ASISA

ASISA STANDARD ON REPLACEMENT

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ASISA

1. INTRODUCTION

1.1 PURPOSE

1.1.1 The member offices of ASISA have agreed to this Standard for the purpose of providing Rules to govern those instances where one member (the replacing insurer) has or intends to replace a policy or policies of another member office (the replaced insurer).

1.1.2 The provisions of this Standard apply to ASISA member life offices in addition to any obligations that may be imposed upon them by the Financial Advisory and Provider Services Act, 2002 ("the FAIS Act") and by Part 3 of the Regulations to the Long-term Insurance Act, 1998 (the "commission regulations"), or any other legislation. In the event of any conflict between the provisions of this Standard on the one hand and the provisions of legislation on the other, the legislative provisions will prevail. The definition of "replacement policy" as defined in section 2 of the Standard will be used for the purposes of the Standard on Replacement and not the definition found in the regulations to the Long-Term Insurance Act.

1.1.3 By committing themselves to, and faithfully observing, this Standard, members through their compliance, will assist in ensuring proper disclosure and informed decision-making by policyholders.

1.1.4 The Standard does not limit the right of policyholders:

(a) to terminate or vary any policy or

(b) to effect a new policy

but it affirms the legal requirement that they should be enabled to do so only on a fully informed basis as provided for in the FAIS Code after proper counselling, so that they may make, and be accountable for, their own decisions accordingly in full knowledge of the effects and costs of doing so.

1.1.5 Members therefore undertake to ensure that:

(a) all representatives are properly trained so as to understand the potential and real disadvantages of inappropriate replacements and, in accordance with the FAIS Code, are required to provide comprehensive disclosure and appropriate advice where a replacement is proposed;

b) they follow all such practices as will assist in preventing inappropriate replacements and to generally giving effect to this Standard;

(c) they make compliance with this Standard a term of their contractual relationship with all representatives and

(d) they make it a term of their contractual relationship with all representatives to deal with non-compliance with this Standard as breach of contract (where the representative is an independent contractor) or misconduct (where the representative is an employee/agent/representative).

1.2 SCOPE

1.2.1 Territory

This Standard applies to all business effected in the Republic of South Africa.

1.2.2 Business

This Standard applies to all long-term insurance policies (excluding reinsurance policies, fund policies, and group scheme policies) as defined in the Act or in any enactment which replaces that Act.

1.2.3 Commencement Date

This Standard comes into effect on 1 January 2012 and the former LOA Code on Replacement ceases to have effect on 1 January 2012

2. DEFINITIONS

In this Standard, unless the context otherwise requires:

"**Amendment or variation to an existing policy**" for purposes of the definition of "**replacement policy**" means an addition to an existing policy that results in a change in premium

"**the Act**" means the Long-term Insurance Act, 52 of 1998

"**commission regulations**" means Part 3 of the Regulations to the Act; which includes amendments made from time to time

"**compliance officer**" means the compliance officer of a member office, as contemplated in sec. 17 of the FAIS Act

"**days**" means any business day (other than a Saturday or Sunday or official public holiday in the Republic of South Africa) and shall be reckoned inclusive of the first day and inclusive of the last day

"**effective date**" means the date on which the replacement policy takes effect i.e. the capture date of the new business application by the new insurer or the date that the cover starts

"**excluded transaction**" means any compulsory transfer affected in terms of section 37(2) of the Act and any compulsory transfer in respect of business flowing from a policyholders change of employment

"**the FAIS Act**" means the Financial Advisory and Intermediary Services Act , 2002

"the FAIS Code" means the General Code of Conduct for Authorised Financial Services Providers and Representatives promulgated under the FAIS Act

"internal replacement" means a replacement in respect of which the terminated policy and the replacement policy are both effected by the same member office

"investment policy" means a single premium policy or a multiple premium policy, other than an excluded policy

"member life office" means a registered insurer, as defined in section 1 of the Act , which is a member of ASISA

"representative" means a financial services provider or a representative as defined in the FAIS Act, as the case may be

"PPR" means the Policyholder Protection Rules promulgated under the Regulations to the Act

"replacing insurer" means the member office/s effecting the replacement policy/ies

"replaced insurer" means the member offices which effected the terminated policy/ies

"policy" means a long-term policy as defined in section 1 of the Act, but excludes fund and reinsurance policies

"replacement policy"

- a new policy, or variation of an existing policy, where the policyholder or life assured was also the policyholder or life assured in respect of another policy, and where a termination event occurs in respect of the latter policy within a period of 4 months before or after the new policy or variation is effected, and where the said termination event occurs in anticipation of, or as a consequence of effecting the new policy or variation, and "replacement" has a corresponding meaning

"representative" means a representative as defined in the FAIS Act

"RPAR" means the Replacement Policy Advice Record set out in Annexure 2

"termination event" – means:

– a "causal event" as defined in Part 5 of the Regulations to the Long-term Insurance Act, 1998; certain amendments were made to this definition to allow for the proper functioning of the Standard and set out below for ease of reference:

- the policy becomes fully paid-up;
- the policy is formally cancelled by the policyholder;
- The policy is formally terminated by the insurer due to the failure of the policyholder to pay premiums in respect of the policy;
- the basic premium is reduced or a variation of the policy is effected which has the effect of reducing the premium, without the policy thereby coming to an end or becoming fully paid-up;
- the policy is surrendered in part (including for the purpose of section 14 transfer) or
- the policy is surrendered in full (including for the purpose of section 14 transfers);

- cessation of premiums and maintaining the policy in force by applying the policy value as premiums (i.e. the non-forfeiture rules);
- reduction or removal of the guaranteed amount or value of any benefit which the insurer has undertaken to provide;
- cancellation of the policy from inception with a refund of premiums (including cancellation from inception by virtue of the PPR provisions relating to cooling off) or
- the policy becoming static because an option to update cover or premiums has not been exercised and "termination"/ "terminate" has a corresponding meaning

"termination date" means the date on which the relevant termination event takes effect, and would exclude any period of grace granted by the life office in which the policy is kept on the books without receipt of a premium

"the Panel" means the Review and Appeal Panel referred to in Annexures 4 and 5

"the Tribunal" means the Tribunal referred to in Annexure 4

3. THE BASIC RULES

3.1 The basic rule is that when a proposal is sought or received in respect of any policy or variation of a policy, it is the duty of the representative (and, in respect of direct marketing by a member office, the duty of the member office) to establish whether such policy or variation is a replacement policy. The 4 month period must be calculated with reference to the effective date of the replacing policy and the termination date of the replaced policy. If it is a replacement the representative, must ensure that the client is properly counseled as required by the FAIS Code, and/or the FAIS Act on the consequences of a replacement and is enabled to take the decision to replace on a fully informed basis and to confirm that he has discharged this duty in writing.

3.2 In cases where a representative is involved:

(a) On completing the proposal for any policy or variation of an existing policy the representative must:

(i) ascertain whether the proposal is in respect of a replacement policy by putting the specific question set out in Annexure 1A to the client and recording the client's answer

(ii) irrespective of the client's answer to the question in Annexure 1A, explain to the client:
- the meaning of replacement
- that replacements are potentially prejudicial and
- that where a replacement is considered, the client is legally entitled to comprehensive information regarding the consequences of replacement and

(iii) confirm compliance with paragraphs (i) and (ii) above by signing the declaration set out in Annexure 1B.

(b) If the transaction is a replacement, the representative must inform

and counsel the client appropriately, as contemplated by the FAIS Code and complete Annexure 2, the RPAR.

(c) The answer to the question in Annexure 1A, the representative's declaration in Annexure 1B and, where applicable, the signed RPAR form must be submitted together with the proposal form to the replacing insurer.

(d) The replacing insurer must, within 5 working days of receipt of a proposal, which is identified by the representative as being a proposal for a replacement policy, transmit the RPAR to the replaced insurer accordingly, by e-mail (to the contact addresses set out in Annexure 7).

(e) The replacing insurer may not, directly or indirectly, provide the representative with any commission, fee, incentive or remuneration in respect of a policy identified as a replacement policy, unless and until all the steps set out in paragraphs (c) and (d) above have been completed.

(f) Member offices must use the information contained in the RPAR (as set out in Annexure 2) as this RPAR will be the only authorised version.

(g) On becoming aware of a replacement, the replaced insurer may take whatever action it deems appropriate to advise the client of the client's rights in terms of this Standard, or FAIS, or to attempt to conserve the replaced policy. Such action may include liaising with the client directly, or requesting a representative to do so. The replaced insurer is required to take any such action in good faith and with due regard to the interests of policyholders, representatives, and the industry as a whole.

3.3 Electronic business (internet, telephone, or direct mail marketing):

3.3.1 If a member office invites policy proposals via the internet, telephone or direct mail, the proposal (or the telemarketer as the case may be) must-

(a) pose a question to ascertain whether replacement is involved and record the client's response;
(b) if so, include (or, where applicable, read out) a general disclosure of the financial implications, costs and consequences of such replacement; and
(c) inform the client that there may be other factors regarding replacement which might influence his/ her decision to replace and ask if the client requires further advice.

3.3.2 The format and content of the questions and disclosures referred to in (a) to (c) must, to the extent relevant, conform to the format and content set out in Annexure 3.

3.3.3 The new insurer must, within 5 working days of receipt of a proposal which is identified as being a proposal for a replacement policy, send a record of the client's response (contemplated in clause 3.3.1(a) above) to the old insurer, by fax or e-mail (to the contact addresses set out in Annexure 7).

3.4 Internal Replacements

This Standard is binding in respect of internal replacements, provided that:

a) Paragraphs 3.2 (d), 3.2 (g) and 3.3.3 do not apply

b) Paragraph 4.2 does not apply in the case of non-compliance with this Standard in respect of an internal replacement, where the representative concerned is a representative of the insurer. The insurer may also reverse any consideration paid to the representative as contemplated in paragraph 4.2.4(a) and may also take such further remedial action as it deems appropriate.

4. NON-COMPLIANCE BY INTERMEDIARIES AND MEMBER OFFICES AND REMEDIAL ACTION

4.1 Evidence of non-compliance with this Standard by representatives and member offices may include, but shall not be restricted to, the following situations:

(a) if Annexure 1A is answered affirmatively but no RPAR is included in the proposal requirements submitted to the replacing insurer

(b) if Annexure 1A, is answered negatively, but there is in fact a replacement

(c) if the client, on receipt of the notification in terms of the right to cancel as set out in Rule 6 of the PPR, provides the replacing insurer with information which indicates that there has been non-compliance with the Standard

(d) If the replaced insurer, when taking steps to conserve a policy, obtains information which indicates that there has been non-compliance with the Standard

(e) If the termination charge question to the representative in the RPAR is answered negatively, but it is a replacement policy as defined in the commission regulations

(f) If the representative has conformed to the steps in paragraphs 3.3.1 to 3.3.3 above but the replacing insurer has failed to transmit the RPAR to the replaced insurer within the prescribed period thus denying the replaced insurer a reasonable opportunity of conserving its business

(g) If the replacing insurer has failed to investigate a matter which has been referred to it by a replaced insurer as contemplated in paragraph 4.2.2 or has failed to furnish the replaced insurer with the outcome of such investigation within the 10 day period.

4.2 Subject to paragraph 3.4 in regard to internal replacements, where a replacement has been effected and it is alleged by any person that there has been non-compliance with this Standard by the representative, the following actions are to be taken:

4.2.1 Where applicable, the replaced insurer must inform the replacing insurer of the cause of its complaint by completing Annexure 6

4.2.2 The replacing insurer concerned shall investigate the matter and advise the replaced insurer of the outcome of such investigation within 5 working days of receipt

Annexure 6. If it is satisfied that there is prima facie evidence of non-compliance, follow the procedures set out in the following paragraphs

4.2.3 Should the replacing insurer find prima facie evidence of non-compliance, it must refer the matter to the Tribunal. Should the replacing insurer not make such referral within 4 weeks of receipt of a complaint from the replaced insurer in terms of paragraph 4.2.1, the matter may be referred to the Tribunal, by the replaced insurer, within a further 2 weeks. If the matter is not referred to ASISA within this 6 week period, it will not be accepted by ASISA for referral to the Tribunal, with the proviso that a longer period (not exceeding a year) will be condoned where the replacement is only discovered after 6 week day period e.g. cases falling under 4.1 (b), (d), or (e).

4.2.4 If the Tribunal is satisfied that there has been non-compliance:

by the representative:

a) it may issue a warning; and/or

b) it may determine that no commission, fee, incentive or remuneration ("consideration") paid directly or indirectly to the representative by the replacing insurer in respect of the replacement policy and that any such consideration already paid must be reversed and repaid by the provider, representative or agent to the replacing insurer; and/or

c) it may grant the client a further 30 days cooling-off period in which to cancel the policy in accordance with PPR.

by either of the insurers:

d) it shall advise ASISA of the breach of the Standard by the insurer who shall record the breach in a register for this purpose and if appropriate deal with the breach in terms of the disciplinary provisions of ASISA.

4.2.5 in arriving at a decision regarding the appropriate remedial action the Tribunal must take into account any information regarding previous breaches of this Standard by the representative concerned, as reflected on the registers referred to in paragraphs 4.2.7 and 3.4.

4.2.6 Every case for consideration by the Tribunal must be submitted and dealt with in accordance with Annexure 4.

4.2.7 ASISA will maintain a register of all Tribunal decisions in accordance with Annexure 4

4.2.8 Nothing in this Standard shall prevent an insurer from taking any additional contractual or disciplinary action which it may deem appropriate.

5. REVIEW AND APPEAL

5.1 A representative may lodge a request for review in respect of an allegation that the Tribunal failed to adhere to the procedural requirements set out in this Standard and Annexure 4.

5.2 An appeal may be lodged against a decision of the tribunal

a) to impose a remedy under clause 4.2.4, if the representative claims that, although a particular transaction is in fact a replacement, the client did not reveal this in the answer to Annexure 1A, with the result that the RPAR was not completed and that the representative did not know, and could not reasonably have been expected to know, that it was a replacement

b) that non-compliance under clause 4.1 (c) has occurred, if the representative claims he or she was provided with incorrect information by the client or replaced insurer

c) not to impose a remedy under clause 4.2.4, if the replacing insurer or replaced insurer claims that such a remedy ought to have been imposed

d) to impose a referral to the register referred to in 4.1.(g) read with 4.2.4(d) if the replacing insurer claims that it did in fact fulfil its obligations in terms of clauses 3.3.3 and 4.2.2.

5.3 Any such appeal or request for review may be lodged by the party concerned for consideration by the Panel in accordance with Annexure 5.

6. REPLACEMENT REGISTER

6.1 ASISA members that issue new investment policies and / or have existing investment policies on their books must participate in the Replacement Register, which was implemented from 1 December 2007.

6.2 Notification by the above member offices to the Replacement Register shall be affected by means described in the "Guide to the ASISA Replacement Register" which will be provided to member offices by ASISA and will be available on the ASISA website.

6.3 The requirements set out in the Guide to the Replacement Register shall be binding on member offices.

6.4 Failure to participate in the Replacement Register, as required by the Guide, will constitute a breach of the Standard.

6.5 It is recommended that member offices obtain consent from clients for the usage of their information on the Register. It is suggested that a broad approach be taken whereby the client consents to (without limiting the generality thereof) the collation, sharing, distribution, storage and use of information supplied. A recordal can be added to the effect that a register to track replacements is maintained by the ASISA and the client consents to the inclusion of its information therein.

6.6 Member offices are bound under the Standard to indemnify the ASISA on the following basis.

6.6.1 The member office agrees to hold harmless and to indemnify ASISA or any of its third party service representatives, involved in the Replacement Register, in respect of claims that may arise against ASISA or any of its third party service representative(s), including but not limited to The Financial Services Exchange (Pty) Ltd trading as Astute, by reason of:

6.7.1.1 The failure or omission by the member office to obtain the necessary consent from any person having an interest in respect of the information contained in the Replacement Register

6.7.1.2 The member office's intentional or negligent conduct relating to incorrect, inaccurate, superfluous, excessive and/or insufficient information contained in the Replacement Register

6.7.1.3 The indemnity referred to in clause 1 will not apply in circumstances where ASISA or any of its employees, servants and/or agents are also at fault in respect of the information contained in the Replacement Register.

6.7.2 The indemnity referred to in clause 6.7.1 is subject to the following provisos:

6.7.2.1 ASISA or any of its third party service representatives will notify the member of any such claim made against it within a reasonable time after the claim is made and

6.7.2.2 ASISA or any of its third party service providers will allow the member to control the handling of any such claim which includes the power, at the member office's sole discretion, to settle or dispute the claim.

7. COMPLIANCE AND COMPLAINTS

7.1 When a member becomes aware of any transgression, without a complaint necessarily being lodged, it must adhere to the Standard and institute the necessary action.

7.2 The compliance officer of every member shall submit an annual report to ASISA, in such form and at such time as ASISA may direct, confirming the member's compliance with this Standard during the year, or providing details of any non-compliance (including, for the avoidance of doubt, details in respect of non-compliance with regard to internal replacements and any matter that has been recorded by ASISA evidencing an insurers non-compliance to the Standard as decided by the Tribunal).

8. ROLE OF THE ASISA

8.1 ASISA is responsible for preparing and maintaining this Standard, and for updating it if necessary.

8.2 ASISA may recommend technical changes to the Standard and these may be approved by the ASISA Life & Risk Board Committee.

8.3 Matters relating to the interpretation of the Standard will be decided upon by ASISA.

8.4 The role of ASISA is to arrange the Tribunal hearings as well as appeal/review hearings, administer the register of cases and deal with other administrative matters provided for in the Standard.

8.5 Intermediaries must direct queries regarding the requirements of the Standard to the contact person at the member office, listed in Annexure 7.

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ANNEXURE 1

NOTIFICATION OF REPLACEMENT: NEW BUSINESS / AMENDMENTS: PROPOSAL FORM

SPECIFIC QUESTION AND REFERENCE TO THE RPAR. 1A

IMPORTANT NOTE: REPLACEMENT OF ANY INSURANCE MAY BE TO THE DISADVANTAGE OF THE PROPOSER

Is this proposal to replace the whole or any part of your existing insurance with any insurer (whether replacement is to occur immediately or to replace an insurance discontinued within the past four months or within the next four months)? Please indicate your submission on the line as a YES or NO.

_____

If "Yes", the representative must discuss and complete the Replacement Policy Advice Record and attach it to this proposal form.

DECLARATION BY THE REPRESENTATIVE 1B

I hereby declare that I have requested and recorded the client's response to the question (Annexure 1A) with regard to replacement and that the client is fully aware of the possible detrimental consequences of the replacement of an insurance policy.

I further declare that, irrespective of the client's response to the question in Annexure 1A, I explained the following to the client:

- The meaning of replacement
- That a replacement is potentially prejudicial and
- That where a replacement is considered, the client is legally entitled to comprehensive information regarding the consequences of replacement.

_____ _____

Name of Representative Signature

ASISA

ANNEXURE 2

REPLACEMENT POLICY ADVICE RECORD

(to be completed in consultation with your adviser – please note that this does not serve as a cancellation of the replaced policy; you must advise the insurer in writing about cancellation of a policy)

NAME AND SURNAME OF POLICYHOLDER: _____

ID NO OF POLICYHOLDER: _____
(or registration no. in the case of non-natural persons)

NAME AND SURNAME OF INTERMEDIARY: _____

FULL NAME OF FSP (BROKERAGE OR INSURER): _____

NEW POLICY:

Type of policy: Investment or risk	Policy/Proposal no	Insurer

POLICY BEING REPLACED:

Type of policy: Investment or risk	Policy/Proposal no	Insurer

QUESTION TO THE REPRESENTATIVE – TO BE COMPLETED IF THE REPLACED POLICY IS AN INVESTMENT POLICY: Does this proposal constitute replacement of an investment policy with a recurring premium investment policy that will lead or has led to the levying/ deduction of a termination charge of more than 15% of the replaced policy's fund value? Refer to the definitions in Part 3 of the Regulations to the Long-Term Insurance Act, 1998 (commission regulations).

Yes ☐ **No** ☐

1. REASONS WHY REPLACEMENT MAY NOT BE ADVISABLE

If you do replace any policy, we want to ensure that you make an informed choice. Please read the following information, carefully and discuss with your intermediary.

- You will **pay some charges and fees twice** (e.g. commission, underwriting expenses & other initial charges levied by the insurer) – initially on the existing policy and once again on the new policy.

- You may **pay higher premiums** for risk (or a bigger part of the premium) on the new policy because you are older now or your health situation might have changed.
- Your new policy may not have the same **life cover or premium guarantees** as the existing policy. Check the period for which the life cover or other cover amounts are guaranteed before the insurer is entitled to change your premiums or reduce or remove cover.
- Your new policy may not have the same **investment performance guarantees** as the existing policy (if applicable).
- Your new policy may have **more exclusions, restrictions or waiting periods** particularly if your health has deteriorated.
- The amount of money that you can withdraw under the new policy may be less (if applicable). A new policy will usually have legal restrictions on access within the first 5 years.
- You may **lose the tax advantage** of your existing policy (if applicable).
- The surrender value or paid up value of your existing policy may be as low as 65% of the policy value before the change, and could be even less than premiums paid in since **unrecovered initial expenses** must first be deducted. Check what charges you will be paying on termination of the old policy and see whether the advantages of the new policy will make up for any such charges.
- The **investment risk** under the new policy may be higher. Remember that the past performance of a fund or asset manager of a fund is not necessarily an indication of future performance.

2. REASONS FOR THE CHANGE OF POLICY / POLICIES

2.1 Did you establish whether the existing / terminated policy could be amended to provide similar benefits to the replacement policy? ***please print clearly***

……

……

……

……

2.2 If such amendment is / was possible, why do you regard it as appropriate that the terminated policy be replaced by the replacement policy? ***please print clearly***

……

……

……

……

2. DECLARATION (COMPULSORY)

REPRESENTATIVE	POLICYHOLDER/LIFE ASSURED
I confirm that I have taken all reasonable steps to confirm that the information in this Replacement Policy Advice Records (RPAR) is true and correct. I confirm that in pursuance of my advice to the policyholder to replace the policy(ies) mentioned in this RPAR. I have fully discharged my duties as set out in section 8 (d) of the General Code of Conduct for Authorised Financial Services Providers and their Representatives (the Standard) and have retained a record of such advice as required by section 3 of the said Code. Signature:(not required for electronic business) Name: Date: Contact tel/e-mail address:	I confirm that the advisor has fully explained the consequences of the replacement of the policy(ies) mentioned in this Replacement Policy Advice Record and I understand the consequences of such replacement(s). Signature: Name: Date: Contact telephone and /or e-mail address:

ASISA

ANNEXURE 3

NOTIFICATION OF REPLACEMENT

NEW BUSINESS VIA INTERNET, TELEPHONE AND DIRECT MAIL MARKETING

Is this proposal to replace the whole or any part of your existing insurance with any assurer (whether replacement is to occur immediately or to replace an insurance discontinued within the past four months or within the next four months)?

YES ☐ NO ☐

Does this proposal constitute replacement of an investment policy with a recurring premium investment policy that will lead or has led to the levying/ deduction of a termination charge of more than 15% of the replaced policy's fund value? Refer to the definitions in Part 3 of the Regulations to the Long-Term Insurance Act, 1998 (commission regulations).

Yes ☐ **No** ☐

If the answer to the first question is "Yes" please take note of the IMPORTANT INFORMATION below

- You will **pay some charges and fees twice** (e.g. commission, underwriting expenses & other initial charges levied by the insurer) – initially on the existing policy and once again on the new policy.
- You may **pay higher premiums** for risk (or a bigger part of the premium) on the new policy because you are older now or your health situation might have changed.
- Your new policy may not have the same **life cover or premium guarantees** as the existing policy. Check the period for which the life cover or other cover amounts are guaranteed before the insurer is entitled to change your premiums or reduce or remove cover.
- Your new policy may not have the same **investment performance guarantees** as the existing policy (if applicable).
- Your new policy may have **more exclusions, restrictions or waiting periods** particularly if your health has deteriorated.
- The amount of money that you can withdraw under the new policy may be less (if applicable). A new policy will usually have legal restrictions on access within the first 5 years.
- You may **lose the tax advantage** of your existing policy (if applicable).
- The surrender value or paid up value of your existing policy may be as low as 65% of the policy value before the change, and could be even less than premiums paid in since **unrecovered initial expenses** must first be deducted. Check what charges you will be paying on termination of the old policy and see whether the advantages of the new policy will make up for any such charges.
- The **investment risk** under the new policy may be higher. Remember that the past performance of a fund or asset manager of a fund is not necessarily an indication of future performance.

There may be more factors regarding replacements that could influence your decision. Do you require any further advice?

YES ☐ NO ☐

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ANNEXURE 4

TRIBUNAL

1. There shall be one Tribunal established in the Western Cape and two Tribunals in Gauteng.

2. Each Tribunal shall have a Chairperson appointed by the ASISA Life & Risk Board Committee and two other members appointed on each occasion by ASISA, from lists of persons nominated by

(a) representative associations recognised for this purpose by the ASISA Life & Risk Board Committee

(b) ASISA member offices

3. An appropriate representative of both the replacing insurer and the replaced insurer involved in any particular case must either be present at the Tribunal hearing concerned, or ensure that they are accessible during the hearing by telephone, in order to provide such evidence or answer such questions as the Tribunal may require. No representative of the replacing insurer or replaced insurer involved in any particular case may serve on a Tribunal considering an allegation of non-compliance with regard to that particular case.

4. The procedure of the Tribunal shall be as informal as possible, subject to the rules of natural justice. Matters will be dealt with on papers but the Tribunal must grant a personal hearing of the representative on the representative's request. The representative may not be represented or assisted by any other person at a hearing. The client, but no other witness (other than the representatives of the insurers involved, referred to in paragraph 3 above), may be called at the hearing. The proceedings of the Tribunal shall be recorded, preferably by tape recording. Any party shall, on request, be provided with a copy of the record of the proceedings, but the costs of having the record transcribed must be borne by the requester. The Chairperson and one other member shall form a quorum at any meeting and can hear any matter before them.

5. Every case of alleged non-compliance as contemplated in paragraph 4.1 of this Standard, shall be submitted to ASISA, within the time periods set out in paragraph 4.2.3, in the form of a full written memorandum (as per Annexure 9) addressed to ASISA which will arrange for it to be dealt with by the Tribunal within 6 weeks after receipt.

6. The representative concerned must be provided with a copy of the memorandum by ASISA and given at least 7 days in which to submit a responding memorandum prior to the meeting of the Tribunal. The representative must also be advised of his or her right to attend the Tribunal hearing, and must within the said 7 days advise the Tribunal whether or not he/she will in fact be attending the hearing. The representative must also be advised that should he for whatever reason not attend the Tribunal hearing, the hearing will proceed in his absence.

7. The Tribunal shall make its determination on a matter and the Chairman shall advise ASISA of this in writing within 7 days of its meeting, providing brief reasons for its determination.

8. ASISA shall advise the representative and the replacement officials of the replaced and replacing insurer of the determination within a further 10 days.

9. Subject to the review and appeal process, the replacing insurer shall activate any remedy imposed by the Tribunal within 50 days of being notified of this.

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ANNEXURE 5

REVIEW AND APPEAL PANEL

1. REVIEW AND APPEAL PANEL

1.1 There will be appointed a Review and Appeal Panel to hear and determine applications made as envisaged in paragraphs 5.1 and 5.2 of the Standard.

1.2 The Panel shall consist of a Chairman appointed by the ASISA Life & Risk Board Committee on the recommendation of ASISA, and two other persons selected by ASISA from time to time - one from a list nominated by representative associations recognised by the Life & Risk Board Committee and one from a list nominated by member offices. No representative of the replacing insurer or the replaced insurer shall serve on a Panel hearing a matter in which such office is involved.

2. LODGING OF APPLICATION

2.1 A party who wishes an appeal or review to be considered by the Panel as provided in paragraph 5.1 or 5.2, may apply for a hearing by lodging with ASISA, a written memorandum accompanied by all supporting documentation. No new evidence may be included in the application.

2.2 A fee of R600 must accompany the application.

2.3 The memorandum must be submitted to reach ASISA not later than the 21st day after the date on which the decision of the Tribunal is received by the applicant concerned.

2.4 ASISA will refer the application, within 5 days of receipt, to the replaced insurer and replacing insurer in order to provide a response if they wish, within a further 10 working days. ASISA will then send the application and responses (if any) together with a full record of the proceedings, to the Chairman of the Panel, and if the Chairman, in his or her sole discretion, is convinced on the basis of the memorandum and other papers that the representations have sufficient merit to warrant a full hearing by the Panel the Chairman shall advise ASISA accordingly, within a further 48 hours, and the matter will then be taken to a hearing as set out below.

2.5 If the Chairman is not convinced that a full hearing as envisaged in 2.4 is required, he or she shall advise ASISA accordingly - in which case there will be no hearing but in advising the applicant of this ASISA shall remind the applicant of the common law right of review. Any action in this latter respect must be pursued by the applicant through the Courts in the normal way.

3. THE HEARING

3.1 If the Chairman so decides as in clause 2.4, ASISA will convene the Panel to hear a matter on a suitable date not later than 21 days after receipt of the Chairman's decision, and shall provide the Panel members with the applicant's memorandum and all other papers at least 3 days before that date.

3.2 The representative, the replacing insurer and the replaced insurer are entitled to be heard by the Panel and must be notified by ASISA of the hearing at least 10 days in advance thereof.

3.3 The client, but no other witness, may be called at the hearing for examination by the applicant and cross-examination by the Panel or the other parties.

3.4 The procedure of the Panel will be as informal as possible consistent with the rules of natural justice which require that any interested party be given a fair hearing.

3.5 The proceedings will be recorded by tape recording. Any party shall, on request, be provided with a copy of the record. The party requesting the copy of the record shall bear the costs of transcribing the record.

4. THE DETERMINATION

4.1 The Panel will decide the question - as submitted to it in terms of paragraph 5.1 or 5.2 - and make an appropriate order. It may do so verbally at the hearing (the other parties having retired while it deliberates) or may take further time. In either case the Panel will record its decision in writing.

4.2 The written decision, together with brief reasons therefore will be sent to ASISA by the Chairman not later than 5 days after the hearing and shall be conveyed to the representative and the other parties by ASISA.

ANNEXURE 6

Pro forma notification to replacing insurer of complaint in terms of Clause: 4.2.1.

Address of Replacing insurer
Date

Dear Sir /Madam

Re: ASISA Replacement Standard (details of policy below)

Policyholder (or life insured):

Id number:

Date of Birth:

Your policy no:

Our policy no:

Type of policy:

Premiums:

Sum Assured:

Date of commencement:

Date of termination:

Manner of Termination:

We received notification that the above-mentioned policy has been replaced by new business affected with your company within the replacement period.

We have not received a Replacement Policy Advice Record provided for in Clause 3.2 (d) of the Standard. If the replacement question on your policy application form was answered in the affirmative, please confirm to us immediately that a fully completed RPAR was submitted to you.

Please investigate the possibility of non-compliance in terms of Clause 4.1 a-e and provide us with written feedback on the outcome.

Yours sincerely

XXX

ASISA

ANNEXURE 7

Replacement Officials

Insurer	Official	Telephone	E-Mail
ABSA Life Ltd	Ms. S. Moloko	011-846 9698 or 011-501 8547	complexlife.replacements@absa.co.za (RPARs and Pro Formas)
African Life	Mr. S. Jones	011-359 7887	StanleyJ@sanlamsky.co.za
Alexander Forbes Life	Ms. A. Ferraris	011-269 1640	ferrarisa@aforbes.co.za
Assupol	Ms. Z. Dlamini	012-741 4144	zodwad@assupol.co.za
Altrisk	Mr. Q. Jacobs	011-547 7011	Lebot@altrisk.co.za OR fax to 086 654 6337 (Pro Formas) ds_ replacements@altrisk.co.za (RPAR)
AVBOB Mutual Assurance	Mr. T. Smith	012-303 1167	tsmith@avbob.co.za
Cadiz	Ms. L. Scullard	021-657 8752	Lynette.scullard@cadiz.co.za
Capital Alliance	Ms. T. Scheffel	011-408 4660	replacements@liberty.co.za (RPARs) newbusiness@liberty.co.za (Pro Formas)
Channel Life Ltd	Ms. T. Wright	011-359 7990	traceyw@sanlamsky.co.za
Clientéle Life	Ms. M. Botha	011-320 3272	mbotha@clientele.co.za
Constantia Life Ltd	Ms. I. Cochius	021-424 8040	ingridc@gandb.co.za
Discovery Life Ltd	Ms. J. Senior	011-529 7003	replacements@discovery.co.za DL_proforma@discovery.co.za (Pro Formas)
Hollard Life	Mr. B. Curnow	011-351 2985	replacements@hollard.co.za
Liberty Group Ltd	Ms. T. Scheffel	011-408 4660	replacements@liberty.co.za (RPARs) newbusiness@liberty.co.za (Pro Formas)
Liberty Life Active/ Charter Life	Ms. T. Scheffel	011-408 4660	replacements@liberty.co.za (RPARs) newbusiness@liberty.co.za (Pro Formas)
MS Life /Medscheme Life	Ms. N. Lewis	011-758 8469	Nevillel@mslife.co.za
Metropolitan Life	Mr. A. Davids	021-917 3301	replacements@metropolitan.co.za
Metropolitan Odyssey	Mr. A. Davids	021-917 3301	replacements@metropolitan.co.za
Momentum Life	Mr. A. Singh	012-684 5451	aresh.singh@momentum.co.za (Pro Formas and cc zilindile.gcwabe@momentum.co.za +

			MvStaden@momentum.co.za) replacements@momentum.co.za (RPARs + queries)
Nedgroup Life (previously BOE Life)	Mr. R. Govender	031-820 5967	rgovender@nedgrouplife.co.za
Old Mutual	Ms. N. Keet	021-5093920	LOAreplacements@oldmutual.com (Pro Formas) replacement@oldmutual.com (RPARs)
Outsurance	Mr. H. Dedekind	012-675 4536	pretoriusv@out.co.za
Prosperity Insurance	Ms. Z. Dlamini	012-741 4144	zodwad@assupol.co.za
Professional Provident Society	Ms. D. Peterson	011-644 4200	ASISA.replacements@pps.co.za OR fax to 011-644 4668 FOR ATT: D Petersen (Pro Formas) replacements@pps.co.za OR fax to: 011-644 4754 (RPARs)
Regent Life	Mr. J. McNeany	011-879 5188	replacements@regent.co.za
Sanlam	Ms. G. Carolus	021-916 5590	drareplacements@sanlam.co.za (RPARs) dracommandreplacements@sanlam.co.za (Pro Formas)

ANNEXURE 8

Date

Replacement Tribunal Referral

1. Life Offices : **Life Office (Replacing)**
Life Office (Replaced)

2. Intermediary :
Name :
Brokerage :
Identity Number :
Postal Address :

3. Policyholder/Client :
ID number :

4. Replacement Details

Life Office (Replacing)
Policy Number :
Type [investment/non-investment] :
Sum Assured :
Premium :
Date commenced :
Owner of policy :
Life assured :

Life Office (Replaced)
Policy Number :
Type [investment/non-investment] :
Sum Assured :
Premium :
Date terminated :
Owner of policy :
Life assured :

Allegation (explain the reasons for the Referral clearly)

Eg: The replacing intermediary did not declare the replacement in their proposal for insurance (see attached application form). This is contrary to the ASISA Standard on Replacement.

Replacement Policy Advice Record (if applicable)

(replacing life office) did not receive the required Replacement Policy Advice Record and it is assumed that this was never completed together with the policyholder.

Annexures (please mark these)

Annexure A First notification to investigate non-compliance to the Standard on replacements

Annexure B Confirmation documents (section of application form indicating non-compliance).
Incomplete RPAR if applicable

Signed: _____
(Print Name)

(contact details)