

PRODUCER AGREEMENT

THIS PRODUCER AGREEMENT (this “Agreement”), dated as of _____, 20___, is made and entered into by and between Affiliated Members Insurance Services, a CA corporation (“Broker”) and _____, a _____ corporation (“Producer”). Broker provides insurance distribution, underwriter, and marketing services on behalf of subsidiaries and affiliates of Broker. As used in this Agreement, the term “Broker” shall refer to these business subsidiaries, affiliates, and any other entities that may be acquired, organized, or affiliated through common ownership and/or managed by Broker; and the term “Producer” means any person or entity, who for compensation and on behalf of another person, transacts insurance other than life with, but not on behalf of, an insurer.

Background

Producer desires to place contracts of insurance through companies represented by Broker (those companies referred to herein as “Insurer” or “Insurers”) and utilizing the underwriting facilities, knowledge, and services of Broker. Broker is willing to offer facilities to Producer 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. Producer has authority, pursuant to the terms of this Agreement, to submit accounts or risks to Broker for the purpose of placement and procurement of insurance coverage with Insurers and utilizing the underwriting facilities, knowledge, and services of Broker. 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 Producer and Broker. Producer is for all purposes an independent contractor. Producer will act in accordance with any Insurer’s policies and administrative guidelines that are known or should be known to the Producer including, but not limited to, the Insurer’s practices regarding the issuance of certificates and other evidence of insurance. Broker, in its sole discretion, shall judge whether to accept, reject or submit to Insurer for acceptance any applications of insurance for risks submitted by Producer and shall incur no liability for failure to quote or place any such risk. Nothing in this Agreement shall place Broker under any obligation to accept any proposal or new business or the renewal of existing business put to it by the Producer, Producer agrees to the following express limitations of authority:

- (a) *Binding Authority.* Producer has no authority to bind Broker or any of its principals, or commit to issue binders or policies of insurance on behalf of Broker or to make any representation not strictly in accordance with the policies and contracts placed pursuant to the terms of this Agreement. Producer 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 Broker.
- (b) *Co-Brokering.* Producer shall not re-broker or co-broker (double broker) for any application submitted or policy placed or procured pursuant to this Agreement.
- (c) *Certificates and Evidence of Insurance.* If Producer provides copies of certificates or evidence of insurance to Broker, it is understood that Broker 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 Broker. Producer is solely responsible for the accuracy and completeness of any certificate or evidence of insurance Producer issues.

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

- (a) *Licensing and Compliance.* Producer is properly licensed to transact business in accordance with all laws, rules and regulations of each state in which Producer transacts business. Producer 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 Broker. Producer will notify Broker 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, Producer shall, prior to or contemporaneously with the execution of this Agreement, provide the Broker 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 the Broker 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 \$2,000,000 in the aggregate, and a deductible or self-insured retention no greater than \$25,000. At renewal of such policies, Producer shall provide the Broker with updated certificates of insurance. Producer shall immediately notify the Broker 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. Producer 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 Producer's knowledge. Producer further represents and warrants that, to the best of Producer's knowledge, such applications shall contain no material misrepresentations of any kind. Producer shall ensure that all material facts of which Producer is aware are accurately described and completely disclosed to Broker. Further, it is the duty of the Producer to notify Broker in writing, promptly after Producer becomes aware, of any material change(s) that may affect the risk during the policy period and at any subsequent renewal.
- (d) *Producer Information.* All information in the attached Producer Application is true and correct. The Producer shall give Broker prompt notice of any change in information.
- (e) *Producer Acknowledgement.* Producer acknowledges that the coverage offered in a quote may vary from those requested on the application. Producer agrees to review any quote carefully with its client. Producer further agrees to disclose all forms, exclusions, warranties, and fees, to its client.
- (f) *Excess and Surplus Lines Placement.* Producer shall not place an order with Broker for any excess or surplus lines insurance unless Producer shall have first complied with any applicable state laws requiring the Producer to attempt to procure such insurance from insurers authorized to do business in the state of residence of the proposed insured.

3. Commissions and Premiums.

- (a) *Commissions.* Broker shall allow Producer, as commission, a percentage of the premium written at a rate agreed upon by Broker and Producer from time to time.
- (b) *Premium and Accounts.* Broker may access an insurer that performs direct billing or that requires agency billing.

Except in the case of direct billings to an insured from an insurer, Producer shall accept the format of Broker'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 Producer by such date. Producer guarantees the full payment due Broker of all premiums including deposit, earned, extension and adjustable premiums (except as provided for in (d) below), fees, plus applicable state and local taxes, less commission, on every insurance contract bound or written for Producer pursuant to this Agreement, whether or not collected by the Producer. 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 the Producer's responsibility to account for and pay all amounts due; (2) prejudice the rights of Broker to collect all amounts due from Producer; or (3) extend the time within which Producer must make payment. Producer's obligation to make payment to Broker 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 the Producer unless otherwise agreed in writing by Broker. Attempts by Broker to collect premiums (including audit premium discussed below) from insured shall not relieve Producer of liability to Broker except to the extent of amounts actually collected by Broker from insured, less the expense of such collection. Producer right to receive any commission or other compensation provided for in this Agreement shall at all times be subordinate to the right of Broker, in its sole discretion, to offset or apply such commissions or compensation against any financial obligation Producer has to Broker. In the event Broker shall have to bring any action or proceeding to enforce collection of any amount due under the terms of this Agreement, Producer 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 a Broker or Insurer invoice.
- (d) *Collection of Audit Premium.* Producer will make all reasonable efforts to collect amounts due. Producer will be relieved of responsibility for audit premium, so adjusted or determined, if Producer notifies Broker in writing within twenty (20) days after said invoice date, stating that Producer has made diligent efforts and is unable to collect such premiums and provided the Insurer releases Broker from liability for such premium. A copy of the Producer's invoice to the insured, as well as copies of correspondence pertaining to the collection, must be sent with this notification. Failure to give Broker timely notice shall constitute Producer's acceptance of responsibility for payment of such premiums. If commission applies to these adjustments, none will be allowed for Producer on premiums collected directly by Broker or Insurer under this provision. If, after a period of sixty (60) days from the date liability was assumed by the Insurer, Broker has not received payment due for the applicable coverage, Broker may, at its option, collect from the insured the premium due. In the event Broker collects the premium or any part thereof from the insured, Producer 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, Broker's sole obligation shall be to remit the required premium or premium tax directly to Producer 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 Broker and the amount to be returned shall in no event exceed the amount recovered.

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

(g) *Financed Premiums.* Unless state law requires otherwise, Broker reserves the right, in its sole discretion, to remit unearned premiums on finance policies that are cancelled, less Producer's unearned commission, directly to the premium finance company for the account of the insured, or, in appropriate circumstances, to Producer or directly to the insured. The ultimate liability of Broker for payment to a finance company, Producer or insured shall never exceed the amount of return premium less unearned commission developed. Producer agrees to hold Broker 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 the Producer.

4. Premium Funds Held in Trust. Producer 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 Producer conducts business. Provided Producer is in compliance with all terms of this Agreement and applicable law, Producer may retain any interest earned on said premium funds while so held by the Producer.

5. Claims. Producer shall comply with the terms of any policy placed pursuant to this Agreement with respect to notification of claims. Producer shall promptly notify the Insurer, and where appropriate the Broker, 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 Broker to facilitate the investigation and adjustment of any claim when and as requested.

6. Renewals. Insurance placed or arranged by Broker for Producer will be for a definite policy period, as specified in the applicable policy. Broker will not be obligated to notify the Producer about any policy expiration. Broker may notify Producer about any policy expiration or renewal instructions; but such notification will not be deemed as a waiver of the Producer's responsibility. Producer will be responsible for notifying its customers and clients about any such expiration.

7. Cancellation of Insurance. Notwithstanding anything to the contrary in this Agreement, but subject to applicable legal requirements and insurance contract provisions, Broker shall have the right to cancel any binder, policy or contract of insurance issued. Broker will not recognize flat cancellations unless (a) written evidence of coverage prior to the inception date of the contract for insurance is provided; and/or (b) such credit has been granted Broker 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 Producer does not make timely payment of any sums due Broker, then Broker may, without limitation of other remedies, initiate with Insurer to cancel the binder, policy or contract for non-payment. If coverage is bound by Broker, all additional fees charged by Broker for the entire policy term shall be fully earned upon binding. Producer hereby acknowledges that Broker and its Insurers are under no duty to reinstate a policy if the policy is cancelled. Producer 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.

8. Advertising. Producer shall not cause any advertisement referring to or using the name of Broker 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 Broker. In the event Broker suffers a loss or expense arising out of any unauthorized advertisement, publication or statement of the Producer, the Producer shall be liable for and hereby agrees to indemnify Broker and hold Broker harmless from all resulting damages, fines, penalties and costs.

9. 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"). Producer agrees not to use any Information of Broker except in connection with the performance of its duties hereunder. Producer shall (a) protect Broker'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 Broker'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. Producer will notify Broker immediately upon any loss or unauthorized disclosure of Information. Producer 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.

10. Inspection of Records. During the term of this Agreement, and for a period of ten (10) years following termination for any reason, Broker or Insurer shall have the right to audit and inspect Producer'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 Producer. The costs of such audit and inspection, including the costs of making copies of relevant records, shall be borne by Broker.

11. Ownership of Accounts. In the event of termination, so long as Producer has promptly accounted for and paid all premiums or return commissions for which it may be liable, the Producer's records and use and control of expiration, shall remain the property of Producer; otherwise, use of records and control of expirations shall be vested promptly and exclusively in Broker. If Broker is notified that an insured wishes to appoint another Broker of Record pursuant to a Broker of Record letter (BOR), the incumbent Producer will have ten (10) days to obtain a rescinding BOR letter signed and dated by the insured. Otherwise, the new producer of record pursuant to a BOR shall not be entitled to commission mid-term and will not be designated and/or recognized as the new producer until the next policy renewal.

12. 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 Producer's license or certificate of authority; or (b) automatically at Broker's option, on the effective date of the sale, transfer, or merger of Producer's business with the provision Broker may, upon review, appoint the successors as a Producer. All representations and obligations of the Producer herein shall survive the termination of this Agreement.

After the date of termination of this Agreement, Producer shall complete the collection and accounting to Broker 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.

13. Indemnification and Hold Harmless.

- (a) *Producer Indemnification.* The Producer 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, 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 the Broker Indemnitees, or any of them, and which directly or indirectly arise out of or relate to (i) negligence of the Producer or its employees or representatives, in discharging their obligations to the Broker or to policyholders, (ii) failure by the Producer or its employees or representatives to comply with any applicable laws, and/or (iii) any failure by the Producer or its employees or representatives to perform their obligations under or relating to this Agreement.
- (b) *Broker Indemnification.* The Broker agrees to defend and indemnify the Producer, its parents, subsidiaries, affiliates, successors and assigns, and the shareholders, directors, officers, agents and employees of any of them (collectively the “Producer 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 Producer Indemnitees, or any of them, and which arise solely out of or solely relate to (i) negligence of the Broker, or its employees or representatives, in discharging its obligations to the Producer or to policyholders; or (ii) any failure by the Broker, or its employees or representatives, to comply with any applicable laws; (iii) and failure by the Broker, or its employees or representatives to perform its obligations under this Agreement. Producer understands that Broker assumes no responsibility for any policy with regard to the adequacy, amount or form of coverage and agrees to indemnify and hold Broker harmless from any claim asserted against Broker in following the instructions of the Producer. Broker is not an insurer and does not guarantee the financial condition of the Insurer with whom it may place risks. Broker shall have no liability for non-payment of claims due to the insolvency of an Insurer, or otherwise, under contracts of insurance placed by Broker.

14. Miscellaneous.

- (a) *Waiver of Default.* Failure of Broker 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 the Producer. 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 Producer without the prior written consent of Broker.
- (d) *Governing Law.* This Agreement shall be deemed to have been made and performed in Placer County, California and shall be governed by, and construed and enforced in accordance with the laws of the State of California.

EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

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

15. Execution and Acceptance of Agreement. Producer acknowledges that a breach of any of the terms, conditions, or provisions of this Agreement by the Producer may give rise to a cause of action by Broker against the Producer and/or may result in the termination of this Agreement, all in the sole discretion of Broker. 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 this Producer is an individual, the individual must sign; if the Producer is a partnership, one of the partners must sign; if the Producer 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 Broker.

Affiliated Members Insurance Services

Broker

Producer

Printed Name

Printed Name

Title

Title

Signature

Date

Signature

Date

Affiliated Members Insurance Services

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