

# K & M Henderson Insurance Services, Inc

## Producer Agreement

THIS AGREEMENT ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between K & M Henderson Insurance Services (Broker), a California Corporation having its principal office in Granite Bay, California and:

Agency \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Corporation ( ) Partnership ( ) Individual ( )

Federal tax I. D. Number: \_\_\_\_\_

Agency License Number: \_\_\_\_\_

WHEREAS, Broker maintains agency and/ or brokerage agreements with various insurance companies, insurance managing general agents and brokers, as well as surplus-lines brokers; and

WHEREAS, Agency is an agent for Broker's property-casualty insurance company affiliates; and

WHEREAS, Agency via this Agreement seeks to broker contracts of insurance through Broker,

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto mutually agree as follows:

### 1. AGENCY AUTHORITY/OBLIGATION

Upon the terms and conditions herein set forth, Broker hereby authorizes Agency to submit to Broker insurance applications for which Broker will attempt to procure coverage. Agency shall have no authority, actual or implied, to bind any coverage hereunder or make any changes in the terms or conditions of any issued policy of insurance brokered through Broker. Agency shall submit fully completed applications containing the insured applicant's own signature. Agency will convey the advice or warning to said applicant that "coverage will not be bound" on the completed application until written confirmation is received from the underwriting insurance company." In the event Broker is able to forward same to the insured. Notices of coverage rejection shall be promptly given to any applicant by Agency. Broker does not issue Certificates of

insurance. Some insurance companies require prior approval. Agency should contact Broker in regards to issuance of Certificate of insurance.

Agency agrees to notify Broker immediately of any claims or occurrences reported by any insured written under the terms of this agreement and to forward to Broker all written loss notices.

Broker does not handle claims. All claims are referred to the respective insurance company

## 2. AGENCY RESPONSIBLE FOR PAYMENT OF PREMIUM

Agency is primarily liable to Broker for the full amount of the premium and applicable state taxes, less commission, including but not limited to additional premiums developed under audits or retrospective penalties, on every insurance contract placed by Broker for Agency. Such invoice for monies owed will be due and payable by Agency as indicated in the Broker's invoice to Agency and may vary based upon the credit term of the issuing company. Agency agrees that the payment of any minimum earned premium required by the issuing company will be the responsibility of Agency. Agency shall be and remain liable to Broker for all earned premiums, whether or not collected from the insured by Agency. Any credit extended to the insured shall be the sole risk and responsibility of Agency. If, after the expiration of forty five (45) days, from the date liability was assumed by the insurance carrier, Broker has not received the amount due it, 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, Agency shall not be entitled to any commission on the premium so collected. Attempts by Broker to collect from the insured shall not relieve Agency of liability to Broker, except to the extent of amounts actually collected by Broker from the insured, less expenses of such collection. In any action or proceeding brought by Broker to recover sums due from Agency to Broker under the terms of this Agreement, Agency agrees to pay costs incident thereto, including reasonable attorneys fees, incurred by broker by reason of such action or proceeding.

## 3. FLAT CANCELLATION

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

## 4. UNEARNED COMMISSIONS

Agency will refund to Broker unearned commission on all business placed with Broker on canceled policies, or reduced premiums, at the same rate at which such commissions were originally allowed Agent. Such refund shall be applied to Broker and paid by the due date indicated on the billing invoice.

## 5. AUDITABLE POLICIES

Notwithstanding anything to the contrary herein set forth, in the situation where premium for a policy of 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 paid by Agency to Broker and paid by the due date indicated on the billing invoice. Broker shall extend to Agency the same turn back privileges, if any, as are granted Broker by the insuring company.

## 6. RECORDS/NOTICE OF EXPIRATION

Both Broker and Agency shall keep duplicate records of the business written and transacted in the accordance with the terms of this agreement. Broker is not obligated to give Agency advance notice of expiration of any policies of insurance that the Agency had procured through Broker.

## 7. INDEPENDENT CONTRACTOR

Each party to this Agreement is an independent contractor and shall be responsible for the sole control of each such part's own personnel, expenses, taxes, office management and operations.

## 8. INSURANCE AGENCY'S ERRORS AND OMISSIONS POLICY

Agency shall maintain errors and omissions (professional liability) insurance in effect in minimum an amount of \$1,000,000 and such insurance must be underwritten by an insured having an A.M.Best's rating of "A-" or better. Agency will be solely and exclusively responsible for all claims demands, actions or causes of action arising out of or relating to any error or omission on Agency's part. Agency shall promptly notify Broker of any claim, demand, action or cause of action relating to business placed by Agency through Broker.

## 9. TERMINATION

This Agreement may be terminated upon the happening of any of the following events:

- A. Upon thirty(30) day's prior written notice by either party;
- B. Upon cancellation of Agency's Agency Agreement with Broker's affiliate insurance companies;
- C. Upon Agency failing to maintain an insurance license; or
- D. Upon the termination of business of either party.

Upon the termination of this Agreement, Agency having accounted for and paid over all premiums for which Agency may be liable, Agency's records, use and control of expirations shall remain the property of Agency.

## 10. PRIVATE INFORMATION OBLIGATION

Agency warrants that it will act in accordance with applicable state and federal privacy laws including, but not limited to, the Gramm-Leach-Bliley Act. Agent warrants that it will be authorized by insurance contemplated herein. Broker will rely on these warranties.

## 11. HOLD HARMLESS/LEGAL FEES

Agency shall indemnify and hold Broker harmless against any claims, liability of costs (including attorney's fees and expenses) which Broker may become obligated to pay as a result of a loss to insured/applicants, which claim, liability, or cost is the result of an error or omission of Agency or a breach by Agency of the terms of this Agreement. Broker shall indemnify and hold Agency harmless against any claims, liabilities or costs (including attorney's fees and expense) which Agency may become obligated to pay as a result of loss to insured/applicants which claim, liability, or cost is the result of an error or omission of Broker in the processing of any business placed and/or attempted to be placed by Broker for Agency. Furthermore, if any legal action is brought to enforce or interpret the provisions of this Agreement, reasonable attorney's fees and costs shall be paid to the prevailing party.

## 12. CURRENT POLICIES IN FORCE

This Agreement shall apply to policies placed through Broker and in force at the date hereof and all future policies which may be placed by Broker for Agency.

## 13. CONFORMITY TO STATUTE

Any portions of this Agreement that are not in conformity with state laws to which the Agreement is subject to shall be amended to conform to those laws; however, this shall not abrogate the remainder of the Agreement.

## 14. ENTIRE AGREEMENT/ MODIFICATION

This Agreement constitutes the entire agreement between the parties hereto and it supersedes and replaces any prior agreement(s) governing the subject matter hereof which may have been entered into by the parties hereto. This Agreement shall become effective on the date specified herein and shall not be modified except upon written agreement of the parties hereunder.

## 15. GOVERNING LAW

THIS Agreement shall be constructed and interpreted in accordance with the laws of the State of California. If any of the provisions hereof shall remain in full force and effect.

## 16. CAPTIONS

The captions used in the Agreement are solely for the convenience of the parties hereto, and such captions do not constitute a part of the Agreement

## 17. NO WAIVER

No failure of either party to exercise any power or right given either party hereunder or to insist upon strict compliance by either party with its obligation hereunder shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

Agency agrees to permission to fax, mail e-mail flyers, brochures, and other marketing information to the Agency.

Agreed to and effective as of the date set forth above.

AGENCY \_\_\_\_\_

By: \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

K&M Henderson Insurance Services

By: \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_