

## BROKER AGREEMENT

**TANGRAM INSURANCE SERVICES, INC. ("Tangram")** makes this Agreement with ("**Producer**"), located at \_\_\_\_\_ to be effective as of \_\_\_\_\_, 20\_\_\_\_. Producer wishes the assistance of Tangram in obtaining insurance for clients and conducting related insurance business, and Tangram is willing to assist Producer subject to the terms and conditions of this Agreement. Tangram is a program administrator for various insurance companies, a managing general underwriter for various Underwriters of Lloyd's of London, and acts in a wholesale capacity for other various markets.

THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

### **I. INSURANCE LICENSING**

In regard to all business conducted, or to be conducted, under this Agreement, Producer agrees that it is solely responsible for obtaining, and at all times maintaining, valid property and casualty agent/Producer insurance licensing that: (i) meets the requirements of each and every state or other jurisdiction in which Producer conducts business; and (ii) is appropriate for each insurance application submitted to Tangram. Producer warrants that it holds insurance a producer license in each relevant jurisdiction, in effect and in good standing as of the execution of this Agreement, as well as any and all other license, registration, or the like required for the conduct of business hereunder. Producer agrees that it will place business with Tangram in compliance with all laws and regulations applicable to the conduct of such business, and that it will provide Tangram evidence of valid insurance licensing at any time, upon request. Producer further acknowledges and agrees that it is obligated to notify Tangram immediately of any termination or gap in insurance licensing and to cease any transaction of insurance requiring such license until active licensing is achieved.

### **II. RELATIONSHIP OF PARTIES**

Producer is an independent contractor to Tangram under this Agreement, free to exercise its own discretion and judgment with respect to the persons or entities from which it solicits business. Nothing herein will create an employer/employee, principal/agent or partnership relationship between the parties hereto. Producer will not hold itself out as an agent or other representative of Tangram, and nor will it place, or attempt to place, business through Tangram on behalf of any third party Producer or agent.

### **III. LIMITED AUTHORITY TO BIND OR PLACE INSURANCE**

Producer shall not bind or place, nor agree to bind or place, insurance with insurers made accessible through operation of this Agreement, for those insurance programs or products so made accessible, without prior authorization from Tangram. Producer is not restricted in the placement of business that is not made accessible to Producer by Tangram under this Agreement. Producer shall pay and indemnify Tangram for the full amount of any costs, liabilities and other damages or expenses arising from any unauthorized binding of insurance by Producer, including but not limited to all costs and attorneys' fees for defending Tangram against any claims arising from any unauthorized binding or placement of insurance by Producer.

### **IV. REMITTANCE OF PREMIUMS AND OTHER PAYMENTS DUE**

Where Producer is responsible for the collection of deposit premiums, Producer will remit to Tangram or to the carrier, as instructed, all amounts due. Where premiums are agency-billed by Tangram, or subject to a premium finance

agreement with Tangram, unless otherwise specifically agreed in writing by Tangram, Producer is responsible for the full balance of all amounts due for all insurance policies, certificates of insurance and other insurance business, including taxes and fees thereon, arising from or related to any insurance obtained through or with the assistance of Tangram. Producer will remit payment to Tangram within thirty (30) days of the effective date of each invoice or demand for payment issued by Tangram. Producer will remit each such payment to the address of Tangram appearing in this Agreement, or to such other address as Tangram may provide from time to time by written notice to Producer.

Where premiums are direct-billed by the insurer, Producer is responsible for properly communicating to the client (the “**Insured**”): (i) the deposit amounts due, including any taxes or surcharges; or (ii) when instructed in writing by Tangram, the deposit amounts to be collected, each as required to bind the account. Producer is to instruct the client to issue payment as instructed by Tangram and to send deposit premiums directly to the address provided by Tangram. Deposit premiums are due by the effective date of coverage.

**V. PRODUCER'S GUARANTEE OF PAYMENTS AND RELATED COSTS**

Subject to the terms of this Article V, Producer guarantees payment on or before the due date, to Tangram or to the carrier, as instructed, of all deposits, premiums, assessments, fees and taxes for all policies placed by Producer, regardless of the ability of Producer to collect such amounts due from the Insured, and without regard to any financing agreement. If Producer does not submit all amounts due to Tangram within the time specified, Tangram is authorized to cancel any insurance policy for which Tangram (or the carrier, as appropriate) has not received the required premium, assessment, tax and fee payment, subject to the restrictions of applicable law. Producer agrees to pay Tangram (or the carrier, as instructed) all unpaid earned premium, taxes, assessments and fees on such terminated policies.

Producer agrees to use every reasonable effort to collect all amounts due from each Insured. For any such amount that is uncollected from the Insured and unpaid by Producer to Tangram (or the Carrier, as appropriate) forty-five (45) days after the date due, and Producer evidences that it has made a reasonable and responsible effort to collect such amount from the Insured, Tangram agrees to undertake direct collection efforts thereafter and not to hold Producer responsible for such amount due. Producer shall have no right to receive commission for the premium amount returned for direct collection by Tangram or for any unpaid premium, and Producer agrees to remit to Tangram any and all commission received or otherwise credited to Producer that is attributable to such premium amounts. All rights to such commission shall accrue to Tangram.

No obligation of Producer to pay or remit to Tangram any amount shall be terminated, reduced, delayed or transferred without the specific written approval of Tangram. In the event of a sale of Producer or its business to any third party, Producer's obligation to pay Tangram for all amounts due shall remain an obligation of the undersigned Producer unless otherwise specifically agreed in writing by Tangram. Producer will remit to Tangram all amounts due and collected, as adjusted by the carrier or Tangram, to reflect termination of coverage for non-payment of premium or other cause, as applicable.

In the event that any fines, penalties or other liabilities, costs or expenses may be levied, assessed or charged by any government agency, surplus lines association, or related entity, as a result of Producer's failure to submit a payment of premium, taxes, or fees when due, Tangram shall be entitled to reimbursement from Producer of all such amounts directly

or indirectly paid by Tangram. The obligations of this Article V shall survive termination of the Agreement for all policies bound or issued by Producer during the term of the Agreement.

## **VI. COMMISSIONS AND RETURN PREMIUMS**

For all policies of insurance placed through Tangram under the terms of this Agreement, Producer is entitled to a payment of commission as a percentage of the premiums paid. Producer is required to pay return commission (if any) for any return premiums, including but not limited to return premiums resulting from any cancellation, reduction or amendment to the terms of any insurance policy subject to this Agreement. Notwithstanding the foregoing, no commission is payable to Producer for premium collected subsequent to the referral of amounts due under specific policies to a third party collection agency and/or attorney by Tangram or the insurer.

Disputes that arise between Producer and Tangram as the result of an accounting issue shall be submitted in writing by the Party seeking resolution. The receiving Party must provide a factual response to the other Party within thirty (30) days of receipt of the dispute. Both Producer and Tangram are required to attempt to resolve the dispute in good faith.

Producer agrees that it will comply with all appropriate laws and regulatory rules regarding reporting and handling of unclaimed policyholder funds, and that all notifications, processes, escheatment and reporting requirements will be followed.

## **VII. ERRORS AND OMISSIONS INSURANCE REQUIREMENTS**

With respect to all business conducted or to be conducted under this Agreement, Producer shall at all times maintain insurance coverage against liability for its errors and omissions with limits of liability of at least one million dollars (\$1,000,000). Producer further warrants that such errors and omissions insurance is already in effect and in good standing as of the execution of this Agreement. Tangram may require Producer to provide evidence of Producer's errors and omissions insurance coverage at any time.

## **VIII. PRODUCER REQUIREMENTS**

To facilitate the placement of insurance through Tangram, Producer agrees to perform all of the following activities in good faith, subject to action by Tangram should such performance obligations not be met as stated below and herein.

A. Producer will submit to Tangram evidence of insurance licensing for each state or jurisdiction and each line of business relevant to business offered by Producer for placement through Tangram, pursuant to the requirements of Section 1 of this Agreement. Such evidence of license issuance must be provided to Tangram no later than the date on which any application for insurance placement is submitted to Tangram or insurer that requires such licensing. Evidence of license renewal must be provided to Tangram no later than the expiration date of the prior license term. In the event such evidence of current licensing has not been provided to Tangram, no commission will be paid to Producer for any policy requiring such license until the required license is provided.

B. Producer will submit to Tangram a certificate of insurance for its errors and omissions coverage, as required under Section VII of this Agreement, no later than five (5) days prior to issuance or renewal of such coverage. Failure to timely provide such evidence of current coverage will result in termination of all commission payments to Producer until the required certificate of insurance is provided to Tangram.

C. Producer will comply with all reasonable instructions and cooperate fully with Tangram to accomplish timely and correct performance under this Agreement, including working with applicants and policyholders to gather all information and records required for initial application or renewal of insurance coverage, or as otherwise required to service in-force policies, and timely gathering and provision of any information necessary to Tangram or the insurer.

D. Producer is responsible for the activities of its employees, officers and contractors and other representatives in performing any of Producer's duties or obligations under this Agreement. Producer is also responsible for all of Producer's own expenses, such as for rent, staffing, postage, advertising, transportation, license fees, solicitor fees, loss adjustment expenses incurred by Producer under policies issued through Producer, and any other expenses Producer may incur. Producer may not commit Tangram or the insurer to any expense or obligation.

E. If Producer has one or more insurer sub-appointments through Tangram, Producer agrees: (i) to comply with all insurer requirements regarding such appointment, (ii) only to submit applications for, or seek renewal of, coverage in compliance with insurer underwriting requirements, and (iii) that Tangram may request that insurer terminate such sub-appointment should two years elapse since coverage has been bound for a Producer client.

F. Tangram may offer certain optional services to Producer in relation to performance under this Agreement, under the terms of a separate service agreement agreed to in writing by the Parties. Such services will be governed by the terms of this Agreement, whether or not this Agreement is referenced in the service agreement, and by the terms of such service agreement. In the event of a conflict, the terms of the service agreement shall control.

## **IX. ADVERTISING**

Unless specifically authorized in writing by Tangram, Producer shall not create, order, distribute, display, or otherwise allow any advertisement, marketing collateral, article, press release, website or social media content, or other promotional material that references or makes any representation regarding Tangram, in, on or through any medium, including but not limited to internet, text, television, radio, print, or and any other means of communication. Producer also agrees not to use the Tangram name, marks or logos in any manner without the specific written permission of an authorized Tangram representative, including without limit such use on marketing materials, business cards, websites or social media content. Producer shall pay and indemnify Tangram for the full amount of any costs, liabilities, and other damages or expenses Tangram may incur from any unauthorized advertising or other public communication by Producer, including but not limited to all costs and attorneys' fees for defending Tangram against any claims arising from any unauthorized advertising or promotional references by Producer.

## **X. INDEMNIFICATION**

A. Tangram shall indemnify, defend and hold harmless Producer and its affiliates, directors, officers, employees, representatives, contractors, assigns and successors-in-interest from any loss, claim, liability, damage and expense (including reasonable attorney's fees and expenses for or related to litigation or settlement) that arises out of, or in connection with, this Agreement, which Producer may incur or suffer by reason of negligent acts or omissions or willful misconduct of the other Party, or material misrepresentation or breach by Tangram of any term, condition or warranty contained in this Agreement, provided the Party being so defended and indemnified has not caused or contributed to such liability by its own negligent acts or omissions or willful misconduct. The Party being so defended and indemnified agrees, as a condition to such indemnification, to promptly notify Tangram of any claim or suit against it and to allow Tangram to

make such investigations, defense, or settlement thereof as Tangram deems prudent, subject to the prior written consent of the Party being defended and indemnified to any settlement, which consent shall not be unreasonably withheld.

B. Producer agrees to jointly and severally indemnify, defend and hold harmless Tangram, its affiliates, directors, officers, employees, representatives, contractors, assigns and successors-in-interest, and the insurers, claims administrators and servicing companies with which it does business in regard to this Agreement (altogether, the "Indemnified Parties") against any and all losses and damages the Indemnified Parties incur as a result from, arising out of, or related to Producer's duties, obligations, or performance under this Agreement, or as a result of any dispute, including allegations of negligent actions or omissions, willful misconduct, or the violation of insurance, privacy, data security, consumer protection, or similar laws of any state, federal, or local governmental authority by Producer and/or its agents, employees, or representatives. Producer shall be liable for all reasonable defense costs incurred by the Indemnified Parties, but only to the extent that the underlying claim or damage was caused by Producer's negligence and is recoverable under applicable law on account of such negligence.

**XI. TERMINATION OF THIS AGREEMENT AND SUBSEQUENT PAYMENTS**

Either Producer or Tangram may terminate this Agreement upon sixty (60) days advance written notice to the other Party. In the event that Tangram terminates this Agreement due to material violation of any term or condition by Producer, Producer agrees to relinquish and waive any further right or claim to any subsequent commission, and to permit Tangram to offset any payment obligation to Producer to satisfy payment of any amount due from Producer to Tangram under this Agreement. If this Agreement is terminated without such cause, any subsequent commissions and return premiums arising from a transaction under this Agreement shall remain payable and be paid by the appropriate Party regardless of the termination of this Agreement, subject to all other terms and conditions of this Agreement.

**XII. OWNERSHIP OF EXPIRATIONS**

Producer retains ownership of expirations for all policies that Producer places through Tangram.

**XIII. CONFIDENTIALITY**

A. Confidential Information. The Parties acknowledge that confidential information will be exchanged among them with respect to performance under this Agreement, such as information regarding clients, systems, business operations and relationships, and the intellectual property of a Party. Each Party agrees, on behalf of itself and its employees, contractors, and other representatives, to maintain the confidentiality of all confidential information received from or through the other Party and, unless written consent is obtained from the other Party, it will not disclose any such information to any third parties except in the following circumstances: (a) such information is or will be in the public domain (provided that this is not the result of a public disclosure by the receiving Party); (b) disclosure of certain, limited information is required by applicable laws, rules or regulations, or order of a court or regulatory agency; or (c) disclosure is required by a Party to its legal counsel or financial advisor regarding the transaction contemplated hereunder, and such legal counsel or financial advisor are also bound by confidentiality duties similar to the duties in this section. Unauthorized disclosure of confidential information by any person obtaining such information from a Party shall be deemed disclosure of such confidential information by that Party, which Party shall be held liable for breach of this Agreement. This Section shall survive the termination of this Agreement for any reason for so long as either Party possesses the confidential information of the other Party. Upon termination of this Agreement, the Parties agree to return or destroy any such information in their

possession as soon as reasonably possible, subject to post-termination needs and information retention requirements. Should the Parties have any separate agreement regarding confidentiality, the provisions of this Section XIII (Confidentiality) shall operate in addition to such separate agreement and any conflict of terms shall be decided in favor of the terms most protective of the non-disclosing Party.

B. Data Security. Tangram may provide Producer access privileges to certain software applications or tools (“Hosted Applications”) and grant a limited, nonexclusive, nontransferable and revocable license to use such Hosted Applications, with or without cost, under parameters and purposes as established by Tangram. Such Hosted Applications are considered proprietary and confidential to Tangram and no right title or ownership privileges, other than the limited license and access privileges specifically granted, will be transferred to Producer. Tangram may terminate Producer’s right to access any Hosted Application at any time, unless otherwise agreed by the Parties. Producer agrees to safeguard any user information or password(s) assigned in regard to the Hosted Applications, not to share such information with any person except the individual to whom such information is assigned. Producer further agrees to notify Tangram promptly when an assigned user no longer requires access to a Hosted Application. Producer shall implement and maintain such administrative, technical and physical safeguards as necessary to protect the security, confidentiality and integrity of any and all of Tangram’s confidential information in its possession, or to which it has access through a Hosted Application. Producer agrees to promptly notify Tangram of any loss, breach or possible breach of the security of any Tangram confidential Information or unauthorized access to a Hosted Application.

#### XIV. MISCELLANEOUS

A. Notices. All notices required by this Agreement shall be given in writing and mailed by either electronic or regular mail to the other Party at the address each Party may from time to time indicate.

B. Governing Law; Jurisdiction; Arbitration: **THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES.** All disputes arising under this Agreement shall be governed by and interpreted in accordance with the laws of California, without regard to principles of conflict of laws. The Parties will submit all disputes arising under this Agreement to arbitration in Contra Costa County, California before a single arbitrator of the American Arbitration Association (AAA). The arbitrator shall be selected by application of the rules of the AAA, or by mutual agreement of the parties, except that such arbitrator shall be an attorney admitted to practice law in California. No Party to this agreement will challenge the jurisdiction or venue provisions as provided in this section. In agreeing to arbitrate any disputes they may have, both Tangram and Producer are waiving their rights to have such disputes resolved by a jury. Any action or proceeding, arising from or relating to this Agreement not settled by arbitration will be brought only in the California Superior Court, County of Contra Costa, and each Party irrevocably waives, to the fullest extent permitted by law, any objection that it may now or in the future have to the venue of a proceeding brought in such a court and any claim that the proceeding was brought in an inconvenient forum. Each Party further agrees that, in the event of breach or threatened breach of any provision of this Agreement, remedies at law may be inadequate and the non-breaching Party shall have the right of injunction, enjoining or restraining the other Party or its representatives or assignees from any violation or threatened violation of this Agreement without bond or proof of damage.

C. Assignment. This Agreement may be assigned by Tangram. The duties of Producer, however, may not be delegated or assigned to any person without written agreement of Tangram. This Agreement shall be binding upon, and shall inure solely to the benefit of, the Parties and their permitted assigns.



D. Non-Disparagement. Each of the Parties agree not to make disparaging, uncomplimentary or negative remarks about the other Party, its products, business affairs or employees, or to do or say anything that a reasonable person would expect to diminish, impugn, or constrain the other Party's goodwill or good reputation, or that of any employees, officers, agents, Representatives, successors, products or services of the other Party, whether during or after the term of this Agreement. This provision shall survive termination of this Agreement for two (2) years.

E. Integration; Construction; Interpretation; Modification. This Agreement contains the entire Agreement between parties and supersedes all prior oral and written agreements, understandings, commitments, and practices between them. Headings in this Agreement are for convenience only, do not constitute a part of the Agreement, and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any Party. The words "herein," "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision, except where specifically narrowed to an identified provision. The term "including" is not limiting and means "including, without limitation." No amendment to this Agreement shall be binding unless in writing and signed by an authorized representative of each Party. Any representations contrary to this Agreement, express or implied, written or oral, are hereby disclaimed.

F. Counterparts; Electronic Signatures. The parties agree that this Agreement, agreements which are collateral to, or ancillary to this Agreement, and any other related documents to be entered into in connection with this Agreement, may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument, and that each such document will be considered signed when the signature of a Party is delivered by electronic transmission. Such electronic signature shall be treated in all respects as having the same effect as an original signature.

G. Severability. The provisions of this Agreement are intended to be interpreted and construed in a manner which makes such provisions valid, legal and enforceable. If any provision of this Agreement is found to be partially or wholly invalid, illegal or unenforceable, such provision shall be modified or restricted to the extent and in the manner necessary to render such provision valid, legal and enforceable.

H. Survival. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the Parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the Parties under this Agreement whether or not specifically stated herein.

I. Signing Authority. Each person signing this Agreement on behalf of a Party represents and warrants that he or she has the full right, power, legal capacity and authority to sign this Agreement on behalf of that Party.

**IN WITNESS WHEREOF**, each of the Parties has caused its duly authorized representative to execute this Agreement as of the date first set forth above.

Producer: \_\_\_\_\_

TANGRAM INSURANCE SERVICES, INC.



Signature: \_\_\_\_\_

\_\_\_\_\_

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

Rekha Schipper, President

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