

# POULTON ASSOCIATES, LLC

## PRODUCER AGREEMENT & ELECTRONIC INTERFACE/WEBSITE(S) LICENSE

This Agreement is made and entered into between Poulton Associates, LLC, referred to herein as “Broker,” and the undersigned entity/organization executing this Agreement, referred to herein as “Producer.”

**Online and Offline Applicability.** This Agreement applies to all insurance applications submitted to or through Broker by Producer, whether via the Electronic Interface/Website(s) or otherwise, and regardless of the insurance product or program. The parties acknowledge that in accordance with industry norms, submissions via the Electronic Interface/Website(s) may be identified as “online” and submissions via other means may be identified as “offline.”

**Electronic Interface/Website(s).** The “Electronic Interface/Website(s)” means the internet-based programs, websites and electronic technologies owned or operated by Broker for the placement and administration of insurance policies, and which Producer is licensed to use in accordance with this Agreement.

**Producer Licensing & Information.** Producer hereby warrants to Broker that Producer is properly licensed to engage in the business of selling and servicing property and casualty insurance in accordance with the laws of any state of the United States of America in which Producer does now or will in the future participate in such business. At all times, Producer will ensure that Producer has entered into the Electronic Interface/Website(s) accurate and up-to-date evidence and details of any and all license(s) granted Producer as an insurance producer, agent, or broker for any state where Producer intends to transact business hereunder.

Producer warrants that Producer will comply with all applicable laws and regulations governing the conduct of business subject to this Agreement in the jurisdiction(s) involved. Producer warrants that Producer is and shall remain properly licensed as an insurance intermediary to legally transact business in accordance with the provisions of insurance laws of any jurisdiction/state in which business is transacted. Producer will promptly notify Broker of any suspension, cancellation, or disciplinary action in respect of Producer’s license or licenses.

Producer shall at all times during the period of this Agreement maintain in full force and effect Errors and Omissions insurance with a carrier acceptable to Broker that has been assigned a current rating by AM Best of at least A- Class VII. Producer shall maintain limits under Producer’s Errors and Omissions policy of no less than one million dollars (\$1,000,000), except that Broker may require higher limit(s) at any time at Broker’s sole discretion.

At any time identified by Broker, Producer shall furnish to Broker all requested information, including without limitation, a description or copy of Producer’s Errors and Omissions insurance policy, Producer’s licensing data for every state, contact data, and a certificate of insurance naming Broker as a Certificate Holder. All information relevant to Producer’s business under this Agreement shall be kept current by Producer and updated at least annually or as may be requested by Broker. Producer must, in any event, update the Producer’s Errors and Omissions insurance carrier information and license number(s) and expiration date(s) on the Electronic Interface/Website(s) (or if allowed by Broker, by other means of communication) annually on each anniversary of Producer’s execution of this Agreement.

**Use of Electronic Interface/Website.** Subject to the terms and conditions of this Agreement, Broker grants to Producer a nonexclusive, nontransferable, and revocable license to use the Electronic Interface/Website(s) for the creation of insurance policies through the Electronic Interface/Website(s) in the manner such policies are made available by Broker. The territory of such

license is limited to the state(s) in which Producer is licensed to transact business as an insurance producer/agent/broker. Producer shall use the Electronic Interface/Website(s) in Producer's normal course of business as an insurance producer/agent/broker, and except for the foregoing, shall not use the Electronic Interface/Website(s) with or for any other person or entity. Producer shall not modify or attempt to modify the Electronic Interface/Website(s) except as instructed or permitted by Broker. Producer acknowledges and agrees to use the Electronic Interface/Website(s) only in those states where Producer holds a valid and un-expired insurance agent's license to transact business in accordance with the provisions of applicable insurance laws.

Producer acknowledges and agrees that the Electronic Interface/Website(s), and any information learned by Producer through Producer's use of it or other communications with Broker, constitute confidential and proprietary information, or trade secrets, of Broker. Producer may not, and may not permit others to, disclose, modify, reverse engineer, decode, use without permission, or otherwise misappropriate any such information. Producer's obligations under this clause to keep such information in strict confidence shall survive any termination of this Agreement. For the avoidance of doubt, said confidential information includes, without limitation, all business procedures developed and utilized by Broker in operating the Electronic Interface/Website(s) and related products and services.

In submitting business to Broker, Producer is acting as an insurance agent/broker on behalf of the applicant for insurance and is not acting as an agent, sub-agent or broker for Broker. This Agreement, and any 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 Broker and Producer. Producer is for all purposes an independent contractor.

**Ownership.** The Electronic Interface/Website(s) and all material thereon are owned by, or licensed to, Broker and are protected by U.S. and international copyright, patent, trademark or trade secret laws. Producer acknowledges and agrees that Producer shall not have or acquire any rights to use the Electronic Interface/Website(s) other than as expressly permitted during the effective period of this Agreement.

**No Warranties; Limitation of Liability.** THE ELECTRONIC INTERFACE/WEBSITE(S) AND RELATED PRODUCTS AND SERVICES ARE PROVIDED "AS IS" BY BROKER WITH NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. BROKER DOES NOT WARRANT THAT THE FUNCTIONS ON THE ELECTRONIC INTERFACE/WEBSITE(S) WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE ELECTRONIC INTERFACE/WEBSITE(S) OR THE SERVER THAT MAKES THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

Broker is neither responsible nor liable for any direct, indirect, incidental, consequential, special, exemplary, punitive or other damages arising out of or relating in any way to Producer's use of or access to the Electronic Interface/Website(s) or related products and services, including those arising from any malfunctions or interruptions of the Electronic Interface/Website(s), problems with an internet service provider, third party actions, or other electronic communication system problems, difficulties or failures. Producer's sole remedy for any of the foregoing is to cease using the Electronic Interface/Website(s) and related products and services.

**Modifications to, Use of and Access to the Electronic Interface/Website(s).** Producer acknowledges that Broker may at any time alter, modify or terminate the technology structure or standards of the Electronic Interface/Website(s), including the platform or the method of access, and any other information or transmission relating to the Electronic Interface/Website(s). Any expense or cost related to the use and access of the Electronic Interface/Website(s), including but not limited to the purchase of additional software, shall be at Producer's sole cost and responsibility.

**Right to Make Changes.** Broker reserves the right to amend, change or update this Agreement, or otherwise amend, change or update the terms of use of the Electronic Interface/Website(s), at any time and from time-to-time. Any such amendments, changes, or updates will be effective immediately upon notification, including notification by way of upload or postings to the Electronic Interface/Website(s) or by Broker sending an email notification to Producer's email address then current on the records of the Electronic Interface/Website(s), such as Producer's profile data. Following an amendment, change, or update, Producer's use of the Electronic Interface/Website(s) or any other action contemplated by this Agreement constitutes acceptance of and agreement to be bound by this Agreement and the terms of use of the Electronic Interface/Websites(s) as amended, changed, or updated.

**Record Retention.** The following documentation requirements apply to all business transactions that are submitted to or through Broker by Producer:

Producer must create, keep and maintain all documentation (including copies of original documents) related to the applicant's/insured's choices of coverage, limits and statements reflecting on insurance and insurability, including any information as may be required by applicable law. Such documentation shall include, but is not limited to, original insurance application(s) signed by the applicant and Producer, supplemental application(s), documents and correspondence relating to any particular risk and all other underwriting notes, documents and signatures required by any applicable surplus lines organization or insurance regulator. Producer must produce and deliver to Broker any and all such information and documentation immediately upon request. Producer further agrees to keep and maintain all applicable documents, including but not limited to the following, in connection with producing any and all insurance business under this Agreement:

1. Completed and signed original applications;
2. Completed and signed original supplemental application(s) (if needed);
3. Fair credit disclosure statements (if any, as required by the applicant's state);
4. Domestic partnership supplemental application (in states where applicable);
5. Cancellation requests and/or lost policy release forms signed by the appropriate parties, along with related documentation concerning a cancellation of coverage accomplished through the use of an acceptable cancellation request form or a lost policy release form; and
6. Any original insurance contract/policy that has been surrendered by an insured, along with related documentation concerning a cancellation of coverage accomplished through the surrender of the original insurance contract/policy.

**Insurance Contract Delivery and Notifications.** Producer must print at Producer's offices all original insurance contracts/policies, endorsements, mortgagee clauses, renewals, notices, and any other amendments to the original contract/policy and deliver such documents to the appropriate insured(s) and any party at interest, such as a mortgagee or other lien holder, in a timely manner. Producer assumes sole responsibility for delivery of these documents to the appropriate insured(s) and any party at interest such as a mortgagee or other lien holder. Producer hereby indemnifies Broker for any financial loss suffered by Broker as a result of Producer's failure to deliver any of these documents and/or notifications to any appropriate insured(s) and any party at interest, such as a mortgagee or other lien holder.

Producer acknowledges that the Electronic Interface/Website(s) offers insurance from multiple insurers, using multiple insurance policy forms and multiple types of insurance coverage. Each insurer may use a distinct policy form, meaning there may be differences regarding coverages, limits, and exclusions between insurers and policy forms. Any submitted application for insurance, if approved, may be responded to using any one of the available insurers and policy forms, and Producer should assume each policy form may differ from any previously offered policy form. Producer is solely responsible for reading and understanding the terms and conditions of any insurance policy sold by Producer. Producer is also solely responsible for appropriately serving, and conveying such information to, the insured(s) under such policies, regardless of any other policy

form offered at any time on the Electronic Interface/Website(s). Broker makes no representations or warranties that any insurance application will be considered for coverage through any specific insurer or on any specific policy form.

In the event that any insurance contracts/policies contemplated by this Agreement are canceled or non-renewed by the underwriter and/or insurance carrier, both Producer and Broker shall endeavor to notify the appropriate insured(s) and any party at interest, such as a mortgagee or other lien holder, of the cancellation or non-renewal in a timely manner. In the event that any insurance contracts/policies contemplated by this Agreement are canceled or non-renewed by Producer or by any insured entity, it shall be the sole responsibility of Producer to notify the appropriate insured(s) and any party at interest, such as a mortgagee or other lien holder of the cancellation or non-renewal in a timely manner.

**Surplus Lines Filings and Other State-Required Documentation.** Except as may be otherwise required of Producer by Broker, Broker accepts responsibility for the filing of any surplus lines taxes and fees (as that term is understood in the insurance industry) that may become due relative to any insurance contracts/policies contemplated by this Agreement. Producer must cooperate with Broker as necessary to comply with any statute or rule related to the filing of surplus lines documents, taxes and fees, including but not limited to, the creation and proper execution of all documents and signatures required by any applicable state surplus lines organization or insurance regulator. Unless required by Broker based on an extraordinary and compelling need to require Producer to accomplish such filings, Producer shall not be required to accomplish any such filings. Producer must immediately complete, with appropriate signatures, and provide to Broker all surplus lines and other documents required by any applicable state surplus lines organization or insurance regulator in a form acceptable to Broker. Producer must immediately comply with any request for paper or electronic copies of any document requested by Broker, including for the purpose of filing surplus lines or other documents as deemed necessary by Broker.

**Consideration.** As consideration for the acceptance of insurance applications and business from Producer by Broker, it is agreed that Producer will pay to Broker on or before the inception date of any insurance coverage, billing, invoice and/or statement, the balance due on all certificates and/or policies arranged by Producer through Broker, including all audits and endorsements, unless accepted for direct collection by Broker. Producer shall be entitled to a commission for each premium-bearing instrument or policy issued through Producer's account with Broker at the then standard commission rate as determined by Broker and at Broker's sole discretion; such commission rate may change from time to time. Commission payments are conditioned on Producer's fulfillment of all legal, regulatory and contractual obligations with respect to the applicable insurance policy, including without limitation, Producer's and each insured's execution and delivery of all documents required by a surplus lines organization or insurance regulator. If Producer does not pay Broker within the time specified, then Broker is authorized to cancel all certificates or policies which are unpaid, and Producer agrees to pay the earned premium on such canceled documents. No flat cancellations shall be allowed, unless authorized by Broker. Producer also agrees to refund and allow Broker to recapture commission on all return premiums at the same rate at which such commissions were originally granted.

**Guarantee of Payment.** In consideration of Broker handling Producer's business as is accepted and for other good and valuable consideration, Producer guarantees the payment to Broker of all initial (payment at policy creation) premiums on insurance contracts/policies placed by Producer through Broker. Premiums due after the initial creation of insurance policies shall be billed and collected by Broker if the insurance contract is designated between Broker and Producer as "direct bill" business, and by Producer if the insurance contract is designated between Broker and Producer as "agency bill" business. In either event, Producer and Broker shall be entitled to the appropriate commission(s) and/or fees due Producer or Broker as their interests may appear.

**Web Based Transactions.** Broker and Producer shall endeavor to accomplish all insurance and financial transactions made under this Agreement through electronic means such as virtual check/electronic funds transfer and credit/debit card processing through the internet. Producer shall allow Broker, at Broker's sole election, to automatically deduct all amounts due Broker from Producer's account(s) using the electronic methods then in place between Producer and Broker by virtue of Producer's use of the Electronic Interface/Website(s). It is specifically agreed that no Producer transactions allowed hereunder shall take place through means other than the Electronic Interface/Website(s) without the express permission of, or at the election of, Broker. Producer is not entitled to endeavor to transact any insurance business with or through Broker under this Agreement that is not accomplished through the Electronic Interface/Website(s) unless specifically allowed by Broker. Producer agrees to execute this Agreement and conduct all business transactions related hereto electronically, which will include using electronic signatures and electronic records.

**No Authority.** No authority of any kind is granted or implied to Producer by this Agreement. Producer understands that Producer has no authority to bind any insurance coverage of any type, nor does Producer have authority to investigate or settle claims, but must notify Broker immediately in writing upon receipt of a claim. Producer agrees to have proper certification and follow any claims regulations set forth by Broker (if any) and/or the Department of Insurance, or the division of state government charged with regulating insurance in any state in which Producer is licensed to transact business.

**Responsibility & Hold Harmless.** Broker assumes no responsibility toward any policyholder, insured(s), party at interest, such as a mortgagee or other lien holder, or Producer with regard to the adequacy, amount or form of coverage obtained through Broker. In the event that Producer issues or disseminates unauthorized or inaccurate documents or information of any kind, violates the terms of this Agreement or a directive communicated to Producer by Broker, or violates any law or regulation applicable to Provider's business activities, and such action results in Broker and/or any underwriter or insurance carrier suffering any loss, cost (including legal costs), expense, damages, judgments, settlements, fines or penalties, Producer shall immediately indemnify, hold harmless and defend Broker, the underwriter and/or the insurance carrier relative to all such amounts which Broker, the underwriter or insurance carrier becomes liable to pay as a result of said action by Producer.

**Remedy for Breach.** Notwithstanding any other provision of this Agreement, in the event that Producer breaches or otherwise fails to comply with any of Producer's obligations under this Agreement, including by failing to remedy such occurrence after a request from Broker, Producer waives all rights to every insurance policy that is the subject of such breach or noncompliance. Producer shall not be entitled to receive any commission or other remuneration from Broker for an insurance policy placement that does not fully comply with the terms and conditions of this Agreement. Without limiting the foregoing, Producer expressly waives all rights, including commission payments and renewals, with respect to insurance policies which are placed by Producer without complete fulfillment of Producer's obligations under this Agreement, and Broker may offset such waived commissions against any other commission or money payable to Producer by Broker, and take any action regarding such waived renewals as Broker determines. For the avoidance of doubt, a breach of this Agreement includes, without limitation, failure to procure, maintain, and make available to Broker all documentation relating to an insurance policy (including the original signed application), failure to complete and immediately deliver all surplus lines and other state-required documents, failure to update Producer's licensing data and Errors and Omissions insurance coverage information, and any other event of noncompliance with a legal, regulatory, or contractual obligation on Producer. The remedies available to Broker under this paragraph are not exclusive, but are in addition to any other available remedy, including by contract, law, or equity.

**Termination.** Either party may terminate this Agreement, without cause, upon written notice to the other. Producer acknowledges and agrees that Producer will no longer have access to the Electronic Interface/Website(s) or use of the Electronic Interface/Website(s) upon any such

termination, and that Producer will return to Broker all documentation and information in Producer's possession with respect to the Electronic Interface/Website(s). Broker acknowledges and agrees that any policyholder who acquires an insurance policy by Producer's placement through Broker, as long as such placement fully complies with all of Producer's obligations under this Agreement, is and remains a client of Producer, and termination of this Agreement shall not affect the relationship between Producer and Producer's clients except as provided herein. Producer recognizes and agrees that termination notification may be made by Broker by publishing such notice on the Electronic Interface/Website(s) or by other electronic means, such as email sent to Producer's last email address known by Broker. Broker may terminate Producer's access to the Electronic Interface/Website(s) immediately without cause and without notice.

**Severability; Assignment.** Should a court of competent jurisdiction declare any provision of this Agreement invalid or unenforceable, such decision will not affect the validity or enforceability of any of the other provisions of this Agreement, which other provisions will remain in full force and effect. The application of such invalid or unenforceable provisions to persons or circumstances other than those as to which it is held invalid or unenforceable will be valid and be enforced to the fullest extent permitted by law. Producer may not assign this Agreement and any such attempted assignment is void.

**Miscellaneous.** This Agreement shall be construed under and in accordance with the laws of the State of Utah. This Agreement constitutes the entire understanding of the parties hereto, supersedes any prior agreements or understandings, written or oral between the parties with respect to the subject matter hereof, and is not intended to confer upon any other person any rights or remedies. No provision hereof shall be deemed waived except in writing executed by the waiving party. The descriptive headings of this Agreement are intended for reference only and do not affect the construction or interpretation of this Agreement.

The prevailing party in any dispute with respect to the meaning or enforceability of this Agreement, or the enforcement of any provisions thereof, shall recover from the other party all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees. Without limiting the generality of the foregoing, any reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in enforcing any judgment, shall be recoverable by the prevailing party as a separate item of recovery.