

# **(TOBA) TERMS OF BUSINESS AGREEMENT**

2023

**These Terms of Business (“Agreement”) apply to insurance products provided by The Exeter Friendly Society Limited & its subsidiary The Exeter Cash Plan, trading together as The Exeter.**

**By submitting business to us on or after the 1<sup>st</sup> August 2020, you agree to these terms. You are responsible for ensuring that your employees and financial advisers, and your appointed representatives, their employees and financial advisers, are aware of and comply with these terms and conditions.**

1. **DEFINITIONS AND INTERPRETATION GOVERNING OUR RELATIONSHIP:**

**"Adviser"**: means any person submitting business through the Intermediary's agency with Us including any Appointed Representatives of the Intermediary.

**"Agreement"** means these terms of business.

**"Appointed Representative"** means any company, partnership or person who is exempt from the requirement to be an Authorised Person for the purposes of section 39 FSMA for whom the Intermediary has accepted responsibility in the conduct of business.

**"Authorised Person"**: has the meaning given to it in the FCA Rules.

**"Bribery Laws"**: means the Bribery Act 2010 and all other applicable United Kingdom laws, legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent laws in any other relevant jurisdiction.

**"Business"**: means advising on/arranging any products and services offered by EXETER at any time.

**"Business Day"**: means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**"Clawback Period"**: means the length of time over which Commission paid on an Indemnity Basis is earned as set out in the Exeter Commission Schedule.

**"Client"**: means the applicant for Business introduced by You and for whom You have been appointed to act as agent and where applicable provide advice.

**"Client Data"**: means the Personal Data and/or Sensitive Data of a Client.

**"Commission" and "Commission Statement" are** described in the Exeter Commission Schedule.

**"Confidential Information"**: means all confidential information (in any form) disclosed by a Party. Including, but not limited to, any information that would be regarded as confidential by a reasonable business person and/or any information developed by the Parties while carrying out this Agreement relating to:

the business, affairs, Clients, clients, suppliers, plans, intentions or market opportunities of the disclosing Party; and/or

the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party.

**"Connected Person"**: means Your employees, spouse, partner or other relative of any such person.

**"Data Controller"**: has the meaning given to it in the Data Protection Laws.

**"Data Processor"**: has the meaning given to it in the Data Protection Laws.

**"Data Protection Laws"**: shall mean the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (commonly referred to as the "GDPR") (or, in the event that the UK leaves the European Union, all legislation enacted in the UK in respect of the protection of Personal Data), together with any and all other laws, regulations or other statutory instruments relating to the protection of personal data applicable to You and/or EXETER in any relevant jurisdiction.

**"Effective Date"**: means 1<sup>st</sup> August 2020.

**"Exempt Person"**: has the meaning given to it in the FCA Rules.

**"Exeter Commission Schedule"**: means the schedule provided by EXETER to You which sets out further details in respect of Commission, as amended by EXETER from time to time.

**"EXETER", "We" "Our" or "Us"**: shall mean The Exeter Friendly Society Limited & its subsidiary The Exeter Cash Plan, trading together as The Exeter.

**"FCA"**: means the Financial Conduct Authority and any successor organisation.

**"FCA Rules"**: the rules, guidance and glossary of the FCA as set out in the FCA Handbook as amended from time to time.

**"Financial Services Register"**: has the meaning given to it in the FCA Rules.

**"FSMA"**: means the Financial Services and Markets Act 2000.

**"Indemnity Basis"**: means where Commission is paid by EXETER to You in a lump sum (Indemnity Commission) on the assumption that a Client will maintain the agreed premiums for the Business accepted by EXETER for the minimum of the Clawback Period applicable to that Business.

**"Initial Commission"**: means initial commission at the rates set out in the Exeter Commission Schedule.

**"Intellectual Property Rights"**: means patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**"Intermediary"**: means an Authorised Person carrying out any insurance distribution activity as defined in the FCA glossary, from whom We accept Business.

**"Intermediary Data"**: means any Personal Data and/or Sensitive Data that is provided by You or which is otherwise processed by the Exeter in accordance with this Agreement that is not Client Data.

**"Insolvency Event"**: means any of the following in relation to You:

- a) You suspend, or threaten to suspend, payment of Your debts or are unable to pay Your debts as they fall due or admit inability to pay Your debts or are deemed unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1) or 123(2) of the IA 1986;
- b) Any action, proceeding, procedure or step is taken with a view to rescheduling any of Your debts, or making a proposal for or enter into any composition, compromise or arrangement with Your creditors (or any class of them) or members (or any class of them) other than for the sole purpose of a scheme for a solvent amalgamation in respect of You with one or more other companies or the solvent reconstruction in respect of You;
- c) A moratorium under Part A1 of the Insolvency Act 1986 is applied for or obtained;
- d) A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up or liquidation in respect of You other than for the sole purpose of a scheme for a solvent amalgamation in respect of You with one or more other companies or the solvent reconstruction in respect of You;
- e) An application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed or given or if an administrator is appointed, over You;
- f) The holder of a qualifying floating charge over the assets in respect of You has become entitled to appoint or has appointed an administrative receiver or to file a notice of intention to appoint an administrator, or to appoint an administrator;
- g) A person becomes entitled to appoint a receiver, manager or similar officer over Your assets or in respect of You or a receiver, manager or similar officer is appointed over Your assets or in respect of You the assets of the Party;
- h) A creditor or encumbrancer in respect of You attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Your assets and such attachment or process is not discharged within 14 days;
- i) Any action, proceeding, procedure or step is taken in relation to Your dissolution;
- j) Any event occurs, or proceeding is taken, with respect of You in any jurisdiction to which You are subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (i) above;
- k) You suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of Your business; or
- l) Your financial position deteriorates so far as to reasonably justify the opinion that Your ability to give effect to the terms of this Agreement is in jeopardy.

**"Money Laundering Legislation"**: means the FCA Rules, The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, the Proceeds of Crime Act 2002, the Terrorism (United Nations Measures) Order 2009, the Joint Money Laundering Steering Group's Guidance Notes for the Financial Sector and/or any other applicable money laundering or terrorist financing legislation, each as amended from time to time.

**"Money Laundering Regulations"**: means the Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, as amended from time to time.

**"Non-Indemnity Basis"**: means where Commission is paid by EXETER to You on an "as earned" basis by way of equal monthly instalments which are dependent on the Client paying the agreed premiums for the Business accepted by EXETER.

**"Parties"**: means You and EXETER and **"Party"** shall be construed accordingly.

**"PEP"**: means a politically exposed person or a family member or a known close associate of a PEP.

**"Personal Data"**: has the meaning given to it in the Data Protection Laws.

**"Personal Data Breach"**: has the meaning given to it in the Data Protection Laws.

**"processing"** shall have the meaning set out in the Data Protection Laws and "process" and "processed" when used in relation to the processing of Personal Data, will be construed accordingly.

**"PRA"**: means the Prudential Regulation Authority and any successor organisation.

**"Product"**: means any product offered for sale or service arranged by Us.

**"Reclaimed Commission"**: means Unearned Commission which EXETER is entitled to reclaim from You pursuant to this Agreement.

**"Registration"**: means the online registration process as advised by EXETER to set up an intermediary account.

**"Regulator"**: means any regulatory or governmental authority exercising jurisdiction over the activities of You and/or EXETER, including the FCA, the PRA and the UK Information Commissioner's Office or any other successor or regulatory body.

**"Regulatory Requirements"**: means all applicable laws, statutes, statutory instruments, orders, rules, regulations, guidance and codes of practice (whether or not having the force of law) in force from time to time, and in particular but without limitation the FCA Rules.

**"Renewal Commission"**: means Commission payable to You on a Non-Indemnity Basis for ongoing servicing of Your Client in respect of a Product at the completion of the Clawback Period.

**"Sensitive Data"**: has the meaning given to it, or "special categories of data" in the Data Protection Laws.

**"Transparency Requirements"** means the requirements around ensuring that processing is fair and transparent, as set out in the Data Protection Laws (including, in particular, Article 5(1)(a) and Articles 13 and 14 of the GDPR, as applicable).

**"Unearned Commission"**: means Commission paid on an Indemnity Basis where the Client has failed to maintain the agreed premiums for the Business accepted by EXETER for the minimum of the Clawback Period applicable to that Business.

**"Website"**: means The EXETER website which is currently at [www.the-exeter.com](http://www.the-exeter.com)

**"You", "Your", "Yourself":** means the Intermediary from whom We accept Business in accordance with this Agreement and any Advisers and in the case of networks of Intermediaries, means all such Intermediaries together with any of its Appointed Representatives or, in each case, any one of them.

- 1.1 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.2 Any reference in this Agreement to another agreement or document shall be construed as a reference to that other agreement or document as the same may have been or may from time to time be amended, varied or supplemented.
- 1.3 The headings used in this Agreement are for reference purposes only and do not affect its interpretation.
- 1.4 The Exeter Commission Schedule is expressly incorporated into and forms part of this Agreement.
- 1.5 Any words following the terms "including", "includes", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. STATUS

- 2.1 The Intermediary may appoint Advisers in relation to the Business transacted pursuant to this Agreement only in accordance with this Agreement.
- 2.2 By placing any Business, with Us, by any Adviser placing business with Us, or by receiving any transfer of Business on or after the Effective Date, the Intermediary is agreeing for itself and on behalf of each Adviser that the terms set out in this Agreement (as may be varied in accordance with its terms) apply to all such Business and Your relationship with Us.
- 2.3 The Intermediary shall be responsible for:
  - 2.3.1 compliance by each Adviser with the provisions of this Agreement; and
  - 2.3.2 all acts and omissions by each Adviser under this Agreement, as if they were acts or omissions of the Intermediary.
- 2.4 The Intermediary shall provide a copy of this Agreement to each Adviser and shall ensure that each Adviser understands that in placing any Business with Us it will be bound by the terms of this Agreement.
- 2.5 Without prejudice to Clause 2.1, by placing Business with Us or by receiving any transfer of Business on or after the Effective Date, each Adviser is agreeing that the terms set out in this Agreement (as may be varied in accordance with its terms) apply to all Business placed by such Adviser with Us or received by such Adviser on or after the Effective Date, and that

Adviser's relationship with Us as if the words "You", "Your" and "Yourself" referred to that Adviser.

- 2.6 The Intermediary warrants and undertakes to Us that it has full right, power and entitlement to enter into this Agreement for itself and as agent for and on behalf of each Adviser.
- 2.7 Without prejudice to Clause 5.1.13, the Intermediary shall indemnify and keep Us indemnified from and against all and any claims, proceedings, actions, demands, loss, liability, costs, expenses, damages, penalties, fines, judgements or awards sustained or incurred by Us or made against Us, arising out of or in connection with any breach by You and/or any Adviser of any of Your and/or an Adviser's obligations under this Agreement.

### **3. SCOPE**

- 3.1 This Agreement applies to insurance products provided by EXETER and should be read in conjunction with the Exeter Commission Schedule. This Agreement sets out the terms on which EXETER will accept Business from You on and after the Effective Date whether transacted directly or via an Adviser. By submitting business to Us on or after the Effective Date, You are deemed to agree to these terms.
- 3.2 This Agreement supersedes all previous terms of business You have with Us.
- 3.3 You are responsible for ensuring that Your employees, Advisers and any Adviser's employees are aware of and comply with this Agreement.

### **4. PLACING BUSINESS WITH THE EXETER**

- 4.1 You may submit applications for Business to EXETER on behalf of Your Clients.
- 4.2 To be able to submit applications for Business to EXETER You must complete a Registration with Us.
- 4.3 An Adviser can only register with Us once their Intermediary has done so.
- 4.4 EXETER are under no obligation to accept any application(s) submitted by You and EXETER shall have the right to refuse to accept any Business introduced via You.
- 4.5 EXETER will only accept business under this Agreement where You are established and carrying on business in the United Kingdom.



## 5. YOUR RESPONSIBILITIES

### 5.1 You must:

5.1.1 Comply with all Regulatory Requirements (including those relating to professional indemnity insurance) in all matters to which this Agreement applies, including those necessary to act as agent for Clients and to carry out Your business in advising Clients and/or submitting applications for Business to EXETER on behalf of Clients.

5.1.2 Maintain the necessary and appropriate authorisations from any Regulator that is required to carry out its obligations under this Agreement.

5.1.3 Maintain at all times and in full force and effect, and observe the terms and conditions of, an appropriate professional indemnity policy adequate to cover Your potential liability in relation to Your dealings with EXETER.

### 5.1.4 On demand, provide EXETER with a copy of:

- (a) Your current professional indemnity insurance certificate;
- (b) any records maintained by You relating to the Business; and
- (c) such detail and information and detail about the distribution chain between You and the Client as EXETER shall reasonably require, and You shall promptly notify EXETER of any material changes to such detail and information.

### 5.1.5 Inform EXETER immediately if:

- (a) Your professional indemnity insurance cover no longer complies with FCA requirements;
- (b) Your FCA permissions, Authorised Person status or Exempt Person status (as applicable) is suspended or altered in any way or You receive notice that the FCA intends to make such alterations or, if an Appointed Representative of the Intermediary, that its principal intends to make such alterations or terminate or suspend You;
- (c) You are in breach or have reasonable cause to suspect You will be in breach of any term of this Agreement;
- (d) You are subject to any investigation and/or action by any Regulator; and/or
- (e) there are any changes to the information provided by You in Your application for this Agreement or any prior terms of business.

5.1.6 Where such Adviser is an Appointed Representative (whether by reason of the Intermediary acting as a network or otherwise), maintain full regulatory responsibility for all acts and omissions of such Adviser.

- 5.1.7 Act in the Client's best interest and be solely responsible to the Client for all matters relating to advising on suitability.
- 5.1.8 Pass all documentation and/or information passed to You in connection with this Agreement to its intended recipient, including without limitation, information given to You by the Client which may affect EXETER's decision to accept that Client's application for Business.
- 5.1.9 Notify EXETER of any facts or matters concerning the Client and/or nature of the Business involved which could affect EXETER's decision as to whether or not to contract with such Client and or accept such Business.
- 5.1.10 In relation to all EXETER Business, present all information in the form specified by EXETER.
- 5.1.11 Endeavour to provide any information that EXETER requests as quickly as possible. You provide such information and any other information that could reasonably be considered relevant to the Business in good faith and use all reasonable endeavours to ensure that the information provided by You is complete and accurate.
- 5.1.12 Comply with all reasonable and lawful instructions of EXETER.
- 5.1.13 Indemnify EXETER against all claims, proceedings, costs (including reasonable legal costs) and losses incurred by EXETER as a result of the following:
  - (a) You submitted business to EXETER beyond Your authorisation;
  - (b) You submitted incorrect information to EXETER;
  - (c) You infringe any of EXETER's Intellectual Property Rights;
  - (d) the intellectual property provided by You to EXETER infringes the intellectual property rights of a third party;
  - (e) a dispute arising between You and another person who is entitled to receive Commission from EXETER in respect of an application for Business by a Client. Subject to this indemnity, EXETER shall have absolute discretion as to whom it shall pay such Commission;
  - (f) a decision by any Regulator, Financial Ombudsman Service or any other successor or regulatory body or court that EXETER are liable to pay a claim to a Client arising as a result of any breach by You of this Agreement or any Regulatory Requirements;
  - (g) the breach, negligent act or omission, or failure or delay in performance, of this Agreement by You, Your employees, Appointed Representatives (if applicable) of the Intermediary, Advisers agents or subcontractors.

- 5.2 You shall not:
- 5.2.1 produce any marketing material for any EXETER Business or Product or use EXETER name, logo or trade marks on any marketing material for any EXETER Business or Product without the prior written consent of EXETER;
  - 5.2.2 have any license or right to use any of EXETER Intellectual Property Rights without EXETER's written consent;
  - 5.2.3 collect premiums on EXETER's behalf;
  - 5.2.4 copy, alter or loan any books, documents, computer hardware or software belonging to EXETER and in Your possession without EXETER's prior written consent. Such items will be made available to EXETER for inspection on request;
  - 5.2.5 undertake any of the activities envisaged by this Agreement where Your FCA permissions, Authorised Person status or Exempt Person status (as applicable) ceases; and/or
  - 5.2.6 vary or purport to vary any of the terms or conditions, premiums or benefits of any Product offered by EXETER or supply documentation to a Client in relation to a Product unless such documentation has been approved by EXETER in advance.
- 5.3 Without prejudice to Clause 5.2.1, the Intermediary shall have sole responsibility for approving the form and content of marketing materials for the purposes of section 21 of FSMA.
- 5.4 The Intermediary must inform EXETER of any appointment or removal of an Adviser.
- 5.5 No provision of this Agreement shall oblige You to act contrary to Your Regulatory Requirements and no act or omission of You required for legal or regulatory purposes shall be considered a breach of this Agreement.
- 5.6 Without prejudice to Clause 5.1.7:
- 5.6.1 You acknowledge that certain Clients may be vulnerable at the time you assess their needs and the suitability of any Product or Business for them;
  - 5.6.2 You warrant that you have in place, and will maintain, all appropriate measures to assess the vulnerability of Clients in relation to Business and the Products; and
  - 5.6.3 You undertake, in providing advice to Clients and assessing suitability in relation to any Business or Product and in compliance with Regulatory Requirements, to take fully into account any relevant vulnerability of each Client (including, without limitation, low English language skills or any other reason why a Client may not understand the purpose and risks of any Business or Product or any related communications).

## 6. EXETER RESPONSIBILITIES

### 6.1 EXETER shall:

- 6.1.1 maintain the necessary and appropriate authorisation from a Regulator to carry out its obligations under this Agreement;
- 6.1.2 produce all information required by the FCA Rules in respect of its Business (including but not limited to all pre-contractual, post-sale and renewal information); and
- 6.1.3 where You continue to act on behalf of a Client, We will endeavour to keep You informed of relevant events such as unpaid premiums and claims or changes to Commission.

6.2 In the case of private medical insurance Business, EXETER will issue renewal documentation, including details of any change in the terms and conditions applying to the Business and to the items covered, to You and to the Client (or a notice that EXETER will not invite renewal) not less than six weeks prior to the renewal date.

### 6.3 EXETER may:

- 6.3.1 send documents directly to any Client. If You request, We will endeavour to keep You informed of such communications;
- 6.3.2 contact any Client for any reason related to their Product or as required by the Regulatory Requirements;
- 6.3.3 subject always to the Data Protection Laws, contact any Client to inform them about other products or services provided by Us;
- 6.3.4 if You do not introduce Business to Us for a period of at least three continuous years or are unable to service Your client, stop paying servicing commission due on all Business already transacted.

6.4 No provision of this Agreement shall oblige EXETER to act contrary to its Regulatory Requirements and no act or omission of EXETER required for legal or regulatory purposes shall be considered a breach of this Agreement.

## 7. COMMISSION

7.1 Subject to any amendments to the FCA Rules or law, We will pay Commission on all applications for Business submitted by You on behalf of Clients, which has been accepted

by EXETER in accordance with this Clause 7 and the EXETER Commission Schedule. All Business submitted must include Your unique agency number.

- 7.2 If You are part of a network, EXETER will pay Commission to the Intermediary on all applications for Business submitted by You on behalf of Clients, except that EXETER may, at its absolute discretion, pay Commission to Advisers directly.
- 7.3 For the first 3 months of Your agency Your Commission frequency will automatically default to monthly payments. After this period You can request that the frequency of Your Commission is changed to daily or weekly payments, however EXETER reserves the right to alter this frequency at any time.
- 7.4 Commission is payable before tax, where Insurance Premium Tax, Value Added Tax or any similar or replacement tax, duty or levy applies to the premiums. You are responsible for accounting to the relevant authority for any tax payable in relation to payments made by EXETER.
- 7.5 EXETER reserves the right to amend Your Commission to be payable on a Non-Indemnity Basis with immediate effect.
- 7.6 EXETER will only pay Commission once We owe You at least £25, however We reserve the right to amend this minimum threshold.
- 7.7 EXETER reserves the right to withhold Initial Commission if We reasonably believe that You have committed or attempted to commit an act of fraud or dishonesty. This is at Our absolute discretion.
- 7.8 EXETER reserves the right to withhold or reduce Initial Commission where a Client purchases a new Product which, in the reasonable opinion of EXETER, is intended to replace a similar Product already in force with EXETER.
- 7.9 EXETER will cease to pay any Commission to You under this Clause if You or a Client notifies EXETER that You are no longer acting as the Client's agent.
- 7.10 EXETER will cease to pay any Commission on any business You submit outside the scope of Your FCA/PRA authorisations, exemptions and permissions or where You have these authorisations, exemptions or permissions suspended.
- 7.11 EXETER will not pay any Commission where You enter into liquidation, receivership, administration, or You are subject to any Insolvency Event.
- 7.12 EXETER will not pay interest to You for the late or non-payment of Commission.

- 7.13 Without prejudice to Exeter's other rights or remedies or to the remaining terms of this Agreement, including Clauses 8 (Clawback of Commission) and 19 (Termination), if at any time You:
- 7.13.1 cease to be an Authorised Person; or
  - 7.13.2 are or become subject to an Insolvency Event (each "Event"), then all Commission that has been paid to You on an Indemnity Basis in respect of which the Client has not paid the relevant premiums (and which has therefore not been earned by You) for whatever reason at the time of either such Event, including any Unearned Commission, shall immediately become repayable, due and owing to the Exeter.
- 7.14 We are entitled to charge interest on debit Commission balances or other debts (including the sums referred to in Clause 7.13) that have been overdue for 28 days or longer at the rate of 4% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue daily from the due date until actual payment of the overdue amount, whether before or after judgment.
- 7.15 EXETER will not pay Commission on Indemnity Basis on any Product taken out by You or any Connected Person.
- 7.16 EXETER will not pay Commission (Indemnity or Non-Indemnity Basis) on any element of the annual premium that is made up of a temporary loading.

## 8. CLAWBACK OF COMMISSION

- 8.1 Where a Client cancels, alters, appoints another intermediary in relation to, or suspends, the Business (including but not limited to reducing or missing premiums) during the Clawback Period applicable to that Business, You shall owe to EXETER and EXETER will reclaim from You any Unearned Commission already paid to You. EXETER shall notify You in writing as soon as reasonably practicable of any Reclaimed Commission and may:
- 8.1.1 set-off any Reclaimed Commission against any other Commission or amount payable to You (including any sums due to You under any previous terms of business); or
  - 8.1.2 submit a written request to You that You reimburse EXETER the full amount of Reclaimed Commission within 10 Business Days.
- 8.2 We reserve the right to share debt information with the Elixir 2000 group as well as other parties including other insurers and as required by the FCA.
- 8.3 In the event of any dispute regarding Commission due from EXETER to You or sums due to EXETER by way of clawback or adjustment, EXETER's decision shall be final.

- 8.4 Without prejudice to Clauses 5.1.1 and 5.1.2, any Commission cancelled in exercise of any statutory right or paid in respect of Business concluded or renewed by You not as an Authorised Person, Exempt Person, excluded from the need to be an Authorised Person shall be repaid to EXETER.
- 8.5 If a Client advises EXETER in writing that Commission should not be paid to You, whether or not the Client gives a reason, EXETER will not make the relevant payment or whatever part of the payment remains outstanding. In such circumstances, any dispute about Your entitlement to that payment will be a matter between You and the Client and EXETER shall not become involved in seeking its resolution.

## 9. CLIENT /AR/ADVISER TRANSFERS

- 9.1 In this Clause 9, reference to "Initial Commission liability" means both payment of Commission by Exeter and sums due to Exeter by way of clawback or adjustment.
- 9.2 In the event that:
- 9.2.1 Your Clients are transferred to another Intermediary, ongoing Renewal Commission and any Initial Commission liability will transfer to the recipient Intermediary;
  - 9.2.2 an Adviser who is placing Business with EXETER is transferred to another Intermediary, ongoing Renewal Commission and any Initial Commission liability will transfer to the recipient Intermediary; and/or
  - 9.2.3 an individual policyholder transfers the servicing rights of their policy to another Intermediary, ongoing Renewal Commission will transfer to the recipient Intermediary, but any outstanding Initial Commission liability will remain with You.

## 10. DATA PROTECTION

- 10.1 The Parties agree that, with respect to the Parties' rights and obligations under this Agreement and with respect to any Client Data and/or Intermediary Data, both You and EXETER are each Data Controllers of the Client Data and Intermediary Data and as such:
- 10.1.1 You and The EXETER shall comply at all times with the Data Protection Laws when processing Client Data and/or Intermediary Data (as applicable);
  - 10.1.2 You and The EXETER agree not to do, or fail to do, or permit to be done, anything which causes the other Party to be in breach of its obligations under the Data Protection Laws; and
  - 10.1.3 each Party shall provide reasonable cooperation and assistance to the other Party to enable the latter Party to fulfil its respective obligations under the Data Protection Laws.

- 10.2 Each Party warrants to the other, that, where either You or We collect Client Data (and where You provide Us with Intermediary Data), which it subsequently transfers or makes available to the other, that We or You (as applicable) have:
- 10.2.1 collected such data fairly and lawfully in accordance with Data Protection Laws;
  - 10.2.2 a valid "lawful basis" to transfer such data to the other Party in accordance with Data Protection Laws;
  - 10.2.3 a "valid lawful basis" for the other Party to process that data in accordance with its obligations under this Agreement in accordance with Data Protection Laws and that any such use will not breach the Data Protection Laws; and
  - 10.2.4 ensured that all fair processing notices have been given in order to meet the Transparency Requirements to enable Client Data and/or Intermediary Data (as applicable) to be processed, in order to obtain the benefit of rights, and to fulfil obligations under this Agreement in accordance with Data Protection Laws.
- 10.3 You shall:
- 10.3.1 at all times not act in any way in relation to the Client Data (or otherwise) which might reasonably damage the reputation or goodwill of The EXETER or its relationship with Clients; and
  - 10.3.2 at Intermediary's cost, promptly (and in any event within twenty-four (24) hours) provide to Us all information in Your possession concerning any actual or suspected, threatened or 'near miss' Personal Data Breach, and any other unauthorised or accidental disclosure of, or access to, the Client Data (a "**Security Incident**") and, together with such notice, provide a written description of the information that must be included in a Personal Data Breach notification, as set out in the Data Protection Laws; and
  - 10.3.3 at the Intermediary's cost, promptly (and in any event within twenty-four (24) hours) inform the data protection regulator or data subjects in respect of such a Security Incident.
- 10.4 In order to consider Your application to be an intermediary for The EXETER, and to comply with the FCA Rules and FSMA, We may need to collect personal data about You and any person associated with or employed by You when You complete the on-line registration to set up an adviser account with The EXETER and thereafter throughout the course of Our business relationship with You. We will use this Intermediary Data to process Your application for registration and on an ongoing basis to administer Your adviser account and develop Our business relationship with You. We may use your personal data for profiling, segmentation and dynamic content to conduct analysis of the performance of our product range and services and to identify ways in which we can improve and develop such product range and services. We shall process all Intermediary Data in accordance with Our privacy policy which can be accessed on Our website <https://www.the-exeter.com/>.



10.5 EXETER reserves the right to check on You through credit reference agencies and any other databases.

10.6 The Parties acknowledge that nothing in this Agreement purports to appoint either Party as a Data Processor for and on behalf of the other in respect of the Client Data and/or the Intermediary Data.

## 11. **CONFIDENTIALITY**

11.1 Each Party undertakes that it shall not at any time disclose to any person any Confidential Information with the exception that each Party may disclose the other Party's Confidential Information:

11.1.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under this Agreement. Each Party shall procure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this Clause;

11.1.2 where the information is in or enters the public domain other than by way of breach of this Agreement;

11.1.3 in the case of EXETER to the extent it is required to disclose Confidential Information in the normal course of business within the insurance industry including for the purposes of reinsurance or fraud prevention; and/or

11.1.4 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.2 No Party to this Agreement shall use any other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

11.3 No Party shall make or permit to be made on its behalf any announcement relating to this Agreement or its subject matter without the prior written agreement of the other Party.

## 12. **COMPLAINTS**

12.1 The Parties will notify each other of a complaint concerning the other Party in relation to any Business and/or Product.

12.2 All notifications must be sent to the other Party in accordance with the Dispute Resolution: Complaints sourcebook in the FCA Rules or any other regulatory body's requirements and the complaint must be resolved in accordance with the FCA Rules and any other regulatory requirements.

**13. AUDIT**

- 13.1 EXETER shall be entitled to undertake an audit of You in connection with Your obligations under this Agreement and the Regulatory Requirements at any time during the term of this Agreement and thereafter until all of Your rights, obligations and duties have come to an end under this Agreement or under the Regulatory Requirements. You shall promptly allow representatives of the EXETER access to any of Your offices during normal business hours and on no less than 5 days' notice ( or such shorter period as EXETER considers (acting reasonably) may be required under the relevant circumstances).
- 13.2 You shall co-operate fully with any such audit and supply promptly such information, data and records (whether stored electronically or otherwise) of whatsoever nature as may be reasonably requested by EXETER, which shall be entitled to make copies or take extracts of the same.
- 13.3 You hereby grant to each of HM Revenue & Customs, any Regulator and any other relevant taxation or regulatory body the same rights as those granted to EXETER under this Clause 12.1 and, in the case of the FCA, You shall also grant such additional rights of access as are required by the Regulatory Requirements.
- 13.4 Where such an Adviser is an Appointed Representative of the Intermediary, EXETER shall be entitled to the same rights of access and other rights in respect of that Adviser as provided in this Clause 12.1 of this Agreement.

**14. MONEY LAUNDERING**

- 14.1 You must comply with all applicable Money Laundering Legislation.
- 14.2 We will rely on You for the purposes of satisfying regulation 39(1) of the Money Laundering Regulations and You must undertake to Us that You will immediately on request by Us supply to Us all of the information and documentation required under regulation 39(2)(a) and 39(2)(b)(i) of the Money Laundering Regulations.
- 14.3 In compliance with regulation 39(2)(b)(ii), You will retain copies of the data and documents referred to in regulation 39(2)(b)(i) for the periods referred to in regulation 40) of the Money Laundering Regulations. We reserve the right to carry out further customer due diligence without referring to You if We consider it appropriate to carry out additional verification.

**15. BRIBERY & CORRUPTION**

- 15.1 You shall ensure that You do not, by any act or omission, breach and/or place EXETER in breach of any Bribery Laws. You shall comply with all applicable Bribery Laws.

15.2 You agree that You will have in place adequate and effective procedures for detecting and monitoring bribery & corruption and will regularly audit and monitor such procedures to prevent a breach of any such compliance. You agree to report promptly to Us in writing any breaches of any of the requirements in this Clause 15 (including where there is a suspicion of a breach or an allegation of a breach) which are or may be relevant to this Agreement.

16. **FRAUD**

16.1 To the extent that any applicable fraud regulations and/or obligations apply to You, Your business or Your officers, agents, sub-contractors, or employees in any relevant jurisdiction, in providing regulated services to Client and introducing Business to Us, You represent that You, Your business, Your officers and employees are compliant and will remain compliant with such regulations and/or obligations and that shall include ensuring that Your officers and employees undertake reasonable levels of training in relation to fraud.

16.2 You agree that You will have in place adequate and effective procedures for detecting and monitoring fraud and will report promptly to Us in writing any breaches of compliance which are relevant to this Agreement. We reserve the right to perform Our own investigation if We suspect there has been fraudulent activity

17. **EXETER WEBSITE**

17.1 You are authorised to conduct business through the Website and will be provided with access, an access code and a password to the Website during the term of this Agreement.

17.2 EXETER may make changes or corrections to, alter, suspend or discontinue any aspect of the Website including Your access to it.

17.3 You are solely responsible for all use of and for protecting the confidentiality of any username or password, e-mail verification or link authorisation that may be given to You to access the Website. You may not share these with, or transfer them to any third parties and must notify EXETER immediately of any unauthorised use of them or any breach of security regarding the Website that comes to Your attention.

17.4 You are solely responsible for ensuring that each Adviser has their own individual username and password and that only business for that Adviser is submitted through their account.

17.5 Any username, password, e-mail verification and link authorisation remains EXETER property and You agree to destroy records of these upon termination of this Agreement.

17.6 Where EXETER has accepted business from You, if You are domiciled outside the UK You must satisfy Yourself that You are lawfully able to use the Website and is solely responsible for complying with any and all applicable local laws relating to the Website.

- 17.7 EXETER accepts no liability to You to the extent permitted by applicable law, for any costs, losses or damages resulting from or related to the access or attempted access of the Website by You from a jurisdiction outside the UK.
- 17.8 EXETER cannot guarantee that the Website will operate continuously or without interruption or be error free and accepts no liability for its unavailability.
- 17.9 You must not attempt to interfere with the proper working of the Website and in particular must not attempt to circumvent Our security, introduce viruses or malicious software, tamper with, hack into, or otherwise disrupt any of Our computer systems, servers, or website routers or any other internet connected devices.
- 17.10 Without prejudice to Clause 17, You must always comply with the terms and conditions on the Website when using the Website.

## 18. GENERAL

- 18.1 We reserve the right, at Our absolute discretion, not to accept Business from You.
- 18.2 We won't accept Business from You if You don't have the correct permissions or if You stop being authorised by the FCA.
- 18.3 You warrant that You are not, directly or indirectly, carrying out insurance distribution activities under this Agreement as a consequence of the activities of another person who is not an Authorised Person or Exempt Person.
- 18.4 By accepting the terms of this Agreement You confirm that You have embedded and are maintaining the FCA Treating Customers Fairly outcomes as well as the FCA Conduct Rules within Your business, and are able to evidence this in Your business culture and practices.
- 18.5 You are solely responsible for any advice You give to a Client in relation to any Product You sell them under this Agreement.
- 18.6 Nothing in this Agreement shall be deemed to establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make any representations or enter into any commitments for or on behalf of any other Party.
- 18.7 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements and understandings between them, whether written or oral, relating to its subject matter. Each Party acknowledges that it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Nothing in this Clause shall limit or exclude any liability for fraud.

- 18.8 You may not vary this Agreement.
- 18.9 Without prejudice to Clause 18.10, upon giving You at least 20 Business Days' notice EXETER shall be entitled to vary this Agreement (including without limitation the Exeter Commission Schedule). Such notice shall be provided by notice on Our website or by email in accordance with Clause 18.16. Any such new terms will apply automatically on the expiry of the notice period on business submitted from that date or on any other date specified in the notice.
- 18.10 EXETER shall be entitled to vary this Agreement immediately where changes in the FCA Rules, or any other regulatory obligation or applicable law require. In such cases EXETER shall give You notice of such variation in accordance with Clause 18.16 as soon as reasonably practicable after the variation takes effect. Unless required by FCA Rules, any other regulatory obligation on EXETER or applicable law, no variation to this Agreement shall affect Business already accepted by EXETER or applications submitted by You on behalf of Clients before the variation date.
- 18.11 This Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the other Party.
- 18.12 No failure or delay in exercising any right under this Agreement or by law shall constitute a waiver of any right nor shall it prevent the further exercise of any right.
- 18.13 If any provision or part-provision of this Agreement is or becomes unenforceable it shall be deemed modified to the minimum extent necessary to make it enforceable. Alternatively, if this isn't possible the relevant provision or part-provision shall be deemed deleted. Any alteration to the Agreement under this Clause shall not affect the enforceability of the rest of this Agreement.
- 18.14 Neither Party is liable for any failure or delay in performance of this Agreement which is caused by circumstances beyond the reasonable control of a party including, but not limited to, strikes, industrial disputes, Acts of God, war, terrorism, lightning or storm or any event analogous to these examples.
- 18.15 No one other than a Party to this Agreement shall have any right to enforce any of its terms, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 18.16 All notices shall be in writing and delivered to the relevant Party's principal place of business (as set out in the Financial Services Register) by hand, pre-paid first-class post or other next Business Day delivery service, sent by fax to its main fax number or by email to [adviser@the-exeter.com](mailto:adviser@the-exeter.com) in the case of EXETER and to the email address provided in the Registration in the case of You. Any notice shall be deemed to have been received:

18.16.1 if delivered by hand at the time the notice is left at the proper address;

18.16.2 if sent by pre-paid first-class post or other next Business Day delivery service, on the second Business Day after posting or at the time recorded by the delivery service;

18.16.3 if sent by fax, on the next Business Day after transmission;

18.16.4 if sent by email provided confirmation is sent by pre-paid first-class post: 24 hours from delivery if sent to the correct email address and no notice of delivery failure is received.

This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18.17 EXETER may accept other electronic communications from or with You upon such terms and subject to such additional or separate conditions as EXETER shall notify You in good time. EXETER shall not be liable if such communications:

18.17.1 are not, in whole or in part, received or are delayed for whatever reason; or

18.17.2 are corrupted, intercepted or their security otherwise compromised.

18.18 This Agreement and any dispute or claim arising out of, or regarding it, or its subject matter, or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales. The courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.

## 19. **TERMINATION**

19.1 This Agreement may be terminated immediately by either Party giving to the other Party written notice to terminate.

19.2 Termination of this Agreement shall not affect:

19.2.1 any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination. This includes the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; or

19.2.2 the payment of any Commission due to You as a result of Business introduced by You and accepted by EXETER prior to termination.

19.3 Upon termination of this Agreement:

- 19.3.1 EXETER will prepare a final Commission Statement which will be settled by way of immediate payment by either Party of the balance due to the other Party;
- 19.3.2 You will cease using EXETER's literature and liaise with EXETER regarding the disposal of all such literature relating to EXETER. For the avoidance of doubt this does not include any correspondence between the Parties relating to this Agreement;
- 19.3.3 all documents and other records (in whatever form) containing Confidential Information supplied to or acquired by You from EXETER shall be returned promptly to EXETER on termination of this Agreement, and no copies shall be kept; and
- 19.3.4 Clauses 2.3, 2.7, 5.1.13, 5.2, 7.13, 7.14, 7.15 8, 10, 11, 12, 17.717.9, 18.6, 18.7, 18.11, 18.12, 18.13, 18.15, 18.16, 18.17, 18.18, 19.2, 19.3 and 20 shall continue in full force and effect after the termination of this Agreement.

20. **DISPUTE RESOLUTION**

- 20.1 If any dispute arises between the Parties out of, or in connection with, this Agreement, the matter shall be referred to senior managers of the Intermediary and the EXETER who shall each use their reasonable endeavours to resolve it.
- 20.2 If the dispute is not resolved within 14 days of the referral being made under Clause 20.1, the Intermediary and EXETER may resolve the matter through mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 20.3 Until the Parties have completed the steps referred to in Clauses 20.1 and 20.2, and have failed to resolve the dispute, neither Party shall commence formal legal proceedings or arbitration except that either Party may at any time seek urgent interim relief.

**To Contact Us:**

**Health insurance and protection**

Advisers: 0300 123 3203

Members: 0300 123 3201

PMI Claims: 0300 123 3253

IP Claims: 0300 123 3201

Members: [member@the-exeter.com](mailto:member@the-exeter.com)

Advisers: [adviser@the-exeter.com](mailto:adviser@the-exeter.com)

Administration Centre:  
Lakeside House Emperor Way  
Exeter EX1 3FD

### **Cash plan and Medicare**

Advisers: 0300 123 3257

Clients: 0300 123 3256

Clients: [cashplan@the-exeter.com](mailto:cashplan@the-exeter.com)

Advisers: [cashplan.adviser@the-exeter.com](mailto:cashplan.adviser@the-exeter.com)

Administration Centre:  
Jewry House Jewry Street  
Winchester SO23 8RZ

**The Exeter Friendly Society Limited** authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority with Financial Services Register number 205309, and its subsidiary,

**The Exeter Cash Plan** also authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority with Financial Services Register number 202311.

Both companies trade as The Exeter and have their registered office at Lakeside House Emperor Way Exeter EX1 3FD. You can check on both companies at [www.fca.org.uk/firms/systems-reporting/register](http://www.fca.org.uk/firms/systems-reporting/register) or by contacting the FCA on 0800 111 6768