

AMERICAN SPECIALTY INSURANCE & RISK SERVICES, INC.
BROKER AGREEMENT

THIS BROKER AGREEMENT (“Agreement”), dated as of _____ 20____ is made and entered into by and between American Specialty Insurance & Risk Services, Inc. dba A.S.I.R.S.I. Insurance Agency, American Specialty Insurance & Risk Services Agency, and A S Insurance & Risk Services Agency, 7609 W. Jefferson Boulevard, Suite 100, Fort Wayne, IN, 46804, an Indiana corporation (“American Specialty”) and

Name of Agency

| | | | |
|---------|------|-------|-----|
| Address | City | State | Zip |
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(hereinafter referred to as “Broker”).

Background

Broker desires to place contracts of insurance through companies represented by American Specialty (those companies referred to herein as “Insurer” or “Insurers”) and utilizing the underwriting facilities, knowledge, and services of American Specialty. American Specialty is willing to offer facilities to Broker for the placement of insurance by admitted and/or non-admitted Insurers. In consideration of the mutual promises contained in this Agreement, it is agreed as follows:

1. Authority. Broker has authority, pursuant to the terms of this Agreement, to submit accounts or risks to American Specialty for the purpose of placement and procurement of insurance coverage with Insurers and utilizing the underwriting facilities, knowledge, and services of American Specialty. This Agreement, and the relationship between the parties and their officers and employees, is not intended, and shall not be construed, to create a partnership, joint venture or employment relationship between Broker and American Specialty. Broker is for all purposes an independent contractor. Broker will act in accordance with any Insurer’s policies and administrative guidelines that are known or should be known to the Broker including, but not limited to, the Insurer’s practices regarding the issuance of certificates and other evidence of insurance. American Specialty, in its sole discretion, shall judge whether to accept, reject or submit to Insurer for acceptance any applications of insurance for risks submitted by Broker and shall incur no liability for failure to place any such risk. Nothing in this Agreement shall place American Specialty under any obligation to accept any proposal or new business or the renewal of existing business put to it by the Broker, Broker agrees to the following express limitations of authority:

(a) Binding Authority. Broker has no authority to bind American Specialty or any of its principals, or commit to issue binders or policies of insurance on behalf of American Specialty or to make any representation not strictly in accordance with the policies and contracts placed pursuant to the terms of this Agreement. Broker shall not make, alter, or vary any terms of coverage, or modify the terms of payment of any premium or deposit, or incur any liability for American Specialty.

(b) Co-Brokering. Broker shall not act as an underwriter, re-broker or co-broker (double broker) for any application submitted or policy placed or procured pursuant to this Agreement without the express written consent of American Specialty.

(c) Certificates and Evidence of Insurance. Broker’s authority to issue or communicate certificates of insurance or evidence of insurance relating to insurance placed pursuant to this Agreement

is limited to verification of coverage or where required by law. Broker specifically acknowledges that certificates must never add, change, or expand coverage. If Broker provides copies of certificates or evidence of insurance to American Specialty, it is understood that American Specialty will not review, analyze or otherwise comment on the accuracy, completeness or propriety of any certificate and will not have any responsibility to provide copies of such certificates or evidence of insurance to Insurers unless required by the respective Insurer's contract with American Specialty. Broker is solely responsible for the accuracy and completeness of any certificate or evidence of insurance Broker issues.

2. Broker's Representations and Warranties. As a material inducement for American Specialty to enter into this Agreement, Broker represents and warrants the following:

(a) Licensing. Broker is properly licensed to transact business as an agent or broker in accordance with the insurance laws, rules and regulations of each state in which Broker transacts business. Broker will maintain such license or licenses in good standing for the duration of this Agreement and will furnish proof of such licensing upon request by American Specialty. Broker will notify American Specialty of any suspension, cancellation or disciplinary action with respect to its license(s) within ten (10) days of any such action.

(b) Insurance Coverage. As a condition precedent and an ongoing obligation throughout the term of this Agreement, Broker shall, prior to or contemporaneously with the execution of this Agreement, provide the American Specialty with certificates of insurance demonstrating the existence of the following insurance coverage for services performed pursuant to this Agreement, from an insurance carrier acceptable to American Specialty and having an A.M. Best Rating of A- or greater: Errors and omissions for the services performed pursuant to this Agreement in an amount of at least \$1,000,000 per claim and \$1,000,000 in the aggregate. At renewal of such policies, Broker shall provide American Specialty with updated certificates of insurance. Broker shall immediately notify American Specialty in the event of: (A) Any claim or claims which materially impact the amount of coverage available to another claimant under any such policy; (B) Any increase in the deductible or self-insured retention of any required policy; or (C) Any cancellation, non-renewal, or reduction of insurance coverage in any required policy. Broker shall be solely responsible to pay any and all deductibles or self-insured retentions which its errors and omissions carrier may apply.

(c) Insurance Applications. Any and all information provided in connection with any application for insurance subject to this Agreement shall be true and complete, to the best of Broker's knowledge. Broker further represents and warrants that, to the best of Broker's knowledge, such applications shall contain no material misrepresentations of any kind. Broker shall ensure that all material facts of which Broker is aware are accurately described and completely disclosed to American Specialty. Further, it is the duty of Broker to notify American Specialty, promptly after Broker becomes aware, of any material change(s) that may affect the risk during the policy period and at any subsequent renewal.

(d) Excess and Surplus Lines Placement. Broker shall not place an order with American Specialty for any excess or surplus lines insurance unless Broker shall have first complied with any applicable state laws requiring Broker to attempt to procure such insurance from insurers authorized to do business in the state of residence of the proposed insured. The party responsible for the payment of surplus lines taxes shall be responsible for full compliance with all relevant surplus lines laws of the pertinent state, including, but not limited to, the collection and payment of surplus lines taxes, filing of affidavits, and providing the appropriate statutory and/or regulatory disclosure legends on all documents.

3. Commissions and Premiums.

(a) Commissions. American Specialty shall allow Broker, as commission, a percentage of the premium written at a rate agreed upon by American Specialty and Broker for each insurance placement.

(b) Premium and Accounts. Broker shall accept the format of American Specialty'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. Broker guarantees the full payment due American Specialty of all premiums including deposit, earned, extension and adjustable premiums, fees, plus applicable state and local taxes, less commission, on every insurance contract bound or written for Broker pursuant to this Agreement, whether or not collected by Broker. The net balance will be due and payable as indicated on such billings and may vary based upon the credit terms of the issuing Insurer. The omission of any item(s) from a monthly statement or separate invoice shall not: (1) affect Broker's responsibility to account for and pay all amounts due; (2) prejudice the rights of American Specialty to collect all amounts due from Broker; or (3) extend the time within which Broker must make payment. Broker's obligation to make payment to American Specialty is not contingent upon the issuance of the policy. Any credit extended to the insured or others shall be at the sole risk and responsibility of Broker unless otherwise agreed in writing by American Specialty. Attempts by American Specialty to collect premiums (including audit premium discussed below) from insured shall not relieve Broker of liability to American Specialty except to the extent of amounts actually collected by American Specialty from insured, less the expense of such collection. In the event American Specialty shall have to bring any action or proceeding to enforce collection of any amount due under the terms of this Agreement, Broker agrees to pay all costs incident thereto, including reasonable attorney's fees, incurred by reason of such action or proceeding.

(c) Adjustable Premiums. Notwithstanding anything to the contrary herein set forth, in situations where premiums for a policy or policies which have been issued cannot be fully determined in advance and where an adjustment or determination is made by an audit, retrospective rating or by interim reports, such amounts are fully earned and due at the invoice date as evidenced by an American Specialty or Insurer invoice.

(d) Collection of Audit Premium. Broker will make all reasonable efforts to collect amounts due. Broker will be relieved of responsibility for audit premium, so adjusted or determined, if Broker notifies American Specialty in writing within twenty (20) days after said invoice date, stating that Broker has made diligent efforts and is unable to collect such premiums and provided the Insurer releases American Specialty from liability for such premium. A copy of Broker's invoice to the insured, as well as copies of correspondence pertaining to the collection, must be sent with this notification. Failure to give American Specialty timely notice shall constitute Broker's acceptance of responsibility for payment of such premiums. If commission applies to these adjustments, none will be allowed for Broker on premiums collected directly by American Specialty or Insurer under this provision. If, after a period of sixty (60) days from the date liability was assumed by the Insurer, American Specialty has not received payment due for the applicable coverage, American Specialty may, at its option, collect from the insured the premium due. In the event American Specialty collects the premium or any part thereof from the insured, Broker shall not be entitled to any commission on the premium so collected.

(e) Refunds of Premiums & Premium Tax. In the event of cancellation or modification of an insurance contract for whatever reason that results in an obligation to refund all or part of the premium and/or premium tax, American Specialty's sole obligation shall be to remit the required premium or premium tax directly to Broker rather than to insured, 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 American Specialty and the amount to be returned shall in no event exceed the amount recovered.

(f) Unearned Commissions. Broker shall be liable to American Specialty and shall pay return commission at the same rate as originally allowed to Broker for all return premium adjustments or cancellations, including return premium on cancellations ordered or made by the Insurer or finance company. Such return commission shall be paid to American Specialty by the due date indicated on the billing document. If a return premium becomes due under any contract of insurance and American Specialty has been issued a credit, or payment has been rendered, for such premium by American Specialty's Insurer, American Specialty will pay to Broker such return premium less the unearned portion of any commission previously retained by Broker.

(g) **Financed Premiums.** Unless state law requires otherwise, American Specialty reserves the right, in its sole discretion, to remit unearned premiums on financed policies that are cancelled, less Broker's unearned commission, directly to the premium finance company for the account of the insured, or, in appropriate circumstances, to Broker or directly to the insured. The ultimate liability of American Specialty for payment to a finance company, Broker or insured shall never exceed the amount of return premium less unearned commission developed. Broker agrees to hold American Specialty harmless from any responsibility for payment to or from finance company and further agrees that financing arrangements do not diminish the responsibility for timely payment of premium by Broker.

4. **Premium Funds Held in Trust.** Broker shall hold premium funds in a fiduciary account for business generated under this Agreement to the extent required by the applicable law of each state in which Broker conducts business. Provided Broker is in compliance with all terms of this Agreement and applicable law, Broker may retain any interest earned on said premium funds while so held by Broker.

5. **Claims.** Broker shall comply with the terms of any policy placed pursuant to this Agreement with respect to notification of claims. Broker shall promptly notify the Insurer, and where appropriate American Specialty, of any claims, suits or notices of loss (or circumstances which might reasonably be expected to result in a claim, suit or notice of loss) and shall cooperate fully with Insurer and/or American Specialty to facilitate the investigation and adjustment of any claim when and as requested.

6. **Cancellation of Insurance.** Notwithstanding anything to the contrary in this Agreement, but subject to applicable legal requirements and insurance contract provisions, American Specialty shall have the right to cancel any binder, policy or contract of insurance issued. American Specialty will not recognize flat cancellations unless (a) written evidence of coverage prior to the inception date of the contract for insurance is provided; and (b) such credit has been granted American Specialty by its Insurer. Earned premium shall be computed and charged on every binder, policy or contract cancelled after the inception date in accordance with the cancellation provision of the applicable contract and/or rules of the Insurer. If Broker does not make timely payment of any sums due American Specialty, then American Specialty may, without limitation of other remedies, initiate with Insurer to cancel the binder, policy or contract for non-payment. If coverage is bound by American Specialty, all additional fees charged by American Specialty for the entire policy term shall be fully earned upon binding. Broker hereby acknowledges that American Specialty and its Insurers are under no duty to reinstate a policy if the policy is cancelled. Broker shall not accept from any insured the late payment of premiums with prior knowledge, whether actual or constructive, that the policy for which the late premiums have been collected has been cancelled.

7. **Advertising.** Broker shall not cause any advertisement referring to or using the name, logo, or service marks of American Specialty or Insurer, or issue or cause to have issued any letter, circular, pamphlet, or other publication or statement so referring, without the express written consent of American Specialty. In the event American Specialty suffers a loss or expense arising out of any unauthorized advertisement, publication or statement of Broker, Broker shall be liable for and hereby agrees to indemnify American Specialty and hold American Specialty harmless from all resulting damages, fines, penalties and costs.

8. **Confidentiality.** The parties to this Agreement hereby represent and acknowledge to each other that in the course of the performance of their respective obligations, they will each make available to the other party certain information pertaining to each party's business and operations ("Information"). Each party hereby agrees that as a condition to being provided the Information, that neither party will use any Information except in connection with the performance of duties hereunder. The recipient shall (a) protect the disclosing party's Information using a standard of care at least equal to that which it uses to safeguard its own confidential information and in no event less than a reasonable standard of care; (b) use the disclosing party's Information only to the extent necessary to perform its obligations pursuant to this Agreement; and (c) disseminate Information to its representatives and agents only on a "need to know" basis, provided that all persons to whom Information is disseminated shall be notified of its confidential nature. Recipient will notify disclosing party immediately upon any loss or unauthorized disclosure of Information. Recipient is liable for breach of this provision by any of its representatives or agents. The limits on use and disclosure will not apply to any Information which (a) at the time of disclosure is generally available to the public or (b) which becomes generally available other than through a breach of this obligation of confidentiality.

9. **Inspection of Records.** During the term of this Agreement, and for a period of three (3) years following termination for any reason, American Specialty or Insurer shall have the right to audit and inspect Broker's books and records concerning the business to which this Agreement applies. Such right of audit and inspection shall be during normal business hours upon reasonable notice to Broker. The costs of such audit and inspection, including the costs of making copies of relevant records, shall be borne by American Specialty or Insurer.

10. **Ownership of Accounts.** In the event of termination, so long as Broker has promptly accounted for and paid all premiums or return commissions for which it may be liable, Broker's records and use and control of expiration, shall remain the property of Broker; otherwise, use of records and control of expirations shall be vested promptly and exclusively in American Specialty.

11. **Termination of Agreement.** This Agreement may be terminated at any time by either party giving written notice to the other. This Agreement will also terminate: (a) automatically, if any public authority cancels or declines to renew the Broker's license or certificate of authority; or (b) automatically at American Specialty's option, on the effective date of the sale, transfer, or merger of Broker's business with the provision American Specialty may, upon review, appoint the successors as a Broker. All representations and obligations of Broker herein shall survive the termination of this Agreement.

After the date of termination of this Agreement, Broker shall complete the collection and accounting to American Specialty for all premiums, commissions and other transactions unaccounted for on the date of termination or arising thereafter in respect of outstanding policies of insurance, including but not limited to, return premium and return commissions. Outstanding policies will be permitted to run to expiration.

12. **Indemnification and Hold Harmless.**

(a) **Broker Indemnification.** The Broker agrees to defend and indemnify American Specialty, its parents, subsidiaries, affiliates, successors and assigns, and the shareholders, directors, officers, agents and employees of any of them (collectively the "American Specialty Indemnitees"), against and in respect of any and all claims (not including covered claims made under any policy properly issued in accordance with this Agreement), demands, actions, proceedings, liability, losses, damages, judgments, costs and expenses, including, without limitation, attorneys' fees, disbursements, court costs, and punitive, exemplary, or compensatory damages, suffered, made or instituted against or incurred by American Specialty Indemnitees, or any of them, and which directly or indirectly arise out of or relate to (i) negligence of the Broker or its employees or representatives, in discharging their obligations to American Specialty or to policyholders, (ii) failure by the Broker or its employees or representatives to comply with any applicable information privacy laws, and/or (iii) any failure by the Broker or its employees or representatives to perform their obligations under or relating to this Agreement.

(b) **American Specialty Indemnification.** American Specialty agrees to defend and indemnify the Broker, its parents, subsidiaries, affiliates, successors and assigns, and the shareholders, directors, officers, agents and employees of any of them (collectively the "Broker Indemnitees"), against and in respect of any and all claims (not including covered claims made under any policy properly issued in accordance with this Agreement), demands, actions, proceedings, liability, losses, damages, suffered, made or instituted against or incurred by the Broker Indemnitees, or any of them, and which arise solely out of or solely relate to (i) negligence of American Specialty, or its employees or representatives, in discharging its obligations to the Broker or to policyholders; or (ii) any failure by American Specialty, or its employees or representatives, to comply with any applicable information privacy laws; (iii) and failure by American Specialty, or its employees or representatives to perform its obligations under this Agreement. Broker understands that American Specialty assumes no responsibility for any policy with regard to the adequacy, amount or form of coverage and agrees to indemnify and hold American Specialty harmless from any claim asserted against American Specialty in following the instructions of the Broker. American Specialty is not an insurer and does not guarantee the financial condition of the Insurer with whom it may place risks. American Specialty shall have no liability for non-payment of claims due to the insolvency of an Insurer, or otherwise, under contracts of insurance placed by American Specialty.

(c) Sub-Broker. The Broker shall be fully responsible for the conduct and performance of any sub-brokers of Broker, and shall defend, indemnify and hold American Specialty harmless against any loss, claim, expense, damages, fines, penalties, or attorney's fees arising out of any act on the part of its sub-brokers, including the failure to maintain appropriate licenses or certificates. Nothing in this paragraph shall be construed to allow Broker to appoint or contract with sub-brokers except as authorized by American Specialty in writing.

13. Miscellaneous.

(a) Waiver of Default. Failure of American Specialty to enforce any provision of this Agreement or to terminate it because of a breach shall not be deemed to be a waiver of such provisions or of any breach committed by Broker. No breach of any provision of this Agreement can be waived unless done so in writing, executed by the waiving party. The waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision of this Agreement.

(b) Severability. If any clause or provision of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity or any other clause or provision, which shall remain in full force and effect. Each of the provisions of the Agreement shall be enforceable independently of any other provision, unless expressed otherwise herein.

(c) Assignment. This Agreement and the obligations hereunder may not be assigned by Broker without the prior written consent of American Specialty.

(d) Governing Law. This Agreement shall be deemed to have been made and performed in Allen County, Indiana and shall be governed by, and construed and enforced in accordance with the laws of the State of Indiana.

(e) Entire Agreement. This Agreement constitutes the entire agreement between American Specialty and Broker and supersedes and replaces any previous agreements between American Specialty and Broker. No oral promises or representations shall be binding, nor shall this Agreement be modified, except by agreement in writing and executed by American Specialty. This Agreement shall apply to current policies already placed through American Specialty and in force at the date hereof and all future policies which may be placed by American Specialty for Broker.

14. Execution and Acceptance of Agreement. Broker acknowledges that it is familiar with the Foreign Corrupt Practices Act of 1977 (FCPA) (15 U.S.C. § 78dd-1, et seq.) and the U.K. Bribery Act and that Broker and all of Broker's agents, representatives and employees who will be transacting business in relation to this Agreement are doing so in compliance with the FCPA and the U.K. Bribery Act. Broker further represents that it has established procedures to ensure ongoing compliance with the FCPA and the U.K. Bribery Act and that such procedures will be provided to American Specialty upon request.

Broker acknowledges that a breach of any of the terms, conditions, or provisions of this Agreement by Broker may give rise to a cause of action by American Specialty against the Broker and/or may result in the termination of this Agreement, all in the sole discretion of American Specialty. Each individual who executes this Agreement in a representative capacity represents and warrants that he or she has the full right and power to execute this Agreement and to bind the entity or individuals on whose behalf he or she so signs. If Broker is an individual, the individual must sign; if Broker is a partnership, one of the partners must sign; if Broker is a corporation, an authorized officer must sign and indicate the title of such authorized officer. The parties hereto agree this Agreement shall not become effective until accepted by American Specialty.

Remainder of page intentionally left blank – signature page follows.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date herein signed.

Name of Agency: _____

Signature: _____
(Must be Owner, Partner or Authorized Officer)

Name and Title: _____

Date: _____

Corp Partnership Individual

Federal Tax I.D. No. _____

S.S. No. (If individual) _____

Agency License No. _____

Agent's License No. _____

Agreement Accepted and Effected by American Specialty Insurance & Risk Services, Inc.

By: _____

Name and Title: _____

Date: _____