

Terms of Business Agreement

Vision Insurance Placements Pty Ltd (ABN 57 661 135 360) Corporate
Authorised Representative (AR 1298415) of Sparaxis Pty Ltd (ABN 44 009 265
105 AFSL 246406) **Sparaxis Pty Ltd** ABN 44 009 265 105, AFS License
number, 246406 of Level 2, 226 Balcatta Road, Balcatta WA 6021 (**Wholesale
Broker**)

Table of contents

This Terms of Business Agreement (“TOBA”) details the terms of your relationship with us in respect of the services we provide you. By instructing us to proceed on your behalf you will be taken to have accepted this TOBA. Please ensure you have read all sections of this document as they provide important information.1

Background	1
Operative provisions	1
1 Licence and registration	1
2 Relationship	2
3 Compliance obligations	2
4 Remuneration	2
Payment of commission and fees	2
Refund of Premium.....	2
Refund of commission	3
5 Arranging insurance	3
New business	3
Renewals	3
6 Paying Premium and commission	3
Payment of commission and fees	3
7 Claims	4
8 Documentation and promotional material	4
Promotional material.....	4
Retail Client disclosures	4
9 GST	5
10 Confidential Information	5
11 Indemnity	5
12 Dispute resolution	6
13 Variation	6
14 Assignment	6
15 Termination	6
16 Contact with clients	7
17 Notices and change of address	8
18 Relevant law	9
19 Interpretation	9
Schedule 1	11
Commission	11
Schedule 2.....	12
Wholesale Broker will issue RCTIs to the Client Broker for commissions.....	12

Schedule 3.....	14
Classes of general insurance	14

This Terms of Business Agreement (“TOBA”) details the terms of your relationship with us in respect of the services we provide you. By instructing us to proceed on your behalf you will be taken to have accepted this TOBA. Please ensure you have read all sections of this document as they provide important information.

Who is Vision

Vision Insurance Placements Pty Ltd (ABN 57 661 135 360) Corporate Authorised Representative (AR 1298415) of Sparaxis Pty Ltd (ABN 44 009 265 105 AFSL 246406)
Sparaxis Pty Ltd ABN 44 009 265 105, AFS License number, 246406 of Level 2, 226 Balcatta Road, Balcatta WA 6021 (**Wholesale Broker**)

Background

- A You are an insurance broker acting on behalf of your clients, referred to in this agreement as the **Client Broker**.
- B The Wholesale Broker and the Client Broker are Australian Financial Services (**AFS**) licensees.
- C The Client Broker wishes to arrange for its clients general insurance products of the classes listed in Schedule 3 through the Wholesale Broker.
- D 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 Client Broker holds an AFS licence that authorises it to provide financial product advice and to deal in general insurance products.
- 1.2 The Wholesale Broker holds an AFS licence that authorises it to provide financial product advice and to deal in 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 Client Broker acts as agent for each of the Client Broker's clients, and not as agent for the Wholesale Broker or the insurers, in providing financial advice or dealing in any financial product.
- 2.2 Unless and to the extent agreed otherwise, the Wholesale Broker acts as a wholesale intermediary and not as agent for the Client Broker, any insurer or underwriting agency in providing financial advice or dealing in any financial product.
- 2.3 Nothing in this agreement creates a binder or a relationship of agency, partnership or employment between the parties or between the Client Broker and Wholesale Broker or any insurer.
- 2.4 Subject to clause 8.4, the Client 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 times, with all Legal requirements.

4 Remuneration

Payment of commission and fees

- 4.1 The Wholesale Broker will pay the Client Broker commission on each Base Premium and fees in accordance with Schedule 1.
- 4.2 The terms of Schedule 1 can be amended by the Wholesale Broker by providing 90 days written notice to the Client Broker.
- 4.3 The Wholesale Broker will notify the Client Broker of the commission or fees 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 Client Broker.
- 4.4 The parties acknowledge that the Client Broker may also charge a fee to its clients, in addition to commission.
- 4.5 This clause survives termination.

Refund of Premium

- 4.6 If a Premium refund is payable when a policy of insurance is varied, cancelled or avoided, the Wholesale Broker will refund the client through the Client Broker.

Refund of commission

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

5 Arranging insurance

New business

- 5.1 The Client Broker may from time to time request that the Wholesale Broker arrange, vary or extend general insurance products of the classes listed in Schedule 3 for and on behalf of the Client Broker's clients.
- 5.2 On receipt of a request under clause 5.1 the Wholesale broker must either:
- 5.2.1 use all reasonable endeavours to arrange the insurance requested by the Client Broker for the Client Broker's client within the timeframe requested by the Client Broker; or
 - 5.2.2 advise the Client Broker as soon as reasonably practicable that the Wholesale Broker declines to arrange the general insurance requested.
- 5.3 The Client Broker must provide all reasonable assistance to enable the Wholesale Broker to arrange the insurance pursuant to clause 5.2.1, including obtaining the information required by the insurer from the Client Broker's client.

Renewals

- 5.4 The Wholesale Broker must notify the Client Broker at least 14 days prior to the expiry of any insurance arranged by the Wholesale Broker (including previous renewals) that the insurance is due for renewal and include any notice of renewal (and any terms of renewal) provided by the insurer to the Wholesale Broker.
- 5.5 On receipt of the notice in clause 5.4, the Client Broker must, before the expiry of cover provide to the Wholesale Broker any renewal information requested by the insurer and confirmation of the client's instructions to renew.

6 Paying Premium and commission

Payment of commission and fees

- 6.1 The Client Broker must pay the Premium it has received for each insurance policy arranged through the Wholesale Broker, within 30 days of commencement of cover.
- 6.2 The Client Broker will retain all amounts earned on investment of the Premium before payment to the Wholesale Broker in accordance with clause 6.1.

7 Claims

- 7.1 The Client Broker is responsible for all claims notification for its clients. At the request of the Client Broker, the Wholesale Broker must provide reasonable assistance to the Client Broker in notifying the insurer of a claim.
- 7.2 The Wholesale Broker acknowledges that it has no authority to admit liability on behalf of the insurer, nor to deal with or settle a claim.

8 Documentation and promotional material

Promotional material

- 8.1 Each party must not change printed material supplied by the other party (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 that party.
- 8.2 Where the material referred to in clause 8.1 has originated from the Wholesale Broker, such material remains the property of the Wholesale Broker and must be returned to the Wholesale Broker, unless already distributed, when requested.
- 8.3 Where the material referred to in clause 8.1 has originated from the Client Broker, such material remains the property of the Client Broker and must be returned to the Client Broker, unless already distributed, when requested.

Retail Client disclosures

- 8.4 In circumstances where the Wholesale Broker provides a financial service to a Retail Client of the Client Broker under this agreement, the Client Broker agrees that it will either:
- 8.4.1 give to the client the Wholesale Broker's financial services guide; or
- 8.4.2 inform the client how to obtain the Wholesale Broker's financial services guide.
- 8.5 Clause 8.4 applies only if, and to the extent that, the Wholesale Broker:
- 8.5.1 provides to the Client Broker the Wholesale Broker's financial services guide to give to the Client Broker's client in the circumstances of clause 8.4.1; or
- 8.5.2 advises the Client Broker in writing how a client of the Client Broker may obtain a copy of the Wholesale Broker's financial services guide in the circumstances of clause 8.4.2.

9 GST

- 9.1 Unless stated otherwise in this agreement, all amounts payable under or relating to this agreement are inclusive of GST.
- 9.2 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.
- 9.3 A tax invoice will be issued in accordance with Schedule 2.
- 9.4 The parties acknowledge that the Client Broker does not guarantee or indemnify the Insurer or the Wholesale Broker for the payment of any taxes, statutory charges or levies applicable to any policy of insurance, even if the Client Broker administers the payment of such taxes, charges and levies.
- 9.5 Words in this clause 9 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).

10 Confidential Information

- 10.1 Subject to clause 16, 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.
- 10.2 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.
- 10.3 Nothing in this clause 10 restricts the use or dissemination of Confidential Information obtained lawfully from a third party.
- 10.4 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.
- 10.5 This clause survives termination.

11 Indemnity

- 11.1 The Client Broker indemnifies the Wholesale Broker for 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 Client Broker of its obligations under this agreement.
- 11.2 The Wholesale Broker indemnifies the Client 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 Wholesale Broker of its obligations under this agreement.

11.3 This clause survives termination.

12 Dispute resolution

12.1 The parties must attempt in good faith to resolve any dispute between them in connection with this agreement by negotiation.

12.2 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.

12.3 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 12.1 and 12.2.

13 Variation

13.1 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.

14 Assignment

14.1 Subject to clause 14.3, the Client 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 Wholesale Broker.

14.2 Subject to clause 14.3, the Wholesale Broker may not assign, charge or otherwise deal with its rights and obligations under this agreement without the prior written consent of the Client Broker.

14.3 Either party may assign its rights and obligation under this agreement, without the consent to 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.

15 Termination

15.1 Either party may terminate this agreement, without cause, upon giving to the other not less than 90 days notice in writing.

15.2 This agreement will terminate with immediate effect, by either party giving written notice to the other, if any of the following events occur:

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- 15.2.1 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;
 - 15.2.2 The other party breaches any term of this agreement, which cannot be rectified;
 - 15.2.3 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 requiring it to rectify the breach;
 - 15.2.4 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;
 - 15.2.5 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.
 - 15.2.6 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.
 - 15.3 Termination of this agreement will not prejudice the rights of either party in connection with anything that occurred between them before its termination.
 - 15.4 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.
 - 15.5 As soon as practicable after termination of this agreement and, in any event, within 90 days:
 - 15.5.1 each party must pay all money owed to the other, if any, after taking into account any adjustments required; and
 - 15.5.2 the Client Broker must return (at its expense) all documents, stationery and materials supplied by the Wholesale Broker to the Client Broker.

16 Contact with clients

- 16.1 The Wholesale Broker will not contact any client of the Client Broker for whom the Wholesale Broker has arranged insurance for during the term of this agreement other than for the following reasons:

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- 16.1.1 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 Client Broker specifically.
- 16.1.2 Negotiating to enter into and entering into any policy of insurance with any client of the Client Broker who approaches the Wholesale Broker directly or who is represented by another insurance intermediary;
- 16.1.3 Making any direct approach to any client in the following circumstances:
- (a) prior to and after termination of this agreement, where the Wholesale Broker is 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 Client Broker's client is represented by another insurance intermediary;
 - (b) where the Client Broker's client makes a claim under a policy of insurance, the Wholesale Broker may deal with the client in relation to that claim;
 - (c) where the Client Broker's client directly requests the Wholesale Broker to do something; or
 - (d) where the Client 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 Wholesale Broker or insurer;
- 16.1.4 Approaching any client with the written consent of the Client Broker; or
- 16.1.5 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.

16.2 This clause survives termination.

17 Notices and change of address

- 17.1 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:
- 17.1.1 when it is left at the relevant address, if delivered by hand;
 - 17.1.2 three business days after the date of posting, if posted;
 - 17.1.3 the date of sending, if sent by facsimile;
 - 17.1.4 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

17.1.5 on the next succeeding business day, if received or deemed to be received on a day which is not a business day.

17.2 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.

18 Relevant law

18.1 This agreement is governed by the laws of the State of Western Australia.

19 Interpretation

19.1 In this agreement:

19.1.1 **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.

19.1.2 **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 or this agreement).

Confidential information does not include the commission rates set out in Schedule 1.

19.1.3 **Corporations Act** means the Corporations Act 2001 (Cth).

19.1.4 **Insurance Contracts Act** means the Insurance Contracts Act 1984 (Cth).

19.1.5 **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).

19.1.6 **Retail Client** has the meaning in section 761G of the Corporations Act 2001 (Cth).

19.1.7 **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.

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- 19.1.8 A reference to a schedule of this agreement is a reference to the terms of the schedule as amended by the Wholesale Broker in accordance with this agreement.
- 19.1.9 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.
- 19.1.10 A reference to the singular includes the plural.

Schedule 1

Commission

Commission payable will vary by individual policy as specifically noted on the relevant quotation document and recipient created tax invoice (**RCTI**).

Schedule 2

Client Broker will issue tax invoices for Premium

The Client Broker will issue the tax invoice or adjustment note required in respect of a taxable supply of a policy of insurance (or variation) to a client of the Client Broker.

The Client 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 Client Broker or passed on from the Wholesale Broker; or
- 14 days after the end of the month in which the taxable supply was made or the adjustment event occurred.

The Client Broker is responsible to ensure that the tax invoice or adjustment note issued complies with rules for tax invoice design.

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

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

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

Wholesale Broker will issue RCTIs to the Client Broker for commissions

The Wholesale Broker 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 Wholesale Broker shall have the right to incorporate into an RCTI any related adjustment note.

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

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

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

The Wholesale Broker agrees not to issue a document that would otherwise be an RCTI on or after the date when the Wholesale Broker 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 Wholesale Broker releases and indemnifies the Client 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 Client Broker arising out of the Wholesale Broker'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 Client Broker.

The Client Broker agrees and acknowledges that from the date of this agreement, the Client 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 Wholesale Broker not less than 30 days written notice if the Insurance Client 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 Client Broker will notify the Wholesale Broker in writing immediately if the Client Broker:

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

The Wholesale Broker acknowledges that it is registered for GST under the GST Law and has an ABN and that it will notify the Client 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.

Schedule 3

Classes of general insurance

All classes of general insurance including but not limited to:

- Professional Indemnity
- Directors & Officers Insurance
- Public & Products Liability
- Excess Public & Products Liability
- Umbrella Liability
- Industrial Special Risks
- Construction (Material Damage and Liability)
- Contractors Plant & Equipment
- Marine Cargo
- Marine Builders Risks
- Hull & Machinery
- Protection & Indemnity
- Stock Throughput
- Accident & Health