

Industry Standard Broker Agreement (Underwriting Agency)

(Brokerage Name)

and

Arena Underwriting Pty Ltd

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Parties

Arena Underwriting Pty Limited ABN 26 125 869 481, AFS License number 317617 of Suite 7, 25 Anzac Road, Tuggerah NSW 2259 (**Underwriting Agency**) and

Broker name

ABN

AFSL No

Address

(**Broker**)

Background

- A The Underwriting Agency is authorised to underwrite insurance products on behalf of the Insurers for the classes of insurance listed in the schedule pursuant to an agreement between the Underwriting Agency and each Insurer.
- B The Broker is an Australian Financial Services (**AFS**) licensee.
- C The parties wish to regulate their relationship under the regulatory regime for financial services on the terms set out in this agreement.

Operative provisions

1 Licence and registration

- 1.1 The Broker holds an AFS licence that authorises it to provide financial product advice and to deal in general insurance products.
- 1.2 The Underwriting Agency holds an AFS licence that authorises it to provide financial product advice and to deal in (by issuing) general insurance products.
- 1.3 Each party must notify the other immediately in the event that its AFS licence is suspended or cancelled, or any authorisation on the licence is varied other than by the addition of authorisations, or, in the case of an exemption, the party is not longer entitled to the exemption.

2 Relationship

- 2.1 Unless and to the extent agreed otherwise, the Broker acts as agent for each of the Broker's clients, and not as agent for the Underwriting Agency or the Insurers, in providing financial advice or dealing in any financial product.

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- 2.2 Nothing in this agreement creates a binder or a relationship of agency, partnership or employment between the parties or between the Broker and Underwriting Agency or any Insurer.
- 2.3 Unless expressly stated otherwise in this agreement, the Broker is not authorised to do anything as agent of the Underwriting Agency or the Insurers.
- 2.4 The Broker acknowledges that it has each of its client's authority to receive for that client all notices for an Insured or intending Insured under the Insurance Contracts Act and the Corporations Act.
- 2.5 The parties agree to act at all times in good faith in their dealings with each other.

3 Compliance obligations

- 3.1 The parties agree to comply, at all time, with all Legal requirements.

4 Remuneration

- 4.1 The Underwriting Agency will pay the Broker commission on each Base Premium in accordance with Schedule 1
- 4.2 The terms of Schedule 1 can be amended by the Underwriting Agency by providing 90 days written notice to the Broker.
- 4.3 The Underwriting Agency will notify the Broker of the commission payable on any policy of insurance that is not included in Schedule 1 or for specially quoted policies of insurance and agrees to pay that commission to the Broker.
- 4.4 The parties acknowledge that the Broker may also charge a fee to its clients, in addition to commission.
- 4.5 This clause survives termination.

5 Arranging insurance

Authority

- 5.1 The Underwriting Agency has authority from each Insurer to enter into this agreement and to bind the Insurer to the terms and conditions of this agreement.

Closing instructions

- 5.2 Subject to clause 5.6, the Broker must provide the Underwriting Agency with all closing instructions within 90 days of attachment, renewal or endorsement of each insurance policy arranged through the Underwriting Agency with any Insurer, by the Broker.

Hold covered new business

- 5.3 If the Underwriting Agency agrees to the terms and conditions upon which the Insurer will accept any new insurance risk, the Underwriting Agency will, at the request of the Broker, issue a cover note for that risk on the agreed terms and conditions (other than period of cover).

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- 5.4 The Underwriting Agency must ensure that all cover notes are for a period of not less than 60 days and are signed and communicated in writing to the Broker by a representative of the Underwriting Agency who is authorised to do so.
- 5.5 The cover note referred to in clause 5.3, will end in accordance with section 38 of the Insurance Contracts Act.
- 5.6 Subject to the terms and conditions of the relevant cover note, the Broker must provide the Underwriting Agency with closing instructions prior to the end of the period (or any extension of the period) of the cover note.
- 5.7 If the Broker does not comply with clause 5.6, the Broker is deemed to have withdrawn the application for final cover as at the end of the period of the relevant cover note.

Hold covered renewals

- 5.8 Subject to clause 5.10, if the Underwriting Agency has offered renewal of any policy of insurance with a client of the Broker and that renewal has not been accepted before expiry of the policy of insurance, the Insurer provides automatic cover under a cover note on the terms of the offer of renewal for 90 days from the expiry date of the policy of insurance.
- 5.9 The cover note referred to in clause 5.8, will end in accordance with section 38 of the Insurance Contracts Act.
- 5.10 Clause 5.8 does not apply to a particular renewal if, prior to or at the time that renewal offer was made, the Underwriting Agency advised the Broker in writing that an automatic cover note will not be provided for that renewal. Specifically, policies that require a declaration from the Broker's client prior to renewal terms being considered or offered, will not be subject to Clause 5.8.

Premium for hold covered policies

- 5.11 The Underwriting Agency will not, and the Underwriting Agency will ensure that the Insurer does not, charge Premium for a hold covered period when the:
- (a) offer of new business referred to in clause 5.3 is not accepted; or
 - (b) renewal offer referred to in clause 5.8 is not accepted;
- unless the Underwriting Agency informs the Broker in writing, before or at the time the offer is made, that Premium will be charged and the basis of calculation of the Premium.

Acceptance and confirmation of new business or renewal terms

- 5.12 Any offer of new or renewal policies of insurance may be accepted by:
- 5.12.1 payment of the Premium to the Broker by the client; or
 - 5.12.2 written notification of acceptance from the Broker to the Underwriting Agency (without receipt of Premium by the Broker);
- before expiry of the cover note described in clauses 5.3 and 5.8 or the inception or renewal date, whichever is the later.

Workers' compensation

- 5.13 Clauses 5.3 and 5.8 do not apply to any policy of insurance required under any legislation dealing with workers' compensation.

6 Paying Premium and commission

- 6.1 The Broker must pay the Net premium it has received for each insurance policy arranged through the Underwriting Agency, within 45 days of commencement of cover.
- 6.2 The Broker is entitled to retain the commission payable under clauses 4.1 and 4.3 at the time the Net premium is paid to the Underwriting Agency under clause 6.1.
- 6.3 The Broker will retain all amounts earned on investment of the Premium before payment to the Underwriting Agency in accordance with clause 6.1.

7 Cancellation, variation or avoidance of policies of insurance

Underwriting Agency

- 7.1 Other than for instalment policies of insurance, if within 14 days of the expiry of the period referred to in clause 6.1, the Broker has not received the Premium from its client, the Underwriting Agency may, on behalf of the relevant Insurer, (subject to the terms of the policy of insurance and the Insurance Contracts Act), cancel the relevant policy of insurance of behalf of the relevant Insurer.
- 7.2 Subject to clause 7.3, the policy of insurance may be otherwise avoided or cancelled in accordance with the Insurance Contracts Act.
- 7.3 The Underwriting Agency must notify the Broker in writing of any intention by the Insurer to cancel or avoid any policy of insurance.

Refund of Premium

- 7.4 If a Premium refund is payable when a policy of insurance is varied, cancelled or avoided, the Underwriting Agency will refund the client through the Broker.

Refund of commission

- 7.5 If any policy of insurance is varied, cancelled or avoided, the Broker will refund to the Underwriting Agency that part of the amount due or paid to it by the Underwriting Agency under clauses 4.1 or 1.1 that relates to the proportion of Premium refunded to the client (if any).

8 Claims

- 8.1 The Broker will provide all reasonable assistance to the Underwriting Agency and the Insurer in respect of all claims and will use reasonable endeavours to obtain any information required from the Broker's client promptly.

9 Documentation and promotional material

- 9.1 The Broker must not change printed material supplied by the Underwriting Agency to the Broker (including but not limited to marketing material such as brochures,

advertisements, articles, editorials, posters, insurance documents such as proposals, policy wordings, certificates of insurance and certificates of currency) without the written consent of Underwriting Agency.

- 9.2 Where the material referred to in clause 9.1 has originated from the Underwriting Agency, such material remains the property of the Underwriting Agency and must be returned to the Underwriting Agency, unless already distributed, when requested.
- 9.3 Where the material referred to in clause 9.1 was originally supplied to the Broker by the Underwriting Agency, such material remains the property of the Underwriting Agency and must be returned to the Underwriting Agency, unless already distributed, when requested.
- 9.4 In circumstances where the Underwriting Agency provides a financial service to a client of the Broker under this agreement, the Broker agrees that it will either:
- 9.4.1 give to the client the Underwriting Agency's financial services guide; or
- 9.4.2 inform the client how to obtain the Underwriting Agency's financial services guide.
- 9.5 Clause 9.4 applies only if, and to the extent that, the Underwriting Agency:
- 9.5.1 provides to the Broker the Underwriting Agency's financial services guide to give to the Broker's client in the circumstances of clause 9.4.1; or
- 9.5.2 advises the Broker in writing how a client of the Broker may obtain a copy of the Underwriting Agency's financial services guide in the circumstances of clause 9.4.2.]

10 GST

- 10.1 Unless stated otherwise in this agreement, all amounts payable under or relating to this agreement are inclusive of GST.
- 10.2 Where one party makes a taxable supply to the other party pursuant to this agreement, the other party shall pay the first party an amount equal to the GST on that taxable supply.
- 10.3 A tax invoice will be issued by the Broker for the Premium for the policy of insurance in accordance with Schedule 2.
- 10.4 The parties acknowledge that the Broker does not guarantee or indemnify the Insurer or the Underwriting Agency for the payment of any taxes, statutory charges or levies applicable to any policy of insurance, even if the Broker administers the payment of such taxes, charges and levies.
- 10.5 Words in this clause 10 and in Schedule 2 have the same meaning as any definition of those words in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

11 Confidential Information

- 11.1 Subject to clause 17, during and after termination of this agreement, each party must keep confidential and must not use the other party's Confidential Information except as necessary to perform this agreement or as required by law.

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- 11.2 If a government, regulatory authority or a court orders a party to disclose Confidential Information, that party will, to the extent permitted, immediately advise the other party and will disclose only such of the Confidential Information necessary to comply with the order.
- 11.3 Nothing in this clause 11 restricts the use or dissemination of Confidential Information obtained lawfully from a third party.
- 11.4 Each party authorises the other to disclose its Confidential Information to its (re)insurers, actuaries, auditors, professional agents and advisors and any related bodies corporate.
- 11.5 This clause survives termination.

12 Indemnity

- 12.1 The Broker indemnifies the Underwriting Agency against all claims, damages, judgments, losses, costs and expenses to the extent that they arise out of or in connection with any breach by the Broker of its obligations under this agreement.
- 12.2 The Underwriting Agency indemnifies the Broker for all claims, damages, judgments, losses, costs and expenses to the extent that they arise out of or in connection with any breach by the Underwriting Agency of its obligations under this agreement.
- 12.3 This clause survives termination.

13 Dispute resolution

- 13.1 The parties must attempt in good faith to resolve any dispute between them in connection with this agreement by negotiation.
- 13.2 If any dispute cannot be resolved by negotiations between the parties within 10 days or such further period as the parties agree is appropriate, then within the following 10 days, the parties must seek to agree on procedural rules and a timetable for resolving the dispute through mediation by a mediator agreed upon by the parties, or if the parties cannot agree, a mediator appointed by the Australian Commercial Disputes Centre or any body which replaces it.
- 13.3 A party may not commence court proceedings or arbitration (other than an urgent interlocutory application) relating to any dispute arising from this agreement unless that party has complied with clauses 13.1 and 13.2.

14 Variation

- 14.1 This agreement may not be varied, other than as provided for specifically in this agreement, unless such variation is agreed upon by the parties and recorded in writing.

15 Assignment

- 15.1 Subject to clause 15.3, the Broker may not assign, charge or otherwise deal with its rights and obligations under this agreement in any way without the prior written consent of the Underwriting Agency.

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- 15.2 Subject to clause 15.3, the Underwriting Agency may not assign, charge or otherwise deal with its rights and obligations under this agreement without the prior written consent of the Broker.
- 15.3 Either party may assign its rights and obligations under this agreement, without the consent of the other party, to a related body corporate (as defined in the Corporations Act), by providing 30 days written notice to the other party.

16 Termination

- 16.1 Either party may terminate this agreement, without cause, upon giving to the other not less than 90 days notice in writing.
- 16.2 This agreement will terminate with immediate effect, by either party giving written notice to the other party, if any of the following events occur:
- 16.2.1 Any officer or employee of the other party is, guilty of malpractice or misconduct that will materially affect in any way the ability to transact general insurance;
 - 16.2.2 The other party breaches any term of this agreement, which cannot be rectified;
 - 16.2.3 The other party breaches any term of this agreement that is capable of being rectified and the party fails to rectify the breach within 14 days of written notice from the other party requiring it to rectify the breach;
 - 16.2.4 The other party enters into any composition or arrangement with its creditors, has a receiver, a receiver and manager or an administrator appointed to it or is the subject of any resolution or petition for winding up (other than for the purpose of amalgamation or reconstruction while solvent) or becomes bankrupt;
 - 16.2.5 The other party is subject to a change in its effective shareholding existing at the time of signing this agreement (whether occurring at one time or through a series of transfers or issues) altering the effective control of that party and the new controlling person(s) or entity is a direct or indirect competitor of the other party.
 - 16.2.6 The other party fails to hold any authority or licence that allows it to carry on the business covered by this agreement or such authority or licence is altered in such a manner as materially affects in any way the ability to transact general insurance or any activity contemplated in this agreement.
- 16.3 Termination of this agreement will not prejudice the rights of either party in connection with anything that occurred between them before its termination.
- 16.4 Termination of this agreement will not affect any rights of a party under any provisions of this agreement that are expressed, or by necessary intendment are intended, to survive termination.
- 16.5 As soon as practicable after termination of this agreement and, in any event, within 90 days:
- 16.5.1 each party must pay all money owed to the other, if any, after taking into account any adjustments required; and

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- 16.5.2 the Broker must return to the Insurer (at its expense) all documents, stationery and materials supplied by the Underwriting Agency to the Broker.

17 Contact with clients

- 17.1 The Underwriting Agency will not, and will ensure that the Insurer does not, contact any client of the Broker who is insured with, or who has been insured with the Insurer during the term of this agreement other than for the following reasons
- 17.1.1 Promoting, marketing and selling its services or products to the general public or to groups of persons who are members of a specific industry, association, profession, club or ethnic community provided that in doing so it does not target any client of the Broker specifically.
- 17.1.2 Negotiating to enter into and entering into any policy of insurance with any client of the Broker who approaches the Underwriting Agency or Insurer directly or who is represented by another insurance intermediary;
- 17.1.3 Making any direct approach to any client in the following circumstances:
- (a) prior to and after termination of this agreement, where the Underwriting Agency or Insurer are required to do so by law, but this does not apply to the provision of notices and information required by the Insurance Contracts Act unless the Broker's client is represented by another insurance intermediary;
 - (b) where the Broker's client makes a claim under a policy of insurance, the Insurer may deal with the client in relation to that claim;
 - (c) where the Broker's client directly requests the Underwriting Agency or Insurer to do something; or
 - (d) where the Broker has not provided or has not agreed to provide to the client any of the relevant notices and information required by the Insurance Contracts Act or other law to be provided by the Underwriting Agency or Insurer;
- 17.1.4 Approaching any client with the written consent of the Broker;
- 17.1.5 With respect to any workers compensation policy, where necessary to meet obligations under any workers compensation legislation or the terms of industry codes of conduct.
- 17.2 This clause survives termination.

18 Notices and change of address

- 18.1 Any notice under this agreement must be in writing and if sent to the last known address, facsimile number or e-mail address of the party, is deemed to be received:
- 18.1.1 when it is left at the relevant address, if delivered by hand;
- 18.1.2 three business days after the date of posting, if posted;
- 18.1.3 the date of sending, if sent by facsimile;

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- 18.1.4 the date on which the e-mail is received in a readable form, if sent by e-mail to the recipient's e-mail address; or
- 18.1.5 on the next succeeding business day, if received or deemed to be received on a day which is not a business day.
- 18.2 Each of the parties will give notice to the other of any change of address, telephone and facsimile numbers and e-mail address as soon as practicable after such change.

19 Relevant law

- 19.1 This agreement is governed by the laws of the State of New South Wales.

20 Interpretation

- 20.1 In this agreement:

- 20.1.1 **Base Premium** means the amount charged to a policyholder by the Insurer for general insurance excluding fire service levies, stamp duty, GST and other government and statutory levies and charges.
- 20.1.2 **Confidential Information** means all information, data, practices and techniques relating to a party, or a related body corporate, customers, competitors, business, operations, strategies, computer systems, marketing systems and intellectual property or other property of which the other party becomes aware in negotiating or performing this agreement and the terms of this agreement and arranging or issuing policies of insurance.
- Confidential Information does not include information that is in the public domain or later comes into the public domain (unless it came into the public domain by a breach of confidentiality of this agreement).
- Confidential information does not include the commission rates set out in Schedule 1.
- 20.1.3 **Corporations Act** means the Corporations Act 2001 (Cth).
- 20.1.4 **Insurance Contracts Act** means the Insurance Contracts Act 1984 (Cth).
- 20.1.5 **Insurer** means an insurer included in Schedule 1.
- 20.1.6 **Legal requirements** means any requirements or obligations under any statute, regulation or statutory instrument, including without limitation, the provisions of the Insurance Contracts Act 1984 (Cth), Corporations Act 2001 (Cth), the Trade Practices Act 1974 (Cth), and the Privacy Act 1988 (Cth).
- 20.1.7 **Premium** means the amount charged to a policyholder by the Insurer for general insurance including commission, fire service levies, stamp duty, GST and other government and statutory levies and charges.
- 20.1.8 **Net premium** means the Premium less commission calculated in accordance with clause 4.1.
- 20.1.9 A reference to a schedule of this agreement is a reference to the terms of the schedule as amended by the Underwriting Agency in accordance with this agreement.

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- 20.1.10 A reference to an Act (or any provision of an Act) includes any subsequent amendment or its replacement by a corresponding enactment in force from time to time.
- 20.1.11 A reference to the singular includes the plural.

Execution and date

Executed as an agreement.

Date:

Signed, sealed and delivered for and on
behalf of **Broker**:

Signature of authorised person

Name of authorised person (print)

Signed, sealed and delivered for and on
behalf of **Underwriting Agency**

Signature of authorised person

Name of authorised person (print)

Schedule 1

Product	Insurer	Commission
Entertainment & Events Liability	Berkley Insurance Australia	15%
Entertainment Encore Liability (PL/PI/ML)	Berkley Insurance Australia	15%
Security Liability	Berkley Insurance Australia	15%
Security Encore Liability (PL/PI/ML)	Berkley Insurance Australia	15%
Fire Protection Encore Liability (PL/PI/ML)	Berkley Insurance Australia	15%
Prize Indemnity - Hole In One	Berkley Insurance Australia	15%
Prize Indemnity	HDI Global Specialty SE	10%
Event Cancellation	Berkley Insurance Australia	15%
Event Cancellation	HDI Global Specialty SE	10%
Gearsure Equipment	Chubb Insurance Australia Limited	15%

Schedule 2

Broker will issue tax invoices for Premium

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

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

- within 28 days of a request from the recipient of the supply whether the request is directly to the Broker or passed on from the Underwriting Agency; or
- 14 days after the end of the month in which the taxable supply was made or the adjustment event occurred.

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

The Broker 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 Broker will indemnify the Underwriting Agency for any fines, penalties or other costs incurred as a result of the Broker failing to provide the Underwriting Agency with matching documentation.

The Underwriting Agency and the Broker each agree they are GST registered when entering into this agreement and will notify the other party if they cease to be registered.

The Underwriting Agency agrees to notify the Broker if it ceases to satisfy any of the requirements for issuing tax invoices.

The Broker agrees to notify the Underwriting Agency if it ceases to satisfy any of the requirements for issuing tax invoices.

The Broker 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 Broker has issued a tax invoice.

Underwriting Agency will issue RCTIs to the Broker for commissions

The Underwriting Agency will issue a monthly recipient created tax invoice (**RCTI**) in relation to the commission within 14 days after the end of the previous month. The Underwriting Agency shall have the right to incorporate into an RCTI any related adjustment note.

After the date of this agreement, the Broker agrees that it shall not issue a tax invoice or adjustment note for any supply to the Underwriting Agency in respect of which the Underwriting Agency has issued or will issue an RCTI.

If the Underwriting Agency will not issue an RCTI for a supply and the Underwriting Agency informs the Broker that it will not issue an RCTI, the Broker agrees to issue a tax invoice to the Underwriting Agency in respect of that supply within 28 days of receiving notice from the Underwriting Agency.

Either party may terminate the right of the Underwriting Agency to issue RCTIs and adjustment notes by giving the other party not less than 60 days notice in writing.

The Underwriting Agency agrees not to issue a document that would otherwise be an RCTI on or after the date when the Underwriting Agency becomes aware that any of the requirements in the A New Tax System (Goods and Services Tax) Act, Classes of Recipient Created Tax Invoice Determination (No. 1) 2000 or the requirements of any other determination with respect to RCTIs in force from time to time are not met.

The Underwriting Agency releases and indemnifies the Broker against all loss, damage, liability, actions, claims and demands (including the cost of defending or settling any action, claim or demand) suffered by the Broker arising out of the Underwriting Agency's understatement on a RCTI of the GST payable on any specified supply for which it issues an RCTI, unless the understatement was as a result of a misrepresentation by the Broker.

The Broker agrees and acknowledges that from the date of this agreement, the Broker:

- is, and will at all times be, registered under the GST Law for GST;
- has and will at all times maintain an ABN; and
- will give the Underwriting Agency not less than 30 days written notice if the Insurance Broker intends to cancel or after its circumstances so that it is no longer entitled to registration for GST under the GST Law and/or have an ABN.

The Broker will notify the Underwriting Agency in writing immediately if the Broker:

- ceases to be registered for GST under the GST Law;
- ceases to have an ABN; or
- registration under the GST Law or the Broker's right to an ABN is revoked, withdrawn, suspended, limited or made conditional in any way.

The Underwriting Agency acknowledges that it is registered for GST under the GST Law and has an ABN and that it will notify the Broker if it ceases to be so registered or to have an ABN.

This agreement to issue RCTIs will terminate immediately if the either party ceases to be registered under the GST Law or have an ABN.

Client Broker Details:

Address:	
Phone:	
Fax:	
Broking Team Email:	
Account/ Finance Team Email:	
Website:	
Responsible Officer Name:	
Bank Account:	Account Name:
	BSB:
	Acct No: