

**NEPTUNE FLOOD INCORPORATED  
DISTRIBUTION AGREEMENT**

**THIS DISTRIBUTION AGREEMENT** (this “Agreement”), dated as of \_\_\_\_\_ is made and entered into by and between **Neptune Flood Incorporated**, a **Delaware** corporation (“Company”) and \_\_\_\_\_, a \_\_\_\_\_ (“Producer”).

**Background**

Producer desires to place contracts of insurance through insurers (“Insurer(s)”) represented by Company and utilizing the underwriting facilities, knowledge, and services of Company. Company is willing to offer facilities on a non-exclusive basis to Producer and its sub-producers for the placement of insurance with Insurers. In consideration of the mutual promises contained in this Agreement, it is agreed as follows:

**1. Authority.** While this Agreement is in effect, Producer has authority, pursuant to the terms of this Agreement, to solicit and submit applications, to issue and deliver binders, endorsements and other evidence of insurance in the lines of business offered and designated by Company on behalf of Company, for the purpose of placement and procurement of insurance coverage with Insurers and utilizing the underwriting facilities, knowledge, and services of Company. 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 Producer and Company. Producer is for all purposes an independent contractor. Producer will act in accordance with any Insurer’s policies and administrative guidelines that are known or should be known to the Producer. Company, in its sole discretion, shall judge whether to accept, reject or submit to Insurer for acceptance any applications of insurance for risks submitted by Producer and shall incur no liability for failure to place any such risk. Nothing in this Agreement shall place Company under any obligation to accept any proposal or new business or the renewal of existing business submitted by the Producer, Producer agrees to the following express limitations of authority:

(a) *Binding Authority.* Producer has no authority to bind Company or any of its principals or commit to issue binders or policies of insurance on behalf of Company or to make any representation not strictly in accordance with the policies and contracts placed pursuant to the terms of this Agreement and Company’s underwriting guidelines. Producer shall not make, alter, or vary any terms of coverage, or modify the terms of payment of any premium or deposit, or incur any liability for Company.

**2. Producer’s Representations and Warranties.** As a material inducement for Company to enter into this Agreement, Producer represents and warrants the following:

(a) *Licensing.* Producer is properly licensed to transact business as an agent or Company in accordance with the insurance laws, rules and regulations of each state in which Producer transacts business. Producer will maintain such license or licenses in good standing for the duration of this Agreement and will furnish proof of such licensing upon request by Company.

Producer will notify Company of any suspension, cancellation or disciplinary action with respect to its license(s) within ten (10) days of any such action.

(b) *Insurance Coverage.* As a condition precedent and an ongoing obligation throughout the term of this Agreement, Producer shall, prior to or contemporaneously with the execution of this Agreement, provide the Company with certificates of insurance demonstrating the existence of the following insurance coverage for services performed pursuant to this Agreement, from an insurance carrier acceptable to the Company: Errors and omissions for the services performed pursuant to this Agreement in an amount of at least \$1,000,000 per occurrence and \$1,000,000 aggregate, and a deductible or self-insured retention no greater than \$10,000. At renewal of such policies, Producer shall provide the Company with updated certificates of insurance. Producer shall immediately notify the Company in the event of any claim or claims which materially impact the amount of coverage available to another claimant under any such policy; any increase in the deductible or self-insured retention of any required policy; or any cancellation, non-renewal, or reduction of insurance coverage in any required policy. Producer shall be solely responsible to pay any and all deductibles or self-insured retentions which its errors and omissions and/or employee dishonesty carrier may apply.

(c) *Insurance Applications.* Any and all information provided in connection with any application for insurance subject to this Agreement shall be true and complete, to the best of Producer's knowledge. Producer further represents and warrants that, to the best of Producer's knowledge, such applications shall contain no material misrepresentations of any kind. Producer shall ensure that all material facts of which Producer is aware are accurately described and completely disclosed to Company. Further, it is the duty of the Producer to notify Company, promptly after Producer becomes aware, of any material change(s) that may affect the risk during the policy period and at any subsequent renewal.

(d) *Producer Information.* All information in the attached Producer Application is true and correct. The Producer shall give Company prompt notice of any change in information.

(e) *Excess and Surplus Lines Placement.* Producer shall not bind insurance with Company for any excess or surplus lines insurance unless Producer shall have first complied with any applicable state laws requiring the Producer to attempt to procure such insurance from insurers authorized to do business in the state of residence of the proposed insured. The Company is the party responsible for the payment of surplus lines taxes and shall be responsible for full compliance with all relevant surplus lines laws of the pertinent state, including, but not limited to, the collection and payment of surplus lines taxes, filing of affidavits, and providing the appropriate statutory and/or regulatory disclosure legends on all documents.

### **3. Commissions and Premiums.**

(a) *Commissions.* Company shall allow Producer, as commission, a percentage of the net premium written at a rate agreed upon by Company and Producer from time to time. "Net Premium" means gross premiums collected for the policy, less policy cancellations and return premiums and any other refunds, discounts, credits, rebates and similar items. The term "Net Premium" does not include any fees, interest, assessments, taxes or surcharges collected or received

by Company for a policy, as determined by Company in its sole and absolute discretion. "Net Premium" does not include premiums collected on policies not paid in full or not in force. Rates of commission are set forth in the Commission Schedule attached to and forming a part of this Agreement. Payment of commission in accordance with this paragraph shall be Producer's sole and full compensation under this Agreement. Company reserves the right to unilaterally change the Commission Schedule at any time during the term of this Agreement following thirty (30) days advance written notice of the proposed revision. Renewal commissions will be paid in accordance with the Commission Schedule in place at the time each policy is renewed.

(b) *Premium and Accounts.* Producer shall accept the format of Company's billings, which may take the form of binders, invoices, statements or similar communications. Producer is authorized to collect balances due as shown on such billings and shall remit such payments to Company in accordance with the delivery instructions on such billings by the billing due date, irrespective of whether a policy has been delivered to Producer or insured by such date.

(c) *Refunds of Premiums & Premium Tax.* In the event of cancellation or modification of an insurance contract for whatever reason that results in an obligation to refund all or part of the premium and/or premium tax, Company shall remit the required premium or premium tax directly to insured, rather than to Producer or to any other person or entity. Notwithstanding the foregoing, no amount of premium tax shall be returnable until recovered by Company and the amount to be returned shall in no event exceed the amount recovered.

(d) *Unearned Commissions.* Producer shall be liable to Company and shall pay return commission at the same rate as originally allowed to Producer for all return premium adjustments or cancellations, including return premium on cancellations ordered or made by the Insurer. Such return commission shall be paid to Company by the due date indicated on the billing document. Company retains the right to offset return commissions due Company from Producer against future commission allowed Producer by Company.

(e) *Reporting.* Company will facilitate Producer access to accurate reporting involving business acquired under the terms of this Agreement.

**5. Claims.** Producer shall comply with the terms of any policy placed pursuant to this Agreement with respect to notification of claims. Producer shall promptly notify the Insurer and the Company of any claims, suits, or notices of loss (or circumstances which might reasonably be expected to result in a claim, suit or notice of loss) and shall cooperate fully with Insurer and/or Company to facilitate the investigation and adjustment of any claim when and as requested. The adjustment and settlement of claims will be solely the right and responsibility of the Insurer and/or its designated representatives.

**6. Complaints & Regulatory Actions.** Producer shall notify Company within three (3) business days from the date of receipt of all complaints, orders, suits, or suit papers related to business under this Agreement from insureds and/or any state or federal regulatory agency.

**7. Cancellation of Insurance.** Notwithstanding anything to the contrary in this Agreement, but subject to applicable legal requirements and insurance contract provisions, Company shall have the exclusive right to cancel any binder, policy or contract of insurance issued. If the Company is restricted from cancelling a policy due to applicable legal requirements and/or insurance contract provisions, Producer shall, at the request of Company, place such policy with a market other than Company's within fifteen (15) days of Company's request. If coverage is bound by Company, all additional fees charged by Company for the entire policy term shall be fully earned upon inception. Notwithstanding anything to the contrary in the insurance contract provisions, Producer hereby acknowledges that Company and its Insurers are under no duty to reinstate a policy if the policy is cancelled. Producer shall not accept from any insured the late payment of premiums with prior knowledge, whether actual or constructive, that the policy for which the late premiums have been collected is not eligible for reinstatement.

**8. Advertising.** Company may design and provide Producer with marketing support including materials, instructions, and other assistance. Producer shall not cause any other advertisement referring to or using the name of Company or Insurer, or issue or cause to have issued any letter, circular, pamphlet, or other publication or statement so referring, without the express written consent of Company. In the event Company suffers a loss or expense arising out of any unauthorized advertisement, publication or statement of the Producer, the Producer shall be liable for and hereby agrees to indemnify Company and hold Company harmless from all resulting damages, fines, penalties and costs.

**9. Confidentiality.** The parties to this Agreement hereby represent and acknowledge to each other that in the course of the performance of their respective obligations, they will each make available to the other party certain information pertaining to each party's business and operations ("Information"). Each party hereby agrees that as a condition to being provided the Information, that neither party will use any Information except in connection with the performance of duties hereunder. The recipient shall (a) protect the disclosing party's Information using a standard of care at least equal to that which it uses to safeguard its own confidential information and in no event less than a reasonable standard of care; (b) use the disclosing party's Information only to the extent necessary to perform its obligations pursuant to this Agreement; and (c) disseminate Information to its representatives and agents only on a "need to know" basis, provided that all persons to whom Information is disseminated shall be notified of its confidential nature. Recipient will notify disclosing party immediately upon any loss or unauthorized disclosure of Information. Recipient is liable for breach of this provision by any of its representatives or agents. The limits on use and disclosure will not apply to any Information which (a) at the time of disclosure is generally available to the public or (b) which becomes generally available other than through a breach of this obligation of confidentiality.

**10. Inspection of Records.** During the term of this Agreement, and for a period of three (3) years following termination for any reason, Company or Insurer shall have the right to audit and inspect Producer's books and records concerning the business to which this Agreement applies. Such right of audit and inspection shall be during normal business hours upon reasonable notice to Producer. The costs of such audit and inspection, including the costs of making copies of relevant records, shall be borne by Company.

**11. Suspension of Authority.** Company may suspend authority to solicit and bind new business in the event of default by Producer. “Default” means any breach or failure to comply with the terms and conditions of this Agreement or any Insurer’s requirements, including, but not limited to:

- Failure to remit any balances due Company as required under the terms of this Agreement;
- Failure to comply with Company’s or Insurer’s guidelines or procedures; and
- Failure to comply with applicable state laws and regulations

**12. Termination of Agreement.** This Agreement may be terminated at any time by either party giving written notice to the other with thirty (30) days advance written notice. Upon delivery by either party of a written notice pursuant to this paragraph, Producer’s authority to issue binders shall terminate. This Agreement will also terminate: (a) automatically, if any public authority cancels or declines to renew the Producer’s license or certificate of authority; or (b) automatically at Company’s option, on the effective date of the sale, transfer, or merger of Producer’s business with the provision Company may, upon review, appoint the successors as a Producer. Notwithstanding the foregoing, in the event of fraud or breach of any of its conditions or provisions by Producer, this Agreement may be terminated by Company with immediate effect. All representations and obligations of the Producer herein shall survive the termination of this Agreement.

After the date of termination of this Agreement, Producer shall complete the collection and accounting to Company for all premiums, commissions and other transactions unaccounted for on the date of termination or arising thereafter in respect of outstanding policies of insurance, including but not limited to, return premium and return commissions. Outstanding policies will be permitted to run to expiration. Any costs incurred by the Company to collect monies owned, including, but not limited to attorneys’ fees, collection agency fees, and all related costs for trial and any appeal, shall be paid by Producer.

**13. Indemnification and Hold Harmless.**

(a) *Producer Indemnification.* The Producer agrees to defend and indemnify the Company, its parents, subsidiaries, affiliates, successors and assigns, and the shareholders, directors, officers, agents and employees of any of them (collectively the “**Company Indemnitees**”), against and in respect of any and all claims (not including covered claims made under any policy properly issued in accordance with this Agreement), demands, actions, proceedings, liability, losses, damages, judgments, costs and expenses, including, without limitation, attorneys’ fees, disbursements, court costs, and punitive, exemplary, or compensatory damages, suffered, made or instituted against or incurred by the Company Indemnitees, or any of them, and which directly or indirectly arise out of or relate to (i) negligence of the Producer or its employees or representatives, in discharging their obligations to the Company or to policyholders, (ii) failure by the Producer or its employees or representatives to comply with any applicable information privacy laws, and/or (iii) any failure by the Producer or its employees or representatives to perform their obligations under or relating to this Agreement.

(b) *Company Indemnification.* The Company agrees to defend and indemnify the Producer, its parents, subsidiaries, affiliates, successors and assigns, and the shareholders, directors, officers, agents and employees of any of them (collectively the “**Producer Indemnitees**”), against and in respect of any and all claims (not including covered claims made under any policy properly

issued in accordance with this Agreement), demands, actions, proceedings, liability, losses, damages, suffered, made or instituted against or incurred by the Producer Indemnitees, or any of them, and which arise solely out of or solely relate to (i) negligence of the Company, or its employees or representatives, in discharging its obligations to the Producer or to policyholders; or (ii) any failure by the Company, or its employees or representatives, to comply with any applicable information privacy laws; (iii) and failure by the Company, or its employees or representatives to perform its obligations under this Agreement. Producer understands that Company assumes no responsibility for any policy with regard to the adequacy, amount or form of coverage and agrees to indemnify and hold Company harmless from any claim asserted against Company in following the instructions of the Producer. Company is not an insurer and does not guarantee the financial condition of the Insurer with whom it may place risks. Company shall have no liability for non-payment of claims due to the insolvency of an Insurer, or otherwise, under contracts of insurance placed by Company.

(c) *Sub-Producer(s)*. The Producer shall be fully responsible for the conduct and performance of any sub-producer(s) of the Producer, and shall defend, indemnify and hold the Company harmless against any loss, claim, expense, damages, fines, penalties, or attorney's fees arising out of any act on the part of its sub-producers, including the failure to maintain appropriate licenses or certificates. Nothing in this paragraph shall be construed to allow Producer to appoint or contract with sub-producers except as authorized by Company in writing.

#### **14. Miscellaneous.**

(a) *Waiver*. Failure of Company to enforce any provision of this Agreement or to terminate it because of a breach shall not be deemed to be a waiver of such provisions or of any breach committed by the Producer. No breach of any provision of this Agreement can be waived unless done so in writing, executed by the waiving party. The waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision of this Agreement.

(b) *Severability*. If any clause or provision of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity or any other clause or provision, which shall remain in full force and effect. Each of the provisions of the Agreement shall be enforceable independently of any other provision, unless expressed otherwise herein.

(c) *Assignment*. This Agreement and the obligations hereunder may not be assigned by Producer without the prior written consent of Company.

(d) *Governing Law*. This Agreement shall be deemed to have been made and performed in, shall be governed by, and shall be construed and enforced in accordance with the laws of the State of Delaware.

(e) *Entire Agreement*. This Agreement constitutes the entire agreement between Company and Producer and supersedes and replaces any previous agreements between Company and Producer. No oral promises or representations shall be binding, nor shall this Agreement be

modified, except by agreement in writing and executed by Company. This Agreement shall apply to current policies already placed through Company and in force at the date hereof and all future policies which may be placed by Company for Producer.

(f) *Notice.* Any written notice required hereunder shall be deemed sufficiently given if sent by overnight courier with confirmation of receipt, or if mailed by the United States Postal Services via certified mail return receipt requested, if addressed to the below names or to such other names and addresses as one party may advise the other in writing:

Company:

Neptune Flood Incorporated  
650 2<sup>nd</sup> Ave S  
Saint Petersburg, FL 33701  
Attn: Legal Department

Producer:

As provided in the Producer Application.

**15. Execution and Acceptance of Agreement.**

Producer acknowledges that a breach of any of the terms, conditions, or provisions of this Agreement by the Producer may give rise to a cause of action by Company against the Producer and/or may result in the termination of this Agreement, all in the sole discretion of Company. Each individual who executes this Agreement in a representative capacity represents and warrants that he or she has the full right and power to execute this Agreement and to bind the entity or individuals on whose behalf he or she so signs. If this Producer is an individual, the individual must sign; if the Producer is a partnership, one of the partners must sign; if the Producer is a corporation, an authorized officer must sign and indicate the title of such authorized officer. The parties hereto agree this Agreement shall not become effective until accepted by Company.

**SIGNATURE PAGE FOLLOWS**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date herein signed.

By

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**NEPTUNE FLOOD INCORPORATED**

By

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**ADDENDUM A  
PRODUCER AUTHORIZATION AND COMMISSION SCHEDULE**

The Company hereby authorizes the Producer to transact business on behalf of the Company, subject to the terms and conditions set forth in this Producer Authorization and Commission Schedule (“Schedule”) and in the Agreement. The Producer, by accepting this Schedule, agrees to service the business in accordance with the territory and limits of liability set forth in this Schedule and the Company’s established underwriting requirements and guidelines. The Producer agrees that applications and risks bound by Producer not in accordance with the terms and conditions set forth in this Schedule, the Agreement and the Company’s underwriting requirements and guidelines constitute a breach of the Agreement and any loss and expense related thereto shall be assumed by the Producer. In the event the Company sustains a loss on an application or risk which the Producer has bound, which is not within the scope of the Producer’s authority under this Schedule, the Agreement and the Company’s underwriting guidelines, the Producer agrees to reimburse the Company for the amount of the loss plus the expense incurred by the Company resulting from the loss (including attorney fees).

In addition to other underwriting guidelines and except to the extent directed by the Company in writing otherwise, the Producer shall comply with the following guidelines:

- Basis of Rates and Premiums to be Charged:** The rates and premiums quoted by the Company
- Authorized Territories:** US States where the Company is eligible to transact business
- Policy Cancellation Provisions:** As set forth in the applicable policy form
- Maximum Policy Period:** 12 months, unless otherwise stated in the policy or as required by law

Commission Rates

Producer is to be paid commissions only, as follows:

New Business from Producer	New Business from Leads	Renewal Business
10%	NA	10%

“New Business” means business not currently in existence at the Company. “New Business from Leads” means New Business placed with the Company by efforts of the Producer as a result of leads provided to the Producer from the Company. “New Business from Producer” means New Business placed with the Company by the efforts of the Producer that is not New Business from Leads. “Renewal Business” means existing business which was originally placed with the Company as New Business from Producer or New Business from Leads that has been renewed.

Commission percentage is to be based upon the “Net Premium” actually received by the Company on any such business produced by the Producer whether New Business or Renewal Business on policies paid in full and in force. “Net Premium” shall have the meaning set forth in the Agreement.

Commission Payments

The Company will pay commissions due the Producer on Net Premium at the commission rate listed in this Schedule via ACH transfer within forty-five (45) days following the end of the calendar month in which the applicable Net Premiums are collected. If the Producer elects to be paid commissions due by a method other than ACH transfer or similar electronic method as determined by the Company in its sole and absolute discretion, payments will be made when commission due exceeds \$100 or at the end of the calendar quarter following the end of the calendar month in which the applicable Net Premiums are collected. Additionally, a five dollar (\$5.00) per check processing fee will be assessed against commissions due if the Producer elects to be paid by paper check. No processing fee will be assessed when the Producer elects to be paid by ACH transfer or similar electronic method as determined by the Company.

Return Commission

The Company shall have the right to offset any credit balances due from the Producer from future commissions. The Producer acknowledges that any credit balances as a result of return premiums or cancellations are immediately due and payable to the Company and shall be paid within thirty (30) days of receipt of an invoice from the Company.