

## **SERVICE PROVIDER AGREEMENT**

THIS SERVICE PROVIDER AGREEMENT ("Agreement"), is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), by and between the FLORIDA AUTOMOBILE JOINT UNDERWIRING ASSOCIATION, a Florida unincorporated association (the "FAJUA"), and \_\_\_\_\_, a corporation authorized to transact business in Florida (to be known, as the "Servicing Provider").

### **RECITALS**

A. The FAJUA is the joint underwriting association created in Florida for the purpose of establishing and carrying out a program for providing automobile liability insurance and other motor vehicle insurance to qualified applicants unable to procure such insurance through ordinary methods.

B. The Service Provider is a \_\_\_\_\_ and satisfies the eligibility criteria established by the FAJUA to provide comprehensive policy administration, and or, claims administration services, and other necessary services to applicants and insureds of the FAJUA.

C. The FAJUA desires to appoint the Service Provider to provide such services to applicants and insureds of the FAJUA, and the Service Provider desires to undertake the duties and responsibilities associated therewith.

For the reasons set forth above, and in consideration of the mutual promises of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which each party hereby acknowledges, the parties agree as follows:

### **AGREEMENTS**

#### **ARTICLE 1** **DEFINITIONS**

In addition to any defined terms as set forth in this Agreement the following terms are defined and mean as follows:

A. "FAJUA" shall mean and include the FAJAU, its Board of Governors (the "Board"), and all FAJUA employees, and the terms "Board" and "FAJUA" shall include any committee created pursuant to the Plan or established by the Board or the Chairman of the Board, where the context so requires.

B. "Plan" shall mean and include the FAJUA's Articles of Association, Operating Principles, Servicing Standards, Accounting and Statistical Requirements Manual, Claims Guidelines Manual, Policy and Forms Manual, Manual of Rules and Rates, including the Rules of Practice, and all amendments, modifications and revisions thereof.

C. "Agreement" shall mean and include this Service Provider Agreement and all amendments, addenda, modifications and supplements thereto.

D. "Code" shall mean and include the Florida Insurance Code and all rules and orders of the Florida Office of Insurance Regulation (OIR) and the Florida Department of Financial Services (the "Department").

E. "Producers" shall mean and include any and all agents or producers assigned to the Service Provider by the FAJUA pursuant to the Plan.

F. "Proposal" shall mean the Proposal submitted to the FAJUA by the Service Provider in response to the Request for Letters of Interest and accepted by the FAJUA pursuant to the FAJUA's process for the selection of serving providers.

Terms not defined in this agreement shall be construed as defined in the following, in declining order of preference: the Code, the Plan, and prevailing usage in the property and casualty insurance industry.

## **ARTICLE II** **APPOINTMENT**

The FAJUA hereby appoints the Service Provider to provide, in conformance with this Agreement, the Plan, and the Code, during the term of this Agreement, all services required to be performed by a Service Provider under the Plan and the Code (the "FAJUA Services"), including without limitation, underwriting, policy issuance, premium collection, accounting, statistical, data-processing, record-keeping services and/or claims handling and administration. By its execution hereof, the Service Provider accepts such appointment and assumes the obligations imposed upon it under this Agreement, the Code, the Plan, as each currently exists and as is amended from time to time after the execution of this Agreement, all judicial or administrative orders or judgments concerning this Agreement that in any form or manner affect the rights or obligations of the parties hereto, and the Proposal and agrees to be bound by the terms and conditions thereof. The Service Provider shall have the obligation to familiarize itself with all of the documents described in this Article as they exist as of the date of the execution of this Agreement and with any subsequent amendments, addenda, modifications or supplements thereto.

## **ARTICLE III** **TERM**

A. **Term.** This Agreement shall commence on the Effective Date and shall continue for a period of thirty-six (36) consecutive calendar months thereafter or until this Agreement has been terminated pursuant to Article VI hereof, whichever occurs first.

B. **Probationary period.** The initial twelve (12) months of this Agreement shall be a "Probationary Period." At any time during or at the end of the Probationary Period, the FAJUA may terminate this Agreement pursuant to Article 6 if, in the reasonable exercise of the Board's discretion, the FAJUA is not satisfied with the Service Provider's performance to that time. Any such notice merely must be given by the FAJUA during the Probationary Period. As long as such notice is given during the Probationary Period, the termination date may occur after the Probationary Period expires.

C. **Optional renewal.** On the expiration of the period set forth in Section 3.a, the parties may renew this Agreement by mutual agreement for two (2) additional twenty-four (24) month periods.

#### **ARTICLE IV**

#### **POWERS AND DUTIES OF SERVICE PROVIDER**

A. **Producers' Activities.** The insurance policy administration Service Provider shall administer the FAJUA activities of all Producers assigned to it in accordance with the Plan and the Code and shall conduct its operations in accordance with the contracts entered into between Producers and the FAJUA (the "Producers Contracts"). The Service Provider shall be primarily responsible for the activities and functions of the producers assigned to it and shall cause such Producers to render their services in accordance with the Producers Contracts, the Plan, and the Code. The Service Provider shall notify the FAJUA in writing of the failure or refusal of any Producer, if known to the Service Provider, to comply with any provision of the Producers Contract, the Plan, or the Code as it relates to FAJUA business. The Service Provider must provide the FAJUA with a procedure manual that includes the procedures to be followed in the processing of FAJUA business, including but not limited to, new business, endorsements, payments, collections, renewals, cancellation, accounting, audits, inspections, producer discipline, and customer service.

4.1.1 Service Provider shall initiate collection procedures within 30 calendar days of the original due date of the past due amount. Procedures to collect unearned commission shall include but not be limited to phone calls, restricted delivery of notice via Certified mail, Registered mail or overnight courier to the Producer. Service Providers may use their voluntary market procedures to collect all unearned commissions. Voluntary market procedures and any other procedures and revisions developed by the Service Provider will be supplied to the FAJUA. Service Providers shall notify the FAJUA of any Producer who has a balance due the FAJUA of more than \$50, that is over 60 days past due.

4.1.2. The FAJUA may suspend the bidding authority of any Producer who is more than 90 days past due. The Service Provider will advise the FAJUA when the unearned commission has been paid and the FAJUA may reinstate the Producer. Producers who are suspended twice during a year will be subject to termination of their contract with the FAJUA.

4.1.3 Producers who have \$250 or more due the FAJUA in unearned commissions that are more than 60 days past due shall be handled in the following manner:

a. The Service Provider will proceed with its collection activity procedures within 30 days of the original due date of the past due amount.

b. The Service Provider will turn the Producer's account over to a collection agency if not paid in full within 30 days of the action taken above.

4.1.4. Producers no longer assigned to the FAJUA who have outstanding unearned commission balances in excess of \$50 shall be handled in the following manner:

a. The Service Provider will proceed with their collection activity procedures for payment of the unearned commissions, within 30 days of the termination of the Producer's contract and advise the FAJUA of any action taken.

b. The Service Provider will turn the Producer's account over to a collection agency if not paid in full within 30 days of the action taken above.

4.1.5. The Service Provider shall provide the FAJUA with a list of all Producers who have overdue unearned commission balances in excess of \$50, and notify the FAJUA when the balances are paid.

B. **FAJUA Services.** The Service Provider shall carry out and perform all FAJUA Services in strict compliance with all of the terms and conditions of the Plan, all written OIR or FAJUA interpretations thereof, all written OIR or FAJUA bulletins, directives, rules, or orders, and all terms of the Request for Letters of Interest and the Proposal submitted by the Service Provider, and shall exercise ordinary care, prudence, and diligence in the performance of such FAJUA Services. In the event of a conflict between any of the foregoing and the Service Provider's operating procedures or method of performing services in the voluntary market, the terms of the Plan and all written interpretations, bulletins, directives, rules, or orders issued by the OIR or the FAJUA shall govern.

4.2.1 In performing its duties hereunder, the Service Provider shall use its best efforts and good faith to achieve an underwriting profit of all business placed with the FAJUA. The Service Provider shall use its best efforts and good faith in the performance of all of its duties, including but not limited to: (a) underwriting policies in a manner consistent with the FAJUA's guidelines; (b) processing applications; (c) collecting and accounting for all premium; (d) rating, quoting and issuing policies of insurance consistent with the FAJUA's rate, rule, and form filings; (e) developing and maintaining proper underwriting files on behalf of the FAJUA; (f) providing proper and timely cancellation of non-renewal notices to policyholders; (g) promptly remitting premium received net of the fees due to the Service Provider as provided for in this Agreement; and (h) administering claims in a manner consistent with the FAJUA's guidelines.

4.2.2 If the FAJUA determines that the Service Provider is not performing at the standards required by this Article 4, the FAJUA may notify the Service Provider of such inadequate performance and take such disciplinary action as the FAJUA sees fit, including but not limited to ordering the Service Provider to implement corrective actions, withholding fees due to the Service Provider, securing repayment of costs incurred as a result of the Service Provider's actions, terminating this Agreement pursuant to Article 6 hereof, or suspending the underwriting authority of the Service Provider.

4.2.3 The FAJUA may withhold fees due to the Service Provider during the period of any dispute between the Service Provider and the FAJUA as to disciplinary or corrective action taken under this Agreement.

4.3 **Internal Audits.** The Service Provider shall conduct internal audits of its FAJUA business, comparable to any internal audits conducted by it of its voluntary business, at such times and in such detail as the FAJUA reasonably requires. The results of any such audit shall be reported to the FAJUA no later than thirty (30) days following completion of same. The Service Provider shall be responsible for the expense of such audits. Failure to conduct and

report internal audits in a timely manner shall constitute a material breach of this Agreement by the Service Provider.

**4.4 OIR or FAJUA Audits.** The Service Provider shall cooperate fully with all officers, employees, agents, or other representatives of the FAJUA or OIR during audits, investigations, or examinations made and conducted by either of them or on behalf of either of them and permit such persons to have full access, during normal business hours, to all books and records (in paper or electronic form) of the Service Provider pertaining to its FAJUA insureds and the FAJUA Services. The Service Provider shall not destroy any data, documents, or records relevant to FAJUA business or the FAJUA Services without prior written approval of the FAJUA.

**4.5 Premium Collection Audits.**

4.5.1 The Service Provider shall be audited by the FAJUA to determine the eligibility of premium charge-offs. The Service Provider shall meet a service standard of no more than 1.25% of the annual earned premium for charge-offs. Audits will be conducted by the FAJUA. They will include a review of the policy issuance and cancellation cycle to ensure that the Service Provider is meeting the performance standard of no more than 1.25%. Within 30 days of notification to the Service Provider, the Service Provider shall reimburse the FAJUA for all ineligible charge-offs. The FAJUA may perform a follow up audit at the expense of the Service Provider when the charge-offs are in excess of 1.25%.

4.5.2 The standard for charge-offs is: uncollected earned premiums charged off should not exceed 1.25% of earned premiums. An annual ratio greater than 1.25% will cause an audit to be made. If ten percent or more of the sample is determined to be ineligible, the percentage of the sample determined ineligible will be applied to the total premiums charged off and the result will be deemed ineligible. If any individual item in the sample is 10% or more of the total population of charge-offs, such item(s) shall be removed from the error ratio calculation and the ratio shall be recalculated. This recalculated ratio shall be applied to the total population and the result will be reimbursed to the FAJUA. The FAJUA shall also be reimbursed for those items removed from the calculation. In addition to reimbursing the FAJUA for ineligible charge-offs, the carrier shall also reimburse the FAJUA for the cost of the audit, said cost not to exceed \$20,000.

Should the audit determine the ineligible charge-offs are not greater than ten percent of the total charge-offs, the Service Provider shall reimburse the FAJUA for those charge-offs in the sample determined to be ineligible.

4.5.3 Reports that show negative charge-offs in excess of written premiums by the Service Provider for any given year will generate an immediate inquiry and/or audit. Within 30 days of notification by the FAJUA to the Service Provider of the negative charge-off, the Service Provider shall provide the FAJUA with a detailed written report on the charge-offs. The FAJUA audit will be at the expense of the Service Provider.

4.5.4 The Service Provider shall develop specific written procedures to apply to charge-offs in compliance with the Accounting and Statistical Manual. Such written procedures and any subsequent revisions thereto shall be supplied to the FAJUA.

4.5.5 If the Service Provider fails to correct its charge-off errors and/or does not reimburse the FAJUA for ineligible charge-offs within 30 days of being notified of the errors and/or ineligible charge-offs, it will be subject to a detailed audit at the expense of the Service Provider, and possible termination as a Service Provider of the FAJUA.

4.6 **Underwriting and Claims Audits.** The FAJUA may perform underwriting and claims administration audits of the Service Provider. The standard for claims administration and underwriting shall be no more than a 10% error ratio for each criteria of the audit. Underwriting audits include but are not limited to new business, renewals, cancellations, electronic binder procedures and endorsements. Within 30 days of notification by the FAJUA of error ratios in excess of 10%, the Service Provider will demonstrate to the FAJUA that the errors have been corrected and procedures put in place to avoid additional errors. A follow up audit will be performed to ascertain that the Service Provider has corrected the errors and taken steps to eliminate future errors. The expense of the follow up detailed audit by the FAJUA will be borne by the Service Provider.

4.7 **Special Audits.** If the FAJUA determines that the Service Provider is not performing at the standards required by this Article 4, it may conduct a special audit of the Service Provider, at the Service Provider's expense (not to exceed a maximum of \$20,000.00). Such special audits by the FAJUA shall be in addition to any other remedy which the FAJUA has under this Agreement or otherwise.

4.8 **Operating Expense Reports.** The Service Provider shall submit to the FAJUA, at such intervals as are requested by the FAJUA, reports of the operating expenses incurred by it in performing FAJUA Services. Such reports shall contain the information and be in the format called for by any uniform operating expense form or procedure now or hereafter adopted by the FAJUA.

4.9 **Financial Statements.** Simultaneous with its filing with the OIR, the Service Provider shall submit to the FAJUA its annual and quarterly statements; audited financial statements, or if such information is not required by any regulatory authority, alternative information in a format sufficient to allow the FAJUA to monitor the financial stability and regulatory status of the Service Provider.

4.10 **Forms and Rates.** The Service Provider shall implement all changes, revisions, amendments, and modifications in rates, rating plans, endorsements, renewals, and policy forms on the effective date of their approval by the OIR or such late date as the FAJUA may specify.

4.11 **Correspondence.** The Service Provider shall designate, in writing, the person or persons within its organization to whom correspondence, bulletins, circulars, and related material shall be sent by the FAJUA. Such person(s) shall be directed to acknowledge receipt of any of the foregoing when so requested by the FAJUA, and such acknowledgement shall bind the Service Provider.

4.12 **Subcontractors.**

4.12.1 The Service Provider may, with FAJUA approval and subject to the conditions and limitations set forth in this Agreement, the Plan and the Request for Proposal, perform any of its obligations or duties under this Agreement through one or more subcontractors with which

the Service Provider elects to contract. No subcontract shall relieve the Service Provider of any of its obligations or duties under this Agreement or of any liability to the FAJUA, and the Service Provider shall be liable to the FAJUA for all conduct of its subcontractors in connection with this Agreement. Any such subcontractor must meet the standards specified in the Plan and the Request for Letters of Interest for eligibility and performance of service providers. Any contract entered into between the Service Provider and a subcontract is subject to prior approval by the FAJUA. Copies of any such contract shall be made available to the FAJUA.

4.12.2 The Service Provider shall be responsible for forwarding to each of its subcontractors any correspondence, bulletins, circulars, and related materials received from the FAJUA and relevant to that subcontractor's responsibilities. The FAJUA shall have no obligation to provide such materials to subcontractors.

4.12.3 The Service Provider shall require, as part of any agreement by which it subcontracts for the performance of any of its FAJUA Services, that the subcontractor shall make its books, records, and operations open and available to the FAJUA so that the FAJUA may conduct or cause to be conducted, at such times and in such manner as the FAJUA elects, comprehensive financial and performance audits of the subcontractors' activities on behalf of the FAJUA, and the Service Provider shall cooperate and assist the FAJUA at its request in all such audits.

4.12.4 No subcontract shall relieve the Service Provider of any of its obligations or duties to perform FAJUA Services using staff, methods, and systems of a comparable quality to those that the Service Provider uses to perform those services for its other voluntary market business.

**4.13 Indemnification.** The Service Provider shall be and is responsible for the good faith claims handling required by Florida Statutory and common law. In the event there is a verdict of bad faith and the award of damages therefore, or in the event a settlement of litigation is required in a case alleging such conduct, the Service Provider shall be responsible for such damages. These damages shall include all damages arising from litigation in a bad faith action, including attorney's fees. The parties agree this paragraph is intended to define the relative rights and responsibilities of the parties in the event of a suit alleging bad faith against the FAJUA or the Service Provider. This paragraph is not intended to suggest that the FAJUA or the Service Provider believe that there is a legal basis for any party to sue the FAJUA or its Service Provider for bad faith.

The Service Provider shall, at its expense, provide competent legal counsel for and defend the FAJUA in any suit, proceeding, or action alleging malfeasance, misfeasance, or nonfeasance of the Service Provider in its performance of the Service Provider's FAJUA Services or seeking benefits or damages under an FAJUA policy of insurance serviced by the Service Provider, unless in the opinion of the FAJUA's legal counsel, such representation may create a conflict of interest or otherwise not be in the FAJUA's best interests. The Service Provider shall indemnify and hold harmless the FAJUA against and for all costs, losses, damages, expenses, liabilities, and judgments, including without limitation attorneys fees and expenses at all stages of pretrial, trial, and appeal, in any suit, proceeding, or action brought or threatened against the FAJUA and arising from or relating in any manner to such alleged malfeasance, misfeasance, or nonfeasance of the Service Provider in its performance of the Service Provider's

FAJUA Services. The FAJUA may request, and the Service Provider shall at its expense provide, a representation by counsel prior to the actual initiation of a lawsuit where such representation and defense is deemed appropriate by the FAJUA.

4.14 **Limitation of Authority.** In addition to any other limitations expressly contained in the Code, the Plan, this Agreement, or any underwriting guideline, bulletin, or instruction which may be issued from time to time by the FAJUA to the Service Provider, and except as otherwise permitted by this Agreement, the Service Provider has no authority to and shall not:

4.14.1 Make, accept or endorse notes or otherwise incur any liability which is not incurred in the ordinary course of business of the Service Provider on behalf of the FAJUA.

4.14.2 Waive forfeiture or issue a guaranty for or on behalf of the FAJUA, other than as permitted expressly in writing by the FAJUA.

4.14.3 Extend the time for the payment of premiums or other monies due the FAJUA.

4.14.4 Directly or indirectly solicit, sell, offer, bind, issue, or deliver any insurance at any reduction or deviation from the rates, terms, or conditions specified therefore by the FAJUA or the OIR.

4.14.5 Transact business in contravention of applicable laws, rules, lawful orders, or regulations or in contravention of written instructions issued by the FAJUA to the Service Provider consistent with this Agreement.

4.14.6 Cause the FAJUA to transact business in contravention of applicable laws, rules, lawful orders, or regulations or in contravention of written instructions issued by the FAJUA or the OIR to the Service Provider consistent with this Agreement.

4.14.7 Hold itself out as an agent of the FAJUA in any other manner, or for any other purpose, than is specifically authorized or permitted by or in accordance with this Agreement or as otherwise expressly authorized by the FAJUA from time to time.

4.14.8 Waive or forgive premium payment.

4.14.9 Withhold or use for its own purposes any monies or property of the FAJUA.

4.14.10 Offer or payment any rebate or return of premium other than as prescribed by the FAJUA's policies of insurance.

4.14.11 Bind (or commit to bind) coverage subsequent to its effective date without express approval of the FAJUA.

4.14.12 Effect or authorize a flat cancellation more than thirty (30) days after the effective date of a policy without express approval of the FAJUA. In the event of such flat cancellation, the Service Provider shall document the existence of substituted coverage or other reasons why the FAJUA has no liability for payment of loss while coverage was in force.



4.14.13 Endorse checks that are payable to the FAJUA or its order, except that the Service Provider may endorse such checks for deposit into a FAJUA account maintained by the Service Provider. The Service Provider may endorse and deposit in the account maintained by the Service Provider for the FAJUA premium checks that are payable to the Service Provider or its order.

4.14.14 Bind reinsurance or retrocession's on behalf of the FAJUA without the FAJUA's express consent or direction.

4.14.15 Commit the FAJUA to any claims compromise or settlement from a reinsurer without express approval of the FAJUA.

## **ARTICLE V**

### **RELATIONSHIP OF THE PARTIES**

A. **Independent Contractor.** The Service Provider shall be an independent contractor performing its FAJUA Services free from any supervision or control by the FAJUA, except such supervision and control as may be exercised by the FAJUA in connection with enforcing compliance with this Agreement, the Code, and the Plan.

B. **Fiduciary.** With respect to member insurers of the FAJUA, the Service Provider shall be deemed a fiduciary in the handling of all FAJUA funds and assets that come into the control or possession of the Service Provider. The Service Provider shall remit all premium or other funds received by the Service Provider to the FAJUA, and shall not convert such premium or other funds to the Service Provider's use or benefit without the express written consent of the FAJUA.

C. **Waiver of Claims.** The Service Provider waives all claims to proceed against any of the following in their individual capacity: former or current employees, agents, or members of the FAJUA Board of Governors or any committee of the FAJUA, individually or as a group, arising from the formation or performance of this Agreement, whether in contract or tort, law or equity. The foregoing shall not be construed as a waiver of the Service Provider's rights to seek judicial relief against the FAJUA arising from any breach of any provision of this Agreement by the FAJUA.

## **ARTICLE VI**

### **TERMINATION**

A. **Termination Upon Event of Default.** The FAJUA may terminate this Agreement at any time upon an Event of Default. The following events shall be deemed an Event of Default:

6.a.1 Willful misconduct by the Service Provider with respect to a matter that is a subject of this Agreement.

6.a.2 Gross negligence or recklessness in the performance of the Service Provider's material duties under this Agreement.

6.a.3 Any act, error, or omission, whether intentional or unintentional, by the Service Provider, its officers, directors, employees, agents, or sub-agents, that places the FAJUA or the Service Provider, as the case may be, in violation in any material respect (not promptly cured) of any applicable law, rule, regulation, or lawful and binding order of the OIR, other regulatory agency or authority, or court of competent jurisdiction.

6.a.4 Failure to fully and adequately perform, or default in the performance of, as reasonably determined in the sole discretion of the FAJUA, any material provision, term or condition hereof or any material obligation or liability imposed under this Agreement, the Plan, any applicable law or rule or order of the OIR by the Service Provider or any of its subcontractors, agents, or sub-agents, or any other violation or charge of violating any applicable law or rule or order of the OIR.

6.a.5 Persistent failure by the Service Provider to follow in a material respect a lawful directive of the FAJUA that is called for by or not inconsistent with this Agreement, the Plan, any applicable law, or any rule or order of the OIR.

6.a.6 Disclosure in an audit or examination of the Service Provider by the FAJUA or OIR that the Service Provider has materially failed to perform its FAJUA Services in compliance with the Plan, the laws of Florida or any applicable rules or orders of the OIR.

6.a.7 Refusal by the Service Provider or a subcontractor or agent, of the Service Provider to give the FAJUA reasonable access to the books, records, and operations of the Service Provider or subcontractor so that the FAJUA may audit the Service Provider's or subcontractor's operations on behalf of the FAJUA or cause the Service Provider's or subcontractor's operations on behalf of the FAJUA to be audited.

6.a.8 Failure by the Service Provider to fully and adequately perform the FAJUA Services in accordance with the terms of the Request for Letters of Interest response from the Service Provider.

The FAJA shall notify the Service Provider in writing of the existence of an Event of Default within a reasonable time after the FAJUA obtains actual notice thereof. Such notice shall set forth a time period for curing same, which curative period shall not exceed thirty (30) days. If the Service Provider fails to cure the Event of Default in the time and manner set forth in such notice, the FAJUA may terminate this Agreement by written notice, which notice shall specify the date of termination and such other matters respecting the procedures to be followed in connection therewith as the FAJUA shall reasonably determine and as are otherwise in conformance with the terms and provisions of this Agreement.

B. **Immediate Termination.** In addition to the FAJUA's right to terminate this Agreement as provided in Section 6.A, this Agreement shall terminate upon the occurrence of any of the following events:

6.b.1 The expiration of the term set forth in Article III.

6.b.2 The commencement of insolvency or conservatorship proceedings against the Service Provider under the insurance laws of any jurisdiction.

6.b.3 A determination by the FAJUA that the Service Provider no longer meets the eligibility requirements as set forth in the Plan, the laws of Florida, or the rules or the OIR.

6.b.4 The Service Provider's loss of authority to transact its business in Florida.

6.b.5 The enactment of legislation into law by the State of Florida, or the promulgation of rules or orders by the OIR, which effectively deactivates the FAJUA or transfers the coverages of the FAJUA to another entity, or materially enlarges, abridges, or otherwise affects the obligations or duties of the Service Provider, or materially limits the FAJUA's ability to receive or use substantially all services contemplated under this Agreement.

6.b.6 The issuance of written notice by the OIR to the FAJUA that the OIR or the Florida Insurance Commissioner has disapproved or refused to ratify the Service Provider's designation as a Service Provider of the FAJUA.

C. **Termination during Probationary Period.** In addition the FAJUA's right to terminate this Agreement as provided in Section 6.A and 6.B, the FAJUA may terminate this Agreement at any time during the Probationary Period upon written notice to the Service Provider, which notice shall specify a date, not less than one hundred twenty (120) days from the date of the notice, on which this Agreement shall terminate.

6.5 **Suspension of Authority.** If such action is reasonably necessary to protect the FAJUA, the FAJUA may suspend the underwriting authority and claims settlement authority of the Service Provider during the pendency of any bona fide dispute over the cause for or propriety of termination.

6.6 **New Policies.** After the effective date of termination of this Agreement, the Service Provider shall not issue any new or renewal policies nor bind any new or renewal insurance on behalf of the FAJUA. This shall not limit the Service Provider's authority to issue appropriate endorsements pursuant to the Plan on policies serviced by the Service Provider.

6.7 **Prior Obligations.** No termination shall affect the rights and obligations of the parties as to transactions or acts by either party prior to the effective date of termination or relieve either party's obligation on policies during the pendency of any dispute over the cause of termination.

6.8 **Other Remedies.** Any right of termination or cancellation belonging to any party may be exercised without prejudice to any other right or remedy to which the terminating or cancelling party may be entitled at law or under this Agreement.

6.9 **Continuation of Performance.** Upon termination of this Agreement, the applicable provisions of this Agreement, the Plan, and the Code shall govern the assignment of Producers to other Service Providers and the continuing performance of FAJUA Services by the Service Provider after termination.

6.9.1 After the effective date of termination of this Agreement, the Service Provider shall neither issue new policies nor bind any new insurance on behalf of the FAJUA, nor extend, renew or increase the FAJUA's liability on any existing policy or binder.

6.9.2 Unless otherwise specified by the FAJUA, the termination of this Agreement shall not relieve the Service Provider of its obligations hereto as to the Service Provider's obligations with respect to policies written prior to the effective date of termination, including but not limited to the Service Provider's obligations with respect to policies written prior to the effective date of termination.

6.9.3 Upon termination of this Agreement Service Provider shall:

- a. fully cooperate with the FAJUA in implementing the assignment of Producers, or the transfer of Service Provider's duties and obligations, to other service providers;
- b. continue to perform all of its obligations and duties as set forth in this Agreement (including but not limited to collecting premium, accounting for premium and commission and settling balances, and administering claims) with respect to all FAJUA business written prior to the effective date of termination, unless instructed otherwise by the FAJUA;
- c. forward to the FAJUA (or its designee) all supplies and policy files and all unused policy forms, with an accounting of all such policies;
- d. upon request of the FAJUA, forward all FAJUA claims files to the FAJUA or its designee.

6.10 **Expenses**. All costs, fees, and expenses incurred by the Service Provider in connection with a termination of this Agreement shall be borne by the Service Provider without any right of reimbursement against the FAJUA.

6.11 **Books and Records**. All books, records, files, policies, contracts, agreements, endorsements, supplies, and related materials used by the Service Provider in the performance of its FAJUA duties shall be the property of the FAJUA. The Service Provider shall deliver to the FAJUA at the FAJUA's request, on reasonable terms and at the Service Provider's expense, all such books, records, files, policies, contracts, agreements, endorsements, supplies, and related material.

6.12 OIR Action. Both the Service Provider and the FAJUA shall, independent of the other, have the right to deal directly with the OIR respecting the Service Provider's performance of or alleged failure to perform its duties under the Plan, the Code, and this Agreement. Each of the FAJUA and the Service Provider may, at its own cost and expense, initiate such action, suite, or other proceeding and assert or file such petition, protest, answer, or other challenge or defense as it shall determine with respect to any other, bulletin, rule, regulation, report, examination, or finding issued or made by the OIR which relates to the performance by the Service Provider of the FAJUA Services or which might adversely affect its right or ability to continue as a Service Provider, or might expose either or both of them to fine or penalty or other enforcement action or liability.

## **ARTICLE VII**

### **POWERS AND DUTIES OF THE FAJUA**

A. **Performance of Obligations.** The FAJUA shall comply with and carry out and perform all obligations and liabilities imposed upon it under the Plan and this Agreement, including the prompt payment to the Service Provider of all fees, allowances, and other reimbursements to which the Service Provider is entitled.

B. **Notice to Service Provider.** The FAJUA shall promptly notify the Service Provider in writing of all amendments or supplements to the Plan and all written interpretations or modifications thereof pertaining to the Service Provider and all rules or orders of the OIR that may affect the Service Provider's performance of its obligations as set forth herein.

C. **Producers.** Upon receipt of notice from the Service Provider that a Producer assigned to the Service Provider is not complying with the Plan or with the terms of any Producers Contract or with any applicable provision of law with respect to its FAJUA business, the FAJUA may, at its sole option, suspend the Producer from writing any further FAJUA business, terminate the Producer's Contract, or take such other steps as the FAJUA may elect to enforce compliance therewith and shall notify the OIR consistent with the Plan of such actions taken.

D. **OIR Filings.** The FAJUA shall handle, through its employees, officers, staff, contractors, or other representatives, all filings and related matters with the OIR required for the operation of the FAJUA, including rates, policy changes, and any other transaction requiring approval by the OIR.

E. **Audits.** The FAJUA shall monitor the performance of FAJUA Services by all service providers appointed by it so as to assure that they are performed in accordance with the Plan, the Servicing Standards and the Code, and at a reasonable cost to the FAJUA's insureds and member insurers. The FAJUA shall audit, or cause to be audited, each service provider with such frequency and in such detail as it shall determine in its discretion. Copies of such audits, when final, shall be furnished to the OIR at such time as they are furnished to the Board and Operating Committee or Claims Committee of the FAJUA. The provisions of this section shall not diminish, waiver, or limit the Service Provider's responsibility for conducting internal audits pursuant to Section 4.3.

## **ARTICLE VIII COMPENSATION**

A. **Compensation.** In consideration of the FAJUA Services rendered by the Service Provider, the Service Provider shall be paid each month the fees set forth in Exhibit "A".

B. **Limitations.** The Service Provider shall be entitled to receive only such fees, allowances, cost reimbursements, or other compensation as are specifically authorized by the Plan and this Agreement. Without limiting the generality of the foregoing, the Service Provider shall not be entitled to receive compensation or reimbursement for: (a) any costs, fees, expenses, penalties, fines, assessments, or charges incurred by it in connection with any suit, investigation, examination, report, decision, claim, or other proceeding by the OIR or by the FAJUA; or (b) any loss, damage, expense, costs, or fees incurred or paid by the Service Provider to any FAJUA insured, Producer, or other person by reason of an actual or alleged failure of the Service Provider to carry out and perform any of its obligations under the Code, the Plan, or this Agreement with diligent and reasonable care and prudence, including, without

limitation, any loss, damage, expense, costs or fees resulting directly or indirectly from an actual or alleged failure or refusal of the Service Provider to (i) perform any FAJUA Services in compliance with the Plan; (ii) account for any funds received or disbursed by it in connection with the performance of the FAJUA Services; or (iii) cure any default or breach of this Agreement.

C. **Excess Payments.** The Service Provider shall promptly repay to the FAJUA any moneys incorrectly or inappropriately paid to it by the FAJUA or in excess of amounts properly payable by the FAJUA, pursuant to this Agreement or the Plan. The Service Provider also shall promptly repay to the FAJUA any moneys incorrectly or inappropriately disbursed by it from an account of the FAJUA.

D. **Fines and Penalties.** The Service Provider shall pay such administrative fines, costs, charges, assessments, and penalties levied by the OIR as a result of the Service Provider's failure to comply with the Plan, the terms of this Agreement, or the laws of the State of Florida or the rules or orders of the OIR. Such amounts shall not be reimbursed by the FAJUA.

E. **Setoff.** The FAJUA shall have, and may exercise, at any time the right to offset any balance or balances due to the Service Provider under this Agreement against any balance or balances then owed by the Service Provider under this Agreement.

## **ARTICLE IX**

### **REPRESENTATIONS AND WARRANTIES**

The Service Provider represents and warrants to the FAJUA as follows:

A. **Licensure.** The Serving Carrier is duly and currently licensed and authorized to engage in business in the State of Florida, and has full power and lawful authority to carry out and perform the duties imposed upon it under the terms of this Agreement and the Plan.

B. **Abilities.** The Service Provider has the ability to: (a) provide policy issuance and premium collection services for all classes of risks, statewide, and/or; (b) service insurance claims in every State and Canada; and/or (c) make financial responsibility filings where ever required.

C. **Staff, Methods, and Systems.** In performing FAJUA Services the Service Provider will use staff, methods, and systems of a comparable quality to those that it uses to perform those services for its other similar or voluntary market business.

D. **Binding Agreement.** This Agreement represents the binding obligation of the Service Provider, enforceable against it in accordance with its terms, the Plan, and the Code. Entering into and performing this Agreement does not and will not conflict with or create or result in any breach or violation of the Code or other applicable law, the articles of incorporation or bylaws of the Service Provider, or any order, contract, agreement, or obligation by which it is bound or to which it is a party.

E. **Eligibility.** The Service Provider has read and is familiar with the eligibility requirements for Service Providers as set forth in the Plan and as adopted by the Board, and agrees, to the extent that they apply, to comply with such criteria.

F. **Information.** All reports, data, information, and other material set forth in the Service Provider's response to become a Service Provider or with respect to the performance of its duties under this Agreement and the Plan, and all reports, statements, or other documents containing financial, accounting, statistical, or related information furnished or to be furnished by the Service Provider to the FAJUA or to the FAJUA's statistical agency during the term of this Agreement, are or will be true and correct to the best of the Service Provider's knowledge and belief and, with respect to financial, accounting, and statistical information, have been or will be prepared consistently in accordance with financial, accounting, and statistical principles required or permitted to be used by the Service Provider with respect to its voluntary or other similar business.

## **ARTICLE X** **COVENANTS**

During the term of this Agreement:

A. **Unlawful Activities.** The Service Provider shall not knowingly engage, while in the performance of its duties hereunder, in any activity which is unlawful under the laws of the State of Florida, applicable rules or orders of the OIR, or the laws of the United States of America, or which would constitute a conflict of interest on behalf of the Service Provider regarding the FAJUA Services rendered to the FAJUA pursuant to this Agreement.

B. **Indemnification.** The Service Provider shall not do or perform and shall refrain from doing or performing any act or thing in violation of this Agreement, the Plan, the Code, the laws of the State of Florida, or the laws of the United States of American which the Service Provider knows or has reason to know would subject the FAJUA, any member of the Board, or any officer, employee, representative, or agent of the FAJUA to any administrative, civil, or criminal fines, forfeitures, or penalties. The Service Provider agrees to indemnify and hold harmless the FAJUA, its Board of Governors, officers employees, representatives, and agents, individually and collectively, and agrees to indemnify same from any such fines, forfeitures, or penalties and all costs and expenses (including without limitation attorneys' fees and expense) imposed against or incurred by the FAJUA as a result of the acts or omissions of the Service Provider upon which such penalties are based.

C. **Unauthorized Payments.** The Service Provider shall not pay out or disburse any FAJUA funds for any purpose or to any person other than those permitted or contemplated by the Plan and this Agreement.

D. **Assignment.** The Service Provider shall not assign, transfer or otherwise dispose of any of its rights under this Agreement or the Plan to any person or entity, without prior written approval from the FAJUA, and any attempt at such assignment shall be void.

## **ARTICLE XI** **MISCELLANEOUS**

A. **Governing Law.** This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Florida, without giving effect to principles of conflicts of laws.

B. **Inability to Perform.** Should any event occur that may affect the Service Provider's ability to perform the terms and conditions of this Agreement, said event shall be immediately reported to the FAJUA by written notice.

C. **Notices.** All notices to be furnished hereunder shall be in writing and shall be delivered either by hand or first class mail, addressed to the FAJUA at 1425 Piedmont Drive East, Tallahassee, Florida 32308, and addressed to the Service Provider in care of: \_\_\_\_\_ or such other address with respect to either party as such party shall hereafter notify the other in writing.

D. **Amendment.** Neither this Agreement nor any provision hereof may be changed, amended, or terminated orally, but only by an instrument in writing signed by the parties. No waiver shall be effective or binding unless in writing and signed and delivered by the party against which it operates. No waiver of a given breach or violation shall operate as a waiver of any different or subsequent violation or breach, whether or not similar or related, unless it expressly so provides.

E. **Severability.** In the event that any article, section, sentence, clause, or provision of this Agreement shall be declared invalid, illegal, or unenforceable in any respect, the validity of the remaining terms and provisions hereof and of the Plan shall in no way be affected or disturbed, and all shall remain in full force and effect.

F. **Grievances.** In the event the Service Provider shall be aggrieved as the result of any action or failure to act of the FAJUA under this Agreement, the Board shall, upon written demand by the Service Provider specifying the details of such action or failure to act, hear and determine all matters in connection therewith or relating thereto. In connection with any meetings, hearings, or other proceedings at which such matters are considered, fundamental rules of fair play shall be observed, including adequate notice to the Service Provider, the opportunity to present evidence and argument on its behalf and in support of its position and the right to a fair but informal hearing. Technical rules of evidence and procedure shall be dispensed with except in such respects as are reasonably requested by either party. Appeals from any action so taken shall be in compliance with the Plan. No appeal shall stay, or otherwise modify, the Service Provider's obligations to cure defaults, or perform services pursuant to this Agreement, nor shall any appeal serve to stay, enlarge or modify the provisions or procedures of termination as set forth in this Agreement in any form of manner.

G. **Construction, venue.** The laws of Florida shall govern all matters concerning the validity, performance, and interpretation of this Agreement. The exclusive venue and the court having jurisdiction shall be in Leon County, Florida.

H. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



I. **Other Parties.** This Agreement is between the FAJUA and the Service Provider, and no FAJUA insured, Producer, claimant, or other person not a party to this Agreement shall have or acquire any rights by reason of the execution and delivery of this Agreement or the performance of any obligation or duties hereunder.

J. **Conflict.** In the event of a conflict between t his Agreement and the terms of the Plan, the terms of the Plan shall govern. In the event of a conflict between this Agreement and applicable Florida or federal law or administrative rule, then the applicable law or administrative rule shall govern.

K. **Headings.** Paragraph headings herein have been inserted for convenience of reference only and shall not be construed to affect the meaning of this Agreement.

**IN WITNESS WHEREOF,** This Service Provider Agreement has been duly signed by the parties the day and year above written, each through a duly authorized officer or representative.

Witness:

FLORIDA AUTOMOBILE JOINT  
UNDERWRITING ASSOCIATION

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

Witness:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A"**  
**SERVICE PROVIDER AGREEMENT**

**Compensation**