

## **NewMarkets Insurance Agency, Inc.**

### **REFERRING PRODUCER AGREEMENT**

Between NewMarkets Insurance Agency, Inc., with offices at 55 Haddonfield Road, Suite 210, Cherry Hill, NJ 08002 (NewMarkets) and \_\_\_\_\_, whose address is \_\_\_\_\_, on behalf of itself and including its affiliates or branch offices listed in Exhibit A (the Referring Producer). NewMarkets Producer Code: \_\_\_\_\_. (Other applicable Producer codes, if any, appear on Exhibit A.)

In consideration of the mutual promises in this Agreement and for valuable consideration, the parties agree as follows:

#### **I. The Relationship of NewMarkets and the Referring Producer**

**A. Client Duty.** To the extent permitted by applicable law, and irrespective of the Referring Producer's license designation, the Referring Producer's relationship to NewMarkets under this contract is that of insurance *broker* and not NewMarkets' *agent*. The Referring Producer's primary duty is to represent the best interests of the insurance consumer that has engaged the Referring Producer to exercise professional judgment and diligence in determining the best interests and insurance needs of its client. Unless expressly stated otherwise, NewMarkets acts as the agent of the underwriting insurance company.

**B. Authority.** Referring Producer may make submissions to NewMarkets, and NewMarkets represents insurance companies in offering quotes, binders and insurance policy contracts underwritten by such insurance companies. NewMarkets has *not* authorized the Referring Producer to do *any* of the following on NewMarkets's behalf unless authorized in a separate, specific written and signed addendum: sell, solicit or negotiate contracts of insurance; procure or accept applications; bind coverage; act as NewMarkets' agent to collect monies; make any representations; issue policies or endorsements; use the name, logo, or service marks of NewMarkets or its affiliates in any advertising or promotional materials; or otherwise transact the business of NewMarkets. The Referring Producer has no obligation to submit business to NewMarkets and NewMarkets has no obligation to accept any business from the Referring Producer.

**C. Insurance Policy.** The Referring Producer is not authorized to speak for NewMarkets or the underwriting insurance company with respect to interpretation of any insurance policy contract issued, or any claims, or to issue certificates or other evidences of insurance that are inconsistent with the insurance policy issued.

**D. Ownership.** As between the parties, the Referring Producer is the sole owner of its list of Clients, and NewMarkets will not, without the Referring Producer's permission, use such list to solicit the sale of insurance to the Referring Producer's Clients upon expiration of policies or termination of this Agreement. NewMarkets and/or the underwriting insurance company(ies), as the case may be, are the owners of policy forms and all data concerning insurance written under this Agreement other than the Referring Producer's Client lists.

## **II. Duties and Responsibilities**

### ***A. Premium Payment and Disbursal of Funds.***

(1) Unless otherwise specified in an addendum or separate agreement, Referring Producer agrees to obtain premium from its Client and pay premiums on the Client's behalf on a timely basis, either gross or net of the Referring Producer's compensation, as agreed upon in each case. Unless different instructions are contained in a written amendment, payment shall be within 30 days after the end of the month in which the insurance generating the premium becomes effective, or 15 days after invoice, whichever is later. Delivery of funds shall be to the NewMarkets address as invoiced. The Referring Producer may not knowingly receive premium until the insurance generating the premium has been authorized in a binder or issued policy.

(2) Any credit that the Referring Producer extends to any Client will be at Referring Producer's sole risk. If the Referring Producer fails to report or pay premium when due or fails to report discrepancies, NewMarkets may consider such failure as Referring Producer's indication on behalf of its Client that the policy should be cancelled for non-payment of premium. If the full amount of premium owed is not paid, NewMarkets may request that the underwriting insurance company send a direct notice of cancellation to the Insured and a copy of the notice of cancellation may be sent to the Referring Producer. The Referring Producer agrees that its account may be charged with any earned premium owed.

(3) If a policy for which the Referring Producer has agreed to remit premium is cancelled, NewMarkets will remit to the Referring Producer, as the Insured's representative, all previously paid unearned net premiums that are owed to the Insured. The Referring Producer agrees to reimburse the Insured promptly the correct amount of unearned premium. If a financed insurance policy is canceled, NewMarkets may return gross unearned premiums, computed on a *pro rata* basis, to the insurance premium finance company for the account of the Insured. This action satisfies NewMarkets's obligation under the insurance policy. The Referring Producer will promptly return to NewMarkets unearned compensation computed on a *pro rata* basis.

(4) If NewMarkets determines that it is necessary to seek payment of earned premiums through direct or third party collection, Referring Producer agrees to forfeit all rights to compensation on such premium.

(5) If NewMarkets refunds any premiums to the Insured, the Referring Producer will likewise return to NewMarkets compensation paid or credited to the Referring Producer's account because of such premiums. The rate of the refund shall be the same as the rate at which the compensation was originally paid.

(6) NewMarkets may reduce the amount of compensation otherwise due to the Referring Producer by any amounts of money that the Referring Producer owes to NewMarkets. The amount of the reduction or set-off may include any expense that NewMarkets incurs because of or related to attachment by third parties of monies that NewMarkets owes to the Referring Producer.

**B. Compensation.** NewMarkets will pay (or arrange to have the underwriting insurance company pay, as applicable) to the Referring Producer an amount equal to a percentage to be deducted from its Client's total gross written premium to be agreed upon on a case-by-case basis for each submission (referred to here as Compensation). The Referring Producer represents that the payment of a percentage-of-premium amount by NewMarkets or the insurance company will not influence the Referring Producer to the detriment of the Insured's best interests. Any obligations related to broker or similar service fees charged to the Client by the Referring Producer shall be the Referring Producer's sole responsibility.

**C. Reporting and Accounting.**

(1) The Referring Producer will promptly notify the appropriate ACE Group insurance company in writing upon receipt of notice of any claims, suits or losses under that company's policies, and will cooperate in the investigation and adjustment of claims and in the collection of deductible reimbursements.

(2) As between the parties, all premiums received by the Referring Producer that are due to NewMarkets are deemed to be NewMarkets's property and must be held in a fiduciary capacity for the benefit of NewMarkets. Return premiums due to the Insured must also be held in a fiduciary capacity until payment is made. This fiduciary relationship and ownership of the premiums will not be affected by account books showing a creditor – debtor relationship, the amount of balances at stated periods, or the Referring Producer's retention of compensation out of premium. The Referring Producer may not (1) commingle any premium funds with any non-premium personal or business accounts or funds held in any other capacity, or (2) take any offsets for monies that are required to be deposited in a fiduciary account. If permitted by law, the Referring Producer may commingle premium funds held in a fiduciary capacity for NewMarkets with other such insurance premium funds, as long as the amounts of funds held for NewMarkets are discernable from an examination of the Referring Producer's books and records, which shall be made available on request by NewMarkets for this purpose.

(3) The Referring Producer will procure and send to NewMarkets promptly from the Insured, as needed, all payroll, revenue, sales and other reports or records on policies written. The Referring Producer grants NewMarkets permission to procure such reports

or records directly from the Insured if not received in a timely manner from the Referring Producer.

(4) Referring Producer has no authority to flat cancel a policy without NewMarkets's prior approval. Earned premium shall be computed and charged on every policy cancelled after inception in accordance with the cancellation provisions of the policy. The Referring Producer is responsible for the full amount of any earned premium due to NewMarkets.

#### ***D. Indemnification.***

(1) Each party agrees to defend, indemnify, and hold the other party harmless from any loss, expense, fine, penalty or damages resulting from any violation of this Agreement or any violation of law or regulation governing business transacted under this Agreement to the extent that the other party has not contributed or compounded the error resulting in such loss, expense, penalty or damages.

(2) A party that agrees to indemnify the other party may investigate, defend and settle such claims with the cooperation of the other party.

### **III. Licensing**

**A. Proper Licenses.** The Referring Producer warrants to NewMarkets that (1) the Referring Producer is properly licensed in all appropriate jurisdictions for business submitted; (2) all such licenses are valid and in force at the time of any submission to obtain insurance (including renewals), (3) any sub-Referring Producers submitting business through the Referring Producer are licensed where required, and (4) all information provided in NewMarkets's Referring Producer questionnaire or request for qualifying information is true and complete. The Referring Producer agrees to notify NewMarkets immediately after receiving any notice of intent to suspend, revoke, or limit any license.

**B. Surplus Lines.** Unless NewMarkets is acting as the surplus lines producer of record for a particular surplus lines transaction and has expressly undertaken to be responsible for compliance with the surplus lines laws governing the transaction, the following shall apply:

1. Any Referring Producer that intends to submit surplus lines business must have a current surplus lines license in the state(s) in which the Referring Producer is conducting such business.
2. For every surplus lines transaction proposed to NewMarkets, either the Referring Producer or a sub-Referring Producer must have a surplus lines license in the state(s) where the proposed risk is resident, located or to be performed.

3. The Referring Producer agrees to be responsible for compliance with the surplus lines laws of all applicable jurisdictions, including placement of insurance in the surplus lines market, collection and remittance of surplus lines taxes and fees and reporting requirements for licensees.
4. The Referring Producer further agrees to supply to NewMarkets, on request, complete and current information regarding all individual or corporate surplus lines licenses, all relevant tax and fee allocation information and agrees to cooperate with NewMarkets with respect to any regulatory inquiry regarding compliance with surplus lines laws.
5. In the event of a claim for indemnification by NewMarkets arising out of responsibility for collection, payment or allocation of surplus lines taxes, independent procurement taxes, or fees or assessments associated with surplus lines business, the Referring Producer expressly waives any claim that NewMarkets contributed to or compounded any error resulting in any loss, expense, penalty or damages.

#### **IV. Insurance**

The Referring Producer represents that it has the following insurance in place at the inception of this Agreement and agrees to maintain such insurance in the same minimum limits in full force and effect for the entire term of this Agreement:

Errors and Omissions Insurance: Minimum amount of \$1,000,000 per claim or occurrence as applicable and \$1,000,000 aggregate; deductible or SIR not to exceed \$250,000.

Certificates of Insurance evidencing such coverage shall be provided to NewMarkets on request.

#### **V. Termination**

**A. Any Reason.** Either party may terminate the Agreement for any reason upon 90 days written notice.

**B. Material Breach.** Either party may terminate the Agreement immediately upon written notice if the other party commits a material breach of the Agreement. Determination of a breach and damages, if any, are governed by Section VI. (Arbitration). However, neither the Referring Producer's exercise of its right to decline to submit any business nor NewMarkets's exercise of its right to decline any submission from the Referring Producer of itself shall be a breach of the Agreement.

**C. Post-Termination Service.** In the event of any termination, the Referring Producer will continue to service its Clients' in-force policies, unless specifically instructed otherwise in writing by NewMarkets. This service is included in the compensation

paid to the Referring Producer under Section II.B. NewMarkets may, at its option, take over servicing of in-force policies, in which case NewMarkets will be entitled to (1) offset the reasonable costs of such service against any monies otherwise due to the Referring Producer, and/or (2) receive reimbursement from the Referring Producer of such costs from compensation already paid.

## **VI. Arbitration**

**A. Submission to Arbitration Panel.** Any dispute arising from or relating to the performance or breach of this Agreement shall be submitted to arbitration before a panel consisting of two arbitrators and an umpire meeting in Philadelphia, Pennsylvania. The initiating party is referred to as the claimant, and the responding party as the respondent.

**B. Panel Selection.** The members of the arbitration panel shall be disinterested active or former officials of insurance or reinsurance companies or insurance producers. Each party will appoint an arbitrator, and the two arbitrators shall choose an umpire before instituting the hearing. If the respondent fails to appoint its arbitrator within 60 days after being requested to do so by the claimant, the claimant may appoint the second arbitrator. If the two arbitrators fail to agree upon the appointment of an umpire within four weeks after their nominations, they shall submit the umpire selection to the American Arbitration Association (AAA) for appointment from its panel of commercial arbitrators. The claimant shall submit its initial brief in 20 days thereafter, and the claimant may submit a reply brief within 10 days after filing of the respondent's brief.

**C. Proceedings.** The arbitrators shall observe the custom and usage of the insurance business, and conduct one or more hearings at which evidence may be introduced without following strict rules of evidence but in which cross-examination and rebuttal shall be allowed. The panel shall issue its decision within 60 days following the termination of hearings unless the parties consent to an extension. A decision by the majority of the members of the panel shall become binding upon all parties to the proceeding. The arbitrators will have no authority to award punitive damages or any other damages not measured by actual damages. The parties agree to abide by and perform any award rendered by the arbitrators, and agree that a judgment of a court having jurisdiction may be entered upon an award. No party shall have a cause of action against any arbitrator for damages or injunctive relief for any act, error or omission in conducting the proceeding.

**D. Costs.** Each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the umpire. The remaining costs of the arbitration proceeding shall be allocated by the panel.

## **VII. Privacy of Information**

**A. Nonpublic Personal Information.** In compliance with federal and state regulations, the Referring Producer may disclose nonpublic personal information to NewMarkets in the course of assisting a customer to obtain insurance products or services. The Referring

Producer acknowledges that nonpublic personal information obtained in course of selling or obtaining a quote on an insurance product may be shared with a third party only with the prior written approval of NewMarkets, which may be granted upon the Referring Producer's demonstration of full compliance with the privacy provisions of all applicable federal and state laws and regulations, including, but not limited to, the Gramm-Leach-Bliley Act of 1999 (Public Law 106-102, 113 Stat. 1138) ("GLB"), as it may be amended from time to time. Each party is also permitted to disclose nonpublic personal information to its officers, agents, subcontractors, and employees to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations under this Agreement so long as such disclosure is not prohibited by applicable federal and state laws and regulations, including, but not limited to GLB. Each party shall take all reasonable measures to maintain the confidentiality of such nonpublic personal information. Each party further agrees promptly to advise the other party in writing of any misappropriation, or unauthorized disclosure or use by any person of such nonpublic personal information which may come to its attention and to take all steps reasonably requested by the other party to limit, stop or otherwise remedy such misappropriation, or unauthorized disclosure or use.

***B. Personal, Family or Household Insurance.*** Whenever the Referring Producer receives an application for insurance that is primarily for personal, family or household purposes, the Referring Producer will promptly provide such policyholder with a copy of the underwriting insurance company's privacy policy as provided to the Referring Producer by NewMarkets and will provide such privacy policy to such policyholders annually and when required by law. The Referring Producer agrees to use, maintain, secure, store, disclose, and protect all nonpublic personal information of policyholders in accordance with all federal and state laws and regulations governing the privacy and security of such information.

***C. Copies to Policyholders.*** The Referring Producer agrees that whenever requested, it will provide policyholders with a copy of the underwriting insurance company's privacy policy as provided to the Referring Producer by NewMarkets.

***D. Compliance/Amendments.*** The parties agree to abide by the terms of their respective privacy policies, and each agree that their privacy policy will not be amended so as to adversely affect the other party's ability to disclose or use nonpublic personal information under the Agreement, except where the adversely affected party has given written permission following at least 15 days written notice of such change. The Referring Producer agrees to comply with the underwriting insurance company's privacy policy as may be provided to the Referring Producer by NewMarkets at any time.

***E. Survival.*** This Section VII (Privacy of Information) shall survive the termination of this Agreement.

**VIII. General Provisions**

**A. Assignment or Change of Ownership.** The Referring Producer must notify NewMarkets in writing within 14 days after any sale, acquisition, divestiture or other substantial change of its ownership or management. The Referring Producer may not assign, transfer, encumber or otherwise dispose of this agreement or any interest in this Agreement without NewMarkets’s written consent.

**B. Full Agreement.** Subject to Section II. B. (but only if agreed upon compensation rate is recorded elsewhere), this Agreement (including any amendments) is the full Referring Producer Agreement between the parties. Any previous agreement between the parties is now void. This Agreement may be amended only in a writing signed by both parties. This Agreement inures to the benefit of the parties and there shall be no third party beneficiaries with respect to this Agreement.

**C. Conformance to Law.** If any provision of this Agreement is in conflict with applicable law, such provision will be considered amended to the minimum extent necessary to comply with the law. The remaining provisions will not be affected.

**D. No Waiver.** If either party fails to insist on strict compliance with this Agreement or fail to exercise any right under this Agreement, such failure will not be a waiver of any right or any provision of this Agreement; nor will such failure prevent any party hereto from insisting on strict compliance with this Agreement or exercising the right in the future.

This Agreement is effective \_\_\_\_\_. The parties’ acceptance of all terms and conditions is evidenced by signing this Agreement.

Referring Producer:

NewMarkets Insurance Agency, Inc.:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
TAX ID# \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
  
Code: \_\_\_\_\_