

## PRODUCER AGREEMENT

THIS AGREEMENT ("Agreement") is made by and between **THE MATTEI COMPANIES**, a Washington entity, whose address is 701 Pike Street, Suite 900, Seattle, WA 98101 ("TMC") and whose address is ("Producer").

### RECITALS

1. The Mattei Companies is comprised of, but not limited to, the following entities: R.F. Mattei & Associates, Inc., R.F. Mattei & Associates (California), Inc. and R. F. Mattei & Associates (Alaska), Inc.
2. Producer wishes to present to TMC applications for policies for risks to be underwritten by insurance companies with whom TMC has contracted business relationships.

### AGREEMENTS

1. Collection of All Premiums. The Producer shall unconditionally guarantee the collection, receipt, and remittance to TMC of all premiums, commissions and fees due to any company issuing a policy as a result of this Agreement and/or to TMC. Producer shall retain, as its full compensation out of the amounts so collected its commission for a particular policy. For purposes of this Agreement, the term "policy" shall include, but not be limited to, policies, endorsements, audits and instruments of surety. Producer hereby agrees to hold all such premiums, commissions, and fees collected by it for remittance to any company and/or to TMC in a segregated "Premium Due Companies" account without commingling such funds with any other operating funds of the Producer. Producer agrees that all such premiums, commissions and fees due to any company issuing a policy and/or to TMC shall be paid by Producer to TMC within fifteen (15) days after the end of the month in which such policy is effective, unless payment at a later date for a particular policy is authorized in writing by TMC.

In the event any payments due under the terms of this agreement are not paid as provided herein, all payments become due and payable immediately. TMC reserves the right to suspend any of Producers authorities under any section of this agreement for failure to remit premiums due.

2. Failure to Collect Any Premiums. If Producer fails to collect any premium, commission, or fee due to any insurance company issuing a policy and/or to TMC, within twenty (20) days of the date that such premium is due, Producer shall notify TMC and the insurance company of its inability to collect such premium. TMC and the insurance company shall have the right, but not the obligation, to collect such premium, commission, or fee from the insured; provided, however, that no action on the part of TMC or the insurance company shall relieve Producer of its obligation to remit all such premiums or its guarantee under Section 1 hereof.

Failure by Producer to report or pay due premium items or report discrepancies to TMC within the 30 day period will be considered as the Agent's indication/authorization to TMC that the policy or other premium bearing items should be canceled by TMC. A copy of the Direct Notice of Cancellation to the Insured will be sent by TMC to Producer and the Direct Notice of Cancellation will be sent by TMC to the policyholder. Producer's account will be charged with any earned premium, fees and the like.

Exception: Uncollectable premiums as a result of a final audit may be returned, as allowed by insuring company, for direct collection subject to the following conditions:

- 2.1 Producer must provide evidence of their diligent efforts to collect any premium due.
- 2.2 Notice must be made to TMC within 30 days from audit billing date.

Producer shall have no right to any commission from the policy where TMC or the insurance company has collected the premium from the insured pursuant to this Section.

3. Additional Obligations of Producer. Producer agrees to pay any countersignature fees or surplus lines taxes or other fees that are due and payable as a consequence of any policy issued as a result of this Agreement.
4. Producer's Commissions. Commission rates and their terms relating to the Producer's commission for each policy issued as a result of this Agreement shall be established by mutual agreement between TMC and the Producer. Producer acknowledges and agrees that its right to receive commissions, fees or other compensation from any policies issued as a result of this Agreement arises solely from its contractual relationship with TMC. If any policy for which Producer received a commission as a result of this Agreement is canceled or terminated for any reason or if the premiums on an existing policy are reduced, Producer agrees to pay to TMC any unearned commissions on such policies within fifteen (15) days after the end of the month in which such termination, cancellation, or reduction in premiums occurs.
5. Producer Not Acting As Agent of TMC. Producer and TMC are, and at all times shall remain, independent contractors as to each other, and at no time shall either be deemed to be the agent of the other, and no joint venture, partnership, agency or other relationship shall be created or implied by reason of this Agreement. Producer acknowledges that:
  - 5.1 it has no right or authority to bind any coverage, or to make any representations concerning the binding of any coverage, without prior written approval and authorization from TMC;
  - 5.2 it has no right or authority to admit liability or potential liability on the part of TMC in any manner except in accordance with specific written authority extended to Producer by TMC; and
  - 5.3 it is acting solely on behalf of Producer's clients and nothing in this Agreement shall be construed so as to require otherwise.
6. Certificates of Insurance. TMC grants Producer the authority to issue Certificates of Insurance on TMC's behalf. Producer acknowledges that:
  - 6.1 it must use the ACORD form and may not alter the form or any wording on the form in any way;
  - 6.2 it is prohibited from issuing any certificate that varies from or expands the actual coverage afforded by a bound policy in any way;
  - 6.3 it must send a copy of every certificate it issues, at the time of issuance, to TMC for review. If the certificate is rejected by TMC, TMC will send written communication to both the Producer and Certificate Holder(s); and
  - 6.4 it shall immediately reissue certificates rejected by TMC in accordance with directions provided in the written communication from TMC.

7. Representations and Warranties of Producer. Producer represents and warrants that:
- 7.1 It is a legally licensed agent/broker/producer in the state or states in which the Producer engages in the business of insurance or suretyship. Producer agrees to provide TMC with evidence of such license(s); and to immediately notify TMC if:
    - (a) Producer becomes licensed in additional relevant states; or
    - (b) any public authority cancels or declines to renew Producer's license or Producer is subject to disciplinary action by the Department of Insurance in any of the states in which Producer is currently licensed or becomes licensed during the term of this Agreement;
  - 7.2 it is in compliance with the Violent Crime Control and Enforcement Act [U.S. Code, Title 18, Part I, Chapter 47, Section 1033] in that it does not employ any individual convicted of a criminal felony involving dishonesty or breach of trust;
  - 7.3 it will maintain, during the term of this Agreement, errors and omission insurance and fidelity insurance with such carriers as are approved by TMC and in such amounts as TMC, in its sole discretion, determines to be reasonable. Producer agrees to provide TMC with a certificate of insurance, on an annual basis, concerning the renewal of such policies or bonds;
  - 7.4 it will adhere to all insurance and/or suretyship laws and regulations of the state or states in which it engages in business during the term of this Agreement;
  - 7.5 it has the authority to enter into this Agreement and to perform all obligations and transactions contemplated by this Agreement; and
  - 7.6 it will comply with the underwriting rules, regulations and instructions of TMC as may be published from time to time.
8. Premium Finance Contracts. Producer agrees that all premium finance contracts to finance the premiums for any policies shall be subject to acceptance by TMC and/or the insurance company.
9. Ownership of Expirations. The records of the Producer and the use and control of expirations on business written through TMC by the Producer shall remain the property of the Producer and will be left in the Producer's undisturbed possession so long as the Producer has accounted for and paid to TMC all premiums collected or held for TMC. If the producer fails to fulfill all of these obligations, then the title, use and control of the Producer's records and expirations on business written through TMC immediately vest in TMC, with the right to sell, assign or transfer, and TMC has the right to require from the producer the immediate delivery of all relevant records. However, TMC will refrain from exercising its right to sell, assign or transfer if the Producer promptly furnishes security acceptable to TMC for the payment of the Producer's debt to TMC.
10. Books and Records. Producer agrees to allow TMC full access, at reasonable times during business hours, to its books and records for the purpose of verifying policies issued, or premiums, commissions, or fees due to the insurance company and/or to TMC as a result of this Agreement.
11. Termination of Agreement. This Agreement shall terminate immediately upon the occurrence of any of the following events:

- 11.1 if any public authority cancels or declines to renew Producer's license in any state or states where Producer is engaged in the business of insurance or suretyship;
- 11.2 if Producer is the subject of disciplinary action resulting in the loss of license by the Department of Insurance of any jurisdiction in which Producer engages in business;
- 11.3 if twenty-five percent (25%) or more of the ownership of Producer is transferred by sale, gift, redemption, merger or other disposition unless said transfer is approved in writing by TMC prior to its effective date; or
- 11.4 if TMC determines Producer has commingled premiums, commissions, or fees due to the insurance company and/or to TMC with any other operating funds.

This Agreement shall also terminate upon thirty (30) days written notice, or in accordance with state regulations pertaining to notification, by either party to the other party.

12. Attorneys' Fees. In any proceeding brought to enforce this Agreement or to determine the rights of the parties under this Agreement, the prevailing party shall be entitled to collect, in addition to any judgment awarded by a court, a reasonable sum as attorneys' fees, and all costs and expenses incurred in connection with such a lawsuit, including attorneys' fees, costs and expenses of any appeal of a judgment. For purposes of this Agreement, the prevailing party shall be that party in whose favor final judgment is rendered or who substantially prevails, if both parties are awarded judgment. The term "proceeding" shall mean and include arbitration, administrative, bankruptcy and judicial proceedings including appeals.

13. General Provisions

- 13.1 Notices. All notices required or permitted hereunder shall be in writing and shall either be delivered in person or sent by certified mail, return receipt requested, and shall be deemed received on the sooner of actual receipt or five (5) days after deposited in the mail, postage prepaid, addressed to TMC or Producer at the address set forth in the introductory paragraph of this agreement. Notice of a change of address shall be given by notice in the manner detailed above.

13.2 Indemnification.

- (a) TMC shall indemnify, defend and save harmless Producer from any and all loss, liability, damage and expense (including attorneys' fees and expenses of litigation and costs of appeal) which Producer may incur or suffer by reason of TMC's material inaccuracy of any representation or by reason of any material breach of any term, condition, or warranty contained in this Agreement.
- (b) Producer shall indemnify, defend and save harmless TMC from any and all loss, liability, damage and expense (including attorneys' fees and expenses of litigation and costs of appeal) which TMC may incur or suffer by reason of the Producer's material inaccuracy of any representation or by reason of any material breach of any term, condition, or warranty contained in this Agreement.

- 13.3 Binding Effect; Assignment. The covenants, agreements, representations and warranties contained herein shall extend to and be obligatory upon the successors and assigns of the respective parties hereto. Notwithstanding the foregoing, Producer may not at any time, without the prior written consent of TMC, transfer or assign any of its rights or obligations under this Agreement.

- 13.4 Amendment. This agreement may be amended only by written instrument executed by Producer and TMC.
- 13.5 Entire Understanding. This Agreement embodies the entire agreement between the parties with relation to the transactions contemplated hereby. There have been and are no covenants, agreements, representations, warranties or restrictions between the parties other than those set forth herein. The provisions of this Agreement cannot be waived except by the written agreement of the party against whom a waiver shall be asserted.
- 13.6 Severability. If any portion of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.
- 13.7 Captions. Section or paragraph titles or other headings contained in this Agreement are for convenience only and shall not be a part of this Agreement, or considered in its interpretation.
- 13.8 Survival. The terms and conditions of this Agreement and the representations and warranties of Producer hereunder shall survive the termination of this Agreement.

EXECUTED on the date and year first above-written.

THE MATTEI COMPANIES

By \_\_\_\_\_  
 Its Authorized Representative \_\_\_\_\_  
 Executed \_\_\_\_\_

PRODUCER:

By x \_\_\_\_\_  
 Printed  
 Name x \_\_\_\_\_  
 Title x \_\_\_\_\_  
 Dated x \_\_\_\_\_

