

## Terms of Business Agreement (“TOBA”)

### **This Terms of Business Agreement (“TOBA”) is entered into between:**

Klapton Insurance Company Limited (“KIC”), registered in Autonomous Island of Anjouan, Union of Comoros, incorporation number 2001, with registered address ACS 69, Mutsamudu, Autonomous Island of Anjouan, Union of Comoros (“The Company”)

And

The intermediary named in the Schedule, and whose registered office and details are listed in the Schedule (“The Broker”)

Where a Clause relates to both parties they are referred to as “The Parties”.

### **Definitions**

The following Definitions will apply throughout this Agreement:

<b><i>Phrase or word</i></b>	<b>Definition</b>
<i>Customer</i>	Any relevant party deemed to have a binding or contractual relationship with The Parties to this Agreement.
<i>Immediately</i>	Within three working days from the moment of knowledge becoming available to The Broker or sooner if the matter is urgent.
<i>Imputed</i>	Imputed knowledge represents facts whether deemed material or not passed to an intermediary shall be deemed to be within the knowledge of that intermediary and thus within the knowledge of The Party for whom the intermediary acts.

<i>Insurance placement</i>	Any insurance risk or risks either by way of insurance or reinsurance which The Broker proposes to The Company for their consideration.
<i>Insured's requirements</i>	The policyholder's requirements seeking either insurance or reinsurance protection from The Parties to this Agreement.
<i>Legislation</i>	Governmental or Parliamentary laws creating legal obligations on The Parties or those contracted to The Parties within any appropriate territory.
<i>Regulator</i>	Any entity/body that supervises or regulates The Parties to this Agreement in whatever territory is applicable.
<i>Privacy Policy</i>	The document detailing how an organisation deals with personal information held or gathered within its operations. Such document relating to legal obligations with regard to Data Protection laws within any appropriate territory affecting The Parties.
<i>Subjectivities</i>	Any condition or requirement within any written Policy which must be complied with risking immediate invalidation of cover if breached.
<i>Third Parties</i>	Any party other than The Parties to this Agreement.
<i>PPW</i>	Premium payment warranty attached to this agreement

## 1) This TOBA

1.1 This TOBA and its attached schedules set out the terms, the rights and the responsibilities upon which the Parties agree to comply.

1.2 References in this TOBA to “insurance” and “insurers” includes reinsurance, retrocession, reinsurers and retrocessioners.

1.3 If the Broker proposes to proceed with any insurance placement with The Company, the Parties agree to proceed exclusively on these terms which will have a contractual and binding effect on the Parties.

1.4 From time to time, The Company may amend and revise these terms. In that event, The Company shall notify The Broker of the proposed changes and, after both Parties agree these changes in writing, the revisions will come into effect from a date to be agreed between the Parties.

## Responsibilities of the Parties

### 2) Responsibilities of The Broker (see Clauses 2.1 to 15.1 inclusive)

2.1 The Broker warrants that it is authorised by its’ relevant Regulator as defined to conduct insurance intermediary and broking activities from the date of this Agreement.

2.2 The Broker shall conduct its relationship with the Company via one of The Company’s contracted Hubs and shall provide the Hub with all necessary assistance and co-operation. The Hub performs administration on the Company’s behalf in terms of specific mandates and shall administer the signing of this agreement, the risks’ acceptance process, the collection of premium where applicable, may provide a quotation to enter into the policy on the Company’s behalf but may not bind the Company in any way with respect to claims or claims settlement.

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

- (a) The Regulator suspends, provokes or withdraws The Broker’s authorisation; or
- (b) The Broker otherwise ceases in any way to be authorised by the Regulator to undertake any activities in relation to any Insurance Business subject to this Agreement; or
- (c) The Broker is downgraded by any ratings agency; or
- (d) The Broker becomes insolvent; or
- (e) The ownership and/or control of the Broker changes.

### 3) The Broker's Service to The Company

3.1 The Broker will provide insurance intermediary services to Insureds and Insurers ("the Services"). In providing the Services, The Broker will:

- (a) Refer risks to The Company for placement, where The Company will be either the Insurer or the Reinsurer.
- (b) Provide The Company with all material information about any risk referred, before it is bound.
- (c) Comply with all The Company's requirements as will have been defined independently for documentation and information disclosure when placing any risk.
- (d) Co-operate with The Company in the co-ordination and assessment of Insureds' / Reinsureds' claims.
- (e) Promptly pass to The Company all documents and other material information in relation to claims. See later for the definition of "material".

### 4) Market and Financial Security

4.1 The Broker undertakes that any premiums received by The Broker for the risks placed with The Company must be paid to The Company immediately and within payment terms (Premium Payment Warranty) – see later – and will not be held by The Broker for any period beyond the PPW period.

4.2 Where The Broker receives:

- a) Premium due to be paid to The Company; or
- b) Return premium due to be paid to The Broker's client; or
- c) Claims funds due to be paid to The Broker's client; or
- d) Any other funds in respect of the business under this Agreement.

The Broker will pay (in accordance with Premium Payment Warranty) such funds without any delay and in accordance with the Premium Payment Warranty. Failure to do so will result in The Company's cancelling the cover from inception and/or denial of a claim and/or rejection of a claim and/or voiding/cancelling cover.

### 5) Evidence of Cover and Policy Documentation

5.1 The Broker shall examine all insurance documents thoroughly to ensure that they meet all Parties' requirements as defined within this Agreement. If the documents do not meet the requirements, or if The Broker feels they are incorrect, or if The Broker does not understand them, or if The Broker is dissatisfied with the

insurance, The Broker shall advise all Parties immediately. If this is not complied with The Company will rely on the services undertaken by The Broker that the documentation meets the requirements at all times.

## **6) Non-payment of Premium**

6.1 Should an Insured, Cedant or Broker fail to pay the premium or any instalment of it in full with cleared funds in the invoiced currency by the due date (as specified within PPW), the insurance contract will be deemed void from the outset (ab initio) or cancelled by The Company in accordance with the cancellation clause in the policy.

6.2 The Company incorporates within its practices a PPW into all insurance and reinsurance contracts and transactions.

6.3 The PPW is a condition precedent to liability under the policy and no claim will be paid in any circumstance in the event of a breach of the PPW.

## **7) Warranties and Subjectivities**

7.1 It is warranted that the Broker will familiarise itself with the terms of any insurance contract that The Company underwrites. In particular, The Broker must address warranties that are applicable seriously and comply strictly with them. Failure to do so will jeopardise The Broker's and/or the Insureds' and/or the Cedants' rights. If The Broker has any doubts or reservations at inception, prior to inception or at any subsequent time, The Company must be informed immediately.

7.2 Any subjectivity condition within any policy of insurance issued by The Company must be complied with. Any subjectivity condition which is not complied with by a policyholder immediately invalidates all cover under the policy whilst the subjectivity remains outstanding.

## **8) Duty of disclosure/utmost good faith**

8.1 For The Company to be able to arrange insurance to meet Insureds' requirements, The Broker must act at all times with utmost good faith towards The Company and Insureds.

8.2 The Broker must disclose to The Company, before the terms of the insurance contract are finalised with The Company, all material information which is known to The Broker (or which would be regarded as imputed to The Broker) in the ordinary course of its business and which is material to the risk and which might give rise to a claim.

8.3 Information is material if it would influence the judgment of a prudent Insurer in determining whether to accept the risk at an appropriate premium or to impose relevant terms, conditions or warranties.

8.4 If there is any doubt as to whether information is material, it must be disclosed to The Company at the outset.

8.5 If The Broker becomes aware that material information supplied before the contract of insurance is incepted and at any time subsequently was incorrect or has been omitted, The Broker shall inform The Company immediately.

8.6 The duty of disclosure is a continuing obligation/responsibility and applies throughout the contract between the Parties. When there are changes in circumstances which materially affect and increase the risk, or relate to compliance with a warranty or condition in the policy, such changes must be notified to The Company immediately. The continuing duty of disclosure in relation to changes or variations in cover and information applies at all times, including when the policy is renewed or extended.

8.7 Nothing in this Agreement shall grant The Broker authority to vary insurance business, alter any document or policy and/or commit The Company in any way other than explicitly agreed in this TOBA.

## **9) Claims**

9.1 If The Broker receives notification of a claim then this shall be passed to The Company immediately.

9.2 Nothing in this Agreement should grant The Broker authority to settle, negotiate or compromise claims and/or commit The Company in any way.

9.3 The Broker will notify The Company immediately in accordance with separate and independently advised conditions in relation to the notification of claims of all details of any incidents that could give rise to a claim and provide The Company with all information relating to the claim. Failure to notify an incident immediately (in accordance with the condition referred to above) will give The Company the right to avoid paying a claim.

9.4 Upon receiving full information and documentation of the circumstances, The Company will promptly inform The Broker of the acceptance or denial of a claim, together with any explanation of the reasons for so doing.

9.5 The Broker will provide reasonable assistance with handling claims and will communicate with The Company promptly.

9.6 The Broker understands and agrees that it has a duty of disclosure towards The Company of both:

- a) any details and facts that might give rise to a claim and
- b) any details and facts that might affect The Company's decision as to the acceptance or denial of a claim.

## **10) The Broker's Liability for Tax**

10.1 Unless there is a legal requirement for The Company or the Cedants to do so, it is The Broker's obligation to make declarations in respect of and to account for tax on all insurance transactions in accordance with relevant obligations and in line with relevant territories.

## **11) Remuneration**

11.1 The Broker will be remunerated by a commission earned on insurances placed and will be specifically stated on the reinsurance document, negotiated and agreed with The Company. As this remuneration is earned on placement, The Broker will be entitled to retain it from premiums collected by The Broker when remitting them to The Company.

11.2 If The Broker wishes to carry out any task beyond the services agreed upon, these will only be subject to an additional fee and/or commission if agreed in writing in advance and signed off between the Parties.

11.3 The Broker may be asked by third parties and/or Insureds at any time to disclose the commission it receives for arranging the insurance business. It is for The Broker to provide such disclosure.

## **12) Conflicts**

12.1 In the event that either Party identifies a conflict of interest in providing the Services under this TOBA, they will immediately notify the other and where the Parties are able to do so they will discuss how to continue to provide the Services.

12.2 During the submission and consideration of any claim that an Insured or a Cedant may have under an insurance contract, the Parties will always use reasonable endeavours to avoid a conflict of interest. Should either of the Parties consider, however, that a conflict has arisen, then The Broker shall under no circumstances take further action on behalf of The Company without its written approval.

12.3 The Broker will warrant to The Company that it has adequate systems and controls in place (including relevant internal policy and procedures documents) to ensure that The Broker, its company, employees and agents will not engage in offering, promising or giving of any financial or other advantage to any person in breach of any laws.

12.4 In relation to bribery The Broker warrants to The Company that it has taken all reasonable measures to ensure that The Broker is not used for the furthering of financial crime or breaches of international sanctions regimes.



**13) Hold Harmless**

13.1 The Broker agrees to hold harmless, indemnify and keep The Company indemnified against all liability that may arise from time to time and against all claims, demands, actions, proceedings, damages, losses, costs (including all legal costs) and expenses whatsoever,

arising out of or in relation to any act, omission or breach for which The Broker is responsible, and which are made or brought against The Company in connection with the appointment as set out in this TOBA.

**14) Authority to give instructions**

14.1 Unless instructed otherwise, The Broker shall assume that all of The Company's employees, directors and officers who give such instructions are authorised to do so and that it may act on oral instructions.

**15) Intellectual property**

15.1 The Broker shall retain all title, copyright, patents and other intellectual property rights to all methodologies and documents used in its provision of the Services to The Company.

**Responsibilities of The Company (see Clauses 16.1 to 20.1 inclusive)****16) Responsibilities of The Company**

16.1 The Company warrants that it is authorised to conduct reinsurance and / or insurance business on the date of this Agreement and will treat The Broker and policyholder fairly in all respects.

16.2 The Company will retain documents relating to business placed with The Company or on its behalf in electronic or paper format in line with market practice.

16.3 Any slip evidencing insurance placed by The Broker or with The Company or on its behalf belongs to and remains the property of The Company.

## **17) Complaints**

17.1 The Company's Complaints Procedure is available upon request. All complaints should be addressed to the Company. A register of complaints with respect to the Company should be maintained by the Broker and provided to the Company on request.

## **18) Confidentiality**

18.1 Information provided by The Broker to The Company will remain confidential and will only be disclosed by The Company in the normal course of negotiating, maintaining or renewing The Broker's insurance policies, unless The Broker has consented in writing.

18.2 The Company may disclose the fact that The Broker has a contractual relationship but no other details. Disclosure may also be made to The Company's regulator or to Claims service providers or where The Company is legally obliged to disclose the information.

**19) Limitation of Liability**

19.1 The maximum aggregate liability of The Company that may be due to the broker, howsoever arising, in connection with the TOBA shall be limited in total to the amount of US\$ 2,000,000.00 (Two million United states Dollars).

**20) Intellectual property**

20.1 The Company shall retain all title, copyright, patents and other intellectual property rights to all methodologies and documents used in its provision of the Services to The Broker.

**Responsibilities of Both Parties (see Clauses 21.1 to 31.1 inclusive)****21) Money laundering**

21.1 Both Parties are obliged within local and territorial money laundering regulations to undertake customer due diligence measures to comply, and to seek further information from each other if any of the Parties request to make any payments to a third party or any other party as may be relevant. No cover shall exist for any policyholder that may appear on any of the Sanctions lists and The Broker shall supply its Anti Money Laundering Policy to the Company on request.

**22) Data protection**

22.1 The Parties may be subject to local Data Protection legislation and undertake to comply with such legislation in all their dealings with any personal data. (See Privacy Policy).

## **23) Compliance**

23.1 The Parties will comply and both Parties agree to co-operate with each other to ensure compliance with any applicable, international, economic, financial or trade sanctions legislation.

23.2 The Parties will not be involved in the offering, promising or giving of any financial or other advantage to any person in breach of any legislation against bribery. The Parties are required to maintain anti-corruption/bribery policies and procedures which seek to prevent corruption/bribery offences. The Parties may take, or omit to take, any action where necessary to comply with such policies and procedures and legislation.

23.3 The Company shall have the right to audit and inspect all documentation relating to the Company or policies that have been referred to the Company to reinsure. The Company shall provide reasonable notice of such audits where appropriate.

23.4 The Broker shall procure both Professional Indemnity and Fidelity Insurance. Proof of such policies shall be provided to the Company on request.

## **24) E-mails/Communications**

24.1 As part of day-to-day communications, the Parties may utilise e-mail and this will be acceptable to the Parties.

24.2 By communicating with The Company via e-mail The Broker accepts that this method of communication is valid and enforceable on that basis alone. The Parties will also be taken to appreciate and accept any inherent risks and that communication in this form is writing for the purpose of any law or regulation when writing is required.

## **25) Termination of Services**

25.1 Whilst the Company wishes to retain the business and goodwill of clients of the Parties either Party may terminate the agreement by giving the other notice in writing of a minimum of 30 (thirty) days prior to the cancellation taking effect. The termination will not jeopardise The Broker's entitlement to commissions and brokerage due to The Broker from businesses placed by The Broker with The Company., Should the Broker be liquidated or be merged with another entity or should The Broker lose its license to trade from its Regulator, this agreement shall terminate with immediate effect.

25.2 If any term of this TOBA, or any part of such term, is or becomes illegal, invalid or unenforceable in any respect, it shall be amended forthwith but then the remainder of the TOBA will remain valid and enforceable if at the time of any relevant event it was valid.

25.3 Should The Broker commit fraud of any type and/or an act of dishonesty and/or make any misrepresentation to The Company and/or act without authority ("Unauthorised Actions"), The Company shall have the right to:

(a) Cancel this agreement with immediate effect and/or, at The Company's discretion,

from the date the Unauthorised Actions, ; and  
(b) withhold any commissions or any other funds that may be due to the broker; and  
(c) offset any funds due from the Broker to The Company; and  
(d) charge the Broker for any and all damages, costs and expenses caused to The Company in investigating and reviewing the Unauthorised Actions,

The Company shall hold all remaining funds that may be due to the Broker until the Company has calculated its reasonable damages (including legal costs) resulting from the Unauthorised Actions and ensured there is no further exposure to the Company resulting from the Unauthorised Actions.

Any commissions earned by the Broker after the Unauthorised Actions will be forfeited and will be written off by the Company, and the Broker will not be entitled to them.

## **26) Third party rights**

26.1 This TOBA is not intended to and it does not confer a benefit or remedy on any third party, whether by virtue of any legislation or otherwise. The Company may rescind or vary this TOBA as it applies to The Broker, in whole or in part without the consent of any third party.

## **27) No Joint Venture**

27.1 Neither this TOBA nor any actions taken by either Party pursuant to this TOBA will create or be construed as creating a partnership association, joint venture or other co-operative entity between the Parties.

## **28) Language**

28.1 Unless otherwise agreed by both Parties in writing, all evidence of cover and other documentation provided to The Broker, and any discussion with The Broker, will be in English. Unless The Company have agreed otherwise with The Broker, in writing. The Broker shall ensure that any documentation and/or instructions that it provides to The Company are always in English including claims.

## **29) Governing law and jurisdiction**

29.1 This TOBA, any associated letter/correspondence and the Parties' business relationship are governed by the law of England and Wales or as otherwise agreed in writing, and are subject to the exclusive jurisdiction of the Court in the Jurisdiction of England and Wales or as otherwise agreed in writing.

## **30) Force majeure**

30.1 The Parties shall not be liable to each other if they are unable to perform the Services as a result of any cause beyond their reasonable control. Such circumstances making performance inadvisable, commercially impracticable, illegal or impossible. In the event of any such occurrence (force majeure) affecting any of the Parties, they shall notify each other immediately either Party becomes aware.

## **31) Entire agreement**

31.1 This TOBA, including, for the avoidance of doubt any Schedule attached, constitutes the entire agreement between the Parties with regard to the Parties'

engagement and supersedes all proposals, prior discussions and representations, oral or written, between the Parties relating to the Services.

### 32) Signatory Clause

#### 32.1 The Parties' acceptance of these terms

32.2 It is deemed that the Parties' consent to working together based upon the terms of this TOBA. The Parties agree that in this consent it is guaranteed that all information provided by the Parties shall be true, within their knowledge that is available to them and to their best knowledge and belief.

Signed – Broker

Name .....  
Position .....  
Witness .....  
Dated .....

Signed – Company

Name .....  
Position .....  
Witness .....  
Dated .....