CIRCULAR LETTER

TO : ALL INSURANCE COMPANIES, INSURANCE BROKERS, AND BOTH INSURANCE AND REINSURANCE BROKERS

SUBJECT : TEMPLATE OF STANDARD BROKERS AGREEMENT

WHEREAS, the Insurance Commissioner under Section 437 of the Amended Insurance Code may issue such rulings, instructions, circulars, orders and decisions as may be deemed necessary to secure enforcement of the Amended Insurance Code, to ensure the efficient regulation of the insurance industry in accordance with global best practices and to protect the insuring public;

WHEREAS, paragraph 3 of Section 315 of the Amended Insurance Code provides that in order to ensure faithful performance of the insurance brokers (IBs) and both insurance and reinsurance brokers (IBRBs) of their fiduciary responsibilities and to protect the insuring public against misappropriation of funds held in trust, the Insurance Commissioner shall prescribe the minimum terms and conditions on the brokers agreement between IBs and both IBRBs and insurance companies;

WHEREAS, guidance on the minimum terms and conditions is necessary to be issued to ensure the faithful performance of the IBs and both IBRBs on their fiduciary responsibilities to their clients and insurance companies;

NOW, THEREFORE, pursuant to the authority vested in me under Section 437 of the Amended Insurance Code, and after a series of consultations, dialogues, and discussions conducted and held with the IBs and both IBRBs, and other stakeholders, the following rules and regulations concerning the minimum requirements on the Standard Brokers Agreement for IBs and both IBRBs and insurance companies are hereby promulgated;

SECTION 1. SCOPE AND COVERAGE

1. The requirements of this Circular Letter (CL) shall cover all agreements between insurance companies and IBs or both IBRBs with valid Certificates of Authority.
SECTION 2. TEMPLATE OF STANDARD BROKERS AGREEMENT

1. The minimum requirements prescribe on the template of Standard Brokers Agreement (SBA) shall be used by IBs and both IBRBs and insurance companies.

2. The IB or both IBRB and insurance company shall attach as “Annex” any agreements required to be disclosed as provided in the SBA.

3. Any additional requirements to be agreed upon by the IB or both IBRB and insurance company may be allowed and required to be attached as “Annex” in the SBA. Provided that, they are not contrary to the minimum terms and conditions of the SBA, any existing IC Circular Letters, laws, and rules and regulations.

SECTION 3. CLIENT MONIES ACCOUNT

1. All IB or both IBRB shall maintain a separate bank account (“Clients Money”) with a bank duly licensed by the Bangko Sentral ng Pilipinas (BSP) as provided in the Article III.A.1 of the SBA.

2. The IB or both IBRB is allowed to maintain only one (1) “Client Money” account on behalf of all partner insurance companies, provided that, the IB or both IBRB shall maintain separate subsidiary ledgers for each partner insurance companies.

3. The “Client Money” accounts and subsidiary ledgers should be kept and made available for examination/verification by the IC.

4. In opening the “Clients Money” account, the IB or both IBRB shall execute a board resolution to be submitted to the bank indicating therein the purpose and guidance on the circumstances under which the monies shall be deposited into or withdrawn from the “Clients Money” account.

SECTION 4: EXAMINATION OF STANDARD BROKERS AGREEMENT

1. The SBA shall be kept by the IB or both IBRB and insurance company and shall be made available for examination by the IC.

2. The IC shall have the authority to conduct an examination of the SBA to determine whether the minimum terms and conditions in the SBA are complied with.

3. If upon examination, material breaches on the minimum terms and conditions are found in the SBA, the IC shall issue letters to the IB or both IBRB in accordance with the IC’s approved operations manual.

4. All IB or both IBRB and insurance companies are required to provide the IC the list of all existing SBA as part of the checklist of requirements on their annual submission to the IC.
SECTION 5. TRANSITION

1. All existing broker agreements entered into prior to the effectivity of this Circular Letter shall be replaced using this new template. All IBs and both IBRBs are required to submit copy of the Standard Brokers Agreement duly signed by the IBs or both IBRBs and partner insurance company and notarized to the Brokers Examination Division within Ninety (90) days after the effectivity of this Circular Letter.

For strict compliance.

DENNIS B. FUNA
Insurance Commissioner
STANDARD BROKERS AGREEMENT

This Agreement made and entered into this ____ day of __________, 20__ at _______ by and between:

____________________ (Name of Broker), a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at ___________________________ represented herein by its President and duly authorized representative, and hereinafter referred to as “BROKER”;

and

____________________ (Name of Insurance Company), a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at ___________________________ represented herein by its President and duly authorized representative, ___________________________ and hereinafter referred to as “INSURER”;

The INSURER and the BROKER are hereinafter collectively referred to as the “PARTIES”.

WITNESSETH: THAT

For and in consideration of the premises, covenants and agreements contained herein, the PARTIES hereby agree as follows:

ARTICLE I - SCOPE OF AUTHORITY

1. The BROKER is authorized to solicit, transact and service (life, non-life, as applicable) and/or reinsurance business that the INSURER is authorized to write:

2. Except as otherwise provided by this Agreement, the BROKER has no authority to represent the INSURER in any and all matters affecting the insurance business.

3. The BROKER shall be an independent business partner of the INSURER. None of the terms and conditions of this Agreement shall be construed as creating an employer-employee or principal-agent relationship between the PARTIES, except in respect of Section 315 of the Amended Insurance Code.

ARTICLE II - TERMS OF AGREEMENT

1. This Agreement shall be effective from __________ and until __________, and shall be in full force and effect unless either PARTY signifies its intent to terminate by giving thirty (30) working days prior written notice and accepted by the other PARTY and shall inform the Insurance Commission (IC) within thirty (30) working days after the agreement of both PARTIES.

2. This Agreement shall be automatically terminated upon the suspension/revocation of License/Certificate of Authority of either PARTY.
ARTICLE III – PERFORMANCE

DUTIES, RESPONSIBILITIES AND OBLIGATIONS

The PARTIES agree to observe their respective obligation, duties and responsibilities as set forth in the Amended Insurance Code and issuances of the Insurance Commission.

A. BROKER’S RESPONSIBILITIES

1. MAINTAIN A SEPARATE BANK ACCOUNT (CLIENT MONIES) – FOR THE ACCOUNT OF INSURANCE COMPANIES

1.1. The BROKER shall maintain a separate bank account duly licensed by the Bangko Sentral ng Pilipinas (BSP) for the account of the INSURER for the premium collection except for direct payments¹.

1.2. All monies and/or negotiable instruments received by the BROKER as payment of any premium, gross of taxes and other charges, shall be held by the BROKER in a fiduciary capacity separate from its own and other funds, in an account called “Client Monies”.

1.3. The BROKER must deposit in full the gross premium and taxes it directly collected from its client to the Client Monies account.

1.4. Guidance on the circumstances under which monies shall be deposited into or withdrawn from a “Client Monies” account:

1.4.1. Deposit into Client Monies account

1.4.1.1. The following shall be deposited into the Client Monies account:

i. Monies received from client for the purpose of purchasing contract of insurance;

ii. Monies received for the purposes of the client which are incidental to the ordinary transactions of insurance broking business; and

iii. Monies required to be deposited for settlement of bank charges incurred on a client account;

1.4.1.2. For avoidance of doubt, monies incidental to ordinary insurance broking business are the following:

i. Premiums, renewal premiums, additional premiums and return premiums of all kinds;

¹ For avoidance of doubt, “direct payment” shall mean premium payment made by the client directly to the INSURER.
ii. Other monies due under contracts of insurance;

iii. Refunds to clients (i.e. policy cancellation);

iv. Fees, charges, levies relating to contracts of insurance; and

v. Discounts, commissions and/or brokerage fee.

1.4.2. Withdrawal from Client Monies account

1.4.2.1. Withdrawals from the Client Monies account shall be strictly limited to the following:

i. Premium required to be paid to insurers or reinsurers for the purchase of contract of insurance;

ii. Payments made for the purposes of the client which are incidental to the ordinary transactions of insurance broking business;

iii. Interest received from deposits;

iv. Monies required to be withdrawn for settlement of bank charges incurred on a client account; and

v. Monies which by mistake or accident have been paid into the account.

1.5. The BROKER undertakes to deliver the policies to his clients, and to collect the corresponding premium, documentary stamp tax (DST), taxes and other charges in accordance with Section 77 of the Amended Insurance Code except for direct payments wherein broker should be copy furnished of the policies issued to the assured.

2. The BROKER shall strictly adhere to the approved premium rates for fire, motor car and bonds pursuant to Sections 365 and 372 of the Amended Insurance Code and pertinent Circulars issued by the IC.

B. INSURANCE COMPANIES' RESPONSIBILITIES

The INSURER shall have the following duties and responsibilities:

1. The INSURER has the absolute unqualified right to accept or decline the BROKER'S insurance business. In the event that the INSURER decides to accept the business of the BROKER, the former shall deliver to the latter all the policies procured by the BROKER who shall then sign the endorsement/transmittal letters and undertakes to deliver the same to, and collect premium from his clients in accordance with the provisions of Section 77 of the Amended Insurance Code.
2. The INSURER shall revert to the BROKER regarding its position within reasonable time from receipt of the BROKER’S Placement Slip. For Placement Slips submitted by the BROKER that would require substantial facultative reinsurance placement and/or support from local/foreign reinsurers, the INSURER shall revert to the BROKER regarding its position within reasonable time from receipt of such placement slip.

3. The INSURER shall deliver the policy/endorsement copies to the BROKER within reasonable time upon receipt of the BROKER’S Placement Slip. For Placement Slips submitted by the BROKER that would require substantial facultative reinsurance placement and/or support from local/foreign reinsurers and the issuance of a complex-worded policy, the INSURER shall deliver the policy/endorsement copies to the BROKER within a reasonable period of time consistent with Section 6 of the Bill of Rights of Policyholder (IC Circular Letter No. 2016-30 dated 26 May 2016).

4. The INSURER shall strictly adhere to the approved premium rates for fire, motor car and bonds pursuant to Sections 365 and 372 of the Amended Insurance Code and pertinent Circulars issued by the IC.

ARTICLE IV – REMUNERATION

1. BASIC COMMISSION RATES. Compensation or Commission Rates, including the process by which these are to be paid to the BROKER from the Client Monies account, should be based on the mutual agreement between the INSURER and the BROKER and should be attached as “Annex” and form part of this agreement.

1.1. The BROKER shall have the right to commissions on premiums actually remitted to the INSURER by either the BROKER itself, or by the Policyholder/Insured itself.

1.2. Nothing in this Agreement shall be construed as authorizing the INSURER to apply any commissions due the BROKER to the payment of any unremitted premiums (including DST and other taxes), outstanding receivables or any other amounts due the INSURER as reflected in the Statement of Account of the BROKER, as mutually agreed upon.

2. CANCELLATION OF RISKS. BROKER shall not be entitled to proportionate share on cancelled policies or risks. The procedure and/or mechanics should be attached as “Annex” in the Agreement.

ARTICLE V – REPORTORIAL REQUIREMENTS

1. At a minimum, the following reports shall be submitted by the PARTIES:


1.2. Statement Of Clients Monies Account – The INSURER shall submit to the BROKER a Monthly Statement of Account.

1.3. Quarterly reconciliation statement of accounts due and payable to each PARTY.
1.4. BIR FORM 2307 – The INSURER shall submit to the BROKER BIR Form 2307 – Creditable Withholding Tax and Monthly/Quarterly Summary Schedule.

2. The form of the reports and date of submissions should be in compliance with the agreement of the PARTIES.

ARTICLE VI – TAXES

The PARTIES agree to observe existing laws on taxes, Bureau of Internal Revenue (BIR) rulings, issuances, and Bill of Rights of Policyholders issued by the Insurance Commission (IC Circular Letter No. 2016-30). Likewise, the PARTIES agree to render mutual assistance and exert all efforts and due diligence in the collection of taxes from the insured.

ARTICLE VII – ANTI-MONEY LAUNDERING ACT AND GOOD CORPORATE GOVERNANCE COMPLIANCE

The PARTIES agree to comply with the Anti-Money Laundering Act (AMLA) and Good Corporate Governance Compliance requirements provided for under the Anti-Money Laundering Act of 2001, as amended, and the Terrorism Financing Prevention and Suppression Act of 2012, its Revised Implementing Rules and Regulations, and IC Circulars related therein to the extent that such laws and regulations, may apply to them.

ARTICLE VIII – DATA PRIVACY ACT

The PARTIES agree to follow the requirements under Republic Act No. 10173 (Data Privacy Act of 2012), including its Implementing Rules and Regulations.

ARTICLE IX – CHANGE OF OWNERSHIP AND ADDRESS

1. In case of any change in ownership and/or address by either of the PARTY, the PARTY changing its ownership and/or address shall comply with all circulars and instructions issued/ to be issued by the IC (such as CL No. 2014-37 – Documentary Requirements for the acquisition of Control of a Domestic Insurance Company, CL No. 2017-09 - Guidelines Fixing the Documentary Requirements for Acquiring Ownership of a Domestic Insurance Broker and Reinsurance Broker and CL No. 2016-39 – Guidelines in the Establishment, Transfer, Change of Address and Closure of a Branch, Extension, Satellite and/or Service Office and Penalties in Case of Non Compliance) and shall notify the other PARTY and the IC in writing, within thirty (30) days before its actual transfer.

2. Failure to inform IC of the change of its official business address would mean automatic suspension of the license.
ARTICLE X – TERMINATION

Upon termination of this Agreement, for proper accounting of premiums that should be remitted to the INSURER and for the commission to be paid to the BROKER, all accountabilities of the PARTIES shall become due and demandable, and the BROKER shall surrender any and all records, invoices, forms, properties, and the like which belongs to the INSURER. Thereafter, the PARTIES shall cease and desist from further performing any act or acts for which it was empowered under this Contract.

ARTICLE XI – ACCEPTANCE

1. The attached Annex/es, is/are hereto incorporated and made an integral part hereof by reference. All circulars and instructions issued/to be issued by the IC shall automatically form part of this AGREEMENT; provided nothing herein shall be construed as impairing existing contractual obligations.

2. No supplement to or change or modification in this AGREEMENT shall be made, except in writing and signed by the PARTIES and unless the modification is approved by IC prior to effectivity.

3. Each PARTY agrees to hold harmless and indemnify the other PARTY and/or any of its officers or representatives from any and all liabilities, claims, damages and suits of whatever nature to include reasonable attorney’s fees by reason of, arising from or connected with its failure to comply with the provisions of this Agreement and with all applicable laws, IC rules and regulations in the performance of their respective obligations under this Agreement.

ARTICLE XII – GENERAL PROVISIONS

1. No waiver, permit, consent or approval of any kind or character or any breach of any provision or condition of this Agreement shall be effective unless in writing and signed by the PARTIES’ duly authorized representatives.

2. This Agreement supersedes all prior agreements contracts and memoranda entered into by the PARTIES

3. FORCE MAJEURE. Either PARTY shall be excused from performance and shall not be liable for any delay in the delivery or non-delivery, in whole or in part, caused by Force Majeure. Force Majeure means the occurrence of any contingency beyond the control of the PARTIES including, but not limited to, work stoppages, fires, civil disobedience, riots, rebellions, accident, explosion, flood, storm, and similar occurrence.

ARTICLE XIII – UNETHICAL PRACTICES

The PARTIES are prohibited from committing any unethical act such as misrepresentation, business twisting, connivance with any personnel in the solicitation of business, and the like or in general, which violates any provision of the Amended Insurance Code, or any of the existing rules and regulations of the IC.
ARTICLE XIV – CUMULATIVE RIGHTS

The rights and remedies of the PARTY under this Agreement do not exclude any other right or remedy provided by law.

ARTICLE XV - SEPARABILITY AND CHANGES TO LAW CLAUSE

If any provisions of this Agreement and its annexes are declared invalid or unenforceable by a competent court, the other provisions shall not be affected and shall continue in full force and effect.

If any law or regulation relevant to the construction of this Agreement is amended or replaced, this Agreement shall be read as though the amended or new law or regulation was incorporated in it. If this produces any ambiguity, this Agreement shall be construed as to most nearly give effect to the intentions of the PARTIES at the time it was executed.

IN WITNESS WHEREOF, the PARTIES have hereunto set their hands on the date and place above written.

By:

________________________________________
(INSURER)

By:

________________________________________
(BROKER)

SIGNED IN THE PRESENCE OF:

________________________________________  __________________________
ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES

BEFORE ME, a Notary Public for and in the City of ____________________,
this ________________ day of ____________________, 20__ personally appeared;

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known to me to be the same persons who executed the foregoing instrument
and they acknowledged to me that the same is their free and voluntary act and deed
and that of the corporations herein represented.

This Agreement consisting of _______ (____) pages, including the page
wherein this acknowledgment is written has been signed by the PARTIES and their
instrumental witnesses.

WITNESS MY HAND AND SEAL this ___ day of ________________, 20__
at ________________________.

NOTARY PUBLIC

Doc. No. ____;
Page No. ____;
Book No. ____;
Series of ____.