

# Access E&S Insurance Services, Inc.

## PRODUCER AGREEMENT

This AGREEMENT is made and entered into in La Mesa, CA, this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (hereinafter called "Producer") and Access E&S Insurance Services Inc., (hereinafter called "Wholesaler").

WHEREAS, Producer desires to procure from time to time for his/her clients various insurance coverages through the facilities of Wholesaler who acts as an intermediary for certain Insurance Carriers. WHEREAS Wholesaler desires to make its facilities available to Producer in cases where the terms are mutually agreeable to Producer and Wholesaler. NOW THEREFORE, the parties hereto agree as follows:

### A. CONDUCT OF PRODUCER

Producer acknowledges that he/she understands that no insurance submitted for consideration is effective until acceptance by the insurer, and to be enforceable only when written confirmation of same exists. Producer is not authorized to Bind, Cancel, Extend, or otherwise effect coverage on behalf of Wholesaler, or Insurance Carrier. It is expressly understood that coverage cannot be bound by telephone. Further to this provision, Producer shall be liable to Wholesaler for any loss incurred or paid by Wholesaler necessitated by Producer's negligence, including but not limited to misrepresenting the binding of coverage or accepting any risk on behalf of Wholesaler or Insurance Carrier. Producer agrees to be properly licensed to transact Property/Casualty insurance business, be insured for Errors and Omissions at all times, and to comply with all Insurance Codes and Regulations in the states in which the Producer procures contracts of insurance or endorsements placed through Wholesaler.

### B. COMMISSIONS:

1. Wholesaler will pay Producer commissions at such rates as are agreed from time to time by the parties hereto.
2. In the event of return premium becoming due for any reason whatsoever, Producer shall promptly pay to Wholesaler commissions previously paid or allowed on the return premium at the same rate at which commission was originally allowed to Producer, and understands that Wholesaler will deduct this amount from all return premiums when sending them to Producer, who agrees to refund the gross amount to the insured or their premium finance company.
3. Producer understands and agrees that aforementioned commission will be calculated as a percentage of the applicable premium only.

### C. PAYMENT OF PREMIUMS:

1. Execution of this agreement will serve as a guarantee by Producer to pay all premiums, taxes, and fees earned on contracts of insurance bound through Wholesaler at Producer's request (and confirmed by Wholesaler), regardless of whether collectible or not by Producer. Sole Proprietors, partners, and corporate officers of the undersigned may be personally liable for unpaid amounts as described above, and Wholesaler shall be entitled to reimbursement covering the cost of collections including, but not limited to attorney's fees incurred by Wholesaler in the efforts to collect unpaid amounts and fines and penalties levied by a governmental agency or Surplus Lines Association/Department due to failure of Producer to remit proper taxes and fees.
2. Wholesaler will render Producer an invoice for all amounts due. Producer agrees that any and all partial payments will be used to satisfy Surplus Lines Tax and Stamping Fees first, Broker, Market, and Inspection fees second, and premium third. In such event of partial payment Producer shall deduct applicable commission only in proportion to the amount of premium (as calculated according to the foregoing) being paid bears to the total premium due. Producer shall make full payment to Wholesaler not later than Twenty (20) calendar days after effective date of policy/Binder.
3. Wholesaler reserves the right to make specific exceptions to the above premium payment terms when circumstances or conditions require earlier payment.
4. Producer specifically agrees that any extension of credit by him to his client or to any other person is solely at his own risk, and shall pay Wholesaler all sums due Wholesaler, when due, whether or not he has collected such monies from others who may owe it to him. If Producer advances monies on behalf of an insured he/she understands that the Insurance Carrier may not be in a position to cancel the policy for non-payment once they have been paid. Furthermore, Producer recognizes that in agreeing to pay Wholesaler, he/she does so as an original undertaking on his/her own part, and not as guarantor or surety of another's obligation.
5. It is expressly agreed that payment to Producer by those seeking coverage through him/her does not constitute payment to Wholesaler or any Insurance Carrier.

### D. PREMIUM FINANCING:

1. Wholesaler recognizes that Producer may arrange premium financing for clients through established premium financing facilities. If Producer does so, Producer Agrees to forward promptly a copy of the finance agreement to Wholesaler so that Wholesaler may be aware of its terms and conditions.
2. Producer further agrees to identify Wholesaler as the issuing agent on the finance agreement.
3. When finance organizations remit directly to the Insurance Carrier or its issuing agent, or in any instance that the premium is not remitted directly to Wholesaler, Producer shall not be entitled to credit for or payment of any commission on such transaction unless and until Wholesaler receives payment of the commission due to it on such business. Payments to Producer directly by finance company will not constitute payment to Wholesaler or any Insurance Carrier. In any such cases finance company assumes the risk of waiving their Power of Attorney until Wholesaler has been paid. Wholesaler and/or Insurance Carrier retain their right to cancel the policy for non-payment until paid.

### E. PREMIUM AUDITS/ADJUSTMENTS:

1. Producer shall make every effort to collect any additional premiums due as a result of audit/adjustment. Producer must return audit adjustments for direct collection within twenty (20) days of receipt if unable to collect amounts due. Producer recognizes direct collection practices vary amongst Insurance Companies, and Wholesaler will relieve Producer of responsibility to pay such audit/adjustment premium only if, and to the extent Wholesaler is released from responsibility by the Insurance Carrier, but to the extent Wholesaler is not so released from responsibility Producer shall promptly pay to Wholesaler the amount due even if Producer has not collected such monies from others who may owe it. If Producer does not collect or pay the audit adjustment premium then Producer shall not be entitled to any commission on any or all of the audit/adjustment premium thereafter collected through the efforts of another.
2. Any uncollectible monies may not be offset by any credits to Producer unless written authorization from the insured upon whose account the credits have been issued is received and approved by Wholesaler. Commingling of premium trust monies or any kind is prohibited. All fees and expenses incurred in Producer's collection efforts are at Producer's expense.

### F: CANCELLATIONS:

1. Producer expressly understands and acknowledges that Minimum Earned Premium Clauses are customary in the Wholesaler's business, even in cases where Admitted Carriers insure the risk. Producer agrees to abide by their terms, and agrees that no policy, binder or covernote will be cancelled flat. Cancellation will always be subject to aforementioned Minimum Earned Clauses. Any cancellations unless requested by the Insurance carrier will be computed on a Short Rate Basis, subject always to the Minimum Earned Clause.
2. Notwithstanding the return of the original policy for cancellation, cancellation will not be effected until sufficient time has elapsed for proper notice to mortgagees, loss payees, certificate holders, public regulatory bodies, etc., in cases where such notice is required.

**G: OWNERSHIP OF ACCOUNTS AND NOTICE OF EXPIRATION:**

Wholesaler acknowledges ownership of expirations as Producer's, and that Producer is under no obligation to renew any policy with Wholesaler. Now, therefore, any custom or usage to the contrary notwithstanding, Wholesaler does not assume any responsibility for giving, and shall be under no obligation to give Producer, the insured, or any other person, firm or corporation, notice of expiration of any policies of insurance. Wholesaler may make an effort to give Producer some advance notice of the expiration of policies, but the failure of Wholesaler to provide such notice for whatever reason, or no reason, shall not render Wholesaler liable to Producer, the insured or any other person, firm or corporation. In the event that Producer sells his/her book of business, all responsibility for remittance of premium, taxes, and fees for policies initiated prior to such sale shall remain with the undersigned Producer. In the event of such sale, Producer relinquishes all rights or claims to subsequent commissions or additional premium commissions insofar as such may be necessary to satisfy the interest of Wholesaler and Insurance Carrier under this agreement. Producer further agrees to notify Wholesaler immediately upon sale of business, book of accounts, or any portion thereof.

**H: PRODUCER NOT AGENT OR REPRESENTATIVE:**

1. Producer is not the employee, agent or authorized representative of Wholesaler or of any Insurer(s) represented by Wholesaler.
2. Producer is not an Agent of Wholesaler or any Insurance Carrier who Wholesaler represents (regardless of any agency agreement that may exist between the Producer and Insurance Carrier outside the business being conducted between Wholesaler and Producer). Furthermore, Producer has no authority to accept or bind risks for or on behalf of Wholesaler or any Insurer(s) represented by Wholesaler.
3. Producer has no authority to handle claims other than to notify Wholesaler in writing of their occurrence which Producer undertakes and agrees to do immediately upon his/her knowledge of same.
4. Notice to, or Knowledge of Producer does not constitute Notice to, or Knowledge of Wholesaler or Insurance Carrier(s).
5. No act, statement or agreement of Producer shall in any way be binding on Wholesaler or any Insurer(s) represented by Wholesaler unless Producer shall have first received prior written approval from Wholesaler.
6. Producer is and at all times shall remain an independent contractor.
7. Receipt of premium payment by Producer does not constitute payment to Wholesaler, or Insurance Carrier. Furthermore, no coverage can be bound without the proper offer and acceptance in the form of a bindable quote, written instruction to bind issued by Producer, and written confirmation of binding by the Wholesaler and Insurance Carrier.

**I. PRODUCER'S WARRANTY**

Producer warrants that he/she is properly licensed in all appropriate jurisdiction(s) for the classes of business to be conducted, and the coverages of insurance to be procured through the facilities of Wholesaler. Producer further warrants that when placing Surplus Lines business with Wholesaler, that he/she has conducted the required diligent search as prescribed by both the state where Producer is domiciled, and by the state where insured is domiciled. In so placing business with Wholesaler, Producer further warrants that he/she has been unable place the account with an Admitted Carrier, and that he/she will maintain in his/her records, the names of the declining carriers, declining underwriters, and dates of declines, in accordance with such state laws, and will provide Wholesaler with said information upon request for same.

**J. TERMS OF AGREEMENT:**

1. This agreement may be cancelled by either party upon ten (10) days prior written notice to the other.
2. Cancellation of this Agreement shall not affect the rights, duties, obligations or responsibilities of the parties hereunder with respect to matters arising prior to such cancellation.
3. Execution of this agreement constitutes full agreement and understanding between the parties with each of its sections. Proper execution requires that if the Producer is doing business as an individual, he must personally sign the agreement in his own name and not in his name as an Agent. If the Producer is a Partnership, this agreement must be executed by the firm and by each member thereof in his individual capacity. If the Producer is a Corporation or Limited Liability Company, the agreement must be executed by an authorized Corporate/Company Officer.

**K. CONFORMITY TO APPLICABLE LAW:**

Any term or provision of this agreement that is held to be unenforceable or impermissible by applicable laws is hereby stricken, and no other term or provision is affected. This Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted in any such instance.

**L. GOVERNING LAW:**

This Agreement shall be subject to an governed by the laws of the Commonwealth of Virginia, County of Arlington, notwithstanding that the Producer may be, or may become a resident of a different State, or that this Agreement may be signed in a different State.

**M: AMENDMENT AND MODIFICATION:**

1. This Agreement constitutes the entire agreement between the parties and contains all of the agreements among the parties with respect to the subject matter hereof; this Agreement supersedes any an all other agreements, either oral or in writing among the parties hereto with respect to the subject matter hereof.
2. No change, modification, or waiver of this Agreement shall be valid unless the same is in writing and signed by Producer and Wholesaler.
3. In the event Producer under this agreement is a Corporation of any type, or a Limited Liability Company, it is further understood, agreed, and guaranteed by the undersigned individuals, principal stockholders of said corporations, that all conditions of this Agreement shall be binding upon them jointly and severally in the same manner as upon the corporation named as Producer.

The parties hereto, intending to be legally bound hereby, have affixed their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Witness \_\_\_\_\_ (SEAL)  
PRODUCER

PRODUCER SS# or Federal ID# \_\_\_\_\_ PRODUCER LICENSE # \_\_\_\_\_

Witness \_\_\_\_\_ (SEAL)  
WHOLESALER