

**ADVANTAGE PARTNERS PRODUCER AGREEMENT**

AGREEMENT made effective the last date set forth on the signature page hereof by and between ADVANTAGE PARTNERS, INC., a New York Corporation with principal offices located at 73 Cutter Mill Road, Great Neck, New York 11021 (“Advantage”) and \_\_\_\_\_ of \_\_\_\_\_ (“Producer”).

WHEREAS, Advantage is an independent insurance agency engaged in the business of identifying qualified insurance agents and brokers and introducing such agents and brokers to insurance Companies or to an insurance Company (“the Companies” or “the Company”) and providing access for appointment of such agents and brokers by such Companies; and

WHEREAS, the “Producer” is an insurance agent or broker duly licensed in the State(s) of \_\_\_\_\_ (copies of Agents/Brokers licenses are attached as Schedule A); and

WHEREAS, the Producer desires to utilize the services of Advantage upon the terms set forth in this Agreement.

NOW, THEREFORE, in exchange for the mutual premises herein contained, the parties agree as follows:

**I. DUTIES AND RESPONSIBILITIES:**

**A. Broker**

The Broker agrees to perform the following duties:

- (1) The Broker shall comply with all policies, procedures, instructions, guidelines, rules and regulations adopted or put into effect by Advantage.
- (2) The Broker shall comply with all policies, procedures, instructions, guidelines, rules and regulations adopted or put into effect by a Company that appoints Producer through the efforts of Advantage.
- (3) The Broker shall reasonably ensure that all applications to a Company are complete and contain accurate information.
- (4) In regard to any Company who appoints the Broker as a result of this Agreement, the Broker agrees to bind coverage with the Company; to pay all Company accounts, receive money from customers; and to conduct business with the Company in the usual and customary manner required of insurance agents and brokers.

(5) The Broker shall be responsible for all amounts due on all policies, endorsements, audits and returns of commissions or premiums.

(6) The Broker shall be responsible for ensuring that he/she is in compliance with all requirements governing insurance agents and brokers in each State in which the Broker conducts business or is licensed to do business.

(7) The Broker shall conduct and transact business in the Broker's own name (or in the name of any entity formed by Broker for that purpose) and be responsible for all of his/her operating expenses.

(8) The Broker is not an agent of Advantage, and has no authority to bind Advantage in any manner. The Broker shall not hold himself/herself out as an agent of Advantage to any third party for any reason.

(9) During the term of this Agreement, the Broker shall carry Errors and Omissions insurance coverage in an amount not less than \$1,000,000 and shall provide Advantage with a Certificate/Policy evidencing such coverage upon the signing of this Agreement and upon request thereafter. The Broker shall be solely responsible for the payment of any deductibles in regard to such policy. The Broker also agrees to indemnify and hold Advantage harmless from any claims resulting from Broker's professional conduct or actions. (copies of Agents/Brokers E & O are attached as Schedule A).

(10) The Broker shall provide prompt notice to Advantage of any problems concerning any insurance licenses held by the Broker.

## **B. Advantage**

(1) Advantage will identify and promote the Broker as a member of the "Advantage Partners Network" with all Companies and vendors.

(2) Advantage will use all reasonable efforts to provide Broker with access to insurance markets through appointments from Companies or on an underwriting basis submit basis (to Advantage) with Companies as the Broker may be eligible and as may be applicable.

(3) Assist in the training of the Broker as be necessary in the specific procedures, underwriting requirements and use of Company software to aid in the Broker producing business for a Company.

(4) Advantage will provide ongoing information to the Broker as to how best to utilize and penetrate the insurance markets of Advantage.

(5) Pay commissions to the Broker in accordance with business produced by Producer and in accordance with the policies established by Advantage.

(6) Recognize the Broker as the agent/broker of record on all business produced by the Broker, and make no claim to the ownership of any such business produced by the Broker.

## **II. TERM:**

A. This Agreement shall remain in effect from the date of execution and continuing until such time as this Agreement is terminated in accordance with the provisions of this Section II.

B. Except as may be provided herein, either party may terminate this Agreement for any reason or for no reason upon thirty (30) days' written notice given to the other party.

C. Notwithstanding the provisions of subsection B above, Advantage may terminate this Agreement immediately and without notice (1) if Broker fails to maintain any valid insurance license; (2) if Broker fails to maintain the Errors and Omissions insurance as required by this Agreement; (3) upon the request of any Company who appoints the Broker by virtue of this Agreement; (4) upon any attempt by the Broker to forward business to a sub-producer or sub-broker; (5) if there is a filing by or against Broker of any petition in bankruptcy.

D. Notwithstanding the provisions of subsection B above, the Broker may terminate this Agreement immediately and without notice if there is a filing by or against Advantage of any petition in bankruptcy or if a Receiver is appointed for the business affairs of Advantage.

E. Either party may terminate this Agreement if there is a breach of a provision of this Agreement and the breaching party fails to cure such breach within ten (10) days from the time written notice of the breach is sent by the non-breaching party.

F. Notwithstanding the foregoing provisions in subsections A –E of this Section, the parties may terminate this Agreement at any time and in any manner as the parties may agree in writing.

## **III. REPRESENTATIONS OF PRODUCER:**

In addition to any other applicable provision, the Producer represents, warrants and covenants as follows:

(1) The Producer is not subject to any oral or written contract or other restrictions or obligations, including, but not limited to, any covenants or warranties contained in any other Producer Agreement with any person or entity, which is inconsistent with the execution of this Agreement, with the performance of the Producer's duties and obligations hereunder, or with the any of the rights of Advantage hereunder.

(2) The Producer will not engage in any other business activities which would conflict with the performance of his/her duties hereunder. The Producer agrees to devote all of his/her professional time and efforts to the performance of the duties required by this Agreement.

(3) The Producer will not do or say anything which in any manner is disparaging to Advantage or any of Advantage's employees, officers, directors or owners, or to the business of Advantage.

#### **IV. NON-COMPETITION-NON-SOLICITATION BY PRODUCER:**

(1) During the term of this Agreement, and for a period of two (2) years thereafter, the Producer will not directly or indirectly newly apply or seek reappointment as an authorized or appointed broker or agent for any Company who the broker or agent is directly appointed with/by Advantage now or at any time during said two year time period.

(2) The provisions of this Section IV shall survive the termination of this Agreement for any reason. The provisions of this Section may be specifically enforced by application for injunctive relief to any Court of competent jurisdiction irrespective of any arbitration provision contained in this Agreement.

#### **V. PROPRIETARY RIGHTS AND TRADE SECRETS OF THE AGENCY:**

A. The Producer acknowledges that during the course of performing his/her duties under this Agreement, Producer will have available to him/her the books, records and knowledge of the method in which Advantage conducts its business and that such information is proprietary and confidential information ("the Confidential Information"). The Producer agrees that the Confidential Information constitutes valuable and confidential trade secrets of Advantage, and that the protection of the trade secrets of Advantage against unauthorized disclosure and use is of critical importance to Advantage in maintaining the competitive position of Advantage, and that any such unauthorized use will cause irreparable harm to Advantage. The Producer therefore agrees as follows: The Producer shall not communicate or divulge, during the term of this Agreement, or at any time subsequent thereto, any of the Confidential Information, which includes any information or knowledge relating to the trade secrets of Advantage which Producer may from time to time acquire, to any person or entity except as authorized in writing by the Advantage or as required by the Companies for rating and underwriting insurance policies.

B. The provisions of this Section V shall survive the termination of this Agreement for any reason. The provisions of this Section may be specifically enforced by application for injunctive relief to any Court of competent jurisdiction irrespective of any arbitration provision contained in this Agreement.

**VI. SOLICITATION OF EMPLOYEES:**

Producer agrees and acknowledges that during the term of this Agreement and for a period of two (2) years subsequent thereto, the Producer shall not attempt to encourage, persuade or solicit the employees or other producers of Advantage to leave Advantage and work at any other insurance agency, person or entity. The parties recognize that this provision may be specifically enforced by means of injunctive relief in any Court of competent jurisdiction irrespective of any arbitration provision contained in this Agreement.

**VII. MODIFICATION:**

This Agreement sets forth the entire understanding of the parties and may be modified or amended only in writing, signed by each of the parties.

**VIII. NOTICES:**

Any written notice required by this Agreement shall be given to the respective parties at the addresses appearing in the preamble hereto unless a different address is assigned by a party by given written notice of such change of address to the other party at least ten (10) days before such new address is to become effective.

**IX. GOVERNING LAW:**

This Agreement shall be governed and interpreted in accordance with the laws of the State of \_\_\_\_\_ without regard to conflict of laws principles.

**X. ARBITRATION:**

The parties agree that any dispute or controversy involving this Agreement or any interpretation of this Agreement shall be resolved through binding arbitration in accordance with the Commercial Rules of arbitration of the American Arbitration Association in the Queens County. The arbitration shall be conducted before a single arbitrator whose decision shall be submitted in writing and which may be entered as a judgment in any court of competent jurisdiction. The administrative costs of the arbitration, including the fees charged by the arbitrator, shall be borne equally by the parties. Each party shall be responsible for paying their own legal fees and costs, subject to the provisions of Section XI below.

**XI. ATTORNEY'S FEES:**

In the event any action to enforce rights under this Agreement is taken, the successful party shall be entitled to recover from the other any such expenses and fees incurred in such enforcement, including costs and reasonable attorney's fees. A party will be deemed "successful" if it obtains equitable relief, and/or if that party recovers more than 50% of the money damages requested.

**XII. WAIVER:**

Any waiver by either party of a breach of any provision of this Agreement shall not be construed to be a waiver of any other subsequent breach of that or of any other provision of this Agreement, and the failure of either party to insist upon strict adherence to any term of this Agreement shall not be considered a waiver of the right to thereafter insist upon strict adherence to that or to any other term of this Agreement.

**XIII. SEVERABILITY:**

The invalidity or unenforceability of any particular term or provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or term were omitted.

**XIV. ASSIGNMENT:**

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, successors and permitted assigns; provided, however, that this Agreement shall not be assignable by the Producer without the prior written consent of Advantage.

**XV. PRODUCER RELATIONSHIP TO ADVANTAGE:**

Nothing contained herein shall be interpreted as creating an employer-employee relationship or a principal-agent relationship between the parties. The Producer is an independent contractor and is solely responsible for the payment of all federal, state and local taxes.

**XVI. MUTUAL INDEMNIFICATION:**

Each party agrees to indemnify and hold the other party harmless from any claims by third parties resulting from the indemnifying party's breach of the terms of this Agreement or by a party's negligent, reckless or purposeful conduct in connection with the performance of this Agreement, including any damages, legal costs and fees incurred in connection with the defense of any such claim.

**XVII. ENTIRE AGREEMENT:**

This Agreement contains the entire agreement between the parties concerning the subject matter herein. Any prior agreements between the parties, whether written or oral, are deemed to be superseded by and merged into this Agreement.

**XVIII. COUNTERPARTS:**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have by their hands caused this instrument to be executed as follows:

**ADVANTAGE PARTNERS, INC.**

By: \_\_\_\_\_  
Duly Authorized

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

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

By \_\_\_\_\_  
Duly Authorized

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

**SCHEDULE A – LIST AND COPIES OF PRODUCER’S LICENSES AND E&O**