

# MACLEAN, ODDY & ASSOCIATES, INC.

As used in this Agreement, the term "MOA" shall refer to Maclean, Oddy & Associates, Inc. and any other entities that may be affiliated through common ownership and/or managed by MOA as agent for maintaining Producer relationships.

## Agreement between MOA

and

---

(referred herein as Producer)

Whereas, Producer is desirous of placing contracts of insurance through companies represented by MOA (those companies referred herein as Insurer) and utilizing the underwriting facilities, knowledge, and services of MOA, and

In consideration of MOA placing risks of Producer's clients (referred herein as Insured) from time to time with an Insurer or Insurers and for mutual promises and covenants set forth in this document it is agreed as follows:

1. **PRODUCER'S AUTHORITY** Producer is an independent contractor and is an agent for the applicant, and acts on behalf of the applicant for insurance, and is not acting as an agent, subagent or broker for MOA. This agreement or the 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 MOA and Producer.

MOA shall be the sole judge of whether to accept, reject, or submit to Insurer for acceptance any applications of insurance for risks submitted by Producer and shall incur no liability for failure to place any such risk. Producer shall have no authority to bind any Insurer for MOA, commit to or issue binders, policies, or other written evidence of insurance on behalf of MOA or to make representations not strictly in accordance with the provisions of the policies and contracts placed under the terms of this Agreement. Producer shall not make, alter or vary any terms of coverage, or modify terms of payment of any premium or deposit, or incur any liability for MOA.

2.
  - A. **LICENSES** Producer warrants and represents that Producer is properly licensed to transact business as an agent or broker in accordance with the insurance laws, rules and regulations of each state in which Producer transacts business. Producer will maintain such license or licenses in good standing for the duration of this agreement and will furnish proof of such licensing upon request by MOA. Producer will promptly notify MOA of any suspension, cancellation or disciplinary action in respect of its license(s).
  - B. Producer shall not place an order with MOA for any excess or surplus lines insurance unless Producer shall have first complied with any applicable state laws requiring the Producer to attempt to procure such insurance from insurers authorized to do business in the State of residence of the proposed Insured. The party responsible for the payment of surplus lines taxes shall also be responsible for full compliance with all relevant surplus lines laws of the pertinent State, including but not limited to, the collection and payment of surplus lines taxes, filing of affidavits, and providing the appropriate statutory and/or regulatory disclosure legends on all documents.

3. A. **PREMIUM AND ACCOUNTS** Producer guarantees the full payment due MOA of all premiums including deposit, earned, extension and adjustable premiums, fees, plus applicable state and local taxes, less commission, on every insurance contract bound or written for Producer under this Agreement. *Producer shall be liable to MOA for the payment of all premiums, fees and taxes whether or not collected by the Producer.* MOA shall allow Producer, as commission, a percentage of the premium written at the rate agreed upon by MOA and Producer from time to time. MOA's billings may take the form of Confirmation of Insurance, invoices or statements. The net balance will be due and payable as indicated on such billings and may vary based upon the credit terms of the issuing company. The omission of any item(s) from a monthly statement or separate invoice shall not: (1) affect the Producer's responsibility to account for and pay all amounts due; (2) prejudice the rights of MOA to collect all amounts due from Producer; and (3) extend the time within which Producer must make payment. *Producer's obligation to make payment to MOA is not contingent upon the issuance of a policy.* Any credit extended to the Insured or others shall be at the sole risk and responsibility of the Producer unless agreed to in writing by MOA.
- B. Notwithstanding the provisions set forth above, in the event that an additional premium shall be due under an applicable policy as a result of policy audit, which results in an increase in premium due for a particular policy, the Producer will make all reasonable efforts to collect amounts due. Producer will be relieved of responsibility for premium, so adjusted or determined, if Producer notifies MOA in writing within 20 days after said invoice date, stating that Producer has made diligent efforts and is unable to collect such premiums and, *provided the Insurer releases MOA of liability for such premium.* A copy of the Producer's invoice to the Insured, as well as copies of correspondence pertaining to the collection, must be sent with this notification. Failure to give MOA timely notice shall constitute Producer's acceptance of responsibility to pay such premiums. If commission applies to these adjustments, none will be allowed to Producer on premiums collected directly by MOA or Insurer under this provision.
- C. If, after the expiration of sixty (60) days from the date liability was assumed by the insurance carrier, MOA has not received payment due for the applicable coverage, MOA may, at its option, collect from the Insured the premium due. In the event MOA collects the premium or any part thereof from the Insured, Producer shall not be entitled to any commission on the premium so collected. Attempts by MOA to collect from the Insured shall not relieve Producer of liability to MOA except to the extent of amounts actually collected by MOA from the Insured, less the expense of such collection.
- D. In the event MOA shall have to bring any action or proceeding to enforce collection of any amount due under the terms of this agreement Producer agrees to pay all costs incident thereto, including reasonable attorney's fees, incurred by reason of such action or proceeding.
- E. Producer shall be liable to MOA and shall pay return commissions at the same rate as originally allowed to Producer for all return premium adjustments or cancellations, including return premium on cancellations ordered or made by the Insurer or Finance Company. Such return commission shall be paid to MOA by the due date indicated on the billing document. If a return premium becomes due under any contract of insurance and MOA has been issued a credit, or payment has been rendered, for such premium by MOA's Insurer; MOA will pay to Producer such return premium less the unearned portion of any commission previously retained by the Producer.

4. **FINANCED PREMIUMS** On all policies for which premiums, which have been financed, MOA will remit any return premium, less unearned commission, directly to the Finance Company unless otherwise specified. The ultimate liability of MOA for payment to a Finance Company, Producer or Insured shall never exceed the amount of return premium less unearned commission developed. Producer agrees to hold MOA harmless from any responsibility for payment to Finance Company and further agrees that financing arrangements do not diminish the responsibility for the timely payment of premium by the Producer.
5. **TRUST FUND** Producer shall hold funds in a fiduciary account for business generated under this Agreement to the extent required by the insurance laws of each state in which Producer conducts business. Provided Producer is in compliance with all terms of this Agreement, Producer shall be entitled to any interest earned on said funds while so held by the Producer.
6. **ERRORS AND OMISSIONS COVERAGE** Producer now has and shall maintain insurance agent's Errors and Omission coverage with a minimum policy limit of one million dollars (\$1,000,000) while this Agreement is in force and will furnish annual proof of such coverage to MOA. Producer will provide MOA with prompt written notice of any change, cancellation or other termination of this Policy.
7. **CANCELLATION OF INSURANCE** MOA will not recognize flat cancellations unless: (1) written evidence of coverage prior to the inception date of the contract for insurance is provided; and (2) *such credit has been granted MOA by its Insurer*. Earned premium shall be computed and charged on every Confirmation of Insurance, policy or contract cancelled after the inception date in accordance with the cancellation provision of the applicable contract and/or rules of the Insurer. If Producer does not make timely payment of any sums due MOA, then MOA may, without limitation of other remedies, initiate with Insurer to cancel the Confirmation of Insurance, policy or contract for non-payment. If coverage is bound by MOA all additional fees charged by MOA for the entire policy term shall be fully earned upon binding. Producer hereby acknowledges that MOA, or its Insurers, is under no duty to reinstate a policy if the policy is cancelled. Producer deposits made directly to MOA's lock box for payment on a delinquent account will not constitute acceptance of these funds by MOA with regard to reinstating any policy being cancelled. Producer shall not accept from Insured the late payment of premiums with prior knowledge, whether actual or constructive, that the policy for which the late premiums have been collected is cancelled.
8. **CLAIMS** Producer shall notify MOA promptly of any claims, suits or notices of loss (or circumstances which might reasonably be expected to result in a claim, suit or notice of loss) and shall cooperate fully with MOA to facilitate the investigation and adjustment of any claim when and as requested by MOA.
9. **ADVERTISING** Producer shall not cause any advertisement referring to or using the name of MOA or Insurer, or issue or cause to have issued any letter, circular, pamphlet, or other publication or statement so referring, without the express written consent of MOA. In the event MOA suffers a loss or expense arising out of any unauthorized advertisement, publication or statement of the Producer, the Producer shall be liable for and hereby agrees to indemnify MOA and hold MOA harmless from all resulting damages, fines, penalties and costs.
10. **NO RESPONSIBILITY OR GUARANTEE** Producer understands that MOA assumes no responsibility toward any policy with regard to the adequacy, amount or form of coverage and agrees to indemnify and hold MOA harmless from any claim asserted against MOA in following the instructions of the Producer. MOA is not an insurer and does not guarantee the financial condition of the Insurers with whom it may place risks. MOA shall have no liability for non-payment of claims due to the insolvency of an Insurer, or otherwise, under contracts of insurance placed by MOA.

11. **WAIVER OR DEFAULT** Failure of MOA to enforce any provision of this Agreement or to terminate it because of a breach hereof shall not be deemed to be a waiver of such provisions or of any breach committed by the Producer.
12. **SEVERABILITY** If any clause or provision of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity or any other clause or provision, which shall remain in full force and effect. Each of the provisions of the Agreement shall be enforceable independently of any other provision unless expressed otherwise herein.
13. **HOLD HARMLESS** Producer shall indemnify, defend and save harmless MOA from any loss, claim, liability, damage and expense (including attorney's fees and expenses of litigation) which MOA may incur or suffer by reason of material inaccuracy of any representation or breach by Producer of any term, condition, or warranty contained in this agreement.
14. **TERMINATION OF AGREEMENT** This Agreement may be terminated immediately at any time by either party giving written notice to the other by certified mail, return receipt requested. This Agreement will also terminate: (1) automatically, if any public authority cancels or declines to renew the Producer's license or certificate of authority, (2) automatically, on the effective date of the sale, transfer, or merger of Producer's business with the provision MOA may, upon review, appoint the successor as a Producer, or (3) immediately, upon either party giving written notice to the other of termination because of fraud, insolvency, failure to pay balances, or willful or gross misconduct. All representations and obligations of the Producer herein shall survive the termination of this Agreement.

After the date of termination of this Agreement, the Producer shall complete the collection and accounting to MOA for all premiums, commissions and other transactions unaccounted for on the date of termination or arising thereafter in respect of outstanding policies of insurance, including but not limited to, return premium and return commissions. Outstanding policies will be permitted to run to expiration.

15. **DISPUTE RESOLUTION** THE PARTIES TO THIS AGREEMENT HEREBY EXPRESS THAT ALL DISPUTES, CONTROVERSIES OR CLAIMS OF ANY KIND AND NATURE BETWEEN THE PARTIES HERETO, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, ITS INTERPRETATION, PERFORMANCE OR BREACH, SHALL BE RESOLVED EXCLUSIVELY BY THE FOLLOWING DISPUTE RESOLUTION MECHANISMS:
  - A. Negotiation – The parties hereto shall first engage in a good faith effort to negotiate any such controversy or claim by communications between them. Said negotiations may be oral or written. To the extent they are oral, they must be confirmed in writing.
  - B. Should the above-stated negotiations be unsuccessful, the parties shall engage in mediation pursuant to the American Arbitration Association Commercial Mediation Rules, or such other mediation rule as the parties may otherwise agree to choose.
  - C. Should the above-stated mediation be unsuccessful, the parties shall agree to arbitrate any such controversy or claim with the express understanding that this Agreement is affected by interstate commerce in that the goods and services which are the subject matter of this Agreement, pass through interstate commerce. Said arbitration shall be conducted pursuant to the American Arbitration Association Commercial Arbitration Rules (the "Arbitration Rules") or such other arbitration rule as the parties may otherwise agree to choose.

- D. The cost of the above-stated mediation shall be borne equally between the parties. The cost of the above-stated arbitration shall be borne by the party against whom an award is issued and in favor of the prevailing party. In either event, each party shall bear the cost of their own attorney's fees and costs.

THE PARTIES UNDERSTAND AND AGREE: (i) THAT EACH OF THEM IS WAIVING RIGHTS TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO A JURY TRIAL; (ii) THAT PRE-ARBITRATION DISCOVERY IN ARBITRATION PROCEEDINGS IS GENERALLY MORE LIMITED THAN AND DIFFERENT FROM COURT PROCEEDINGS; AND (iii) THAT THE ARBITRATORS' AWARD IS NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING, AND (iv) EITHER PARTY'S RIGHT OF APPEAL OR TO SEEK MODIFICATION OF RULINGS BY THE ARBITRATORS, IS STRICTLY LIMITED.

THE VENUE FOR MEDIATION AND/OR ARBITRATION UNDER THIS PARAGRAPH SHALL BE IN THE CITY OF DALLAS, STATE OF TEXAS.

16. **APPLICABLE LAWS** This Agreement shall be deemed to have been made and performed in Dallas, Texas and shall be governed by, and construed and enforced in accordance with the laws of the State of Texas. The rights, duties and obligations of the parties to this agreement to such extent they are not dealt with specifically or by necessary implication in this instrument shall be in accordance with the customs prevailing in the surplus lines and special risks insurance business in the state in which the Producer is domiciled.
17. **PRIOR AGREEMENT** This Agreement constitutes the entire agreement between MOA and Producer and supersedes and replaces any previous agreements between MOA and Producer. No oral promises or representations shall be binding, nor shall this Agreement be modified, except by agreement in writing and executed by MOA. This Agreement shall apply to current policies already placed through MOA and in force at the date hereof and all future policies which may be placed by MOA for Producer.
18. **EXECUTION AND ACCEPTANCE OF AGREEMENT** Producer acknowledges that a breach of any of the terms, conditions, or provisions of this Agreement by the Producer may give rise to a cause of action by MOA against the Producer and/or may result in disciplinary action by MOA, including but not limited to, the termination of this Agreement, all in the sole discretion of MOA. Each individual who executes this Agreement in a representative capacity represents and warrants that he or she has the full right and power to execute this Agreement and to bind the entity or individuals on whose behalf he or she so signs. If the Producer is an individual, the individual must sign; if the Producer is a partnership, one of the partners must sign; if the Producer is a corporation, an authorized officer must sign and indicate the title of such authorized officer. The parties hereto agree this Agreement shall not become effective until accepted by MOA.

PRODUCER: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

(Must be Owner, Partner or Authorized Officer)

WITNESS: \_\_\_\_\_

DATE: \_\_\_\_\_

Agreement Accepted and Effected by MOA.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Please complete, sign and return **ORIGINAL AGREEMENT** along with the following:

1. Copy of your **INSURANCE LICENSE issued by your state of residence.**
2. Copy of your **E & O POLICY DEC PAGE.**
3. Completed **CONFIDENTIAL PRODUCER PROFILE.**

Please check one: Corporation [  ] Partnership [  ] Sole Proprietorship [  ]

Federal Tax I.D. Number: \_\_\_\_\_ (SS Number if Individual)

Surplus Lines License Number: \_\_\_\_\_ (If applicable)

# MOA CONFIDENTIAL PRODUCER PROFILE

## General Information

Name of Firm: \_\_\_\_\_

Year Firm Established: \_\_\_\_\_

C-Corporation: \_\_\_\_\_

Joint Venture: \_\_\_\_\_

Individual: \_\_\_\_\_

S-Corporation: \_\_\_\_\_

Partnership: \_\_\_\_\_

Other: \_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

List of all owners of the firm showing interest:

\_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Web Site: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Premium Volume: \_\_\_\_\_ Commercial % \_\_\_\_\_ Personal % \_\_\_\_\_

Percentage placed through wholesale brokers \_\_\_\_\_ %

## (A.) Errors & Omissions and (B.) Fidelity Insurance

Carrier: A. \_\_\_\_\_ B. \_\_\_\_\_

Limits: Occurrence A. \_\_\_\_\_ B. \_\_\_\_\_  
Aggregate A. \_\_\_\_\_ B. \_\_\_\_\_

Deductible: A. \_\_\_\_\_ B. \_\_\_\_\_

Expiration Date: A. \_\_\_\_\_ B. \_\_\_\_\_

*Attach a copy of your current E&O and Fidelity policy dec page.*

**Financial Information**

Name of Bank: \_\_\_\_\_

Address: \_\_\_\_\_

Bank Officer: \_\_\_\_\_

Contact Name: \_\_\_\_\_

*Please provide a copy of your latest Financial Statement*

**License**

States Licensed	License Number	States Licensed	License Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Does your agency hold a Surplus Lines License ? \_\_\_\_\_

If yes, please enter License Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Name of individual who holds surplus lines license: \_\_\_\_\_

Has a license of the firm or any licensed member been revoked, suspended or any fine or penalty imposed by any Insurance Regulatory Authority \_\_\_\_\_

If so, describe in detail \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Attach a copy of the above licenses.*

**Agency Personnel**

Title	Name	Direct Number	E-Mail
CEO / President:	_____	_____	_____
Marketing Director:	_____	_____	_____
Umbrella Contact:	_____	_____	_____
GL Contact:	_____	_____	_____
Property Contact:	_____	_____	_____
E&O/D&O Contact:	_____	_____	_____
Accounting Contact:	_____	_____	_____
Claims Contact:	_____	_____	_____

**Market Data**

List major companies and wholesale brokers in order of premium volume.

**Companies**

**Wholesale Brokers**

_____	_____
_____	_____
_____	_____
_____	_____

**Prepared By:** \_\_\_\_\_ **Date:** \_\_\_\_\_