



UNCOMMONLY INDEPENDENT

**TERMS OF BUSINESS AGREEMENT
(NON-LIFE INSURANCE BUSINESS)**

MADE AND entered into BY AND between

THE PARTY STIPULATED IN THE LETTER OF APPOINTMENT (hereinafter referred to as "you", "your" or the "Client")

AND

FULL NAME OF INTERMEDIARY : Lockton South Africa (Pty) Ltd

REGISTRATION NUMBER : 2005/037205/07

AUTHORISED FINANCIAL SERVICES PROVIDER (FSP), LICENCE NUMBER : 25937

PHYSICAL ADDRESS : Ground Floor, The Crossing, 372 Main Road, Bryanston, Johannesburg (hereinafter referred to as "we", "us", "our" or the "Intermediary")

1 The purpose of this document is to describe the professional business relationship between the parties, as well as the services we will provide to you, and supersedes any terms of business agreement that may previously have been sent to you by us. You should contact us if there is anything in this document that you do not understand or with which you disagree.

2 DEFINITIONS AND INTERPRETATION

2.1 *Advice* means any recommendation, guidance, or proposal of a financial nature regarding your non-life insurance needs and/or objectives.

2.2 *Applicable Law* means any of the following, from time to time, to the extent it applies to a *Party*: (i) any statute, regulation, policy, by-law, ordinance or subordinate legislation (including treaties, multinational conventions and the like having the force of law), including the *FAIS Act* and *Data Protection Legislation*; (ii) the common law; (iii) any binding court order, judgment or decree; (iv) any applicable industry code, policy or standard enforceable by law; or (v) any applicable direction, policy or order that is given by a regulator.

2.3 *Authorised Financial Services Provider* means a person who has been granted authorisation as a Financial Services Provider by the issue of a license by the Financial Sector Conduct Authority of South Africa (FSCA) in terms of section 8 of the *FAIS Act*.

- 2.4 *Business Day* means a day, other than a Saturday, Sunday, or public holiday in the Republic of South Africa.
- 2.5 *Change in Law* means any change in any *Applicable Law* which impacts on the performance of the *TOBA*, and which comes into force after the *Signature Date*, and which was not envisaged by either *Party* at the time of the *Signature Date*.
- 2.6 *Data Protection Legislation* means all applicable data protection, privacy and similar laws, regulations, directives and codes of practice in any relevant jurisdiction relating to the *Processing* and privacy of personal data, including *POPIA*.
- 2.7 The *FAIS Act* means the Financial Advisory and Intermediary Services Act, No. 37 of 2002.
- 2.8 *FIA* means the Financial Intermediaries Association of South Africa.
- 2.9 *Financial Services Provider* means any person, other than a representative, who as a regular feature of the business of such a person-
- 2.9.1 furnishes *Advice*, or
- 2.9.2 furnishes *Advice* and renders any *Intermediary Service*
- 2.9.3 renders an *Intermediary Service*.
- 2.10 *Insurance Act* means the Insurance Act, No. 18 of 2017.
- 2.11 *Insurer* means the underwriter of the *Policy*.
- 2.12 *Intermediary service* means any act other than the furnishing of *Advice*, performed by a person for or on behalf of a Client or *Insurer*-
- 2.12.1 the result of which is that a Client may enter into, offers to enter into or enters into any transaction in respect of a *Policy* with an *Insurer*, or
- 2.12.2 with a view to-
- 2.12.2.1 buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a *Policy* purchased by a Client from an *Insurer*
- 2.12.2.2 collecting or accounting for premiums or other monies payable by the Client to an *Insurer* in respect of a *Policy*, or
- 2.12.2.3 receiving, submitting or *Processing* the claims of a Client against an *Insurer*.
- 2.13 *Letter of Appointment* means the letter of appointment issued by the Intermediary confirming its appointment as non-life insurance intermediary to render the stated Services on behalf of the Client and signed by the Client.
- 2.14 *Party* means, collectively or individually as the context may require, the Client and the Intermediary.
- 2.15 *Personal Information* has the meaning given to it in *POPIA*.
- 2.16 *POPIA* mean the Protection of Personal Information Act, No. 4 of 2013.
- 2.17 *Policy/ies* means a non-life insurance policy as defined in the *Insurance Act*.

- 2.18 *Processing* has the meaning given to it in *POPIA*.
- 2.19 *Record of advice* means a document of mutual understanding that relates to the relevant and material content of the *Advice* or *Intermediary Service* that is/was provided to the Client.
- 2.20 *Services* means the services specified by the Client in the *Letter of Appointment*, and in clause 3 of this *TOBA*
- 2.21 *Signature Date* means the date that the Client signs the *Letter of Appointment*.
- 2.22 *TOBA* means this Terms of Business Agreement.
- 2.23 Unless expressly provided to the contrary or inconsistent with the context, a reference in this *TOBA* to-
- 2.23.1 this *TOBA* or any other agreement, document or instrument shall be construed as a reference to this *TOBA* or that other agreement, document or instrument as amended, varied, novated or substituted from time to time;
- 2.23.2 a person includes any natural person, firm, company, corporation, body corporate, juristic person, unincorporated association, government, state or agency of a state or any association, trust, partnership, syndicate, consortium, joint venture, charity or other entity (whether or not having separate legal personality);
- 2.23.3 any one gender, whether masculine, feminine or neuter, includes the other two;
- 2.23.4 the singular includes the plural and vice versa;
- 2.23.5 a word or expression given a particular meaning includes cognate words or expressions;
- 2.23.6 any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day is a day that is not a *Business Day*, the next *Business Day*;
- 2.23.7 to a statute or statutory provision includes a reference to any subordinate legislation made under it from time to time and a reference to a statute, statutory provision or subordinate legislation includes a reference to-
- 2.23.7.1 any statute, statutory provision or subordinate legislation which it re-enacts or replaces (with or without modification); and
- 2.23.7.2 such statute, statutory provision or subordinate legislation as from time to time amended, re-enacted or replaced (whether before or after the *Signature Date* of this *TOBA*);
- 2.23.8 the words including, include or in particular followed by specific examples shall be construed by way of example or emphasis only and shall not be construed, nor shall it take effect, as limiting the generality of any preceding words, and the eiusdem generis rule is not to be applied in the interpretation of such specific examples or general words; and
- 2.23.9 the words other or otherwise shall not be construed eiusdem generis with any foregoing words where a wider construction is possible.

- 2.24 All the headings and sub-headings in this *TOBA* are for convenience and reference only and shall be ignored for the purposes of interpreting it.
- 2.25 No rule of construction may be applied to the disadvantage of a *Party* because that *Party* was responsible for or participated in the preparation of this *TOBA* or any part of it.
- 2.26 If a definition confers substantive rights or imposes substantive obligations on a *Party*, such rights and obligations shall be given effect to and are enforceable as substantive provisions of this *TOBA*, notwithstanding that they are contained in that definition.
- 2.27 References to a subsidiary or a holding company are references to a subsidiary or holding company as defined in the Companies Act.

3 TOBA

This *TOBA*, together with *Letter of Appointment*, set out the terms and conditions of business in respect of the relationship between us and our Client and will apply where we render *Services* to the Client or place insurances on behalf of our Client, irrespective of whether or not there is a signed agreement in place and to the exclusion of all other terms that you or we may purport to apply in connection with our engagement (unless otherwise expressly agreed in writing between you and us).

4 OUR SERVICE MODEL AND COMMITMENT TO YOU

4.1 Disclosure of information

- 4.1.1 We shall provide you with reasonable assistance to enable you to make informed decisions regarding your insurance requirements during the course of our professional relationship with you.

4.2 Advice

- 4.2.1 We undertake to provide you with appropriate non-life insurance related *Advice* based on the information and instructions you provide to us. However, it is your sole responsibility to ensure that all information provided to us or the *Insurer* is timely, accurate and complete.
- 4.2.2 You acknowledge that we cannot be held responsible for-
 - 4.2.2.1 any loss that may be incurred by you or any other third party as a result of inaccurate information provided to us that is relevant to your circumstances, insurance needs and objectives;
 - 4.2.2.2 financial loss as a result of any recommendation, guidance or proposal that is not acted upon or implemented by you; and
 - 4.2.2.3 any recommendation, guidance or proposal that is implemented partially, or in whole, through any other intermediary or insurer in the absence of a signed *Record of Advice*, confirming the relevant and material content of the advice that was offered.

4.3 Intermediary Services

4.3.1 The *Intermediary Services* we render upon the Client's request include-

- 4.3.1.1 recommendations, guidance and proposals relating to non-life insurance needs and objectives;
- 4.3.1.2 investigating the various product options that would meet your non-life insurance needs;
- 4.3.1.3 leading you through a process to enable you to make informed insurance decisions;
- 4.3.1.4 the placement of insurance with the selected *Insurer*;
- 4.3.1.5 confirmation of insurance cover;
- 4.3.1.6 assistance with potential amendments relating to your insurance cover;
- 4.3.1.7 annual renewal of your insurance cover and insurance contracts, and
- 4.3.1.8 assistance with insurance claims.

4.4 Record of Advice

In terms of the *FAIS Act*, *Financial Services Providers* are required to maintain a detailed *Record of Advice*. In view of this statutory requirement, we will confirm all instructions and *Advice* in writing. Any instruction will form the basis of a record of mutual understanding between both *Parties* and is intended to complement our corporate governance procedures and requirements in terms of *Applicable Law*. It is recorded that these records are vital for both *Parties* and it is agreed and understood that your instruction(s) shall be confirmed in writing and acknowledged by both *Parties*. We undertake to maintain records of our dealings with you and on your behalf as required by *Applicable Law*. Archived documents will be returned to you or destroyed upon your written request. We will maintain our records for such period as is required by *Applicable Law*.

4.5 Remuneration

- 4.5.1 Our remuneration comprises commission received directly from the *Insurers* and agreed fees for specific *Services* that are rendered to you.
- 4.5.2 The source and the quantum of our remuneration will depend on the circumstances of each transaction and will be disclosed in our proposal(s) to you.
- 4.5.3 We undertake to disclose remuneration received, directly or indirectly, arising from this *TOBA*.

4.6 Confidentiality and Personal Information

- 4.6.1 Other than as set out in this clause, all information that we receive from you will be kept confidential and not disclosed to any third parties except in the normal course of business. The information may be disclosed if it is required by *Applicable Law* or an order of court of competent jurisdiction, or is already in the public domain, or has been received from a third party who is not in breach of a confidentiality agreement in releasing the information to us.

4.6.2 We will be required to Process *Personal Information* in order to liaise with you and perform the *Services* contemplated in this *TOBA* (including disclosing your *Personal Information* to other companies or entities with whom we are associated whether by way of shareholding, partnership, joint venture or the like), and will be required to transfer your *Personal Information* to applicable *Insurers*. We may process your *Personal Information* both inside and outside South Africa insofar as required for the execution, performance or termination of the *Services*. As a condition to soliciting the *Services*, you expressly and voluntarily consent and authorise us to Process your *Personal Information* as contemplated in this clause in accordance with the requirements of *POPIA*. We will comply with all the Data Protection Laws enacted in the Republic of South Africa.

5 CLIENT RESPONSIBILITIES

5.1 Authorised Representative

5.1.1 You warrant that the Director, Officer, Partner or other employee that will represent you in your dealings with us, is duly authorised to do so. We will confirm all instructions in writing by letter, e-mail or facsimile to your authorised representative. Written instructions may also be recorded in the minutes following any meetings or discussions with you.

5.2 Duty of Disclosure to Insurers and Duty of Good Faith

5.2.1 Please take note that a *Policy* imposes onerous duties upon prospective insured parties 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 *Policy* is concluded, any "material" circumstances or information that may in any way affect the risk and, in turn, the decision of the Insurer to insure the risk. The obligation of disclosure includes but is not limited to material circumstances of which you are aware; it extends to those circumstances of which you ought to be aware in the ordinary course of your business. This obligation continues throughout the duration of any *Policy*.

5.2.3 You are responsible for ensuring that we have all the material information, documents and facts that should be disclosed to Insurers.

5.2.4 If there is any doubt as to whether or not a circumstance or information is material to the risk, we recommend that you inform us of it in writing.

5.2.5 If there is any breach of duty to act in utmost good faith or failure to disclose any material circumstance or information to Insurers, the Insurers will be entitled to void the *Policy* from inception or reject your claims under the insurance policy. In effect, this means Insurers are entitled to act as if the *Policy* had never existed and to seek recovery of all claims already paid under that *Policy*, although they would be obliged to repay the premium.

5.2.6 The duties of utmost good faith and full disclosure apply at renewal, extension, or amendment of any *Policy*. 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.

5.2.7 You undertake to ensure that all the information provided to us is true and correct.

5.2.8 As referred to in clause 4.2 above, we cannot be held responsible for any material information that is not disclosed to us as your Intermediary. You indemnify and hold us harmless for any loss or damages suffered by us as a result of incorrect or incomplete information and documents furnished to us.

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. We cannot complete or sign the form on your behalf.

5.3.2 In completing a proposal form, claim form or other document relating to an insurance policy, the accuracy of all answers, statements and/or information is your sole responsibility, and you indemnify us against any liability in this regard.

5.4 Risk Information

5.4.1 You will be required, with effect from the *Signature Date* and on an annual basis, 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 the initial cover or renewal terms from *Insurers* and re-insurers.

5.4.2 We will provide guidance and advice on the nature of the information required.

5.4.3 Your attention is drawn to the fact that, should the subject matter of the insurance or the circumstances affecting it, or the risk insured, be altered in such a way as to increase the risk insured by the *Policy*, the *Policy* can be voided, unless the *Insurer* was given prior written notice thereof and 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.

6 PLACEMENT OF INSURANCE

6.1 Instructions

Any placement of insurance cover by us on your behalf will be implemented based on your specific instruction(s), which must be recorded in writing.

6.2 Provision of Insurance Premium Costings

6.2.1 When providing a quotation for the placement of your insurance coverages, we will make every reasonable endeavour to ensure its accuracy and that we can place it at the quoted price.

6.2.2 In cases where we are requested to provide estimated costs of insurance cover without approaching the market, we will be unable to confirm the final premium until we have agreed the costings with Insurers.

6.2.3 We will inform you of the premium required by *Insurers*, the terms and conditions and the scope of coverage. Payment is due upon presentation of our invoice, or where paid on a monthly basis, on presentation of the debit order against your bank account.

6.3 Binding of Cover

Cover will be placed on your specific instruction and will only be in force once it has been accepted and confirmed by the *Insurer*.

6.4 Mid-term amendments

6.4.1 If you require any changes to your insurance covers please contact us immediately, and we will use all reasonable endeavours to negotiate the changes required.

6.4.2 Notice to us of changes required does not mean that cover is automatically in place. You acknowledge that the changes to cover will only be effective upon acceptance of such changes by the *Insurer*.

6.4.3 In view of our statutory record-keeping obligations, any instructions in this regard and/or material changes must be agreed to by both *Parties* and be confirmed in writing.

6.5 Confirmation of Cover

6.5.1 We will confirm that we have placed cover or effected your required changes within *7 Business Days*. We will confirm in writing the scope of cover, explain specific terms and conditions which may apply and give you the names of the *Insurers* with whom the insurance has been placed. This will usually be sent to you within 45 days of inception of cover.

6.5.2 We will send you a policy document and/or cover note within 60 days of inception of cover. The *Policy* sets out the various terms, conditions, warranties and exclusions relating to the cover. In the event of a claim, it is the only document that can be used to determine whether or not a claim is payable and the applicable terms, conditions and limits.

6.5.3 Whilst we will endeavour to ensure that the *Insurer* has given proper effect to your requirements, it is your responsibility to ensure they are correct and meet your requirements. If you identify any requirements that have not been met, we should be informed in writing immediately.

6.5.4 You further undertake to carefully read all confirmations of cover, schedules, *Policies* and other documents as soon as received to ensure that you fully understand the scope of insurance cover provided as well as all other terms and conditions. In the event that you do not understand any of the terms of the insurance cover provided or you require further clarity in respect thereof, you should immediately contact us to obtain clarity.

7 PAYMENT OF PREMIUM AND FEES

7.1 You are responsible for the timeous payment of the premium to the *Insurer* and fees to us in accordance with the *Policy* terms and conditions read together with any other policy or premium or fee documentation. It is not our policy to fund the payment of premium on behalf of our clients to *Insurers*. Failure to pay your premium on or before the date contractually required in the *Policy*, may result in the *Insurer* cancelling the insurance policy. In this regard, we shall have no liability to you whatsoever by reason of the *Insurer's* cancellation of insurance cover due to late payment or non-payment of premiums.

8 CLAIMS

- 8.1 Claims, losses or any circumstances which could give rise to a claim under any *Policy* should be notified to us as soon as possible in writing, and within the time limit specified in the *Policy*. Any notification to us should include all material facts concerning the claim. 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.
- 8.2 The settlement and payment of your claim will depend on us receiving the claim payment from the *Insurer*, where you have authorised us in writing to collect such monies on your behalf. You acknowledge that the collection of payments from overseas *Insurers* may take longer.
- 8.3 The Client acknowledges that settlement payments in respect of a claim paid by *Insurers* is the sole responsibility of the *Insurer*. The Client indemnifies and holds the Intermediary harmless for non-payment of an admitted claim by *Insurers* and any interest payable on delayed or outstanding claim payments.
- 8.4 It is our policy to conduct claims negotiations and use our reasonable endeavours to secure interim settlements from *Insurers* during the process of settling the claim. We will provide this service as long as we are your appointed Intermediary. We reserve the right to charge you a fee to manage the settlement of outstanding and/or run-off claims, should you terminate our appointment as contemplated in this *TOBA*, before such claims are finalised.

9 FINANCIAL SECURITY OF RISK CARRIER

- 9.1 It is our policy to place your business only with reputable and creditworthy insurers and re-insurers. We do not accept responsibility for, nor guarantee, the future solvency of these insurers or re-insurers or their ability to pay claims.
- 9.2 In order to place risks fully or improve terms and conditions of cover, you acknowledge that it may be necessary to place risks with overseas markets. In these circumstances, we must abide by regulations set out in the *Insurance Act* and the ability to obtain and enforce any judgment with an overseas placement may be more expensive and difficult.
- 9.3 If you require information about any of the *Insurers* or have specific instructions in this respect, please liaise with us.
- 9.4 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.

10 DELEGATION

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

11 REFERRALS TO THIRD PARTIES

11.1 In the event that we refer you to a third party for *Advice* or *Intermediary Services* that do not form part of your non-life insurance needs, we undertake to take all reasonable steps to ensure that such third parties are licensed as *Financial Services Providers*. In this regard, we shall have no liability to you whatsoever by reason of the third party's lack of authorisation, negligence or otherwise when rendering any services to you and you acknowledge that its action for such will lie solely against the third party.

12 INDEMNITY

12.1 We confirm that we currently have professional indemnity and fidelity guarantee insurance cover. These covers are renewed annually, and we will notify you if, at any stage, we are unable to procure such insurances.

12.2 In the event that you may suffer any loss or damage arising out of or in any way related to our performance or non-performance of *Services* rendered to you in terms of this *TOBA*, whether arising out of negligence or any other cause, our total aggregate liability shall be limited to a maximum of R1 million. We shall not under any circumstances, be liable to you for any indirect, consequential or economic loss nor for any punitive damages whatsoever arising under or in relation to this *TOBA* or any part of it. You may, in writing, request that the maximum amount of our liability be increased, we will however charge you a premium commensurate with the cost for the increased limit of liability.

12.3 The provisions of this clause shall survive the termination of this *TOBA* for any reason.

13 TERMINATION OF OUR APPOINTMENT

13.1 This *TOBA* may be terminated by either you or us by giving 60 days' notice in writing to the other, or immediately in any of the following events-

13.1.1 if either you or we commit a material breach of any of the terms of this *TOBA*, which is not remedied within 14 *Business Days*, except where such breach is due to a cause beyond the control of either you or us, or

13.1.2 if either you or we are liquidated, become insolvent, make a voluntary arrangement with creditors or have a receiver or administrator appointed.

13.2 Upon termination of this *TOBA*, we shall continue managing any outstanding claims work or complete any work in progress that we are reasonably able to do. Both Parties agree that an acceptable method of remuneration and conduct will apply, with specific reference to the following-

13.2.1 we will be entitled to retain all remuneration earned up to the date of termination, inclusive of any notice period;

13.2.2 other than in circumstances where there has been a material breach of this *TOBA* by us, and the mandate is cancelled within 6 months of inception or of renewal of the insurance policy, 40% of the annual remuneration payable and received shall be refunded;

13.2.3 where our mandate is cancelled after 6 months of inception or of renewal of the insurance policy, the full annual remuneration shall be regarded as having been properly earned by us and not refunded; and

13.2.4 we will return to you the original or a copy of your current policy documents, your risk information and claims history/experience.

13.3 The *Parties* agree all other information remains our property.

14 DISPUTE RESOLUTION

14.1 Any and all disputes arising from or in connection with this *TOBA* (including: (a) the interpretation of; (b) the carrying into effect of; (c) any of the *Parties*' rights and obligations arising from; (d) the validity of this *TOBA*), other than where an interdict is sought or urgent relief be obtained from a court of competent jurisdiction, shall be finally decided by arbitration in terms of the commercial rules of the Arbitration Foundation of Southern Africa (or its successor-in-title).

14.2 The appointment of the arbitrator shall be agreed by the *Parties* in writing within 7 (seven) days after the arbitration has been demanded, failing which (and at the request of either of the *Parties*) the arbitrator shall be chosen by the Chairperson (or his nominee) for the time being of the Arbitration Foundation of Southern Africa (or its successor-in-title) who, in making his appointment, shall have regard to the nature of the dispute. If the aforesaid Chairperson fails or refuses to make the nomination, either *Party* may approach the High Court of the Republic of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.

15 COMPLAINTS

15.1 Should the Client have any complaints relating to the *Services* rendered by the Intermediary to the Client, the Client should contact the Compliance Officer of the Intermediary:

15.1.1 Compliance Officer:

Horizon Compliance (Pty) Ltd / Advocate Adriaan van Wyk

First Floor, Ashlea Gardens Office Park, 180 Garsfontein Road, Ashlea Gardens, Pretoria, 0081

Tel: 072 351 1653

Adriaan@horizoncompliance.co.za

15.2 Should a complaint not be resolved satisfactorily, you may be entitled to refer it to the FAIS Ombud or the office of the Short-Term Insurance Ombudsman:

15.2.1 Ombudsman for Short-term Insurance

PO Box 32334, Braamfontein, 2017

Tel: 011 726 8900

Fax: 011 726 5501

15.2.2 Office of the FAIS Ombudsman

PO Box 74571, Lynnwood Ridge, 0040

Tel: +27 12 762 5000 / +27 12 470 9080

Fax: +27 86 764 1422 / +27 12 348 3447

Email: info@faisombud.co.za

Website: www.faisombud.co.za

16 GENERAL PROVISIONS

16.1 Communications between the Parties

All notices, demands and other oral or written communications given or made by or on behalf of either of the *Parties* to the other *Party* shall be in English.

16.2 Remedies

No remedy contemplated by this *TOBA* is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy is cumulative and in addition to, and not exclusive of, every other right or remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedies by either of the *Parties* does not constitute a waiver by such *Party* of the right to pursue any other remedy.

16.3 Entire Agreement

16.3.1 This *TOBA*, together with the *Letter of Appointment*, constitute the entire agreement between the Parties in respect of the subject matter hereof. To the extent that the Parties had previously entered into any agreement or agreements pertaining to any *Services*, this *TOBA* shall novate and supersede such agreement or agreements in their entirety.

16.3.2 In the event of a conflict between the *TOBA* and the *Letter of Appointment*, the *TOBA* shall take precedence.

16.4 Data Messages

Any reference to "writing" or "written" in this *TOBA* shall include email or other data messages and signed shall include electronic signature, as defined in the Electronic Communications and Transactions Act, 2002.

16.5 No Waiver

16.5.1 A waiver of any right or remedy under this *TOBA* or by law is only effective if given in writing and is not deemed a waiver of any subsequent breach or default.

16.5.2 A failure to exercise or a delay by a *Party* in exercising any right or remedy provided under this *TOBA* or by law does not constitute a waiver of that or any other right or remedy, nor does it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this *TOBA* or by law prevents or restricts the further exercise of that or any other right or remedy.

16.6 Third Party Rights

Save for any provision of this *TOBA* which expressly contemplates otherwise, no one other than a *Party* to this *TOBA*, their successors and permitted assignees, shall have any right to enforce any of its terms.

16.7 Severance

If any provision of this *TOBA* that is not material to its efficacy as a whole is rendered void, illegal or unenforceable in any respect under any law of any jurisdiction, the validity, legality and enforceability of the remaining provisions are not in any way affected or impaired thereby and the legality, validity and unenforceability of such provision under the law of any other jurisdiction are not in any way affected or impaired.

16.8 Change of Laws

16.8.1 If, at any time after the *Signature Date*, any *Change of Law* occurs, the *Parties* shall as soon as possible but not later than the commencement date of the *Change of Law*, change, amend, or alter any terms or conditions of this *TOBA* in order to comply with such legislation, rulings or regulations.

16.8.2 Any change which impacts this *TOBA* shall be agreed and documented in accordance with a change control procedure.

16.9 Applicable Law

This *TOBA* is governed by and shall be construed in accordance with the laws of South Africa.

16.10 Intellectual Property

We shall retain all title, copyright, patents and other intellectual property rights to all methodologies and documents used in our provision of the *Advice* and *Intermediary Services* to you.