

## Next Wave Insurance Services, LLC BROKERAGE AGREEMENT

As used in this Agreement, Next Wave Insurance Services, LLC (NWIS) shall refer to any business unit or entity that may be affiliated through common ownership and /or manager by NWIS as agent for maintaining Producer relationships.

### Agreement between NWIS

And

(referred herein as producer)

Whereas, Producer is desirous of placing contracts of insurance through companies represented by NWIS (those companies referred herein as Insurer) and utilizing the underwriting facilities, knowledge, and services of NWIS, and in consideration of NWIS placing risks of Producer's clients (referred herein as Insured) from time to time with in Insurer or Insurers and for mutual promises and covenants set forth in this document it is agreed as follows:

**AUTHORITY** Producer is an agent for the applicant and acts on behalf of the applicant for insurance, and is not acting as an agent, subagent or broker for NWIS. This agreement or the relationship between the parties and their officers and employees is not intended, and shall not be construed, to create a partnership, joint venture or employment relationship between NWIS and Producer. Producer is for all purposes and independent contractor.

NWIS shall be the sole judge of whether to accept, reject, or submit to Insurer for acceptance any applications of insurance for risks submitted by Producer and shall incur no liability for failure to place any such risk. Producer shall have no authority to bind any Insurer for NWIS, commit to or issue binders, policies, or other written evidence of insurance on behalf of NWIS or to make representations not strictly in accordance with the provisions of the policies and contracts placed under the terms of this Agreement. Producer shall not make, alter or vary any terms of coverage, or modify terms of payment of any premium or deposit, or incur any liability for NWIS.

**RESPONSIBILITY** Producer warrants and represents that Producer is properly licensed to transact business as an agent or broker in accordance with the insurance laws, rules and regulations of each state in which Producer transacts business. Producer will maintain such licenses in good standing for the duration of this agreement and will furnish proof of such licensing upon request by NWIS. Producer will promptly notify NWIS of any suspension, cancellation or disciplinary action in respect of its license(s).

**SURPLUS LINES INSURANCE** Producer shall not place an order with NWIS for any excess or surplus lines insurance unless Producer shall have first complied with any applicable state laws requiring the Producer to attempt to procure such insurance from insurers authorized to do business in the State of residence of the proposed Insured. The party responsible for the payment of surplus lines taxes shall also be responsible for full compliance with all relevant surplus lines laws of the pertinent State, including but not limited to, the collection and payment of surplus lines taxes, filing of affidavits, and providing the appropriate statutory and/or regulatory disclosure legends on all documents.

**PREMIUM AND ACCOUNTS** Producer guarantees the full payment due NWIS of all premiums including deposit, earned, extension and adjustable premiums, fees, plus applicable state and local taxes, less commission, on every insurance contract bound or written for Producer pursuant to this Agreement. *Producer shall be liable to NWIS for the payment of all premiums, fees and taxes whether or not collected by the Producer.* NWIS shall allow Producer, as commission, a percentage of the premium written at the rate agreed upon by NWIS and Producer from time to time. NWIS's billings may take the form of binders, invoices or statements. The net balance will be due and payable as indicated on such billings and may vary based upon the credit terms of the issuing company. The omission of any item(s) from a monthly statement or separate invoice shall not: (1) affect the Producer's responsibility to account for and pay all amounts due; (2) prejudice the rights of NWIS to collect all amounts due from Producer; and (3) extend the time within which Producer must make payment. *Producer's obligation to make payment to NWIS is not contingent upon delivery of a policy to Producer on or before the billing due date.* Any credit extended to the Insured or others shall be at the sole risk and responsibility of the Producer unless agreed to in writing by NWIS.

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**FUNDS HELD IN TRUST** Producer shall hold funds in a fiduciary account for business generated under this Agreement to the extent required by the insurance laws of the state in which Producer conducts business. Provided Producer is in compliance with all terms of this Agreement, Producer shall be entitled to any interest earned on said funds while so held by the Producer.

**CLAIMS** Producer shall notify NWIS promptly of any claims, suits or notices of loss (or circumstances which might reasonably be expected to result in a claim, suit or notice of loss) and shall cooperate fully with NWIS to facilitate the investigation and adjustment of any claim when and as requested by NWIS.

**ADJUSTABLE PREMIUMS** Notwithstanding anything to the contrary herein set forth, in the situation where premiums for a policy or policies which have been issued cannot be fully determined in advance and where an adjustment or determination is made by an audit, retrospective rating or by interim reports are fully earned and due at the invoice date as evidenced by a NWIS or insurance company invoice. Producer will make all reasonable efforts to collect amounts due. Producer will be relieved of responsibility for premium, so adjusted or determined, if Producer notifies NWIS in writing within 20 days after said invoice date, stating that Producer has made diligent efforts and is unable to collect such premiums and, *provided the Insurer releases NWIS of liability for such premium*. A copy of the Producer's invoice to the Insured, as well as copies of correspondence pertaining to the collection, must be sent with this notification. Failure to give NWIS timely notice shall constitute Producer's acceptance of responsibility to pay such premiums. If commission applies to these adjustments, none will be allowed to Producer on premiums collected by NWIS or Insurer under this provision.

**DIRECT COLLECTION** If, after the expiration of sixty (60) days from the date liability was assumed by the insurance carrier, NWIS has not received payment due for the applicable coverage, NWIS may, at its option, collect from the Insured the premium due. In the event NWIS collects the premium or any part thereof from the Insured, Producer shall not be entitled to any commission on the premium so collected. Attempts by NWIS to collect from the Insured shall not relieve Producer of liability to NWIS except to the extent of amounts actually collected by NWIS from the insured, less the expense of such collection.

**COLLECTION OF AMOUNTS** In the event NWIS shall have to bring any action or proceeding to enforce collection of any amount due under the terms of this agreement Producer agrees to pay all costs incident thereto, including reasonable attorney's fees, incurred by reason of such action or proceeding.

**CANCELLATION OF INSURANCE** NWIS will not recognize flat cancellations unless: (1) written evidence of coverage prior to the inception date of the contract for insurance is provided; and (2) *such credit has been granted NWIS by the Insurer*. Earned Premium shall be computed and charged on every binder, policy or contract cancelled after the inception date in accordance with the cancellation provision of the applicable contract and/or rules of the Insurer. If Producer does not make timely payment of any sums due NWIS, then NWIS may, without limitation of other remedies, initiate with Insurer to cancel the binder, policy or contract for non-payment. If coverage is bound by NWIS all additional fees charged by NWIS for the entire policy term shall be fully earned upon binding. Producer hereby acknowledges that NWIS, or its Insurers, is under no duty to reinstate a policy if the policy is cancelled. Producer deposits made directly to NWIS's lock box for payment on a delinquent account will not constitute acceptance of these funds by NWIS with regards to reinstating any policy being cancelled. Producer shall not accept from Insured the late payment of premiums with prior knowledge, whether actual or constructive, that the policy for which the late premiums have been collected is cancelled.

**UNEARNED COMMISSIONS** Producer shall be liable to NWIS and shall pay return commission at the same rate as originally allowed to Producer for all return premium adjustments or cancellations, including return premium on cancellations ordered or made by the Insurer or Finance Company. Such return commission shall be paid to NWIS by the due date indicated on the billing document. If a return premium becomes due under any contract of insurance and NWIS has been issued a credit, or payment has been rendered, for such premium by NWIS's Insurer; NWIS will pay to Producer such return premium less the unearned portion of any commission previously retained by the Producer.

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**FINANCED PREMIUMS** On all premiums which have been financed NWIS will remit payment for any return premium, less unearned commission, directly to the Finance Company unless otherwise specified. The ultimate liability of NWIS for payment to a Finance Company, Producer or Insured shall never exceed the amount of return premium less unearned commission developed. Producer agrees to hold NWIS harmless from any responsibility for payment to Finance Company.

**ADVERTISING** Producer shall not cause any advertisement referring to or using the name of NWIS or Insurer, or issue or cause to have issued any letter, circular, pamphlet, or other publication or statement so referring, without the express written consent of NWIS. In the event NWIS suffers a loss or expense arising out of any unauthorized advertisement, publication or statement of the Producer, the Producer shall be liable for an hereby agrees to indemnify NWIS and hold NWIS harmless from all resulting damages, fines, penalties and costs.

**WAIVER OR DEFAULT** Failure of NWIS to enforce any provision of this Agreement or to terminate it because of a breach hereof shall not be deemed to be a waiver of such provisions or of any breach committed by the Producer.

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

**NO RESPONSIBILITY OR GUARANTEE** Producer understands that NWIS assumes no responsibility toward any policy with regard to the adequacy, amount of form of coverage and agrees to indemnify and hold NWIS harmless from any claim asserted against NWIS following the instructions of the Producer. NWIS is not an insurer and does not guarantee the financial condition of the Insurers with whom it may place risks. NWIS shall have no liability for non-payment of claims due to the insolvency of an insurer, or otherwise under contracts of insurance placed by NWIS.

**PRIVACY POLICY** Producer shall neither disclose nor use Nonpublic Personal Information (as that term and similar terms are defined in the Gramm-Leach-Briley Act, 15 U.S.C Section 6801 et. Seq. and the applicable state insurance laws and regulations enacted or adopted pursuant to the Gramm-Leach-Briley Act [individually and collectively, the "Act"]) that is received from or collected on behalf of NWIS except as necessary to permit the Producer to perform its duties under this Agreement, or as otherwise permitted or authorized by the ACT. The Producer shall also implement and maintain appropriate administrative, technical and physical safeguards to protect the security, confidentiality and integrity of such Nonpublic Personal Information.

**TERMINATION OF AGREEMENT** This Agreement may be terminated immediately at any time by either party giving written notice to the other by certified mail, return receipt requested. This Agreement will also terminate: (1) automatically, if any public authority cancels or declines to renew the Producers' license or certificate of authority, (2) automatically, on the effective date of the sale, transfer, or merger of Producer's business with the provision NWIS may, upon review, appoint the successor as a Producer, or (3) immediately, upon either party giving written notice to the other termination because of fraud, insolvency, failure to pay balances, or willful or gross misconduct. All representations and obligations of the Producer herein shall survive the termination of this Agreement. After the date of termination of this Agreement, the Producer shall complete the collection and accounting to NWIS 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 commission. Outstanding policies will be permitted to run to expiration.

**ERRORS AND OMISSIONS COVERAGE** Producer now has and shall maintain insurance agent's Errors and Omission coverage with a minimum policy limit of one million dollars (\$1,000,000) while this Agreement is in force and will furnish proof of such coverage upon request by NWIS. Producer will provide NWIS with prompt written notice of any change, cancellation or other termination of this Policy.

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**NO RE-BROKERING** Producer shall not act as an underwriter or re-broker (double broker) for any application or policy underwritten pursuant to this Agreement without the express written consent of NWIS.

**HOLD HARMLESS** Producer shall indemnify, defend and save harmless NWIS from any loss, claim, liability, damage and expense (including attorney's fees and expenses of litigation) which NWIS may incur or suffer by reason of material inaccuracy or any representation or breach by Producer of any term, condition, or warranty contained in this Agreement.

**ALTERNATIVE DISPUTE RESOLUTION** THE PARTIES TO THIS AGREEMENT HEREBY EXPRESS THAT ALL DISPUTES, CONTROVERSIES OR CLAIMS OF ANY KIND AND NATURE BETWEEN THE PARTIES HERETO, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, ITS INTERPRETATION, PERFORMANCE OR BREACH, SHALL BE RESOLVED EXCLUSIVELY BY THE FOLLOWING ALTERNATIVE DISPUTE RESOLUTION MECHANISMS.

1. Negotiation –The parties hereto shall first engage in a good faith effort to negotiate any such controversy or claim by communications between them. Said negotiations may be oral or written. To the extent they are oral; they must be confirmed in writing.
2. Should the above-stated negotiations be unsuccessful, the parties shall engage in mediation pursuant to the American Arbitration Association Commercial Mediation Rules, or such other mediation rule as the parties may otherwise agree to choose.
3. Should the above-stated mediation be unsuccessful, the parties shall agree to arbitrate any such controversy or claims with the express understanding that this Agreement is affected by interstate commerce in that the goods and services which are the subject matter of the Agreement, pass through interstate commerce. Said arbitration shall be conducted pursuant to the American Arbitration Association Commercial Arbitration Rules (the "Arbitration Rules") or such other arbitration rule as the parties may otherwise agree to choose.
4. The cost of the above-stated mediation shall be borne equally between the parties. The cost of the above-stated arbitration shall be borne by the party against whom an award is issued and in favor of the prevailing party. In either event, each party shall bear the cost of their own attorney's fees and costs.

THE PARTIES UNDERSTAND AND AGREE: (i) THAT EACH OF THEM IS WAIVING RIGHT TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO A JURY TRIAL; (ii) THAT PRE-ARBITRATION DISCOVERY OR ARBITRATION PROCEEDINGS IS GENERALLY MORE LIMITED THAN AND DIFFERENT FROM COURT PROCEEDINGS, AND (iii) THAT THE ARBITRATIONS' AWARD IS NOT REQUIRED TO INCLUDE FACTUAL MODIFICATION OF RULINGS BY THE ARBITRATORS, IS STRICTLY LIMITED. THE VENUE FOR MEDIATION AND/OR ARBITRATION UNDER THIS PARAGRAPH SHALL BE IN THE CITY OF SAN DIEGO, STATE OF CALIFORNIA.

**GOVERNING LAWS** This Agreement shall be deemed to have been made and performed in San Diego County, California and shall be governed by, and construed and enforced in accordance with the laws of the State of California. The rights, duties and obligations of the parties to this agreement to such extent they are not dealt with specifically or by necessary implication in this instrument shall be in accordance with the customs prevailing in the surplus lines and special risks insurance business in the state in which the Producer is domiciled.

**ENTIRE AGREEMENT** This Agreement constitutes the entire agreement between NWIS and Producer and supersedes and replaces any previous agreements between NWIS and Producer. No oral promises or representations shall be binding, nor shall this Agreement be modified, except by agreement in writing and executed by NWIS. This Agreement shall apply to current policies already placed through NWIS and in force at the date hereof and all future policies which may be placed by NWIS for Producer.

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

PRODUCER: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

(Must be Owner, Partner or Authorized Officer)

WITNESS: \_\_\_\_\_

DATE: \_\_\_\_\_

Agreement Accepted and Effective by NWIS

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Please complete, sign and return ORIGINAL AGREEMENT along with the following:

Copy of current insurance licenses issued by your state of reside

Copy of your E&O Policy Dec Page.

Please check one: Corporation  Partnership  Sole Proprietorship

Federal Tax I.D. Number: \_\_\_\_\_ (SS Number if individual)

Surplus Lines License Number: \_\_\_\_\_ (if applicable)