

## BROKER'S AGREEMENT

THIS AGREEMENT entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_, located at \_\_\_\_\_ (hereinafter "Broker") and K&B Underwriters, LLC (a Virginia Limited Liability Company), 11710 Plaza America Drive, Suite 2000, Reston, VA 20190 (hereinafter known as "K&B").

**WHEREAS**, Broker wishes to place business through K&B for acceptance by carriers in connection with programs administered by K&B, in accordance with applicable laws and regulations; and

**WHEREAS**, K&B is willing to offer its facilities to Broker for placement of such insurance, all the foregoing in accordance with the laws and regulations pertaining thereto.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter expressed, the parties hereto, intending to be legally bound, agree as follows:

1. Broker warrants that it holds a Broker's license issued by the state of its domicile and all other licenses required to do business hereunder and intends to place business through K&B for acceptance by carriers in compliance with the laws and regulations pertaining thereto regarding the placement of business with such carriers.

K&B warrants that it holds a Broker's license issued by the state of its domicile and all other licenses required to do business hereunder and intends to place business through carriers in compliance with the laws and regulations pertaining thereto regarding the placement of business with such carriers.

Broker warrants that any business which it shall submit to K&B will, if accepted, be effected in accordance with the insurance laws and/or similar applicable laws of the state and Broker will indemnify K&B for any tax liability and loss arising as a result of K&B's accepting any application submitted by Broker.

It is Broker's sole responsibility to notify the insured of policy expiration; however, it shall be the insurance carrier's responsibility to send legal notice of cancellation or non-renewal in accordance with applicable laws.

Broker shall be entitled to collect a commission on such business at a rate which shall be mutually agreed to between the parties at the time of placement of the business.

Broker shall not have authority to appoint other agents or subagents for purposes of this Agreement and shall not do so. Broker shall have no authority to make and shall not make any agency agreements on behalf of K&B, nor shall Broker make any agreements rendering or purporting to make K&B liable for the payment and/or repayment of expenses, commissions or any other sums.

2. It is further agreed by and between the parties that for “agency bill” business, payment of premiums, net of commissions earned by Broker, shall be made by Broker to K&B not later than 15 days after the end of the month in which coverage is effected, unless otherwise mutually agreed to in writing. Failure to pay premiums as scheduled may result in cancellation of the subject policy. All premiums collected from insureds which are to be paid to K&B shall be held by Broker in a fiduciary capacity in accordance with applicable laws. For “direct bill” business, the insurance carrier will collect all premiums directly from the insured and remit full commissions to K&B. K&B will remit the Broker’s share of these commissions not later than 15 days after the end of the month in which K&B receives the funds. Broker will be responsible to return any unearned commissions on “direct bill” policies that are cancelled within 30 days of the cancellation notice.

Any payments to Broker under this Agreement shall be paid only to the extent permissible under applicable Insurance Department or other Governmental laws, rules and regulations. Broker shall have no right to such payment and K&B shall have no duty to make such payments in excess of those legally permissible.

K&B may, at its option, offset Broker’s proportional share of any return premiums from any payments due Broker under this Agreement.

Notwithstanding any provision in this Agreement to the contrary, no compensation shall be payable to Broker subsequent to the termination of this Agreement if Broker commits any act of fraud, malfeasance or non-feasance in the performance of its duties hereunder. In the event K&B alleges Broker has committed an act of fraud, malfeasance or non-feasance in the performance of its duties hereunder, K&B shall give Broker written notice such allegations and provide Broker not less than Ten (10) days to remedy or clarify such allegations are incorrect.

3. For any “agency bill” business, Broker hereby guarantees the payment of all earned premiums due K&B, net of commissions earned by Broker, on insurance bound or written hereunder, whether or not they are collected by Broker and whether or not they are financed.

4. For any “agency bill” business, any credit extended to the insured or others shall be at the sole risk of the Broker and Broker guarantees that premiums shall be paid to K&B, net of commissions earned by broker, by broker when due.

5. Insurance issued to insureds under any program administered by K&B shall be subject to minimum earned premiums and/or short rate penalties as such are required by the insurance carrier.

6. Broker agrees to report immediately to K&B, or the designated claim administrator, any fact, occurrence or incident that may result in a loss or claim, together with full

details thereof. Broker shall forward all documents and cooperate fully with K&B, or the designated claim administrator, in the investigation and adjustment of any claim, if requested.

7. Broker agrees to keep complete records and accounts of all transactions and to permit K&B to inspect all records pertaining to business transacted under this Agreement. Broker will promptly assist in the procurement of any reports or records on insurance contracts written on an audit or reporting basis. K&B or the insurance company may procure such reports or records directly from the Insured if not received in a timely manner from the Broker.

8. Broker agrees to maintain Errors and Omissions Insurance for itself and those for whom it is responsible in a form and with an insurer acceptable to K&B, in the minimum amount of \$1,000,000 each claim limit. Broker shall provide written notification to K&B in the event of a lapse in the foregoing coverage. K&B agrees to maintain Errors and Omissions Coverage for itself and those for whom it is responsible. Each party shall provide the other evidence of such insurance upon written request.

9. Broker shall not advertise in any way the name of K&B or its affiliates or trade names, nor shall Broker advertise in any way the name of any company or underwriter represented by K&B without the prior written consent of K&B.

10. Broker is solely responsible for the accuracy, completeness and correctness of the information provided in any certificates of insurance issued. Any certificates of insurance must accurately reflect the terms, conditions and information contained in the insurance policy as issued by the insurance company. No certificates of insurance shall amend, extend or alter the coverage afforded by the insurance company pursuant to the insurance policy and such certificate of insurance must contain the wording:

“This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the insurance policy or policies designated herein.”

11. Broker hereby agrees to indemnify and hold K&B, its parent, affiliated and subsidiary corporations and its and their officers, directors, employees, and agents, harmless from any and all claims, losses, costs, expenses, deficiencies, liabilities, obligations or damages (including related counsel fees) arising from or in any manner relating to (i) any inaccurate representation made by Broker in this Agreement, (ii) any breach of any of the warranties or any default in the performance of any of the covenants made by Broker under, or which Broker was to perform pursuant to, this Agreement, (iii) any errors and omissions of Broker or of any of its agents with respect to any customers occurring prior to the date K&B becomes the broker for such customer and (iv) any negligent acts or omissions, whether intentional or unintentional, and any willful misconduct of Broker or of any of its agents in connection with this Agreement. In a like manner, Broker agrees to indemnify and hold K&B harmless from any action brought by a regulatory body as a result of actions by Broker.

11a. K&B hereby agrees to indemnify and hold Broker, its parent, affiliated and subsidiary corporations and its and their officers, directors, employees, and agents, harmless from any and all claims, losses, costs, expenses, deficiencies, liabilities, obligations or damages (including related counsel fees) arising from or in any manner relating to (i) any inaccurate representation made by K&B in this Agreement, (ii) any breach of any of the warranties or any default in the performance of any of the covenants made by K&B under, or which K&B was to perform pursuant to, this Agreement, (iii) any errors and omissions of K&B or of any of its agents with respect to any customers placed with K&B by Broker and (iv) any negligent acts or omissions, whether intentional or unintentional, and any willful misconduct of K&B or of any of its agents in connection with this Agreement. In a like manner, K&B agrees to indemnify and hold Broker harmless from any action brought by a regulatory body as a result of actions by K&B.

Notwithstanding any provisions herein to the contrary, K&B, at its option, may effect the recovery of damages under this Section 11 by offsetting such amounts against payments of amounts otherwise owing by it to Broker hereunder. Election of this remedy shall not be construed as exclusive, and shall not bar K&B from seeking any and all other remedies available at law or equity.

Notwithstanding any provisions herein to the contrary, Broker, at its option, may effect the recovery of damages under this Section 11a by offsetting such amounts against payments of amounts otherwise owing by it to K&B hereunder. Election of this remedy shall not be construed as exclusive, and shall not bar Broker from seeking any and all other remedies available at law or equity.

12. It is understood that Broker is an independent contractor and this Agreement does not permit Broker to bind K&B or any company or underwriter represented by K&B. Broker is not hereby the agent of K&B or any company or underwriters represented by K&B.

13. In the event of termination of this Agreement, so long as the Broker has promptly accounted for and paid all premiums for which it may be liable, the Broker's records, and use and control of the expirations shall remain the property of the Broker and be left in its undisputed possession; otherwise, use of the records and control of the expirations shall be vested exclusively in K&B.

14. Broker hereby agrees not to seek direct placement of renewal business written with markets used to write the business as new with K&B.

15. Broker agrees to the filing and paying of surplus lines tax and/or related fees to state/s (or associations representative of the state) wherein the risk obliges a filing and payment, when Broker declares responsibility to file and pay the said tax/fees. Fines imposed by the state or representative for failure to file, pay or meet deadlines on the said tax/fees, are to be paid by the Broker.

16. This Agreement shall become effective when accepted by K&B and supersedes all previous agreements, whether oral or written. This Agreement may be terminated by either party at any time upon the giving of thirty (30) days written notice of termination, but such termination shall not alter in any way the continued application of this Agreement to policies in effect as of the date of such termination and Broker shall complete the collections of premiums and continue to provide claims support and service on all policies in effect at termination, and K&B shall continue to pay Broker Commission on any policy written pursuant to this agreement so long as such policy is in effect through K&B.

16a. Unless K&B determines otherwise, and so notifies the Broker, this Agreement shall terminate immediately and without prior notice to the Broker in the event of any of the following:

- a) A regulatory authority suspends, cancels or declines to renew the license or certificate of authority of Broker or any of the Broker's affiliated entities, or the Broker's license or certificate authority, or that of any of the Broker's affiliated entities, is not renewed or is otherwise allowed to lapse;
- b) Broker or any of its affiliated entities has misappropriated, converted or unlawfully withheld money or property belonging to K&B; or
- c) Dissolution or liquidation of the Broker.

17. This Agreement constitutes the entire and exclusive understanding between the parties with respect to its subject matter.

18. All issues under this Agreement, including determination of the obligations and liabilities of the parties, shall be governed by the laws of the Commonwealth of Virginia.

19. This Agreement may not be assigned by Broker without the written consent of K&B.

20. This Agreement shall be binding upon and adhere to the benefit of the parties hereto, their respective heirs, successors and assignees.

21. If any of the terms of this Agreement are deemed to be invalid by any Court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

22. If any provision of this Agreement is in contravention of any state statute, insurance department regulation or directive, or any governmental ruling, such portion shall be modified without further action by K&B or Broker to conform to such state statute, regulation, directive or ruling. The remainder of this Agreement shall not be affected thereby. Any provisions or stipulations of this Agreement not in accord or compliance with applicable law shall be construed to be limited or broadened, as the case may be, to comply with such law.

23. The failure of K&B to enforce compliance with this Agreement, or to exercise its rights hereunder, shall not be construed to be a waiver of any of said rights. No waiver of

any breach or default hereunder shall be valid unless in writing signed by K&B, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

24. All notices under this Agreement shall be delivered personally, or by pre-paid certified or registered mail, addressed to the address set forth on the first page of this Agreement.

25. This Agreement may be amended, but then only in a written addendum to this Agreement executed by the parties.

26. All exhibits and schedules hereto shall be deemed a part hereof.

27. This Agreement may be executed in counterparts.

**IN WITNESS WHEREOF**, the parties have hereto executed this Agreement as of the day and year set forth above.

Brokerage Name: \_\_\_\_\_

Home state and P&C license #: \_\_\_\_\_

By (officer or agency principal):

Title and Date:

K&B Underwriters, LLC

By:

Title and Date: