

This Agreement is made and entered into on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and **between Program Brokerage Corporation** (hereinafter, “PBC”) and \_\_\_\_\_ (hereinafter, “Broker”).

**WHEREAS**, Broker is licensed as an insurance broker and/or agent in the states applicable to this Agreement; and

**WHEREAS**, Broker desires to use the services of PBC in obtaining certain insurance coverage for Broker’s clients; and

**WHEREAS**, PBC desires to extend such services to Broker, subject to the terms and conditions set forth below.

**NOW, THEREFORE**, in consideration of the covenants, promises and obligations contained herein, and for other good and valuable consideration, the parties hereto agree as follows:

**SECTION 1: RELATIONSHIP BETWEEN THE PARTIES.**

- (a) Independent Contractor. Broker is an independent contractor and no provision of this Agreement shall be deemed to create an employer and employee relationship between PBC and Broker.
- (b) Advertising. Broker shall not use the name of PBC in any advertising or promotional materials without PBC’s prior written approval.
- (c) No Authority to Incur Expenses. Broker shall not incur any expense or obligation on behalf of PBC unless previously authorized by an officer of PBC in writing.

**SECTION 2: SOLICITATION AND SERVICING OF BUSINESS.**

- (a) Authorization of Broker. Broker is authorized to transmit to PBC proposals or applications for insurance. Broker is not authorized to quote premiums for any insurance policy sought to be procured through PBC unless the quotations have been confirmed in writing by PBC.
- (b) Binding Coverage. Broker is not authorized to bind any risk or to issue any binder or policy of insurance on behalf of PBC or the insurers. Any proposal or application submitted by Broker to PBC for consideration will not become effective for Broker’s clients unless and until specifically confirmed by PBC in writing to Broker. PBC and/or the insurers shall have the absolute right to decline any proposal, application for insurance and/or request for insurance transmitted to PBC by Broker.
- (c) Cancellation of Coverage. No insurance contract may be returned to PBC by Broker for flat cancellation unless it is returned prior to the inception or effective date of the contract. Broker is not authorized to cancel any policy and acknowledges that either PBC or the insurer(s) may cancel any policy on a pro-rata or short rate basis, subject only to the limitations of applicable insurance laws and regulations and the terms of the policy being canceled. Nothing contained in this Agreement shall limit the right of PBC and/or the insurer(s) to cancel any binder or policy.
- (d) Accuracy of Documentation. Broker shall: (i) ensure that all applications, forms and other documents prepared and/or submitted in connection with the production and servicing of the business procured through PBC are properly completed and promptly delivered; and, (ii) check the accuracy of each quotation, binder, policy and other documents received from PBC and to notify PBC of any errors or required changes.
- (e) Best Efforts; Information Disclosure. Broker acknowledges that PBC does not have a direct relationship with the insured. Broker shall use its best efforts to obtain accurate and complete information for use in underwriting the policies and shall promptly disclose to PBC all material information that Broker obtains regarding any risk submitted or written pursuant to this Agreement.
- (f) No Changes in Forms. Broker shall not alter the terms and conditions of any policy, application or other form used in connection with this Agreement and shall not extend the time for payment of premiums.

- (g) Responsibility for Renewals. Broker shall provide insured(s) with timely renewal premium quotations; provided that Broker shall not provide any such quotations unless they have been confirmed in writing by PBC.

### **SECTION 3. PREMIUMS.**

- (a) Collection of Premiums. Broker hereby guarantees the payment of all premiums, taxes, fees and any or all other charges of any kind whatsoever relating to each policy placed by PBC for Broker, whether or not the premiums are collected by Broker. If Broker extends credit to the insured, Broker does so at its own risk and premiums shall be paid by Broker to PBC when due, whether or not they are collected by Broker. Broker may, however, relieve itself of responsibility for the collection of additional premiums developed on audit by requesting in writing that PBC undertake collection thereof directly (or through the insurer) provided that: (i) Broker's request is made to PBC within twenty (20) days after the billing date shown on the audit statements; and, (ii) the insurer(s) permit PBC to similarly relieve itself of responsibility for the collection of additional premiums. No commissions shall be payable to Broker on premiums referred to PBC or the insurer(s) for direct collection.
- (b) Premium Trust Fund Account. The premium for each policy is the property of PBC and/or the insurer(s) and, until delivered to PBC, shall be held by Broker in a fiduciary capacity in a Premium Fund Trust Account at a financial institution which is federally or state insured. Broker shall comply with all applicable state insurance laws and regulations governing the maintenance of a Premium Fund Trust Account and the books and records related thereto.
- (c) Earned Premium. Earned premium shall be computed and charged on every policy, binder, certificate, cover note and endorsement canceled after inception in accordance with the cancellation provisions of such document.

### **SECTION 4. REMITTANCES AND COMMISSIONS.**

- (a) Remittances. All premiums, less Broker's commission, on all agency-billed business placed by Broker through PBC shall be paid directly to PBC in accordance with the invoice.
- (b) Commissions. PBC agrees to allow Broker to retain commissions on coverage placed by Broker through PBC in accordance with the rate of commission set forth on the premium quotation document. However, Broker shall not retain, and PBC shall not be obligated to pay, a commission to Broker with respect to any particular policy unless Broker is current in the payment of all premiums, fees or other amounts due under the terms of this Agreement. Accordingly, if Broker fails to remit, when due, any portion of the premiums, fees or other amounts due on any statement issued by PBC to Broker, then PBC shall be entitled to the payment of any of the commissions that may be credited to Broker on said account statement and Broker shall pay the gross amount shown as due from Broker on said account without any reduction for commissions to which Broker would otherwise be entitled. All commissions that remain unpaid to Broker solely because of the provisions of this SECTION 4(b) shall be paid to Broker if and when Broker pays all amounts then due or past due to PBC.

### **SECTION 5. CLAIMS AND REPORT OF LOSSES.**

Broker has no authority, either express or implied, to adjust, settle or otherwise handle claims on behalf of the insurer(s) or PBC. Broker and/or the insured shall comply with the policy terms and conditions relating to the reporting of claims and potential claims.

### **SECTION 6. INDEMNIFICATION.**

- (a) Indemnification by Broker. Broker shall defend, indemnify, and hold harmless PBC:
- (i) for any loss or liability arising out of any breach by Broker of this Agreement and/or any loss or liability arising out of Broker's negligence or intentional misconduct; and,

- (ii) for any reasonable costs of collecting amounts due from Broker under this Agreement, legal fees incurred in connection with the enforcement of PBC's rights under this Agreement, and cost of any returned checks remitted to PBC by Broker; and,
  - (iii) from and against any claims, suits, losses, expenses, or causes of action filed against PBC by reason of any act, error or omission of Broker relating to the services provided by Broker under the terms or the conditions of this Agreement; and,
  - (iv) from and against any claims, suits, losses or expense made by the insured relating to an alleged act, error or omission by Broker in its processing or handling of any policy or claim under any policy.
- (b) Indemnification by PBC. PBC shall defend, indemnify, and hold harmless Broker:
- (i) for any loss or liability arising out of any breach by PBC of this Agreement and/or any loss or liability arising out of PBC's negligence or intentional misconduct; and,
  - (ii) from and against any claims, suits, losses, expenses, or causes of action filed against the Broker by reason of any act, error or omission of PBC relating to the services provided by PBC under the terms or the conditions of this Agreement; and,
  - (iii) from and against any claims, suits, losses or expense made by the insured relating to an alleged act, error or omission by PBC in its processing or handling of any policy.

#### **SECTION 7. REGULATORY COMPLIANCE.**

- (a) Maintenance of Licenses. Broker warrants that it is properly licensed in all states relevant to the business placed through PBC and that such licenses are valid and in force at the time any insurance contract offered and accepted hereunder commences or is renewed. Broker shall supply PBC with a copy of Broker's current insurance licenses in these states before any commissions are paid. Broker shall promptly notify PBC of any suspension, cancellation or disciplinary action in respect to its license(s) and agrees that, if Broker breaches this warranty/requirement to maintain the aforesaid licenses, whether or not copies of such licenses are provided to PBC, Broker shall indemnify and hold harmless PBC for any losses, claims, expenses, reasonable attorneys' fees, penalties or fines PBC incurs arising therefrom.
- (b) Compliance with Law. Broker agrees to comply with all state insurance laws and regulations, including any applicable countersignature and surplus lines laws and regulations, which affect the business written hereunder. .
- (c) Notice of Regulatory Inquiries or Complaints. Broker shall give PBC immediate written notice of Broker's receipt of any inquiry or complaint from any regulatory authority pertaining to any policy of insurance placed through this Agreement.

#### **SECTION 8. ERRORS AND OMISSION COVERAGE.**

Broker shall maintain in force during the period of this Agreement professional errors and omissions insurance with limits of at least One Million Dollars (\$1,000,000) each claim/Two Million Aggregate (\$2,000,000), written with an insurance company rated A- or better by AM Best. Broker shall immediately advise PBC of any claim or potential claim under said policy which in any way: (i) relates to or may affect PBC or any policy procured by PBC for Broker; or (ii) is reasonably anticipated to exhaust the "each claim" and/or aggregate limit. Broker shall provide a copy of the declarations page of the said policy to PBC annually, and shall provide prompt written notice to PBC of any change, cancellation or other termination of said policy.

## SECTION 9. TERMINATION

- (a) Termination. Either party may terminate this Agreement without cause by giving thirty (30) days written notice to the other. In addition, either party may terminate this Agreement immediately by giving the other written notice in the event of the other's insolvency, fraud, willful misconduct, non-payment or breach of any other terms and provisions of this Agreement. Any termination of this Agreement shall not affect the respective rights or liabilities of either party accruing up to the date of termination, nor shall it affect premium or commission payments on in-force business until such business has expired and all applicable premium and commission matters relating to such business have been resolved.
- (b) Additional Payments. After the date of the termination of this Agreement:
  - (i) PBC shall pay Broker commissions on additional premiums collected and remitted to PBC provided that such commissions are due and payable to Broker in accordance with SECTION 4 (b) above; and,
  - (ii) Broker shall remit to PBC any return commissions attributable to canceled policies or return premiums.

## SECTION 10. EXPIRATIONS & RESTRICTION.

In the event that (i) this Agreement is terminated; and, (ii) Broker pays PBC all amounts due PBC within fifteen (15) business days of Broker's receipt of PBC's invoice, the use and control of the expirations relating to the policies shall remain the property of Broker and be left in Broker's undisputed possession. Otherwise, the records, use and control of all expirations shall be vested in PBC.

## SECTION 11. MISCELLANEOUS.

- (a) Governing Law: Severability: This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Broker agrees to be subject to the personal jurisdiction of and service of process through the courts of such State including the federal district courts located in such State in any action relating to this Agreement or the matters referred to herein. If any provision of this Agreement is declared or determined to be unenforceable or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said unenforceable or invalid provision shall be deemed not to be part of this Agreement. If any provision of this Agreement is unenforceable or invalid, then a suitable and equitable provision shall be substituted in order to carry out, so far as may be enforceable and valid, the intent and purpose of the unenforceable or invalid provision.
- (b) Entire Agreement/Amendments: This Agreement constitutes the entire agreement among the parties and supersedes any and all other agreements, either oral or in writing, among the parties hereto with respect to the subject matter hereof. This Agreement may be revised only through a writing signed by Broker and PBC.
- (c) No Waiver: The failure of PBC or Broker to insist upon performance of the rights or conditions of this Agreement shall not constitute a waiver of such rights or conditions.
- (d) No Assignment: Broker shall not transfer or assign any right, benefit, or interest under this Agreement without the prior written consent of PBC.
- (e) Counterparts: This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (f) Notice: Any notice required to be provided pursuant to this Agreement shall be sent by overnight or certified mail/RRR to the following:

**If to PBC:**

Program Brokerage Corporation  
5 Bryant Park  
New York, NY 10018  
Attention: General Counsel

**If to Broker:**

*IN WITNESS WHEREOF, the parties hereto have executed this Broker Agreement effective as of the date first above written.*

**Broker Signature Below:**

***For PBC Use Only:***

By: _____	By: _____
Title: _____	Title: _____
Witness: _____	Witness: _____
Date: _____	Date: _____