Intermediary Agreement
Intermediary Agreement
between:

OAKHURST
INSURANCE COMPANY LIMITED

Oakhurst Insurance Company Limited

Registration No: 2006/000723/06
FSP 39925
VAT No: 9174122177

(Hereinafter referred to as 'Oakhurst')

AND

Registration No: ____________________________
FSP No: ____________________________
VAT No: ____________________________

(Hereinafter referred to as “the Intermediary”)

Oakhurst Insurance Company Limited (Registration number 2006/000723/06), an authorised financial services provider (FSP39925)
Life insurance is underwritten by Oakhurst Life Limited (Registration number 2012/066504/06), an authorised financial services provider (FSP44793)
1. INTERPRETATION

1.1 In this agreement, unless inconsistent with or otherwise indicated by the context -

1.1.1 “the/this agreement” means this document, including the appendices to this document;
1.1.2 “the Act” means the Short Term Insurance Act, 53 of 1998 as amended from time to time and the regulations published in terms thereof;
1.1.3 “business day” means a day which is not a Saturday, Sunday or South African public holiday;
1.1.4 “CPA” means the Consumer Protection Act 68 of 2008 as amended for time to time and the regulations published in terms thereof;
1.1.5 “the effective date” means ____________, notwithstanding the signature date;
1.1.6 “FAIS” means the Financial Advisory and Intermediary Services Act 37 of 2002 as amended form time to time and the regulations published in terms thereof;
1.1.7 “gross written premium” means the gross premiums paid by the Insured for all current policies underwritten pursuant to this agreement before the deduction of commission, but excluding Value Added Tax, and any other charges;
1.1.8 “the Intermediary” means the intermediary defined on the cover page;
1.1.9 “Insured” means a natural or juristic person to whom a policy has been issued and from whom premium in respect of a policy has been received;
1.1.10 “non-mandated intermediary” means a non-mandated intermediary as defined in the binder regulations published under the Act;
1.1.11 “Oakhurst” means Oakhurst Insurance Company Limited defined on the cover page;
1.1.12 “the parties” means all the parties to this agreement;
1.1.13 “policy” means a short term insurance policy;
1.1.14 “the signature date” means the date upon which this agreement is signed by the last party signing;
1.1.15 any reference to the singular includes the plural and vice versa;
1.1.16 any reference to natural persons includes legal persons and vice versa;
1.1.17 any reference to a gender includes the other genders;
1.1.18 words defined in the Act shall bear the meanings assigned to them in the Act.

1.2 The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.

1.3 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
1.4 Words and expressions defined in the Act, the CPA and/or FAIS shall have corresponding meanings in this agreement, and if any clause is at variance with the above legislation the provisions of the clause shall be deemed to be amended to be in compliance with the relevant legislation.

1.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.

1.6 If any period is referred to in this agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day.

1.7 This agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

1.8 The rule of construction that this agreement be interpreted against the party responsible for drafting the agreement shall not apply.

2 APPOINTMENT AND CAPACITY OF INTERMEDIARY

2.1 The Intermediary is a non-mandated Intermediary.

2.2 The Intermediary is authorised to conduct those activities indicated in clause 4.

2.3 Nothing in this agreement shall:

2.3.1 require Oakhurst to accept any proposal for or the renewal of any policy if in its solediscretion it declines to do;

2.3.2 be construed as being an exclusive relationship between the parties;

2.3.3 be construed as giving the Intermediary any authority to act on behalf of, or bind Oakhurst in any manner whatsoever.

3 PERIOD OF AGREEMENT

3.1 This agreement shall commence on the effective date and endure indefinitely there after subject to either party's right to cancel this agreement with 90 (ninety) days written notice to the other.
PARTIES’ GENERAL RIGHTS AND OBLIGATIONS

4.1 The Intermediary shall:

4.1.1 be permitted to place and retain Oakhurst on its panel of insurers that provides short-term insurance services to its client base;
4.1.2 market and sell the policies which have been approved by Oakhurst;
4.1.3 market and sell the policies at the premiums and on the terms determined by Oakhurst, which shall be determined by an authorised employee of Oakhurst and/or the black box as the case may be;
4.1.4 disclose to Oakhurst all facts within its knowledge which may impact on whether or not Oakhurst accepts risks under any policy;
4.1.5 perform all acts necessary to comply with the act, FAIS and the CPA;
4.1.6 on acceptance of any quotations by prospective clients, as soon as practically possible transmit the lead (either telephonically or electronically) to the Oakhurst underwriting department who shall forthwith attend to the underwriting of the policy;
4.1.7 promptly and with all possible despatch inform Oakhurst of any changes to be made to a policy or schedule by email;
4.1.8 maintain accurate records and books of account of all policies sold to Insureds.

4.2 Oakhurst shall:

4.2.1 provide all policy administration, underwriting, client care servicing, amendments and claims administration functionality relative to all policies issued pursuant to this agreement;
4.2.2 administer all necessary product and policy training to the Intermediary in its sole discretion;
4.2.3 provide copies of policy documentation and policy correspondence to the Intermediary by email;
4.2.4 be responsible for policy fulfilment, changes to policies and without limiting the aforesaid be obliged to provide all policy schedules and other necessary correspondence to the Insured.

BUSINESS PROCESS

5.1 The Intermediary will quote on the quoting engine and if a client accepts, the lead shall be sent directly to Oakhurst.

5.2 Once the lead is received, Oakhurst will underwrite the client.

5.3 Oakhurst will provide feedback regarding underwriting status to the Intermediary via a dedicated feedback e-mail address (as created by the Intermediary).

5.4 Once a policy has been signed-up, Oakhurst will attend to the administration where after the policy schedule will be automatically e-mailed to the Intermediary via the dedicated e-mail address as provided by the Intermediary and referred to in 5.3 above.

5.5 The Intermediary hereby agrees that it will have read-only access to the policy schedule and as such no changes may be effected by the Intermediary.
6 POLICY HOLDER PROTECTION RULES AND FAIS COMPLIANCE

6.1 For the duration of this agreement both parties shall at all times ensure that they comply with the Policy Holder Protection Rules published under the Act and are also FAIS compliant and maintain their licences issued under Section 8 of FAIS.

6.2 In particular, both parties undertake to:

6.2.1 act honestly and fairly, and with due skill, care and diligence in the interest of the Insured;
6.2.2 have in place and effectively employ the resources, procedures and appropriate technological systems for the proper performance of the professional services sought by Insureds;
6.2.3 where applicable, seek from the clients appropriate and available information regarding their financial situations, financial product experience and objectives in connection with the financial service required and such information shall be used for no purpose other than to provide policies;
6.2.4 act with circumspection and treat the Insured fairly should situations of conflicting interests arise; and
6.2.5 comply with all applicable statutory or common law requirements applicable to the conduct of their respective businesses.

7 REMUNERATION

7.1 Oakhurst agrees that it will pay to the Intermediary the appropriate statutory commission in respect of policies taken up by each Insured as a consequence of this agreement, as recorded in the Act or its regulations from time to time, which, as at signature of this agreement is 12.5% of gross written premium. The commission shall be paid on accordance with clause 8.

7.2 No other remuneration in respect of the services rendered by the Intermediary on behalf of Oakhurst shall be paid to the Intermediary.

7.3 The Intermediary charges a fee equal to ________for each policy written in terms of section 8(5) of the Act, this fee shall be shown separately on the schedule and clearly identified to the Insured.

7.4 Oakhurst shall collect the fee in clause 7.3 on behalf of the Intermediary and remit same to the Intermediary.

7.5 The Intermediary indemnifies Oakhurst and holds it harmless in respect of all damages including regulatory fines and penalties arising out of the collection and remittance of the fees in clause 7.3.

7.6 The above amounts are all inclusive of Value Added Tax (“VAT”) levied in terms of the Value Added Tax Act 89 of 1991 (“the VAT Act”).

7.7 The parties warrant that they are both VAT vendors and that the VAT registration numbers they have each provided in the pre-amble of this agreement are true and correct.
7.8 The intermediary shall not issue a tax invoice in respect of commission and Oakhurst shall issue a recipient-created tax invoice that complies with the provisions of sections 20(4) and/or (5) of the VAT Act within 21 (twenty one) business days of time of supply in the form of a monthly commission statement, and provide same to the Intermediary whilst retaining a copy thereof for a period contemplated in section 55 of the VAT Act.

8 PAYMENT AND PREMIUM:

8.1 All payments by Oakhurst to the Intermediary will be made by Electronic File Transfer into the Intermediary's following nominated bank account: ___________________________

Bank: ___________________________

Branch: ___________________________

Account No: ___________________________

8.2 Payments will be made by the 15th day of the following month after collection of premium by Oakhurst from the Insured.

8.3 All premium shall be remitted into Oakhurst's designated account as designated by it from time to time by in writing.

9 INTELLECTUAL PROPERTY

All copyright in any documents, computer software and other material which may be made available by either party shall at all times vest in the party that originated same and may only be copied or reproduced with the express written consent of either party. All such documents, computer software and material, including any copies or reproductions thereof, shall at all times remain the sole and exclusive property of the party whom originated same and shall be returned to such party on demand. Both parties shall be obliged to comply with any terms of supply or instructions for the operation or use of such documentation, computer software and/or material as may be communicated by one another.

10 CONFIDENTIALITY AND NON-SOLICITATION

10.1 The parties acknowledge that any information supplied in connection with this agreement or in connection with each other's business or financial affairs which has or may be transferred or come into the possession or knowledge of any of the other of them (“the receiving party”) may consist of confidential or proprietary data, disclosure of which to or use by third parties might be damaging to the party concerned.

10.2 The receiving party therefore agrees to hold such material and information in the strictest confidence, to prevent any copying thereof by whatever means and not to make use thereof other than for the purposes of this agreement and to release it only to such authorised directors or employees requiring such information for the purposes of this agreement and agrees not to release or disclose it to any other party who has not signed an agreement expressly binding himself not to use or disclose it other than for the purposes of this agreement.
10.3 The parties shall take such precautions as may be necessary to maintain the secrecy and confidentiality of such material and information in respect of their directors, employees, agents or any other person to whom any such confidential or proprietary data may have been or will be disclosed.

10.4 The undertaking and obligations contained in this clause 10 do not apply to information which –

10.4.1 is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the parties;
10.4.2 is required by law or any regulatory authority to be disclosed;
10.4.3 after being disclosed to the receiving party is disclosed by any other person to the receiving party otherwise than in breach of any obligation of confidentiality.
10.4.4 The provisions of this clause 12 shall endure notwithstanding the termination of this agreement.

10.5 The parties agree that they shall not, for the duration of this agreement, and for a period of 24 (twenty four) months from the date upon which the agreement is terminated for whatever reason and whether for reward or not, directly or indirectly:

10.5.1 encourage or entice or incite or persuade or induce any employee, who was employed by the other whilst this agreement was in force, to terminate his employment with the other party; or
10.5.2 furnish any information or advice to any employee to whom clause 10.5.1 applies or to any prospective employer of such employee or use any other means which are directly or indirectly designed, or in the ordinary course of events calculated, to result in any such employee terminating his employment with the innocent party and/or becoming employed by or directly or indirectly in any way interested in or associated with any other company, close corporation, firm, undertaking or concern; or attempt to do so.

11 BREACH

In the event of either of the parties (“the defaulting party”) committing a breach of any of the terms of this agreement and failing to remedy such breach within a period of 10 days after receipt of a written notice from another party (“the aggrieved party”) calling upon the defaulting party so to remedy, then the aggrieved party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this agreement or to cancel this agreement forthwith and without further notice, claim and recover damages from the defaulting party.
12 IMMEDIATE TERMINATION

12.1 Oakhurst shall, notwithstanding clause 11, be entitled to terminate this agreement by providing the Intermediary with 5 (five) days written notice of cancellation to that effect in the event that, but not limited to:

12.1.1 the Intermediary performing any action on behalf of Oakhurst that is not authorised in terms of this agreement; or
12.1.2 the Intermediary failing to maintain a proper system of records and storage in accordance with clause 4.1.8; or
12.1.3 the Intermediary, its directors, senior management and/or senior staff contravening any provision of the Act, FAIS, the SAIA Code, CPA or any other legislation, or committing or permitting to be committed any act bringing the Intermediary or Oakhurst into disrepute; or
12.1.4 a change in control of the Intermediary takes place and Oakhurst withholds its consent thereto, which consent shall not be unreasonably withheld; and the Intermediary has failed to remedy any of the above to the satisfaction of Oakhurst within the 5 (five) days after receiving written notice in accordance with this clause 12.

12.2 Notwithstanding anything to the contrary contained in this agreement, it may be terminated by either party giving the other party immediate written notice of cancellation to that effect if at anytime:

12.2.1 the other party should become insolvent, liquidated (provisionally or finally), wound up or be placed under curatorship or business rescue; or
12.2.2 the other party shall make any assignment for the benefit of its creditors; or
12.2.3 any license of the other party to conduct its business is suspended, removed, impaired or revoked by any order or decree of any regulatory or judicial authority; and
12.2.4 the other party, its directors, or any senior member of its staff commits any act of fraud or theft.

12.3 Once the notice of cancellation has been delivered to the relevant party, the Intermediary will be obliged to immediately transfer to Oakhurst all paper-based and electronic records pertaining to the contact details of the Insureds to enable Oakhurst to notify them that this agreement has been cancelled.

13 INDEMNITY

Both parties hereby indemnify one another against all actions, claims, damages or any other liability which either party or any other third party may sustain either directly or indirectly arising out of any intentional or negligent or unlawful act or omission by either party or its employees or agents acting in the course and scope of their employment or mandate with their employer.
14 JURISDICTION

For the purpose of all or any proceedings herein the parties hereby consent to the jurisdiction of the Magistrate’s Court. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said Court pursuant to Section 45 of the Magistrate’s Court Act of 1944, as amended. Notwithstanding the foregoing, either of the parties shall have the right at their sole option and discretion to institute proceedings in any other competent Court which might otherwise have jurisdiction.

15 NOTICES AND DOMICILIA

The parties choose as their domicilia citandi et executandi their respective addresses set out in this clause for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.

15.1 For purposes of this agreement the parties’ respective addresses shall be:
Oakhurst Insurance Company Limited
Hurteria Building
127A York Street
George
6529

15.2 ______________________________
______________________________
______________________________
______________________________

or at such other address in the Republic of South Africa of which the party concerned may notify the others in writing provided that no street address mentioned in this sub-clause shall be changed to a post office box or poste restante.

15.3 Any notice given in terms of this agreement shall be in writing and shall –

15.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
15.3.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) day following the date of such posting;
15.3.3 if transmitted by facsimile or electronic mail be deemed to have been received by the addressee on the day following the date of dispatch, unless the contrary is proved.

15.4 Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the parties from another including by way of facsimile transmission or electronic mail shall be adequate written notice or communication to such party.
16 **FORCE MAJEURE**

16.1 No party shall be liable to the other in respect of the non-performance of any of the provisions of this agreement in the event and to the extent that such non-performance is the direct result of or has been directly caused by force majeure, which shall mean any event beyond the reasonable control of a party and which could not reasonably have been foreseen by it at the date of signature of this agreement, and shall include: war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, riot (insofar as it is uninsurable), civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power or any act of any person acting on behalf of or in connection with any organisation with activities directed towards the overthrow by force of the Government de jure or de facto or to the influencing of it by terrorism or violence, confiscation, nationalisation or requisition or destruction of or damage to property by or under the order of the Government de jure or de facto or any Public or Local Authority.

16.2 A party claiming force majeure shall as soon as reasonably possible after becoming aware of the force majeure event, notify the other party thereof, stating the nature, extent and expected duration of same.

16.3 The burden of proof of the existence and extent of the alleged event and the enforceability thereof shall rest on the party claiming force majeure.

16.4 The party receiving notice in terms of clause 16.2 shall within 7 (seven) days of receipt thereof notify the other party of his acceptance or otherwise of the claim. In the event of such party notifying the other that the latter's claim of force majeure is not accepted, the provisions of 16.3 shall apply.

16.5 In the event of force majeure as notified and accepted or determined in terms of clause 16.1 continuing for a period of 30 (thirty) days, the party who has received notice of force majeure, shall be entitled to terminate this agreement with immediate effect.

17 **ASSIGNMENT**

No party may cede, assign, transfer, sub-contract or otherwise part with this agreement or any part thereof or any right or obligation under it, without obtaining the other party's prior written consent thereto.

18 **RELAXATION**

No latitude, extension of time or other indulgence which may be given or allowed by any party to the other parties in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any party arising from this agreement, and no single or partial exercise of any right by any party under this agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of or arising from this agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
19 **SEVERABILITY AND UNLAWFULNESS**

19.1 If any provision of this agreement is unenforceable, such provision shall (unless it is material in nature) be severed from the remaining provisions of this agreement, which shall not be affected thereby, and shall remain of full force and effect.

19.2 Should any provision of this agreement be unlawful or be contrary to any law and be severable from this agreement the parties shall negotiate in good faith to conclude a new agreement or clause as the case may be substantially similar to the original agreement or clause.

20 **AGENCY AND PARTNERSHIP**

20.1 This agreement does not constitute the appointment of the Intermediary as an agent of Oakhurst, and the Intermediary is not authorised to represent itself in any form whatsoever as an agent of Oakhurst.

20.2 This agreement does not create a partnership between Oakhurst and the Intermediary and neither of them are authorised to represent itself in any form whatsoever as a partner of the other.

21 **VARIATION**

No addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.

22 **ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the parties who acknowledge that there are no other oral or written understandings or agreements between them relating to the subject matter of this agreement. No amendment, consensual cancellation or other modification of this agreement including this clause shall be valid or binding on a party hereto unless reduced to writing and executed by both parties hereto.

23 **PROOF OF INDEBTEDNESS**

A certificate under the hand of any officer of Oakhurst or under the hand of its auditors (who's capacities as such will not need to be proven) shall constitute prima facie proof of any amounts owing in terms of this agreement.

24 **CESSION IN SECURITY**

As security for any present or future debt or debts that the Intermediary may owe Oakhurst, the Intermediary hereby cedes to Oakhurst which Oakhurst accepts in security all right and title to any monies that the Intermediary may be entitled to in terms of this agreement.

25 **SURETYSHIP**

As the Intermediary is a company, it shall procure that a deed of suretyship be entered into by all the members and directors or any other party as the case may be, as may be required by Oakhurst, binding themselves jointly and severally for the due performance by the Intermediary of all its obligations in terms of this agreement.
26 CREDIT AND CRIMINAL CHECKS

The Intermediary hereby consents that Oakhurst may from time to time conduct, at the relevant authorities and/or bureaus, credit and/or criminal background checks on its employees or directors and further consents that Oakhurst may share information with the relevant authorities and/or bureaus pertaining to the Intermediary’s performance in terms of this agreement.

27 CPA

27.1 The Intermediary shall comply with the CPA (insofar as it is applicable), ensure that its representatives comply, and indemnify and hold harmless Oakhurst with regard to such compliance in respect of the services rendered to the clients and/or Insureds, which obligations shall include, but not be limited to:

27.1.1 Timely performance and completion of the supply of services, and timely notice of unavoidable delay; and
27.1.2 performance of services in a manner and quality that a client and/or Insured would generally be entitled to expect.

THIS DONE AND SIGNED AT _____________ ON THIS THE _____ DAY OF ______________

AS WITNESSES:

1 __________________________

2 ____________________________ For and Behalf of Oakhurst Insurance Company Limited who warrant that he is duly authorised hereto

THIS DONE AND SIGNED AT _____________ ON THIS THE _____ DAY OF ______________

AS WITNESSES:

1 __________________________

2 ____________________________ For and behalf of

________________________________________

who warrants that he is duly authorised hereto

DESIGNATION: __________________________