

# Broker Agreement

*www.kis-hospitality.com*

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between Klein Insurance Services, Inc. hereinafter referred to as **KIS** and \_\_\_\_\_ licensed insurance broker(s) in the State of \_\_\_\_\_ hereinafter referred to as **Broker**.

## **A. Statement of Intent.**

**Broker** and **KIS** desire, from time to time and at the request of the Broker, that **KIS** place certain policies of insurance with insurers on behalf of insureds represented by **Broker**. The Parties agree to be bound by the following provisions with respect to their dealings with one another in connection with the placing of insurance policies.

## **B. Obligations and Representations of KIS.**

In connection with **KIS** placing said policies of insurance, **KIS** agrees to the following and makes the following representations and warranties:

- i) **KIS** will use its best efforts to place with insurers such risks as asked by **Broker** to be placed with insurers.
- ii) **KIS** is a licensed agency and shall maintain at all times all applicable licenses and authorizations to transact insurance business in each and every jurisdiction in which it places said policies of insurance.
- iii) **KIS** is an authorized agent of the insurer with whom it places insurance.
- iv) That **Broker** shall retain use and control of the expirations, provided:
  - a) this Agreement remains in full force and effect and has not been terminated by either party; and
  - b) the insured has not executed or provided **KIS** with any broker of record letter or other designation in which a broker other than the **Broker** has been designated broker of record.

## **C. Obligations and Representations of Broker.**

In connection with the undertakings hereunder, the **Broker** hereby represents and warrants the following, with the understanding that **KIS** has relied upon the following material representations and warranties in entering into this Agreement.

- i) **Broker** is a retail broker and as such is the representative of the insured and that no other Broker, entities or individuals are due or will receive a commission in connection with the placement of the polic(ies) by **KIS**, subject to Paragraph F below.
- ii) **Broker** possess all licenses and authorizations to do business, and to place insurance, with all governmental bodies or regulatory agencies in each and every jurisdiction in which **Broker** transacts business, and that **Broker** is in compliance

and will continue to be in compliance with all applicable state and federal laws and regulations.

- iii) **Broker** shall have in place at all times and maintain Errors & Omission coverage with a minimum policy limit of \$1,000,000 per occurrence, with a carrier rated A-, VII, or better, by A. M. Best.
- iv) **Broker** agrees to keep in strict confidence and not to disclose any proprietary or confidential information about **KIS** that **Broker** learns of or obtains as a result of this Agreement, unless such information is otherwise in the public domain.

#### **D. Mutual Covenants Between the Parties.**

- i) **Broker** shall immediately report to **KIS** in writing all claims, suits and notices of loss.
- ii) **Broker** shall accept **KIS's** billings, which may take the form of binders, invoices, statements or similar communications. The net balance due as shown on such billings shall be paid by the billing due date, irrespective of whether a policy has been delivered to **Broker** by such date.
- iii) **Broker** hereby guarantees the payment of all premiums including deposit, earned, extension and adjustable premiums due **KIS** on insurance bound or written hereunder (with the exception of premium amounts disputed by the insured or additional premiums due as a result of premium audits, hereinafter referred to collectively as "Non-Guaranteed Premiums"), whether or not the premiums are collected by **Broker**. Any credit extended to the insured or others shall be at the sole risk of **Broker**.
- iv) **Broker** accepts full and entire responsibility for the collection and payment of all premiums (including minimum earned premiums, but excluding NonGuaranteed Premiums), countersignature fees and resulting charges required by any state, or any other applicable fees and taxes, and agrees to make full payment to **KIS** under the terms and conditions in place at the time of binding. **Broker's** obligation to make such payments on a timely basis to **KIS** is not contingent upon delivery of a policy to **Broker** on or before the billing due date. **Broker** agrees to reimburse **KIS** for all reasonable collection costs, including reasonable attorneys' fees and court costs, in the event **Broker** does not remit payment of all premiums (including minimum earned premiums but excluding Non-Guaranteed Premiums), countersignature fees and resulting charges required by any state, or any other applicable fees and taxes to **KIS** per **KIS's** billings.
- v) In the event of cancellation or modification of an insurance policy for whatever reason that results in an obligation to refund all or part of the premium and/or premium tax, **KIS's** sole obligation shall be to remit the required premium or premium tax directly to **Broker** rather than to the insured or to any premium finance company or to any other person or entity. Notwithstanding the foregoing, no amount of premium tax shall be returnable until recovered by **KIS** and the amount to be returned shall in no event exceed the amount so recovered.
- vi) **KIS** shall allow **Broker**, as commission, a percentage of the premium written at a rate agreed upon by **KIS** and **Broker** in writing. **Broker** will pay **KIS** a return commission at the same rate on any return premium, including return premiums on cancellations ordered or made by the insurer or finance company.
- vii) **Broker** shall hold funds in trust for business generated under this Agreement to the extent required by the insurance laws of each state in which it is conducting business.

- viii) Notwithstanding anything to the contrary in this Agreement, but subject to applicable legal requirements and insurance contract provisions, **KIS** shall have the right to cancel any binder, policy, or contract of insurance issued.
- ix) **Broker** is neither the agent of nor has authority to bind **KIS** or any of its principals. **Broker** understands that **KIS** assumes no responsibility toward any applicant, insured or sub-producer with regard to the adequacy, amount or form of coverage and agrees to hold **KIS** harmless from any claim asserted against **KIS** in following the instructions of **Broker**.
- x) **Broker** agrees to provide to **KIS** all required affidavits of due diligence and other documents to enable **KIS** to comply on a timely basis with the filing requirements of any applicable state surplus line law.
- xi) With respect to cancellation of this Agreement, the Parties agree that this Agreement may be canceled at any time by 30 day written notice of either party to the other, but said cancellation shall not alter in any way the continued application of this Agreement to insurance policies effected prior to the date of such cancellation. In the event that either party fails to fulfill responsibilities agreed to in this contract, the other party will have the right to terminate this Agreement immediately.

## **E. Certificates of Insurance**

### **Authorized Broker Procedures**

Broker is authorized to issue certificates of insurance in accordance with the following procedures:

- i. Use only ACORD Certificate of Insurance forms. Any other Certificate of Insurance Form must have prior approval from the Program Administrator (KIS).
- ii. All information on Certificate of Insurance, such as Named Insured, Limits, Policy Dates, Policy Numbers and Company Names, must be exactly as shown on Insured's Policy or Insurance Binder. No changes will be permitted with the exception of Limits lower than those stated on Policy.
- iii. No Additional Interests are to be shown on the Certificate of Insurance, unless they are specifically endorsed on the Policy. The Company or ISO Additional Interest Endorsement Form Number must also be shown on the Certificate.
- iv. No Waiver of Subrogation and/or Primary/Contributory Insurance wording is to be shown on the Certificate.
- v. Any additions, deletions or alterations to the preprinted wording of the ACORD Certificate must have prior written approval from the Program Administrator, other than the deletion of "will endeavor to" and addition of "shall" in the Certificate Cancellation Provision.

It is Broker's responsibility to notify all Additional Interests shown on Certificates of Insurance in the event of Policy Cancellation, either by the Insured or the Program Administrator. KIS assumes no responsibility for acts of broker and does not require that copies of certificates issued by broker be sent to it. In the event broker sends a copy of a certificate, KIS will neither review nor retain a copy.

## **F. Wholesale Brokering.**

It is understood that the **Broker** herein is a retail broker representing the insured, and that no other broker is due any commission or monies in connection with the placement of insurance policies hereunder. However, in certain limited instances and further provided that the **Broker** complies with the following conditions, KIS may permit the **Broker** to serve as a wholesale broker, provided:

- i) **Broker** discloses in writing to **KIS** that it is acting as a wholesale broker with respect to specific insureds. Each time a policy is placed with **KIS** with respect to said insured, **KIS** must be advised in writing if the **Broker** is acting as a wholesale broker.
- ii) **KIS** shall have no responsibility or obligation whatsoever to pay any commission or monies to any other broker, and **Broker** hereby agrees to indemnify and hold harmless **KIS** in connection with any claims or suits for said commissions.
- iii) **Broker** represents that all other brokers will be fully licensed and authorized to transact insurance business in each and every jurisdiction in which said brokers transact business.
- iv) **Broker** hereby indemnifies and hold harmless **KIS** for any suits, cause of action or claims asserted against **KIS** as a result of any action or conduct of any other brokers involved in the underlying insurance transaction, whether asserted by the insured or any other individual or entity.

## **G. Miscellaneous Provisions.**

- i) Other Documents. The parties to this Agreement, and each of them, agree to execute such other or further documents or instruments as may be reasonably necessary to implement the terms and conditions of this Agreement.
- ii) Ambiguity. The parties to this Agreement, and each of them, agree that should any provision of the Agreement be found to be ambiguous in any way, such ambiguity shall not be construed in favor of or against any party to this Agreement, but rather by construing the terms of this Agreement fairly and reasonably in a manner to effectuate the intentions of the parties hereto.
- iii) Advice of Counsel. The parties to the Agreement, and each of them, and the signatories hereunder, and each of them, are represented by independent counsel, with whom each has fully discussed the terms and conditions of this Agreement.
- iv) Attorneys' Fees. In the event it becomes necessary for any party to this Agreement to obtain the services of any attorney to enforce the provisions of this Agreement against any party who has breached any obligation set forth in this Agreement, the breaching party shall pay the reasonable attorneys' fees and related legal expenses of the non-breaching party. In the event of any action for breach of or to enforce the provisions of the Agreement, the court in such action shall award the prevailing party reasonable attorneys' fees and costs in addition to any other recovery.
- v) Authorization. Each of the persons executing this Agreement, on whose behalf the parties they purport to act, hereby represents and warrants that said persons are fully authorized to execute this Agreement on behalf of such party.
- vi) Free Will. Each of the persons executing this Agreement does so of their own free will and under no threat, menace, coercion or distress, whether economic or physical, from any party to this Agreement, or any of them. Said parties and signatories, and each of them, further acknowledge that they execute this Agreement

acting on their independent judgment and upon advice of their respective counsel without any representation, express or implied, from any other party except as set forth herein.

- vii) Waiver. No breach of any provision of this Agreement can be waived unless done so in writing, executed by the waiving party. The waiver of anyone breach shall not be deemed to be a waiver of any other breach of the same or any other provision of this Agreement.
- viii) Amendment. This Agreement may be amended only by a written Agreement executed by the parties-in-interest at the time of the modification.
- ix) Entire Agreement. This Agreement contains the entire Agreement and understanding concerning the subject matter herein between the parties to this Agreement, and each of them, and supersedes and replaces all prior negotiations and proposed Agreement, whether written or oral. The parties to this Agreement, and each of them, hereby expressly acknowledge that none of them, nor any agent or attorney of any of them, has made any promise, representation or warranty whatsoever, express or implied, not contained herein, concerning the subject matter hereto, induce any of them to execute this Agreement. The parties to this Agreement, and each of them, further acknowledge that none of them has executed the Agreement in reliance upon any promise, representation or warranty not expressly set forth herein.
- x) Governing Law. This Agreement is executed and delivered within the State of New Jersey and shall be construed in accordance with and governed by the laws of the State of New Jersey. The Parties agree that any dispute hereunder shall be resolved by the courts within the state of New Jersey with said courts having the exclusive jurisdiction of any disputes under this Agreement. If any term, provision, covenant or condition of the Agreement shall be held by a court of competent jurisdiction to be invalid, it shall be severed from any remaining portion hereof and the remainder shall stand in force and effect and shall in no way be affected, impaired or invalidated.
- xi) Assignment. This Agreement may not be assigned by any party without the express written authorization and acknowledgment of the other party.

Wherefore, the Parties agree to be so bound as of the effective date of this Agreement, as first set forth above.

Witness:

\_\_\_\_\_

**KIS:**

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

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

Witness:

\_\_\_\_\_

**Broker:**

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

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

\_\_\_\_\_  
Federal Tax 1.D. Number

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Broker License Number & State

**PROOF OF E&O CARRIER & COVERAGE ALONG WITH COPIES OF ALL STATE AGENT/BROKER LICENSES ARE REQUIRED WITH THIS AGREEMENT.**