**PRODUCER AGREEMENT**

This PRODUCER AGREEMENT (this “Agreement”) is made and entered into effective as of [INSERT DATE], 2023, by and between Specialty Program Group LLC, a Delaware limited liability company, on behalf of itself and its United States operating divisions and office locations (collectively, “Company”) and [INSERT PRODUCER NAME], a [INSERT STATE] [INSERT TYPE OF LEGAL ENTITY], on behalf of itself and its United States operating divisions and office locations (collectively, “Producer”).

**RECITALS**

WHEREAS, Company and Producer desire to maximize the efficiency of any business conducted between them by entering into one agreement as opposed to multiple agreements with different divisions and offices of each of them;

WHEREAS, Company represents certain insurance companies and similar entities and risk-transfer facilities in the placement and writing of insurance (each, an “Insurer” and collectively, the “Insurers”); and

WHEREAS, Producer wishes to utilize Company’s services to place business on behalf of its clients and/or such clients’ agents, brokers or other representatives.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual agreements and covenants set forth herein, Company and Producer hereby agree as follows:

1. Scope of Agreement. This Agreement shall govern the relationship between Company and Producer with respect to all policies of insurance placed by Company pursuant to this Agreement after the date hereof. Producer acknowledges that this Agreement is between itself and the Company division and/or office with which it conducts business and that Producer will not contest the enforceability of this Agreement on the grounds that Company is the signatory hereto. This Agreement shall apply to all business activities and policies placed or that may be placed by Company for Producer (including any divisions or offices of Company and Producer), as well as amounts owed on any policies that were placed by Company for any divisions or offices acquired, formed or opened by Producer, after the date of acquisition. In the event that Company and Producer mutually agree to add a subsidiary or other affiliate of one or both of them as a party to this Agreement, such agreement shall be set forth in an amendment to this Agreement pursuant to Section 10(d). Unless such an amendment is entered into, this Agreement does not apply to subsidiaries or affiliates of Company or Producer, which subsidiaries or affiliates may already have entered into, or may in the future enter into, separate agreements between them for various reasons.
2. Producer’s Status; Duties and Responsibilities.
   1. General Authority. Company hereby authorizes Producer to submit accounts or risks to Company for the purpose of procuring insurance coverage on behalf of certain insureds. Producer’s authority under this Agreement shall be exercised in accordance with the terms, conditions and provisions set forth in this Agreement and in accordance with any instructions that have been provided by Company to Producer, and consistent with all regulatory and licensing requirements in the states of the business placed hereunder. Producer shall not, without the prior written authorization of Company (which authorization may be withheld by Company in its sole discretion), accept applications for insurance to be placed by Company from any other insurance agent or broker. Nothing contained in this Agreement shall be construed to require Company or any Insurer to accept orders for insurance from Producer. Company shall have no responsibility or liability to any insured, sub-agent, solicitor or sub-producer of Producer with respect to the adequacy, amount or form of coverage obtained through Company. Without limiting Section 7, Producer expressly agrees to indemnify and hold Company harmless from any claim or liability asserted against Company as a result of following Producer’s instructions.
   2. No Binding or Representational Authority. Nothing contained in this Agreement shall be construed to appoint Producer as agent for Company in any respect, and Producer shall have no authority to, and agrees that it will not, make representations on behalf of Company or obligate Company in any respect. Without limiting the generality of the foregoing, Producer acknowledges that it shall have no authority to (i) accept or bind risks on behalf of Company or Insurer for which Company solicits insurance; (ii) waive, alter, modify or change any of the terms, rates or conditions of any policy of insurance placed by Company on behalf of any insured; or (iii) admit liability, compromise claims or accept proof of loss on behalf of Company or any Insurer.
   3. Independent Contractor. Producer is for all purposes, an independent contractor of Company. Nothing contained in this Agreement shall be construed to create a partnership, joint venture or employment between the parties. Producer is not an agent, sub-agent or broker of Company. Producer shall be responsible for all expenses incurred in connection with the exercise of any duties hereunder. Neither Producer nor any of its employees shall be entitled to participate in, or to receive benefits under, any pension, welfare or other benefit plan, program or policy established or maintained from time to time by Company or any of its affiliates.
   4. Licensing. Producer represents, warrants and covenants that it is, and will continue to be, appropriately licensed as an insurance agent or broker in, and in good standing with, the jurisdiction in which Producer is domiciled as well as each jurisdiction in which Producer conducts business. Upon request from Company, Producer shall deliver to Company within seven (7) business days a copy of any such license. Producer shall advise Company immediately in the event Producer ceases to meet the requirements contained in this Section 2(d).
   5. Errors and Omissions. Producer shall keep in force and effect during the term of this Agreement an errors and omissions policy of insurance covering itself, its agents, solicitors and employees having an aggregate limit in an amount not less than $5,000,000. Upon request from Company, Producer shall deliver to Company, within seven (7) business days, a certificate of insurance issued by a third party agent or broker evidencing such coverage. Producer shall advise Company immediately in the event Producer’s errors and omissions policy ceases to meet the requirements contained in this Section 2(e).
   6. Applications. With respect to those insureds for which or whom Producer requests that Company procure insurance, Producer shall submit to Company a completed application on a form satisfactory to Company and such other information as Company may request of Producer. Producer shall disclose to Company any information Producer may become aware of that may be reasonably expected to affect the insurance coverage of any insured. Producer acknowledges that, in procuring insurance coverage on behalf of an insured, Company is relying upon the accuracy and completeness of information provided by Producer with respect to such insured. Producer acknowledges its duty to fully inform all insureds of the terms, conditions, exclusions and limitations of any policy of insurance placed by Company pursuant to this Agreement. Producer acknowledges its responsibility to request proper insurance coverages for the insureds, review all quotes, policies and binders for accuracy and otherwise keep each insured informed of issues relating to the insurance coverage of such insured.
   7. Electronic Communications. Both parties agree that electronic communications, including without limitation, any applications, authorizations, representations, submissions, quotes, binders, or policies transmitted via e-mail, internet, or any other digital or electronic means (collectively, “Electronic Communications”), are as valid and binding, with the same full legal force and effect, as any original manual or physical form of communication and may therefore be relied and acted upon in the normal course of business. Producer agrees that the completion and submission of any Electronic Communications by Producer constitutes a valid application and submission to Company, with the same legal force and effect as completing and submitting a hard copy application.
   8. Books and Records; Audits. Producer shall keep true and complete records, and shall maintain such records for periods of time equal to at least those required by each appropriate governmental authority, of all transactions to which it is party pursuant to this Agreement. In the event that Producer accepts any premium for insurance placed hereunder, Producer hereby grants to Company access to Producer’s books and records related to such payment during normal business hours at Producer’s principal place of business for the purpose of Company verifying the amounts received by Producer and the amounts remitted by Producer to the Insurer or the third party administrator managing the Program. This right of access shall survive the termination of this Agreement. All information reviewed by Company under this provision shall be and remain the confidential information of Producer. Producer shall not remove the logo or name of Company from any materials relating to the administration or marketing of any business placed hereunder (including, for the avoidance of doubt, any such materials that are provided to any insured or prospective insured by Producer).
   9. Acknowledgements regarding Claim Reporting and Expirations. Producer acknowledges and agrees that Company (i) is not responsible for claims reporting and that all claims will be reported in accordance with the provisions of the policies placed and (ii) Company shall be under no obligation to give Producer advance notice of expiration of any policies of insurance placed hereunder.
   10. Compliance with Applicable Law. Producer shall comply with all applicable law in connection with its performance of this Agreement including with respect to the placement of insurance with admitted and/or non-admitted insurance companies in each state and insurance professionals’ compensation disclosure requirements. Without limiting the generality of the foregoing, Producer shall comply in all respects with the United States Foreign Corrupt Practices Act of 1977, as amended, and all other applicable anti-corruption or anti-bribery laws.
3. Ownership of Business and Expirations. Producer shall own all insurance business placed under this Agreement and the use and control of all expirations with respect to insurance placed by Company on behalf of insureds hereunder; provided, however, that in the event that Producer fails to account for or to make payment of all amounts due to Company or an Insurer after notice is provided to Producer, and a reasonable opportunity to cure, such expirations and renewals, including any future commissions relating thereto, shall become the property of Company for such use and disposal as Company shall determine, in its discretion, in order to satisfy the financial obligations of Producer to Company and/or an Insurer. To the extent the disposition of the expirations and renewals are insufficient to satisfy the indebtedness owed by Producer, Producer shall remain liable for all remaining amounts owed plus any expenses incurred in disposing of such expirations and renewals as well as reasonable costs and attorney fees.
4. Policy Cancellation or Non-Renewal. Subject to requirements imposed by law or the applicable policy of insurance, Producer acknowledges that the issuing Insurer, directly or indirectly, shall have the right to accept or decline any insurance proposal, application or certificate, or to cancel or non-renew any policy of insurance placed by Company pursuant to this Agreement. There shall be no flat cancellation of any insurance coverage bound and/or written at the request of Producer, except as prescribed by law. Any and all coverage placed through Company at the request of Producer is submitted with the understanding that they are not subject to flat cancellation, and will be cancelled in accordance with the policy issued and the applicable Insurer’s procedures. In consideration of the commission allowed to Producer on all premiums, Producer agrees to refund commission on all returned premiums at the same rate at which such commission was originally paid. If an insurance policy is cancelled by an insured prior to the policy expiration date, Producer acknowledges that a short-rate cancellation penalty may apply and would be deducted from any return premium and agrees that Company is not responsible or liable for short-rate penalty.
5. Premium Payment and Collection; Taxes and Fees, Etc.
   1. Payment Guarantee. Except as otherwise set forth in this Section 5, regardless of whether collected or not, Producer guarantees the full payment due Company of all earned premiums, including but not limited to, deposit, minimum earned, extension and adjustable premiums, such as those determined under audits or retrospective penalties, fees, plus applicable state and local taxes, less applicable commission, on every insurance contract bound, written, or placed for Producer hereunder. Any credit extended to insured by Producer shall be the sole risk and responsibility of Producer, subject to policy terms and conditions. To the fullest extent allowed by law and unless otherwise agreed to in writing by Company, all fees, including but not limited to, service fees, shall be fully earned by Company when coverage is bound. Company’s billings may take the form of binders, invoices, or statements (each, a “Billing” and together, the “Billings”). The net balance will be due and payable as indicated in such Billings and may vary based upon the payment terms of the issuing Insurer. The omission of any item(s) from a Billing shall not: (i) affect Producer’s responsibility to account for and pay all amounts due; (ii) prejudice the rights of Company to collect all amounts due from Producer; or (iii) extend the time within which Producer must make payment. Company shall at all times have the right to offset any amount due Company against any amounts due Producer under this Agreement.
   2. Direct Collection. To the extent earned premium has not been paid, Company reserves the right to collect such amounts directly from the insured. Any attempts by Company to collect from insured will not relieve Producer of liability to Company, except to the extent of amounts actually collected by Company from insured less the expense incurred by Company for such collection. Producer further agrees that, if it becomes necessary for Company to initiate direct collection efforts for past-due amounts on accounts covered by this Agreement, then Producer shall forfeit its right to receive commissions or any other compensation related to such account for that policy term.
   3. Surplus Lines Taxes and Fees. To the fullest extent allowed by law and unless otherwise agreed to in writing by Company, Producer agrees to timely collect, remit, and provide all applicable surplus lines taxes and stamping (or other required fees), and any state required forms to Company or the applicable taxing authority as appropriate. Producer agrees to pay all surplus lines taxes due on policies with adjustable premiums, whether such premium is actually collected and paid or not, if and to the extent payment of such taxes is required by applicable law.
   4. Bank Accounts. Producer will hold in trust, in a fiduciary capacity, all premium (net of commissions) for the benefit of Company and the applicable Insurer, in accordance with all applicable state insurance laws. Producer shall not comingle any Insurer premium funds with any of Producer’s personal or operating funds. Interest accruing on the premium funds in a premium trust account may be retained by Producer in accordance with applicable law, so long as Producer timely transmits all net balances due to Company in accordance with this Agreement and complies with all other provisions of this Agreement.
   5. Premium Financing. On all premiums that have been financed where Company has received proper legal notice, Company will remit payment for any return premium actually received by it, plus Company’s portion of unearned commission, directly to the premium finance company. The ultimate liability of Company for payment to any premium finance company, Producer or insured shall never exceed the amount of return premium received by Company plus Company’s portion of unearned commission. Without limiting Section 7, Producer agrees to indemnify and hold Company harmless from any responsibility for payment to any premium finance company and further agrees that financing arrangements do not diminish the responsibility for the timely payment of premium by Producer hereunder. Policy provisions prevail over premium financing contracts to the extent permitted by applicable law. Any requests to reinstate coverage following receipt of a notice to cancel from a premium finance company will not be effective until written agreement to reinstate the policy is confirmed by the Insurer. Producer agrees that it will not offset any balances owed to Company against any credit for return premium owed to a premium finance company.
6. Compensation; Unearned Commissions. For all business placed hereunder, Producer shall earn, as commission, a percentage of the premium written at the rate agreed upon in writing from time to time by Company and Producer or such other lawful compensation as the parties may mutually agree upon in writing. Company shall not be responsible for any costs or expenses of Producer whatsoever, unless and only to the extent that any such costs or expenses were previously approved in writing by Company. Producer shall be liable for and shall pay return commissions at the same rate as originally allowed to Producer for all return premiums. Such return commission shall be paid by the due date reflected on the Billings. If a return premium becomes due under any contract of insurance and Company has been issued a credit, or payment has been rendered, for such premium by the applicable Insurer, Company will pay to Producer such return premium less the unearned portion of any commission previously retained by Producer.
7. Indemnification, Limitation of Liability; Claims.
   1. Indemnification. Each party (the “Indemnifying Party”) shall indemnify, defend and hold harmless the other party (the “Indemnified Party”) from and against all damages, losses, claims, costs and expenses (including reasonable attorneys’ fees and expenses) incurred or suffered by the Indemnified Party as a result of, in connection with or arising out of (a) any acts or errors or omissions on the part of the Indemnifying Party or (b) any breach by the Indemnifying Party of any of its representations, warranties, covenants or agreements set forth in this Agreement.
   2. Notice of Claims. Producer shall notify Company promptly of any claims, suits or demands against Company arising out of or related to business placed under this Agreement, or circumstances that might reasonably be expected to give rise to such claim, suit, or demand. Producer further agrees to cooperate fully with Company to facilitate the investigation and adjustment of any claim when and as requested by Company, including without limitation, by making available for review and copying all records, documents, and information of any kind arising out of or related to such claim or the underlying account.
8. Confidentiality. Each party agrees to the terms of the Confidentiality Addendum attached hereto as Schedule A, which is fully incorporated herein.
9. Termination; Survival.
   1. Termination. This Agreement may be terminated by either party giving at least ninety (90) days prior written notice to the other. This Agreement will also terminate: (i) automatically, if any public authority cancels or declines to renew Producer’s license or certificate of authority; (ii) automatically, on the effective date of the sale, transfer, or merger of Producer’s business; provided, however, that Company may, upon review and in its sole discretion, appoint the successor of Producer; (iii) automatically, upon the death or dissolution, as applicable, of Producer; or (iv) immediately, upon either party giving written notice to the other of termination because of material breach of any provision hereof, fraud, insolvency or willful or gross misconduct.
   2. Survival. Any termination will not affect the respective rights or liabilities of either party accruing up to the date of such termination, and all representations and obligations of Producer herein shall survive the termination of this Agreement, including without limitation the obligations under Section 7 hereto. Furthermore, after the date of termination of this Agreement, Producer shall complete the collection and accounting to Company for all premiums, commissions and other transactions unaccounted for on the date of termination or arising thereafter in respect of outstanding policies of insurance, including but not limited to, return premium and return commissions.
10. Miscellaneous.
    1. Notice. All notices, requests and other communications to any party hereunder: (i) shall be in writing signed by or on behalf of the party making the same; (ii) shall be deemed to have been given (1) when received if delivered personally, (2) on the third business day after being deposited in the United States mail if sent by registered or certified mail, postage prepaid, return receipt requested, or (3) on the first business day after being deposited with a reputable overnight courier service; and (iii) shall be addressed to each party at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10(a)):

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| --- | --- |
| If to Company, to: | If to Producer, to: |
|  |  |
| Specialty Program Group LLC | [                                  ] |
| 180 River Road, 2nd Floor | [                                  ] |
| Summit, New Jersey 07901  Attn: Maryellen Dolan, Chief Operating Officer | [                                  ]  Attention: [                                  ] |
|  |  |
|  |  |
| With a copy to: |  |
|  |  |
| Specialty Program Group LLC |  |
| 150 N. Riverside Plaza, 17th Floor |  |
| Chicago, Illinois 60558 |  |
| Attn: Matthew E. Pinkham, Chief Legal Officer, Vice President |  |

* 1. Governing Law: Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the substantive laws of the State of Illinois, without regard to its principles of choice of law or conflicts of law. Each party hereby irrevocably and unconditionally (a) consents to submit to the exclusive jurisdiction of the courts of the State of Illinois and of the United States of America located in Chicago, Illinois in connection with any action, suit or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby, (b) waives any objection to the laying of venue of any such action, suit, or proceeding in any such court and (c) waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.
  2. Counterparts. This Agreement may be executed and delivered (including by “pdf” or other electronic transmission) in counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same agreement.
  3. Amendments and Waivers. This Agreement may not be amended or waived except by an instrument in writing signed, in the case of an amendment, by an authorized representative of each party to this Agreement or, in the case of a waiver, by the party against whom such waiver is to be effective. No course of conduct or failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided herein shall be cumulative and not exclusive of any rights or remedies provided by law.
  4. Assignment; Successors and Assigns. This Agreement may not be assigned by Producer without the prior written consent of Company. Company may assign this Agreement and its rights, remedies and obligations hereunder without prior notice to Producer, and Producer hereby expressly consents to any such assignment. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of Company and Producer and their respective successors and permitted assigns.
  5. Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such term or provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such term or provision or any other terms or provisions hereof, unless such a construction would be unreasonable. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.
  6. Headings; Interpretation. The headings of Sections in this Agreement have been inserted for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. If an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.
  7. Entire Agreement. This Agreement sets forth the entire agreement and understanding, and supersedes any and all prior or contemporaneous agreements and understandings, oral or written, between the parties regarding the subject matter hereof.

[Remainder of page left intentionally blank; Signature page follows]

IN WITNESS WHEREOF, the parties have signed this Producer Agreement as of the day and year first above written.

|  |  |
| --- | --- |
|  |  |
| **SPECIALTY PROGRAM GROUP LLC** | **[INSERT PRODUCER NAME]** |
|  |  |
|  |  |
| By: | By: |
| Name: | Name: |
| Title: | Title: |
|  |  |

**Schedule A**

**Confidentiality Addendum (to Producer Agreement)**

**BACKGROUND**

Company and the Producer (each a “Party” and, together, the “Parties”) desire to protect and preserve the confidential and/or proprietary nature of certain information and materials of the Parties that may have been or may be disclosed or made available to the Parties and their Representatives (as defined below) concerning the placement of insurance (each placement, a “Proposed Transaction”) pursuant to the Producer Agreement. As used herein, the Party disclosing Confidential Information (as defined below) is “Disclosing Party” and the Party receiving the Confidential Information is “Receiving Party”.

**AGREEMENT**

Definitions. For purposes of this Confidentiality Addendum, the following terms have the meanings set forth below:

“Confidential Information” means any and all information, documents and materials, whether written, oral or electronic, disclosed by Disclosing Party or its Representatives to Receiving Party or its Representatives, or otherwise obtained by Receiving Party or its Representatives, relating to a Proposed Transaction, together with all reports, analyses, compilations, forecasts, studies, summaries and other documents or materials prepared by Receiving Party or its Representatives that contain or otherwise reflect any such information. Confidential Information specifically includes, without limitation, (i) clients (including third party retail insurance brokers, agents and other intermediaries), whether actual or prospective (collectively “Clients”), lists, contact information, coverage requirements, insurance needs or preferences, policy values, policy expiration dates, renewal information and claims and loss history for Clients; (ii) the amount of commissions or fees directly or indirectly earned from any Clients; (iii) policy pricing; (iv) unique insurance products, features or programs; (v) information pertaining to a party’s relationships with insurance carriers and lenders; (vi) compensation structures; (vii) internal accounting procedures; (viii) sales and marketing strategies; (ix) e-commerce strategies; (x) acquisition candidates; and (xi) employee training procedures. Confidential Information also includes (a)  the proposed terms and conditions of any agreement concerning a Proposed Transaction (including any financial terms) and the status thereof and (b) the existence, context and scope of the Producer Agreement.

Notwithstanding the foregoing, the term “Confidential Information” does not include information that Receiving Party demonstrates (i) is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or its Representatives, (ii) was within Receiving Party’s possession prior to its being furnished to Receiving Party or its Representatives by Disclosing Party or its Representatives pursuant hereto, but only to the extent that the source of such information was not bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, Disclosing Party or any other party with respect to such information; or (iii) is or becomes available to Receiving Party from a source other than Disclosing Party or any of Disclosing Party’s Representatives, but only to the extent that such source is not bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, Disclosing Party or any other party with respect to such information.

“Representatives” means, as to each party, such party’s affiliates and its and their respective directors, officers, employees, agents and representatives (including, without limitation, attorneys, accountants and financial advisors).

Non-Disclosure of Confidential Information. Receiving Party (a) shall keep, and shall cause its Representatives to keep, the Confidential Information confidential; (b) except as required by applicable law, regulation or legal process, and in that case only after compliance with the below, shall not disclose, and shall cause its Representatives not to disclose, in any manner whatsoever, either in whole or in part, any Confidential Information, or the fact that the Confidential Information exists or is being made available, other than to those of its Representatives who need to know the Confidential Information for the purpose of assisting Receiving Party with respect to a Proposed Transaction; and (c) shall not use, and shall cause its Representatives not to use, the Confidential Information for any purpose other than the evaluation and/or implementation of a Proposed Transaction. Receiving Party shall be responsible for any breach of this Agreement by it or any of its Representatives.

Legally Required Disclosure. In the event that Receiving Party or any of its Representatives is requested pursuant to, or required by, applicable law, regulation or legal process to disclose any of Disclosing Party’s Confidential Information, Receiving Party shall (to the extent permitted by applicable law) notify Disclosing Party in writing promptly so that Disclosing Party, at its own expense, may seek a protective order or other appropriate remedy or, in its sole discretion, waive Receiving Party’s compliance with the terms herein.

Degree of Care. Receiving Party shall use, and shall cause its Representatives to use, the same degree of care (but in no event less than a reasonable standard of care) that it uses to protect its own confidential or proprietary information to protect the confidentiality, and avoid the unauthorized disclosure or use, of the Confidential Information.

Ownership of Confidential Information. All Confidential Information acquired by or disclosed to Receiving Party and its Representatives shall be and remain the sole and exclusive property of Disclosing Party and its affiliates. Nothing herein shall be construed as granting any rights, by license or otherwise, with respect to any Confidential Information disclosed pursuant hereto, except the limited right to use the Confidential Information in accordance with the terms hereof.

Term. The obligations of this Addendum shall have a term of three (3) years following the last date upon which Confidential Information was provided to a party hereto; provided that with respect to Confidential Information that constitutes a trade secret under applicable law, such obligations will survive such expiration until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of Receiving Party or its Representatives.