

## BROKER AGREEMENT

THIS BROKER AGREEMENT (the "Agreement") is made as of \_\_\_\_\_ by and between InsureCargo Insurance Services, Inc. and Elkoll Investment Co., Inc. (hereinafter referred to as "IIS") and \_\_\_\_\_ (hereinafter referred to as the "Broker").

Your agency/brokerage name

### RECITALS

WHEREAS, IIS is engaged in the business of selling, procuring, and placing property, casualty and other insurance on a wholesale and retail basis; and

WHEREAS, IIS is an agent for certain insurance companies from whom and on whose behalf it procures, sells and places property and casualty insurance; and

WHEREAS, Broker has requested that from time to time IIS place with the carriers it represents property and casualty insurance for Broker's customers, and IIS has agreed to do so subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, and for other good, valuable and legal consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Policy Premiums and Miscellaneous Charges. Broker shall be responsible to IIS for the payment of all premiums due on any and all binders and policies issued at the request of Broker. The term "Premiums Due" as used herein shall include: the binder or policy premium; applicable state taxes; all tax filing fees; policy and inspection fees; processing fees; earned premiums and/or commissions on any and all binders or policies issued at the request of the Broker; and unearned commissions due IIS on binders or policies that have been canceled.

2. Payment of Policy Premiums. Premiums Due shall be paid by Broker to and received by IIS no later than thirty (30) days from the effective date of a policy. Broker shall remit all premiums to IIS on a net of commission basis. Notwithstanding anything to the contrary in this section, all deposit premiums or special billed items, as may be from time to time required by IIS's insurers, shall be paid by Broker at the time and in the manner specified by IIS. If Broker shall extend credit to the insured, it shall be at the Broker's sole risk and premiums shall be paid to IIS by the Broker when due, whether or not they are collected by the Broker and whether or not the Broker has extended credit to the insured.

3. Binding. No risk shall be bound by Broker without the express written authorization of IIS and further subject to the acceptance and consent of IIS's insurers. Nothing in this Agreement shall entitle Broker to bind IIS or any of IIS's insurers.

4. Ownership of Business. IIS expressly recognizes and acknowledges Broker's ownership of all business placed under this Agreement by Broker. Notwithstanding such ownership, the parties hereto agree that in the event there are any Premiums Due to IIS at the termination for any reason of this Agreement, IIS shall have the exclusive use and control of all expirations and renewals of such business unless and until the Premiums Due have been paid in full to IIS.

5. Cancellations of Binders or Policies. Broker shall promptly notify IIS if it receives notice of any kind that a policy is to be canceled. No cancellation of a policy or binder will be back-dated. Broker shall be responsible for any premium earned on a binder or policy even where the premium has not been collected from the insured. In the event a financed premium is canceled and the premium has not been refunded to the premium finance company, the Broker shall promptly refund any premiums and unearned commissions due IIS.

6. Claims. Broker shall promptly report to IIS all claims and /or losses, and such notices shall be provided as expeditiously as possible. Broker has no authority to assign losses to be adjusted nor may Broker negotiate settlement of any loss on behalf of IIS or IIS's insurers, without the prior express written consent of IIS. Broker agrees to cooperate fully at the request of IIS, its insurers, adjusting firms, surveyors, attorneys, or other agent in the investigation, adjustment, settlement, or payment of any loss or claim.

7. Renewals. IIS and Broker hereby acknowledge and agree that there shall be no automatic renewal by IIS of binders or policies. While IIS agrees to endeavor to give Broker reasonable advance notice of expiring binders and policies, it shall be under no legal or other obligation to do so and IIS's failure for any reason to provide notice of expiring binders and policies shall not relieve Broker of its obligations with regard to Premiums Due. Furthermore, it is expressly agreed that IIS is under no obligation to furnish renewal binders or policies.

8. Unearned Commissions. The Broker agrees to refund to IIS any unearned Premiums Due to IIS for canceled binders or policies or reduced premiums, within thirty days after Broker is advised of the cancellation or reduction in premium.

9. Financed Policies. If Broker extends credit to an insured it shall be at Broker's sole risk, and all Premiums Due shall be paid IIS when due, regardless of whether such Premiums Due have been collected by Broker. IIS shall not refund any premium to a premium finance company, unless such premium was received by IIS. In the event a financed premium is canceled and the premium is refunded to a premium finance company, Broker shall promptly refund to IIS any unearned Premiums Due.

10. Audited Premiums. Whenever a premium for an issued policy cannot be fully determined in advance and where a subsequent adjustment is necessary by audit or otherwise, the amount of any additional Premiums Due shall be paid to IIS within thirty (30) days after such additional amount is billed to Broker. If, within twenty (20) days after any additional Premiums Due are billed to Broker and Broker is unable to collect the additional premium due from the insured, IIS will allow Broker to return uncollected audited Premiums Due under the same terms and conditions provided in IIS's agency agreement with its insurers.

11. Agency. In placing business under this Agreement, Broker acknowledges that Broker is a representative of the insured and not an agent or representative of IIS or IIS's insurers. Broker further acknowledges and agrees that all contact and/or communication with the carrier shall be through IIS. IIS has access to certain insurance companies or markets which the Broker does not have direct access to and IIS agrees to use such markets at its discretion.

12. Broker Commission. IIS shall pay Broker commissions as agreed to by the parties to this Agreement in writing on a case-by-case basis.

13. Hold Harmless. (a) Notwithstanding any other provision of this Agreement and as special consideration for the execution of this Agreement by IIS, Broker agrees that it shall save, defend, indemnify and hold harmless IIS from any and all claims, demands, liabilities, actions, proceedings, judgments, fines or other expenses including without limitation, reasonable attorneys' fees, incurred by IIS arising from or related to any claim of alleged errors and omissions caused by or related to the acts of Broker, its agents, servants, principals and employees. (b) IIS agrees that it shall save, defend, indemnify and hold harmless Broker from any and all claims, demands, liabilities, actions, proceedings, judgments,

finances or other expenses including without limitations, reasonable attorneys' fees, incurred by Broker arising from or related to any claim of alleged errors and omissions caused by or related to the acts of IIS, its agents, servants, principals and employees.

14. Willful Violations. In the event Broker willfully violates this Agreement, Broker shall be liable for all costs and damages incurred by IIS, including court costs and attorney's fees.

15. Cancellation of this Agreement. This Agreement may be canceled at any time by either party giving thirty (30) days notice. In the event of cancellation, Broker will continue to be paid commissions on all binders and policies until they expire or are placed elsewhere.

16. Notices. Any notices which may be given under this Agreement shall be in writing, and shall be given: (a) by hand delivery; (b) by commercial overnight courier; or (c) registered or certified mail with return receipt requested. Such notices shall be addressed as follows:

If to IIS:

InsureCargo Insurance Services, Inc.  
Attention: Angie Ramirez  
1120 Bristol Street  
Costa Mesa, CA 92626

If to Broker:

Broker / Agency Name: \_\_\_\_\_  
Attention (Broker Contact): \_\_\_\_\_  
Broker's Street: \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_  
Tax ID #: \_\_\_\_\_  
Insurance License #: \_\_\_\_\_

17. Governing Law. The laws of the State of California shall govern the validity and construction of this Agreement.

18. Restrictive Covenants. With regard to any customer of Broker to whom any policy of insurance is provided pursuant to this Agreement, Broker shall not, for a period of three (3) years from the date of termination of this Agreement and regardless of the cause of such termination, place with any insurance carrier used by IIS in the performance of its duties and obligations under this Agreement (including such insurance carrier's affiliates, subsidiaries and related companies) any policy of insurance or coverage which provides the same or similar coverage, insurance and/or benefits as provided by IIS pursuant to this Agreement.

19. Liquidated Damages. In the event of a breach by Broker of the restrictions set forth in Paragraph 18 herein, Broker shall, as liquidated damages for such breach, be liable to IIS for an amount equal to fifty (50) percent of the gross commissions earned by Broker over a period of three (3) years from all insurance placed in violation of Paragraph 18. Notwithstanding this provision, in the event of a breach of this Agreement by Broker, IIS reserves its right to such other legal and equitable remedies including, without limitation, injunctive relief, as may be appropriate.

20. Errors and Omissions Insurance. The Broker shall purchase and maintain Errors and Omissions Insurance with limits no less than \$1,000,000 per occurrence. Evidence of such coverage shall be provided IIS during the currency of this Agreement.

21. Copyright. The Broker agrees that the forms and endorsements developed exclusively as part of the copyright protected InsureCargo insurance program are for the exclusive use within the InsureCargo insurance program and cannot be duplicated in any manner.

22. Communications. Broker agrees to receive advertising material and announcements from IIS on a periodic basis. This advertising material and announcements may be sent via U.S. Mail, via facsimile or by email. IIS agrees to discontinue sending periodic advertising material upon written request from the Broker to do so.

23. Severability Clause. If any provision of this Agreement is alleged to be invalid or unenforceable, the provision shall be construed to have the broadest interpretation that would make it valid and enforceable. Invalidity or unenforceability of one provision shall not affect any other provision of this Agreement.

24. Entire Agreement. This instrument represents the entire agreement between the parties and no other representations, understandings or agreements have been made or relied upon in the making of this Agreement, other than those specifically set forth herein.

25. Insurer/Agency Termination. In the event that any insurance carrier pursuant to this agreement terminates its relationship with IIS and who is currently providing a policy of insurance to any customer of Broker, the Broker is hereby relieved of the restrictions under paragraphs 18 and 19. All other terms and conditions of this agreement shall remain in full force and effect.

No alterations, modifications, amendments or additions to this Agreement shall be valid unless in writing and executed with the same formalities as this Agreement.

The failure of either party at any time to enforce any of the provisions of this Agreement shall not be construed to be a waiver of such provisions, nor to affect the validity of this Agreement or any part thereof, nor the rights of any party to thereafter enforce each and every such provision.

INSURECARGO INSURANCE SERVICES, INC.

By: \_\_\_\_\_  
Ray J. Markley, President

Broker: \_\_\_\_\_  
Your Agency Name

By: \_\_\_\_\_  
Name:  
Title: