice to existing Clients. In such a case, the Company may, at its sole discretion, transfer payment of commission to the new intermediary provided that the new intermediary has accepted in writing the contingent liability to repay to the Company any unearned indemnity commission paid to the original Intermediary. These Terms of Business shall thereafter apply to such authorised party. Any commission subsequently payable in these circumstances will be subject to a deduction, if applicable, to meet any sums due by the ceding Intermediary to the Company then or subsequently arising.

### **3.9 Cancellation rights**

- 3.9.1 If a Client exercises the right to cancel any contract (or additional premium or contribution to an existing contract) in terms of the FSA Conduct of Business Sourcebook COBS15 or any other statutory, regulatory or contractual right, no commission shall be payable to the Intermediary in respect of such Business and any commission already paid shall forthwith be repaid to the Company.
- 3.9.2 In relation to any contracts (or additional premiums or contributions to existing contracts), where a Client has a right to cancel as described in 3.9.1 then, in addition to those statutory, regulatory or contractual rights to cancel, the Company may allow its Clients an extended right to cancel within a period of up to 30 days from the date of receipt by the Client of a notice of cancellation specifying such a right to cancel. In the event that a Client exercises an extended right of cancellation, no commission shall be payable to the Intermediary in respect of such Business and any commission already paid shall be immediately repayable to the Company.
- 3.9.3 If, as result of either a complaint by the Client against the Intermediary or an order by a court, ombudsman, and/or any regulatory body, either premiums require to be refunded or the current fund value of the investment requires to be paid out either directly to the Client or to a third party on behalf of the Client, no commissions shall be payable to the Intermediary in respect of such Business and any commission already paid shall, together with interest at the rate specified at 3.2.4 above accruing from the date of payment of the commission until the commission is repaid, be immediately payable to the Company by the Intermediary.

### **3.10 Frequency of commission payments**

Commission will be paid to the Intermediary at such intervals as the Company may agree. If the amount of commission payable at any time is less than £100 sterling, the sum may be retained until the total commission payable exceeds that figure.

### **3.11 Statements**

The Company's statement of account (which may be contained in writing, on disk, on tape, in direct online communication to a computer terminal, or any other method of communication agreed between the Company and the Intermediary) shall be the conclusive record of commission due to the Intermediary, save in the case of manifest error or omission.

### **3.12 Debt reporting**

In the event that the Intermediary is, at any time, due to the Company a debt incurred as a result of the clawback of commission paid on indemnity terms or otherwise, including any amount which falls within FSA Supervision Manual Rule 15.8.3, or such other rules of the FSA which require the Company to report to the FSA details of the amount due, then the Company reserves the right to pass this information to other financial institutions and to third parties providing data gathering information services on their behalf.

### **3.13 Set off**

The Company reserves the right to set off the payment of commission due to the Intermediary against any debt due from the Intermediary to the Company. If the Intermediary holds more than one account with the Company, the Company reserves the right to set off one account against another for monies due to the Company.

### **3.14 General**

- 3.14.1 The Intermediary must comply with all relevant regulatory and legislative requirements relating to Business submitted to the Company and, in particular, with those rules regarding commission disclosure.
- 3.14.2 Without prejudice to 3.1 to 3.13 above, matters relating to commission payable or provided by the Company to the Intermediary shall be subject to the rules of the FSA.

## **4. Documentation**

- 4.1 The Intermediary must pass on immediately, without amendment, any documentation which the Company supplies for the benefit of, or completion by, the Client or which the Client provides in relation to the Business.

## **5. Variation**

- 5.1 The Company reserves the right to vary the terms contained in these Terms of Business. No formal written notification of a variation will require to be sent by the Company to the Intermediary. The variation will be posted on the appropriate websites for the Company and shall take effect, subject to 5.2, no earlier than one month after posting on the website.
- 5.2 Such variation shall have immediate effect in circumstances where variation must take effect earlier than the date expressed in 5.1 to accord with any legislation (including delegated legislation and statutory instruments) or with the FSA rules. Such variation will not affect Business placed with the Company before the variation to these Terms of Business is to take effect.

## **6. Money laundering**

- 6.1 In connection with all transactions with the Company, the Intermediary gives an assurance that, where required to do so in terms of the Money Laundering Regulations 2007, as amended from time to time, evidence of the identity of all parties introduced by the Intermediary will have been obtained and recorded and such records will be preserved under procedures maintained by the Intermediary in accordance with or pursuant to the said Regulations and rules and any other rule of law applicable to the Intermediary.

- 6.2 Where required by the Company to do so, either generally or only for specific types of Business, an application form submitted by the Intermediary on behalf of a third party shall be accompanied by an 'Identity Verification Certificate' fully completed by the Intermediary. The Identity Verification Certificate will be in a format approved by The Joint Money Laundering Steering Group from time to time, or otherwise as the Company may reasonably require.
- 6.3 The Intermediary will supply to the Company such relevant verification data, with regard to the identity of the Client and any relevant such third party, including the source of funds, as the Company may consider appropriate having regard to the Company's obligations arising from the Money Laundering Regulations 2007, as amended from time to time.

## **7. Data protection/Use of information/data**

- 7.1 The Intermediary warrants that:
- (a) it has in place all necessary notifications in respect of its processing of personal data as required by the Data Protection Act 1998 ('the Act'), as amended from time to time; and
  - (b) it has obtained all appropriate consents from the Client to provide the Company with personal data.
- 7.2 The Intermediary acknowledges that the Company will be a Data Controller (as defined by the Act) in respect of the information or data provided to it and shall be entitled (either alone or in conjunction with any other party) to use and disclose such information or data in accordance with the business requirements of the Company from time to time and to carry out its obligations under any contract entered into either by or on behalf of the Client. The purposes for which the Company may use and disclose such information or data will include, without limitation, conducting market research, preparing strategic or other marketing plans and exchanging information with another contracting party (for any such party's legitimate purposes or use).
- 7.3 Information about the Intermediary, the conduct of the Intermediary and the Intermediary's agency account with the Company shall be processed and disclosed by the Company, and the Intermediary consents to such processing and disclosure, in accordance with the purposes described in clause 7.2 above. The Intermediary acknowledges that such information may be held on computer or in such other medium as the Company may use. The Company also reserves the right to provide such information to a Credit Reference Agency, Closed User Group or Computer Bureau.

## **8. Service of documents**

- 8.1 Any letter or other document shall be deemed to have been served upon the Intermediary if it is sent by post or left at any address of the Intermediary from which the Intermediary has informed the Company, in writing, that the Intermediary was last trading or at the Intermediary's registered office (if appropriate).
- 8.2 Any letter or document sent by post shall be deemed to have been served on the second business day following that on which it was posted and service shall be sufficiently proved if there is evidence that the envelope containing the letter or document was properly addressed, stamped and posted.

## 9. Communication and electronic mail

- 9.1 The Intermediary and the Company accept the integrity of all electronic mail messages and agree to accord these the same status as would be applicable to a document or to information sent other than by electronic means.
- 9.2 The Intermediary and the Company agree not to contest the validity or enforceability of electronic mail messages in any legal proceedings between them respecting or related to a transaction and hereby expressly waive any right to raise any defence of waiver of liability based upon the absence of a memorandum in writing or a failure of execution.
- 9.3 The Company may accept email or other electronic communications from or with the Intermediary upon such terms and subject to such additional or separate conditions as the Company may consider appropriate or desirable from time to time. This is subject to the strict understanding on the part of the Intermediary that the Company shall not be held responsible in the event that such communications are not, in whole or in part, received by it or are delayed for whatever reason.
- 9.4 In accessing any information or systems made available to the Intermediary by the Company from time to time, the Intermediary undertakes and warrants that: (a) the Intermediary is authorised, registered and holds the necessary consents from Clients to have such access and to process the information made available by the Company; (b) the Intermediary has in place appropriate technical and organisational security measures to ensure that the information is stored securely and not accessible to any unauthorised person; (c) the Intermediary has taken steps to ensure that the information will not be disclosed to anyone who is not authorised to receive the information; and (d) the information will be used only for the Intermediary's legitimate business purposes and in compliance with the Intermediary's data protection registrations.
- 9.5 It is a condition that any identifier and associated password issued for the purposes of gaining access to the Company's computers – or access to information about the Company's products and services held on third party computers – will be used prudently and kept secure. In particular, an identifier and the associated password will only be made known to persons authorised by the Company to hold such identifier and associated password.

## 10. Applicable law

These Terms of Business shall be governed and construed in accordance with the laws of the part of the United Kingdom in which the Intermediary has its principal place of business.