

PRODUCER AGREEMENT

Between

NATIONAL E&S INSURANCE BROKERS, INC.  
DBA: ENVIRONMENTAL E&S INSURANCE SERVICES  
(Hereinafter referred to as "**NATIONAL**")

and

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(Hereinafter collectively referred to as "**PRODUCER**")

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

WHEREAS, **NATIONAL** is duly organized and existing under and by virtue of the laws of the State of **CALIFORNIA** for the purpose of underwriting and brokering of insurance and;

WHEREAS, **PRODUCER** is desirous of placing contracts of insurance for Insureds or principals named in such contracts of insurance and utilizing the underwriting facilities, knowledge and services of **NATIONAL**.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein expressed, the parties hereto agree to be bound as follows:

**I. STATUS AND AUTHORITY OF PRODUCER**

A. **NATIONAL** and **PRODUCER** mutually agree that the interests of the parties are best served when the **PRODUCER** is an independent contractor for all purposes. Nothing in the agreement shall be construed to create the relationship of employer and employee between **NATIONAL** and **PRODUCER**.

B. **PRODUCER** agrees that, without the prior written consent of **NATIONAL**, **PRODUCER** has no authority:

- i) to bind or to cause to have bound any risk, insured or contract of insurance to **NATIONAL** or their insurance carriers, or to issue or cause to be issued any binder, policy endorsement or certificate or to otherwise bind coverage on behalf of **NATIONAL**; or
- ii) to waive or extend any conditions of a policy or application or to make, vary, or discharge any policy contract; or
- iii) to make representations concerning **NATIONAL** or its products and services including, but not limited to, representations regarding the application of coverage to specific situations; the existence or extent of coverage that is not consistent with the terms and conditions of such coverage; or
- iv) to extend the time for payment of premiums; or
- v) to incur any liability on behalf of **NATIONAL**; or
- vi) to act in any way as an agent of **NATIONAL**; or

- vii) to refer to **NATIONAL**, or its companies or the business covered by this Agreement in any advertisement, letter, circular, pamphlet, or other written material and then only in strict compliance with any restrictions or guidelines contained in such consent. All supplies and advertising materials furnished by **NATIONAL** shall remain the property of **NATIONAL** and shall be returned upon demand.
- C. **PRODUCER** and **NATIONAL** agree that all binding authority remains with **NATIONAL OR THEIR CARRIERS**. **PRODUCER**, subject to a written or faxed authorization from **NATIONAL**, may quote contracts of insurance, provided they conform to the terms of this Agreement, terms of the faxed or written quote, **NATIONAL'S** underwriting guidelines, rules, restrictions and rates or those of their carrier. Further, **PRODUCER** shall give prompt written notice to **NATIONAL** of any quote requiring coverage bound pursuant to **NATIONAL'S** authorization. Coverage is not bound until written or faxed notification of bound coverage is received from **NATIONAL**.
- D. Any binders, certificates or other evidence of coverage including policy forms shall be in a form designated by **NATIONAL OR THEIR CARRIERS**. **NATIONAL** and their carriers reserve the right to amend or change such forms at any time.
- E. Nothing in this Agreement shall be construed as limiting or restricting the right of **NATIONAL** to decline or accept any application for coverage or to cancel any binder, policy or contract of insurance issued under this Agreement in accordance with the cancellation provisions of such binder, policy or contract. **PRODUCER** shall not make, permit, or cause general or indiscriminate cancellations, terminations, or replacements of policies.
- F. **PRODUCER** shall not be entitled to credit for any flat cancellation unless expressly agreed in writing by **NATIONAL**.

## II. CONDUCT OF THE BUSINESS

- A. **PRODUCER** will provide all the usual and customary services of a **PRODUCER** on all business transacted under this Agreement and shall pay all expenses attendant to the performance of **PRODUCER'S** duties hereunder.
- B. **NATIONAL** shall pay **PRODUCER**, as full compensation for insurance placed with **NATIONAL**, a commission for a contract of insurance bound by **PRODUCER**, accepted by **NATIONAL**, and fully paid for under this Agreement at the rate stipulated by **NATIONAL** in as specified on the quote letter for the business to be bound. **NATIONAL** hereby reserves the unilateral right to revise the rates of commission at any time. Such change shall not affect commission on premiums due or collected. The commission paid to the **PRODUCER** shall include all commissions or fees which the **PRODUCER** is required to pay to sub producers or countersigning agents. **NATIONAL** shall incur no liability for any commissions or fees, which the **PRODUCER** is required to pay to sub producers or countersigning agents.
- C. **PRODUCER** shall pay **NATIONAL** during the continuance of this Agreement or after its cancellation, a return of unearned commissions on any and all return premiums at the rate originally allowed when the contract of insurance in question was originally written or renewed, including, but not limited to, premiums on cancellations ordered or made by **NATIONAL**.
- D. Any commission payable to **PRODUCER** shall be subject to offset by **NATIONAL** of any money due **NATIONAL** from **PRODUCER** including premiums developed under audits or retrospective adjustments.
- E. This Agreement shall limit **PRODUCER** to the territory specified in Exhibit "A."

- F. In the event **PRODUCER'S** business is sold or merged with another entity this Agreement shall be deemed canceled at the date of any such sale or merger unless otherwise agreed in writing by **NATIONAL**. This Agreement shall not be assigned in whole or part without prior written consent of **NATIONAL**.

### III. PREMIUMS AND ACCOUNTS

- A. **PRODUCER** hereby guarantees payment of all premiums due **NATIONAL** on insurance bound or written hereunder, whether or not collected by **PRODUCER** and whether or not such premiums are financed or developed by audit.
- B. **NATIONAL** authorizes **PRODUCER** to collect, receive and account for premiums on insurance contracts placed with **NATIONAL** pursuant to the terms and conditions of the Agreement. **PRODUCER** is further authorized to retain out of premiums so collected, as full compensation for such policies, commissions as prescribed by **NATIONAL**.
- C. Where an insurance contract provides for premiums developed by audit, the **PRODUCER** agrees to pay **NATIONAL** premium balances developed by audit, net of applicable commissions ("net audit premium"). If the **PRODUCER** provides written notice to **NATIONAL** of uncollectability of premiums developed by audit, which notice shall be received by **NATIONAL** within 30 days of the **PRODUCER'S** initial premium billing, the **PRODUCER** shall have no responsibility to remit such premiums developed by audit. If such notice to **NATIONAL** is not provided, the **PRODUCER** shall pay such net audit premium (whether collected or not) within 30 days of **PRODUCER'S** initial audit premium billing. In the event the **PRODUCER** provides notice to **NATIONAL** that the premium is uncollectible, the **PRODUCER** will cooperate with and assist **NATIONAL** in its efforts to collect such additional audit premiums and shall waive any commission on additional audit premium.
- D. Unless otherwise specified in writing, all premiums related to the business produced under this Agreement, net of the commissions specified in this Agreement, received by the **PRODUCER** shall be held by it in a fiduciary capacity as trustee for **NATIONAL** until delivered to **NATIONAL**.
- E. The **PRODUCER** may retain the interest income earned on the premiums held by the **PRODUCER** prior to their payment to **NATIONAL**.
- F. The net balance shown as due for a particular item of insurance shall be paid by the **PRODUCER** to **NATIONAL** within thirty (30) days from date of binding, unless otherwise agreed in writing by **NATIONAL**. In no event will payment be contingent upon issuance of a policy.

### IV. CLAIMS

- A. The **PRODUCER** agrees to do everything possible to safeguard the interests of **NATIONAL** and shall immediately report to **NATIONAL or their carriers**, with full details, any fact, occurrence or incident that may result in a claim or loss or increased risk of loss to **NATIONAL or their carriers**.
- B. The **PRODUCER** shall forward all claims, suits and notices of loss and cooperate fully with **NATIONAL** to facilitate the investigation, adjustment, settlement and payment of any claim when and as requested by **NATIONAL or their carriers**.
- C. The **PRODUCER** will assist **NATIONAL** or their carriers in the collection of any deductible due from the insured. **PRODUCER** has no authority to adjust, compromise, settle, or pay any claim on the policies written or bound pursuant to this Agreement.

## V. MAINTENANCE AND INSPECTION OF RECORDS

- A. **NATIONAL** expressly recognizes that the **PRODUCER** is the owner of the records and expirations of the insurance business transacted under this Agreement. **PRODUCER** agrees to keep complete records and accounts of all such transactions. At the request of **NATIONAL**, **PRODUCER** will permit **NATIONAL** to inspect or audit all such records and accounts wherever they may be located.
- B. Regardless of who owns control of the expiration dates, **NATIONAL** and **PRODUCER** recognize that the policyholder, who pays the premium, ultimately decides who services and underwrites his insurance. Therefore, despite the language regarding the property rights and the expiration dates, the decision of the policyholder may reflect the ultimate proprietary expression.
- C. **PRODUCER** shall not contract with other parties in regard to the insurance business transacted under this Agreement without prior written consent of **NATIONAL**. If the **PRODUCER**, with **NATIONAL'S** consent, contracts with other parties in regard to the insurance business transacted under this Agreement, the **PRODUCER** will require such parties to permit **NATIONAL** to inspect or audit all records and accounts of such parties relating to such business. **NATIONAL** may make such inspection or audit directly or through persons designated by **NATIONAL**.
- D. If the **PRODUCER** violates any provision of this Agreement, the **PRODUCER** agrees, at the request of **NATIONAL**, to grant **NATIONAL** a security interest in the records and expirations of the insurance business transacted under this Agreement.
- E. When this Agreement is terminated, if the **PRODUCER** has not properly accounted for and paid all premiums owed to **NATIONAL**, the ownership of the records and expirations will vest in **NATIONAL**, which will have the sole right to use and control them to the extent of the **PRODUCER'S** obligation to **NATIONAL** unless the **PRODUCER** provides other security acceptable to **NATIONAL**.

## VI. COMPLIANCE WITH LAW

- A. The **PRODUCER** warrants and represents that the **PRODUCER** holds all licenses necessary for the conduct of all business which is the subject of this Agreement and that said licenses will be maintained in force for the duration of this Agreement. **PRODUCER** will provide **NATIONAL** with copies of all licenses and permits required of **PRODUCER** for the proper conduct of its duties under this Agreement.
- B. The **PRODUCER** will comply with, and use all reasonable efforts to see that any sub producers comply with, any and all laws and regulations governing the conduct of business which is the subject of this Agreement, including but not limited to laws and regulations governing:
  - the writing of surplus and excess lines;
  - countersignature;
  - the filing of affidavits with regulatory authorities;
  - the payment of surplus or excess lines taxes; and
  - the charging of fees to any policyholder.
- C. **PRODUCER** agrees to promptly notify **NATIONAL** in writing of all contacts and correspondence received from insurance regulatory or other governmental authorities, to forward promptly upon receipt all summonses, complaints, subpoenas or other court documents, and to cooperate fully with **NATIONAL** and their carriers in making any responses.

- D. The **PRODUCER** will furnish to **NATIONAL** such information as may be required by various states for **NATIONAL** to enable its companies to maintain their status as an approved admitted or non-admitted carrier.
- E. Both **PRODUCER** and **NATIONAL** are aware that there are or may be laws or regulations in the various jurisdictions served by **PRODUCER** that may be interpreted to provide **PRODUCER** with certain rights of notice, "run-off", continuation of business written through **NATIONAL**, prevention of termination and regulatory review and possible disapproval of the termination of the Agreement. Because this Agreement has been mutually entered into for a special purpose, **PRODUCER** acknowledges that this therefore involves and necessitates a different relationship.
- F. **PRODUCER** hereby specifically waives any and all rights with respect to termination of this Agreement that may now or hereafter be provided **PRODUCER** by such statute or regulation in recognition of that different relationship, and agrees not to impose upon or require compliance by **NATIONAL** or its companies of any obligations relating to termination of this Agreement other than those provided for specifically in this Agreement

#### VII. WAIVER

The forbearance, neglect or failure by **NATIONAL** to enforce any or all of the provisions of this Agreement or to insist upon strict compliance by the **PRODUCER** shall not be construed as a waiver of any rights or privileges of **NATIONAL**. A waiver of a past act or circumstance shall not constitute or be a course of conduct or waiver of any subsequent action or circumstance.

#### VIII. INDEMNIFICATION OF NATIONAL

- A. The **PRODUCER** will defend, indemnify, save harmless and protect **NATIONAL** against any and all claims, suits, actions, liabilities, losses, expenses, or damages now existing or which hereafter arise that **NATIONAL** may incur directly or indirectly as a result of any actual or alleged act, error, or omission of the **PRODUCER** or any person for whom the **PRODUCER** is legally responsible including, but not limited to, any of the following:
- any violation or alleged violation of law governing the business transacted under this Agreement, whether such violation is committed or alleged to have been committed by the **PRODUCER** or by any sub **PRODUCER** of the **PRODUCER**: or
  - any unauthorized advertisement, publication, or statement of the **PRODUCER**.
- B. If the **PRODUCER** fails to perform the duties required of the **PRODUCER** under this Agreement (including, but not limited to, the **PRODUCER'S** duty to collect and remit premiums, and pay surplus lines taxes) and **NATIONAL** finds it necessary to perform such duties, the **PRODUCER** shall indemnify **NATIONAL** for all costs and expenses (including reasonable attorney's fees) incurred by **NATIONAL** as a result.
- C. **PRODUCER** agrees that at **NATIONAL'S** request its principals shall execute a personal guarantee to secure the obligations, if any, which may arise under this Agreement. If such guarantee is required it shall be attached to this Agreement as Exhibit "B" and by this reference made a part hereof.
- D. **PRODUCER** shall at all times during the term of this Agreement maintain professional errors and omissions insurance with a company and in an amount acceptable to **NATIONAL**. **PRODUCER** shall provide **NATIONAL** with copies of policies evidencing such coverage or, at **NATIONAL'S** option: certificates of insurance may be accepted by **NATIONAL** as evidence of insurance. Any such policy or certificate shall provide for thirty (30) days notice to **NATIONAL** in the event of cancellation or non-renewal.

## IX. INDEMNIFICATION OF PRODUCER

**NATIONAL** agrees to hold the **PRODUCER** harmless for any claims asserted against the **PRODUCER** based upon or arising out of acts, errors or omissions of **NATIONAL**.

## X. CANCELLATION OF AGREEMENT

- A. This Agreement may be canceled at any time by either party giving written notice to the other stating when not more than ten (10) days later the cancellation is to be effective. After the effective date of cancellation, unless **NATIONAL** directs otherwise, the **PRODUCER** shall complete the collection of premiums and account to **NATIONAL** for all premiums, commissions, and other transactions unaccounted for on the date of cancellation, or arising thereafter with respect to outstanding insurance.
- B. **PRODUCER** shall continue to provide its usual and customary services in regard to business, which is subject to this Agreement after the termination of this Agreement. There shall be no abandonment of any duty or responsibility of **PRODUCER** to **NATIONAL**.

## XI. ENTIRE AGREEMENT

This Agreement represents the entire agreement of the parties. It supersedes all previous agreements, whether oral or written, between **NATIONAL** and the **PRODUCER**, and may not be altered, changed or amended by either party, except as authorized in writing by **NATIONAL**.

## XII. APPLICABLE LAW

- A. Any dispute arising out of this Agreement shall be submitted to the decision of a board of arbitration composed of two arbitrators and an umpire meeting at **NATIONAL'S** offices in **CALIFORNIA** unless otherwise mutually agreed.
- B. The notice requesting arbitration shall state in particulars all principal issues to be resolved and shall set a date for the hearing, which date shall be no sooner than 90 days and no later than 120 days from the date that the notice requesting arbitration is mailed.
- C. The members of the board of arbitration shall be active or retired and disinterested officials of insurance companies. Each party shall appoint its own arbitrator and the two arbitrators shall choose a third arbitrator as umpire before the date set for the hearing. If a party fails to appoint its arbitrator within 30 days after having received a written request from the other, the other shall appoint the second arbitrator. If the two arbitrators fail to agree upon the appointment of the umpire within 30 days after their appointment, then the umpire shall be selected by either party by requesting the American Arbitration Association select such umpire. The umpire shall promptly notify all parties to the arbitration of his selection.
- D. This Agreement shall be construed under and governed by the laws of the State of **CALIFORNIA**.

In witness whereof the parties hereto have set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**PRODUCER:**

**NATIONAL E&S INSURANCE BROKERS, INC.  
DBA: ENVIRONMENTAL E&S INSURANCE  
SERVICES:**

By: \_\_\_\_\_  
(Producer's Signature)  
\_\_\_\_\_  
(Type or Print Name and Title)

By: \_\_\_\_\_  
(Owner/President's Signature)  
\_\_\_\_\_  
Ross E. Driscoll, President  
(Type or Print Name and Title)

Attest: \_\_\_\_\_  
(Witness' Signature)

Attest: \_\_\_\_\_  
(Witness' Signature)

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

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

Phone Number: \_\_\_\_\_

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

Agency License Number: \_\_\_\_\_

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

Federal I.D. Number or  
Social Security Number: \_\_\_\_\_

**PRODUCER AGREEMENT**

**EXHIBIT A**

Date:

Producer:

Producer Agreement Number:

Producer Number:

Commission Schedule on net written premiums (gross written premium less refunds or cancellations):

Territory – State(s) of:

This Exhibit is attached to and becomes part of the Producer Agreement dated \_\_\_\_\_ between **NATIONAL E&S INSURANCE BROKERS, INC., DBA: ENVIRONMENTAL E&S INSURANCE SERVICES** and \_\_\_\_\_ (**PRODUCER**) and is to become effective on and after \_\_\_\_\_.

**PRODUCER:**

**NATIONAL E&S INSURANCE BROKERS, INC.  
DBA: ENVIRONMENTAL E&S INSURANCE  
SERVICES:**

By: \_\_\_\_\_  
(Producer's Signature)

By: \_\_\_\_\_  
(Owner/President's Signature)

\_\_\_\_\_  
(Type or Print Name and Title)

**Ross E. Driscoll, President**  
\_\_\_\_\_  
(Type or Print Name and Title)

Attest: \_\_\_\_\_  
(Witness' Signature)

Attest: \_\_\_\_\_  
(Witness' Signature)

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_