



**INSURANCE PRODUCER (AGENCY) AGREEMENT**

This Agency Agreement (the "Agreement") is entered into between DeCotis Insurance Associates, Inc., an insurance agency organized under the laws of the State of Rhode Island having its principal office at 245 Waterman Street, Suite 501, Providence, RI 02906 and DeCotis Insurance Associates of MA, LLC., an insurance agency organized under the laws of the State of Massachusetts having its principal office at 35 Braintree Hill Office Park, Braintree, MA 02184 (the "Agency") and the insurance producer identified immediately below (the "Producer"), effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**PRODUCER**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Street

\_\_\_\_\_  
City State Zip Code

Corporation       Partnership       Sole Proprietorship

WHEREAS, the 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 licenses and furnish proof of such licensing with a copy of this signed Agreement. Producer will notify the Agency of any suspension, cancellation or disciplinary action of its license(s).

WHEREAS, the Producer desires to utilize the services of the Agency and place contracts of insurance through companies represented by the Agency for the Producer's clients; and

WHEREAS, the Agency agrees to extend such services and facilities to the Producer subject to the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual promises and covenants herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I  
AGENCY AUTHORITY**

**1.1 Authority.** The Agency shall be authorized upon written request made by the Producer to obtain surplus lines insurance coverages for the Producer's clients subject to the terms and conditions specified herein.

**1.2 Surplus Lines Broker Licensure.** As a condition to exercising the authority provided in Section 1.1, the Agency warrants that it is properly licensed to transact business as a broker of insurance

policies in accordance with the insurance laws, rules and regulations in the state Producer is requesting coverage.

- 1.3 Term.** The Agency's authority as specified in Section 1.1 shall be effective as of the date specified above and shall remain in effect until terminated in accordance with Section 5 of this Agreement and provided that the parties hereto are not in breach of any obligations or covenants stated herein.
- 1.4 Right to Decline Business.** The Agency's authorization provided for herein shall not be construed to affirmatively require it to obtain insurance coverages for Producer's clients and Agency shall have the absolute right to accept, decline or reject any applications of insurance submitted by the Producer.
- 1.5 Requirement of Written Authorization.** The Agency is authorized to bind a risk for a Producer client only in such instances where the Producer has provided written authorization to do so to the Agency.
- 1.6 Agency Not Agent or Employee.** Producer acts on behalf of the Applicant for insurance. By rendering the services stated in Section 1.1, the Agency is not considered as an agency or employee of the Producer or of Producer's clients.

## **ARTICLE II COMMITMENTS OF THE PARTIES**

### **2.1 Producer Commitments.**

- (a) Submission of Applications and Supporting Documentation. As a condition to Agency's agreement to obtain insurance coverages for Producer's clients, Producer agrees to submit to Agency the necessary Applications, information and such other documentation & surplus lines affidavits (if applicable) necessary to establish the eligibility of Producer's clients for coverages. The Producer and Insured must always act in good faith to provide all known information regarding the account being submitted, current and prior claims (or situations that might be construed as a claim or loss), and must hold nothing back, however insignificant it might seem to the insurance procurement process.
- (b) Payment of Premiums and Accounts. Payment of the premium shall be made to Agency based on either the terms & conditions provided on the quote or those terms specified on the Invoice from the Agency. Invoices will be due and payable as indicated on the invoice and may vary based upon the terms of the issuing company.

**The Producer shall be liable to the Agency for the full amount of the premium due including deposit; earned, extension and adjustable premiums; fees; applicable state and local taxes; less any commission on every insurance contract bound or placed for the Producer pursuant to this Agreement whether or not collected from the Insured by Producer.** Producer agrees that payment of any minimum earned premium required by the issuing company, additional premiums for audits and/or retrospective penalties and fees will be the responsibility of the Producer and that the Producer will remain liable to the Agency for all earned premiums whether or not collected from the Insured by Producer.

Producer will make all reasonable efforts to collect amounts due. Producer will be relieved of responsibility for adjusted or determined audit premium if Producer notifies the

Agent in writing within twenty (20) days after the invoice date, stating that Producer has made diligent efforts and is unable to collect such premiums provided the Insurer releases the Agency 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, may be requested by the Agency. Failure to give the Agency timely notice shall constitute Producer's acceptance of responsibility to pay such premiums. Producer shall not be entitled to any commission on the premium so collected. Any credit extended to an Insured or others shall be at the sole risk and responsibility of the Producer unless agreed to in writing by the Agency. Producer's obligation to make payment to the Agent is not contingent upon the issuance of an Insurance Policy.

- (c) Direct Collection. If, after the expiration of forty five (45) days from the date liability was assumed by the Insurer, Agent has not received the amount due for the applicable coverage, The Agent may, at its option, collect from the Insured or the Producer, the premium due. In the event the Agent collects the premium or any part thereof from the Insured, Producer shall not be entitled to any commission on the premium so collected. Attempts by the Agent to collect from the Insured shall not relieve Producer of liability to the Agent except to the extent of amounts actually collected by the Agent from the Insured, less the expense of such collection.
- (d) Costs of Collection. In any action or proceeding brought by the Agent to recover sums due from Producer to Agent under the terms of this Agreement Producer agrees to pay cost incident thereto, including reasonable attorneys' fees and court costs incurred by reason of such action or proceeding.
- (e) Return Commissions. In the event that such coverages are cancelled or modified (regardless of whether such cancellation or modification is instituted by the underwriting insurance company, the insured, a premium finance entity, or any other person), the Producer agrees to pay return commissions to the Agency on any return premiums at the same rate at which such return premiums are calculated. The obligations of the Producer to return commissions on cancelled or modified policies shall survive termination of this Agreement for any reason.
- (f) Agent for Insured. Producer agrees that it is the agent of each of its clients referred to the Agency and that Producer is responsible for ensuring that the applications for insurance submitted through Agency are complete and contain true accurate information in order to ensure the adequacy, amount, or form of insurance coverage is appropriate.

## 2.2 Agency Commitments.

- (a) Holding and Tendering of Premiums. Agency shall hold all premiums received from Producer for purposes of obtaining surplus lines coverages for the Producer's clients in a fiduciary capacity until such time as said funds are delivered to the insurer underwriting such coverages. The Agency agrees that such fiduciary funds shall not be used by the Agency for any other purpose whatsoever.
- (b) Commission. The Agency agrees under the terms of this Agreement to remit to the Producer a percentage of the income or commissions received from the insurance carrier on insurance policies bound or renewed through the Agency for the Producer's clients.
- (c) Maintenance of Surplus Lines Broker Licensure. During the term of this Agreement, Agency agrees to maintain its licensure to transact business as a broker of surplus lines insurance policies in states as referred to in **Section 1.2 Surplus Lines Broker Licensure**.

- (d) Maintenance of Agency Status. Agency agrees to maintain its status as an appointed and authorized agent of the surplus lines insurers underwriting the insurance coverages for Producer's clients.
- (e) Forwarding of Policy. Agency shall forward to Producer any and all surplus lines insurance policies issued to Producer's clients that are received by the Agency.

### **ARTICLE III INDEMNIFICATION AND LIABILITY**

- 3.1 Producer Indemnity.** The Producer agrees to indemnify and hold the Agency harmless against any damages, losses, expenses, liabilities, penalties and other costs or expenses, including without limitation reasonable attorneys' fees, arising out of, relating to or resulting from any breach of this Agreement by the Producer, the Producer's negligence, wrongful acts or omissions, the adequacy, amount or form of any insurance coverage obtained by the Agency as a consequence of following the instructions of the Producer and agrees to pay for any costs and attorneys' fees incurred by the Agency to collect any sums due from the Producer to the Agency or to enforce the terms of this Agreement.
- 3.2 Agency Indemnity.** This Agreement is entered into solely between the Agency and the Producer. As such, the Agency assumes no responsibility toward the Producer's clients or any sub producer with regard to the adequacy, amount or form of any insurance coverage bound through the Agency. The Agency agrees to indemnify and hold the Producer harmless against any damages, losses, expenses, liabilities penalties and other costs or expenses, including without limitation, reasonable attorneys' fees, which result solely from the negligence or willful acts of the Agency.
- 3.3 Errors and Omission Coverages.** The Agency and Producer agree to maintain at all times during the term of this Agreement errors and omissions liability coverage with a minimum limit of \$1,000,000.

### **ARTICLE IV ARBITRATION**

- 4.1 Disputes, Disagreements.** If any dispute or disagreement arises in connection with any interpretation of this Agreement, its performance or nonperformance, or the figures and calculations used, the parties will make every effort to settle the dispute in good faith. If the parties cannot agree to a settlement of the dispute or disagreement, then written forty-five (45) days after the dispute or disagreement arises, the matter in controversy will, upon written request of the Agent or the Producer, be settled by binding arbitration. Arbitration will be conducted at a location in Massachusetts or Rhode Island to be agreed upon and shall follow the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.
- 4.2 Choosing Arbitrators.** The parties may agree to submit the dispute to one arbitrator; otherwise there shall be three, one named in writing by each party within ten (10) business days after notice of arbitration is served by either party upon the other, and a third arbitrator selected by these two arbitrators within fifteen (15) business days of their selection. If the arbitrators are unable to agree on a third arbitrator, then the third member will be chosen impartially by the American Arbitration Association.

- 4.3 Expenses of Arbitration.** If the dispute is submitted to one arbitrator, the parties will share the expenses of that arbitrator equally, as well as any other arbitration expenses. If the dispute is submitted to three arbitrators, each party will pay for the arbitrator of their selection, and both parties will share equally in the expenses of the third arbitrator and all other arbitration expenses. Attorneys' fees and witness fees are not arbitration expenses and must be paid by the party incurring them.
- 4.4 Decision of Arbitrators.** The written determination of the arbitrator(s) will be final and binding on all parties.

## **ARTICLE V TERMINATION**

- 5.1 Automatic Termination.** This Agreement shall terminate automatically on the date any public authority revokes, cancels or declines to renew any license required for the Producer to transact business as a producer or Agency to transact business as a surplus lines broker or on the date on which there shall occur a merger or consolidation with respect to the Agency or a sale or transfer of substantially all of the assets of the Agency or a majority of its issued and outstanding stock.
- 5.2 Immediate Termination.** This Agreement shall terminate immediately upon either party giving written notice to the other in the event of a breach or abandonment of this Agreement, fraud, insolvency, or gross or willful misconduct on the part of the other party.
- 5.3 Termination with Notice.** This Agreement may be terminated with or without cause, by either party at any time by the giving of ninety (90) days prior written notice to the other party.

## **ARTICLE VI OWNERSHIP OF EXPIRATIONS**

- 6.1 Ownership.** Subject to the provisions of Sections 6.2 and 6.3 below, the Producer shall be the owner of all expirations generated by the Producer pursuant to this Agreement.
- 6.2 Use of Information.** The Producer hereby grants to the Agency the right to use any and all information, records or other data relating to the policies of insurance and policyholders represented by or associated therewith. Such use shall include the right to contract each insured directly for the purposes of obtaining underwriting information or any other information required by R.I. Gen. L. § 27-3-38 but shall not include any right to solicit insurance business from policyholders represented by the Producer.
- 6.3 Security Interest.** If at the time of termination, or any time thereafter, the Producer has not properly accounted for and paid all premiums or other indebtedness to Agency for which the Producer is liable (including, but not limited to, any commission refunds), the Agency will have a security interest in the Producer's ownership interest of the expirations to secure the Producer's payment of all of its outstanding indebtedness to the Agency. In such event, the use and control of the Producer's expirations, including all rights, title, and interest in and to the records thereof are vested in the Agency as of the date of termination, and the Producer has the right to sell the expirations of the Producer and to apply the proceeds thereof in satisfaction of the Producer's indebtedness to the Agency.

**ARTICLE VII  
MISCELLANEOUS**

**7.1 Entire Agreement.** This Agreement, together with such amendments as may from time to time be executed in writing by the parties, constitutes the entire agreement between the parties with respect to the subject matter hereof.

**7.2 Modifications and Amendments.** This Agreement may be modified or amended only by an agreement in writing and signed by the parties hereto.

**7.3 Notices.** All notices, statements or requests provided for hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand to an officer of the other party, sent by overnight courier or mailed by certified mail, return receipt requested. Such notice shall be deemed given when so delivered personally, or if send by overnight courier, one (1) business day after the date so sent, or if mailed by certified mail three (3) business days after the date of mailing. Notices shall be sent to the address of the addressee stated in this Agreement or to such other address as any addressee shall request by written notice.

If to Agency: Paul M. DeCotis  
245 Waterman Street, Suite 501  
Providence, RI 02906

With a copy to Jennifer R. Cervenka  
Partridge Snow & Hahn LLP  
180 South Main Street  
Providence, RI 02903

If to Producer: At the address set forth above.

**7.4 Waivers.** The failure of any party to insist upon strict performance of a covenant hereunder or of any obligation hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation hereunder, shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation hereunder. No term or provision of the Agreement may be waived unless such waiver is in writing and signed by the party against whom such waiver is sought to be enforced.

**7.5 Governing Law.** This Agreement shall be governed and interpreted under the laws of the State of Rhode Island, without reference to principles of conflicts of laws thereof.

**7.6 Severability.** Any part, provision, representation or warranty of this Agreement which is prohibited or which is held to be void or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

**7.7 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**Producer:** \_\_\_\_\_

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

**Title** \_\_\_\_\_

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

Agreement Accepted and Effected by DeCotis Insurance Associates,

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

**Title** \_\_\_\_\_

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

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

- Copy of your **E&O Policy Declarations Page**
- Copy of your **Insurance Licenses issued by your state of residence and all states you do business in**
- This Completed **Agency Agreement**

**CONFIDENTIAL BROKER PROFILE**

**General Information**

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

DBA (if applicable): \_\_\_\_\_

Mailing Address:

\_\_\_\_\_  
Street

\_\_\_\_\_  
City State Zip

Location Address (if different from above):

\_\_\_\_\_  
Street

\_\_\_\_\_  
City State Zip

Accounting Address:

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

\_\_\_\_\_  
Street

\_\_\_\_\_  
City State Zip

Main Phone: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Website: \_\_\_\_\_

**Errors & Omission Insurance**

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

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

**\*Please submit a copy of your E&O Declarations Page with this completed agreement**



**License Information**

This agreement stipulates that your firm and your producers must be properly licensed in the states you do business in, in order to do business with our firm.

Please indicate the states in which your firm is licensed to do business by using state abbreviations:

\_\_\_\_\_

*\*if you find it easier to submit a separate spreadsheet or attachment with this information, please do so as you see fit.*

Does your Agency hold a Surplus Lines License?  YES  NO

If Yes, please provide the state and license number(s):

\_\_\_\_\_  
State License # Expiration Date

\_\_\_\_\_  
State License # Expiration Date

\_\_\_\_\_  
State License # Expiration Date

\_\_\_\_\_  
State License # Expiration Date

*\*if you find it easier to submit a separate spreadsheet or attachment with this information, please do so as you see fit.*

**Agency Personnel**

	<b>Name</b>	<b>Email</b>
President	_____	_____
Sales Manager	_____	_____
Accounting	_____	_____
Claims	_____	_____

Others – Please include contact info for any other personnel you want us to have on file:

\_\_\_\_\_  
Position Name Email

\_\_\_\_\_  
Position Name Email

\_\_\_\_\_  
Position Name Email

\_\_\_\_\_  
Position Name Email

**Market Data**

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

Surplus Lines Premium Vol: \_\_\_\_\_

Main Surplus Lines Brokers / Outlets used:

\_\_\_\_\_  
Name of Organization Location (state)

\_\_\_\_\_  
Name of Organization Location (state)

\_\_\_\_\_  
Name of Organization Location (state)

This Document Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_