

# Agency Excel Agency Agreement

This Agency Agreement (the "Agreement") is made this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ an "Agency" which is an \_\_\_\_\_ (Individual, Corp, LLC) with its principal business located in \_\_\_\_\_, \_\_\_\_\_ and Smart Insurance NC LLC dba Agency Excel, a North Carolina Limited Liability Company and its affiliates, "AE" having its principal place of business located in Mooresville, North Carolina.

## **PURPOSE OF AGREEMENT**

WHEREAS, Agency desires to quote and place insurance policies and related services with AE.

WHEREAS, AE desires to provide quotes for insurance policies and related services to the Agency and facilitate the placement of policies, on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein and for other good and valuable consideration, the parties hereto agree as follows:

## **DEFINITIONS**

**Platform:** various websites or portals on domains owned or operated by AE where quotes and applications can be obtained, requested and/or submitted.

**Carriers:** Insurance companies, MGAs, Insurance Wholesalers/Brokers, and any other insurance intermediaries that pay commissions to agencies for the sale of insurance products.

**Fees:** Revenue generated from products or services provided to customers other than commissions resulting from the sale of insurance products- including but not limited to broker fees, consulting fees, and risk management fees.

## **Relationship**

At all times during the term of this agreement, agency shall be an independent contractor with respect to AE. No relationship of employer/employee, principal/agent or joint venture is hereby created by the parties. AE shall neither have nor exercise control over the methods by which agency shall execute its duty to customers, whether impacted by this agreement or apart from it. Agency does not have and will not hold itself out as having any right, power or authority to create any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon AE. Agency cannot and has no authority to do any of the following:

- 1) Bind coverage, issue binders, issue insurance policies or obligate AE or any carrier in any way.
- 2) Waive, modify, or change any terms, conditions, rates, proposals, or limitations of any insurance policy or related service presented by AE.
- 3) Make or acknowledge receipt of payment on behalf of AE or any carrier.
- 4) Extend the time for any premium payment on behalf of AE or any carrier.
- 5) Reinstate any coverage on a policy that has been terminated.
- 6) Adjust, settle, or admit liability on any claim on behalf of AE or any carrier.
- 7) To incur any indebtedness, liability, or obligation on behalf of AE or any carrier.
- 8) To enter into any legal contract or proceeding pertaining to AE or any carrier as their representative, including the acceptance of legal process on behalf of AE or any carrier.

## **Premiums**

Agency shall collect, account for, and transmit to AE the applicable premiums, fees, and other charges (collectively 'Premiums') for insurance and related products placed through AE including premiums developed by credits or other adjustments, such as premiums being held by Agency in a fiduciary capacity with no right of offset or counterclaim.

### **COMMISSIONS**

Commissions paid the Agency under this agreement are the sole and full compensation to be paid the Agency for the products and services sold to customers under this agreement. Commission % payable to the agency will be indicated prior to binding and unchanged at future renewals unless otherwise stated. Commission % is subject to change at the discretion of AE for any future policy term including policies not yet bound.

### **Fees**

**Fees Charged by AE:** AE reserves the right to charges a fee to customers for services over and above the purchase of a policy. This includes certain risk transfer documents (sample contracts, sample certificates) and/or general consulting services- such as state specific employee classification advice and assistance. AE may also charge a broker fee in states where allowed by law for the application and placement of a policy of insurance.

**Fees Charged by Agency:** The Agency is also entitled to charge fees for services as appropriate where allowed by law, however, it is agreed that a customer will not be charged a duplicate fee for a similar service or policy. For example, AE and the Agency will not charge a broker fee for the same policy. AE will notify the Agency when it intends to charge a fee for services and if the Agency collects a fee for services rendered, it will become due and payable to AE upon receipt along with any collected premium will be paid to AE per the same timeline as shared commissions.

### **Errors & Omissions Coverage & Licensing**

**Insurance Coverage.** Agency shall maintain Errors and Omissions Coverage with minimum limits in the amounts of one million dollars (\$1,000,000.00) for each individual occurrence and one million dollars (\$1,000,000.00) aggregate coverage. Agency shall provide evidence of Errors and Omissions Coverage upon execution of this Agreement and at the annual renewal of coverage either electronically or via facsimile to an address or email designated by AE. The Agency shall continually maintain such Errors and Omissions Coverage throughout the term of this Agreement and shall assure that AE receives timely notice if there should be any cancellation of coverage.

**Continuing License.** Agency and AE separately warrants that each holds and shall continue to hold during the duration of this Agreement the required professional licenses in all states where they operate or solicit customers, and such other license(s) as may be required for the sale of related products or services. If either party for any reason has his/her professional license, or other license(s), suspended or revoked by the State Department of Insurance or other regulating agency, each party has an obligation to report such suspension or revocation to the other by certified mail, return receipt requested within five (5) days of such suspension or revocation. Failure to reinstate the license(s) necessary to legally operate within the scope of this agreement within 10 days of revocation shall be a breach of this agreement.

### **Obligations & Representations**

**Subject to Change:** Agency acknowledges that the platforms available through AE may change from time to time and that AE makes no representation as to the availability or the performance of any platform.

**Rates and Accuracy:** AE may make estimated premium indications available on its platforms. Rating and underwriting appetites indicated by AE may be made available based on public filings and/or anecdotal data provided by Agencies representing a wide variety of carriers. There is no guarantee express or implied that rates or underwriting eligibility indicated by AE on any of its platforms will match the premiums or underwriting guidelines ultimately approved by any carrier. AE will not assume any liability on behalf of any agency for any

quote, misquote, or other inaccurate information communicated to the insured. Information provided to customers on any AE platform is for research and education only. The responsibility for confirming correct premiums, underwriting, and binding authority lies solely with the Agency who issues the policy.

**Premium Financing:** AE, at its sole discretion and in conjunction with a finance company of its choosing, may choose to offer premium financing terms for prospective applicants referred to the Agency. The agency is not obligated to use AE premium financing options, however, in the event that a policy is financed through AE and its premium finance relationship(s), ALL PREMIUM RETURNED TO THE AGENCY ON A FINANCED POLICY WILL BE RETURNED TO AE FOR RECONCILIATION. UNDER NO CIRCUMSTANCES WILL THE AGENCY RETURN PREMIUM ON A FINANCED POLICY TO THE CUSTOMER WITHOUT SPECIFIC INSTRUCTIONS IN WRITING FROM AE OR ITS CHOSEN FINANCE COMPANY. Agency will fully comply and assist with finance company and AE efforts to collect outstanding amounts due to the finance company or to resolve outstanding audit or other compliance obligations that impact financed premium and the collection thereof. This section does not alter, amend, limit, or in any way prohibit the Agency's ability to secure its own financing through the same or separate finance companies under a separate agreement.

**Mutual Indemnification:** Agency shall indemnify and hold harmless AE and its affiliates and subsidiaries, and all officers, employees, shareholders and agents of AE and its affiliates and subsidiaries for any and all claims, actions, causes of action, damages, fees, expenses, and costs including reasonable attorneys fees, arising out of any negligent, reckless, or intentional acts or omissions of the Agency or representatives of the Agency as well as for any breach of this Agreement. AE shall indemnify and hold harmless the Agency, and all officers, employees, shareholders and agents of the Agency for any and all claims, actions, causes of action, damages, fees, expenses, and costs including reasonable attorneys' fees, arising out of any negligent, reckless, or intentional acts or omissions of AE as well as for any breach of this Agreement.

### **Termination of Agreement**

**Termination without cause:** This agreement may be terminated by either party without cause at any time by providing 30 days advance notice to the other party by certified mail, return receipt requested. If terminated without cause, the agency is entitled to receive ongoing commissions on all policies still in force at the time of termination and for all continuous renewals as long

**Termination with cause:** This agreement shall terminate immediately if any public authority declines to renew the agency's license or in the event of material misrepresentation by the agency in this agreement, or for other gross and willful misconduct including but not limited to abandonment, fraud, or insolvency.

### **Injunctive Relief**

Should the Agency violate the terms of this agreement, in addition to any other remedy provided by law or equity, it is agreed AE shall be entitled to petition for and receive injunctive relief without the necessity of posting any bond or undertaking.

### **Confidential Information**

**Confidential Information:** Agency acknowledges that AE possesses certain confidential, proprietary information and documents, including but not limited to marketing lists, lead generation platforms and related software, data collection processes and integration, policy, procedural, and underwriting manuals (collectively, "Trade Secrets"). In order to protect the confidential, proprietary nature of the Trade Secrets, the Agency agrees as-follows:

Agency shall never reveal any Trade Secrets to any person, except pursuant to an order from a Court of competent Jurisdiction. In the event that the Agency should receive such a Court order, the Agency shall provide immediate oral and written notice of such order to AE, and shall cooperate with AE in protecting the confidential nature of the Trade Secrets.

### **Miscellaneous**

**Survival:** Confidential Information and Injunctive Relief shall survive the termination of this Agreement.

**North Carolina Law:** The laws of the State of North Carolina shall govern the validity, interpretation, performance and enforcement of this Agreement.

**Severability:** If any of the terms or provisions of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and such terms and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**Arbitration:** In the event that any claim, complaint, or dispute should arise resulting from or related to this Agreement, the parties hereby agree that such dispute shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

**No Placement Required:** This Agreement does not in any way require AE to place business submitted through its platforms by the Agency.

**Successors and Assigns:** This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their successors and permitted assigns.

**Modification in Writing:** AE reserves the right to alter or amend this agreement by providing written notice of proposed changes 30 days in advance to the Agency. Any changes to the agreement will only be applicable and binding on or after the effective date identified in the modification notice. If the Agency does not agree to the modified version of the agreement, they may terminate the agreement subject to the termination provisions outlined herein.

**Assignment:** The Agency's rights under this Agreement are not assignable for any reason (by operation of law, or otherwise) unless expressly indicated elsewhere in this agreement or without the express written agreement of AE.

**Construction:** This Agreement shall not be construed in favor of, or against, either party based on the identity of the party preparing this Agreement

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Legal Entity Name

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EIN

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Authorized Signature

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Date

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Printed Name

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Title (Must be Owner, President, or Principal Member)

**Smart Insurance NC LLC dba Agency Excel**

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Authorized Signature

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Date

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Printed Name

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Title

# Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type.  
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.  <input type="checkbox"/> Individual/sole proprietor or single-member LLC  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ <b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is <b>not</b> disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.  <input type="checkbox"/> Other (see instructions) ► _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  Exempt payee code (if any) _____  Exemption from FATCA reporting code (if any) _____  <small>(Applies to accounts maintained outside the U.S.)</small>
5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
6 City, state, and ZIP code	
7 List account number(s) here (optional)	

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
				-				-	
or									
Employer identification number									
				-					

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ►	Date ►
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## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*

# ACH Disbursement Agreement

I hereby authorize Smart Insurance Services Inc (SIS) and/or its designated affiliate to initiate automatic deposits to my account at the financial institution named below when I am entitled to commissions or fees on behalf of SIS or its affiliates. I also authorize withdrawals from this account in the event that a credit entry is made in error or there is a debit balance from unearned commissions.

Further, I agree not to hold SIS and/or its designated affiliate responsible for any delay or loss of funds due to incorrect or incomplete information supplied by me or by my financial institution or due to an error on the part of my financial institution in depositing funds to my account.

This agreement will remain in effect until I provide a written notice of cancellation from me or my financial institution.

Account Name \_\_\_\_\_

Bank Name \_\_\_\_\_

Account Number \_\_\_\_\_

Routing Number \_\_\_\_\_

☐ Checking    ☐ Savings

SIGNATURE \_\_\_\_\_  
(Account Holder's Signature)

DATE \_\_\_\_\_