



The McGowan Companies

Home Office – Old Forge Centre • 20595 Lorain Road • Fairview Park, OH 44126
P: (440) 333-6300 • F: (440) 333-3214 • www.mcgowancompanies.com

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. 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.

Member Companies of The McGowan Companies [“Member(s)”]

Members of McGOWAN have no relationship to one another, separate from the fact that they have agreed to accept a “universal” brokerage agreement (this Agreement) to begin a relationship with BROKER, in lieu of their own brokerage agreements. Each Member of MCGOWAN is independently-owned and operated. Each Member of McGOWAN sells unique products and coverages that are - generally - not available through other Members of McGOWAN. Some Members of McGOWAN offer financial services to BROKER, while others offer insurance products and services. The sole purpose of this Agreement is to offer BROKER access to the diverse financial services and insurance products and services of the Members of McGOWAN in the easiest manner possible (i.e. - the usage of a “universal” brokerage agreement).

Members of McGOWAN to which this Agreement applies:

- | | |
|---|---|
| <input checked="" type="checkbox"/> The McGowan Companies | <input checked="" type="checkbox"/> Broker Resources Insurance Services, LLC |
| <input checked="" type="checkbox"/> The McGowan Holdings Group, Ltd. | <input checked="" type="checkbox"/> Community Associations PG, Inc. |
| <input checked="" type="checkbox"/> McGowan Consolidated Insurance Holdings Group, Inc. | <input checked="" type="checkbox"/> Cultural & Historical Institutions PG, Inc. |
| <input checked="" type="checkbox"/> McGowan & Company, Inc. | <input checked="" type="checkbox"/> Great American Cities PG, Inc. |
| <input checked="" type="checkbox"/> McGowan, Donnelly & Oberheu, LLC | <input checked="" type="checkbox"/> National Restaurant Owners PG, Inc. |
| <input checked="" type="checkbox"/> McGowan Excess & Casualty | <input checked="" type="checkbox"/> Program Managers International, Inc. |
| <input checked="" type="checkbox"/> McGowan Insurance | <input checked="" type="checkbox"/> Statehouse Casualty Managers, Inc. |
| <input checked="" type="checkbox"/> McGowan Program Administrators, Inc. | <input checked="" type="checkbox"/> The Windward Group, Inc. |
| <input checked="" type="checkbox"/> McGowan Risk Specialists | |

Any entity which becomes a Member of McGOWAN while this Agreement is in force or at any time thereafter.

WITH REGARDS ANY POLICY OF INSURANCE OR FINANCIAL SERVICES PRODUCT ISSUED BY OR THROUGH ANY MEMBER OR ANY SERVICE PROVIDED BY A MEMBER, THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL APPLY AS IF THAT MEMBER AND BROKER WERE THE ONLY TWO PARTIES TO THIS AGREEMENT.

WHEREAS, BROKER desires to utilize the services and/or facilities of COMPANY to obtain insurance policies (hereinafter “policy” or “policies”), financial products, or services (hereinafter and collectively, “Products”) for the BROKER and/or BROKER’s clients, and,

WHEREAS, COMPANY agrees to extend 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 properly licensed to transact business as an agent, broker, or producer for all the types of Products it shall 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. Commission & BROKER Fees

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 of insurance (hereinafter “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.

BROKER may charge insureds and customers fees for its services. However, BROKER warrants that it will charge fees in accordance with the applicable state insurance and financial regulations and laws.

3. Liability of BROKER (When Net & When Gross); Offsets; COMPANY & Third-Party Fees

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

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

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

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.

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

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 BROKER by COMPANY against amounts owed COMPANY by BROKER.

For the purposes of this section and this Agreement, "fees" 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 due COMPANY, as well as any fees mandated by local, state, or federal governments or other governmental organizations, including, but not limited to, surplus lines stamping office 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.

4. 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 in payment for policies shall be known as "Special Funds." BROKER shall hold Special Funds due COMPANY in a segregated account and in a fiduciary capacity 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: (1) Special Funds received by BROKER from its customers were remitted to BROKER for the express purpose of securing insurance coverage; and, (2) Special Funds are expressly held for the sole and exclusive purpose of making the Special Funds available to COMPANY to secure insurance coverage for BROKER's customers.

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

COMPANY is required by its insurance companies to make payment of premiums on or before a certain date each month. With regards any given policy: (1) if COMPANY advances premium to an insurance company, but COMPANY has not yet received payment of that premium from BROKER, COMPANY shall not be deemed to be a creditor of BROKER or its customer, particularly, but not exclusively, with regards the application of bankruptcy laws (and, particularly, preference avoidance); (2) at all times, COMPANY is merely a conduit of funds between the BROKER's customer, BROKER, and the relevant insurance company. BROKER shall be financially-responsible for any situation in which COMPANY is declared a creditor of an insured or BROKER due to the advancement of a premium payment to an insurance company.

5. 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, fees, and 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 BROKER and COMPANY.

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.

6. Payment Due to COMPANY Even If Payment Not Received from Insured or Customer

BROKER shall pay all charges, premiums, fees, and taxes due to COMPANY in accordance with paragraph "5." above, subject to paragraph "7." below, whether or not such charges, premiums, fees, and taxes have been collected by BROKER from its insured or customer. BROKER shall pay for all costs or attorneys' fees incurred by COMPANY to collect any sums due in accordance with this Agreement, subject to paragraph "7." below.

7. Collection of Audit Premiums

BROKER will use its reasonable efforts to collect audit premiums due COMPANY. If BROKER is unsuccessful in collecting audit premiums due, it may give COMPANY written notice of same. So long as BROKER provides COMPANY written notice that it is unable to collect the audit premium due from a given insured for a given policy within thirty (30) days of receiving an invoice for said audit premium from COMPANY, and so long as BROKER provides proof to COMPANY that it has attempted at least twice, in writing, following the receipt of said invoice, to collect said audit premium due from said insured, BROKER shall not be liable to COMPANY for said audit premium, provided that the relevant insurance company is willing to waive collecting said audit premium from COMPANY. COMPANY may then attempt to collect said audit premium. If COMPANY is successful in obtaining said audit premium, BROKER shall not be entitled to commission on said audit premium.

8. Right to Decline

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

9. No Quoting or Binding Authority; Coverage Not Bound Without Written Binder; Conveying Coverage to Insureds; BROKER Liable for Conveying Terms & Conditions of Coverage to Insureds Beyond the Terms & Conditions of Binders or Policies Issued by Company; No Obligation to Quote or Bind Coverage Pursuant to BROKER's Request

A. *No Quoting or Binding Authority*

BROKER does not have the authority to quote or bind coverage on any policy available through COMPANY. Nor shall any provision of this Agreement be construed as permitting BROKER to bind a policy, even if it has received a quote from COMPANY.

B. *Coverage Not Bound without Written Binder*

Coverage is not bound on a policy until such point as BROKER receives a written binder from COMPANY.

C. *Conveying Coverage to Insureds*

Once COMPANY has provided BROKER a binder of coverage, BROKER may convey that coverage has been bound to the insured.

D. *BROKER Liable for Conveying Terms & Conditions of Coverage to Insureds Beyond the Terms & Conditions of Binders or Policies Issued by COMPANY*

BROKER assumes all liability for situations in which a BROKER inaccurately conveys to an insured that it has received coverage which exceeds that provided by a binder or policy insurance received by BROKER from COMPANY.

E. *No Obligation To Quote or Bind Coverage Pursuant To BROKER's Request*

If BROKER requests COMPANY to provide a quote or 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.

10. 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 an agency relationship, between BROKER and COMPANY. BROKER is an independent contractor.

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.

11. 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.

12. Agreement Only Between COMPANY & BROKER

This Agreement is entered into solely between BROKER and COMPANY.

13. 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 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; (b) the failure to provide any customer or insured with: (i) insurance coverages or Products requested; (ii) insurance coverages or Products which are adequate or appropriate for that customer or insured's needs; (iii) limits and/or benefits requested; and/or, (iv) limits and/or benefits which are adequate or appropriate for that customer or insured's needs.

This Section 13. B. supersedes and takes precedence over 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 and/or 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, policyholder, sub-producer, or BROKER with regard to the adequacy, amount, or form of any insurance coverage or 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.

14. No Obligation to Provide Notice of Expiration; No Automatic Renewals

With regards to the renewal of any policy or Product placed by BROKER through COMPANY, COMPANY shall not be under any obligation to provide BROKER with notice of that policy or 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. Policies and Products do not automatically renew. In order to renew coverage, BROKER must comply with all of the renewal guidelines and instructions specified by COMPANY.

15. No Backdating; Written Instructions Required to Bind

Requests to bind coverage on a new or renewal policy must be sent to COMPANY in writing and be received by COMPANY on or before the inception date of coverage.

16. Flat Cancellations Not Permitted

Flat cancellations are not permitted on policies placed by BROKER through COMPANY, unless an Originator permits flat cancellations.

17. 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) That either Party becomes or is declared insolvent; or,
- (e) 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;
 - iii. Gross or willful misconduct by the other Party;

(2) *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.

B. *Compliance with State Laws Regarding Termination*

COMPANY will comply with any State's laws which 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.

18. 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. Such 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, and/or competitive intelligence. The terms of this Section 18. A. 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 of confidentiality owed to BROKER by COMPANY. Further, the terms and conditions of this Section 18. A. supersede and take precedence over 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.

Any information supplied to COMPANY by BROKER shall be considered the exclusive property of 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.

19. “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.

20. 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.

21. 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.

22. 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.

23. No Modification Without Written Consent of Both Parties

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

24. Survival

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

- A. Section 4.;
- B. Section 7.;
- C. Section 13., including sub-sections A., B., and C.;
- D. Section 17. C., including sub-sections (1), (2), (3), and (4);
- E. Section 18., including sub-sections A., B., C., and D.;
- F. Section 20.;
- G. Section 21.;
- H. Section 29.; and,
- I. Section 30.

25. Not Assignable

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

26. 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.

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

Should any 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.

28. Notice

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 request in writing.

29. 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 officers, directors, employees, agents, or representatives shall be resolved by binding arbitration in Cleveland, Ohio. The results of the arbitration 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 or 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.

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

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

A. *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.

B. *WAIVER OF JURY TRIAL*

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

C. *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.

D. *Binding Arbitration Not Affected*

This section does not affect the provisions of Section 29. above; rather, it limits the parties such that they may only enforce binding arbitration in the federal and state courts located in Cleveland, Ohio.

31. "Open Brokerage" Operation; COMPANY has Sole Discretion Whether to Transact Business with Broker (Either Entirely, Partially, or with Regards a Particular Account or Product)

COMPANY operates in an "open brokerage" manner.

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

32. 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 they have agreed to accept a "universal" brokerage agreement to begin a relationship with BROKER, in lieu of their own brokerage agreements. 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.

33. Advertising & Electronic Marketing

BROKER shall not place any advertisement referring to COMPANY or any Originator or issue or cause to have issued any letter, circular, pamphlet, or other publication or statement referring to COMPANY or any Originator without the express, written consent of COMPANY.

34. Headers

Headers in this Agreement are used for organizational purposes and shall not be interpreted to convey any meaning.

35. 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.

36. Maintenance of Records

BROKER shall maintain complete and accurate records on all Product and service transactions conducted involving COMPANY or any Originator. 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 insured/customer or prospective insured/customer'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.

37. Definitions

For purposes of this Agreement, the following definitions shall apply.

- A. "BROKER": Any person or entity defined as "BROKER" in this Agreement. Further, this term shall also include: (1) any person or entity who/which is an owner, officer, director, employee, representative, or agent of BROKER; and, (2) any parent, subsidiary, or affiliated company of BROKER, in addition to person or organization who/which is an owner, officer, director, employee, representative, or agent of said parent, subsidiary, or affiliated company of BROKER.
- B. "COMPANY": Any person or entity defined as "COMPANY" in this Agreement. Further, this term shall also include: (1) any person or entity which is a parent or owner of any Member; and, (2) any organization which is a subsidiary of, owned by, related to, or affiliated with any Member.
- C. "Confidential Information": 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.
- D. "Originator": 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.

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