



## **OFFICE OF THE GENERAL COUNSEL**

### **MGA/E&S BROKER CONTRACT CHECKLIST**

This checklist includes only general information and comments, and is not intended to provide specific advice about individual legal, business or other questions. It was prepared solely for use as a guide, is not a substitute for Agents' independent evaluation of any provision in a contract, and is not a recommendation that the contract be signed or rejected. If specific legal or other expert advice is required or desired, the services of an appropriate, competent professional, such as an attorney, should be sought.

- The Agreement should clearly state that the relationship between the Broker and the Company is that of an independent contractor and should not be construed as an employer/employee relationship.
- The Agreement should define the Broker's authority (e.g., to bind coverage, issue binders, cancel coverage, issue insurance certificates.)
- The Agreement should specify if the Broker has the authority to adjust or settle claims.
- The account and payment terms, including terms for audits and reporting policies, should be defined in the Agreement. Payment in advance of binding and payment within ten days of binding are common provisions.
- The Agreement should define policy cancellation and return premium authority, including the ability to obtain flat cancellations and to return uncollectable audits.
- The Agreement should specifically state how commissions will be paid (e.g. per a schedule as part of the Agreement or as negotiated per policy) and whether there are volume requirements or bonuses. Modifications should occur only after 30 days prior written notice to retail agent.
- The Agreement should clarify the licensing requirements for retail agents.
- The professional liability insurance requirements for both parties should be outlined in the Agreement, including any provisions for specific limits, certificate responsibilities and notice requirements. The requirement to maintain such coverage should be mutual.

- The Agreement should contain an indemnification/hold harmless provision. It is recommended that the indemnification provision be reciprocal and limited to the extent each party is legally liable under statute, regulation or common law.
- The Agreement should define expirations ownership and work product ownership used to transact insurance placement. The work product and expirations should belong to retail agent and direct solicitation by the MGA or E&S brokerage should be prohibited. The retail agent's ownership interest in work product/expirations should also be protected from other agencies or companies that become involved with the account as a result of the MGA's or E&S agent's efforts. The retail agent's ownership is often contingent on payment obligations to the MGA or E&S brokerage, but should otherwise survive the Agreement's termination. Because wholesale agents may not be able to bind the company regarding ownership of expirations, the Broker may want to review the agency-company agreement concerning ownership and solicitation.
- The Agreement should outline the broker of record procedures.
- The Agreement should specify the procedure for amendments to the Agreement. It is recommended that all amendments be in writing and signed by both parties, and that notice of any amendment be given in writing at least 30 days prior to the effective date.
- The Agreement should specify the termination and notification procedures, periods and service obligations of MGA or E&S brokerage during runoff. It is recommended that at least 30 days prior written notice of intent to terminate by either party be given.
- The Agreement should contain dispute settlement procedures, including an arbitration provision.
- The Agreement should define the Company's responsibility for providing the Broker with advance written notice of expiration of policies.
- The Agreement should define the retail agent's responsibility to secure affidavits arising out of surplus lines laws.
- The choice of law provision should be negotiable. Jurisdiction and venue should be in the jurisdiction where the retail agent's business is located.

OTHER PROVISIONS TO BE AWARE OF:

- Personal guarantees of premium payment or agreement compliance. Such provisions could jeopardize the guarantor's personal assets.
- Indemnification provisions which expand beyond the retail agent's E&O coverage.
- Warranties given by Broker which may have the same effect as personal guarantees.

- Provisions which hold the retail agent primarily responsible for accounting and payment of fees and taxes to regulatory authority.
- Provisions which put restrictions on and create responsibilities for actual or assigned sub producers.