

Member Agent's Agreement

Version 2.1.2017

IMPORTANT – THIS IS A LEGAL AGREEMENT BETWEEN YOU (“Member”) AND Consolidated Agency Partners, Inc. dba CAPNet Insurance Agency (“CAPNet”). BEFORE ACCESSING OR USING ANY PART OF THE PROGRAM OR SERVICES, YOU SHOULD READ CAREFULLY THE FOLLOWING TERMS AND CONDITIONS CONTAINED IN THIS MEMBER AGENT’S AGREEMENT AS THEY GOVERN YOUR ACCESS TO AND USE OF ANY PROGRAMS, SERVICES, TOOLS, MATERIALS, OR INFORMATION AVAILABLE THROUGH CAPNet. CAPNet IS WILLING TO ALLOW THE USE OF CAPNet PROGRAMS, SERVICES, TOOLS, MATERIALS AND WEBSITES ONLY ON THE CONDITION THAT YOU ACCEPT AND AGREE TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS MEMBER AGENT’S AGREEMENT. IF YOU DO NOT AGREE WITH THIS MEMBER AGENT’S AGREEMENT, YOU ARE NOT GRANTED PERMISSION TO ACCESS OR OTHERWISE USE THE CAPNet PROGRAMS, SERVICES, TOOLS, MATERIALS AND WEBSITES AND ARE INSTRUCTED TO EXIT THE WEBSITE IMMEDIATELY.

This MEMBER AGENT’S AGREEMENT (“Agreement”) between (“Member”) and Consolidated Agency Partners, Inc. dba CAPNet Insurance Agency (“CAPNet”) is effective as of the date that all materials outlined below in this agreement are provided by Member and received by CAPNet.

WHEREAS, Member wishes to place business through CAPNet for acceptance by admitted carriers and/or non-admitted carriers in connection with programs administered by CAPNet, in accordance with applicable laws and regulations; and

WHEREAS, CAPNet is willing to offer its facilities to Member for placement of such insurance, all the foregoing in accordance with the laws and regulations pertaining thereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter expressed, the parties hereto intending to be legally bound, agree as follows:

1. For Program placements under this Agreement, Member will be paid the compensation set forth in Exhibit A attached hereto, subject to its compliance with said Exhibit A and the other material obligations set forth herein. Member warrants that it holds a Broker/Agent’s license issued by the state of its domicile and all other licenses required to do business hereunder and intends to place business through CAPNet for acceptance by admitted and non-admitted carriers in compliance with the laws and regulations pertaining thereto regarding the placement of business with admitted carriers. Member acknowledges that obtaining and maintaining the requisite insurance licenses is a condition precedent to placing business through CAPNet pursuant to this Agreement.

Member further warrants that any business which it will submit to CAPNet involving persons or property situated in a state other than that of its domicile will, if accepted, be effected in accordance with the surplus lines laws, insurance laws and/or similar applicable laws of that state and Member will indemnify CAPNet for any tax or regulatory liability and loss arising as a result of CAPNet’s accepting any application submitted by Member.

Subject to the terms set forth herein, Member will be entitled to collect a commission on such business at a rate which will be mutually agreed to between the parties.

Member will not have the authority to appoint other agents or subagents for purposes of this Agreement and will not do so. Member will have no authority to make and will not make any agency agreements on behalf of CAPNet nor will Member make any agreements rendering or purporting to make CAPNet liable for the payment and/or repayment of expenses, commissions, or any other sums.

2. Failure to pay premiums as scheduled may result in cancellation of the subject policy. All premiums collected from insureds which are to be paid to the Insurance Company (as defined in Exhibit A) and will be held by Member in a fiduciary capacity in accordance with applicable law and will not be commingled with Member's other funds.

Any payments to Member under this Agreement will be paid only to the extent permissible under applicable laws, rules and regulations. Member will have no right to such payments and CAPNet will have no duty to make such payments in excess of those legally permissible. Any conflict arising between you and any of our other members concerning compensation on any business, or the control of any risk or issued policy will be resolved by the policyholder (or certificate holder, if applicable) evidenced by said policyholder's (or certificate holder's, if applicable) written statement designating the member who will control the business. You agree that the policyholder's (or certificate holder's, as applicable) decision on the issue will be final.

Member agrees to collect and remit premiums to CAPNet or Insurance Company in accordance with each specific agreement between CAPNet and the Insurance Company regardless of whether Member has collected all premiums due from the insured. The obligations imposed on the Member under this section shall be joint and several obligations of each individual owner, partner, or employee of the Member together with the Member.

Member acknowledges that it is solely responsible for the return of their proportionate share of commissions and/or fees on business it places with CAPNet that is verifiably due the insurance carrier as a result of cancellation, overpayment or other calculated commission difference. This applies to agency bill, direct bill, admitted and/or non-admitted accounts. The Member agrees that their return commission and/or fees will be deducted from their most current CAPNet commission statement, if there is a net balance due CAPNet after the deduction Member agrees to immediately remit payment to CAPNet. The obligations imposed on the Member under this section shall be joint and several obligations of each individual owner, partner, or employee of the Member together with the Member.

Notwithstanding any provision in this Agreement to the contrary, no compensation will be payable to Member subsequent to the termination of this Agreement if Member commits any act of fraud, malfeasance or nonfeasance in the performance of its duties hereunder.

3. Member as business entity and individually hereby guarantees the payment of all premiums due the Insurance Company and/or CAPNet on insurance bound or written hereunder, whether or not they are collected by Member and whether or not they are financed.

4. No insurance contract may be returned to CAPNet for flat cancellation unless it is returned prior to the inception or effective date of the contract. Earned premiums will be computed and charged on every insurance contract cancelled after inception in accordance with the cancellation provision of such contract.

5. Member agrees to report immediately to CAPNet any fact, occurrence or incident that may result in a loss or claim, together with full details thereof. Member will forward all documents and cooperate fully with CAPNet, or the designated claim administrator, in the investigation and adjustment of any claim, if requested.

6. Member agrees to keep complete records and accounts of all transactions and to permit CAPNet to inspect and copy all records pertaining to business contracted under this Agreement.

7. Member is required to maintain in full force and effect the following policies issued by an insurer rated no less than "A" by A.M. Best Company during the Term of this Agreement and thereafter while Member has any obligations hereunder:

a. Errors and Omissions Insurance covering all business written with CAPNet by Member, its employees and sub-contractors in the minimum amount of One Million Dollars (\$1,000,000), with a deductible not to exceed Ten Thousand Dollars (\$10,000);

b. Comprehensive General Liability Insurance (including personal injury) covering Member and its employees in the minimum amount of One Million Dollars (\$1,000,000) single limit per occurrence;

8. Member will not advertise in any way the name of CAPNet nor will Member advertise in any way the name of any company or underwriter represented by CAPNet without the prior written consent of CAPNet.

9. Member represents and warrants that (a) it is duly authorized and has all requisite power and authority to enter into and perform its obligations under this Agreement, (b) all necessary corporate, partnership or other entity actions have been taken to authorize the execution and delivery of this Agreement, which constitutes a valid and binding agreement of such party, and (c) the execution, delivery and performance of this Agreement will not violate the terms or provisions of any charter document, agreement, license or other contract to which Member is a party.

10. Member hereby agrees to indemnify and hold CAPNet, its parent, affiliated and subsidiary corporations and its and their officers, directors, employees, and agents, harmless from any and all claims, losses, costs, expenses, deficiencies, liabilities, obligations or damages (including related attorney fees and costs) arising from or in any manner relating to (i) any inaccurate representation made by Member in this Agreement; (ii) any breach of any of the warranties or any default in the performance of any of the covenants made by Member hereunder, or which Member was to perform pursuant to, this Agreement; (iii) any errors and omissions of Member or of any of its agents with respect to any customers occurring prior to the date CAPNet binds insurance coverage for such customer; and (iv) any negligent acts or omissions, whether inadvertent or intentional, and any willful misconduct of Member or of any of its agents in connection with this Agreement. In a like manner, Member agrees to indemnify and hold CAPNet harmless from any action brought by a regulatory body as a result of actions by Member.

Notwithstanding any provisions herein to the contrary, CAPNet, at its option, may affect the recovery of damages under this Section 10 by offsetting such amounts against payments of amounts otherwise owing by it to Member hereunder. Election of this remedy will not be construed as exclusive, and will not bar CAPNet from seeking any and all other remedies available at law or equity.

The provisions of this Section 10 shall survive termination. Member understands that CAPNet assumes no responsibility for any policy with regard to the adequacy, amount or form of coverage and agrees to indemnify and hold CAPNet harmless from any claim asserted against CAPNet in following the instructions of the Member. CAPNet is not an insurer and does not guarantee the financial condition of the Insurer with whom it may place risks. CAPNet shall have no liability for non-payment of claims due to the insolvency of an Insurer, or otherwise, under contracts of insurance placed by CAPNet.

11. It is understood that Member is an independent contractor and this Agreement does not permit Member to bind CAPNet or any company or underwriter represented by CAPNet. Member is not an agent of CAPNet or any company or underwriters represented by CAPNet.

12. Each party agrees that it will refrain, either directly or indirectly, from soliciting, inviting, or encouraging any employee of or individual licensed under the other party who is directly involved in performing duties under this Agreement to leave the employ of such party to join or become associated with or be employed by such party or licensed by such party or any of its affiliates during the term of this Agreement, provided, however, that the foregoing will not restrict either party from employing any such person employed by the other party: (1) in response to any "want ad," advertisement or other method of employee recruitment directed to the general public, or (2) who has been terminated by a party.

13. In the event of termination of this Agreement, so long as the Member has promptly accounted for and paid all premiums for which it may be liable and remains properly licensed, the Member's records, and use and control of the expirations will remain the property of the Member and be left in its undisputed possession; otherwise, use of the records and control of the expirations will be vested exclusively in CAPNet for business that is renewed by CAPNet.

14. Unless authorized in writing by the Member, CAPNet will not use the records of Member's business with the Insurance Company to solicit individual clients for the sale of other lines of coverage which can be solicited by Member's employees under their licenses.

15. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous agreements, whether oral or written. This Agreement may be terminated by either party at any time upon the giving of written notice of termination, but such termination will not alter in any way the continued application of this Agreement to policies in effect as of the date of such termination and Member will complete the collections of premiums and continue to provide claims support and service on all policies in effect at termination.

16. This Agreement is to be construed in accordance with and governed by the laws of the State of California.

17. Member represents that, in connection with its activities hereunder, it:

- a. will not, directly or indirectly, make, authorize or offer any payments, gifts, or other things of value to any: (i) official or employee of any national, state, or local government or any agency or instrumentality thereof; to any candidate for public office; (ii) political party; or (iii) officer or employee thereof;
- b. will not pay or tender, directly or indirectly, any commissions or finder or referral fee to any person in connection with its activities hereunder; and
- c. will fully cooperate in any request for information, including making employees available for interviews, in the event that CAPNet may make such requests.

Additionally, Member warrants that neither it nor any of its employees or agents performing services hereunder has been convicted of or pleaded guilty to a criminal offense and that it is not now, to the best of its knowledge, the subject of any government investigation for such offenses.

18. This Agreement may not be assigned by Member without the prior written consent of CAPNet. This Agreement will be binding upon and adhere to the benefit of the parties hereto, their respective heirs, and permitted successors and assignees.

19. All notices under this Agreement will be delivered personally, by overnight courier, fax, or by pre-paid certified, registered mail or electronic mail (email).

20. No failure of either party to insist on strict compliance with this Agreement, or to exercise any right under it, will be waiver of such right.

21. This Agreement may be amended by CAPNet.

Program Compensation and Member Requirements

Exhibit A

I. Program Compensation.

Member is paid two thirds (2/3 or 66.67%) of CAPNet's commission received from the Insurance Markets or Insurance Carriers on all listed lines of business written as long as this MEMBER'S AGREEMENT is in force.

CAPNet is the Program Administrator (the "Program") and the method of Calculation for Commission paid by CAPNet to Member on all lines of business with wholesalers, MGA/MGU's or Excess and Surplus lines entities shall be sixty percent (60%) of CAPNet's commission received from these wholesalers, MGA/MGU's or Excess and Surplus lines entities. CAPNet may elect to charge a placement fee on this business.

Growth bonuses, retention bonuses, profit sharing and transition bonuses are exempt from Member Compensation. Growth bonuses, retention bonuses, profit sharing, transition bonuses and overrides are paid to CAP/CAPNet for work CAP/CAPNet performs outside of traditional commission agreements.

On policies billed by Member ("Agency Bill Policies"), Member shall be responsible for remitting the gross premium to CAPNet. If Member's insured requires financing for full payment of policy premium, CAPNet may assist in the placement of financing and Member shall be responsible for remitting the required down payment to CAPNet. Member commissions on Agency Bill Policies will be calculated upon receipt by CAPNet of the full premium or down payment and financing, as applicable.

II. Timing of Calculation. CAPNet shall calculate commissions on the 12th day of each month and the 3rd day prior to the end of each month.

III. Payment of Commission. CAPNet shall issue Member commission checks on the 15th and the last day of the month. If the check issue date falls on a weekend or holiday, CAPNet shall issue the check on the next business day that follows thereafter.

IV. Dispute Resolution. CAPNet shall make reasonable efforts to research any commission discrepancies with Markets where CAPNet and/or Member believe the Insurance Markets or Insurance Carriers have underpaid or neglected to pay a commission due.

Fees charged by CAPNet are Earned 100% and retained by CAPNet.

Sub-commissions payable to Member for placements under the Program is the applicable percent stated above of collected and unreturned premium.

V. Member Requirements. For CAPNet to accept business for the Program from Member and to compensate Member pursuant to Article I immediately above, the following is required:

1. Furnish current documentation of an agency license (or an agent license for a principal owner in states that do not issue agency licenses) for all states in which the Member intends to conduct business with CAPNet or refrain from seeking to place business through CAPNet under this Agreement in any state for which the requisite licensing documentation is not provided.
2. Furnish evidence of Errors & Omissions coverage with no less than \$1,000,000 per claim limit.
3. Furnish a completed W-9 form.
4. Member agrees NOT to market the Program to other brokers or agents.
5. Member agrees to be responsible for all earned premiums and return commissions. Member agrees to pay promptly all moneys due from the Member's agency.
6. Member agrees NOT to quote premiums unless the quote has been provided in writing by CAPNet.
7. Member agrees NOT to issue certificates of insurance or binders other than through the CAPNet Connect Portal.
8. Binding authority is NOT extended to the Member, and Member will under NO circumstance, contact carrier underwriters or service personnel directly.
9. Member agrees NOT to write any documents regarding the Program's coverage without approval from CAPNet.
10. The full gross premium (or down payment check and signed finance agreement if financed through CAPNet) must be received by CAPNet prior to binding coverage.
11. The original copy of the application and any endorsements that require signature must be received by CAPNet prior to binding coverage.
12. All information amending coverage must be submitted in writing by an authorized representative of the insured. Member agrees to forward the original copy of the request to CAPNet.
13. All claims must be submitted in writing directly to the Insurance Company, and a copy must be submitted to CAPNet.
14. Member SHALL promptly notify CAPNet in writing at the address stated herein upon becoming the subject of, and/or being sanctioned, fined or reprimanded pursuant to any investigation or disciplinary proceeding by any governmental entity or self-regulatory organization.
15. Member shall pay CAPNet a Monthly Service and Support Fee of \$49.00. The first Monthly Service and Support Fee will be payable upon acceptance of this Agreement, with subsequent Monthly Service and Support Fee due on the monthly anniversary of acceptance of this Agreement. Monthly Service and Support

Fee includes two unique CAPNet Connect Portal user logins. Additional user login credentials beyond the initial two will be charged an additional Monthly Service and Support Fee of \$29.00 per unique CAPNet Connect Portal user login.

16. Member shall furnish a completed ELECTRONIC FUNDS TRANSFER AUTHORIZATION (ACH) or CREDIT CARD AUTHORIZATION form if required.