

## **BROKER'S AGREEMENT**

THIS BROKER'S AGREEMENT (hereinafter "Agreement"), is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), by and between O'Donovan & Associates, Inc. (hereinafter the "Firm") and \_\_\_\_\_ (hereinafter the "Broker").

In consideration of the covenants set forth herein, and other consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. **BROKER'S OBLIGATIONS & LIMITATIONS.**

1.1. Broker will solicit third parties who need insurance services or products, obtain applications for insurance from them, and submit those applications to the Firm. The Firm shall review those applications for possible submission to insurance providers with whom the Firm has agency agreements. Broker has no authority to bind insurance without a specific, written authorization from the insurance provider, and then only if all terms set forth herein for such insurance, including timely payment, have been strictly satisfied.

1.2. Under no circumstances may Broker bind insurance coverage or deliver an insurance policy, unless and until the Firm receives full payment for such insurance coverage, or until the Firm receives a deposit and a finance agreement (which has been either provided, or approved in writing, by the Firm) executed by the insured. Broker guarantees payment of all premiums due and owing by the insureds, as well as the cost of collection of any premiums or other amounts due to the Firm under this Agreement or otherwise.

1.3. Broker shall be responsible for servicing the insured's account, including, but not limited to, collecting from the insured the information for the applications for insurance and delivering to the insured all notices, including those of policy expirations and non-renewal. The Firm has no obligation to notify Broker or the insured of renewal dates. The Firm, however, retains the right to contact any insured directly. Broker, and not the Firm, shall be responsible for the adequacy, amount, type, form, and other elements of insurance coverage obtained for the insureds. Broker shall also report promptly to the Firm and the relevant insurance provider any fact, occurrence, or incident, of which Broker has any knowledge that might result in a loss or claim, and shall cooperate fully with the Firm and the insurance provider in the investigation and adjustment of any claim. Broker has no authority to assign losses to be adjusted, or to negotiate or settle claims, without the express written consent of the insurance provider and the Firm. Broker shall keep complete records and accounts pertaining to any insurance applications, policies, and related business conducted in connection with this Agreement, and shall permit the Firm to inspect same.

1.4. If the insured or the Broker fails to remit any premium due within the time required by this Agreement, or fails to make any payment due within the time

required by an applicable finance agreement, then the Firm, the insurance provider, or the finance company may issue a written notice of cancellation of the insurance policy and the insurance provider may terminate that insurance policy in accordance with that notice. The Firm may report any such delinquent amounts to the insurance provider as uncollectible and no commissions shall be due to Broker for such delinquent amounts. If Broker has received unearned commissions for premiums not paid by the insured, including, but not limited to, commissions paid to Broker in advance in connection with premiums paid pursuant to a finance agreement, Broker shall remit such commissions to the Firm within ten (10) days of written notice to Broker from the Firm, the insurance provider, or the finance company.

1.5. Broker will faithfully, efficiently and diligently execute its obligations hereunder in a timely and professional manner, consistent with the methods and standards of care and competence generally accepted in the insurance industry. Broker will not do or permit anything to be done that would injure the goodwill or reputation of the Firm.

1.6. Broker will, at Broker's own sole expense, at all times observe and comply with all present and future laws, ordinances, orders, rules and regulations of all federal, state, city and county governments, and all other governmental authorities, relating to the services hereunder. Broker warrants that it now has and shall maintain throughout the Contract Term, all insurance, business, and other licenses, and all authorities and approvals from all relevant jurisdictions necessary for Broker to conduct the activities described in, and contemplated under, this Agreement. Broker agrees to promptly provide copies and other proof and documentation of such licenses, authorities, and approvals upon request of the Firm.

1.7. The use, control, and ownership of all expirations of the insurance business that Broker places through the Firm shall remain with the Broker; provided, however, that at the termination of this Agreement, if Broker has failed to pay and account for any premiums or to meet any other obligations arising from this Agreement, then the use, control, and ownership of such expirations shall revert exclusively to the Firm.

## 2. CONTRACT TERM.

2.1. The Contract Term will begin on the Effective Date, and will continue in effect until terminated as provided herein. Either party may terminate this Agreement at any time, without cause or penalty, by giving written notice to the other party.

2.2. If this Agreement is not sooner terminated in accordance with the provisions hereof, this Agreement will automatically terminate twenty (20) years after the death of the last survivor of all individuals who are stockholders of the Firm as of the Effective Date.

2.3. Unless otherwise agreed in writing by the parties, the termination of this Agreement will not terminate either party's obligations or liabilities which have already accrued hereunder prior to the termination or expiration of this Agreement, including (i) Broker's obligation to collect all premiums due and owing, and to continue to provide support and claims service on all such policies; and (ii) the liability of either party for breach of this Agreement.

### 3. BROKER COMMISSIONS.

3.1. The Firm agrees to pay Broker commissions consisting of a percentage of the premiums that the Firm receives from the insured for a policy issued pursuant to an application originally procured and submitted by Broker, and for any renewal thereof. The commission percentages shall be as provided for on the "Commission Schedule" attached hereto, and incorporated herein, as Exhibit A. Broker's remuneration shall be limited to the commissions set forth on Exhibit A (the "Commissions") and, under no circumstances, shall Broker be entitled to any bonuses, contingent commissions, profit sharing, or other additional incentives paid to the Firm by the insurance providers.

3.2. Commissions to Broker shall be paid as follows:

a. For an insurance policy paid in full by the insured at the time the policy is issued, Broker shall remit to the Firm, within ten (10) days of receipt of such premium, all premiums paid by the insured, net of Commissions due to Broker.

b. For an insurance policy paid in part by a down payment from the insured with the balance paid pursuant to an approved finance agreement, Broker shall remit to the Firm, within ten (10) days of receipt of such premium, all premiums paid as a down payment by the insured, net of Commissions due to Broker, for the entire premium amount due for that policy.

c. For insurance policies purchased and paid by the insured directly to the insurance provider, the Firm will pay the Broker the Commissions, within thirty (30) days of receipt by the Firm, of commissions it receives from the insurance provider for the insurance policy in question.

3.3. If the insurance provider or the Firm disagrees with Broker's calculation of Commissions, Broker must, within ten (10) days of receipt of written demand from the insurance provider or the Firm, remit to the Firm any disputed amount of Commissions that the Broker has received. Broker acknowledges and agrees that good faith attempts to resolve any such dispute by the Firm are conditioned on Broker first remitting any disputed Commissions to the Firm.

#### 4. AUDITS

From time to time, the insurance providers may conduct audits of their policies to determine whether adjustments need to be made in the amount of premium paid by the insured. Broker acknowledges and agrees that:

a. If any additional premium is due from the insured as a result of such an audit by the insurance provider, Broker must collect and remit to the Firm that additional premium, net of commissions due to Broker for that premium, within twenty (20) days of notice from the insurance provider that such additional premium is due. If Broker fails to so deliver such additional premium to the Firm, then the Firm may report such premium to the insurance provider as uncollectible and no commission share shall be due to Broker for such additional premium.

b. If a refund of premium is due to the insured as a result of such an audit by the insurance provider, the Firm shall return to Broker any premium refund that it received from the insurance provider, less the Broker's share of premium commissions attributable to the returned premium. The firm shall return such premium refunds to Broker by the fifteenth (15<sup>th</sup>) day of the month following the month in which the Firm receives the refund. Broker shall be responsible for paying to the insured, within ten (10) day of the receipt of the net premium from the Firm, the full amount of the premium refund due to the insured.

#### 5. RELATIONSHIP OF THE PARTIES.

The parties agree and acknowledge that Broker's relationship with the Firm is solely that of an independent contractor and that Broker is not an employee, agent, servant, partner or co-venturer of the Firm. Broker will not receive, nor be eligible to receive, or participate in, any employee benefits or perquisites, including, but not limited to: health, accident, dental, life or disability insurance; 401(k), profit sharing, pension plans or other types of retirement plans or programs; or incentive or bonus compensation plans or programs. Broker shall not advertise or use in any way the name of the Firm or any insurance providers represented by the Firm without the prior written consent of the Firm or such insurance providers, which consent may be granted or provided in Firm's or insurance providers' sole and absolute discretion.

#### 6. TAXES AND COMPLIANCE.

As an independent contractor, Broker is solely responsible for complying with all obligations under federal and state law pertaining to employees, including, without limitation, federal and state withholding, workers' compensation and unemployment compensation insurance for Broker and its employees and contractors.

## 7. INSURANCE.

7.1. General Liability Insurance. During the Contract Term, Broker will maintain, at Broker's own expense, commercial general liability insurance in limits of not less than One Million Dollars (\$1,000,000) for any one occurrence and Two Million Dollars (\$2,000,000) for the aggregate of all occurrences during any given annual policy period, and limits of not less than Two Hundred Fifty Thousand Dollars (\$250,000) in respect of damage to property for any one occurrence.

7.2. Errors and Omissions Insurance. During the Contract Term, Broker will maintain, at Broker's own expense in companies and in form reasonably acceptable to Firm, an errors and omissions insurance policy covering acts of Broker in the performance of any of the services hereunder. Such policy will provide coverage with minimum limits of One Million Dollars (\$1,000,000) for each loss and an aggregate of Two Million Dollars (\$2,000,000) in any given annual policy period.

7.3. Worker's Compensation Insurance. During the Contract Term, Broker will maintain, at Broker's own expense, worker's compensation insurance for Broker's employees, agents, contractors and subcontractors, in amounts and form as required by law, and to pay all expenses thereof, and Firm will have no responsibility therefor.

7.4. General Policy Requirements. All of the foregoing insurance policies will be obtained and maintained at Broker's own expense in companies and in form reasonably acceptable to Firm. The company writing any such insurance will have at least an "A" rating and will be licensed to do business in each of the states in which any insurance policy is sold by the Broker. Each of the foregoing policies will contain a provision by which the insurer agrees that such policy will not be canceled, materially changed or not renewed without at least thirty (30) days advance written notice to Firm by certified mail, return receipt requested, to the address for notices set forth in this Agreement. For each of the foregoing policies, Broker will provide to Firm, from time to time upon request by Firm, a Certificate of Insurance and, if applicable, an Additional Insured endorsement, which provides proof of such coverage. Not less than thirty (30) days prior to the expiration, cancellation or termination of any such policy, Broker will supply Firm with a new and replacement Certificate of Insurance and Additional Insured endorsement as proof of renewal of the original policy. Such new and replacement endorsements will be similarly endorsed in favor of Firm as set forth above.

## 8. INDEMNIFICATION.

Broker agrees to indemnify, defend and hold harmless Firm, and Firm's stockholders, members, officers, directors, successors and assigns (collectively, the "Indemnified Parties"), from and against any and all claims, suits, demands, actions, liabilities, losses, damages, investigations, costs and expenses (including, without limitation, reasonable attorneys' and experts' fees as and when incurred), suffered or

incurred by any of the Indemnified Parties, directly or indirectly, in connection with or arising in whole or in part from: (i) any breach of any covenant, obligation, representation or warranty of Broker hereunder; (ii) the performance of any of the services provided hereunder; (iii) any injury to or death of any person or damage to any property occurring or arising from or out of any actual or alleged act or omission of Broker or any of its officers, employees, affiliates or agents; (iv) any actual or alleged act or omission of Broker or any of its officers, employees, affiliates or agents; (v) any actual or alleged injury to Broker or any of its officers, employees, affiliates or agents; and/or (vi) any claim or proceeding brought by a third party alleging, in whole or in part, that Broker's acts, activities, conduct, or omissions violate its obligations to comply with a law, rule, order, ordinance, direction, regulation or requirement of federal, state, county and municipal authorities. In addition, any amounts due from Broker or the insureds that are not paid when due, shall incur interest payable to the Firm at the rate of 1.5% per month.

9. MISCELLANEOUS.

9.1. Notices. Any notice or delivery required or permitted to be given under this Agreement (a "Notice") will be in writing and given by (i) hand delivery, (ii) express overnight delivery service or (iii) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) the next business day, if delivered by express overnight delivery service, or (c) the third business day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices will be provided to the following addresses (or facsimile numbers, as applicable):

To Firm:

O'Donovan & Associates, Inc.  
3881 Ten Oaks Road, Suite 2E  
Glenelg, MD 21737

Attn: \_\_\_\_\_

To Broker:

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

Contact: \_\_\_\_\_

Entity Type: \_\_\_\_\_

State of Organization: \_\_\_\_\_

EIN/SSN: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Principals: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

9.2. Assignment and Binding Effect. Broker may not assign or delegate its rights or obligations hereunder without the prior written consent of the Firm. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legatees, personal representatives and other legal representatives, successors and permitted assigns.

9.3. Rules of Construction. Any reference to a “person” means any individual, corporation, partnership, joint venture, limited liability company, unincorporated association, estate, trustee, government (including any division, agency or department thereof), or other legal entity. Any reference to an “affiliate” means, with respect to a person, any other person that, directly or indirectly, on its own behalf or through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. The enumeration and headings of the sections of this Agreement are merely for convenience of reference and do not constitute representations or warranties, do not impose any obligations whatever and have no substantive significance. Unless the context otherwise requires, whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, and the masculine gender shall include the neuter or feminine gender and vice versa. This Agreement shall be construed without the aid of any canon, custom or rule of law requiring construction against the draftsman, and this Agreement shall be construed reasonably to carry out its intent without presumption against or in favor of either party.

9.4. Partial Invalidity. If any provision of this Agreement will for any reason be held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability will not affect any other provision hereof. Any provision of this Agreement that is declared invalid or unenforceable in any application will remain in full force and effect as to valid applications, and the offending provision will be deemed to be modified to the minimum extent necessary to make such provision valid and enforceable.

9.5. Counterparts. This Agreement may be signed in separate counterparts each of which when so executed and delivered will be an original document. All executed counterparts will together constitute one and the same instrument.

9.6. Entire Agreement. This Agreement constitutes the entire agreement between the parties and there are no representations, warranties or commitments except as provided herein. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether written or oral. This Agreement will be amended only in writing executed by the parties hereto affected by such amendment.

9.7. Governing Law/Jurisdiction. This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Maryland. Any action, suit, or proceeding arising out of, connected with, or pertaining to this Agreement will be submitted exclusively to the state or federal courts sitting in Maryland, and all parties hereto hereby consent to the jurisdiction of such courts and irrevocably waive any objection as to personal jurisdiction, venue, or inconvenient forum.

9.8. Due Authorization. Each party which is a corporation, limited liability company or other legal entity (the “representing party”) represents and warrants to the other party that: (i) the representing party is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Maryland; (ii) the execution, delivery and performance of this Agreement are within the corporate power of the representing party and have been duly authorized by all necessary corporate action; (iii) this Agreement is, when executed and delivered by the representing party, the valid and binding obligation of the representing party enforceable against it in accordance with the terms hereof; and (iv) no consent, approval, authorization, order, filing or registration is required to be obtained by the representing party with regard to the execution or performance of this Agreement.

9.9. Exhibits Part of Agreement. Any Addendum, Exhibit or Schedule attached hereto is incorporated into this Agreement by reference and the same forms a part of this Agreement and is binding upon the parties as if the provisions thereof were replicated and contained in this Agreement.

9.10. No Third Party Beneficiaries. This Agreement is made solely among and for the benefit of the parties hereto, and their successors and assigns, and no other person shall have any rights, interests or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

9.11. Waiver of Jury Trial. EACH PARTY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A JURY TRIAL IN THE EVENT OF ANY ACTION ARISING FROM OR CONNECTED WITH THIS AGREEMENT OR ANY OF ITS PROVISIONS. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY EACH PARTY, AND EACH PARTY ACKNOWLEDGES THAT THE OTHER PARTY HAS NOT MADE ANY

REPRESENTATION OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT.

THIS IS A LEGALLY BINDING CONTRACT. YOU AGREE THAT YOU HAVE READ THIS CONTRACT AND UNDERSTAND ALL OF ITS TERMS. IF YOU DO NOT UNDERSTAND ANY PART OF THIS CONTRACT, PLEASE CONSULT WITH AN ATTORNEY BEFORE SIGNING.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**BROKER:**

**FIRM:**

[CONTRACTOR NAME]

O'DONOVAN & ASSOCIATES, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### COMMISSION SCHEDULE

The percentage of premiums to be paid by the Firm to Broker as commissions shall be as follows:

1. Umbrella/Excess Liability- Seven and one half percent (7.5%)
2. Property, General Liability, and Automobile Liability/Physical Damage - Ten Percent (10%)

Commission percentages for other insurance policies and products shall be set by Firm at a later date.