



PRODUCER AGREEMENT

Producer Code Number: _____
(NBIS CTIS use only) Effective Date _____

NBIS CONSTRUCTION & TRANSPORT INSURANCE SERVICES, INC. (hereinafter "NBIS CTIS") of Atlanta, Georgia, agrees with:

Producer's Name: _____
Address: _____
City, State and Zip: _____
Telephone/Fax: _____

(Hereinafter **PRODUCER**), as follows (the "Agreement"):

Whereas **NBIS CTIS** underwrites and services risks of insurance as a Managing General Underwriter on behalf of several insurers ("Insurer"); and

Whereas **PRODUCER** is an independent producer selling and servicing various insurance products to individuals and entities seeking insurance (hereinafter "**POLICYHOLDER(S)**"), and **PRODUCER** desires to place contracts of insurance for such **Policyholders** named in such contracts of insurance, and desires to utilize generally the underwriting and servicing facilities, knowledge and services of **NBIS CTIS**.

Now, therefore, in consideration of the mutual promises herein expressed, the parties agree as follows:

- A. **NBIS CTIS** and **PRODUCER** mutually agree that the interests of the parties are best served when **PRODUCER** is an independent contractor for all purposes. Nothing in this Agreement shall be construed to create the relation of employer and employee or principal and agent between **NBIS CTIS** and **PRODUCER**.
- B. **PRODUCER** agrees that without prior written consent of **NBIS CTIS**, **PRODUCER** has no authority (including risks from the underwriting manuals quick rater or rate books given to **PRODUCER** by **NBIS CTIS**):
 - (i) To bind or to cause to have bound any coverage on any risk or insured on behalf of **NBIS CTIS** or an Insurer or to issue or cause to be issued any binder, policy, endorsement, certificate or other evidence of coverage on behalf of **NBIS CTIS** or Insurer; or
 - (ii) To waive or extend any conditions of a policy or application or to make, vary or discharge any policy or contract; or
 - (iii) To make representations on behalf of **NBIS CTIS** or Insurer, including representations regarding the application of coverage to specific situations; or
 - (iv) To extend the time for payment of premium or any other amounts due; or
 - (v) To incur any liability on behalf of **NBIS CTIS** or Insurer; or
 - (vi) To act in any way as an agent of **NBIS CTIS** or Insurer.
- C. **PRODUCER** agrees that all supplies including the underwriting manuals quote rater or rate books and advertising materials furnished by **NBIS CTIS** or Insurer shall remain the property of **NBIS CTIS** or Insurer and shall be returned upon demand or upon the termination of this Agreement. (See also paragraph CC)

- D. **PRODUCER** agrees that all quote and binding authority remains with **NBIS CTIS** or the Insurer, as the case may be. **PRODUCER** has no authority to quote or bind any insured based upon the underwriting manuals quick rater or rate book information. **PRODUCER** agrees to secure such information, documentation, payment and any other items necessary for **NBIS CTIS** or the Insurer to underwrite and price quotes which **PRODUCER** shall provide to each **POLICYHOLDER** as the agent of the **POLICYHOLDER**. **PRODUCER** agrees to properly and accurately obtain, assemble and assess information provided by **POLICYHOLDERS** and to ensure that the terms and conditions of any policy proposed by **NBIS CTIS** shall be sufficient to meet the **POLICYHOLDER'S** insurance needs. **NBIS CTIS's** sole responsibility shall be to utilize reasonable commercial efforts to provide such insurance products and services as **PRODUCER** deems appropriate under all circumstances to **POLICYHOLDERS**. **NBIS CTIS** expressly assumes no obligation to **POLICYHOLDERS** or **PRODUCER** in regard to the amount, adequacy or form of insurance products or services provided hereunder.
- E. This Agreement does not constitute **PRODUCER** as the agent or the legal representative of **NBIS CTIS** or Insurer, or **NBIS CTIS** or Insurer as the agent or legal representative of **PRODUCER**, for any purpose whatsoever. **PRODUCER** is not being granted any express or implied right or authority by **NBIS CTIS** or Insurer to assume or to create any obligation or responsibility on behalf of or in the name of **NBIS CTIS** or Insurer, or to bind **NBIS CTIS** or Insurer in any manner or thing whatsoever, other than as specifically stated in this Agreement.
- F. **PRODUCER** agrees to keep complete records and accounts of all such transactions. At the request of and upon reasonable notice by **NBIS CTIS**, **PRODUCER** shall permit **NBIS CTIS** to inspect or audit all such records and accounts wherever they may be located.
- G. If at any time it is determined that **PRODUCER** has not properly accounted for and paid all premiums owed to **NBIS CTIS**, and **PRODUCER** does not correct the problem within five business day following notice from **NBIS CTIS**, ownership of the records and expirations shall vest in **NBIS CTIS** and **NBIS CTIS** shall have the sole right to use and control them to the extent of **PRODUCER's** obligations to **NBIS CTIS** or Insurer, unless **PRODUCER** provides other security acceptable to **NBIS CTIS** or Insurer unless disputed and not resolved. The provisions of this paragraph are not an exclusive remedy and **NBIS CTIS** shall be entitled to seek any other remedies at law or equity for **PRODUCER's** failure to comply with this paragraph.
- H. As compensation for the services to be provided herein, **PRODUCER** shall be entitled to a percentage of premiums generated (commissions) from insurance products and services provided hereunder at the rate agreed upon by **PRODUCER** and **NBIS CTIS**. All commissions will be listed in the quote from **NBIS CTIS** and no changes may be made to quote without the prior express written permission of **NBIS CTIS**. **PRODUCER** assumes full responsibility for and agrees to repay to **POLICYHOLDER** or **POLICYHOLDER's** authorized agent that portion of return premium representing **PRODUCER's** commissions resulting from cancellations of policies either by the **POLICYHOLDER**, the **POLICYHOLDER's** authorized agent, **NBIS CTIS** or Insurer, or resulting from premium adjustments, whether by audit or otherwise directed by **NBIS CTIS** or Insurer. Upon the failure of **PRODUCER** to make any such repayment upon request of **NBIS CTIS**, **PRODUCER** authorizes **NBIS CTIS** to make the repayment and recoup any such payment or payments from any other funds owed by **NBIS CTIS** to **PRODUCER**. In the event of a deficiency in such payments, **PRODUCER** shall be liable to **NBIS CTIS** for the full amount of said deficiency.
- I. Nothing in this Agreement shall be construed as limiting or restricting the right of **NBIS CTIS** or Insurer to cancel any binder, policy or contract of insurance issued or bound under this Agreement in accordance with the cancellation provisions of such binder, policy or contract or applicable law. There shall be no flat cancellations of any kind without prior written approval of **NBIS CTIS** and Insurer. **PRODUCER** shall not be entitled to any credit for flat cancellations unless agreed in writing by **NBIS CTIS** and Insurer.
- J. **PAYMENT FOR POLICIES:** For any policy issued by an insurance carrier, full payment of the premium, taxes and any applicable surcharges or fees on or with respect to insurance bound or written hereunder, net of **PRODUCER's** commission and net of any applicable surplus lines taxes or fees to be remitted to the appropriate tax authority by **PRODUCER**, shall be made by **PRODUCER** to **NBIS CTIS** not more than ten (10) days following the binding date of the subject policy premium, regardless of whether the policy has been issued and regardless of whether the premium, taxes or fees have been collected from the **POLICYHOLDER**. Full payment of the premium, taxes and any applicable surcharges or fees on or with respect to any and all policy endorsements bound or written hereunder, net of **PRODUCER's** commission and any applicable surplus lines taxes or fees, shall be made by **PRODUCER** to **NBIS CTIS** not more than ten (10) days following the invoice date of the subject endorsement premium, regardless of whether the endorsement has been issued and regardless of whether such has been collected from the **POLICYHOLDER**. Full payment of the premium due as additional premium, taxes and any applicable surcharges or fees resulting from an audit on insurance bound or written hereunder, net of **PRODUCER's** additional commission or any applicable surplus lines taxes or fees to be remitted by **Producer**, shall be made by **PRODUCER** to **NBIS CTIS** not more than ten (10) days following the invoice date of the subject audit premium, taxes and any applicable surcharges or fees.

- K. **PRODUCER** accepts full and complete responsibility for the collection of premium, taxes and any applicable surcharges or fees. Prior to remitting such monies to **NBIS CTIS** or any surplus lines taxes or fees to the appropriate tax authority, **PRODUCER** shall hold all such monies received by **PRODUCER** in a fiduciary capacity, in a segregated premium trust account. Further, **PRODUCER** shall account for and hold such funds in accordance with applicable state laws and regulations, and **PRODUCER** shall in no case use such monies for any purpose other than the payment of the premium, taxes or fees due to **NBIS CTIS** or Insurer, or the withdrawal of commissions due **PRODUCER**. **PRODUCER** shall provide evidence to **NBIS CTIS** of its compliance with the foregoing premium trust fund requirements on request by **NBIS CTIS** or Insurer. **PRODUCER** shall be liable for all earned premium (whether minimum, deposit, audit, annual, minimum earned or endorsement premiums), fees and other monies due on any business under this Agreement.
- L. **NBIS CTIS** hereby expressly authorizes **PRODUCER** to deposit in banks insured by the F.D.I.C. and in savings and loan associations insured by the F.S.L.I.C., including investments in certificates of deposit or savings accounts, any and all premiums, taxes, fees and other monies collected by **PRODUCER** for and on behalf of **NBIS CTIS** or Insurer. The interest, if any, which accrues on said funds shall be the property of **PRODUCER**.
- M. Failure by **PRODUCER** to remit monies due **NBIS CTIS** as required by this Agreement and law shall be cause for **NBIS CTIS** to immediately initiate policy cancellation proceedings on behalf of Insurer, subject to applicable state laws and regulations. Reinstatement upon subsequent payment by **PRODUCER** of the premiums and other monies due shall be at the Insurer's sole discretion. **PRODUCER** shall forfeit all rights, whether in law or equity, to any and all commissions if **NBIS CTIS** is required to make, or makes, direct collection thereof from **PRODUCER** or the **POLICYHOLDER**; provided, however, that such forfeiture shall not relieve **PRODUCER** of any duties, obligations or liabilities under law or this Agreement.
- N. **PRODUCER** shall immediately forward (within 12 hours) all claims, suits and notices of loss in a written notice to **NBIS CTIS**, and cooperate fully with the Insurer and its agents to facilitate the investigation, adjustment, settlement and payment of any claim when and as reasonably requested. **PRODUCER** shall use its best efforts to assist **NBIS CTIS** and Insurer in the collection of any deductible due from the **POLICYHOLDERS** if so requested by the Insurer. This provision shall survive the termination of this Agreement.
- O. **PRODUCER** shall not insert any advertisement referring to **NBIS CTIS** or to Insurer or issue or cause to have issued any letter, circular, pamphlet, or other publication or statement referring to **NBIS CTIS** or Insurer without the express written consent of **NBIS CTIS** or the Insurer. Any such approved advertising shall also be subject to all applicable state laws and regulations, which shall be the responsibility of **PRODUCER** notwithstanding any approval of **NBIS CTIS** or Insurer. In the event **NBIS CTIS** or Insurer shall be subjected to loss or expense arising out of any unauthorized or illegal advertisement, publication or statement of **PRODUCER** or its subproducers, **PRODUCER** shall be liable for all resulting damages and costs, including attorneys' fees and costs.
- P. This Agreement supersedes all agreements existing between **NBIS CTIS** and **PRODUCER** and shall be applicable to all business placed by **PRODUCER** with **NBIS CTIS** or Insurer on or after January 1, 2011.
- Q. **PRODUCER** agrees to forward to **NBIS CTIS** full and complete annual financial statements of **PRODUCER** upon request by **NBIS CTIS**. **NBIS CTIS** agrees to maintain **PRODUCER**'s financial information in a confidential manner.
- R. Each party ("1st Party") hereby agrees to indemnify and hold harmless the other party ("2nd Party"), its officers, directors, employees, and principals, from and against any and all liabilities, losses, damages, claims, and expenses (including attorneys' fees and costs) sustained or incurred by or imposed upon the 2nd Party in any manner resulting from or arising out of any breach of this Agreement, willful or negligent acts or omissions, or violation of applicable law, regulation or contract by the 1st Party or any employee or agent of the 1st Party (including, in the case of **PRODUCER**, its subproducers) or any other person for whom the 1st Party may be responsible. Such indemnification and hold harmless shall include all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses (including attorneys' fees and costs) incident to the foregoing. This provision shall survive the termination of this Agreement.
- S. If **PRODUCER** fails to perform the duties required of **PRODUCER** under this Agreement (including **PRODUCER**'s duty to collect and remit all forms of premiums, fees and other monies), and **NBIS CTIS** finds it necessary to perform such duties, the **PRODUCER** shall indemnify and reimburse **NBIS CTIS** for all costs and expenses (including reasonable attorneys' fees) incurred by **NBIS CTIS** as a result.
- T. **PRODUCER** agrees to maintain while this Agreement is in effect, professional errors and omissions insurance with minimum limits of one million dollars (\$1,000,000.00) per occurrence from an insurer with an A.M. Best rating of A or above. **PRODUCER** shall provide to **NBIS CTIS** copies of any such policies, or if agreed by **NBIS CTIS**, certificates of insurance evidencing such coverage. **PRODUCER** agrees to give, or if requested by **NBIS CTIS** to cause its insurer to give, thirty (30) days' prior written notice to **NBIS CTIS** in the event of the cancellation, non-renewal, or reduction in the limits of, or material restriction in the coverage provided by, such professional errors and omissions insurance.
- U. **PRODUCER** shall make no claim or bring any action against **NBIS CTIS** except for claims or actions arising out of the reckless conduct or willful misconduct of **NBIS CTIS**.

- V. **PRODUCER** warrants that **PRODUCER** and its subproducers are properly licensed as insurance agents/brokers by the appropriate state insurance regulatory authority for all states for which **PRODUCER** is submitting and/or producing policies of insurance with **NBIS CTIS** under this Agreement, and agrees to notify **NBIS CTIS** immediately if **PRODUCER** shall fail to renew any such license or if for any reason any such license is revoked, suspended or cancelled. **PRODUCER** shall submit a copy of the appropriate license for each state for which **PRODUCER** submits business to **NBIS CTIS**, or other evidence acceptable to **NBIS CTIS**, certified by insurance regulatory authorities.
- W. **PRODUCER** agrees to perform **PRODUCER**'s duties and obligations under this Agreement in compliance with applicable federal statutes and regulations and the statutes and regulations of the states in which the business subject to this Agreement is written or in which the business is located or conducted. **PRODUCER** further agrees to be responsible for the filing of all required documents with the appropriate insurance regulatory authorities and to remit all applicable surplus lines premium taxes to the appropriate state tax authority, both as may be required by law to be filed by **PRODUCER**, if any.
- X. The parties have negotiated the terms of this Agreement and the language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the Agreement. No rule of strict construction shall be applied against any person.
- Y. The forbearance, neglect or failure by **NBIS CTIS** to enforce any or all of the provisions of this Agreement or to insist upon strict compliance by **PRODUCER** shall not be construed as a waiver of any rights or privileges of **NBIS CTIS**. **NBIS CTIS**'s waiver of a past act or circumstance shall not constitute or be a course of conduct or waiver of any subsequent action or circumstance. In the event that any provision of this Agreement is determined by a court to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement, and the provision deemed invalid or unenforceable shall be deemed modified to the minimum extent necessary to render it valid and enforceable under applicable law.
- Z. This Agreement may be terminated for any reason upon ten days prior written notice by either party to the other party. This Agreement may be terminated immediately by **NBIS CTIS** if the **PRODUCER** fails to perform its duties under this Agreement or if the **PRODUCER** breaches any material term of this Agreement. Following termination, unless **NBIS CTIS** directs otherwise, **PRODUCER** shall complete the collection of premiums, fees and other monies due to **NBIS CTIS** or Insurer. **PRODUCER** shall also account to **NBIS CTIS** for all premiums, fees, commissions and other transactions unaccounted for on the date of termination, or arising thereafter with respect to outstanding insurance. **PRODUCER** shall continue to provide usual and customary services regarding the business which is the subject of this Agreement. There shall be no abandonment to **NBIS CTIS** of any duty, obligation or responsibility of **PRODUCER**.
- AA. Any action to enforce this Agreement shall be brought and heard in a court located in Chicago, Cook County, Illinois or the United States District Court for the Northern District of Illinois, and each party hereby waives any right to claim that such a forum is improper or inconvenient for any reason, and agrees to submit to the jurisdiction of the court in Cook County, Illinois or the United States District Court for the Northern District of Illinois. This Agreement shall be interpreted under the laws of the State of Illinois, excluding any provision of Illinois law that otherwise would require or allow application of the substantive or procedural law of another jurisdiction.
- BB. **PRODUCER** hereby acknowledges that policyholders covered by a surplus lines carrier, which may be an Insurer under this Agreement, are not covered by state insurance guaranty funds in the event of insolvency. **PRODUCER** further acknowledges that it has reviewed the form of policy issued by the Insurer and understands the restrictions and limitations on the coverage provided thereby. **PRODUCER** represents and warrants to **NBIS** and Insurer that **PRODUCER** will provide, or cause its sub-producers to provide, appropriate information to each policyholder concerning the terms, conditions and restrictions of policies issued by any Insurer, whether that Insurer is an admitted or surplus lines carrier, and concerning the other matters described in this paragraph.
- CC. **PRODUCER** acknowledges that it will be granted access to certain non-public, proprietary and confidential information concerning **NBIS CTIS**. **NBIS CTIS**, the "Disclosing Party", is willing, on the terms and subject to the conditions set forth in this Agreement, to provide such information to and to permit **PRODUCER** to have access to certain Confidential Material, including the Risk Management Support System and the quick rater and rate book. The Risk Management Support System, underwriting manuals quick rater and rate books are proprietary systems, trademarked, trade secrets, service marked or copyrighted by **NBIS CTIS**.

NBIS desires to maintain the confidentiality of the Confidential Material and **NBIS** will make the Confidential Material available to **PRODUCER** only upon the terms and conditions set forth below.

PRODUCER agrees to accept the Confidential Material as follows:

1. **PRODUCER** will maintain Confidential Material in strict confidence using appropriate administrative, technical and physical safeguards to protect Confidential Material to prevent

its unauthorized use or disclosure;

2. Not to use for any purpose, any portion of the Confidential Material except to market and sell **NBIS** policies of insurance;
3. **PRODUCER** will not, directly or indirectly, copy, reproduce, sell, assign, license, market, transfer or disclose any Confidential Material to any third party, without **NBIS's** prior written consent.

Nothing in this Agreement is intended to grant any rights to **PRODUCER** under any patent, copyright, trademark, trade name or other proprietary right of **NBIS**, nor shall this Agreement grant **PRODUCER** any rights in or to Confidential Material of the Company except as expressly set forth herein.

In witness whereof, the parties hereto set their hands in signature this date: _____.

NBIS CTIS: NBIS CONSTRUCTION & TRANSPORT INSURANCE SERVICES, INC.

By: _____

Title: _____

Federal Employer Identification Number of **NBIS CTIS** (F.E.I.N.) 36-4347239

PRODUCER:

By: _____

Title: _____

Federal Employer Identification Number of **PRODUCER** (F.E.I.N.) _____