STATE OF NORTH DAKOTA

BEFORE THE INSURANCE COMMISSIONER

In the Matter of	)	
	)	
The Climate Insurance Agency, FEIN 26-3976800, NPN 13871508	)	**CONSENT ORDER**
	)	
	)	**FILE NO. AG-16-600**
	)	
Respondent.	)	

TO: Bruce Baty, Legal Counsel for The Climate Insurance Agency, Dentons US LLP, 4520 Main Street, Suite 1100, Kansas City, MO 64111-7700

John Olson, Attorney at Law, 1011 Southport Loop, Bismarck, ND 58504

Insurance Commissioner Adam Hamm, hereinafter "Commissioner", has determined as follows:

1. The Commissioner has authority in this matter pursuant to N.D.C.C. § 26.1-01-03.

2. The Climate Insurance Agency, LLC, NPN 13871508 (hereinafter "Respondent"), possessed a North Dakota nonresident business entity insurance producer license at all times relevant to this proceeding.

3. The Commissioner has jurisdiction over the Respondent and the subject matter of this Consent Order, and this Consent Order is made in the public interest.

4. The North Dakota Insurance Department ("Department") initiated an investigation regarding the conduct of the Respondent. Respondent fully cooperated

with the Department in this investigation. As a result of information obtained by the Department, the Commissioner has considered initiating administrative proceedings regarding Respondent's conduct and regarding the imposition of a civil penalty or any other action the Commissioner deems necessary.

5. The Department alleges the following with regard to Respondent's conduct in the State of North Dakota:

COUNT I

6. Respondent did not report the June 25, 2012, administrative action taken by the State of Missouri to the North Dakota Insurance Department within 30 days. Respondent's failure to timely report this administrative action violated N.D.C.C. § 26.1-26-45.1.

COUNT II

7. N.D.C.C. § 26.1-26-06 states:

> **26.1-26-06. Insurance producer - Agent of insurer.** An insurance producer who sells, solicits, or negotiates an application for insurance of any kind is, in any controversy between the insured or the insured's beneficiary and the insurer, regarded as representing the insurer and not the insured or the insured's beneficiary. An insurance producer may not act as an agent of an insurer unless the insurance producer becomes an appointed insurance producer of that insurer. This section does not affect the apparent authority of an agent.

N.D.C.C. § 26.1-26-42(6) states:

> **26.1-26-42. License suspension, revocation, or refusal — Grounds.** The commissioner may suspend, revoke, place on probation, or refuse to continue or refuse to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:

. . .

> 6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.

8. In the course of enrolling insurance producers to sell Respondent's TWI product, Respondent used an Insurance Producer Enrollment Form which suggested that the producers would be acting as agents of the insureds. As the producers selling Respondent's TWI product were acting as agents of State National Insurance Company and Respondent, and not as agents for the insureds, that statement in the Insurance Producer Enrollment Form is misleading and constitutes violations of N.D.C.C. §§ 26.1-26-06 and 26.1-26-42(6).

COUNT III

9. During the course of the investigation, the Department learned the insurance producers selling TWI on behalf of Respondent believed Respondent was the insurance company underwriting the TWI product because Respondent, in a misleading manner, repeatedly referred to itself as "the Company" in the Insurance Producer Enrollment Form and in its corresponding exhibits.

10. N.D.C.C. § 26.1-26-42(6) states:

> **26.1-26-42. License suspension, revocation, or refusal —Grounds.** The commissioner may suspend, revoke, place on probation, or refuse to continue or refuse to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:
>
> . . .

6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.

11. This misleading practice led insurance producers selling TWI to believe Respondent was the insurance company underwriting the TWI product and that they had been appointed as an agent of the insurance company writing the product when the producer signed the Insurance Producer Enrollment Form. This conduct constitutes a violation of N.D.C.C. § 26.1-26-42(6).

COUNT IV

12. During the course of the investigation, the Department learned the terms of the TWI product were misrepresented by Respondent's sales presentations and corresponding explanatory materials. The Department also learned the TWI product was marketed in a false and misleading manner by reviewing the sales and training materials the Department received from Respondent during the course of the investigation.

13. N.D.C.C. § 26.1-04-03 states:

> **26.1-04-03. Unfair methods of competition and unfair or deceptive acts or practices defined.** The following are unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:
>
> 1. Misrepresentations and false advertising of policy contracts. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making

any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policies, or making any misleading representation or any misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurance company operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy or for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance.

2. False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of that person's insurance business, which is untrue, deceptive, or misleading.

N.D.C.C. § 26.1-26-42 states:

26.1-26-42. License suspension, revocation, or refusal — Grounds. The commissioner may suspend, revoke, place on probation, or refuse to continue or refuse to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:

. . .

6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to

be incompetent, untrustworthy, or financially irresponsible.

7. A misrepresentation of the terms of any actual or proposed insurance contract.

. . .

12. A violation of or noncompliance with any insurance laws of this state or a violation of or noncompliance with any lawful rules or orders of the commissioner or of a commissioner of another state.

14. As a result of the investigation, the Department believes the manner in which a claim arises under a TWI policy was misrepresented by Respondent's sales presentations and marketing materials. Specifically, the product was marketed and sold using materials which discussed yields, bushels and profits while the TWI product and its insurance contract were based on the occurrence of various weather metrics such as the temperature and rainfall at predetermined gathering stations. Yield, bushels and profits are not determining factors in considering whether an insured incurs loss under the terms of the TWI policy.

15. At least 100 North Dakota farmers who purchased the TWI product had historically low yields and profits during the 2012 growing season and did not receive any payment from the TWI product.

16. Respondent's marketing and training materials for TWI also state that TWI provides automatic payment which requires nothing from the insured. However, the terms of the policy state Respondent can require proof of loss. The training videos and brochures the Department received from Respondent during the course of the

investigation all state that payment is automatic with no claims, no adjuster and no waiting period. However, the policy provides under "Claims":

> B. We, in Our sole discretion, may require proof of actual loss. If We request such proof, then (i) You must provide the requested information and/or documentation within 30 days of Our request, and (ii) Your claim will not be paid until We have received and evaluated the sufficiency of such proof of Your actual loss.

17. Respondent's 2012 Soybean pamphlet states: "Hassle-free TWI policies have no claims process, no paperwork, and no waiting for payment. If bad weather happens, the grower is paid automatically." Therefore, requiring proof of actual loss including information and documentation which will be evaluated for sufficiency is not as advertised by Respondent. Advertising automatic payment with no claims procedures is misleading and dishonest and in violation of N.D.C.C. §§ 26.1-04-03 and 26.1-26-42.

18. N.D.C.C. § 26.1-24-03(2) states:

> **26.1-24-03. When insured entitled to return of premium.** A person insured is entitled to a return of premium, including all policy fees in excess of two dollars, on any one policy, and all other sums of money paid in consideration of the insurance policy, as follows:
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> . . .
>
> 2. To the whole of the premium when the contract is voidable on account of the fraud or misrepresentation of the insurer or on account of facts of the existence of which the insured was ignorant without the insured's fault, or when by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.

19. As Respondent misrepresented the nature of the TWI product, N.D.C.C. § 26.1-24-03(2) entitles North Dakota insureds who were misled by Respondent's

marketing to a return of premium or premium waiver for each 2012 TWI policy purchased.

COUNT V

20. During the course of the investigation, the Department scrutinized a complaint it received in 2012 from Robert Joos concerning the TWI product Joos purchased from Respondent for the 2011 crop year. In analyzing this complaint, the Department learned that the sale of the 2011 TWI product by Respondent to Joos was conducted in a manner highly similar to the unlawful sales and marketing practices outlined for the 2012 TWI product in Count IV above.

21. As Respondent misrepresented the nature of the 2011 TWI product to Joos, N.D.C.C. § 26.1-24-03(2) entitles Joos to a return of premium or premium waiver for each 2011 TWI product Joos purchased.

COUNT VI

22. During the course of the investigation, the Department learned Respondent reduced or offered to reduce the amount of premium owed to Respondent for TWI on 329 policies sold to North Dakota insureds who had complained to Respondent about the unsatisfactory performance of TWI. Respondent's stated goal in forgiving or reducing the amount of premium owed was to encourage a future business relationship with the individuals who purchased these policies.

23. N.D.C.C. § 26.1-04-06 states:

> **26.1-04-06. Insured persons and applicants for insurance prohibited from accepting rebates — Exception.**
>
> 1. An insurance producer or agent of any insurance or surety company, reciprocal,

benevolent society, or any other insurance organization or association, however constituted or entitled, may not grant, and an insured person or party or applicant for insurance, either directly or indirectly, may not receive or accept, or agree to receive or accept, any rebate of premium or of any part thereof, or all or any part of any insurance producer's commission thereon, or any favor or advantage, or any share in any benefit to accrue under any insurance policy, or any other valuable consideration or inducement other than such as may be specified in the policy, except as provided in an applicable filing which is in effect under the provisions of the laws regulating insurance rates or except as provided under subsection 2.

N.D.C.C. § 26.1-25-16 states in relevant part:

26.1-25-16. Rebates prohibited - Exception.

1. No insurance producer may knowingly charge, demand, or receive a premium for any insurance policy except in accordance with this chapter. No insurer or employee of an insurer, and no broker or agent may pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in an insurance policy, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement whatever, not specified in the insurance policy, except to the extent provided for in applicable filing.

24. Respondent's actions of reducing or offering to reduce the premium owed on 329 TWI policies sold to North Dakota insureds with the goal of inducing a future business relationship between the policyholders and Respondent constitutes 329 separate violations of N.D.C.C. §§ 26.1-04-06 and 26.1-25-16.

25. Pursuant to N.D.C.C. § 26.1-01-03.3, Respondent may be subjected to an administrative penalty of up to $10,000 for each violation of N.D.C.C. §§ 26.1-04-06, 26.1-25-16, and 26.1-26-45.1.

26. Respondent has been duly apprised of all allegations and, during the course of the Department's investigation, cooperated fully with the Department and its staff, making available all of the requested records and responding fully to the Department's inquiries.

27. Respondent denies the allegations contained herein but acknowledges that if taken to an administrative hearing, the Department has evidence that may support each of the allegations detailed within this Consent Order.

28. Respondent and the Commissioner have agreed to an informal disposition of this matter without entry of a Cease and Desist Order by the Commissioner, without revocation of Respondent's nonresident insurance producer license, or other further administrative proceedings, as provided by N.D.C.C. § 28-32-22, and enter into the following Consent Order.

NOW, PURSUANT TO THE AGREEMENT OF THE PARTIES, IT IS HEREBY ORDERED THAT:

1. Respondent is assessed and shall pay an administrative penalty in the amount of $150,000 for the violations alleged above, which shall be paid within 30 days of the execution of this Order. Payment must be mailed to: North Dakota Insurance Department, 600 East Boulevard Avenue, Dept. 401, Bismarck, ND 58505.

2. Within 120 days of the execution of this Order, Respondent shall issue premium return checks to each of the North Dakota insureds holding a 2012 TWI policy number identified in the attached Exhibit 1 in the aggregate amount of $485,948.48.

Respondent will issue payments in the form of checks payable to each of the insureds holding a 2012 TWI policy number listed in Exhibit 1 and in the corresponding amounts set forth therein. Respondent will send payments to each insured with a copy of each letter and copy of each check to the Department. The letter shall indicate that the premium return is made pursuant to a settlement with the North Dakota Insurance Department. Respondent and the Department shall exchange draft transmittal and explanation letters for review and approval by the Department prior to mailing.

3. If any payment to an insured holding a 2012 TWI policy number listed in Exhibit 1 is returned as undeliverable, Respondent will cooperate with the Department to attempt to locate that insured. If, thereafter, the insured is still not located, a list of all insureds that have not been located must be provided to the Department, and all funds due or payable to those insureds whose last known addresses are in the State of North Dakota, but not deliverable, shall be delivered to the Unclaimed Property Division of the North Dakota Department of Trust Lands and shall be processed pursuant to the provisions of North Dakota unclaimed property law.

4. Within 120 days of the execution of this Order, Respondent shall waive premium owed by each of its North Dakota insureds holding a policy number identified in the attached Exhibit 2 together with the corresponding amount to be waived for each insured, in the aggregate amount of $234,078.16. Respondent agrees to send an explanation letter to each insured advising them that the premium otherwise due and owing is waived, with a copy of each letter provided to the Department. The letter shall indicate that premium is waived pursuant to a settlement with the North Dakota Insurance Department. Respondent and the North Dakota Insurance Department shall exchange draft

transmittal and explanation letters for review and approval by the Department prior to mailing. Notwithstanding anything herein to the contrary, all of Respondent's defenses or counterclaims shall be fully preserved in any action initiated against it by one of the insureds identified in Exhibit 2.

5. Within 30 days of the execution of this Order, Respondent shall waive the premium owed by Robert Joos for the 2011 TWI product purchased by Joos in the aggregated amount of $18,079.65. Respondent agrees to send an explanation letter to Joos advising Joos that the premium otherwise due and owing is waived. The letter shall indicate that premium is waived pursuant to a settlement with the North Dakota Insurance Department. A copy of the letter sent to Joos shall be provided to the Department within 10 days of mailing.

6. The Department agrees that it will not seek additional sanctions, penalties, or remedies against Respondent, other than those agreed to in this Consent Order, in connection with the investigation or the TWI product in the State of North Dakota.

7. The use of this Consent Order for competitive purposes by an insurance producer or agency holding a license in the State of North Dakota, or by any company holding a Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of the license or authority.

DATED this 30th day of June, 2016.

Adam Hamm
Commissioner
N.D. Insurance Department

CONSENT TO ENTRY OF ORDER

The undersigned, Michael K. Stern **on behalf of Respondent, The Climate Insurance Agency**, states that the undersigned has read the foregoing Consent Order and is authorized by The Climate Insurance Agency to consent to the entry of this order. The undersigned, on behalf of The Climate Insurance Agency, fully understands the contents and effect of the Consent Order. The Climate Insurance Agency has been advised of its right to be represented by legal counsel, to request a hearing in this matter, to present evidence and arguments to the Commissioner, and of its right to appeal from an adverse determination after hearing. By the signing of this Consent to Entry of Order the undersigned on behalf of The Climate Insurance Agency knowingly and voluntarily waives those rights in their entirety and knowingly and voluntarily consents to the entry of this Consent Order by the Insurance Commissioner and agrees to be bound by it. It is further expressly understood that this Consent Order constitutes the entire settlement agreement between the parties hereto, there being no other promises or agreements, either express or implied.

DATED this 31st day of May, 2016.

The Climate Insurance Agency

By: _____

Print Name: Michael K. Stern

Title: VP and CEO of The Climate Corporation

Subscribed and sworn to before me this 31st day of May, 2016.

_____
Notary Public

MICHELLE L. WEBER
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis County
My Commission Expires: August 28, 2016
Commission Number: 12394707

State of Missouri
County of St. Louis

My Commission Expires: 8/28/16