

**SOUTH AFRICAN BINDING AUTHORITY ENDORSEMENT**  
**(for use in conjunction with South African Binding Authority Wordings)**

The Coverholder has been appointed as coverholder and in that capacity is [*an underwriting manager performing binder activities and intermediary services solely on behalf of the Underwriters and not on behalf of Insureds*] / [*a non-mandated intermediary performing binder activities*][DELETE AS APPROPRIATE]. The Coverholder will not perform binder activities for any other insurer without written consent from the Underwriters. The Coverholder must not delegate, assign or subcontract any of the binder activities.

This South African Binding Authority Endorsement ('the Endorsement') is part of the Binding Authority Agreement ('the Agreement'). In the event of a conflict between this Endorsement and terms included elsewhere in the Agreement the provisions of this Endorsement shall prevail.

The Coverholder agrees to comply with the following:

1. **Licence Requirements:** The Coverholder undertakes to comply with all relevant local insurance, financial advisory, fiscal and taxation laws, regulations, codes of conduct and requirements and to hold all the proper licence, licences, approval or approvals according to South African law.
2. **The Coverholder's General Responsibilities:** The Coverholder will perform the following binder activities on behalf of the Underwriters:
  - (a) enter into, vary and renew policies in terms of the wordings provided by the Underwriters. The wordings may not be amended without the prior written consent of the Underwriters.
  - (b) determine the specific provisions of any policy entered into with an insured using the wording provided by the Underwriters or any amended wording recommended by the Coverholder agreed to by the Underwriters.
  - (c) determine the premiums applicable to a particular policy using the premium rates determined by the Underwriters. The Coverholder may not add any amount to the gross premium of a policy.
  - (d) determine the value of policy benefits for any particular policy appropriate to the Insured within the limits of the mandate given to the Coverholder by the Underwriters.
  - (e) settle claims under the policies within the limits of any claims mandate provided by the Underwriters which includes if the Coverholder is an underwriting manager the right to accept partial or full liability for a claim, to determine the liability of the Insurer, to reject or refuse to pay a claim or part of a claim and to refuse to admit a claim under the policy or to avoid a policy.

If the Coverholder is a non-mandated intermediary it may not, without prior written authorisation from the Underwriters:

- (f) refuse to renew a policy;
- (e) reject or refuse to pay a claim for policy benefits or a part thereof;
- (g) terminate, repudiate or deny the Underwriters liability to provide policy benefits under a policy;
- (h) declare a policy void.

The Coverholder shall not perform any duties as a Coverholder for which the Coverholder does not have an appropriate level of expertise and knowledge and if not approved to do so by Lloyd's.

In all communications arising out of or relating to the Agreement, the Coverholder shall ensure that it is clearly stated that the Coverholder acts as agent of the Underwriters. In particular, and without limiting the operation of the obligations set out in the previous sentence, the Coverholder shall: (a) advise third parties,

including but not limited to brokers, Insureds, intending Insureds and government authorities, of its status as agent of the Underwriters for whom it is acting; and (b) not purport to act, or represent to any third party that it is acting, in the capacity of a Principal in respect of any matter arising out of or relating to the Agreement; and (c) comply, with all laws applicable to their agency including the Short-term Insurance Act, 1998, the Policyholder Protection Rules and the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act) with all subsidiary legislation including Codes of Conduct.

All persons responsible for the operation and control of the Agreement must be authorised to do so to the extent necessary in terms of the FAIS Act and any other applicable law.

If the Underwriters are held responsible for the conduct of the Coverholder, its agents or employees by virtue of the operation of South African law or otherwise, where such conduct was not within the scope of or was in breach of the Coverholder's authority, as set out within the Agreement, the Coverholder shall fully indemnify the Underwriters the entire sum which the Underwriters are ordered or held liable to pay and in addition, all legal costs on an attorney and own client basis which the Underwriters may incur.

If the Underwriters are held to have committed offences against South African law or any other law by reason of acts or omissions of the Coverholder, its agents or employees, the Coverholder shall fully indemnify the Underwriters the entire sum which the Underwriters are ordered or held liable to pay and, in addition, all related legal costs on an attorney and own client basis which the Underwriters may incur.

**3. Premium Collection/Payment:** Incidental to the binder activities, the Coverholder is hereby authorised in writing to collect and deal with premium on behalf of the Underwriters and the Coverholder, acting on behalf of the Underwriters, is hereby mandated to authorise in writing any agent or premium collection agency approved by the Coverholder to collect and deal with premiums on behalf of the Underwriters provided the broker or premium collection agency undertakes to comply with the Short-term Insurance Act, 1998, the FAIS Act, and regulations in that connection. Notwithstanding, in relation to a personal lines policy as defined by the Short-term Insurance Act 1998, the Underwriters do not authorise more than one intermediary to receive or otherwise deal with premium in relation to the same policy.

Whenever the Coverholder mandates any agent or premium collection agency to collect and deal with premiums on behalf of the Underwriters, the Coverholder must inform the Underwriter of the appointment on its behalf and must provide the Underwriters with a copy of the written mandate concerned before the effective date of that appointment. The Underwriters reserves the right to cancel that mandate at any time in its own discretion in a manner that will not adversely affect the policyholders.

If the Coverholder is not party to the South African Bank Account Arrangements Endorsement, then it must collect such premiums and hold security in terms of the South African Short-term Insurance Act, 1998 and the Regulations and other subordinate legislation thereunder ("the Act") particularly Part 4 of such Regulations.

In accordance with Regulation 4.3(1) of the Act, a Coverholder shall within a period of 15 days after the end of every month in which premiums are received:

- (a) pay to the short-term insurer concerned, the total amount of those premiums received; and
- (b) for every month in respect of which the contract is in force, furnish the short-term insurer with a bordereau relating to the premiums received, the commissions payable and the amounts paid to the short-term insurer.

Where Underwriters have authorised more than one intermediary to receive premiums in relation to the same policy, other than a personal lines policy, the period may not exceed the 15 day period as envisaged under Regulation 4.3.

4. **Commission:** The Coverholder shall not be paid or accept commission before the date on which the premium in respect of which it is payable has been paid to the short-term insurer or Lloyd's Broker.
5. **Remuneration of Coverholders:** The Coverholder will be remunerated for the binder services performed on behalf of Underwriters at the rate set out in the Schedule. The Coverholder who is an underwriting manager may also be entitled to a profit share on the basis set out in the Schedule.

- (a) A Coverholder that is a non-mandated intermediary and is remunerated by way of regulated commission (i.e. a retail coverholder), the Coverholder, shall not receive commission more than the prescribed maximums, as set out in the Act, in respect of a certificate, irrespective of how many intermediaries render services in relation to a certificate currently:
    - (i) for a motor policy, 12.5% of the premium payable under the certificate; or
    - (ii) for any other short-term policy, 20% of the premium payable under the certificate.
  - (b) A Coverholder that is an underwriting manager that receives remuneration other than by way of regulated commission (i.e. a wholesale coverholder), the Coverholder, must not:
    - (i) enter into any kind of short-term policy other than the kind to which the Agreement relates;
    - (ii) if the Coverholder is an underwriting manager, enter into any short-term policy in relation to which the proposal forms or other application for insurance comes directly from the prospective Insured and not from an independent intermediary, nor accept any business from an independent intermediary who is an associate of the Coverholder for the purposes of Section 48A of the Act and the binder regulations.
    - (iii) conduct any business with a mandated or non-mandated intermediary that is an associate (as defined in the Binder Regulations) of the Coverholder.
6. **Certificate Issuance:** In respect of short term insurance, excluding reinsurance thereof, the Coverholder must furnish a certificate of insurance to the Insured within 30 days of entering into or varying the contract. The certificate must fully embody the contract of short term insurance and incorporate the wording of the policies that the Underwriters have authorised the Coverholder to enter into on its behalf. On renewal, as a minimum, details of any amendment must be furnished within the 30 days provided that the policy wordings may not be amended without the prior approval of the Underwriters.
7. **Certificates:** It is a condition of the Agreement that the format of any certificate issued under the Agreement shall include South African service of suit and South African law and jurisdiction provisions.
8. **Policyholder Protection:** It is a condition of the Agreement that the Coverholder undertakes:
  - (a) to comply to the extent necessary with the provisions of the South African Policyholder Protection Rules (Short-Term Insurance) 2004 (“Policyholder Protection Rules”), and any subsequent amendments to these Policyholder Protection Rules, as if each reference to the “insurer” were a reference to the Coverholder.
  - (b) to comply with the Financial Advisory and Intermediary Services Act, 2002 and any applicable Code of Conduct or other subordinate legislation thereunder (“FAIS Act”).
  - (c) in connection with performing its obligations in paragraph (a) above on their own behalf and on behalf of the Underwriters to do all things reasonably necessary, or reasonably required by the Underwriters, in order to ensure that the Underwriters comply with:
    - (i) the Policyholder Protection Rules;
    - (ii) the FAIS Act;
    - (iii) all other laws applicable to the business.
9. **Good Business Practice:** It is a condition of the Agreement that the Coverholder undertakes:
  - (a) to comply with the South African Insurance Association Code of Conduct (“the Code”).
  - (b) to comply with any law or directive relating to treating customers fairly.

- (c) in connection with performing its obligations in paragraph (a) above on their own behalf and on behalf of the Underwriters to do all things reasonably necessary, or reasonably required by the Underwriters, in order to ensure that the Underwriters comply with the Code and any direction of the South African Insurance Association and any regulatory requirement, guidance note or directive issued by the Registrar of Insurance.

#### 10. Confidentiality and disclosure

- (a) The Coverholder undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Insureds or prospective insureds of the Underwriters, except as permitted by sub-paragraph (b) below.
- (b) The Coverholder may disclose Underwriters' confidential information:
  - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Coverholder's obligations under this Agreement. The Coverholder shall ensure that its employees, officers, representatives or advisers to whom it discloses the Underwriters' confidential information comply with this clause 10; and
  - (ii) as may be required by law, court order or any governmental or regulatory authority.
- (c) The Coverholder shall not use the Underwriters' confidential information for any purpose other than to perform its obligations under this Agreement.
- (d) The Coverholder will at intervals of not more than 60 days, update insured and policy information in the records of the Underwriters, which information must enable the Underwriters to identify the Insureds, contact the Insureds and assess their liability under the policies.
- (e) On termination of this Agreement, the Coverholder shall return to the Underwriters all documents and materials (and any copies) containing, reflecting, incorporating or based on the Underwriters' confidential information.
- (f) The Underwriters may communicate directly with any Insured or any other insurer that the Coverholder represents and any independent intermediary from whom any business is received by the Coverholder on behalf of the Underwriters and the Underwriters may obtain from the Coverholder for that purpose any information required in relation to the Insured or the policies.

11. **Taxes:** It is a condition of the Agreement that the Coverholder shall, be registered for Value Added Tax (VAT) and shall be responsible for accounting for VAT on business bound under the Agreement in accordance with the relevant provisions of the South African tax law and the procedures set out by Lloyd's South Africa.

12. **Complaints:** It is a condition of the Agreement that the Coverholder shall in respect of disputes or complaints notified:

- (a) to Lloyd's South Africa, respond to the Lloyd's South Africa office within 10 working days of the notification of such dispute or complaint.
- (b) to the Coverholder by any Insured, regulatory authority, ombud or other person, advise the Underwriters and Lloyd's South Africa within 10 working days (or any shorter period that urgency requires) of the dispute or complaint and the intended method of resolving that dispute or complaint and must allow them to intervene in resolving the dispute.

#### 13. Ombuds

- (a) **Ombudsman for Short-term Insurance:** The Coverholder acknowledges that Underwriters subscribe to the office of the Ombudsman for Short-term Insurance who will consider all complaints where a claim does not exceed ZAR800, 000 or such other amount as may be agreed upon by the Underwriters and the Ombudsman. It is a condition of the Agreement that the Coverholder agrees to co-operate fully

with the Ombudsman in relation to any complaint and to act upon any ruling which shall be binding on Underwriters, on behalf of the Underwriters.

- (b) **FAIS Ombud:** If any dispute or complaint is referred to the FAIS Ombud under the FAIS Act the Coverholder will notify the underwriter immediately and comply with all lawful requirements of the FAIS Ombud and abide by any lawful rulings when they are final.

14. **Indemnities:** It is a condition of this Agreement that:

- (a) the Coverholder will have the fidelity guarantee and professional indemnity required by the FAIS Act and undertakes to increase the cover or sums insured in terms of those policies to the extent reasonably required by the Underwriters. The Underwriters are entitled to inspect those policies and to require the Coverholder to take steps or to take steps themselves to ensure that sufficient insurance is in place and premiums are paid.
- (b) each indemnity and undertaking to insure is a continuing obligation despite:
  - (i) any settlement of account; or
  - (ii) the occurrence of any other thing,and remains in full force and effect until all money owing, contingently or otherwise, under the indemnity or insurance has been paid in full; and
- (c) each indemnity contained in the Agreement:
  - (i) is an additional, separate and independent obligation and no one indemnity limits the generality of any other indemnity; and
  - (ii) survives the termination of the Agreement.

15. **Reporting to Insurer:** The Coverholder must reconcile all bank accounts in which premiums or claims funds are held with bordereaux provided on a monthly basis and provide details of the reconciled bank account and immediate information if the bank account does not reconcile with the bordereaux provided.

16. **Governance:** The board of directors, executives and prescribed officers and any FAIS key individuals must direct and control the Coverholder in a responsible, professional and transparent manner in accordance with principles of corporate governance and in accordance with the Companies Act, 2008 and the FAIS Act.

The directors and executives of the Coverholder must use management control and reporting systems that ensure that the quality of information regarding all the business conducted by the Coverholder is communicated to them internally so that they can constantly review business risks, plans and strategy, manage the company on a daily basis in a way that mitigates operational and other risks, monitor the financial and regulatory conduct of the business and take and comply with compliance advice as required by the law and good business practice.

The Underwriters may themselves or using an external auditor at any reasonable time on at least two working days' notice, audit the Coverholder's compliance with this authority.

17. **IT systems:** The Coverholder must have, maintain and upgrade as necessary the information technology systems required to perform the binder activities and other activities in terms of this authority including both IT, hardware, software and data control necessary to ensure the efficient use of data and the communication of data between the Coverholder and the Underwriters. The information available on the IT system must be sufficient to enable the Underwriters to monitor performance of this authority. All information on the IT system must be backed-up regularly (at least daily) and backed-up information must be kept safely and confidentially at a separate venue. The Coverholder must have disaster recovery procedures in place for all the information required to run its business to ensure that in the event of a disaster it is possible to continue to run the business with minimal disruption.

18. **Intellectual property:** All intellectual property relating to the name “Lloyd’s” and all policy wordings of Lloyd’s and other documents belonging to Lloyd’s or the Underwriters remain the entire property of Lloyd’s or the Underwriters and the Coverholder will not be able to use any such intellectual property except to the extent required to act as a coverholder in terms of this authority.

The Coverholder will continue to own its intellectual property used in connection with its business.

19. **Review:** The Coverholder and a representative of the Underwriters must meet or communicate at least once every six months to review the performance of the Coverholder in terms of this authority and any plans, strategies and changes required in order to optimise the business.
20. **Period:** Despite anything in the Binding Authority Agreement, this agreement may only be terminated by either party on 90 days’ notice for any reason.

If the Coverholder is no longer able to perform in terms of this authority after notice of termination (for instance, if the Coverholder is placed under curatorship, business rescue, becomes insolvent or is liquidated), or at the election of the Underwriters, the Underwriters or some person acting on their behalf may take over the business of the Coverholder conducted in terms of this Agreement and perform the activities that the Coverholder is required to perform in terms of this agreement. The cost of performing those activities will be payable by the Coverholder on demand or set off against money owing to the Coverholder. The Coverholder must not perform the same activities and must co-operate with the Underwriters or their appointed agent to ensure that this agreement is properly performed and that policyholders are not prejudiced by the termination of the agreement.

If the Underwriters do not step in and take over the conduct of the business, the Coverholder will continue to perform this agreement in all respects until the date of termination and will thereafter stop acting on behalf of the Underwriter’s in any manner and will account to the Underwriters and reconcile the financial position at the termination of the agreement and will assist the Underwriters to fulfil any legislative or regulatory obligations arising from the this authority or its termination.

21. **Dispute resolution:** If any dispute, deadlock or conflict arises in connection with this authority it will be resolved by arbitration in terms of the arbitration laws applicable in South Africa.
22. **General obligation:** The Coverholder undertakes to comply in every respect with the Coverholder’s undertaking to Lloyd’s and to conform with all the undertakings made, performance committed and information given regarding the manner of carrying on business as a Coverholder contained in the Coverholder’s application form and Coverholder declarations on the basis of which the authority to act as a coverholder was granted.
23. The Coverholder must on request provide the Registrar of Short-term Insurance with a copy of this Agreement and with access to its business and information in respect of the Coverholder’s functions under this Agreement.