

# Moxie Underwriters LLC –Broker Appointment Agreement

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This Broker Agreement (“Agreement”) is made between **Name** of **Address, City, State, Zip** referred to as the “Brokerage,” “Broker,” “you,” or “your” and Moxie Underwriters LLC, referred to as the “Company” or “we,” “us,” or “our” (each of which may be referred to as a “Party” and collectively as the “Parties”), and is effective as of **Eff Date** (the “Effective Date”).

We, the Company, agree with you, the Broker as follows:

## 1. Your Authority

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### Applications

You may receive applications for insurance for the lines of insurance we market and submit them to us. You have no authority to bind insurance. In no event shall you have the authority to accept, deliver, or issue any endorsement, rider, or modification to any contract of insurance coverage issued hereunder or to otherwise in any way amend, alter, change or modify any contract of insurance coverage. We may reject or refuse an application in our sole and absolute discretion.

### Premiums

You are required to collect premiums, fees, monies, taxes and other payments for policies and services as further described in Section 5.

### Claims Settlement

You have no authority to adjust or settle claims or losses on our behalf.

## 2. Cancellations and Non-Renewals

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We may cancel or non-renew any binder, policy or contract of insurance you place with us at any time, in accordance with the cancellation provisions of such binder, policy, contract or as permitted by law, in our sole discretion or as directed by the underlying insurer. We will notify you when we send a notice of cancellation or non-renewal of a policy. The notification may be in the form of a letter or other form of electronic communication, including posting the notice to our website. No insurance policy may be returned to us for a flat cancellation. Earned premiums will be computed and charged on every contract cancelled after inception in accordance with the provisions of the contract. Cancellations as a result of a payment default under a premium finance arrangement will be considered as having been requested by the insured and return premiums will be calculated in accordance with applicable law.

## 3. Your Responsibilities

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In the conduct of our business, we will deal with each other in good faith, with loyalty and honesty, and in accordance with the conditions in this Agreement.

You shall keep and maintain a complete record of all information with respect to the services you provide hereunder and agree to maintain those records in such form and for such time period required by applicable law.

You will promptly report all losses and claims, and provide relevant loss and claim information pertaining to coverages placed with us. You are required to cooperate fully in the investigation, adjustment, settlement and payment of any claim when and as reasonably requested by us.

You are responsible for all of your expenses, except when we agree in writing to the contrary.

You will obtain our prior written approval of any advertising that includes reference to this Company or any of its policies or services.

If applicable, you are responsible for the payment of any applicable surplus lines taxes and stamping or filing fees and the filing of all affidavits as required by the appropriate surplus lines governmental entities and shall provide us with written evidence of such payment and compliance on a quarterly basis.

Any blank policy forms, Company supplies, information obtained from our computer systems, or underwriting guidelines we provide for your use are our property and must be returned to us, or our authorized representatives, immediately upon our request. All software or electronic documents or files must be deleted from your computers or systems immediately upon our request, subject to any applicable statutory document retention requirements. You agree to certify that all our property has been returned or destroyed at our request.

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## **4. Confidentiality**

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Broker and Company agree to treat the other Party's proprietary information including, but not limited to, information related to sales, projections, reports of operations, underwriting criteria, underwriting rates and rules, computer software, method and style of doing business, (collectively, the "Confidential Information") as confidential and to not disclose such information to any person not a party to this Agreement. The Broker recognizes and agrees that the disclosure or improper use of the Company's Confidential Information will cause serious and irreparable injury to the Company. The Parties agree to protect each other's Confidential Information by using commercially reasonable efforts to prevent the unauthorized disclosure of the Confidential Information. This Section shall survive the termination of this Agreement.

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## **5. Premium Collection and Commissions**

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You are responsible for collecting all premiums, fees, monies and taxes due and for holding, as a fiduciary, such premiums, fees, monies and taxes separate from your own funds. Every binder, policy or endorsement we issue will have an attached premium bill showing the gross premiums, the agreed upon commission rate, the net premium and the date when the premium net of commission is due to us. You are responsible for remitting premium for all policies (whether collected by you or not), less the agreed upon commission, plus any applicable taxes, fees or policy fees to the Company when such premiums, fees, monies or taxes are due. You do not have the authority to extend the time for payment of premiums or other amounts due.

You shall promptly refund to, and agree unconditionally to pay to the order of, us all unearned commissions received with respect to any insurance premiums that are refunded because of the cancellation of any policy, and/or reductions in insurance premiums paid for any policy at the same rate at which such commissions were originally paid. The underlying insurer reserves the right to collect any premium or fees directly from the insured in the event that you fail to remit such amounts as required. Notwithstanding the foregoing sentence, your obligations pursuant to this Section shall not be deemed waived, released, or forgiven, nor shall it be deemed a substitution of your obligation, if the underlying insurer attempts to collect the premiums or fees directly from the insured.

You agree to notify us in writing by the billing due date if you are unable to collect additional premiums due as a result of a policyholder audit. No commissions are payable on premiums you are unable to collect.

From time-to-time we may find non-material accounting differences between your and our records. If and when this occurs, the Party noting the discrepancy must notify the other Party no more than five (5) business days from the date of discovery, and together the Parties shall work to resolve such discrepancy in a customary, reasonable, prudent and professional manner. However, if the nature and/or amount of the discrepancy remains in dispute, you agree that our records shall control. You agree to use your best efforts to assist us in collecting any deductible due from a policyholder if we so request.

We shall have the right to offset compensation due to You under this Agreement by the amount of (1) past due premiums, or other amounts, such as return commissions, currently due and owed by You to Us and/or the underlying insurer(s) arising out of any policy of insurance issued under this Agreement; and (2) liabilities incurred by Us or our insurers caused by Your negligent or illegal acts or omissions or Your failure to follow the terms of this Agreement.

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## **6. Broker Representations and Warranties**

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You represent, warrant, and covenant that:

1. You are properly licensed by the regulatory agency for all states and lines of business for which Broker is submitting business under this Agreement. You agree to notify us immediately in writing if you shall fail to renew such license(s) or a license(s) is revoked, suspended or canceled, or subject to a proceeding therefore, or if you receive any inquiry from a regulatory agency regarding a consumer complaint related to the business you produce for us pursuant to this Agreement.
2. At our request, you will promptly provide us with a copy of your relevant insurance license(s) or the license(s) of any person producing business under this Agreement.
3. Notwithstanding any provision in this Agreement to the contrary, no compensation shall be payable by us to you after termination of this Agreement if you commit any act of fraud, malfeasance or nonfeasance in connection with this Agreement.
4. You have and shall maintain (i) Errors & Omissions insurance coverage of not less than \$1,000,000 per occurrence for matters arising out of or relating to any and all aspects of your business performed pursuant to this Agreement, and (ii) fidelity insurance covering you and your employees. All insurance must be issued by an insurer with an A.M. Best rating of at least "A-". You agree to provide us with proof of such coverage upon our request and shall provide us notice of any material changes to coverage or notices of non-renewal or cancelation from the insurer(s).
5. You and your employees shall comply with all applicable federal, state and local laws in connection with this Agreement and any transaction effected pursuant hereto.
6. You acknowledge that under "The Violent Crime Control and Law Enforcement Act of 1994" (the "Act"), 18 U.S.C. § 1033, it is a criminal offense for you or any of your employees to engage in the business of insurance if you or such employee(s) has been convicted of a criminal felony involving dishonesty or a breach of trust or has been convicted of a felony offense under the Act. You understand that the Act does allow for exemptions to be made on a case-by-case basis upon application to the applicable Department of Insurance regulating its business and that, in addition, states may require the disclosure of your employment of any individuals convicted of such felonies. You warrant and represent that you will not employ any individuals to transact business under the terms of this Agreement who have been convicted of a felony as that term is defined under the Act, or will obtain appropriate exemptions for such individuals and, further, warrants and represents that you are and will remain in compliance with the Act during the term of this Agreement.

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## **7. Indemnification**

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You agree to forever defend, indemnify and hold us and our affiliates, employees, officers, directors, agents and assigns harmless from any claims, suits, actions, judgments, liabilities, losses, expenses and damages of any kind, including, but not limited to, attorney's fees and costs of investigation, which we or our employees, officers, directors, agents and assigns become legally liable for as a direct result of any acts, errors, omissions, unauthorized representations, negligent, reckless or willful misconduct, or fraud of you or your employees, or due to the failure of you or your employees to comply with the provisions of this Agreement or the transactions effected pursuant hereto.

We agree to forever defend, indemnify and hold you harmless from any claims, suits, actions, judgments, liabilities, losses, expenses and damages of any kind, including, but not limited to, attorney's fees and costs of investigation, which you become legally liable for as a direct result of any acts, errors, omissions, unauthorized representations, negligent, reckless or willful misconduct, or fraud of us or our employees, or due to the failure of us or our employees to comply with the provisions of this Agreement or the transactions effected pursuant hereto.

A party seeking indemnification under this paragraph must, as a condition precedent to such indemnification, promptly notify the other party in writing of any claim or suit against it, which it contends is covered by the indemnification language contained herein. If indemnification is sought from us, we shall be entitled to make such investigation, settlement or defense thereof as it deems prudent, including, at our sole option, the right to assume the full defense of any action filed.

The indemnification provisions herein shall survive the expiration or termination of this Agreement.

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## **8. Electronic Transactions**

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In the event that we provide you access to our data processing files through a computer terminal or other processing equipment in your office, and/or access to our computer system via the Internet, a computer terminal, or other processing equipment to electronically access and download information to rate and quote insurance and to access and download information including, but not limited to, policies, rates, rules, forms, manuals, and other information which is contained in or accessible from its computer system, Broker agrees to comply with any policies and procedures established by us regarding your Brokerage's access to and use of such information.

Without limitation of the foregoing, when we provide any such access, you are responsible for maintaining the security and integrity of our electronic systems at your place of business. In the event of a data breach, you will be responsible for notifying the affected policyholders including your intent to remedy the matter.

It is your responsibility to ensure that your staff is aware of the sensitive and proprietary nature of our systems and the information provided by our systems, of the importance of confidentiality, and of the conditions described in this Section of this Agreement. All rights we grant under this Agreement as to our systems and information provided by our systems are limited, non-exclusive, non-transferable, non-assignable license rights during the term of this Agreement, not a sale; we, and our licensors and suppliers, reserve all rights not expressly granted herein.

Notwithstanding the foregoing, nothing in this Agreement changes, modifies or supersedes any applicable End-User License Agreement.

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## **9. Term and Termination**

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The term of this Agreement shall commence from the Effective Date and continue thereafter until terminated by either party in accordance with the terms and conditions hereto.

This Agreement may be terminated as follows:

**Without Cause**

Either party may terminate this Agreement at any time, subject to any regulatory requirements that may apply, by providing at least 30 days written notice to the other party. The Agreement may be terminated immediately by the mutual agreement of the parties.

**Automatically (With Notice)**

Subject to any regulatory requirements that may apply, we shall have the right to terminate this Agreement immediately upon written notice to you, in the event that:

1. You become financially insolvent;
2. You are the subject of a voluntary or involuntary petition under any state or federal bankruptcy, receivership, liquidation, rehabilitation, administrative proceeding statute;
3. You violate any applicable federal, state or local law, regulation or rule in connection with this Agreement;
4. Any license required to conduct business as contemplated in this Agreement becomes subject to suspension or revocation by any regulatory agency;
5. You or your employee(s) or agent(s) breach the confidentiality provisions of Section 4 or the terms of any applicable End-User License Agreement;
6. Your remittance of premiums, fees, return commissions, monies or taxes is consistently late;
7. Any payment made to us is rejected due to non-sufficient funds in your bank account; or
8. You breach any of the material provisions of this Agreement and fail to cure the breach within ten (10) days after written notice of the breach.

**Automatically (Without Notice)**

Subject to any regulatory requirements that may apply, this agreement shall terminate immediately, without notice, as follows:

1. **Advance Notice of Brokerage Change in Ownership Required.** Upon the effective date of any sale, merger, change in control, or transfer of your business or substantially all of its assets, or its consolidation with a successor broker, brokerage or other business entity, unless, prior thereto, this Agreement is assigned with our express written consent;
2. Upon the abandonment of your business.

After the date of the termination of this Agreement, unless otherwise stipulated at our option, you shall collect and account to us for all premiums, commissions and other transactions unaccounted for as of the date of termination or arising thereafter in respect to outstanding insurance policies. If we find it necessary to perform any duties otherwise required by you under this Agreement, you shall be liable for costs incident thereto. Notwithstanding any other provision of this Agreement to the contrary, all of our rights arising out of this Agreement shall survive the termination of this Agreement, unless otherwise specifically excluded.

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## **10. Ownership of Expirations and Renewals**

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Unless otherwise provided for herein, your records, expirations and renewals of policies are your property and will remain in your possession. We will not take any action that could be construed as moving a policy from one of our brokers to another without authorization from the policyholder, unless required to do so by law. We will not use our records to solicit policyholders for the sale of insurance or other products or services without first obtaining your written consent.

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## **11. After Termination**

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Upon termination, you shall complete the collection of and account to us for all premiums or other funds unaccounted for at the time of termination or thereafter with respect to any policies issued pursuant to this Agreement. If, upon termination of this Agreement, you are entitled to the ownership, use and control of expirations and renewals, we will maintain policies in force for as long as required by law or until their normal expiration or anniversary date, whichever occurs first, and subject to these conditions:

1. We are not obligated under this Section to continue in force or renew policies where prohibited by law or regulation;
2. You will use your best efforts to replace all policies with other insurers;
3. For policies continued in force or renewed after the termination of this Agreement, you will continue to be the broker of record, subject to all the conditions of this Agreement; and
4. We will pay commissions for these policies either at the rate specified in this Agreement or otherwise agreed to by us in writing and applicable at the time of termination or at the Company's current commission structure by line of business at the time of renewal, whichever is less.

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## **12. Broker As Independent Contractor**

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Your status will be that of an independent contractor in all relations with us.

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## **13. Privacy**

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Company and Broker shall maintain the confidentiality of any information that is subject to protection under any federal or state privacy laws, including those requirements set forth in the Gramm-Leach-Bliley Act and any regulations promulgated thereunder, or other applicable state or federal law, now or hereafter in effect. Broker shall comply at all times with any Privacy Policies established by the Company concerning financial, medical and other personally identifiable information.

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## **14. Governing Law and Conformity to Statute**

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This Agreement shall be governed by and construed in accordance with the laws of the State of, Delaware giving effect to the principles of conflicts of laws thereof. Notwithstanding the arbitration rights under Section 15, the parties each consent to personal jurisdiction in the State of Delaware and agree that the exclusive venue and place for trial for any legal actions or proceedings arising in connection with the interpretation or enforcement of this Agreement shall be the state courts of Georgia sitting in Cobb County, Georgia or the Federal Court for the federal district encompassing Cobb County, Georgia.

If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid or unenforceable in any jurisdiction, such determination shall not affect the validity and enforceability of the remaining provisions of this Agreement in such jurisdiction or affect the validity or enforceability of such provision in any other jurisdiction. To the extent any provision of this Agreement is prohibited or ineffective under controlling law, this Agreement shall be considered amended to the smallest degree possible in order to make this Agreement effective and enforceable under controlling law.

Nothing contained herein is intended to amend or modify the obligation of the parties hereunder to arbitrate their disputes as provided in Section 15 below.

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## **15. Arbitration**

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If any dispute or disagreement shall arise in connection with any interpretation of this Agreement or its performance or nonperformance, the parties shall make every effort to meet and settle their dispute in good faith informally. If the parties cannot agree on a resolution of their dispute or disagreement and if the dispute or disagreement does not involve a claim for Indemnification under Section 7 of this Agreement or the termination of this Agreement by the Company or withdrawal of authority of any type(s) of business, the matter in controversy will, upon written request of either party, be settled by arbitration. Arbitration will be conducted in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

The parties may agree to submit the dispute to one arbitrator; or, otherwise, there will be three, one named in writing by each party within ten (10) days after notice of arbitration is served by either party upon the other, and a third arbitrator selected by these two arbitrators within fifteen (15) days. If the arbitrators are unable to agree on a third arbitrator, then the third member will be chosen impartially by the American Arbitration Association. Any arbitrator selected by the American Arbitration Association shall be knowledgeable in insurance law and regulation, including brokerages and broker agreements.

If the dispute is submitted to one arbitrator, both parties will share the expenses of that arbitrator equally, as well as any other arbitration expenses. If the dispute is submitted to three arbitrators, each party will pay for the arbitrator that they selected, and both parties will share equally in the expenses of the third arbitrator and all other arbitration expenses. Attorney fees and witness fees are not arbitration expenses and must be paid for by the party that incurred them. The written determination of the arbitrator(s) will be final and binding on the parties. Arbitration shall be held in Atlanta, Georgia, unless otherwise agreed in writing, before any Arbitrator is appointed.

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## **16. Prior Agreements**

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This Agreement takes the place of all previous agreements, whether oral or written, between you and us, provided that this Agreement does not affect indebtedness under the conditions contained in previous oral or written agreements.

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## **17. Entire Agreement; Waiver; Amendment; Counterparts**

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This Agreement (including all exhibits and schedules hereto) contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, written or oral, with respect thereto. Forbearance, neglect or failure by us to enforce any or all of the provisions of this Agreement or to insist upon strict compliance by you shall not be construed as a waiver of any of our rights or privileges. A waiver of a past act or circumstances shall not constitute or be a course of conduct or waiver of any subsequent action or circumstance. This Agreement may not be changed or amended except through a written agreement between the parties. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

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## **18. Binding Effect; No Assignment**

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This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns and legal representatives. Neither this Agreement, nor any of the rights, interests or obligations hereunder, may be assigned, in whole or in part, by operation of law or otherwise by Brokerage without receipt of our prior written consent, and any such assignment that is not so consented to shall be null and void.

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## **19. Broker of Record Letters**

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The Company has the following policies regarding Agent of Record / Broker of Record ("BOR") letters:

- a) BOR's are not accepted by the Company within the first 90 days following the effective date of this agreement.
- b) Mid-Term BOR's are not accepted. A BOR request can be processed only for un-bound placements and/or for renewal policy terms.
- c) The Company provides the incumbent agent/broker with a 5 business day waiting period following the date in which they are notified of the BOR being received. The company will not waive the 5 business day waiting period in any circumstance.

[signatures on the following page]

**Signed by the Company, and accepted by the Broker, on the date and at the place shown below.**

**BROKERAGE:**

**COMPANY:**

**Name**

**Name**

Print: \_\_\_\_\_  
          Brokerage Owner(s)/Principal(s)

Print: \_\_\_\_\_  
          Authorized Company Representative

Sign: \_\_\_\_\_  
          Brokerage Owner(s)/Principal(s)

Sign: \_\_\_\_\_  
          Authorized Company Representative

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

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