



## TERMS AND CONDITIONS OF INSTRUCTION

### You acknowledge that:

- (1) it has been Your choice whether or not to enter into this agreement and that prior to doing so You had the opportunity to make a Claim on Your own behalf or by other means;
- (2) by entering into this agreement You do not necessarily increase Your Claim's chances of success;
- (3) Wybract is not providing, and is not regulated to provide, financial advice; and,
- (4) Wybract is not regulated by the Solicitors Regulation Authority.

### Definitions

The following terms in this agreement shall have the corresponding meanings, save where the context requires otherwise.

**Accountant:** an independent chartered accountant who is a member of the Institute of Chartered Accountants of England and Wales

**Assessment Stage:** the period during which We are assessing a Claim in accordance with clause 1.6

**Claim:** each potential complaint or cause of action which You may have against a Provider in relation to a Provider Service (excluding any claim(s) in respect of, and limited to, payment protection insurance and/or a packaged bank account)

**Claims Management Services:** the assessment, preparation, submission, negotiation and conclusion of a Claim (each a "Claims Management Service")

**Confidential Information:** all information (however recorded or preserved) which would be regarded as confidential by a reasonable person which is provided or disclosed in connection with or relating to a Claim or the Claims Management Services, and including (but not limited to) any intellectual property rights and any legal advice, legal document or other document or advice given to or provided by Us or on Our behalf to You in connection with or relating to a Claim or the Claims Management Services)

**Data Controller:** has the meaning set out in section 1(1) of the Data Protection Act 1998

**FCA:** the Financial Conduct Authority (including its successor from time to time)

**Fee:** the fee determined under clause 4

**Materials:** any and all information, documents, authorisations, correspondence or notifications (whether favourable or adverse and whether in hardcopy or electronic form) which is/are or may be relevant to a Claim

**Personal Data:** has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which We are

the Data Controller and in relation to which We are providing services to You under this agreement

**Processing and Process:** have the meanings set out in section 1(1) of the Data Protection Act 1998

**Provider:** an FCA authorised and regulated entity and its predecessors

**Provider Fees:** the fees payable by a Client to a Provider (past, present or future) in connection with any financial product or service which is the subject of a Claim

**Provider Service:** a service which has been carried out on Your behalf by a Provider (including but not limited to pension investments, pension transfer and mortgages) excluding any claim(s) in respect of, and limited to, payment protection insurance and/or a packaged bank account

**Recovery:** the gross amount of money offered or which is recovered or settled in Your favour and/or on Your behalf in respect of a Claim (whether or not We are still instructed by You to deal with the Claim at that point), whether paid to or received by Us, You, Your pension provider or another third party (including but not limited to any other claims management company who takes over conduct of the Claim in respect of which the money is offered, recovered or settled) which You have nominated in writing from time to time or otherwise.

Where the Provider, following a Claim, agrees to reduce its Provider Fees then the amount of the savings to the Client (for a period of 5 years from the date from which any reduction takes effect) shall be deemed to be included in the amount of the Recovery for the purposes of calculating the Fee, provided that We will not charge a Fee, pursuant to this provision, to the extent that such a Fee would exceed the total amount of any compensation payable to the Client

**Recovery Fee:** 24% of the Recovery in respect of a Claim, inclusive of VAT at the applicable rate thereon

**Submitted:** the earlier of:

- (a) When We actually send and/or process Your Claim to the Provider (or its regulator);
- (b) When We notify the Provider (or its regulator) of Your Claim or the Provider decides to treat any enquiry as a Claim

**Us / Our / We:** Wybract Limited (FRN: 829865) whose registered office address is Salisbury House, Station Road, Cambridge CB1 2LA

**You / Your:** the name(s) which appear in the letter accompanying this agreement

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

Any reference to “writing” includes email.

## 1. Conduct of Your claim

- 1.1. By signing and returning this agreement (or a copy of it) to Us, You have instructed Us to provide Claims Management Services to You.

- 1.2. The extent to which We carry out each of the Claims Management Services will depend on the merits of Your Claim and We have no obligation to carry out a particular Claims Management Service if We reasonably believe that a Claim, at any time, has no reasonable prospect of success.
- 1.3. You agree that We have the exclusive right to deal with and provide Claims Management Services to You in respect of any further Claim(s) (an “**Additional Claim**”) which may come to Our attention when dealing with a particular Claim.
- 1.4. We will conduct any Additional Claim on the terms of this agreement.
- 1.5. We will exercise reasonable care and skill in carrying out Claims Management Services for You.
- 1.6. Following compliance by You with clause 2.1.1 We will make an initial assessment of the prospects of a Claim being successful and, following that initial assessment:
  - 1.6.1. if We form the view that a Claim does not have reasonable prospects of success then We will let You know why We have formed such a view and may at that point terminate this agreement by written notice to You;
  - 1.6.2. if We need further information to establish whether a Claim has reasonable prospects of success We will let You know what further information We require; or,
  - 1.6.3. if We believe that a Claim has reasonable prospects of success, We will let You know what subsequent action We will take in respect of that Claim.
- 1.7. If We form a view in accordance with clause 1.6.3 then We will prepare the Claim for Submission (subject to any further information which We may require) to the relevant body who will deal with the Claim.
- 1.8. Once the draft submission is prepared We will send this to You for Your review and comments following which We will take into account any further comments You have and amend the submission accordingly (if reasonable to do so) and/or submit the Claim to the relevant body on Your instruction as the case may be.
- 1.9. Once We have submitted the Claim We will take such action as We consider reasonably necessary to progress the Claim and will keep You informed of the progress of the Claim at reasonable intervals.
- 1.10. If, during the course of conducting a Claim it becomes apparent, advisable or necessary that court or other legal proceedings should or must be commenced then these proceedings will be the subject of a separate agreement between You and Us.

For the avoidance of doubt this clause does not oblige You to enter into a new agreement with Us or to participate in such proceedings in those circumstances. It is Your choice whether You do so. If You choose not to do so then:

- a. this agreement will continue in force to allow a reasonable time (from the date on which You give written notice to Us that You do not wish to be a party to any court or similar proceedings) for Us to consider any alternative steps We could take to progress Your Claim;
- b. if We come to the conclusion (acting reasonably) that there is another reasonable step that We could take to progress Your Claim, then We will inform You in writing of what that step is and continue to progress Your Claim in that alternative way;

- c. if We come to the conclusion (acting reasonably) that there is no other reasonable step that We could take, then either We or You can immediately terminate this agreement by giving written notice to the other. If it is so terminated, no Fee will be payable by You;
- d. If We have not notified You that there is an alternative way to progress Your Claim within 6 months of You informing Us that You do not wish to be a party to court or similar proceedings, then this agreement will automatically terminate at the expiry of that 6 month period. This termination will be without prejudice to either party's rights of action against the other for a prior breach of it.

- 1.11. At the conclusion of a Claim, We will return any Materials to You which You have provided to Us, save for those which We are required or may by law, regulation, guidance or procedure retain.
- 1.12. If You wish to make a complaint about any service We have provided to You please follow the complaints process provided to You.
- 1.13. Subject to clause 6.3, it is agreed that We may engage agents ("**Third Party Agents**") to provide or assist with any Claims Management Services at Our sole discretion.

## 2. Your obligations to Us

- 2.1. You are obliged to:
  - 2.1.1. provide Us, within 20 working days of signing and returning this agreement to Us, with all Materials (or authentic copies of Materials) which You have in Your possession or control;
  - 2.1.2. throughout the period during which We provide Claims Management Services to You, provide Us with any further Materials which come into Your knowledge, possession or control within a reasonable time of becoming aware of them;
  - 2.1.3. provide Us with all reasonable assistance in acquiring any Materials held by a third party in relation to a Claim;
  - 2.1.4. deal with any correspondence which We send to You in a timely manner;
  - 2.1.5. throughout the period during which We provide Claims Management Services to You, reply truthfully, fully and accurately to the best of Your knowledge and belief to any enquiry which We raise with You;
  - 2.1.6. following termination of this agreement in accordance with clause 4.1, notify Us immediately in writing if You become aware that the Claim(s) in respect of which this agreement has been terminated (or a Claim which is based on the same material facts (whether in whole or in part) as that Claim) may, will be or has/have been Submitted by You or a third party.
  - 2.1.7. immediately notify Us in writing if You receive any correspondence directly from any third party in connection with a Claim which We are dealing with; and,
  - 2.1.8. provide Us with Your bank details to which any net Recovery monies are to be sent (subject to the provisions of clause 3 and clause 4).

### **3. Fees and Payment**

- 3.1. If there is a Recovery in respect of a Claim then You agree to pay to Us the Recovery Fee.
- 3.2. If We receive the Recovery monies direct from the payee then You agree that We can deduct and retain any sums due to Us from You (including but not limited to the Recovery Fee and whether or not the monies due relate to the Claim in respect of which the monies are received) before remitting the balance to You.
- 3.3. You agree that any Provider paying a Recovery in cash is authorised, now and in the future, to make such payment to Our client account as notified in writing to You from time to time and that You will provide Us with the necessary authority upon request and upon any assignment in accordance with clause 6 for this to occur.
- 3.4. If the Recovery is sent to You, to Your pension provider or to a third party, by the payee then You agree to pay to Us, within 7 days of the issue of an invoice to You in respect of a Claim, the outstanding balance of Our invoice.
- 3.5. We agree that, if no Recovery is made in respect of a Claim (and this agreement has not been terminated by Us or You), then You are not obliged to pay to Us a Recovery Fee in respect of that Claim. For the avoidance of doubt, the absence of Your liability to pay to Us a Recovery Fee in respect of that Claim does not absolve You from liability to pay to Us a Recovery Fee in respect of any other Claim in which a Recovery is made.
- 3.6. By way of a typical example only, an illustration of a calculation of a Recovery Fee is provided in Schedule 1.
- 3.7. Any payment under this agreement not made by its due date shall attract interest at the rate of 4% per annum above the base rate of Barclays Bank plc (both before and after any judgment).
- 3.8. In the event that any payment is not made in accordance with this agreement, We shall also be entitled to recover from You all proper expenses and costs incurred in securing payment, including but not limited to the cost of engaging a debt collection agency and the costs of taking legal action to recover the sums owing.

### **4. Suspension and Termination**

- 4.1. Termination of the agreement by You
  - 4.1.1. You may terminate this agreement within 14 days of signing this agreement (or a copy of it) by notice to Us.
  - 4.1.2. You may terminate this agreement at any time by giving Us 21 days' notice. We can request that You provide a reason for the termination to Us but this does not affect your right to terminate.
  - 4.1.3. If You terminate this agreement under clause 4.1.2 then You will be obliged to pay Us for the time spent working on Your Claim at the rate of £150 plus VAT per hour. This will be payable within 14 days of issuing an invoice to you.
  - 4.1.4. Notwithstanding this clause 4.1, We agree that You do not have to pay to Us a fee if You, acting reasonably, terminate this agreement where We fail

materially to comply with any material obligation imposed on Us under this agreement.

4.2. Termination of the agreement by Us

4.2.1. We may terminate this agreement by giving You at least 21 days' notice in writing;

4.2.2. If We terminate the agreement in accordance with clause 1.6.1 or (subject to clause 4.2.3) clause 4.2.1 We agree that You are not obliged to pay Us a fee;

4.2.3. However, if We terminate this agreement in accordance with clause 4.2.1 when one of the following grounds reasonably applies then You agree to pay to Us a Fee calculated in accordance with clause 4.1.1 within 14 days of an invoice being sent to You:

4.2.3.1. You fail to comply with any obligation imposed on You or to be complied with by You under this agreement;

4.2.3.2. You provide false or misleading information to Us;

4.2.3.3. You refuse to accept an offer of Recovery which We (acting reasonably) regard as being reasonable in the circumstances;

4.2.3.4. You repeatedly fail or refuse to respond timely to any queries raised with, or sent to, You by Us in connection with a Claim;

4.2.3.5. You act in a way which is or may be prejudicial or detrimental to a Claim;

4.2.3.6. You omit to act and that omission is or may be prejudicial or detrimental to a Claim; or,

4.2.3.7. We become aware that You are pursuing a Claim (in respect of which You have instructed Us to provide Claims Management Services) with the assistance of a third party or independently.

4.3. If the amount of the Fee cannot be agreed then the matter can be referred by You or Us to the President of the Institute of Chartered Accountants of England and Wales to appoint an Accountant to determine the amount of the Fee and whose decision shall, in the absence of manifest error, be final and binding on both parties.

4.4. The Accountant's costs will be borne by the parties equally or in the proportion which the Accountant directs within his sole discretion based on the reasonableness or otherwise of the conduct of the parties in respect of the matters in issue.

4.5. If a referral to the Accountant is made then You agree to pay the Fee to Us within 14 days of the earlier of it being agreed by You and Us or determined by the Accountant.

4.6. Suspension of the agreement

4.6.1. At any time if we consider it reasonable to do so (including if any of the events listed in clauses 4.2.3.1 to 4.2.3.7 occur) and without limiting Our other rights or remedies under this agreement, We may suspend provision of any or all of the Claims Management Services and/or Our other obligations under this agreement on giving You at least 7 days' written notice (a "**Suspension Notice**") until such time from when We give You

written notice that the suspension has been lifted (a “**Reinstatement Notice**”).

- 4.6.2. The period of time between a Suspension Notice taking effect and the service on You of a Reinstatement Notice is referred to as the “**Suspension Period**”.
- 4.6.3. During a Suspension Period, We shall not be liable to You (as far as permitted by law) for a Claim not being progressed and in particular, but without prejudice to the generality of this clause, We shall not be liable for any failure to comply with deadlines (including but not limited to statutory or common law limitation periods).
- 4.6.4. If no Reinstatement Notice has been provided to You within 6 months of a Suspension Notice taking effect, either You or We may terminate this agreement by giving written notice (including email) to the other. If it is so terminated, no Fee will be payable by You without prejudice to any claim which either party to this agreement may have against the other for a prior breach of this agreement.
- 4.7. Termination of this agreement in accordance with this clause 4 is without prejudice to any claim which either party to this agreement may have against the other for a prior breach of this agreement.

## 5. Variation

- 5.1. If We have a good reason for doing so (acting reasonably) We may vary or change the terms of this agreement by giving You at least 21 days’ notice in writing and if the variation or change is material We will seek Your consent to the change before it is binding (such consent not to be unreasonably withheld or delayed). Such consent will be deemed to be given if You continue to instruct Us in relation to a Claim for more than 21 days after receiving notice of the variation or change from Us.
- 5.2. If following a request for Your consent under clause 5.1, You inform Us before the deadline referred to in clause 5.1 that You do not agree to the proposed variation or change then this agreement will continue in force without the proposed variation or change. However, if We, acting reasonably, form the view that We cannot continue to represent You without the variation or change being made then We can terminate this agreement under clause 4.2. For the avoidance of doubt no fee will be payable by You if We terminate this agreement under this clause 5.2.
- 5.3. If there is a dispute as to whether a proposed variation or change is material or whether We are acting reasonably in terminating this agreement under clause 5.2, either You or We may refer the dispute to the President for the time being of the Chartered Institute of Arbitrators for the President to appoint an arbitrator to determine the dispute (“the Arbitrator”).
- 5.4. The Arbitrator’s costs will be borne by Us and You equally or in the proportion which the Arbitrator directs at his sole discretion based on the reasonableness or otherwise of the conduct of the parties in respect of the matter(s) in issue.

- 5.5. Without prejudice to the generality of clause 5.1, We can make the following changes to the agreement and/or in the following circumstances and/or for the following reasons:
  - 5.5.1. the grounds stated in clause 4.2.3 so that they remain up to date and current;
  - 5.5.2. the definition of “Claims Management Services” so that We can ensure that the service We are providing to You is in-line with Our business structure and current guidance (from time to time);
  - 5.5.3. the obligations imposed on You by clause 2.1 so that Your obligations to Us remain current; and,
  - 5.5.4. general changes to this agreement so that the service We provide and offer to You is in accordance with guidance issued by the claims management regulator or another relevant regulatory body.
- 5.6. Any variation to this agreement proposed by You must be in writing but will not be binding unless a copy of the proposed variation is signed by an individual who is registered as a director of Us at Companies House.

## **6. Assignment and Subcontracting**

- 6.1. We may by giving You at least 14 days’ written notice assign or novate any or all of Our rights and/or obligations under this agreement to a third party save that We are not permitted to do so without first:
  - 6.1.1. taking reasonable steps to ensure that Your rights under this agreement will not be significantly reduced or diminished by the assignment and/or novation (as the case may be); and,
  - 6.1.2. consulting with You (if reasonable to do so) before the assignment and/or novation (as the case may be) occurs.
- 6.2. You may assign any or all of Your rights under this agreement on 14 days’ written notice to Us but must first provide Us with reasonable information regarding the identity of the proposed assignee and the reason for the assignment.
- 6.3. We may appoint Third Party Agents pursuant to clause 1.13 by giving You at least 14 days’ written notice save that We are not permitted to do so without first:
  - 6.3.1. taking reasonable steps to ensure that Your rights under this agreement will not be significantly reduced or diminished by the appointment; and,
  - 6.3.2. consulting with You (if reasonable to do) so before the appointment takes place.
- 6.4. Without prejudice to the generality of clause 6.3, You consent to Us appointing Brangaene Limited of Essex House, 71 Regent Street, Cambridge, England CB2 1AB (Company Registration Number: 09488019) to assist Us in the handling and progression of a Claim and in particular in the provision of:
  - 6.4.1. Administration;
  - 6.4.2. Information technology systems for customer relationship management and document storage; and,
  - 6.4.3. Physical storage facilities.



## **7. Data Protection**

- 7.1. We agree that We will Process Your Personal Data in accordance with the Data Protection Act 1998 as Data Controller.
- 7.2. You grant Us permission (without further reference to You) to:
  - 7.2.1. share Your Personal Data with third parties (including but not limited to Third Party Agents as referred to in clause 1.13 and 6.3) if in Our reasonable opinion it is necessary to do so for the purpose of furthering or assisting with a Claim;
  - 7.2.2. share Your Personal Data as required by an order of a competent lawful authority, a court order or by law; and,
  - 7.2.3. make a request under section 7 of the Data Protection Act 1998 on Your behalf to any third party who is or maybe connected with a Claim.

## **8. Limitation of liability**

- 8.1. We shall not have any liability to You for any loss which arises as a result of action taken or omitted to be taken in reliance on any Materials or other information which You provide to Us.
- 8.2. We shall not be liable to You in tort (including but not limited to negligence), contract, breach of statutory or common law duty or otherwise (to the extent permitted by law) for any loss (including but not limited to loss of business, profit or reputation) including consequential or indirect loss or damage.
- 8.3. Notwithstanding clauses 8.1 or 8.2, nothing in this agreement shall exclude or limit Our liability to You in respect of:
  - 8.3.1. death or personal injury resulting from Our negligence;
  - 8.3.2. fraud or fraudulent misrepresentation; or,
  - 8.3.3. any provision of the Consumer Rights Act 2015 (such as those under sections 54-56 of that Act), the Supply of Goods and Services Act 1982 or any other liability which cannot be limited or excluded by applicable law.

## **9. Confidentiality and Intellectual Property Rights**

- 9.1. The provisions of this clause shall not apply to any information which becomes available to the public (other than as a result of either party or its representatives due to a breach of this clause 9) or which the parties agree, prior to the disclosure, is not Confidential Information and may be disclosed.
- 9.2. Subject to clauses 7.2 and 9.4, each party shall keep the Confidential Information of the other party confidential and shall not:
  - 9.2.1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement; or,
  - 9.2.2. disclose such Confidential Information in whole or in part to any third party except as expressly permitted by this clause 9 as far as applicable.
- 9.3. We may disclose Your Confidential Information to:
  - 9.3.1. Brangaene Limited in connection with the matters set out in clause 6.4; and,
  - 9.3.2. Our employees, officers, representatives or advisers who need to know such information for the purposes of exercising Our rights or carrying out Our

obligations under or in connection with this agreement. We shall ensure that those employees, officers, representatives or advisers, which Your Confidential Information is disclosed to, comply with the provisions of this clause 9.

- 9.4. In addition to Your obligations in clause 9.2, You agree that You will not disclose any Confidential Information to any third party (and in particular, but without prejudice to the generality of this clause 9.4, will not disclose any Confidential Information to any other claims management company) without Our prior written consent.
- 9.5. Before considering a request for consent pursuant to clause 9.4 We can request from You reasonably sufficient information to enable Us to determine who the Confidential Information will be disclosed to, used by and why it is being disclosed.
- 9.6. A party may disclose Confidential Information of the other party to the extent that such Confidential Information is required to be disclosed by law, by any government or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of, and information relating to, that disclosure as reasonably possible.
- 9.7. All intellectual property rights relating to or in connection with a Claim or the Claims Management Services (including Our intellectual property rights in documents provided by Us for Your benefit) shall remain vested in Us at all times and shall not transfer to You.
- 9.8. The provisions of this clause 9 shall continue to apply after termination of this agreement.

## **10. Identity Verification**

- 10.1. We are obliged by legislation to complete checks on all our clients at periodic times under the anti-money laundering legislation. Checks in compliance with the legislation, or similar rules, shall be completed electronically through a third-party provider.
- 10.2. We may be required by applicable statutory and other legal requirements to disclose information to governmental or other regulatory authorities. In particular you should be aware that under UK anti-money laundering legislation we may be obliged to notify the relevant government authority if we know of or suspect or have reasonable grounds for suspecting that you, or another person, are using the proceeds of crime. You should also be aware that in those circumstances we may be precluded from seeking your consent or informing you that we have made a notification or disclosure.

## **11. Joint and Severable Liability**

- 11.1. Where You consist of more than one person or individual each such person or individual shall be jointly and severally liable for the obligations imposed on You under this agreement.
- 11.2. We may take action against either or any of those persons in Our sole discretion without affecting the liability of the other(s).

**12. Governing Law**

- 12.1. This Agreement and any dispute or claim arising out of or in connection with 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.
- 12.2. Save as provided for in clause 4.3 and clause 5.3, the parties irrevocably agree to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**13. Indemnity**

You agree to indemnify Us and to keep Us indemnified against any loss or damage which results from You breaching this agreement or as a result of any act or omission of You or those authorised by You in connection with or in relation to this agreement.

**14. Warranties**

You warrant that You are authorised and permitted to enter into this agreement, and have obtained all necessary permissions and approvals.

**15. Notices**

Any notice given under this agreement must be in writing. Any notice sent by post shall be deemed served on the second working day after posting.

**By signing this agreement You confirm that You understand that You are solely responsible for any statements, answers or replies you make or give in connection with or relating to this agreement or a Claim.**

**By signing this agreement You agree to its terms. If You have any queries You should raise these with Us before signing this agreement and, if You still have queries, You should seek independent legal advice before signing.**

<p><b>Signature:</b> .....</p> <p><b>Name:</b> .....</p> <p><b>Date:</b> .....</p>
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