

## TERMS OF BUSINESS AGREEMENT

As used in this Agreement, Keating, Inc. (Keating) shall refer to any business unit or entity that may be affiliated through common ownership and/or managed by Keating as an instrument for maintaining Producer relationships.

### Agreement between Keating

And \_\_\_\_\_  
(Producer)

As Producer desires to place contracts of insurance through companies represented by Keating (those companies herein referred to as Insurer) and in consideration of Keating placing contracts of insurance on behalf of Producer's clients (referred herein as Insured and/or Applicant) from time to time with an Insurer and for mutual promises and covenants set forth in this document it is agreed as follows:

**RELATIONSHIP** Producer is an agent for the Applicant, and acts on behalf of the Applicant for insurance. This agreement or the relationship between the parties and their officers and employees is not intended, and shall not be construed, to create a partnership, joint venture or employment relationship between Keating and Producer. Producer is for all purposes an independent contractor and is not an agent, sub-agent, broker or representative of Keating or its Insurer(s).

**LICENSING** Producer warrants and represents that Producer is properly licensed to transact business as an agent or broker in accordance with the insurance laws, rules and regulations of each state in which Producer transacts business. Producer will maintain such license or licenses in good standing for the duration of this agreement and will furnish proof of such licensing with a copy of this signed Agreement. Producer will promptly notify Keating of any suspension, cancellation or disciplinary action with respect to any of its license(s). Keating also warrants and represents that Keating is properly licensed to transact business as an agent or broker in accordance with the insurance laws, rules and regulations of each state in which Keating transacts business.

**LEGAL COMPLIANCE** Producer shall not place an order with Keating for any excess or surplus lines insurance unless Producer shall have first complied with any applicable state laws requiring Producer to attempt to procure such insurance from insurers authorized to do business in the state of residence of the proposed Insured. The party responsible for the payment of surplus lines taxes shall also 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.

**ERRORS AND OMISSIONS COVERAGE** Producer warrants that Producer now has and shall maintain in-force for the duration of this relationship, insurance agent's Errors and Omissions coverage with a minimum policy limit of one million dollars (\$1,000,000) and will furnish proof of such coverage with a copy of this signed Agreement and at every annual review thereafter. Producer will provide Keating with prompt written notice of any change, cancellation or termination of said Errors and Omissions coverage.

**AUTHORITY** Keating 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 shall have no authority to bind any Insurer for Keating, commit to or issue binders, policies or other written evidence of insurance on behalf of Keating or to make representations not strictly in accordance with the provisions of the quotes, binders, policies and contracts placed under the terms of this Agreement. Producer shall neither make, alter or vary any terms of coverage, or modify terms of payment of any premium or deposit, nor incur any liability for Keating or its Insurer(s).

**OWNERSHIP** Keating expressly recognizes the ownership of all policies and contracts placed under this Agreement with Producer. In the event of any premium's due Keating at the termination of this Agreement, the use and control of all expirations and renewals shall be at Keating's discretion until all payments have been made in full.

**NO DOUBLE BROKERING** Producer shall not act as a secondary agent or broker (double broker) for any application or policy underwritten pursuant to this Agreement without the express written consent of Keating.

**CLAIMS** Producer shall immediately (not later than twenty four (24) hours after receiving notice) notify Keating of any claims, suits or notices of loss (or circumstances which might reasonably be expected to result in a claim, suit or notice of loss) and shall cooperate fully with Keating to facilitate the investigation and adjustment of any claim when and as requested by Keating. Producer has no authority to assign losses to be adjusted or negotiate or settle any loss on behalf of Keating or any Insurer(s) without the express written consent or permission of Keating and applicable Insurer(s). Producer shall not allow the insured to directly contact Keating.

**DISCLAIMER AND INDEMNIFICATION** Producer agrees that it is Producer's responsibility to service Producer's account and to inform Keating as to the type and amount of coverage to be considered for quotation. Producer understands that Keating assumes no responsibility toward any insured with regard to the adequacy, amount or form of coverage and agrees to indemnify and hold Keating harmless from any claim asserted against Keating in following the instructions of Producer. Keating is not an Insurer and does not guarantee the financial condition of the Insurer(s) with whom it may place risks. Keating shall have no liability for nonpayment of any claims due to the insolvency of any Insurer, or otherwise, under contracts of insurance placed by Keating.

In addition, the Producer agrees to indemnify and hold Keating harmless from and against all claims, actions, causes of action, liability or loss which arise from any breach of this Agreement, misconduct, error, omission or other unauthorized act by the Producer, or its directors, officers,

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employees, representatives, agents, subagents, producers or brokers in the performance of duties under this Agreement. The Producer further agrees that in the event Keating is in violation of any applicable law due to the Producer's breach of this Agreement, misconduct, error, omission or other unauthorized act, or those of its directors, officers, employees, representatives, agents, subagents, producers or brokers, the Producer shall assume the responsibility and liability for such breach of this Agreement, misconduct, error, omission or other unauthorized act and shall indemnify and hold Keating harmless for any liability and loss incurred by Keating as a result of such breach of this Agreement, misconduct, error, omission or unauthorized act. Loss shall include, but not be limited to, all damages, costs, expenses, reasonable attorney's fees, penalties, fines, direct or consequential damages, assessments, verdicts (including punitive damages to the extent permissible by law) and any other expense or expenditure incurred by Keating.

Keating agrees to indemnify and hold the Producer harmless from and against all claims, actions, causes of action, liability or loss which arise from any breach of this Agreement, misconduct, error, omission or other unauthorized act by Keating, or its directors, officers or employees, in the performance of duties under this Agreement. Keating further agrees that in the event the Producer is in violation of any applicable law due to Keating's breach of this Agreement, misconduct, error, omission or other unauthorized act, or those of its directors, officers or employees, Keating shall assume the responsibility and liability for such breach of this Agreement, misconduct, error, omission or other unauthorized act and shall indemnify and hold the Producer harmless from any liability and loss incurred by the Producer as a result of such breach of this Agreement, misconduct, error, omission, or other unauthorized act. Loss shall include, but not be limited to, all damages, costs, expenses, reasonable attorneys' fees, penalties, fines, direct or consequential damages, assessments, verdicts (including punitive damages to the extent possible by law, and other expense or expenditure incurred by the Producer.

**ADVERTISING** Producer shall not cause any advertisement referring to or using the name of Keating or any of its Insurers, or issue or cause to have issued any letter, circular, pamphlet, or other publication or statement so referring, without the express written consent of Keating. In the event Keating suffers a loss or expense arising out of any unauthorized advertisement, publication or statement of Producer, then Producer shall be liable for and hereby agrees to indemnify Keating and hold Keating harmless from all resulting damages, fines, penalties and costs.

**PRIVACY POLICY** Producer shall neither disclose nor 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) (the Act) that is received from or collected on behalf of Keating except as necessary to permit Producer to perform its duties under this Agreement, or as otherwise permitted or authorized under the Act. Producer shall also implement and maintain appropriate administrative, technical and physical safeguards to protect the security, confidentiality and integrity of such Nonpublic Personal Information.

**PREMIUM AND ACCOUNTS** Producer guarantees the full payment to Keating of all premiums due including deposit, earned, extension and adjustable premiums, plus fees, and any applicable state and local taxes, less commission due Producer, on every insurance contract bound or written for Producer pursuant to this Agreement. *Producer shall be liable to Keating for the payment of all premiums, fees and taxes whether or not collected by Producer.* Keating shall allow Producer, as commission, a percentage of the premium written at the rate agreed upon by Producer and Keating. From time to time Keating's billings may take the form of binders, invoices or statements. The net balance will be due and payable as indicated on such billings and may vary based upon the credit terms of the issuing Insurer.

1. **Statements:** Keating will send Producer an accounting statement on the 15<sup>th</sup> and 30<sup>th</sup> of every month listing all transactions bound currently outstanding. Exception to these payment terms: Some Insurers require payment on Insured(s) placed through them much earlier than our standard terms. When payment is due earlier, those payment terms will be clearly noted on the account invoice(s). In those instances, all funds are due in full not later than the date noted on the invoice(s).
2. **Omissions:** The omission of any item(s) from a monthly statement or separate invoice shall not: (1) affect the Producer's responsibility to account for any and all amounts due from Producer; (2) prejudice the rights of Keating to collect all amounts due from Producer, or (3) extend the time within which Producer must make payment.
3. **Recurring Late Payments:** Keating understands that there may be very infrequent instances when Producer will experience a late payment. Late payments, however, result in significant expense to Keating in both processing and mailing costs. Producer will be provided notification should recurring instances of late payments result in undue expense to Keating. Following proper notice and Producer's failure to correct the recurrence of late payments, Keating reserves the right to charge a handling fee to process any additional late payments on Producer's behalf.
4. **Producer's Obligations:** Producer shall be liable to Keating for the payment of all premiums, fees and taxes whether or not collected by Producer. Producer's obligation to make payment to Keating is not contingent upon the issuance of a policy. Any credit extended to the Insured or others shall be at the sole risk and responsibility of Producer unless agreed to in writing by Keating.
  - a. **Exception:** Producer shall make diligent efforts to collect premium on all direct bill policies. Producer shall not be liable for the payment of direct bill premiums. However, should Carrier make Keating responsible for any direct bill premiums, such responsibility shall pass to the Producer.

**ADJUSTABLE PREMIUMS** Notwithstanding anything to the contrary herein, in the situation where premiums for a policy or policies which have been issued cannot be fully determined in advance and where an adjustment or determination is made by an audit, retrospective rating or by

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interim reports, premiums are fully earned and due at the invoice date as evidenced by a Keating invoice. Producer will make all reasonable efforts to collect amounts due. Producer will be relieved of responsibility for audit premium, so adjusted or determined, if Producer notifies Keating (20) days after said invoice date, stating that Producer has made diligent efforts and is unable to collect such premiums *provided the Insurer releases Keating for liability for any such premium*. A copy of Producer's invoice to the Insured, as well as copies or correspondence pertaining to the collection, must be sent with this notification. Failure to give Keating timely notice shall constitute Producer's acceptance of responsibility to pay such premiums. If commission applies to these adjustments, none will be allowed to Producer on premiums collected directly by Keating or Insurer under this provision.

**RETURN PREMIUM** If a return premium becomes due under any contract of insurance and Keating has been issued a credit, or payment has been rendered for such premium by Keating's Insurer, then Keating will pay to Producer such return premium less the earned portion of any commission previously retained by Keating.

**DIRECT BILL COMMISSIONS** Keating shall allow Producer, as commission, a percentage of the premium on each policy written and paid for under this Agreement at a rate mutually agreed upon by Keating and Producer. Producer shall be liable to Keating and shall pay return commissions at the same rate as originally allowed to Producer for all return premium adjustments or cancellations, including return premium on cancellations ordered or made by the Insurer or Finance Company. Such return commission shall be paid to Keating by the due date indicated on the invoice or billing statement.

**FINANCED PREMIUMS** On all financed premiums Keating will remit payment for any return premium, less earned commission, directly to Producer unless otherwise agreed to by Keating. The ultimate liability of Keating for payment to a Finance Company, Producer or Insured shall never exceed the amount of return premium less earned commission and fees. Producer agrees to hold Keating harmless from any responsibility for payment to Finance Company and further agrees that financing arrangements do not diminish the responsibility for the timely payment of premium by the Producer.

**DIRECT COLLECTION** If after the expiration of sixty (60) days from the date liability was assumed by the Insurer, Keating has not received payment due for the applicable coverage; Keating may, at its option, collect from the Insured directly the premium due. In the event Keating collects the premium or any part thereof from the Insured, Producer shall not be entitled to any commission on any premium so collected. Attempts by Keating to collect from the Insured shall not relieve Producer of liability to Keating except to the extent of amounts actually collected by Keating from the Insured, less the expense of such collection.

**COLLECTION COSTS** In the event Keating shall have to bring any action or proceeding to enforce collection of any amount due under the terms of this agreement Producer agrees to pay all costs incident thereto, including reasonable attorney's fees and court costs incurred by reason of such action or proceeding.

**FUNDS HELD IN TRUST** Producer shall hold funds in a fiduciary account for business generated under this Agreement to the extent required by the insurance laws of each state in which Producer conducts business. Provided Producer is in compliance with all terms of this Agreement, Producer shall be entitled to any interest earned on said funds while so held by Producer.

**CANCELLATION OF INSURANCE** Producer must notify Keating immediately if a binder, policy or contract is to be cancelled. Keating will not recognize flat cancellations unless: (1) written evidence of coverage prior to inception date of the contract for insurance is provided; and (2) *such credit has been granted Keating by its Insurer*. Earned premium and commission shall be computed and charged on every binder, policy or contract cancelled after the inception date in accordance with the cancellation provision of the applicable contract and/or rules of the Insurer. If Producer does not make timely payment of all sums due Keating on a binder, policy or contract, then Keating may, without limitation of other remedies, initiate the Insurer to cancel the binder, policy or contract for non-payment. If coverage is bound with Keating all fees charged by Keating and Insurer shall be fully earned. Producer deposits made directly to Keating's lockbox for payment on a delinquent account will not automatically constitute acceptance of these funds by Insurer with regard to reinstating any policy being cancelled. Producer shall not accept from Insured the late payment of premiums with prior knowledge, whether actual or constructive, that the policy for which the late premiums have been collected is cancelled.

**TERMINATION OF AGREEMENT** This Agreement may be terminated by either party giving thirty (30) days written notice to the other by certified mail return receipt requested. This Agreement will also terminate: (1) automatically, if any public authority cancels or declines to renew 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 that Keating may, upon review, appoint the successor as a Producer; or (3) immediately by either party because of fraud, misrepresentation, insolvency, failure to pay balances, or willful or gross misconduct. All representations, warranties and obligations of Producer shall survive the termination of this Agreement.

After the date of termination of this Agreement, Producer shall complete the collection and accounting to Keating for all premiums, commissions and other transactions unaccounted for on the date of termination or arising thereafter in respect of outstanding policies of insurance, including but not limited to return premium and return commissions. Outstanding policies, subject to Insurer permission, will be permitted to run to expiration.

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**ENTIRE AGREEMENT** This Agreement constitutes the entire Agreement between Keating and Producer and supersedes and replaces any previous agreements between Keating and Producer. No oral promises or representations shall be binding, nor shall this Agreement be modified, except by agreement in writing and executed by Keating. This Agreement shall apply to current policies already placed through Keating and in force at the date hereof and all future policies which may be placed by Keating for Producer.

**WAIVER OR DEFAULT** Failure of Keating to enforce any provision of this Agreement or to terminate it because of a breach hereof shall not be deemed to be a waiver of such provisions or of any breach committed by Producer

**ALTERNATIVE DISPUTE RESOLUTION** The parties to this Agreement hereby express that all disputes, controversies or claims of any kind and nature between the parties hereto, arising out of any or in any way related to this Agreement, its interpretation, performance or breach, shall be resolved exclusively by the following alternative dispute resolution mechanism

1. Negotiation: The parties hereto shall first engage in a good faith effort to negotiate any such 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.
2. Mediation: Should the above stated negotiations be unsuccessful, the parties shall engage in mediation pursuant to the American Arbitration Association Commercial Mediation Rules.
3. Arbitration: Should the above stated mediation be unsuccessful, the parties shall agree to arbitrate any such controversy or claim with the express understanding that this Agreement is affected by interstate commerce it's that the goods and services that are the subject matter of this Agreement, pass through interstate commerce. Said arbitration shall be conducted pursuant to the American Arbitration Association Commercial Arbitration Rules.
4. The cost of the above stated mediation shall be borne equally between the parties. The cost of the above stated arbitration shall be borne by the party against whom an award is issued and in favor of the prevailing party. In either event, each party shall bear the cost of their own attorney's fees and costs.

*The parties understand and agree that they hereby waive their rights to seek remedies in court, including the right to a jury trial, that pre-arbitration discovery in arbitration proceedings is generally more limited than and different from court proceedings, and that the arbitrators' awards is not required to include factual findings or legal reasoning, and either party's right of appeal or to seek modification of rulings by the arbitrators is strictly limited.*

The venue for mediation and/or arbitration under this paragraph shall be in the city of Phoenix, state of Arizona.

**GOVERNING LAWS** This Agreement shall be deemed to have been made and performed in Maricopa County, Arizona and shall be governed by, construed and enforced in accordance with the laws of the state of Arizona. The rights, duties and obligations of the parties to this Agreement to such extent that they are not dealt with specifically or by necessary implication in this instrument shall be in accordance with the customs prevailing in the surplus lines and special risks insurance business in the state in which the Producer is domiciled.

**SEVERABILITY** If any clause or provision of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity or any other clause or provision, which shall remain in full force and effect. Each of the provisions of this Agreement shall be enforceable independently of any other provision unless expressed otherwise herein.

**EXECUTION AND ACCEPTANCE OF AGREEMENT** Producer acknowledges that a breach of any of the terms, conditions, or provisions of this Agreement by Producer may give rise to a cause of action by Keating against Producer and may result in action by Keating, including but not limited to, the termination of this Agreement, all in the sole discretion of Keating. Each individual who executes this Agreement in a representative capacity represents and warrants that he or she has the full right and power to execute this Agreement and to bind the entity or individuals on whose behalf he or she so signs. If the Producer is an individual, the individual must sign; if the Producer is a partnership, one of the partners must sign; if the Producer is a corporation, an authorized officer must sign and indicate the title of such authorized officer. This Agreement shall not become effective until accepted by Keating.

/// SIGNATURE PAGE TO FOLLOW ///

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**PRODUCER NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_  
(Must be Owner, Partner or Authorized Officer)

**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**WITNESS NAME:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

Agreement Accepted and Effected by Keating.

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

Please complete, sign and return Original Agreement along with the following:

- Copy of your **Insurance License issued by your state of residence**
- Copy of your **E&O Policy Declarations Page**
- Completed **Confidential Producer Profile**

Please check one:  LLC  Corporation  Partnership  Sole Proprietorship

Federal Tax I.D. Number: \_\_\_\_\_

Surplus Lines License Number: \_\_\_\_\_ (If applicable)

## KEATING CONFIDENTIAL BROKER PROFILE

### General Information

Legal Name of Organization: \_\_\_\_\_

DBA (If Different): \_\_\_\_\_

Mailing Address:

Billing Address:

_____	_____
_____	_____
_____	_____

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Web Site: \_\_\_\_\_ Email Address: \_\_\_\_\_

Federal I.D. Number: \_\_\_\_\_ Year Est.: \_\_\_\_\_

Premium Volume: \_\_\_\_\_ Commercial % \_\_\_\_\_ Personal % \_\_\_\_\_

If your agency accounting is conducted at an address other than the above mailing address please provide that address below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Errors & Omissions Insurance (Attach a copy of your E&O Dec. Page).

Carrier: \_\_\_\_\_

Limits: \_\_\_\_\_ Occurrence: \_\_\_\_\_ Aggregate: \_\_\_\_\_

Deductible: \_\_\_\_\_

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

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**License Information** (Attach copies of all licenses and separate pages as necessary)

State	License Number	State	License Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Does your Agency hold a Surplus Lines License? \_\_\_\_\_

If Yes, please enter License Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_ State: \_\_\_\_\_

Name of individual holding Surplus Lines License: \_\_\_\_\_

**Agency Personnel**

Title	Name	Direct Number	Email
CEO/ President	_____	_____	_____
Accounting Contact	_____	_____	_____
Claims Contact	_____	_____	_____

**Market Data**

Wholesale Brokers/Premium Volume

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_