

# STARWIND BROKERAGE AGREEMENT

As used in this Agreement, **Starwind Specialty Insurance Services** (referred herein as “Company”) shall refer to any business unit or entity that may be affiliated through common ownership and/or managed by Company as its agent for maintaining Producer relationships.

## Agreement between Company and

\_\_\_\_\_ (referred herein as “Producer”)

Whereas, Producer is desirous of placing contracts of insurance through the Company, and/or its subsidiaries and business units identified in the attached, with companies represented by Company (those companies referred herein as “Insurer”) and utilizing the underwriting facilities, knowledge, and services of Company, and

In consideration of Company placing risks of Producer’s clients (referred herein as “Insured”) from time to time with an Insurer or Insurers and for mutual promises and covenants set forth in this document it is agreed as follows:

1. **AUTHORITY.** Producer is an agent for the applicant, and acts on behalf of the applicant for insurance, and is not acting as an agent, subagent or broker for Company. Producer agrees that Company may not offer or quote every insurance product, coverage, limit, or condition that may be requested within applications for insurance and that it’s the responsibility of the Producer and Insured to both review any quotes and policies offered by Company and obtain the desired coverages and limits. This agreement or the relationship between the Parties and their officers and employees is not intended, and shall not be construed, to create a partnership, joint venture or employment relationship between Company and Producer. Producer is for all purposes an independent contractor.

Company shall be the sole judge of whether to accept, reject, or submit to Insurer for acceptance any applications of insurance for risks submitted by Producer and shall incur no liability for failure to place any such risk. Producer shall have no authority to bind any Insurer for Company, commit to or issue binders, policies, or other written evidence of insurance on behalf of Company or to make representations not strictly in accordance with the provisions of the policies and contracts placed under the terms of this Agreement. Producer shall not make, alter or vary any terms of coverage, or modify terms of payment of any premium or deposit, or incur any liability for Company. Upon the issuance of the policy, Producer represents and warrants that it will review the policy and fully inform the Insured of the terms and conditions, including limits and exclusions, contained therein.

2. **RESPONSIBILITY.** Each party warrants and represents that such party 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 each party transacts business. Each party will maintain such license or licenses in good standing for the duration of this agreement and will furnish proof of such licensing upon request by the other. Producer will promptly notify Company of any suspension, cancellation or disciplinary action in respect of its license(s). Producer will promptly notify Company of any regulatory inquiry it receives related to the placement of insurance pursuant to this Agreement.
3. **SURPLUS LINES INSURANCE.** Producer shall not place an order with Company for any excess or surplus lines insurance unless: (i) Producer shall have first complied with any applicable state laws requiring the Producer to attempt to procure such insurance from insurers authorized to do business in that State(s), (ii) Producer shall retain and provide Company with evidence of such declination and any other documentation evidencing compliance with applicable laws, and (iii) the Producer is properly licensed in such State(s) where the insured is domiciled or in which coverage is provided as required by applicable law. The party responsible for the payment of surplus lines taxes shall also be responsible for compliance with all relevant surplus lines laws of the pertinent State(s), including but not limited to, the collection and payment of surplus lines taxes, filing of affidavits, and providing the appropriate statutory and/or regulatory disclosure legends on all documents. Where Company is responsible for filing surplus lines taxes all required forms, documents and paperwork must be provided by Producer to Company in a timely manner to allow for the prompt filing of the surplus lines taxes.
4. **GROUP/MASTER POLICIES.** Without limiting the Surplus Lines Insurance clause of the Agreement, the Producer hereby represents and warrants that any Group or Master Policy subject to this Agreement will be placed in compliance with all applicable laws. A “Group or Master Policy” includes any policy covering unaffiliated insureds, such as a policy issued to an affinity group or an association of members with a common interest. Laws applicable to Group or Master Policies vary by state and may include “bona fide” group and seasoning requirements, or restrictions or absolute prohibitions. If Company incurs any fines, penalties or other losses as a result of Producer’s failure to comply with any applicable Group or Master Policy insurance laws or regulations, then Producer shall indemnify and hold Company harmless against any such fines, penalties or other losses.
5. **PREMIUM AND ACCOUNTS.** Producer guarantees the full payment due Company of all premiums including deposit, earned, extension and adjustable premiums, fees, plus applicable state and local taxes, less commission, on every

insurance contract bound or written for Producer pursuant to this Agreement. *Producer shall be liable to Company for the payment of all premiums, fees and taxes whether or not collected by the Producer.* Company shall allow Producer, as commission, a percentage of the premium written at the rate agreed upon by Company and Producer from time to time. Company's billings may take the form of binders, invoices or statements. The net balance will be due and payable as indicated on such billings and may vary based upon the credit terms of the issuing Company. The omission of any item(s) from a monthly statement or separate invoice shall not: (1) affect the Producer's responsibility to account for and pay all amounts due; (2) prejudice the rights of Company to collect all amounts due from Producer; and (3) extend the time within which Producer must make payment. *Producer's obligation to make payment to Company is not contingent upon the issuance of a policy.* Any credit extended to the Insured or others shall be at the sole risk and responsibility of the Producer unless agreed to in writing by Company.

6. **FUNDS HELD IN TRUST.** Producer shall hold funds in a fiduciary account for business generated under this Agreement to the extent required by the insurance laws of each state in which Producer conducts business. Provided Producer is in compliance with all terms of this Agreement, Producer shall be entitled to any interest earned on said funds while so held by the Producer.
7. **ADJUSTABLE PREMIUMS.** Notwithstanding anything to the contrary herein set forth, in the situation where premiums for a policy or policies which have been issued cannot be fully determined in advance and where an adjustment or determination is made by an audit, retrospective rating or by interim reports are fully earned and due at the invoice date as evidenced by a Company or insurance Company invoice. Producer will make all reasonable efforts to collect amounts due. Producer will be relieved of responsibility for premium, so adjusted or determined, if Producer notifies Company in writing within 20 days after said invoice date, stating that Producer has made diligent efforts and is unable to collect such premiums and, *provided the Insurer releases Company of liability for such premium.* A copy of the Producer's invoice to the Insured, as well as copies of correspondence pertaining to the collection, must be sent with this notification. Failure to give Company timely notice shall constitute Producer's acceptance of responsibility to pay such premiums. If commission applies to these adjustments, none will be allowed to Producer on premiums collected directly by Company or Insurer under this provision.
8. **OWNERSHIP OF EXPIRATIONS.** In the event of termination of this Agreement and provided Producer has accounted for and paid to Company all premiums and other monies due in accordance with the terms of this Agreement, the use and control of expirations on business written under this Agreement shall remain the property of the Producer. If a proper accounting and payment has not been made, Producer's license(s) to produce the business hereunder has been suspended or terminated, or there has been an indemnity claim or material breach of this Agreement resulting in uncovered liability to the Company, the ownership of the records and the ownership of the right of use and control of the expirations shall vest in Company.  
  
Notwithstanding the foregoing, each party acknowledges that the Insured has the ultimate ownership of their expirations and authority to decide who provides insurance services to them as their registered insurance Agent. In the unlikely event Producer abandonees or fails to service the business produced hereunder, or the Insured initiates direct contact with the Company expressing dissatisfaction with Producer and/or makes an unsolicited clear request for Company to be their Agent of Record then in such event the Company shall take control of the account and expiration.
9. **DIRECT COLLECTION.** If, after the expiration of sixty (60) days from the date liability was assumed by the insurance carrier, Company has not received payment due for the applicable coverage, Company may, at its option, collect from the Insured the premium due. In the event Company 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 Company to collect from the Insured shall not relieve Producer of liability to Company except to the extent of amounts actually collected by Company from the Insured, less the expense of such collection.
10. **COLLECTION OF AMOUNTS** In the event Company shall have to bring any action or proceeding to enforce collection of any amount due under the terms of this agreement Producer agrees to pay all costs incident thereto, including reasonable attorney's fees and expenses, incurred by reason of such action or proceeding.
11. **CANCELLATION OF INSURANCE.** Company will not recognize flat cancellations unless: (1) written evidence of coverage prior to the inception date of the contract for insurance is provided; and (2) *such credit has been granted Company by its Insurer.* Earned premium shall be computed and charged on every binder, policy or contract cancelled after the inception date in accordance with the cancellation provision of the applicable contract and/or rules of the Insurer. If Producer does not make timely payment of any sums due Company, then Company may, without limitation of other remedies, initiate with Insurer to cancel the binder, policy or contract for non-payment. If coverage is bound by Company all additional fees charged by Company for the entire policy term shall be fully earned upon binding. Producer hereby acknowledges that Company, or its Insurers, is under no duty to reinstate a policy if the policy is cancelled. Producer deposits made directly to Company's lock box for payment on a delinquent account will not constitute acceptance of these funds by Company with regard to reinstating any policy being cancelled. Producer shall not accept from Insured the late payment of premiums with prior knowledge, whether actual or constructive, that the policy for which the late premiums

have been collected is cancelled. Company will be under no obligation to give Producer advance notice of expiration of any policies which Producer, from time to time, procures through Company.

12. **UNEARNED COMMISSIONS.** Producer shall be liable to Company and shall pay return commissions at the same rate as originally allowed to Producer for all return premium adjustments or cancellations, including return premium on cancellations ordered or made by the Insurer or Finance Company. Such return commission shall be paid to Company by the due date indicated on the billing document. If a return premium becomes due under any contract of insurance and Company has been issued a credit, or payment has been rendered, for such premium by Company's Insurer; Company will pay to Producer such return premium less the unearned portion of any commission previously retained by the Producer.
13. **FINANCED PREMIUMS.** On all premiums which have been financed Company will remit payment for any return premium, less unearned commission, directly to the Finance Company unless otherwise specified. The ultimate liability of Company for payment to a Finance Company, Producer or Insured shall never exceed the amount of return premium less unearned commission developed. Producer agrees to hold Company harmless from any responsibility for payment to Finance Company and further agrees that financing arrangements do not diminish the responsibility for the timely payment of premium by the Producer.
14. **COMPENSATION DISCLOSURE.** Company is compensated on a commission basis by the insurers it represents. Company may also receive fees, bonus commissions and profit (contingent) commissions. Payment of such additional compensation amounts is based upon performance measurements established by the individual insurers with whom Company transacts business. Such additional compensation is based upon the entire portfolio of business with an insurer and not individual policies. Producer agrees to so disclose the fact of the compensation referenced in this section to insureds and any compensation Producer receives in connection with placement of policies hereunder, as may be required by law.
15. **ADVERTISING.** Producer shall not cause any advertisement referring to or using the name of Company or Insurer, or issue or cause to have issued any letter, circular, pamphlet, or other publication or statement so referring, without the express written consent of Company. In the event Company suffers a loss or expense arising out of any unauthorized advertisement, publication or statement of the Producer, the Producer shall be liable for and hereby agrees to indemnify Company and hold Company harmless from all resulting damages, fines, penalties and costs.
16. **CLAIMS.** Producer shall submit First Notices of Loss pursuant to terms and conditions of the policy. In addition, and not as a substitute for the forgoing, Producer shall notify Company promptly of any claims, suits or notices of loss (or circumstances which might reasonably be expected to result in a claim, suit or notice of loss) and shall cooperate fully with Company to facilitate the investigation and adjustment of any claim when and as requested by Company. Company shall not be liable for any failure to report a claim pursuant to the terms and conditions of the policy.
17. **NO RESPONSIBILITY OR GUARANTEE.** Producer understands that Company assumes no responsibility toward any policy with regard to the adequacy, amount or form of coverage and agrees to indemnify and hold Company harmless from any claim asserted against Company in following the instructions of the Producer. Company is not an insurer and does not guarantee the financial condition of the insurers with whom it may place business. Company shall have no liability for non-payment of claims due to the insolvency of an insurer, or otherwise, under contracts of insurance placed hereunder.
18. **PRIVACY POLICY.** Neither Producer nor Company shall disclose or use Nonpublic Personal Information (as that term and similar terms are defined in the Gramm-Leach-Bliley Act, 15 U.S.C. Section 6801 et. seq. and the applicable state insurance laws and regulations enacted or adopted pursuant to the Gramm-Leach-Bliley Act [individually and collectively, the "Act"]) that is received from or collected on behalf of either party except as necessary to permit the Parties to perform their duties under this Agreement, or as otherwise permitted or authorized by the ACT. Both Parties shall implement and maintain appropriate administrative, technical and physical safeguards to protect the security, confidentiality and integrity of such Nonpublic Personal Information.
19. **TERMINATION OF AGREEMENT.** This Agreement may be terminated immediately at any time by either party giving written notice to the other by certified mail, return receipt requested, or overnight courier. This Agreement will also terminate: (1) automatically, if any public authority cancels or declines to renew the Producer's license or certificate of authority, (2) automatically, on the effective date of the sale, transfer, or merger of Producer's business with the provision Company may, upon review, appoint the successor as a Producer, or (3) immediately, upon either party giving written notice to the other of termination because of fraud, insolvency, failure to pay balances, service upon the Company of any lien, garnishment, or similar effect by a public authority (included the United States Internal Revenue Services) or willful, unprofessional, or gross misconduct. All representations and obligations of the Producer herein shall survive the termination of this Agreement.

After the date of termination of this Agreement, the Producer shall complete the collection and accounting to Company for all premiums, commissions and other transactions unaccounted for on the date of termination or arising thereafter in respect of outstanding policies of insurance, including but not limited to, return premium and return commissions. Outstanding policies will be permitted to run to expiration.

20. **ERRORS AND OMISSIONS COVERAGE.** During the term of this Agreement, and unless otherwise agreed, each party now has and shall maintain insurance agent's Errors and Omission, Cyber, and Fidelity insurance coverages with an A.M. Best rated insurer of A- or better with a minimum policy limits not less than (i) one million dollars (\$1,000,000) per occurrence/aggregate if Producer places one million dollars (\$1,000,000) or less in annual written premium under this agreement with Company, or (ii) two million dollars (\$2,000,000) per occurrence/aggregate if Producer places more than one million dollars (\$1,000,000) in annual written premium under this Agreement with Company. Producer shall furnish proof of such coverage upon annual renewal. Each party will provide prompt written notice of any change, cancellation or other termination of this Policy to the other party.
21. **NO REBROKERING.** Producer shall not act as an underwriter or rebroker (double broker) for any application or policy underwritten pursuant to this Agreement without the express written consent of Company.
22. **MARKETING TERMS.** Upon execution of this Agreement, Producer hereby consents to Company periodically communicating with Producer via faxes, text, and emails for product and service updates and general announcements. These communications will cease upon the termination of this Agreement by either party or upon written notice from Producer to Company to opt out of receiving such communications.
23. **INDEMNIFICATION & HOLD HARMLESS.** The Company and Producer shall each indemnify, defend and hold harmless (the "Indemnifying Party") the other party, its shareholders, officers, directors, and employees (the "Indemnified Party") from and against any claim, and any and all loss, liability, damages, costs, and expenses, including reasonable attorneys' fees, sustained or incurred by such Indemnified Party, or by any of the Indemnified Party's shareholders, officers, directors, and employees to the extent directly based upon or resulting from (1) any act or omission by the Indemnifying Party and/or its employees giving rise to the claim, loss, liability, damages, costs or expenses or (2) any breach of this Agreement. Either party who intends to claim their right of indemnification hereunder shall promptly notify the other party when it receives notice of the commencement of any action or proceeding related to such claim or alleged liability  
  
In no event shall either party be liable for any indirect, special, incidental, consequential or punitive damages or for any lost profits or other economic loss arising out of or relating to placement of insurance under this Agreement. Company's aggregate limit of liability arising out of or relating to any placement of insurance under this Agreement shall not exceed the minimum limits of Errors and Omissions insurance coverage required to be maintained pursuant to Section 20 above.
24. **CYBERSECURITY REGULATION COMPLIANCE.** Producer warrants and represents that Producer is compliant with cybersecurity regulations and data protection laws in each state where Producer writes business. In respect of any data a Producer processes or receives in connection with this Agreement, the Producer shall comply at all times with its obligations under applicable cybersecurity and data protection laws; shall notify Company without undue delay after, and in any event within 24 hours of, becoming aware of a data breach; and shall assist and cooperate fully with Company to enable Company to comply with their obligations under all cybersecurity and data protection laws, including but not limited to keeping data secure, dealing with data breaches and carrying out data protection impact assessments.
25. **INSURER FINANCIAL CONDITION.** Company is not an insurer and does not guarantee the financial condition of the insurers with whom it may place business. Company shall have no liability for non-payment of claims due to the insolvency of an insurer, or otherwise, under contracts of insurance placed hereunder.
26. **RECORDS.** The Parties shall maintain complete and accurate records on all insurance transactions conducted under this Agreement, and records shall be retained in a durable, retrievable, legible, and incapable of alteration manner for a period not less than the longer of (i) the time period prescribed by applicable law or (ii) seven (7) years from the expiration date of the policy. Upon request, Producer agrees to provide Company a copy of such records at Company's expense.
27. **ALTERNATIVE DISPUTE RESOLUTION.** THE PARTIES TO THIS AGREEMENT HEREBY EXPRESS THAT ALL DISPUTES, CONTROVERSIES OR CLAIMS OF ANY KIND AND NATURE BETWEEN THE PARTIES HERETO, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, ITS INTERPRETATION, PERFORMANCE OR BREACH, SHALL BE RESOLVED EXCLUSIVELY BY THE FOLLOWING DISPUTE RESOLUTION MECHANISMS:
  1. Negotiation – The Parties hereto shall first engage in a good faith effort to negotiate any such controversy or claim by communications between them. Said negotiations may be oral or written. To the extent they are oral, they must be confirmed in writing.

2. Mediation – Should the above-stated negotiations be unsuccessful, the Parties shall engage in mediation pursuant to the American Arbitration Association Commercial Mediation Rules, or such other mediation rule as the Parties may otherwise agree to choose.
3. Arbitration – Should the above-stated mediation be unsuccessful, the Parties shall agree to arbitrate any such controversy or claim with the express understanding that this Agreement is affected by interstate commerce in that the goods and services which are the subject matter of this Agreement pass through interstate commerce. Said arbitration shall be conducted pursuant to the American Arbitration Association Commercial Arbitration Rules (the “Arbitration Rules”) or such other arbitration rule as the Parties may otherwise agree to choose.
4. Injunctive Relief – Notwithstanding anything to the contrary herein, either party shall have the right to apply at any time to a court of competent jurisdiction to enjoin any breach of this Agreement that would be deemed material and would result in immediate and irreparable injury to that party, which is, not properly or completely compensable by damages in an action at law, and to recover all costs of such action, including reasonable attorney’s fees. All of the rights and remedies of both Parties hereunder shall be cumulative and not alternative.

THE PARTIES UNDERSTAND AND AGREE: (i) THAT EACH OF THEM IS WAIVING RIGHTS TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO A JURY TRIAL; (ii) THAT PRE-ARBITRATION DISCOVERY IN ARBITRATION PROCEEDINGS IS GENERALLY MORE LIMITED THAN AND DIFFERENT FROM COURT PROCEEDINGS; AND (iii) THAT THE ARBITRATORS’ AWARD IS NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING, AND (iv) EITHER PARTY’S RIGHT OF APPEAL OR TO SEEK MODIFICATION OF RULINGS BY THE ARBITRATORS, IS STRICTLY LIMITED. THE VENUE FOR MEDIATION AND/OR ARBITRATION UNDER THIS PARAGRAPH SHALL BE IN THE CITY OF BIRMINGHAM, STATE OF ALABAMA.

28. **GOVERNING LAWS.** This Agreement shall be deemed to have been made and performed in the State of Alabama and shall be governed by, construed and enforced in accordance with the laws of the State of Alabama. The rights, duties and obligations of the Parties to this agreement to such extent they are not dealt with specifically or by necessary implication in this instrument shall be in accordance with the customs prevailing in the surplus lines and special risks insurance business in the state in which the Producer is domiciled.
29. **WAIVER OR DEFAULT.** Failure of Company to enforce any provision of this Agreement or to terminate it because of a breach hereof shall not be deemed to be a waiver of such provisions or of any breach committed by the Producer.
30. **SEVERABILITY.** If any clause or provision of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity or any other clause or provision, which shall remain in full force and effect. Each of the provisions of the Agreement shall be enforceable independently of any other provision unless expressed otherwise herein.
31. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between Company and Producer and supersedes and replaces any previous agreements between Company and Producer. No oral promises or representations shall be binding, nor shall this Agreement be modified, except by agreement in writing and executed by Company. This Agreement shall apply to current policies already placed through Company and in force at the date hereof and all future policies which may be placed by Company for Producer.
32. **EXECUTION AND ACCEPTANCE OF AGREEMENT.** Each party acknowledges that a breach of any of the terms, conditions, or provisions of this Agreement by one party may give rise to a cause of action by the other party against the breaching party and/or may result in disciplinary action against the breaching party, including but not limited to, the termination of this Agreement, all in the sole discretion of the non-breaching party. Each individual who executes this Agreement in a representative capacity represents and warrants that he or she has the full right and power to execute this Agreement and to bind the entity or individuals on whose behalf he or she so signs. If the Producer is an individual, the individual must sign; if the Producer is a partnership, one of the partners must sign; if the Producer is a corporation, an authorized officer must sign and indicate the title of such authorized officer. The Parties hereto agree this Agreement shall not become effective until accepted by both Parties.
33. **ELECTRONIC SIGNATURE.** Each party may sign this Agreement electronically if so desired. By so doing, the party agrees that use of a keypad, mouse, or other device to electronically sign and to enter a signature constitutes acceptance and agreement of the terms and conditions herein, representation that all information provided is accurate and true, as if such party signed in writing and has the same force and effect as a signature affixed by hand.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorised representatives as of the date indicated below.

PRODUCER: \_\_\_\_\_  
(Agency Name)

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

TITLE: \_\_\_\_\_  
(Must be Owner, Partner or Authorized Officer)

COMPANY: STARWIND SPECIALTY INSURANCE SERVICES

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

Please complete, sign and return **ORIGINAL AGREEMENT** along with the following:  
Copy of your **INSURANCE LICENSE** issued by your state of residence  
Copy of your **W-9**  
Copy of your **E & O POLICY DEC PAGE**.  
Completed **CONFIDENTIAL PRODUCER PROFILE**.

