

Contract Information and Signature Form



If contracting as a: **Producer only** - complete sections 1, 3 & Individual FCRA Authorization Form
Business Entity only - complete sections 2 & 3

Section 1 **Business Entity & Principal**- complete sections 1, 2, 3 (both signature blocks) & Individual FCRA Authorization Form

Producer Information (Required)

Name: _____ SSN: _____ - _____ - _____ DOB: _____ - _____ - _____
First Name, Middle Initial, Last Name (as it appears on license) MM DD YYYY

Home Address: _____
Not a P.O. Box City State Zip Code

Business Address: _____
P.O. Box Accepted City State Zip Code

Primary Phone Number: _____ - _____ - _____ Business Phone: _____ - _____ - _____ Email Address: _____

Master General Agency (If applicable): _____

Errors & Omission Insurance (As Required): _____ \$ _____
Carrier Name Minimum \$1M Per Claim

Background Information (Required - Must be answered)

Yes	No	Has any regulatory authority, such as an insurance department, FINRA or the SEC ever fined or suspended you, placed you on probation, assessed you any administrative costs, entered into a consent order with you, issued you a restricted license, or otherwise disciplined you? Are you currently under investigation by any regulatory authority, such as an insurance department, FINRA or the SEC?
Yes	No	Other than minor traffic offenses that did not result in harm to a person or property, have you been (1) convicted of any offense, or (2) pled guilty or nolo contendere (no contest) to any offense?

NOTE: Answering "YES" to the above questions does not automatically preclude you from being contracted.

If Yes, please include county _____

Directions: PLEASE PROVIDE A WRITTEN EXPLANATION for any "YES" answer including the disposition and applicable supporting documentation (court documents, insurance department documents etc.). Failure to answer "YES", when appropriate, may result in denial of your request to be contracted.

Contracting Selection (Required)

<input type="checkbox"/>	I have received, reviewed and agree to be bound by the Terms & Conditions of the General Agent Agreement with Mutual of Omaha and its affiliates (BMO151.011) Please retain a copy of the agreement for your files. A copy will not be returned to you.
<input type="checkbox"/>	I have received, reviewed and agree to be bound by the Terms & Conditions of the Special Agent Agreement with Mutual of Omaha and its affiliates (BMO152.011) Please retain a copy of the agreement for your files. A copy will not be returned to you.

Direct Deposit Information (Complete if you are electing direct deposit - not applicable for Special Agents)

Financial Institution: _____

Routing Number: _____ Account Number: _____ Account Type Checking Savings

This is not an assignment of commissions. Form 1099 will be issued to the commission owner.

Express Pay Opt In

Eligibility requires Direct Deposit, Electronic Statements and no active Legal Judgments. Express Pay may not be available for all Marketers. Express Pay is calculated every day. (If unselected, default pay cycle is Weekly.)

Designation of Beneficiary (if applicable)

Name: _____ Relationship: _____
First Name, Middle Initial, Last Name or Business Name

Home Address: _____
Not a P.O. Box City State Zip Code

SSN: _____ - _____ - _____ or TIN: _____ - _____ DOB: _____ - _____ - _____ Phone Number: _____ - _____ - _____

W-9 Information

Taxpayer Identification Number (SSN)

Enter your TIN in the appropriate box. For individuals, this is your social security number. For other entities, it is your employer identification number.

Social Security Number _____ - _____ - _____

Certification

Under penalties of perjury, I certify that:

- The number provided is my correct taxpayer identification number, and
- 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
- I am a U.S. person (a U.S. citizen or U.S. resident alien or a partnership, corporation, company or association created or organized in the U.S. or under the laws of the U.S. or an estate (other than a foreign estate) or a domestic trust (as defined in Regulations section 301.7701-7).

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.

The Internal Revenue Service does not require your consent to any provision of this document other than the above-referenced certifications required to avoid backup withholding.

Sign Here	Signature of U.S. Person →	Date →
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Please proceed to Section 3

Contract Information and Signature Form

Section 2

Business Information *(Only complete this section if contracting as an Incorporated Entity, Partnership or LLC)*

Name: _____ TIN: _____
(As Shown On Income Tax Returns)

Doing Business As: _____

Address: _____
P.O. Box Accepted City State Zip Code

Phone: _____ - _____ - _____ Email Address: _____

Principal Officer: _____

Master General Agency *(If applicable)*: _____

Contracting Selection *(Required for Corporation)*

I have received, reviewed and agree to be bound by the Terms & Conditions of the **General Agent Agreement** with Mutual of Omaha and its affiliates **(BMO151.011)**

Please retain a copy of the agreement for your files. A copy will not be returned to you.

Direct Deposit Information *(Complete if you are electing direct deposit)*

Financial Institution: _____

Routing Number: _____ Account Number: _____ Account Type Checking Savings

This is not an assignment of commissions. Form 1099 will be issued to the commission owner.

Express Pay Opt In

Eligibility requires Direct Deposit, Electronic Statements and no active Legal Judgments. Express Pay may not be available for all marketers. Express Pay is calculated every day. *(If unselected, default pay cycle is Weekly.)*

W-9 Information

Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number. For other entities, it is your employer identification number.

Employer Identification Number _____

Certification

Under penalties of perjury, I certify that:

1. The number provided is my correct taxpayer identification number, 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. person (a U.S. citizen or U.S. resident alien or a partnership, corporation, company or association created or organized in the U.S. or under the laws of the U.S. or an estate (other than a foreign estate) or a domestic trust (as defined in Regulations section 301.7701-7).

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.

The Internal Revenue Service does not require your consent to any provision of this document other than the above-referenced certifications required to avoid backup withholding.

Sign Here	Signature of U.S. Person →	Date →
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****Please proceed to Section 3****

Section 3 - Contract Signature, Certification and Direct Deposit Authorization

By signing below:

- (a) you agree to be bound by the terms and conditions of the Agreement(s) selected,
- (b) you certify that the information that you have provided is true and correct and you agree that you will report immediately any event that would change any of the information, in any manner, which you have provided,
- (c) you agree to maintain your state insurance license in good standing, stay current with required continuing education, and obtain and maintain E&O coverage as required, and
- (d) if you have completed the Direct Deposit section(s) you authorize Mutual of Omaha Insurance Company ("Company") and its affiliates to electronically credit the bank account and, if necessary, to electronically debit the account to correct erroneous credits. You understand that this authorization will remain in full force and effect until you notify Company that you wish to revoke this authorization.

Producer Signature

Name: _____
(Signature Required)

Date: _____

Business Signature *(If Signing on the behalf of the Business)*

Name: _____

Title: _____
(Required)

Date: _____

****Please proceed to the FCRA Authorization Form****

FAIR CREDIT REPORTING ACT DISCLOSURE

Disclosure Regarding Consumer Reports

Mutual of Omaha Insurance Company and its affiliates with which you intend to contract (together, "Mutual of Omaha") may obtain and use consumer reports about you in order to evaluate your eligibility to contract with Mutual of Omaha as an insurance producer or to remain contracted as an insurance producer for Mutual of Omaha.

Your Authorization

By signing below, I authorize Mutual of Omaha to obtain and use consumer reports about me in order to evaluate my eligibility to contract with Mutual of Omaha as an insurance producer. If I do contract with Mutual of Omaha as an insurance producer, by signing below, I also authorize Mutual of Omaha to obtain and use consumer reports about me while my contract is in effect in order to evaluate my continued eligibility to remain an insurance producer for Mutual of Omaha.

Candidate Signature

Date

Print Name

Additional Information About Consumer Reports

Consumer reports may include, among other things, information about your credit history, criminal record and history, and insurance department regulatory actions.

We will obtain a copy of your consumer report from:

Name/Address/Phone

For California, Minnesota and Oklahoma: You have a right to request a copy of the consumer report which will disclose the nature and scope of the report.

Yes, please provide me a copy of the consumer report

For New York: You have a right, upon written request, to be informed of whether or not a consumer report was requested. If a consumer report is requested, you will be provided with the name and address of the consumer reporting agency furnishing the report.

GENERAL AGENT AGREEMENT

This General Agent Agreement (“Agreement”) is entered into between the undersigned General Agent (“GA”) and Mutual of Omaha Insurance Company, and each affiliated insurance company as specified on the Compensation/Product Schedule(s) attached to the Agreement (hereinafter referred to as the “Company”). The parties agree that additional affiliates of the Company may be added to the Agreement at a later date by way of changes/additions to the Compensation/Product Schedules attached hereto. Any Company affiliate added to the Agreement will be thereafter included in the definition of “Company”.

SEE SECTION K FOR DEFINITIONS

The parties agree as follows:

- A. **APPOINTMENT.** Company authorizes GA to solicit Product applications and to recruit Other General Agents. Company agrees to appoint GA with the appropriate state insurance departments for GA to solicit Product applications. This appointment is not exclusive.
- B. **COMPENSATION.**
 1. **For Each Product.** GA’s compensation depends on the particular Products sold. Compensation for each Product will be as specified in the Compensation/Product Schedules. Compensation/Product Schedules may be changed by Company at any time and will be distributed to GA.
 2. **Contingencies.** In addition to any conditions imposed in the Compensation/Product Schedules and any amendments, no compensation is earned until:
 - (a) GA is licensed and appointed in accordance with laws and Company procedures,
 - (b) the Product is actually issued, delivered to and accepted by the customer, and
 - (c) the premium for the Product is paid to the Company.
 3. **Compensation After Termination.** GA shall not be entitled to any compensation after the Termination Date of this Agreement, except for:
 - (a) Vested Compensation, and
 - (b) any net credit balance in GA’s account for compensation earned as of the Termination Date.

4. **Forfeiture.** GA will forfeit all rights to receive compensation, including Vested Compensation, if, in the sole reasonable discretion of Company, GA commits any of the following acts:
 - (a) breaches any material provision of this Agreement while in effect or any material obligation that survives termination of this Agreement.
 - (b) commits a fraudulent or illegal act in connection with any activities contemplated under this Agreement.
 - (c) does any act which results in the suspension or revocation of GA's insurance license.

C. GA'S DUTIES.

1. **Licenses and Approvals.** GA shall obtain and maintain and provide copies of all necessary licenses and regulatory approvals to perform the services under this Agreement.
2. **Monitor and Communicate.** GA may recruit Other General Agents. GA shall monitor its Other General Agents and communicate information to Company, of which it is aware or should be aware, that Company needs to know about its Other General Agents to properly address compliance or other risks. When directed by Company, GA shall communicate Company information to its Other General Agents.
3. **Solicitation.** GA shall help its Other General Agents in soliciting Products. If GA is contracting as an individual, then GA may solicit applications for Products.
4. **Service.** GA shall help its Other General Agents in servicing customers. If GA is contracting as an individual, GA shall provide service to GA's customers.
5. **Confidentiality and Privacy.** GA shall comply with the "Confidentiality and Privacy Amendment" which is attached hereto and incorporated into this Agreement. Company may unilaterally revise the Confidentiality and Privacy Amendment upon written notice to GA.
6. **Compliance with Laws and Conduct.** GA shall comply with all applicable laws and regulations and act in an ethical, professional manner in connection with this Agreement, including, without limitation, with respect to any compensation disclosure obligations and any other obligations it may have governing its relationships with its clients.
7. **Compliance with Company Policies.** GA shall comply, and shall ensure its employees comply, and shall instruct and encourage its Other General Agents to comply with all policies, practices, procedures, processes and

rules of Company. GA shall promptly notify Company if GA or any of its employees or Other General Agents are not in compliance with any Company policy, procedure, process or rule.

8. **Insurance.** GA shall have and maintain Errors and Omissions liability insurance covering GA and GA's employees during the term of this Agreement in an amount and nature, and with such carrier(s) satisfactory to Company and provide evidence of such insurance to Company upon request.
9. **Fiduciary Responsibilities.** GA shall be responsible for all money collected by GA, GA's employees and its Other General Agents on behalf of Company and shall remit to Company all payments and collections received for or payable to Company from Other General Agents, applicants, customers, or others no later than 15 days after receipt, or within any shorter period required by law. All money tendered as payment shall always be the property of Company and shall be held by GA purely in a fiduciary capacity and not for GA's own benefit. GA is not authorized to spend, cash or deposit for any purpose any portion of such money.
10. **Records.** Except as provided in the Confidentiality and Privacy Amendment, GA shall keep regular and accurate records of all transactions related to this Agreement for a period of at least five years from the date of such transactions, or longer if required by federal or state law or regulation.
11. **Advertising Materials.** GA shall obtain Company's written approval prior to using any advertising material or script identifying Company or Products, except such material provided by Company and used pursuant to Company's instructions.
12. **Notice of Litigation or Regulatory Proceeding.** GA shall promptly notify Company upon receiving notice of potential, threatened, or actual litigation or any regulatory inquiry or complaint with respect to this Agreement or any Product. Company shall have final decision-making authority to assume the administration and defense of any such action. A copy of the correspondence or document received shall accompany each notice.
13. **Delivery of Documents to Customers.** Upon request from Company, GA shall deliver to its customers any information that Company provides to GA for the purpose of fulfilling Company's obligation to provide such information to the customer, including without limitation, Schedule A to Form 5500 and any other information relating to compensation paid to GA by Company. GA shall deliver such information to its customers within the time period required by ERISA or other applicable law or as otherwise instructed by Company.

D. **LIMITATIONS.** GA, either directly or through its employees or Other General Agents, shall not:

1. **Expense or Liability.** Incur any expense or liability on account of, or otherwise bind Company without specific prior written approval from an Authorized Representative.
2. **Alteration.** Alter any advertising materials or make, alter, waive or discharge any contracts or Products on behalf of Company.
3. **Premium Payments and Reinstatement.** Extend the time for payment of any premium or waive any premium, or bind Company to reinstate any terminated contract, or accept payment in any form other than a customer check or money order payable to the Company or other method authorized by Company.
4. **Respond in Connection with Proceeding.** Institute or file a response to any legal or regulatory proceeding on behalf of Company in connection with any matter pertaining to this Agreement or any Product, without Company's prior written consent.
5. **Replacement.** Replace any existing insurance product or annuity contract unless the replacement is in compliance with all applicable laws and regulations and is in the best interest of the customer. The decision whether to replace an insurance product or annuity contract should be made by the customer. To help the customer make a decision regarding any proposed replacement, GA must provide the customer with full disclosure (both positive and negative) of all relevant information.
6. **Misrepresentation.** Misrepresent or induce any Other General Agent to misrepresent, any provision, benefit, or premium of any Product.

E. **COMPENSATION ADMINISTRATION.**

1. **Accounting.** Company will account to GA for payable commissions based upon initial and renewal premiums received and accepted by Company for policies issued upon applications submitted by or through GA. Company reserves the right to freeze GA's account for a reasonable period of time to ensure that funds are available to reimburse the Company for any Indebtedness.
2. **Effect of Return of Premium.** Except where provided on a Compensation/Product Schedule, if any premiums shall be returned by Company on any policy or contract, or should Company become liable for the return thereof for any cause either before or after the Termination Date, GA shall pay to Company all compensation previously paid or credited to GA's account on such returned premium.

3. **Set-Off.** Company is authorized to set-off and apply any and all amounts due to GA from Company under this Agreement to any and all obligations or Indebtedness of GA or its employees, Other General Agents or affiliates to Company or its affiliates. This right of set-off does not require Company to make any prior demand upon GA, and the right exists irrespective of whether the obligations of GA or its affiliates are contingent or unmatured. The rights of the Company under this Section E.3 are in addition to any other rights and remedies which the Company may have under this Agreement or otherwise.
 4. **Interest.** Interest will accrue on any amount due under this Agreement, which has not been paid within 30 days of receipt of written demand for such amount at the rate of one percent per month, or the highest rate permitted by law, whichever is lower.
 5. **Limitation of Compensation Actions.** Any claim by GA regarding compensation must be brought within one year from the date the compensation was reported on an accounting issued from Company to GA. Any claim regarding compensation must be brought against the corporation which issued the Compensation/Product Schedule to which the claim relates.
- F. **TERMINATION WITH OR WITHOUT CAUSE.** In addition to the termination provisions set forth in the Confidentiality and Privacy Amendment, GA or Company shall have the right at any time to terminate this Agreement, with or without cause, upon written notice to the other party. Termination shall be effective as of the Termination Date.
- G. **INDEPENDENT CONTRACTOR.** GA is an independent contractor and not an employee of Company. Subject to legal and regulatory requirements, GA shall be free to exercise GA's own judgment as to the persons from whom GA will solicit and the time and place of such solicitation.
- H. **INSPECTION OF BOOKS AND RECORDS.** Company shall have the right, during normal business hours and with reasonable notice, to inspect, audit and make copies from the books and records of the GA for the purpose of verifying GA's compliance with the provisions of this Agreement.
- I. **INDEMNITY AND HOLD HARMLESS.** Each party shall indemnify and hold the other party harmless from any liability, loss, costs, expenses (including reasonable attorneys' fees incurred by the indemnified party) or damages, including punitive and extra-contractual damages, resulting from any act or omission of its obligations provided in this Agreement by the indemnifying party or any of its employees or Other General Agents in the performance of its duties under this Agreement or other agreements with Company, including without limitation, any breach of its obligations provided under this Agreement.

J. **GENERAL.**

1. **Issue and Product Type.** Company shall retain the right to decide whether to issue or withdraw a Product and determine the type of Product to be issued or withdrawn. Company may discontinue or change a Product at any time.
2. **Producer of Record.** The producer of record for any Product shall be determined by Company records. Company reserves the right to change the producer of record according to Company procedures and shall have no obligation to designate a successor producer of record.
3. **Notice.** Any notice required or permitted to be sent to Company under this Agreement shall be delivered personally or sent by U.S. Mail with all postage prepaid or by express mail to:

**Producer Services
Mutual of Omaha Insurance Company
Mutual of Omaha Plaza
Omaha, Nebraska 68175-0001**

4. **Entire Agreement.** This Agreement, the Confidentiality and Privacy Amendment and the Compensation/Product Schedules constitute the entire agreement between the parties regarding the Products sold under this Agreement.
5. **Governing Law.** With respect to Companion Life Insurance Company, this Agreement shall be governed by the laws of the State of New York, without giving effect to that State's principles of conflicts of law. With respect to any other Company, this Agreement shall be governed by the laws of the State of Nebraska, without giving effect to that State's principles of conflicts of law.
6. **Severability.** In the event any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in effect.
7. **No Waiver.** Failure of Company to enforce any provision of this Agreement shall not operate to waive or modify such provision or render such provision unenforceable.
8. **No Assignment or Change.** Except for Compensation/Product Schedules, Confidentiality and Privacy Amendments and other amendments to the Agreement which are required by federal, state or local laws or regulations, no modification, amendment or assignment of this Agreement shall be valid unless approved in writing by an Authorized Representative. Compensation/Product Schedules, Confidentiality and Privacy Amendments and other amendments to the Agreement which are

required by federal, state or local laws or regulations may be distributed only by Company but need not be signed by either party to be effective.

9. **Survival.** GA's appointment pursuant to Section A of this Agreement shall immediately terminate on the Termination Date. Except for Sections C.2 and C.3 of this Agreement, all other provisions of this Agreement shall survive its termination.
 10. **Beneficiary.** If GA is an individual, then GA designates the beneficiary specified on the signature page or such other party or parties as GA may designate by written notice delivered to and recorded by Company, as beneficiary for payment of any compensation becoming due after GA's death.
 11. **Headings.** Any section or other heading contained in this Agreement are for reference purposes and convenience only and shall not affect, in any way, the meaning and interpretation of this Agreement.
 12. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- K. **DEFINITIONS.** The following terms have the following meanings. Any singular word shall include any plural of the same word.
1. **"Authorized Representative"** means the Chief Executive Officer or President of a Company or an individual authorized in writing by the Chief Executive Officer or President.
 2. **"Compensation/Product Schedule"** means a Company's distributed commission schedule that (a) specifies the amounts and conditions under which commissions will be due and payable to GA for any Product, and (b) is made a part of this Agreement.
 3. **"Indebtedness"** means any amounts owed by GA to Company, including but not limited to (a) the chargeback of any compensation paid or credited to GA under this or any other Agreement, if the monies on which such compensation was based are not collected or are refunded by the Company, (b) any advances made by Company to GA, (c) any expenses incurred by the Company on behalf of GA, and (d) any amount paid by the Company, which in its determination resulted from fraud, misrepresentation or other improper conduct by the GA.
 4. **"Other General Agent"** means any individual or organization, which (a) enters into a general agent, representative or other marketing agreement with Company and (b) submits Product applications that designate GA.

5. **“Product”** means any insurance policy, contract, investment vehicle or other offering identified in any Compensation/Product Schedule.
6. **“Termination Date”** means the later to occur of (a) the date on which GA or Company sends written notice of termination to the other party, or (b) the date specified by GA or Company in a written notice of termination to the other party.
7. **“Vested Compensation”** means compensation identified as vested on a Compensation/Product Schedule and that may be paid to GA after the Termination Date if (a) the policy related to the Product remains in force, (b) the premiums for the policy are paid to Company, and (c) if GA is the writing agent, GA remains the producer of record.

**MUTUAL OF OMAHA INSURANCE COMPANY
ON BEHALF OF IT AND ITS AFFILIATES SET FORTH
IN COMPENSATION/PRODUCT SCHEDULES
ATTACHED TO THIS AGREEMENT**

**TO BE COMPLETED BY GENERAL AGENT
FOR ALL STATES**



GENERAL AGENT

By: **See signature on Producer Contract
Information and Signature Form**
(Signature always required)

GENERAL AGENT AGREEMENT

MUTUAL OF OMAHA INSURANCE COMPANY

**ON BEHALF OF IT AND ITS AFFILIATES SET FORTH IN
COMPENSATION PRODUCT SCHEDULES
ATTACHED TO THIS AGREEMENT**

By: _____

Name: _____

Title: _____

Date: _____

Please do not complete this page. If approved, you will receive an executed copy of this contract page.

CONFIDENTIALITY AND PRIVACY AMENDMENT

This Confidentiality and Privacy Amendment (this “Amendment”), is made part of and incorporated into the General Agency Agreement between GA and Company (the “Agreement”), and is effective on the effective date of the Agreement. This Amendment supersedes and replaces in its entirety all prior versions of this Amendment. If there are any inconsistencies between this Amendment and the Agreement, the terms of this Amendment shall control.

1. **Definitions.** The following terms shall have the following meanings:
 - (a) **“Business Information”** means information, which relates to customers or the business of Company including without limitation, sales and rate information, software, business plans and operating strategies, Product information, and material identifying an association with the Company. Business Information shall not include any information that (i) relates to direct or indirect compensation payable, paid or provided to GA under the Agreement; (ii) is or becomes part of the public domain or is publicly available through no act or omission or through no breach of any contract; (iii) is known at the time of disclosure without an obligation to keep it confidential, as evidenced by documentation in possession at the time of such disclosure; (iv) becomes rightfully known from another source without restriction on disclosure or use; or (v) has been independently developed without the use of or any reference to Business Information.
 - (b) **“Confidential Information”** means Business Information and Personal Information created by or received from the other party or on behalf of Company.
 - (c) **“HIPAA Privacy and Security Rules”** means the Privacy, Security and Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as may be amended from time to time.
 - (d) **“Information Security Breach”** means the unauthorized acquisition, access, use, disclosure, transmittal, storage or transportation of Confidential Information which is not permitted by law or by the terms of this Amendment, including, but not limited to, a Security Incident.
 - (e) **“Personal Information”** means a first name or initial, and last name, in combination with any demographic, medical or financial information such as age, gender, address, Social Security number, past, present or future physical or mental health condition or treatment, debt status or history, income and other similar individually identifiable personal information that is not publicly available or that has been designated as such by law or regulation. The term “Personal Information” includes, but is not limited to, Protected Health Information.

- (f) “**Protected Health Information**” shall have the same meaning as that assigned in the HIPAA Privacy and Security Rules limited to the information created or received from or on behalf of Company.
- (g) “**Representatives**” means all directors, officers, employees, agents, consultants, Subcontractors, professional advisors and affiliates of GA.
- (h) “**Security Incident**” means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information, or interference with system operation, in an electronic information system containing Confidential Information.
- (i) “**Subcontractors**” means all persons to whom GA delegates a function, activity or service under the Agreement, other than in the capacity of a member of the workforce of GA.

2. **GA’s Obligations Regarding Confidential Information.** The performance of the duties and obligations required under the Agreement may require either party to disclose to the other certain Confidential Information.

- (a) **Confidentiality.** GA agrees to retain all Confidential Information in confidence, and shall not use, disclose, transmit, store or transport the Company’s Confidential Information except as allowed under this Amendment and for purposes related to the performance of obligations under the Agreement. GA is responsible to Company for a breach of the terms of this Amendment and for any Information Security Breach by itself or its Representatives.
- (b) **Reporting an Information Security Breach or Successful Security Incident.** GA agrees to report to Company any Information Security Breach and any successful Security Incident of which it becomes aware. Any report made pursuant to this Section 2(b) shall be made as soon as possible, but in no event later than five (5) business days following the date that GA becomes aware of the Information Security Breach or successful Security Incident. GA shall take action(s) requested by Company to document and mitigate the Information Security Breach or successful Security Incident. GA shall cooperate in evaluating the necessity of providing any and all notices of an Information Security Breach or successful Security Incident as deemed advisable or as otherwise required under applicable laws or regulations.
- (c) **Return of Confidential Information.** During the term of the Agreement, GA shall only retain Confidential Information which is necessary to continue proper management and administration of the services under the Agreement, or to carry out its legal responsibilities. Upon termination of the Agreement, GA shall return, or if agreed to by Company, destroy all Confidential Information that GA maintains in any form. Should Confidential Information be maintained beyond the termination of the

Agreement for legitimate business purposes or as may be required by law, then GA shall limit the use, disclosure, transmittal, storage or transportation of Confidential Information to the specific reason requiring retention of Confidential Information, and the protections of the Agreement and this Amendment shall be extended for so long as Confidential Information is maintained. Once the reason for retention of Confidential Information has expired Confidential Information will be returned or, if agreed to by Company, destroyed.

- (d) **Disposal of Confidential Information.** GA agrees to maintain a security policy for the disposal of paper and any other media that contains Confidential Information that includes a technology or methodology that will render Confidential Information unusable, unreadable or indecipherable.
- (e) **Cost of an Information Security Breach.** GA shall pay Company all costs or expenses that result from GA's acts or failure to act that result in an Information Security Breach.

3. **Permitted Uses and Disclosures by GA.** Unless otherwise prohibited by the Agreement, this Amendment or applicable laws or regulations, including the HIPAA Privacy and Security Rules, GA may use, disclose, transmit, store and transport Confidential Information:

- (a) for the proper management and administration of GA's business, provided that the use, disclosure, transmittal, storage and transportation are required by law, or GA obtains reasonable assurances from the entity or person to whom the Confidential Information is disclosed that it will remain confidential and be used, disclosed, transmitted, stored, or transported only as required by law or for the purpose for which it was disclosed to the entity or person;
- (b) to carry out the legal responsibilities of GA;
- (c) to its Representatives if the Representatives are first informed of the confidential nature of such information and the obligations set forth herein, and agree to be bound thereby; and
- (d) to its Subcontractors if Subcontractors have entered into a written agreement with GA under which Subcontractors agree to be bound by the obligations in this Amendment.

4. **GA's Additional Obligations Regarding Protected Health Information.** GA acknowledges that it is subject to the following requirements to the same extent as applicable to Company:

- (a) to comply with subpart C of 45 CFR part 164 of the HIPAA Privacy and Security Rules, requiring development, implementation, maintenance and

use of administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information, that it creates, receives, maintains or transmits on behalf of Company;

- (b) at the request of and in the time, manner and means, electronic or otherwise, as specified by Company, to provide access to Protected Health Information to Company, or to an individual as directed by Company, in order to meet the requirements of the HIPAA Privacy and Security Rules;
- (c) to make any amendment(s) to Protected Health Information that Company directs or agrees to pursuant to HIPAA Privacy and Security Rules in the time and manner designated by Company;
- (d) to document and maintain information on any disclosure of Protected Health Information for at least six (6) years, and upon request, in the time, manner and means designated by Company, make any information about the disclosure of Protected Health Information available to Company or to an individual as directed by Company, in order for Company to meet the accounting requirements of the HIPAA Privacy and Security Rules;
- (e) to make Protected Health Information and its internal practices, books and records, including policies and procedures, relating to the use and disclosure of Protected Health Information, available to the Secretary of Health and Human Services or to a state Attorney General for purposes of determining GA's or Company's compliance with the HIPAA Privacy and Security Rules; and
- (f) upon written request of Company, to provide Company a report of Security Incidents of which it becomes aware that are attempted but not successful.

5. General Security Requirements.

- (a) GA shall have a written, comprehensive information security program for the establishment and maintenance of a security system covering all electronic equipment, including its computers and any wireless system that, at a minimum, has the following elements:
 - (i) Secure user authentication protocols that include:
 - (A) control of user IDs and other identifiers;
 - (B) a secure method of assigning and selecting passwords, or use of unique identifier technologies, such as biometrics or token devices;

- (C) control of data security passwords to ensure that such passwords are kept in a location and/or format that does not compromise the security of the data they protect;
 - (D) restricting access to active users and active user accounts only;
 - (E) blocking access to user identification after multiple unsuccessful attempts to gain access or limitation placed on access for the particular system;
 - (F) prohibitions against sharing or migrating access privileges to another individual; and
 - (G) assignment of access privileges only to identifiable, individual accounts, and all activity conducted by these accounts must be auditable.
- (ii) Secure access control measures that:
- (A) restrict access to records and files containing Confidential Information to those who need such information to perform their job duties; and
 - (B) assign unique identifications plus passwords, which are not vendor supplied default passwords, to each person with computer access, that are reasonably designed to maintain the integrity of the security of the access controls.
- (b) Company may require GA to have an annual review and/or an annual technical audit of its security policies and practices by Company, or, at GA's option and expense, an independent auditor, to ensure compliance with this Amendment. The third party audit report, including recommendations for remedying deficiencies where appropriate, will be provided to Company within seven (7) business days of receipt of the report by GA. GA shall have thirty (30) calendar days to implement remedies to any identified deficiencies, and notify Company that such deficiencies have been addressed. GA's failure to remedy the identified deficiencies shall be considered in breach of this Section 5.
- (c) GA will encrypt all records and files containing Confidential Information that are transmitted across public networks or transmitted wirelessly.
- (d) GA will encrypt all desktop computers, laptops and all other portable devices on which Confidential Information is stored.
- (e) GA will monitor systems for unauthorized use of or access to Confidential Information.

- (f) For files containing Confidential Information on a system that is connected to the Internet, GA will maintain up-to-date firewall protection and operating system security patches designed to maintain the integrity of the Confidential Information.
- (g) GA will maintain up-to-date versions of system security agent software which includes malware protection and up-to-date patches and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions, and is set to receive the most current security updates on a regular basis.
- (h) GA will educate and train employees on the proper use of the computer security system and the importance of Confidential Information security. In addition:
 - (i) GA will designate one or more employees to maintain the comprehensive information security program.
 - (ii) GA will identify and assess foreseeable internal and external risks to the security, confidentiality and/or integrity of any electronic, paper or other records containing Confidential Information, and will evaluate and improve, where necessary, the effectiveness of their current safeguards for limiting such risks, including but not limited to: (A) ongoing employee (including temporary and contract employee) training; (B) employee compliance with policies and procedures; and (C) means for detecting and preventing security system failures.
 - (iii) GA will maintain a security policy for Representatives that protects records containing Confidential Information that are transported outside of business premises.
 - (iv) GA will impose appropriate disciplinary measures for employees that violate its comprehensive information security program rules.
 - (v) GA will have processes in place to prevent terminated employees from accessing records containing Confidential Information by immediately terminating their physical and electronic access to such records, including deactivating their passwords and user names.
- (i) No transfer of Confidential Information may be made by GA outside of the United States without the prior, express written authorization of Company.

6. **PCI-DSS Requirements for GA.** If GA stores or transmits credit or debit card data, it will employ safeguards that comply with the Payment Card Industry Data Standard (PCI-DSS), as may be amended from time to time.

7. General Provisions.

- (a) **Compliance with Laws.** GA shall comply with its obligations under this Amendment and with any laws or regulations as may now be in effect or as may hereafter be enacted, adopted or determined that apply to the confidentiality, use, disclosure, transmittal, storage or transportation of Confidential Information.
- (b) **Amendment.** This Amendment shall be amended to conform to any new or different legal requirements that result from any changes, revisions or replacements of any laws or regulations as may now be in effect or as may hereafter be enacted, adopted or determined that apply to the confidentiality, use, disclosure, transmittal, storage or transportation of Confidential Information, including, without limitation, the HIPAA Privacy and Security Rules, on or before effective compliance date thereof. Company may change, revise or replace this Amendment in its sole discretion upon notice to GA without the consent of GA. In the event of a conflict between the requirements of this Amendment and those of the HIPAA Privacy and Security Rules, the HIPAA Privacy and Security Rules shall control. Any such amendment will automatically be effective upon the effective compliance date of such laws or regulations and shall become effective upon without the signature of either party.
- (c) **Termination for Cause.** In addition to any other termination provisions contained in the Agreement, a party may terminate the Agreement upon written notice to the other party that they have breached a term of this Amendment.
- (d) **Disclosures Required By Law or a Governmental Authority.** If GA is required to disclose Company's Confidential Information in response to legal process or a governmental authority, GA shall immediately notify Company and, upon request, cooperate with Company in connection with obtaining a protective order. GA shall furnish only that portion of Confidential Information which it is legally required to disclose and shall use commercially reasonable efforts to ensure that Confidential Information is treated confidentially.
- (e) **Indemnification.** Notwithstanding any other provisions of the Agreement, GA shall indemnify, defend and hold Company, its affiliates, directors, officers and employees, harmless for any liabilities, claims, demands, suits, losses, damages, costs, obligations and expenses, including without limitation attorneys' fees, court costs and punitive or similar damages, incurred by Company which result from any breach of this Amendment by GA.
- (f) **Equitable Relief.** GA acknowledges that Confidential Information it receives is confidential and/or proprietary to Company, that disclosure thereof could be seriously harmful to the business prospects of Company,

that Company may not have adequate remedies at law for a breach of the confidentiality obligations hereunder and that money damages may be difficult or impossible to determine. Accordingly, GA agrees, in addition to all other remedies available at law, that, in the event of a breach or threatened breach of this Amendment, Company shall be entitled to (i) seek and obtain equitable relief, including injunctive relief, and (ii) reimbursement of all attorneys' fees and court costs arising in connection with seeking and obtaining such equitable relief.

- (g) **Material Obligation/Survival.** Each obligation contained in this Amendment is deemed to be a material obligation of the parties hereunder and shall survive the termination of the Agreement.

- (h) **Interpretation.** In the event of an inconsistency or conflict between the terms of the Agreement and the terms of this Amendment, this Amendment shall control. Any such inconsistency or conflict shall be resolved in favor of a meaning that permits the parties to comply with the HIPAA Privacy and Security Rules or any other laws or regulations that apply to the confidentiality of Personal Information. This provision shall supersede any similar provision in the Agreement. In the event of an inconsistency between the provisions of this Amendment and mandatory provisions of the HIPAA Privacy and Security Rules or any other laws or regulations that apply to the confidentiality of Personal Information, as may be amended from time to time, the HIPAA Privacy and Security Rules or any other laws or regulations that apply to the confidentiality of Personal Information, including, without limitation, any definitions in any such laws or regulations, shall control. Where provisions of this Amendment are different than those mandated in the HIPAA Privacy and Security Rules or any other laws or regulations that apply to the confidentiality of Personal Information, but are nonetheless permitted by such laws or regulations, the provisions of this Amendment shall control.

#261783v21

SPECIAL AGENT AGREEMENT

This Special Agent Agreement (“Agreement”) is entered into between the undersigned Special Agent (“Special Agent”) and Mutual of Omaha Insurance Company, and each affiliated insurance company as specified on the Compensation/Product Schedule(s) attached to the Agreement (hereinafter referred to as the “Company”). The parties agree that additional affiliates of the Company may be added to the Agreement at a later date by way of changes/additions to the Compensation/Product Schedules attached hereto. Any Company affiliate added to the Agreement will be thereafter included in the definition of “Company”.

SEE SECTION J FOR DEFINITIONS

The parties agree as follows:

- A. **APPOINTMENT.** Company authorizes Special Agent to solicit Product applications. Company agrees to appoint Special Agent with the appropriate state insurance departments for Special Agent to solicit Product applications. This appointment is not exclusive.

- B. **COMPENSATION.** All compensation for Products solicited by Special Agent while this Agreement is in effect shall be paid to a General Agent or Master General Agency pursuant to the terms and conditions of the applicable Compensation/Product Schedule. Company has no obligation to pay compensation to Special Agent for any services performed pursuant to this Agreement.

- C. **SPECIAL AGENT’S DUTIES.**
 - 1. **Licenses and Approvals.** Special Agent shall obtain and maintain and provide copies of all necessary licenses and regulatory approvals to perform the services under this Agreement.

 - 2. **Personal Solicitation and Service.** Special Agent shall solicit applications for Products and provide services to Customers for the Products.

 - 3. **Confidentiality and Privacy.** Special Agent shall comply with the “Confidentiality and Privacy Amendment” which is attached hereto and incorporated into this Agreement. Company may unilaterally revise the Confidentiality and Privacy Amendment upon written notice to Special Agent.

 - 4. **Compliance with Laws and Conduct.** Special Agent shall comply with all applicable laws and regulations and act in an ethical, professional manner in connection with this Agreement, including, without limitation, with respect to any compensation disclosure obligations and any other obligations it may have governing its relationships with its clients.

 - 5. **Compliance with Company Policies.** Special Agent shall comply with all policies, practices, procedures, processes and rules of Company. Special

Agent shall promptly notify Company if Special Agent is not in compliance with any Company policy, procedure, process or rule.

6. **Insurance.** Special Agent shall have and maintain Errors and Omissions liability insurance covering Special Agent and Special Agent's employees during the term of this Agreement in an amount and nature, and with such carrier(s) satisfactory to Company and provide evidence of such insurance to Company upon request.
7. **Fiduciary Responsibilities.** Special Agent shall be responsible for all money collected by Special Agent on behalf of Company and shall remit to Company all payments and collections received for or payable to Company from applicants, customers, or others no later than 10 days after receipt, or within any shorter period required by law. All money tendered as payment shall always be the property of Company and shall be held by Special Agent purely in a fiduciary capacity and not for Special Agent's own benefit. Special Agent is not authorized to spend, cash or deposit for any purpose any portion of such money.
8. **Records.** Except as provided in the Confidentiality and Privacy Amendment, Special Agent shall keep regular and accurate records of all transactions related to this Agreement for a period of at least five years from the date of such transactions, or longer if required by federal or state law or regulation.
9. **Advertising Materials.** Special Agent shall obtain Company's written approval prior to using any advertising material or script identifying Company or Products, except such material provided by Company and used pursuant to Company's instructions.
10. **Notice of Litigation or Regulatory Proceeding.** Special Agent shall promptly notify Company upon receiving notice of potential, threatened, or actual litigation or any regulatory inquiry or complaint with respect to this Agreement or any Product. Company shall have final decision-making authority to assume the administration and defense of any such action. A copy of the correspondence or document received shall accompany each notice.
11. **Delivery of Documents to Customers.** Upon request from Company, Special Agent shall deliver to its customers any information that Company provides to Special Agent for the purpose of fulfilling Company's obligation to provide such information to the customer, including without limitation, Schedule A to Form 5500 and any other information relating to compensation paid to Special Agent. Special Agent shall deliver such information to its customers within the time period required by ERISA or other applicable law or as otherwise instructed by Company.

- D. **LIMITATIONS.** Special Agent shall not:
1. **Expense or Liability.** Incur any expense or liability on account of, or otherwise bind Company without specific prior written approval from an Authorized Representative.
 2. **Alteration.** Alter any advertising materials or make, alter, waive or discharge any contracts or Products on behalf of Company.
 3. **Premium Payments and Reinstatement.** Extend the time for payment of any premium or waive any premium, or bind Company to reinstate any terminated contract, or accept payment in any form other than a customer check or money order payable to the Company or other method authorized by Company.
 4. **Respond in Connection with Proceeding.** Institute or file a response to any legal or regulatory proceeding on behalf of Company in connection with any matter pertaining to this Agreement or any Product, without Company's prior written consent.
 5. **Replacement.** Replace any existing insurance product or annuity contract unless the replacement is in compliance with all applicable laws and regulations and is in the best interest of the customer. The decision whether to replace an insurance product or annuity contract should be made by the customer. To help the customer make a decision regarding any proposed replacement, Special Agent must provide the customer with full disclosure (both positive and negative) of all relevant information.
 6. **Misrepresentation.** Misrepresent any provision, benefit, or premium of any Product.
- E. **TERMINATION WITH OR WITHOUT CAUSE.** In addition to the termination provisions set forth in the Confidentiality and Privacy Amendment, Special Agent or Company shall have the right at any time to terminate this Agreement, with or without cause, upon written notice to the other party. Termination shall be effective as of the Termination Date.
- F. **INDEPENDENT CONTRACTOR.** Special Agent is an independent contractor and not an employee of Company. Subject to legal and regulatory requirements, Special Agent shall be free to exercise Special Agent's own judgment as to the persons from whom Special Agent will solicit and the time and place of such solicitation.
- G. **INSPECTION OF BOOKS AND RECORDS.** Company shall have the right, during normal business hours and with reasonable notice, to inspect, audit and make copies from the books and records of the Special Agent for the purpose of verifying Special Agent's compliance with the provisions of this Agreement.

H. **INDEMNITY AND HOLD HARMLESS.** Each party shall indemnify and hold the other party harmless from any liability, loss, costs, expenses (including reasonable attorneys' fees incurred by the indemnified party) or damages, including punitive and extra-contractual damages, resulting from any act or omission of its obligations provided in this Agreement by the indemnifying party or any of its employees or agents in the performance of its duties under this Agreement or other agreements with Company, including without limitation, any breach of its obligations provided under this Agreement.

I. **GENERAL.**

1. **Issue and Product Type.** Company shall retain the right to decide whether to issue or withdraw a Product and determine the type of Product to be issued or withdrawn. Company may discontinue or change a Product at any time.
2. **Producer of Record.** The producer of record for any Product shall be determined by Company records. Company reserves the right to change the producer of record according to Company procedures and shall have no obligation to designate a successor producer of record.
3. **Notice.** Any notice required or permitted to be sent to Company under this Agreement shall be delivered personally or sent by U.S. Mail with all postage prepaid or by express mail to:

**Producer Services
Mutual of Omaha Insurance Company
Mutual of Omaha Plaza
Omaha, Nebraska 68175-0001**

4. **Entire Agreement.** This Agreement, the Confidentiality and Privacy Amendment and the Compensation/Product Schedules constitute the entire agreement between the parties regarding the Products sold under this Agreement.
5. **Governing Law.** With respect to Companion Life Insurance Company, this Agreement shall be governed by the laws of the State of New York, without giving effect to that State's principles of conflicts of law. With respect to any other Company, this Agreement shall be governed by the laws of the State of Nebraska, without giving effect to that State's principles of conflicts of law.
6. **Severability.** In the event any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in effect.
7. **No Waiver.** Failure of Company to enforce any provision of this Agreement shall not operate to waive or modify such provision or render such provision unenforceable.

8. **No Assignment or Change.** Except for Compensation/Product Schedules, Confidentiality and Privacy Amendments and other amendments to the Agreement which are required by federal, state or local laws or regulations, no modification, amendment or assignment of this Agreement shall be valid unless approved in writing by an Authorized Representative. Compensation/Product Schedules, Confidentiality and Privacy Amendments and other amendments to the Agreement which are required by federal, state or local laws or regulations may be distributed only by Company but need not be signed by either party to be effective.
 9. **Survival.** Special Agent's appointment pursuant to Section A of this Agreement shall immediately terminate on the Termination Date. Except for Section C.2 of this Agreement, all other provisions of this Agreement shall survive its termination.
 10. **Headings.** Any section or other heading contained in this Agreement are for reference purposes and convenience only and shall not affect, in any way, the meaning and interpretation of this Agreement.
 11. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- J. **DEFINITIONS.** The following terms have the following meanings. Any singular word shall include any plural of the same word.
1. **"Authorized Representative"** means the Chief Executive Officer or President of a Company or an individual authorized in writing by the Chief Executive Officer or President.
 2. **"Compensation/Product Schedule"** means a Company's distributed commission schedule that (a) specifies the amounts and conditions under which commissions will be due and payable to Special Agent's designee for any Product, and (b) is made a part of this Agreement.
 3. **"Product"** means any insurance policy, contract, investment vehicle or other offering identified in any Compensation/Product Schedule.
 4. **"Termination Date"** means the later to occur of (a) the date on which Special Agent or Company sends written notice of termination to the other party, or (b) the date specified by Special Agent or Company in a written notice of termination to the other party.

**MUTUAL OF OMAHA INSURANCE COMPANY
ON BEHALF OF IT AND ITS AFFILIATES SET FORTH
IN COMPENSATION/PRODUCT SCHEDULES
ATTACHED TO THIS AGREEMENT**

**TO BE COMPLETED BY SPECIAL AGENT
FOR ALL STATES**



SPECIAL AGENT
By: **See signature on Producer Contract Information
and Signature Form**
(Signature always required)

SPECIAL AGENT AGREEMENT

**MUTUAL OF OMAHA INSURANCE COMPANY
ON BEHALF OF IT AND ITS AFFILIATES SET FORTH IN
COMPENSATION PRODUCT SCHEDULES
ATTACHED TO THIS AGREEMENT**

By: _____

Name: _____

Title: _____

Date: _____

CONFIDENTIALITY AND PRIVACY AMENDMENT

This Confidentiality and Privacy Amendment (this “Amendment”), is made part of and incorporated into the Special Agent Agreement between Special Agent and Company (the “Agreement”), and is effective on the effective date of the Agreement. This Amendment supersedes and replaces in its entirety all prior versions of this Amendment. If there are any inconsistencies between this Amendment and the Agreement, the terms of this Amendment shall control.

1. **Definitions.** The following terms shall have the following meanings:

- (a) **“Business Information”** means information, which relates to customers or the business of Company including without limitation, sales and rate information, software, business plans and operating strategies, Product information, and material identifying an association with the Company. Business Information shall not include any information that (i) relates to direct or indirect compensation payable, paid or provided to Special Agent under the Agreement; (ii) is or becomes part of the public domain or is publicly available through no act or omission or through no breach of any contract; (iii) is known at the time of disclosure without an obligation to keep it confidential, as evidenced by documentation in possession at the time of such disclosure; (iv) becomes rightfully known from another source without restriction on disclosure or use; or (v) has been independently developed without the use of or any reference to Business Information.
- (b) **“Confidential Information”** means Business Information and Personal Information created by or received from the other party on behalf of Company.
- (c) **“HIPAA Privacy and Security Rules”** means the Privacy, Security and Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as may be amended from time to time.
- (d) **“Information Security Breach”** means the unauthorized acquisition, access, use, disclosure, transmittal, storage or transportation of Confidential Information which is not permitted by law or by the terms of this Amendment, including, but not limited to, a Security Incident.
- (e) **“Personal Information”** means a first name or initial, and last name, in combination with any demographic, medical or financial information such as age, gender, address, Social Security number, past, present or future physical or mental health condition or treatment, debt status or history, income and other similar individually identifiable personal information that is not publicly available or that has been designated as such by law or regulation. The term “Personal Information” includes, but is not limited to, Protected Health Information.

- (f) **“Protected Health Information”** shall have the same meaning as that assigned in the HIPAA Privacy and Security Rules limited to the information created or received from or on behalf of Company.
- (g) **“Representatives”** means all directors, officers, employees, agents, consultants, Subcontractors, professional advisors and affiliates of Special Agent.
- (h) **“Security Incident”** means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information, or interference with system operation, in an electronic information system containing Confidential Information.
- (i) **“Subcontractors”** means all persons to whom Special Agent delegates a function, activity or service under the Agreement, other than in the capacity of a member of the workforce of Special Agent.

2. **Special Agent’s Obligations Regarding Confidential Information.** The performance of the duties and obligations required under the Agreement may require either party to disclose to the other certain Confidential Information.

- (a) **Confidentiality.** Special Agent agrees to retain all Confidential Information in confidence, and shall not use, disclose, transmit, store or transport the Company’s Confidential Information except as allowed under this Amendment and for purposes related to the performance of obligations under the Agreement. Special Agent is responsible to Company for a breach of the terms of this Amendment and for any Information Security Breach by itself or its Representatives.
- (b) **Reporting an Information Security Breach or Successful Security Incident.** Special Agent agrees to report to Company any Information Security Breach and any successful Security Incident of which it becomes aware. Any report made pursuant to this Section 2(b) shall be made as soon as possible, but in no event later than five (5) business days following the date that Special Agent becomes aware of the Information Security Breach or successful Security Incident. Special Agent shall take action(s) requested by Company to document and mitigate the Information Security Breach or successful Security Incident. Special Agent shall cooperate in evaluating the necessity of providing any and all notices of an Information Security Breach or successful Security Incident as deemed advisable or as otherwise required under applicable laws or regulations.
- (c) **Return of Confidential Information.** During the term of the Agreement, Special Agent shall only retain Confidential Information which is necessary to continue proper management and administration of the services under the Agreement, or to carry out its legal responsibilities.

Upon termination of the Agreement, Special Agent shall return, or if agreed to by Company, destroy all Confidential Information that Special Agent maintains in any form. Should Confidential Information be maintained beyond the termination of the Agreement for legitimate business purposes or as may be required by law, then Special Agent shall limit the use, disclosure, transmittal, storage or transportation of Confidential Information to the specific reason requiring retention of Confidential Information, and the protections of the Agreement and this Amendment shall be extended for so long as Confidential Information is maintained. Once the reason for retention of Confidential Information has expired Confidential Information will be returned or, if agreed to by Company, destroyed.

- (d) ***Disposal of Confidential Information.*** Special Agent agrees to maintain a security policy for the disposal of paper and any other media that contains Confidential Information that includes a technology or methodology that will render Confidential Information unusable, unreadable or indecipherable.
- (e) ***Cost of an Information Security Breach.*** Special Agent shall pay Company all costs or expenses that result from Special Agent's acts or failure to act that result in an Information Security Breach.

3. **Permitted Uses and Disclosures by Special Agent.** Unless otherwise prohibited by the Agreement, this Amendment or applicable laws or regulations, including the HIPAA Privacy and Security Rules, Special Agent may use, disclose, transmit, store and transport Confidential Information:

- (a) for the proper management and administration of Special Agent's business, provided that the use, disclosure, transmittal, storage and transportation are required by law, or Special Agent obtains reasonable assurances from the entity or person to whom the Confidential Information is disclosed that it will remain confidential and be used, disclosed, transmitted, stored, or transported only as required by law or for the purpose for which it was disclosed to the entity or person;
- (b) to carry out the legal responsibilities of Special Agent;
- (c) to its Representatives if the Representatives are first informed of the confidential nature of such information and the obligations set forth herein, and agree to be bound thereby; and
- (d) to its Subcontractors if Subcontractors have entered into a written agreement with Special Agent under which Subcontractors agree to be bound by the obligations in this Amendment.

4. **Special Agent's Additional Obligations Regarding Protected Health Information.** Special Agent acknowledges that it is subject to the following requirements to the same extent as applicable to Company:

- (a) to comply with subpart C of 45 CFR part 164 of the HIPAA Privacy and Security Rules, requiring development, implementation, maintenance and use of administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information, that it creates, receives, maintains or transmits on behalf of Company;
- (b) at the request of and in the time, manner and means, electronic or otherwise, as specified by Company, to provide access to Protected Health Information to Company, or to an individual as directed by Company, in order to meet the requirements of the HIPAA Privacy and Security Rules;
- (c) to make any amendment(s) to Protected Health Information that Company directs or agrees to pursuant to HIPAA Privacy and Security Rules in the time and manner designated by Company;
- (d) to document and maintain information on any disclosure of Protected Health Information for at least six (6) years, and upon request, in the time, manner and means designated by Company, make any information about the disclosure of Protected Health Information available to Company or to an individual as directed by Company, in order for Company to meet the accounting requirements of the HIPAA Privacy and Security Rules;
- (e) to make Protected Health Information and its internal practices, books and records, including policies and procedures, relating to the use and disclosure of Protected Health Information, available to the Secretary of Health and Human Services or to a state Attorney General for purposes of determining Special Agent's or Company's compliance with the HIPAA Privacy and Security Rules; and
- (f) upon written request of Company, to provide Company a report of Security Incidents of which it becomes aware that are attempted but not successful.

5. **General Security Requirements.**

- (a) Special Agent shall have a written, comprehensive information security program for the establishment and maintenance of a security system covering all electronic equipment, including its computers and any wireless system that, at a minimum, has the following elements:
 - (i) Secure user authentication protocols that include:

- (A) control of user IDs and other identifiers;
 - (B) a secure method of assigning and selecting passwords, or use of unique identifier technologies, such as biometrics or token devices;
 - (C) control of data security passwords to ensure that such passwords are kept in a location and/or format that does not compromise the security of the data they protect;
 - (D) restricting access to active users and active user accounts only;
 - (E) blocking access to user identification after multiple unsuccessful attempts to gain access or limitation placed on access for the particular system;
 - (F) prohibitions against sharing or migrating access privileges to another individual; and
 - (G) assignment of access privileges only to identifiable, individual accounts, and all activity conducted by these accounts must be auditable.
- (ii) Secure access control measures that:
- (A) restrict access to records and files containing Confidential Information to those who need such information to perform their job duties; and
 - (B) assign unique identifications plus passwords, which are not vendor supplied default passwords, to each person with computer access, that are reasonably designed to maintain the integrity of the security of the access controls.
- (b) Company may require Special Agent to have an annual review and/or an annual technical audit of its security policies and practices by Company, or, at Special Agent's option and expense, an independent auditor, to ensure compliance with this Amendment. The third party audit report, including recommendations for remedying deficiencies where appropriate, will be provided to Company within seven (7) business days of receipt of the report by Special Agent. Special Agent shall have thirty (30) calendar days to implement remedies to any identified deficiencies, and notify Company that such deficiencies have been addressed. Special Agent's failure to remedy the identified deficiencies shall be considered in breach of this Section 5.

- (c) Special Agent will encrypt all records and files containing Confidential Information that are transmitted across public networks or transmitted wirelessly.
- (d) Special Agent will encrypt all desktop computers, laptops and all other portable devices on which Confidential Information is stored.
- (e) Special Agent will monitor systems for unauthorized use of or access to Confidential Information.
- (f) For files containing Confidential Information on a system that is connected to the Internet, Special Agent will maintain up-to-date firewall protection and operating system security patches designed to maintain the integrity of the Confidential Information.
- (g) Special Agent will maintain up-to-date versions of system security agent software which includes malware protection and up-to-date patches and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions, and is set to receive the most current security updates on a regular basis.
- (h) Special Agent will educate and train employees on the proper use of the computer security system and the importance of Confidential Information security. In addition:
 - (i) Special Agent will designate one or more employees to maintain the comprehensive information security program.
 - (ii) Special Agent will identify and assess foreseeable internal and external risks to the security, confidentiality and/or integrity of any electronic, paper or other records containing Confidential Information, and will evaluate and improve, where necessary, the effectiveness of their current safeguards for limiting such risks, including but not limited to: (A) ongoing employee (including temporary and contract employee) training; (B) employee compliance with policies and procedures; and (C) means for detecting and preventing security system failures.
 - (iii) Special Agent will maintain a security policy for Representatives that protects records containing Confidential Information that are transported outside of business premises.
 - (iv) Special Agent will impose appropriate disciplinary measures for employees that violate its comprehensive information security program rules.
 - (v) Special Agent will have processes in place to prevent terminated employees from accessing records containing Confidential

Information by immediately terminating their physical and electronic access to such records, including deactivating their passwords and user names.

- (i) No transfer of Confidential Information may be made by Special Agent outside of the United States without the prior, express written authorization of Company.

6. **PCI-DSS Requirements for Special Agent.** If Special Agent stores or transmits credit or debit card data, it will employ safeguards that comply with the Payment Card Industry Data Security Standard (PCI-DSS), as may be amended from time to time.

7. **General Provisions.**

- (a) **Compliance with Laws.** Special Agent shall comply with its obligations under this Amendment and with any laws or regulations as may now be in effect or as may hereafter be enacted, adopted or determined that apply to the confidentiality, use, disclosure, transmittal, storage or transportation of Confidential Information.

- (b) **Amendment.** This Amendment shall be amended to conform to any new or different legal requirements that result from any changes, revisions or replacements of any laws or regulations as may now be in effect or as may hereafter be enacted, adopted or determined that apply to the confidentiality, use, disclosure, transmittal, storage or transportation of Confidential Information, including, without limitation, the HIPAA Privacy and Security Rules, on or before effective compliance date thereof. Company may change, revise or replace this Amendment in its sole discretion upon notice to Special Agent without the consent of Special Agent. In the event of a conflict between the requirements of this Amendment and those of the HIPAA Privacy and Security Rules, the HIPAA Privacy and Security Rules shall control. Any such amendment will automatically be effective upon the effective compliance date of such laws or regulations and shall become effective upon without the signature of either party.

- (c) **Termination for Cause.** In addition to any other termination provisions contained in the Agreement, a party may terminate the Agreement upon written notice to the other party that they have breached a term of this Amendment.

- (d) **Disclosures Required By Law or a Governmental Authority.** If Special Agent is required to disclose Company's Confidential Information in response to legal process or a governmental authority, Special Agent shall immediately notify Company and, upon request, cooperate with Company in connection with obtaining a protective order. Special Agent shall

furnish only that portion of Confidential Information which it is legally required to disclose and shall use commercially reasonable efforts to ensure that Confidential Information is treated confidentially.

- (e) **Indemnification.** Notwithstanding any other provisions of the Agreement, Special Agent shall indemnify, defend and hold Company, its affiliates, directors, officers and employees, harmless for any liabilities, claims, demands, suits, losses, damages, costs, obligations and expenses, including without limitation attorneys' fees, court costs and punitive or similar damages, incurred by Company which result from any breach of this Amendment by Special Agent.
- (f) **Equitable Relief.** Special Agent acknowledges that Confidential Information it receives is confidential and/or proprietary to Company, that disclosure thereof could be seriously harmful to the business prospects of Company, that Company may not have adequate remedies at law for a breach of the confidentiality obligations hereunder and that money damages may be difficult or impossible to determine. Accordingly, Special Agent agrees, in addition to all other remedies available at law, that, in the event of a breach or threatened breach of this Amendment, Company shall be entitled to (i) seek and obtain equitable relief, including injunctive relief, and (ii) reimbursement of all attorneys' fees and court costs arising in connection with seeking and obtaining such equitable relief.
- (g) **Material Obligation/Survival.** Each obligation contained in this Amendment is deemed to be a material obligation of the parties hereunder and shall survive the termination of the Agreement.
- (h) **Interpretation.** In the event of an inconsistency or conflict between the terms of the Agreement and the terms of this Amendment, this Amendment shall control. Any such inconsistency or conflict shall be resolved in favor of a meaning that permits the parties to comply with the HIPAA Privacy and Security Rules or any other laws or regulations that apply to the confidentiality of Personal Information. This provision shall supersede any similar provision in the Agreement. In the event of an inconsistency between the provisions of this Amendment and mandatory provisions of the HIPAA Privacy and Security Rules or any other laws or regulations that apply to the confidentiality of Personal Information, as may be amended from time to time, the HIPAA Privacy and Security Rules or any other laws or regulations that apply to the confidentiality of Personal Information, including, without limitation, any definitions in any such laws or regulations, shall control. Where provisions of this Amendment are different than those mandated in the HIPAA Privacy and Security Rules or any other laws or regulations that apply to the confidentiality of Personal Information, but are nonetheless permitted by such laws or regulations, the provisions of this Amendment shall control.