

SPECIAL AGENT AGREEMENT



This Special Agent Agreement ("Agreement") is between the undersigned Special Agent ("Special Agent") and each insurance company which executes this Agreement (each a "Company").

If more than one Company executes this Agreement with Special Agent, Special Agent and each such Company agree that there shall be two or more separate and distinct agreements between Special Agent and each such executing Company. The rights, duties, obligations and responsibilities of each Company under this Agreement are separate and distinct from the duties, obligations and responsibilities of any other Company. All such rights, duties, obligations and responsibilities shall exist only between Special Agent and each Company. No Company shall have any responsibility or liability for the actions or omissions of any other Company under this Agreement.

SEE SECTION J FOR DEFINITIONS

The parties agree as follows:

- A. APPOINTMENT.** Company authorizes Special Agent to solicit Product applications. Company agrees to appoint Special Agent with the appropriate state insurance departments for Special Agent to solicit Product applications. This appointment is not exclusive.
- B. COMPENSATION.** All compensation for Products solicited by Special Agent while this Agreement is in effect shall be paid to a General Agent or Master General Agency pursuant to the terms and conditions of the applicable Compensation/Product Schedule. Company has no obligation to pay compensation to Special Agent for any services performed pursuant to this Agreement.
- C. SPECIAL AGENT'S DUTIES.**
 - 1. Licenses and Approvals.** Special Agent shall obtain and maintain and provide copies of all necessary licenses and regulatory approvals to perform the services under this Agreement.
 - 2. Personal Solicitation and Service.** Special Agent shall solicit applications for Products and provide services to Customers for the Products.
 - 3. Confidentiality and Privacy.** Special Agent shall comply with the "Confidentiality and Privacy Amendment" which is attached hereto and incorporated into this Agreement. Company may unilaterally revise the Confidentiality and Privacy Amendment upon written notice to Special Agent.
 - 4. Compliance with Laws and Conduct.** Special Agent shall comply with all applicable laws and regulations and act in an ethical, professional

manner in connection with this Agreement, including, without limitation, with respect to any compensation disclosure obligations and any other obligations it may have governing its relationships with its clients.

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

Schedule A to Form 5500 and any other information relating to compensation paid to Special Agent. Special Agent shall deliver such information to its customers within the time period required by ERISA or other applicable law or as otherwise instructed by Company.

D. LIMITATIONS. Special Agent shall not:

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

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

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

G. INSPECTION OF BOOKS AND RECORDS. Company shall have the right, during normal business hours and with reasonable notice, to inspect, audit and make copies from the books and records of the Special Agent for the purpose of verifying Special Agent's compliance with the provisions of this Agreement.

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

I. GENERAL.

1. Issue and Product Type. Company shall retain the right to decide whether to issue or withdraw a Product and determine the type of Product to be issued or withdrawn. Company may discontinue or change a Product at any time.

2. Producer of Record. The producer of record for any Product shall be determined by Company records. Company reserves the right to change the producer of record according to Company procedures and shall have no obligation to designate a successor producer of record.

3. Notice. Any notice required or permitted to be sent to Company under this Agreement shall be delivered personally or sent by U.S. Mail with all postage prepaid or by express mail to:

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

4. Entire Agreement. This Agreement, the Confidentiality and Privacy Amendment and the Compensation/Product Schedules constitute the entire agreement between the parties regarding the Products sold under this Agreement.

5. Governing Law. With respect to Companion Life Insurance Company, this Agreement shall be governed by the laws of the State of New York, without giving effect to that State's principles of conflicts of law. With respect to any other Company, this Agreement shall be governed by the laws of the State of Nebraska, without giving effect to that State's principles of conflicts of law.

6. Severability. In the event any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in effect.

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

CONFIDENTIALITY AND PRIVACY AMENDMENT



Special Agent

This "Confidentiality and Privacy Amendment" is made a part of and incorporated into the Special Agent Agreement between Special Agent and Company ("Agreement") and is effective on the effective date of the Agreement. To the extent any provision of the Agreement conflicts with or is inconsistent with any provision of this Confidentiality and Privacy Amendment the provisions of this Confidentiality and Privacy Amendment shall control. All other terms and conditions of the Agreement not inconsistent with the terms of this Confidentiality and Privacy Amendment shall remain in full force and effect.

A. Definitions.

Except as otherwise defined, any and all capitalized terms in this Amendment shall have the definitions set forth in the Privacy and Security Rules.

1. **"Confidential Business Information"** means the following nonpublic business or financial information whether in written, oral or electronic form: information which relates to customers or the business of Company including without limitation, sales and rate information, software, business plans and operating strategies, Product information, personal information that is not considered Protected Health Information, and material identifying an association with the Company. Confidential Business Information does not include (a) information similar to Confidential Business Information which is independently owned and developed by Special Agent or (b) information relating to direct or indirect compensation payable, paid or provided to Special Agent under the Agreement.
2. **"Confidential Information"** means Confidential Business Information and Protected Health Information.
3. **"Privacy and Security Rules"** shall mean the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 160 and part 164, as they may be amended from time to time.
4. **"Protected Health Information"** shall have the same meaning as that assigned in the Privacy and Security Rules limited to the information created or received from or on behalf of Company.
5. **"Representative"** means all officers, directors, employees, agents, consultants, representatives, subcontractors, professional advisors and affiliates of Special Agent.

B. Special Agent's Obligations Regarding Confidential Information.

1. **Non-Disclosure of Confidential Information.** Special Agent agrees to retain all Confidential Information in strict confidence. Special Agent will not use or disclose Confidential Information to others, except to Special Agent's Representatives, for purposes related to Special Agent's performance of its obligations under the Agreement, provided the Representative is first informed of the confidential nature of such information and the obligations set forth herein, and agrees to be bound thereby and provided such disclosure is not otherwise prohibited under the Agreement. Special Agent is responsible to Company for a breach of confidentiality by its Representatives.
2. **Safeguarding.** Special Agent agrees to use appropriate safeguards commonly available, such as anti-virus, firewalls and encryption, to prevent use or disclosure of Confidential Information other than as provided for by the Agreement. This shall include, without limitation, compliance with all existing and enacted laws and regulations.
3. **Reporting Unauthorized Use or Disclosure.** Special Agent agrees to report to Company any incidents involving use or disclosure of Confidential Information not provided for by the Agreement. Such report shall be made as soon as possible, but in no event later than three business days following the date that Special Agent becomes aware of such unauthorized use or disclosure. All details of the incident shall be provided so that Company can assess the scope and impact and take additional action as necessary to safeguard the information. Special Agent shall take action(s) requested by Company, if any, to mitigate such unauthorized use or disclosure.
4. **Information Regarding Confidential Information.** Special Agent agrees to adequately inform its Representatives of the obligations set forth herein relating to Confidential Information.
5. **Offshore Outsourcing.** Special Agent agrees that it will not allow any Confidential Information to leave the United States without prior written consent of the Company's Privacy Office. Special Agent further agrees to ensure that any Representative to whom it provides customer information agrees to the same restriction.

C. Special Agent's Obligations Regarding Protected Health Information.

1. **Non-disclosure of Protected Health Information.** Special Agent agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law without prior written authorization by Company's Privacy Office.
2. **Safeguarding.** Special Agent agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by the Agreement. Additionally, Special Agent agrees to

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

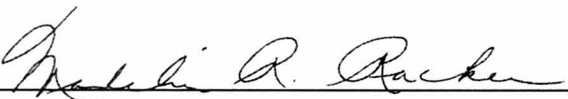
3. **Reporting Security Incidents and Unauthorized Use or Disclosure.** Special Agent agrees to report to Company's Privacy Office any successful security incident of which it becomes aware and any use or disclosure of the Protected Health Information not provided for by the Agreement. Such report shall be made as soon as possible, but in no event later than three business days following the date that Special Agent becomes aware of such successful security incident or unauthorized use or disclosure. Special Agent shall take action(s) requested by Company to mitigate any such unauthorized use or disclosure. Special Agent will report any security incident that is attempted but not successful of which it becomes aware only upon receipt of a written request from Company.
4. **Representatives.** Special Agent agrees to ensure that any Representative who creates or receives from or on behalf of Special Agent any Protected Health Information agrees to the same restrictions and conditions set forth in the Agreement, including the implementation of reasonable and appropriate safeguards to protect electronic Protected Health Information.
5. **Access to Protected Health Information.** At the request of and in the time and manner designated by Company, Special Agent agrees to provide access to Protected Health Information to Company, or as directed by Company, to an Individual in order to meet the requirements under 45 CFR 164.524.
6. **Amendment of Protected Health Information.** Special Agent agrees to make any amendment(s) to Protected Health Information that Company directs or agrees to pursuant to 45 CFR 164.526 in the time and manner designated by Company.
7. **Accounting for Disclosures.** Special Agent agrees to document and immediately notify Company's Privacy Office of its disclosure of any Protected Health Information for purposes outside of Treatment, Payment or Health Care Operations, as each term is defined in the Privacy and Security Rules. With regard to each such disclosure, Special Agent will provide Company's Privacy Office (a) the date of the disclosure, (b) the name of the entity or person who received the Protected Health Information, and, if known, the address of such entity or person, (c) a brief description of all Protected Health Information disclosed, and (d) a brief statement regarding the purpose and explanation of the basis of such disclosure and the name(s) of all Individuals whose Protected Health Information was disclosed in accordance with 45 CFR 164.528.
8. **Inspection of Internal Practices, Books and Records.** Special Agent agrees to make its internal practices, books, and records, including

policies, procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information available to Company, or at the request of Company to the Secretary or their designee, in a time and manner designated by Company or the Secretary for purposes of determining Company's compliance with the Privacy and Security Rules.

- D. Return or Destruction of Confidential Business Information and Protected Health Information.** Upon termination of the Agreement, for any reason, Special Agent will promptly return or destroy all Confidential Information. Upon written request of Company, the destruction or return of such information shall be confirmed in writing. Upon termination of the Agreement, for any reason, Special Agent shall return, if feasible, all Protected Health Information that Special Agent maintains in any form and retain no copies of it. If return of any Protected Health Information is not feasible, the protections of the Agreement shall be extended to the Protected Health Information and Special Agent's use and disclosure of such Protected Health Information shall be limited to those purposes that make the return of the Protected Health Information not feasible, for so long as Special Agent maintains the Protected Health Information.
- E. Disclosures Required by Law or a Governmental Authority.** If Special Agent is required to disclose Confidential Information in response to legal process or a governmental authority, Special Agent shall immediately notify Company's Privacy Office and, upon request, cooperate with Company in connection with obtaining a protective order. Special Agent shall furnish only that portion of the Confidential Information which it is legally required to disclose and shall use commercially reasonable efforts to ensure that confidential treatment will be accorded such Confidential Information.
- F. Compliance with Laws.** Special Agent shall comply with its obligations under the Agreement and under any applicable state or federal law or regulations as may be in effect or as may hereafter be enacted, adopted or determined regarding the confidentiality, use and disclosure of Confidential Information.
- G. Amendment.** This Confidentiality and Privacy Amendment shall be amended to conform to any new or different legal requirements that result from any changes, revisions or replacements of the Privacy and Security Rules, on or before the effective date thereof. Company may change, revise or replace this Confidentiality and Privacy Amendment in its sole discretion upon notice to Special Agent without the consent of Special Agent. In the event of a conflict between the requirements of this Confidentiality and Privacy Amendment and those of the Privacy and Security Rules, the Privacy and Security Rules shall control.
- H. Survival.** The respective rights and obligations of Special Agent under this Confidentiality and Privacy Amendment shall survive the termination of the Agreement.
- I. Termination for Violation of this Confidentiality and Privacy Amendment.** Company may terminate the Agreement, effective immediately upon notice to

Special Agent, if Special Agent has violated the terms of this Confidentiality and Privacy Amendment.

Acknowledged by Company:

By: 

Name: Madeline R. Rucker

Title: Executive Vice President, Customer Service