



Terms of Business Agreement

Agency Agreement

September 2019



FIRST FOR JUSTICE

Terms of Business Agreement

Between

- 1 **DAS Legal Expenses Insurance Company Limited**, a company registered in England (company number: 103274) (FCA reference number: 202106) having its registered office at **DAS Parc | Greenway Court | Bedwas | Caerphilly | CF83 8DW** (“**DAS**”); and
- 2 The insurance intermediary authorised by DAS under this Agreement (the “**Agent**”).

Each a “**Party**” and together the “**Parties**”.

Whereas

- (i) DAS is a legal expenses insurance company authorised to carry out various classes of insurance business.
- (ii) The Agent is an insurance intermediary. The Agent arranges insurance business directly with Policyholders and/or through authorised sub agents.
- (iii) The Agent wishes to arrange and market within the Territory the Insurance and associated services that DAS has agreed to provide in accordance with this Agreement.
- (iv) Both Parties are authorised by the Regulator to carry out their obligations under this Agreement.
- (v) The Parties have made this Agreement on the following terms.

It is Agreed

1 Definitions and Interpretation

- 1.1 In this Agreement unless the context requires otherwise the following capitalised terms shall have the following meanings:

“**Agency Letter**” means a letter that includes details of the Agent and encloses this Agreement, and may contain other additional terms;

“**Agreement**” means this agreement and the schedules hereto and any terms contained in any Agency Letter or other acceptance letter and any annex thereto which will be incorporated in this Agreement and shall be of full force and effect;

“**Appointed Representative**” means someone who undertakes regulated activities under the supervision of an authorised firm, who is their ‘Principal’. The ‘Principal’ accepts responsibility of the ‘Appointed Representative’ in writing by way of a written agreement;

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are ordinarily open for general commercial business in London;

“**CASS**” means the Regulator’s client money requirements outlined in the Client Assets Sourcebook contained within the FCA Handbook or any replacement thereof;

“**Commencement Date**” means the earlier of:

- the date the Agent electronically accepts the terms of this Contract; or,
- the date the Agent signs and returns a copy of an Agency Letter; or,
- the date from which the Agent is deemed to have accepted these terms under Clause 2.2.3; or,
- the earliest date that the Agent acts under this Agreement, including but not limited to using the E-Trade Platform or otherwise binding DAS risks;

“Commission” means the Gross Premium less the Net Premium;

“Complaint” means a complaint as defined under the DISP Rules arising as a result of this Agreement;

“Confidential Information” means information relating to any information and/or material relating to the business, affairs, finances, systems, processes and/or methods of operation of either Party (other than information and Personal Data about an Insured, held by either Party or supplied by either Party to the other in connection with the operation of this Agreement) which is disclosed by one Party to the other in connection with the operation of this Agreement (whether oral or in writing and whether or not such information is expressly stated to be confidential or marked as such). Confidential Information shall not include:

- (a) information already known to the receiving Party prior to the Commencement Date;
- (b) information received from a third party who is not bound by a confidentiality agreement;
- (c) information that is, or becomes available, to the public (other than as a direct or indirect breach of this Agreement); and
- (d) information as agreed between the Parties in writing as being capable of being disclosed;

“Contract” means the terms of this Agreement and any Agency Letter provided;

“Customer” means a customer of the Agent who purchase a Policy and upon purchasing a Policy become Policyholders;

“Customer Data” means all data (including but not limited to Personal Data and Confidential Information), information, text, drawings, statistics, analysis and other materials owned by and/or provided to the Agent pursuant to this Agreement by or on behalf of:

- DAS; and/or
- any DAS Group company; and/or
- an Insured;

“DAS Group” means DAS and any other company which is for the time being its subsidiary or holding company or a subsidiary of any such holding company and, where the context so permits any of those companies. The terms “subsidiary” and “holding company” shall have the meaning given in s 1159 of the Companies Act 2006;

“Data Controller, Data Processor, Data Subject and Data Subject Request” have the meaning given to them in the DPL;

“Delegated Authority” means the delegated authority granted by DAS to the Agent under this Agreement as detailed in Clause 4;

“DISP Rules” means the Dispute Resolution Complaints manual contained within the FCA Handbook or any replacement thereof;

“DPA” means the Data Protection Act 2018;

“DPL” means all applicable data protection legislation, including but not limited to the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 as amended from time to time, and all applicable laws, enactments, regulations, orders, standards and other similar instruments relating to the processing of personal data and privacy, in force during the Term of this Agreement including those that come into force after the Commencement Date, and including where applicable, and to the extent having the force of law, the Guidance Notes and Codes of Practice issued by the Information Commissioner;

“E-Trade Insurance” means:

- the E-Trade insurance products underwritten by DAS under the terms of this Agreement; and
- the terms of the sale of E-Trade Insurance are set out in the terms of this Agreement and Schedule 1 of this Agreement;

“E-Trade Platform/s” means:

- the platform hosted by Acturis; and/or
- DAS’s portal ‘DAS Connect’; and/or
- any alternative electronic platform for selling Insurances that DAS gives written notice of to the Agent;

“EU Standard Contractual Clauses” means the set of standard contractual clauses as approved by Commission Decision of 15 June 2001 (as amended) on standard contractual clauses for the transfer of Personal Data to third countries, under Directive 95/46/EC (as amended by Commission Decision of 27 December 2004 amending Decision 2001/497/EC as regards the introduction of an alternative set of standard contractual clauses for the transfer of Personal Data to third countries);

“FCA” means the Financial Conduct Authority and any organisation which supersedes it as a regulatory authority;

“FSMA” means the Financial Services and Markets Act 2000 and its subordinate legislation, regulations, rules and guidance;

“Gross Premium” means the total sum received by the Agent from the Policyholder in respect of each Insurance including Commission and excluding Tax;

“Insurance” means insurance underwritten by DAS including E-Trade Insurance, Insurance Products, and any other services that DAS agrees the Agent is authorised to sell to its Customers under the terms of this Agreement;

“Insurance Product” means insurance underwritten by DAS under the terms of this Agreement, and:

- the terms of the sale of Insurance Product are set out in the terms of this Agreement and Part A of Schedule 2 and Schedule 3 (whichever is applicable) of this Agreement;
- the products and pricing of the Insurance Products is set out at Part B of Schedule 2 and Schedule 3 (whichever is applicable) of this Agreement; and
- the terms of the sale of the Insurance Product for Stand-Alone Business outside of Schedule 2 shall be governed by Schedule 3;

“Insured” means a Policyholder and any other person covered by the Policy to whom DAS has extended indemnity under the Policy;

“Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, moral rights, brands, trade marks and service marks, trade names and domain names, rights to goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Marketing Literature” means any sales and marketing literature and materials used, produced, published, displayed, issued, distributed, and/or made available electronically on any website by the Agent in relation to the Insurance;

“Net Premium” means the amount charged by DAS, excluding Tax, in respect of each Policy;

“Personal Data” has the meaning set out in section 1(1) of the DPA (or any succeeding legislation) and relates only to personal data, including sensitive personal data, or any part of such personal data;

“Personal Data Breach” means any material breach (or incident that may amount to a breach) of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Personal Data;

“Policy” means the terms and conditions applicable to the Insurance purchased by and issued to a Policyholder;

“Policy Document” means any literature and materials issued to a Policyholder, in respect of the Policy, including the Policy wordings, Policy booklets, Key Facts and any amendments, schedules, certificates of insurance, endorsements, renewal notices, and any amendments, default and/or termination notices issued (excluding all Marketing Literature);

“Policyholder” means a Customer who is the legal holder of a Policy;

“Regulations” means FSMA, the rules, regulations and guidance of the Regulator, the Consumer Insurance Act 2013, the Bribery Act 2010, Modern Slavery Act 2015, European Union Regulation 2580/2001, the Terrorist Asset-Freezing etc. Act 2010, compliance with the United Nations Global Compact and any other laws, regulations, rules, or orders imposed to the maximum extent applicable to the performance by either Party of its obligations under this Agreement, including but not limited to the sale and administration of the Policies under this Agreement and all as amended from time to time;

“Regulator” means the FCA or any competent governmental, statutory or regulatory body having regulatory or supervisory authority over either Party at any time;

“Security Incident” means an actual, suspected or threatened unauthorised exposure, access, disclosure, use, communication, deletion, revision, encryption, reproduction or transmission of any component of Customer Data or unauthorised access or attempted unauthorised access or apparent attempted unauthorised access (physical or otherwise) to any Customer Data or any supplier systems on which such Customer Data is processed or stored;

“Stand-Alone Business” means where the Agent refers to DAS for a specific quote for an Insurance Product where the Insurance Product is not included as part of Schedule 2 and is governed under Schedule 3 of this Agreement;

“Tax” means any relevant tax payable in respect of the Insurance including, but not limited to, insurance premium tax (or any successor tax, charge or levy) at the prevailing rate at the time of sale;

“Territory” means the United Kingdom of Great Britain, Northern Ireland, the Isle of Man and the Channel Islands.

1.2 In this Agreement:

- 1.2.1 the masculine gender includes the feminine and neuter and the singular includes the plural and vice versa;
- 1.2.2 references to Clauses, Schedules and Appendices are to the clauses, schedules and appendices of this Agreement;
- 1.2.3 headings and sub-headings are included for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.4 the words “including”, “include”, “for example”, “in particular” and words of similar effect shall not limit the general effect of the words which precede them;
- 1.2.5 reference to each Party herein include reference to its successors in title, permitted assigns and novatees;
- 1.2.6 reference to termination of this Agreement include reference to expiry of this Agreement;
- 1.2.7 an obligation on a Party not to do something includes an obligation not to allow that thing to be done;
- 1.2.8 reference to a person shall include a reference to an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of that person; and
- 1.2.9 any reference to legislation shall (except where the context otherwise requires) be construed as referring to such legislation as amended, supplemented or varied and in force for the time being and from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation and to any statutory instruments, subordinate legislation, rules, guidance or regulations made pursuant to it from time to time in force.

2 Application of Agreement

2.1 Formation of the Contract

The Contract shall be formed, subject to Clause 2.2.3, once the Agency Letter and this Agreement been received and electronically accepted by the Agent, or, once the Agent has signed and returned a copy of the Agency Letter (if an Agency Letter has been provided).

2.2 Commencement

2.2.1 This Agreement shall commence on the Commencement Date and shall continue until terminated in accordance with Clause 10.1.

2.2.2 This Agreement shall supersede any earlier agreement otherwise agreed between the Parties, and shall commence on the Commencement Date and endures until termination of the Agreement in accordance with its terms.

2.2.3 The Contract shall be deemed to be accepted by the Agent, in the event that the Agent acts under this Agreement (including but not limited to using the E-Trade Platform or otherwise binding DAS risks) even if the Agent has not electronically accepted the terms of the Contract or signed and returned a copy of the Agency Letter.

2.3 Extent

This Agreement applies to the sale of the Insurance by the Agent in accordance with the terms of this Agreement and the terms of the Schedules (as applicable) within the Territory with effect from the Commencement Date.

3 Appointment

3.1 DAS appoints the Agent and the Agent agrees to act as DAS's agent for the sale of Insurance in accordance with the Agreement subject to the limits of the Delegated Authority.

3.2 DAS shall underwrite the Insurance to which this Agreement applies with effect from the Commencement Date for the duration of the Agreement and make the Insurances available for distribution by the Agent.

3.3 DAS shall be acting as the product manufacturer and the Agent shall be acting as product distributor.

4 Delegated Authority and Risk Transfer

4.1 Grant of Delegated Authority

4.1.1 DAS delegates its authority in its capacity as the underwriter to the Agent to introduce and sell the Insurance to Customers on the terms set out in this Clause 4 and (where applicable) Schedule 1, and/or Schedule 2, and/or Schedule 3 respectively.

4.1.2 The Delegated Authority granted by this Clause 4 is subject to the obligations and restrictions specified in this Agreement.

4.1.3 The Delegated Authority shall be at the absolute discretion of DAS.

4.1.4 The Agent shall at all times act within the limits of the Delegated Authority.

4.2 Grant of Risk Transfer

4.2.1 DAS grants Risk Transfer to the Agent in respect of (and shall hold such monies in accordance with clause 4.2.2):

4.2.1.1 the collecting, receiving and holding monies received from Policyholders pending remittance of the Net Premium plus applicable Tax to DAS;

4.2.1.2 refunding monies to Policyholders;

4.2.1.3 claims money due to be paid to or on behalf of Policyholders;

4.2.1.4 money received by the Agent from DAS for onward payment to agents of DAS in respect of claims adjustment, legal and similar professional fees.

4.2.2 Pending payment to DAS or the Policyholder, DAS shall bear the risk in respect of such monies provided that the Agent shall hold the money described in Clause 4.2.1 as agent for DAS. Such monies shall be held either:

4.2.2.1 in a UK bank account designated for the holding of insurance premiums or proceeds which shall be an unregulated trust account for the benefit of DAS (and any similar insurance undertaking) and which shall be named accordingly. Such sums shall be identified in the Agent's books and records separately from those held by the Agent or third parties; or

4.2.2.2 in a client money bank account established in accordance with CASS and in such case DAS consents to its interests under the trusts in CASS 5.3.2 or 5.4.7 (as the case may be) being subordinated to the interests of the Agent's other clients.

4.2.3 The Agent shall from time to time provide DAS with documentary evidence confirming the status of the UK bank account in which monies are held.

4.2.4 DAS accepts no liability for actions undertaken by the Agent in breach of this Clause 4.

4.2.5 In the event that a Policyholder fails to pay the amounts due for the purchase of the Policy (or, as the case may be, any instalment), the Agent shall notify DAS as soon as reasonably practicable.

4.3 Limitations of the Delegated Authority and Risk Transfer

4.3.1 The Agent is the agent for DAS to the extent described in clauses 4.1.1 and 4.2.1. The Agent is the agent of its Customer for all other purposes.

4.3.2 The Agent is not authorised to bind DAS to any Insurance other than as detailed in this Agreement or otherwise agreed in writing between the Parties.

4.3.3 The Agent is not authorised to hold or receive claims money without the prior written authority of DAS.

4.3.4 The Agent is not authorised to issue or defend legal proceedings on behalf of DAS without the prior written authority of DAS.

4.3.5 The Delegated Authority may not be transferred, assigned or novated nor can any rights under this Agreement be transferred, assigned or novated without the prior written agreement of DAS acting in its absolute discretion.

4.3.6 Nothing in this Agreement shall grant the Agent authority to accept, amend, or vary any contract of Insurance, settle, negotiate or compromise claims, alter any document or Policy, make any non-exempt financial promotion on behalf of DAS, and/or commit DAS in any way.

4.4 Extension of Delegated Authority to sub agents

4.4.1 DAS agrees to extend the Delegated Authority granted to the Agent and the grant of Risk Transfer in order for the Agent to appoint sub agents to distribute the Insurance. DAS at its absolute discretion reserves the right to withdraw any extension of the Delegated Authority and Risk Transfer at any time and in such case, the Agent shall immediately cease to use the sub agent to distribute the Insurance.

4.4.2 Subject to DAS right to withdraw consent at any time pursuant to Clause 4.4.1, the Agent may appoint sub agents provided that:

4.4.2.1 The Agent notifies DAS not less than 14 days in advance of its intention to appoint a sub agent and allows DAS a reasonable opportunity to comment.

4.4.2.2 Where the Agent is an Appointed Representative it has written authorisation from its Principal to do so.

4.4.2.3 The Agent enters into a written terms of business agreement with the sub agent before trading commences, which impose on the sub agent equivalent obligations and conditions imposed on the Agent under this Agreement and the Agent permits DAS access to copies of these agreements.

4.4.2.4 The Agent ensures that such sub agent holds monies in accordance with Clause 4.2.2 including but not limited to either:

(a) use of a UK bank account designated for the holding of insurance premiums or proceeds which shall be an unregulated trust account for the benefit of DAS and which shall be named accordingly; or

(b) in a client money bank account established in accordance with CASS and in such case DAS consents to its interests under the trusts in CASS 5.3.2 or 5.4.7 (as the case may be) being subordinated to the interests of the sub-agent's other clients.

4.4.2.5 The Agent ensures that any sub agent acts within the limits of the Delegated Authority and Risk Transfer under and subject to the provisions of Clause 4.

4.4.2.6 The Agent carries out adequate due diligence of any proposed sub agent prior to its appointment and as a result ensures that the sub-agent is appropriately authorised by the Regulator to perform certain obligations of the Agent under this Agreement.

4.4.2.7 The Agent undertakes adequate monitoring of the sub agent during the term of its appointment.

4.4.2.8 The Agent is responsible to DAS for the actions and omissions of the sub agent as if they were the actions and omissions of the Agent.

4.4.2.9 The Agent advises DAS immediately if any sub agent ceases to hold the required authorisation from the Regulator.

- 4.4.3** The Agent hereby indemnifies DAS against any and all liabilities, costs, fines (to the extent permitted by law), expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a party/party basis) and all reasonable professional costs and expenses) suffered or incurred by DAS arising out of or in connection with any breach this Clause 4 by the Agent and/or any sub agent to whom the Delegated Authority has been extended.

5 DAS Obligations

- 5.1** DAS shall:
- 5.1.1** underwrite the Insurance;
 - 5.1.2** handle all claims on the Insurances by Policyholders;
 - 5.1.3** produce the Policy Document and provide the same to the Agent; and
 - 5.1.4** comply with its obligations (where applicable) in respect of Schedule 1 E-Trade Insurance, Schedule 2 Insurance Products, and Schedule 3 Stand-Alone Business.
- 5.2** DAS may at its absolute discretion appoint legal or other firms or companies to act on its behalf or on behalf of the Insured to deal with any aspect of such claims.
- 5.3** DAS may deal directly with the Insured in relation to the provision of services ancillary to the Insurance, as part of the claims process and where the Insured makes an unsolicited approach.

6 The Agent's Obligations

- 6.1** The Agent shall:
- 6.1.1** comply with its obligations (where applicable) in respect of Schedule 1 E-Trade Insurance, Schedule 2 Insurance Products, and Schedule 3 Stand-Alone Business;
 - 6.1.2** market and sell the Insurance to its Customers in accordance with the terms of this Agreement and applicable Regulations;
 - 6.1.3** remit the Net Premium plus applicable Tax to DAS in accordance with Clause 7;
 - 6.1.4** produce the Marketing Literature and comply with all applicable Regulations whilst doing so, including but not limited to those related to internet marketing where direct selling regulations would apply;
 - 6.1.5** issue Policy Documents to Policyholders promptly;
 - 6.1.6** not make false or misleading claims in respect of the Insurance;
 - 6.1.7** forward all claims correspondence to DAS promptly following receipt;
 - 6.1.8** resolve all Complaints in accordance with Clause 15;
 - 6.1.9** deal with all cancellations, mid-term adjustments and renewals in respect of the Insurance:
 - 6.1.9.1** for new or renewed Policies, the Agent must promptly provide the information that DAS requires in the format that DAS requires it;
 - 6.1.9.2** if DAS invites renewal of Policies, the Agent must notify DAS in writing on or prior to the renewal date if (and with specific reasons as to why) a renewal is not to take place;
 - 6.1.9.3** if mid-term adjustments to Gross Premium are requested (as permitted by law or the relevant Insurance), the Agent must inform DAS as soon as possible via the E-Trade Platform or by email as applicable;
 - 6.1.10** carry out at the point of sale adequate checks on all new (and recurring) clients in accordance with, but not limited to, the Terrorist Asset-Freezing etc. Act 2010 and in particularly in respect of financial sanctions and HM Treasury's asset freeze target list and the Regulations.
- 6.2** The Agent shall not publish to any third party any material, document or literature referring expressly or implicitly to DAS unless it is in accordance with this Agreement or with DAS' prior written consent.
- 6.3** The Agent shall provide any information reasonably required by DAS to ensure compliance with any contractual, statutory, regulatory, court or other requirement.

- 6.4** The Agent must notify DAS:
- 6.4.1** immediately if it ceases to be directly authorised by the Regulator;
 - 6.4.2** immediately and in writing if the Agent, any individual within the Agent's business, or any sub agent becomes subject to enforcement or disciplinary proceedings instigated by the Regulator and at the point of the eventual outcome;
 - 6.4.3** immediately if there is any change to its regulatory status;
 - 6.4.4** if there is a change of the registered or trading name and address;
 - 6.4.5** if there is a change of ownership including the directors' controlling shares and capital structure or change of owner (whether legal or beneficial) or partners;
 - 6.4.6** immediately if at any time the Agent does not have professional indemnity insurance as required by the Regulator;
 - 6.4.7** as soon as reasonably practicable if there are any other material changes that occur in the Agent's business, which would impact upon the contractual relationship between both Parties;
 - 6.4.8** immediately if the Agent becomes aware of any individual or entity that has been put on cover with DAS that are an exact match with any individual or entity on the HM Treasury's asset freeze target list.

7 Financials

- 7.1** The Parties shall comply with the terms of this Clause 7 and specific financial terms (where applicable) set out at Schedule 1 in respect of E-Trade Insurance, Schedule 2 in respect of Insurance Products and Schedule 3 in respect of Stand-Alone Business.
- 7.2 General**
- 7.2.1** Details of any charges the Agent makes to the Policyholder in addition to the Gross Premium must be disclosed to the Policyholder in accordance with the applicable Regulations.
 - 7.2.2** If the Agent fails to make any payment due to DAS under this Agreement by the due date for payment then the Agent shall pay interest on the overdue amount at the rate of 5% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount whether before or after judgment. The Agent shall pay the interest together with the overdue amount.
 - 7.2.3** Monies due to DAS from the Agent shall not be subject to any charge, set off or lien.
 - 7.2.4** The Agent shall inform DAS if in addition to the Commission, the Agent is to be remunerated or paid by the Policyholder for any services provided by the Agent to the Policyholder in respect of the Insurance Product/s. In such circumstances, the Agent shall also disclose to the Policyholder the detail and amount of such charges.
 - 7.2.5** In the case of cancellation, the Agent shall refund to the Policyholder any Commission pro-rated to the attributable Net Premium repaid. Unless otherwise obliged to by law, regulation or terms of the contract of insurance, DAS shall refund Net Premium.
 - 7.2.6** All payment queries should be directed to the 'credit control department' at DAS Head office at Bristol.
 - 7.2.7** Payment to DAS by the Agent under this Agreement:
 - 7.2.7.1** must be made by Electronic Transfer, (BACS) direct to DAS Legal Expenses Insurance Company's account at Barclays Bank, Queens Square Bristol (Account Number 50306290 and Sort Code is 20-13-42); and
 - 7.2.7.2** is not related to any credit period given by or arranged by the Agent to its customers or the Agent's sub agents; and/or
 - 7.2.7.3** is not related to any outsourced premium or funding arrangements that may be in place between the Agent, the customer and any applicable finance provider.

8 Audit

- 8.1** The Agent shall prepare, maintain and retain for the appropriate period under Regulations full and proper accounts and records as appropriate which present and reflect in all material respects all transactions and matters relating to this Agreement.
- 8.2** DAS, as well as its Regulator, or the agents or representatives of DAS or its Regulator, or the HMRC, shall be entitled, on giving at least 5 days' notice, to conduct an audit. Such notice shall detail the scope of the audit unless the audit concerned relates to suspected fraud or has arisen from requirements of the Regulator, in which event no notice (or such shorter period as may be required by the Regulator) shall be required.
- 8.3** DAS shall be permitted to audit any relevant documents, contracts or any other records however stored, recorded or held which relate to the subject matter of this Agreement. For the avoidance of doubt, relevant records shall include any appointed agency agreements and other relevant records between the Agent and any sub agents.
- 8.4** Should DAS require to attend the Agent's offices to conduct the audit, then the Agent shall make available reasonable facilities to enable the audit to be carried out. Should DAS require copies of any such documents, contracts or any other records then the Agent shall provide such copies. DAS will be responsible for the reasonable copying costs.
- 8.5** Any audit will be conducted reasonably.
- 8.6** In the event that the Agent has delegated any or all of its obligations under this Agreement to a third party, the Agent shall impose written obligations on its sub agents to ensure that DAS is entitled to audit the sub agents on terms no less stringent than those set out in this Clause.

9 Obligations of Both Parties

- 9.1** Each Party shall provide such information as is necessary for the other Party to enable it to satisfy its compliance with any statutory, regulatory or court requirement insofar as such obligations relate to this Agreement.
- 9.2** Each Party shall:
 - 9.2.1** take appropriate steps to safeguard information, money and property held on behalf of the Insured;
 - 9.2.2** maintain professional indemnity insurance at all times as required by the Regulator;
 - 9.2.3** treat the Insured fairly in accordance with the requirements of the Regulator, as amended from time to time;
 - 9.2.4** ensure that all written information sent to the Insured is sent promptly and is clear, fair and not misleading;
 - 9.2.5** comply with all applicable laws and Regulations, the requirements of any Regulator of the Parties and act in accordance with the requirements of any ombudsman, arbitrator or court to which any of the Parties are subject under or in connection with this Agreement;
 - 9.2.6** keep proper, accurate and sufficient training, Tax, Policy and Claims records, for a minimum period of 6 (six) years;
 - 9.2.7** render reasonable assistance to and co-operate with the other Party to enable its compliance with all legal, taxation and regulatory requirements, and/or any application for authorisation or other permit applicable to the business under this Agreement.

10 Termination

- 10.1** Either Party may terminate this Agreement or any Delegated Authority granted under it upon giving 30 days' written notice to the other Party.
- 10.2** Either Party may terminate this Agreement immediately in writing at any time if:
 - 10.2.1** the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 60 calendar days after being notified in writing to make such payment; or
 - 10.2.2** the other Party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 15 Business Days after being notified in writing to do so; or
 - 10.2.3** the other Party is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if it is a firm, the owner or any of the partners in the firm are made bankrupt or the firm is wound up; or

- 10.2.4** the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party; or
- 10.2.5** a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 Business Days; or
- 10.2.6** any event occurs or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses 10.2.3-10.2.5 (inclusive); or
- 10.2.7** if the other Party's direct authorisation as granted by the Regulator is withdrawn; or
- 10.2.8** if the other Party suspects fraud or dishonesty or suspects that the administration of the business is likely to prejudice the rights of the Insured; or
- 10.2.9** the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 10.2.10** there is a change of control of the other Party.
- 10.3** DAS may immediately terminate this Agreement without notice if the Agent has not placed business with DAS for a period of 18 months or more, all existing Insurances have lapsed and in the reasonable opinion of DAS this Agreement has become dormant.
- 10.4** In the event of either Party becoming aware that any of the events in Clause 10.2 are likely to affect its organisation, such Party must give notice in writing to the other Party without undue delay.

11 Consequences of Termination

- 11.1** The consequences of termination shall include:
 - 11.1.1** All Net Premiums and Tax shall be paid to DAS immediately.
 - 11.1.2** The Delegated Authority shall cease unless otherwise agreed by DAS in writing.
 - 11.1.3** The Agent shall return or destroy all Policy Documents, all stationery and property of DAS that are in the Agent's possession and immediately ceases to promote the products of DAS, subject to the retention of Policy Documents necessary for compliance with obligations under this Agreement and/or the requirements of any Regulator.
 - 11.1.4** DAS shall have the right to communicate directly with the Insured or introduce via another Agent where it is, in DAS' reasonable opinion, in the best interests of the Insured:
 - 11.1.4.1** in providing continued relevant insurance cover and/or services; and/or
 - 11.1.4.2** in order to establish if Gross Premium and Tax had been paid, which would enable us to determine whether to continue to honour cover, should a claim arise.
 - 11.1.5** Examples under clause 11.1.4 would include if:
 - 11.1.5.1** the Agent's FCA authorisation is withdrawn;
 - 11.1.5.2** the Agent ceases to trade due to bankruptcy, having a liquidator, receiver
 - 11.1.5.3** an administrative receiver is appointed or the Agent has passed a resolution for winding up, is wound up, or a court of competent jurisdiction makes an order to that effect;
 - 11.1.5.4** if the Agent ceases to trade due to any form of insolvency, DAS will communicate directly with the Policyholder.
 - 11.1.6** Termination of this Agreement does not affect any liabilities or duties that have already accrued prior to termination. Nor does termination affect any term that expressly or implicitly is intended to come into force or continue in force after the termination.

12 Intellectual Property

- 12.1** Nothing in this Agreement will result in the transfer of ownership from one Party of any Intellectual Property Rights belonging to the other.
- 12.2** The Agent undertakes to not use in any way and undertakes to not permit its sub agents to use DAS' Intellectual Property Rights and/or DAS Group's Intellectual Property Rights without the specific written consent of DAS.

13 Data protection

- 13.1** Each Party confirms it shall strictly comply with the requirements of the DPL.
- 13.2** The Parties agree that each Party shall be a Data Controller in respect of any Personal Data collected by them or that they hold under this Agreement and shall ensure that it is included in the register maintained by the Information Commissioner.
- 13.3** The Agent shall establish an appropriate legal basis for processing Personal Data prior to any transfer of Personal Data to DAS.
- 13.4** The Agent shall not transfer Personal Data for which DAS is the Data Controller outside the United Kingdom without the prior written consent of DAS, which (if granted) will be subject to the Agent entering into a binding data transfer agreement with the party to whom the data is being transferred which will meet in full the requirements within the DPL for transfer of Personal Data outside the EEA (for example, by incorporation of the EU model clauses for such transfer as published from time to time).
- 13.5** Both Parties shall:
 - 13.5.1** implement and maintain appropriate technical and organisational measures in order to safeguard the rights and freedoms of individuals by securing Personal Data including but not limited to protection against unauthorised or unlawful processing and against accidental loss, destruction or damage in a manner appropriate to the risk.
 - 13.5.2** use all reasonable endeavours to assist the other Party in complying with all obligations imposed on them with regards to Personal Data under the DPL.
 - 13.5.3** where appropriate, carry out a data protection impact assessment of the envisaged processing operations on the protection of Personal Data, in accordance with guidance issued by the applicable supervisory authority.
 - 13.5.4** ensure that all employees who have or need access to Personal Data:
 - 13.5.4.1** are informed of the confidential nature of the Personal Data;
 - 13.5.4.2** have undertaken adequate training on the DPL and in the care and handling of Personal Data; and
 - 13.5.4.3** are aware both of the Parties' duties and their personal duties and obligations under the DPL.
 - 13.5.4.4** ensure that access to the Personal Data is limited to those employees who need access to the Personal Data in order to fulfil their duties and in such case only such part or parts of the Personal Data as are strictly necessary;
- 13.6** If the Agent receives a Data Subject Request from a Policyholder in relation to their rights under the DPL in respect of any Personal Data for which DAS is a Data Controller, and the Agent is not a Data Controller, the Agent shall forward the request to DAS (dataprotection@das.co.uk) as soon as reasonably practicable but in any event within 1 working day.
- 13.7** If the Agent receives any complaint, notice or communication which relates directly or indirectly to either Party's compliance with the DPL and the data protection principles set out therein, it shall notify DAS (dataprotection@das.co.uk) as soon as reasonably practicable but in any event within 1 working day and shall provide DAS with full co-operation and assistance in relation to any such complaint, notice or communication.

- 13.8** In addition to the obligations at Clause 13.5, if either party becomes aware of a Personal Data Breach or an incident that may amount to a Personal Data Breach relating to any Personal Data obtained in connection with the performance of the services provided under or in connection with this Agreement, such Party shall:
- 13.8.1** notify the other Party without undue delay (but in no event later than 48 hours after becoming aware of the incident or Personal Data Breach) (if notifying DAS use (dataprotection@das.co.uk)); and
 - 13.8.2** provide the other Party without undue delay with such details as such other Party reasonably requires regarding:
 - 13.8.3** the nature of the breach, including the categories and approximate numbers of Data Subjects and Personal Data records concerned;
 - 13.8.4** any investigations into the breach;
 - 13.8.5** the likely consequences of the breach; and
 - 13.8.6** any measures taken, or proposed to be taken to address the breach, including to mitigate its possible adverse effects.
- 13.9** Each Party shall indemnify the other Party against all claims and proceedings and all liability, loss, fines (to the extent permitted by law), costs and expenses reasonably incurred by the other Party as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or any other legal person as a result of the indemnifying Party's unauthorised Processing, unlawful Processing, unlawful destruction of and/or damage to any Personal Data Processed by that Party, its employees or agents in their performance of this Agreement.
- 13.10** The provisions in this Clause 13 shall survive termination of this Agreement however arising.

14 Information Security

- 14.1** Both Parties shall have in place appropriate administrative, physical, procedural and technical controls to ensure the security (confidentiality, integrity and availability) of information.
- 14.2** Both Parties shall ensure the controls at Clause 14.1 are in accordance with good industry practice, being a standard no less stringent than reasonably to be expected of competent, high integrity data controlling and/or processing, FCA regulated corporate entities in the UK exercising reasonable skill care and diligence (for example aligned with ISO/IEC 27001 or the ISF Standard of Good Practice for Information Security). Both Parties shall review such controls frequently to ensure continued alignment with good industry practice.
- 14.3** Without prejudice to Clause 14.2, both Parties shall have appropriate security governance in place including but not limited to:
- 14.3.1** Information security policies, standards and guidelines;
 - 14.3.2** Comprehensive risk management framework;
 - 14.3.3** Information security strategy; and
 - 14.3.4** Regular reviews of the effectiveness of information security.
- 14.4** Subject always to Clause 13, the Agent shall notify DAS immediately if they become aware of any Security Incident, unauthorised or unlawful processing, loss of, damage to, corruption of or destruction of Customer Data.

15 Complaints Resolution

- 15.1** Each Party shall be responsible for resolving any Complaints and shall bear the full costs of any Complaints dispute or problems raised by any person arising from the act or omission of that Party or its representatives. The Agent shall be responsible for any marketing or sales related Complaints and DAS shall be responsible for any Policy Document or claims handling related Complaints.
- 15.2** Each Party shall comply with all reasonable requests from the other for the provision of information and documents in connection with their activities for the purpose of dealing with any such Complaint. The one Party shall update the other Party in respect of the progress of such Complaint.
- 15.3** Each Party agrees to handle Complaints in accordance with its regulatory responsibilities and the DISP Rules as amended from time to time and to assist the other in satisfying the FCA in respect of appropriate handling of Complaints.

- 15.4** Each Party shall be responsible for resolving any Complaints, dispute or problems received from the Financial Ombudsman Service (“FOS”) which relates in any way to the functions or activities for which that Party or its representatives is responsible. That Party shall investigate the Complaint and shall be responsible for any case fee and/or any award that the FOS determines is due.
- 15.5** If one Party believes that any FOS Complaint received by that Party should more properly be dealt with by the other Party, the receiving Party shall immediately report in writing to the other.

16 Variation

- 16.1** DAS may vary the terms of this Agreement at any time by notification in writing. Changes shall be effective 30 days from notification.

17 Assignment

- 17.1** Subject to Clause 17.2, this Agreement is personal to the Parties. It may not be assigned, transferred or novated except with the written consent of the other Party.
- 17.2** DAS may at any time assign its rights under this Agreement to a member of the DAS Group.

18 Waiver

- 18.1** The failure by either Party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

19 Confidentiality and Non-solicitation

- 19.1** Both Parties shall treat as confidential at all times all Confidential Information obtained from the other as a result of this Agreement. The Agent shall not disclose such information to any third party (other than those of its employees and agents whose responsibilities require them to know the same) or use for any purposes other than those set out within this Agreement. The Agent shall ensure that its employees and agents are aware of and comply with the obligations within this Clause 19.1.
- 19.2** For the avoidance of doubt, each Party agrees that the obligation stated in Clause 19.1 above includes an undertaking not to solicit the other Party’s customers where such details have been acquired solely for the purposes of or as a result of this Agreement.

20 Notices

- 20.1** All notices sent under this Agreement shall be in accordance to this Clause 20 and shall, if the other Party is a limited company be sent to the registered office of the receiving Party or, if the party is a firm or sole trader, the last known address of the receiving Party.
- 20.2** Wherever possible, written notices should be sent by pre-paid first class post or special delivery. A letter will be deemed to have arrived within two Business Days after posting.
- 20.3** In respect of DAS, all notices should be for the attention of the Agency Department. A written notice shall be validly given if sent by post as referred to in the above Clause 20.2.
- 20.4** A notice given under or in connection with this Agreement shall not be validly given if sent by email only unless otherwise agreed by the Parties.

21 Third Parties

- 21.1** Apart from a member of the DAS Group, a person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

22 Force Majeure

- 22.1** Neither Party shall be liable to the other if performance of any of its obligations under this Agreement is prevented, hindered or delayed by circumstances beyond that Party's control. These circumstances shall include, but are not limited to, Acts of God, strikes or any other industrial action whether actual or threatened, or civil commotion, acts of government or any quasi governmental authority, or any change in any statute, order or regulation having the force of law or any guidelines or restrictions issued or imposed by the FCA, or any other Regulator, whether or not having the force of law, that affects the operation of any Insurance or service of that Party supplied under this Agreement.
- 22.2** The Party affected shall immediately notify the other Party of any such circumstances. The Party affected shall use all reasonable endeavours to overcome or minimise the adverse effects and shall inform the other Party of the steps it is taking to do so.

23 No Partnership

- 23.1** Nothing in this Agreement and no action taken by the Parties shall constitute a partnership, employment, association, joint venture or other co-operative entity between any of the Parties.

24 Counterparts

- 24.1** This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same agreement.

25 Governing Law and Jurisdiction Applicable to this Agreement

- 25.1** This Agreement and any dispute or claim arising out of or in relation to or in connection with it is governed by, and shall be construed in accordance with, English Law. The Parties irrevocably agree to submit to the exclusive jurisdiction of the Courts of England in relation to all matters relating to this Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formulation.

Schedule 1: E-Trade Insurance

1 Scope

- 1.1** This Schedule sets out the specific requirements and obligations of DAS and the Agent respectively in relation to E-Trade Insurance. The terms of this Schedule are deemed to be incorporated into the Agreement and in the event this Schedule conflicts with the terms of this Agreement, the terms of the Schedule shall prevail.

2 Definitions

“**Request for Payment**” means the request by DAS to the Agent for payment of E-Trade Insurance Policies sold each month by the Agent.

3 Delegated Authority

- 3.1** The Delegated Authority granted to the Agent by DAS in accordance with Clause 4.1 of the Agreement for E-Trade Insurance shall include the Agent introducing and selling the E-Trade Insurance to Customers at the rates provided for and built into the E-Trade Platforms.
- 3.2** For the avoidance of doubt, the grant of Risk Transfer to the Agent by DAS at Clause 4.2 of the Agreement applies to handling of premiums related to E-Trade Insurance in accordance with Clause 4.2 and paragraph 6 of this Schedule.

4 DAS Obligations

- 4.1** DAS shall:
- 4.1.1** provide the E-Trade Platforms to the Agent (in the event the Agent does not have previous access); and
 - 4.1.2** ensure the Policy rating information is provided for within the E-Trade Platforms.
- 4.2** DAS shall have no liability to the Agent in the event the E-Trade Platforms are withdrawn, not functioning, or unavailable for any other reason.

5 The Agent's Obligations

- 5.1** The Agent shall use the E-Trade Platform to sell the E-Trade Insurance to Customers in accordance with the sales process set out at paragraph 7 of this Schedule.

6 Financials

- 6.1** All premiums quoted on the E-Trade Platforms are Gross Premiums plus Tax, with Gross Premium consisting of Net Premium and Commission.
- 6.2** DAS shall issue to the Agent a Request for Payment 14 days after the end of the preceding month in respect of Policies sold, renewals or adjustments during the preceding month.
- 6.3** The Agent shall deduct the Commission prior to remitting the Net Premium in accordance with paragraph 6.4 below. Commission is set at 15% of Gross Premium exclusive of Tax. DAS may, upon prior request of the Agent agree in writing that Commission can be increased up to a maximum of 50% of Gross Premium exclusive of Tax. The Agent shall in no circumstances deduct more than 50% of the Gross Premium as Commission.
- 6.4** The Agent shall within 30 days following DAS issuing a Request for Payment remit the full Net Premium plus applicable Tax in cleared funds to DAS.
- 6.5** If there are items on the Request for Payment which subsequently need adjustment, the monies owing on the Request for Payment will remain unchanged, and will need to be paid in full.
- 6.6** If the Agent enters an adjustment on the E-Trade Platform after 14 days following the end of the preceding month any refund required will appear on the subsequent months Request for Payment.

7 Sales Process

- 7.1** The Sales Process is as follows:
- 7.1.1** the Agent shall access the E-Trade Platforms and provide the Customer with a quote for the Policy provided by the E-Trade Platforms;
 - 7.1.2** the quote the Customer receives from the Agent is valid for 30 days and the Agent must access the E-Trade Platforms to accept the quote in the event the Customer agrees to take up the Policy;
 - 7.1.3** upon agreement by the Customer under clause 7.1.2 above, the Agent sells the appropriate Policy to the Customer and takes the payment for that Policy. For the avoidance of doubt, the E-Trade Platform does not include the capability for processing payments;
 - 7.1.4** the Agent provides the Customer with the correct Policy Document after the sale has taken place;
 - 7.1.5** the Customer has 14 days in order to cancel the Policy after the sale has taken place and the Agent must update the E-Trade Platforms in the event of a cancellation;
 - 7.1.6** the E-Trade Platforms send a daily XML feed of Policy sales information to DAS via a STFP folder into the DAS system; and
 - 7.1.7** DAS on receipt of the Policy sales information for that particular month issues a Request for Payment and the Agent remits the Net Premium in accordance with Clause 6.4.

Schedule 2: Insurance Products (Scheme Business)

1 Scope

- 1.1** This Schedule sets out the specific requirements and obligations of DAS and the Agent respectively in relation to Insurance Products. The terms of this Schedule are deemed to be incorporated into the Agreement and in the event this Schedule conflicts with the terms of this Agreement, the terms of the Schedule shall prevail.

Part A – Key Terms

2 Delegated Authority

- 2.1** The Agent is authorised to sell the Insurance Products at the prescribed rates set out at Part B of this Schedule below in accordance with the Delegated Authority granted to the Agent by DAS at Clause 4.1 of the Agreement.
- 2.2** For the avoidance of doubt, the grant of Risk Transfer to the Agent by DAS at Clause 4.2 of the Agreement applies to handling of premiums related to Insurance Products in accordance with Clause 4.2 and paragraph 3 of this Schedule.

3 The Agent's Obligations

- 3.1** The Agent shall sell the Insurance Products to Customers in accordance with the sales process set out at paragraph 6 of this Schedule.

4 Financial

- 4.1** The Agent may sell the Insurance at a Gross Premium plus Tax, with Gross Premium consisting of the Net Premium and Commission. It shall be the responsibility of the Agent to disclose to the Policyholder any charges made in addition to the Net Premium.
- 4.2** The Agent shall supply DAS with a bordereau including at least details of Gross Premium, any other charges, and Tax in respect of a calendar month within 5 (five) days of the end of each such calendar month.
- 4.3** The Agent shall deduct the Commission prior to remitting the Net Premium in accordance with Clause 7.2.4.
- 4.4** The Agent shall remit to DAS the Net Premium amounts set out at Part B of this Schedule for each Policy, corresponding to the applicable bordereau, plus the applicable Tax so cleared funds arrive in the DAS bank account within 30 (thirty) days of the end of the month to which the bordereau relates.

5 Sales Process

- 5.1** The Agent shall in no circumstances deduct more than 50% of the Gross Premium as Commission.
- 5.2** The Sales Process is as follows:
- 5.2.1** the Agent sells the appropriate Policy or through its sub agents to the Customer and takes the payment for that Policy;
 - 5.2.2** the Agent provides the Customer with the correct Policy Document;
 - 5.2.3** the Agent sends to DAS a monthly bordereau and remits the Net Premium in accordance with paragraph 3 of Schedule 2.

Part B – Insurance Products Rating Information

DAS shall provide Part B of this Schedule 2 including the rating information for the Insurance Products to the Agent under separate cover.

Schedule 3: Stand-Alone Business

1 Scope

- 1.1** This Schedule sets out the specific requirements and obligations of DAS and the Agent respectively in relation to Insurance Products sold as Stand-Alone Business. The terms of this Schedule are deemed to be incorporated into the Agreement and in the event this Schedule conflicts with the terms of this Agreement, the terms of the Schedule shall prevail.

Part A – Key Terms

2 Delegated Authority

- 2.1** The Agent is authorised to sell the Insurance Products for Stand Alone Business at the prescribed rates set out at Part B of this Schedule below in accordance with the Delegated Authority granted to the Agent by DAS at Clause 4.1 of the Agreement where:
- 2.1.1** the Agent refers to DAS for a specific quote for an Insurance Product where the insurance Product is not included as part of Schedule 2 of this Agreement; and
- 2.1.2** DAS agrees to quote and provides the Agent with the price set out at Part B of this Schedule below.
- 2.2** For the avoidance of doubt, the grant of Risk Transfer to the Agent by DAS at Clause 4.2 of the Agreement applies to handling of premiums related to E-Trade Insurance in accordance with Clause 4.2 and paragraph 6 of this Schedule.

3 The Agent's Obligations

- 3.1** The Agent shall sell the Insurance Products to Customers in accordance with the sales process set out at paragraph 5 of this Schedule.

4 Financial

- 4.1** The Agent may sell the Insurance at a Gross Premium plus Tax, with Gross Premium consisting of the Net Premium and Commission. It shall be the responsibility of the Agent to disclose to the Policyholder any charges made in addition to the Net Premium.
- 4.2** The Agent shall supply DAS with a bordereau including at least details of Gross Premium, any other charges, and Tax in respect of a calendar month within 5 (five) days of the end of each such calendar month.
- 4.3** The Agent shall deduct the Commission prior to remitting the Net Premium in accordance with Clause 7.2.4.
- 4.4** The Agent shall remit to DAS the Net Premium amounts set out at Part B of this Schedule for each Policy, corresponding to the applicable bordereau, plus the applicable Tax so cleared funds arrive in the DAS bank account within 30 (thirty) days of the end of the month to which the bordereau relates.

5 Sales Process

- 5.1** The Agent shall in no circumstances deduct more than 50% of the Gross Premium as Commission.
- 5.2** The Sales Process is as follows:
- 5.2.1** the Agent refers to DAS for specific quote for an Insurance Product where the Insurance Product is not included as part of Schedule 2;
- 5.2.2** DAS agrees and provides the Agent with the rating information set out at Part B of this Schedule below;
- 5.2.3** the Agent sells the appropriate Policy or through it sub agents to the Customer and takes the payment for that Policy;
- 5.2.4** the Agent provides the Customer with the correct Policy Document;
- 5.2.5** the Agent sends to DAS a monthly bordereau and remits the Net Premium in accordance with paragraph 3 of Schedule 3.

Part B – Insurance Products Stand-Alone Business Rating Information

DAS shall provide Part B of this Schedule 3 including the rating information for the Insurance Products Stand-Alone Business to the Agent under separate cover.



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