

## **COLLATERAL AGREEMENT**

This Agreement (“Agreement”) is made by **CANAL INSURANCE COMPANY, INC.** (the “Company”) and \_\_\_\_\_ (the “Policyholder”).

The Company has issued insurance policies to Policyholder, including any operating affiliates and subsidiaries of the Policyholder, and the parties agree that such policies result in financial exposure to the Company based upon financial responsibility filings, endorsements, deductibles, self-insured retentions, and overdue premium payments, among other things. To secure the financial exposures, the parties agree that Policyholder shall provide the Company with the collateral and associated rights described below. When used in this Agreement, the term “Policies” shall include all of the policies listed in the attached Schedule A, and any and all renewals, replacements, reinstatements or rewritings thereof.

### **SECTION 1 – ENDORSEMENTS AND FILINGS**

At the request of the Policyholder, the Company has issued, or may issue, endorsements to some or all of the Policies to satisfy various financial responsibility or insurance requirements relative to motor carriers. The Company, at the further request of the Policyholder, has filed, or may file, evidence of the issuance of endorsements or of the existence of insurance for the protection of the public with various regulatory agencies. By reason of the issuance of these endorsements or filings, the Company may have an obligation to pay certain claims and other direct liabilities for which coverage would not have been provided under the Policies but for such endorsements or filings. Policyholder agrees to reimburse the Company as billed for any payments made by Company as a result of such endorsements or filings.

### **SECTION 2 – PAYMENT OF CLAIMS**

Policyholder agrees that Company will handle all claims reported to Company that are potentially covered by the Policies issued by Company to Policyholder, including responsibility for handling of coverage determinations and denials. Moreover, the parties agree that the Policies issued shall have a liability deductible of \$10,000 per occurrence and that the Company shall pay claims under the Policies that are the direct liability of the Policyholder because of a policy deductible, but only to the extent that coverage exist under the Policies for the claims asserted. The Policyholder agrees to reimburse the Company as billed for such payments pursuant to the attached Schedule C.

### **SECTION 3 – PREMIUM PAYMENTS**

Premium payments are due and payable to the Company in accordance with the terms of the Policies and Company’s billings, including but not limited to monthly payments of estimated premium, audit adjustments and Policy premium adjustments, as applicable. The Policyholder agrees to make such payments to the Company in accordance with the terms of the Policies and Company’s billings or as otherwise may be mutually agreed.

## **SECTION 4 – COLLATERAL**

The Company will, from time to time, determine, in its discretion the amount of collateral appropriate to secure Policyholder obligations under the Policies and this Agreement, including expenses that are incidental to the Company's exercise of any rights under this Agreement, which amount shall be stated or described on Schedule B, attached hereto, and revisions thereto (the "required amount").

The Company may, in its sole discretion, accept for a period of time to be determined solely by the Company, an amount of collateral that is less than the required amount. If Company accepts a lesser amount, it shall do so by written notice to Policyholder specifying a different amount, which amount shall be maintained by Policyholder until Policyholder's receipt of further written notice from the Company specifying a different amount of collateral. POLICYHOLDER EXPRESSLY AGREES THAT, NOTWITHSTANDING COMPANY'S PRIOR ACCEPTANCE OF A LESSER AMOUNT, COMPANY MAY, UPON WRITTEN NOTICE TO POLICYHOLDER, REQUIRE POLICYHOLDER TO INCREASE AND POLICYHOLDER SHALL SO INCREASE THE COLLATERAL AMOUNT UP TO THE REQUIRED AMOUNT SPECIFIED IN SCHEDULE B.

Policyholder agrees that, upon written notice by the Company to Policyholder, Company may increase or decrease the required amount of collateral to reflect changes in Policyholder obligations. If increased, the Policyholder will within fifteen (15) days from the date of demand by the Company provide the additional required amount of collateral.

The Policyholder will maintain with Company at all times during this Agreement the required amount of collateral or such lesser amount as Company may accept pursuant to the foregoing provisions. The collateral may be in the form of a (1) cash deposit, (2) letter of credit, or (3) any other instrument agreed to by the Company or any combination thereof that is mutually agreed to by the parties.

A letter of credit constituting part of the collateral must be clean, unconditional and irrevocable in the form required by the Company and must be in favor of the Company, providing for payment on a sight draft. The letter of credit must be issued by a bank that is acceptable to the Company and must provide for a term of at least twelve (12) months with an automatic renewal clause.

If for any reason, the letter of credit does not automatically renew, then, no later than sixty (60) days before the expiration date of the letter of credit, the Policyholder shall deliver to the Company a replacement letter of credit to take effect no later than the expiration of the former letter of credit. In the event any letter of credit will expire within sixty (60) days and the Company has not been provided with (a) advice by the issuer that the expiry date thereof has been extended for a period of not less than an additional 12 months or (b) a replacement letter of credit acceptable to the Company and which is issued by a bank having a performance rating of three (3) or above, the Company shall be entitled to draw on such letter of credit for the full amount available thereunder, to hold the proceeds of such draw as collateral hereunder and to direct and/or apply all or any part of such proceeds to the payment or satisfaction of any obligation or liability of Policyholder to Company, whether fixed or contingent, liquidated or unliquidated, disputed or undisputed.

A cash deposit constituting part of the collateral shall be placed in an account owned solely by the Company or invested in instruments owned solely by the Company that are eligible for insurance company investment. Moreover, there shall be no interest paid to the Policyholder related to the cash deposit held by the Company nor shall this cash deposit be considered premium subject to applicable taxation.

## **SECTION 5 – RIGHTS**

Policyholder gives and grants the Company a security interest in all money, cash, funds, monetary equivalents, deposits, balances, deposit accounts, accounts, investment property, general intangibles, instruments, letters of credit, letter-of-credit rights and any and all other property paid, provided or delivered to such Company by or for the account of Policyholder at any time pursuant to this Collateral Agreement or otherwise (including, without limitation, amounts paid in respect of premiums or reimbursement obligations that may exceed the specific obligations in respect of which paid; all property described or referred to in this sentence being herein of any and all of the following (the “Secured Obligations”): (a) any and all obligations and liabilities of Policyholder to such Company of the kinds described or referred to in the Collateral Agreement and including, without limitation, expenses of enforcement of the security interest and realization on the Collateral, and (b) any and all obligations and liabilities of Policyholder to Company of the kinds described or referred to in this Collateral Agreement, all obligations and liabilities described in clauses (a) and (b), including both those existing on the date of this Collateral Agreement and those arising after such date and in all cases whether fixed or contingent, liquidated or unliquidated, disputed or undisputed. Company shall also have a right of set-off against any debts, obligations and/or liabilities of the Company to Policyholder for all Secured Obligations owing to the Company.

Policyholder hereby authorizes the Company and constitutes the Company as Policyholder’s attorney in fact, coupled with an interest, to execute and/or endorse for and on behalf and in the name of Policyholder or Company any and all financing statements, control agreements, checks, drafts, instructions, assignments and any other agreements or desirable in the judgment of Company at any time to perfect Company’s security interest in, realize upon, collect, secure payment of, transfer title or ownership to Company or its designee or assignee, sell, pledge or hypothecate and/or liquidate all or any item or unit of collateral. The security interest of the Company receiving or having possession or control of particular Collateral shall have priority over the security interests of the other Companies in such Collateral, and the security interests of such other Companies in such Collateral shall rank equally in priority and share ratably in any such Collateral or proceeds thereof remaining after satisfaction of all indebtedness secured by the security interest therein having first priority. At any time after the occurrence of any “default” as defined in the next sentence, the company shall have all rights and remedies of a secured party under the Uniform Commercial Code as in effect from time to time in the State of South Carolina or any other jurisdiction whose law may apply to any Collateral, including, without limitation, the right to realize on, sell, dispose of or liquidate any Collateral and/or apply any Collateral and/or proceeds of any Collateral to any and all Secured Obligations, with Policyholder being liable for deficiency. A “default” shall occur if Policyholder

- (1) fails to provide additional required amounts of collateral or a replacement letter of credit as required by this Agreement;
- (2) fails, within thirty (30) days of the date of Company's billings pursuant to Schedule C, to reimburse the Company for payments under Sections 1 or 2 or to pay premiums due under Section 3 or any expenses incidental to the Company's exercise of any right hereunder; or
- (3) becomes bankrupt, insolvent or unable or unwilling, for any reason, to fulfill its obligations to the Company hereunder.

If the collateral is in more than one form, i.e., both cash and a letter of credit, the Company may, in its discretion, exercise its rights hereunder against any one or all forms of collateral.

## **SECTION 6 – NOTICES**

Any notice required to be sent to the Policyholder shall be in writing and be sent to the Policyholder, which shall act on behalf of all listed "insureds" unless the Policyholder and the Company agree on some other arrangement. The name and address of the Policyholder is as maintained in the Company's records.

## **SECTION 7 – TERMINATION**

This Collateral Agreement will continue in force following the termination of the insurance Policies listed in Schedule A, and all renewals, replacements, reinstatements and rewritings thereof until all obligations of the Policyholder to the Company thereunder have been satisfied. However, in the event of termination of the insurance Policies listed in Schedule A, the Company shall allow the required collateral requirements of Schedule B to be adjusted thereafter to 120% of open reserves.

If the Company draws on collateral pursuant to Section 6 of this Agreement, then Policyholder shall be deemed to have not paid all amounts when due under the Policies, and Company may elect to cancel the Collateral Agreement and the Policies.

## **SECTION 8 – MISCELLANEOUS**

This Collateral Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina and, in the event that any provisions shall be deemed invalid or unenforceable, the remainder will continue in full force and effect. This Collateral Agreement, together with its Schedules, will be executed in two counterparts, each of which will be deemed an original and both of which taken together will constitute the entire agreement of the parties. Any alteration or modification must be in writing signed by both parties. Failure to insist upon strict compliance with any terms and conditions hereof shall not be deemed a waiver of such terms and conditions, nor shall any waiver or relinquishment of any right hereunder at any one time or times be deemed a waiver or relinquishment of any right of any other time or times. Policyholder shall reimburse Company for all reasonable legal fees and associated expenses incurred by

Company in enforcing its rights under this Agreement. Upon execution, this Agreement shall supersede any prior Collateral Agreement between the parties pertaining to the Policies.

IN WITNESS WHEREOF, the parties have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**Canal Insurance Company:**

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

Name: \_\_\_\_\_

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

**Policyholder:**

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

Name: \_\_\_\_\_

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

## SCHEDULE A

### POLICIES

Policy Number

Policy Period

## SCHEDULE B

### COLLATERAL REQUIREMENTS

**Due Date**

**Amount**

**Form of Collateral**

Prior to Policies' Effective Date(s)

Cash Deposit

45 days after Policies' Effective Date(s)

Cash Deposit

90 days after Policies' Effective Date(s)

Cash Deposit

In accordance with Section 4, the above collateral amounts will be adjusted by the Company based upon the reserves open for payment of claims and expenses as of First Adjustment Date; and, on a quarterly basis thereafter ("Adjustment Date"), until such time as all claims and premiums are paid in full and all claims are closed. If the Required Amount is increased, the Policyholder will within fifteen (15) days from the date of demand by the Company provide the additional required amount of collateral.

## SCHEDULE C

### BILLING DATES

**Quarterly Close Date**

**Billing Date**

**Due Date**