



SUBEX Subsidence Excess Insurance

Terms of Business Agreement

This Agreement will be effective from the date we received your application and will replace any Agreement in place prior to this date with **Howe Maxted Group Ltd**.

THE PARTIES

SUBEX a trading name of Howe Maxted Group Ltd a company registered in England (and Wales) with Registered Number 1854813 and having its registered office at Tubs Hill House, London Road, Sevenoaks, Kent TN13 1BL. (“We, Us, Our”).

And

The insurance intermediary who has confirmed agreement to the Terms and Conditions of this Agreement in a format provided by Us (“You, Your, Yours”).

1. PREAMBLE

1.1 This Agreement specifies the Terms under which You will place business with Us on behalf of Your clients, which You wish to be placed by Us under Binding Authorities held by Us with Insurance Companies.

1.2 In so far as this Agreement is concerned You shall remain for all purposes the agent of Your client and We shall remain for all purposes the agent of the Insurer(s).

2. INTERPRETATION

The Parties agree that the following terms shall have the following meanings for the purpose of this Agreement

“Act”	means the Financial Services and Markets Act 2000
“Agreement”	means the terms and conditions contained in this document
“Client”/”Clients”	means a client or potential client of Yours

“Client Money”	has the meaning it bears in the FSA Client Asset Sourcebook
“Commission”	means any payment by Us to You in consideration of You placing General Insurance Business with Us
“Confidential Information”	means all Our business and trade secrets, Our methods of doing business, and Our customer lists but excluding such information available in the public domain
“FSA”	means the Financial Services Authority
“General Insurance Business”	means the scope of insurance business extended to You by the FSA on authorisation (that you are permitted to transact)
“ICOB”	means the Insurance Conduct of Business Rules of the FSA
“Intellectual Property Rights”	means all intellectual and industry property rights world wide, including without limitation any invention, patent, design or utility model rights, and copyright and trade marks, service marks, database rights, topography rights, trade names, domain names, commercial or Confidential Information, corporate symbol, logo and any other rights of similar nature
“Money Laundering Rules”	means the Money Laundering Regulations 2003 and Proceeds of Crime Act 2002
“Rules”	means the FSA Handbook of Rules, including regulations where applicable and amendments made from time to time
“Statement of Account”	means Your monthly or ad hoc statement of account produced in any media including but not limited to, disc, electronic mailing, Excel and Word documents or in writing
“Terms of Credit”	means the terms of credit applied to Your account by Us

3. YOUR REGULATORY STATUS

- 3.1 You will have or will obtain and maintain authorisation with the FSA to carry on General Insurance Business effective as from 14th January 2005 and You will be able to fulfil your duties and obligations under this Agreement
- 3.2 You will comply with all relevant Rules and the FSA customer protection standards which include:
- (i) treating clients fairly
 - (ii) having appropriate systems and controls in place given the nature, extent and complexity of Your business
 - (iii) only undertaking activities which You are competent to undertake
- 3.3 You will inform Us in writing immediately if during any time that this Agreement is in force:
- (i) Your authorisation is suspended or withdrawn in full or in part by the FSA
 - (ii) You are subject to disciplinary action or are under investigation by the FSA or other regulatory authority
 - (iii) You are or become aware of an actual, including suspected, breach with the Rules or Your inability to comply with them

4. COMPLIANCE

- 4.1 You will procure and maintain Professional Indemnity Insurance in accordance with the Rules and if requested produce a copy of the cover note or policy and evidence of premium payment on demand
- 4.2 You shall inform Us immediately in writing if Your Professional Indemnity Insurance is cancelled, voided or not renewed or is deemed to be insufficient to meet Your business needs or scale of Your operations
- 4.3 You have the requisite controls, systems and procedures in place to meet the requirements of the Money Laundering Rules, including record keeping and retention of records, and that You will fully comply with these to the extent that is applicable to Your business
- 4.4 You will inform the Us in writing within 14 days if during any time that this Agreement is in force:
- (i) there is any change to Your ownership, partners, directors or shareholders
 - (ii) You change Your trading name, correspondence address, registered office or in the case of a sole trader or partnership, You become incorporated

- (iii) You become insolvent, appoint a receiver, administrator or manager over any part of your undertaking or assets, seek Liquidation or any analogous proceedings in any jurisdiction, or if any of Your principals becomes bankrupt
- (iv) Your principal, owners, partners or directors are subject to now, or become in the future subject to disciplinary proceedings instituted by a professional or regulatory entity and if the same are convicted of any criminal offence (excluding a motoring offence)

5. YOUR OBLIGATIONS

- 5.1 All instructions from Us must be carefully complied with by You
- 5.2 You are not authorised to delegate Your obligations hereunder or appoint a sub-agent nor are You empowered to bind Us for any risk either by acceptance or amendment of any insurance or in any other manner whatsoever unless prior specific authority has been obtained in writing from Us, or unless the business is transacted through Our website
- 5.3 You are required to:
 - (i) deliver/transmit to Us all completed proposal forms or other documents, which relate to any risk which has been or may be bound by Us without delay and in any event within 1 business day as You receive such information or proposals
 - (ii) inform Us immediately of any matter known to You which would or could reasonably be expected to influence Our decision regarding any risk
 - (iii) notify Us within one business day of any material information notified to You by Your client in accordance with the terms of the contract of insurance. Any such information relating to claims shall be provided to the Claims Service Handler by You. The identity of the Claims Service Handler shall be notified to You from time to time
 - (iv) conduct business with utmost good faith and integrity towards Us
 - (v) comply with all applicable laws, regulations and codes when transacting business with or on Our behalf (which shall include the Data Protection Act 1998)
 - (vi) keep separate and accurate records of all business transacted with and on Our behalf and shall permit Our duly appointed representatives to inspect such records and to take copies of the same at all reasonable times during a business day

- (vii) notify Your client promptly and accurately of all terms and conditions applying to the insurance (in relation to new or renewal business) including details of cover, premium and taxes
- 5.4 For the avoidance of doubt, notification to You by Your client will not be deemed to be notification to Us
- 5.5 If We provide a quotation, You shall only present it to Your client on the exact same basis
- 5.6 We shall only be bound to incept a General Insurance policy on behalf of Your client after We have received written instructions to commence such cover
- 5.7 The renewal of Your client's Business shall be Your responsibility and You will liaise with Us in accordance with ICOB 5.3.18 for retail clients and in accordance with ICOB 5.4.10 for commercial clients to allow for the proper and timely interchange of information and the subsequent consideration by Your Client of renewal terms agreed by Us
- 5.8 All documentation regarding the proposed contract of insurance required by the FSA under the provision of ICOB shall be drafted in good time to permit compliance with FSA requirements and once received and agreed shall be sent to the client by You within one business day

6. ACCESS TO WEBSITE

We will provide You with password access to a secure website (the "Company Website") where You will be able to enter and retrieve data in connection with proposals of insurance to Us for Your clients. The provisions of Schedule 1 to this Agreement shall apply to Your usage of the Company Website

7. COMMISSION TERMS

- 7.1 As an Underwriting Agency We received commission from Insurers and We will pay You commission on all risks placed with Us and any renewal thereof
- 7.2 The rate of commission is as set out in Our Commission Schedule, a copy of which is set out in Schedule 2. Commission is calculated on the element of premium excluding Insurance Premium Tax
- 7.3 We reserve the right to change the Commission Schedule subject to giving 30 days prior written notice to You
- 7.4 In addition We may receive a Profit Commission from insurers. If received this will be retained by Us
- 7.5 Where We agree or are required to return any part of the premium to Your client You will immediately repay to Us the equivalent proportion of Commission

7.6 We reserve the right to set off and deduct any monies due from You from any Commission or other payment due from Us to You on any account whatsoever

8. PAYMENTS

8.1 Unless otherwise agreed, Your Terms of Credit are strictly 30 days

8.2 We will be responsible for the preparation of a Statement of Account, which may take the form of but not be limited to paper, disk, tape, electronic mailing, Excel and Word documents and this statement, unless otherwise agreed, will be the basis of accounting transactions between us

8.3 The Statement of Account will be rendered to You on a monthly basis by Us. Payment of all monies due net of Commission but inclusive of insurance premium tax must be settled by the last working day of the month following the month in which the entries are debited/credited

8.4 Failure to settle accounts in accordance with clause 8.3 shall be seen as a material breach of this Agreement and may result in Termination of this Agreement

8.5 For the avoidance of doubt, Your payment obligations to Us shall be unaffected:

(i) if You have without Our prior written consent allowed credit to Your Client

(ii) if You have obtained extended deferment periods from any premium finance house

(iii) if You have delays or experience difficulties within Your own accounting systems

8.6 You will notify Us immediately if You become aware of the possibility of a failure to collect any premium. We shall inform You that either the cover will remain on risk for a further period or that the contract of insurance will be cancelled unless You accept responsibility for payment of the premium. You shall comply promptly with instructions from Us in this regard failing which You shall be deemed to have accepted responsibility for payment of the premium

8.7 If You fail to notify Us in accordance with 8.6 above You shall be responsible for payment to Us of the net premium

8.8 Premiums and other monies received by You in respect of a policy We have incepted on behalf of Your client shall be paid into a separate, properly designated bank account opened for the receipt of such monies so that such monies are readily identifiable as being attributable to such policy(ies) at all times, and shall not be applied for any other purpose other than remittance to Us (unless Commission is properly due) or as set out in 8.9 below in

accordance with the credit terms set out above. The said bank account shall be operated in accordance with the Rules

- 8.9 We act as an Agent of the Insurer and do not hold client monies. Premiums paid to and received by Us are deemed to have been received by the Insurer

9. USE OF THE COMPANY NAME

- 9.1 We shall supply You with any relevant promotional material and related insurance documentation. All stocks of certificates of insurance, endorsements and other documents and any electronic method of producing documentation shall be kept secure at all times. If requested by Us You will promptly return or destroy all unused documents relating to this Agreement and ensure that any electronic production of such documents ceases. Title to all such materials will remain vested in Us at all times

- 9.2 We shall be solely responsible for the design, content and format of any materials supplied to You and may alter or modify such design, content or format from time to time

- 9.3 You are not authorised to use Our name in advertisements, circulars, other general announcements or in any other manner whatsoever without obtaining Our prior written consent

10. CLAIMS

- 10.1 If Your clients have occasion to claim on their policy they must notify Us immediately. You or Your client should not admit liability nor agree to any course of action, other than emergency measures carried out to minimise the loss, until You or Your Client has agreement from Us

- 10.2 You are not authorised to settle or negotiate the settlement of claims on behalf of the Insurers without prior written consent being obtained from Us, failing which the Insurers shall not be liable to reimburse You for such settlements or be bound by the terms of such negotiated settlement

- 10.3 You are authorised to receive notice of a claim from Your client whereupon You shall immediately advise Us of any such notice of a claim. Your assistance may be required in connection with claims and, in such circumstances, both for the benefit of Your client and Us, You will provide the fullest co-operation as is possible

11. NOTIFICATION

- 11.1 You shall inform Us immediately in writing of any of the events referred to in clause 13 hereof as soon as they come to Your, or in the case of a partnership, any of the partners, knowledge

- 11.2 You shall notify Us immediately upon becoming aware of any matter arising out of the operation of or in connection with the Agreement which has resulted or could result in a complaint to any regulatory authority or give rise to litigation or proceedings against Us or the Insurers (save in respect of claims under insurance policies)

12. ASSIGNMENT

- 12.1 Your agency or the benefit thereof is not assignable except with Our prior written consent
- 12.2 In the case of a partnership the agency shall accrue for the benefit of, and the terms of this appointment shall be binding on, any partnership or individual being or becoming a member of the partnership or, in the event of its dissolution, its successor, provided that in such circumstances Our confirmation for the continuance of this appointment on the same terms and conditions shall have been received by You or Your successor after due notification by You or Your successor and, thereafter, receipt by Us of written acknowledgement from any new partner or Your successor that they will comply with the terms of this appointment

13. TERMINATION

In addition to the circumstances set out in clause 3.3 We may terminate or vary the terms of this appointment as follows:

- 13.1 The Agreement shall be automatically terminated if:
- (i) in the case of a partnership any of the partners become bankrupt
 - (ii) in the case of a company it goes into liquidation or administration (except for the purpose of solvent reconstruction)
 - (iii) You compound with or combine Your estate and/or effects for the benefit of a creditor or in the case of a partnership any of the partners and/or effects are compounded or assigned for the benefit of a creditor
- 13.2 We may terminate or vary the terms of the Agreement at any time by giving You 7 days notice if:
- (i) You have goods seized in the execution of a debt or in the case of a partnership any of the partners have goods seized in the execution of a debt
 - (ii) a petition is presented in the case of a partnership for the bankruptcy of any partner or in the case of a company for its liquidation or administration or in the case of a company calls a meeting of its

creditors to consider a resolution for its winding up or a receiver or administrative receiver is appointed over all or any of its undertakings or assets

- (iii) You commit a material breach of this Agreement or fail to remedy a breach which is regarded as being remedial by Us, within 14 days
- (iv) the effective control of the registered company changes (except with Our prior written consent)
- (v) any of the answers given in Your application for an Agency with Us are subsequently found to be untrue
- (vi) You cease to conduct business or a substantial part of Your business in the United Kingdom
- (vii) being a company, You are unable to pay Your debts within the meaning of Section 123 of the Insolvency Act 1986

14. POST TERMINATION

14.1 Upon termination of this Agreement:

14.1.1 We shall honour all contracts of insurance in force until their natural expiry date

14.1.2 Within 7 days of this Agreement being terminated We will deliver a final Statement of Account for Your immediate settlement or, if applicable, Your confirmation that You have not collected any premiums due to Us in which case We will seek payment directly from Your client, but in such circumstances, You will continue to be responsible to pay Us any such premiums in the event that We are not able to collect these directly from Your clients

14.1.3 Any monies which continue to be held by You following termination or cancellation of this Agreement will continue to be held by You and operated in accordance with Clause 8 (Payments)

14.1.4 You will cease to have access to the Company Website, unless otherwise agreed in writing with Us

14.1.5 We reserve the right to charge You interest on any premiums due from Your clients that have not been received by Us 7 days after termination, at the annualised rate of 2% above the base rate from time to time of Barclays Bank PLC. Such interest shall accrue daily

14.1.6 You shall return to Us all promotional and advertising material, and any other property of Ours

14.1.7 You shall permit Us to inspect and take copies of records in accordance with clause 5.3.(vi)

14.2 The termination of this Agreement shall be without prejudice to any obligations or rights of either of the parties which shall have accrued prior to such termination and shall not affect any provisions of this Agreement which is expressly or by implication provided to come into effect on or to continue in effect after such termination

15. INDEMNITY

15.1 You shall at all times keep Us indemnified against:

- (i) any risk assumed by You in Our name after termination of this Agreement
- (ii) any risk assumed by You in Our name outside the scope of Your authority
- (iii) any loss, damage or liability suffered or incurred by Us as a result of any act, negligence or default by You, Your officers or employees

16. GENERAL PROVISIONS

16.1 Any notice herein shall be deemed given if despatched by ordinary pre-paid post to the address given in Your Agency application form or in the last given change of address and the date of receipt shall be deemed to be the first working day after the date of despatch. Notices to Us should be sent to Our registered address or such other address as may be notified to You from time to time

16.2 If there is a complaint by any of Your clients (either directly or indirectly) in respect of any business transacted by You on Our behalf, You will co operate with Us in any investigations that We may undertake to deal with the complaint and You shall immediately, upon receipt of the complaint, inform the policy holder of their right to complain direct to Us or the Insurers

16.3 Unless otherwise indicated any quotation given will remain valid for a period of thirty (30) days from the date of issue to You

16.4 These Terms of Trade shall be governed by English Law and each party shall submit to the jurisdiction of the English Courts

16.5 Nothing in this Agreement shall constitute or be deemed to constitute a partnership arrangement between the parties and You shall have no authority to bind Us in any way whatsoever other than as contemplated or provided for in this Agreement

- 16.6 This Agreement sets out the entire agreement of the parties and supersedes all prior arrangements and undertakings relating to its subject matter and other than as provided below and any further terms stipulated by Us on the Company Website, no alteration or variation of this Agreement shall be effective unless made in writing in accordance with the relevant provisions of this Agreement
- 16.7 We reserve the right to amend or reissue this Agreement if required to do so by law or regulation. It is intended that we will become authorised by the FSA as a general insurance intermediary on or prior to 14 January 2005 and consequential amendments may be required to these terms
- 16.8 Headings are for a matter of convenience only and shall not affect interpretation of this Agreement
- 16.9 Nothing in this Agreement shall require Us to accept any proposal for insurance or renewal of insurance or to maintain cover in respect of any existing contract of insurance if, in the Insurers discretion, they decline to do so
- 16.10 A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act
- 16.11 This Agreement may be executed in counterparts all of which together shall constitute one and the same instrument and all counterparts shall be deemed to be originals
- 16.12 We undertake not to directly or indirectly approach or solicit Your clients save as expressly set out in Clause 14.1.2

17. CONFIDENTIALITY

Both parties will treat information received from the other relating to this Agreement and to the clients as confidential and will not disclose it to any other person not entitled to receive it, except as may be necessary to fulfil their respective obligations in the conduct of this Agreement or in the operation of any policy effected and except as may be required by law or any regulatory authority

SCHEDULE 1

ACCESS TO THE COMPANY WEBSITE

1. We will provide You and Your designated employees with a username and password, use of which will give You access to the Company Website.
 2. Your access will enable You to:
 - 2.1 submit risk details to Us
 - 2.2 obtain on-line quotations for Our products
 - 2.3 submit proposed amendments in relation to Your clients policies which were originally established by use of the Company Website
 - 2.4 access all records based on risk submissions made by You or Your employees
 - 2.5 issue policy documentation
 3. We will periodically require each user to change his/her security password in accordance with Our standard security procedures. If We shall become aware or shall suspect that any unauthorised person has obtained or has attempted to obtain access to the Company Website then We shall notify the user whose account was used for that attempt and shall forthwith disable that account until the password has been changed
 4. You undertake not to:
 - 4.1 Attempt to obtain access to, use or interfere with Our data or data relating to matters other than those risks submitted by You
 - 4.2 Permit the disclosure of any user account details by any individual user to any other person, including but not limited to Your other employees
 - 4.3 Input anything obscene, offensive or defamatory
- You shall indemnify Us against any loss, damage or liability which We may sustain or incur as a consequence of You failing to comply with the above undertaking
5. You shall procure that:
 - 5.1 The password is kept secure and that each member of Your staff shall at all times keep the password confidential
 - 5.2 The data contained in the Company Website which is made available to You is only used and processed in accordance with the provisions of the Data Protection Act 1998

6. It is intended that access to the Company Website is available 24 hours per day, however, the Company makes no warranties as to this availability
7. Notwithstanding the above We reserve the right to:
 - 7.1 Withdraw the electronic facility at any time with immediate effect
 - 7.2 Alter the areas of the Company Website to which You have the right of access
 - 7.3 Stipulate further terms of use of the Company Website on the Company Website from time to time
8. We shall not be liable for any loss or damage sustained or incurred by You as a result of any use, failure or breakdown of the Company Website
9. You shall advise us immediately, when any employee leaves You, in order that we may cancel their password