



NATIONAL PRODUCER AGREEMENT

This National Producer Agreement (this "Agreement") is made and entered into severally and not jointly, by Amwins Group, Inc. ("Amwins Group") and all of Amwins Group's direct and indirect subsidiaries owned from time to time and engaged in the property and casualty insurance brokerage business in the United States (herein collectively "Amwins") and _____, and its direct and indirect subsidiaries owned from time to time engaged in the property and casualty insurance brokerage business (hereinafter collectively, "Producer") effective this the ____ day of _____, 20__ (the "Effective Date"). Producer acknowledges this Agreement is between itself and the Amwins entity which it conducts business and that Producer will not contest the enforceability of this Agreement on the basis that Amwins Group is the signatory.

WHEREAS, Amwins and Producer want to improve the overall efficiency of the business they conduct by eliminating the need for the Producer to execute a separate broker, agency, or producer agreement with each Amwins Company;

WHEREAS, Producer desires Amwins to place risks of Producer's clients (hereinafter, the "insured") with and for acceptance by admitted and non-admitted insurance companies, as well as other risk-transfer facilities (individually, an "Insurer" and collectively, "Insurers"); and

WHEREAS, Amwins and Producer shall receive such compensation, if any, as agreed to by the parties from time to time for such business;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, Amwins and Producer agree as follows:

1. DUTIES AND RESPONSIBILITIES.

1.1. INDEPENDENT CONTRACTOR. Producer is an agent for the insured and acts on behalf of the insured. Producer is not an agent, subagent, or broker for Amwins. 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 Amwins and Producer. Producer is for all purposes an independent contractor.

1.2. LIMITATION OF RESPONSIBILITIES OF Amwins. Amwins retains sole discretion to accept, reject, or submit to an insurer for consideration any applications 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. Except to the extent specific written recommendations are made by Amwins and acted upon by Producer and insured or as may be otherwise expressly set forth in this Agreement, Amwins 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 Amwins. Without limiting the effect of Section 11, Producer expressly agrees to indemnify and hold Amwins harmless from any claim or liability asserted against Amwins as a result of following the Producer's instructions.

- 1.3. NO BINDING OR REPRESENTATIONAL AUTHORITY.** Producer shall have no authority to (a) commit to or issue binders, policies, or other written evidence of insurance on behalf of Amwins, or (b) 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 Amwins or any Insurer. Amwins will not verify the accuracy or completeness of any certificates of insurance, or any other evidence of coverage, prepared by Producer and specifically disclaims any liability arising out of any certificates of insurance, or any other evidence of coverage, prepared by Producer.
- 1.4. ELECTRONIC COMMUNICATIONS.** Both parties agree that electronic communications, including without limitation, any applications, authorizations, representations, submissions, quotes, binders, or policies transmitted 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. Producer agrees that the completion and submission of any Electronic Communications by Producer constitutes a valid application and submission to Amwins, with the same legal force and effect as completing and submitting a hard copy application.
- 1.5. 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 Amwins for review upon request at any reasonable time during business hours.
- 1.6. CLAIM REPORTING.** Amwins is not responsible for claims reporting. Producer agrees that all claims will be reported in accordance with the provisions of the policies placed.
- 2. 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 Amwins or an Insurer, such expirations and renewals, including any future commissions relating thereto, shall become the property of Amwins for such use and disposal as Amwins shall determine, in its discretion, in order to satisfy the financial obligations of Producer to Amwins 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 attorney fees.
- 3. BROKER OF RECORD.** In the event a change in the broker of record for a particular account is effected, Producer agrees that, any amounts due Amwins or the insured for transactions (including audits, unearned commission and return premium) after the effective date of any change, are the sole responsibility of the newly recognized broker.

4. PAYMENT OF PREMIUM.

4.1. GUARANTEE OF PAYMENT. Except as otherwise set forth in this Section 4, Producer guarantees the full payment due Amwins of all premiums, including but not limited to, deposit, minimum earned, extension, and adjustable premiums, such as those determined under audits or retrospective penalties, fees, plus applicable state and local taxes, less applicable commission, on every insurance contract bound, written, or placed for Producer. *Producer shall be liable to Amwins for the payment of all premiums, fees, and taxes whether or not actually collected by the Producer.* Any credit extended to insured shall be the sole risk and responsibility of Producer, subject to policy terms and conditions. To the fullest extent allowed by law and unless otherwise agreed to in writing by Amwins, all fees, including but not limited to, service fees, shall be fully earned by Amwins when coverage is bound.

Amwins' billings may take the form of binders, invoices, or statements (individually, a "Billing" and together, the "Billings"). The net balance will be due and payable as indicated in such Billings and may vary based upon the payment terms of the issuing company. If no date is specified, premiums are to be remitted no later than the 20th day following the effective date of the underlying transaction. The omission of any item(s) from a Billing shall not: (1) affect Producer's responsibility to account for and pay all amounts due; (2) prejudice the rights of Amwins to collect all amounts due from Producer; or (3) extend the time within which Producer must make payment. Amwins shall at all times have the right to offset any amount due Amwins against any amounts owed to Producer under this Agreement.

4.2. DIRECT COLLECTION. To the extent earned premium has not been paid, Amwins reserves the right to collect such amounts directly from the insured. Any attempts by Amwins to collect from insured will not relieve Producer of liability to Amwins, except to the extent of amounts actually collected by Amwins from insured less the expense incurred by Amwins for such collection. Producer further agrees that, if it becomes necessary for Amwins to initiate direct collection efforts for past-due amounts on accounts covered by this Agreement, then Producer shall forfeit its right to receive commissions or any other compensation related to such account for that policy term.

4.3. COMMISSION. Subject to the terms of Section 4, Producer shall earn, as commission, a percentage of the premium written at the rate agreed upon by Amwins and Producer, or such other lawful compensation as the parties may decide, if any, from time to time. Amwins shall not be responsible for any costs or expenses of Producer whatsoever, unless specifically authorized by Amwins in advance in writing.

4.4. SURPLUS LINES TAXES AND FEES. To the fullest extent allowed by law and unless otherwise agreed to in writing by Amwins, Producer agrees to timely collect, remit, and provide all applicable surplus lines taxes and stamping (or other required fees), and any state required forms to Amwins or applicable taxing authority as appropriate. Producer agrees to pay all surplus lines taxes due on policies with adjustable premiums, whether such premium is actually collected and paid or not, if and to the extent payment of such taxes is required by applicable law.

4.5. AUDITABLE POLICIES. Notwithstanding anything to the contrary in this Agreement, where premium for one or more policies that have been issued cannot be fully determined

in advance and where an adjustment or determination, after a specific time period, is made by audit, retrospective rating, or by interim reports, such premium is fully earned and due by the date specified in the Billings, and the amount of such additional premium due shall be paid by Producer to Amwins by the date indicated. Producer will make all reasonable efforts to collect any amounts due. If Producer notifies Amwins in writing no later than the due date reflected in any Billings that Producer has made diligent efforts and is unable to collect such premium (the "Uncollectible Premium"), Amwins will relieve Producer of the responsibility for collection of such Uncollectible Premium only to the extent Amwins is relieved of its responsibility to the applicable Insurer to collect the Uncollectible Premium. A copy of Producer's invoice to insured, as well as copies of any correspondence pertaining to the collection, must be sent with the notice from Producer. Failure to give Amwins notice of uncollectability prior to the due date reflected in the Billings shall constitute Producer's acceptance of responsibility to pay such premium. No commission will be allowed to Producer on premium collected directly by Amwins or an insurer under this provision.

- 4.6 BANK ACCOUNTS** – Producer will hold in trust, in a fiduciary capacity, all premium (net of commissions) for the benefit of Amwins and the Insurer, in accordance with all applicable state insurance laws. Producer shall not co-mingle any of Insurer's premium funds with any of Producer's personal or operating funds. Interest accruing on the premium funds in a premium trust account may be retained by Producer in accordance with applicable law, so long as Producer timely transmits all net balances due to Amwins in accordance with this Agreement and complies with all other provisions of this Agreement.
- 5. CANCELLATIONS.** Once coverage under an insurance policy has been bound, no flat cancellations shall be permitted except to the extent permitted by the Insurer. If the insurance policy is cancelled by the insured prior to the expiration date, Producer acknowledges that a short-rate cancellation penalty may apply and would be deducted from any return premium. Producer agrees Amwins is not liable for any short rate penalty.
- 6. UNEARNED COMMISSIONS.** Producer shall be liable for and shall pay return commissions at the same rate as originally allowed to Producer for all return premiums. Such return commission shall be paid by the due date reflected on the Billings. If a return premium becomes due under any contract of insurance and Amwins has been issued a credit, or payment has been rendered, for such premium by the Insurer, Amwins will pay to Producer such return premium less the unearned portion of any commission previously retained by the Producer.
- 7. FINANCED PREMIUMS.** On all premiums that have been financed where Amwins has received proper legal notice, Amwins will remit payment for any return premium actually received by it, plus Amwins' portion of unearned commission, directly to the premium finance company. The ultimate liability of Amwins for payment to any premium finance company, Producer, or insured shall never exceed the amount of return premium received by Amwins plus Amwins' portion of unearned commission. Producer agrees to indemnify and hold Amwins harmless from any responsibility for payment to any premium finance company and further agrees that financing arrangements do not diminish the responsibility for the timely payment of premium by the Producer. Policy provisions prevail over premium financing contracts to the extent permitted by law. Any requests to reinstate coverage following receipt of a notice to cancel from a premium finance company will not be effective until written

agreement to reinstate the policy is confirmed by the insurance carrier. Producer agrees that it will not offset any balances owed Amwins against any credit for return premium owed to a premium finance company.

- 8. CLAIMS AGAINST AMWINS.** Producer shall notify Amwins promptly of any claims, suits, or demands against Amwins 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 Amwins to facilitate the investigation and adjustment of any claim when and as requested by Amwins, 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.

- 9. ADVERTISING.** Producer shall not use any advertisement referring to or using the name of Amwins 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 Amwins.

- 10. NOTICE OF EXPIRATION AND RENEWAL REQUESTS.** Amwins shall be under no obligation to give Producer advance notice of expiration of any policies of insurance placed for Producer by Amwins.

- 11. INDEMNITY AND HOLD HARMLESS.** Producer shall defend, indemnify and hold Amwins harmless from and against any claims, liabilities, obligations, judgments, settlements or costs of any kind whatsoever (including but not limited to reasonable attorney's fees and expenses) that Amwins 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. Amwins shall defend, 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 reasonable 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 Amwins in the processing of any business placed and/or attempted to be placed by Amwins for Producer. For purposes of this Agreement, the rights, duties and obligations of each of the various Amwins (individually, an "Amwins Entity" and together, "Amwins Entities") under this Agreement shall be individual and not attributable to Amwins Group, its affiliates, or any of the other Amwins Entity. No Amwins Entity is an agent of any other Amwins Entity, and the acts of any Amwins Entity shall not be imputed to any other Amwins Entity.

- 12. CONSEQUENTIAL DAMAGES WAIVER.** Amwins SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.

- 13. CONFIDENTIALITY.** Both Parties agree to the terms of the Confidentiality Addendum attached hereto as Addendum A and incorporated fully herein by reference.

14. REPRESENTATIONS AND WARRANTIES. A breach of any one or more terms or conditions, or any breach of any representation or warranty given pursuant to this Agreement, shall be deemed a material breach of this Agreement, entitling Amwins, without limiting any other remedies that may be available, to terminate this Agreement immediately upon notice to Producer. Producer hereby represents, warrants, and covenants as follows:

14.1. 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 agent, solicitors, servants, employees, and representatives, with limits of not less than \$1,000,000 per claim and a per claim deductible or self-insured retention that Amwins deems, in its sole discretion, to be commercially reasonable. Producer has, and will maintain throughout the duration of this Agreement, Employee Dishonesty coverage with limits of not less than \$25,000 per claim (or an amount that is deemed commercially reasonable by Amwins) and a per claim deductible or self-insured retention that Amwins deems, in its sole discretion, to be commercially reasonable. This requirement may be satisfied in one or more of the following ways: (i) a stand-alone crime / fidelity insurance policy; (ii) Employee Dishonesty coverage provided under a business owners policy; or (iii) other insurance product affording such coverage as deemed acceptable by Amwins. Producer agrees to provide Amwins with proof of such coverage annually and at such other times as Amwins may reasonably request.

14.2. 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 Amwins. Producer will promptly notify Amwins of any suspension, revocation, or other disciplinary action taken, or any other impairment, of or with respect to such license(s).

14.3. COMPLIANCE. Producer represents, warrants, and covenants that it 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.

15. APPLICATION TO BUSINESS ACTIVITIES. The parties agree that this Agreement shall apply to all business activities and policies placed or that may be placed by Amwins for Producer, as well as amounts owed on any policies that were placed by Amwins for any entity acquired by Producer.

16. WAIVER OR DEFAULT. Failure of Amwins 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.

17. TERMINATION AND SURVIVAL; NOTICE. This Agreement may be terminated by either party giving at least ninety (90) days prior written notice to the other. 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 Amwins 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 Section 11 hereto. Furthermore, after the date of termination of this Agreement, Producer shall complete the collection and accounting to Amwins 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.

Any notice, offer, acceptance or other document required or permitted to be given pursuant to any provisions of this Agreement shall be in writing, signed by or on behalf of the person giving the same, and shall be deemed to have been duly given (i) when delivered by hand, (ii) five (5) Business Days after it is mailed, if mailed by registered or certified mail, postage prepaid (return receipt requested), or (iii) one (1) Business Day after it is mailed, if mailed by a nationally recognized overnight delivery service, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice, provided that notices of a change of address shall be effective only upon receipt thereof):

If to Amwins: Amwins Group, Inc.
4725 Piedmont Row Drive, Suite 600
Charlotte, North Carolina 28210
Attention: Donna L. Hargrove, General Counsel

If to Producer, at the address provided at the end of this Agreement.

18. GOVERNING LAWS AND VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to any choice or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction) that would cause the application of laws of any other than those of the State of North Carolina.

19. ATTORNEY'S FEES AND COSTS. Producer agrees to pay all costs and expenses incurred by Amwins in any action or proceeding brought by Amwins to recover sums due from Producer, or otherwise enforce its rights, under the terms of this Agreement, including but not limited to, reasonable attorney's fees.

20. INTEREST. In any suit or proceeding to collect any amount claimed due under this Agreement, the prevailing party shall be entitled to receive interest on the amount owed computed from the date the obligation accrued at the lesser of ten percent (10%) per annum or the maximum lawful rate of interest per annum that may be incurred by contract in the jurisdiction found to apply under Section 18.

- 21. 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 Amwins to any of its affiliates.
- 22. ENTIRE AGREEMENT AND NO RELIANCE.** This Agreement constitutes the entire agreement between Amwins and Producer and supersedes and replaces any previous Producer Agreements between Amwins 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 Chief Executive Officer or Chief Operating Officer of Amwins. Producer agrees that it has not relied on any representation or statement of Amwins in entering into this Agreement.
- 23. 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.
- 24. EXECUTION AND ACCEPTANCE OF AGREEMENT.** Each individual who executes this Agreement in a representative capacity represents and warrants that he or she has the full right, power and authority 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 or limited liability company, an authorized officer must sign and indicate the title of such authorized officer. Producer acknowledges this Agreement is between itself and the Amwins entity which it conducts business and that Producer will not contest the enforceability of this Agreement on the basis that Amwins Group is the signatory. *Producer acknowledges and agrees that this Agreement shall not become effective until finally accepted by Amwins, as evidenced by the signature of its Chief Executive Officer or Chief Operating Officer below.*
- 25. COURSE OF DEALING.** No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term of this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.
- 26. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or other electronic device (including as a .pdf or other attachment to electronic mail) shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile or other electronic device shall also, at the request of the other party, deliver an original executed counterpart of this Agreement, but the failure to deliver an original executed counterpart of this Agreement shall not affect the validity, enforceability and binding effect of this Agreement.

ACCEPTED AND AGREED:

Producer (from Page 1 of agreement)

Address

By

FEIN / Social Security (if individually)

Printed Name

License State

Title

License Number

Date

License Expiration Date

ACCEPTED, AGREED, AND EFFECTED by Amwins as of the Effective Date shown on page 1 of the Agreement.

AMWINS GROUP, INC.

BY:

Scott M. Purviance

PRINTED NAME:

Chief Executive Officer

TITLE:

ADDENDUM A

CONFIDENTIALITY AGREEMENT

(To the Producer Agreement)

BACKGROUND STATEMENT

Amwins and the Producer (referred to herein individually as a “Party” and collectively as the “Parties”) from time to time may furnish or already have furnished, certain Evaluation Material (as defined below) to the other Party and its Representatives (as defined below) concerning the placement of insurance (the “Proposed Transaction”). As used herein, the party disclosing Evaluation Materials is the “Disclosing Party” and the party receiving the Evaluation Materials is “Recipient.”

Recipient acknowledges that the Evaluation Material of the Disclosing Party includes, or will include, information that is proprietary and important to the business and prospects of the Disclosing Party. Recipient and the Disclosing Party have entered into this Confidentiality Agreement in order to ensure the confidentiality of the Evaluation Material and to confirm certain other agreements related to Recipient’s evaluation of the Proposed Transaction.

STATEMENT OF AGREEMENT

The Parties hereto agree as follows:

Definitions. For purposes of this Confidentiality Agreement, the following terms have the meanings set forth below:

“Evaluation Material” means, with respect to a Disclosing Party, and its affiliates, subsidiaries and parent entities, information that is not generally known to the public that has been furnished or disclosed or will be furnished or disclosed to the Recipient or its Representatives (whether before or after the date of this Confidentiality Agreement and whether in oral, written, electronic or other form) and includes, without limitation, actuarial models, loss information, proprietary guidelines, rating models, computer programs, specifications, market information, product designs, product strategies, financial and pricing information, customer and supplier information and any materials evidencing the same and includes all notes, analyses, compilations, studies, interpretations or other data (whether prepared by the Disclosing Party or its Representatives or the Recipient or its Representatives) that contain, are based upon (in whole or in part) or otherwise reflect such information.

Notwithstanding the foregoing, the term “Evaluation Material” does not include information that Recipient demonstrates (i) is or becomes generally available to the public other than as a result of a disclosure by Recipient or its Representatives, (ii) was within Recipient’s possession prior to its being furnished to Recipient or its Representatives by the Disclosing Party or its Representatives pursuant hereto, but only to the extent that the source of such information was not bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the Disclosing Party or any

other party with respect to such information; or (iii) is or becomes available to Recipient from a source other than the Disclosing Party or any of the Disclosing Party's Representatives, but only to the extent that such source is not bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the Disclosing Party or any other party with respect to such information.

“Representatives” means, with respect to any Party, the subsidiaries and affiliates of such Party and the respective directors, officers, employees, representatives or agents of such Party and of its subsidiaries and affiliates.

“Person” means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or governmental body.

Limited Use of Evaluation Material. Except as otherwise expressly provided in this Confidentiality Agreement, without the prior written consent of the Disclosing Party, all Evaluation Material of the Disclosing Party (i) shall be held in confidence and not disclosed by Recipient or its Representatives to any Person other than Recipient and its Representatives who need to know the Evaluation Material to evaluate a Proposed Transaction and who are informed of its confidential nature and are informed of the terms of this Confidentiality Agreement, (ii) shall not be used by Recipient or its Representatives other than in connection with consideration of a Proposed Transaction and (iii) shall not be used by Recipient or its Representatives in any way detrimental to the Disclosing Party. Recipient agrees to be responsible for any breach of this Confidentiality Agreement by any of its Representatives and to take all such actions as are reasonably necessary to cause its Representatives to comply with the terms of this Confidentiality Agreement and to prevent any disclosure of the Evaluation Material of the Disclosing Party by any of Recipient's Representatives (including taking all actions that Recipient would take to protect its own trade secrets and confidential information). Recipient acknowledges and agrees that the Disclosing Party retains all of its intellectual property rights in its Evaluation Materials and that neither the furnishing of the Evaluation Materials to Recipient or its Representatives nor the execution by Recipient of this Confidentiality Agreement shall be construed as granting to any right or license whatsoever in or to its Evaluation Materials.

Disclosure Pursuant to Subpoena. If Recipient or any of its Representatives are requested or required to disclose any Evaluation Material of the Disclosing Party (or to disclose that any investigations, discussions or negotiations have taken or will take place concerning a Proposed Transaction) pursuant to a subpoena, court order, civil investigative demand or similar judicial process, Recipient shall provide the Disclosing Party with prompt written notice of any such request or requirement so that the Disclosing Party or any of its Representatives may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Confidentiality Agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by the Disclosing Party, Recipient or any of its Representatives are nonetheless, in the opinion of counsel, legally compelled to disclose Evaluation Material of the Disclosing Party (or information relating to any such investigation, discussions or negotiations) or else stand liable for contempt or suffer other censure or penalty, Recipient or such Representative may, without liability hereunder, disclose only that portion of the Evaluation Material that such counsel advises Recipient or such Representative to be legally required to be disclosed; provided, however, that Recipient and any such Representative exercise all reasonable efforts to preserve the confidentiality of the Evaluation Material of the Disclosing Party (or information relating to any

such investigation, discussion or negotiations), including, without limitation, by cooperating with the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded such information at the expense of the Disclosing Party.

Destruction of Evaluation Material. Promptly upon the Disclosing Party's request therefor, Recipient shall, and shall cause its Representatives to, destroy all other Evaluation Material of the Disclosing Party, including notes, analyses, compilations, studies and other documents (whether in written, electronic or other form) prepared by Recipient or any of its Representatives, and any Evaluation Material not so requested and returned (and shall confirm such destruction to the Disclosing Party in writing, such confirmation to include a complete list of destroyed materials in reasonable detail), provided that Recipient may retain one copy of the Evaluation Materials of the Disclosing Party for its files which shall remain subject to the other terms of this Confidentiality Agreement. Neither the return of Evaluation Material to the Disclosing Party nor the destruction of Evaluation Material shall relieve Recipient or its Representatives of their obligations of confidentiality or any other obligation hereunder.

Term. This Confidentiality Agreement shall have a term of two years following the last date upon which Evaluation Materials were provided to a party hereto.

Remedies. Recipient shall be responsible for and shall indemnify and hold harmless the Disclosing Party from, and shall pay the Disclosing Party for, any damage, loss, cost or liability (including but not limited to attorney's fees and the costs of enforcing such obligations under this indemnity) arising out of or resulting from any breach by Recipient or its Representatives of its obligations hereunder. Recipient acknowledges that remedies at law are inadequate to protect against breach of this Confidentiality Agreement and hereby agrees, without prejudice to any rights to judicial relief the Disclosing Party may otherwise have, to the granting of equitable relief, including injunction and specific performance, in the Disclosing Party's favor without proof of actual damages and without the requirement of posting a bond or other security.

Severability. If any term or provision of this Confidentiality Agreement, or any application thereof to any circumstances, shall, to any extent and for any reason, be held to be invalid or unenforceable, the remainder of this Confidentiality Agreement, or the application of such term or provision to circumstances other than those to which it is held invalid or enforceable, shall not be affected thereby and shall be construed as if such invalid or unenforceable provision had never been contained herein and each term and provision of this Confidentiality Agreement shall be valid and enforceable to the fullest extent permitted by law.

Entire Agreement. This Confidentiality Agreement shall constitute the entire agreement between the Parties with regard to the subject matter hereof. No modification, amendment or waiver shall be binding without the written consent of both Parties. This Confidentiality Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and assigns; provided, however, that neither this Confidentiality Agreement nor any of the rights, interests and obligations hereunder shall be assigned by either of the Parties hereto without the prior written consent of the other Party, and no assignment of any right, interest or obligation shall release any such assigning Party therefrom unless the other Party shall have specifically consented to such release in writing. It is further understood and agreed that no failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Application to Representatives. Any person who at any time after the date hereof becomes a Representative or affiliate of either Party shall be deemed to be such Party's Representative or affiliate, for the purposes of this Confidentiality Agreement, regardless of whether such person was such Representative or affiliate on the date hereof.