

PRODUCER AGREEMENT

This Producer Agreement ("Agreement") is by and between **NEW ENGLAND EXCESS EXCHANGE**, a Vermont corporation and its direct and indirect subsidiaries engaged in the insurance brokerage business ("NEEE"), and _____ ("Producer").

Background

1. NEEE represents insurance companies and other similar entities ("Insurers") in the placement and writing of insurance.

2. Producer requires the services of NEEE to place insurance for its clients ("Insureds") and Producer desires to place contracts of insurance through companies represented by NEEE (those companies referred to herein as "Insurer" or "Insurers") and utilizing the underwriting facilities, knowledge, and services of NEEE.

N O W , T H E R E F O R E ,

In consideration of the foregoing and the mutual covenants and agreements herein set forth, the parties hereby agree as follows:

Section 1. **Authority.** Producer is an agent for the Insured, and acts on behalf of the Insureds for insurance, and is not acting as an agent, subagent or broker for NEEE. NEEE shall be the sole judge of whether to accept, reject, or submit to Insurer for acceptance any applications of insurance for risks submitted by Producer and shall incur no liability for failure to place any such risk. Producer shall have no authority to bind any Insurer for NEEE, commit to or issue binders, policies, or other written evidence of insurance on behalf of NEEE or to make representations not strictly in accordance with the provisions of the policies and contracts placed under the terms of this Agreement. Nothing in this Agreement shall obligate NEEE to accept any proposal or new business or the renewal of existing business put to it by Producer. Producer shall not make, alter or vary any terms of coverage, or modify terms of payment of any premium or deposit, or incur any liability for NEEE. Receipt of payment, with or without application for a policy, will not constitute automatic binding coverage for said policy.

Section 2. **Independent Contractor.** This Agreement and the relationship between the parties and their officers and employees is not intended, and shall not be construed, to create a partnership, joint venture or employment relationship between NEEE and Producer. Producer is an independent contractor. Producer is not an employee or entitled to participate in any plans, arrangements or distributions of NEEE pertaining to or in connection with any pension, stock, bonus, profit sharing, insurance or similar benefits provided or available to the employees of NEEE.

Section 3. **Licensing /Excess and Surplus Lines Placement.** Producer warrants and represents that it is properly licensed to transact business as an agent or broker in accordance with the insurance laws, rules and regulations of each state in which Producer transacts business. Producer will maintain such license or licenses in good standing for the term of this Agreement and will furnish proof of such licensing upon request by NEEE. Producer will promptly notify NEEE of any suspension, cancellation or disciplinary action in respect of its license(s) in any jurisdiction. Producer shall not place an order with Broker for any excess or surplus lines insurance unless Producer shall have first complied with any

applicable state laws requiring Producer to attempt to procure such insurance from insurers authorized to do business in the state of residence of the proposed insured.

Section 4. **Premiums and Account.** Producer shall pay the full amount due NEEE of all premiums including deposit, earned, extension and adjustable premiums, fees, plus applicable state and local taxes, less commission, on every insurance contract bound or written for Producer pursuant to this Agreement in accordance with the terms set forth on Exhibit A attached hereto and made a part hereof. Producer shall be liable to NEEE for the payment of all premiums, fees and taxes whether or not collected by Producer. NEEE shall allow Producer, a commission equal to a percentage of the premium written at the rate agreed upon by NEEE and Producer from time to time. NEEE's billings may take the form of binders, invoices or statements. The net balance will be due and payable as indicated on such billings and may vary based upon the credit terms of the issuing company. The omission of any item(s) from a monthly statement or separate invoice shall not: (a) affect Producer's responsibility to account for and pay all amounts due; (b) prejudice the rights of NEEE to collect all amounts due from Producer; and (c) extend the time within which Producer must make payment. Producer's obligation to make payment to NEEE is not contingent upon the issuance of a policy. Any credit extended to the Insured or others shall be at the sole risk and responsibility of Producer unless agreed to in writing by NEEE.

Section 5. **Premium Funds Held in Trust.** Producer shall hold premium funds in a fiduciary account for business generated under this Agreement to the extent required by the applicable law of each state in which Producer conducts business. Provided Producer is in compliance with all terms of this Agreement and applicable law, Producer may retain any interest earned on said premium funds while so held by Producer.

Section 6. **Audit Premiums.** Notwithstanding anything to the contrary herein set forth, if a premium for a policy or policies which have been issued cannot be fully determined in advance and where an adjustment or determination is made by an audit, such premium shall be due at the invoice date as evidenced by a NEEE or Insurer invoice. Producer will make all reasonable efforts to collect amounts due. Producer will be relieved of responsibility for premium, so adjusted or determined, if Producer notifies NEEE in writing prior to the due date shown on the audit paperwork and/or invoice stating that Producer has made diligent efforts and is unable to collect such premiums. Failure to give NEEE timely notice shall constitute Producer's acceptance of responsibility to pay such premiums. If commission applies to these adjustments, none will be allowed to Producer on premiums collected directly by NEEE or Insurer under this provision.

Section 7. **Ownership of Expirations.** Upon termination of this Agreement the use and control of expirations on business written under this Agreement shall remain the property of Producer provided Producer has accounted for and paid to NEEE all premiums and other monies due in accordance with the terms of this Agreement. If a proper accounting and payment has not been made, the ownership of the records and the ownership of the right of use and control of the expirations shall vest in NEEE.

Section 8. **Cancellation of Insurance.** Notwithstanding anything to the contrary in this Agreement, but subject to applicable legal requirements and insurance contract provisions, NEEE shall have the right to cancel any binder, policy or contract of insurance issued. NEEE will not recognize flat cancellations unless: (a) written evidence of coverage prior to the inception date of the contract for insurance is provided; and (b) such credit has been granted NEEE by its Insurer. Earned premium shall be computed and charged on every binder, policy or contract cancelled after the inception date in accordance with the cancellation provision of the applicable contract and/or rules of the Insurer. If Producer does not make timely payment of any sums due NEEE, then NEEE may, without limitation of other remedies, initiate with Insurer to cancel the binder, policy or contract for non-payment. If coverage is bound by NEEE, all additional fees charged by NEEE for the entire policy term shall be fully earned upon binding. Producer

hereby acknowledges that NEEE and its Insurers are under no duty to reinstate a policy if the policy is cancelled. Producer shall not accept from any insured the late payment of premiums with prior knowledge, whether actual or constructive, that the policy for which the late premiums have been collected has been cancelled.

Section 9. **Unearned Commissions.** Producer shall be liable to NEEE and shall pay return commissions at the same rate as originally allowed to Producer for all return premium adjustments or cancellations, including return premium on cancellations ordered or made by the Insurer or a finance company, if any. Such return commission shall be paid to NEEE by the due date indicated on the billing document. If a return premium becomes due under any contract of insurance and NEEE has been issued a credit, or payment has been rendered, for such premium by NEEE's Insurer, NEEE will pay to Producer such return premium less the unearned portion of any commission previously retained by Producer.

Section 10. **Financed Premiums.** On all premiums which have been financed NEEE will remit payment for any return premium, less unearned commission, directly to the finance company unless otherwise specified. The ultimate liability of NEEE for payment to any finance company, Producer or Insured shall never exceed the amount of return premium less unearned commission developed. Producer agrees to hold NEEE harmless from any responsibility for payment to any finance company and further agrees that financing arrangements do not diminish the responsibility for the timely payment of premium by Producer.

Section 11. **Direct Collections.** If, after the expiration of sixty (60) days from the date liability was assumed by the Insurer, NEEE has not received payment due for the applicable coverage, NEEE may, at its option, collect from the Insured the premium due. In the event NEEE collects the premium or any part thereof from the Insured, Producer shall not be entitled to any commission on the premium so collected. Attempts by NEEE to collect from the Insured shall not relieve Producer of liability to NEEE except to the extent of amounts actually collected by NEEE from the Insured, less all reasonable expenses and fees incurred in connection with any such collection.

Section 12. **Claims.** Producer shall comply with the terms of any policy placed pursuant to this Agreement with respect to notification of claims. Producer shall promptly notify the Insurer, and where appropriate the NEEE, of any claims, suits or notices of loss (or circumstances which might reasonably be expected to result in a claim, suit or notice of loss) and shall cooperate fully with Insurer and/or NEEE to facilitate the investigation and adjustment of any claim when and as requested. Producer does not have authority to adjust, handle, investigate or provide coverage opinions regarding any claim, loss or occurrence.

Section 13. **Advertising.** Producer may not, without the prior, express, written consent of NEEE, which consent may be withheld in its sole discretion, issue, print or circulate any letter, pamphlet, advertisement, publication or statement, oral or written, referring in any way to NEEE or representing any relationship of any kind between Producer, NEEE or any Insurer represented by NEEE. Producer specifically agrees to indemnify NEEE for any loss, legal fees, or other expense it may sustain from any unauthorized advertisement, publication or statement by Producer.

Section 14. **No Responsibility or Guarantee.** Producer understands that NEEE assumes no responsibility toward any policy with regard to the adequacy, amount or form of coverage and agrees to indemnify, defend and hold NEEE harmless from and against any and all claims asserted against NEEE in following the instructions of Producer. NEEE is not an insurer and does not guarantee the financial

condition of the Insurers with whom it may place risks. NEEE shall have no liability for non-payment of claims due to the insolvency of an Insurer, or otherwise, under contracts of insurance placed by NEEE.

Section 15. **Confidentiality.** The parties to this Agreement hereby represent and acknowledge to each other that in the course of the performance of their respective obligations, they will each make available to the other party certain information pertaining to each party's business and operations ("**Information**"). Each party hereby agrees that as a condition to being provided the Information, that neither party will use any Information except in connection with the performance of duties hereunder. The recipient shall: (a) protect the disclosing party's Information using a standard of care at least equal to that which it uses to safeguard its own confidential information and in no event less than a reasonable standard of care; (b) use the disclosing party's Information only to the extent necessary to perform its obligations pursuant to this Agreement; and (c) disseminate Information to its representatives and agents only on a "need to know" basis, provided that all persons to whom Information is disseminated shall be notified of its confidential nature. Recipient will notify disclosing party immediately upon any loss or unauthorized disclosure of Information. Recipient shall be liable for breach of this provision by any of its representatives or agents. The limits on use and disclosure will not apply to any Information which: (i) at the time of disclosure is generally available to the public; or (ii) which becomes generally available other than through a breach of this obligation of confidentiality.

Section 16. **Inspection of Records.** During the term of this Agreement and for a period of three (3) years following termination, NEEE shall have the right to audit and inspect Producer's books and records concerning the business to which this Agreement applies. Such right of audit and inspection shall be during normal business hours upon reasonable notice to Producer. The cost of such audit and inspection shall be borne by NEEE.

Section 17. **Termination of Agreement.** This Agreement may be terminated at any time by either party giving written notice to the other. This Agreement will also terminate: (a) automatically, if any state agency in which Producer transacts business authority cancels or declines to renew Producer's license or certificate of authority; (b) by NEEE upon Producer's breach of this Agreement and failure to cure such breach within thirty (30) days' of receipt of written notice of Producer's breach; or (c) automatically at NEEE's option, on the effective date of the sale of all or substantially all of Producers assets or the transfer, or merger of Producer with a third party, provided, however, that NEEE may, consent to the appointment of the successor as a Producer. All representations and obligations of Producer herein shall survive the termination of this Agreement.

After the date of termination of this Agreement, Producer shall complete the collection and accounting to NEEE for all premiums, commissions and other transactions unaccounted for on the date of termination or arising thereafter in respect of outstanding policies of insurance, including but not limited to, return premium and return commissions. Outstanding policies will be permitted to run to expiration.

Section 18. **Errors and Omissions Coverage.** Producer has in place and agrees to maintain during the term of this Agreement, errors and omissions coverage for itself and its agents, solicitors, servants and employees in an amount not less than \$1,000,000 per claim. A copy of the policy or confirmation of coverage shall be submitted on each yearly anniversary of this Agreement to NEEE and at any such time as NEEE may reasonable request. Producer will provide NEEE with prompt written notice of any change, cancellation or other termination of the policy.

Section 19. **Indemnification and Hold Harmless.**

- (a) **Producer Indemnification.** Producer agrees to defend and indemnify NEEE, its parents, subsidiaries, affiliates, successors and assigns, and the shareholders, directors, officers,

agents and employees of any of them (collectively the “Broker Indemnitees”), against and in respect of any and all claims (not including covered claims made under any policy properly issued in accordance with this Agreement), demands, actions, proceedings, liability, losses, damages, judgments, costs and expenses, including, without limitation, attorneys’ fees, disbursements, court costs, and punitive, exemplary, or compensatory damages, suffered, made or instituted against or incurred by NEEE Indemnitees, or any of them, and which directly or indirectly arise out of or relate to: (a) negligence of Producer or its employees or representatives, in discharging their obligations to NEEE or to policyholders; (b) failure by Producer or its employees or representatives to comply with any applicable information privacy laws; and (c) any failure by Producer or its employees or representatives to perform their obligations under or relating to this Agreement.

- (b) NEEE Indemnification. NEEE agrees to defend and indemnify Producer, its parents, subsidiaries, affiliates, successors and assigns, and the shareholders, directors, officers, agents and employees of any of them (collectively the “Producer Indemnitees”), against and in respect of any and all claims (not including covered claims made under any policy properly issued in accordance with this Agreement), demands, actions, proceedings, liability, losses, damages, suffered, made or instituted against or incurred by Producer Indemnitees, or any of them, and which arise solely out of or solely relate to: (a) negligence of NEEE, or its employees or representatives, in discharging its obligations to the Producer or to policyholders; (b) failure by NEEE, or its employees or representatives, to comply with any applicable information privacy laws; and (c) and failure by NEEE, or its employees or representatives to perform its obligations under this Agreement. Producer understands that NEEE assumes no responsibility for any policy with regard to the adequacy, amount or form of coverage and agrees to indemnify and hold NEEE harmless from any claim asserted against NEEE in following the instructions of the Producer. NEEE is not an insurer and does not guarantee the financial condition of the Insurer with whom it may place risks. Broker shall have no liability for non-payment of claims due to the insolvency of an Insurer, or otherwise, under contracts of insurance placed by NEEE.

Section 20. **Privacy Policy**. Neither Producer nor NEEE shall disclose or use Nonpublic Personal Information (as that term and similar terms are defined in the Gramm-Leach-Bliley Act, 15 U.S.C. Section 6801, *et seq.* and the applicable state insurance laws and regulations enacted or adopted pursuant to the Gramm-Leach-Bliley Act (the “Act”) that is received from or collected on behalf of either party except as necessary to permit the Parties to perform their duties under this Agreement, or as otherwise permitted or authorized by the Act. Both Parties shall implement and maintain appropriate administrative, technical and physical safeguards to protect the security, confidentiality and integrity of such Nonpublic Personal Information.

Section 21. **No Waiver**. The waiver by NEEE of a breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or of any subsequent breach of the same or any other term, covenant or condition. No covenant, term or condition of this Agreement shall be deemed to have been waived or modified by NEEE, unless such waiver or modification is in writing and executed on behalf of NEEE.

Section 22. **Severability**. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby

and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 23. **Entire Agreement.** This Agreement constitutes the entire agreement between NEEE and Producer and supersedes and replaces any previous agreements between NEEE and Producer. No oral promises or representations shall be binding, nor shall this Agreement be modified, except by agreement in writing and executed by NEEE. This Agreement shall apply to current policies already placed through NEEE and in force at the date hereof and all future policies which may be placed by NEEE for Producer.

Section 24. **Assignment.** This Agreement and the obligations hereunder may not be assigned by Producer without the prior written consent of NEEE, which consent may be withheld in its sole and absolute discretion.

Section 25. **Governing Law.** This Agreement shall be governed by, and construed in accordance with the laws of the State of Vermont, without giving effect to principles of conflict of laws that would require the application of any other law. The rights, duties and obligations of the parties to this agreement to such extent they are not dealt with specifically or by necessary implication in this instrument shall be in accordance with the customs prevailing in the surplus lines and special risks insurance business in the state in which Producer is domiciled.

Section 26. **Forum Selection; Venue.** All questions or controversies arising out of or in any way relating to this Agreement or any other aspect of the commercial relationships between NEEE and Producer shall be submitted to the United States District Court for the District of Vermont or, in the event that District Court is without subject matter jurisdiction, to the courts of the State of Vermont having subject matter jurisdiction, and the parties submit themselves to the personal jurisdiction of such District Court or Vermont State Court, as the case may be, and any service of a summons, process or other paper in connection with such proceedings may be made by giving notice as provided in this Agreement. In the event NEEE is the successful party on any claim by it, counterclaim by it, or defense by it in any action or proceeding brought by or against it with respect to Producer, Producer agrees to pay, in addition to all other sums which may be due, NEEE's reasonable attorneys' fees, costs and disbursements attributable to such claim, counterclaim or defense, both at the trial and any appellate level.

Section 27. **Execution and Acceptance of Agreement.** Producer acknowledges that a breach of any of the terms, conditions, or provisions of this Agreement by Producer may give rise to a cause of action by NEEE against Producer and/or may result in disciplinary action by NEEE, including but not limited to, the termination of this Agreement, all in the sole discretion of NEEE. Each individual who executes this Agreement in a representative capacity represents and warrants that he or she has the full right and power to execute this Agreement and to bind the entity or individuals on whose behalf he or she so signs. If Producer is an individual, the individual must sign; if Producer is a partnership, one of the partners must sign; if Producer is a corporation, an authorized officer must sign and indicate the title of such authorized officer. The parties hereto agree this Agreement shall not become effective until accepted by NEEE.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties, as evidenced by the signatures of their Duly Authorized Agents, do hereby execute this Producer Agreement as of the __ day of _____, 20__.

Witness

NEW ENGLAND EXCESS EXCHANGE

By: _____
Duly Authorized Agent

Witness

PRODUCER

By: _____
Duly Authorized Agent