# Terms of Business & Services Agreement

An agreement related to the conduct of Insurance Business between **Agile Underwriting Services Pty Ltd** and **{$Company_Name}** on **{$Date}.**

An Agreement governing the conduct of Insurance Business and the provision of Insurance Services between:

1. Agile Underwriting Services Pty Ltd, AFS Licence number 483374, ABN: 48 607 908 243 of Suite 1, Level 6, 171 Clarence Street, Sydney, NSW 2000 (the "Underwriting Agency"); and
2. {$Company_Name} AFS Licence number {$AFSL}, ABN: {$ABN} of {$Street_Address_1}

   {$Street_Address_2} {$Suburb} {$State} {$Postcode}

   (the "Intermediary"),

   Each a "Party" and together the "Parties"

## 1. Scope

1.1. This Agreement shall supersede all other Terms of Business Agreements between the Parties and shall commence on the date of this agreement for an initial term of twelve months and shall automatically renew unless notice of termination has been give pursuant to Clause 9 below.

1.2. The purpose of this Agreement is solely to set out the rights and obligations of the Parties only in respect of the matters specifically addressed in the Agreement. To the extent that any matters relating to the relationship between the Parties are not expressly addressed in this Agreement, they remain unaffected and unaltered by this Agreement. This Agreement shall not override the terms of any underlying contract for, or of Insurance Business.

1.3. Nothing in this Agreement overrides the Intermediary's duty to place the interests of its client before all other considerations nor shall this Agreement override any legal or regulatory requirements (whether obligatory or advisory) which may apply to the Intermediary, the Underwriting agency, or the placing of any Insurance Business. Where the Intermediary provides Insurance Services to the Underwriting agency, the Intermediary shall at all times act in the interests of the Underwriting agency and where this is inconsistent with the first sentence of this clause 1.3, the Intermediary shall advise the Underwriting agency accordingly.

1.4. The Parties agree that the terms herein shall apply to the conduct of any Insurance Business which has been or may be transacted between the Parties on or after the date of this Agreement and any Insurance Services provided by the Intermediary in connection with Insurance Business underwritten by the Underwriting agency.

1.5. Each proposal for Insurance Business, renewal of existing Insurance Business or continuation of cover in respect of any existing Insurance Business will be accepted or declined by the Underwriting agency at its sole discretion.

1.6. Prior to or at the time of placement of any Insurance Business (or as otherwise agreed separately in writing between the Parties), the Intermediary and the

Underwriting agency may agree provisions relating to the conduct of that Insurance Business. These provisions may include (but are not limited to) roles and responsibilities relating to administration of the Insurance Business and the handling of claims and processes by which amendments to the risk may be agreed, and so forth. This Agreement shall be subject to any provisions so agreed, and does not seek to address such provisions.

## 2. Regulatory Status

2.1. The Intermediary warrants that it is authorised and/or regulated in Australia as required to conduct insurance mediation activities, and/or where applicable, Insurance Services, from the date of this Agreement. The Underwriting agency warrants that it has an Australian Financial Services Licence and is authorised to conduct insurance business under its retail and wholesale licence and is regulated by the Australian Securities and Investments Commission ("ASIC") from the date of this Agreement.

2.2. The Intermediary shall inform the Underwriting agency immediately in writing if at any time during the period of this Agreement: -

2.2.1. The Regulatory Authority in Australia varies, suspends or withdraws the Intermediary's Financial Services Licence; or

2.2.2. The Regulatory Authority in Australia varies, suspends or withdraws any authorisation under the Intermediary's Financial Services Licence; or

2.2.3. The Intermediary is required to provide any Enforceable Undertaking to the Regulatory Authority in Australia; or

2.2.4. The Intermediary becomes the subject of any disciplinary action by the Regulatory Authority in Australia or any Professional body which administers professional standards; or

2.2.5. The Intermediary becomes insolvent.

2.3. The Underwriting agency shall inform the Intermediary immediately if: -

2.3.1. ASIC suspends or withdraws the Underwriting agency's authorisation; or

2.3.2. The Underwriting agency otherwise ceases to be authorised by ASIC to undertake any activities in relation to any Insurance Business subject to this Agreement; or

2.3.3. The Underwriting agency becomes insolvent.

## 3. Authority

3.1. This Agreement sets out the basis on which the Underwriting agency will accept Insurance Business from the Intermediary and nothing in this Agreement shall grant the Intermediary authority to accept, amend, or vary Insurance Business, settle, negotiate or compromise claims, issue or alter any document or policy, make any non-exempt financial promotion on the Underwriting agency's behalf, and/or commit the Underwriting agency in any way.

## 4. Remuneration

4.1. Commission in respect of Insurance Business placed with the Underwriting agency shall be as agreed in writing between the Parties.

4.2. Where the Intermediary acts as agent of the client, it may deduct the Commission

upon receipt of the premium. Where premium is payable in more than one instalment, the Intermediary will only deduct the proportion of Commission that the instalment premium bears to the premium as a whole, unless otherwise agreed on a risk-by-risk basis between the Parties.

4.3. The Intermediary shall not be entitled to the reimbursement of expenses incurred in the exercise of any of its activities in fulfilment of its obligations under this Agreement.

5. **Premium and Claims**

5.1. The Intermediary has no authority under this Agreement to permit any third-party or sub-agent to receive, hold, or pay any money on behalf of the Underwriting agency, without the Underwriting agency's consent.

5.2. Provided the Intermediary shall itself have received the premium, the Intermediary shall pay that premium (net of Commission, but including Taxes) to the Underwriting agency within 60 days of inception of the insurance in accordance with the terms of trade agreed between the Parties. Where such premium is not received in full, the Intermediary shall only be entitled to retain its commission pro-rata to the premium (excluding taxes) received by it.

5.3. Unless otherwise provided for in this Agreement, pending payment to the Underwriting agency, the Insured or a third party (as the case may be), the Intermediary shall hold all monies comprising:

5.3.1. premium due to be paid to the Underwriting agency, and

5.3.2. return premium due to be paid to the Intermediary's client, and

5.3.3. claim monies due to be paid to the Intermediaries client

within a segregated bank account, which shall be kept separate from monies held for its own account. The Underwriting agency hereby agrees that any interest earned on the said account shall accrue to the Intermediary.

5.4. The Intermediary will report regularly to the Underwriting agency on any activities undertaken in connection with this contract and in particular will notify the Underwriting agency, within such time as may be agreed between the Parties, but in any event no later than 90 days after inception of the insurance, that the insured has failed to pay the premium (or, as the case may be, any provisional premium). In the event of the cancellation of a contract of insurance:

5.4.1. Where the Underwriting agency is obliged by law, regulation or the terms of the contract of insurance to refund gross premiums in respect of such contract of insurance, the Intermediary agrees to refund the relevant Commission (which shall not for the purpose of this clause include fees) received by the Intermediary which is attributable to the period following cancellation of the contract of insurance for which such contract of insurance would otherwise have remained in force. Unless otherwise obliged to do otherwise, the Underwriting agency shall refund premiums net of Commission.

5.4.2. Where a pro-rata premium is payable, the Intermediary shall only be entitled to receive its commission pro–rata to the premium received.

## 6. Taxes

Intermediary will issue tax invoice for Premium

6.1. Where the Underwriting agency makes a taxable supply of a policy of insurance (or variation) to a client of the Intermediary, the Underwriting agency authorises the Intermediary and the Intermediary agrees to issue any tax invoice or adjustment note required in respect of that taxable supply as an agent of the Underwriting agency.

6.2. The Intermediary must issue a tax invoice or adjustment note no later than the earlier of the following times:

6.3. within 28 days of a request from the recipient of the supply whether the request directly to the Intermediary or passed on from the Underwriting agency; or

6.4. 14 days after the end of the month in which the taxable supply was made or the adjustment event occurred.

6.5. The Intermediary is responsible to ensure that the tax invoice or adjustment note issued complies with rules for tax invoice design. The Intermediary will indemnify the Underwriting agency for any fines, penalties or other costs incurred as a result of the Intermediary failing to issue complying documentation.

6.6. The Intermediary is responsible to ensure that all amounts disclosed in the tax invoice or adjustment note issued to the client are the same amounts included in the closing forwarded to the Underwriting agency. The Intermediary will indemnify the Underwriting agency for any fines, penalties or other costs incurred as a result of the Intermediary failing to provide the Underwriting agency with matching documentation.

6.7. The Underwriting agency and the Intermediary each agree they are GST registered when entering into this agreement and will notify the other if they cease to be registered.

6.8. The Underwriting agency agrees to notify the Intermediary if it ceases to satisfy any of the requirements for issuing tax invoices.

6.9. The Intermediary agrees to notify the Underwriting agency if it ceases to satisfy any of the requirements for issuing tax invoices.

6.10. The Intermediary agrees that as agent of the Underwriting agency for the purposes set above, it will indemnify the Underwriting agency and keep the Underwriting agency indemnified for any liability for GST, or any related penalty or loss relating to GST that may arise from an understatement of the GST payable on any supply for which the Intermediary has issued a tax invoice. Intermediary will issue tax invoices for commission.

6.11. The Intermediary will issue a tax invoice or adjustment note for any taxable supply to the Underwriting agency.

6.12. The Intermediary will issue the tax invoice to the Underwriting agency in respect of that supply within 28 days of the taxable supply.

## 7. Compliance

7.1. Each Party will comply with their respective legal, licensing and regulatory

requirements applicable to the production, placing, claims handling and premium and claims accounting of any Insurance Business which the Intermediary places with the Underwriting agency.

## 8. Data Protection

8.1. The Parties shall comply with all applicable obligations imposed by, or made under requirements of the Privacy Act 1988 and subsequent amendments ("PA"), together with any other applicable regulations, orders or codes of practice.

8.2. Without prejudice to the generality of clause 8.1, where either Party (the "Disclosing Party") discloses Personal Data (as defined in the PA) to the other (the "Recipient") in connection with the operation of this Agreement, the Disclosing Party will ensure that it obtains all necessary consents so that the Personal Data it provides to the Recipient can be lawfully used or disclosed by the Recipient in the manner and for the purposes anticipated by this Agreement.

## 9. Termination

9.1. This Agreement shall terminate: -

9.1.1. At any time by one Party giving 6 (six) months written notice of termination to the other;

9.1.2. Immediately, without notice, should either Party become the subject of voluntary or involuntary rehabilitation or liquidation proceedings (save for the purposes of amalgamation or solvent reorganisation) or become the subject of an action in bankruptcy or make or propose any composition with its creditors or otherwise acknowledge its insolvency;

9.1.3. Immediately, without notice, should the Intermediary have any authority or permission granted to it by the Regulatory Authority in Australia withdrawn or altered by the Regulatory Authority in Australia in such a manner as materially to affect in any way the Intermediary's ability to introduce, arrange, conclude, administer, perform or otherwise be involved with any Insurance Business which is carried out between the Parties under this Agreement.

9.2. Following termination: -

9.2.1. The Parties will agree the procedure for administering the Insurance Business current at the time of termination;

9.2.2. The Intermediary will make all reasonable efforts to provide the Underwriting agency with contact details for any Insured or other Party with whom the Underwriting agency has contracted in the conduct of Insurance Business where such information is reasonably required in order for the Underwriting agency to carry out its obligations in relation to Insurance Business concluded in accordance with this Agreement;

9.2.3. Where permissible the Parties will remain liable to perform their obligations in accordance with the terms of this Agreement in respect of all Insurance Business subject to this Agreement until all Insurance Business has expired or has otherwise been terminated.

## 10. Access to Records

10.1. The Intermediary will retain all of the Records created, held or received by the Intermediary for the purposes of the introduction, arranging, concluding, administration or performance of the Insurance Business for the minimum periods required by law or by any regulatory body with jurisdiction over the Intermediary, the Underwriting agency or the Insurance Business or, where no such period applies, for a minimum of 7 years from expiry of the insurance to which such records pertain.

10.2. The Intermediary agrees to allow the Underwriting agency, on reasonable notice, to inspect and to take copies of the following: -

10.2.1. the accounting records pertinent to any Insurance Business including information relating to the receipt and payment of premiums and claims and documentation such as any insurance contract endorsements, addenda or bordereaux in the possession of the Intermediary relating to the Insurance Business; and

10.2.2. documents as may be in the possession of the Intermediary which were disclosed to the Underwriting agency by the Intermediary in respect of any Insurance Business including, but not limited to, documentation relating to the proposal for the Insurance Business, the placing thereof (including endorsements and reinstatements) and any claims thereunder.

10.2.3. All documentation and records created or received by the Intermediary in the performance of such functions or duties shall be and remain the property of the Underwriting agency, other than documents over which the Intermediary has a proprietary commercial interest.

10.3. The Intermediary will take all reasonable steps to retain, maintain and safeguard any of the Underwriting agency's documents in the Intermediary's possession in accordance with any regulatory requirements which apply to the Underwriting agency and of which the Intermediary has notice.

10.4. On termination of this Agreement for whatever reason and on reasonable notice the Intermediary will deliver up to the Underwriting agency such documentation if requested.

## 11. Confidentiality

11.1. Each of the Parties will treat information received from the other relating to this Agreement and to the Insurance Business as confidential and will not disclose it to any other person not entitled to receive such information except as may be necessary to fulfil their respective obligations in the conduct of the Insurance Business and except as may be required by law or regulatory authority. For the avoidance of doubt each Party shall be entitled to disclose such information where necessary to its actuaries, auditors, professional agents and advisers and other Group companies. This clause will not apply to information which was rightfully in the possession of such Party prior to this Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is trivial or obvious.

## 12. Complaints

12.1. Each Party will, on becoming aware, immediately notify the other of any complaint or breach concerning the other Party relating to Insurance Business subject to this Agreement.

## 13. Protection of Reputation

13.1. Each Party agrees it will not, without the written authority of the other Party, make use of the other Party's corporate or trading names or logos and trademarks.

## 14. Conflicts of Interest

14.1. 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 any Insurance Business.

## 15. Disclosure

15.1. The Intermediary will comply with relevant regulatory, fiduciary and legal requirements regarding disclosure of all forms of remuneration from any arrangements it may have for remuneration in connection with Insurance Business.

## 16. Variation and Assignment

16.1. This Agreement may be assigned or varied only in writing by the Parties.

## 17. Rights of Third Parties

17.1. 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. This clause shall not affect any right or remedy of a third party which exists or is available apart from that Act.

## 18. Dispute Resolution

18.1. The Parties to this Agreement are committed to resolving all disputes arising under it (and whether such dispute arises before or after termination of this Agreement) without the need for litigation and to allow as far as possible for commercial relationships to remain unaffected by disputes and therefore the Parties: -

18.1.1. will attempt in good faith to resolve any dispute or claim promptly through negotiations between respective senior executives of the Parties who have authority to settle the same;

18.1.2. will attempt in good faith, if the matter is not resolved through negotiation within three months of the dispute arising to resolve the dispute or claim through mediation with the assistance of a mediator agreed between the Parties or as recommended to the Parties by the Centre for Dispute Resolution or such similar organisation as the Parties may agree; or

18.1.3. if the matter has not been resolved by mediation within six months of the dispute arising, or if either Party will not participate in a mediation procedure, the Parties will refer the dispute in accordance with the Jurisdiction and Choice of Law Clause below.

18.2. Notwithstanding the above:

18.2.1. either Party may seek the immediate protection or assistance of the relevant court if appropriate.

18.2.2. this shall not impede the operation of any internal or external dispute resolution procedures in accordance with any applicable legislation or code of practice.

## 19. Jurisdiction and Choice of Law

19.1. This Agreement shall be construed according to Australian law and practice and any disputes arising under it shall, subject to the provisions of clause 18 above, be determined in the Australian Courts.

## 20. Enforceability Clause

20.1. In the event any portion of this Agreement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

## 21. General Interpretation of this Agreement

21.1. In this Agreement, words importing the singular shall include the plural and vice versa. Headings are included for ease of reference and convenience only and shall not affect the interpretation of the Agreement.

## 22. Service of Notices

22.1. Any notices to be given under this Agreement shall be sent by Express post, by hand, or email to the Compliance Officer at the registered office or principal place of business of the Party to be served. The notice shall be deemed to have been served, if posted, at the expiration of two business days after posting and if by email, or by hand, at the expiration of one business day after it was dispatched.

## 23. Force Majeure

23.1. Neither Party shall be liable for any delay or non-performance of its obligations under this Agreement caused by an event beyond its control (a "Force Majeure Event") provided that the Party affected gives prompt notice in writing to the other part of such Force Majeure Event and uses all reasonable endeavours to continue to perform its obligations under the Agreement. Either Party may terminate this Agreement if such Force Majeure Event continues for more than 3 (three) months.

## 24. Authorised Representatives

24.1. The Intermediary will notify the Underwriting agency, details of any new, existing or exiting Authorised Representatives or any other Authorised Representatives that are not employees. The Intermediary shall provide the name of the Authorised Representatives, the ASIC Authorised Representative Number and the Authorised Representative address/contact details.

24.2. The Intermediary will have full responsibility to ensure Authorised Representatives remain authorised by ASIC during the time the Authorised Representative provides business to us

## 25. Bank Details – Intermediary

25.1. The Intermediary shall provide their bank details to enable the Underwriting Agency to remunerate services performed by the Intermediary for using Agile's

Information Technology platform "Powered by AGILE". These bank details will be requested during the signing process and included in the schedule.

## 26. Bank Details – Underwriting Agency

26.1. The Underwriting Agency provides to the Intermediary our banking details for remittance of premium, taxes and charges to our Premium Trust Account.

**Name of Bank:** National Australia Bank
**Address:** NAB House, Tenancy 12-14 Marrickville Metro, Marrickville
**Name of A/C:** AGILE Premium Trust Account
**BSB:** 082-356
**Account No:** 36 524 4286

# Schedule

## About the business (Intermediary)

Business name: {$Company_Name}

Company number: {$NZBN}

GST number: {$GSTN}

Street address: {$Street_Address_1} {$Street_Address_2}
{$Suburb} {$State} {$Postcode}

### Bank details

Bank name: {$Bank_Name} of {$Bank_Street_Address_1} {$Bank_ Street_Address_2} {$ Bank_ Suburb} {$ Bank_ State} {$ Bank_ Postcode}

Bank account: {$Account_Name} - {$BSB} - {$Account_Number}

### Signed by Intermediary

Name of signer: {$First_Name} {$Last_Name}

Date signed: {$Date}

Email address: {$Email}




### Signed by Coverholder

Name of signer: {$AFSL_First_Name} {$AFSL_Last_Name}

Date signed: {$AFSL_ Date}

