

- 2.1.8 “**Companies Act**” means the Companies Act, 71 of 2008;
- 2.1.9 “**Confidential Information**” means any information, know-how, reports and documents, technical as well as economical and financial documents relating to the Insurer’s business, including, without limitation, books, instruction books, guidelines, application forms, the Insurer Data, the Products, information relating to the Benefits, Policies and the Insurance Business, Policy documents, premium rates and calculations and all financial information, which may come to the attention of the Intermediary pursuant to the terms and conditions of this Agreement;
- 2.1.10 “**Data Protection Laws**” means any and all Laws relating to or regulating the protection or Processing of data or Personal Information, direct marketing, or unsolicited electronic communications and which may be applicable in the Republic of South Africa from time to time, including POPI, the Consumer Protection Act, 68 of 2008, and the Electronic Communications and Transactions Act, 25 of 2002. The term “**Data Protection Legislation**” shall have a corresponding meaning;
- 2.1.11 “**Date of Signature**” means the date of signature of this Agreement by the last party signing;
- 2.1.12 “**Disaster Recovery Plan**” means the contingency and disaster recovery plan of the Intermediary, outlining how the Intermediary will manage demand surges, emergency and crisis situations, quality issues and any other factors that could disrupt the Services, to ensure that it continues uninterrupted and in compliance with the Applicable Law;
- 2.1.13 “**Disclosure Documents**” means all documents setting out the disclosures that the Insurer is obliged to make in terms of the Applicable Law, copies of which shall be provided by the Insurer to the Intermediary from time to time and shall contain the minimum information provided by the Insurer from time to time;
- 2.1.14 “**Documents**” means all marketing material, advertising material and brochures relating to the Policies, whether in electronic format or otherwise;
- 2.1.15 “**Effective Date**” means, notwithstanding the Date of Signature;
- 2.1.16 “**FAIS**” means the Financial Advisory and Intermediary Services Act, 37 of 2002;
- 2.1.17 “**Financially Distressed**” means “**financially distressed**” as such term is defined in section 128(1)(f) of the Companies Act and “**Financial Distress**” shall have a corresponding meaning;
- 2.1.18 “**Financial Sector Conduct Authority**” means the Financial Sector Conduct Authority, established in terms of the Financial Sector Regulation Act and its successor in title;
- 2.1.19 “**Financial Services Provider/ FSP**” means a financial services provider as defined in section 1 of FAIS;
- 2.1.20 “**Financial Sector Regulation Act**” means the Financial Sector Regulations Act, 9 of 2017;
- 2.1.21 “**Indemnified Parties**” means the Insurer, its officers, directors, shareholders, successors, and assigns;
- 2.1.22 “**Infrastructure**” means the information technology and telecommunications infrastructure and systems, including computer and telecommunications networks, equipment, hardware, software, middleware, firmware, data, databases, peripherals, terminals and components;
- 2.1.23 “**Insurance Act**” means the Insurance Act. 18 of 2017;
- 2.1.24 “**Insurance Business**” means the long- term insurance business of the Insurer;
- 2.1.25 “**the Insurer**” means Guardrisk Life Limited, registration number 1999/013922/06, a public company as defined in the Companies Act, a registered long-term insurer in terms of the Long-term Insurance Act;
- 2.1.26 “**Insurer Data**” means the Policyholder Data and all Insurer Materials, data or information relating to the Insurer, its staff, the Policyholders, the operations, Insurance Business or activities of the Insurer;
- 2.1.27 “**Insurer Materials**” means any and all (i) Materials that are owned or acquired by the Insurer before the Effective Date; (ii) Materials developed or acquired by the Insurer after the Effective Date independently of this Agreement and other than pursuant or related to the performance of the Services; (iii) Materials that are licensed to the Insurer by a third party; (iv) the Product(s); and (v) the Policies;
- 2.1.28 “**Intellectual Property Rights**” means all current and future rights in and to copyright, patents, know-how, trade secrets, Confidential Information, databases (including rights of extraction), internet domain names, website addresses, trademarks and designs (whether registered or unregistered), applications for registration of any of the foregoing and the right to apply for registration, and all rights and forms of protection of a similar nature or having equivalent effect to any of them which may subsist or be capable of protection existing anywhere in the world and any goodwill related to or arising from such right;
- 2.1.29 “**Intermediary**” means the Financial Services Provider with its registration number and FSP number stated on page 1.
- 2.1.30 “**Laws**” means all laws, statutes, regulations, standards, regulatory instruments, by-laws, rules, directives and orders, including all other requirements of any government or any government agency, body, authority, tribunal, regulator (including the Financial Services Board, the Prudential Authority, the Financial Sector Conduct Authority and the Independent Communications Authority of South Africa, or their successors) or court of the Republic of South Africa;
- 2.1.31 “**Long-term Insurance Act**” means the Long-term Insurance Act, 52 of 1998;
- 2.1.32 “**Loss**” means, without limitation, all claims, losses, damages, costs, charges, liabilities, penalties, interest, fines and expenses (including legal and other professional charges and expenses on an attorney and own client scale, and VAT thereon);
- 2.1.33 “**Materials**” means all products, goods, software, software documentation, documentation, literature, materials, tools, data, information, databases, modules, components, compilations of data, methodologies, processes, policies, procedures, techniques, models, configurations, protocols, routines, interfaces, reports, plans, notes, files, diagrams, manuals, templates, schematics, correspondence, designs, circuit designs, algorithms, specifications, records, equipment, hardware, servers, computers, platforms, computer code, derivative works, and works of authorship, and irrespective of the form and format of the foregoing and whether tangible or intangible;
- 2.1.34 “**Parties**” means the parties to this Agreement being the Insurer and the Intermediary and “**Party**” means any one of them as the context may indicate;
- 2.1.35 “**Personal Information**” shall have the meaning as ascribed to it in POPI;

- 2.1.36 “Policy / Policies” means the long-term insurance policies underwritten by the Insurer in respect of the Products listed in Annexe A;
- 2.1.37 “Policy Documents” means all documents to be issued by the Insurer to the Policyholders, which includes, but is not limited to the - policy agreement and Disclosure Documents containing the wording as provided or made available by the Insurer from time to time, or otherwise approved by the Insurer in Writing;
- 2.1.3.8 “Policyholders” means all existing and prospective Policyholders or customers of the Insurer and any persons entitled to be provided with the Benefits;
- 2.1.39 “Policyholder Data” means the Personal Information, information, records and data of the Policyholders, whether of a financial nature or otherwise, held by or under the direct or indirect control of, or in possession of the Intermediary for purposes of rendering the Intermediary Services in terms of this Agreement or which is Processed by the Intermediary in performing its obligations in this Agreement including, but not limited to-
- 2.1.39.1 contact details of the Policyholders;
- 2.1.39.2 current and historic claims information, records and data;
- 2.1.39.3 any other information which either the Insurer or the Intermediary is obliged by law to maintain, including without limitation, all records, registers, data messages, whether in electronic form or otherwise;
- 2.1.39.4 current and historic claims information, records and data;
- 2.1.39.5 “POPI” means the Protection of Personal Information Act, 4 of 2013;
- 2.1.39.6 “Processing” shall have the meaning ascribed to it in POPI and “process” or “processed” shall have corresponding meanings, as indicated by the context;
- 2.1.39.7 “Products” means the long-term insurance products of the Insurer underwritten in terms of the Policies as set out in Annexe A;
- 2.1.39.8 “Representative” means a representative as defined in FAIS;
- 2.1.39.9 “Services” means the services rendered by the Intermediary in terms of this Agreement;
- 2.1.39.10 “Termination Notice” means a notice of termination of this Agreement as provided for in clause 18 below;
- 2.1.39.11 “Termination Period” means the period specified in the Termination Notice after which period this Agreement will terminate and come to an end subject to the provisions of this Agreement;
- 2.1.39.12 “VAT” means value-added tax payable in terms of the Value Added Tax Act, 89 of 1991;
- 2.1.39.13 “Year” means calendar year
- 2.2 In this Agreement -
- 2.2.1 any Applicable Law as at the Date of Signature and as amended or re-enacted from time to time;
- 2.2.2 an expression which denotes any gender includes the other genders; a natural person includes a juristic person and *vice versa*; and the singular includes the plural and *vice versa*.
- 2.3 A Party includes a reference to that Party’s successors in title and assigns allowed at law.
- 2.4 “shall” and/or “will” and/or “must” used in the context of any obligation or restriction imposed on a party have the same meaning;
- 2.5 “include/ing” means “include/ing without limitation” and “including without limitation”.
- 2.6 “person” means any person, juristic person, trust or other entity whether or not having separate legal personality.
- 2.7 Reference to “days” shall be construed as calendar days and reference to “business day/s” shall be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time.
- 2.8 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 2.9 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 2.10 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination.
- 2.11 This Agreement and annexes hereto constitute and indivisible transaction and shall be interpreted as such.
- 3. Background**
- 3.1 The Insurer underwrites the Products in respect of the Policyholders in terms of the Policies.
- 3.2 The Insurer wishes to appoint the Intermediary to render the Services in respect of the Policies and the Intermediary wishes to accept such appointment and wish to conclude this Agreement, which sets out the terms and conditions of the Intermediary’s appointment to render the Services.
- 4. Duration**
- 4.1 This Agreement shall commence on the Effective Date and shall remain in force for an indefinite period, unless terminated in terms hereof.
- 4.2 This Agreement is entered into between the Parties in relation to the AOS cell captive only.
- 4.3 This Agreement supersedes all previous agreements (whether in writing or verbal) entered into between the Parties relating to the subject matter hereof, all of which are cancelled and replaced with effect from the Effective Date.
- 5. FAIS licence**
- The Intermediary hereby acknowledges that it is a material term and condition of this Agreement and that the Intermediary is at the Effective Date and shall for the duration of the Agreement remain a licensed Financial Services Provider.
- 6. The Services**
- 6.1 The Intermediary shall render intermediary services as defined in FAIS and the Long-Term Insurance Act to the Policyholders in respect of the Policies for the duration of this Agreement;

- 6.2 The Services include:
- Marketing and selling the Policies**
- 6.2.1 Marketing the Policies through the display and/or distribution of the Documents in electronic format or otherwise; and/or using such alternative means of marketing and communication as may be appropriate in the circumstances;
- 6.2.2 No promises or offer may be made to the Policyholder by the Intermediary on behalf of the Insurer other than those contained in the Policy or unless specifically agreed to by the Insurer.
- 6.2.3 Except where agreed in writing to the contrary, either Party shall be liable to the other for any Loss, expense or damage which a Party may sustain as a result of any negligent or willful act or omission on the part of the other or its employees or representatives, which Loss, expense or damage would not have been incurred but for the said act or omission;
- 6.2.4 The Insurer will provide marketing and advertising support as the Parties may from time to time agree in writing to promote the sale of the Insurer's Products.
- 6.2.5 Where marketing and/or sales are rendered telephonically the Intermediary shall ensure that all telephone conversations during which the Services are rendered comply with the Applicable Laws.
- 6.2.6 Where any Policy constitutes the replacement of a Policy, the Intermediary shall comply fully with the requirements of the Applicable Laws.
- Maintaining, servicing or otherwise dealing with Policies**
- 6.2.7 Maintaining, servicing or otherwise dealing with the Policies which includes without limitation -
- 6.2.7.1 assisting Policyholders in completing information required for the conclusion of a Policy;
- 6.2.7.2 providing completed application forms to the Insurer for Processing;
- 6.2.7.3 providing factual information about the Policies, and distributing and/or making available information reasonably required from time to time, in electronic format;
- 6.2.7.4 dealing with general queries of the Policyholders in respect of the Policies;
- 6.2.7.5 distributing the Policy Documents to the Policyholders who have concluded a Policy, the costs of which shall be borne by the Intermediary;
- 6.2.7.6 ensuring that all Documents, Policy Documents and information received, Processed and/or collected on behalf of the Insurer are kept and stored in accordance with the Applicable Law and made available to the Insurer as and when it requires such access.
- 6.2.8 The Insurer shall not be obliged to accept liability for any application for cover which does not comply with its stipulated criteria.
- 6.2.9 The Intermediary must ensure that no blank or partially completed forms in connection with any transaction is signed by a Policyholder or potential Policyholder. If this has occurred, or the forms have been filled in by another person, the Intermediary must avoid concluding that transaction.
- Premium Collection**
- 6.2.10 The Intermediary shall, on written authorisation by the Insurer, collect premiums on behalf of the Insurer in compliance with the Applicable Law.
- 6.2.11 The Intermediary shall ensure that it obtain all approvals, licenses and guarantees required in terms of the Applicable Laws prior to collecting premiums on behalf of the Insurer.
- 6.2.12 Premiums collected by the Intermediary will be the property of the Insurer and will be paid into a specified Intermediary trust account, held in the name of the Insurer, with such bank as the Insurer may specify from time to time.
- 6.2.13 The Intermediary will at all times be fully and solely responsible for the management of this trust account and shall as fiduciary of the Insurer duly account to the Insurer and shall in addition without limitation be liable for any shortages, discrepancies and errors therein caused by or ascribable to the Intermediary or any of its employees, officers, agents or representatives acting on behalf of the Intermediary.
- 6.2.14 At the end of every month, the Intermediary must:
- 6.2.14.1 Provide to the Insurer, data of collected premiums and pay the premiums to the Insurer on or before the last business day of the month following the collection;
- 6.2.14.2 Record every premium due that is not paid;
- 6.2.14.3 Notify Policyholders of unpaid monthly premiums within 5 (five) business days from the due date;
- 6.2.14.4 Send Policy lapse notices to the Policyholder within 5 (five) business days of the lapse of a Policy;
- 6.2.14.5 Record, subject at all times to the provisions of clauses 6.4, 8.2, 8.3 and 15.1, lapses on the Intermediary system to ensure that no premiums are requested after the lapse date.
- 6.3 In respect of claims, the Intermediary shall assist the Insurer as follows:
- 6.3.1 as soon as possible upon the Intermediary being so advised, notify the Insurer of any claim intimated.
- 6.3.2 render assistance where possible to effect settlement of the claim; and
- 6.3.3 must pass on to the Insurer any claim information or documentation given by or on behalf of the Policyholder.
- 7. Annual Policies**
- 7.1 Definitions
- For the purpose of Annual Policies, "Due Date" in relation to a premium means:
- 7.1.1 In the case of a new Policy - the inception date of the Policy.
- 7.1.2 In the case of an existing Policy which has been renewed - the renewal date of the Policy.
- 7.1.3 In respect of the Policy where there are instalments - the instalment date specified in the Policy.
- 7.1.4 In respect of an Endorsement to the Policy - the first day of the month following the date on which the Endorsement became effective.
- 7.2 Premium payments
- 7.2.1 The Intermediary agrees that premiums in respect of Annual Policies must be received by the Intermediary on the Due Date.

- 7.2.2 In the event of premiums not being received by the Intermediary on Due Date or within the statutory prescribed grace period after the Due Date, no cover will be provided and the Policy will be voidable.
- 7.2.3 Once it has received premiums on behalf of the Insurer, the Intermediary undertakes to:-
 - 7.2.3.1 Close off records of premiums received not later than the last day of the month during which premiums were received.
 - 7.2.3.2 Pay the amount of such premium to the Insurer within 15 (fifteen) days of the last day of the month referred to in sub-clause 7.2.3.1.
 - 7.2.3.3 Simultaneously furnish the Insurer with a detailed payment bordereau in respect of the payments.
- 7.2.4 With regard to Monthly Policies (or Annual Policies paid monthly), premiums shall be payable in accordance with the debit order arrangements agreed between the Insurer, the Intermediary and the Policyholder.
- 7.3 Hold covered agreement
 - 7.3.1 The Insurer agrees to provide cover in order to afford the Intermediary additional time to complete invoicing and collection of the premium for a period of time ("the hold covered period") during which the Intermediary has not received premiums from the Policyholder. In such instances the following terms shall apply.
 - 7.3.1.1 The Insurer will allow the Intermediary 45 (forty five) days credit for payment of premiums due on any. The hold covered period will be calculated:
 - 7.3.1.1.1 in respect of a Policy for which a single premium must be paid, from the inception date or renewal date of the Policy in question;
 - 7.3.1.1.2 in respect of a Policy for which premiums must be paid monthly, quarterly or biannually, from the due date to which the premium in question relates;
 - 7.3.1.1.3 if an endorsement varies terms of a Policy, from the effective date of the endorsement; and
 - 7.3.1.1.4 if adjustment premiums become due on a Policy subject to declaration, from the date that the declaration is due.
 - 7.3.2 The Policyholder is required to pay the premium to the Intermediary as soon as possible after presentation of invoice.
 - 7.3.3 In the event of the Intermediary not having received such premium during the hold covered period or within the statutory prescribed grace period, no cover will be provided and the Policy will become voidable from due date unless the Insurer agrees in writing to extend the hold covered period for a specified term.
 - 7.3.4 The hold covered agreement shall apply equally to both new and renewal business.
 - 7.3.5 Third party financiers shall under no circumstances have any access to or entitlement to avail themselves of the hold covered facilities that may from time to time be extended to the Intermediary.

7.3.6 **Infrastructure**

- 7.4 The Intermediary warrants that it shall, at all times for the duration of this Agreement, have the necessary Infrastructure, governance, risk management systems, information technology systems and internal control systems in place as required in terms of the Applicable Laws in order to render the Services on behalf of the Insurer.
- 7.5 The Intermediary shall, have an Infrastructure which is able to integrate with the infrastructure of the Insurer to the extent that it allows to the Insurer unrestricted access of up to date, accurate and complete Insurer Data maintained and Processed by the Intermediary in the performance of the Services.
- 7.6 The Intermediary must ensure that its Infrastructure is capable of electronically sharing all data necessary for compliance with the Applicable Law.

8. Ownership of Insurer Data and data protection

- 8.1 The Parties agree that all Insurer Data as well as all information relating to the Services and the Insurance Business in respect of the Policies, shall belong to the Insurer, shall be held by the Intermediary, and shall be provided to the Insurer upon demand.
- 8.2 The Intermediary shall provide the Insurer unrestricted access as and when such access is required, to all such information, which includes, without limitation, the Policyholder Data.
- 8.3 The Intermediary will be required to process Policyholder Data for purposes of providing the Services and shall, when processing the Policyholder Data, comply with the provisions of the Applicable Laws.
- 8.4 The Intermediary must:
 - 8.4.1 promptly and without delay notify the Insurer in the event of the Intermediary's non-compliance or breach of any applicable Data Protection Laws or any other obligations in this Agreement;
 - 8.4.2 on receipt of a written request from the Insurer, promptly supply all information, data and Materials required by the Insurer to assess and confirm the Intermediary's compliance with this Agreement. ;
 - 8.4.3 provide the Insurer with all assistance and co-operation requested by the Insurer in relation to any requests or complaints regarding Personal Information or Policyholder Data;
 - 8.4.4 immediately notify the Insurer where there are reasonable grounds to believe that the Insurer Data has been breached. In such event, the Intermediary must immediately: (i) comply with all instructions and directions given by the Insurer, (ii) take all measures necessary to determine the scope of the compromise and all information which may be requested by the Insurer, (iii) co-operate fully with the Insurer in relation to any notifications which may be made by the Insurer, (iv) co-operate fully with the Insurer in relation to any investigations that the Insurer may initiate or which may be initiated by an investigator or other authority;
 - 8.4.5 maintain and adhere to the Disaster Recovery Plan on the occurrence of any trigger event set out in the Disaster Recovery Plan
- 8.5 Any breach by the Intermediary of these obligations shall be deemed to be a material breach of this Agreement and shall entitle, the Insurer to terminate this Agreement on written notice to the Intermediary.

9. Accounting, Reporting and Reviews

- 9.1 The Intermediary acknowledges that it owes the Insurer a duty of good faith in performing the Services and shall, at all times, be obliged to account fully to the Insurer.
- 9.2 The Insurer shall monitor the Intermediary's performance in terms of this Agreement through the medium the Insurer deems fit.
- 9.3 The Insurer may be required to conduct a review on the Intermediary, with prior notice on such a date as agreed to between the parties. The Insurer shall measure the performance of the Intermediary against the performance criteria as set out in **Annexe B** and shall provide a weighted score against each criterion.

- 9.4 During such review, the following may be requested from the Intermediary by the Insurer in writing:
- 9.4.1 an undertaking from the Intermediary's compliance officer that compliance monitoring takes place and meets the requirements in the Applicable Laws;
- 9.4.2 an undertaking from the Intermediary's compliance officer that a risk management plan is in place and that the Intermediary's compliance report has been submitted in terms of the Applicable Laws;
- 9.4.3 audited financial statements;
- 9.4.4 quarterly financial reports within 30 (thirty) days after the end of each quarterly review period the first period to commence on the Effective Date, which financial reports shall contain such information as prescribed by the Insurer from time to time.
- 9.5 It is specifically recorded that such reviews are required by the Insurer for a variety of business purposes, including monitoring the effectiveness of the Insurer's own business systems.
- 9.6 Should, in performing such audits, the Insurer become aware of any problems, errors or shortcomings on the part of the Intermediary, the Insurer may inform the Intermediary thereof and the Intermediary shall take all necessary steps to rectify the problems, errors or shortcomings.
- 9.7 In the event that the Intermediary fails to meet these criteria, the Insurer shall be entitled to terminate the Agreement in accordance with the provisions of clause 13.
- 9.8 This clause shall survive any termination of this Agreement.
- 10. Complaints and legal proceedings**
- 10.1 All complaints lodged with the Ombudsman of Long-term Insurance and all legal proceedings in respect of the Insurer, the Policies and/or the Insurance Business shall be dealt with exclusively by the Insurer.
- 10.2 The Intermediary shall give all assistance and cooperation to the Insurer in respect of any legal proceedings, claims, potential claims, complaints or potential complaints in respect of the Insurer.
- 10.3 The Intermediary shall within 24 (twenty four) hours of receipt of a complaint, claim, a notification from the Ombudsman for Long-term Insurance or any other legal document pertaining to the Insurer, the Insurance Business and/or the Policies, provide a copy of such documents and any supporting documents to the Insurer.
- 10.4 The Intermediary will ensure that it has a documented Complaints Management Policy and Complaints Management Framework aligned with the Insurer's Complaint Management Framework which will be made available by the Insurer from time to time.
- 11. Commission**
- 11.1 The Intermediary may only be remunerated by way of the payment of commission in monetary form.
- 11.2 Commission payable shall at all times be paid subject to the Applicable Law.
- 11.3 The Intermediary shall, as consideration for rendering the Services, be entitled to payment of an initial and/or ongoing advice fee as set out in **Annexe D**.
- 11.4 The Insurer shall pay the advice fee on or before the 7th (seventh) business day of each month by means of an electronic transfer of funds to the bank account nominated by the Intermediary from time to time in Writing held at a bank in South Africa.
- 11.5 The Intermediary warrants that it shall disclose all commissions, remuneration and fees to Policyholders in accordance with the Applicable Law.
- 11.6 The Insurer shall at all times be entitled to set off any amount owing by the Intermediary to the Insurer resulting from any cause whatsoever. In the event that the Insurer is not able to apply set-off, it shall at all times be entitled to deduct any amounts owing to the Intermediary from accounts due by the Intermediary to the Insurer.
- 11.7 Any commission payable to the Intermediary by the Insurer shall only be paid for the duration of this Agreement. Upon termination of this Agreement for whatsoever reason, no further commission will be paid to the Intermediary by the Insurer.
- 12. Appointment of Representatives**
- 12.1 Without limitation to any other requirements contained in this Agreement, the Intermediary must:
- 12.1.1 in addition to any statutory prescribed duty, report to the Insurer, any material information which may affect its authorisation as an authorised financial services provider, or the authorisation of any of its Representatives;
- 12.1.2 at all times ensure that it, its key individuals and Representatives are and/or remains authorised as such in accordance with provisions of FAIS;
- 12.1.3 provide the Insurer with confirmation, as and when required, that it and its Representatives have obtained the requisite class of business and product specific training required in terms of FAIS.
- 13. Tax warranties and indemnities**
- 13.1 The Insurer shall at all times be entitled to rely on the documentation, financial information and any data provided by the Intermediary and that is required for the purposes of preparing any calculations and/or returns to be furnished to the South African Revenue Services ("SARS"), whether as part of a bordereau, report or otherwise, and the Intermediary indemnifies and holds the Indemnified Parties harmless against any damages, Losses or claims which it may incur or suffer due to errors or unexplained discrepancies in respect of or arising from the documentation, data or information provided as herein contemplated.
- 13.2 The Intermediary shall meet the requirements stipulated by the Insurer from time to time in order to comply with the Insurer's obligations to SARS. The requirements may be reviewed by the Insurer with reference to changes in Laws and may be amended by means of a written notice issued to the Intermediary.
- 13.3 The Intermediary undertakes that all information supplied by or to be supplied by it which may materially affect any tax risks in respect of the Services has been disclosed to the Insurer and is true and correct in every material respect.

13.4 **Warranties, indemnities and insurance**

- 13.5 Each Party represent and warrant to the other that -
- 13.5.1 it is duly constituted, organised and validly existing under the laws of the Republic of South Africa; and
- 13.5.2 each has all requisite corporate power and authority to conclude, execute, deliver and perform its obligations under this Agreement.
- 13.6 In addition to the warranties set out in clause 15.1, and without limitation to any provisions of this Agreement, the Intermediary warrants towards the Insurer as at the Date of Signature, the Effective Date and for the duration of this Agreement that -
- 13.6.1 it has the technical expertise required to perform the Services in terms of this Agreement;
- 13.6.2 it will implement and maintain adequate back-up, disaster recovery and business continuity systems, policies, controls, methodologies, and procedures within its business operations and in relation to its Infrastructure, facilities and equipment; it will not use the Insurer Materials for any purpose other than to the extent strictly necessary to provide the Services;
- 13.6.3 it has an adequate number of employees with the necessary skill, experience, qualifications, knowledge and know-how to render the Services in accordance with the provisions of this Agreement;
- 13.6.4 all information supplied which may materially affect the risk in respect of the provision of the Services has been disclosed and is true and correct in every material respect;
- 13.6.5 all information furnished to the Insurer relating to the financial affairs of the Intermediary is true and correct in every material respect;
- 13.6.6 it is at present and will at all times while it is an Intermediary be and remain solvent; and
- 13.7 the Services will be performed in accordance with the terms of this Agreement and subject at all times to the Applicable Law. The Intermediary undertakes to promptly notify the Insurer of any fact which is likely to affect the financial soundness or solvency of the Intermediary.
- 13.8 The Intermediary hereby, irrevocably and unconditionally, indemnifies the Indemnified Parties, for whose benefit this clause 15.4 constitutes a *stipulatio alteri* against all Losses suffered or claims instituted against the Indemnified Parties, resulting from or in connection with, directly or indirectly.
- 13.8.1 the breach of any warranty provided by the Intermediary in terms of this Agreement; and/or
- 13.8.2 any regulatory fines by any Regulatory body, levied against the Insurer due to the Intermediary's non-compliance with this Agreement; and/or
- 13.8.3 due to any act performed or failure by the Intermediary or any of its directors, officers, employees, subcontractors or agents relating to or in connection to this Agreement, including but not in any manner limited to negligent or fraudulent acts or failures; and/or
- 13.8.4 any inaccurate and/or incomplete data or reports received from the Intermediary, including any and all legal costs to be incurred in respect of any such Losses or claims on a scale as between attorney and own client.

14. Intellectual Property rights

- 14.1 The Intermediary shall not acquire any rights, title or interest of any kind in any Intellectual Property owned by the Insurer.
- 14.2 It is recorded that the rights, title, interest in and to the Insurer Materials are the Intellectual Property of the Insurer.
- 14.3 The Intermediary shall inform the Insurer, as soon as reasonably possible, of any infringement of the Intellectual Property, and shall further provide the Insurer with all assistance in order to protect the Intellectual Property of the Insurer.

15. Confidentiality

- 15.1 The whole of this clause 17 is subject to the provisions of clause 9.
- 15.2 The Parties hereby acknowledge that -
- 15.2.1 in the course of their involvement, Confidential Information belonging to the Insurer will be disclosed to and come to the attention of the other Party ("the Receiving Party");
- 15.2.2 in the event of the unauthorised disclosure of the Confidential Information, the Disclosing Party may suffer irreparable financial and other harm; and
- 15.2.3 the obligations contained in clause 17.1 shall not apply to Confidential Information which -
- 15.2.3.1 at the time of its disclosure is part of the public domain or which subsequently becomes, through no fault or failure of the Receiving Party, part of the public domain;
- 15.2.3.2 at the time of disclosure can be shown by the Receiving Party to the Disclosing Party, to have been in its possession prior to disclosure thereof by the Disclosing Party or to have come into its possession thereafter by disclosure of a third party.
- 15.3 The Receiving Party undertakes not to disclose, in whole or in part any Confidential Information to any third party without the prior written approval of the Disclosing Party.
- 15.4 The Receiving Party's confidentiality obligations hereunder shall remain in force for an indefinite period after the Date of Signature hereof.
- 15.5 The Receiving Party agrees that the sole purpose of the Confidential Information being disclosed or made accessible to it, is in connection with the performance of its duties in terms of this Agreement.
- 15.6 The Receiving Party undertakes not to use the Confidential Information for any other purpose or in any manner that is adverse or detrimental to the interest of the Disclosing Party.
- 15.7 In the event that this Agreement with the Disclosing Party is terminated or in any manner brought to an end, the Receiving Party shall return to the Disclosing Party all documents and other writings supplied by it to the Receiving Party and which constitute Confidential Information and the Receiving Party shall not retain any copies, extracts or other reproductions in whole or in part of such documents or other writings or any data contained in computers or stored on computer readable media of any kind prepared by the Disclosing Party or its employees, containing or based upon the Confidential Information.

- 15.8 The Disclosing Party shall be entitled, forthwith, without prior Written notice to the Receiving Party and without prejudice to any rights which it may be entitled, to -
- 15.8.1 obtain an interdict in any competent court to prohibit the Receiving Party to continue with the contravention of its undertakings in terms hereof;
- 15.8.2 obtain a court order in any competent court for the delivery of any documents, writings, copies, extracts or reproductions referred to in clause 17.7 above.
- 15.9 For the avoidance of doubt the Parties record and acknowledge that the Insurer Materials, the Policyholder Data as well as the details of the Products and Policies shall constitute the Confidential Information of the Insurer, without limitation to other Confidential Information of the Disclosing Party.
- 15.10 This clause 17 is severable from the rest of the Agreement and shall continue to bind the Parties should the Agreement be terminated.
- 16. Termination**
- 16.1 Either Party shall have the right to terminate the Agreement with 90 (ninety) days' written notice to the other Party for any reason whatsoever.
- 16.2 Notwithstanding any contrary provision in this Agreement, the Insurer shall be entitled to terminate this Agreement in writing upon 7 (seven) business days' notice (or such shorter period as set out in the Termination Notice) if at any time the Intermediary:
- 16.2.1 when the Intermediary's authorisation to act as a Financial Services Provider (FAIS license) becomes inoperative by virtue of lapsing, suspension or being withdrawn;
- 16.2.2 is Financially Distressed;
- 16.2.3 fails to meet a satisfactory rating after review by the Insurer or meet the required Performance Criteria in terms of **Annexe C**;
- 16.2.4 is provisionally or finally liquidated or wound-up or placed under Business Rescue or curatorship;
- 16.2.5 commits any act of insolvency in terms of the Insolvency Act 24 of 1936;
- 16.2.6 any of the assets of the Intermediary are subjected to judicial attachment and the Intermediary fails to procure the release of such assets from attachment within 60 (sixty) days of the attachment; or
- 16.3 a director, shareholder or manager of the Intermediary is convicted of an offence involving dishonesty Each of the notices and periods mentioned in clause 18.1 and 18.2 constitute a "Termination Notice" or a "Termination Period", as the case may be.
- 17. Breach**
- 17.1 Save as otherwise provided in this Agreement, should the Intermediary commit any breach of any provision of this Agreement, and should such breach be -
- 17.1.1 incapable of remedy; or
- 17.1.2 be capable of being remedied and should the Intermediary fail to remedy such breach within 14 (fourteen) days after receiving written notice from the Insurer requiring the Intermediary to do so,
- then the Insurer shall be entitled without prejudice to its other rights in Law, to terminate this Agreement immediately or to claim immediate specific performance of all of the Intermediary's obligations, whether or not due for performance, in either event without prejudice to the Insurer's rights to claim damages.
- 18. Effect of termination and step-in rights**
- 18.1 The Intermediary must, where a Termination Notice is given in terms of clause 18.1, notify the Policyholders at least 31 (thirty one) days before the expiry of the Termination Period, and provide proof to the Insurer.
- 18.2 Where a Termination Notice is given in terms of clause 18.2 the Intermediary must provide the Policyholders with the prescribed notice as soon as reasonably possible after the Termination Notice was given, and provide proof to the Insurer.
- 18.3 If a Termination Notice is given in terms of clause 18.1 the Intermediary shall -
- 18.3.1 continue to render the Services for the duration of the Termination Period in accordance with and in compliance with its obligations in terms of this Agreement;
- 18.3.2 not be entitled to any further fees, commission or remuneration of whatsoever nature payable in terms of this Agreement after expiry of the Termination Period; and
- 18.3.3 where the Intermediary is unable to fulfil its obligations in terms of the run-off during the period between the Termination Notice and the expiry of the Termination Period and beyond, the Insurer may withhold up to 100% of any amounts due to the Intermediary in order to make provision for costs in managing the run off.
- 18.4 If a Termination Notice is given in terms of clause 18.2, no further Services shall be rendered by the Intermediary with effect from the date of the Termination Notice and all Services and payment of commission will immediately be terminated. All amounts owing to the Insurer will also become due and payable.
- 18.5 In the event that a Termination Notice is given in terms of either clause 18.1 or clause 18.2, the Intermediary shall:
- 18.5.1 within 24 (twenty four) hours of receipt of the Termination Notice or expiry of the Termination Period as instructed in Writing by the Insurer, deliver all:
- 18.5.1.1 documentation and information relating to the Insurer Data, Confidential Information and all Intellectual Property in its possession (including without limitation the Insurer Materials);
- to the Insurer in such form and format as the Insurer may prescribe in Writing;
- 18.5.2 the Intermediary shall provide all reasonable assistance to the Insurer in facilitating a seamless transfer of the Services back to the Insurer (or to a replacement service provider).
- 18.6 If the Intermediary is unable or unwilling to perform any of its continuing obligations during the Termination Period the Insurer may exercise its step-in rights and itself perform and/or appoint another administrator to perform such obligations, and the Intermediary shall be liable for all administration costs and fees incurred by the Insurer in this regard.

- 21.1.3 The notice shall be deemed to have been duly given:
- 21.1.3.1 on delivery, if delivered to the Party's physical address in terms of either this clause 23.1 before 17h00 on a business day, or if delivered on a business day but after 17h00 on that business day, or on any day other than a business day, it will be deemed to have been given at 08h30 on the first business day after it was delivered;
- 21.1.3.2 on despatch, if sent to the Party's email address before 17h00 on a business day, or if sent on a business day but after 17h00 on that business day, or on any day other than a business day, it will be deemed to have been given at 08h30 on the first business day after it was sent,
- 21.1.3.3 unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.
- 21.2 **Entire contract**
This Agreement contains all the provisions agreed on by the Parties with regard to the subject matter of the Agreement and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.
- 21.3 **Change of law**
The Parties undertake to negotiate in good faith with one another to align and amend the terms and conditions of this Agreement where necessary to give effect to any requirement in an Applicable Law or any amendment to any Applicable Law.
- 21.4 **Variation, termination and waiver**
No contract varying, adding to, deleting from or terminating this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to Writing and signed by or on behalf of the Parties.
- 21.5 **Jurisdiction**
The Parties Consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg for any proceedings arising out of or in connection with this Agreement.
- 21.6 **Costs**
- 21.6.1 Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.
- 21.6.2 Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.
- 21.7 **Signature in counterparts**
This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

Annexe A

Products

- Living Annuity
- Linked Endowment

Annexe B

Performance criteria

The following will be considered performance criteria for the measuring of the performance of the Intermediary:

1. Loss Ratios
2. Regulatory Requirements
3. Market Conduct Requirements
4. Client Review process
5. Compliance Requirements
6. Legal Requirements
7. Claims Reviews
8. Complaints (internal escalations, Ombud Scheme, Regulator)
9. Overturn rulings (Ombud/Regulatory)
10. Lapse / Cancellation Ratios

Annexe C

Market Conduct Standards

1. The Intermediary will have appropriate policies and procedures in place to achieve the fair treatment of policyholders insofar as it is appropriate for their business model and the identified target market.
2. The fair treatment of policyholders encompasses achieving at least the following 6 outcomes:
 - (a) policyholders can be confident that they are dealing with a firm where the fair treatment of policyholders is central to its culture;
 - (b) products are designed to meet the needs of identified types, kinds or categories of policyholders and are targeted accordingly;
 - (c) policyholders are given clear information and are kept appropriately informed before, during and after the time of entering into a policy;
 - (d) where policyholders receive advice, the advice is suitable and takes account of their circumstances;
 - (e) policyholders are provided with products that perform as insurers or their representatives have led them to expect, and the associated service is both of an acceptable standard and what they have been led to expect; and
 - (f) policyholders do not face unreasonable post-sale barriers to change or replace a policy, submit a claim or make a complaint.

3. TCF information must be supplied to Guardrisk on request in a format required by Guardrisk from time to time that enables us to monitor the extent to which fair treatment of policyholders / members of a group scheme / potential policyholders / potential members of a group scheme is being achieved.
4. The Intermediary will monitor to ensure that the product and associated service is suitable to policyholders' needs, even where functions in the value chain are performed by other parties. Any instances of poor customer treatment that the Intermediary becomes aware of must be brought to the Insurer's attention immediately.
5. The Intermediary will have clear agreements in place regarding the division of responsibilities between the various parties / service providers in the relevant Guardrisk value chain to ensure fair treatment of policyholders.
6. The Intermediary will monitor the published decisions of the FAIS Ombud, guidance from the FSCA and other relevant information sources, to ensure that controls and practices in relation to TCF remain relevant and effective.
7. The Intermediary agrees that the above mentioned requirements do not constitute an exhaustive list and will ensure that appropriate steps are taken to ensure that the requirements of this annexe meets the approval of the applicable authority and /or legislation as required from time to time.

Annexe D

Commission

- No commission is paid on this product.
- The FSP may, through agreement with their client, charge an initial and/or ongoing financial advice fee according to the table below.

Living Annuity

1. Initial advice fee with a maximum of 1.5% and/or
2. Ongoing annual financial advice fee (Calculated as a percentage of the daily market value of the investment) with a maximum of 1% per annum.

Linked Endowment

1. Initial advice fee with a maximum of 3%. Paid up front and once off.