

# 21<sup>st</sup> CENTURY GENERAL AGENCY, INC.

## Commercial Business Producers Agreement

The parties hereto, in consideration of the mutual promises set forth herein, agree as follows

### Section 1

#### **AUTHORIZATION AND AUTHORITY**

MGA is authorized to market the commercial insurance products listed on Addendum A (collectively, the "Insurance Products," and individually, a "Policy"). Addendum A may be amended by MGA at any time, and shall be effective thereafter as amended. The parties understand that MGA may add, not add, or delete insurance contracts to Addendum A at any time. In the event an insurance product is deleted for reasons other than negligence, fraud or dishonesty on the part of the agent, and if the circumstances allow, a 30 day notice shall be provided.

MGA hereby grants to Producer, as of the Effective Date, the right to solicit and accept applications for policies under the terms of this Agreement. The authorization granted under this agreement shall not be effective until this Agreement is approved and signed by the MGA authorizing agent.

Addendum A may be amended by MGA to include additional contracts of insurance.

Producer will place all applications as indicated in this agreement for procurement of policies, and seek quotes for policies, only through MGA. Producer's relationship under this agreement is only with MGA, and not with any issuer of a policy, or other broker or agency. This agreement is subject to the agreement between MGA and its Insuring companies. Producer's authority to solicit and accept applications for policies shall extend only to the lines of business, classes of risks, and limits of liability authorized by MGA and its Insuring companies, which may be restricted by underwriting guidelines, rate charts, and other instructions received by MGA from its Insuring companies.

Producer represents to MGA that Producer holds, and will maintain, appropriate and valid licenses from any and all states in which producer procures and/or sells each policy (collectively and singly, the "License"), and will conduct the business of insurance in compliance with all applicable Insurance Codes, any applicable Administrative Codes, and applicable state and federal law. Producer will furnish MGA a copy of all applicable licenses upon execution of this agreement, upon each anniversary date of referenced licenses, and upon any change in a license.

Termination or revocation of any license will automatically terminate this agreement. Producer will immediately notify MGA in writing of any notice of proceedings, or of notice of intent, to terminate or revoke any license, and of the effective date of revocation of any license.

Producer has no a binding authority for any coverage. All decisions to bind coverage under a policy, or renewal of a policy, will be made only by the MGA.

Producer has no authority to make, alter, vary or discharge the terms or conditions of any offer of coverage, any issued policy, any and all submitted applications, any binders or any other MGA issued documents, to alter or extend the time for payment of premiums, to incur any liability on behalf of MGA or Company, to make any advertisement respecting the MGA or company or a policy without prior written approval of MGA.

If Producer is a partnership, the death, withdrawal or addition of one or more partners will not terminate this agreement; it will continue binding between MGA and the partnership as subsequently constituted, and each of its partners individually. If such a partnership is dissolved, each former partner will remain individually bound. If producer is an individual and takes on one or more partners, this agreement will not terminate, but shall be binding upon each partner and the partnership. If producer is an individual or a partnership, and thereafter incorporates, this agreement will not terminate, but will continue to be binding on the corporation as well as the officers of the corporation conclusively deemed ratified as a pre-incorporation agreement. If producer (whether an individual, partnership, or corporation) effects a sale, merger, consolidation or affiliation, this agreement will continue binding upon producer, producer's successors in interest, and any person or entity receiving any commission or other thing of value for sale of a policy.

## SECTION 2

### COMMISSION

Producer shall be paid a commission, in the respective percentages specified on Addendum A, on premiums actually collected under each policy procured by producer under this agreement. No commissions are payable on deposit premium unless such deposits represent earned premium. Commission schedules are subject to change upon thirty (30) days written notice by MGA to producer. Any commission changes will be on new business and renewals after the thirty (30) day notice. All commission payments will be made to Producer by MGA within forty-five (45) days after actual receipt of same by MGA from the Policy issuer. Producer shall have the authority to collect the deposit premium on bound accounts as requested by MGA and forward all premiums received to MGA immediately and all such amounts shall be held by producer in trust for the benefit of MGA and the applicable company.

Producer agrees to pay to MGA all amounts due as return commission on cancelled policies or reductions in premiums, at the same rate at which commissions were originally paid to producer.

MGA reserves the right to charge interest at twelve percent (12%) simple interest per annum on any amounts thirty (30) days or more past due from producer for items such as, but not limited to, cancellations, commissions, return commissions, and endorsements under this agreement, calculated from the date due.

MGA has the right to offset any amount owing from producer to MGA, against any amounts owing from MGA to producer, at any time without prior notice.

## SECTION 3

### PREMIUMS

Producer understands that producer has no authority to demand or collect premiums on any policy, except that upon completion of an application. Producer may collect the first installment of premium or any deposit premium requested by MGA on the policy and immediately forward the same to MGA unless otherwise agreed to in writing as an addendum to this agreement.

Any premiums, fees, and premium taxes relating to a policy and received by the producer, either before or after termination of this agreement, shall be immediately endorsed, or paid, and delivered to MGA. All such funds held by producer shall be held in a fiduciary capacity as trustee for MGA. Any account kept for producer on MGA'S books, in the form of a debtor-creditor account, is deemed merely a record of business transacted. Neither keeping such account, nor rendering the same, nor failure to enforce prompt remittance, nor alteration in compensation rate, nor retention of producer's commission, nor compromise or settlement, shall be held to waive this trust relationships as to premiums collected by producer. It is further understood and agreed that producer is responsible for, and guarantees to MGA, payment of all earned premiums on policies placed by producer under this agreement with the exception of audit premium.

If any premiums are shown to be owed, by audit or any other method, except those shown to be owed by producer in the normal course of business, and cannot be collected within thirty (30) days after the billing date, MGA may request producer to assist in collection of such premiums, and producer agrees to assist as requested. Any audit premium deemed uncollectible may be placed for collection by MGA and no commission will be paid on any additional premium collected by that means.

The producer will not be responsible for uncollectible earned premiums except to the extent the producer did not follow company or MGA guidelines, rules or procedures or unless producer contributed to the company's inability, directly or through MGA, to collect such premium.

## SECTION 4

### CONDUCT OF BUSINESS

Producer (and if more than one, then jointly and severally) hereby indemnifies and holds harmless MGA, the issuer of any policy, and each of their respective officers, directors, shareholders, attorneys, and their respective successors and assigns from and against any and all claims, suits, judgments, losses, damages, costs, settlements, expense, and attorney's fee, relating directly or indirectly to producer's advertisement, solicitation, representations, acts, or omissions relating to any policy or placement, sale, procurement, or administration of any policy, or due to failure to comply with any term or covenant of this agreement, or the applicable state Insurance code Department of Insurance Administrative Code, or other state or federal law. This paragraph will continue in force after termination of this agreement.

MGA jointly and severally hereby indemnifies and holds harmless producer and its officers, directors, shareholders, attorneys, and their respective successors and assigns from and against any and all claims, suits, judgments, losses, damages, costs, settlements, expenses, and attorney's fees, relating directly or indirectly to MGA'S advertisement, solicitation, representations, acts, or omissions relating to any policy, or placement, sale, procurement, or administration of any policy, or due to failure to comply with any term or covenant of this

agreement, or the applicable state Insurance code, Department of Insurance administrative code, or other state or federal law. This paragraph will continue in force after termination of this agreement.

Producer is an independent contractor and is not an employee or servant of MGA. Subject to applicable state law and the terms of this agreement, producer retains all right to conduct its business in any legal manner it deems appropriate. Pursuant to the terms of this agreement, producer shall exercise independent judgment in the conduct of its business.

MGA is not responsible for any producer expenses including, but not limited to, office expense, travel, telephone, rental, transportation facilities, clerk hire, fees, postage, advertising, exchange and license fees, or any other expenses of producer. Producer is solely responsible for all of its expenses, without expectation of reimbursement.

Producer shall not advertise, promote, or represent any policy, use MGA'S name or insuring company's name, without MGA'S prior written consent to the specific use and content. Producer shall not misrepresent, or fail to accurately represent, the terms of any policy.

If a policy applied for by a prospective insured is a surplus lines policy, producer shall, if required by statute, conduct a reasonable and adequate review of the admitted insurance policies available in the marketplace to cover the risk sought to be covered by the prospective insured, keep written records of such review, and deliver a report thereof to MGA. Producer shall maintain a record of the risk to be insured, all avenues for placement of the risk with an admitted Insurance company, and all other information requested by MGA. Producer shall deliver copies of all such information to MGA.

Prior to issuing a policy, producer or authorized representative will sign and have the prospective insured sign an application, if required, on the form then used and provided by MGA or the insurer issuing the policy. Producer may collect the policy premium, deposits if any, or any installment at the time the application is taken.

Producer will not administer claims under any policy, or have any continuing right or obligation in respect of any policy, except as provided in this agreement or as required by statute or regulation. Producer's authority hereby conferred does not extend to the adjustment, compromise or settlement of claims against MGA or its insurer(s) or the waiver of any condition of any policy of insurance except upon specific prior written authority granted by an officer of MGA. Producer must immediately upon receipt, report and forward to MGA, all notices of and information concerning claims and losses (whether verbal or in writing) together with all documents, instruments and writings received by producer related thereto. Producer shall cooperate with MGA and/or its insurer(s) in the investigation, settlement or defense of any claim or suit arising out of business produced on behalf of MGA or its insurer(s). Further, producer will do nothing after a claim or suit arises to prejudice the rights of MGA or its insurer(s).

Producer will immediately forward all demand letters, notices of suit, verbal demands, Department of Insurance notices of complaint, letters from attorneys or notice thereof, of which producer receives notices or becomes aware, concerning any policy or claim, to MGA.

If MGA cancels or non-renews any policy produced by producer or one of its sub-producers, MGA will use its best effort to send a notice to producer as soon as reasonably possible.

MGA shall make, or cause to be made, all surplus lines filings, if any, and send all policies, notices of coverages, cover notes, and confirmations to the insured at the address shown on the application. MGA will further remit or cause to be remitted all policy premium taxes, if any, to the Surplus Lines and/or Stamping Office of the state of Texas.

The conduct of business of producer under this agreement shall be further defined by all directives, instructions, rate books, and publications issued by the insurer or MGA, to the producer.

During the term of this agreement and within twenty four (24) months following termination of this agreement, MGA shall have access to all policyholder records, experience date, enrollment characteristics and other data developed by producer relating to policies and may take away copies thereof at their own expense. This information will not be used for the solicitation of policyholder records, experience data, enrollment characteristics and other data developed by producer or transferred to any other party for that purpose.

Producer agrees to have and maintain in effect errors and omissions insurance on agency's operations with minimum limits of \$500,000 and a maximum deductible of \$10,000.

## Section 5

### **GENERAL PROVISIONS**

This agreement may be terminated at any time by any party, with or without cause, by giving any other parties thirty (30) day's written notice of intent to terminate. Such termination does not relieve MGA of its obligation to remit commissions to producer on policies then in effect. MGA may terminate this agreement if producer breaches any term of this agreement and does not correct such breach within ten (10) days of receipt of written notice from MGA. This agreement may be cancelled at any time by mutual consent. This Agreement is not binding unless MGA and producer have each executed it.

This Agreement supersedes any and all previous agreements between producer and MGA concerning any policy or the matters discussed herein. It may not be altered, modified, or amended, except by written agreement signed by the parties hereto. This agreement may not be assigned by producer, in whole or in part, without the prior written consent of MGA.

Invalidity of any part of this agreement shall not affect the remaining portions hereof. There are no other agreements, promises, covenants, or conditions between the parties concerning the subject matter of the agreement. All referred addendums and attachments are incorporated herein by this reference for all purposes. Words and phrases used in this agreement shall have the meaning given them in the Texas Insurance Code.

Delay in enforcement of any provision of the agreement will not operate as a waiver of that provision, and such delay or an express waiver of a breach of a provision shall not affect later enforcement of the provision for a similar breach.

This agreement will be construed and interpreted in accordance with the laws of the State of Texas, venue shall lie in Dallas County, Texas, and it is effective the date first set forth above.

Notice under this agreement shall be provided in writing by hand delivery or certified mail return receipt requested to the parties at the addresses set forth in the heading. The parties may modify the above addresses as provided herein.

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Arbitration Rules of Dispute Solutions, Inc. of Dallas, Texas, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The venue for any arbitration will be in Dallas, Texas.

## SECTION 6

### **TERMINATION OR SUSPENSION**

Upon termination, producer shall make original files available to company and MGA, copy such files as needed for claim adjustment and/or audit information upon request of MGA and at expense of MGA. Producer may keep the originals of any such files.

Upon termination, producer shall cease to act under this agreement or to represent itself as an producer under this agreement.

Upon termination, producer shall account for all premiums received by producer and pay such amounts to MGA on behalf of Company within fourteen (14) days.

Upon termination, producer shall not be entitled to further commissions, except for commissions on the run-off of business in force up to renewal or cancellation, on the terms and conditions provided in the agreement. MGA may, in its sole discretion require the producer to run-off the in-force business to normal expiration in accordance with the provisions of this agreement. The producer shall bear all expenses of the run-off operations.

Upon termination, producer shall upon demand, return to the MGA any policies, forms or other supplies imprinted with the MGA'S name regardless of who incurred the cost for same, or any policies, forms or other supplies furnished to the producer by the MGA or Company.

Upon termination the obligations of the producer, MGA and company under this agreement shall be discharged and terminated promptly.

Upon termination no party shall have a claim upon the other for loss of prospective profit or damage to the business arising thereof.

MGA, in lieu of termination of this agreement, may suspend the authority of producer to submit new or renewal business and quotes for policies for any period of time if such suspension is for cause.

SECTION 7

**NOTICE**

All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, faxed (which is confirmed) or sent by overnight courier service to the parties at the following addresses ( or such address for a party as shall be specified by like notice):

**Name of Producer:** \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Date signed: \_\_\_\_\_

**Managing General Agent:**

21<sup>st</sup> Century General Agency Inc.

**By:** \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

**Producer:**

**By:** \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

**ADDENDUM A**

<b>Carrier</b>	<b>Commercial Product</b>	<b>Producer Commission %</b>
Dallas Fire Ins.	General Liability	12%

**PLEASE COMPLETE THE FOLLOWING INFORMATION**

1. Name in which Producer License is Held
2. Producer's Social Security or Federal Taxpayer ID Number

FEIN:

Attach copy of current Group 1 License and/or property casualty license. Each license must be re-submitted to MGA on each anniversary of the effective date of this Agreement, and if any changes in the License occur.

**INSURANCE INFORMATION**

Agency shall maintain in full force and affect the following insurance

Errors & Omissions Insurance (Must be placed with A- or better AM Best rated carrier):

Per occurrence minimum limit: \$ 500,000  
Maximum deductible \$ 10,000