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## 1. INTRODUCTION

1.1 In terms of the Section 48(2) Intermediary Agreement between Hollard and Artinsure:

1.1.1 Hollard has agreed to act as underwriter in regard to the insurance business on the terms and conditions contained in the Policies;

1.1.2 Artinsure has agreed to perform the functions of a Section 48(2) Intermediary in accordance with the Act;

1.1.3 Hollard has specifically authorised Artinsure to, *inter alia* promote and establish relationships with independent intermediaries, as described in the Regulations to the Act, subject to Hollard's written approval of those intermediaries, for the purpose of promoting the insurance business;

1.1.4 Hollard retains ultimate authority in all aspects of this agreement and any further related agreements and Hollard's decision shall be final and binding should any difference of opinion arise between Artinsure and Hollard.

1.2 This agreement records the terms and conditions of the parties' agreement and how they wish to regulate their relationship.

1.3 This agreement replaces and supersedes any previous agreements between Artinsure and the Broker.

## 2. INTERPRETATION

2.1 Unless the contrary appears from the contents, the following phrases shall have the meanings assigned to them where they appear in this agreement:

<b>"the Act"</b>	<i>means</i>	the Short-Term Insurance Act No 53 of 1998 as amended or substituted and the rules, directives, practice notes and regulations published thereunder
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<b>“Artinsure”</b>	<i>means</i>	Artinsure Underwriting Managers (Pty) Ltd (Reg. No. 200700492907)
<b>“the Broker”</b>	<i>means</i>	
<b>“Hollard”</b>	<i>means</i>	The Hollard Insurance Company Limited, (Reg. No. 1952/003004/06)
<b>"Effective Date"</b>	<i>means</i>	1 <sup>st</sup> November 2007 irrespective of the date of signature hereof.
<b>“insurance business”</b>	<i>means</i>	the insurance arrangements in respect of the policies concluded by Artinsure acting pursuant to its mandate as a Section 48(2) Intermediary in terms of the Act.
<b>“insured”</b>	<i>means</i>	a natural or legal person to whom a policy has been issued by Artinsure approved agents on behalf of Hollard and from whom the premium due in respect of such policy has been received
<b>“the Policy”</b>	<i>means</i>	the standard Artinsure policies underwritten by Hollard pursuant to this Agreement which will be updated from time to time, and includes all and any modifications made by Artinsure to the Policies after the date of this agreement
<b>“Certificate of Cover”</b>	<i>means</i>	the certificate or schedule issued to the insured as proof of cover and containing <i>inter alia</i> the details of the insured and amount of premium.

<b>“Gross Written Premium”</b>	<i>means</i>	the total amount of money paid or payable for the intended duration of policies authorised and sold pursuant to this agreement excluding any VAT, policy fee or other fee charged
<b>“the Republic”</b>	<i>means</i>	the Republic of South Africa
<b>“Business Day”</b>	<i>means</i>	any day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa in accordance with the Public Holidays Act, 1994;

- 2.2 The clause headings in this agreement are for reference purposes only and shall not affect the interpretation of the subject matter of the clause or of this agreement.
- 2.3 When any number of days is prescribed in this Agreement, same shall be reckoned inclusively of the first and exclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the immediately following Business Day.
- 2.4 In the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, then the relevant date for payment shall be the following Business Day.
- 2.5 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.6 References to the masculine gender include the other genders and *vice versa*. References to the singular shall include the plural and *vice versa*. References to natural persons shall include juristic persons and *vice versa*.
- 2.7 Schedules, annexures and addendums attached to this agreement shall be deemed to form part of this agreement.

### 3. **APPOINTMENT**

Artinsure hereby appoints the Broker, on the terms and conditions contained in this agreement and the Act, to canvass for insurance business which it shall introduce to Artinsure and to fulfil the functions and comply with the obligations of an Independent Intermediary in respect of such insurance business in return for commission and administration fees.

### 4. **NON-EXCLUSIVITY**

The appointment of the Broker in terms of this agreement is non-exclusive in that Artinsure may itself canvass for insurance business and/ or appoint other agents to do likewise.

### 5. **COMMISSION**

5.1 On the introduction of insurance business, as a direct result of canvassing carried out by the Broker, to and accepted by Artinsure , the Broker shall be entitled to payment of commission not exceeding the maximum commission in terms of the rules and regulations published in accordance with Section 48 of the Act.

5.2 The Broker shall become entitled to commission only upon and subject to receipt of the Gross Written Premium and necessary documentation required by Artinsure in terms of clause 6.

5.3 Subject to clause 5.2 above, the Broker is authorised to deduct the relevant commission due prior to paying the applicable premium to Hollard.

5.4 The Broker shall not be entitled to recover any expenses or disbursements from Artinsure and the Broker's commission shall be the sole compensation to which the Broker shall be entitled in connection with the insurance business.

5.5 Should a policy be cancelled or lapse due to non-payment of premium, the Broker's right to receive commission in respect of such policy shall terminate on the effective date of such cancellation or lapse. If the Broker received any commission in respect of any unexpired portion of any policy

the Broker shall refund to Artinsure, within 30 (thirty) days of the lapse or cancellation of any policy, such commission, calculated in the same proportion as the unexpired portion of the policy bears to the original term of the policy, but for its lapse or cancellation.

- 5.6 If the premium payable under a policy is reduced during the term of the policy, and should the Broker have received commission based on the original premium, the Broker shall refund to Artinsure, within 30 (thirty) days of the reduction in premium, a portion of the commission received by the Broker, such amount being calculated in the same proportion as the reduced premium bears to the original premium.
- 5.7 Commission shall only be payable to the Broker on any Artinsure policies introduced by the Broker, unless otherwise agreed between Artinsure and the Broker in writing.

## **6. INTRODUCTION OF INSURANCE BUSINESS BY A BROKER**

- 6.1 The Broker shall not be deemed to have introduced insurance business to Artinsure unless and until Artinsure:
- 6.1.1 has received applicants' details for insurance, a fully completed and duly signed application form by the prospective insured, in compliance with the relevant requirements as stipulated by both parties or as otherwise required by Artinsure from time to time;
  - 6.1.2 has received an endorsement on such information recording the Broker's name, code and signature as introducing broker; and
- 6.2 the premium has been received in accordance with the conditions contained in clause 8.

## **7. CONCLUSION OF INSURANCE POLICIES**

- 7.1 The Broker shall not have the right to conclude any policy or to bind Artinsure or Hollard in any way whatsoever;

- 7.2 Artinsure shall have absolute discretion to reject any application for policies introduced by the Broker;

## 8. **COLLECTION OF PREMIUMS**

The Broker shall:

- 8.1 transmit to Artinsure within 15 (fifteen) days of month end, information of the nature and in the form agreed by the parties from time to time;
- 8.2 collect premiums for policies in accordance with the premium rates, as amended by Artinsure from time to time on written notice to the Broker;
- 8.3 issue a written receipt for any premium received in cash, which receipt shall state the date and time of receipt, the name, address and telephone number of the recipient, the policy number and the name of Hollard on whose behalf the premium is received;
- 8.4 comply with Section 48 of the Act and particularly the Regulations thereto.
- 8.5 deposit all premiums, collected by the Broker into a separate trust banking account held by the Broker and thereafter remit such premiums to Hollard (less commission payable) by depositing them into Hollard's premium banking account within 15 (fifteen) days of month end, held at Nebank, Johannesburg Branch Code 145405, account number 1454096098 .
- 8.6 The Broker shall furnish security as required by the Act and the rules and regulations thereto in the form of an Intermediary Guarantee and shall maintain such security for the duration of this agreement.

## 9. **CANCELLATION OF POLICIES**

The Broker shall not have the right to cancel policies under the policy terms and conditions unless such cancellation is instructed by the insured in writing.

10. **ADMINISTRATION OR SERVICE FEE**

Any administration fee, service fee or any other fee charged by the Broker pursuant to this agreement to the insured must be shown separately on the Certificate of Cover, policy document or policy schedule and shall not be concealed from the insured, Artinsure or Hollard. Such fee, if any, shall be charged only in accordance with the Act and after obtaining Artinsure's approval, which approval shall not be unreasonably withheld.

11. **OBLIGATIONS OF THE BROKER**

The Broker shall:

- 11.1 only canvass for insurance business within the Republic of South Africa;
- 11.2 not cede, assign or otherwise encumber in any way any of his rights or obligations under this agreement, without the prior written consent of Artinsure;
- 11.3 not appoint any sub-agents to canvass for or market the insurance business without first obtaining Artinsure 's written approval and complying with the conditions for such appointment, if any, communicated by Artinsure to the Broker from time to time;
- 11.4 at all times implement the relevant policies, practice, instructions, direction and rules of Artinsure as may be communicated to the Broker from time to time;
- 11.5 comply with the Act, particularly sections 45, 48 and 55 thereof and the rules and Regulations published thereunder, including the Policyholder Protection Rules.
- 11.6 ensure that all employees who market or vary any Artinsure products, receive the necessary training, in order to possess the relevant knowledge, competency and proficiency in the products that they may market and/ or vary;

- 11.7 when dealing with any policyholder or prospective policyholder who is a natural person as defined by the Policyholder Protection Rules, individually accredit such trained employees (as per 11.6) who market and / or vary such products and ensure that only such employees act in this capacity;
- 11.8 maintain an accreditation register of such accredited employees, the details of which have to be communicated to Artinsure at least quarterly;
- 11.9 observe good faith towards Artinsure, Hollard and the insureds;
- 11.10 not hold out or represent anything which is contrary to the terms, conditions, restrictions and the like to which the insurance business is subject;
- 11.11 not be entitled to advertise the insurance business in any media or communicate with the media in regard to the insurance business without the written approval of Artinsure ; and prior to dealing with an insured on behalf of Artinsure , advise insureds that it acts as an intermediary on behalf of Artinsure and Hollard in terms of this agreement

## 12. CLAIMS

- 12.1 The Broker shall not admit liability on behalf of Artinsure and/ or Hollard in respect of any claim or otherwise, nor make any representations regarding the merits of a claim and hereby indemnifies Artinsure and/ or Hollard accordingly should it do so;
- 12.2 Artinsure shall be solely responsible for the administration of all claims and the answering of queries for insureds in respect thereof and the Broker shall not provide any advice or make any representations that bind Hollard and/ or Artinsure ;
- 12.3 should the Broker receive any claim forms then the Broker shall notify Artinsure by telephone or fax by no later than the next business day after receipt thereof and send written confirmation and any relevant supporting documents and claim forms received by the Broker to Artinsure within 3 (three) business days after such receipt;

- 12.4 Hollard shall, in its sole discretion, have the right to dispute, reject, settle, compromise or otherwise deal with or respond to claims made under policies;
- 12.5 if called upon to do so by Hollard, the Broker shall promptly render to Hollard such assistance as may reasonably be required by it in the attending to, processing or investigating of claims;
- 12.6 the Broker shall not complete any claim form, ancillary documentation and the like on behalf of an insured;
- 12.7 the Broker shall notify Artinsure in writing within 24 (twenty-four) hours of the service on the Broker of any legal process relating to the insurance business or the Broker becoming aware of any potential legal action against him which may have any impact on Artinsure or Hollard.

### 13. **POLICY AMENDMENTS AND PREMIUM INCREASES**

- 13.1 Artinsure or Hollard may from time to time, at their discretion, endorse or modify the Policies and increase or decrease premiums payable by insureds by giving 45 (forty five) days notice thereof in writing.
- 13.2 Every such endorsement, modification, increase or decrease shall become binding on the Broker forthwith on receipt of such notification by the Broker and the Broker shall in turn immediately give notice to insureds of such changes.

### 14. **COPYRIGHT AND TRADE MARKS**

The Broker acknowledges and agrees:

- 14.1 that copyright and ownership in all documents, records and procedures pertaining to the insurance business vest and shall continue to vest in Artinsure and that unauthorised publication, use or reproduction thereof is prohibited;
- 14.2 that Artinsure is the proprietor of certain trade marks, trade names, designs, logos, characteristics, intellectual property, codes and descriptions

which are registered in terms of the Trade Marks Act of 1993, or pending application for registration or which are in use but not so registered or so pending;

- 14.3 not to do anything which may have the effect, directly or indirectly, of infringing the said copyright or any of the other rights described in clause 14.2.

## 15. **DOCUMENTATION**

- 15.1 All documentation, computer software and other material which Artinsure makes available to the Broker from time to time shall remain the sole and exclusive property of Artinsure at all times, and may not be copied or reproduced by the Broker, without the express written authority of Artinsure, except to the extent necessary for the fulfillment of the purposes of this agreement, and be returned to Artinsure on termination of this agreement.
- 15.2 For the duration of this agreement, the Broker shall only use documents which have been approved by Artinsure and which are current, as determined by Artinsure from time to time, and shall not for any purpose whatsoever amend, vary or modify any such documents.
- 15.3 The Broker shall also be obliged to comply with any terms of supply or instructions for the operations or use of such documentation or software as may be communicated to the Broker by Artinsure from time to time.

## 16. **CONFIDENTIALITY**

The Parties shall keep confidential each others' systems, know-how, trade secrets, documents, computer software and other confidential information insofar as these may come to be known or be available to each other during the currency of this agreement, and shall not disclose the same to any person except to the extent that such disclosure is necessary for the purposes of this agreement and after obtaining the prior written consent of the affected party, which consent shall not be unreasonably withheld.

17. **NO PREMIUM – NO COVER**

The Broker acknowledges that subject to the provisions contained in the Act and the terms of the Policy, no cover will exist while a premium due by the insured remains unpaid. If the Broker, contrary to the terms of the Policy, holds out to any person that cover exists notwithstanding that payment of premium has not been received by the due date and if Artinsure accepts or is obliged to accept the risk, the Broker shall indemnify Artinsure and/ or Hollard and hold them harmless in respect of any claim which may be made against them in this regard.

18. **GENERAL INDEMNITY**

18.1 The Broker hereby indemnifies Artinsure and/ or Hollard against all actions, claims, damages (including consequential damages) or any other liability which Hollard or any third party may sustain either directly or indirectly arising out of any intentional or negligent act or omission by the Broker, or its employees or agents acting in the course and scope of their employment or mandate with the Broker: provided that the Broker shall not be liable for any loss or damage to the extent that such loss or damage is attributable to the negligence of Artinsure and/ or Hollard or its employees acting in the course and scope of their employment with Artinsure and/ or Hollard.

18.2 The Broker shall effect and keep current a professional indemnity policy on such terms reasonably required by Artinsure and/ or Hollard to cover the Broker for any claims, action, demands which may be made by Hollard or any other person against the Broker. Any expenses incurred in effecting such policy shall be for the Broker's account. The Broker shall, if requested to do so by Artinsure and/ or Hollard, exhibit to Artinsure and/ or Hollard the professional indemnity policy and proof of payment of premiums thereunder.

18.3 Without limiting any of its rights, Artinsure shall be entitled, in order to preserve its good name and reputation :

18.3.1 to discharge any obligation, as determined in the discretion of Artinsure, to insureds arising from misrepresentation and/ or negligence by the Broker, his employee, agent or representative;

18.3.2 to obtain payment from the Broker of any amount of damages caused by such misrepresentation and/ or negligence, or of the amount paid by Artinsure as a result of the exercise of its election to discharge such obligation; or

18.3.3 to investigate any alleged misrepresentation and/ or negligence and to disallow the particular individual responsible for the misrepresentation and/ or negligence to continue to canvass for or market the insurance business in any way, and Artinsure shall be entitled to regard any such misrepresentation and/ or negligence as a material breach of this agreement.

18.4 Whenever Artinsure exercises its discretion as set out above, it shall be deemed that such act of misrepresentation and/ or negligence occurred and the onus of proof shall rest on the Broker to disprove the same.

## 19. **OFFICE, ADMINISTRATION, RECORDS AND EXPENSES**

The Broker:

19.1 acknowledges that each application form and payment advice form are an integral part of the contract of insurance with the insured and shall ensure that such application form and payment advice form, if any, are fully and correctly completed and once completed, duly signed and dated by the prospective insured;

19.2 shall, throughout the duration of this agreement, keep at its principal place of business, true and proper books and records of all material information regarding insurance business introduced by the Broker and all matters incidental thereto;

19.3 shall be liable for and shall pay all the charges and expenses incurred in its operations and the carrying out of its obligations in terms of this agreement; and

19.4 agrees that Artinsure and/ or Hollard or their duly authorised representatives shall have the right at any reasonable time during business hours, without restriction and by prior appointment and at their own expense, to inspect and take extracts from the books and records so maintained by the Broker in connection with the insurance business and such other documents of the Broker as might be reasonably expected to be in its possession or under its control.

## 20. **SUSPENSIVE CONDITION**

20.1 It is understood by the parties that Hollard's written approval is required before the appointment of the Broker can take place.

20.2 In the event that this approval is not given, then the appointment shall be deemed to be null and void and no obligations shall have arisen between the parties.

20.3 Hollard's signature of this agreement will constitute such written approval.

## 21 **BREACH**

If either party commits any material breach of this agreement and fails to remedy such breach within 10 (ten) days after receipt by that party ("the defaulting party") of written notice from the other party ("the aggrieved party") calling upon it to do so, then the aggrieved party shall be entitled, without prejudice to any other rights it may have in terms of this agreement, including the right to claim damages, to cancel this agreement on 15 (fifteen) days' written notice and the consequences contemplated in Clause 22 will follow

## 22. **AUTOMATIC TERMINATION**

22.1 Should the Broker :

22.1.1 fail to effect and keep current the requisite professional indemnity insurance policy described in clause 18 to this agreement;

- 22.1.2 if a natural person or partnership or unincorporated association, be sequestrated (whether provisionally or finally) or surrender his estate; or
- 22.1.3 if a juristic person, be wound up (whether provisionally or finally or whether voluntarily or compulsorily) or placed under judicial management (whether provisionally or finally); or
- 22.1.4 if a partnership, be dissolved; or
- 22.1.5 effect or offer to effect a general compromise with its creditors or any class of them; or
- 22.1.6 suffer the attachment of any of its assets to be attached in execution; or
- 22.1.7 do anything which would amount to an act of insolvency as defined in Section 8 of the Insolvency Act No. 24 of 1936; or
- 22.1.8 be guilty of a criminal offence involving fraud or dishonesty; or
- 22.1.9 suffer a judgement to be granted or entered against it in or by any court of law and fail to cause such judgement to be satisfied, rescinded or appealed against within a period of 7 (seven) days after the date such judgement came to its knowledge; or
- 22.1.10 have any licence including a Financial Service Providers license issued under the Financial Advisory and Intermediary Services Act 2002, as may be substituted or amended from time to time, to conduct business suspended, removed or endorsed by any order or decree by any applicable authority; or
- 22.1.11 be merged with, acquired by or absorbed by any other entity without Artinsure 's prior written consent;

then Artinsure shall be entitled, but not obliged, forthwith to terminate this agreement and to recover from the Broker any damages sustained without

derogating from any rights of action which may have arisen in favour of Artinsure against the Broker during the subsistence of this agreement, and also to recover from the Broker the immediate payment of all amounts which are then payable by him to Artinsure.

22.2 the Broker warrants that as at the date of signature of this agreement, none of the circumstances envisaged in sub-clauses 22.1.1 to 22.1.11 are in force or are pending against it or any of its directors.

### 23. **DURATION**

This agreement shall come into effect on the date of last signature and shall remain in force unless terminated:

23.1 in writing at any time by either party on 30 (thirty) days' written notice to the other;

23.2 in terms of clauses 21 and 22

### 24. **EFFECT OF CANCELLATION OR TERMINATION**

24.1 Upon the termination of this agreement at any time and for any reason, the Broker shall forthwith:

24.1.1 cease to canvass for and market the insurance business;

24.1.2 return to Artinsure all documentation in the possession or under the control of the Broker bearing Artinsure's or Hollard's name or logo together with all copies thereof in the Broker's possession or under the Broker's control and all cheque deposit books;

24.1.3 deliver to Artinsure all software, records, files, claim forms and policies and other material and documentation in the possession of the Broker pertaining to the insurance business introduced in terms of this agreement together with all copies thereof in the Broker's possession or under its control; and

24.1.4 desist from holding out in any way that the Broker remains entitled to canvass for or market insurance business.

24.2 The termination of this agreement shall not affect any policy properly issued while this agreement was in force or the Broker's right to commission in respect of such policy for the period of insurance of such policy.

## 25. DOMICILIA

25.1 The parties choose as their respective *domicilia citandi et executandi* for the service on them of all legal processes, notices, correspondence and communications in terms of this agreement the addresses set out below, provided that either party may change its domicilium to any other address in the Republic by written notice to the other party with effect from the date of deemed receipt of such notice and that such new address contains a physical address for the service of legal processes.

25.1.1 Hollard Insurance Company Limited

Physical address: 22 Oxford Road (entrance in Federation Road), Parktown, 2193

Postal address: PO Box 87419, Houghton, 2041

25.1.2 Artinsure

Physical address: 22 Oxford Road (entrance in Federation Road), Parktown, 2193

Postal address: PO Box 1721, Durbanville, 7551

25.1.3 \_\_\_\_\_

Physical address: \_\_\_\_\_

Postal address: \_\_\_\_\_

25.2 Any notice, order, acceptance, demand or other communication sent by pre-paid registered post shall have been deemed to have been received by the addressee on the 10<sup>th</sup> (tenth) day following the date of posting thereof.

25.3 Any notice given by a party to this agreement to another party to this agreement which is sent by facsimile during the normal business hours of the receiving instrument shall be rebuttably presumed to have been received on the date of successful transmission thereof, provided that any party may change its facsimile number to any other facsimile number in the Republic by written notice to the other parties with effect from the date of deemed receipt of such notice. Legal processes may not be sent by facsimile.

26. **NON-WAIVER**

Neither party to this agreement shall be precluded from exercising any right in terms of or arising from this agreement by reason that such party has previously, in respect of the same or any other right, granted an extension of time or other indulgence for the relevant or any other payment or performance or failure to enforce the terms of this agreement timeously or at all, and no failure to delay in or about the exercise of its rights under this agreement shall operate as a waiver of rights.

27. **NON-VARIATION**

27.1 This agreement contains the entire agreement between the parties.

27.2 No warranties, representations, disclosures or expressions of opinion have been made which have not been incorporated into this agreement as warranting or undertakings.

27.3 No variation or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by all parties.

27.4 No provision of this agreement shall be construed as preventing Hollard from amending the Policies at any time.

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 200\_\_

\_\_\_\_\_

For and on behalf of THE HOLLARD INSURANCE COMPANY LIMITED

AS WITNESSES:

1. \_\_\_\_\_ 2. \_\_\_\_\_

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 200\_\_

\_\_\_\_\_

for and on behalf of Artinsure Underwriting Managers (Pty) Ltd who warrants that he is duly authorised hereto

AS WITNESSES:

1. \_\_\_\_\_ 2. \_\_\_\_\_

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 200\_\_

\_\_\_\_\_

for and on behalf of \_\_\_\_\_ who warrants that he is duly authorised hereto

AS WITNESSES:

1. \_\_\_\_\_ 2. \_\_\_\_\_