

## BROKER AGREEMENT

THIS BROKER AGREEMENT is effective this \_\_\_ day of \_\_\_\_\_ 20\_\_ by and between \_\_\_\_\_, hereinafter designated as "Broker," located at \_\_\_\_\_ and Indigo Insurance Services LLC, a Massachusetts limited liability company located at Landmark Center, 401 Park Drive, Boston, Massachusetts 02115, hereinafter designated as "Agency."

Whereas, Broker wishes to place insurance business through Agency for acceptance by insurance companies whose facilities may be available to Agency; and

Whereas, Agency is willing to offer, on a non-exclusive basis, its facilities to Broker for placement of such insurance in accordance with applicable laws and regulations.

Now, therefore, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **BROKER IS AN INDEPENDENT CONTRACTOR.** Broker is not the agent of Agency or any insurer that Agency represents. Broker represents the applicant/policyholder, who is a customer of Broker and whose insurance risk is being referred to Agency for possible placement. Agency acknowledges that Broker's first duty is to Broker's clients. Neither this Broker Agreement nor the procedures hereunder shall be construed to override Broker's independent judgment as to the time, place or manner of soliciting insurance coverage for its clients. Broker shall at all times be considered an independent contractor, and Broker agrees that neither this Broker Agreement nor the services provided hereunder are intended to create a common law employment relationship between Broker and Agency. Furthermore, Broker shall be responsible for the satisfaction of all taxes, including premium, employment, unemployment and income taxes relating to or arising by reason of the compensation or fees paid to Broker under this Broker Agreement.

2. **AUTHORITY.** Broker shall have no authority to bind Agency or any insurer represented by Agency with regard to any business, insurance or otherwise or make quotes for insurance or other coverage for or on behalf of Agency or any insurer represented by Agency until submission of all required material and the quotation of the risk by Agency. Further, in no event shall Broker have authority to appoint agents or subagents for Agency or any insurer represented by Agency or process or handle claims, investigations or inspections for Agency or any insurer represented by Agency. Broker may not issue binders or certificates of insurance with respect to coverage placed hereunder.

3. **LICENSES.** Broker warrants that it now has and shall maintain during the term of this Broker Agreement the license or licenses necessary to place the business contemplated herein, and Broker shall comply with all applicable laws governing said business. Broker shall notify Agency immediately and in writing if such requisite license(s) expires or is suspended, revoked or is otherwise not fully in effect, and of any pending, threatened or actual investigations or adverse actions taken by any regulatory

authority that might reasonably have an adverse impact on Broker's licensing status. Broker agrees to provide proof of licensing satisfactory to Agency prior to the effective date of this Broker Agreement and thereafter within forty-eight (48) hours of a request by Agency for such proof.

4. SUBMISSION OF BUSINESS. Broker shall submit risks to Agency in a format that is reasonably acceptable to Agency. Broker warrants that any business that it submits to Agency will, if accepted by the insurer, be carried out in accordance with applicable law, and Broker shall indemnify Agency for any tax liability and loss arising as a result of Agency's acceptance of any application submitted by Broker. Nothing herein shall obligate Agency or the insurers represented by Agency to accept any application submitted by Broker or to renew any policy of insurance placed by Broker with Agency hereunder, except in accordance with applicable law.

5. COMMISSIONS. As full compensation for the services of Broker to Agency and/or the insurers represented by Agency, Broker shall be entitled to commissions in the amounts set forth in the attached Commission Schedule on the premiums paid for policies issued or renewed pursuant to applications submitted to Agency by Broker. Agency may amend the commission rate(s) from time to time upon notice to Broker, and such changes shall apply to all new and renewal business placed after the effective date of said change. Broker shall not be entitled to payments of commissions in excess of those legally permissible, and Agency shall have no duty to make such payments. No commission shall be paid to Broker by Agency on a particular risk until Agency receives payment regarding said risk from the insurer that issued or renewed the policy. Broker shall not be entitled to a commission if Broker has accepted any compensation from any other party (except from Agency pursuant to this Broker Agreement) in regard to an application submitted to Agency by Broker. Broker agrees to refund to Agency ratably all unearned commissions on business canceled or reduced for any reason at the same rate of commission as originally paid by Agency.

6. PREMIUM. All business placed hereunder shall be billed and paid pursuant to the direct bill system of the insurer underwriting that business or the agency bill system of Agency. Payment of premium for any policy written shall be paid directly by the insured to such insurer or Agency, consistent with the insurer's direct bill system or Agency's agency bill system, respectively. In the event that Broker inadvertently receives premium from an insured for business placed hereunder, Broker shall immediately pay such premium to Agency.

7. RIGHT TO OFFSET. Notwithstanding anything to the contrary contained in this Broker Agreement, Agency may offset any future compensation due Broker against any indebtedness owed by Broker to Agency, including but not limited to indebtedness arising by reason of cancellation of an insurance policy submitted hereunder, mistaken overpayment by Agency or failure of Broker to satisfy any of the conditions precedent for payment of compensation. Nothing contained herein shall be construed to limit any other remedies that are available to Agency.

8. **BROKER'S USE OF SERVICE MARK.** Broker shall not publish or distribute any advertising, circulars or other materials, electronic or written, containing the name, service marks or logos of Agency or an insurer that Agency represents without the prior written consent of Agency.

9. **INSURANCE COVERAGE.** Broker agrees to maintain errors and omission insurance of at least \$500,000 with a deductible no higher than \$10,000 that is issued by an insurance carrier with an A.M. Best rating of at least "A." If Broker's coverage is on a "claims made" basis, then Broker agrees to purchase "tail" insurance to cover errors and omissions claims in the amount specified above for a period of no less than six (6) years following the expiration or termination of this Broker Agreement or the date that the last service was performed by Broker in connection with this Broker Agreement, whichever is longer. Broker shall notify Agency at least thirty (30) days prior to any change or cancellation of insurance, and Broker shall supply a copy of its certificate of insurance evidencing its error and omissions coverage within forty-eight (48) hours of a request by Agency.

10. **CLAIMS.** Broker shall report immediately to Agency, with full details of any fact, occurrence or incident that may result in a loss or claim under any policy placed hereunder or against Broker or Agency on account of any act or omission with respect to any insurance policy issued hereunder or which allegedly should have been issued hereunder. Broker shall forward all documents and cooperate fully with Agency and the insurer in the investigation and adjustment of any claim, if requested.

11. **REGULATORY INQUIRIES.** In the event that Broker is served with process or notification regarding or relating to any litigation, investigation, inquiry, request or otherwise by any governmental authority or agency, Broker shall promptly notify Agency of the same and shall promptly deliver to Agency an original of any such process and/or notification and all attachments thereto.

12. **TERMINATION.** Either party may terminate this Broker Agreement by giving at least thirty (30) days prior written notice to the other party specifying the effective date of termination. In the event that this Broker Agreement is breached, the non-breaching party may notify the breaching party that it has elected to immediately terminate the Broker Agreement and state the reason or reasons therefor. In the event of a change of control of Broker, Agency shall have the right to immediately terminate this Broker Agreement upon the effective date of such change of control. Notwithstanding anything contained herein to the contrary, a termination by either party hereto, with or without cause, or at natural expiration of this Broker Agreement, shall not relieve Broker of its obligations and duties under this Broker Agreement, which obligations, and the terms and provisions thereof, shall survive any termination of this Broker Agreement.

13. **INDEMNIFICATION.** Broker shall indemnify and hold harmless Agency, its parent, affiliated and subsidiary entities and its and their officers, directors, employees and agents from any and all claims, losses, costs, deficiencies, obligations, liabilities, damages or expenses (including related court and legal costs) which may arise directly or indirectly from (i) any inaccurate representation made by Broker in this Broker

Agreement, (ii) any breach of the warranties or any default in the performance of any covenants made by Broker under, or which Broker was to perform pursuant to, this Broker Agreement, (iii) any errors or omissions of Broker or any of its agents with respect to any client or insured, (iv) any negligent acts or omissions, whether intentional or unintentional, and any willful misconduct of Broker or any of its agents in connection with this Broker Agreement, including any action brought by a regulatory body as a result of actions by Broker and (v) the violation of any law or regulation.

14. NOTICES. All notices required to be sent hereunder and any other notices sent hereunder shall be sent either by certified mail, postage paid, return receipt requested, or by overnight delivery service to the address listed above or to such other address as may from time to time be designated by a party hereto in writing and sent to the other party in the manner set forth above.

15. RECORDS. Broker shall keep complete records and accounts of all transactions and permit Agency to inspect all records pertaining to business transacted under this Broker Agreement at Broker's offices during normal business hours.

16. ATTORNEY FEES. If Agency retains the services of any attorney to enforce the provisions of this Broker Agreement, Broker agrees that, in addition to damages, if any, for which it might be found liable, it shall be responsible for reimbursing Agency for all reasonable costs and expenses, including attorneys' fees, incurred in enforcing this Broker Agreement.

17. ASSIGNMENT. This Broker Agreement may not be assigned by Broker without the prior written consent of Agency.

18. SUCCESSORS. This Broker Agreement, together with all exhibits, schedules and appendices hereto, shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

19. ENTIRE AGREEMENT. This Broker Agreement represents the entire agreement between the parties related to its subject matter. All prior oral or written agreements, negotiations, understandings, conversations and communications, if any, are merged into this Broker Agreement and shall be of no force and effect other than as expressly set forth in this Broker Agreement.

20. APPLICABLE LAW. This Broker Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its rules regarding conflict of laws, and any dispute shall be resolved in the proper state or federal court in the Commonwealth of Massachusetts.

21. AMENDMENTS. Agency may amend this Broker Agreement from time to time upon written notice to Broker. Except as may otherwise be provided, all amendments to this Broker Agreement will be considered accepted, unless Broker gives Agency written notice of non-acceptance within thirty (30) days of receipt of such amendment, in which event Agency may terminate this Broker Agreement upon written notice to Broker. No

modifications made or requested by Broker from the terms specified in this Broker Agreement shall be binding upon Agency unless the modifications are agreed to in writing and signed by both parties.

22. INTERPRETATION. In this Broker Agreement, the words “includes” and “including” are not limiting. Terms defined in the singular have corresponding meanings in the plural and *vice versa*. Unless otherwise indicated, references in this Broker Agreement to Sections, Exhibits and Schedules are to the Sections, Exhibits and Schedules of, or attached to, this Broker Agreement; all such Exhibits and Schedules are incorporated by reference into this Broker Agreement; references to any other agreements, documents or instruments are references to such agreements, documents and instruments as amended, modified or supplemented from time to time; and references to laws, statutes, rules, regulations or other governmental restrictions, standards or requirements are references to such laws, statutes, rules, regulations and other governmental restrictions, standards or requirements as in effect from time to time. Headings in this Broker Agreement are for ease of reference only and are not to be used to interpret the terms and conditions hereof.

23. CONSTRUCTION. This Broker Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party but shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

24. WAIVER. The failure of either party to enforce a term or condition of this Broker Agreement shall not constitute a waiver of such term or condition. No waiver of any breach or default hereunder shall be valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default whether or not of the same or similar nature.

25. REMEDIES. No right or remedy set forth in this Broker Agreement is exclusive of any other right or remedy but shall be in addition to every other right or remedy given under this Agreement or existing now or hereafter in law or equity.

26. SEVERABILITY. Any provision of this Broker Agreement that conflicts with applicable law shall be interpreted in such a manner and to such an extent as to be effective and valid under applicable law. If any provision of this Broker Agreement is prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity.

27. COUNTERPARTS. This Broker Agreement may be executed in two or more counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Broker Agreement as of the date stated above.

**BROKER:**

\_\_\_\_\_ (type in broker's name)

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AGENCY:**

INDIGO INSURANCE SERVICES LLC

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_