

# BROKERAGE AGREEMENT



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## BROKERAGE AGREEMENT

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and/or between Empire State Brokerage Services, LLC. and its subsidiary offices, hereinafter referred to as ESBS and \_\_\_\_\_, an individual, partnership, corporation, registered firm, producer or agency, hereinafter referred to as BROKER

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth, the parties agree as follows:

### **1) LICENSING**

BROKER hereby warrants ESBS that they are properly licensed to transact business as an agent or broker in accordance with the provisions of the BROKER'S commercial domicile or any state in which the BROKER transacts business.

Upon request, the BROKER agrees to provide evidence to ESBS of such license(s).

### **2) PAYMENT OF PREMIUMS**

BROKER accepts full and entire responsibility for the collection and payment of all premiums (including minimum earned premiums), countersignature fees and resulting charges required by any state, or any other applicable fees and taxes; and BROKER agrees to make full payment to ESBS under the terms and conditions in place at the time of binding.

To effect the binding of an account with ESBS, BROKER agrees to request same in writing and agree that they are responsible for any earned premiums incurred in absence of furnishing deposit in accordance with the "Guarantee of Payment" provision of this agreement. All premiums will be rendered on a Monthly Statement basis for all items billed within the preceding month and due by the tenth of the month. This provision applies only to companies that bill ESBS on a similar statement basis. All other payments are due thirty (30)days after invoice date.

### **3) FINANCING OF PREMIUMS**

The BROKER shall forward to ESBS immediately upon receipt, or upon the BROKER'S knowledge thereof, all correspondence or notices with relation to the financing or proposed financing of premiums by any policyholder, and the BROKER agrees to instruct the premium finance company to pay ESBS for all premiums which have been financed. The BROKER shall not accept premium financing on policies for which the premium is short-term or short-term minimum earned.

The BROKER is not and shall not hold itself out as the agent of ESBS or the Insurance Company for the purpose of obtaining premium financing and agrees to hold ESBS harmless from any responsibility for payment to the premium finance company, and further agrees that financing arrangements do not diminish the responsibility for the timely payment of premiums by BROKER to ESBS, ESBS or any Insurance Company represented by them reserves the right to refund premiums directly to the premium finance company upon cancellation of a policy(ies). The BROKER shall refund applicable commission to the premium finance company or ESBS in the event of cancellation of a policy(ies).

### **4) GUARANTEE OF PAYMENT**

In consideration of ESBS accepting business from BROKER, BROKER guarantees payment to ESBS of all earned premiums Including but not limited to deposits, audits ,and endorsements on all policies of insurance placed by BROKER with ESBS. Such payment is due ESBS whether or not BROKER has collected the premium. BROKER agrees to pay ESBS a return commission on all returned premium adjustments at the same rate that was originally applied to such coverage. BROKER understands that ESBS, without limitation of its other rights and remedies, reserves the right to cancel any policy for non-payment of premium. BROKER further guarantees that they will be responsible for any extension of credit to Broker's client or any other person.

### **5) UNCOLLECTIBLE ADJUSTABLE PREMIUMS**

Additional premiums that have been determined by annual or interim audits and/or retrospective rating adjustments are fully earned on the last date that coverage was In effect BROKER can be relieved of responsibility for the collection of such premiums if within twenty (20)days from the date of ESBS' s invoice, BROKER notifies ESBS in writing that the BROKER has made diligent efforts to collect such premiums but is unable to do so and ESBS is subsequently relieved of its responsibility to the carrier.

BROKER waives any right to commission payments under this provision if premiums are subsequently collected by ESBS.

### **6) FIDUCIARY DUTIES**

BROKER here by agrees that any monies they collect, which are due or will fall due to ESBS, shall be held by BROKER in a fiduciary account in accordance with the applicable laws, rules and regulations of the state in which the fiduciary account is located.

### **7) RESPONSIBILITY OF BROKER**

BROKER understands that in providing insurance coverages, ESBS Is relying upon the accuracy of information provided by Insured through BROKER and submitted to ESBS. It is the responsibility of BROKER to disclose to ESBS the existence of any conditions which they are or reasonably should be aware of that may affect the Insurability of the insured.

Further, it is the responsibility of BROKER to inform ESBS as to the type and amount of insurance coverage to be considered for quotation. ESBS assumes no responsibility toward BROKER, insured, sub producer, or any other party with regard to the adequacy, amount or form of coverage obtained through any insurance carrier.

**8) CONFIDENTIALITY**

In connection only with BROKERS authorized by ESBS as Program Territory Representative, BROKER agrees to treat any proprietary information supplied by NJF as confidential. ESBS agrees that they shall not use any proprietary information supplied by the BROKER as confidential. Unless otherwise required by law, neither ESBS nor BROKER or their respective representatives will, without the other's written consent, disclose any proprietary information or other information about the relationship or program.

**9) INDEMNIFICATION**

ESBS agrees to indemnify and hold harmless BROKER and any affiliated company, their officers, directors, employees and agents, from and against any and all claims, damages, or liabilities, including reasonable attorneys' fees, costs and other expenses incurred by BROKER arising directly from any acts, omissions, or breach of this Agreement by ESBS. In addition, BROKER agrees to Indemnify and hold harmless ESBS and any affiliated company, their officers, directors, employees, and agents, from and against any and all claims, damages, or liabilities, including reasonable attorneys' fees, costs and other expenses incurred by ESBS arising directly from any acts, omissions, or breach of this Agreement by BROKER.

**10) LIMITATIONS OF RIGHTS AND REMEDIES**

BROKER will look only to ESBS for satisfaction of any liability, damages or cause of action in contract related to or arising under the terms and conditions of this Agreement. In no event will ESBS' s parent or sister companies, directors, officers, employees, contractors or agents be liable to BROKER or any third party for any contractual liabilities, losses, damages or expenses of any nature whatsoever, whether direct or indirect, resulting from the work performed by BROKER under this Agreement, more specifically outlined in the section discussing RESPONSIBILITY OF BROKER.

**11) CONTROL OF EXPIRATIONS**

The BROKER having accounted for and paid over all premium for which it may be liable, the. BROKER's records and the use and control of expirations shall remain the property of the BROKER and left to his undisputed possession and control.

The BROKER, in placing business under this Agreement, recognizes that he is a representative of the insured and not the agent or representative of Empire State Brokerage Services, LLC and/or any of its subsidiary operating companies.

**12) CLAIMS**

1. BROKER will report all claims and/or losses directly to ESBS as expeditiously as possible.
2. BROKER has no authority to assign losses to be adjusted nor may he negotiate or settle any loss on behalf of Company.

**13) EVIDENCE OF INSURANCE**

BROKER agrees to maintain Professional Liability Insurance coverage with a minimum limit of \$1,000,000 each occ./agg. BROKER further agrees to attach to this Agreement a certificate of insurance evidencing coverage that is acceptable to ESBS.

**14) PRIVACY CLAUSE**

Both you and we have obligations .to safeguard customer information under Public law No. 106-1 02 (the Gramm-Leach-Bliley Act) and other federal and state privacy laws and regulations (herein collectively referred to as "Privacy Laws"). In accordance with those Privacy Laws, you and we agree to the, following:

Each party hereto agrees to comply with the Privacy Laws and agrees further not to take any action to cause the other party to violate such Privacy Laws. If the applicable Privacy Laws change, each party shall take such action as is necessary to comply. We agree not to disclose or use any non-public personal information as defined in the Privacy Laws ("Confidential Information") except for the purposes contemplated under the Agency Agreement or as may be required by law. You agree not to disclose or use any Confidential Information received from us except for the purposes contemplated under the Agency Agreement or as may be required by law.

**15) COMPLETE AGREEMENT**

This signed Agreement incorporates all of the previous and contemporaneous discussions, representations, understandings, and agreements between the parties with respect to the subject matter representations have been made to or relied upon by BROKER. The terms and conditions expressed in this agreement shall not be altered except in writing, signed by an authorized officer of BROKER and an officer of ESBS.

**16) WAIVER**

No waiver or modification of this agreement shall be effective unless it be In writing and signed by a duly authorized officer of ESBS. The failure of ESBS to enforce any provision of this Agreement shall not constitute a waiver by ESBS of any such provision. The past waiver of a provision by ESBS or the BROKER shall not constitute a course of conductor a waiver in the future of that same provision.

IN WITNESS WHEREOF, the parties have caused this agreement to be signed as of the date first above written.

EMPIRE STATE BROKERAGE SERVICES, LLC.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

BROKER: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

**A copy of this Agreement should be retained for your records.**



# PRODUCER QUESTIONNAIRE



Legal Name of Producer: \_\_\_\_\_

D/B/A or A/K/A: \_\_\_\_\_

Producer Mailing Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_  
(including area code)

Date Established: \_\_\_\_\_ Federal Tax ID: \_\_\_\_\_

Check the options below that describe your organization:

1. Corporation  Partnership  Individual

2. Wholesale Broker  Retail Broker

Broker License #: \_\_\_\_\_ State: \_\_\_\_\_  
*Please attach a copy of this license*

Errors and Omissions Coverage:

Carrier: \_\_\_\_\_ Limits: \_\_\_\_\_ Deductible: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

**Please attach copy of your E&O Binder, Declaration, or Renewal Certificate**

Fidelity Coverage:

Carrier: \_\_\_\_\_ Limits: \_\_\_\_\_

**Complete the following questions in detail if applicable:**

1. When was present ownership established? \_\_\_\_\_

2. If present ownership or structure was established within the last five years, list previous business entities purchased, merged, or consolidated with present ownership:

<i>Previous Entity</i>	<i>Year Acquired</i>	<i>Purchased/Merged/ Consolidated</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. Is Producer, engaged in, owned by, controlled by, associated and/or affiliated with any business interest:  No

If Yes, explain: \_\_\_\_\_

4. Names of subsidiaries of your operation, description of operations, and percentage owned by you: \_\_\_\_\_



5. Breakdown of producer's staff (include part-time)      Total Staff: \_\_\_\_\_  
 Principals, Partners, Owners, Directors, Officers, Managers: \_\_\_\_\_  
 Account Executives: \_\_\_\_\_  
 Employed Solicitors, Brokers: \_\_\_\_\_  
 Other employees: \_\_\_\_\_

6. Key personnel in your organization:

<i>Name</i>	<i>Title or Position</i>	<i>Year started in insurance</i>	<i>Year started with producer</i>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

7. Does producer operate outside it domicile state?     Yes     No

8. Indicate the major geographic area(s) which you service:  
 \_\_\_\_\_

9. Number of branch, and/or production offices: \_\_\_\_\_  
 (List locations on a separate attachment)

10. Will branches submit business direct to our office?     No     Yes

If yes, submit details:

11. State your approximate percentage breakdown of total annual volume by source and line of business:

<u>Source of Volume</u>		<u>Line-of-Business</u>	
Agent .....	_____ %	Construction General Liability	
Broker .....	_____ %	and Auto .....	_____ %
MGA .....	_____ %	Construction WC .....	_____ %
Surplus Lines Broker .....	_____ %	Surety .....	_____ %
Consultant (fee) .....	_____ %	Other .....	_____ %
Other (detail below) .....	_____ %		

Of the above construction %, what % is attributable to:

Mechanical/Electrical .....	_____ %
Interior .....	_____ %
GC/CM .....	_____ %
Other .....	_____ %

12. Briefly describe the Lines-Of-Business or Types of Insurance your company specializes in handling:

13. Producer's total volume in the last three(3) years:

<u>Year</u>	<u>Volume</u>
_____	_____
_____	_____
_____	_____

14. List major companies you represent and your premium volume:

<i>Company Name</i>	<i>Years Represented</i>	<i>Annual Volume</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

15. List companies for which you are a Managing General Agent:

<i>Company Name</i>	<i>Annual Volume</i>	<i>Current Yr. Loss Ratio</i>	<i>Prior 3 Yrs. Loss Ratio</i>
_____	_____	_____	_____
_____	_____	_____	_____

16. Volume to our office will come from the following sources:

- New business to producer: \$ \_\_\_\_\_
- Transferred from current discontinued company: \$ \_\_\_\_\_
- Transfer business from discontinued company: \$ \_\_\_\_\_

17. List your banks name and address

Is your organization subjected to audits by a Certified Public Accountant?

No  
 If Yes, Frequency \_\_\_\_\_

**A Principal, Partner, or Officer must complete this section**

Has any Principal, Partner or Officer of your office ever been charged or convicted of fraud and/or a felony?  Yes  No

Has your Insurance License ever been suspended and/or revoked, or have you ever been by an Insurance Department?  Yes  No

To be considered for approval as a producer for Empire State Brokerage Services, LLC your signature and title are required on this document. By signing this document, you are confirming the information contained within this questionnaire is correct and there have been no material misrepresentations.

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_