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BROKERAGE AGREEMENT

THIS AGREEMENT, made and effective this _____ day of _____ 2010, is by and between McCloskey Surplus & Excess, Inc. t/a Metcom Excess (METCOM) and _____ (hereinafter referred to as BROKER). As consideration for METCOM placing for BROKER certain risks with an insurer or insurers, and in respect of the mutual promises and covenants set forth herein, it is agreed by the parties as follows:

1. BROKER warrants that it is properly licensed to solicit business and conduct a brokerage (producer) business; warrants that such license shall be and remain in force during the duration of this Agreement; and warrants further that employees and agents who are hired or contracted with by BROKER to service the accounts of BROKER's business are licensed in accordance with law and the rules and regulations of the Department of Insurance in the state(s) in which BROKER does business.
2. BROKER and METCOM warrant and represent to each other that they maintain errors and omissions coverage and that such coverage shall be in force at all times during the duration of this Agreement. BROKER and METCOM hereby agree to, and shall, hold METCOM and BROKER, respectively, their agents, employees, legal representatives, subsidiaries, affiliates, successors and assigns harmless from and against any and liabilities in law or equity, including but not limited to actions, causes of action, suits, debts, accounts, contracts, claims, agreements, promises, damages, judgments, fines, executions, costs, expenses and fees (including attorney fees and disbursements incurred in defending METCOM or BROKER, as the case may be, in connection with any of the foregoing) with regard to (a) any negligent, willful or intentional acts by BROKER or METCOM, any one over whom either is responsible, and producers and sub-producers; and (b) any and all acts that result in the violation of the authority granted to or obligations incurred by BROKER and METCOM pursuant to this Agreement. When invoking this provision, a party shall give the other prompt written notice of a claim, shall grant full authority to defend the same, and shall provide reasonable assistance in connection with it.
3. BROKER is, and shall always be considered by METCOM to be, an independent contractor; as such, BROKER is solely responsible for reporting and paying any and all taxes relative to income derived from the relationship governed by this Agreement. BROKER is not the agent of, and has no authority to bind or make any representations for or on behalf of METCOM or any other of its principals or companies. BROKER is not authorized to bind coverage; issue any binder or certificate of insurance for any insurance policy or contract placed for BROKER by METCOM; waive or extend any policy condition or change any policy in any way; or extend time for payment of premiums.
4. BROKER shall be primarily liable for, and hereby guarantees, to METCOM, payment of the full amount of premium, applicable surcharges, taxes and fees (less commission), including additional premiums, developed as a result of audit/inspection after binding of risks, audits at expiration of coverage, including retrospective penalties, on every insurance contract placed by METCOM for BROKER. In the case of additional premiums developed from an audit, the same are due and payable upon receipt of the audit. Should METCOM be notified within thirty (30) days of the date of invoice that the audit premium is uncollectible, BROKER will be relieved of the responsibility of collection, as the carrier will attempt to collect the additional premium directly (but BROKER shall forfeit all commissions on that premium).
5. Upon presentation of an invoice from METCOM, BROKER shall remit immediately all amounts thereon stated. METCOM's invoices or bordereau of accounts will be stated monthly to BROKER; accounts which become more than forty-five (45) days in arrears will be subject to cancellation without further notice from METCOM.
6. Coverage under any policy shall not be bound absent payment, and receipt by METCOM, of a deposit amount of at least 25% of the gross premium indicated; if the account is to be financed, the name and the account number of the finance company must be noted on the completed application and request to bind. Financed premiums are to be remitted by the finance company directly to METCOM; financed return premiums will be sent to the finance company by METCOM. If a BROKER receives a financed premium and remits a net check to METCOM, net return premiums for that account(s) will be returned to the producer.

