

**Aon Kenya Insurance Brokers Limited**

**Terms and Conditions of Business**





Important notice to Clients of Aon explaining the terms of business and Independent Intermediary Services (these terms and conditions, whether signed or not by you, take effect when we provide Services to you, or when insurance is placed on your behalf, or when we have provided you with Consultancy Services and irrespective of whether or not there is a signed agreement in place with you).

## 1. Introduction

- 1.1 This document sets out the Terms and Conditions of Business in respect of the business relationship between Aon and its Clients.
- 1.2 These Terms and Conditions apply between Aon and its Clients, regardless of the type of Services Aon provides. Without limiting the generality thereof, they apply whether or not Aon is providing:
  - 1.2.1 Services as a Broker in terms of the Insurance Act Chapter, Chapter 487 of of the Laws of Kenya..
  - 1.2.2 Consultancy Services in various areas, including, without limitation, risk management services, actuarial services, healthcare services benefits and retirement funding.
  - 1.2.3 Pension / Provident fund and Healthcare administration services.
- 1.3 To the extent that any of the Services provided by Aon are governed by any Kenyan legislation or regulated by the Insurance Regulatory Authority (IRA) and to the extent that the terms and conditions of business conflict with the provisions of the Insurance Act, the provisions of the Insurance Act will prevail.

## 2. Terminology

In these terms and conditions the words used shall bear the meaning assigned to them below:-

- 2.1 "Aon/we/us/our's" shall mean Aon Kenya Insurance Brokers Limited, with registered office at Aon House, Mamlaka Road, Off Nyerere Road, Nairobi , including all its subsidiaries from time to time, including any that do not bear the name "Aon" and/or that have a separate registration number Aon Kenya Insurance Brokers Limited. In the absence of anything agreed to by us in writing to the contrary, we do not however represent any of the other Aon Group companies or entities, nor do we purport to act as an agent for or on behalf of any of the other Aon Group companies or entities.
  - 2.2 "Aon Group" shall mean Aon Corporation, in the United States of America, and any corporations, companies or other entities in which it has a direct or indirect interest, including Aon Kenya Insurance Brokers Limited.
  - 2.3 "Aon Standard, Aon Choice and Aon Choice Plus" shall mean different levels of limitations of liability on the part of Aon offered to our Clients. Each level of limitation of liability is an annual aggregate limit of liability on the part of Aon in respect of all claims by the Client against Aon arising or resulting from any Services provided by Aon, or acts or omissions by Aon during the time that level of limitation of liability was in place, even though the claims by the Client against Aon are brought against Aon thereafter.
  - 2.4 "Aon Standard" shall mean a level of limitation of liability in terms of which the annual aggregate limitation of liability on the part of Aon in respect of its relevant Client will be K Shs 200 million for any and all claims by the Client against Aon resulting from or in any way related to any
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Services provided by Aon to that Client, or acts or omissions on the part of Aon relating to that Client during the year that that level of limitation of liability was in place, even though the claim by the Client against Aon is brought thereafter.

- 2.5 "Aon Choice" shall mean a level of limitation of liability in terms of which the annual aggregate limitation of liability on the part of Aon in respect of its relevant Client will be K Shs 2 billion for any and all claims by the Client against Aon resulting from, or in any way related to any Services provided by Aon to that Client, or acts or omissions on the part of Aon relating to that Client during the year that that level of limitation of liability was in place, even though the claim by the Client against Aon is brought thereafter.
- 2.6 "Aon Choice Plus" shall mean a level of limitation of liability in terms of which the annual aggregate limitation of liability on the part of Aon in respect of its relevant Client will be K Shs 4 billion for any and all claims by the Client against Aon resulting from or in any way related to any Services provided by Aon to that Client, or acts or omissions on the part of Aon relating to that Client during the year that that level of limitation of liability was in place, even though the claim by the Client against Aon is brought thereafter.
- 2.7 "Appointment Letter" shall mean a separate appointment letter where you appoint Aon to render certain Services to you.
- 2.8 "Client" shall mean the party with whom Aon enters into this agreement and/or the Service Level Agreement and/or the Broker's Letter of Appointment Letter and/or in respect of which it performs any Services.
- 2.9 "Consultancy Services" shall mean the services to be rendered by us to you of a consultancy nature, including, without limitation, risk management services, actuarial services, healthcare services, retirement funding and pension fund administration.
- 2.10 "Insurance Act" shall mean the Insurance Act Chapter 487 of the Laws of Kenya.
- 2.11 "Insurance Regulatory Authority" shall mean the Insurance Regulatory Authority (IRA) established by the Insurance Act, Chapter 487 of the Laws of Kenya.
- 2.12 "Services" shall mean the services to be rendered by us to you as set out in a separate Service Level Agreement, or as set out in the separate Appointment Letter. Such services to include, whether or not a Service Level Agreement and or Appointment Letter is in place, all quoting, preliminary work, discussions, meetings, and all related functions from time to time.
- 2.13 "Service Level Agreement" shall mean a separate Service Level Agreement entered into by and between Aon and you and which shall cover the various service levels agreed upon.
- 2.14 "Sum Insured" shall mean the value shown in the policy which is the policyholder's (your) calculation of the total value at risk and upon which the insurer calculates the premium".
- 2.15 "You/your" shall mean the Client, who has appointed Aon to render certain Services on your behalf, who will be referred to as "the Client" or "you", as the context may require with registered office as is set out in the Appointment Letter and/or the Service Level Agreement, if any.

### **3. Regulation**

We are authorised and regulated by the Insurance Regulatory Authority (IRA) in terms of the Insurance Act, Chapter 487 of the Laws of Kenya.

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#### **4. Products and Services**

We offer a full range of insurance products and our service may include, but are not limited to: advising you on your insurance needs; arranging your insurance cover with insurers to meet your specific requirements and helping you with any subsequent event or alteration to the insurance we have arranged on your behalf. As part of our service we may assist you with any claim you need to make. We have access to the majority of major insurers, with which we place your insurance. We will advise you should we have any special arrangements with them or if you are required to deal directly with the insurer for on-going policy administration. We may issue policies and handle claims on behalf of some insurers. In respect of certain products and services we may have selected specific products and services from certain suppliers to provide cost effective solutions to meet the needs of our Clients generally rather than specifically.

#### **5. Disclosure of Information**

##### **5.1 Instructions:**

- 5.1.1 You warrant to us that the Director or Officer or Partner or other employee/s that will represent you in your dealings with us is duly authorized to do so. We will, in any event, endeavour to confirm all instructions in writing (by letter, e-mail or facsimile) in order to avoid any misunderstandings about the cover which you have requested. Written instructions may also be recorded in minutes following meetings. For administration purposes we may record our telephone conversations with you.

##### **5.2 Duty of Disclosure:**

- 5.2.1 An insurance contract imposes onerous duties upon prospective insureds and their service providers, who are obliged to act with utmost good faith towards insurers and re-insurers at all times.
  - 5.2.2 In particular you are obliged to disclose to insurers, before the contract is concluded, each and every "material" circumstances or information which may in any way affect the assessment of the risk and, in turn, the decision of the insurer to insure the risk, as well as the premium payable. The obligation of disclosure is not limited to material circumstances or information of which you are aware; it extends to those circumstances of which you ought to be aware in the ordinary course of your business. You are responsible for ensuring that we have all material documents / information and facts which should be disclosed to insurers.
  - 5.2.3 If there is any doubt as to whether or not a circumstance or information is material to the risk, we recommend you inform us thereof.
  - 5.2.4 If there is any breach of duty to act with utmost good faith or failure to disclose any material circumstance or information to insurers, the insurers may be entitled to void the policy of insurance from inception. In effect, this means they may be entitled to act as if the policy had never existed and to seek recovery of all claims already paid under that policy, although they may be obliged to repay the premium.
  - 5.2.5 The duties of utmost good faith and full disclosure arise again on renewal, extension, amendment of any policy or replacement of cover with a new Insurer. They also apply to the making of claims and to any situation during the period of the policy in which you are required, under the terms of the policy or otherwise, to provide information to insurers.
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5.2.6 You must also take care to ensure that all the information provided to us is true and updated as insurers may also void a policy based on misrepresentation.

5.2.7 If you are in any doubt over any of the policy terms or conditions, please seek our advice promptly.

### **5.3 Questionnaires and Forms:**

5.3.1 With certain classes of insurance you may be required to complete a proposal form or questionnaire. We will provide any advice and assistance you may require, but we cannot complete or sign the form on your behalf. In completing a proposal, claim form or other document relating to an insurance policy, the accuracy of all answers, statements and/or information is your sole responsibility.

### **5.4 Risk Information:**

5.4.1 You will be required, annually, and in the case of any material changes in the interim, to provide updated risk information with regard to the subject matter to be insured and claims information which will be used for the purposes of obtaining renewal terms from insurers and re-insurers.

5.4.2 All Insured Values / Sums Insured provided by you are deemed by us to include VAT at the prevailing rate (unless otherwise stated), should be adequate to cater for replacement at current market values and in addition, the cost of services and extras provided in terms of the policy. Motor vehicles are usually insured for their current market value and not new replacement value unless agreed in writing.

5.4.3 If Insured Values / Sums Insured are too low and the Client is therefore under-insured, then average will apply. The insurer's liability shall be limited to that sum which bears the same proportion to the amount of the loss or damage as the Insured Value / Sum Insured bears to what the Insured Value / Sums Insured should have been. Aon will not be liable in any way to the Client if the Insured Values / Sums Insured are too low, as the Client bears the responsibility to ensure that those amounts are not too low.

5.4.4 Your attention is drawn to the fact that should the subject matter of the insurance or the circumstances or information affecting it or the risk insured be altered in such a way as to increase the risk insured under the policy, the policy can be avoided, unless the insurer has been given prior written notice thereof and has accepted that situation. Where the subject matter of the insurance is so altered as to make it a different risk (as opposed to increasing the risk), the insurer will not be liable.

### **5.5 Global Accounts / International Insurance Programmes:**

In the event that Aon arranges insurance coverage for you and you are part of a group of companies / entities that falls under an international insurance programme arranged outside of Kenya by one of the other Aon companies, then you agree that:

5.5.1 you will have no claim against Aon, whether in contract or in tort, relating to such programme and that Aon's contractual or liability in tort to it only relates to the insurance coverage arranged by Aon for you in Kenya;

5.5.2 if you or one of your related companies, employees or agents claims against Aon, in relation to such international insurance programme, then you agree to indemnify and

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hold Aon harmless in respect of such claim, as well as related liabilities in respect of such claim, including costs and expenses incurred in resisting such claim.

## **6. Provisions of Insurance Premium Costings**

- 6.1 We will, when providing a quotation for the placement of your business, use our best efforts to ensure its accuracy and that we can place it at the quoted price.
- 6.2 In cases where we are requested to provide estimated terms without approaching the market, we cannot confirm the final premium until we have agreed the costing with insurers.
- 6.3 We will inform you of the premium required by insurers when the payment is due and the terms and conditions of the scope of coverage agreed.

## **7. Binding of Cover**

Cover will only be placed on your specific written instruction and will only be in force once it has been 100% (fully) placed with insurers and you have received written confirmation of the fact from us. It is a statutory requirement that all premiums are payable prior to inception of cover.

## **8. Renewal of Cover**

We shall endeavour to contact you prior to the Renewal Date of your Insurance Programme. All proposed amendments to your insurance programme will be deemed to take effect on the renewal date. If you require any changes to take effect immediately it is your responsibility to specifically request, in writing, that the required changes take effect as soon as full cover can be placed.

## **9. Mid-Term Amendments**

- 9.1 If you require any changes to your insurance covers please contact us immediately, and we will negotiate the changes required. We again draw attention to the duty of disclosure and binding of cover referred to in clause 5 and 7 above.
- 9.2 Any notification to Aon of changes required does not mean that cover is automatically in place. As soon as approval of changes has been obtained, we shall accordingly notify you thereof in writing.

## **10. Confirmation of Cover**

- 10.1 We will confirm that we have placed cover or effected your required changes as soon as possible. We will confirm in writing the scope of cover, on your specific request, explain specific Terms and Conditions which may apply and give you the names of the insurers with whom the cover or; insurance has been placed. This will usually be sent to you within 30 days of inception of cover. Notice to us of changes required does not mean that cover is automatically in place; the changes to cover will be effective from the date upon which they are accepted by the insurer and confirmed in writing.
  - 10.2 We will endeavour to send you a policy document and/or cover note within 60 days of inception of cover, provided that the insurer has furnished us with such document. Overseas insurers may take many months to issue a policy. The policy sets out the various terms, conditions, warranties and exclusions relating to the cover.
  - 10.3 Whilst we will endeavour to ensure that the insurer/s has/have given proper effect to your requirements, it is important that you carefully read all confirmations of cover, schedules,
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policies and other documents to ensure they meet your requirements. If they do not, we should be contacted as soon as possible. We do not undertake to review the entire wording of insurance policies with you unless specifically requested.

10.4 Your only assurance of effective cover is written confirmation from us and payment by you of the applicable premium and fee in full, prior to inception of cover.

## 11. Payment of Premium and Fees

11.1 You are responsible for the payment, in full, of premium and/or fees to us or as directed on receipt of the statement. Your policy will state that all premiums are payable prior to inception of cover. If you do not pay your premiums timeously, no cover is in force and we are not obliged to inform you of the fact. In the event that settlement is required, other than on presentation of our invoice, we will advise you accordingly. It is not our policy to fund the payment of premium on behalf of our Clients to insurers. Failure to pay your premium, on time, will result in the voiding of your policy.

11.2 Except for monthly policies, or with specific Agreement from insurers, part payments of premium and fees, is not acceptable. On receipt of a part payment, we will deduct any fees due to us and hold any balance of yours under payment in trust pending your written instructions on how we should apply the balance of the monies to individual premium debits. Any delayed payment may result in void policies for which we can accept no liability.

## 12. Banking Procedures

12.1 Unless otherwise directed, electronic bank transfers in the currency of our invoice should be made directly to:

<u>Division</u>	<u>Bank</u>	<u>Branch</u>	<u>Branch Code</u>	<u>A/C NO.</u>
Industry & Mining	Commercial Bank of Africa - Nairobi	Mamlaka Branch	07000	659246 0047
Middle Markets	Commercial Bank of Africa - Nairobi	Mamlaka Branch	07000	659246 0293
Personal Lines	Commercial Bank of Africa - Nairobi	Mamlaka Branch	07000	659246 0089
Specialty	Commercial Bank of Africa - Nairobi	Mamlaka Branch	07000	659246 0031
Healthcare	Commercial Bank of Africa - Nairobi	Mamlaka Branch	07000	659246 0327
Life & Pensions	Commercial Bank of Africa - Nairobi	Mamlaka Branch	07000	659246 0068
Coast	Commercial Bank of Africa - Mombasa	Moi Avenue Branch	07020	662664 0018
Western	Standard Chartered Bank	Eldoret Branch	02000	104017641900
Dollar Account	Commercial Bank of Africa - Nairobi	Mamlaka Branch	07000	659246 0107

12.2 Notification of the payment must be faxed or e-mailed to our Account Handler (Servicer) or Financial Controller for information purposes, including our invoice reference number(s) of the items being settled.

12.3 We also accept cheques and cash payments made at our offices.

12.4 Cheques in the currency of our invoice should be delivered to us at Aon Kenya Insurance Brokers Limited, Aon House, Mamalaka Road, Off Nyerere Road, Nairobi. Alternatively, if you choose to mail cheques to us to our mailing address, namely PO Box 48279 - 00100, Nairobi,



Kenya, then you agree that the postal officials are acting as your agent and, in the circumstances, you bear the risk if the cheque is not received timeously by us.

12.5 Cheques must be accompanied by our invoice reference number(s), as well as the name of your Account Handler.

### **13. Claims**

13.1 Claims, losses or any circumstances which could give rise to a claim should be notified to us as soon as possible and certainly within any time limit specified in the policy (usually within 7 days or in accordance with the General Exceptions, Conditions and Provisions of your policy). Such notification should include all material facts concerning the claim, loss or circumstances. Where circumstances so require we will advise you how to proceed with the quantification and settlement of your claim. We will keep you apprised of the progress of your claim and of any special circumstances relating thereto.

13.2 The settlement of your claim will depend upon acceptance of the claim by the insurer and receipt by us of the claims monies from the insurer. The collection of payments from overseas insurers may take longer.

13.3 It is our policy to assist you in conducting claims negotiations and secure interim payments, where appropriate, from insurers during the process of settling the claim. We will provide this service as long as we are your appointed service provider. We reserve the right to charge you a fee for handling the settlement of outstanding and/or run off claims should you terminate our appointment before such claims are finalised.

13.4 If your insurer declines to settle your claim, on the grounds that no cover exists, we may offer to negotiate an ex-gratia settlement and subject to the agreement of an acceptable fee, provided that all outstanding premium is paid.

13.5 Any excess, deductible, or first amount payable is an uninsured part of your claim. We may undertake to request your insurer to recover your uninsured amount from a negligent Third Party or their insurers. We do not undertake to recover such amounts ourselves. We undertake, if agreed upon, to negotiate all insured claims submitted by you during the currency of your insurance programme as part of our normal service.

13.6 If the circumstances of any claim provide for an excess or deductible to an insurer, then the amount claimable by you from the insurer will be the net amount, after such excess or deductible has been taken into account. For claims involving vehicle damage, insurers will require you to settle the excess or deductible before the vehicle is released to you upon satisfactory repair work.

### **14. Retention of Documentation**

14.1 We will maintain records of our dealings with you and on your behalf as required by law.

14.2 Archived documents may be destroyed or returned to you upon your written request. The cost of storage and retrieving documents that you request will be for your own account.

14.3 We will maintain our own records for such period as may be required by law.

14.4 We reserve the right to retain certificates or other policy documents until all payments under the policy are met.

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- 14.5 By accepting this Agreement, you agree that delivery of insurance documentation to us shall constitute delivery to yourself.
- 14.6 We shall maintain records of the contract(s) of insurance that we arrange on your behalf. In this regard, we shall maintain (i) placing records for 6 (six) years from the commencement of the insurance contract; (ii) claim records for 6 (six) years after the final settlement of the claim; and (iii) legal liability records for a period of 8 (eight) years.
- 14.7 We shall automatically destroy documents and records after the aforesaid periods have lapsed, unless you advise us otherwise. We, as your service provider, shall render this service of retention of documentation to you free of charge. However, should our appointment be terminated, we reserve the right to charge you a fee for the service of retention of documentation.

## **15. Financial Security of Risk Carrier**

- 15.1 It is our policy to place your business only with reputable and creditworthy insurers and re-insurers. We do not accept responsibility for, or guarantee, the future solvency of insurers or re-insurers or their ability to pay claims.
- 15.2 Should circumstances necessitate it, we may in order to place risks fully or improve terms and conditions of cover, place risks with international markets and/or markets outside Kenya. This shall only be done with your prior consent and after we have consulted with you. In these circumstances local regulations of the insurance markets and the legal ability to obtain and enforce payment of disputed claims may be more expensive and difficult to obtain.
- 15.3 If you require information about any of the insurers or have specific instructions in this respect please discuss this with us.
- 15.4 If you require us to place all or part of your insurance cover with a market that is not on our approved financial security list, we will require your written authorisation to do so.
- 15.5 We are not the insurer of any risk nor can we guarantee the availability of a cover. The final choice of insurer(s) remains with you. If at any time the cover you require can only be provided by an insurer that is not on our list of approved insurer(s), we will advise you of such and we will further advise you of the risks of using that insurer which you will be required to acknowledge in writing.

## **16. Remuneration**

- 16.1 Our remuneration will comprise commission from the insurer/s concerned as a result of placing your business with local and international insurance markets as well as fees for services rendered to you.
- 16.2 Services for which fees are charged may include but are not limited to reasonable costs of documentation, duplicate documentation, premium administration, and mid-term amendments to insurance cover, ex gratia claims negotiation, risk surveys and time and travel outside of a radius of 50km of our nearest branch office, as long as we have been appointed by you.
- 16.3 **Alternatively**
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- 16.3.1 We may annually agree our remuneration with you and show transparency in our earnings, disclosing to you all earnings flowing directly from appointment.

#### 16.4 Remuneration Disclosure

- 16.4.1 The law requires us to pay your premiums into a designated account pending payment to the insurer.. We pay insurers within the period dictated by the law

- 16.4.2 Aon is part of a large financial and professional services group of companies, the Aon Group. There are other parts of the Aon Group that may earn and retain remuneration in connection with insurance we place for you. However, these are kept separate and distinct from the Services that we provide to you so that they do not influence us from acting in conflict with your interests. The following are more frequent examples:

- 16.4.2.1 The Aon Group has separate reinsurance broking companies that arrange insurance for insurers (called reinsurance). In some cases an insurer may ask one of our reinsurance broking companies to arrange reinsurance in respect of insurance purchased by you, in which case that company may also earn commission or other remuneration.

- 16.4.2.2 The Aon Group has separate specialist broking companies that arrange insurance placements into major insurance markets, acting as wholesale brokers. Such companies may assist Aon in accessing, negotiating, placing, or procuring insurance markets. If this is the case, they may also earn commission or other remuneration.

- 16.4.2.3 Aon and members of the Aon Group provide various consulting and other services for insurers and reinsurers from time to time. They may earn commission or other remuneration from these services.

- 16.4.2.4 Aon or members of the Aon Group may be entitled to receive remuneration from third parties, including insurers, due to contingencies, overrides, bonus commissions, and/or administrative expense reimbursements.

- 16.4.2.5 Sometimes an Aon product we recommend may be developed and managed by another company in the Aon Group and is made available to other brokers and their clients as well as Aon. Where this happens, that other company usually acts as the insurer's agent in managing the product (sometimes including claims handling and underwriting on the insurer's behalf) and earns, and will retain, separate commission and other remuneration for the development, design and management of that product. This may include additional commission based on sales or profitability.

- 16.4.2.6 The Aon Group may also earn remuneration for managing an underwriting agency that may provide insurance to you and this may be linked to volume of business or profitability. We won't recommend placing any insurance with such an agency unless it's the best solution for your needs. Your invoice will identify any insurance placed with such an agency.
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16.5 Companies in the Aon Group hold equity and loan stock in other companies as part of our investment portfolio. These companies may occasionally form part of the services we provide and sometimes some of these companies may have an interest in Aon. We will specifically notify you where we have a material interest in any insurer we recommend or any other company involved in the service we provide that is not obviously part of the Aon Group.

## 17. Additional Services

We shall, if possible, provide you with additional services upon your request. Such services shall only be rendered if you agree to our proposed fee, for rendering such additional services.

## 18. Confidentiality

### 18.1 Personal information collection - Purposes of processing data

- 18.1.1 We shall collect and process the following kinds of personal information for the following purposes:
- 18.1.1.1 purposes related to and intended to acquire contractual information or preliminary information; or
  - 18.1.1.2 purposes related and intended to performance of the contract as well as the handling of the related contractual obligations between parties; or
  - 18.1.1.3 purposes related to and intended to comply with obligations relating to statutory, tax and accounting laws, as well as the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution, and punishment of offences; or
  - 18.1.1.4 purposes related to the enforcement of a law imposing a pecuniary penalty; or
  - 18.1.1.5 purposes related to the protection of the public revenue; or
  - 18.1.1.6 purposes related to the conduct of proceedings before any court or tribunal being proceedings that have been commenced or are reasonably in contemplation; or
  - 18.1.1.7 purposes related to the interests of national security; or
  - 18.1.1.8 statistical, research, commercial or direct marketing purposes which shall imply to gather useful information in order to improve the communication and/or our solutions, services and products; however nondisclosure of your identity will be observed.
- 18.1.2 Where we disclose your personal information to our agents or sub-contractors for these purposes, the agent or sub-contractor in question will be obligated to use that personal information in accordance with the terms of these terms and conditions of business.
- 18.1.3 In addition to the disclosures reasonably necessary for the purposes identified elsewhere above, we may disclose your personal information to the extent that it is required to do so by law, in connection with any legal proceedings or prospective legal
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proceedings, and in order to establish, exercise or defend our legal rights.

## **18.2 The way in which data will be processed- Securing your data**

18.2.1 The processing will be carried out by means of operations carried out with or without the help of electronic or automated means, concerning the collection, recording, organization, modification, selection, retrieval, comparison, utilization, interconnection, blocking, communication, dissemination, erasure and destruction of data, whether the latter are contained or not in a data bank. The processing will be carried out by the data controller.

18.2.2 We will take reasonable technical and organisational precautions to prevent the loss, misuse or alteration of your personal information. We will further implement appropriate technical and organisational measures to secure against the unauthorised or unlawful access to or processing of personal information.

## **18.3 The mandatory or facultative nature of the data**

The data required is necessary in order to perform the Services. Your eventual refusal to confer the data shall cause the impossibility to perform the Services.

## **18.4 Cross-border data transfers and further processing**

18.4.1 Information that we collect may be stored and processed in and transferred between any of the countries in which we operate.

18.4.2 You agree to such cross-border transfers and further processing of personal information.

## **18.5 Rights of information, rectification, correction and update**

18.5.1 You shall have the right to obtain, free of charge, confirmation as to whether or not personal data concerning you exists, regardless of there being already recorded communication of such data in intelligible form.

18.5.2 You, upon proof of identification, shall have the right to be informed of the source of the personal data, of the purposes and methods of processing, as well as of the entities to which the personal data may be communicated. You shall also have the right to obtain updating or rectification of the data, erasure, anonymisation or blocking of data that have been processed unlawfully, including data whose retention is unnecessary for the purposes for which they have been collected or subsequently processed. This shall be done by us within a reasonable time, at a charge to you that is not excessive, in a reasonable manner and in a form that is generally understandable.

18.5.3 You shall have the right to object, in whole or in part, on legitimate grounds, to the processing of personal data concerning you, even though they are relevant to the purpose of the collection.

18.5.4 Aon and the Aon Group gathers data containing information about its Clients and their insurance placements, including, but not limited to, names, industry codes, policy types, and policy expiration dates, as well as information about the insurance

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companies that provide coverage to its Clients or compete for its Clients' insurance placements. This information is maintained in one or more databases. Aon may use or disclose information about its clients, if required to do so by law, Aon policy, pursuant to legal process or in response to a request from law enforcement authorities or other government officials. In addition to being used for the benefit of Aon's Clients, these databases also may be accessed by other Aon affiliates for other purposes, including providing consulting, and other services to insurance companies for which Aon or its affiliates may earn compensation. Due to the global nature of services provided by Aon and the Aon Group, the personal information Clients may provide may be transmitted, used, stored and otherwise processed outside the country where Clients submitted that information. If you have questions about the data processing by Aon and the Aon Group or related compensation, please contact your account executive within Aon.

## **19. Delegation**

- 19.1 In the normal course of our operations we may request other service providers to assist us to service and place your business.
- 19.2 The remuneration of such other service providers will form part of the agreed fees unless otherwise advised.

## **20. Restriction of our Liability**

- 20.1 We confirm that we have in place professional indemnity insurance and fidelity guarantee cover.
  - 20.2 In no event will we be liable to you for any indirect, incidental, special, consequential, exemplary or punitive damages (including, without limitation, lost or anticipated revenues, lost business opportunities or lost sales or profits).
  - 20.3 To the fullest extent permitted by law, and except for damages resulting solely and directly from fraud or intentional misconduct by us, Aon's liability to you for any and all damages, costs, and expenses (including but not limited to attorneys' fees), whether based on contract, tort (including negligence), or otherwise, in connection with or related to the services (including a failure to provide a service) or any other services that we provide shall be limited to an annual aggregate amount of KShs 200 million (Aon Standard) or such higher amount:
    - 20.3.1 as we may agree with you from time to time by express agreement, signed by both of us in accordance with the Aon Choice and Aon Choice Plus provisions contained in Clause 20.13; or
    - 20.3.2 as we specify in our invoice to you for which you have paid the Aon Choice charge or Aon Choice Plus charge within the credit terms applicable in respect of such invoice.
  - 20.4 The single total annual aggregate liability limitation above also applies to:
    - 20.4.1 claims and liabilities asserted by your related companies, employees and agents against Aon;
    - 20.4.2 claims and liabilities asserted by your related companies, employees and agents against Aon's related companies, employees and agents; and
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20.4.3 claims and liabilities asserted by you against Aon's related companies, employees and agents,

so that the total of all such claims combined cannot exceed the amount set out above.

20.5 However nothing in this Agreement shall create, imply, or operate as an admission, that our related companies, employees and agents owe or accept any duty or responsibility to you or to your related companies, employees and agents.

20.6 Where any claim or loss arises partly due to an error or omission by us and partly due to an error or omission by you (including one of your related companies, employees or agents), you waive any claims against us and indemnify and hold us harmless for all damage and loss arising from the error or omission by you (including one of your related companies, employees or agents).

20.7 To the fullest extent permitted by law, Aon has no liability for any claim or liability asserted by you or by your related companies for any loss arising by reason of or arising out of an error or omission by you or one of your related companies, including any failure to comply with your duty of disclosure.

20.8 To the fullest extent permitted by law, any claim against Aon (or any of its related companies, employees and agents) brought by you (or any of your related companies, employees and agents) in connection with or related to the services (including a failure to provide a service) or any other services that we provide including, but not limited to, any contractual, common law or statutory causes of action, must be brought no later than one year from the date that you become aware, or, in the exercise of reasonable diligence, should have become aware, of the grounds for any such claim. You acknowledge and agree that this provision shall take precedence over and supersede any statutes of limitation or repose that would otherwise apply.

20.9 We are not responsible for any alleged errors or omissions by a placing broker, co-broker, sub-broker, correspondent broker or other agent that is not a member of the Aon Group of companies, and all such liability is entirely and for all time excluded.

20.10 We are not responsible for any loss you may suffer as a result of our calculation or estimation of the premium and statutory charges that apply to your insurance.

20.11 If any term of these Terms of Business is or becomes or is found by a court of law or other competent authority to be illegal, invalid or unenforceable, in whole or in part, under any law, such term or provision or part will to that extent be deemed not to form part of these terms of business and the legality, validity and enforceability of the remainder of these terms of business will not be affected or impaired.

20.12 If you or one of your related companies, employees and agents claim or make demands against us or one of our related companies, employees and agents for a total amount in excess of the amount set out in Clause 20.3, above, then you agree to indemnify and hold us and our related companies, employees and agents harmless for all liabilities, costs and expenses incurred by us or our *related companies*, employees and agents in excess of that amount.

20.13 Through Aon Standard, Aon Choice and Aon Choice Plus, we have the advantage to offer you different levels of limitations of Aon's liability.

20.13.1 "Aon Standard, Aon Choice and Aon Choice Plus" shall mean the different levels of limitations of liability on the part of Aon offered to our Clients. Each level of limitation

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of liability is an annual aggregate limit of liability on the part of Aon in respect of all claims by the Client against Aon arising or resulting from any Services provided by Aon, or acts or omissions by Aon during the time that that level of limitation of liability was in place, even though the claims by the Client against Aon are brought against Aon thereafter.

20.13.2 "Aon Standard" shall mean a level of limitation of liability in terms of which the annual aggregate limitation of liability on the part of Aon in respect of its relevant Client will be KShs 200 million for any and all claims by the Client against Aon resulting from or in any way related to any Services provided by Aon to that Client, or acts or omissions on the part of Aon relating to that Client during the year that that level of limitation of liability was in place, even though the claim by the Client against Aon is brought thereafter.

20.13.3 "Aon Choice" shall mean a level of limitation of liability in terms of which the annual aggregate limitation of liability on the part of Aon in respect of its relevant Client will be K Shs 2 billion for any and all claims by the Client against Aon resulting from or in any way related to any Services provided by Aon to that Client, or acts or omissions on the part of Aon relating to that Client during the year that that level of limitation of liability was in place, even though the claim by the Client against Aon is brought thereafter.

20.13.4 "Aon Choice Plus" shall mean a level of limitation of liability in terms of which the annual aggregate limitation of liability on the part of Aon in respect of its relevant Client will be K Shs 4 billion for any and all claims by the Client against Aon resulting from or in any way related to any Services provided by Aon to that Client, or acts or omissions on the part of Aon relating to that Client during the year that that level of limitation of liability was in place, even though the claim by the Client against Aon is brought thereafter.

20.13.5 Aon Standard, Aon Choice and Aon Choice Plus are neither an insurance product. This offer to you defines your options relating to Aon's liability limitation parameters and professional liability risk management.

20.14 Should you choose, in writing, for either Aon Choice or Aon Choice Plus we will charge you an annual commensurate non-refundable fee for the increased limit of liability.

## **21. Client Premiums**

21.1 We normally act as agents for the Insurer for the collection insurance premiums, payment of claims and refund premiums. We are governed by strict rules pertaining to the collection and receipt of premiums in terms of the Insurance Act and we maintain the statutory guarantee required in terms thereof.

21.2 This means that premiums paid in full to us, are treated as having been received by the Insurer when received in our bank account and claims payments and premium refunds are treated as having been received by you when the money leaves our bank account.

21.3 We may earn interest on monies held in our accounts, which will be retained by us for our own use and to offset the costs we incur by undertaking premium collection and credit control functions on behalf of insurers.

## **22. Complaints Procedure**

22.1 If you are dissatisfied with our service, please contact us or our Chief

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Executive Officer or your Account Director at Aon. It is our policy to deal with all complaints speedily and fairly.

- 22.2 Aon is committed to resolving disputes without the need for litigation or arbitration and to allow as far as possible for commercial relationships to remain unaffected by disputes.

### **23. Cancellation of Your Insurance**

- 23.1 If, during the period of your insurance programme, your insurers tender notice of cancellation of your insurance cover, we will utilise our best efforts to replace your programme with suitable new insurers. In such circumstances, our efforts may be unsuccessful or the replacement cover may differ in cost and comprehensiveness.
- 23.2 We accept no liability for any acts or omissions arising out of the mid-term replacement of your cancelled programme. Our duty to you is to arrange replacement cover as expeditiously as possible under the prevailing circumstances.
- 23.3 We will retain the full annual commission and/or fees on the cancelled programme and we will earn pro rata commission and/or fees on the replacement programme.

### **24. Consultancy Services**

In the event of you using our consultancy services relating to risk assessment/management and the following happening:

- 24.1 those consultancy services recommending that certain things should be done by you, with a view to reducing risks; and
- 24.2 you deciding not to implement some or all of those recommendations; and
- 24.3 that not being disclosed by you or us to the relevant underwriters/reinsurers; and
- 24.4 at a later stage those underwriters/reinsurers becoming aware of that non-disclosure and taking steps to invalidate the policy,

then we shall not be liable to you at all, in the event of the underwriters/reinsurers successfully avoiding liability in terms of the policy on the basis of the non-disclosure.

### **25. Termination of our Appointment**

- 25.1 This Agreement may be terminated by either you or us giving 30 (thirty) days notice in writing to the other, or immediately in any of the following events:
- 25.1.1 if either you or we commit a material breach of any of the terms of this Agreement which is not remedied within 14 (fourteen) working days after the aggrieved party has served a notice calling on the guilty party to rectify the breach, except where such breach is due to a cause beyond the control of either you or us, or
- 25.1.2 if either you or we are liquidated, become sequestrated, make a voluntary arrangement with creditors or have a receiver or administrator appointed.
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- 25.2 Upon termination of this Agreement we shall continue handling any outstanding claims work or complete any work in progress provided that we are able to and that an acceptable method of remuneration is agreed between us.
- 25.3 We shall co-operate in ensuring that your insurance broking arrangements can be promptly and effectively continued either by you or by a third party nominated by you at the time.
- 25.4 We shall return to you the original or a copy of your current policy documents, your risk information and claims history/experience only on request. All other information / documentation remain our property.
- 25.5 Where any termination, as aforesaid, takes place before the expiry of the full 12 (twelve) month policy period, the full annual fee shall be regarded as having been properly earned by us.

## **26. Communications / Notices**

- 26.1 All introductions and notices to us from you should be in writing. In urgent cases, oral instructions will be accepted. All instructions should be confirmed in writing.
- 26.2 Electronic communications and facsimiles received after normal business hours shall only be deemed to have been received on resumption of normal business hours.

## **27. Applicable Law**

It is agreed that our contractual relationship with you is governed by the laws of Kenya.

## **28. Dispute Resolution**

- 28.1 It is agreed that, in the event of a dispute arising between us, we will first try to resolve that dispute by way of negotiation.
- 28.2 If the matter is not resolved through negotiation, we will attempt in good faith to resolve the dispute through mediation with the assistance of a mediator appointed by the Commissioner of Insurance- Insurance Regulatory Authority or any other mediator recommended to the parties or as agreed between us.
- 28.3 However, if we are unable to resolve that dispute by mediation within 6(six ) months after it has arisen, then we agree that such dispute will be dealt with by way of arbitration in accordance with the the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with those Rules.
- 28.4 Such arbitration proceedings shall be held in Nairobi and conducted in English.

## **29. Money Laundering / Financial Crime**

- 29.1 We may be obliged to request you to furnish us with additional information and/or documentation in order to enable us to comply with the provisions of Kenyan legislation relating to money laundering / financial crime.
  - 29.2 Furthermore, we will screen our databases including your records, against the Office of Foreign Assets Control (OFAC) and/or similar lists in compliance with the provisions of the Proceeds of Crime and Anti-Money Laundering Act, 2009..
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29.3 You undertake to furnish us with whatever information and/or documentation that we may require in connection with that.

### **30. Intellectual Property**

You agree and acknowledge that we reserve all right and title and interest in all data, analyses, recommendations, proposals, reports, our knowledge, software, ideas, concepts, methodologies and processes, including, but not limited to insurance strategies, financial information, technical information, systems information, consumer research, information processing, delivery systems, product development, and service development which either party uses, acquires or develops, during the term of, or in the course of the performance of our appointment as service provider to you.

### **31. Client Acknowledgement**

We serve multiple clients within industries, including those with potentially opposing interests to yours. We are committed to maintaining the confidentiality of each client's information in all such situations. Accordingly, you acknowledge and agree that we may have served, may currently be serving or may in future serve other companies, whose interests are adverse to yours, including parties with whom you –

31.1 compete;

31.2 have a commercial relationship or potential commercial relationship (e.g. suppliers, distributors);

31.3 enter into competitive bidding situations; and

31.4 enter into or consider entering into merger, acquisition, divestiture, alliance or joint venture transactions.

### **32. General**

32.1 If any provision of this agreement is found to be invalid, unlawful or unenforceable, that will be severable from the rest of this agreement and shall not affect the validity of the rest of this agreement.

32.2 The terms of this agreement constitute the entire understanding and agreement between the parties; supersede all prior communications, agreements and understandings of the parties with regard to the subject matter of this agreement. The parties agree that no rights to damages or to claim loss from the other arise from any termination of any prior agreement by this agreement.

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