

## PRODUCER AGREEMENT

This AGREEMENT

Dated:

**BETWEEN:** **Healthcare Professional Services, Inc.** a Georgia corporation having its principal office at 313 Swanson Drive, Lawrenceville, GA 30043, and its subsidiaries and affiliates, hereinafter collectively referred to as "HPSI"; and

**PRODUCER:** hereinafter referred to as "the PRODUCER."

**ADDRESS:**

**WHEREAS,** the PRODUCER desires HPSI to place risks of the PRODUCER'S clients (hereinafter referred to as the "INSURED") with and for acceptance by admitted insurance companies and/or non-admitted insurance companies, in compliance with the laws, rules and regulations pertaining thereto, regarding the placement of such business; and

**WHEREAS,** HPSI agrees to allow the PRODUCER a commission on such business, if and when placed, at such rates as are agreed from time to time by the parties hereto:

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

### **1. LEGAL RELATIONSHIP**

In placing business under this Agreement, the PRODUCER agrees it is the representative of the INSURED and not an agent, representative or employee of HPSI. Nothing in this Agreement shall be construed to imply or create an employer-employee relationship between the PRODUCER and HPSI.

### **2. PRODUCER RESPONSIBLE FOR PAYMENT OF PREMIUM**

The PRODUCER shall be primarily liable to HPSI for the full amount of the premium collected by Producer and applicable state taxes, less the PRODUCER'S share of any commission, including but not limited to additional premiums developed under audits or retrospective penalties, on every insurance policy placed for the PRODUCER. HPSI will invoice the PRODUCER on each risk where coverage is effective at the request of the PRODUCER. Invoiced amounts will be due and payable as indicated in each invoice and may vary based upon the credit terms of the issuing company. If no specific instructions are provided, premiums that are collected by PRODUCER are to be remitted immediately by the PRODUCER to HPSI. The PRODUCER agrees that payment of any minimum earned premium required by the issuing insurance company will be the responsibility of the PRODUCER unless otherwise limited by applicable law. The PRODUCER shall be and remain liable to HPSI for all earned premiums, to the extent collected by the PRODUCER. Any credit extended to the INSURED shall be the sole risk and responsibility of the PRODUCER. The PRODUCER may retain interest on PRODUCER trust accounts.

The PRODUCER shall hold all funds received pursuant to this Agreement in a fiduciary capacity. If any such funds are not remitted to HPSI, then HPSI shall have a right of offset all compensation due or which may become due the PRODUCER to the extent of such funds due, either before or after the cancellation of this Agreement, from any compensation due the PRODUCER.

#### **DIRECT COLLECTION**

If, after the expiration of forty five (45) days from the date liability was assumed by the insurance carrier, HPSI has not received the amount due to it, HPSI may, at its option, collect from the INSURED the premium due. In the event HPSI seeks collection of the premium or any part thereof from the INSURED, the PRODUCER shall not be entitled to any commission on the premium so collected. Attempts by HPSI to collect from the INSURED shall not relieve the PRODUCER of liability to HPSI, except to the extent of amounts actually collected by HPSI from the INSURED, less expense of such collection.

#### **COSTS OF COLLECTION**

In any action or proceeding brought by HPSI to recover sums due from the PRODUCER to HPSI under the terms of this agreement, the PRODUCER agrees to pay all costs incurred by HPSI incident thereto, including reasonable attorneys' fees if the PRODUCER fails to remit past due premium within 10 days following a written demand from HPSI. Such action or proceeding shall not be subject to the Dispute Resolution provisions of Section 21 below.

### **3. FLAT CANCELLATIONS**

No insurance policy may be returned to HPSI by the PRODUCER for flat cancellation unless it is returned prior to the inception, or effective date, of the applicable insurance policy. Earned premium shall be computed and charged on every policy cancelled after inception in accordance with the cancellation provisions of such policy.

### **4. UNEARNED COMMISSIONS**

the PRODUCER AGREES TO REFUND TO HPSI unearned commissions on all business placed with HPSI on cancelled policies, or reduced premiums, at the same rate at which such commissions were originally allowed the PRODUCER. Such refund shall be paid to HPSI by the due date indicated on the billing invoice.

## **5. AUDITABLE POLICIES**

NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, in any situation where premium for a policy or policies which have been issued cannot be fully determined in advance and where an adjustment or determination, after a specific time period, by audit or otherwise shall have been made, then the amount of such additional premium due shall be timely paid by the PRODUCER to HPSI on or before the due date indicated on the billing invoice or as otherwise agreed. HPSI shall extend to the PRODUCER the same turn back privileges, if any, as are granted HPSI by the insuring company.

## **6. NO BINDING AUTHORITY**

The parties hereto understand and agree that in no event shall this Agreement be interpreted or construed to the effect that the PRODUCER may bind HPSI or any company or underwriter represented by HPSI.

Unless agreed to in writing, HPSI shall have no responsibility to provide notice of any claim to any insurer, such obligation being the sole responsibility of the INSURED and/or the PRODUCER. Nor, absent an agreement in writing, shall HPSI have any responsibility to deal with any finance company acting on behalf of or in connection with the PRODUCER or any INSURED or otherwise be responsible to them for any monies owed.

The PRODUCER may not solicit, receive and accept applications or proposals directly from other insurance agents or sub-agents of the PRODUCER, without the express agreement of HPSI. HPSI acknowledges that the Producer acts as a wholesale broker. HPSI also acknowledges that sub-producers may issue certificates of insurance as proof of insurance for policies issued under this agreement.

## **7. NOTICE OF EXPIRATION AND RENEWAL REQUESTS**

HPSI shall be under no obligation to give the PRODUCER advance notice of expiration of any policies of insurance which the PRODUCER, from time to time, procures through HPSI.

## **8. OWNERSHIP OF THE BUSINESS**

The parties agree that in the event of termination of this Agreement, only upon the PRODUCER having accounted for and paid over all premiums or other monies for which it is or may be liable, the PRODUCER'S records and use and control of expiration shall remain the property of the PRODUCER. The use and control of the expiration shall become the property of HPSI only if the PRODUCER fails to remit past due amounts within 10 days of a written demand from HPSI.

## **9. OTHER AGREEMENTS**

It is specifically understood and agreed that notwithstanding anything to the contrary herein set forth, this Agreement shall not be interpreted or construed so as to:

- (a) Prevent the PRODUCER from executing other similar agreements with competitive markets; or
- (b) Compel HPSI to accept or place all or any of the business offered to it by the PRODUCER.

## **10. THE PRODUCER'S RESPONSIBILITIES**

The PRODUCER understands that in arranging coverage on behalf of an INSURED, HPSI is relying upon the accuracy and completeness of information provided by the INSURED to the PRODUCER. It is the responsibility of the PRODUCER to disclose to HPSI all material facts of which the PRODUCER is aware. HPSI assumes no responsibility with regard to the adequacy, amount or form of coverage obtained, except as otherwise provided herein.

## **11. INDEMNITY, DEFENSE & HOLD HARMLESS**

The PRODUCER shall indemnify, defend and hold HPSI harmless against any claims, damages, liabilities or costs (including reasonable attorneys' fees and expenses) which HPSI may pay as a result of loss to INSUREDS or others or otherwise arising from or in relation to this Agreement, caused by or relating to acts, errors or omissions of the PRODUCER or breach of this Agreement to the extent the PRODUCER is legally liable.

HPSI shall indemnify and hold the PRODUCER harmless against any claims, damages, liabilities or costs (including reasonable attorneys' fees and expenses) which the PRODUCER may pay as a result of loss to INSUREDS or others caused by or relating to an act, error or omission of HPSI in the processing of any business placed and/or attempted to be placed by HPSI for the PRODUCER or breach of this Agreement to the extent that HPSI is legally liable or arising as a result of the PRODUCER following the instructions of HPSI.

## **12. INSURANCE & LICENSING**

The PRODUCER hereby agrees to obtain and maintain, at all times during the term of this Agreement, errors and omissions coverage for itself and its agents, solicitors, servants, officers, directors, shareholders and employees in an amount not less than \$1,000,000 per claim and in the aggregate with a [A-] rated insurance company. A copy of the relevant errors and omissions policy or certificate of insurance shall be submitted to HPSI annually and the PRODUCER shall not discontinue such coverage during the term of this agreement without providing HPSI thirty (30) days prior written notice of such action. Any failure to timely provide such notice or to maintain such insurance shall be deemed to be a material breach of this Agreement.

The PRODUCER represents that it is properly licensed to offer and sell insurance in its state of domicile, and in all other states in which the PRODUCER offers and/or sells insurance, and agrees to act in compliance with all laws and regulations regarding placement of insurance with admitted and/or non-admitted insurance companies in each such state. The PRODUCER further agrees to provide HPSI with evidence of its licenses upon request.

### **13. CURRENT POLICIES IN FORCE**

This Agreement shall apply to current insurance policies already placed on behalf of any INSURED and in force at the date hereof and all future insurance policies which may be placed by HPSI for the PRODUCER and to any outstanding debt on insurance policies which were placed by HPSI for the PRODUCER and to any outstanding debt on insurance policies which were placed by HPSI for any entity acquired by or coming under the control of the PRODUCER. Although, this Agreement may be cancelled at any time by written notice of either party to the other, any such cancellation shall not alter in any way the continued application of this Agreement to insurance policies placed prior to the date of such cancellation.

### **14. ACCEPTANCE OF AGREEMENT BY HPSI**

The parties hereto agree that this Agreement shall not become effective until accepted by HPSI. The parties agree that this Agreement contains all of the contractual agreements existing between them relative to the brokerage relationship, and all their written or oral agreements are deemed to be merged herein.

### **15. MODIFICATION OF THIS AGREEMENT/WAIVER**

This Agreement may be amended only by written agreement of the parties. Any waiver by either party of any provisions or conditions of this Agreement shall not be construed or deemed to be a waiver of any other provisions or conditions of this Agreement, nor a waiver of a subsequent breach of the same provision or condition, unless such waiver is expressed in writing by the party to be bound.

### **16. ASSIGNMENT**

The PRODUCER may not assign or delegate any of its rights or obligations under this Agreement without the express written consent of HPSI.

### **17. TERMINATION OF THIS AGREEMENT**

This Agreement may be terminated at any time, by either party, upon 10 (ten) business days written notice to the other party. Such termination, however, shall in no event affect the respective rights or liabilities of either party accruing up to the date of termination, nor shall any such termination affect the continued applicability of Paragraph 11 with regard to any insurance placement made on or before the effective date of such cancellation.

### **18. INVALIDITY OF PROVISIONS**

If any provision of this Agreement shall be determined to be void, invalid, unenforceable or illegal for any reason, then the validity and enforceability of all of the remaining provisions hereof shall not be affected thereby. If any particular provision of this Agreement shall be adjudicated to be invalid or unenforceable, then such provision shall be deemed amended to delete the portion adjudicated to be invalid or unenforceable, such amendment to apply only to the operation of such provision in the particular jurisdiction in which such adjudication is made; provided that, if any provision contained in this Agreement shall be adjudicated to be invalid or unenforceable because such provision is held to be excessively broad as to duration, geographic scope, activity or subject, then such provision shall be deemed amended by limiting and reducing it so as to be valid and enforceable to the maximum extent compatible with the applicable laws of such jurisdiction, such amendment only to apply with respect to the operation of such provision in the applicable jurisdiction in which the adjudication is made.

### **19. GOVERNING LAW & PREVAILING PARTY**

This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to its conflicts of law provisions. In any action to enforce any of the terms or provisions of this Agreement or on account of the breach hereof, the party prevailing shall be entitled to recover all its expenses, including, without limitation reasonable attorney's fees.

### **20. NOTICES**

All notices required hereunder shall be in writing and shall be deemed given to a party (a) upon delivery to the address of such party specified below if delivered personally (including delivery by courier) or mailed by registered or certified mail (return receipt requested) or (b) upon dispatch if transmitted by telex, telecopy or other means of facsimile, in any case to the parties as follows: if to the PRODUCER to: \_\_\_\_\_, Attention: \_\_\_\_\_  
**Email:** \_\_\_\_\_; if to HPSI, to: 313 Swanson Drive, Lawrenceville, GA 30043, Attention: Fred Seilkop – Executive Vice President, Email: fseilkop@hpsi-ins.com. Any party hereto may change its address for delivery of notice by giving written notice to the other party.

### **21. DISPUTE RESOLUTION**

If a dispute, controversy, or claim arises out of or relates to this Agreement, its termination, or the alleged breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation administered by an independent third party. Any such mediation shall be conducted in Lawrenceville, Georgia, or a

mutually agreed upon location. Any collection actions or proceedings described in Section 2 above shall be excluded from the requirements of this Section 21.

**22. CONFIDENTIALITY**

In connection with this Agreement, the PRODUCER agrees to treat any proprietary information supplied by HPSI as confidential. HPSI agrees to treat any proprietary information supplied by the PRODUCER as confidential. Unless otherwise required by law, neither the PRODUCER OR HPSI nor their respective representatives will, without the other's written consent, disclose any proprietary information or other information about the relationship or program.

Both the PRODUCER and HPSI are committed to protecting the non-public, personal information of their clients. As such, the parties agree that they will comply with all applicable federal and state laws and regulations, including, but not limited to, Title V of the Gramm-Leach-Bliley Act, protecting the confidential information and privacy rights of customers and consumers ("Customer Information"). The parties will, each at their own expense, as required by law, implement and maintain and appropriate security programs reasonably designed to ensure the security and confidentiality of the Customer Information and prevent against any anticipated threats or hazards to security and integrity of the Customer Information. The parties will, each at their own expense, as required by law, implement and maintain appropriate security programs reasonably designed to prevent any unauthorized access to or use of Customer Information that could result in substantial harm or inconvenience to any customer or consumer of either party.

**23. MISCELLANEOUS**

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, 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 a party's server. This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements, representations and understandings of the parties, written or oral.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

PRODUCER: _____	Corp. ( ) Partnership ( ) Individual ( )
BY: _____	Federal Tax I.D. No. _____
TITLE: _____	SS No. (If Individual) _____
DATE EXECUTED: _____	Agent's License No. _____
WITNESS: _____	Surplus Lines Lic. No. _____ (if applicable)

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AGREEMENT ACCEPTED AND EFFECTED BY HPSI AND ITS AFFILIATES, this \_\_ day of \_\_\_\_\_, 20\_\_.

BY: \_\_\_\_\_ WITNESS: \_\_\_\_\_

THE PRODUCER AGREEMENT  
MULTIPLE OFFICE ADDENDA

Please note the following office(s) fall under Federal I.D. Tax No. \_\_\_\_\_ and the HPSI PRODUCER Agreement signed \_\_\_\_\_(date) includes and applies to the office(s) listed below:

WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

PRODUCER: _____	Corp ( ) Partnership ( ) Individual ( )
By: _____	Federal Tax Id # _____
Title: _____	SSN: (if Individual) _____
Date Executed: _____	Agent's License #: _____
Witness: _____	Surplus Lines Lic # _____ (IF Applicable)

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AGREEMENT ACCEPTED AND EFFECTED BY HPSI AND ITS AFFILIATES, This \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

BY: \_\_\_\_\_ Witness: \_\_\_\_\_