



Brokerage Application and Terms of Trade Agreement

ABEX Affiliated Brokers Exchange Inc.
139 Northfield Dr. W., Suite 206
Waterloo, ON N2L 5A6
(p)519-880-0044 (f)855-821-7060
quotes@abexinsurance.com
www.abexinsurance.com

Brokerage:			
Broker Address:			
Accounting/Document mailing address, if different than above:			
Mailing Preference:	Canada Post	ICS Courier	Website:
Telephone:		Fax:	
Policy Docs Contact:		Policy Docs Email:	
Accounting Contact:		Accounting Email: (for broker statements)	
Other brokerage names that are part of your group (e.g. parent, subsidiary):			

Please provide a separate list of all sub-offices, branches or affiliated offices, including phone, fax, email & staff information. ("Additional Location Brokerage Supplement" form available at www.abexinsurance.com/applications).

Brokerage Personnel

Name	Position/Title	Email Address

Please attach a separate document for additional personnel.

Top Markets Represented

Company	Year to Date Volume	Loss Ratio

Split of Business:	Personal Lines:	Commercial Lines:
Does your brokerage specialize in any class of business?		
	Yes	No
If so, please descibe:		
How do you attract business to your office?		
Existing Volume with Intermediaries		
Encon:	SWG:	
Transcanada:	Premiere Marine:	
Markel:	A.M. Fredericks:	
April (Canada Worldwide):	Group One:	
Totten:	Special Risk Ins. Managers:	

Please review and sign "Terms of Trade Agreement" on the folowing pages.



Terms of Trade Agreement

Made Between:

Brokerage Name(s)

Hereinafter called **"Broker"**

And: ABEX Affiliated Brokers Exchange Inc.

Hereinafter called **"ABEX"**

This Terms of Trade Agreement (hereinafter called the "Agreement"), dated and effective as per the "Agreement Effective Date" (under "Signature Section"), constitutes the sole and entire agreement between the Parties and supersedes all prior agreements, contracts or understandings, either written or oral, concerning the matters covered herein. There are no conditions, covenants, agreements, representations, warranties or other provisions, express, implied or otherwise, relating to the subject matter hereof, except as herein provided.

1. Definitions

For the purposes of this Agreement, unless the context otherwise requires, the following terms shall have the respective meanings set out below:

- a) **"Agreement"** means this Agreement and any Schedules attached to this Agreement, in each case as they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement;
- b) **"Parties"** means ABEX and the Broker and "Party" means either one of them;
- c) **"Person"** includes, without limitation, an individual, partnership, limited partnership, joint venture, sole proprietorship, corporation, with or without share capital, unincorporated association or organization, trust, trustee, executor, administrator or other legal personal representative or other legal or business entity;

2. Authority

- a) The Broker hereby acknowledges that it has no authority to bind ABEX or any insurers represented by ABEX, whether with respect to policies, endorsements, renewal certificates or otherwise, without the prior written consent of ABEX.
- b) The Broker is authorized to countersign insurance policies once written confirmation to do so has been received by the Broker from ABEX and deliver such policies, endorsements, and renewal certificates issued through ABEX as are covered under this Agreement, subject to the rules, instructions and limitations that may, from time to time, be established by ABEX.
- c) Most policies of insurance are not automatically renewed and renewals must be negotiated and placed by the Broker prior to expiration of the policy. However, certain exceptions apply and automatic renewals apply to certain policies, such as Rental, Student Rental, Homeowner and Condo policies. These types of policies may be removed from the automatic renewals and new types of policies may be added to automatic renewals at ABEX's discretion.

3. Accounting - Premium and Commissions Payable

- a) The Broker is authorized to receive the premiums and policy fees due to ABEX in respect of the business written pursuant to this Agreement. All monies so received, less commissions due to the Broker and such other deductions to which the Broker may from time to time be entitled hereunder, shall be held by the Broker as fiduciary trust funds and shall not be used for personal or any other purpose inconsistent with the Broker's fiduciary duties.
- b) Any credit extended to the insured or others shall be at the sole risk and responsibility of the Broker, unless otherwise agreed in writing by ABEX.
- c) The Broker shall receive as commission a percentage of the premium on each policy written and paid for pursuant to this Agreement at the rate from time to time agreed to in writing by the Parties. The Broker shall be liable to ABEX and shall pay return commission at the same rate as originally allowed to the Broker for all return premiums, including but not necessarily limited to adjustments or cancellations.
- d) ABEX shall prepare and forward to the Broker each month an itemized statement of account in respect of the Broker's balances due to ABEX (a "Monthly Statement"). The balances shown in the Monthly Statement shall be payable, regardless of whether



such premiums are financed, not later than thirty (30) days after the end of the account month for which the statement was prepared or on credit terms as may be agreed to, in writing, by and between ABEX and the Broker from time to time.

- e) The omission of any item from a Monthly Statement shall not affect the responsibility of either Party to account for and/or pay all amounts due to the other.
- f) The broker shall have 30 days, after receiving the statement of account, to dispute any items identified thereon.
- g) ABEX shall have, at any time during customary business hours and after reasonable notice, access to the Broker's books and records for the purpose of determining any fact relating to the Broker's obligations hereunder.
- h) For the avoidance of doubt, the Broker is fully responsible for collecting and remitting provincial sales tax to the respective provincial governments in all jurisdictions where sales tax applies to insurance premiums.

4. Claims

The Broker shall immediately notify ABEX of all claims, suits and notices of loss directly and refrain from appointing an adjuster unless and until approved by ABEX. The Broker agrees to co-operate fully, at its own expense, with ABEX to facilitate the investigations, adjustment, settlement and payment of any claim when and as requested by ABEX.

5. Policy Cancellation

Nothing in this Agreement shall be construed as limiting or restricting the right of ABEX to cancel, or decline to renew, as applicable, any binder, policy or contract of insurance issued pursuant to this Agreement in accordance with the cancellation provisions of such binder, policy or contract. The Broker shall not be entitled to credit for any flat cancellation unless expressly agreed to in writing by ABEX prior to such cancellation and any credit extended by the broker to the Insured or to any other person will be at the Broker's sole risk and expense.

6. Term and Termination

- a) The term of this Agreement should commence on the Agreement Effective Date and shall continue until terminated in accordance with the provisions of Section 6(b) or Section 6(c) hereof (the "Term").
- b) Notwithstanding 6 (a), this Agreement may be terminated by either Party for any reason upon the giving of 60 days' notice in writing to the other Party.
- c) This Agreement may be terminated by ABEX at any time and without notice, or payment in lieu thereof, upon the occurrence of any of the following:
 - i. if the Broker breaches, or refuses or fails to perform any duties, obligations and responsibilities established under this Agreement, or in the event the Broker's duties are performed negligently or in an unsatisfactory manner;
 - ii. if any regulatory authority cancels or declines to renew the Broker's license or certificates of authority.
 - iii. if the Broker makes an assignment for the benefit of its creditors, it is declared bankrupt, or otherwise takes advantage of provisions for relief under the Bankruptcy and Insolvency Act, the Companies Creditors Arrangement Act or similar legislation in any jurisdiction, or makes an authorized assignment or makes a proposal under the Bankruptcy and Insolvency Act or initiates proceedings under similar legislation in any jurisdiction; or
 - iv. if the Broker is in breach of any material term of this Agreement and such breach is not cured within five days of the Broker receiving written notice from ABEX specifying the breach in reasonable detail or within such longer period of time as may be reasonably necessary to cure such breach provided that the Broker is acting in good faith and with all reasonable diligence to cure such breach.
 - v. if the sale, transfer or merger of the Broker's business occurs, on the effective date of such sale, transfer or merger. However, ABEX will offer a "Terms of Trade Agreement" to any successor who meets ABEX's requirements for appointment. Upon such sale, transfer or merger, the Broker covenants that ABEX shall be paid any monies owing to it out of any proceeds realized upon such sale, transfer or merger, which would otherwise be paid to the Broker. The Broker covenants that it will execute any documents necessary to ensure that ABEX will be so paid. If there are not sufficient proceeds to meet the indebtedness, the Broker shall be responsible for the deficiency.



- d) Upon termination of this Agreement, the Broker shall cease placing insurance through ABEX and the Broker shall promptly return to ABEX all brochures and other promotional materials, manuals, application prints and other written information furnished by ABEX to the Broker, including without limitation, any Confidential Information as defined in Section 8 hereof.

7. Independent Contractor

- a) It is acknowledged by the Parties that the Broker is being retained by ABEX as an independent contractor and not as an employee of ABEX. The Broker acknowledges that it has no rights and entitlement to any employee benefits including, without restricting the generality of the foregoing, Employment Insurance ("EI") and Canada Pension Plan ("CPP") benefits. ABEX will not withhold and remit any source deductions or pay any premiums under any federal or provincial legislation on behalf of the Broker.
- b) The Broker agrees that it shall be responsible for and pay all taxes, premiums, remittances, payments and fees, including but not limited to CPP remittances, income tax deductions, payroll taxes, EI remittances, vacation pay, statutory holiday pay, workers compensation premiums and automobile insurance premiums, relating to or arising out of the Commissions paid under this Agreement and the services performed by the Broker. Payments relating to any of the foregoing shall be forwarded by the Broker as required directly to the government agencies involved. Proof of compliance with this requirement shall be made immediately available to ABEX upon request. The Broker further agrees that if ABEX is called upon to make any such payments on the Broker's behalf, that the Broker shall forthwith, upon demand, reimburse ABEX for such payments made, together with ABEX's legal costs relating to same. The Parties further agree that if the Broker is unable to reimburse ABEX for such payments on demand, then ABEX will be entitled to withhold any payments owing to the Broker under this Agreement as a set-off for the monies owing to ABEX.
- c) Nothing contained in this Agreement shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or employer and employee between the Parties or to provide either Party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other Party. In the event that ABEX is adjudicated or determined to be a partner, associate, affiliate, subsidiary, joint venturer, co-principal, or employer of the Broker, then the Broker shall indemnify and hold ABEX harmless from and against any and all claims for loss, liability or damages arising therefrom.
- d) In addition, in the event that the Broker is classified or adjudicated by a court or a taxing authority or any statutory body, as an employee of ABEX instead of as an independent contractor, then the Broker shall indemnify and save harmless ABEX of and from any and all claims and demands which may be made against ABEX by the Canada Customs and Revenue Agency (or any other taxing authority or government body) for employee remittances, EI premiums, workers' compensation premiums, employer health tax, source deductions, CPP premiums, and all other government related claims of any kind including any penalties, interest and fines.

8. Confidentiality

- a) **Non-Disclosure of Confidential Information.** The Broker acknowledges that in the course of its relationship with ABEX, the Broker will receive confidential information about the business or activities of ABEX, its affiliates and their respective affairs, including, without limitation, information on processes, products, policies, clients, insurers, pricing, business plans, financial information, intellectual property, database structures, file formats, marketing plans, service plans, insurance lists and information, whether set out in formal documents, files, data, records, notes, diagrams or in any other manner that are proprietary to and valuable trade secrets of ABEX ("Confidential Information"), and the disclosure of which to competitors of ABEX or to the general public would be highly detrimental to the best interests of ABEX and cause severe damage to the economic interests of ABEX.
- b) **ABEX Property.** All Confidential Information of ABEX, whether developed by the Broker or by others employed, engaged by or associated with ABEX or any of its affiliates, is the exclusive property of ABEX or its affiliates, as appropriate, or their respective customers or clients, and shall at all times be regarded, treated and protected as such by the Broker.
- c) **No Disclosure.** The Broker shall not disclose any Confidential Information other than as necessary in carrying out Services on behalf of ABEX, without first obtaining ABEX's written consent, and the Broker shall take all reasonable precautions to prevent inadvertent disclosure of any such Confidential Information.
- d) **No Exploitation.** The Broker shall not use, copy, transfer or destroy any Confidential Information other than as necessary in carrying out services on behalf of ABEX, without first obtaining ABEX's written consent, and the Broker shall take all reasonable



precautions to prevent inadvertent use, copying, transfer or destruction of such Confidential Information. This prohibition includes, but is not limited to, exploiting, directly or indirectly, any products or services which embody or are derived from such Confidential Information or exercising judgment or performing analysis based upon knowledge of such Confidential Information.

- e) **No Improper Use.** The Broker hereby covenants and agrees not to disclose at any time, either during or after the contractual relationship with ABEX, the Confidential Information, and not to make improper use, either directly or indirectly, of the Confidential Information or to use such Confidential Information for the benefit of the Broker or others. Without limiting the generality of the foregoing, the Broker shall not use the Confidential Information for the purpose of assisting any entity that competes with ABEX or its affiliates.
- f) **Broker Covenants.** Without limiting the generality of this Section 8, the Broker shall:
 - i. Treat all Confidential Information as strictly confidential;
 - ii. Not use or disclose the Confidential Information to any third party, nor disclose to any third party the fact that the Broker has received the Confidential Information;
 - iii. Use the same care which a reasonable person under similar circumstances would use, which shall be no less than the care ABEX uses to prevent disclosure of the Confidential Information;
 - iv. Use the Confidential Information solely for the purpose of providing the services hereunder to ABEX, and not for any personal use or purpose detrimental to the Company or otherwise;
- g) **Termination.** The Broker shall, immediately upon the termination of this Agreement or earlier at the request of ABEX:
 - i. Return and deliver to ABEX all Confidential Information, including all copies thereof made by the Broker. Should any Confidential Information be discovered by the Broker at a later date, it shall be promptly returned to ABEX without retaining any copy or extracts thereof or any notes relating thereto; and
 - ii. Certify to ABEX in writing when requested that it has complied with the provisions of this Section 8.
- h) **Conflict of Interest.** The Broker understands that a conflict of interest situation may arise where the Broker is able to profit or place itself in a position to profit directly or indirectly through a misuse of Confidential information. The Broker agrees to decline benefits, if offered, that may pose a conflict of interest and to advise ABEX of the circumstances of any such attempt.
- i) **Survival.** The Broker acknowledges and agrees that the obligations under this Section 8 are to remain in effect in perpetuity.

9. Indemnification

In addition to any other indemnifications contained in this Agreement, the Broker covenants and agrees to assume full responsibility and to indemnify and hold completely harmless ABEX, its affiliates and their respective directors, officers, employees and agents from any and all charges, claims, demands, suits, actions or other obligations whatsoever, including reasonable expenses for legal fees and disbursements, arising out of or in connection with any act or omission of the Broker in performing its duties under this Agreement (including negligent performance of the services hereunder) or in respect of any other matter relating to the Broker which is not within the scope of this Agreement.

10. General Provisions

- a) This Agreement shall apply to current policies already placed and in force at the date hereof and to all future policies which may be placed through ABEX.
- b) The Broker represents and warrants to ABEX that it has and shall maintain all requisite power, authority, capacity and licenses to carry on its business in accordance with this Agreement, and that it shall comply with the laws of the applicable jurisdiction in order to carry on its business hereunder.
- c) This Agreement shall be interpreted in accordance with the laws of the Province of Ontario. The Broker hereby attorns to the jurisdiction of the Province of Ontario for purposes of the service of any process and for the purpose of disputing any claim of any nature whatsoever which ABEX may have against the Broker.



- d) The Broker may not assign this Agreement to any other Person without the prior written consent of ABEX. This Agreement shall be binding upon the Broker and its successors and permitted assigns.
- e) In the event that any sentence, paragraph, sub-paragraph or term in this Agreement, or any part thereof, shall be deemed to be void, illegal, invalid or unenforceable by a court of competent jurisdiction, such offending sentence, paragraph, sub-paragraph, term or part (as the case may be) shall be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and be binding upon the Parties and unaffected thereby.
- f) The failure of either Party at any time to require performance by the other Party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall a waiver by either Party of the breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.
- g) **Changes.** The Parties confirm and agree that, subject to the balance of this Section 10(g), any changes to this Agreement must be in writing and signed by both Parties to be enforceable. In the event that either Party wishes to vary a term of this Agreement including, without limiting the generality of the foregoing, the Commissions, such Party desiring the change must submit the proposed change(s) in writing (the "Change Notice") to the other Party (the "Receiving Party"). The Receiving Party shall then have a period of ten (10) days following receipt of the Change Notice to elect in writing to either accept such change or to elect to terminate this Agreement as of a date no later than thirty (30) days following receipt of the Change Notice. In the event that the Receiving Party fails to make either election within the aforesaid period of time, the Receiving Party shall be deemed to have elected to accept the change(s) as set out in the Change Notice. In the event that the change(s) is accepted or deemed to be accepted, the change(s) shall be effective ninety (90) days following receipt by the Receiving Party of the Change Notice.
- h) **Survival of Terms.** Upon termination or the expiry of this Agreement, this Agreement shall be wholly terminated with the exception of any clauses specifically contemplated to continue in full force and effect beyond the termination of this Agreement.
- i) **Notices.** Any demand, notice or other communication (hereinafter in this Section 10(i) referred to as a "Communication") to be made or given in connection with this Agreement shall be made or given in writing and may be made or given by personal delivery, by registered mail or fax addressed to the recipient as follows:

To ABEX at: 139 Northfield Dr. W., Suite 206, Waterloo, ON N2L 5A6 Fax: 1-855-821-7060
To the Broker at the address and fax number provided in the above "Brokerage Application" or if different, to the following:

or such other address as may be designated by notice by either Party to the other. Any Communication made or given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if made or given by registered mail, on the second day, other than a Saturday, Sunday or statutory holiday in Ontario, following the deposit thereof in the mail or on the day following any confirmed fax transmission. If the Party giving any Communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of the mail, any such Communication shall not be mailed but shall be made or given by personal delivery or fax.
- j) **Other Agreements.** The Parties covenant and agree to execute such instruments or other documents and to take such actions as they may deem necessary or desirable to give full effect to the terms and conditions of this Agreement.
- k) **Other Brokers.** Nothing in this Agreement shall restrict ABEX from retaining other brokers or hiring employees to perform the same services or similar services as provided by the Broker.
- l) **Counterparts.** This Agreement may be executed in several counterparts, each of which, once executed, shall be deemed to be an original and such counterpart together shall constitute one and the same instrument

11. Privacy Consent

- a) The Broker hereby authorizes ABEX and its corporate affiliates (collectively referred to in this Section 11 as ABEX) to collect, use and disclose personal information as permitted by law, in connection with any insurance policy provided for in this Agreement or a renewal, extension or variation thereof, for the purposes necessary to assess the risk, investigate and settle claims, and detect and prevent fraud, such as credit information and claims history.



- b) ABEX is also authorized to collect, use and disclose such personal information and provide such personal information to third parties, as required, including insurance companies, brokers, agents, private investigators, and adjusters. Such disclosure to third parties may include but is not limited to adjudication, assessment, investigation and/or ongoing administrative purposes. ABEX may also be required or permitted to disclose such personal information pursuant to relevant privacy laws or other laws.
- c) If ABEX wishes to review personal information pertaining to an application or policy maintained by the Broker, obtain copies of the Broker’s privacy policies or standards, or make other enquiries or express concerns, ABEX may do so by contacting the Broker’s Privacy Officer.
- d) The Broker acknowledges that they are in compliance with the “Personal Information Protection and Electronic Documents Act (PIPEDA)” and/or any like Provincial legislation.
- e) ABEX acknowledges that they are in compliance with the “Personal Information Protection and Electronic Documents Act (PIPEDA)” as evidenced by its Privacy Policy posted at <http://www.abexinsurance.com/privacy-policy/>

12. Commercial Electronic Messages Consent

In order for ABEX to be able to send commercial electronic messages and marketing communications to the Broker, the Broker hereby gives ABEX the following consent:

The Broker consents to receive ABEX’s commercial electronic messages with newsletters containing news, updates and promotions regarding ABEX’s products and services. The Broker understands that the Broker can withdraw its consent at any time.

Please refer to ABEX Privacy Policy found at <http://www.abexinsurance.com/privacy-policy/> or contact ABEX for more details. ABEX’s contact information is provided in the header of this Agreement or at <http://www.abexinsurance.com/contact-us/>.

13. Signatures

Broker

Signature (Signing Officer):

Print Name:

Title:

Agreement Effective Date:

ABEX Affiliated Brokers Exchange Inc.

Signature:

Print Name: JAD McGregor

Title: President

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* If clicking on **Submit** button above doesn't bring up a new email with this application attached to it, please try using Internet Explorer or email the application to **quotes@abexinsurance.com** or fax it to 1-855-821-7060.