

NEWPORT PRODUCER AGREEMENT

THIS PRODUCER AGREEMENT (the “Agreement”) is made by and between **NEWPORT GENERAL AGENCY, INC.** (“Manager”) and _____ located at _____ (“Producer”).

WHEREAS, Manager acts as a Managing General Agent for various insurance companies (the “Insurers”); and

WHEREAS, Producer holds a valid and existing property and casualty license as an agent issued by the Texas Department of Insurance; and

WHEREAS, Producer desires to solicit business from time to time with Insurers, which business such Insurers in their sole discretion may accept or reject; and

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein, the parties agree as follows:

ARTICLE I: APPOINTMENT AND AUTHORITY

A. Manager hereby appoints and grants authority to Producer to:

1. Solicit, prepare, accept and transmit applications from Producer’s clients (“Insured”) only with respect to those lines of business listed on the schedule attached as “Addendum No. 1” and as it may be amended from time to time by the parties.
2. Deliver policies and endorsements to Producer’s clients, but only with respect to business that has been accepted by Insurers.
3. Collect and remit premiums for such policies to Manager.

B. It is expressly agreed that the authority of the Producer shall be limited and only as defined in this Agreement, in appropriate program manuals, underwriting manuals, instructions received in writing from Manager or an Insurer.

ARTICLE II: LIMITATION OF RESPONSIBILITIES OF MANAGER

A. Manager retains sole and absolute discretion to accept, reject, or submit to an Insurer for consideration any application of insurance for risks submitted by Producer and shall incur no liability to Producer, the Insured, or any other person for failure to place any such risks. Manager shall have no responsibility to any Insured, sub-agent, solicitor, or sub-producer of Producer with respect to the adequacy, amount, or form of coverage obtained through Manager. Without limiting the effect of Article X, Producer expressly agrees to indemnify and hold Manager harmless from any claim or liability asserted against Manager as a result of following the Producer’s instructions.

ARTICLE III: NO BINDING OR REPRESENTATIONAL AUTHORITY

A. **Authority of Producer:** The authority of Producer to bind insurance coverages shall be limited as defined and set forth in this Agreement, in specific program manuals and/or underwriting guidelines, receipt of which is hereby acknowledged, or as otherwise specifically set out in writing by Manager or an Insurer. Producer shall have no authority to: (1) bind any Insurer for Manager; (2) commit to or issue binders, policies, or other written evidence of insurance on behalf of Manager; (3) countersign policies, endorsements, insurance certificates or any other evidence of insurance on behalf of Manager or Insurer; or (4) 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 payment of any premium or deposit, or incur any liability for or on behalf of Manager or any Insurer.

B. **Flat Cancellations:** Once coverage has been bound, no flat cancellations by Producer shall be permitted except to the extent permitted by the applicable program manuals, underwriting guidelines and/or the Insurer.

ARTICLE IV: INDEPENDENT CONTRACTOR

A. Producer acts on behalf of the Insured. Producer is not an agent, subagent, or broker for Manager or Insurer. This Agreement and 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 Manager and Producer. Producer is for all purposes an independent contractor.

ARTICLE V: REPRESENTATIONS AND WARRANTIES

Understanding and agreeing that breach or noncompliance of any one or more term or condition hereof shall be deemed a material breach of this Agreement, entitling Manager, without limiting any other remedies that may be available, to terminate this Agreement immediately and without prior notice, Producer now represents, warrants, and covenants as follows:

A. **Licensing:** Producer is properly licensed to sell and/or solicit insurance as contemplated by this Agreement in its state of domicile and in all other states in which Producer transacts business. Producer will maintain such license(s) in good standing for the duration of this Agreement and will furnish proof of such proper licensing upon request by Manager. Producer will promptly notify Manager of any suspension, revocation, or other disciplinary action taken, or any other impairment, of or with respect to such license(s).

B. **Compliance:** Producer is in compliance, and will continue to comply, with all federal, state, and local laws, rules, and regulations applicable to the conduct of the business contemplated by this Agreement, including but not limited to laws, rules and regulations

applicable to insurance professionals' compensation disclosure requirements. Producer also authorizes Manager to conduct credit and criminal background checks on a periodic basis so long as this Agreement remains in effect.

- C. **Insurance:** Producer has, and will maintain throughout the duration of this Agreement, an errors and omissions policy covering its activities and obligations under this Agreement, as well as those of its agents, solicitors, servants, employees, and anyone else acting as its representative, with limits of not less than \$500,000 per claim and a per claim deductible not to exceed the Producer's financial capabilities, as determined in Manager's sole discretion. Producer agrees to provide Manager with proof of such coverage annually and at such other times as Manager may reasonably request.

ARTICLE VI: PREMIUMS AND COMMISSIONS

- A. **Remittance of Premium:** Producer, upon receipt of any payments from an Insured or proposed Insured, shall within 48 hours remit such premiums to Manager. Producer shall be allowed a commission on such premiums as set forth in Addendum No. 1, as may be revised from time to time in a manner consistent with the terms of this Agreement. Premiums shall be remitted as follows:
1. New and Renewal Business: Producer shall remit without deduction the gross premiums plus policy fees to Manager upon receipt.
 2. Premiums generated by policy changes will be remitted by Producer to Manager in the same manner as renewal premiums.
- B. **Premiums Held in Trust:** All premiums received by Producer are the property of the Insured (or proposed Insured) and the Insurer and shall be held by Producer in trust until delivered to Manager. The keeping of an account on Manager's books as a credit and debit account, and the payment of commissions by Manager, shall not be held to modify, affect, or waive the trust relationship as to premiums collected by Producer, nor Manager's interest in unpaid premiums that have not been collected by Producer.
- C. **Payment of Commissions:**
1. Producer commissions will be paid at least monthly for all transactions completed in the previous calendar month in accordance with the commission schedule in Addendum No. 1.
 2. No commission will be paid on policy or billing fees.
- D. **Insurer not a Party to Agreement:** Producer commissions are paid by the Manager. The Insurer is not a party to this Agreement and is not responsible to the Producer for any commission or other amounts arising from such Producers activities pursuant to this contract. If Manager places business under this Agreement with a program that limits the liability of the program's sponsoring insurance company to Producer, then Producer agrees that it shall have no right, claim or cause of action against that insurance company and shall look exclusively to Manager for the payment of or satisfaction of any and all damages, losses, claims, costs, causes of action or expenses (including attorneys' fees), including, but not limited to, extra-contractual damages or losses in excess of policy limits, arising, directly or indirectly, out of or in connection with such business, unless and to the extent such damages, losses, costs, causes of action or expenses are the result of the acts, omissions, or conduct of such insurance company.
- E. **Unearned Commissions:** Producer shall be liable to Manager and shall pay return commissions at the same rate as originally allowed to Producer for all return premiums. Such return commission shall be paid to Manager by the due date indicated on the billing document.

ARTICLE VII: RESPONSIBILITY IN EVENT OF CLAIMS

- A. Producer shall have absolutely no authority for the investigation, adjustment or litigation of claims arising from policies placed by Producer. Producer has no authority to and shall not admit any liability on the part of the Insurance Company in which the business is placed or on behalf of the Manager.
- B. Producer shall notify Manager promptly of any claims, suits, or demands ("Claims") against Manager arising out of or related to business placed under this Agreement, or circumstances that might reasonably be expected to give rise to such claim, suit, or demand. Producer further agrees to cooperate fully with Manager to facilitate the investigation and adjustment of any Claim when and as requested by Manager, including without limitation by making available for review and copying all records, documents, and information of any kind arising out of or related to such Claim or the underlying account.

ARTICLE VIII: TERMINATION AND SURVIVAL

This Agreement may be terminated by either party by providing no less than thirty (30) days' written notice to the other by certified mail, return receipt requested. 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, provided, that Manager may, upon review and in its sole discretion, appoint the successor as a Producer; (3) automatically, upon the death or dissolution, as applicable, of Producer; or (4) immediately, upon either party giving written notice to the other of termination because of breach of any provision hereof, fraud, insolvency, failure to pay balances, or willful or gross misconduct. Any termination will not affect the respective rights or liabilities of either party accruing up to the date of such termination, and all representations and obligations of Producer herein shall survive the termination of this Agreement, including without limitation the obligations under Article X. Furthermore, after the date of termination of this Agreement, Producer shall complete the collection and accounting to Manager for all premiums, commissions and other transactions unaccounted for in respect of outstanding policies of insurance, including but not limited to, return premium and return commissions.

ARTICLE IX: OWNERSHIP OF THE BUSINESS

Producer shall control all expirations and renewals of insurance placed under this Agreement; provided, however, in the event that Producer fails to account for or to make payment of all amounts due to Manager or an Insurer, such expirations and renewals, including any future commissions relating thereto, shall become the property of Manager for such use and disposal as Manager shall determine, in its discretion, in order to satisfy the financial obligations of Producer to Manager and/or an Insurer. To the extent the disposition of the expirations and renewals are insufficient to satisfy the indebtedness owed by Producer, Producer shall remain liable for all remaining amounts owed plus any expenses incurred in disposing of such expirations and renewals as well as reasonable costs and attorneys' fees.

ARTICLE X: INDEMNITY AND HOLD HARMLESS

Producer shall indemnify and hold Manager harmless from and against any claims, liabilities, obligations, judgments, settlements or costs of any kind whatsoever (including but not limited to attorney's fees and expenses) that Manager may become obligated to pay caused directly or indirectly by any actual or alleged act, error, omission, misstatement, misleading statement, breach of duty, or breach of this Agreement by Producer. Manager shall indemnify and hold Producer harmless from and against any claims, liabilities, obligations, judgments, settlements or costs of any kind whatsoever (including but not limited to attorney's fees and expenses) that Producer may become obligated to pay to Insureds caused directly by an act, error, omission, misstatement, misleading statement, or breach of duty by Manager in the processing of any business placed and/or attempted to be placed by Manager for Producer.

ARTICLE XI: OTHER PROVISIONS

- A. **No Assignment:** This Agreement for services by Producer is personal and may not be transferred, assigned, pledged, made subject to a security interest, or otherwise disposed of by Producer in whole or in part. This Agreement may be assigned by Manager to any of its affiliates.
- B. **Advertising:** Producer shall not use any advertisement referring to or using the name of Manager or any Insurer or referring to any of their products, or issue or cause to have issued any letter, circular, pamphlet, or other publication or statement so referring, without the express written consent of Manager.
- C. **Consequential Damages Waiver:** MANAGER SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED OR ON ANY THEORY OF LIABILITY.
- D. **Forms and Supplies:** All supplies, including forms and policies furnished by Manager, shall always remain the property of Manager and shall be returned to Manager or its representative upon demand or upon termination of this Agreement.
- E. **Records:** Producer will keep complete records and account for all transactions pertaining to insurance written under this Agreement as required by applicable federal, state, or local laws, rules, and regulations and make these records available to Manager for review upon request at any reasonable time during business hours.
- F. **Entire Agreement:** This Agreement constitutes the entire agreement between Manager and Producer and supersedes and replaces any previous Producer Agreements between Manager and Producer. No oral promises or representations shall be binding, nor shall this Agreement be modified, except by agreement in writing and executed by the President or Chief Executive Officer of Manager.
- G. **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 this Agreement shall be enforceable independently of any other provision unless expressed otherwise herein.
- H. **Waiver or Default:** Failure of Manager 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.
- I. **Governing Laws and Venue:** This Agreement shall be deemed to have been made and performed in Dallas County (hereinafter, the "County"), and shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas (hereinafter, the "State"), without giving effect to any choice of law principles. The sole and exclusive venue for any suit or proceeding to enforce any provision of this Agreement shall be in the County. To the extent they are not dealt with specifically or by necessary implication in this Agreement, the rights, duties, and obligations of the parties shall be in accordance with the customs prevailing in the non-standard personal lines insurance business in the State.
- J. **Electronic Communications:** The parties agree that electronic communications, including without limitation, any applications, authorizations, representations, or submissions, transmitted by one party to the other via e-mail, internet, or any other digital or electronic means (collectively, "Electronic Communications"), are as valid and binding, with the same full legal force and effect, as any original manual or physical form of communication and may therefore be relied and acted upon in the normal course of business by the receiving party.
- K. **Confidentiality:** Both Parties agree to the terms of the Confidentiality Addendum attached as Addendum No. 2 and incorporated fully herein by reference.

ADDENDUM NO. 1 TO NEWPORT PRODUCER AGREEMENT

DATED: _____, 20__.

Commissions payable for coverage provided in various insurance companies at rates as set out below:

Coverage	Commissions
Old American County Mutual Fire Insurance Company Private Passenger Auto Program	15% New Business / 15% Renewals

Type of Account: Cash with application, per program guidelines

ACCEPTED AND AGREED:

Producer: _____

Manager: Newport General Agency, Inc.

Signature: _____

Printed Name: _____

Name: Dennis DiCapua

Title: _____

Title: President

Date: _____

Date: _____

ADDENDUM NO. 2 TO NEWPORT PRODUCER AGREEMENT

1. DEFINITION OF CONFIDENTIAL INFORMATION.

1.1 Information to be treated as Confidential Information shall be all information that is supplied by Manager before or after the effective date of the Agreement to Producer concerning or relating to the Purpose (as defined below) or by Producer before or after the effective date of the Agreement to Manager concerning or relating to the Purpose, including, but not limited, to the following:

- (i) Confidential proprietary computer software, including any programs, source or object codes, data bases, specifications, techniques, technical information, know how, and other related information;
- (ii) Confidential strategic business information, including current and future marketing and business plans, confidential financial data, and related documentation and/or information; and
- (iii) Confidential account and customer lists and other account and customer information, such as policy terms, premium amounts, and information gathered as part of the underwriting process relating to persons or entities, including but not limited to their personal or unique identification data.

1.2 Notwithstanding any other provisions to the contrary, the obligations of the parties with respect to information designated to be Confidential Information shall not apply if, and to the extent that:

- (i) the disclosing party's information was legally and rightfully known to or already in the possession of the receiving party prior to disclosure;
- (ii) the disclosing party's information becomes part of the public domain without breach of the Agreement by the receiving party;
- (iii) the information is independently developed by the receiving party or any of its subsidiaries without reference to or use of the disclosing party's Confidential Information; or
- (iv) a third party legally and rightfully disclosed such Confidential Information to the receiving party without violating obligations of confidence.

Notwithstanding the foregoing, the fact that some of the information, including Confidential Information, may have originally been obtained from or provided by public information does not by this provision create any presumption that such information is "part of the public domain" or generic information or knowledge.

2. PURPOSE, USE, AND DISCLOSURE OBLIGATIONS.

2.1 The use of all Confidential Information disclosed to a receiving party shall be limited solely to and for the purposes of conducting business between the parties as contemplated and governed by the Agreement (the "Purpose").

2.2 The parties agree that disclosure of Confidential Information shall be limited solely to directors, officers, employees, representatives and other authorized third parties of the parties (collectively, "Representatives") with a need to know such Confidential Information to accomplish the Purpose. Each party agrees to obligate such Representatives to a level of care sufficient to protect the Confidential Information from unauthorized use or disclosure.

2.3 When either party disposes of any paper or electronic copies of Confidential Information pursuant to regular business practice, the disposing party shall destroy such copies using reasonable care and in such a manner so as to protect such Confidential Information from disclosure to or use by unauthorized third parties.

2.4 In the event that a receiving party or any of its Representatives are requested or required by legal process to disclose any of the Confidential Information of the disclosing party, the receiving party shall give prompt advance notice so that the disclosing party may seek a protective order or other appropriate relief. In the event that such protective order is not obtained, the receiving party shall disclose only that portion of the Confidential Information that its counsel advises it is legally required to disclose; provided that, the receiving party shall use reasonable efforts to preserve the confidentiality of the Confidential Information after such disclosure including, without limitation, by obtaining an appropriate order or other reliable assurance that confidential treatment will be accorded the Confidential Information by such tribunal and the parties thereto.

2.5 The obligations set forth in Section 2 of this Addendum shall remain in full force and effect in perpetuity or until such Confidential Information has become generally known in the public domain other than by a violation of the Agreement.

3. GENERAL

3.1 The holding of discussions between the parties or the disclosure of Confidential Information shall not restrict either party from using, disclosing or disseminating their own information, including Confidential Information, in any way.

3.2 It is agreed that no license under any invention, patent, copyright, trade secret or other proprietary right is granted, either directly or indirectly, by this Agreement or by any disclosure of Confidential Information hereunder. Neither party represents or warrants that Confidential Information disclosed hereunder will not infringe any third party's patents, copyrights, trade secrets or other proprietary rights.

3.3 Subject to the limitations on damages and other terms of the Agreement, each party agrees to indemnify and hold harmless the other party for any breach of this Confidentiality Addendum by it or any of its Representatives.