



Sub-Producer Agreement

This agreement is made by and between Eastern Underwriting Managers, LLC (hereinafter referred to as EUM), a Tennessee Limited Liability Company, whose address is 300 N. Forest Park Blvd., Suite 103, Knoxville, TN 37919 and

_____ (Sub-Producer)
whose address is _____

Recitals

I Independent Contractor

The Sub-Producer is an independent contractor and neither the Sub-Producer nor any of its employees shall be deemed an employee of EUM. Nothing in this agreement is intended to create the relationship of employee and employer and/or principal and agent between the Sub-Producer (or any of its officers, employees, partners or members and EUM). Sub-Producer and EUM are, and at all times, shall remain independent contractors as to each other and no LLC, joint venture, partnership, agency or other relationship shall be created or implied by reason of this agreement. Sub-Producer shall have exclusive control of his/her time, exercise his/her own judgment as to place and the persons from whom he/she will solicit applications (as well as methods, details and time). Sub- Producer acknowledges that:

- I.1 It has no right or authority to admit liability, or potential liability, on the part of EUM or any company EUM may represent.
- I.2 It has no right or authority to bind any coverage, or make any representations regards the binding of any coverage, without prior written approval and authorization from EUM.
- I.3 It is acting solely on behalf of the Sub-Producer's clients and nothing in this agreement shall be construed so as to imply otherwise.
- I.4 Sub-Producer shall not act as an underwriting entity or co-broker (double broker) for any application or policy without the written permission of EUM.

II **Certificates of Insurance/Binders**

EUM does not issue binders or certificates of insurance. Due to potential liabilities created by the erroneous and fraudulent issuance of these documents and the failure to comply with any notice requirements created by the issuance of such documents, such documents issued by the Sub-Producer will be done solely at his or her own undertaking and peril. It is understood that EUM will not review, analyze or otherwise comment on the accuracy, completeness or propriety of any certificate or evidence of insurance and will not have any responsibility to provide copies of such certificates or evidence of insurance to Insurers unless required by the respective Insurer's contract with EUM. Sub-Producer agrees to save, defend, hold harmless and indemnify EUM from any and all liabilities arising from or associated with the issuance of these aforementioned documents.

III **Evidence of Errors & Omissions Insurance**

Sub-Producer shall carry, and furnish to EUM evidence of Errors & Omissions insurance with minimum liability limits of \$1,000,000. per occurrence (Best A- or better rated company) and will notify EUM promptly if the insurance is non-renewed, cancelled, terminated or materially changed. Sub-Producer agrees to keep the required E&O coverage in effect during the term of this agreement and for three (3) years following termination of this agreement.. Sub-Producer shall be solely responsible for any deductible or self-insured retention applying to the aforementioned E&O coverage.

IV **Commissions Payable to Sub-Producer**

We will pay you commission based on the agreed upon rate on an account by account brokerage basis. We agree to pay commissions on all direct billed business within 30 days after receipt of company commissions by EUM. Accounts not direct billed will be handled on an account by account basis with the entire annual premium being paid to EUM prior to the binding of coverage. We may offset any commissions due you from us against any other balances owed to you by us. Additionally, you agree to refund any unearned commissions to us at the same rate that the commissions were paid to you.

V **Ownership of Expirations**

The use and control of the expiration rights to policies placed under this agreement shall remain in the undisputed ownership of the Sub-Producer, and EUM shall not use its records of those expirations for the renewal of such insurance policies, nor

shall EUM communicate this expiration information to any other agent or producer.
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However, in the event of termination of this agreement, if Sub-Producer has not then properly accounted for and paid all premiums and other charges associated with business placed under this agreement to EUM and/or the insurance companies in question, the use and control of such expiration rights, including all right, title and interest in and to the records thereof shall reside with EUM as of the termination date.

VI **Representations and Warranties of Sub-Producer**

Sub-Producer represents and warrants that:

- VI.1 It is a legally licensed agent/broker/producer in the state or states in which the Sub-Producer engages in the business of insurance. Sub-Producer agrees to provide EUM with evidence of such license(s) and to notify EUM in writing should any required license(s) be terminated by any licensing authority.
- VI.2 It is in compliance with the Violent Crime Control and Enforcement Act { U.S. Code, Title 18, Part I, Chapter 47, Section 1033 } in that it does not employ any individual convicted of a criminal felony involving dishonesty or breach of trust.
- VI.3 It has the authority to enter into this agreement and to perform all obligations and transactions contemplated and required by this agreement.
- VI.4 It will comply with the underwriting rules, regulations and instructions of EUM as may be published from time to time by EUM or any insuring company.
- VI.5 Sub-Producer warrants that any and all information provided in connection with any application for insurance subject to this agreement shall be true and complete, to the best of the Sub-Producer's knowledge, and that such applications shall contain no misrepresentations of any kind. Sub-Producer shall ensure that all material facts, of which the Sub-Producer is aware, are accurately described and completely disclosed to EUM.

VII **Indemnification**

The Sub-Producer shall defend, hold harmless and indemnify EUM, its officers directors, employees, producers and affiliates as regards to any and all claims (groundless or otherwise), suits, actions, liabilities, losses,

damages and/or reasonable expenses of any kind (including, without limitation, reasonable attorneys fees and expenses) which any of them may sustain due to or arising out of any act, error or omission by the Sub-Producer, its officers, directors, employees, agents, producers or representatives (including violation of this agreement and/or violation of any applicable law, rule or regulation). This provision shall survive the expiration or termination of this agreement.

Conversely, EUM agrees to defend, hold harmless and indemnify the Sub-Producer, its officers, directors, employees and affiliates as regards to any and all claims, suits, actions, liabilities, losses and/or reasonable expenses they may sustain due to or arising solely out of any act, error or omission by EUM, its officers, directors, employees, producers and affiliates. This provision shall survive the expiration or termination of this agreement.

VIII

Additional Obligations of Sub-Producer

The Sub-Producer shall unconditionally guarantee the collection, receipt, and remittance to EUM of all premiums, commissions and fees due to any company issuing a policy as a result of this agreement and /or EUM. The Sub-Producer agrees to pay any countersignature fees or surplus lines taxes and/or other fees that are due and payable as a consequence of any policy issued as a result of this agreement.

Exception: Uncollectible premiums as a result of a final audit may be returned, if allowed by insuring company, for direct collection subject to the following conditions:

VIII.1 Sub-Producer must provide evidence of their diligent efforts to collect any premium due.

VIII.2 Notice must be made to EUM within 20 days from audit billing date.

Sub-Producer shall have no right to any commission on audits returned or where EUM or the insurance company has subsequently collected such premium.

IX

Premium Finance Contracts

Sub-Producer agrees that all premium finance contracts financing premiums for any policy shall be subject to acceptance by EUM and the insurance

company.

X

Termination of Agreement

This agreement shall terminate immediately upon the occurrence of any of the following events:

- X.1 If any public authority cancels or non-renews Sub-Producer's license in any state where Sub-Producer does business with EUM or Sub-Producer is subject to any disciplinary action, resulting in loss of license, by any public authority or department of insurance in any jurisdiction in which the Sub-Producer engages in business with EUM.
- X.2 Thirty (30) days written notice by either party to the other (or in accordance with state regulations pertaining to notification).

XI

General Provisions

- XI.1 **Notices**- All notices required or permitted hereunder shall be in writing and shall either be delivered in person or sent by certified mail, return receipt requested, and shall be deemed received on the sooner of actual receipt or five (5) days after deposited in the mail, postage prepaid, addressed to EUM or the Sub-Producer at the address set forth in the introductory paragraph of this agreement.
- XI.2 **Amendment/Entire Agreement**- This writing represents the entire agreement and understanding of the parties with respect to the subject matter hereto and may be amended only by written instrument executed by Sub-Producer and EUM. This agreement, and its validity, performance, and effect shall be determined and its terms construed in accordance with the laws of the state of Tennessee.
- XI.3 **Severability**- If any portion of this agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this agreement.
- XI.4 **Assignment**- No assignment of this agreement or commission payable under this agreement shall be valid unless authorized in writing by EUM.
- XI.5 **Adjustable Premiums**- When an adjustment or determination is made by an audit, loss sensitive adjustment or interim report, such amounts or premiums are fully earned and due at the time of invoice or notification.

XI.6 Excess and Surplus Lines Placements

Sub-Producer shall not place an order with EUM for any excess or surplus lines insurance unless Sub-Producer shall have first complied with any applicable state laws regarding such placement. The party responsible for the payment (Sub-Producer) shall be responsible for full compliance with all relevant surplus lines laws of the pertinent state, including but not limited to the collection and payment of surplus lines taxes, filing of affidavits, and providing the appropriate statutory and/or regulatory disclosure legends on all documents.

XI.7 Cancellation of Insurance- EUM shall have the right to cancel any binder, policy or contract of insurance issued subject to applicable legal requirements and insurance contract provisions. EUM will **not** recognize flat cancellations unless similar coverage prior to the effective date of insurance can be verified.

XI.8 Inspection of Records and Confidentiality- During the term of this agreement and for a period of three (3) years following termination, for any reason, EUM or Insurer shall have the right to audit and inspect Sub-Producer's books and records concerning the business to which this agreement applies.

The parties to this agreement hereby represent and acknowledge to each other that, in the course of their performance of their respective obligations, they will make available to the other party certain information pertaining to each party's business and operations. Each party hereby agrees that, as a condition to being provided this information, that neither party will use or release to other parties (except to parties as necessary to effect the contract of insurance) any information provided except in connection with the performance of duties hereunder. Sub-Producer is liable for breach of this provision by any of its representatives or agents.

XI.9 Governing Law-This agreement shall be deemed to have been made and performed in Knox County, Tennessee and shall be governed by, construed and enforced in accordance with the laws of the State of Tennessee.

XI.10 Alternative dispute Resolution- The parties hereby agree that all disputes, controversies or claims of any kind and nature between the parties arising out of or in any way related to this agreement, its interpretation, performance or breach, shall be resolved exclusively

by the following alternative dispute resolution mechanisms:

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(a)**Negotiation**-The parties shall first engage in a good faith effort to negotiate any controversy or claim by communications between them. Said negotiations may be oral or written. To the extent they are oral, they must be confirmed in writing.

(b)**Mediation**-Should the above-stated negotiations be unsuccessful, the parties shall engage in mediation pursuant to the rules promulgated by the National Arbitration Forum relating to commercial mediations. Any costs relating to or arising out of mediation shall be borne equally between the parties.

(c)**Arbitration**-Should the above-stated be unsuccessful, the parties shall arbitrate any controversy or claim with the express understanding that this Agreement is affected by interstate commerce in that the goods and services which are the subject matter of this Agreement, pass through interstate commerce. Said arbitration shall be conducted pursuant to the rules promulgated by the National Arbitration Forum relating to commercial arbitrations (the "Arbitration Rules"). Any costs relating to or arising out of arbitration shall be borne by the party against whom an award is issued.

THE PARTIES UNDERSTAND AND AGREE: (A) THAT EACH OF THEM IS WAIVING RIGHTS TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO A JURY TRIAL; (B) THAT PRE-ARBITRATION DISCOVERY IN ARBITRATION PROCEEDINGS IS GENERALLY MORE LIMITED THAN AND DIFFERENT FROM COURT PROCEEDINGS; (C) THAT THE ARBITRATOR'S AWARD IS NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING; AND (D) EITHER PARTY'S RIGHT TO APPEAL TO SEEK MODIFICATION OF RULINGS BY THE ARBITRATOR IS STRICTLY LIMITED. VENUE FOR MEDIATION AND/OR ARBITRATION UNDER THIS PARAGRAPH SHALL BE IN THE CITY OF KNOXVILLE, STATE OF TENNESSEE.

XI.11 **Advertising**-Sub-Producer shall not use or distribute any advertising referring to or using the name of EUM or Insurer. This includes letters, circulars, pamphlets or similar publications. In the event EUM suffers a loss or expense arising out of any unauthorized advertisement, publication or statement of the Sub-Producer, the Sub-Producer shall be liable for and hereby agrees to indemnify EUM and hold EUM harmless from all resulting damages, fines, penalties and costs.

XI.12 **Premiums Held in Trust**- Sub-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 the Sub-Producer conducts business.

XI.13 **Effective Date**- This agreement shall be effective at 12:01 AM on the date signed and dated below by EUM.

AGREED AND ACCEPTED:

SUB-PRODUCER -----

SIGNATURE -----

PRINTED NAME -----

DATE -----

EUM -----

SIGNATURE -----

PRINTED NAME -----

DATE -----

SUB-PRODUCER

I.D. NUMBER EUM -----

