



BIG **i**SM
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THE GUIDE TO PRODUCER CONTRACTS



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TABLE OF CONTENTS

Introduction to this Guide	3
Contract Provisions Explained	4
Parties to the Agreement	
Recitals	
Term of the Agreement	
Responsibilities of the Producer	
Responsibilities of the Agency	
Exclusive Nature of Employment	
Compensation	
Benefits and Expenses	
Non-compete Clause	
Non-piracy Clause	
Data Security and Privacy	
Collections	
Authority of the Producer	
Option to Purchase Agency Interest	
Vesting of the Commissions	
Termination	
Ownership of Accounts, Expiration Lists, and Renewals	
Other Provisions	
Disclaimer	10
Producer Contract Checklist	11
Example Contract 1	
Employee-Employer Relationship	12
Example Contract 2	
Independent Contractor Relationship	17
Example Contract 3	
Employee-Employer Relationship	21
Example Contract 4	
Independent Contractor Relationship	25
Example Contract 5	
Employee-Employer Relationship	34
Resources	38
Acknowledgment	39

Guide to Producer Contracts

As your agency formulates plans for the competitive future, increased sales through effective marketing are crucial. Hiring a new producer provides an avenue by which the agency can market its products and services. The producer may also provide perpetuation options, develop product lines previously undersold, attract new company markets and apply his or her talents for the benefit of the agency.

Every producer in the agency should have a written, signed contract with the agency, which serves as the basis of the business relationship. The contract defines the ownership of the business produced, and the responsibilities and obligations of the parties, and it also provides the agency with legal recourse to discourage piracy of produced business. Contracts can both negatively and positively affect the value of an agency.

The keys to drafting a good agreement are creativity, fairness, communication between parties, and mutual goal setting. Because the contract's terms affect both a producer's job satisfaction and the cost of that producer's services to the agency, the agreement should be structured to provide a clear incentive for the producer to earn higher income by increasing sales. For better odds at long-term success, the producer agreement should not be unreasonably biased in favor of the agency, and the agency must be willing and able to provide the producer with the required inside technical and service support. The level of support will directly affect the level of production by producers.

The parties to the contract must reach an agreement on a variety of issues. Once the terms of employment or the independent contractor relationship are agreed upon, the contract is written to reflect the terms of that agreement. The following sections represent areas that the agency owner should consider, giving thought to the appropriateness of each item relative to the agency's intended application.

This Guide to Producer Contracts is provided only for general informational purposes and is not intended to provide specific advice about individual legal, business or other questions. IIABA and its subsidiaries and affiliates shall not be responsible in any way for, and specifically disclaim any liability arising out of or in any way connected to, reliance on or use of the Guide and its contents. This Guide is not a substitute for an agency's independent evaluation of any contract or for obtaining expert advice relating thereto. If specific legal or other expert advice is required or desired, the services of an appropriate, competent professional, such as an attorney, should be sought.





Parties to the Agreement

Standard in all employment and independent contractor contracts, this section identifies the parties to the contract and the date on which the contract commences. This section also designates the “Employee” and “Employer” (or “Agency” and “Independent Contractor”) entering into the agreement and provides their respective addresses at the time of signing.

Recitals

This section defines the purpose of the agreement, as well as the producer’s status as either an employee or an independent contractor. An independent contractor does not receive the benefits an employee would, and the ownership of business typically stays with the agency. For more information about worker classification, see the Independent Insurance Agents & Brokers of America’s legal advocacy memorandum titled, “Worker Classification: Employee vs. Independent Contractor,” under the heading, “Fair Labor Standards Act (FLSA) and Worker Classification,” in the Legal Advocacy section of IIABA’s website located [here](#).

Term of the Agreement

The producer agreement can be written either as a continuous contract with a termination date to be determined in the future by either or both parties, or it can be structured to terminate on a specific date.

Responsibilities of the Producer

This section provides a listing of the general and specific duties and obligations of the producer. It may also include a commitment to devote all working time to the exclusive service of the agency (for an employee, but not for an independent contractor) and a covenant to comply with the agency’s rules and procedures. Wording should be flexible enough to allow the agency to shift the producer into other necessary functions without re-negotiation of the contract.



Responsibilities of the Agency

The obligations of the agency may be very broad and general in terms, or the contract may be specific in this area. This section of the contract can enumerate any items that the agency will provide for the producer beyond compensation, benefits and expense reimbursement. Office space, phone, office equipment and support staff as deemed adequate for performance of the producer's duties, payment of license fees, and coverage under the agency's Errors and Omissions Insurance Policy should all be included here to the extent applicable.

Exclusive Nature of Employment

This provision requires that a producer who is an employee (and not an independent contractor) devote their entire working time and business effort to the agency and includes a covenant that the producer will not engage in any other business or occupation during the contract term.

Compensation

The compensation paragraphs state the obligation of the agency to pay the producer and the manner in which the compensation is to be determined, for example: salary or fixed pay only, commissions only, salary or fixed pay plus commission, salary or fixed pay plus bonus. The compensation provisions are typically incorporated into the body of the contract or included as an addendum to the contract.

Specific arrangements vary widely. Precise terms need to be stated to tailor the agreement between the parties to the contract, such as the amount of salary or fixed pay and/or rate of commission, and when the producer is to be paid.

Benefits and Expenses

This section defines in detail any benefits provided by the agency, such as:



Health & Medical Insurance



Life Insurance



Disability Insurance



**Profit Sharing/
Bonus Plan**



Vacation & Holiday Schedule



Company Car & Expense Reimbursement



General Expenses

(travel, entertainment, telephone, postage, etc.)



Coverage under Agency's E&O policy



Sick Days

While the benefits above are appropriate for an employee, they are generally not appropriate for an independent contractor. Citing "the standard agency benefits as detailed in the agency personnel manual, as it may be amended from time to time" should generally allow the agency to amend its benefit plan without amending the employment contract. If this approach is used, it is important that the personnel manual be kept up-to-date.

This section is also used to designate which expenses are the express responsibility of the producer (taxes, licensing fees, E&O coverage, etc.).

Non-compete Clause

The non-compete clause or agreement protects the agency's accounts from being exploited by requiring the producer to agree not to solicit or write insurance for any of the agency's accounts after termination of employment or the independent contractor relationship. This is arguably the single most controversial clause within the producer agreement as courts in some states have refused to allow the application of the clause due to the limitation it places on the producer's ability to earn a living. Required compensation from the producer for writing agency accounts (at a specified rate times the annual commissions on such accounts) may provide better protection against the loss of the account than the covenant not to engage in the insurance business.

If a covenant not to compete is included in the contract, it should be reasonable as to duration, scope and geographic area. It is extremely important that you seek the advice of your attorney or a consultant who specializes in producer compensation regarding the content of this clause, as well as the geographical and time-limitations deemed reasonable in your jurisdiction.

Non-piracy Clause

A non-piracy clause is more acceptable than a non-compete clause in some jurisdictions as it does not strip the producer of a reasonable right to earn a living with the insurance skills and experience that have been acquired. A non-piracy agreement is used to prevent the producer from soliciting accounts that were on the books of the agency while the producer was associated with the agency, for a defined period of time. A geographic area restriction is sometimes included, as well as a provision that the producer will compensate the agency at a specified price for any of the agency's accounts that are written by the producer after termination of employment or the independent contractor relationship.

Non-disclosure Clause

The section provides for the confidentiality of the records and information that become known to the producer during their association with the agency, but that are not known to the general public.

Data Security and Privacy

Data security and privacy is an emerging area of the law. Some companies are starting to include provisions in agency appointment contracts that require information security programs or safeguards designed to prevent data security breach incidents, notices of incidents and incident response plans. For more information, please see ACT's Agency Cyber Guide, located on IIABA's website [here](#). Based on those provisions, the agency may wish to add language to the producer contract to ensure that the agency complies with its obligations under its appointment contract, as well as with applicable data security laws and regulations.

Collections

The producer contract may dictate the responsibilities of the producer regarding collections and payments. This may require 100% responsibility on the producer, or state that the responsibility may be shared with the agency as a normal cost of doing business.

Authority of the Producer

This provision may be used to limit the binding authority of new producers if their underwriting ability is unproven. It may also be used to limit the authority of the producer in modifying agency contracts or in using the agency name in advertising material.

Option to Purchase Agency Interest

The agency may wish to motivate the producer by granting them the right to purchase an interest in the agency. It should include the time and conditions under which the producer will become eligible to purchase into the agency, the amount of the interest the producer will be eligible to purchase, the price at which the interest will be sold, and condition the sale on the producer signing the agency's shareholder agreement.

Vesting of the Commissions

This section of the agreement is used to delineate any commitments made regarding vesting arrangements. It provides for the producer, while associated with the agency, to have a vested interest in commissions on specific portions of the business produced. Under this arrangement, ownership of the business rests with the agency, but the producer is granted an "interest" in the commissions upon completion of a specified term.

Termination

The producer contract should contain a provision regarding the termination of the agreement. Termination triggers should include death, disability, for cause, retirement, etc. "For cause" is a legal term that is usually defined to include material breaches of the agreement, failure to pay financial obligations due to the agency, illegal acts, immoral acts and material indiscretions. Contracts may also include "without cause" termination rights, which typically require a meaningful prior notice period.

Ownership of Accounts, Expiration Lists, and Renewals

This is one of the most critical sections to be included in the producer contract. Customer lists and rights to renewals are of tangible value to the agency, and the ownership of these assets should be clear.

If the business is to be owned exclusively by the agency, a non-compete and/or non-piracy covenant is usually included, which may also require the producer to compensate the agency for agency accounts written after the producer's relationship with the agency is dissolved.

If the business is to be owned by the producer, as is often the case of brokered business, the contract should also specify that the agency retains ownership of the expirations if the producer has not met all financial obligations to the agency at the time of termination.

If the business is to be owned jointly by the two parties, one party or the other in the event of termination of the contract must agree to transfer ownership of the expirations. This provision may increase the likelihood of retaining a successful producer.

Other Provisions

The producer contract will contain other provisions and clauses based upon the particular jurisdiction and the attorney drafting the agreement. It would be impossible to list all other possible contract clauses, but other provisions commonly included are:

- Recovery of reasonable attorneys' fees for the prevailing party in the event of a dispute.
- Governing law—Indicates the state whose law will govern the agreement.
- Choice of venue—Specifies the jurisdiction and location of where any legal proceedings will be filed.
- Binding effect—Binds the agreement to heirs, legal representative, successors.
- Notices—Methods of providing notice to all parties, which are usually required to be in writing.
- Entire Agreement and Amendment—Providing that this is the entire agreement and restricting unilateral amendment/providing for a method for amending agreement.
- Severability—Provides that if any provision of the agreement is found to be illegal or unenforceable to any extent for any reason, such provision shall be modified or deleted so as to make the balance of the agreement valid and enforceable to the fullest extent permitted by law.

For guidance about similar provisions that may arise in carrier appointment contracts, please visit the [Contracts Review](#) area on the Big "I" web page.

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The example checklist and producer contracts that follow focus on major issues concerning the relationship between producers and agencies, and do not address every possible issue that can or should be addressed in a contract between a producer and an agency. They were prepared solely for informational purposes and are not intended to provide specific advice about individual legal, business or other questions. To the extent they are used as a guide, they are not a substitute for agents' independent evaluation of any provision in a contract, and are not a recommendation that any example contract be signed or rejected, or used without being revised to meet the needs of an individual situation. IIABA and its subsidiaries shall not be responsible in any way for, and specifically disclaim, any liability arising out of or in any way connected to, reliance on or use of the Guide and its contents. If specific legal or other expert advice is required or desired, the services of an appropriate competent professional, such as an attorney, should be sought.



Producer Contract Checklist

Producer Name: _____

Contract contains the following components:

	Yes	No	Comments
Parties to the Agreement			
Recitals			
Term of the Agreement			
Responsibilities of the Producer			
Responsibilities of the Agency			
Exclusive Nature of Employment			
Compensation			
Benefits and Expenses			
Non-compete Clause			
Non-piracy Clause			
Non-disclosure Clause			
Collections			
Authority of the Producer			
Option to Purchase Agency Interest			
Vesting of the Commissions			
Termination			
Ownership of Expirations			
Other Provisions (list as desired)			
E.g., data security and privacy			

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EXAMPLE CONTRACT #1

Employee-Employer Relationship

Parties to the Agreement

This Agreement is made and entered into this ____ day of ____ , 20 , between (agency) ("Employer"), a (state of incorporation) corporation with its office located at (address), and (producer) ("Employee") who resides at (address).

Recitals

EMPLOYMENT. Employer employs Employee and Employee accepts full-time employment with Employer upon and subject to the terms and conditions of this Agreement. Employee shall initially be classified as "producer-outside sales."

Term of the Agreement

TERM. The term of this Agreement shall begin on (month/day/year) and will continue until terminated as provided under this Agreement.

Duties of the Employee

NATURE OF EMPLOYMENT. Employee's duties will include selling insurance, regularly attending producers' and office personnel meetings, attending continuing education seminars as required by Employer's Sales Manager, and such other business duties as shall be assigned to Employee by Employer's Sales manager. Employee agrees to devote Employee's skill, labor and attention to the performance of Employee's specified duties under this Agreement on an exclusive and full-time basis. Employee shall at all times maintain a valid ___ [state] license as an insurance producer and follow all applicable laws, rules, regulations and orders.

Compensation

SALARY. As compensation for Employee's services, Employer shall pay Employee as base salary of

\$(salary) per month, payable on the ____ day of each month. The base salary payable to Employee shall commence to be earned on (date), and shall be subject to review annually in the month of (month)

COMMISSIONS. Employer shall pay Employee commissions for new business produced by Employee on and after the date of this Agreement and for renewal business produced by Employee on and after (date), as follows:

- a. 70% of the annual commission received by Employer on all new property/casualty insurance business;
- b. 70% of the first policy period commission received by Employer on sub-standard auto business (not annualized);
- c. 100% of the first annual commission received by Employer on new life insurance and disability income policies; and
- d. 30% of the commission received by Employer on all renewed commercial policies, as compensation for servicing the accounts (to be reviewed annually).

No commission shall be paid for short-term medical, travel accident, and other specialty policies. Employee shall be paid on the ____ day of each month. For accounting purposes, Employee shall report to Employer any policies previously serviced by Employee and lost to another agency.

Benefits and Expenses

BENEFITS. Employee shall receive the following benefits:

- a. Effective _____, 20__ coverage under Employer's Errors and Omissions insurance Policy and its group medical, disability, and life insurance plan. Employee will pay and have deducted from Employee's payroll check one-half of the premium (currently \$ __, but which sum may change) under the medical insurance plan.
- b. Effective _____, 20__ coverage under Employer's other group life insurance plan and its medical reimbursement plan.
- c. Paid holidays, sick days, and vacations as outlined in Employer's office procedures manual, as amended from time to time.
- d. Participation in Employer's profit sharing and bonus plans as defined in the procedures manual.
- e. Automobile: In recognition of Employee's need for an automobile for business purposes, Employer shall furnish Employee with a suitable Employer-owned automobile and pay the expenses (insurance, fuel, and maintenance) incidental to the operation of such automobile. Employee shall reimburse Employer for Employee's personal use of such automobile at the rate of \$ __ per mile on a monthly basis. The reimbursable amount shall be determined by __.
- f. Expenses: Reimbursement of expenses will be made as outlined in the office procedures manual.
- g. Stock Purchase(s): Contingent upon satisfactory job performance, Employee will be offered, no later than _____, 20 __, the opportunity to purchase shares of stock in Employer that are owned by Employer's principal shareholders, upon such terms and conditions as the principal shareholders shall determine. The determination of whether or not Employee has performed satisfactorily or not shall be based solely upon Employer's judgment.

Termination

TERMINATION. In the event Employee's performance under this Agreement is considered unsatisfactory by Employer's Sales Manager, Employee will receive a written notice of deficiencies, after which he will be given an opportunity to confer with the Sales Manager for the purpose of reviewing and improving Employee's job performance. Should Employee fail to satisfactorily improve Employee's job performance, as solely determined by Employer's Sales Manager, within a reasonable time period after receipt of such notice, Employee's employment hereunder may thereupon be terminated by Employer. Furthermore, this agreement shall terminate immediately upon:

- a. The cessation of Employer's business;
- b. The death of Employee;
- c. The voluntary termination of employment by Employee;
- d. The disability or incapacity of Employee, rendering Employee unable to substantially perform Employee's job duties hereunder (as determined by Employer, consistent with all federal, state and local laws and regulations, including, without limitation, the Americans with Disabilities Act); or,
- e. Employee committing an act or omission that employer determines to be grounds for a "for cause" termination.

Upon termination of Employee's employment, Employer shall pay Employee (or Employee's estate), in addition to the reimbursable expenses under this Agreement incurred by Employee to date of termination, Employee's compensation (base salary prorated on a daily basis for a partial month, and accrued commission less any commissions paid but not collected), and accrued vacation benefits earned to date of termination, after which Employer shall have no further liability to Employee for other payments or benefits under this Agreement.

Other Provisions

Miscellaneous. All contracts with insurance companies shall be signed by an officer of Employer, and all copies of policies will be kept at Employer's office. Employee will receive copies of policies as necessary for servicing all mail and correspondence with insurance companies shall be sent to Employer's office and mail that requires Employee's attention will be directed to Employee.

This agreement can only be modified in writing signed by all parties and final agreement of the parties with respect to the subject matter hereof, and all prior writings and

communications between the parties concerning this agreement shall be of no force or effect.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date and year first above written.

Employer:

Producer:

Approved: Principal Shareholders of Employer

Principal

Principal

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EXAMPLE CONTRACT #2

Independent Contractor Relationship

Parties to the Agreement and Definitions

Agency

(name of agency) (address of agency)

Producer

(producer's name) (producer's address)

Life Insurance Sales

Sale of any and all life insurance products, including disability income insurance and annuities.

Health Insurance Sales

Includes traditional health and hospitalization policies, as well as Medicare supplements, cancer policies, nursing home policies and hospitalization indemnity policies.

Existing Life Insurance Policies

Life, disability, and annuity policies that Producer has written prior to the Commencement Date.

Securities Sale

Includes mutual funds, unit investment trust, limited partnership and variable annuities.

Client

Any person or entity that has coverage or funds in force with either Agency or Producer.

Commencement Date

(____, 20____.)

Recitals**RECITALS:**

Producer operates an insurance business at (address of producer's insurance business) selling primarily life insurance and related products including disability income insurance, health insurance, and certain securities.

Agency operates an insurance business at (address of agency) selling primarily property and casualty insurance products.

Agency and Producer are desirous of entering into a mutually beneficial working relationship, with Producer being employed by Agency as an independent contractor.

NOW THEREFORE, the parties agree as follows:

Duties of the Producer

The Agency shall hire Producer as an independent contractor beginning on the Commencement Date and continuing thereafter until terminated as set forth in this contract. Producer shall perform all the duties required of Producer as an independent contract of Agency in a faithful, honest and diligent manner to the satisfaction of the Agency, and shall devote Producer's best efforts to the business of the Agency. Producer will control the manner and means of doing the work required.

Producer will, by the date of engagement recited in Paragraph 1 above, arrange, pay for and at all times while this agreement is in force maintain Producer's own Errors and Omissions insurance coverage for all Life Insurance Sales, Health Insurance Sales and Securities Sales as defined herein, with a reputable company acceptable to Agency. Said insurance policy shall have minimum limits of \$(_____). Producer agrees to provide Agency with a certificate of such insurance coverage on an annual basis.

Obligations of the Agency

The Agency or either of its principals, (name of principal(s)) agree to make a good-faith effort to become licensed with any new or existing life insurance companies that Producer desires to write business with.

Agency agrees to allow Producer access to all Client files for solicitation of life/health and securities business.

Compensation

Agency will pay a fee to Producer for any property/casualty prospects recruited or solicited by Producer that become new Clients of Agency. The fee will be 10% of the first year net commission paid to Agency from the initial premium aid by the new Client. Producer will receive no commission on property/casualty renewals.

Ownership of Customer Accounts, Expiration Lists and Renewal

Producer will own all records, files and renewals of Life Insurance Sales, Health Insurance Sales and Security Sales, all of which shall remain the exclusive property of Producer subject only to the terms of this Contract. Likewise, Agency will own all records, files and renewals of property/casualty insurance sales, and same shall remain the exclusive property of Agency subject only to the terms of this Contract.

Non-Compete Agreement and Non-Disclosure

Upon the termination of this contract, Producer covenants and agrees not to engage in, or compete with, Agency in Producer's own name or as employee, partner, stockholder or like interested party in the solicitation, sales or servicing of property/casualty insurance products to any property/casualty Clients of Agency that were property/casualty Clients at the time of the termination of this Contract, for a period of two years from the termination date of this Contract. Likewise, Agency covenants and agrees not to engage in or compete with Producer in its own name or through any arrangement whereby it, or any of its principals, are an interested party in the solicitation, sales or servicing of life/health and securities business to an life/health and securities Clients of producer that were life/health and securities clients at the time of the termination of this Contract for a period of two years from the termination date of this Contract. It is agreed that Producer may solicit, sell to and/or service any Clients with regard to life/health and securities business both before and after the termination of this Contract. It is likewise agreed that Agency may solicit, sell to and/or service any Clients with regard to property/casualty insurance business both before and after termination of this Contract.

Both parties specifically agree that the time limitation of two years is reasonable, and both parties waive any objection to the reasonableness of same.

Both parties further covenant, following the termination of this Contract that they will not use or impart to anyone else any confidential or proprietary information that they may have learned because of their relationship with each other. This clause is not intended to prevent either party from calling on Clients of the other party as allowed above. However, neither party may retain or use confidential or proprietary information of the other, including, without limitation, written or printed Client lists of the other party, after the termination of this Contract.

Non-Compete Agreement and Non-Disclosure (continued)

By entering into this covenant not to compete, the parties recognize and agree that the enforcement of the covenants would merely place the parties back in the same relative position they were in prior to the execution of this agreement. Therefore, the parties waive any objection they might have to the enforceability of the covenant not to compete based on economic hardship.

Benefits and Expenses

Producer is retained only for the purposes and to the extent set forth in this agreement, and Producer's relationship to the Agency shall be that of an independent contractor. As such, Producer shall not be entitled to any pension, stock, bonus, profit sharing, health or similar benefits, which may be available to employees of the Agency.

Termination

This contract is terminable by either party at will by delivery of a written notice of termination to the other party at least 30 days prior to the contemplated date of termination.

Other Provisions

All notices required hereunder shall be deemed sufficient if delivered in person; or, if mailed, U.S. mail, postage prepaid, to the party's address as reflected in this agreement or at such other address as is provided to the mailing party by the receiving party.

If the services of any attorney are required to enforce the terms of this agreement, the prevailing party shall be entitled to recover their reasonable attorney's fees in addition to any other remedies allowed by law.

This Contract constitutes the entire agreement of the parties concerning the subject matter herein, supersedes all prior communications between the parties and may not be changed or modified except by a written agreement executed by both parties.

WITNESS OUR SIGNATURES, this the ___ day of ___ 20 ____.

WITNESS

(Name of Agency)

AGENCY SIGNATURE

PRODUCER SIGNATURE

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EXAMPLE CONTRACT #3

Employee-Employer Relationship

Parties to the Agreement

THIS AGREEMENT, made this ___ day of ___, 20 ___ by and between (name of agency) whose office is located at (address) hereinafter designated as "Agency" and (producer) of (address) hereinafter designated as "Producer".

Recitals

WHEREAS, the Producer seeks employment with the Agency.

WHEREAS, the Agency is desirous of employing the Producer.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

Duties of the Employee

1. Producer hereby agrees to enter the employ of the Agency, as an insurance agent and producer for all types of general insurance for which the Agency acts as agent for various insurance companies. At any time, either party hereto can notify the other that the arrangement is not to continue beyond the thirtieth (30th) day after such notice. In the absence of any such notification, this contract will run from month to month.
2. Producer shall perform all the duties required of Employee as a producer in a faithful, honest, and diligent manner to the satisfaction of the Agency and shall devote Producer's best efforts to the business of the Agency.

Exclusive Nature of Employment

3. The Producer shall not sell insurance of any nature whatsoever or place insurance of any nature whatsoever with any person, firm or corporation other than the Agency, and shall not commit any act designed or intended to be of advantage to the insurance business of any person, firm, or corporation other than the Agency.

Obligation of the Employer

4. The Agency shall furnish to Producer at the Agency's expense, all secretarial service office space, telephone, utilities, connected with this employment as required in the ordinary course of business.

Compensation

5. As compensation for insurance business produced and for all services performed by Producer for the Agency, the Producer shall be entitled to receive (percentage) of all net annual commissions, thereby excluding any portion of so-called contingent bonus, or profit sharing commissions, if any received by the Agency, actually received by the Agency on all insurance written by Producer and renewals thereof. The Agency shall provide a monthly accounting to the Producer of all commissions due to the Producer by the thirtieth (30th) day of each month for the business of the preceding month, together with such payment as is due.

Collections

6. Any sums paid to Producer pursuant to this agreement shall be subject to an adjustment in the event that subsequent to said payment the Agency shall be required to pay and return premiums on business for which Producer shall have been paid a portion of the premium on such business. The provisions of this paragraph shall continue after the termination of Producer's employment, however caused, and the Agency shall be entitled to set off against any sums due Producer such amount of return commissions he shall owe to the Agency hereunder.

7. All original premiums and renewal premiums shall be paid into the Agency by the Producer. On all new or renewal business written by the Producer, all outstanding accounts must be paid into the agency not later than the tenth (10th) day of the second calendar month after the effective date of the insurance. If not paid in by that time, the same shall be charged to the account of the Producer. Producer shall be responsibility to the Agency for all outstanding premiums due agency by Producer's accounts, whether owned or serviced.

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Obligation of the Employer

8. The Agency provides an Errors & Omissions policy with limits of \$_____ with a \$_____ deductible and defense costs being paid by Agency accruing to this deductible. It is agreed that if any of the Producer's accounts proffer suit against Agency involving any negligent act, error or omission of the Producer for whose acts the Agency is legally liable, arising out of the conduct of the business of the Agency as a general insurance agency, then any costs incurred by the Agency up to the \$_____ deductible will be borne by the Producer.

Ownership of Customer Accounts, Expiration Lists & Renewals

9. In the event of the termination of this agreement, the Producer, having property accounted for and paid over premiums collected by Producer, and having properly discharged all Producer's other legal obligations as set forth in this Agreement, the Producer's records, use and control of work product and expirations shall remain the property of the Producer and be left in Producer's undisputed possession. Otherwise, the records, use and control of the Producer's work product and expirations shall be vested in the Agency.

10. From time to time the Agency will provide the Producer with leads. The Producer will receive commissions for the sale of this lead and the subsequent renewals as designated in paragraph (.). However, the Producer agrees that these accounts remain the property of the Agency.

Non-Compete Agreement

11. Upon termination of this agreement, the Producer agrees not to do anything that will cause the Client to transfer the business owned by Agency to the Producer, or to accept control over this business if requested to do so by the Client for a period of two years after termination of this agreement.

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Non-Disclosure

12. Both parties recognize and acknowledge that all information concerning each other’s accounts is confidential information and will be treated by them such, both during and after termination of this Agreement. Unless the expirations on business written by the Producer become vested in the Agency as provided in paragraph (), neither party will make, create, or retain after the termination of this Agreement, any lists of the other’s accounts or disclose such information to any other party. Further, each party agrees that it will not, directly or indirectly, solicit any insurance business owned by the other for a period of two (2) years following the termination of this Agreement.

Other Provisions

13. In the event of a dispute between the parties hereto with respect to this contract or the rights and obligations created thereby, such dispute shall be settled by arbitration in the City of (agency city), (state) in accordance with the rules of the American Arbitration Association, and the judgment upon the award rendered may be entered in any Court having proper personal and subject matter jurisdiction over the controversy. The prevailing party in any arbitration proceedings hereunder shall be entitled to reimbursement from the losing party for all out of pocket expenses, including reasonable attorneys’ fees sustained or incurred as a result of such arbitration proceedings.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written for the purposes set forth in this contract.

WITNESS

(Name of Agency)

AGENCY SIGNATURE

PRODUCER SIGNATURE

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EXAMPLE CONTRACT #4

Independent Contractor Relationship

Parties to the Agreement

AGREEMENT made and entered into by and between Name of agency, (hereinafter called "THE AGENCY") a State Corporation with its principal place of business located at (address, city, state, zip) and (producer) (hereinafter called "SALESPERSON") who resides at (address, city, state, zip).

WITNESSETH:

Recitals

WHEREAS, it is the intention of THE AGENCY to contract with SALESPERSON for the purpose of granting SALESPERSON the authority to receive and transmit proposals for surety bonds, and contracts of insurance, including all types of general life, accident and health insurance, and other insurance related services, (hereinafter referred to as insurance business) and

WHEREAS, SALESPERSON is duly licensed in the state of (resident license state) and desires to use the facilities of THE AGENCY to work as a SALESPERSON for the purpose hereinafter set forth;

NOW, THEREFORE, in consideration of the matters stated above and of the mutual conditions, covenants and matters herein contained, it is hereby agreed as follows:

Date and Term of the Agreement

1. THE AGENCY agrees for a period of one (1) year following the date of execution hereof by both parties, to provide the SALESPERSON with a market for insurance business produced by the SALESPERSON during said period consistent with such markets as are available to THE AGENCY. THE AGENCY shall attempt to place all such business produced by the SALESPERSON in accordance with the underwriting and credit standards as set forth by THE AGENCY.
 - a. At the end of the initial one (1) year period, referred to paragraph one (1) hereof, this agreement shall continue in effect until either party shall give the other written notice of their intent to terminate this agreement, which notice shall be in accordance with paragraph 14.
2. SALESPERSON shall perform all work in a faithful, honest and diligent manner.

Collections

3. SALESPERSON shall remit to THE AGENCY all monies collected in payment to THE AGENCY as soon as practicable. In the meantime, all funds are held in a fiduciary capacity.
4. THE AGENCY shall notify the SALESPERSON of all accounts receivable, which are thirty (30) days old. Ten (10) days after notification, THE AGENCY shall be free to cancel the insurance for said account for non payment of premium without further notice to the SALESPERSON. THE AGENCY shall be free to charge back such commission amounts against any other sums, which may be due from THE AGENCY to the SALESPERSON hereunder. With regard to billings received by THE AGENCY for premiums due as a result of audits, THE AGENCY shall have the exclusive right to return the same to the carrier as uncollectible. The SALESPERSON shall not be entitled to any commission on accounts of such audit premiums.

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Ownership of Customer Accounts, Expiration Lists and Renewals

5. All new and renewal insurance business of every kind and type -- excluding Life, Health and Employee Benefit plans—written at any time during the term of this agreement by the SALESPERSON shall be and remain the property of THE AGENCY.

However, the SALESPERSON will become vested in all renewal commissions coded to SALESPERSON after a period of five (5) years from the date of this agreement. The vesting schedule is provided by Addendum.

- a. For the purpose of this agreement, the term “vested” shall be defined as a percentage interest in the renewal commissions of the accounts coded to the SALESPERSON.
- b. For the purpose of this agreement, the term “vested” shall not include Life & Health commissions.

Nature of Relationship

6. All applications for new and renewal insurance business, including Life, Health and Employee Benefit plans, secured by the SALESPERSON during the term of this agreement shall be tendered and processed through THE AGENCY.

Duties of Producer

7. SALESPERSON shall negotiate with all prospects and customers including existing customers in the name of THE AGENCY.

Compensation

8. All new and renewal business, which is written by the SALESPERSON, shall be carried on the books of THE AGENCY in the code number of the SALESPERSON.

The SALESPERSON shall be entitled to receive 60% of all first-year commissions, and 30% of any renewal commission on all commissions actually received by THE AGENCY and coded to the SALESPERSON, provided the premium has been paid in full by or on behalf of the insured. THE AGENCY shall provide a monthly accounting to the SALESPERSON of all business written by THE AGENCY coded to the SALESPERSON, together with such payment as may be due. Such accountings and payment shall be due no later than the fifteenth (15th) day after the close of the month for which the accounting applies. In the event a return commission shall be due on any business for which the SALESPERSON has been paid a percentage of the commission, the SALESPERSON shall be responsible for a pro-rata share of such return commission when due.

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**Compensation
(continued)**

- a. Upon achieving \$50,000 in gross property & casualty commission, SALESPERSON renewal commission rate shall increase to 35%.
- b. Upon achieving \$100,000 in gross property & casualty commission, SALESPERSON renewal commission rates shall increase to 40%.
- c. For the purpose of Life & Health commission, SALESPERSON shall be entitled to receive 50% of all commission, both new and renewal on all accounts coded to SALESPERSON.

**Authority of
the Producer**

- 9. The authority of the SALESPERSON is limited to the proper and legal solicitation of the kinds of insurance business written by THE AGENCY through various insurance companies that it represents. SALESPERSON shall have no power or authority to modify, alter or waive any of the provisions of any policy, contract, or endorsement issued by any insurance company, or to waive or release any of the rights of any insurance company herein before stated, or to make contracts or incur obligations in the name of, or on behalf of THE AGENCY, or bind it in any manner whatsoever, unless specifically authorized by THE AGENCY in writing. Any written advertising matter involving THE AGENCY shall be first submitted to THE AGENCY for its consent to such use before the same is published or used.

**Non-Compete
Agreement &
Nondisclosure**

- 10. The SALESPERSON hereby acknowledges that by virtue of this agreement, SALESPERSON will acquire confidential information concerning the customers and insurance companies of THE AGENCY, that would otherwise not be available to SALESPERSON. In the event that this agreement is terminated at any time, for any cause whatsoever, or no cause, SALESPERSON shall not, during a period of 18 months following the date of such termination, alone as a partner, employee, stockholder, agency advisor of any person:
 - a. canvass, solicit or accept any business from an insured or insureds named in the books or records of THE AGENCY, or any business owned and/or controlled by said customer.
 - b. permit, or allow, or give any other person, firm or corporation the right or permission to canvass, solicit, or accept business from any customer or customers named in the books or records of THE AGENCY.

Non-Compete Agreement & Nondisclosure (continued)

- c. directly or indirectly, in any way request, or advise any customers whose names are on the books and records of THE AGENCY, to withdraw, or cancel his or her, or any of their business with THE AGENCY; or
- d. disclose to any person, firm or corporation the name or any contact information of any such customer or customers.

For purposes of this agreement, the term “customer” shall include, but not be limited to, persons and/or businesses who have insurance with THE AGENCY, and persons and/or businesses who are potential customers through the use of THE AGENCY’S prospecting list.

Non-Piracy Agreement

- 11. In the event that SALESPERSON shall engage in, accept or in any manner obtain, alone, or as an employee, partner, stockholder, agency or advisor, or any person, any insurance business from any customer of THE AGENCY within 18 months of the date of such termination then in that event, THE AGENCY shall be entitled to and shall receive from SALESPERSON one hundred per cent (100%) of the commission received by the SALESPERSON (or any firm, company, business or corporation with whom SALESPERSON shall be employed or otherwise connected) which is attributable to and derived from such business during a period of 18 months commencing upon the date on which SALESPERSON (or any other person) shall first receive such commissions.

Other Provisions

- 12. For the purposes of the agreement, the term “just cause” shall include (but not be limited to) dishonesty, falsifying records and/or accounts, excessive customer complaints made against SALESPERSON or any conduct displayed by SALESPERSON that adversely reflects upon THE AGENCY or that violates any code of the state of (agency state).
- 13. It is agreed between these parties that all property, which THE AGENCY furnishes, owns and/or retains legal title to, shall be returned to THE AGENCY upon termination of the SALESPERSON. Such property shall be in condition satisfactory to THE AGENCY. The SALESPERSON shall be financially responsible to THE AGENCY for any unreasonable damage to the property other than normal wear, tear and depreciation.

Termination

14. This agreement may be terminated by either party hereto at any time by either party giving to the other party, by certified mail, ninety (90) days' written notice; provided, however, that in the event of cancellation or termination at any time by either party for any reason or no reason, the provisions of paragraphs (11), (12), and (13) above shall be and remain binding on THE AGENCY and SALESPERSON. For purposes of this agreement, all notices shall be mailed to THE AGENCY at (agency address) and to the SALESPERSON at (producer's address). The mailing of such notice shall constitute evidence of the termination of this agreement.
 - a. In case of fraud, embezzlement or any other dishonest act of the SALESPERSON, and/or for termination for "just cause", as defined in paragraph (12) above, THE AGENCY may cancel this agreement immediately.
 - b. Termination for fraud, embezzlement or violation of any part of this agreement will cancel any vested interest whatsoever.

Amendments & Enforceability

15. No stipulation, agreement, or understanding, verbal or otherwise, by the parties or their agents shall be valid and enforceable unless in writing and embodied or attached to the provisions of this agreement.
16. In the event that any part of this agreement shall be declared invalid for any reason; then, such invalidity shall not affect any other part of this agreement.

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**Benefits
and Expenses**

17. The foregoing provision for payment of commissions shall be the sole and exclusive compensation to which the SALESPERSON shall be entitled. All out-of-pocket expenses incurred by the SALESPERSON in the course of SALESPERSON'S conduct and business hereunder, including, but not limited to; travel and entertainment expenses; dues and other similar expenses shall be borne by the SALESPERSON exclusively

**Independent
Contractor
Relationship**

18. This agreement is not an employment contract. SALESPERSON is retained only for the purposes and to the extent set forth in this agreement, and SALESPERSON's relationship to THE AGENCY shall be that of an independent contractor. SALESPERSON shall not be entitled to any pension, stock, bonus, profit sharing, health or similar benefits, which may be available to employees of THE AGENCY.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on this ____ day of _____, 20 ____.

(Name of Agency)

AGENCY SIGNATURE

PRODUCER SIGNATURE

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ADDENDUM I

This Addendum is to the agreement dated ____ between _____,
THE SALESPERSON, and THE AGENCY.

THE SALESPERSON shall be entitled to the following vesting schedule upon completing five (5) years of service from the date of this agreement:

- a. SALESPERSON will be entitled to receive commissions based on renewed business payable over a 24-month period. The commissions will be equal to one-fourth times the renewal Property & Casualty commission coded to SALESPERSON at a rate of commission paid to SALESPERSON for the preceding twelve (12) months.
- b. This payment will be due upon the SALESPERSON'S retirement, death, or termination by either party other than for termination under paragraphs (14a) and/or (14b) of the agreement.

SALESPERSON shall be entitled to the following vesting schedule upon completing ten (10) years of service from the date of this agreement:

- a. SALESPERSON will be entitled to receive commissions based on renewal business payable over a 24-month period. The commissions will be equal to one-half times the renewal Property and Casualty commission coded to SALESPERSON at a rate of commission paid to SALESPERSON for the preceding twelve (12) months.
- b. This payment will be due upon the SALESPERSON'S retirement, death, or termination by either party other than for termination under paragraphs (14a) and/or (14b) of the agreement.

BY:

(Name of Agency)

AGENCY SIGNATURE

PRODUCER SIGNATURE

ADDENDUM II

This Addendum is to the agreement dated _____ between _____ THE SALESPERSON, and _____, THE AGENCY.

- a. It is agreed that in accordance with paragraph (5) of the agreement, the undersigned SALESPERSON shall automatically be vested (as respects the 5th year only) in the book of business coded to SALESPERSON from the inception date of this agreement.

BY:

(Name of Agency)

AGENCY SIGNATURE

PRODUCER SIGNATURE

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EXAMPLE CONTRACT #5

Employee-Employer Relationship

Parties to the Agreement

This Agreement is made and entered into this _____ day of ____, 20 ____, between (agency) ("Employer") and a (state of incorporation) corporation with an address of (address) and (producer) ("Employee") an adult resident of (city and state).

Employment

1. EMPLOYMENT. Employer employs Employee and Employee accepts full-time employment with Employer upon and subject to the terms and conditions of this Agreement. Employee shall initially be classified as "producer-outside sales."

Date and Term of the Agreement

2. TERM. The term of this Agreement shall begin on _____, 20 and will continue until terminated as provided under this Agreement.

Duties of the Employee

3. NATURE OF EMPLOYMENT. Employee's duties will include selling insurance, regularly attending producers' and office personnel meetings, attending continuing education seminars as required by Employer's Sales Manager, and such other business duties as shall be assigned to Employee by Employer's Sales Manager. Employee agrees to devote her skill, labor, and attention to the performance of her specified duties under this Agreement on an exclusive and full-time basis.

Compensation

4. SALARY. As fixed compensation for her services, Employer shall pay Employee a base salary of \$ ___per month for the months of (month), and (month), 20___. Commencing (month), 20 ___, the base month salary payable to Employer to Employee shall be as set for the on Exhibit "A" attached. The base monthly salary shall be paid in equal semi-monthly installments on the 15th and 30th (or last day) of each month.

5. COMMISSIONS. As further compensation for Employee's services under this Agreement, Employer shall pay Employee 100% of the first year's commission received by Employer for new Personal Lines insurance policies produced by Employee on and after the date of this Agreement. Employee shall not, however, be entitled to commissions for any renewal business. Furthermore, no commissions shall be paid for short-term medical, travel accident, or specialty policies. Earned commissions due Employee shall be paid on the 15th of each month.

6. FINDER'S FEE. In the event a Commercial Lines insurance policy is sold by Employer through a sales lead from Employee, Employee shall be entitled to receive a finder's fee in such amount as Employer determines.

7. ADDITIONAL BENEFITS. Employer shall receive, without cost, the following additional benefits:

- a. Effective ____, 20 ___, coverage under Employer's Errors and Omissions insurance policy and its group life and long-term disability insurance plans.
- b. Effective ____, 20 ___, coverage under Employer's other group life insurance plan.

Compensation (Continued)

- c. Paid holidays, sick days, and vacations as outlined in Employer's office procedures manual, as amended from time to time.
 - d. Participation in Employer's profit-sharing plan (when eligible) and bonus plan.
8. AUTOMOBILE. In recognition of Employee's need for an automobile for business purposes, Employer shall furnish Employee a suitable Employer-owned automobile and pay the expenses (insurance, fuel, and maintenance) incidental to the operation of such automobile. Employee shall reimburse Employer for personal use of such automobile at a rate of ___ cents per mile.
9. EXPENSES REIMBURSEMENT. Employer shall reimburse Employee for all business-related expenses as outlined in Employer's office procedures manual.
10. STOCK PURCHASE(S). Contingent upon satisfactory job performance as determined by Employer, Employee will be offered, no later than ____, 20 ____, the opportunity to purchase shares of stock in Employer owned by Employer's principal shareholders, upon such terms and conditions as the principal shareholders shall determine.

Termination

11. TERMINATION. In the event Employee's production, customer service, or related activities ("job performance") under this Agreement is considered unsatisfactory by Employer, Employee will receive a written notice of deficiency or deficiencies, after which Employee will be given an opportunity to confer with Employee's supervisor for the purpose of reviewing and improving job performance. Should Employee fail to satisfactorily improve job performance, as solely determined by Employer, within a reasonable amount of time, Employee's employment hereunder may be terminated by Employer for such reasons. Furthermore, this Agreement shall terminate upon:
- a. the cessation of Employer's business;
 - b. the death of Employee;
 - c. the voluntary termination of employment by Employee;

**Termination
(Continued)**

- d. the disability or incapacity of Employee, rendering her unable to substantially perform her job duties hereunder (as determined by Employer, consistent with all federal, state and local laws and regulations, including, without limitation, the Americans with Disabilities Act); or,
- e. Employee committing an act or omission constituting for-cause grounds for discharge, such as fraud, embezzlement or any other dishonest act.
- f. Employer terminating Employee's employment without cause, as outlined in Employer's office procedures manual.

Upon termination of Employee's employment, Employer shall pay Employee, in addition to the reimbursable expenses under this Agreement incurred by Employee to date of termination, Employee's compensation (base salary, prorated on a daily basis for a partial month, and earned commissions) and accrued vacation benefits earned to date of termination, after which Employer shall have no further liability to Employee for other payments or benefits under this agreement.

Other Provisions

- 12. FINAL AGREEMENT AND AMENDMENTS. This agreement supersedes and takes the place of any prior agreement, written or oral, between Employer and Employee relating to Employee's employment or compensation, and may only be amended or modified upon and by the signed written consent of Employer and Employee.

WITNESS OUR SIGNATURES, this _____ day of _____, 20 _____.

(Name of Agency)

AGENCY SIGNATURE

PRODUCER SIGNATURE

Resources

Best Practices Agencies with the greatest amount of sales success all consistently show they explore and address three essential elements. Best Practices Agencies equip their producers for success with the training and support needed to be successful, create a culture of accountability, and have a culture to recruit and develop new producers on an ongoing basis. Best Practices Agencies also list identifying, hiring, and developing producers as one of their biggest challenges. This Guide to Producer Contracts is geared to help with one part of the process.

Look to the Big "I" for other areas of support to help ensure your agency has the talent and resources needed to thrive and maintain a competitive edge. The **#BigIHasYourBack**.

Visit the Guide to Producer Contracts Resource Page for Related Support

Big "I" Hires: Big "I" Hires has cutting-edge tools to help small to large insurance agencies hire top-performing sales and service staff, including recruiting support, DIY Hiring Toolkits, HR Resources and more.

Big "I" Virtual University: Online training, including the EXCEED program which can help on-board employees and address and identify knowledge gaps.

Big "I" Markets: Exclusive Market Access for Big "I" Members

Legal Advocacy: Contract reviews, FAQs, industry issues and more.





Acknowledgment

Thank you to the Big "I" Office of the General Counsel (OGC) for their time and expertise dedicated to the update of this Best Practices Guide to Producer Contracts.

Scott Kneeland
General Counsel

Eric Lipton
Senior Counsel

The OGC handles agency/broker member and state association requests on a broad range of legal and business issues, including reviews of and advocacy concerning contracts addressing agency relationships with carriers, Big I trademark use and infringement, antitrust, and federal laws and regulations affecting the insurance industry. The OGC also prepares memoranda and FAQs to assist members in complying with the complex legal requirements of federal laws and regulations that affect their agency and brokerage businesses. External advocacy on behalf of members is central to the activities of the OGC, with an emphasis on the protection of agents ownership of expirations and other key components of agency-company contracts. In addition, considerable time is spent by the OGC advocating on other issues that impact the efficiency and profitability of members businesses, including proactive negotiation with carriers for changes in agency-company contracts. The OGC also works with members and state associations on strategies for litigation on industry issues. The OGC also provides legal and business counsel to IIABA and all its subsidiaries on contracts that deliver products and services to members, such as the IIABA endorsed errors and omissions program, Big I Markets, Trusted Choice, IA Magazine and the Virtual University.

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