

## BROKER-WHOLESALE AGREEMENT

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_ 2011 by and between Brooks Insurance Group, its subsidiaries and affiliates (collectively referred to herein as "WHOLESALE") and \_\_\_\_\_, an individual, partnership, corporation, or insurance producer (hereinafter referred to as "BROKER").

In consideration of the mutual covenants and agreements expressed in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, WHOLESALE and BROKER hereby agree as follows:

1. BROKER's Authority. BROKER shall have the authority to solicit, process, and administer applications of insurance, and (with the exception of direct billed policies) to bill and collect premiums on all policies, contracts, binders, riders and endorsements.

2. WHOLESALE's Authority. BROKER authorizes WHOLESALE to obtain quotes and/or place a policy of insurance with any insurer irrespective of its financial rating and WHOLESALE is not responsible for the insolvency of any insurance carrier. Nor is WHOLESALE responsible to BROKER, or to BROKER's insured or any purported insured or additional insured, with regard to the adequacy, amount or form of coverage obtained through any insurance carrier.

3. BROKER's Responsibilities. In performing its services under this Agreement, BROKER is responsible for:

- (a) maintaining a staff of competent and trained personnel;
- (b) acting faithfully as a fiduciary to WHOLESALE in a manner that will safeguard, promote, and further the best interests of the WHOLESALE;
- (c) soliciting and receiving proposals for prospective insureds consistent with Loss Control Guidelines that meet or exceed applicable regulatory standards and informing WHOLESALE as to the type and amount of insurance coverage to be considered for quotation;
- (d) checking the terms, conditions and coverage of a quote and subsequent policy obtained from WHOLESALE for its accuracy and reviewing for whether such quote and/or policy deviates from what was applied for;

- (e) complying with all applicable laws, rules, and regulations, including protecting the privacy of non-public personal information and the mailing of Privacy Notices to policyholders, and;
- (f) cooperating with WHOLESALER as WHOLESALER may request.
- (g) If and only if prior written confirmation is provided by WHOLESALER, BROKER may also issue and countersign binders and policies of insurance, endorsements and certificates thereto on forms and with rates approved by WHOLESALER.

4. BROKER's Representations and Warranties. BROKER represents and warrants that:

- (a) BROKER is licensed to transact business as a broker and is in good standing in accordance with the provisions of BROKER's commercial domicile and any state(s) in which BROKER transacts business. Upon request, BROKER agrees to provide evidence to WHOLESALER of such license(s), approvals and authorizations. BROKER shall immediately notify WHOLESALER if at any time BROKER ceases to have such license(s).
- (b) BROKER shall act as a fiduciary of WHOLESALER and will maintain all funds held in trust for business generated under this Agreement in accordance with the Insurance Laws of the state(s) in which BROKER is duly licensed to transact insurance.
- (c) BROKER understands that in providing coverage, WHOLESALER is relying upon the accuracy of information provided by the insured through BROKER and submitted to WHOLESALER. It is the responsibility of BROKER to accurately disclose the information to WHOLESALER as well as to accurately disclose the existence of any conditions that BROKER is or reasonably should be aware of that WHOLESALER would want to know in determining the insurability of the risk or the rate or surcharge to be applied.
- (d) BROKER shall maintain Errors and Omissions insurance with policy limits of not less than one (1) million dollars and shall furnish proof of such insurance upon WHOLESALER's request.

5. Payment of Premiums. BROKER agrees to remit to WHOLESALER no less than twenty-five percent (25%) of the total premium due, plus any and all applicable taxes and fees, unless otherwise agreed to in writing by WHOLESALER within seven (7) days of the inception date of each binder or policy. The

balance of the premium is due to WHOLESALER no later than thirty (30) days after binding of coverage. All other payments are due thirty (30) days after invoice date. BROKER's responsibility to account for and pay WHOLESALER all receivables hereunder survives termination of this Agreement.

6. Guarantee of Payment. In consideration of WHOLESALER accepting business from BROKER, BROKER guarantees payment to WHOLESALER of all earned premiums including but not limited to deposits and endorsements on all policies of insurance placed by BROKER with WHOLESALER except as provided in Paragraph 7 of this Agreement. Such payment is due to WHOLESALER whether or not BROKER has collected the premium. BROKER agrees to pay WHOLESALER a return commission on all returned premium adjustments at the same rate that was originally applied to such coverage. BROKER further guarantees that BROKER will be responsible for the return of any premiums due to a finance company, if funds are directly released to BROKER.

7. Uncollectable Adjustable Premiums. Additional premiums that have been determined by annual or interim audits and/or retrospective rating adjustments are fully earned on the last date that coverage was in effect. BROKER is relieved of responsibility for the collection of such premiums if within thirty (30) days from the date of the WHOLESALER invoice, BROKER notifies WHOLESALER in writing that BROKER had made diligent efforts to collect such premiums but is unable to do so. BROKER waives any right to commission payments under this provision if adjustable or any other premiums are subsequently collected by WHOLESALER.

8. Claims. BROKER shall immediately notify WHOLESALER and/or insurer in writing of any claims, suits, and notices of loss. BROKER has no authority to assign losses to be adjusted nor may BROKER negotiate or settle any loss. BROKER will cooperate with the insurer and/or WHOLESALER in the claims process.

9. Compensation. WHOLESALER shall pay BROKER a percentage of the premium written and paid for under this Agreement for business produced by BROKER and placed through WHOLESALER. BROKER shall return to WHOLESALER any commissions paid on policies that were subsequently cancelled or for policies where coverage is subsequently reduced on a pro rated basis.

10. Indemnification. BROKER shall indemnify and hold harmless WHOLESALER, its affiliates, officers, directors, employees and/or agents, from and against any and all claims, actions, suits, proceedings, demands, assessments, judgments, liabilities, losses, damages, fines, penalties, fees, costs and expenses, including reasonable attorneys' fees, incurred by WHOLESALER

arising directly or indirectly from any acts, omissions or breach of this Agreement by BROKER. BROKER's Indemnification obligations under this Paragraph 11, extend to any claims by an insured, purported insured, or purported additional insured or third party claiming to be a beneficiary under an insurance contract, arising out of the procurement or lack of procurement of coverage, or otherwise related to BROKER's services hereunder.

11. Ownership / Control of Expirations. BROKER'S records and the use and control of expirations shall remain the property of BROKER.

12. Relationship of the Parties. This Agreement shall in no way constitute or give rise to a partnership, or joint venture between the parties. BROKER recognizes that BROKER is the representative of the insured and not the agent, representative or employee of WHOLESALER. BROKER shall not hold itself out as authorized to act in the name of or on behalf of WHOLESALER.

13. Term and Termination. This Agreement remains in full force and effect unless terminated as set forth herein.

a) Voluntary Termination. Either party may terminate this Agreement for any reason upon forty-five (45) days' written notice to the other party stating the date when such termination shall be effective.

b) Termination for Cause. This Agreement may be terminated for cause, effective immediately, by either party upon written notice to the other party. "Cause" shall include (i) cancellation or non-renewal of one's license or certificate of authority, (ii) any material breach of this Agreement, including but not limited to, failure to pay balances due to either party (after notice and an opportunity to cure), fraud, gross negligence, or willful misconduct.

14. Communications and Notices. Any notice required hereunder shall be in writing and shall be submitted by facsimile, or by certified mail or by overnight delivery upon the following:

if to WHOLESALER:  
Brooks Insurance Agency  
70 Bridge Plaza Drive  
Manalapan, New Jersey 07726

if to BROKER:  
[Insert address]

15. Governing Law and Jurisdiction. This Agreement shall be governed and construed and enforced in accordance with the laws of the State of New York, without regard to its conflict of laws principles. For any dispute arising out of this Agreement, the parties consent to the jurisdiction of the state and federal courts located in the State of New York.

16. Assignability. BROKER shall not, and shall have no right or power to, assign or delegate any of BROKER's rights or obligations arising out of this Agreement. Any attempted assignment or delegation by BROKER shall be null, void and without effect. Without limiting the foregoing, BROKER shall notify WHOLESALER of each change, direct or indirect, in the legal and beneficial ownership of BROKER.

17. Miscellaneous. This Agreement constitutes the entire understanding of the parties with respect to the subject matter herein and supersedes any prior agreements, understandings, negotiations, and discussions between the parties with respect thereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Neither party may amend this Agreement without the other party's written consent. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term herein. If any of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect.

Agreed to and accepted:

**Brooks Insurance Group  
(WHOLESALER)**

**(BROKER)**

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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