

Chenango Excess and Surplus Inc Brokerage Agreement

This agreement is entered into this ____ day of _____ by and between Chenango Excess and Surplus Inc. and its subsidiary offices, herein referred to as WHOLESALER and _____, 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:

1. solicit applications of insurance;
2. bill and collect premiums on all policies, contracts, binders, riders and endorsements pursuant to this agreement;
3. maintain a sufficient staff to perform his duties under this agreement; and
4. 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 **30** percent of the total premium due. The down payment is due on or before the inception date of each binder or policy. The balance of the premium is due to WHOLESALER no later than **10** days after binding of coverage.

All other payments are due **10** days after invoice date 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, audits, 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. 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.

Upon receipt of new, renewal and/or amended policies, the BROKER assumes the responsibility for review of coverages, limits, terms, conditions, and exclusions for accuracy. WHOLESALER assumes no responsibility with regard to reviewing policies for accuracy or following-up on change requests or cancellations.

VII. 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.

VIII. COMPENSATION

WHOLESALER shall pay BROKER a percentage of the premium for business produced by BROKER and placed through WHOLESALER based on the applicable commission schedule in effect as of the inception date of each policy or renewal. WHOLESALER will pay such commissions provided that:

1. BROKER is properly licensed;
2. BROKER has paid all amounts that are due and owing to WHOLESALER;
3. BROKER is the broker of record at the inception of the policy or renewal;
4. BROKER agrees that undistributed commissions in the hands of the WHOLESALER at any time may be held by us, applied to and constitute an offset against any moneys due us from you;
5. BROKER agrees to refund to WHOLESALER any return commission on policy cancellations, renewals not taken, and premium reductions at the same rate that those commissions were originally paid to you.

WHOLESALE may change the commission schedule at any time upon prior written notice to you.

Upon termination of this Brokerage Agreement, between the WHOLESALE and the BROKER, commissions on renewal business, if any, shall be paid at the rate of two percent (2%), unless otherwise required by law.

IX. CONFIDENTIALITY

In connection with this agreement, BROKER agrees to treat any proprietary information supplied by WHOLESALE as confidential. WHOLESALE agrees to treat any proprietary information supplied by the BROKER as confidential. Unless otherwise required by law, neither WHOLESALE 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.

X. INDEMNIFICATION

WHOLESALE 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 WHOLESALE to the extent that WHOLESALE is legally liable. In addition BROKER agrees to indemnify and hold harmless WHOLESALE, 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 WHOLESALE arising directly from any acts, omissions or breach of this agreement by the BROKER to the extent that BROKER is legally liable.

XI. 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 WHOLESALE 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 WHOLESALE in connection with this agreement.

XII. 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.

XIII. RIGHTS AFTER TERMINATION

Upon and after the expiration or termination of this Agreement:

1. all authority given to BROKER by this Agreement ends;
2. WHOLESALE may notify policyholders of the expiration or termination of this Agreement;

3. BROKER will promptly return all of our manuals, forms, records, materials, applications, rate guides, Underwriting and Processing Rules and Procedures, software, and any other property that we have furnished to you;
4. all in force policies and renewals will continue to normal expiration subject to their terms;
5. except as otherwise provided, BROKER'S records and the use and control of expirations of the business produced by BROKER shall remain your property and shall be left in your undisputed possession;
6. notwithstanding paragraph e of this section, the ownership of the records and the use and control of expirations and the goodwill relating thereto shall be vested in us in the event that this Agreement is terminated because:
 - a. BROKER has failed to timely account for and remit all monies due and owing to WHOLESALER;
 - b. BROKER has abandoned his/her business or otherwise have ceased to service our insureds;
or
 - c. BROKER has had his/her license suspended or revoked by the New York Insurance Commissioner.

In such event, WHOLESALER shall have the rights of the holder of a security interest granted by law, including but not limited to the rights of foreclosure to effectuate such security interest, and BROKER hereby agrees to peaceably surrender possession of such records to us upon demand.

Notwithstanding the foregoing, unless otherwise notified by WHOLESALER in writing, the BROKER will continue to have authority to submit requests for endorsements to policies and renewals outstanding after the expiration or termination of this Agreement, and BROKER may retain necessary Company materials to exercise this authority.

XIV. EVIDENCE OF INSURANCE

BROKER agrees to maintain an errors and omissions liability insurance policy coverage with a per claim limit and an aggregate limit each not less than \$500,000/1,000,000, underwritten by an insurer rated not less than B+ 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 while 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 \$1,000,000/1,000,000, underwritten by an insurer rated not less than B+ 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 respect 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 non-assignable 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 such 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 _____, and any legal proceeding in connection with this agreement shall be brought only in a court of competent jurisdiction in the state of _____.

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 _____

**Chenango Excess and Surplus Inc
Addendum to Brokerage Agreement**

Broker Name & Address

I am aware that coverage quoted may be issued through an insurer that is not licensed by the State of _____, and therefore not subject to the rules and regulations promulgated by the _____ State Insurance Department. I am aware that such carriers are not protected by the _____ State Insolvency Fund.

I understand that any insurance licensee has an affirmative responsibility to inquire into the financial solvency of any non-admitted insurer that he recommends to his client.

I further understand that no coverage can be bound until all of the requirements of the _____ Insurance Department for placing coverage with non-admitted carriers have been completely fulfilled.

I am fully aware that carriers not licensed by the State of _____ may have unique terms and conditions and exclusions not found in standard policy forms and it is my responsibility as the licensed broker to understand and communicate to the insured the terms, conditions and exclusions of the coverage I am procuring on behalf of my client.

This addendum is attached and made part of the brokerage agreement between Chenango Excess & Surplus, Inc., and _____ with the same force and effect as if it were included in the actual brokerage agreement.

WHOLESALER:

Chenango Excess and Surplus, Inc.

By: _____

Title: _____

Date: _____

BROKER:

By: _____

Title: _____

Date: _____