

# **A Guide of What to Look for in a Broker Company Contract**



**Your Best Insurance  
is an Insurance Broker**

**2014**



## Table of Contents

### Company/ Broker/ Effective Date Index

1. Definitions.....	4
2. Term of Contract.....	5
3. Broker Covenant.....	5
4. Authority of the Broker.....	5
5. Ownership of Expirations and/or Portfolio.....	7
6. Commissions.....	8
7. Broker Billed Policies.....	9
8. Direct Billed Policies.....	10
9. Harmless Provision.....	11
10. Assignment of Contract.....	12
11. Rehabilitation.....	13
12. Termination of Contract.....	14
13. Limited Brokerage Agreement.....	15
14. Arbitration.....	15

### Miscellaneous Provisions

15. Advertising.....	15
16. Claims.....	14
17. Cancellation of Policy.....	14
18. Subrogation and Salvage Recovery Credits.....	15
19. Limitation Period.....	15
20. Change in Policy Wording.....	15
21. Electronic Interface.....	17
22. Confidentiality and Protection of Personal Information.....	18
23. Contingent Profit Agreement.....	18
24. Signature Page.....	19

## Definitions

As used herein, and in instruments and agreements supplementary and amendatory hereto, the following words shall be construed to mean:

**Company:**

The undersigned insurance company or companies of insurance

**Broker:**

The undersigned person or persons so designated, whether an individual, partnership or corporation.

**Binder:**

An agreement to provide coverage prior to actual issuance of a written policy, bond, endorsement, or other contract. The term "binder" includes "cover notes".

**Policy:**

Unless an otherwise more restrictive meaning is indicated, the term "policy" shall include all contracts of insurance and surety and other agreements amending coverage.

**Double Registered Mail:**

Is mail by which the sender received confirmation from the post office of receipt of the mail by the addressee.

## **1. Term of Contract**

- A) This Agreement shall, unless earlier terminated, as provided herein, be continuous from the Effective date.
- B) Either party can terminate this Agreement upon providing written notice to the other party, at least, one hundred and eighty (180) days prior to the proposed termination date.

## **2. Broker Covenant**

The Broker covenants and agrees that all staff and licensed brokers working in and from the Broker's office shall be instructed to operate under the terms and conditions of the Agreement and that the Broker will see that they are governed thereby. The obligations hereunder and the limitations of the Broker's authority expressed herein shall govern the Broker equally as regards insurance business that may be brought to the Broker from other brokers or outside his own office.

## **3. Authority of the Broker**

- A) The Broker is an independent contractor, not an employee of the Company, and shall have exclusive control of its time, the conduct of its brokerage, and the selection of companies it represents.
- B) Subject to the terms of this Agreement, requirements imposed by law or regulation, and the underwriting rules of the Company, the Broker is authorized:
- i) To solicit and submit applications for insurance contracts and surety and fidelity bonds.
  - ii) To bind the Company on and execute insurance contracts and certificates for the lines of insurance the Company and Broker are legally permitted to write. Coverages and limits of liability will only be bound by the Broker in accordance with the written guidelines, including any amendments and conditions thereto, furnished to the Broker by the Company from time to time.

- iii) To execute fidelity and surety bonds if expressly authorized in powers of attorney and letters of limitations provided to the Broker by the Company.
  - iv) To collect and receipt for premiums as provided herein.
  - v) To request that the Company cancel policies and binders where cancellation is otherwise legally permissible.
  - vi) To provide all usual and customary services of an insurance broker on all insurance contracts placed by the Broker with the Company.
  - vii) To sign subscription policies and other policies of insurance on behalf of the Company. The Company's liability shall not be repudiated on the grounds that the policy shall be unenforceable at law by reason of the fact that it has not been duly signed by a representative of the Company and the Broker.
- B) The Broker agrees to forward to the Company written copies of applications, binders, policies, and endorsements, and/or certificates after issuance or execution, and to immediately report to the Company any cancellations of/or changes to any such document in accordance with the authority granted under paragraph 3 (B) (ii) above.
- C) The Broker shall not publish or distribute any advertisements, circulars, or other materials referring to the Company or containing the Company's name other than acknowledging the Company it represents, without first securing advance written approval from the Company.

#### **4. Ownership of Expirations and/or Portfolio**

A) Except as herein provided, all of the business placed by the Broker with the Company through the Broker shall at all times be and remain the sole property of the Broker; and the policyholders shall be and remain the Broker's customers and the Broker's records pertaining thereto and the right to use them for the purpose of doing further business with those customers shall be and remain the sole property of the Broker; and the Company shall not in any way during or after the termination of this Contract use its records of business placed by the Broker with the Company for the purpose of doing any insurance business (except through the Broker) with any policyholder nor permit or make available use of the said records to any other broker or company or by any other person who might use them to compete for said business with the Broker.

B) In the event that the Broker fails to remit premiums to the Company falling within the provisions of the normal time allowed in this Contract, the records, ownership and use and control of expirations of that business placed by the Broker with the Company shall be vested in the Company and the Company may take possession and control of the Broker's business but only as it relates to the policyholders of the Company, including all records and premiums, until such time as the indebtedness of the Broker to the Company is fully discharged; or in the alternative sell them to another broker to the best advantage, using the purchase money to discharge the Broker's indebtedness to the Company and paying any balance then remaining to the Broker. In either such event, the Broker covenants and agrees to act reasonably with the Company to assist the Company to produce the result most favourable to all concerned including policyholders of the Broker.

Nothing in this section shall interfere with the Company's obligation to renew policies containing contractual renewal guarantees or which must be renewed pursuant to government regulations or by order of government authority and the Broker shall be entitled to receive commissions on such policies at the prevailing rate of commission then in effect, unless specifically prohibited by law.

- A) As full compensation for services, the Company will pay commissions to the Broker in accordance with the rates and conditions set forth in the current Commission Schedule (included as schedule).
- B) Company reserves the right to revise such rates, but no reduction in commission shall be made unless:
  - i) Such a reduction is being made to substantially all of the brokers in Ontario with whom the Company has contracts.
  - ii) The Broker is given at least one hundred and eighty (180) days prior written notice and the revised rate(s) established shall not be further reduced during the twelve (12) months immediately following the effective date of the reduction;
  - iii) Change in commission is required by law or government authority.
- C) Upon return of any unearned premium to an insured by the Company, the Broker shall promptly return to the Company the commission on such unearned premium by cheque or by accounting for them on the monthly statement.



A) The Broker is authorized and expected to collect premium on binders and policies not billed to insureds directly by the Company, and to remit net balances to the Company in accordance with the current Commission Schedule. It is expressly understood that all premiums collected by the Broker are trust funds, that these premiums are the property of the Company, unless specified otherwise by Court order that the Broker has no interest in premiums collected, and that the Broker shall make no deductions or expenditures from these monies before paying the Company (except for commissions as agreed upon which are to be deducted and retained by the Broker).

B) Broker shall have no responsibility for remittance of premiums developed by audit, or premiums on reporting from contracts or non-cancellable bonds, provided notice of uncollectibility is given in writing to Company within sixty (60) days of the billing but in such case Broker shall co-operate with Company in its efforts to collect such premiums and shall waive any commissions thereon.

C) Failure of the Company to bill the Broker for any item will not relieve the Broker of responsibility to pay the amount due.

D) The Broker and the Company shall comply with the following accounting procedures on business, other than direct-billed business, placed by the Broker with the Company:

i) Itemized statements of money due shall be prepared monthly by the Company, or, when mutually agreed, by the Broker, and sent to the Broker or Company, whichever is applicable, not later than the twentieth (20) day of the following month.

ii) The balance shown in the statement due the Company, or due the Broker, shall be payable not later than sixty (60) days after the end of the account month for which the statement was prepared subject to adjustments by the Broker to reflect the Broker's accounting records.

iii) If the Broker pays to the Company any premium or part thereof which has not been paid to the Broker, such payment to the Company shall be deemed to be a deposit made on behalf of the

policyholder and should the policy in question be cancelled for non-payment of premium, the Company shall repay to the Broker the amount by which the premium so received from him exceeds the time-on-risk premium due to the Company. In such case the amount of the said time-on-risk premium shall be a loss to be borne by the Broker

iv) Subject to compliance with PIPEDA, the Company shall have access at all reasonable times to the Broker's books and records as it pertains to the business written by the Broker with the Company for the purpose of determining any fact relating to money due the Company when the Broker is in premium payment default and as such default is not subject to bona fide disagreement.

## **7. Direct Billed Policies**

On business placed by the Broker with the Company as direct-billed, the following provisions apply:

- A) The Broker agrees to collect and remit to the Company the initial premium or premiums together with the completed application/declaration within the time period set forth in the established Company procedure.
- B) The Broker is not responsible to the Company for bad cheques written by insureds when accepted in good faith by the Broker.
- C) The Company will assume responsibility for billing and collecting the initial premium when existing business of the Broker is transferred to a direct-billed program of the Company.
- D) Commissions on direct-billed premiums shall be paid to the Broker within fifteen (15) days after the end of the month in which the premiums are received and recorded by the Company. Any business billed directly to the insured by the Company and for which a Broker receives the premium payment shall be promptly paid gross to the Company, properly identified as to policy, without deduction for commissions.
- E) The Company shall clearly and prominently identify the Broker by name when transmitting policies, endorsements, premium notices and other communications to policyholders. The Company shall provide the Broker with simultaneous notification and copies of all communications with a policyholder. Any value added promotion undertaken by the Company shall be communicated to the Broker before it is communicated to the

policy holders and the Broker may refuse to allow the Company to so communicate with the Broker's customers

F) Notwithstanding that the Company deals directly with the policyholders under the direct billing system they shall continue to be customers of the Broker and in the event of termination of this Agreement by either party the Company shall supply the Broker as soon as possible with a list of all the Broker's customers having insurance in force at that time within the said system, such list identifying for each customer the type and number of each policy and its next premium due date or expiry date.

G) Unless authorized in writing by the Broker, the Company shall not use or permit the use of the records of the Broker's business with the Company to solicit individual policyholders for the sale of other lines of insurance or other products or services. If authorization is granted, the Broker shall be entitled to the applicable commission or fee (subject to any applicable law to the contrary) on sales resulting from the use of the Broker's records.

## **8. Hold Harmless Provision**

- A) The Company shall indemnify and hold the Broker harmless against all liability, including legal fees and costs of investigation and defense incidental thereto, arising as a direct result of:
- i) Company error or omission in the preparation, processing, handling, or billing of direct-billed business or any other business placed by the Broker with the Company, except to the extent that the Broker has caused or contributed to such error or omission.
  - ii) Failure of any insured to receive notice of cancellation, non-renewal, or any other notice affecting coverage on direct-billed or broker-billed business, where such notices are being sent directly to the insured by the Company.
  - iii) Any action or inaction of the Broker based upon the Broker's use of forms supplied by the Company or following of instructions or procedures established by the Company, except to the extent that the Broker has caused or contributed to any such action or inaction.

- iv) Damages sustained by any person or entity as a result of information furnished by the Broker to the Company unless the Broker furnished false information with malice or willful intent to injure or reckless disregard for the truth or accuracy thereof.
- v) Damages sustained and caused by acts of omission of the Company in connection with claims handling, the performance of loss control counselling, inspections, or similar related work, or for the preparation of appraisals for Broker's clients or customers, except to the extent that Broker has caused or contributed to such acts of omissions.

The Broker shall promptly notify the Company when the Broker receives notice of any claim or the commencement of any action relating to such liabilities, and the Company shall be entitled, (subject to the consent of the Broker's E & O's carrier) but not obligated, to participate in such action or to assume the defense of any such action at its expense. If the Company assumes the defense of any such action, it shall not be liable to the Broker for any legal or other expenses subsequently incurred by the Broker in connection with such action without the Company's advance written approval of such expenses.

## **9. Assignment of Contract**

The Broker shall not assign this Contract, directly or indirectly or through sale of shares carrying voting control, to any person, firm or corporation without the previous written consent of the Company (which consent shall not be unreasonably withheld) and the Broker shall advise the Company in writing of any agreement entered into by the Broker to enter a new association or to sell the business.

## **10. Rehabilitation**

When problems arise in the Broker/Company relationship, a Rehabilitation Program shall be instituted to address volume, loss ratio, mix of business or other concerns. This Rehabilitation Program shall be designed co-operatively by the Company and Broker, with both parties committed to its implementation and success:

A) The Company agrees not to terminate The Agreement on the grounds of the volume of business placed or mix of business, unless the Company has previously spelled out in writing to the Broker, at least one hundred and eighty (180) days prior, any such requirements in sufficient time for the Broker to comply.

Further, the Company agrees not to terminate The Agreement if or failure to meet such requirements if the underwriting actions of the Company preclude the Broker from meeting the aforementioned requirements.

B) The Company further agrees not to terminate The Agreement on the basis of an adverse loss ratio, without taking into account the Broker's average loss ratio over the preceding five years, and putting the Broker on notice of adverse loss ratio within ninety (90) days of calendar year end in which the adverse loss ratio occurred. Any review of the Broker's loss ratio shall limit the impact of shock losses to \$150,000 and eliminate no fault losses (for example, automobile claims under Direct Compensation Property Damage).

C) Before taking any steps to terminate for reasons other than those set out in paragraph 11 below, in an effort to avoid termination, the Company will endeavour to reach mutual agreement with the Broker on a written plan for rehabilitation for a period of one year or more. Such agreement shall specify what the Broker must do to avoid termination, and how the Company intends to assist the Broker to avoid termination.

## **11. Termination of Contract**

- A) The Company may terminate the contract without notice if:
- i) The Broker is over 30 days financially in arrears with the Company following proper notification, bona fide accounting differences exempt.
  - ii) The Broker is bankrupt.
  - iii) The Broker is convicted of a crime regarding the misuse, misappropriation or conversion of funds.
  - iv) The Broker deliberately breaches the Company's underwriting rules.
  - v) The Broker's Certificate of Registration with RIBO is revoked or lapses.

In the event of termination of this Agreement by either party, insurance contracts written through the Broker and in force on the effective date of termination shall be allowed by the Company to remain in force until their expiry dates unless cancelled by the policyholder or cancelled by the Company for non-payment of premium or by reason of material change in risk, and the Broker's commission arrangements provided hereby shall continue as regards incoming premiums on those policies and as regards refunds of premium made in connection with them.

Termination of this Agreement shall not relieve the Broker of its' continuing duty to collect premiums due and to remit to the Company, less commissions thereon, any premium received by him, in accordance with the terms of this Agreement.

B) If the contract is cancelled after August 31st, it will not affect the cancellation of any Contingent Profit Commission (CPC) owed to the brokerage.

C) If this Contract is terminated by either party, or if the Company elects not to renew substantially all policies within a given area Of the Province, which include policies issued through the Broker, at least one hundred and eighty (180) days prior notice in writing of such termination is to be provided.

## **12. Limited Brokerage Agreement**

The following Limited Brokerage Agreement shall come into force automatically upon termination of this contract:

- A) The Broker will continue to have binding authority with respect to insurance policies in force at the time of termination.
- B) The Broker shall have authorization to issue and countersign appropriate endorsements or contracts of insurance in force at the time of termination.
- C) The Broker will use diligence and dispatch to advise the Company of any actions taken by him under the terms of this Limited Brokerage Agreement.
- D) Consent of the Company shall not be unreasonably withheld for the normal continuance of contracts in force including amendments, endorsements and increases or extensions of liability.
- E) The ownership of all policies in the portfolio shall remain the sole property of the Broker, and the Company will have no rights to control the clients through another broker or client.

## **13. Arbitration**

The parties agree that any dispute between them arising out of or under this Agreement which they cannot promptly settle shall be the subject to the rules of conduct of the Arbitration and Mediation Institute of Canada Inc. There shall be two arbitrators, one appointed by each party and a third arbitrator or umpire appointed by the first two. The expense of such Arbitration shall be borne equally by Broker and Company.

## **14. Miscellaneous Provisions**

### **A) Advertising**

The Broker agrees not to use any advertisement naming the Company, or use its trademarks, or issue or cause to have issued any letter, circular, pamphlet or other publication or statement referring to the Company or its trademarks, without the prior written consent of the Company. The Company agrees to give its consent or denial in a reasonable timeframe to allow the production of the

advertising material. Companies can agree in contracts to share advertising costs for certain pre- approved advertising material. (Co-op Advertising).

**B) Claims**

Unless other agreed by the company, the Broker shall as soon as reasonably possible report to the Company all losses and claims occurring on policies placed by the Broker with the Company in respect of which notice is given by the insured to the Broker, or losses and claims on such policies which otherwise come to the Broker's attention.

**C) Cancellation of Policy**

The Company shall not cancel a policy or binder placed by the Broker until normal expiry date if they have been on risk for sixty (60) days, the only exceptions being for non-payment of premium, or material change in risk.

**D) Subrogation and Salvage Recovery Credits**

Credits for subrogation and salvage recoveries when computing loss ratios will be taken into account and the Broker advised.

**F) Limitation Period**

No claim can be made by the Company or Broker for newly discovered account differences more than one year old.

**G) Change in Policy Wording**

The Broker will be given sixty ( 60) days written notice by the Company of any changes made in the wording or content of its policies, which restricts or reduces the coverage. The Company agrees to provide at its expense prominent notices for the policyholders detailing the change, providing a list of policyholders affected if possible.



## **15. Electronic Interface**

For Brokers that have been authorized to send applications for insurance and other related insurance transactions electronically for such classes of business approved by the Company, the following provisions apply.

- i) The Company agrees that the Broker shall not be liable to the Company for any direct or indirect or consequential damages for the loss of data or any other commercial loss as a result of sending insurance transactions electronically to the Company.
- ii) The Broker agrees that the Company shall not be liable to the Broker for any direct or indirect or consequential damages for the loss of data or any other commercial loss as a result of sending insurance transactions electronically to the Broker.
- iii) The Broker shall keep confidential all signed applications for insurance, signed releases, signed endorsements, appraisals, building evaluations forms, financial institution payment plan authorization forms, and other documents that are required to be retained in accordance with the Company manual or bylaw, and shall, subject to PIPEDA, upon demand or as required by the Company manual submit to the Company or make available for audit purposes all such documentation, forms and information. All such documents, forms and information are to be retained by the Broker for a period of seven (7) years.
- iv) The Company shall have the right upon providing ten (10) Business Days prior notice, to periodically audit the files of the Broker that have been set up electronically, and otherwise in accordance with Company policy and procedures for audits as may be set out in the Company Manual.
- v) Both the Company and the Broker agree to maintain confidential all passwords, confidential information or trade secrets of the other received via interface, which obligation shall survive the termination of this agreement.
- vi) The Company will accept and honour the information or coverage's evidence in the Brokers file documentation if there is an inconsistency between the information contained in your file documentation and the information transmitted via the network.

vii) In the case of termination of the Broker Agreement, the said right to send applications shall also be terminated.

## **16. Confidentiality and Protection of Personal Information**

The parties acknowledge that each of them will be required to transfer to each other, process and otherwise deal with the personal information of individuals who may obtain insurance through the broker. Each of the parties agrees to collect, use and disclose such personal information in accordance with PIPEDA. The parties further agree to safeguard the security of such personal information in a manner appropriate to the sensitivity of that information.

## **17. Contingent Profit Agreement**

Every company has a different agreement and they should be reviewed with each insurer individually. It is important that the insurance company comply with any future ruling by the Canadian Council of Insurance Regulators (CCIR).

**Signature Page**

Any and all prior Agreements, formal or informal, between the Broker and the Company, except presently existing contingent profit agreements, which shall continue to remain in force and effect, are hereby terminated with effect from the date hereof and this Agreement and such contingent profit agreements alone shall govern the rights and liabilities of the parties on and from that date.

In witness whereof the Company has executed this Agreement by hand of its (CEO, General Manager, etc.) duly authorized for the purpose.

And in witness whereof the Broker has hereunto set his hand.

Or for a Corporate Brokerage:

In witness whereof the Broker has signed this Agreement by the hands of its proper officer's thereunto duly authorized.

The Company and the Broker have executed this Agreement this day of the year.

Company	Insurance
_____	_____
Witness	Title

Company	Broker
_____	_____
Witness	Title

Notes:



**Insurance Brokers Association of Ontario**  
One Eglinton Avenue East, Suite 700, Toronto, Ontario M4P 3A1  
Tel: (416) 488-7422 INW/ATS (888) ASK-IBAO Fax: (416) 488-7526  
[www.ibao.org](http://www.ibao.org)

