



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
 quotes@abexinsurance.com
www.abexinsurance.com

| | |
|---|---|
| Brokerage: | |
| Broker Address: | |
| Accounting/Document mailing address, if different than above: | |
| Mailing Preference: | Canada Post ICS Courier Telephone: |
| Website: | Does your brokerage/affiliate have its own Lloyds facility: |
| Policy Docs Contact: | Policy Docs Email: |
| Accounting Contact: | Accounting Email: (for broker statements) |
| Other brokerage names that are part of your group (note if parent, subsidiary, etc.): | |

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

Brokerage Personnel

| Name | Position/Title | Email Address |
|------|----------------|---------------|
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Please attach a separate document for additional personnel.

Top Markets Represented

| Company | Year to Date Volume | Loss Ratio |
|---------|---------------------|------------|
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|---|-----------------------------|-------------------|
| Split of Business: | Personal Lines: | Commercial Lines: |
| Does your brokerage specialize in any class of business? | | |
| | Yes | No |
| If so, please describe: | | |
| How do you attract business to your office? | | |
| Existing Volume with Intermediaries | | |
| Victor: | SWG: | |
| Trans Canada: | 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 following 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.

WHEREAS ABEX is a licensed insurance brokerage based in the province of Ontario;

AND WHEREAS ABEX desires to appoint the Broker as a sub-broker of ABEX, to solicit and service insurance policies on behalf of ABEX as provided herein;

AND WHEREAS the Broker desires to accept such appointment;

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

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) ABEX hereby appoints the Broker as a sub-broker of ABEX, to solicit and service insurance policies on behalf of ABEX.
- b) 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.
- c) 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 reasonable rules, instructions and limitations that may, from time to time, be established by ABEX and communicated by ABEX to the Broker in writing.
- d) The Parties acknowledge that many types of policies of insurance are not automatically renewed and that such renewals must be negotiated and placed by the Broker prior to expiration of the policy. However, automatic renewals may 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 as communicated in writing by ABEX to the Broker from time to time.



3. Accounting - Premium and Commissions Payable

- a) The Broker is authorized to receive the premiums and policy fees due to ABEX and the insurers 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 commission rates set forth in Schedule "A", which Schedule may be amended by ABEX from time to time by delivery of not less than 10 days prior written notice to the Broker. 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 endeavor to prepare and forward to the Broker on or before the 2nd business day of each month an itemized statement of account in respect of the Broker's balances due to ABEX (a "Monthly Statement"). Any undisputed balances shown in the Monthly Statement shall be payable, regardless of whether such premiums are financed, not later than the last business day of the month in which the statement is received by the Broker or on credit terms as may be agreed to, in writing, by and between ABEX and the Broker from time to time. ABEX's preferred methods of receiving payments are ClearPay electronic payments and cheques. Some items, such as open market policies, may be payable upon billing, as noted on the statement for those items.
- e) The omission of any item from a Monthly Statement shall not affect the responsibility of either Party to account for and/or pay as soon as reasonably possible all amounts due from one Party to the other.
- f) The Broker shall have 30 days, after receiving the statement of account, to dispute any items identified thereon. The parties shall work together in good faith and promptly endeavor to resolve any disputed items.
- g) Each Party shall have, at any time during customary business hours and after reasonable notice and at their own cost, access to the other Party's books and records relevant to this Agreement for the purpose of determining any fact relating to such other Party's obligations hereunder.
- h) For the avoidance of doubt, the Broker is fully responsible for collecting and remitting provincial sales tax on insurance premiums to the respective provincial governments in all jurisdictions where sales tax applies to insurance premiums.

4. Claims

Each Party shall immediately notify the other Party of all complaints, regulatory inquiries, investigations, claims, suits and notices of loss relating to insurance business conducted pursuant to this Agreement and the Broker shall refrain from appointing an adjuster unless and until such appointment has been approved in writing by ABEX. Each Party agrees to co-operate fully with the other, at its own expense, to promptly address and resolve all complaints, regulatory inquiries or investigations and to facilitate the investigation, adjustment, settlement and payment of any claim relating to insurance business conducted pursuant to this Agreement.

5. Policy Cancellation

Nothing in this Agreement shall be construed as limiting or restricting the right of ABEX or an insurer 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 Section 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 either Party at any time immediately upon delivery of written notice to the other Party upon the occurrence of any of the following:
- i. if any regulatory authority cancels or declines to renew the other Party's license or certificates of authority.
 - ii. if the other Party 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
 - iii. if the other Party is in breach of any material term of this Agreement and such breach is not cured within five days of the other Party receiving written notice from terminating Party 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 Party in breach is acting in good faith and with all reasonable diligence to cure such breach.
- ci) if the sale, transfer or merger of the other business occurs without the prior consent of the terminating Party, 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 termination following such sale, transfer or merger, each Party covenants that the other Party shall be promptly paid any monies owing to it.
- cii) 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 of ABEX as defined in Section 8 hereof.

7. Independent Contractor

- a) It is acknowledged by the Parties that the Broker is as an independent contractor and not 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 or other contributions under any federal or provincial legislation applicable to employees or employers 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 to the Broker under this Agreement and the services performed by the Broker. Payments relating to any of the foregoing shall be remitted by the Broker as required directly to the government agencies involved. Proof of compliance with this requirement shall promptly be made 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. 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.

8. Confidentiality

- a) **Non-Disclosure of Confidential Information.** Each Party acknowledges that in the course of its relationship with the other Party, it may receive confidential information about the business or activities of the other Party, 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 the other Party (“Confidential Information”), and the disclosure of which to competitors of such Party or to the general public would be highly detrimental to the best interests of such Party and cause severe damage to the economic interests of such Party. For greater certainty, “Confidential Information” shall not include information that a Party can establish: (i) was or becomes generally available to the public through no act or failure to act by the Party; (ii) was already known by the Party at the time of receipt as evidenced by its written records in existence at the time of disclosure; (iii) was provided to the Party by a third party not bound by an obligation of confidentiality, as a matter of right and without restriction on disclosure; (iv) was independently developed by the Party without access to Confidential Information of the other Party, as evidenced by the Party’s written records in existence at the time of disclosure; or (v) is information customarily provided by insurance brokers to third parties in the ordinary course of business of an insurance broker. Nothing herein shall preclude a Party from disclosing Confidential Information to a regulatory authority having jurisdiction over the Party or from disclosing Confidential Information in the course of a legal proceeding, pursuant to a court order, or as otherwise required by applicable law.

- b) **Property of a Party.** All Confidential Information of a Party is the exclusive property of that Party 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 other Party.
- c) **No Disclosure.** A Party shall not disclose any Confidential Information of the other Party other than as necessary in carrying out services hereunder or customary in the ordinary course of carrying on business as contemplated hereunder, without first obtaining the other Party’s written consent, and such Party shall take all reasonable precautions to prevent inadvertent disclosure of any such Confidential Information.
- d) **No Exploitation.** A Party shall not use, copy, transfer or destroy any Confidential Information other than as reasonably necessary and appropriate in carrying out services hereunder, without first obtaining the other Party’s written consent, and such Party shall take all reasonable precautions to prevent inadvertent use, copying, transfer or destruction of such Confidential Information.
- e) **No Improper Use.** The Parties each hereby covenant and agree not to disclose at any time, either during or after the term of this Agreement, the Confidential Information of the other Party, and not to make improper use, either directly or indirectly, of the Confidential Information. Without limiting the generality of the foregoing, neither Party shall use the Confidential Information of the other Party for the purpose of assisting any entity that competes with such Party or its affiliates.
- f) **Confidentiality Covenants.** Without limiting the generality of this Section 8, each Party shall:
 - i. Treat all Confidential Information of the other Party as strictly confidential;
 - ii. Not improperly use or improperly disclose the Confidential Information to any third party, nor improperly disclose to any third party the fact that the Party has received the Confidential Information;
 - iii. Use the same care which a reasonable person under similar circumstances would use to prevent disclosure of the Confidential Information;
 - iv. Use the Confidential Information solely for the purpose of providing the services hereunder to the other party, and not for any personal use or purpose detrimental to the other Party or otherwise;
- g) **Termination.** A Party shall, immediately upon the termination of this Agreement or earlier at the request of the other Party:
 - i. Return and deliver to the other Party, or destroy as appropriate, all Confidential Information, including all copies thereof made by the Party. Should any Confidential Information be discovered by the Party at a later date, it shall be promptly returned to the other Party without retaining any copy or extracts thereof or any notes relating thereto; and
 - ii. Certify to the other Party in writing when requested that it has complied with the provisions of this Section 8.
- h) **Conflict of Interest.** Each Party understands that a conflict of interest situation may arise where the Party is able to profit or place itself in a position to profit directly or indirectly through a misuse of Confidential information. Each Party agrees to decline benefits, if offered in exchange for the misuse of Confidential Information, that may pose a conflict of interest and to advise the other Party of the circumstances of any such offer.
- i) **Survival.** Each Party acknowledges and agrees that the obligations under this Section 8 are to survive the termination of this Agreement.



9. Indemnification

In addition to any other rights of indemnification contained in this Agreement, each Party covenants and agrees to indemnify and hold harmless the other Party, 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 breach by such indemnifying Party of the terms of this Agreement or any negligent act or omission of the indemnifying Party in performing its duties under this Agreement.

10. Records

Each Party shall maintain and preserve in accordance with insurance industry standards accurate and complete records of all transactions completed pursuant to the provisions of this Agreement, including customary books of account, insurance, banking and trust records (the "Records"). Each Party, and its auditors and other authorized representatives, shall upon providing at least five (5) business days written notice to the other Party, have the right during normal business hours to examine at the other Party's premises all of the Records of such Party that relate to business transacted pursuant to this Agreement. The reviewing Party shall be entitled to take copies of the Records of the other Party at the reviewing Party's expense.

11. Ownership of Business

Each Party hereto acknowledges and agrees that the portfolio of business written by the Broker pursuant to this Agreement shall at all times be the property of the Broker and, as between the Broker and ABEX, the customers of the Broker insured pursuant to this Agreement shall be the Broker's customers. ABEX shall not in any way, before or after termination of this Agreement, use any information regarding such customers provided to ABEX by the Broker or otherwise received by ABEX pursuant to this Agreement, except as may be reasonably necessary for ABEX to fulfill its obligations under this Agreement and its obligations to such customers under any policy of insurance or as required by law. Unless otherwise directed by the Broker or the customer, ABEX shall not disclose, divulge or transfer such customer information to any other broker who might use such information to compete for said business of the Broker. Although the customer relationship is owned by the Broker, the parties acknowledge and agree that the insurer relationship is owned by ABEX.

12. 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) Each Party represents and warrants to the other Party 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. Each Party 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 one Party may have against the other Party.
- d) A Party may not assign this Agreement to any other Person without the prior written consent of the other Party. This Agreement shall be binding upon the Parties 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.** The provisions of Sections 3 to 10 shall survive any termination or expiry 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 by email, addressed to the recipient as follows:

To ABEX at:

ABEX Affiliated Brokers Exchange Inc.

139 Northfield Dr. W., Suite 206, Waterloo, ON N2L 5A6

Attention: Jad McGregor, President

Email: service@abexinsurance.com

To the Undersigned Broker at:

Address:

Attention:

Email:

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 or email 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 email.

- 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.

13. 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 to the extent permissible under applicable law by contacting the Broker's Privacy Officer.
- d) The Broker acknowledges that the Broker is in compliance with the "Personal Information Protection and Electronic Documents Act (PIPEDA)" and/or any applicable provincial privacy legislation.
- e) ABEX acknowledges that ABEX is in compliance with the "Personal Information Protection and Electronic Documents Act (PIPEDA)" and/or any applicable provincial privacy legislation as evidenced by its Privacy Policy posted at <http://www.abexinsurance.com/privacy-policy/>

14. 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/>.



ABEX Affiliated Brokers Exchange Inc.
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(p) 519-880-0044
quotes@abexinsurance.com
www.abexinsurance.com

15. Signatures *Electronic signature or typed name acceptable if document emailed by Signing Officer*

Broker

ABEX Affiliated Brokers Exchange Inc.

Signature (Signing Officer):

Signature: 

Print Name:

Print Name: JAD McGregor

Title:

Title: President

Agreement Effective Date:

Submit *

* If clicking on **Submit** button above doesn't bring up a new email with this application attached to it, please try using a different browser or save and email the application to quotes@abexinsurance.com



Schedule “A” - Broker Commissions

For **standard in house authority business** the following commission structure applies:

| Product | Broker Commission (%)* |
|--|-------------------------------|
| Building Owners | 15 |
| Construction | 15 |
| Package Policies | 15 |
| Rented Properties | 15 |
| Student Housing | 17.5 |
| Vacant Properties | 17.5 |
| Rented Condominiums | 15 |
| Commercial General Liability | 15 |
| Commercial General Liability with E&O Sublimit | 15 |
| Owners Landlords and Tenants (OL&T) | 15 |
| Stand Alone Premises Liability | 15 |
| Cyber Insurance | 15 |
| Directors & Officers | 15 |
| Professional Liability | 15 |
| High Value Homes | 15 |
| Personal Umbrella | 15 |
| Equipment Breakdown | 15 |

*Commission may vary for business written outside of our in-house authority, however, applicable commission will always be noted on quote and invoice.