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# MARKETING AND SERVICE CO-ORDINATOR / AGENCY AGREEMENT

between

CERTAINSURE UNDERWRITING MANAGERS (PTY) LTD  
(Licensed Financial Services Provider FSP: 47088)  
**(CERTAINSURE)**  
("The Underwriting Manager")

and

(.....)  
(Licensed Financial Services Provider FSP: .....)  
**("The Broker / Agent")**

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**MARKETING AND SERVICE CO-ORDINATOR AGREEMENT**

**1. PARTIES**

**1.1 CERTAINSURE; and**

1.2 .....

**2. INTERPRETATION**

2.1 The head notes to the clauses of this agreement are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.

2.2 Unless inconsistent with the context, the expressions set forth below shall bear the following meanings:

- “the Underwriting Manager            CERTAINSURE (Pty) Ltd
- “the broker                                the Broker who has been granted a short-term insurance agency by Certainsure Underwriting Managers(Pty) Ltd to sell insurance products on behalf of CERTAINSURE.
- “the Insurer/s                            Insurer/s who have mandated Certainsure (Pty) Ltd
- “the business”                            the business of marketing and service co-ordination of insurance products in conjunction with Certainsure
- “effective date”                           \_\_\_\_\_
- “insurance facility”                        all insurance policies underwritten and administered by CERTAINSURE on behalf of the Insurer
- “the Act”                                    the Short Term Insurance Act No. 53 of 1998 and any amendments thereto
- “Financial Services Provider As determined in the financial advisory and Intermediary Act No 37 of 2002 and any amendments thereto
- “PPR”                                        Schedule as per section 55 of the Short Term Insurance Act of 1998 and as published in the Government Gazette No. 22084 on 23 February 2001 and any amendments thereto
- “FAIS”                                        the Financial Advisory and Intermediary Act No. 37 of 2002
- “PI Cover”                                    Professional Indemnity Cover
- “CERTAINSURE”                            CERTAINSURE (Pty) Ltd
- “Marketing committee”                    A management committee consisting of representatives of Insurer/s, CERTAINSURE and the Broker, responsible for managing, marketing and service providing in respect of the Insurance facility.

“Marketing”	all activities relating to the effecting, maintaining and servicing of insurance policies by the Broker which are underwritten by CERTAINSURE in respect of the Insurance facility.
“policy / policies”	the policy contract of insurance cover, quoting, or administering of any / all client and client related insurance business.
“new business”	all insurance policies which forms part of the Insurance scheme and which have been placed on the scheme by the broker or on behalf of the broker.
“administer”	all insurance policies which forms part of the Insurance scheme and which have been placed on the scheme by the broker or on behalf of the broker.
“secure”	the completion and/or closing done of any Certainsure insurance proposal form by a Broker and or their employees.
“binding”	the accepting of any form of risk or cover, or the placing on risk of any form of cover.
“personal lines”	personal lines short term insurance business, being domestic in nature
“commercial lines”	commercial lines short term insurance business, being commercial risk entities
“mandated limits”	The maximum values at risk to which CERTAINSURE may bind the insurer to which the facility has been granted.
“electronic system/s”	the operating and administration system for which the broker is authorized to access, operate, issue new business and administer changes.
“clients”	clients as defined in the FAIS ACT – See Brokers Appointments

2.3 Unless inconsistent with the context, an expression which denotes:

2.3.1 any gender includes the other genders;

2.3.2 a natural person includes an artificial person and vice versa;

2.3.3 the singular includes the plural and vice versa.

### **3. INTRODUCTION**

3.1 The Insurer/s are prepared to provide insurance cover in respect of the Insurance scheme.

3.2 The broker wishes to act as a service provider and marketing agent of CERTAINSURE in respect of the insurance scheme.

3.3 The parties wish to record the terms and conditions upon which the broker has been appointed as a service provider and marketing agent on behalf of CERTAINSURE

#### **4. APPOINTMENT**

- 4.1 CERTAINSURE hereby appoints the broker, who hereby accepts the appointment, as service provider and marketing agent for the Insurance scheme with effect from the effective date on the terms and conditions set out in this agreement.
- 4.2 The broker undertakes that it will at all times:
  - 4.2.1 use its best endeavors to promote the interests of the Insurance scheme and of CERTAINSURE and the Insurer/s; and
  - 4.2.2 act in accordance with the highest standards of business practice in all acts it performs in terms of this agreement; and
  - 4.2.3 conforms to requirements as set out in the Short Term Insurance Act, FAIS Act and PPR Rules ; and
  - 4.2.3 maintain in force a suitable Professional Indemnity cover and will notify CERTAINSURE immediately if such cover is no longer in force.
  - 4.2.4 No appointed CERTAINSURE broker is mandated to retain client's funds.

#### **5. SERVICES TO BE RENDERED BY CERTAINSURE**

CERTAINSURE undertakes to perform for the broker, his employees, representatives, or mandated representative all of the SERVICES described below with regard to the INSURANCE SCHEME, namely:

- 5.1 Accepting the risk on behalf of various INSURERS in terms of the rating schedules and underwriting criteria and guidelines as agreed upon in writing between all Parties concerned;
- 5.2 The administration of claims as required by various Insurers.
- 5.3 The collection of premiums and other payments from the bank accounts of INSUREDS, utilizing automated credit bureau collection mechanisms
- 5.4 Reporting on underwriting statistics and claims performance in the format and frequency as required by THE INSURERS from time to time.
- 5.5 Negotiations with the BROKER / INSUREDS / THIRD PARTIES / REPAIRERS / SUPPLIERS relating to all aspects of claims under INSURANCE POLICIES in order to facilitate the claims handling process, excluding the obtaining of claim forms and documentation in respect of any claims as required:
- 5.6 The appointment of loss adjusters from a panel approved by INSURERS from time to time, where such appointment is appropriate or required by them;
- 5.7 CERTAINSURE must inform the broker in writing on a regular basis of any changes with regards to service levels and procedures to be followed between CERTAINSURE and the broker.

## **6. DURATION**

- 6.1 This agreement shall be deemed to have commenced on the effective date and shall, subject to 6.2, 6.3 and 6.4, endure forthwith and be subject to a minimum period of not less than 120 (ONE HUNDRED AND TWENTY) days' notice of termination being given by either party to the other to enable all parties to timeously and correctly adhere to the FAIS ACT guidelines regarding the cancellation and movement of business to alternate carriers.
- 6.2 CERTAINSURE and/or the broker shall be entitled to cancel this agreement summarily if either one of the parties :
- 6.2.1 breaches any of the terms or conditions of this agreement, all of which are deemed to be material, and fails to remedy such breach within the period prescribed in paragraph 14, or;
- 6.2.2 is placed under judicial management or wound up (whether provisionally or finally) or compromises or attempts to compromise with its creditors or permits a judgment against it to remain unsatisfied for more than 21 (twenty one) days after it becomes aware thereof unless it applies for rescission of such judgment within the time periods prescribed by the relevant rules of court .
- 6.2.3 the brokers FAIS license is withdrawn, suspended, cancelled or lapsed.
- 6.2.4 the broker, his employees, representatives, or mandated representative is found guilty of a breach of the Fit and Proper requirements as determined and set out in the FAIS Act.
- 6.2.5 the broker, his employees, representatives, or mandated representative has a change or replacement of the key individual or representatives which are not acceptable to CERTAINSURE.
- 6.3 CERTAINSURE shall be entitled to cancel this agreement in the event where:
- 6.3.1 the claims frequency of each independent Broker will be monitored on a monthly basis and will be communicated in writing to the broker to enable all parties concerned to analyze and implement corrective action, a claims frequency ratio of 65% is deemed to act as acceptable percentage determining the brokers agency profitability ratio.. In the event where such remedies do not have any effect the particular independent Broker facility after through consideration and consultation with the broker, will have to be terminated by giving the broker 90 days notice of cancellation and to afford the broker opportunity to place the business at an alternate Underwriter or Insurer.
- 6.3.2 the Broker, his employees, representatives, or mandated representative cancels more than one client simultaneously but does not terminate this agreement at the same time or CERTAINSURE reserves the right to apply a 120(one hundred and twenty) days, notice of termination as set out in 6.1.
- 6.3.3 the broker, his employees, representatives, or mandated representative fails to obtain and maintain a minimum premium income on the agency as agreed with CERTAINSURE, or the agency has become dormant.
- 6.3.4 CERTAINSURE is of the opinion that the business being placed with CERTAINSURE is consistently of poor nature and quality and which the broker has not been able to place with another Underwriter.
- 6.3.5 Repetitive and persistent business errors and poor administration from the broker, despite training and guidance being provided by CERTAINSURE to help the broker correct these errors.
- 6.3.6 CERTAINSURE reserves the right to withdraw system access from the broker/s on intimation of the date of the cancellation instruction. CERTAINSURE will provide and attend to all the functionality that is required to be actioned during the 90-day period of cancellation. The broker/s will need to submit amendments / changes / endorsements as received from the clients to CERTAINSURE to administer these changes. CERTAINSURE will not accept any new business after the last date of close off for premium collections for the last 30 days of the 90-day cancellation period. Only active client system policy's will be catered for during the last 30 days.

## **7. MARKETING DUTIES AND RESPONSIBILITIES AND ELECTRONIC ADMINISTRATION SYSTEMS**

- 7.1 Subject to the provisions of 6.2, The Broker, his employees, representatives, or mandated representative shall be empowered, on behalf of CERTAINSURE to market insurance policies in respect of the business.
- 7.2 When exercising its powers referred to in 7.1, The broker, his employees, representatives, or mandated representative shall be bound by the wording of the treaties, the policies, policy schedules, policy wordings and the underwriting instructions, terms, conditions, warranties and endorsements applicable to the Insurance scheme from time to time and shall not be entitled to vary any wording of the policies of insurance, endorsements, warranties, excesses, requirements, underwriting criteria or to depart from any specified procedure or instruction agreed upon between the parties and/or set out in the underwriting instructions.
- 7.3 “binding” The broker, his employees, representatives, or mandated representative is not entitled to bind CERTAINSURE by granting or accepting or placing cover on risk in any manner or value irrespective unless specifically mandated or authorized in writing to do so. CERTAINSURE will not be deemed to be on risk unless an authorized representative or mandated representative of CERTAINSURE has granted acceptance of the risk.
- 7.4 “binding” CERTAINSURE will accept binding of risk only on:  
> **Personal Lines Risks:** If the risk has been accepted by the electronic underwriting system, to which the broker has access and onto which the risk has been input according to the system risk acceptance criteria. Further that the risk is not specifically subjected to increased and or undue exposure or that the loss has already occurred or that there is reason to believe that a loss will occur.  
> **Commercial Lines Risks:** If the risk has been accepted by the electronic underwriting system, to which the broker has access and onto which the risk has been input according to the system risk acceptance criteria. Further that the risk is not specifically subjected to increased and or undue exposure or that the loss has already occurred or that there is reason to believe that a loss will occur.
- 7.5 “mandated limits” CERTAINSURE will only accept risks bound by the broker under 7.4 above, if the values bound by the broker on the system are within the values supplied to the broker as contained within the annexure “Underwriting” guidelines. Whilst the system may accept values on risk higher than the values to which CERTAINSURE may bind the broker is explicitly responsible to ensure that they do not bind risks in-excess of the values set out in the “Underwriting Guidelines” should they bind CERTAINSURE to values in excess of the values set out in the “Underwriting Guidelines” the broker will be held responsible for any loss or damage which the client or CERTAINSURE may sustain.
- 7.6 “electronic system/s” The broker, his employees, representatives, or mandated representative, will receive system access and processing codes which are unique and only known to the broker or his delegated employee or representative and such shall be responsible for all data inserted onto the system by his employees, representatives or mandated representatives and shall further be responsible for the data accuracy, content, correctness, and administration of such system data and client information. The broker shall ensure that he / she, employees and representatives are aware of and adhere to the system specifications, requirements and all product details.
- 7.7 The broker, his employees, representatives, or mandated representative or his employee or elected representative will receive system training to enable them to perform the system processing, accurately, and effectively.

- 7.8 The broker, his employees, representatives, or mandated representative will following the processing of data and be responsible for and be held accountable for all errors, omissions, incorrect, misleading, neglect, fraudulent data insertion, backdating or mal administration and not CERTAINSURE or the underlying Insurer.
- 7.9 The broker, his employees, representatives, or mandated representative must ensure that when processing data that the end result will meet and provide the necessary and effective cover for the needs of the client/s and that the broker can substantiate such selected cover.
- 7.10 The broker, his employees, representatives, or mandated representative is responsible for and must ensure that all documentation on all transactions is filed onto the e-filing system, which will be accessed by CERTAINSURE or the Insurer as required.
- 7.11 The broker, his employees, representatives, or mandated representative may not exceed system mandates as reflected on the system, and any other mandate (if any) communicated to them via letter, electronic mail, fax, or other acceptable method of communication.
- 7.12 The broker, his employees, representatives, or mandated representative may under no circumstance increase or override any system value or maximum insured amount on any insured section, item, extension or any other perceived item maximum sum insured either set on or reflected by the system or communicated by any other means to the broker.
- 7.13 The broker, his employees, representatives, or mandated representative shall be solely responsible for any claim that may be made against or brought against CERTAINSURE by any party arising out of any insurance or policy issued other than strictly in terms of this agreement and the broker, his employees, representatives, or mandated representative hereby indemnifies and holds harmless CERTAINSURE and the underlying Insurer against any claims which may be made by third parties in such circumstances.
- 7.14 The broker, his employees, representatives, or mandated representative shall at all times comply with all the provisions of any legislation as amended, insofar as the Act or any amendments hereto may apply to all and any of the activities of the broker, his employees, representatives, or mandated representative in terms of this agreement.
- 7.15 The broker, his employees, representatives, or mandated representative shall at all times be entitled to market the Insurance scheme directly to customers who qualify according to CERTAINSURE's underwriting criteria.
- 7.16 The broker, his employees, representatives, or mandated representative shall at all times be entitled to market other insurances not related to the Insurance scheme directly to customers.
- 7.17 All policies relating to the Insurance scheme shall be branded as CERTAINSURE policies, the respective Insurer details, and reflect the brokers logo and details.

## **8. COSTS**

All expenses incurred by the broker, his employees, representatives, or mandated representative in conducting the business shall be borne and paid by the broker, his employees, representatives, or mandated representative unless otherwise agreed in writing by all parties concerned.

CERTAINSURE will provide the system access and related system services free of charge. The broker, his employees, representatives, or mandated representative are responsible for the system connectivity, and data connectivity usage.



## **9. REMUNERATION**

- 9 As remuneration for the marketing and services it renders in terms of the agreement, CERTAINSURE shall be entitled to charge a RISK MANAGEMENT FEE calculated at a percentage (%) of the clients risk premium with a minimum of R00.00 monthly on Personal and Commercial business. However, this percentage may be adjusted by declaration to parties / clients as applicable, by giving 30 days' notice in writing.
- 9.1 The commission of the independent Brokers shall be become due and payable in terms of the provision of the Short Term Insurance Act 91 of 1998 or as otherwise negotiated. Brokers may also charge a broker fee / policy fee / service fee as regulated by the act from time to time and as agreed between broker and the client.
- 9.2 CERTAINSURE does not charge a system fee on the Personal lines business, however we reserve the right to amend this in future.
- 9.3 CERTAINSURE does not charge a system fee on Commercial Business however we reserve the right to amend this in future.
- 9.4 In addition to the remuneration in paragraph 9.1, 9.2, 9.3 a condition that such fees and charges are disclosed separately and explicitly to such policyholders.

## **10. BOOKS AND RECORDS**

The broker shall keep a complete set of records relevant to the business which shall at all reasonable times be open to inspection by CERTAINSURE and its auditors.  
The broker shall adhere to the FAIS ACT requirements relating to record and data keeping at all times.

## **11. TRAINING (system only)**

- 11.1 The broker shall submit two delegates for training in the CERTAINSURE Systems and procedures.  
11.2 Training can be done at the broker's offices or at the Offices of CERTAINSURE.

## **12. STATIONERY AND MARKETING MATERIAL**

- 12.1 The broker shall, at its own cost, procure all stationery and documentation necessary to market the business for its own account.  
12.2 Any stationery and documentation which makes or has any specific undertaking by or on behalf of CERTAINSURE shall first be referred to CERTAINSURE approval.  
12.2 Policy wordings, proposals and all other basic policy documents will be provided by CERTAINSURE to the broker.

## **13. NO DELEGATION**

Save with the prior written consent of CERTAINSURE, The broker shall not be entitled under any circumstances whatsoever to delegate or otherwise cede or assign any of its rights or obligations under this agreement to any person.

## **14. DISPUTES**

- 14.1 In the event of any dispute of difference arising between the parties hereto relating to or arising out of this agreement, such dispute will be referred for resolution to the then chief executives of the broker and CERTAINSURE. Should such dispute fail to be resolved within a period of 60 (sixty) days from the date on which the dispute is so referred, the said dispute or difference shall be submitted for arbitration to the person agreed to by both parties.

- 14.2 The parties to the arbitration undertake to keep the arbitration, including the subject matter of arbitration and the evidence heard during the arbitration, confidential and not to disclose it to anyone.
- 14.3 The decision of the arbitrator shall, in the absence of manifest error, be final and binding on the parties to the arbitration.
- 14.4 Disputes pertain to disputes outside the scope of the FAIS ACT and for which guidelines, process and procedures have been documented

**15. BREACH**

Should any party (“the defaulting party”) commit a breach of any of the provisions hereof, then any of the other parties (“the aggrieved party”) shall be obliged to give the defaulting party 14 (fourteen) days written notice to remedy the breach. If the defaulting party fails to comply with such notice, the aggrieved party shall be entitled to cancel this agreement against the defaulting party or to claim immediate payment and/or performance by the defaulting party of all of the defaulting party’s obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to the aggrieved party’s rights to claim damages. The afore going is without prejudice to such other rights as the aggrieved party may have at law.

**16 BROKER APPOINTMENTS / CLIENTS**

- 16.1 All brokers who contract with CERTAINSURE will not be permitted to acquire brokers’ appointments unless mutually agreed in writing by all parties concerned.
- 16.2 Clients who are already placed with CERTAINSURE will ONLY be transferred from one agency to another if the newly appointed broker provides CERTAINSURE with the required CERTAINSURE closings.
- 16.3 No existing rates, terms, conditions will be reduced or amended following a brokers appointment. Only amendments on values, covers and policy structure will be allowed.
- 16.4 Existing holding broker will be allowed 14 days to obtain a counter appointment before agency change is actioned.
- 16.5 “Clients” as defined in the FAIS Act and Short Term Insurance Act, belong to the Insurer, where the broker is a non-mandated broker. CERTAINSURE will not seek to acquire or attract or entice any broker/s clients placed with CERTAINSURE whilst the client has signed a brokers appointment with the standing current broker.
- 16.6 CERTAINSURE does not deal directly with clients, unless the client contacts CERTAINSURE and requests assistance where the client is unable to reach or contact the broker. CERTAINSURE will assist the client and advise and copy the broker in on all relative correspondence between CERTAINSURE and the client.

**17 DOMICILIUM CITANDI ET EXECUTANDI**

- 17.1 CERTAINSURE chooses domicilium citandi et executandi at .....
- 17.2 The Broker chooses domicilium citandi et executandi at \_\_\_\_\_
- 17.3 Any notice delivered to a PARTY’S domicilium citandi et executandi by hand shall be deemed to have been received on the date of such delivery or sent by fax shall rebuttably be deemed to have been received on the date of transmission if the recipient’s answerback code appears on the fax sent, alternately sent by electronic mail and an electronic mail delivery and or read receipt has been acknowledged.

17.4 Either of THE PARTIES hereto shall be entitled to change its/his chosen domicilium citandi et executandi to any other address, which change shall become effective 14 (fourteen) days after receipt of written notice of same.

**18 GENERAL**

- 18.1 This document and any annexure thereto constitute the sole record of the agreement between the parties in regard to the subject matter thereof.
- 18.2 No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.
- 18.3 No addition to, variation or consensual cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of all the parties.
- 18.4 The parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this agreement.
- 18.5 The broker indemnifies CERTAINSURE and holds CERTAINSURE harmless against any loss or damage which could or might be suffered by CERTAINSURE arising out of the failure of the broker to perform strictly according to the underwriting criteria and requirements of CERTAINSURE or any of its obligations arising out of or in respect of this agreement whether now or in future. The broker will be informed on a regular basis of any amendments given by the Underwriter.
- 18.6 CERTAINSURE will not be entitled to access the brokers clients by using the information acquired via its business dealings with the broker to its advantage on termination of this agreement unless
  - 18.6.1 adhering to any Legal requirements instituted by the Insurance Act, FAIS Act and/or
  - 18.6.2 the client approaches CERTAINSURE direct to place his business CERTAINSURE.

**CONFIDENTIALITY**

- 1. Both CERTAINSURE and the Broker undertake to keep confidential all dealings, information, documentation, processes, rating, policy wordings, terms, conditions, specific structures.
- 2. System access will not be allowed or displayed to any third party for any purpose irrespective, unless required to do so by law.
- 3. All client information will be kept in utmost good faith and confidentiality by all parties.
- 4. Other

**PENALTIES**

- As agreed and amended to by all parties from time to time.

**ANNEXURES:**

- Underwriting Guidelines
- Claims Guidelines
- System Guidelines

THUS DONE and SIGNED at ..... on the

..... day of .....(year) ..... in the presence of the

undersigned witnesses.

WITNESSES

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

\_\_\_\_\_ for: Certainsure Underwriting Managers (Pty) Ltd THUS DONE

and SIGNED at ..... on the  
..... day of ..... (year) .....

in the presence of the undersigned witnesses.

WITNESSES

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

For:  
.....  
Broker / Agency  
  
.....  
Authorized Person/s