

GROUP INSURANCE APPOINTMENT APPLICATION



Mutual of Omaha Group Office and/or Name of Group Sales Representative: _____

Section 1: Individual Information (Complete if an individual/sole proprietor is seeking appointment)

Producer Name: _____ DOB: _____ SSN: _____
Address: _____ City: _____ State: _____ Zip: _____
Mailing Address (if different from above): _____ City: _____ State: _____ Zip: _____
(All correspondence including compensation statements will be mailed to the address indicated above unless different mailing address is listed)
Business Phone: _____ Cell Phone: _____ Fax: _____ Email: _____

Section 2: Firm Information (Complete if a firm is seeking appointment)

Name of Firm (herein "the Firm"): _____ Federal Employer Identification #: _____
Firm Address: _____ City: _____ State: _____ Zip: _____
Name of Principal/Officer: _____ Phone: _____ Email: _____

Section 3: License Information

List all states in which the individual and/or the Firm is requesting appointment to sell, solicit or negotiate business on behalf of Mutual of Omaha and/or its affiliates: _____

Section 4: Errors & Omissions Insurance Information

E&O Coverage Carrier Name: _____
Policy #: _____ In the amount of \$ _____

Section 5: Background Information:

Note: A "yes" answer below may result in denial of a request to be appointed. If you answer "YES" to either question below, PLEASE PROVIDE A WRITTEN STATEMENT and APPLICABLE SUPPORTING DOCUMENTATION (e.g., court documents, insurance department documents, etc.).

1. Has the applicant (individual or firm) been fined, suspended, placed on probation, paid administrative costs, entered into a consent order, been issued a restricted license or otherwise been disciplined or reprimanded, or is the applicant currently under investigation by any insurance department, the NASD, SEC or any other regulatory authority? YES NO
2. Has the applicant (individual only) been convicted or pled guilty or nolo contendere (no contest), served any probation, paid any fines or court costs, had charges dismissed through any type of first offender or deferred adjudication or suspended sentence procedure, or are any charges currently pending against the applicant for any offense other than a minor traffic violation? YES NO

Section 6: Commissions Direct Deposit (If opting to utilize direct deposit, please complete this Section 6. If not, please skip to Signature Section below.)

Checking Savings Financial Institution: _____ City: _____ Zip: _____
Routing Number: _____ Account Number: _____

I hereby authorize and request Mutual of Omaha and/or its affiliates to initiate credit entries to my or the Firm's checking or savings account (select one above) at the depositor financial institution named above, and to credit commissions to such account. This authorization will remain in full effect until Mutual of Omaha and/or its affiliates have received written notification from me or the Firm of its termination in such time and in such manner as to afford Mutual of Omaha and/or its affiliates and above named financial institution a reasonable opportunity to act upon such notice.

Section 7: Signature By signing below, I hereby:

- Certify that the information which I have provided in this application is true and correct to the best of my knowledge and agree that I will and/or the Firm will report immediately any event that would change any of the information, in any manner, which I have provided in this application.
- Acknowledge that I have received and reviewed the Producer Agreement (attached hereto as Attachment A) and, if I am and/or the Firm is appointed to sell, solicit or negotiate insurance on behalf of Mutual of Omaha and/or its affiliates, I agree and/or the Firm agrees to be bound by such Producer Agreement and all of its terms, conditions and provisions, as it may be amended from time to time.

• Certify, under penalties of perjury, that (1) the social security number or employer identification number provided above is my and/or the Firm's correct taxpayer identification number, and (2) I am not and/or the Firm is not subject to any backup withholding because (a) I am exempt and/or the Firm is exempt from backup withholding, or (b) I have not and/or the Firm has not been notified by the IRS that I am and/or the Firm is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me or the Firm that I am and/or the Firm is no longer subject to backup withholding, and (3) I am and/or the Firm is 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 IRC Regulations section 301.7701-7).

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

Signature (of Individual or Principal/Officer of the Firm): _____ Date: _____
Name (Print): _____ Title (if signing on behalf of the Firm): _____

Please be sure to send the following items to ensure timely consideration of appointment:

- Appointment Application (complete all applicable sections, including name of Group Office and/or Group Sales Representative)
- Fair Credit Reporting Act Disclosure form (only for an individual seeking appointment)
- Copy of current license(s) for ALL states in which the individual and/or the Firm is requesting appointment
- Copy of E&O certificate

Retain a copy of the Appointment Application and all attachments for your records.

Please review our Online Privacy Policy at www.mutualofomaha.com/privacy

Send to: Group.contracts@MutualofOmaha.com / Fax: 402-997-1831 Contact us at: 1-800-867-6873

BMO201.009

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.

ATTACHMENT A

PRODUCER AGREEMENT

This Producer Agreement ("Agreement") is between (1) the individual producer who has signed the Group Insurance Appointment Application (BMO201.006) ("Appointment Application") or the Firm whose principal or officer has signed the Appointment Application on behalf of the Firm ("Producer") and (2) each insurance company which has executed this Agreement ("Company"). If a single Appointment Application has been signed on behalf of an individual and a Firm, this Agreement will be deemed to be a separate and distinct agreement between the individual and Company and the Firm and Company. This Agreement is effective on the date it is signed by an Authorized Representative of Company.

If more than one Company executes this Agreement, Producer and each such Company agree there shall be deemed to be separate and distinct agreements between Producer and each Company. The rights and obligations of each Company under this Agreement shall be separate and distinct from the rights and obligations of any other Company. No Company shall have any responsibility or liability for the actions or omissions of any other Company.

The parties agree as follows:

A. DEFINITIONS. Capitalized terms used in this Agreement which are not otherwise defined are used with the meanings assigned to them in Section L. of this Agreement.

B. APPOINTMENT. Company authorizes Producer to solicit Product applications. Company agrees to appoint Producer with the appropriate state insurance departments for Producer to solicit Product applications. This appointment is not exclusive, and Company retains the right to appoint, at any time, any other persons or entities to solicit Product applications.

C. COMPENSATION.

1. **For Each Product.** Compensation for each Product will be as specified in the Compensation/Product Schedules. Compensation/Product Schedules may be changed by Company at any time upon notice to Producer without consent of Producer. Company shall distribute revised Compensation/Product Schedules to Producer. Producer agrees to, and shall comply with, all terms and conditions of Compensation/Product Schedules.

2. **Contingencies.** In addition to any conditions imposed in the Compensation/Product Schedules and any amendments and addenda, no compensation is earned until:

- (a) Producer 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 or fee for the Product is received and accepted by the Company.

3. **No Compensation After Termination.** Producer shall not be entitled to any compensation after the Termination Date of this Agreement, except for compensation payable on premiums or fees received and accepted by Company prior to the Termination Date.

4. **Forfeiture.** Producer will forfeit all rights to receive compensation, if, in the sole reasonable discretion of Company, Producer commits any of the following acts:

- (a) breaches any material provision of this Agreement, including, without limitation, any such provision 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 Producer's insurance license.

D. PRODUCER'S DUTIES.

1. **Licenses and Approvals.** Producer shall obtain and maintain all necessary licenses and regulatory approvals to perform the services under this Agreement, and shall provide copies thereof to Company at the address shown in Section K.3.

2. **Solicitation and Service.** Producer may solicit applications for Products and shall provide service to Producer's customers.

3. **Confidentiality and Security.** Producer certifies that it will comply with the "Confidentiality and Security Amendment" which is attached hereto and incorporated into this Agreement. Company may revise the Confidentiality and Security Amendment upon written notice to Producer.

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

5. **Compliance with Company Policies.** Producer shall comply, and shall ensure that its employees and agents comply, with all policies, practices, procedures, processes and rules of Company. Producer shall promptly notify Company if Producer or any of its employees or agents are not in compliance with any Company policy, practice, procedure, process or rule.

6. **Insurance.** Producer shall have and maintain Errors and Omissions liability insurance covering Producer and Producer's employees during the term of this Agreement in an amount and nature and with such carrier(s) as may be satisfactory to Company, and shall provide evidence of such insurance to Company upon its request. If any of Producer's coverage is on a claims-made basis, for three years after the Termination Date, Producer will continue such coverage with a nonadvancing retroactive date or purchase tail coverage for all losses or liabilities relating to actions or failures to act which may have occurred during the term of this Agreement.

7. **Fiduciary Responsibilities.** Producer shall be responsible for all money collected on behalf of Company by Producer and Producer's employees and shall remit to Company all such money no later than five calendar days after receipt, or within any shorter period required by law. All money tendered as payment for a Product shall be the sole and exclusive property of Company and shall be held by Producer purely in a fiduciary capacity and not for Producer's own benefit. Producer 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 Security Amendment, Producer 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.** Producer 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.** Producer 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 the option to assume the administration and defense of any such action. A copy of the correspondence or document received shall accompany each notice.

11. **Delivery to Customers.** Upon request from Company, Producer shall deliver to its customers any money, Products or information that Company provides to Producer for the purpose of fulfilling Company's obligation to provide such money, Products or information to the customer, including, without limitation, Schedule A to Form 5500 and any other information relating to compensation paid to Producer. Producer shall deliver such money, Products or information to its customers within the time period required by ERISA or other applicable law or as otherwise instructed by Company.

E. LIMITATIONS. Producer, either directly or through its employees or 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 the terms of any contract or Product, or make, waive or discharge any contracts or Products on behalf of Company.

3. **Payments and Reinstatement.** Extend the time for payment of any premium or fee, waive any premium or fee, 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 form of payment or method authorized in writing 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. **Misrepresentation.** Misrepresent any provision, benefit, premium or fee of any Product.

F. COMPENSATION ADMINISTRATION.

1. **Payment.** All compensation for Products solicited by Producer while this Agreement is in effect shall be paid to Producer or to such other individual or organization identified on the applicable Compensation/Product Schedule, provided that either Producer or such other individual or organization is the producer of record. If compensation is paid to such other individual or organization, Company has no obligation to pay compensation to Producer for any services performed pursuant to this Agreement. Compensation hereunder shall be based upon initial and renewal premiums and fees received and accepted by Company for Products issued upon applications submitted by or through Producer. Compensation shall only be paid to an individual or organization which is properly licensed and appointed as required by law.

2. **Effect of Return of Premium or Fees.** If any premiums or fees shall be returned or refunded by Company on any Product, or should Company become liable for the return thereof either before or after the Termination Date, Producer shall pay to Company all compensation previously paid to Producer by Company on such returned premium or fees.

3. **Indebtedness.** Interest will accrue on any amount due to Company from Producer under this Agreement which has not been paid within 30 days of receipt of written demand for such amount at the rate of 12 percent a year, compounded monthly, or the highest rate permitted by law, whichever is lower. Company is authorized to set-off and apply any and all obligations or Indebtedness of Producer or Producer's employees or affiliates to Company or its affiliates to any and all amounts due to Producer from Company under this Agreement. This right of set-off does not require Company to make any prior demand upon Producer, and the right exists irrespective of whether the obligations of Producer or Producer's employees or affiliates are contingent or unmatured. The rights of Company under this Section are in addition to any other rights and remedies which Company may have under this Agreement or otherwise.

4. **Limitation of Compensation Actions.** Any claim by Producer regarding compensation must be brought within one year from the date the compensation was reported on an accounting or written statement issued from Company to Producer. Any claim regarding compensation must be brought against the Company which issued the Compensation/Product Schedule to which the claim relates.

G. TERMINATION WITH OR WITHOUT CAUSE. In addition to the termination provisions set forth in the Confidentiality and Security Amendment, Producer or Company shall have the right at any time to terminate this Agreement, with cause or without cause, upon written notice to the other party. Termination shall be effective as of the Termination Date.

H. INDEPENDENT CONTRACTOR. Producer is an independent contractor and not an employee of Company. Subject to legal and regulatory requirements, Producer shall be free to exercise Producer's own judgment as to the persons from whom Producer will solicit and the time and place of such solicitation.

I. 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 Producer for the purpose of verifying Producer's compliance with the provisions of this Agreement.

J. 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 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 in this Agreement.

K. GENERAL.

1. **Issue and Product Type.** Company shall retain the right to decide whether to issue to or withdraw from a customer a specific policy, contract or other offering of Company. 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. Producer of record letters or requests from customers shall be recognized by Company, provided such letters or requests are submitted to Company on the customer's letterhead and signed by an authorized official of the customer. Notwithstanding the foregoing, Company reserves the right to name or 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 or overnight courier service to:

Producer Services
Mutual of Omaha Insurance Company
3300 Mutual of Omaha Plaza
Omaha, NE 68175-0001

4. **Entire Agreement.** This Agreement, the Confidentiality and Security Amendment, Producer's Appointment Application, the Compensation/Product Schedules and all amendments, attachments and addenda to this Agreement constitute the entire agreement between the parties regarding the Products sold under this Agreement and supersede and replace any previous agreements between the parties relating to the subject matter herein.

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 the principles of conflicts of law of that State or any other state. With respect to any other Company, this Agreement shall be governed by the laws of the State of Nebraska, without giving effect to the principles of conflicts of law of that State or any other state.

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. **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. **Amendment.** Except for Compensation/Product Schedules, Confidentiality and Security Amendments and other amendments or addenda to the Agreement which are required by federal, state or local laws or regulations, no modification, amendment or addendum to this Agreement shall be valid unless approved in writing by an Authorized Representative. Compensation/Product Schedules, Confidentiality and Security Amendments and other amendments or addenda 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. **Assignment.** No assignment of this Agreement or any compensation payable hereunder shall be valid unless approved in writing by an Authorized Representative.

10. **Survival.** Producer's appointment pursuant to Section B. of this Agreement shall immediately terminate on the Termination Date. Except for Section D.2 of this Agreement, all other provisions of this Agreement shall survive its termination.

11. **Beneficiary.** If Producer is an individual and entitled to compensation under this Agreement, Producer shall designate a beneficiary for payment of any compensation under this Agreement becoming due after Producer's death. Such beneficiary shall be designated by written notice delivered to and recorded by Company.

12. **Headings.** All section or other headings 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.

13. **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.

L. 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 or compensation schedule that (a) specifies the amounts and conditions under which commissions or other compensation will be due and payable to Producer or other appropriate individual or organization for any Product, and (b) is made a part of this Agreement.

3. **"Indebtedness"** means any amounts owed by Producer to Company, including but not limited to (a) the chargeback of any compensation paid to Producer under this or any other agreement, if the monies on which such compensation was based are not collected or are returned or refunded by Company, (b) any advances made by Company to Producer, (c) any expenses incurred by Company on behalf of Producer, and (d) any amount paid by Company which, in its determination, resulted from fraud, misrepresentation or other improper conduct by Producer.

4. **"Product"** means any insurance policy, contract (including, without limitation, an administrative services contract), or other offering identified in any Compensation/Product Schedule.

5. **"Termination Date"** means the later to occur of (a) the date on which Producer or Company sends written notice of termination to the other party, or (b) the date specified by Producer or Company in a written notice of termination to the other party.

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PRODUCER AGREEMENT

MUTUAL OF OMAHA INSURANCE COMPANY
UNITED OF OMAHA LIFE INSURANCE COMPANY

By: _____

Name: _____

Title: _____

Date: _____

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



PRODUCER AGREEMENT

<p>MUTUAL OF OMAHA INSURANCE COMPANY COMPANION LIFE INSURANCE COMPANY</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>

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

CONFIDENTIALITY AND SECURITY AMENDMENT

1. Definitions. The following terms will have the following meanings:

- (a) **"Business Information"** means information, oral, electronic, or in writing, that is either of such a nature that a party should reasonably believe it to be confidential or is designated as confidential by either party, including, without limitation, any information or other materials that either party exchanges with the other party or its Representatives in any form and in any media now or hereafter developed, or other information, the tampering with which, or unauthorized Use of which, would cause a material adverse impact to the business operations or security of a party. If information is designated as confidential, such designation will be in any written form which clearly communicates that the nonpublic business or financial information is confidential. The term "Business Information" will not include any information that: (i) is or becomes part of the public domain or is publicly available through no act or omission or through no breach of any contracts; (ii) 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; (iii) becomes rightfully known from another source without restriction on Use; or (iv) has been independently developed without the use of or any reference to Business Information.
- (b) **"Confidential Information"** means Business Information and Personal Information, both electronic or otherwise, that a party creates, accesses, uses, or receives from the other party or a third party, on behalf of a party.
- (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 Use 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: (i) demographic, medical or financial information such as age, gender, address, Social Security number, driver's license or non-driver identification card number, account number, credit or debit card number, or biometric records; (ii) any security code, access code or password that would permit access to an individual's financial account; (iii) past, present or future physical or mental health condition or treatment; (iv) debt status or history; and (v) 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"** will have the same meaning as that assigned in the HIPAA Privacy and Security Rules limited to the information acquired, accessed, used, created, received, stored, or transported from or on behalf of Company.
- (g) **"Representatives"** means all directors, officers, employees, agents, consultants, Subcontractors, professional advisors and affiliates of a party.
- (h) **"Security Incident"** means the attempted or successful unauthorized Use, 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 Producer delegates a function, activity or service under the Agreement, other than in the capacity of a member of the workforce of Producer.
- (j) **"Unsuccessful Security Incident"** means an attempted but unsuccessful Security Incident, and includes, without limitation, pings and other broadcast attacks on Producer's firewall, port scans, unsuccessful log-on attempts, denials of service attacks, malware such as worms or viruses, and any combination of the above, so long as no such Security Incident results in, or is reasonably anticipated by Producer to result in, unauthorized Use, modification, or destruction of Confidential Information or interference with system operations in an information system within Producer's control.
- (k) **"Use"** means acquisition, access, use, sale, disclosure, transmittal, storage, or transportation.

2. 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.** Each party agrees to retain all Confidential Information in confidence, and will not Use the other party's Confidential Information except as allowed under this Amendment, and for purposes related to the performance of obligations under the Agreement. Each party will be responsible to the other party 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 Security Incident.** Producer 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) will be made as soon as possible, but in no event later than five (5) business days or such shorter period of time imposed on either party by federal or state law or regulation following the date that Producer becomes aware of the Information Security Breach or successful Security Incident. Producer will take action(s) requested by Company to document and mitigate the Information Security Breach or successful Security Incident. Producer will 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, Producer will 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, Producer will return, or if agreed to by Company, securely destroy all Confidential Information that Producer 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 Producer will limit the Use of Confidential Information to the specific reason requiring retention of Confidential Information, and the protections of the Agreement and this Amendment will 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, securely destroyed. The obligation to return or securely destroy such Confidential Information will not apply to electronic copies stored solely for back-up and archival purposes ("Backup Copies") that are not readily accessible by Producer. Producer will not be required to erase electronically stored Confidential Information that has been saved to Backup Copies in accordance

with its standard electronic back-up practices, on the condition that, except as otherwise required by applicable law: (i) its personnel whose functions are not primarily information technology do not access such Backup Copies; and (ii) its personnel whose functions are primarily information technology in nature access such Backup Copies only as reasonably necessary for the performance of their information technology duties (e.g., for purposes of system recovery). The Backup Copies will continue to be subject to the remaining terms of this Amendment.

- (d) **Disposal of Confidential Information.** Producer agrees to maintain a security policy for the secure 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.** Producer will pay Company all costs or expenses that result from Producer's acts or failure to act that result in an Information Security Breach.
3. **Permitted Uses and Disclosures by Producer.** Unless otherwise prohibited by the Agreement, this Amendment or applicable federal and state laws and regulations, including the HIPAA Privacy and Security Rules, Producer may access, use, disclose, transmit, store and transport Confidential Information:
- (a) for the proper management and administration of Producer's business, provided that the access, use, disclosure, transmittal, storage and transportation are required by law, or Producer obtains reasonable assurances from the entity or person to whom Confidential Information is disclosed that it will remain confidential and be accessed, 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 Producer;
 - (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 Producer under which Subcontractors agree to be bound by the obligations in this Amendment.
4. **Producer's Additional Obligations Regarding Protected Health Information.**
- (a) Producer acknowledges that it is subject to the following requirements to the same extent as applicable to Company:
 - (i) 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 accesses, uses, creates, receives, maintains, transmits, or transports on behalf of Company;
 - (ii) 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;
 - (iii) 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;
 - (iv) 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; and
 - (v) 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 Producer's or Company's compliance with the HIPAA Privacy and Security Rules.
 - (b) The parties acknowledge that this Section 4(b) constitutes notice by Producer to Company of the ongoing existence and occurrence of Unsuccessful Security Incidents for which no additional notice to Company will be required.
5. **General Security Requirements.**
- (a) Producer will maintain a written, information security program designed to protect the confidentiality, integrity and availability of Confidential Information in paper or other records and within its information system, including computers, devices, applications, and any wireless systems, and designed to perform the following core information security functions:
 - (i) identify and assess both internal and external information security risks ("Risk Assessment");
 - (ii) utilize a defensive infrastructure;
 - (iii) implement policies and procedures that protect Confidential Information from unauthorized Use;
 - (iv) detect, respond to, and mitigate, Information Security Breaches and Security Incidents, restoring normal operations and services; and
 - (v) fulfill regulatory reporting obligations.
 - (b) The Risk Assessment performed by Producer will be:
 - (i) sufficient to inform the design of the information security program;
 - (ii) updated as reasonably necessary to address changes to Producer's information systems, records, Confidential Information, and business operations; and
 - (iii) documented and carried out in accordance with written policies and procedures.
 - (c) Producer will designate a qualified individual responsible for overseeing and implementing its information security program and enforcing its information security policy initiatives.
 - (d) Producer will assess the effectiveness of its information security program through continuous monitoring, periodic penetration testing and vulnerability assessments, or similar actions, all as dictated by its Risk Assessment.
 - (e) Producer, or Producer's designated third party, will:
 - (i) utilize qualified information security personnel to manage its information security risks and perform or oversee the performance of Producer's core information security functions; and

- (ii) provide or verify that such personnel have obtained periodic information security training to maintain up-to-date knowledge of changing information security threats and countermeasures.
 - (f) Producer will provide regular information security awareness training for all personnel.
 - (g) Producer will have written policies, implemented and approved by senior management for the protection of its information systems and Confidential Information, addressing the following:
 - (i) data governance and classification;
 - (ii) asset inventory and device management;
 - (iii) access controls and identity management;
 - (iv) business continuity and disaster recovery planning;
 - (v) system security and monitoring;
 - (vi) network security and monitoring;
 - (vii) physical security and environmental controls;
 - (viii) customer data privacy; and
 - (ix) vendor and third-party service provider (“TPSP”) management, to include the following topics:
 - (A) identification and risk assessment of TPSPs;
 - (B) minimum information security practices required of TPSPs;
 - (C) due diligence processes for assessing the information security practices of TPSPs; and
 - (D) periodic assessment of TPSPs, based on the risk and the continued adequacy of the TPSPs’ information security practices.
 - (h) The following information systems’ controls will be utilized by Producer, to the extent prescribed by its written information security program:
 - (i) limited user access privileges to information systems providing access to Confidential Information and periodical review of such access privileges, as dictated by Producer’s Risk Assessment;
 - (ii) multi-factor authentication for any individual accessing Producer’s internal networks from an external network, and for all privileged access to Producer’s cloud-based systems;
 - (iii) implementation of risk-based policies, procedures and controls designed to monitor the activity of authorized users and detect unauthorized Use or tampering with Confidential Information; and
 - (iv) implementation of encryption to protect Confidential Information, both in transit over external networks, and at rest.
 - (i) To the extent dictated by Producer’s Risk Assessment, and for a duration specified by its records retention standards, Producer will maintain audit trails:
 - (i) for material financial transactions; and
 - (ii) sufficient to recreate Security Incidents.
 - (j) Producer will have written procedures, guidelines and standards for the secure development of applications created in-house, and procedures for evaluating and testing the security of externally-developed applications used on Producer’s information systems.
 - (k) Producer will have a written Security Incident response plan designed to promptly respond to, and recover from, any Information Security Breach or successful Security Incident materially affecting the confidentiality, integrity or availability of the Confidential Information or the continuing functionality of any aspect of Company’s business or operations. The plan will address the following areas:
 - (i) internal processes for responding to an Information Security Breach or successful Security Incident;
 - (ii) goals of the plan;
 - (iii) definition and clear roles, responsibilities and levels of decision-making authority;
 - (iv) external and internal communications and information sharing;
 - (v) identification or requirements for the remediation of any identified weaknesses in information systems and associated controls;
 - (vi) documentation and reporting regarding Information Security Breaches or successful Security Incidents and related incident response activities; and
 - (vii) evaluation and revision as necessary of the plan following an Information Security Breach or successful Security Incident.
 - (l) No transfer of Confidential Information may be made by Producer outside of the United States without the prior, express written authorization of Company.
 - (m) Company may require Producer to have an annual review and/or an annual technical audit of its security policies and practices by Company, or, at Producer’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 Producer. Producer will have thirty (30) calendar days to implement remedies to any identified deficiencies and notify Company that such deficiencies have been addressed. Producer’s failure to remedy the identified deficiencies will be considered in breach of this Section 5.
6. **PCI-DSS Requirements for Producer.** If Producer stores or transmits credit or debit card data on behalf of Company, or could impact the security of Company’s cardholder data environment, Producer will employ safeguards that comply with the Payment Card Industry Data Standard (PCI-DSS), as may be amended from time to time. Depending on services being provided pursuant to the Agreement, and upon request, Producer will provide Company a PCI-DSS Attestation of Compliance.
7. **General Provisions.**
- (a) **Compliance with Laws.** Each party will promptly: (i) comply with its obligations under this Amendment and with any federal and state laws and regulations as may now be in effect or as may hereafter be enacted, adopted or determined that apply to the confidentiality, security, or Use of Confidential Information; and (ii) cooperate with and assist the other party in fulfilling its federal and state legal and regulatory obligations with respect to Confidential Information a party holds on behalf of the other. Such obligations include any: (viii) rights of or obligations to customers or consumers whose information is included in the Confidential Information; (ix) inventory and location of Confidential Information; and (x) performance of due diligence to ensure Representatives used in connection with performance of Services under the Agreement comply with the provisions of this Amendment.

- (b) **Amendment.** This Amendment will be amended to conform to any new or different legal requirements that result from any changes, revisions or replacements of any federal or state laws and regulations as may now be in effect or as may hereafter be enacted, adopted or determined that apply to the security, confidentiality, or Use of Confidential Information, including, without limitation, the HIPAA Privacy and Security Rules, on or before the effective compliance date thereof. Any such amendment will automatically be effective upon the effective compliance date of such laws and regulations and will become effective 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 either party is required to disclose the other party's Confidential Information in response to legal process or a governmental authority, such party will immediately notify the other party and, upon request, cooperate with the other party in connection with obtaining a protective order. The disclosing party will furnish only that portion of Confidential Information which it is legally required to disclose and will use commercially reasonable efforts to ensure that Confidential Information is treated confidentially.
- (e) **Indemnification.** Notwithstanding any other provisions of the Agreement, each party will indemnify, defend and hold the other party and its affiliates, and their 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 a party which result from any breach of this Amendment by the other party.
- (f) **Equitable Relief.** Both parties acknowledge that Confidential Information it receives is confidential and/or proprietary to the other party, that disclosure thereof could be seriously harmful to the business prospects of the other party, that the other party 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, each party agrees, in addition to all other remedies available at law, that, in the event of a breach or threatened breach of this Amendment, an aggrieved party will be entitled to: (i) seek 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 will 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 will control. Any such inconsistency or conflict will be resolved in favor of a meaning that permits the parties to comply with the HIPAA Privacy and Security Rules or any other federal and state laws and regulations that apply to the confidentiality of Confidential Information. This provision will 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 federal and state laws and regulations that apply to the confidentiality of Confidential Information, as may be amended from time to time, the HIPAA Privacy and Security Rules or any other federal and state laws and regulations that apply to the confidentiality of Confidential Information, including, without limitation, any definitions in any such federal and state laws and regulations, will control. Where provisions of this Amendment are different than those mandated in the HIPAA Privacy and Security Rules or any other federal and state laws and regulations that apply to the confidentiality of Confidential Information but are nonetheless permitted by such federal and state laws and regulations, the provisions of this Amendment will control.