

CHENANGO EXCESS AND SURPLUS, INC. BROKERAGE AGREEMENT

THIS AGREEMENT, effective as of the ____ day of _____, 20__, by and between, CHENANGO EXCESS AND SURPLUS, INC., a New York domestic business corporation, with its home office and principal place of business at 65 West Front Street, Hancock, New York (hereinafter “CHENANGO”), and _____ [INSERT BROKER NAME AND ADDRESS] (hereinafter the “Broker”).

WHEREAS, Broker wishes to place certain products with various insurance carriers for (his) (her) (its) clients through CHENANGO; and

WHEREAS, CHENANGO desires to provide the services of an excess and surplus lines broker to place insurance on behalf of Broker with various insurance companies with which CHENANGO has a relationship.

1. RETENTION AND PROVISION OF SERVICES

1.1 Independent Broker

The Broker will act as an independent insurance broker and will be entitled to receive commissions as set forth in this Agreement. Under no circumstances will the Broker be considered an agent, partner or joint venture of CHENANGO. The Broker will not be entitled to reimbursement from CHENANGO for any expenses incurred in the performance of its responsibilities under this Agreement.

As an independent insurance broker on behalf of (his) (her) client, Broker has the authority to refer submissions for insurance products to CHENANGO for placement by CHENANGO with insurers with which CHENANGO has a relationship.

Broker has no authority to bind any risk or commit CHENANGO or any insurer to any risk, policy change, or course of action without prior written permission of CHENANGO and the insurer. Any and all requests received by Broker for endorsements, amendments, cancellation, or modification of any policies placed through CHENANGO shall immediately be forwarded to CHENANGO. Broker shall immediately forward written notice of all occurrences, claims, suits or proceedings of any notice of which Broker receives written notice and which involve the insured, a policy holder, CHENANGO or the insurer and Broker agrees to cooperate and assist CHENANGO and the insurer in the adjustment of all such claims, suits or proceedings. Unless CHENANGO provides written authority to do so, Broker does not have the authority to commit CHENANGO or any insurer to pay for any loss occurring under any policy or coverage document, or to communicate any position or opinion to any insured or claimant as to whether any claim or loss is covered under any policy or coverage documents.

_____ CHENANGO Initials
_____ Broker Initials

1.2 Responsibilities of Broker

Broker understands that in providing coverage, CHENANGO is relying upon the accuracy of information provided by the insured through Broker and submitted to CHENANGO. It is the responsibility of Broker to disclose to CHENANGO the existence of any conditions which he is or reasonably should be aware of that may affect the insurability of the insured.

Further, it is the responsibility of Broker to inform CHENANGO as to the type and amount of insurance coverage to be considered for quotation. CHENANGO assumes no responsibility with regard to the adequacy, amount or form of coverage obtained through any insurance carrier.

Upon receipt of new, renewal and/or amended policies, the Broker assumes the responsibility for review of coverages, limits, terms, conditions, and exclusions for accuracy. CHENANGO assumes no responsibility with regard to reviewing policies for accuracy or following-up on change requests or cancellations.

1.3 Term

The term of this Agreement shall commence on the effective date hereof and shall continue through the first anniversary of the effective date hereof, unless sooner terminated in accordance with Section 5 of this Agreement. Thereafter, the term of this Agreement shall automatically extend for an additional one-year periods, beginning on the first anniversary of the effective date hereof, unless either party notifies the other in writing at least sixty (60) days prior to expiration of intent not to renew, then this Agreement shall terminate on the close of business on the last day of the term. Notwithstanding anything to the contrary herein, Section 3 of this Agreement shall in all events survive any termination of this Agreement, however caused.

1.4 Ownership/Control of Expirations

The Broker having accounted for and paid over all premiums for which it may be liable, Broker's records and the use and control of expirations shall remain the property of Broker and left to his undisputed possession and control. As such CHENANGO will not use such information to solicit insurance and shall not disclose such information to anyone other than any company, agency or underwriter represented by CHENANGO in connection with this agreement.

2. COMMISSIONS AND COMPENSATIONS

2.1 Commissions and Compensations

During the term of this Agreement, CHENANGO shall pay to the Broker commissions and any other compensation received in connection with risks placed with CHENANGO in accordance with the terms of the Addendum attached hereto as Addendum "B". The Commission levels set forth in Addendum B may be revised upon thirty (30) days written notice.

2.2 Premium Collection and Accounting

A. Broker Billed Policies

(a) Broker shall be liable to CHENANGO for the full amount of premiums, fees, and applicable state taxes, less commissions, including additional and/or adjustable premiums developed under audits or applicable rating plans on every insurance contract placed by the Broker through CHENANGO.

(b) The Broker shall remit the full amount of premiums, fees and applicable state taxes, less commissions, to CHENANGO no later than thirty (30) days following the date CHENANGO'S invoice is sent to the Broker.

(c) The Broker is responsible for earned premiums developed on any audit of Broker Billed policies. CHENANGO shall bill the Broker for any such audit premium, and the Broker shall remit such audit premium to CHENANGO within thirty (30) days following the date CHENANGO'S invoice is sent to the Broker. If any audit is uncollectible, after good faith effort to collect, Broker shall advise CHENANGO. The premium on the audit will not be written off unless written off in writing by the insurer. Any Broker commission on any uncollectible audit premium will be waived by Broker.

(d) In the event the broker billed policies are canceled, CHENANGO agrees to remit to the Broker all previously paid unearned premiums, net of unearned commissions, that are owed to the insured. Broker, in turn, will reimburse the insured the unearned premiums, including unearned commissions. CHENANGO shall have no liability to the insured for such unearned premiums or commissions. Broker agrees to indemnify, defend and hold harmless CHENANGO for any and all liability to the insured for the payment of unearned premiums or unearned commissions.

(e) In consideration of the commission allowed the Broker on all premiums and additional premiums, the Broker agrees to pay CHENANGO the commission on all return premiums at the same rate such commissions were originally allowed, payment to be made within thirty days from the cancellation date.

B. Direct Bill Policies

(a) The insurers are responsible for the billing and collection of premiums on all Direct Bill business, including any endorsement premiums. The Broker is not responsible for earned premiums developed on Direct Bill policies.

(b) The Insurer will pay CHENANGO commissions on Direct Bill policies. The Broker's portion of any such commission shall be paid to the Broker by CHENANGO within thirty (30) days after CHENANGO's receipt of such commission from the Company, subject to reduction by commission on any return premiums. On any policy where the direct bill commission exceeds \$5,000.00 Chenango will pay commission to producer in installment payments.

(c) The Broker agrees to remit promptly to CHENANGO, in gross, any and all premiums which may be received by the Broker from any insured on Direct Bill policies, which CHENANGO will apply to the insured's account within ten (10) days of CHENANGO's receipt of same.

(d) If the Broker fails to pay premiums and/or commissions on return premiums due to CHENANGO, and CHENANGO elects to bring action against the Broker, Broker agrees to pay for all legal and collection fees, or court costs, and expenses associated with the collection. Broker agrees that, if CHENANGO elects to, it can retain future commissions on business written with CHENANGO and CHENANGO will be acting in all respects as attorney in fact for the Broker and waives all interest in commission on premiums collected by CHENANGO up to the amount

3. TERMINATION

CHENANGO shall have the right to terminate this Agreement as provided herein in the event Broker fails to observe any of the terms and conditions of this Agreement to be observed or performed by Broker, or CHENANGO discovers that any material representation or statement made by Broker on any applications or submissions for insurance herein is false or Broker no longer maintains a license to sell or broker insurance in the States where business is done under this Agreement. Either party shall have the right to terminate this Agreement, with or without cause upon thirty (30) days written notice. Such notice shall be given pursuant to the notice provisions of this Agreement.

3.1 Termination for Breach

In the event of a material breach of this Agreement by a party, the non breaching party may terminate this Agreement, by giving forty-eight (48) hours prior written notice thereof; provided however that this Agreement shall not terminate at the end of said forty-eight (48) hour period if the Party in breach has cured the breach of which it has been notified prior to the expiration of said forty-eight (48) hours.

3.2 Post-Termination

If subsequent to termination of this Agreement, however caused, it is determined that the Broker received more compensation than earned and provided under this Agreement and /or any bad debts have been charged to the Broker of a statement setting forth the amount owed and due to CHENANGO for Compensation paid in excess of that earned, the Broker and/or its affiliates shall pay and shall be liable, to CHENANGO for such debt in the amount set forth in the notice.

3.3 Return of Records; Termination of Access

Upon and after the expiration or termination of this Agreement, however caused:

1. all authority given to Broker by this Agreement ends;
2. CHENANGO may notify policyholders of the expiration or termination of this Agreement.
3. Broker will promptly return all of our manuals, forms, records, materials, applications, rate guides, underwriting and processing Rules and procedures, software, and any other property furnished by CHENANGO.
4. All in force policies and renewals will continue to normal expiration subject to their terms.
5. Except as otherwise provided, Broker's records and the use and control of expirations of the business produced by Broker shall remain Broker's property and shall be left in your undisputed possession;
6. Notwithstanding paragraph 1.4 of this Agreement, the ownership of the records and the use and control of expirations and the goodwill relating thereto shall be vested in us in the event this Agreement is terminated because:
 - a) Broker has failed to timely account for and remit all monies due and owing to CHENANGO;
 - b) Broker has abandoned his/her business or otherwise have ceased to service our insureds;
 - c) Broker has had his/her license suspended or revoked.

In such event, CHENANGO shall have the rights of the holder of a security interest granted by law, including but not limited to the rights of foreclosure to effectuate such security interest, and Broker hereby agrees to peaceably surrender possession of such records to us by demand.

Notwithstanding the foregoing, unless otherwise notified by CHENANGO in writing, the Broker will continue to have authority to submit requests for endorsements to policies and renewals

outstanding after the expiration or termination of this Agreement, and Broker may retain necessary Company materials to exercise this authority.

4. RESTRICTIVE COVENANTS

For purposes of this Section 4, the term “Broker” shall be deemed to include any subsidiaries, affiliates or employees of the Broker.

4.1 Confidentiality

Broker agrees and understands that information provided by CHENANGO concerning its operations, pricing structure and insurance markets is the proprietary information of CHENANGO. Any and all information with respect to the sales, marketing, pricing, programming, and support, which may, in the course of satisfying this Agreement be disseminated to Broker, will remain the confidential property of CHENANGO. Any notes, manuals, programs, and/or other materials provided to or for Broker during the course of this relationship will be immediately returnable to CHENANGO in the event of termination by either party. Broker agrees to maintain the confidentiality of this information and not to compete with or attempt to duplicate, transfer, copy, distribute, or assign the software or any information, materials, etc. related thereto in any way whatsoever to any entity or person directly or indirectly during the term of this Agreement, or for a period of one (1) year after the termination of this Agreement for any reason whatsoever. “Confidential” information is defined as all non-public information or data of any kind.

4.2 Nondisclosure

In consideration of entering into this Agreement with CHENANGO, together with all of the benefits accruing therefrom, the Broker agrees that, except as required by law, or for the performance of the Broker's duties pursuant to this Agreement, the Broker shall not, during the term of this Agreement, disclose, in whole or in part, any confidential information of CHENANGO or affiliate thereof for any reason or purpose whatsoever.

5. SUCCESSORS AND ASSIGNS

Broker may not assign or delegate any of its rights or obligations hereunder without first obtaining the written consent of CHENANGO. Such consent shall not be unreasonably withheld. CHENANGO may assign its rights to a successor-in-interest without the cast of Broker. In the event that this Agreement is assigned, each party's successors and/or permitted assigns shall be likewise bound by the terms and conditions of this Agreement.

6. INDEMNIFICATION

6.1 Broker to Indemnify CHENANGO

Broker will indemnify, defend and hold harmless CHENANGO, its directors, officers, employees agents, and affiliates from and against any and all claims, causes of action, demands, judicial and administrative proceedings, liabilities, errors, damages, costs and expenses, including, but not limited to, court costs, and reasonable attorney's fees, and insurance deductibles relating to losses of any type whatsoever, but only to the extent that they that may arise as a result of Broker's acts or omissions, as a result of the performance of this Agreement. Broker further agrees to indemnify and hold CHENANGO harmless from any and all debts, obligations or liabilities whatsoever of Broker individually, and/or any other corporation or entity in which it may have, or have had, an interest whether directly or indirectly.

The obligation to defend and indemnify CHENANGO as set forth in this Section shall include any and all claims arising from the loss or unauthorized use, disclosure, acquisition or access to any data or confidential non-public proprietary or personal information of CHENANGO, any insured or any insurer in connection with services provided by this agreement. Broker represents that it is in full compliance with all applicable laws, regulations and government orders relating to the handling of such information and data privacy.

6.2 CHENANGO to Indemnify Broker

CHENANGO will indemnify, defend and hold harmless Broker, its directors, officers or employees from and against any and all claims, causes of action, demands, judicial and administrative proceedings, liabilities, errors, damages, costs and expenses, including, but not limited to, court costs, reasonable attorney's fees, and insurance deductibles relating to losses of any type whatsoever, but only to the extent that they may arise as a result of CHENANGO's negligent acts or omissions, as a result of the performance of this Agreement. CHENANGO further agrees to indemnify and hold Broker harmless from any and all debts, obligations or liabilities whatsoever of CHENANGO individually, and/or any other corporation or entity in which it may have, or have had, an interest whether directly or indirectly.

The obligation to defend and indemnify Broker as set forth in this Section shall include any and all claims arising from the loss or unauthorized use, disclosure, acquisition or access to any data or confidential non-public proprietary or personal information of Broker, any insured or any insurer in connection with services provided by this agreement. CHENANGO represents that it is in full compliance with all applicable laws, regulations and government orders relating to the handling of such information and data privacy.

7. INSURANCE

Broker agrees and represents that Broker has in force, and shall maintain in force for a period of three years following termination of this Agreement, an Insurance Agents and Brokers professional liability insurance policy insuring on a primary basis in the amount of at least One million dollars (\$1,000,000) per occurrence with self-insured retentions or deductibles satisfactory to CHENANGO which shall afford coverage for Broker for claims on suits relating to or arising from this Agreement. All such insurance shall be placed with an insurance carrier approved by CHENANGO. Broker agrees to provide CHENANGO with an appropriate Certificate of Insurance evidencing such coverage and/or a copy of the policy.

8. MISCELLANEOUS PROVISIONS

8.1 Notices

All notices, demands and other communications which may be or are required to be given under this Agreement shall be in writing and shall be deemed given when mailed, postage prepaid, by registered or certified mail, return receipt requested, overnight mail by private courier or by hand delivery addresses to CHENANGO or the Broker at the address first set forth above or such other address as is designated upon notice to the other.

8.2 Electronic Delivery of Documents

Both CHENANGO and Broker, by signing this Agreement, agree to electronically provide documents on behalf of themselves, their insureds, the insurers with whom coverage is placed or may be placed and third parties. Documents subject to this consent include, but is not limited to, any and all disclosures, declarations, contracts, endorsements, binders, policy forms, certificates and/or documents, information, requests, applications, communications and/or notices required by law, except that when law requires notice by another means. This paragraph shall not include the notices and communications described in paragraph 8.1. It is agreed that electronic delivery of documents is sufficient to meet all reporting and/or notice requirements, except when applicable law requires notice by another means. It is agreed that for the purpose of this paragraph, Broker shall maintain active and current e-mail addresses and fax numbers for the transmission of electronic documents.

8.3 Governing Law

This Agreement will be governed by and its provisions construed in accordance with the laws of the State of New York, as applied to contracts between New York residents entered into and to be performed entirely within New York without regard to the conflict of law principles thereof. If any action or proceeding involving any question arising under this Agreement or if there is a diversity of citizenship between the parties hereto, so that an action is instituted, shall be instituted in the Supreme Court of the State of New York, Broome County or, if the action is instituted in a United States District Court, then it will be instituted in the United States District Court for the Northern District of New York.

8.43 Licensing.

Broker will, at all times, be duly and appropriately licensed by all States where any business is produced in all lines of insurance business for which any commissions are paid by CHENANGO. This Agreement may be terminated by CHENANGO in the event that Broker fails to hold an appropriate license from the licensing agency with jurisdiction over the parties hereunder.

A copy of a valid license shall be affixed to this Agreement, by Broker, as an Exhibit and copies of Broker's renewal license and/or application will be provided to CHENANGO upon request.

8.5 Entire Agreement

This Agreement constitutes the entire understanding and agreement of the parties hereto regarding the subject matter of this Agreement and supersedes all prior negotiations, discussions, correspondence, communications, understandings and agreements between the parties relating to the subject matter of this Agreement.

If any particular provision of this Agreement shall, however, be declared or found invalid, prohibited or unenforceable for any reason whatsoever, the remaining provisions of this Agreement shall be unaffected and shall continue in full force and effect in the same manner as if the invalid or illegal provisions had not been originally contained in this Agreement. Notwithstanding the foregoing, if such offending provision or provisions could be more narrowly drawn so as not to be invalid, prohibited or unenforceable under the law of the State of New York, they shall be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision(s).

8.6 Rights and Remedies

The rights and remedies of CHENANGO with respect to this Agreement are in addition to those which are now or hereafter available to CHENANGO as a matter of law or equity. Each right, power and remedy of CHENANGO provided now or hereafter existing at law or in equity will be cumulative and concurrent and will be in addition to every right, power or remedy provided for herein and the exercise by CHENANGO of any one or more of the rights, powers or remedies provided for now or hereafter existing at law or in equity, will not preclude the simultaneous or later exercise by any person, including CHENANGO, of any or all other rights, powers or remedies.

8.7 No Waiver

Neither party to this Agreement will be deemed to have waived any right that it holds hereunder unless the waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party in exercising any such right will be deemed a waiver of its future exercise). No waiver will be deemed a waiver as to any other instance or any other right.

8.8 Compliance with Procedure

Broker agrees to be bound to and follow those CHENANGO procedures and practices including but not limited to (a) requiring full disclosure to insureds for any placement for an insurer that has an A- AM Best rating or below; (b) notification to CHENANGO, in writing, of any matter, happening or event that could give rise to an E&O claim that will trigger an Incident Report as required by CHENANGO's practices and procedures.

8.98 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but, all of which will constitute one and the same instrument.

8.10 Modifications

This Agreement may only be modified by a writing signed by both parties.

8.11 Recitals and Schedules Part of Agreement

The Recitals, Schedules and Exhibits are an integral part of this Agreement, and any reference herein to this Agreement shall be deemed to mean and include a reference to such Schedules and Exhibits.

8.12 Construction

(a) It is hereby understood that the parties have jointly negotiated and drafted this Agreement. In the event of an ambiguity or question of intent or interpretation arise, this Agreement will be construed as if it were jointly drafted by all parties. No presumption or burden of proof will arise favoring or disfavoring any Party hereto by virtue of the authorship of any of the provisions of this Agreement.

(b) As used herein, (a) the term "person" means a natural person, a trustee, a corporation, a partnership, a limited liability company and any other form of legal entity; and (b) all reference made (i) in the neuter, masculine, or feminine gender will be deemed to have been made in all genders, (ii) in the singular or plural number will be determined to have been made, respectively, in the plural or singular number as well, and (iii) to any Section, subsection, paragraph, or subparagraph will, unless therein expressly indicated to the contrary, be deemed to have been made to such Section, subsection, paragraph, or subparagraph of this Agreement.

8.13 Headings

The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

8.14 Review of the Agreement

The parties acknowledge that they had the opportunity to review this Agreement with an attorney and further acknowledges that they reviewed and understand the contents of this Agreement. Broker further acknowledges that Broker has entered this agreement freely and voluntarily without duress from CHENANGO.

8.15 Authority

Each party hereby warrants and represents that they have the power to enter into this Agreement.

ATTEST: CHENANGO EXCESS AND SURPLUS, INC.

By:
Title:

AGREED AND ACCEPTED:

WITNESS:

Broker Signature

DATE

Print Broker Name