

PRODUCER AGREEMENT

I. PARTIES:

WHOLESALER: HCF INSURANCE AGENCY, a licensed California Insurance Agency holding California License No. 0E36313.

PRODUCER: _____, a licensed California _____, holding California License No. _____

EFFECTIVE DATE:

TERM: Continuous until terminated.

II. RECITALS:

- A. **WHOLESALER, herein HCF**, has available insurance program(s) to provide the following type(s) of insurance coverage(s), including: Workers Compensation, Professional & General Liability, and Commercial Property & Auto.
- B. These programs are underwritten by, including: Alaska National Insurance Company (Workers Compensation) and American Safety Insurance Company (Liability).
- C. **PRODUCER** has insured clients and/or prospects for insurance for which program coverage's may be desirable, and wishes to be able to submit applications to **HCF** for such coverage's, to the extent that equivalent coverage's are not available from a majority of insurance companies admitted to transact insurance in California in the lines of coverage included in the program. Producer understands and agrees that it is a complete independent entity and bears the entire responsibility for its own acts and omissions to act.
- D. **HCF** is willing to receive applications and effect placement of coverage's under the program(s) for qualified applicants.

III. AGREEMENTS:

1. Grant of Authority to PRODUCER.

HCF hereby grants authority to **PRODUCER** to do the following with respect to the program only:

- a. Receive applications and/or information forms from would-be insured's;

- b. If requested by **HCF**, render bills for premiums on forms supplied by **HCF**, in accordance with premium schedules and rates established by **HCF**, and receive and acknowledge receipt for premiums so billed;
- c. Receive and acknowledge receipt for deposit premiums to be submitted with application or information forms as specified by **HCF**;
- d. **PRODUCER** may retain from premiums received by **PRODUCER** on coverage issued under the **PROGRAM** an amount equal to but not exceeding, the commissions payable to **PRODUCER** as more specifically set forth in Exhibit A, attached hereto and hereby made a part hereof.
- e. **PRODUCER** is an independent contractor and not an employee of the company. Producer shall maintain a staff of competent and trained personnel necessary to develop and produce the business covered by this Agreement.
- f. **HCF** may in its sole discretion, change or discontinue applicable forms, endorsements, premium rates, rating plans, and underwriting guidelines;
- g. **PRODUCER** may issue policies and endorsements, renewal notices, non renewal notices, cancellation notices, financial responsibility filings and other similar documents with the prior written consent of **HCF** only;
- h. **PRODUCER** may speak directly to insured's;
- i. **PRODUCER** may order risk management to be implemented, if necessary, after obtaining written approval of **HCF**.

2. **Obligations of PRODUCER.**

PRODUCER shall:

- a. Comply with all lawful instructions which may be issued from time to time by **HCF** with respect to the program;
- b. Fully comply with all laws and regulations of the State of California applicable to **PRODUCER** and to insurance under the program, including, but not limited to: (a) at all times maintaining its license as a California insurance broker-agent; and (b) completing and submitting with each application or information form a Surplus Line Association of California Form SL-1, SL-2, D-1, D-2, and/or any other filing forms or equivalents, demonstrating submittal of the risk and declination thereof, and required disclosures in accordance with the requirements of California law;

- c. Immediately notify **HCF** in the event **PRODUCER** learns of any investigation, accusation, or other proceeding pending or threatened against **PRODUCER** which would in any way adversely affect **PRODUCER'S** license or its ability fully to perform its obligations under this Agreement. Immediately advise **HCF** of termination, expiration, or suspension of any required license;
- d. Maintain errors and omissions and fidelity insurance in such amounts and forms, and with such carriers as customary and reasonable for Producer's business. A minimum of \$1,000,000 per occurrence with a \$3,000,000 aggregate must be maintained at all times when transacting business for the program.
- e. Maintain complete and accurate books and records of all transactions and correspondence related thereto, conducted by or through **PRODUCER** with respect to the program;
- f. Upon request of **HCF**, permit examination of all such books, records and correspondence by **HCF** or its representatives at any reasonable time;
- g. Remit to **HCF**, not later than 25 days after statement date on monthly statement rendered by **HCF** therefore, all premium due **HCF** for business having effective dates to and including the last day of the calendar month next preceding the month in which statement is rendered, net, however, of (a) return premiums; and (b) commissions payable to **PRODUCER**;
- h. Remit, as instructed by **HCF** any return premiums arising out of changes, cancellations or terminations of coverage; **PRODUCER** shall be responsible for return of **PRODUCER'S** commissions on any return premium; **PRODUCER** shall not be required to remit return premium to the extent that **PRODUCER** no longer retains or has not received from **HCF** the **HCF** portion of the return premium owed.
- i. Report all loss claims to **HCF** as promptly as possible and, in any event, not later than the third business day after such claims are received by **PRODUCER**;
- j. Promptly forward to **HCF** not less often than weekly all requests to insure or modify coverages which **PRODUCER** receives;
- k. Maintain all premium funds in fiduciary trust accounts as trustee for **HCF** until delivered to **HCF** or its authorized representative, permitting withdrawal only for:
 - (1) Payment of net premiums to **HCF**;
 - (2) Payment of return premiums to policyholders, but only to the extent that the premiums as to which return is required are still part of the trust accounts so maintained;

(3) Payment of commissions to **PRODUCER**, but only to the extent that the premiums as to which commissions are payable have been fully paid; if premium for an account is payable in installments, **PRODUCER** shall be permitted to retain and pay, from the first one or more of such installments, amounts sufficient to pay **PRODUCER**'s gross commissions for the full policy term.

l. Fully and faithfully comply with all the terms and provisions of this Agreement.

3. Commission.

a. Provided **PRODUCER** has fulfilled its obligations hereunder, **PRODUCER** shall receive commissions equal to the schedule set forth in Exhibit A attached to this Agreement.

b. **HCF** shall collect a policy fee in addition to the risk management fee set forth in this schedule in Exhibit A attached to this agreement.

c. **PRODUCER** shall refund unearned commissions on policy cancellations, endorsements or reductions at the same rate as such commissions were paid for all return premiums, adjustments or cancellations made at the option of **HCF**, the insured or otherwise. Flat cancellation is subject to the terms of the policy underwriter. Short rate cancellations will apply. If **PRODUCER** does not make timely payment of any sum due to **HCF**, it is understood that **HCF**, without limitations of its other remedies, reserved the right to cancel policies for non-payment of premium.

d. **HCF** may offset or apply commissions and other compensation due to **PRODUCER** hereunder against any indebtedness of **PRODUCER** to **HCF**.

4. Restrictions on PRODUCER.

PRODUCER shall not:

a. Issue, or allow issuance of, any advertising or other communication relating to the program unless (a) the same is specifically approved in writing by **HCF** before it is released; and (b) the same prominently discloses that the program is written through the services of **HCF**;

b. Engage in any direct negotiations, solicitations or other communications with the **Underwriting Company** relating to the program, except by and through **HCF**;

c. Hold itself out to the public or otherwise represent to any person or entity that it is acting with respect to the program on behalf of any person or entity other than **HCF**;

specifically, **PRODUCER** shall not in any manner hold itself out to the public or otherwise represent that it is acting on behalf of the **Underwriting Company**;

- d. Do any act or thing, or commit any error or omission, which is asserted in any proceeding, whether regulatory or judicial, to be a violation of the laws or regulations of the State of California and which would be grounds for suspension or revocation of any insurance producer or insurance-related license held by **PRODUCER**;
- e. Sell, transfer, consolidate, merge, or otherwise reorganize itself or its business without giving **HCF** at least 30 days' prior written notice thereof, in which event **HCF** shall have the right, at its sole option, to consent to such transaction upon such terms as **HCF** deems appropriate, or to terminate this Agreement. Failure of **PRODUCER** to give such notice shall be grounds for immediate termination.
- f. **PRODUCER** has no rights to bind coverages or to confirm coverage except upon the **HCF** written authorization. **PRODCUER** shall not (a) adjust, compromise, settle claims, or waive any insurance policy condition any insurance policy conditions; (b) make any changes in the terms or conditions of any offer to insure or policy of insurance written by the **HCF**, by endorsement or otherwise; (c) use Company's name in any advertising or promotional material without **HCF** prior written consent; or (d) issue Certificates of Insurance or other proof of loss (e) issue binders or other commitments to provide coverage without **HCF** prior written consent.

5. **Fiduciary Accounts.**

- a. Until remitted to **HCF**, all premium funds for program coverage's which are received by **PRODUCER** shall be maintained by **PRODUCER** in premium trust accounts in licensed California banks in accordance with §§ 1734 et seq. of the California Insurance Code.

6. **Premium Collection Responsibility.**

PRODUCER shall be responsible for collection of all premiums when due, and no flat cancellations shall be permitted; provided, however, that **PRODUCER** shall be relieved of responsibility for delinquent premium if **PRODUCER** notifies **HCF** in writing within forty-five (45) days after such premium is due and payable by an insured that it is uncollectible. In such event, **HCF** may pursue such avenues of collection as it deems prudent, and **PRODUCER** shall fully cooperate with **HCF** in such collection efforts. **PRODUCER** specifically waives all commission entitlement on any premium as to which **PRODUCER** has given timely notice of uncollectability to **HCF**.

7. **Relationship of Parties.**

PRODUCER and **HCF** are independent contractors in their relationship with each other, and **HCF** shall not be responsible for any expenses whatsoever incurred by **PRODUCER**.

8. Warranties of PRODUCER.

PRODUCER warrants that:

- a. **PRODUCER** is a duly and validly licensed broker-agent under the laws of the State of California;
- b. To the best knowledge and belief of **PRODUCER**, there are no investigations, accusations, or other proceedings pending or threatened against **PRODUCER** which would in any way adversely affect **PRODUCER**'s license nor its ability fully to perform its obligations under this Agreement;
- c. **PRODUCER** has full power and authority to enter into this Agreement and there are no judgments, contracts, charter restrictions or any other matters of which **PRODUCER** is aware which would in any manner conflict with **PRODUCER**'s power and authority to enter into or perform its obligations under this Agreement.

9. Termination, Suspension and Discontinuance.

a. Termination by Either Party, With or Without Cause.

Either party may terminate this Agreement at any time upon not less than thirty (30) days' advance written notice to the other, with or without cause.

Upon terminations of this Agreement, **PRODUCER** will (a) continue to pay all sums due to **HCF**; (b) unless otherwise instructed by **HCF** continue to discharge all obligations hereunder in connection with the run-off of all in force business; and (c) cease to submit to seek to renew business with **HCF** or extend the term of any existing business, except may be otherwise required by law. **PRODUCER** will be obligated to adhere to all clauses of this contract after contract is terminated. It is clear from this Agreement that certain terms are intended to survive to termination of the Agreement and these do in fact survive termination of the Agreement. These include but not limited to confidentiality and obligations to insureds.

b. Termination by Either Party, With Cause.

Either party may immediately terminate this Agreement by written notice to the other in any of the following events:

- (1) Material breach by the other party of any term or condition of this Agreement;
- (2) The commencement of any regulatory or judicial action or proceeding against or involving a party which, in the good faith judgment of the terminating party,

would materially and adversely affect the licenses or the ability of either party to perform its obligations under this Agreement;

- (3) The enactment of any law or regulation which, in the good faith judgment of the terminating party, would materially and adversely affect the licenses or the ability of either party to perform its obligations under this Agreement.

c. Automatic Termination.

This Agreement shall terminate automatically in the event of (i) any lapse, revocation, suspension or non-renewal of any license held by either party which is required to enable it lawfully to perform any of its obligations hereunder; or (ii) in any event which is, or results in, termination of the program by the **Underwriting Company**.

d. Arrangements following Termination.

- (1) Run Off of Business.

In any of the foregoing events, the parties shall co-operate fully to run off business and policies placed under the program in as orderly a manner as is feasible under the circumstances.

10. Ownership of Expirations.

Upon the cancellation of this Agreement, if **PRODUCER** has promptly accounted for and paid over all premiums for which it may be liable, Producer's records pertaining to the business produced under this Agreement and its use and control of expirations are proprietary to **PRODUCER** and will remain the property of **PRODUCER** and be left in its undisputed possession, and shall not be disclosed by **HCF** to any other party without **PRODUCER'S** prior consent; provided, however, that **PRODUCER** shall provide, at the request of **HCF**, true and complete copies thereof whenever, in the opinion of **HCF**, the same are reasonably necessary to provide policyholder or administrative services relating to the program only, or are requested or required by judicial or regulatory authorities. Otherwise, all such records and the use and control of expirations will be vested in **HCF**, subject to the restriction set forth in the preceding sentence. **HCF** agreed to refrain for a period of twenty four (24) months after termination of this Agreement, from soliciting **PRODUCER'S** customers which have been bound with the **HCF** so long as **PRODUCER** has promptly and accurately accounted for and paid all premiums for which it may be liable. This Agreement only applied to bound business, and any business submitted and not bound is not protected under this contract. If termination or suspension occurs, however, by reason of **PRODUCER'S** being legally barred from continuing this Agreement (as, for example, by reason of loss or suspension of necessary licenses), use and control of expirations and the records of **PRODUCER** pertaining thereto shall, for purposes of the program only, be vested in **HCF**.

11. Confidentiality

PRODUCER and **HCF** each agree to treat as confidential all of the information and materials disclosed by the other party, whether or not it is identified as confidential, and to use their best efforts, fully commensurate with those employed by the other party for the protection of its own confidential information, to protect the information disclosed by the other party; not to employ to their own advantage, duplicate or reconstruct the information and materials disclosed by the other party, including the nature, structure, and format for the delivery of the insurance coverage offered as part of the insurance programs developed by **HCF**; and to restrict disclosure of the information disclosed by the other party to the minimum number of the party's own employees and/or officers as shall be necessary in order for the party to perform its obligations pursuant to the proposed transactions.

PRODUCER further agree to, within thirty (30) days of notification by **HCF** to return all documents, materials and/or other tangible items the **PRODUCER** received under this Agreement or otherwise pertaining, referring, or relating to the information; and return all copies, summaries, records, descriptions, modifications, lists, or adaptations which they made form the items referred to in this paragraph.

It is understood and agreed that certain of the confidential information or trade secret information has originally been disseminated from others such as insurers for use by **HCF**. That Confidential Information is subject to the same terms and conditions of this Agreement as Confidential Information authored or originated by **HCF**.

It is understood and agreed that disclosure of Confidential Information will result in damage. Such damage may be difficult to quantify but it is stipulated that such damage results in irreparable harm. In addition to any actual damages which can be reasonably calculated, breach of this Confidentiality clause shall include liquidated damages of \$100,000 for each breach of this Agreement and shall entitle **HCF** to injunctive relief.

12. Severability.

The provisions of this Agreement are severable and are intended to comply fully with applicable laws and regulations of the State of California. In the event that any provision hereof is declared illegal or unenforceable, the offending provision shall be deemed deleted, or, if not inconsistent with the fundamental purposes of this Agreement, amended to comply with applicable law, and the remainder of this Agreement shall be effective and binding to the fullest extent permitted by law.

13. Non-Waiver.

Failure of either party promptly to declare a default for breach of any terms or conditions of this Agreement shall not be construed as a waiver of any of said terms and conditions, and shall not prevent the non-defaulting party from thereafter demanding full and complete compliance, unless such party has executed a written waiver thereof. Written waiver by a party of any breach by the other shall not constitute a waiver of any subsequent breach, whether or not similar in nature.

14. Miscellaneous

This Agreement will be construed under, enforced in accordance with and governed by California law. This Agreement may be changed only in writing signed by the parties. If a court of competent jurisdiction modifies any provision, the remaining provisions shall remain in effect. The invalidity or unenforceability of any term or provision of this Agreement, or portion thereof, shall not impair or affect the validity of any other term or provision of this Agreement. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to its subject matter. This Agreement is binding upon and shall inure to the benefit of the parties and their successors and assigns. This Agreement may not be assigned by either party without the prior written consent of the other. Nothing in this Agreement shall prevent **HCF** from merging or consolidating with a corporation or having assets sold or otherwise transferred to another entity. Failure to insist upon strict compliance with any of the terms, covenants or conditions hereof shall not be a waiver of such terms, covenants or conditions. No waiver or relinquishment of any right hereunder at any one time(s) be deemed a waiver or relinquishment of such right ay any other time(s). This agreement may be executed simultaneously in several counterparts, each of which shall constitute the same instrument.

15. Notices.

All notices, requests, demands and other communications shall be in writing and shall be deemed to have been given: (a) on the date of service, if served personally or by facsimile transmission prior to the close of normal business hours on a normal business day; (b) at the opening of the next business day, if served personally or by facsimile transmission after the close of normal business hours on a normal business day; (c) on the date of receipt if served by mail, whether first class or express delivery service, but in any event not later than two (2) business days after being deposited by the sender.

Notices shall be addressed as follows:

To **WHOLESALE (HCF):**

HCF Insurance Agency
21650 Oxnard Street, Suite 1530
Woodland Hills, CA 91367
Attn: Jason Adelman
Facsimile Number: (818) 716-2716

To **PRODUCER:**

Facsimile Number: () -

16. Attorneys' Fees.

In the event of any lawsuit or arbitration proceeding for breach of or to enforce any term or terms of this Agreement, the prevailing party in such proceeding shall be entitled to recover, in addition to any other recovery, its costs of suit or arbitration costs, and reasonable attorneys' fees.

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, other than a cause of action sounding in equity for which injunctive relief is sought, shall be determined by binding arbitration. Arbitration shall be held in Los Angeles County at a mutually agreed upon office or site, or if the parties are unable to agree, designated by the arbitrator. It shall be held before one arbitrator mutually agreed upon by the parties. If the parties cannot agree upon an arbitrator, each party shall elect a person unrelated to the party and each of them shall elect a neutral third party. These three individuals shall choose a neutral arbitrator. Arbitration shall proceed according to the rules of the American Arbitration Association or such other rules to which the parties may agree. The arbitration shall proceed according to the laws of the State of California. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

Allocation of Fees and Costs: The arbitrator shall, in the Award, allocate all or part of the costs of the arbitration to each party including the fees for the arbitrator, the fees for those choosing the arbitrator and reasonable attorneys' fees of the prevailing party.

17. Applicable Law and Venue.

Any dispute under this Agreement or arising out of it shall be decided under and pursuant to the laws of the State of California. Venue of any action or proceeding hereunder shall be in the State of California in the county or federal judicial district in which **BROKER** maintains its principal office.

18. Assignability.

Neither party may assign its rights or obligations hereunder without the prior written consent of the other party.

19. Binding Agreement.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

20. No Party the Maker.

No party shall be deemed maker of this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the **EFFECTIVE DATE**.

BROKER:

HCF INSURANCE AGENCY

By: _____

Its: _____

PRODUCER:

By: _____

Its: _____

EXHIBIT A - COMMISSION SCHEDULE

Preferred Producer Plan

This implementation plan will outline the Preferred Producer Plan (PPP) between PRODUCER and HCF.

The PPP is only applicable to the following companies:

American Safety Insurance (ASI) – Liability program

- 12% Commission on pure premium.
- Reduced \$2,300 per location Risk Management fee conducted by OmniSure Risk Management Company.
- Broker of Record Protection on all bound business placed with HCF.
- Minimum Premiums lowered to \$5,000.
- Retrospective Plans, Large Deductible Plans and Increased Aggregate limits offered.
- Fast turnaround on proposals.
- Limited information required for proposals.
- Increased credits on premiums.

Alaska National Insurance Company (ANIC) – Workers Compensation

- 10% Commission on pure premium
- Reduced \$1,000 per location Risk Management fee conducted by ANIC
- Broker of Record Protection on all bound business placed with HCF.
- Minimum premiums lowered to \$25,000.
- Retrospective Plans, large Deductible Plans offered.
- Fast turnarounds on proposals.
- No charge for pre onsite inspections.
- Limited information required for proposals.
- Increased credits on premiums.

Premium Commitments:

In order to offer this Preferred Producer Plan (PPP), a minimum of \$1,000,000 must be met in the first twelve (12) months. An evaluation will take place at the six (6) month mark. Unless stated otherwise, subsequent years shall be increased by 25% minimum, per year.

This contract will renew automatically at the beginning of each calendar year. This contract may be cancelled within ninety (90) days notice of cancellation from either party. If contract is cancelled, Preferred Producer Plan will still be applicable for business in the program up to the cancellation.

*When applicable, the terms on this exhibit may be changed by HCF.