

VISION UNDERWRITING LIMITED

- AND -

[INTERMEDIARY]

TERMS OF BUSINESS AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 2010

BETWEEN:

- (1) **VISION UNDERWRITING LIMITED**, a UK-registered company (company number 04451375) whose registered office is at 3rd Floor, Two Minster Court, Mincing Lane, London, EC3R 7YE (the “**Agency**”); and
- (2) **[INSERT FULL COMPANY NAME]**, a company incorporated in **[INSERT]** (registered number **[INSERT]**) whose registered office is at **[INSERT]** (the “**Broker**”);

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

BACKGROUND

- (A) The Agency is an insurance intermediary authorised by the UK Financial Services Authority (“**FSA**”) under registration number 305651 to carry on Insurance Mediation Activities in the Territory. The Agency is authorised by certain insurers to provide Products on their behalves.
- (B) The Broker is an insurance intermediary authorised by the **[INSERT]** under registration number **[INSERT]** to carry on Insurance Mediation Activities in the Territory.
- (C) The Broker wishes to introduce its clients to the Agency so that the Agency can consider whether to offer to provide Products to such clients. The Parties have agreed that the Broker will make such introductions on the terms and conditions set out in this Agreement.

OPERATIVE TERMS

1. Interpretation

1.1 In this Agreement, unless inconsistent with the context or unless otherwise specified, the following words and expressions shall have the following meanings:

- “this Agreement” means this agreement including the Schedule(s) hereto;
- “CASS” means the Client Assets sourcebook contained within the FSA Handbook;
- “Commission” means the commission due and payable to the Broker at the rates and times (if any) set out in the relevant Slip or as otherwise agreed in writing between the Parties in accordance with Clause 15;
- “Claim(s)” means any Policy claim, or fact or circumstance(s) which may give rise to a Policy claim, communicated by the Policyholder to the Broker;
- “Claims Money” means money of any currency held by the Broker in respect of a Claim;
- “Client Money” means money of any currency which, in the course of carrying on Insurance Mediation

Activities in accordance with this Agreement, the Broker receives and holds on behalf of its clients (but not on behalf of the insurer under the relevant policy);

“FSA”	means the UK Financial Services Authority;
“FSA Handbook”	means the handbook of rules and guidance issued by the FSA, as amended from time to time;
“Intellectual Property”	means any patent, invention or utility model rights, any copyright, design right, registered design or other rights of a similar nature and any trademarks, service marks, trade names, domain names, database rights of unfair extraction and reutilisation or other forms of intellectual property owned by the Agency or Insurer (in each case, in any part of the world, whether registered or not registered or registrable), and any applications for any of the aforementioned, and rights in any know-how, formulae, secret processes of information, rights in computer software and any other protected rights and assets and any licences and permissions of the Agency or Insurer in connection with the foregoing;
“Insurance Mediation Activities”	has the meaning given to such expression in the FSA Handbook;
“Insurer”	means an insurer which has authorised the Agency to provide products on its behalf and/or which is the insurer under a Policy;
“IUA”	means the International Underwriting Association of London;
“Policyholder”	means a legal entity to whom or which a Policy has been issued by the Agency;
“Policy”	means a policy of insurance issued by the Agency to a client of the Broker pursuant to the provision of the Services by the Broker under the terms of this Agreement;
“Premium”	means the money payable by the Policyholder under a Policy including tax on such money;
“Products”	means insurance cover made available by the Agency from time to time;
“Promotional Materials”	means any materials of whatever kind and in whatever form prepared or provided by the Agency to be used for the advertising, promotion and marketing of the Products;
“Services”	means the services to be provided by the Broker to the Insurer including but not limited to:

- a) the dissemination of Promotional Materials and the soliciting and receiving of submissions, proposals and applications for the Products in the Territory;
- b) the transmission of quotations, Policies of Insurance, endorsements, renewals and cancellations as authorised by the Agency;
- c) collecting Premium and remitting Premium to the Agency and, where it is market practice for a broker to do so, processing and paying taxes related to Premium on behalf of the Agency and/or Insurer;
- d) as soon as is reasonably practicable, notifying the Agency of any Claims; and
- e) assisting the Agency in the administration of (a) Claim(s) if expressly authorised by the Agency pursuant to Sub-Clause 3.4;
- f) remitting all Claims Money and Premium refunds due to Policyholders;
- g) promptly releasing and delivering to Policyholders all statutory policy documentation including but not limited to employer's liability certificates in order that Policyholders, the Agency and the Insurer will be in full compliance with all relevant laws and regulation; and
- h) promptly recovering from Policyholders all statutory policy documentation and/or promptly notifying Policyholders of the cancellation by the Agency and/or Insurer of statutory documentation in the event a Policyholder is in breach of the terms of a Policy.

"Slip"

means a document which is or is to form the basis of a Policy and which may incorporate details, amongst others, of administrative arrangements pertinent to the processing of the Policy and the amount and payment of Commission;

"Territory"

means the United Kingdom;

"Trust Bank Account"

means a statutory or non-statutory trust bank account opened in the name of the Broker with an approved bank (as defined in the FSA Handbook) in the Territory in accordance with CASS 5;

"United Kingdom"

means England, Scotland, Wales and Northern Ireland, excluding the Channel Islands and the Isle of Man.

1.2 For the avoidance of doubt, if there should be any conflict between the terms of this Agreement and the terms of a Slip, the terms of the Slip will prevail.

2. **Commencement and duration**

This Agreement comes into effect on its date and shall continue in effect until terminated in accordance with Clause 11. The terms of this Agreement supersede the terms of any other terms of business agreement already in place between the Agency and the Broker.

3. **Services**

3.1 The Broker hereby agrees to provide the Services to the Agency and the Agency hereby authorises the Broker to do so.

3.2 Nothing in this Agreement shall restrict the Agency's right to conduct activities identical or equivalent to the Services either on its own behalf or through other brokers.

3.3 Except as provided by Sub-Clause 6.3, the Broker shall act as agent of Policyholders or prospective Policyholders and the Agency acknowledges that nothing in this Agreement shall prejudice the Broker's duty to act in their best interests.

3.4 The Broker is not authorised to bind or commit the Agency or the Insurer to any Policy or other contractual obligation, issue Policies or endorsements, or defend, dispute or settle Claims unless otherwise expressly authorised to do so in writing by the Agency.

4. **Broker's obligations**

4.1 The Broker warrants that it is authorised by the FSA to carry out Insurance Mediation Activities. The Broker shall be responsible at its own cost and expense for obtaining and maintaining all authorisations licences, permits and approvals which are necessary or advisable for it to perform the Services and its other duties hereunder.

4.2 The Broker shall inform the Agency immediately in writing if at any time during the period of this Agreement:

4.2.1 the FSA suspends, varies or withdraws the Brokers' authorisation;

4.2.2 the Broker otherwise ceases in any way to be authorised by the FSA to undertake Insurance Mediation Activities;

4.2.3 the FSA initiates an investigation or enforcement action is taken in respect of the Broker (or its employees, agents, representatives or sub-contractors); or

4.2.4 any of the events set out in Sub-Clause 11.2 apply to the Broker.

4.3 The Broker undertakes to maintain in force at all times professional indemnity insurance in accordance with the requirements prescribed by the FSA from time to time and the Broker shall if requested by the Agency produce to the Agency the relevant schedule or policy of insurance relating thereto.

4.4 Subject to any legal or regulatory requirement dictating a longer period and subject to any obligations of confidentiality which the Broker owes to Policyholders, the Broker shall:

4.4.1 maintain for a minimum of six (6) years an accurate record of all communication, documents, information and correspondence entered into between the Agency and the Broker in relation to business transacted or to be transacted in accordance with this Agreement;

4.4.2 maintain for a minimum of six (6) years full and accurate books of account of business transacted pursuant to this Agreement and keep detailed management and accounting records of such business;

and shall permit the Agency or its duly authorised agent on reasonable notice during business hours to inspect and audit any such accounts, records and documents referred to in this Clause and to take copies thereof at its own expense.

4.5 The Broker shall not represent itself or hold itself out as an agent of the Agency or the Insurer for any purpose other than in accordance with Clause 6 or pledge the Agency's credit or give any condition or warranty or make any representation (whether oral or written) on the Agency's or the Insurer's behalf to any Policyholder, prospective policyholder or any other third party. Further, the Broker shall not make any promise, representation or statement with reference to the Products beyond those contained in the Promotional Materials supplied by the Agency or otherwise incur any liability on behalf of the Agency or purport to do so.

4.6 The Broker agrees to promptly pass to the Agency any material information notified to it and relating to this Agreement and its subject matter, including without limitation any information known to it which would or could reasonably be expected to influence the Agency's or Insurer's decision regarding insuring any risk. Notification by the Policyholder of such information to the Broker does not constitute notification to the Agency or the Insurer.

4.7 The Broker shall indemnify the Agency and keep it indemnified from and against any liabilities including but not limited to legal expenses incurred by the Agency as a result of:

4.7.1 the Broker breaching any term of this Agreement or any laws or regulations from time to time in force in the Territory; or

4.7.2 the Broker carrying out any acts which are not expressly authorised under the terms of this Agreement or expressly authorised by the Agency in writing pursuant to Sub-Clause 3.4 of this Agreement;

4.7.3 the Broker carrying out its obligations hereunder negligently;

4.7.4 the Broker holding itself as agent for the Agency or as having any other authority on behalf of the Agency which the Agency has not granted to it.

5. **Marketing**

5.1 The Agency may, at its sole discretion, provide Promotional Materials to the Broker, which the Broker may pass to prospective Policyholders.

5.2 The Agency or the Insurer shall own the Intellectual Property in all Promotional Materials relating to the Products, but the Broker has a royalty free non-exclusive right to use it in order to carry out the Services under this Agreement.

6. Premium collection and Claims payments

- 6.1 Unless otherwise expressly agreed from time to time between the Agency and the Broker either in the Slip or in writing accordance with the provisions of Clause 15, the Broker shall as part of the Broker's obligations to provide the Services be responsible for collecting Premium in respect of all Policies and Policy endorsements issued by the Agency from time to time in respect thereof and the Broker will remit Premium to the Agency no later than sixty (60) days from the date the Broker invoices the Policyholder for the Premium. The Agency confirms that it is authorised by the Insurer to hold Premium as agent for the Insurer. The Broker shall invoice the Policyholder for the Premium no later than five (5) business days after the inception date of the Policy.
- 6.2 Where the Broker uses the facilities of the IUA to remit Premiums and to pay Claims, it will comply with all of the IUA's accounting and settlement procedures.
- 6.3 Where the Broker, either in accordance with this Agreement or under the terms of a further written agreement, holds:
- 6.3.1 Premium or other monies due to be paid to the Agency;
 - 6.3.2 refunds of Premium due to be paid to the Broker's client; or
 - 6.3.3 Claims Money or other monies due to be paid to the Broker's client,
- the Broker shall hold such monies as the agent of the Insurer, and the Broker shall inform Policyholders that it will receive such monies as agent of the Insurer. The Broker has no authority to permit any third party, sub-agent, or Appointed Representative to receive, hold, or pay any money on behalf of the Insurer, without the Agency's prior written consent.
- 6.4 Where the Broker holds Premium, Premium refunds and/or Claims Monies, such monies will be held by the Broker as agent for the Insurer, and the Agency, on behalf of the Insurer, hereby:
- 6.4.1 agrees that such monies shall be held in the Broker's Trust Bank Account and may be co-mingled with other monies held by the Broker in that account;
 - 6.4.2 where the Broker operates a non-statutory client money trust as contemplated by CASS 5.4, for as long as (and only as long as) it may be required by CASS, consents to the Insurer's interests in the monies held in such Trust Bank Account being subordinated to the interests of the Broker's policyholder clients, but not further or otherwise; and
 - 6.4.3 agrees and acknowledges that any interest earned on the Trust Bank Account shall belong to the Broker, who shall be entitled to withdraw such interest at any time, subject to FSA rules or requirements and to any reimbursement or refund of such interest which the Insurer may make to a Policyholder.
- 6.5 The Broker will procure that the bank which holds the Trust Bank Account has no rights by way of charge (whether fixed or floating) encumbrance, lien or right of set-off, compensation or retention against monies in such account at any time.
- 6.6 In the event that the Broker shall be unable to collect and remit Premium received from a Policyholder within the timeframe specified in Sub-Clause 6.1 above or in a timeframe otherwise agreed with the Agency or in accordance with the IUA's procedures as the case may be, the Broker shall promptly inform the Agency in writing. The Agency shall then inform the Broker in writing (without

prejudice to its right to contact the Policyholder direct and to collect Premium for its own account) either that:

6.6.1 the Insurer shall remain on risk for a specified period pending payment of Premium (but thereafter the Agency will be deemed to have cancelled the Policy and the Broker will immediately notify the Policyholder of such cancellation), or

6.6.2 the Agency has cancelled the Policy (and the Broker will immediately notify the Policyholder of such cancellation).

6.7 In the absence of prompt notification by the Broker to the Agency in accordance with Sub-Clause 6.6 that the Broker has failed to collect the Premium from a Policyholder, or if the Broker fails to immediately notify a Policyholder of the cancellation of their Policy under Sub-Clause 6.6, the Broker shall be responsible for payment to the Agency of the Premium in respect of such Policy.

6.8 Notwithstanding Sub-Clause 6.6, the Broker shall be responsible with immediate effect for payment to the Agency of the Premium due where the Agency agrees to a request from the Broker to make payment of a Claim before the payment to the Agency of the Premium due in respect of that Policy.

6.9 The Broker warrants that it will not do anything to prevent, hinder or prejudice the Agency's right to collect Premium for Policies in the circumstances set out in Sub-Clause 6.6.

6.10 For the avoidance of doubt unless expressly agreed with the Agency in accordance with Clause 15 the Broker shall not be entitled to any commission for Premium collected by the Agency.

6.11 Where the Broker holds Premium refunds, Claims Money or other monies due to be paid to the Policyholder, the Broker shall ensure that such monies are paid to the Policyholder promptly.

6.12 Where the Agency or Insurer has agreed to pay a Claim, the Broker shall be entitled to set-off the amount of Claims Money which has been agreed to be paid in relation to such Claim against any Premium which the Broker remits to the Agency.

7. Commission

7.1 The Broker shall be entitled to payment of Commission on Premium actually received by the Agency from the Broker on Policies issued or renewed by the Agency. The Broker shall be entitled to debit Commission from Premium held in the Trust Bank Account once the relevant Premium has been received by the Broker and paid into the Trust Bank Account. The Agency shall be entitled to set-off Commission due to be repaid by the Broker to the Agency and Premium which is due to be paid to the Agency but which remains unpaid against Commission payable to the Broker pursuant to this Sub-Clause. If any dispute arises as to the amount of Commission payable by the Agency to the Broker, such dispute shall be referred to the Agency's auditors for settlement and their certificate shall be binding on both parties.

7.2 The Broker agrees to return promptly to the Agency Commission previously paid to it pursuant to Sub-Clause 7.1 above on Premiums reimbursed to the Policyholder under any Policy for any reason whether the reimbursement is made during the term of this Agreement or thereafter.

7.3 In the event that the Broker ceases to be the Policyholder's broker of record during the term of a multi-year Policy, the Broker shall be entitled only to

Commission on a pro-rata basis for the period for which the Broker was the Policyholder's broker of record and, notwithstanding that in respect of a multi-year term Policy, Commission is earned annually. If Commission has been paid to the Broker for the entirety of a multi-year Policy, the Broker shall reimburse the balance of the Commission which the Broker has thus not earned to the Agency within thirty (30) days of ceasing to be the Broker of record.

7.4 In the event that the Broker ceases to be the Policyholder's Broker of record during the term of an annual Policy, the Broker shall nevertheless be entitled to the entire Commission payable by the Agency pursuant to Sub-Clause 7.1 above.

7.5 The details of other remuneration payable to the Broker and/or any other arrangement or agreement in relation to Commission, if any, shall be provided for in accordance with Clause 15.

8. **Electronic communications**

8.1 The Agency and the Broker shall each accept the authenticity and integrity of all electronic communications which appear to be genuine and are in the ordinary course of business and agree to accord them the same status as would be applicable to a document, information or correspondence sent other than by electronic means, unless such electronic communications can be shown to have been corrupted or materially altered, whether as a result of technical failure or otherwise unlawfully or fraudulently made.

8.2 In the event that the Agency and the Broker wish to provide insurance quotations by electronic means, they shall determine the details of such provision and record these in writing in accordance with the provisions of Clause 15.

9. **Compliance and data protection**

9.1 Each Party shall comply with all legislation and regulations in force and which apply to this Agreement including, but without limitation, all FSA rules and requirements and FSA Guidance. The Parties shall comply at all times with their obligations under all applicable anti-bribery, anti-money laundering and sanctions laws and regulations.

9.2 The Parties will adopt and/or maintain procedures to ensure that each has in place arrangements for the identification and management of any conflicts of interest that may arise in relation to the conduct of this Agreement.

9.3 In this Agreement the terms "**Personal Data**", "**Data Processor**", "**Data Subject**" and "**Data Controller**" have the meanings given to them in the Data Protection Act 1998 ("**DPA**")

9.4 Each Party shall at all times comply with the DPA and in particular insofar as either Party (being the Data Processor) processes any Personal Data on behalf of the other (being the Data Controller):

9.4.1 the Data Processor shall only process the Personal Data for the purposes set out in this Agreement and act on the data Controller's or Data Subject's instructions in relation to the processing of that data;

9.4.2 the Data Processor shall ensure that it has appropriate technical and organisational measures in place against unauthorised or unlawful processing of Personal Data, and against accidental loss or destruction of, or damage to, Personal Data held or processed by it in compliance with obligations equivalent to those imposed on data Controllers under the DPA; and

9.4.3 the Data Processor shall keep the Personal Data confidential and observe the restrictions on and comply with its obligations as a Data Processor under the DPA.

10. Confidentiality

10.1 Both Parties shall treat as confidential all confidential information or documents in any form relating to the existence, terms or subject-matter of this Agreement or to Policyholders, Policies, or the clients, business, business introducers, accounts or finances of the other ("Confidential Information"), except to the extent that such information is in the public domain or acquired from another lawful source other than as a result of any breach of this Agreement. Neither Party shall disclose Confidential Information to any third party or use it for any purpose other than in connection with the subject-matter of this Agreement or any Policy or as may be required by law or by any governmental or regulatory authority or to enforce its rights under this Agreement. Further, each Party shall be entitled to disclose Confidential Information where appropriate on confidential terms to its insurers or reinsurers, brokers, actuaries, auditors, professional agents and advisers, directors, officers and employees, and affiliates.

10.2 The provisions of this Clause 10 shall survive and continue to apply for a period of five years after disclosure of the relevant information, notwithstanding any termination of this Agreement.

11. Termination

11.1 Either Party may terminate this Agreement by giving to the other not less than thirty (30) days written notice.

11.2 Either Party may terminate this Agreement with immediate effect by giving written notice:

11.2.1 if the other Party ceases to carry on its business or is no longer authorised by law or regulation to carry out its obligations under or in connection with this Agreement; or

11.2.2 if a receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the other Party, the other Party makes an arrangement for the benefit of its creditors generally or goes into liquidation; or

11.2.3 the other Party has breached a material provision of this Agreement and has not remedied such breach within 15 days of being given a written notice to do so by the terminating Party; or

11.2.4 the other Party does something that might jeopardise the terminating Party's legal or regulatory authorisation to carry out its obligations under or in connection with this Agreement.

11.3 The Agency may, for whatever reason, on notice to the Broker immediately suspend all or any part of any authority granted to the Broker under this Agreement.

11.4 In the event of termination of this Agreement, termination of a Policy or alteration to the terms and conditions of a Policy for whatever reason, the Parties undertake to act in good faith and use all reasonable endeavours to agree the text of a letter of notification to be sent to the Policyholder. The Agency reserves the right, at all times, to notify the Policyholder of the termination of this Agreement, termination of a Policy or alteration to the terms and conditions of a Policy.

12. Consequences of termination

- 12.1 Termination of this Agreement shall be without prejudice to the Agency's rights to receive Premiums or to the Broker's right to its Commission or other remunerations due in respect of Policies bound pursuant to this Agreement before its termination.
- 12.2 Upon termination of this Agreement the Broker shall not have any further authority to provide the Services.
- 12.3 Upon termination of this Agreement the Broker shall within thirty (30) days of the termination pay to the Agency all and any outstanding balances due to the Agency.
- 12.4 Upon termination of this Agreement the Broker shall not make any further use of the Intellectual Property or the Promotional Materials and shall forthwith deliver to the Agency, or destroy as the Agency may direct, any Promotional Materials in its possession unless the Agency agrees that they are required for the purposes of discharging outstanding obligations to Policyholders.
- 12.5 Nothing herein shall be construed or have effect as constituting any relationship of agent and principal between the Broker and the Agency. Upon termination of this Agreement for whatever reason the Broker shall not have any claims for damages or compensation of any nature whatsoever and shall merely be entitled to any outstanding Commission and other remuneration if any due to it.
- 12.6 For the avoidance of doubt Policies bound pursuant to this Agreement prior to termination of this Agreement shall run until their natural expiry and the Broker shall if requested by the Agency be obliged to continue to act in accordance with the provisions of this Agreement in respect of the administration of those Policies.

13. Ownership of expirations

13.1 Prior to termination

Unless the Agency becomes entitled to the use and control of expirations hereunder, the Agency shall not, without the Broker's prior written approval, use the records of the business the Agency obtains through the Broker to solicit the Broker's existing customers for other lines of insurance.

13.2 On termination

If upon termination of this Agreement the Broker has within thirty (30) calendar days of that termination accounted for and paid to the Agency all Premiums and other amounts that may be due to the Agency or for which the Broker may be liable or has given the Agency a bond satisfactory to the Agency guaranteeing the payment thereof, the Broker's records and the use and control of expirations shall remain the Broker's property and be left in the Broker's undisturbed possession; otherwise the right and title to the records and the use, control and ownership of expirations shall be vested in the Agency.

13.3 Dispute

For the purpose of the above Sub-Clause the Broker shall not be considered in breach of the Broker's obligation to account for and pay Premiums or other amounts due to Agency which the amount thereof is being reasonably disputed in writing and in good faith, provided the Broker has promptly accounted for and paid to the Agency all items about which there is no such dispute.

14. Miscellaneous

- 14.1 Any notice required or authorised to be given by the Agency or the Broker under the provisions of this Agreement shall be in writing and any notice or document relating to this Agreement may be served or delivered to the other Party addressed to the Compliance Officer at the address given at the start of this Agreement or at such other address as may be duly notified for any such purpose from time to time.
- 14.2 This Agreement may be amended, supplemented, superseded, cancelled and have any of its terms and conditions varied or waived provided that this is by an agreement in writing which is expressed to be either supplemental to or in substitution of this Agreement whether in whole or in part and which has been signed by or on behalf of the Agency and the Broker.
- 14.3 The failure or delay by either Party at any time to enforce any provision of this Agreement shall in no way affect its right thereafter to require complete performance by the other Party and the waiver of any breach of any provision shall not be taken or held to be a waiver of any subsequent breach of any such provision or a waiver of the provision itself or of any other provision. Any waiver of any such Clause or Sub-Clause must be by an agreement in writing in accordance with Clause 15 to be effective.
- 14.4 This Agreement shall be governed by and construed in accordance with the laws of England and the parties hereby agree to submit to the exclusive jurisdiction of the English courts.
- 14.5 If any provision or term of this Agreement shall become or be declared illegal, invalid or unenforceable, all other terms or provisions shall remain in full force and effect.
- 14.6 Neither Party shall assign or delegate any rights or obligations under this Agreement except with the prior written agreement of the other Party.
- 14.7 A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

15. Electronic trading

- 15.1 In the event that the Parties engage in business using an electronic trading facility provided by the Agency, the website terms and conditions and the privacy statement, applicable to that electronic trading facility shall be incorporated into, and form part of, this Agreement, and by using it, the Broker will confirm its understanding and acceptance of them.
- 15.2 Such website terms and conditions and privacy statement can be downloaded from the applicable electronic trading facility or obtained in hard copy from the Agency directly.

The Parties have caused this Agreement to be executed:

SIGNED by _____)
Name : _____)
Position : _____)
Date : _____)

on behalf of **VISION UNDERWRITING LIMITED**

SIGNED by _____)
Name : _____)
Position : _____)
Date : _____)

on behalf of the Broker

SAMPLE