



CMS, LLC / CMSX, LLC
Brokerage Agreement
2018

This agreement is entered into this _____ day of _____ by and between CMS, LLC / CMSX, LLC (wholesaler's name) and its subsidiary offices, herein referred to as WHOLESALER and _____ (broker's name), an individual, partnership, corporation, registered firm, producer or agency, hereinafter referred to as BROKER. This agreement replaces all previous agreements or contracts, whether oral or written, and shall continue in full force and effect until amended, suspended or terminated.

WHEREAS the BROKER desires to place business with WHOLESALER and WHOLESALER desires to consider such business now, therefore, WHOLESALER and BROKER agree to be bound by the following terms and conditions with respect to such offering:

I. LEGAL RELATIONSHIP

The BROKER, in placing business under this agreement, recognizes that he is the representative of the insured and not the agent, representative or employee of WHOLESALER and/or any of its subsidiary companies. Nothing in this agreement shall be construed to imply an employer-employee relationship between WHOLESALER and BROKER.

II. BROKER'S AUTHORITY

Subject to the terms of this agreement, BROKER shall:

- a. Solicit applications of insurance;
- b. Bill and collect premiums on all policies, contracts, binders, riders and endorsements pursuant to this agreement;
- c. Maintain a sufficient staff to perform his duties under this agreement; and
- d. Hold all monies received pursuant to this agreement in a fiduciary capacity.

III. LICENSING

BROKER warrants that he is properly licensed to transact business as a 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 WHOLESALER of such license(s).

IV. PAYMENT OF PREMIUMS

BROKER agrees to remit to WHOLESALER no less than 25 percent of the total premium due, unless otherwise agreed to in writing by WHOLESALER within 5 days of the inception date of each binder or policy. The balance of the premium is due to WHOLESALER no later than 30 days after binding of coverage.

All other payments are due 30 days after invoice date or effective date whichever comes first unless otherwise agreed to in writing by WHOLESALER.

V. GUARANTEE OF PAYMENT

In consideration of WHOLESALER accepting business from BROKER, BROKER guarantees payment to WHOLESALER of all earned premiums including, but not limited to, deposits and endorsements on all policies of insurance placed by BROKER with WHOLESALER except as provided in section VI of this agreement. Such payment is due WHOLESALER whether or not BROKER has collected the premium. BROKER agrees to pay WHOLESALER a return commission on all returned premium adjustments at the same rate that was originally applied to such coverage. BROKER understands that WHOLESALER, without limitation of its other rights and remedies, reserves the right to cancel any policy for nonpayment of premium. BROKER further guarantees that they will be responsible for the return of any premiums due a finance company if funds are directly released to them.

VI. UNCOLLECTIBLE ADJUSTABLE PREMIUMS

Additional premiums that have been determined by annual or interim audits and/or retrospective rating adjustments are fully earned and guaranteed by the BROKER on the last date that coverage was in effect.

BROKER is relieved of responsibility for the collection of such premiums if within twenty five (25) days from the date of the WHOLESALER'S invoice, BROKER notifies WHOLESALER in writing that BROKER has made diligent efforts to collect such premiums but is unable to do so.

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

VII. RESPONSIBILITIES OF BROKER

BROKER understands that in providing coverage, WHOLESALER is relying upon the accuracy of information provided by the insured through BROKER and submitted to WHOLESALER. It is the responsibility of BROKER to disclose to WHOLESALER the existence of any conditions, which he is or reasonably should be aware of that, may affect the insurability of the insured.

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

VIII. CLAIMS

BROKER will report all claims and/or losses as expeditiously as possible to WHOLESALER or insurer. BROKER has no authority to assign losses to be adjusted nor may he negotiate or settle any loss.

IX. COMPENSATION

WHOLESALER shall pay BROKER a percentage of the premium for business produced by BROKER and placed through WHOLESALER.

BROKER shall refund return commissions on policy cancellations or reductions in coverage, in each case at the same rate at which such commissions were originally earned.

X. CONFIDENTIALITY

In connection with this agreement, BROKER agrees to treat any proprietary information supplied by WHOLESALER as confidential. WHOLESALER agrees to treat any proprietary information supplied by the BROKER as confidential. Unless otherwise required by law, neither WHOLESALER or BROKER or their respective representatives will, without the other's written consent, disclose any proprietary information or other information about the relationship or program.

XI. INDEMNIFICATION

WHOLESALEER agrees to indemnify and hold harmless BROKER, any affiliated company, their officers, directors, employees and agents from and against any and all claims, damages, liabilities, including reasonable attorney's fees, costs or other expenses incurred by the BROKER arising directly from any acts, omissions or breach of this agreement by WHOLESALEER to the extent that WHOLESALEER is legally liable. In addition BROKER agrees to indemnify and hold harmless WHOLESALEER any affiliated company, their officers, directors, employees and agents from and against any and all claims, damages or liabilities, including reasonable attorney's fees, costs or other expenses incurred by WHOLESALEER arising directly from any acts, omissions or breach of this agreement by the BROKER to the extent that BROKER is legally liable.

XII. OWNERSHIP/CONTROL OF EXPIRATIONS

The BROKER having accounted for and paid over all premiums for which it may be liable, BROKER'S records and the use and control of expirations shall remain the property of BROKER and left to his undisputed possession and control. As such WHOLESALEER will not use such information to solicit insurance and shall not disclose such information to anyone other than any company, agency or underwriter represented by WHOLESALEER in connection with this agreement.

XIII. TERMINATION

This agreement may be terminated by either party upon 30 days written notice of termination to the other. Such termination, however, will not affect the rights of the parties including, but not limited to, coverage, obligation to pay premiums, commissions payable and return commissions due on the date of termination.

XIV. EVIDENCE OF INSURANCE

BROKER agrees to maintain an errors and omissions liability policy coverage with a per claim limit and an aggregate limit each not less than \$1,000,000, underwritten by an insurer rated not less than A- by the A.M. Best Company. BROKER further agrees to attach to this agreement a certificate of insurance evidencing coverage that is acceptable to WHOLESALER and to maintain such coverage at all times this agreement is in effect.

Further, WHOLESALER also agrees to maintain an errors and omissions liability insurance policy coverage with a per claim limit and an aggregate limit each not less than \$1,000,000, underwritten by an insurer rated not less than A- by the A.M. Best Company.

XV. COMPLETE AGREEMENT

This signed agreement incorporates all of the previous and contemporaneous discussions, representations, understandings and agreements between the parties with respects to the subject matter. 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 WHOLESALER.

XVI. ASSIGNMENT

This agreement is nonassignable and the BROKER may not assign or delegate any of the BROKER'S rights, interests, or obligations under this agreement without the express written consent of WHOLESALER.

XVII. WAIVER

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

XVIII. SEVERABILITY

If any provision hereof shall be held to be invalid or unenforceable, such legal defect shall not affect any other provision of this agreement.

XIX. JURISDICTION

This agreement shall be governed by the laws of the State of New York, and any legal proceeding in connection with this agreement shall be brought only in a court of competent jurisdiction in the state of New York.

In witness thereof, the parties have caused this agreement to be signed as of the date first above written:

WHOLESALER

By _____

Title _____

Date _____

BROKER

By _____

Title _____

Date _____

2/03