



An H.W. Kaufman Group company.

PRODUCER AGREEMENT

This Producer Agreement (“Agreement”) is made and entered into as of this ____ day of _____, 20__ (“Effective Date”) by and between Burns & Wilcox, Ltd. (“B&W”) and its direct and indirect subsidiaries owned from time to time and engaged in the insurance brokerage business, and _____ (“Producer”).

WHEREAS, B&W represent insurance companies and other similar entities (“Insurers”) in the placement and writing of insurance and reinsurance generally; and

WHEREAS, Producer requires the services of B&W to place insurance for its clients commonly referred to as insureds; and

WHEREAS, B&W and Producer desire to enter into an Agreement, which includes a commission arrangement, and independent control by Producer of the insurance business placed through B&W and an understanding of the rights and obligations of each;

NOW, THEREFORE, in consideration of these mutual agreements, the sufficiency of which is acknowledged, it is agreed as follows:

SECTION 1. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between B&W and Producer and supersedes and replaces any previous agreements between the parties. This Agreement may not be changed or modified unless in writing, signed by the parties.

SECTION 2. PRODUCER'S STATUS AND DUTIES

a. It is understood that Producer is an independent contractor and not an agent of B&W. Producer has no authority to bind B&W or any insurance company or underwriter represented by B&W.

b. Producer shall control all expirations and renewals of insurance subject to this Agreement; provided, however, in the event that Producer fails to account for or to make payment of all amounts due to B&W or an Insurer, such expirations and renewals, including any future commissions relating thereof, shall become the property of B&W. Producer shall remain liable for all remaining amounts owed plus any expenses, costs and fees incurred in disposing of such expirations and renewals.

c. Producer agrees to keep complete records and accounts of all transactions and will allow B&W to inspect and audit all such records and accounts upon request.

d. Producer acknowledges its duty to fully inform all clients of the terms, conditions, exclusions and limitations of any insurance placed through B&W. Producer further acknowledges its responsibility to request proper coverages for its clients, review all quotes, policies and binders for accuracy and keep Producer's clients fully informed.

e. Producer must comply with all state-specific diligent effort requirements and agrees to provide B&W with evidence demonstrating that Producer adequately attempted to place coverage with admitted insurers prior to submitting a surplus lines coverage request to B&W.

SECTION 3. PLACEMENT OF ORDERS; ELECTRONIC COMMUNICATIONS

Producer shall follow all applicable state statutes prior to placing any order for insurance or excess surplus lines insurance with B&W. Both parties agree that electronic communications, including without limitation, any applications,

authorizations, representations, submissions, quotes, binders, or policies transmitted via e-mail, internet, or any other digital or electronic means (collectively, "Electronic Communications"), are as valid and binding, with the same full legal force and effect, as any original manual or physical form of communication and may therefore be relied and acted upon in the normal course of business. Producer agrees that the completion and submission of any Electronic Communications by Producer constitutes a valid application and submission to B&W, with the same legal force and effect as completing and submitted a hard copy application. Receipt of cash with or without application for a policy will not constitute automatic binding coverage for said policy.

Where B&W is responsible for filing surplus lines taxes, all required forms, documents and paperwork must be provided by Producer to B&W in a timely manner to allow for the prompt filing of the surplus lines taxes. B&W 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 understands that B&W assumes no responsibility toward any policy with regard to the adequacy, amount or form of coverage and agrees to indemnify and hold B&W harmless from any claim asserted against B&W in following the instructions of the Producer. B&W is not an insurer and does not guarantee the financial condition of the Insurers with whom it may place risks. B&W shall have no liability for non-payment of claims due to the insolvency of an Insurer, or otherwise, under contracts of insurance placed by B&W.

SECTION 4. LICENSING AND COMPLIANCE

Producer warrants that it is properly licensed to sell and/or solicit insurance in its state of domicile, and all other states in which Producer transacts insurance. Producer will maintain such license(s) in good standing for the duration of this Agreement and will furnish proof of such proper licensing upon request by B&W. Producer will promptly notify B&W of any suspension, revocation, or other disciplinary action taken, or any other impairment, of or with respect to such license(s).

Producer warrants that it is compliant, and will continue to comply, with all laws and regulations regarding placement of insurance with admitted and/or non-admitted insurance companies, including, but not limited to, applicable laws, rules and regulations applicable to insurance professionals' compensation disclosure requirements and data security and privacy.

SECTION 5. PREMIUM PAYMENT

Producer guarantees full payment due to B&W of all premiums, including but not limited to, deposit, minimum earned, extension, and adjustable premiums, such as those determined under audits or retrospective penalties, fees, plus applicable state and local taxes, less applicable commission, on every insurance contract bound, written, or placed for Producer. *Producer shall be liable to B&W for the payment of all premiums, fees, and taxes whether or not Producer is able to collect such monies.* The net balance will be due and payable as indicated on B&W invoices. If Producer does not pay B&W within the time specified, B&W is authorized to cancel any certificates or policies for which B&W has not been paid, and Producer agrees to pay the earned premium on such canceled documents.

SECTION 6. CANCELLATION; UNEARNED COMMISSIONS AND FINANCED PREMIUMS

There shall be no flat cancellation of any insurance coverage bound and/or written at the request of Producer under any circumstances, except as prescribed by state law. All coverage effected by B&W at the request of Producer is submitted with the understanding that it is not subject to flat cancellation, and will be canceled in accordance with the policy issued and the insurance carrier's procedures. In consideration of the commission allowed to Producer on all premiums and additional premiums, the Producer agrees to refund commission on all returned premiums at the same rate at which such commission was originally paid.

When B&W has received legal notice that premium has been financed, it will remit payment for any return premium actually received, plus any unearned commission, directly to the premium finance company. Producer agrees to indemnify and hold B&W harmless from any responsibility for payment made to a premium finance company and agrees that any such financing arrangements do not limit or reduce the Producer's responsibility for timely payment of premium. As permitted by law, policy provisions govern in the event a premium finance agreement is in conflict with this Section. Producer agrees that it will not offset any balances it owes to B&W due to any payments made to a premium finance company.

SECTION 7. ACCOUNTING

Producer will pay in accordance with terms indicated by B&W invoices provided to Producer. The payment must be made in accordance to the payment instructions on your invoice or statement in time to be recorded by our accounting department no later than the date indicated on each invoice. When a discrepancy exists in accounting between Producer and B&W, it shall be Producer's responsibility to notify B&W, in writing, within ten (10) days from receipt of invoice, or within fifteen (15) days from the month end of policy(ies) effective date, whichever shall occur earlier, of amounts in variance with B&W's records. If no written notice is received by B&W within this period of time, B&W's accounts will stand as correct and agreed to by Producer. The omission of any item(s) from any invoice shall not: (1) affect the Producer's responsibility to account for and pay all amounts due; (2) prejudice the rights of B&W to collect all amounts due from Producer; or (3) extend the time within which Producer must make payment. Producer's obligation to make payment to B&W is not contingent upon the issuance of a policy.

SECTION 8. CLAIMS AND REPORTS OF LOSSES

Producer agrees to report, immediately upon receipt, any claim, loss or possible claim or loss it has knowledge of, in writing, to B&W, and to immediately report, in writing, any fact, occurrence, or incident that may result in a loss or claim, under any policy of insurance placed through B&W. Producer does not have authority to adjust, handle, investigate or provide coverage opinions regarding any claim, loss or occurrence.

SECTION 9. ADVERTISING

Producer may not, without the prior, express, written consent of B&W, issue, print or circulate any letter, pamphlet, advertisement, publication or statement, oral or written, referring in any way to B&W or representing any relationship of any kind between Producer, B&W or any market represented by B&W. Producer specifically agrees to indemnify B&W for any loss, legal fees, or other expense it may sustain from any unauthorized advertisement, publication or statement by Producer.

SECTION 10. INDEMNITY AND HOLD HARMLESS; CONSEQUENTIAL DAMAGES WAIVER

B&W shall indemnify and hold the Producer harmless from and against any and all claims, suits, actions, judgements, losses or expenses (including but not limited to reasonable attorney's fees and expenses) that the Producer may incur or become obligated to pay as a result of any act, omission or gross negligence of B&W in its processing or handling of insurance business placed by the Producer through B&W under this Agreement, except to the extent that the Producer has caused, contributed to or such claims, suits, actions, judgements, loss or expenses.

Producer shall defend, indemnify and hold B&W harmless from and against any and all claims, suits, actions, judgements, losses or expenses (including but not limited to reasonable attorney's fees and expenses) that B&W may incur or become obligated to pay as a result of any act, error, omission, negligence or breach of this Agreement by Producer.

Each party shall promptly provide written notice to each other party of any claimed obligation of the other party arising under this indemnification provision, but in no event may such notice be provided by the party seeking indemnification after thirty (30) days after receipt of notice of the possible claim, suit, action, judgment, loss or expense giving rise to the obligation to indemnify.

B&W SHALL NOT BE LIABLE TO PRODUCER FOR LOST PROFITS, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED OR ON ANY THEORY OF LIABILITY.

SECTION 11: ERRORS AND OMISSIONS INSURANCE

Producer has and agrees to maintain, throughout the duration 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 must be submitted annually to B&W or at any such times as B&W may reasonable request. Producer will provide B&W with prompt written notice of any change, cancellation or other termination of the policy.

SECTION 12. TERMINATION AND SURVIVAL; NOTICE

This Agreement may be terminated immediately at any time by either party giving written notice to the other party mailed to the last known address of the party. This Agreement will also terminate: (1) automatically, if any public authority cancels or declines to renew the Producer's license or certificate of authority, (2) automatically, on the effective date of the sale, transfer, or merger of Producer's business with the provision B&W may, upon review, appoint the successor as a Producer, (3) immediately, upon either party giving written notice to the other of termination because of fraud, insolvency, failure to pay balances, or willful or gross misconduct; or (4) immediately in the event Producer fails to maintain or provide proof of coverage as set forth in Section 11, Errors and Omissions Insurance, or fails to comply with Section 4, Licensing and Compliance.

Termination of this agreement will not affect the provisions of sections 4, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 15 with regard to any policy of insurance placed through B&W during the term of this agreement or any prior or subsequent agreement between the parties.

After termination of this Agreement, Producer shall complete the collection and accounting to B&W for all premiums, commissions and other transactions unaccounted for on the date of termination or arising thereafter with respect to outstanding policies, including but not limited to, return premium and return commissions.

Any notice or other communication required or permitted pursuant to this Agreement shall be in writing and effective immediately if delivered by hand, five (5) business days after mailing by registered or certified mail or one (1) day after mailing by a nationally recognized overnight delivery service:

If to B&W: Burns & Wilcox, Ltd.
30833 Northwestern Highway
Farmington Hills, MI 48334
Attention: Chief Compliance Officer

If to Producer, at the address provided at the end of this Agreement.

SECTION 13. GOVERNING LAW AND VENUE

This Agreement shall be subject to and governed by the laws of the State of Michigan without regard to any choice or conflict of law provision or rule. Venue for any suit or action arising in whole or in part under this Agreement shall be proper only in Oakland County, Michigan (if in state court) or the United States District Court for the Eastern District of Michigan, Southern Division (if in federal court). Each party to this Agreement expressly waives any defense of lack of personal jurisdiction in such court, and each party to this Agreement acknowledges, understands and agrees that such courts are the most convenient forums in which to bring a claim or other action arising in whole or in part under this Agreement.

SECTION 14. CONFIDENTIALITY

Each party acknowledges that due to the nature of their business each has had access to certain confidential information which each is required to protect, maintain and secure statutory, legal and regulatory requirements collectively referred to as "Privacy Laws". Therefore the parties agree and acknowledge that they have no legal right to access, receive, accept, transmit, store or otherwise impact confidential information which has come into their possession except as may be permitted under said Privacy Laws and except where necessary to provide services within the scope of this agreement. Accordingly, the parties agree not to permit or provide access to said confidential information by agents, employees, affiliates, representatives and subcontractors not engaged in the placing of insurance under this agreement. The confidential information agreed to be protected herein shall not include information (i) required to be disclosed by law; (ii) generally available to the public other than as a result of a breach of a non-disclosure obligation; or (iii) available to and obtained on a non-confidential basis from a source other than either party to disagreement. Notwithstanding anything to the contrary, B&W may provide information concerning Producer, Producer's insureds and those insureds' policies to B&W's affiliated entities for marketing purposes. Absent Producer's prior, written permission, such marketing will involve only services and products ancillary to the policies placed by Producer through B&W, including, but not limited to, premium financing and auditing and inspection services.

SECTION 15. SEVERABILITY; WAIVER OR DEFAULT

The invalidity or unenforceability of any provision of Agreement shall not affect the other provisions hereof, and Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted. Each of the provisions of this Agreement shall be enforceable independently of any other provision unless otherwise expressed herein.

Failure of B&W to enforce any provision of this Agreement or to terminate shall not be deemed to be a waiver of such provisions or any breach by the Producer.

SECTION 16. PRIVACY POLICY

Except as otherwise set forth in this Agreement, neither Producer nor B&W 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 or personally identifiable information (as that term is used and understood in data security and privacy act laws and regulations) (individually and collectively, 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, and each Party shall comply with all applicable state or federal data security, privacy and confidentiality laws.

SECTION 17. ATTORNEY'S FEES AND COSTS

Producer agrees to pay all costs and expenses incurred by B&W in any action or proceeding brought by B&W to recover sums due from Producer, or otherwise enforce its rights, under the terms of this Agreement, including but not limited, reasonable attorney's fees.

ACCEPTED AND AGREED:

Burns & Wilcox, Ltd.

Producer

BY: _____
(Signature)

BY: _____
(Signature)

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: _____
