

Agent Contract



Aviva Life Insurance Company (hereinafter called "Aviva" or "the Company"), and

Full Legal Name of Agent

Full Address Including ZIP Code

Phone Number Including Area Code

(hereinafter called the "Agent"), hereby mutually agree as follows:

1. PRIOR AGREEMENTS

This Contract shall supersede all prior agreements between the Company and Agent, including with regard to new business on the specific policy forms shown in the Compensation Schedule(s) under this Contract. If similar contracts are in existence on other policy forms not specifically covered by this Contract but offered by the Company on business already issued, any compensation payable under said prior contracts shall continue to be paid in accordance with the terms thereof. From time to time, additional life insurance companies affiliated with Aviva may be added as parties to this Contract, or existing companies deleted, by amendment to the Compensation Schedule(s) under this Contract.

2. GENERAL

- a. The Company hereby appoints Agent, and the Agent hereby accepts the appointment, as an Agent for the Company, to procure applications for individual and group life insurance, individual and group annuities and health insurance subject to the terms and conditions hereinafter set forth in this Contract. It is understood and agreed that no geographical area or product is assigned to Agent exclusively.
- b. It shall be Agent's responsibly to contract or, at Agent's option, employ agents, brokers and employees to procure applications for the Company for individual and group life insurance, individual and group annuities and health insurances and to request the Company appointed such persons in a timely manner. Agent shall also be responsible for exercising general supervision over and training of such agents, brokers and employees.
- c. The compensation to be paid by the Company to the Agent shall be in accordance with the Compensation Schedule(s) attached hereto, and made a part of this Contract. Agent shall make arrangements with his or her agents, brokers and employees (hereinafter collectively called "Sub-Producers") for payment of compensation (by commission or otherwise) to them. Such Sub-Producers shall look solely to Agent for their compensation, whether by commission or otherwise, and Agent agrees to save indemnify and hold harmless the Company from any and all claims or demands of any Sib-Producers for any compensation or commission. At Agent's request and subject to written approval by the Company, Sub-Producers can be contacted directly with thee Company, in which case the compensation payable to Sub-Producers shall be deducted by the Company from the compensation payable to Agent under this Contract. In any event, any payment of compensation or other monies by the Company to Agent which shall prove to be improper shall, upon receipt of proof which the Company deems to be reasonable, be refunded to the Company within thirty (30) days of its request. Improper payment shall include, but not be limited to: any overpayment of earned commissions; and any payment of earned commissions of any other agent paid to Agent in error; any payment to Agent of monies due another agent which agent fails to pay that agent. Agent's failure to refund these monies shall be considered a debt to the Company and shall be governed by Section 6 of this Contract, "LIEN FOR INDEBTEDNESS."
- d. The Company reserves the right to terminate the appointment of any Sub-Producer at any time.
- e. Agent shall be duly licensed by the applicable state insurance department(s) having jurisdiction, and shall operate his or her business in strict conformance with all applicable laws and regulations.
- f. The Company will pay all first time and renewal resident and non-resident appointment fee(s) for Agent and any Sub-Producer. However, any license or miscellaneous fee(s) shall be paid by Agent or Sub-Producers.

- g. Agent agrees to exert his or her best efforts in keeping all insurance effected under this Contract in full force and effect so long as it is in the policyowner's best interest. For purposes of this Contract the term "policyowner" includes the owners of certificates under group policies.
- h. Agent agrees to inform the Company of all facts of which Agent is aware relating to insurance applications or policies and further agrees to represent the Company's insurance policies thoroughly and fairly to owners, insureds or proposed insureds.
- i. The Company agrees that its relationship with any policyowner is limited to a contractual nature which arises out of the issuance of an insurance contract. The Company agrees that any and all of Agent's files, documents, letters, forms and other information and records are Agent's property. However, Agent agrees that any information in Agent's files relating to Aviva business or matters will be immediately made available to the Company at the Company's request.
- j. Forbearance or neglect by the Company to insist on the performance of any of the terms of this Contract, or to declare a forfeiture or termination against Agent, shall not constitute a waiver of such rights and privileges.
- k. Agent agrees to be bonded in such manner and in such amount as the Company may require.
- l. Agent shall be free to exercise his or her independent judgment as to the time, place and means of performing all acts under this Contract, and the relationship of Agent to the Company shall be that of an independent contractor. Nothing contained herein shall be construed to create the relationship of employer and employee between Agent (or any of Agent's Sub-Producers) and the Company.
- m. The Company may establish or revise procedures with respect to transfers of Sub-Producers to which Agent shall adhere.

3. DELIVERY

- a. Delivery of a policy may be made only if the proposed insured at the time of delivery is, to the best of Agent's or Sub-Producer's knowledge and belief, in as good a condition of health and insurability as is stated in the application for such policy and the first premium has been fully paid and delivery made within thirty (30) days from the date the policy is mailed by the Company.
- b. Any policy not delivered within thirty (30) days shall be immediately returned to the Company upon expiration of the thirty (30) day period so that it is physically received by the Company within five (5) days of such expiration.
- c. For each policy issued in the form as applied for and returned for cancellation on account of non-acceptance by the applicant, or which is rewritten by the Company at Agent's request, the Company may require Agent to reimburse the Company for the cost of underwriting requirements and policy reissue, or the Company may elect to charge back such costs against any compensation otherwise due the Agent.

4. SETTLEMENT

All premium payments shall be by check, made payable to the Company. Only the initial premium on applications procured by or through Agent may be collected by Agent or Agent's Sub-Producers. All such monies received by Agent are received as a fiduciary trust, and any such premium payment, entire or partial, taken with an application or taken upon delivery of the Policy, shall be immediately forwarded to the Company by Agent. All subsequent premiums must be sent directly to the Company. Agent is not authorized to collect other than initial premiums on behalf of the Company.

5. LIMITATIONS

- a. Agent is not authorized, and is expressly forbidden, to bind the Company by any promise or agreement; to incur any debt, expense or liability in the Company's name or account; to enter into any legal proceedings in connection with any matter pertaining to the Company's business; or to waive or alter any of the provisions of any policy issued by the Company.
- b. Any material, supplies, advertising, sales proposals or other printed matter mentioning the Company by name or intending to create interest in its products (except that provided by the Company) may be used or be permitted to be used, only with the Company's prior written approval.

6. LIEN FOR INDEBTEDNESS

Any debt or other liability of Agent to the Company, together with interest thereon at the legal rate, may be set off by the Company at any time against any sums due Agent under this or any other agreement with the Company or any of its affiliates. A first lien is hereby reserved to the Company for the satisfaction of any such debt or liability. This lien shall not be extinguished by the termination of this Contract.

7. ASSIGNMENT

No assignment of this Contract shall be valid unless the Company has given its prior written approval of the assignment. The Company does not assume any responsibility for, or guarantee the validity or sufficiency of any assignment. Any assignment shall be subject to the lien and right of offset of the Company under Section 6 above.

8. RESERVATION OF RIGHTS

The Company may, without becoming liable to Agent or Agent's Sub-Producers, in its sole discretion, at any time: (1) discontinue and/or withdraw any policy forms or product in any and all territories without prejudice to its right to continue use of said forms or product in any other territory; (2) resume the issuance or use of any policy forms or product in any territory or territories at any time; (3) modify or amend any policy form or its premium rate; (4) modify or change the conditions or terms under which any policy form or product may be offered; (5) implement and modify any rules and regulations of the Company; and (6) cease doing business in any state or geographically defined area.

9. TERMINATION

a. Termination of this Contact or of Contracts with Sub-Producers

At the Company's discretion or upon Agent's written request, the Company may terminate a contract or appointment with any of Agent's Sub-Producers. If the Company initiates termination, it will first attempt to notify Agent of its reasons for terminating the contract or appointment with the Sub-Producer. Upon termination of this Contract, with or without cause, Agent will no longer be a party to contracts with Sub-Producers recruited and approved under this Contract, except any obligations of Agent to Sub-Producers that are in existence at the time this Contract is terminated will not be eliminated by such termination.

b. Automatic Termination

This Contract shall automatically terminate in the event of Agent's: (1) being in any non-licensed status as is required for the sale of insurance; (2) assignment (other than as permitted under Section 7 above) for the benefit of creditors; (3) bankruptcy; or (4) death, and alternately, if Agent is a partnership or a corporation, upon any event legally or contractually causing a dissolution of the partnership or a termination of the corporation. Notwithstanding this Section, the Company shall continue to rely on this Contract until the Company receives formal written notice of such dissolution or termination.

c. Termination for Failure to Maintain Requirements for Appointment

The Company may terminate this Contract immediately if Agent has not met the Company's guidelines, as published in writing from time to time, regarding minimum annual premium production, maintenance of active sub-producers and maintenance of Errors and Omissions insurance coverage.

d. Termination for Cause

A termination for cause will be effective immediately upon Agent's conviction of a felony or revocation of Agent's license, or upon the Company's sending Agent a written notice of termination specifying the reason(s). This Contract may be terminated for cause for the following additional reasons; if Agent shall: (1) withhold or misappropriate any money or other property belonging to the Company; (2) subject the Company to liability due to Agent's malfeasance; (3) commit an act of embezzlement; (4) fail to comply with the laws, rules or regulations of any federal, state, or other governmental agency or body having any jurisdiction over the subject matter of this Contract; (5) fail to conform to the rules and regulations of the Company; (6) commit any fraud; (7) refuse to pay any indebtedness Agent owes to the Company under the terms of this Contract or any other agreement with the Company; (8) misrepresent any of the Company's products or services; (9) misrepresent or omit any material information on an application for, or reinstatement of, a contract for insurance; (10) fail to comply with the material terms of this Contract or the Company's published rules and regulations; or (11) cause or attempt to cause any policyowner of the Company to discontinue any policy or certificate when it is not in his or her best interest.

Should this Contract be terminated for cause, Agent shall be liable to the Company for such acts including liability for damages, including but not limited to liability for actual, consequential, and punitive damages, for which the Company may have been subjected by virtue of such act or acts allowing such termination. For purposes of determining whether this Contract has been breached for cause, the acts of all of Agent' Sub-Producers, shall be deemed Agent's acts. The determination of the Company on this question shall be binding.

e. Voluntary Termination

Except as otherwise provided, this Contract may be terminated at will by any of the parties hereto by giving sixty (60) days written notice to the other party.

f. General

Upon any termination of this Contract, Agent shall immediately pay in cash any sums due hereunder and shall immediately deliver to the Company any of the previously furnished materials, supplies, advertising and any other printed matter that the Company specifically requests in writing.

If Agent is an individual, the Company agrees that upon Agent's death all commissions then or thereafter due and owing will be paid only to the duly appointed executors or administrators of Agent's estate and thereafter pursuant to the Final Decree of Distribution, if any.

g. Competition

If this Contract is terminated by the Company or Agent for my reason, Agent shall not for a period of two (2) years following the date of such termination: (1) directly or indirectly solicit any employee of the Company or its affiliates for employment; (2) directly or indirectly solicit any policyowner of the Company or its affiliates for the purpose of suggesting or encouraging cancellation of such insurance contract, or replacement or exchange of such insurance contract with coverage issued by another insurance company; or (3) directly or indirectly solicit any Agent or agent of the Company or its affiliates for the purpose of suggesting or encouraging the transfer of existing insurance contracts to another insurance company.

In the event of breach by Agent of the obligations hereunder, the damages at law to the Company may be inadequate. Therefore, Agent hereby agrees that the Company shall be entitled to seek monetary damages arising out of such breach, and/or to seek equitable relief by injunction or other appropriate relief to prevent a breach or threatened breach or to enforce the performance of any such obligation. In addition, in the event of breach, Agent shall no longer be entitled to receive any commissions, commission overrides or other compensation otherwise payable under the terms of this Contract and the attached Compensation Schedule(s).

h. Vesting

Except as provided in Sections 9.d and 9.g above, all compensation payable under this Contract, except for Service Fees, is fully vested. If this Contract is terminated other than for cause under Section 9.d and there is no subsequent breach of Section 9.g, the Company shall pay to Agent, or Agent's successors or assigns the first-year commissions, renewal commissions, and any other non-Service Fee compensation on premiums received after termination of this Contract, to which Agent would have been entitled had this Contract remained in full force and effect; provided, however, if total payments during any calendar year following termination of this Contract shall be less than \$500.00, all payments hereunder shall terminate as of the end of such calendar year, and the Company shall be relieved of any further obligations under this Contract.

i. Notice

Any notice or demand required or permitted to be given under this Contract shall be in writing and shall be deemed effective (unless this Contract provides for a different period of time) immediately upon the personal or facsimile delivery thereof, or if mailed, forty-eight (48) hours after having been deposited in the United States mail, and addressed to the last known address of the other party.

10. COMMISSIONS

- a. Subject to the terms of this Contract, the Company will pay Agent commissions as earned on premiums at the rates provided in the attached Compensation Schedule(s), less any commissions payable directly to Agent's Sub-Producers. Commissions will be deemed to have been earned on policies placed in force from applications procured by Agent or Agent's Sub-Producers while this Contract is in effect when all of the following events have occurred: (1) the policy is underwritten and placed in force by the Company; (2) the policy is not written in violation of any federal or state law or regulation; (3) Agent or Agent's Sub-Producers have delivered the policy within thirty (30) days of the postmark date that such policy is mailed for delivery; (4) the applicant accepts the policy; and (5) the Company receives the first premium on such policy.
- b. Except as set forth under Section 6 above, it is agreed between the Company and Agent that all compensation payable under this Contract which is in the amount of \$100.00 or more shall be paid to Agent within sixty (60) days after receipt of the premium and any outstanding delivery requirements by the Company.
- c. The Company reserves the right to revise the commission rates on any one or all of the policies at any time the Company deems such revision advisable. The Company shall effect such revisions by issuing revised or new compensation schedules which shall become a part of this Contract when issued. Such revisions shall apply only to applications for insurance received by the Company more than sixty (60) days after written notice of such revision(s) or the revision(s) themselves have been sent to Agent by the Company.
- d. If any insurance procured hereunder is subsequently converted to, or replaced by, some other form of policy, the commission, if any, payable under such new insurance, shall be paid to Agent only if such conversion or replacement is accomplished by or through Agent. Commissions on replacements (including replacements of policies issued by any subsidiary of Aviva) or conversions shall only be allowed if permitted by the Company rules in force at the time such replacement or conversion is accomplished.
- e. If the premium on any policy secured hereunder is not paid within ninety (90) days from the premium due date and such policy is subsequently reinstated, Agent shall be entitled to further commissions thereon only if said policy is reinstated by or through Agent.
- f. Agent is responsible to the Company for the acts and omissions of all Sub-Producers of Agent and shall, if requested at the sole discretion of the Company, furnish to the Company a fidelity bond and Errors and Omissions certificate of coverage with the Company named as an additional insured in a form and amount acceptable by the Company. If such coverage(s) have not been furnished, or under recovery under the bond has been realized, or coverage is not then in force, Agent's accounts may be debited with the amount of such obligation when the same is due and unpaid from said Sub-Producers or Agent to the Company, and, on demand, shall promptly pay the Company the amount for such debt.
- g. The Company may, in its discretion and for reasons it deems valid, cancel or rescind a policy written by Agent or Agent's Sub-Producers and refund all or a portion of the premiums received on such policy. The Company can, at its option, charge back compensation, including override commissions, paid to Agent on such policy. If the Company rejects or cancels an application or policy for any reason, Agent shall, upon notification of the Company's action, immediately pay to the Company any premium or portion of premium on such application or policy received by Agent and not previously paid to the Company.
- h. All commissions and payments thereof for any calendar year under this Contract will be considered final and closed on March 1 of the following calendar year (the "Closing Date"). Any request for an adjustment to commissions must be received in writing by the Company on or before the close of business on the Closing Date.

11. SEVERABILITY

Any provision of this Contract which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.

12. NON-WAIVER

The forbearance or neglect of the Company to insist upon strict compliance by Agent, or Agent's Sub-Producers, with any of the provisions of this Contract, or the rules of the Company, whether continuing or not, or to declare a termination against Agent, shall not be construed as a waiver of any of the Company's rights or privileges hereunder. No waiver of any right or privilege of the Company arising from any default or failure of performance by Agent shall affect the Company's rights or privileges in the event of a further default or failure of performance.

13. ENTIRE AGREEMENT

This Contract together with the attached Compensation Schedule(s) contains the entire agreement between the Company and Agent with respect to the subject matter hereof and supersedes all prior oral and written agreements, understandings and commitments between the Company and Agent. No amendments to this Contract may be made except in writing signed by the parties hereto, except as provided herein.

14. APPLICABLE LAW

This Contract shall be construed in accordance with Company rules and policy now or hereafter established and shall be interpreted and enforced under the laws of the commonwealth of Massachusetts.

15. HEADINGS

The headings in this Contract are for convenience of reference only, and shall not limit or otherwise affect the meaning thereof.

16. COUNTERPARTS

This Contract may be executed simultaneously in two (2) or more counterparts, and each of them as well as copies hereof shall be deemed an original, but all of which together shall constitute one and the same agreement.

17. BINDING EFFECT

This Contract shall be binding upon the respective successors and assigns of all the parties hereto.

18. EFFECTIVE DATE

This Contract shall take effect as of the date it is received by the Company provided it is signed by all the parties.

19. LITIGATION

If any claim is made against the Company by reason of any alleged act, fault, or failure of Agent or Agent's Sub-Producers in connection with their activities hereunder, the Company may require Agent to defend such action, or at its sole option the Company may defend and expend any sums as may be deemed necessary, including attorneys' fees. Agent shall be chargeable with such sums as well as with any amount which may be recovered against the Company in any such action, or any amount which the Company, in its sole discretion, should pay in settlement, which amount Agent shall pay to the Company on demand, except in those cases when, in the sole judgment of the Company, Agent or Agent's Sub-Producers have not been at fault and should not be held responsible.

20. MEDIATION

If any dispute shall arise out of or related to this Agreement, its performance or non-performance, the parties shall attempt in good faith to resolve the dispute promptly through negotiations between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within fourteen (14) days after delivery of said notice, executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If a written resolution of the matter has not been reached within thirty (30) days of the disputing party's notice, or if the parties fail to meet within fourteen (14) days, either party may initiate mediation of the controversy or claim as provided hereinafter.

If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least three (3) days notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the United States Federal Rules of Evidence and State Rules of Evidence.

If the dispute has not been resolved by negotiation as provided herein, the parties shall endeavor to settle the dispute by mediation in accordance with the Commercial Mediation Rules of the American Arbitration Association ("AAA"). The parties agree to request jointly that AAA provide a mediator to work with them to resolve their dispute. The mediator appointed by AAA shall have a background in commercial transactions and may be rejected by the parties only for bias. The mediator shall have sixty (60) days from the time of appointment to meet with the parties and help them resolve the dispute, unless they mutually consent to an extension of the deadline. All mediation sessions will be held in Boston, Massachusetts. The direct costs of the mediation shall be borne equally by the parties.

In any mediation, evidence of anything said or of any admission made in the course of the mediation is not admissible in evidence, and disclosure of any such evidence shall not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

21. SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated below:

SIGNATURE OF AGENT

If Agent is an Individual:

Print Name _____ Signature _____

Date _____

If Agent is a Partnership:

Print Name of Partnership _____

Partner Signature _____ Date _____

Partner Signature _____ Date _____

If Agent is a Corporation:

By executing this Contract, the undersigned officer represents and warrants that the corporation has duly authorized and approved this Contract and Financial Guaranty below, if applicable:

Print Name of Corporation _____

Signature _____ Date _____

Title _____

Financial Guaranty:

The undersigned individual(s) hereby unconditionally, jointly and severally, guarantee the full and faithful performance of each and every obligation of the GA under this Contract. The undersigned waives notice of acceptance, presentation and protest and any other notice with respect to obligations guaranteed hereby.

Signature(s) of principal stockholders if Agent is a corporation:

Name & Title

Name & Title

SIGNATURE OF AVIVA LIFE INSURANCE COMPANY

By:

Pauline Jenkins
Vice President – TSA Marketing

Aviva Life Insurance Company
Licensing and Commissions Department
PO Box 55244, Boston, MA 02205-5244

(800) 225-8073
FAX: (617) 405-6456

www.avivausa.com

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