

Agreement Number _____

“COMPANY” Use Only

This Agreement is made this ___ day of _____, _____ (“Effective Date”) by and between: FAIR of New Jersey, LLC, its subsidiaries and/or affiliates (“Company”), and _____ (“Producer”), an Independent Agent, which can be a Retail Agent, Retail Broker and/or Surplus Lines Broker, provided however, that the Producer must disclose the role(s) that the Producer is acting in for the insured to the Company on the date of execution of this Agreement:

W I T N E S S E T H

Whereas, Company represents it is a duly registered and licensed insurance brokerage and has contracted with certain insurers and insurance companies (its “insurers”) to produce and/or administer policies of insurance on their behalf.

Whereas, Producer desires to submit applications for insurance to Company on behalf of its clients and market the services of the Company.

Now, therefore, in consideration of the mutual covenants set forth herein, and intending to be legally bound, the parties agree as follows:

1. **Term.** Unless terminated in accordance with the terms hereof, this Agreement shall be for a period of one (1) year beginning on the Effective Date, and shall automatically renew for additional one (1) year periods thereafter unless either Party provides written notice of termination to the other Party at least sixty (60) days prior to the end of the then existing period.
2. **Scope.** Company retains Producer as an independent contractor to solicit and market its services to existing and potential customers of Producer. Producer is not an employee, servant, partner, joint venturer, officer, or authorized agent of Company. Producer may not bind Company orally or by written contract.
3. **Supervision.** Except to the extent specified herein, Company shall not direct the mode or manner of Producer or otherwise control or supervise the actions of Producer with respect to Producer’s performance hereunder.
4. **Marketing.** Marketing by Producer may be done via the Internet, direct mailing or via any other means deemed to be legal in the marketing territory- international, national, or state. Company will provide Producer with certain materials that the Producer may use to assist in marketing the Company programs and products. The Producer may elect to produce their own marketing materials, but the Company must provide written approval of any and all marketing materials that involve the programs and products offered by the company, have their logo or the insurance company and its related information contained in the marketing materials.

Producer agrees to include with or add to all marketing material utilized or published by Producer any and all disclaimers, notices, and restrictions related to the services provided in this Agreement, or otherwise requested by Company. Producer shall not place any advertisement, or circulate any advertising, promotional or similar materials, in any form whatsoever, bearing the name of Company or its insurers, without prior written consent of Company. In no event shall Company or its insurers be responsible for any cost or expenses for such advertising, unless agreed to in writing. Furthermore, if Company provides consent, this action shall not in any way whatsoever transfer to Company any of Producer's responsibility for advising its clients.

5. **Expenses.** Company has no obligation to reimburse Producer for any expenses incurred by Producer in connection with its performance of this Agreement.
6. **Producer's Covenants and Warranties.** Producer covenants and warrants the following:
 - A. Producer warrants it has and will conduct business in accordance with all federal, international, and state laws and regulations in which it will operate under this Agreement. Producer further warrants it has and will maintain all licenses, permits, and authorizations required by law or regulation to conduct business with Company. Producer further warrants that it holds a valid license issued by the state of its domicile, and any other licenses required to do business hereunder this Agreement. A copy of Producer's license in each state Producer desires to do business with Company is to be provided upon execution of this Agreement.
 - B. Producer is not an agent or representative of Company or any of its insurers and no authority to act or make representations on behalf of Company or its insurers, including binding authority, is granted or delegated to Producer by this Agreement. Company and its insurers shall not be bound as to any quotation for a new or renewal policy or any endorsement to an existing policy until Company's position has been confirmed in writing to Producer by an authorized representative of Company.
 - C. Producer shall guarantee and be liable for payment to Company of any and all earned premium on all policies of insurance written through Company pursuant to an order by Producer to bind, whether or not any premium has been collected by Producer. This includes all premiums on insurance bound, or written hereunder, whether or not they are collected by Producer, and whether or not they are financed.
 - D. Producer hereby guarantees the payment of all premiums and fees due to Company. Producer shall pay to Company all premiums and fees due to Company in accordance with Company's procedures and instructions. In the event Producer fails to remit premiums and fees as agreed herein this Agreement, Company will be entitled to the full reimbursement of all collection costs, including reasonable attorneys' fees.

- E. In the event that the placement of insurance through Company is effected on a surplus lines basis, Producer warrants that it will properly process surplus lines affidavits, filings, and pay taxes in compliance with applicable laws and regulations of the jurisdictions where authorized. In those jurisdictions where Producer is not authorized, Producer will report to the Company who is responsible for compliance with the Surplus Lines Laws.
- F. Producer warrants that all applications will be completed properly and the statements contained within them will be true and accurate. Producer acknowledges that Company will be relying upon the statements and representations in the applications for the purpose of determining whether to provide an insurance quote or to issue a policy.
- G. At all times, Producer shall conduct itself and perform its obligations under this Agreement in a professional manner and in a manner that reflects positively on Company.
- H. At all times, Producer shall comply with any applicable local, state, federal or international laws, including laws related to consumer privacy and the publication of privacy notices. Producer shall also be responsible for securing all necessary permits, licenses, and any other forms of clearance required, if any, by any governmental or other regulatory agencies in connection with Producer's performance hereunder. Producer agrees to notify Company within three (3) business days of the date of receipt of any complaints from insureds, or any state or federal regulatory agency. Producer shall provide with said notice to Company the corresponding complaint, order, and all related documents to the action.
- I. Producer has no right or authority to and shall not admit liability or potential liability on the part of Company or its insurers in respect of any claim or potential claim or otherwise.
- J. Producer represents that it is in compliance with the Violent Crime Control and Law Enforcement Act of 1994 and that Producer will not employ or continue to employ as an officer, director, employee, or other person authorized to act on behalf of Producer, any individual who has ever been convicted of any state or federal criminal felony involving dishonesty or a breach of trust or any crime under 18 U.S.C. 1033 unless the individual has obtained the prior written consent of the insurance regulatory official possessing authority over such individual. Producer shall notify Company promptly of any individual who has obtained such written consent.
- K. Producer warrants that it will immediately report to Company or a designated claims administrator it appoints, any fact, occurrence, or incident that may result in a loss or claim, together with full details thereof. Producer shall forward all documents and cooperate fully with Company, or the designated

claims administrator it appoints, in the investigation and adjustment of any claim, if requested.

- L. Producer warrants that it will keep complete records and accounts of all transactions, and will permit Company to inspect all records pertaining to business transacted under this Agreement within five (5) business days of written request.

7. Policies/Insurance/Commissions. It is agreed:

- A. Company has no duty whatsoever to any policyholder or client of Producer regarding the appropriateness and/or sufficiency of any aspect of a policy of insurance issued or written through Company.
- B. In respect of each policy of insurance or endorsement thereto bound or executed under this Agreement, Producer shall pay to Company within fifteen (15) days of the inception date of the policy or effective date of the endorsement, one hundred percent (100%) of the gross premium, less Producer's commission, plus one hundred percent (100%) of any service fees, taxes, assessments, or similar charges stipulated on the policy by Company. Failure to pay premiums as scheduled may result in cancellation of the subject policy. All premiums collected from the insured's which are to be paid to Company shall be held by Producer in a fiduciary capacity in accordance with applicable laws and should not be commingled with Producer's other funds. Any fees charged to the policyholder by Producer shall be in compliance with all laws and shall be based on the role(s) being fulfilled to the insured and that the Company and insured is made aware of at the time of the submission of the insured's risk application for quoting.
- C. Company will allow Producer commission at a rate agreed at the time of binding each policy of insurance. Producer shall return to Company commission, at the originally allowed rate, previously retained by Producer on any unearned premium due to the cancellation of a policy of insurance or any adjustment to the premium made by Company under the terms of the policy of insurance.
- D. Producer shall have no right to offset or take credit for any commission or premium under one policy of insurance against any other policy of insurance placed through Company.
- E. Company shall have the right to offset any amounts it owes Producer against amounts due from Producer to Company. This includes Company offsetting any damages it has sustained as a result of Producer's breach of this Agreement against payments it owes Producer. Election of this remedy shall not be construed as exclusive and shall not bar Company from seeking any and all other remedies available to it at law or equity.

- F. In the event Producer is unable to collect any additional premium due at audit, Producer may request Company to undertake direct collection of the premium from the policyholder. Producer shall be relieved from responsibility for payment of the additional premium provided the request is made in writing no later than forty-five (45) calendar days from the date Company emailed the original invoice for the additional premium to Producer. No commission shall be paid or deemed earned on any such additional premium collected directly by Company. If Producer fails to make a request for direct collection by Company within the time period specified herein, then Producer shall pay the additional premium due to Company.
- G. In the event a policyholder contracts with a finance company to pay premium due to Company, the terms and timing of payment to Company shall be as set out in paragraph 7(B). The Premium Finance Company must name FAIR of New Jersey, LLC as the insurer when the insurer is Certain Underwriters at Lloyd's of London. The correct name and address is as follows:
- FAIR of New Jersey, LLC
8374 Market Street
#180
Lakewood Ranch, Florida 34202
- H. Producer acknowledges that Company and its insurers are not party or parties to any arrangements made by or on behalf of Producer's clients with an entity providing financing to pay any premium due Company. Further, in accordance with Paragraph 2, Producer shall not present itself as the agent or representative of Company or its insurers in dealing with any such entity.
- I. Inspection fees and policy fees charged by Company for any policy of insurance written through Company shall be fully earned by Company upon binding of the policy, and will not be returned in the event of cancellation of the policy.
- J. Any credit extended to the insured or others shall be at the sole risk of the Producer, and Producer guarantees that premium shall be paid to Company by Producer when due.
- K. To effect flat cancellation of a policy of insurance (i.e. the cancellation is effective from inception of the policy); Producer must either return the original policy (i.e. the policyholder's copy) or provide a fully executed "lost policy release" to Company so that it is received by Company within ten (10) calendar days of the inception date of the subject policy of insurance. Producer shall not be entitled to credit for any cancellation of a policy of insurance until proof of such cancellation has been provided to and accepted as satisfactory by Company.
- L. Provided that all premiums due Company has been fully paid pursuant to this Agreement, Producer shall retain full ownership and control of all expirations.

- M. Producer shall instruct the policyholder for which it places a policy through Company that any and all claims or potential claims must be reported promptly. Producer understands that prompt reporting of claims protects the interests of all Parties. Producer shall report all claims or potential claims to Company, or its designated representative, promptly upon notice. Furthermore, Producer agrees to cooperate fully with Company and its insurers or designated representatives in the investigation and adjustment of any claim.
- N. Company will not be responsible for the errors and omissions of Producer, provided that Company did not cause, contribute, or compound such errors or omissions. Producer must maintain Errors and Omissions Coverage in an amount not less than \$1,000,000.00 covering all operations and employees conducting the business under this Agreement. The Errors and Omissions insurance policy must be issued by an insurer rated "A- VII", or better, by A.M Best, and a copy of the Declaration Page of the policy evidencing the existence of such policy shall be provided to the Company upon request.
8. **Computer System Confidentiality.** In doing business with Company, Producer may be provided access to Company's proprietary computer systems. Producer shall not show or demonstrate Company's systems without Company's prior written approval or provide passwords or access codes to any third party and shall keep all information regarding such systems confidential. Producer understands the great value to Company of such systems and will do everything reasonably possible to protect this value. Producer acknowledges that monetary damages may not be a sufficient remedy for a breach of this provision and that Company shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.
9. **Assignability.** This Agreement is non-assignable and neither Party may assign or delegate any of its rights, interest, or obligations under this Agreement.
10. **Termination.** Either Party may terminate this Agreement immediately, by written notice, upon the happening of any of the following events:
- A. The insolvency, bankruptcy, liquidation, conservatorship, administrative supervision, or dissolution of either Party or any Company insurer(s) that the Producer has placed current business with Company's insurer(s) that become insolvent, bankrupt, liquidated, under conservatorship, administrative supervision, or dissolution;
 - B. Failure to pay any monies required under the terms and conditions of this Agreement when due, and such default continues for a period of fifteen (15) calendar days;
 - C. The commission of any material act of malfeasance, disloyalty, or breach of trust against the other Party or any of its affiliated, parent, or subsidiary companies;

- D. Breaches of the restrictive covenants, including any exclusivity, non-disclosure and confidentiality provisions, contained in this Agreement, and a failure to cure such breach and make appropriate reparations within ten (10) calendar days after having been given written notice thereof;
- E. The voluntary or involuntary appointment of a receiver or liquidator to manage the affairs of either Party; and
- F. A breach of any provision of this Agreement by either party which is not remedied within fifteen (15) calendar days after written notice of such breach is given to such Party.

Termination of this Agreement shall not affect the responsibilities of the Parties as set out under this Agreement in respect of any policies bound prior to the termination date. The Producer shall not be entitled to any further commissions if the Agreement is terminated pursuant this Paragraph.

11. **Notice.** To be effective, a written notice of termination must be sent by registered mail to the address specified below or as may be amended from time to time and endorsed hereon:

Notices to Producer:

The address shown in the Producer signatory section at the end of this agreement will be the address used for all Notices to Producer

with a copy to the Producer's counsel (whose notice information shall be provided to the Company by the Producer)

Notices to the Company:

FAIR of New Jersey, LLC
Richard Mims
8374 Market Street, #180
Lakewood Ranch, Florida 34202

with a copy to:

Thomas E. Patterson
The Patterson Law Firm, LLC
1 North LaSalle Street, Suite 2100
Chicago, Illinois 60602

12. **Indemnification.** It is agreed that:

- A. Producer agrees to defend, indemnify, and hold harmless Company and its insurers, their respective affiliates and subsidiaries and officers, directors,

and employees from any damage and against any liability for loss, cost, expenses, fines, penalties, including punitive or exemplary damages and all cost of defense:

1. Arising from any error or omission, whether intentional or unintentional, by Producer and/or its officers, directors, or employees, related to or arising out of the business covered by this Agreement.

2. Arising from any breach by Producer of any warranty, requirement, agreement, condition, responsibility, undertaking, or any other obligation under this Agreement.

B. Company agrees to defend, indemnify and hold harmless Producer and its insurers, their respective affiliates and subsidiaries and officers, directors, and employees from any damage and against any liability for loss, cost, expenses, fines, penalties, including punitive or exemplary damages and all cost of defense:

1. Arising from any error or omission, whether intentional or unintentional, by Company and/or its officers, directors, employees, and its sub-producers, related to or arising out of the business covered by this Agreement.

2. Arising from any breach by Company of any warranty, requirement, agreement, condition, responsibility, undertaking, or any other obligation under this Agreement.

It is a condition precedent to Company undertaking this Section that Producer shall notify company promptly in writing whenever Producer shall be aware of a claim or the commencement of a lawsuit against Producer for which Company has undertaken to indemnify Producer.

13. Mutual Non-Disclosure. In conjunction with each Party's performance of its obligations under this Agreement, each Party acknowledges that it will be disclosing its business methods to the other Party and that the other Party may be given access to various lists, notes, materials, brochures, records, files, memoranda, contracts, and other information relating to its marketing techniques, strategic partnerships and alliances, and technological systems, (collectively "Proprietary Materials"). Each Party acknowledges that the Proprietary Materials are confidential, constitute legitimate protectable business interests of the Party to which they belong, and are or shall be deemed confidential trade secrets of the Party to which they belong, regardless of whether the information contained in the Proprietary Materials is available to the public at large. Each Party agrees to keep the Proprietary Materials and the information contained therein confidential, and to exercise a high degree of care to safeguard them from being accessed by or disclosed to any unauthorized persons.

14. **Property.** Producer recognizes and agrees that the systems, client lists, policy forms, line slips, pricing, claim manuals, programs, codes, algorithms, ideas, procedures, plans, rules, discs, copyrights, trademarks, patents, software, materials, facilities, manuals, reports or methods and similar information or intellectual property relating to or utilized by Company in its business are and shall remain the sole and exclusive property of Company (the "Intellectual Property"). Producer further agrees that nothing in this Agreement shall create any right in Producer to the Intellectual Property or to the proceeds of any license, sale or distribution of the Intellectual Property.

15. **Trade Secrets.** A substantial portion of the information communicated to Producer by Company is considered trade secrets. Producer agrees to preserve the secrecy of said information. All information that becomes known through the course of business conducted by the Parties shall be deemed trade secrets. Said trade secrets include, but are not limited to: prepared information packages; financials; formulas; and financial considerations. The Producer agrees to preserve and protect the secrecy and confidentiality of such information and shall not disclose trade secrets without the express written consent of the Company. This prohibition shall be enforced from the date of this Agreement and for a period of five (5) years thereafter.

16. **Ownership of Data.** All data and information provided to Producer under or in connection of this Agreement, regardless of whether such data or information is provided to Producer directly by Company or by any potential consumers of the services to be provided under this Agreement, such data or information shall be the sole and exclusive property of Company, and subject to any applicable laws relating thereto, Company may use such data or information for any legitimate business purpose as determined in Company's absolute discretion.

17. **Non-Circumvention.** Producer agrees that, for a period of two (2) years after the expiration or termination of this Agreement, Producer shall not discuss or make available the identities of any individual or entity, and any other third parties (including, without limitation, customers, financial sources, consultants, agents) in respect to the purpose of this Agreement and any related business opportunity shall be constituted as confidential. Furthermore, Producer agrees that without prior written consent of Company, it shall not directly or indirectly initiate, solicit, negotiate, contract, or enter into any business transactions, agreements or undertakings with any such third-party identified by the Company; or seek to bypass, compete, avoid or circumvent the Company from any business opportunity that relates to the purpose of this Agreement by utilizing any confidential information, or by exploiting or deriving any benefit from the confidential information.

18. **Non-Solicitation.** Producer agrees that, for a period of two (2) years after the expiration or termination of this Agreement, Producer shall not directly or indirectly through another entity or person: (i) solicit, induce, or attempt to induce, any Employee/Independent Contractor of the Company, any Subsidiary, or any Employee/Independent Contractor of any customer of the Company, to leave the employ of the Company, any Subsidiary, any customer, or in any way interfere with the relationship between the Company, subsidiary, customer and any

Employee/Independent Contractor thereof (provided that untargeted general solicitations through public advertisements shall be permitted); (ii) hire any person who was an Employee/Independent Contractor of the Company, any subsidiary or customer at any time during the Employment Period or; (iii) induce or attempt to induce any customer, supplier, licensee, licensor, franchisee or other business relation of the Company or any Subsidiary to cease doing business with the Company or such Subsidiary, or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and the Company or any subsidiary (including, without limitation, making any negative or disparaging statements or communications regarding the Company or its Subsidiaries).

Notwithstanding any term to the contrary, Producer shall not use or benefit from any Company customer relationship in any way during the non-compete period. As used in this Agreement, "customer" is defined as all persons or entities who: (i) have purchased the Company's services or products in the past or present; (ii) have been contacted by the Company for the purpose of selling its services or products, or have contacted the Company for the purpose of purchasing the Company's services or products in the past, present or future; or (iii) are controlling, are controlled by or are under common control with any person described above. The term includes but is not limited to, brokers, prospective customers and referral sources of customers, any individuals involved in the management or ownership of any customer entities, as well as any customer entities even if the management, ownership, or name has changed.

19. Entire Agreement. This Agreement shall supersede any previous agreement between Company and Producer and shall be applicable to all policies of insurance quoted and/or bound after the date hereof. This Agreement may only be amended in writing and any such amendment must be executed by both Producer and Company.

20. Severability. Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated and it is hereby declared the intention of the parties thereto that they would have executed the remaining portion of this Agreement without including therein any such part, parts, or portion which may, for any reason, be hereafter declared invalid.

21. Governing Law and Forum. Producer hereby agrees to submit the jurisdiction of Collier County, Florida, and appoints the Secretary of State of Florida as Producer's agent for all purpose of service of process. The validity, interpretation and construction of this Agreement shall be governed by the laws of the State of Florida.

22. Arbitration. Any controversy or dispute arising out of this Agreement shall be settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules in effect on the Notice of Arbitration delivery date. The number of arbitrators shall be three. The place of arbitration shall be in Florida. Florida law shall apply. Judgment rendered by the arbitrator may be entered in any court in Florida.

A. Notice of Arbitration. Any Party desiring to arbitrate a controversy must give written notice to the other parties to the controversy. Within twenty (20) days of written notice, the Parties shall confer and agree to a date that Arbitration can take place.

B. Expenses. All expenses associated with obtaining and utilizing the services of the AAA and the arbitrators, and as otherwise provided in the Commercial Arbitration Rules, shall be shared equally by the individual parties to the arbitration, and the arbitrators shall request payment separately from each Party for said expenses. Each Party shall bear its own expenses of preparing for and participating in the arbitration, including attorney and witness fees, and discovery costs.

23. **Attorneys' Fees.** In the event any litigation between the Parties arises out of this Agreement, the prevailing Party shall be entitled to recover all reasonable costs, expenses, and attorney fees incurred at all stages of any proceedings.

24. **Confidentiality.** Both Parties agree to keep the terms and provisions of this Agreement confidential.

25. **Waivers or Breaches.** No waiver of any breach or violation of any provision within this Agreement by either party shall be deemed made unless in writing. In the event a waiver occurs, it shall not operate or be construed as a waiver of any unrelated previous breach, or subsequent breach of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above. This Agreement may be executed in two or more counterparts, each of which shall be deemed to an original, but all of which shall constitute one and the same agreement.

COMPANY: **FAIR of New Jersey, LLC**

By:

Name:

Title:

Address:

PRODUCER:

By:

Name:

Title:

License #:

Surplus Lines License #:

Federal Tax ID #:

Address: