

INSURANCE BROKERAGE AGREEMENT

BETWEEN THE

AND

This document constitutes an Insurance Brokerage Agreement between the _____ established pursuant to the provisions of the laws of the State of California, hereinafter referred to as _____, an insurance brokerage firm licensed as such by the State of California, hereinafter referred to as "Broker".

In return for the sole consideration of being named broker of record for _____, Broker shall perform freely and without reservation and on a timely basis the terms set forth herein.

1. TIMEFRAME OF AGREEMENT

This agreement shall be for the period _____, through _____, unless extended for an additional period by mutual written agreement of _____ and Broker or terminated as provided by SECTION 8 hereof.

2. LINES OF INSURANCE SUBJECT TO SERVICE

This Agreement covers Liability, Property, Excess Workers Compensation and such additional line(s) as may be added by _____, subject to written agreement.

3. FINANCIAL TERMS

Broker will deliver the services as outlined in this Agreement for the all-inclusive annual fee of \$_____ for the _____ contract year and \$_____ for each of the _____ and _____ contract years, payable and to be invoiced as follows: Quarterly January 1, April 1, July 1, and September 1. In addition, if a new member joins the _____, or an existing _____ member joins an additional Risk Management Program, then the Broker's compensation shall be adjusted as follows:

For each new member in the Liability Program, the fee shall be increased by a \$_____ one time fee. For each new member in the Property Program, the fee shall be increased by a \$_____ one time fee. In the event that there are more than 18 members in the Workers' Compensation program during a contract year, the Client shall pay _____ an additional fee of \$_____, payable quarterly provided that 3 or more additional Workers' Compensation members joined the program in such contract year. In the event of _____ Liability and Property members withdrawing, the all inclusive fee shall be in force until the membership is less than twenty (20), at which time the fee will be subject to mutual renegotiation.

shall be compensated for the placement of ancillary lines requested by members and group purchases directed by [REDACTED] through receipt of carrier commissions, unless otherwise negotiated, and are subject to disclosure to [REDACTED].

With respect to insurance placed by Broker on the [REDACTED] behalf, Broker will disclose to the [REDACTED] any commissions received by Broker and credit them against the annual fee. In the event such commissions for a contract year exceed Broker's annual fee for that year, then excess commissions will be returned to the [REDACTED], if permitted by law or carried forward and applied against Broker's annual compensation for subsequent years, as agreed upon, if permitted by law. Such commissions do not include and Broker shall be entitled to receive and retain, as to all lines of coverage, wholesale commissions with respect to placements for [REDACTED]. Broker will disclose to [REDACTED] any such wholesale commissions collected by [REDACTED]. In addition, Broker and its affiliates will not credit any enhanced commissions collected by Broker or its affiliates on placements incepting on or after January 1, 2009 against the annual fee. Enhanced commissions shall be disclosed when presenting quotations.

In certain cases, placements which Broker makes on behalf of [REDACTED] may require the payment of surplus lines taxes and/or fees to state regulators, boards or associations. Such taxes and fees will be charged to [REDACTED], as applicable, and identified separately on invoices covering these placements.

Broker may utilize the services of intermediaries to assist in the marketing of [REDACTED] insurance, when in Broker's professional judgment it is necessary or appropriate. Such intermediaries may be affiliates of Broker or other intermediaries not related to it. The compensation of such intermediaries is not included in Broker's compensation hereunder and will be paid by insurers out of paid premiums. However, if the intermediary is owned by or is an affiliate of Broker, such fees or commissions shall be disclosed to [REDACTED] in writing.

In the event there is a significant change in the operations which affects the nature and scope of its insurance program, Broker and [REDACTED] both agree to renegotiate Broker's future compensation in good Faith as appropriate.

4. SERVICES TO BE PROVIDED

Broker agrees to provide the following services with respect to the lines of coverage set forth in Section 2:

- A. Marketing of Insurance. The Broker agrees to solicit comprehensive quotations for all insurance renewals, as directed by [REDACTED], and submit details of marketing efforts. This will include names of insurance companies contacted and amounts quoted at least thirty (30) working days prior to entering the marketplace. Copies of the formal underwriting submissions will be provided to [REDACTED] within ten (10) days after renewal dates.
- B. Assist member cities and potential member cities in the completion of applications and compilation of data for marketing purposes. Broker will not independently verify or audit information provided by members necessary to prepare underwriting submissions and other documents relied upon by insurers, and [REDACTED] shall be solely responsible for the accuracy and completeness of

such information and other documents furnished to Broker and/or insurers and shall sign any application for insurance. ~~XXXXXX~~ understands that the failure to provide all necessary information to an insurer, whether intentional or by error, could result in the impairment or voiding of coverage.

- C. Broker will monitor published financial information of ~~XXXXXX~~'s current insurers and alert ~~XXXXXX~~ when the status of one or more of its insurers falls below Broker's minimum financial guidelines. Broker shall not be responsible for the solvency or ability to pay claims of any carrier. Insurers with whom ~~XXXXXX~~ risks have been placed will be deemed acceptable to ~~XXXXXX~~, in the absence of contrary instructions from ~~XXXXXX~~.
- D. Assist members with mid-term coverage additions and changes.
- E. Verify rates and premium for member cities by the insurance carriers.
- F. Review invoices received from carriers to determine accuracy, use best efforts resolve accounting differences or discrepancies.
- G. Provide ~~XXXXXX~~ with premium renewal estimates as required for budgeting purposes no later than March 1 and provide ~~XXXXXX~~ with copies of all quotations received from insurers.
- H. Review all ~~XXXXXX~~ insurance policies to assure that policy language is accurate and in conformity with negotiated terms and conditions, and use best efforts to deliver all policies within 90 days.
- I. Deliver a renewal proposal at the ~~XXXXXX~~ Administrative Committee Meeting in ~~XXXXXX~~, and provide premiums estimate for all pooled programs in February.
- J. Assist ~~XXXXXX~~ with resolving coverage, claim or insurance-related issues arising from policies placed by the Broker.
- K. Monitor claims filed by ~~XXXXXX~~ against insurance providers, placed by Broker. Broker shall not be responsible for notifying carriers unless requested in writing by ~~XXXXXX~~.
- L. Assist members in obtaining professional insurance property valuation service, as needed.
- M. Attend ~~XXXXXX~~ Governing Board meetings, and other meetings as mutually agreed.
- N. Prepare annual stewardship report on a policy year basis by the October following the end of the July policy year.
- O. Use best efforts to cause the development and issuance of endorsements to the coverage document as requested. Said documents will be subject to the approval of ~~XXXXXX~~ or persons designated by ~~XXXXXX~~.

- P. Issue certificates of insurance on policies placed by Broker requested by members within ten (10) days of receipt of request and renewal certificates within 15 days of policy renewals.
- Q. Provide annual disclosure report of any and all commissions, rebates, or other earnings on ~~XXXXXX~~ placements by August 15 of each year.
- R. Assist in the recruitment and marketing of new member cities, as approved by General Manager. Report all contacts made on behalf of ~~XXXXXX~~.
- S. Assist with feasibility studies and possible implementation of self funded pooling vehicles as alternatives to the purchase of insurance as necessary. Also, introduce successful risk financing strategies engaged by other insurance pools.
- T. Disclose on a timely basis all real or potential conflicts of interest.

If Broker has taken over any existing program or policies implemented by another broker, Broker will not assume any responsibility for the adequacy or effectiveness of those programs or policies or any actions or omissions occurring prior to Broker's retention. Within forty-five (45) days, Broker will have completed a review of those programs and policies and will make recommendations it believes are necessary.

Broker does not speak for any insurer, is not bound to utilize any particular insurer, and does not have the authority to make binding commitments on behalf of any insurer. Broker does not guarantee or make any representation or warranty that insurance can always be placed on terms acceptable to the ~~XXXXXX~~.

5. ACCOUNT TEAM

For purposes of this agreement, the following lead persons shall be designated as the account team and shall function in all matters relating to ~~XXXXXX~~ account. Changes to the account team may be made upon mutual written agreement between ~~XXXXXX~~ and Broker.

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6. BROKER INSURANCE REQUIREMENTS

Broker shall procure and maintain throughout the term of this agreement, insurance or self-insurance as described below. Broker shall provide evidence of such insurance or self-insurance to ~~XXXXXX~~ annually.

- A. Commercial General and Auto Liability insurance as broad ISO Commercial General Liability forms or equivalent at a limit of ~~XXXXXX~~ dollars (\$~~XXXXXX~~) per occurrence and a ~~XXXXXX~~ dollar (\$~~XXXXXX~~) aggregate. The policies are to contain, or be endorsed to contain, the following provisions:

- 1. ~~XXXXXX~~, its directors, officers, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or

operations performed by or on behalf of the Broker; or automobiles owned, leased, hired or borrowed by the Broker. To the extent Broker self-insures for General & Auto Liability, it shall indemnify such additional insureds to at least the extent of the coverage that would be afforded under commercial insurance.

2. For any covered claims related to this agreement, Broker's insurance coverage shall be primary insurance as respects [REDACTED], its directors officers, employees and volunteers. Any insurance or self-insurance maintained by [REDACTED] or any of its member cities shall be excess of the Broker's insurance and shall not contribute with it.
 3. Each insurance policy required by this clause shall provide that coverage shall not be canceled by either party, without Insurers endeavoring to give (30) days prior written notice to [REDACTED].
- B. A professional liability insurance policy with limits of ~~two million~~ dollars (\$~~2,000,000~~) per claim covering errors and omissions which Broker may make resulting in financial loss to [REDACTED].
- C. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

7. COMMUNICATION, GRIEVANCES AND DISAGREEMENT

Disagreements, complaints and alleged improprieties between [REDACTED] and Broker will be negotiated in good faith between [REDACTED] and the Broker. Any such negotiations, including the results thereof will be reported to and approved by [REDACTED] Governing Board. All resolutions will be in accordance with contract law.

8. TERMINATION OF AGREEMENT

This Agreement can be terminated by either party for any reason, with or without cause, ninety (90) days after written notice is given by either party, or at a time mutually agreeable to both parties. In the event of termination, Broker will assist [REDACTED] in arranging a smooth transition process. However, Broker's obligation and the obligation of its affiliates to provide services to [REDACTED] will cease upon the effective date of termination, unless otherwise agreed in writing. If this agreement is terminated prematurely, the fees set forth in Section 3 shall be prorated. However, the annual fee shall be considered 65% earned if contract is terminated after a July renewal is completed for Property and Liability. In addition this Agreement shall be terminated within thirty (30) days after written notice, should either party breach any provision hereof and fail to cure said breach or commence to cure the same within ten (10) days after written notice is given.

9. **SUBCONTRACTORS AND VENDORING**

Broker shall not subcontract any aspect of ~~XXXXXX~~ account, including program development, facilitation, management, administration, and/or analysis to any subcontractor without prior written approval of ~~XXXXXX~~. Any subcontracts entered into by broker shall be for the Broker's benefit and, as such, shall be its responsibility with no liability resting on ~~XXXXXX~~.

10. **COST OVERRUNS**

Broker will not bill ~~XXXXXX~~ for any operational/management expenditures in addition to those fees stated in Section 3 of this Agreement.

Any work completed under this agreement for ~~XXXXXX~~ by Broker and/or any subsidiary of Broker will be included in the fees noted in Section 3 of this Agreement.

11. **INDEMNIFICATION/LIMITATION OF LIABILITY**

Broker agrees to defend, indemnify and hold harmless ~~XXXXXX~~, its directors, officers, employees and agents for any and all claims and damages whatsoever, including but not limited to: claims for personal injury, property damage, or professional errors and omissions brought by third parties to the extent such claims and damages are caused by any negligent act or failure to act by the Broker, its officers, employees or agents or the breach by Broker of any of its obligations under this Agreement.

~~XXXXXX~~ shall not be called upon to assume any liability for direct payment of salaries, wages or other compensation or benefits to any Broker personnel or subcontractors performing services for ~~XXXXXX~~, or any liability other than specifically provided for in this Agreement.

In no event shall either party to this Agreement be liable for any indirect, special, incidental, consequential or punitive damages or for any lost profits arising out of or relating to any services provided by Broker or its affiliates. The aggregate liability of Broker, its affiliates and its and their employees to ~~XXXXXX~~ or its affiliates arising out of or relating to the provision of services by Broker or its affiliates shall not exceed \$10 million. This provision applies to the fullest extent permitted by applicable law.

12. **CONFIDENTIALITY**

A. Confidential Information.

~~XXXXXX~~ may provide Broker with certain proprietary and confidential information ("Confidential Information") in connection with the Services provided by Broker under this Agreement. Neither Broker nor any of its employees or agents directly or indirectly shall disclose to any third party or use any Confidential Information furnished by or on behalf of Client for any purpose except in furtherance of the Services and in furtherance of other insurance brokerage, risk consulting, risk financing, risk transfer, employees benefits or other insurance-related services rendered by Broker to Client, which may include in the normal course of business the release to insurers and other financial institutions of Confidential Information relevant to the underwriting and/or evaluation of Client's risks and the processing of its claims, provided that such insurers and financial institutions are informed of the confidential nature of such

information. Broker shall take all steps reasonably required to maintain the confidentiality of Confidential Information in Broker's possession. The transmission of Confidential Information via electronic data transmission networks which provide for the security of users' data shall be deemed consistent with Broker's obligations hereunder unless such use is contrary to Client's express instructions.

B. Exceptions.

The restrictions and agreements set forth above shall not apply to any Confidential Information: (i) which at the time disclosed to or obtained by Broker is in the public domain; (ii) which becomes part of the public domain through no act, omission or fault of Broker; (iii) which Broker's records demonstrate was developed independently by Broker or was received by Broker from a third party which Broker had no reason to believe had any confidentiality or fiduciary obligation to ~~XXXX~~ with respect to such information; (iv) which is required to be disclosed by law, including, without limitation, pursuant to the terms of a subpoena or other similar document; provided, however, Broker shall, to the extent practical, give prior timely notice of such disclosure to ~~XXXX~~ to permit ~~XXXX~~ to seek a protective order, and, absent the entry of such protective order, Broker shall disclose only such Confidential Information that Broker is advised by its counsel must be disclosed by law; or (v) following the lapse of two years after disclosure of such information to Broker.

C. Return of Confidential Information.

As between ~~XXXX~~ and Broker, Confidential Information shall be the sole and exclusive property of ~~XXXX~~. Upon ~~XXXX~~ request, all documents and records in Broker's possession containing Confidential Information shall be returned to ~~XXXX~~; provided, however, that Broker may retain copies of documents that may contain Confidential Information which are necessary for the conduct and proper record keeping of Broker's business in accordance with standard operating procedures or applicable law.

D. Remedy.

It is understood and agreed that money damages would not be a sufficient remedy for any breach of these confidentiality provisions and ~~XXXX~~ shall be entitled to injunctive relief as a remedy for such breach, without prejudice to any other rights or remedies available to ~~XXXX~~ under applicable law.

13. **NOTICE**

Formal notice between ~~XXXX~~ and the Broker shall be deemed given if delivered to the principal office of ~~XXXX~~ or Broker as applicable, by (1) personal service or (2) telecopy if such telecopy is followed by a notice sent out on the same day by mail, or (3) Express Mail, Federal Express, or other like overnight mail service, or (4) Registered or Certified Mail, postage prepaid, return receipt requested. Such notice shall be addressed:

To . . . :

With a Copy to:

With a Copy to Broker:

All notices shall be deemed to have been given on (1) the date delivered, if delivered personally, or (2) upon transmission, if prior to 5:00 p.m., or (3) the date of actual attempted delivery, provided such attempted delivery is on a business day if by Federal Express, Express Mail or other like overnight delivery, or (4) the date of actual delivery as shown on the addressee's certification of receipt or the third day following the date of mailing, whichever is the earlier.

14. AGREEMENT

We the undersigned agree to the terms and conditions contained in this document entitled Insurance Brokerage Agreement Between [redacted] And [redacted]. This Agreement, together with all appendices attached hereto, contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all written or oral prior agreements, understandings and negotiations with respect to such matters. This Agreement may be modified or otherwise amended and the observance of any term of this Agreement may be waived, only if such modification, amendment or waiver is in writing and signed by the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors. Neither party shall have any liability for any failure or delay in performance of its obligations under this Agreement because of circumstances beyond its reasonable control, including, without limitation, acts of God, fires, floods, earthquakes, acts of war or terrorism, civil disturbances, sabotage, accidents, unusually severe weather, governmental actions, power failures, computer/network viruses that are not preventable through generally available retail products, catastrophic hardware failures or attacks on its server.

This Agreement will become effective on [redacted], when signed by authorized representatives of both parties.

15. ARBITRATION

In the event that the parties are unable to resolve any dispute pursuant to Section 7 above, each party to this agreement, on behalf of itself and its affiliates, agrees that any dispute, claim or controversy arising out of or relating to this Agreement or the provision of services by Broker or its affiliates shall be resolved by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall be conducted by a panel of three arbitrators, with each party selecting one arbitrator and the two arbitrators selecting the third arbitrator. If the two

arbitrators are unable to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. Each of the arbitrators shall have at least fifteen years of insurance industry experience. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction.

16. **SEVERABILITY**

It is the intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Agreement or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified or deleted in such manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the balance of this Agreement shall not be affected thereby, the balance being construed as severable and independent.

AGREED AND ACCEPTED:

Date: _____

Date: _____