



# The McGowan Companies

Home Office – Old Forge Centre • 20595 Lorain Road • Fairview Park, OH 44126  
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## Brokerage Agreement

This Agreement (hereinafter “Agreement”) by and between COMPANY and BROKER shall be effective the first date that it is executed by both signatories.

“**COMPANY**” shall mean, severally, but not jointly, each Member of The McGowan Companies (hereinafter “**McGOWAN**”) designated herein and in Addendum A to this Agreement. COMPANY has its principal office at 20595 Lorain Road, Fairview Park, Ohio 44126.

“**BROKER**” shall mean the following organization (firm):

**Name of Firm:**

**Firm's Principal Office Address:**

\_\_\_\_\_  
(BROKER)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you check this box, this Agreement will apply to all of your branch offices, not just the branch office listed above. Please provide us with the contact information for all of your branch offices (the names of your Marketing Manager and other contacts, in addition to their addresses, phone #s, fax #s, e-mail addresses, etc.).

Throughout this Agreement, COMPANY and BROKER may each be referred to as a “Party” to this Agreement, individually, and “Parties” to this Agreement, collectively.

\* \* \*

**WHEREAS**, BROKER desires to utilize the services and/or facilities of COMPANY to obtain Products for the BROKER and/or BROKER’s clients, and,

**WHEREAS**, COMPANY agrees to provide such Products to BROKER, subject to the terms and conditions set forth herein;

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein set forth herein, and for other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Properly Licensed

BROKER warrants that it is and shall remain properly licensed to transact business as an agent, broker, or producer for all the types of Products it has placed or will place or purchase through COMPANY in accordance with the insurance and financial regulations and laws of the state in which BROKER transacts such business.

2. Financial Matters

A. *Payment Due Upon Receipt of Invoice Unless Other Due Date Stipulated; Undisputed Sums Due*

COMPANY shall furnish BROKER with an invoice setting forth the total amount due COMPANY with regards a given Product (which total amount may include totaled premiums, charges, fees, and/or taxes). BROKER shall remit to COMPANY the amount shown on such invoice upon receipt of the invoice, unless a different payment due date appears on the invoice or is agreed to by COMPANY, in writing.

If BROKER disputes a sum due on an invoice, it shall bring the disputed sum due to the attention of COMPANY within ten (10) days of its receipt of the invoice. If it does not, the sums due on the invoice shall be considered undisputed.

B. *Liability for Premiums, Charges, Fees &/or Taxes*

With regards any Policy or Product placed or provided by COMPANY to BROKER, BROKER is liable to COMPANY for the net amount due COMPANY (all premiums, charges, and/or fees, and/or taxes, less commissions payable to BROKER on Products), without deductions.

With regards any service provided by COMPANY to BROKER, BROKER is liable to COMPANY for the gross amount due COMPANY (including all fees and/or taxes), without deductions.

BROKER shall pay all premiums, charges, fees, and taxes due to COMPANY, subject to Sub-Section 3. C. below, whether or not such premiums, charges, fees, and/or taxes have been collected by BROKER from its customers/insureds. BROKER shall pay for all costs or attorneys' fees incurred by COMPANY to collect any sums due in accordance with this Agreement, subject to Sub-Section 3. C. below.

C. *Collection of Audit Premiums*

BROKER shall use its reasonable efforts to collect audit premiums due COMPANY. With regards any given customer/insured, BROKER shall not be liable to COMPANY for any audit premium due, provided that: (A) within 30 days of receiving an invoice for such audit premium from COMPANY, BROKER notifies COMPANY in writing that it is unable to collect such audit premium; (B) BROKER provides written proof to COMPANY that it has attempted at least twice, in writing, following the receipt of said invoice, to collect such audit premium; and, (C) the relevant insurance company agrees not to hold COMPANY liable for such audit premium [following the adherence by BROKER to the protocols set out in parts (B) and (C) of this sentence]. After being notified that BROKER is unable to collect such audit premium, COMPANY may attempt to collect such audit premium. If COMPANY is successful in obtaining such audit premium, BROKER shall not be entitled to commission on such audit premium.

D. *Offsets*

In the event that an endorsement to a Policy or change in a Product results in a return premium or credit, BROKER is not permitted to deduct this return premium or credit from any other amounts due to COMPANY by BROKER. Return premiums and credits will be remitted by COMPANY to BROKER.

In the event that BROKER fails to make a timely payment of amounts due COMPANY under this Agreement or any other agreement, COMPANY may offset amounts owed by COMPANY to BROKER against amounts owed by BROKER to COMPANY.

BROKER may not offset any amount owed by BROKER to COMPANY against any amount owed by COMPANY to BROKER.

E. *Fiduciary Requirements; Permission for BROKER to Retain Interest on Fiduciary Sums*

For purposes of this section, all premiums, charges, fees, taxes, and other amounts remitted to BROKER by its customers/insureds in payment for Products shall be known as "Special Funds." BROKER shall hold Special Funds due COMPANY in a segregated account, in a fiduciary capacity, and in trust for the benefit of COMPANY until such time as said funds are remitted to COMPANY. BROKER shall not commingle Special Funds with its operating funds or use Special Funds for any purpose other than the payment of amounts due COMPANY. Special Funds shall not be subject to BROKER's dominion or control.

BROKER agrees that, with regards policies of insurance, Special Funds were remitted to BROKER by its customers/insureds for the express, sole, and exclusive purpose of securing insurance coverage for such customers/insureds through COMPANY.

COMPANY provides its permission to BROKER to retain interest on any account in which fiduciary sums are held.

F. *Premium Advances*

COMPANY is required by its insurance/financial services companies to make payment of premiums/charges on or before a certain date each month. With regards any given Policy: (1) if COMPANY advances a premium/charge to an insurance/financial services company, but COMPANY has not – at the time of said advance – previously received payment of that premium/charge from BROKER, COMPANY shall not be deemed to be a creditor of BROKER or its customer/insured, particularly, but not exclusively, with regards the application of bankruptcy laws (and, more particularly, preference avoidance); (2) at all times, COMPANY is merely a conduit of funds between the BROKER's customer/insured, BROKER, and the relevant insurance/financial services company. BROKER shall indemnify and hold harmless COMPANY from any situation in which COMPANY is declared, by a court or person/entity acting with governmental power, to be a creditor of a BROKER or any of BROKER's customers/insureds due to the advancement of a premium/charge by COMPANY to an insurance/financial services company.

With regards any given Policy, if BROKER advances a premium/charge to COMPANY, but BROKER has not – at the time of said advance – previously received payment of that premium/charge from its customer/insured, BROKER shall: (A) be deemed to be a creditor of such customer/insured, particularly, but not exclusively, with regards the application of bankruptcy laws (and, more particularly, preference avoidance); (B) not be deemed to have extended the credit of COMPANY or relevant insurance companies to said customer/insured; and, (C) be responsible for the collection of such credit (i.e. - loan).

G. *Direct Bill*

At times, BROKER may place or provide Products for BROKER on a "direct bill" basis (meaning that the relevant insurance company or financial services company is responsible for the billing and collection of billings for Products, rather than COMPANY). If BROKER receives a "direct bill" payment that was intended for an insurance/financial services company, it shall immediately notify COMPANY and remit such "direct bill" payment to the relevant insurance/financial services company.

H. *Commission; Notification of Compensation; Fees*

(1) *Commission*

Some Products sold by COMPANY are commissionable to BROKER, while others are not. Quotes and invoices provided to BROKER by COMPANY shall clearly state whether or not commission is payable.

On commissionable Products, the commission payable shall be at a rate stipulated by COMPANY, which rate is within COMPANY's sole discretion.

In the event that a Policy on which BROKER has received a commission is cancelled or modified (regardless of whether such cancellation or modification is instituted by an insurance company, a financial services company, COMPANY, BROKER, the insured, a premium finance entity, or by any other person or organization), BROKER shall pay return commission to COMPANY on return premium at the same rate at which such return premium is calculated.

(2) *Notification of Compensation*

BROKER shall be responsible for notifying its customers/insureds of its compensation (including commissions) when required to do so by and in accordance with applicable insurance and financial regulations and laws.

(3) *Fees*

a. *Broker Fees*

BROKER may charge its customers/insureds fees for its services ("broker fees"). However, BROKER warrants that it will charge fees in accordance with applicable insurance and financial regulations and laws.

b. *COMPANY Fees*

If COMPANY charges a fee, on its own behalf or on behalf of a third party, whether for a particular service, in connection with a particular Product, or in connection with or on behalf of a purchasing group, it shall disclose the amount and presence of said fee.

For the purposes of this Sub-Section and this Agreement, a "fee" charged by COMPANY shall be defined to include purchasing group membership fees, other purchasing group fees, placement fees, service fees, broker fees, Policy fees, consulting fees, or any other fees charged by COMPANY, as well as any fees collected by COMPANY that are mandated by local, state, or federal governments or other governmental organizations, including, but not limited to, surplus lines stamping office fees.

3. Coverage/Policy-Related Matters; Broker Matters

A. *Limitations on BROKER; Liabilities of BROKER*

- (1) BROKER does not have the authority to quote, bind, alter, modify, cancel, or reinstate coverage with regards any Policy available through COMPANY.
- (2) No provision of this Agreement shall be construed as permitting BROKER to bind a Policy, even if BROKER has received a quote from COMPANY.
- (3) Coverage is not bound on a Policy until such point as BROKER receives a written binder of coverage from COMPANY.
- (4) Once COMPANY has provided BROKER a written binder of coverage, BROKER may convey that coverage has been bound to the insured.
- (5) BROKER assumes all liability for situations in which a BROKER inaccurately conveys to an insured that such insured has received a particular coverage under a Policy in contradiction of said Policy's terms, conditions, and exclusions.

- (6) If BROKER requests COMPANY to provide a quote or bind a Policy with particular terms and conditions, COMPANY shall be under no obligation to do so. The terms and conditions of quotes or policies issued by COMPANY may not comport with all of the terms and conditions requested by BROKER in its application for insurance or other correspondence.
- (7) BROKER does not have the authority to and shall not waive defaults relative to the terms, conditions, or exclusions of a Policy.

B. *Right to Decline*

COMPANY shall have the absolute right to decline any business submitted by the BROKER.

C. *No Obligation to Provide Notice of Expiration; No Automatic Renewals*

With regards to the renewal of any Product placed by BROKER through COMPANY, COMPANY shall not be under any obligation to provide BROKER with notice of that Product's expiration. It shall be BROKER's responsibility to request renewal instructions from COMPANY, regardless of any prior practice of COMPANY, standard in the industry, custom, or usage. Products do not automatically renew (unless a specific exception for a particular Product is made by COMPANY in writing).

In order to renew coverage under a Product, BROKER must comply with all of the renewal guidelines and instructions specified by COMPANY.

D. *No "Backdating"; Written Instructions Required to Bind*

Requests to bind coverage on a new Policy, a renewal Policy, or an endorsement to a Policy must be sent to COMPANY in writing and be received by COMPANY on or before the inception date of coverage (in the case of a Policy) or the effective date of the endorsement, as applicable.

On occasion, and when permitted to do so by the relevant insurance company, COMPANY may make an exception and "backdate" the inception date of coverage (in the case of a Policy) or the effective date of an endorsement, as applicable. Such exceptions are within the sole discretion of COMPANY and are not valid unless they are made in writing by COMPANY.

E. *Flat Cancellations Not Permitted*

Flat cancellations are not permitted on Policies placed by BROKER through COMPANY, unless the relevant insurance companies permit flat cancellations.

F. *"Broker-of-Record" Letters; Quotes To Other Brokers Following Policy Lapses*

Nothing in this Agreement shall prevent COMPANY from acknowledging a "Broker-of-Record" letter from another broker not party to this Agreement, either during or after termination of this Agreement.

Furthermore, if an insured's Policy placed by BROKER through COMPANY should lapse, and BROKER does not request COMPANY to renew such Policy, nothing in this Agreement shall prevent COMPANY from quoting or binding insurance coverage to or for that insured through another broker not party to this Agreement. However, COMPANY shall not do so without receiving an application from said other broker not party to this Agreement.

G. "Open Brokerage" Operation

COMPANY operates in an "open brokerage" manner (meaning that it transacts business with and accept submissions from numerous insurance brokers/brokerages). The decision of COMPANY to work with any particular insurance broker is at the sole discretion of COMPANY. Nothing in this Agreement shall prevent COMPANY from working with the insurance brokers/brokerages of its choosing.

H. Determination of Extent of Relationship

COMPANY has the sole discretion to determine whether or not it transacts business with BROKER, either partially, entirely, or with regards a particular account or Product.

4. Independent Contractor – No Agency Relationship, No Employer-Employee Relationship; Broker's Rights

BROKER may not hold itself out, nor convey to anyone by any means, nor allude to the fact that it is an agent or employee of COMPANY. Nothing in this Agreement shall be construed to create a relationship of employer and employee, nor a relationship of agent and principal (an agency relationship), between BROKER and COMPANY. BROKER is an independent contractor, which exercises its own judgment in the conduct of its business.

BROKER's only rights as an appointed broker of COMPANY shall be: (1) to submit applications for Products to COMPANY for consideration; and, (2) to request COMPANY to bind coverage pursuant to COMPANY's quote.

No act or statement of BROKER shall in any way be binding upon COMPANY unless expressly authorized by COMPANY.

5. Authorization To Receive Advertising Information & Correspondence

BROKER authorizes COMPANY to send it and any of its employees advertising information and correspondence, whether solicited or unsolicited, via any means of communication or telecommunication, electronic or otherwise, including, but not limited to, facsimile, telephone, modem, Internet, United States Mail, or independent package delivery service.

6. Agreement Only Between COMPANY & BROKER

This Agreement is entered into solely between BROKER and COMPANY.

7. Allocation of Responsibility for Errors & Omissions

A. *Negligence, Errors & Omissions, and Wrongdoing of COMPANY*

Should a third party bring a claim or lawsuit against BROKER because of the alleged negligence, wrongdoing, error, or omission of COMPANY, COMPANY shall defend, indemnify, and hold harmless BROKER from any damage, loss, cost, expense, liability, penalty or fine, attorney's fee, including reasonable interest thereon until paid, settlement, or judgment: (1) which BROKER incurs defending, settling, or resolving the claim or lawsuit, but only to the extent of COMPANY's alleged negligence, wrongdoing, error, or omission.

B. *Negligence, Errors & Omissions, and Wrongdoing of BROKER*

Should a third party bring a claim or lawsuit against COMPANY and/or any Originator because of the alleged negligence, wrongdoing, error, or omission of BROKER or its sub-producers (if applicable), BROKER shall defend, indemnify, and hold harmless COMPANY and said Originator(s) from any damage, loss, cost, expense, liability, penalty or fine, attorney's fee, including reasonable interest thereon until paid, settlement, or judgment: (1) which COMPANY and/or said Originator(s) incurs defending, settling, or resolving the claim or lawsuit, but only to the extent of BROKER's alleged negligence, wrongdoing, error, or omission; or, (2) arising out of, caused by, relating to, resulting from, or as a consequence of any alleged errors or omissions regarding: (a) the adequacy, amount, or form of any insurance coverage or Product obtained by BROKER through COMPANY; and/or, (b) the failure to provide any customer/insured with: (i) particular insurance coverage, limits, or benefits; (ii) particular Products or benefits related thereto; (iii) particular insurance coverage, limits, or benefits that are requested; (iv) particular Products or benefits related thereto that are requested; (v) insurance coverage, limits, or benefits that are adequate or appropriate for that customer's/insured's needs; (vi) Products or benefits related thereto that are adequate or appropriate for that customer's/insured's needs; and/or (vii) the reporting or handling of claims.

This Sub-Section voids and supersedes any other language in this Agreement to the contrary.

C. *Adequacy, Amount & Form of Coverage – BROKER's Responsibilities; COMPANY's Responsibilities*

It shall be BROKER's responsibility to provide its customers/insureds with proper advice as to the adequacy, amount, and form of insurance coverage or Products. If BROKER is a wholesale insurance broker, it may transfer this responsibility to its retail insurance brokers by contract; however, doing so does not affect any terms or conditions of this Agreement.

COMPANY shall have no responsibility toward any customer/insured, Policyholder, sub-producer, or BROKER with regards to the adequacy, amount, or form of any Product placed through COMPANY. COMPANY shall only be liable for: (1) binding coverage according to the terms and conditions of its quotes; and, (2) issuing policies according to the terms and conditions of its quotes and binders.

D. Either Party who intends to claim their right of indemnification hereunder shall promptly notify the other Party when it receives notice of commencement of any action or proceeding related to such claim, and such other Party shall be entitled to participate in such action or proceeding with counsel satisfactory to both Parties.

8. Termination of Agreement

A. *Effective Date of Termination*

(1) *Automatic Termination*

This Agreement shall immediately and automatically terminate on the date:

- (a) that any public authority revokes, cancels, or declines to renew any license required for BROKER to transact business as an agent or BROKER for any of the types of insurance policies BROKER has placed through COMPANY;
- (b) on which there occurs a merger or consolidation with respect to BROKER;
- (c) on which there occurs a sale or transfer of substantially all of the assets of BROKER or a majority of its issued and outstanding stock;
- (d) on which there occurs a change in the control of BROKER;
- (e) on which the voluntary or involuntary cessation of BROKER's business occurs;

- (f) that either Party becomes or is declared insolvent, files for bankruptcy protection or reorganization, or can no longer pay its debts as they mature;
- (g) that any senior manager of BROKER is convicted of a crime involving moral turpitude (not including minor traffic violations and misdemeanors);
- (h) that any senior manager of BROKER is convicted of violating insurance regulations or laws; or,
- (i) that either Party gives written notice to the other of:
  - i. A breach or abandonment of this Agreement by the other Party;
  - ii. Fraud by the other Party; or,
  - iii. Gross or willful misconduct by the other Party.

(2) *Termination for Non-Payment*

COMPANY shall be permitted to immediately terminate this Agreement, with written notice to BROKER, if BROKER fails to: (a) remit payments due COMPANY on a timely basis; or, (b) otherwise comply with the terms of this Agreement.

(3) *Termination for Any Other Reason*

This Agreement shall terminate thirty (30) days after the date that either Party to this Agreement notifies the other Party to this Agreement of its intent to terminate this Agreement, in writing.

B. *Compliance with State Laws Regarding Termination*

COMPANY shall comply with any State's laws that require COMPANY to maintain this Agreement for a period of time after BROKER has been notified of COMPANY's intent to terminate.

C. *Financial Obligations of Parties in Event of Termination*

(1) *Payment on All Accounts Owed to COMPANY When Due*

In the event of a termination of this Agreement, BROKER shall pay all sums owed to COMPANY when due.

(2) *Balances Due From Past & Future Transactions Not Affected By Termination*

Termination of this Agreement does not relieve BROKER from paying any sums due COMPANY as of the date of such termination; nor does termination of this Agreement relieve BROKER from paying any sums which become due COMPANY after the termination of this Agreement because of transactions not yet processed as of the date of such termination, but which transactions are related to business in-force as of the termination date of this Agreement.

(3) *Accrued Rights, Liabilities & Obligations of Parties To Agreement Not Affected By Termination*

Termination of this Agreement shall not affect the respective rights, liabilities, or obligations of either Party to this Agreement accrued up to the date of such termination.



(4) *Amounts Due & Commissions Due Not Affected by Termination*

Termination of this Agreement will not affect any amounts due or commissions due either Party accrued up to the date of such termination; nor will it affect any amounts due or commissions due with regards in-force business that continues in-force after the date of such termination.

D. *Ownership of Expirations*

So long as BROKER has satisfied its financial obligations to COMPANY within thirty (30) days of the termination date of this Agreement, the use and control of expirations shall remain the property of BROKER. If BROKER does not satisfy its financial obligations to COMPANY as of or within thirty (30) days of the termination date of this Agreement, COMPANY shall have exclusive use and control of the expirations until such point as BROKER has satisfied all of its financial obligations to COMPANY.

9. Ownership of COMPANY, Programs & Underwriting Authorities ("Pens"); Ownership of Information; Obligations Regarding Confidential Information

A. *Ownership of COMPANY, Programs & Underwriting Authorities ("Pens")*

At all times, ownership of COMPANY, COMPANY's insurance programs, and COMPANY's underwriting authorities remains exclusively with COMPANY. BROKER warrants that it shall never make a claim nor file a lawsuit alleging that it has ownership, whether partial or total, of COMPANY, COMPANY's insurance programs (whether past, current, or future), COMPANY's underwriting authorities (whether past, current, or future), COMPANY's insurance programs (whether past, current, or future), any of COMPANY's assets, or the income or profits generated by COMPANY.

At times, BROKER may provide COMPANY, with or without COMPANY's request, with information or suggestions (1) to improve or modify COMPANY's existing insurance programs or underwriting authorities, or (2) which would allow COMPANY to develop new insurance programs and/or underwriting authorities. Said information may include, but is not limited to, BROKER's loss experience in a given class of business, rate or coverage information, information about BROKER, information about BROKER's customers/insureds, and/or competitive intelligence. The terms of this Sub-Section apply irrespective of any information or suggestions which BROKER supplies or makes to COMPANY before, during, or after the effective dates of this Agreement, and the use of said information or suggestions by COMPANY shall not be considered conversion or a breach of any duty owed to BROKER by COMPANY under this Agreement, including any duty of confidentiality.

The terms and conditions of this Sub-Section void and supersede any language in this Agreement to the contrary.

B. *Ownership of Information*

Any information supplied to BROKER by COMPANY shall be considered the exclusive property of COMPANY, except information which BROKER obtains through sources other than COMPANY.

Any information supplied to COMPANY by BROKER shall be considered the exclusive property of BROKER, except information which COMPANY obtains through sources other than BROKER.

C. *Obligations Regarding Confidential Information*

Except as otherwise stated in this Agreement...

BROKER may not disclose the Confidential Information of COMPANY – as defined in this Agreement - to any third party without the express, written permission of the president of COMPANY. BROKER shall not use, nor allow any person or third party to use, the Confidential Information of COMPANY to compete against COMPANY. BROKER shall take all necessary steps to protect COMPANY's Confidential Information.

COMPANY may not disclose the Confidential Information of BROKER – as defined in this Agreement - to any third party without the express, written permission of the president of BROKER. COMPANY shall not use, nor allow any person or third party to use, the Confidential Information of BROKER to compete against BROKER. COMPANY shall take all necessary steps to protect BROKER's Confidential Information.

D. *Requests/Demands for Disclosure of Confidential Information*

If either Party receives a request or demand for disclosure of the other Party's Confidential Information, that Party shall immediately provide written notice to the other Party of said request or demand, allowing sufficient time for the other Party to seek a protective order or similar protection as may be available under law.

10. Claims

A. *Duty to Cooperate In Investigation & Adjustment of Claims*

BROKER shall cooperate fully with COMPANY to facilitate the investigation and adjustment of any claim arising in connection with any Policy placed by BROKER through COMPANY. BROKER shall provide copies of its records concerning any given Policy placed by BROKER through COMPANY within five (5) days of the receipt of such request from COMPANY.

B. *Reporting of Claims*

It shall be BROKER's responsibility to report claims directly to its customers'/insureds' insurance companies and in compliance with the terms and conditions of such customers'/insureds' Policies. As soon as BROKER becomes aware of a claim involving one of its customers/insureds, BROKER shall report that claim directly to that customer's/insured's insurance companies and in compliance with the terms and conditions of that customer's/insured's Policies. COMPANY shall not be liable for the failure of BROKER or its customers/insureds to comply with the claims reporting provisions of such customers'/insureds' Policies.

At the same time that BROKER provides claims documents and correspondence to its customers'/insureds' insurance companies, it shall provide copies thereof to COMPANY.

C. *Claims Authority*

BROKER shall not have any authority or power to adjust, settle, compromise, or pay any claim.

BROKER shall not make any representation regarding: (1) coverage; and/or, (2) the acceptance or denial of coverage.

11. Maintenance of E&O; Minimum E&O Limits; Limitation of Liability

A. *Maintenance of E&O; Minimum E&O Limits*

Both BROKER and COMPANY shall maintain, at all times while this Agreement is in effect, an Errors & Omissions Liability Policy with limits of at least \$1,000,000.00 "per claim" underwritten by an insurance company rated "A-" or better by A.M. Best.

B. *Limitation of Liability*

COMPANY's aggregate limit of liability arising out of or relating to the sale of any Product or provision of any service shall not exceed One Million United States Dollars (\$1,000,000).

In no event shall COMPANY be liable for any indirect, special, incidental, consequential, exemplary, or punitive damages or for any lost profits or other economic loss arising out of or relating to the sale of any Product or provision of any service.

12. Entire Agreement; Voids & Supersedes Previous Agreements; Governs All Claims & Controversies Between the Parties, Regardless of Timing

This Agreement constitutes the entire agreement between the Parties hereto and voids and supersedes all previous agreements entered into between the Parties hereto with respect to its subject matter.

This Agreement governs all claims and controversies (hereinafter "disputes") between the Parties hereto, regardless of whether: (1) the events, actions, inactions, failures, errors, or omissions giving rise to those disputes occurred or began prior to, during, or after the effective date of this Agreement; (2) said disputes were known or unknown as of the effective date of this Agreement; and, (3) were, are currently, or will be the subject of litigation.

13. No Modification Without Written Consent of Both Parties

This Agreement may not be modified without the express written consent of COMPANY and BROKER.

14. Survival

The following sections shall survive termination of this Agreement, regardless of the reason for the termination:

- A. Sub-Sections 2. C., 2. E. and 2. F.;
- B. Section 7.;
- C. Sub-Sections 8. C. (1), 8. C. (2), 8. C. (3), and 8. C. (4);
- D. Section 9.;
- E. Section 10.;
- F. Section 11.;
- G. Section 18.;
- H. Section 19.;
- I. Section 20.;
- J. Section 24.;
- K. Sub-Sections 25. C. and 25. D.;
- L. Section 26; and,
- M. Section 27.

15. Not Assignable

BROKER's rights under this Agreement are not assignable without the express written consent of COMPANY.

16. Waivers

Failure by COMPANY to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition.

No waiver of any breach or default of this Agreement shall be valid unless in writing and signed by COMPANY.

No waiver of any breach or default of this Agreement shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

17. Provisions Determined to be Invalid by a Court - Severability

Should any section, sub-section, paragraph, or provision of this Agreement be ruled unenforceable because of the effect of any law, or for any other reason, the remaining provisions herein shall remain unaffected and shall remain fully binding and enforceable.

This Agreement shall be deemed to be automatically amended to include any provision required by application regulations or law.

18. Notice(s)

A. *Notice Under this Agreement*

Any notice required or which may be given under this Agreement shall be in writing and either delivered personally, sent by overnight courier, or mailed by certified mail (return receipt requested) to the addressee. Such notice shall be deemed given when so delivered personally, or, if sent by overnight courier, one (1) business day after the date so sent, or, if mailed by certified mail, three (3) business days after the date of mailing. Notices shall be sent to the address of COMPANY or BROKER stated in this Agreement or to such other address as COMPANY or BROKER shall designate, in writing.

B. *Notices to BROKER*

Notices to BROKER from any third party (including, but not limited to, customers/insureds) shall not constitute notice to COMPANY. Said notices may include such things as notices of loss, notices of change in exposure, requests to bind or cancel coverage, etc.

19. Dispute Resolution

A. *Binding Arbitration*

All disputes which one Party to this Agreement brings against the other Party to this Agreement, an Originator, and/or any of their past, present, or future owners, directors, officers, employees, agents, or representatives shall be resolved by binding arbitration in Cleveland, Ohio. The decision of the arbitrator(s) shall be final and binding, the arbitrator(s)' award is not required to include factual findings or legal reasoning, and BROKER and COMPANY's right to appeal or to seek modification of rulings by the arbitrator(s) is strictly limited. Arbitration and selection of an arbitrator/arbitrators shall be conducted according to the then-current rules of the American Arbitration Association, except to the extent that any term or condition of this Agreement conflicts therewith, and shall be conducted as expeditiously as possible. The arbitrator(s) shall be authorized, at his/her/their discretion, to include in any award the fee of the American Arbitration Association and the arbitrator(s)' fee, in addition to any monetary relief granted.

The arbitration award may be entered as a judgment in any court of record having jurisdiction, but shall be first entered as a judgment in the federal and state courts located in Cleveland, Ohio.

However, COMPANY shall not be prohibited from filing a lawsuit against BROKER to collect undisputed sums due COMPANY.

B. Jurisdiction; Waiver of Jury Trial; Choice & Conflicts of Law; Binding Arbitration Not Affected

1. *JURISDICTION*

EACH PARTY HEREBY: (1) HEREBY DESIGNATES THE FEDERAL AND STATE COURTS OF COMPETENT JURISDICTION LOCATED IN CLEVELAND, OHIO, AS THE EXCLUSIVE COURTS OF PROPER JURISDICTION AND VENUE FOR ANY AND ALL LEGAL PROCEEDINGS RELATING TO THIS AGREEMENT; (2) IRREVOCABLY AND UNCONDITIONALLY CONSENTS TO SUCH DESIGNATION, JURISDICTION AND VENUE; AND, (3) IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION OR DEFENSE RELATING TO JURISDICTION OR VENUE WITH RESPECT TO ANY LEGAL PROCEEDING INITIATED IN OR TRANSFERRED TO FEDERAL AND STATE COURTS OF COMPETENT JURISDICTION LOCATED IN CLEVELAND, OHIO.

2. *WAIVER OF JURY TRIAL*

EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

3. *Choice & Conflict of Laws*

This Agreement shall be construed in accordance with the laws of the State of Ohio without regard to its principles regarding conflicts of laws.

4. *Binding Arbitration Not Affected*

This section does not affect the provisions of Section 19. Above.

20. No Relationship Between MCGOWAN Members; Warrant & Covenant Not To Sue MCGOWAN Members Not Related To A Specific Transaction

Members of MCGOWAN have no relationship with one another, separate from the fact that each of them has agreed to accept a "universal" brokerage agreement to govern its relationship with BROKER, in lieu of its own brokerage agreement. Each Member is independently-owned and operated. Each Member sells unique Products and coverages that are - generally - not available through other Members. Some Members offer financial Products, while others offer insurance Products. Use of a "universal" brokerage agreement allows BROKER access to the diverse Products of the Members in the easiest manner possible.

**WITH REGARDS ANY PRODUCT ISSUED BY, ISSUED THROUGH, PLACED BY, OR PROVIDED BY ANY MEMBER, THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL APPLY AS IF THAT MEMBER AND BROKER WERE THE ONLY TWO PARTIES TO THIS AGREEMENT.**

Should a claim or controversy arise with regards one Member of McGowan, Broker warrants and covenants that shall not file a lawsuit, file an administrative action or complaint, nor engage in any sort of legal proceeding or arbitration against any other Member of MCGOWAN not involved in the claim or controversy.

21. Advertising & Marketing; COMPANY Name, Trademarks & Logos

Without the express, written consent of COMPANY, BROKER shall not: (A) place any advertisement referring to COMPANY or any insurance company/financial services company; or, (B) broadcast, issue, publish, or cause to have broadcasted, issued, or published, any letter, circular, pamphlet, advertising, information, or statement referring to COMPANY, COMPANY's Products, or any insurance company/financial services company.

Without the express, written consent of COMPANY, BROKER shall not use the name, trademarks, or logos of COMPANY or its Affiliates.

22. Headers

Headers in this Agreement are used for organizational purposes and shall not affect the meaning, construction, or interpretation of this Agreement.

23. Notice of Default

BROKER shall promptly provide written notice to COMPANY, in any case within three (3) business days, of any default by BROKER of its obligations under this Agreement.

24. Maintenance of Records

BROKER shall maintain complete and accurate records on all Product and service transactions conducted involving COMPANY or any insurance company/financial services company. Such records shall include, but are not limited to, all signed applications, exclusions, endorsements, selections or rejections of optional coverage under any Product or renewal thereof, records of coverages offered and explained, documents which served as the basis of determining an customer's/insured's or prospective customer's/insured's qualification as an eligible risk, documents and language required by any state in which a Policy is issued, and correspondence from any insured.

Such records shall be retained in a durable, retrievable, legible, and incapable-of-alteration manner for a period of at least seven (7) years from the expiration date of any Product.

25. Other Duties & Responsibilities

A. *Complete & Accurate Information*

BROKER shall provide complete and accurate information to COMPANY (including, but not limited to, in all correspondence and documents (including, but not limited to, applications for insurance).

B. *Communications During Business Hours*

BROKER shall maintain a place of business capable of receiving communications during regular business hours.

C. *Direct Communications & Negotiations*

With regards Products quoted, placed by, or provided to BROKER by COMPANY, BROKER shall not directly communicate or negotiate with the insurance companies or financial service companies which underwrite or support such Products, except to report claims in compliance with this Agreement.

D. *Compliance with Laws*

In the performance of their duties and obligations under his Agreement, both Parties shall comply with all applicable rules, regulations, and laws, including, but not limited to, all laws related to: (1) the privacy of financial and health information; and, (2) security breaches. Said rules, regulations, and laws to which the Parties must comply include, but are not be limited to: (1) the Gramm-Leach-Bliley Act; (2) data security acts; (3) consumer protection acts; (4) licensing rules, regulations, and laws; (5) labor rules, regulations, and laws; and, (5) insurance rules, regulations, and laws.

26. Software License

A. *Limited License*

COMPANY grants to BROKER a non-exclusive, royalty-free license, upon the terms and conditions and subject to the limitations set forth in this Section of this Agreement, to use the COMPANY's Software Systems or certain elements thereof in connection with this Agreement, but for no other purpose ("Systems License").

B. *Term*

The Systems License shall commence as of the effective date of this Agreement and shall continue until the Systems License is revoked by COMPANY or this Agreement is terminated. COMPANY may revoke the Systems License at any time, at its sole discretion.

C. *Assignment of Rights*

The Systems License and the rights granted thereunder shall not be sub-licensed or assigned without the express, written permission of COMPANY. If COMPANY permits BROKER to sub-license or assign the Systems License, BROKER shall only be permitted to do so in furtherance of this Agreement and for no other purpose.

D. *Use Limitations*

The rights granted in this Systems License are subject to the following limitations:

- (1) BROKER shall not copy or distribute any Systems IP, except in furtherance of this Agreement;
- (2) BROKER shall not disclose any Systems IP to any third parties without the express, written permission of COMPANY and only in furtherance of this Agreement;
- (3) BROKER shall not modify, decompile, disassemble, reverse engineer, or create derivative works based on the Systems IP or any elements thereof; and,
- (4) BROKER shall use the Systems IP in compliance with applicable law, including, but not limited to, all applicable provisions of copyright and other intellectual property laws.

E. *Ownership*

Nothing in this Systems License shall be deemed to grant to BROKER any ownership or rights in the Systems IP other than the rights granted herein.

F. *COMPANY's Software Systems Warranty*

COMPANY warrants that it has the right to grant the Systems License set forth herein. COMPANY agrees to indemnify and hold harmless BROKER from and against any damages arising out of BROKER's infringement or violation of the intellectual property rights of others resulting from BROKER's use of the Software Systems in accordance with this Systems License.

G. *Maintenance & Technical Support*

During the term of this Systems License, and at no cost to BROKER, COMPANY shall provide BROKER with updates to, upgrades of, and maintenance/support of the Software Systems.

## 27. Definitions

For purposes of this Agreement, the following definitions shall apply. Definitions shall have the same meaning whether used in the singular or the plural.

- A. "Affiliate": This term shall mean: (1) any entity which is under common ownership, either partially or entirely, with a particular entity; and, (2) any entity which is under the control of a particular entity. This term shall include, but not be limited to, a parent company, subsidiary, or sister company of a particular entity.
- B. "BROKER": This term shall mean: (1) any person or entity defined as "BROKER" in this Agreement; (2) any person or entity who/which is an owner, director, officer, employee, representative, or agent of BROKER; and, (3) any Affiliate of BROKER, as well as any person or organization who/which is an owner, officer, director, employee, representative, or agent of said Affiliate of BROKER.
- C. "COMPANY": This term shall mean: (1) any entity defined as "COMPANY" in this Agreement; and, (2) any Member of COMPANY.
- D. "Confidential Information": This term shall mean any information disclosed by one Party to this Agreement to the other, whether disclosed in writing or orally, that is not generally available to the public.

With regards COMPANY, "Confidential Information" shall include Software Systems and Systems IP.

- E. "Member": This term shall mean: (1) any Affiliate of McGowan Consolidated Insurance Holdings Group, Inc.; (2) any entity specified in Addendum A attached to this Agreement (*Members of McGOWAN to Which this Agreement Applies*); and, (3) any Affiliate of a Member.
- F. "Originator": This term shall mean an insurance company through which a Policy is placed or attempted to be placed or an insurance company or financial services company through which a Product is obtained or attempted to be placed.
- G. "Policy": This term shall mean an insurance policy.
- H. "Policyholder": This term shall mean the First Named Insured under a given policy of insurance.
- I. "Product": This term shall mean: (1) an insurance policy, product, or service provided by a Member; and, (2) a financial product or service provided by a Member.
- J. "Software Systems": This term shall mean the software systems developed, owned, and/or licensed by COMPANY, now and in the future, along with the products and services related thereto.
- K. "Systems IP": This term shall mean all inventions, patents, trade secrets, copyrights, software programs, works of authorship, trademarks, service marks and other intellectual property rights related to the Software Systems.



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed on the dates set forth after their names.

**BROKER**

By: \_\_\_\_\_, 201\_\_

Date

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**COMPANY**

By: \_\_\_\_\_, 201\_\_

Date

Print Name: \_\_\_\_\_

Title: Compliance Representative

# Addendum A

## Members of McGOWAN to Which this Agreement Applies

Members of McGOWAN to which this Agreement applies:

- McGowan Consolidated Insurance Holdings Group, Inc.
- The McGowan Companies
- The McGowan Holdings Group, Ltd.
- McGowan & Company, Inc.
- McGowan, Donnelly & Oberheu, LLC
- McGowan Excess & Casualty
- McGowan Insurance
- McGowan Program Administrators
- McGowan Risk Specialists
- Program Managers International, Inc.
- Statehouse Casualty Managers, Inc.
- The Windward Group, Inc.
  
- Broker Resources Insurance Services, LLC
  
- Community Associations PG, Inc.
- Cultural & Historical Institutions PG, Inc.
- Great American Cities PG, Inc.
- National Restaurant Owners PG, Inc.
- National Small Business PG, Inc.
  
- Any entity which becomes a Member of McGOWAN while this Agreement is in force or at any time thereafter.