

TERMS OF BUSINESS AGREEMENT (TOBA)

For RAC Breakdown Insurance supplied through the Keychoice Sales Platform

In using the Keychoice Sales Platform and this RAC microsite the user, hereafter referred to as "**the Agent**", accepts the following Terms and Conditions:

1. Appointment and Authority

1.1 RAC Motoring Services ("**RACMS**") provides roadside repair and recovery insurance for vehicles in the United Kingdom and the Republic of Ireland, for which it does not require authorisation under the Financial Services and Markets Act 2000 ("**FSMA**") to effect or carry out contracts of insurance. RACMS also provides various related services in connection with vehicle breakdowns. RACMS is authorised under FSMA to act as an insurance intermediary. RAC Insurance Limited ("**RACIL**") provides onward travel and European breakdown insurance. RACIL is authorised under FSMA to effect and carry out contracts of insurance. RACMS is appointed by RACIL to sell and administer onward travel and European breakdown insurance on its behalf, and is permitted to sub-delegate all or part of that appointment.

1.2 The Agent wishes to make roadside repair and recovery, onward travel and European breakdown insurance and various related services provided by RACMS and RACIL available to its customers. RACMS hereby appoints the Agent as its agent and as RACIL's sub-agent for the sale of breakdown products, on the terms of this TOBA.

1.3 The Agent confirms it is authorised under FSMA to arrange and sell contracts of insurance. The Agent wishes to sell insurance policies provided by RACMS and RACIL on the terms of this TOBA.

1.4 The terms of this TOBA are in addition to any Intermediary Agreement between the Agent and Keychoice. In the event of conflict the terms of this TOBA shall prevail.

1.5 In making Insurance Arrangements, the Agent undertakes to RACMS that it will fully comply with all relevant legislation, regulations, guidance and statutory reporting requirements as affects the business conducted under this TOBA.

1.6 The Agent shall take out and maintain professional indemnity insurance as required by FSMA, and shall provide to RACMS upon request, a copy of such insurance policy.

1.7 The Agent shall notify RACMS if:

- any authorisation or approval under FSMA or relevant to the activities, is or is likely to be terminated, suspended, withdrawn, refused, expired, made subject to conditions or otherwise come to an end; or
- if the Agent becomes aware of any actual or pending investigation or enforcement or disciplinary action by any Regulator (including any proposed or threatened regulatory enforcement action and/or any steps taken by any Regulator which indicate that such regulatory enforcement action may or will be taken).

2. Arranging Cover

2.1 The Agent is authorised by RACMS to make Insurance Arrangements solely on the basis of this TOBA. RACMS authorises the Agent to, and the Agent shall:

- provide quotations for breakdown insurance contracts only in the form of the full policy wording made available to the Agent on the Keychoice Sales Platform from time to time ("**Policies**") on behalf of RACMS;
- enter into Policies on behalf of and for the account of RACMS;
- issue and despatch Policies and Policy related literature and materials including Polices, Policy booklets, Policy Schedules, Policy Summaries and proposal forms ("**Fulfilment Material**") in accordance with Clause 14;
- effect any necessary alteration, endorsement or cancellation of any Policy after it is issued;
- renew any Policy on behalf of RACMS.

2.2 Notwithstanding the authorities granted to the Agent by this TOBA, the Agent does not act as either RACMS's or RACIL's Authorised Representative (as defined by the FCA Handbook)

2.3 All Policies shall be in the form made available on the Keychoice

Sales Platform from time to time, and the Agent shall have no authority to amend, alter or extend any terms of the Policies.

2.4 The Agent shall bring the Policy terms to the notice of the prospective customers in accordance with regulatory requirements and any additional information required by RACMS at the point of sale.

2.5 The Agent shall not whether orally or otherwise, make or give any promises, warranties, guarantees or representations concerning the Policies other than those set out in the Policies.

2.6 If, during the 14 day period from acceptance of a Policy by a Policyholder (the "**Cooling-Off Period**"), a Policy is cancelled in accordance with the Policy, the Policy shall be cancelled immediately and the Agent shall issue to the Policyholder, a full refund of the retail price and IPT paid for the Policy by the Policyholder, **PROVIDED THAT** the Agent first determines that such Policyholder has not received any service(s) under its Policy prior to issuing any refund. No refund shall be provided outside of the Cooling-Off Period in any circumstances.

2.7 The Agent shall pay to RACMS (acting on its own behalf and as agent for RACIL) the net premium as set out on the Keychoice Sales Platform from time to time and IPT at the prevailing rate (calculated in respect of the retail price) on all Policies sold in each calendar month, whether or not collected from the Policyholder, by no later than 30 days after the end of the calendar month in which such Policies are sold and account to RACMS in accordance with Clause 3.4.

2.8 RACMS has not specified a retail price at which the Policies are to be sold and, the Agent may add commission to the net premium as it see fit. In the event that RAC reasonably believe that the retail price is too high and/or the retail price may not meet FCA TCF requirements, RAC shall have the right to fix the Agents maximum retail price. In the event that the Agent does not agree to the retail price, the Agent may terminate the Agreement by providing RAC with 7 days' notice in writing.

2.9 If the Agent:

2.3.1 fails to properly and fully account to RACMS and/or RACIL for IPT on any amount paid in relation to any Policy; or

2.3.2 charges an amount whether in connection with the Policy, or any services provided to a Policyholder or any other person, and that amount is subject to IPT or any other tax or duty for which RACMS and/or RACIL has any liability to collect and/or account to HMRC,

and where in consequence HMRC raises any action or demand against RACMS and/or RACIL, then the Agent shall reimburse to RACMS (acting on its own behalf and as agent for RACIL) all such tax or duty together with all costs, expenses, interest, penalties and fines which RACMS or RACIL (as the case may be) sustains or incurs as a result of such action or demand being brought. Any such reimbursement shall be made within 10 days of receiving a written request, with details of such action or demand and setting out the tax, duty, costs, expenses, interest, penalties and fines incurred by RACMS and/or RACIL.

2.10 The Agent accepts responsibility for ensuring the sales procedure is fully compliant with the FCA rules (and/or any other relevant regulatory authority), and agrees to indemnify RACMS for any claims or complaint redress that has to be made as a direct result of non-compliance, or where the Financial Ombudsman Service find in favour of a claimant/complainant where compliance to the sales procedure cannot be proved.

3. Premiums, Commission and Accounting and Reporting

3.1 RACMS shall at the end of each calendar month, using the Daily List (described in Clause 3.4) supplied by the Agent, produce an invoice in respect of the net premium and IPT due to RACMS and send the same to the Agent. The Agent shall pay RACMS in accordance with Clause 2.7.

3.2 If the Agent disputes part of the invoice then the Agent shall notify RACMS which elements of the invoice are in dispute together with full reasons and, if the dispute cannot be resolved within 2 days,

- RAC may remove the disputed elements and present a revised invoice and the disputed elements shall be invoiced separately and payable upon resolution of the dispute.
- 3.3 Late payments of any monies due from the Agent to RACMS will incur interest charges at the rate of 2.0% above the prevailing bank base rate as set by HSBC Bank.
- 3.4 The Agent shall make available to RACMS (acting on its own behalf and as agent for RACIL) via the Keychoice Sales Platform a daily list of all Policies sold by the Agent that day ("**Daily List**") as set out in Annex 1 of this TOBA and such other information which RACMS shall reasonably request from time to time.
- 4. Non Validating Vehicles**
- 4.1 Where RACMS is requested to provide services to any vehicle which has not been notified to RACMS as an insured vehicle on the Daily List (above) ("**Non-Validating Vehicle**") it shall do so subject to the user of such Non-Validating Vehicle paying for such services direct to RACMS. If the Agent can subsequently demonstrate to RACMS's reasonable satisfaction that such vehicle was a vehicle insured under a Policy under this TOBA then RACMS shall, subject to receipt of the relevant net premium and IPT reimburse the customer for the fees paid.
- 5. Exclusivity and Non-Solicitation**
- 5.1 RACMS acknowledges that any person insured under a motor policy sold by the Agent who is also the legal holder of a Policy under the terms of this TOBA ("**Policyholders**") are and remain the clients of the Agent who has the ultimate right to handle and deal generally with all such Policyholders. RACMS shall not, during the continuance of business conducted under this TOBA and for the period of two (2) years after its termination, (however caused) knowingly solicit the custom of any Policyholder.
- 6. Credit Risk Transfer**
- 6.1 RACMS (acting on its own behalf and as agent for RACIL) authorises the Agent to act as RACMS's and RACIL's agent for the purposes of receiving and holding premiums received from or payable to Policyholders in connection with the Policies ("**Risk Transfer Monies**"), such that:
- 6.1.1 the valid receipt of the retail price and IPT by the Agent will constitute valid receipt by RACMS and RACIL; and
- 6.1.2 retail price and IPT refunds held by the Agent but due to the Policyholder will be deemed to be held by RACMS and RACIL until transmitted to the Policyholder. The Agent and RACMS (acting on its own behalf and as agent for RACIL) acknowledge and confirm that the terms of the Policies are compatible with the provisions of this Clause 6.
- 6.2 The Agent may co-mingle retail price (including refunds of retail price) monies and IPT under this Agreement with Client Money (as defined by the Regulatory Rules). RACMS (acting on its own behalf and as agent for RACIL) hereby consents to such co-mingling and agrees that RACMS's and RACIL's interests will be subordinated to the interests of the Agent's clients (other than insurance undertakings).
- 6.3 If the Agent is to co-mingle funds held as agent for RACMS and RACIL pursuant to Clause 6.2 in a non-statutory trust account, it must hold all Risk Transfer Monies as follows:
- 6.3.1 the Agent shall open and maintain a segregated bank account with an Approved Bank (as defined by the Regulators) for the holding of monies as agent of insurance undertakings and shall use such account for the banking of retail price (including refunds of retail price) monies and IPT. Such account shall be a trust bank account or equivalent (including holding money as agent in Scotland) and shall be for the sole benefit of those insurance undertakings on whose behalf the Agent holds monies and shall contain no money other than that held as such insurance undertakings' agent;
- 6.3.2 prior to holding any funds in the account referred to in Clause 6.3.1, the Agent must provide RACMS with a copy of the written confirmation of the bank with which the account is held to the effect that:
- a) all money standing to the credit of the account is held by the Agent as trustee (or if relevant in Scotland, as agent) and that the bank is not entitled to combine the account with any other account or to exercise and right of set-off or counterclaim against money in the account in respect of any sum owed to it on any other account of the Agent;
- b) that the title of the account sufficiently distinguishes that account from any other account containing money that belongs to the Agent, and is in the form requested by the Agent; and
- c) obtain RACMS's written approval of the form of trust deed required to set up the account and provide RACMS with a copy of the executed trust deed (or, where the Agent is situated in Scotland, enter into an agency agreement with RACMS in order to establish and govern the operation of the account);
- 6.4 In relation to the account referred to in Clause 6.3.1, the Agent shall also require its auditors annually to give an opinion as to whether or not the account is being operated in accordance with the terms of the trust deed and provide copy of such opinion to RACMS upon request;
- 6.5 No advances of credit obtained by the Agent secured on the account referred to in Clause 6.3.1 shall be made without the prior written consent of RACMS;
- 6.6 The Agent shall take all steps necessary to ensure that the establishment and operation of the account referred to in Clause 6.3.1 complies with all applicable local laws; and
- 6.7 All interest paid on Risk Transfer Monies held by the Agent in accordance with this Clause 6 shall be for the account of the Agent who shall be entitled to withdraw such interest at any time, subject to any applicable Regulatory Requirements.
- 7. Commencement and Termination**
- 7.1 This TOBA commences on the date of acceptance by the Agent (the "**Commencement Date**") and shall continue unless terminated in accordance with Clause 7.2 until RACMS or the Agent provide each other with seven (7) days' written notice to in writing (the "**Term**"). Notices may be delivered by hand or sent by prepaid first class recorded delivery post sent to RACMS at RAC House, Brockhurst Crescent, Walsall, WS5 4AW or to the last known address of the Agent. Notice sent by post shall be deemed to have been received by the addressee at noon on the second business day after posting, excluding the day of dispatch.
- 7.2 Either party shall be entitled forthwith to terminate this relationship by written notice to the other if:
- 7.2.1 The other party commits any material breach of any of the provisions of this TOBA; or
- 7.2.2 the other party goes into liquidation, or an encumbrancer take possession of or a Receiver of Administration is appointed over any of the property or assets of that other party, or an Administration Order is made in respect of that other party or that other party makes a voluntary arrangement with its creditors; or
- 7.2.3 the other party ceases to be authorised under FSMA or ceases or threatens to cease to carry on business; or
- 7.2.4 the Agent fails in any manner to hold and account for monies due to RACMS strictly in accordance with FCA rules or as required under this TOBA; or
- 7.2.5 The Agent is in breach of Clause 15.1.
- 7.3 Upon termination:
- 7.3.1 all services provided shall cease except those applying to Policies which remain in force;
- 7.3.2 any net premium accrued which has not been paid will immediately become due and payable to RACMS;
- 7.3.3 the Agent shall continue to provide RACMS with all information that is necessary to satisfy any applicable regulatory requirements or is reasonably required in relation to the on-going administration of the Policies;
- 7.3.4 the Agent shall immediately cease the promotion, distribution and sale of the Policies;
- 7.3.5 the Agent shall continue to process in the ordinary course of business any application which was received but not accepted by the Agent prior to the effective date of termination and any application which was received by the Agent on or after the effective date of termination but within the maximum thirty (30) day quote validity period;
- 8. Data Protection**

- 8.1 Each Party agree that in performing its obligations, it shall comply in all material respects with the provisions of the DPA, all statutory and regulatory provisions binding upon it and any applicable codes of practice and that it will remain, entitled under the DPA to receive, retain and disclose all personal data relating to a Policyholder or otherwise.
- 8.2 All information received by one Party from the other shall be held in a secure state to no less a standard than the recipient secures its own information.
- 8.3 To the extent that the Agent acts as a data processor on behalf of RACMS and/or RACIL, for the purposes of any personal data processed by the Agent in connection with this Agreement, the Agent agrees to comply with the obligations placed on RACMS and/or RACIL by the seventh data protection principle set out in the DPA (the 'Seventh Principle').
- 8.4 The Agent agrees to use all reasonable efforts to assist RACMS and RACIL to comply with such obligations as are imposed on RACMS and/or RACIL by the DPA. In particular, the Agent agrees to immediately notify RACMS and/or RACIL (as the case may be), and to provide all reasonable and necessary assistance to RACMS and/or RACIL (as the case may be) in the following events:
- 8.4.1 receipt of any subject access request under Section 7 of the DPA in relation to this Agreement;
- 8.4.2 any accidental or unlawful destruction, accidental loss, alteration, unauthorised disclosure or access of Personal Data governed by this Agreement;
- 8.4.3 any breach by the Agent, its employees, officers, agents or subcontractors of the provisions of this Clause 8; or
- 8.4.4 any enquiry, investigation or enforcement proceeding relating to the Personal Data under this Agreement.
- 8.5 The Agent shall not disclose or release any personal data in response to a subject access request or a request from any regulatory or other governmental authority without first consulting with and obtaining the consent of RACMS.
- 8.6 The Agent shall not transfer personal data to countries outside the European Economic Area without the prior written consent of RACMS.
- 8.7 The Agent agrees to provide all necessary notices and obtain all necessary consents from individuals whose personal data is passed by the Agent to RACMS and/or RACIL to satisfy the legal obligations on all Parties to obtain such information fairly and lawfully under Principle 1 of the DPA. The Agent agrees to provide RACMS and/or RACIL with the opportunity to approve the nature and extent of any notices and/or consents provided to and/or obtained from the individuals in question.
- 8.8 The Agent shall indemnify each of RACMS and RACIL against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by RACMS or RACIL (as the case may be) as a result of any breach of the DPA and/or this Clause 8 by the Agent, its employees or agents.
- 9. Financial Crime**
- 9.1 The Agent shall maintain adequate and up to date financial crime prevention, anti-money laundering and whistle blowing processes, and not undertake any activity in any way that would constitute a criminal act within the jurisdiction. It shall conduct the business in accordance with all applicable anti-money laundering and international trade, economic or financial sanctions legislation.
- 9.2 The Agent shall carry out Financial Sanctions checks on all customers to ensure its compliance with the Counter Terrorism Act 2008 and all applicable laws and regulations. The Agent shall provide evidence of this upon request by RAC.
- 9.3 The Agent shall have and shall maintain in place throughout the term of this Agreement its own Anti-Bribery policies and procedures (including adequate procedures under the Bribery act 2010) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and not engage in any activity or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom.
- 10. Claims and Complaints**
- 10.1 The Agent is not authorised to settle or negotiate settlement of claims under Policies.
- 10.2 RACMS shall be responsible for the receipt, handling, recording and reporting of complaints (or parts of complaints) relating to:
- 10.2.1 the Policies; and
- 10.2.2 the performance by RACMS of its obligations under the Policies.
- 10.2.3 where a customer expresses dissatisfaction with RACMS's brand and RACMS determines, acting reasonably, that the customers opinion of RACMS's brand has been or is reasonably likely to be damaged; or
- 10.2.4 which RACMS determines, acting reasonably, could have negative press relations
- 10.3 The Agent shall be responsible for the receipt, handling, recording and reporting of complaints (or parts of complaints) relating to the sale and administration of the Policies.
- 10.4 If a Party receives a complaint for which the other Party is responsible, each Party shall within two working days, forward the complaint (along with full details of such complaint and copies of written correspondence and data to enable the relevant Party to deal with the complaint) to the other Party at:
- 10.4.1 in the case of RACMS: Membership Customer Care, RAC Motoring Services, Great Park Road, Bradley Stoke, Bristol, BS32 4QN; or
- 10.4.2 in the case of the Agent: its Registered Office address.
- 10.5 The Agent shall notify RACMS of all complaints received by it even if the responsibility for dealing with the complaint vests with the Agent.
- 11. Confidentiality**
- 11.1 RACMS and the Agent shall treat any information relating to the other party, its business or customers, as confidential except to the extent that such information is public knowledge other than as a result of any breach of this TOBA. Each Party shall not disclose such information to any third party nor use it for any purpose except as is necessary for the enforcement of the party's rights in law or contract. For the avoidance of doubt, RACMS may disclose information about the Agent and its ongoing performance under this TOBA to Keychoice.
- 12. Audit**
- 12.1 RACMS shall, itself or by its, auditors, professional advisors, have the right at any time or times while business is being conducted pursuant to this TOBA and for a reasonable period thereafter, in business hours, and upon giving reasonable notice to the Agent to make investigation and to examine all files and records of the Agent (including bank records) pertaining to obligations and responsibilities thereunder, to fulfil any legal or regulatory request by any regulatory body, undertake verification of fees and may arrange for copies to be made at RACMS's expense of any of the records containing such information as it may require.
- 12.2 The Agent shall provide all reasonable assistance and cooperation to RACMS in making such investigation and examination and will answer all reasonable enquiries made by RACMS in respect of this TOBA.
- 12.3 If the audit identifies a material default by the Agent, the Agent shall reimburse RACMS for all its reasonable costs incurred in the course of audit. This Clause 12 shall survive termination of the agreement for 12 months.
- 13. Intellectual Property**
- 13.1 The Agent hereby acknowledges that all Intellectual Property Rights in the Policies and services and the RAC Marks (including goodwill) are the absolute property of RACMS (or its licensors) and the Agent shall make no claim to ownership or do anything to adversely affect the ownership or exercise of such rights by RACMS.
- 13.2 The Agent shall not reproduce any logo, trade mark, service mark or name of RAC in any form without its prior written consent.
- 14. Fulfilment and Marketing Material**
- 14.1 RACMS shall be responsible for creating the form and content of Fulfilment Material and any marketing materials which shall be made available to the Agent via the Keychoice Sales Platform.
- 14.2 The Agent shall be responsible for production and printing of all Fulfilment Material and marketing materials including all costs and expenses.
- 15. General**

- 15.1 Within 14 days of the Commencement Date the Agent shall submit a completed copy of the “**Initial Broker Due Diligence Form**” which shall be made available to the Agent via this RAC microsite to RACMS at duediligence@rac.co.uk or such other address which RACMS may notify the Agent of from time to time. The Agent must complete and return the “**Annual Due-Diligence Form**” in the same way within 7 days of the anniversary of the Commencement Date and each subsequent year.
- 15.2 This TOBA replaces any previous terms or agreements between the Parties.
- 15.3 This TOBA cannot be waived, amended, varied or added to except by written agreement except that RAC reserves the right to amend this TOBA by providing the Agent with seven (7) days’ written notice.
- 15.4 RACMS and the Agent agree not to assign their respective rights under this TOBA whether by sale, consolidation, merger, operation of law or otherwise, except as agreed by both parties in writing.
- 15.5 Nothing in this TOBA will confer any rights, remedies or benefits of any nature whatsoever on any third party for the purpose of the Contract (Rights of Third Parties) Act 1999 or for any other purpose.
- 15.6 This TOBA shall be governed by and constructed in accordance with the laws of England and Wales and it is irrevocably agreed that the Courts of England and Wales are to have jurisdiction to settle any disputes which may arise out of or in connection with this TOBA.
- 15.7 Clauses 1.5 (Insurance), 8 (data protection), 11 (confidentiality), 12 (audit) shall survive termination of this TOBA.

Annex 1

SEGMENTS
Senders SCID Number
Broker's Name
Policy Number
Customer Forename
Customer surname
Salute
Customer Address line 1
Customer Address line 2
Customer Address line 3
Customer Address line 4
Customer Postcode
Customer Home Telephone
Customer Work Telephone
Policy Inception Date
Policy Expiry Date
Vehicle Registration
Vehicle Make
Vehicle Model
Registration Year
Gross Premium Float
IPT Float
Net of IPT Premium float
Scheme Name
Premium of Parent Policy
Scheme Commission
Customer Date Of Birth