

Aviva Life Licensing Instructions

Please download, complete and fax appointment paperwork to Tom Bodine (Fax #: 1-315.655.4784) along with a photocopy of your state(s) insurance license(s).

Please fax copy of the front cover of your errors & omissions insurance showing your policy number and dates of coverage.

Questions? Please call Tom Bodine at 1-877-341-3342
or email Tom at sfp@theusbroker.com

Please make sure that you have completed:

1. Aviva NY Agent Appointment
2. Front Cover of E&O Insurance
3. Aviva NY Data Form - separate downloadable document
4. IRS W9 Tax Form - separate downloadable document
5. Don't forget to fax your State License



Standard Contract For Agent

This AGENT CONTRACT ("Contract") is entered into by and between Aviva Life Insurance Company of New York (hereinafter called "Aviva Life" or the "Company"), and _____ (hereinafter called the "AGENT").

The parties hereby mutually agree as follows:

1. APPOINTMENT

1.1 Appointment of Agent. Subject to the terms and conditions set forth in this Contract, the Company hereby appoints AGENT, and AGENT hereby accepts the appointment, as an agent for the Company, to (i) procure applications for the Company's insurance and annuity products and (ii), accurately and professionally represent the Company and its products to all customers and prospective customers of the Company, including all applicants, owners, insureds and proposed insureds (hereinafter referred to collectively as the "Customers.")

1.2 Scope of Appointment. Unless otherwise authorized by the Company in writing, AGENT shall only procure applications for those insurance and annuity products specifically set forth in the Compensation Schedules attached hereto (the "Compensation Schedules"), which Compensation Schedules may be revised by the Company from time to time in accordance with **Section 2.1(a)** below. It is understood and agreed that no product or geographical area is assigned to AGENT exclusively, and that the Company may enter into contracts with other agents with respect to such geographical areas or products.

1.3 Scope of Relationship; Limitations on Authority. 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 and the Company and AGENT shall not represent themselves as an employee of the Company. 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 establish or maintain any bank account in the Company's name; to enter into any legal proceedings in connection with any matter pertaining to the Company's business; to adjust or pay claims on behalf of the Company or to negotiate or underwrite insurance on behalf of the Company; to make or alter any forms or materials relating in any way to the Company or its products; or to waive or alter any of the provisions of any contract issued by the Company.

2. COMPENSATION

2.1 Commissions and Service Fees.

- (a) Compensation Schedules; Revisions. The Compensation Schedules attached hereto, as they may be revised from time to time in accordance herewith, shall be deemed to be a part of this Contract and shall be incorporated by reference herein. Subject to the terms of this Contract (including **Sections 2.1(b)** and **(c)** below), the Company will pay commissions, override commissions and/or asset based compensation (hereinafter referred to collectively as "Commissions") and service fees (hereinafter referred to collectively as "Services Fees") on premiums at the rates provided in the applicable, then current Compensation Schedules. The Company reserves the right to revise the



Commission and/or Service Fee rate levels set forth in the Compensation Schedules at any time and from time to time, in the Company's sole discretion. The Company shall affect such revisions by issuing revised Commission and/or Service Fee rate levels which shall become effective fifteen (15) days after notice of such revisions has been provided by the Company to AGENT in accordance with **Section 12.4**. Once they become effective, the revised Commission and/or Service Fee rate levels shall apply to applications for insurance and annuity contracts received by the Company thereafter and shall replace the existing Commission and/or Service Fee rate levels included within the Compensation Schedules.

- (b) Earning of Commissions and Service Fees. Commissions and Service Fees are earned by the AGENT on policies and contracts placed in force from applications procured by AGENT while this Contract is in effect only when all of the following events have occurred: (i) the policy or contract is underwritten and placed in force by the Company; (ii) the policy or contract is not written in violation of any federal or state law or regulation; (iii) the policy or contract is delivered to the applicant in accordance with the requirements set forth in **Section 4.4**; (iv) the applicant accepts the policy or contract; and (v) the Company receives the initial minimum premium on such policy or contract.
- (c) Payment of Earned Commissions and Service Fees. Commissions and Service Fees that have been earned on policies and contracts shall only become due and payable to AGENT as and to the extent that premium payments are made on such policies and contracts, and shall be paid to AGENT within sixty (60) days after the date that such premium is actually received by the Company and available for deposit. Notwithstanding the foregoing, if the aggregate amount of Commissions and Service Fees due and payable to AGENT does not exceed \$100, the Company may withhold payment until such time as such Commissions and Service Fees, when aggregated with other amounts that become due and payable by Company to AGENT hereunder, exceed \$100.
- (d) Vesting. All Commissions that are earned by the AGENT while this Contract is in effect are deemed to be vested with AGENT. Subject to the terms and conditions set forth in **Section 7.6(e)**, the AGENT shall be entitled to receive vested Commissions after termination of this Contract, as they become due and payable in accordance with **Section 2.1(c)**. Service Fees do not vest and will be paid to AGENT only while this Contract is in effect.
- (e) Licensing Requirement. No Commissions or Service Fees will be paid on any premium unless AGENT that would otherwise be entitled to receive such Commissions or Service Fees (i) is properly licensed in the state in which the policy or contract is issued for delivery and (ii) have been appointed by the Company in such state.
- (f) Commissions and Service Fees on Advance Premiums. No commissions will be payable on premiums paid in advance until one (1) month after the due dates of the respective premiums so paid in advance and then only if the policy is in full force and effect on such due date.



- (g) Contract Conversions and Replacements. If any insurance or annuity contract procured hereunder is subsequently converted to or replaced by some other form of contract, whether or not such contract is offered by the Company or by another carrier, no Commissions and/or Service Fees shall be due and payable to AGENT under such new insurance unless such conversion or replacement is accomplished by or through AGENT. Commissions and Service Fees on contract conversions or replacements (including replacements of policies issued by any subsidiary of the Company) shall not be allowed unless expressly permitted by written Company guidelines and policies in force at the time such conversion or replacement is initiated.
- (h) Contract Cancellations / Rescissions. The Company may, in its sole discretion, cancel or rescind a policy or contract written by AGENT and refund all or a portion of the premiums received on such policy or contract. In such an event, or in the event that the customer cancels or lapses a policy or contract written by AGENT, the Company may, in its sole discretion, charge back all Commissions and Service Fees paid to AGENT on such policy or contract in accordance with the Compensation Schedule attached hereto. If the Company rejects or cancels an application, policy or contract 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, policy or contract received by AGENT and not previously forwarded to the Company. The Company will use reasonable efforts to provide prior written notice to the AGENT of any such cancellation or rescission.
- (i) Contract Reinstatements. If any policy or contract that has been cancelled by the Company for any reason is subsequently reinstated, AGENT shall be entitled to further Commissions and Service Fees upon reinstatement only if said policy or contract is reinstated by or through AGENT and only as such Commissions and Service Fees become due and payable in accordance with **Section 2.1(c)**.
- (j) Premium Waivers. No Commissions or Service Fees will be paid on premiums waived under the provisions of any policy procured by AGENT.
- (k) New Products. The Commission and Service Fee rates set forth in the Compensation Schedules shall apply only to the products specifically set forth therein. The Company reserves the right to pay different Commissions or Services Fees with respect to new products developed by the Company at any time.
- (l) Final Payments. Unless otherwise agreed to in writing by the Company, all Commissions and Service Fees earned during any calendar year under this Contract, and all payments thereof, will be conclusively considered final and closed on March 1 of the following calendar year (the "Closing Date"). Any request by AGENT for an adjustment to Commissions and/or Service Fees must be received in writing by the Company on or before the close of business on the Closing Date. Notwithstanding the foregoing, the Company reserves its right, from and after the Closing Date, to charge back any improper payments in accordance with the terms of this Contract (including **Section 2.3**).
- (m) Asset Based Compensation. The Company may, in its sole discretion, in accordance with **Section 2.1(a)**, revise or modify the Commission Schedules to include provision



for asset based compensation either in addition to or in lieu of commission and service fees. Such compensation shall be subject to the provisions of this contract in the same manner as Commission.

- (n) No Other Obligations. The Company shall have no obligation to pay any Commission or Service Fee to AGENT except as expressly set forth in this Contract and the Compensation Schedules attached hereto.

2.2 Payment of Compensation. All Compensation (as defined below in this section), which is due to be paid by the Company to AGENT shall be paid directly to AGENT in accordance with (i) the Compensation Schedules; and (ii) such compensation policies, procedures and guidelines that may hereafter be adopted by the Company from time to time. As used in this Contract, the capitalized term "Compensation" shall be interpreted to include Commissions and Service Fees earned by and due and payable to AGENT under the terms of **Section 2.1(b)** and **(c)** above, and all incentives, promotions, rewards, bonuses, awards, benefits, conference credits, deferred compensation, benefit plans and programs and other compensation paid by, or offered through, the Company.

2.3 Improper Payments. Any payment of Compensation or other monies by the Company to AGENT that prove to be improper shall be refunded to the Company within thirty (30) days of the Company's request. Improper payment shall include, without limitation: (i) any overpayment of Commissions or Service Fees; (ii) any payment of Commissions or Services Fees that were due and payable to another agent and paid to AGENT in error. AGENT's failure to refund such monies shall be considered a debt to the Company and shall be governed by **Section 9**.

3. INTERNAL COMPLIANCE REQUIREMENTS

3.1 E&O Insurance. AGENT shall maintain errors and omissions insurance in a form and an amount as determined by the Company from time to time (subject to a maximum deductible amount set by the Company from time to time). AGENT shall provide the Company with evidence of such coverage upon request and shall give prompt notice in writing to the Company of any notice of claim or notice of cancellation sent or received by the AGENT concerning the errors and omissions policy.

3.2 Licenses and Permits. AGENT has obtained, and will maintain in good standing, all licenses and permits from all states, subdivisions, territories and countries, and all insurance or other departments or agencies thereof, having or acquiring jurisdiction over it, and shall operate its business in strict conformance with all applicable laws and regulations. The Company will pay all resident and non-resident appointment fees for AGENT; however, the Company reserves the right to discontinue payment of such fees for any non-producing AGENT. AGENT shall pay any license or miscellaneous fees.

3.3 Training Programs and Materials. All training practices, programs, manuals and materials to be used by AGENT that mention the Company or any of its products by name, or are intended to generate interest in the Company or any of its products, shall be submitted to the Company for review and written approval prior to being used by AGENT. Such approval is effective for twelve (12) months from date of approval subject to the right of the Company to shorten such period upon prior written notice. The Company may withhold its approval of any such practices, programs, manuals and/or materials in its sole discretion and may rescind any approval previously granted upon twenty-four (24) hours prior written notice to AGENT.



3.4 Marketing Materials. Any material, supplies, advertising, sales proposals or other materials whether printed or published by any other method or means including the use of the Internet that mention the Company or any of its products by name or are intended to generate interest in the Company or any of its products (except materials that are provided directly by the Company) shall be submitted to the Company for review and written approval prior to being used by AGENT. The Company may withhold its approval of any such materials, in its sole discretion. Upon submission to the Company, AGENT shall indicate the manner in which the proposed materials will be distributed or published. The manner and method of publication or distribution of such materials (except those materials that are provided directly by the Company) shall be subject to the Company's prior written approval.

3.5 Trademark Policies. AGENT shall be responsible for ensuring that the use of the name "Aviva" (or any other trade name, trademark or service mark which is owned by the Company or any parent or affiliate of the Company) by AGENT shall comply with the Aviva Group Trademark Guidelines, as established by the Company from time to time. The Company reserves the right (on its own behalf and on behalf of any parent or affiliate of the Company) to revise the Aviva Group Trademark Guidelines at any time and from time to time, with or without prior notice to AGENT.

3.6 Use of the Internet. Without in any way limiting AGENT's obligations under **Section 3.4**, AGENT expressly acknowledges and agrees that, in recognition of the Internet as a unique medium of communication, AGENT shall be responsible for ensuring that the use of the Internet by AGENT to disseminate information or materials that mention the Company or any of its products by name or are intended to generate interest in the Company or any of its products, shall comply with any policies, procedures and guidelines that may be adopted by the Company at any time and in conformance with all applicable laws and regulations.

3.7 Privacy. AGENT acknowledges that certain Customer non-public personal information provided (i) to AGENT by Customers; (ii) by AGENT to the Company; and (iii) by the Company to AGENT, may be subject to state and federal privacy laws and regulations including, but not limited to, the Gramm-Leach-Bliley Act of 1999 ("GLB"). AGENT acknowledges that it is prohibited from disclosing customer non-public personal information directly or indirectly to affiliated or unaffiliated third parties except as provided for by GLB, all other applicable privacy laws and regulations, and the Company Privacy Policy as established by the Company from time to time. AGENT agrees to abide by and conform its business practices to the requirements of the Company's Privacy Policy, GLB and all other applicable privacy laws and regulations.

3.8 Other Company Policies, Procedures and Guidelines. AGENT shall abide by all policies, procedures and guidelines that may be established by the Company from time to time, including without limitation, the Market Conduct and Compliance Practices of Aviva and the requirements of federal and state law or regulation. AGENT expressly acknowledges and agrees that all such policies, procedures and guidelines may be revised or discontinued by the Company at any time and from time to time, in the Company's sole discretion and without prior notice to AGENT.

3.9 Examination of Records. Upon the request of the Company, AGENT shall make available to the Company (or any third party designated or appointed by the Company to conduct compliance activities), during normal business hours, all books, files, data or information stored in any electronic medium and records relating to the business activity conducted by AGENT as an agent of the Company under the Contract.



3.10 Customer Complaints. AGENT shall promptly notify the Company of any customer complaint received by AGENT concerning AGENT, the Company, or any of the Company's products in accordance with any complaint handling policy, procedure or guideline as may be published by the Company from time to time. In accordance with the requirements set forth in **Section 12.5**, AGENT agrees to cooperate with and voluntarily make itself and its records available to the Company and its legal counsel in a timely manner, upon request, in connection with the resolution of any such customer complaint.

3.11 Rebating. AGENT shall not, under any circumstances whatsoever, pay or allow any rebate of premiums or commissions in any manner, directly or indirectly, nor shall AGENT accept business from or pay any commissions to (1) an agent whose name does not rightfully appear on the application or (2) any person not appointed with the Company.

4. POLICY, PRODUCT AND CUSTOMER REPRESENTATION REQUIREMENTS

4.1 Customer Representation Requirements.

- (a) Fair Representation. AGENT agrees to represent the Company and its insurance and annuity products thoroughly and fairly to Customers. Each agent soliciting applications for the Company's products, through any medium, shall inform the applicant that he or she is an insurance agent soliciting an insurance and annuity products on behalf of an insurance company. AGENT agrees to refrain from disparaging competitors.
- (b) Insurance Needs and Financial Objectives. AGENT agrees to solicit applications for insurance or annuity products when such products satisfy the applicant's insurance needs and financial objectives.
- (c) Market Conduct. AGENT agrees to treat all Customers with dignity and respect.

4.2 Disclosure of Information. AGENT agrees to inform the Company of all facts of which AGENT is aware relating to applications for Company products.

4.3 Maintenance. AGENT agrees to exert its best efforts in keeping all insurance and annuity products affected under this Contract in full force and effect in accordance with all applicable laws and regulations.

4.4 Delivery Requirements. Delivery of an insurance policy shall be deemed to have been completed only if: (i) the proposed insured at the time of delivery is, to the best of AGENT's knowledge and belief, in as good a condition of health and insurability as is stated in the application for such policy; (ii) the initial minimum premium has been fully paid; and (iii) delivery of the policy (including all revised illustrations, riders, addenda and endorsements) is made within thirty (30) days from the date the policy is mailed by the Company. 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 the Company physically receives it within five (5) days of such expiration.

4.5 Premium Collection. All premium payments shall be made payable to the Company by check, money order, check-o-matic, direct deposit or similar acceptable form of payment authorized under the Company's Premium Payment Policies, as revised from time to time in the Company's sole discretion. The Company will not accept premiums paid in cash. Only the initial minimum premium on applications procured by or through AGENT may be collected by AGENT. All such monies received by AGENT shall



be deemed to be held in trust on the Company's behalf, and any such premium payment, entire or partial, taken with an application or taken upon delivery of a policy, shall be immediately forwarded to the Company by AGENT. All subsequent premiums must be sent by the Customer directly to the Company.

5. RESERVATION OF RIGHTS

Notwithstanding any contrary section in this contract, the Company may, without becoming liable to AGENT, with or without prior notice, in its sole discretion, at any time: (a) discontinue and/or withdraw any policy forms, products, product features, riders, endorsements or addenda in any and all territories without prejudice to its right to continue use of same in any other territory; (b) resume the issuance or use of any policy forms, products, product features, riders, endorsements or addenda in any territory or territories at any time; (c) modify or amend any policy forms, products, product features, riders, endorsements or addenda; (d) modify or amend the conditions or terms under which any policy forms, products, product features, riders, endorsements or addenda may be offered; (e) modify or amend its premium rates; (f) implement, modify, discontinue and/or make exceptions to any incentive, promotion, reward, bonus, award, benefit, conference credit, deferred compensation or other benefit plan or program; (g) implement, modify, discontinue and/or make exceptions to, any policies, procedures or guidelines of the Company; (h) pay different Commissions, Services Fees or other Compensation with respect to new products developed by the Company; and (i) cease doing business in any state or geographically defined area.

6. PROBATION AND SUSPENSION

6.1 Probation. The Company retains the right, with or without prior notice, to place AGENT on probation as a result of (i) any suspected or alleged misconduct; (ii) any violation, breach, suspected violation or suspected breach of any provision hereof; or (iii) any complaint issued or disciplinary action taken, by any state or federal insurance agency or department, the National Association of Securities Dealers, or any other governmental or quasi-governmental entity. During the probationary period, AGENT shall be required to comply with any and all restrictions or oversight instructions imposed by the Company, in its sole discretion, which may include restrictions that (a) limit or prohibit the solicitation or procurement of applications for the Company's insurance and annuity products, either directly or through agents, brokers or employees; and (b) limit the ability of agents placed on probation to qualify for any reward, incentive or other promotional programs including, but not limited to, conference credits previously awarded to them or awarded during the probationary period. The probationary period shall not exceed twelve (12) months. The Company reserves the right to suspend and/or terminate AGENT at any time during the probationary period and the duration of the probationary period shall count towards any requirement that such AGENT receive notice of termination, including the notice requirement set forth in **Section 7.4**.

6.2 Suspension. The Company retains the right, with or without prior notice, to place AGENT on suspension and/or suspend the processing of any submitted insurance or annuity applications as a result of (i) any suspected or alleged misconduct; (ii) any violation, breach, suspected violation or suspected breach of any provision hereof; or (iii) any complaint issued or disciplinary action taken, by any state or federal insurance agency or department, the National Association of Securities Dealers, or any other governmental or quasi-governmental entity. During the period of suspension, suspended agents shall not take any action to solicit or procure applications for the Company's insurance or annuity products, directly or through agents, brokers or employees. Furthermore, during the period



of suspension, suspended agents shall not be entitled to qualify for any reward, incentive or other promotional programs including, but not limited to, conference credits, previously awarded to them or awarded during the period of suspension. The period of suspension shall not exceed three (3) months or such longer period as the Company may deem appropriate for the investigation of such violation or suspected violation. The Company reserves the right to terminate AGENT at any time during the period of suspension and the duration of the suspension shall count towards any requirement that such AGENT receive notice of termination, including the notice requirement set forth in **Section 7.4**.

7. TERMINATION

7.1 Automatic Termination. AGENT's appointment and this Contract shall automatically terminate upon the occurrence or existence of any one or more of the following events:

- (a) AGENT becomes insolvent, makes an assignment for the benefit of creditors or calls a general meeting of its creditors or principal creditors;
- (b) any petition or application for any relief under the bankruptcy laws of the United States now or hereafter in effect or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at law or in equity) is filed by or against AGENT.

7.2 Immediate Termination. AGENT's appointment and this Contract may be immediately terminated with less than thirty (30) days notice, upon the occurrence or existence of any one or more of the following events:

- (a) AGENT dies or becomes permanently disabled (if AGENT is an individual), or any person owning a majority interest in the AGENT (if AGENT is a corporation, partnership, LLP or LLC) dies or becomes permanently disabled;
- (b) AGENT ceases to exist or the usual business of AGENT ceases or is suspended;
- (c) any change in the controlling ownership of AGENT (as determined by the Company in its sole discretion);
- (d) any merger or acquisition of AGENT;
- (e) any other contract between AGENT and the Company or any affiliate of the Company is terminated by breach, including but not limited to fraud, non-performance, malfeasance or misfeasance: or
- (f) any judgment or judgments aggregating in excess of \$50,000 or any injunction or attachment is obtained against AGENT which remains unsatisfied and unstayed for a period of sixty (60) days.

Notwithstanding any termination effected pursuant to **Section 7.1** or **Section 7.2**, the Company may, in its sole discretion, continue to rely on this Contract until the Company receives formal written notice of the event causing such termination



7.3 Termination for Cause. The Company shall have the right to terminate the appointment of AGENT, any principal or any Affiliate thereof (the term "Affiliate" being defined as any person or entity controlling, controlled by or under common control with AGENT) and/or this Contract for "cause" upon or at any time after the occurrence or existence of any one or more of the following events:

- (a) AGENT, or any principal or Affiliate thereof, is convicted of a felony or becomes a "Prohibited Person" as that term is defined under Section 1033 (e)(1)(A) of the Violent Crime Control and Law Enforcement Act of 1994;
- (b) The revocation of any license or permit necessary to the conduct of the business of AGENT, or any principal or an Affiliate thereof;
- (c) AGENT or an Affiliate withholds or misappropriates any money or other property belonging to the Company;
- (d) AGENT or an Affiliate subjects the Company to liability due to AGENT's malfeasance;
- (e) AGENT or an Affiliate commits an act of embezzlement or fraud;
- (f) AGENT or an Affiliate fails 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;
- (g) AGENT or an Affiliate breaches or otherwise fails to conform to any policy, procedure or guideline of the Company;
- (h) AGENT fails to pay, or otherwise default in the payment of, any debt that AGENT or any Affiliate of AGENT owes to the Company under the terms of this Contract or any other agreement with the Company.
- (i) AGENT or any Affiliate materially misrepresents any of the Company's products or services or engages in sales practices that are inconsistent with the Company's policy, product and market conduct requirements including, without limitation, the requirements set forth in **Section 4.1**;
- (j) AGENT or any Affiliate misrepresents or omits any material information on an application for, or reinstatement of, an annuity or insurance policy or contract;
- (k) AGENT breaches or otherwise fails to comply with any material term of this Contract including, without limitation, any obligation set forth under **Section 3**;
- (l) AGENT assigns this Contract or any of its rights or obligations hereunder in violation of **Section 12.1**;
- (m) AGENT or any Affiliate makes any representation, warranty or statement of fact to the Company in this Contract or any other agreement, schedule, certificate or otherwise, which is inaccurate or misleading;



- (n) AGENT causes, attempts to cause or solicits any Customer of the Company to discontinue any policy, contract or certificate, or interferes with the continuation or renewal of such policy, contract or certificate by any Customer unless such transaction is in the best interests of the customer and in accordance with applicable statutes and/or insurance regulations;
- (o) AGENT fails to meet Company targets with respect to minimum annual premium production.

For purposes of determining whether the AGENT's appointment has been terminated for cause, the acts of all of AGENT's, Affiliates principals, officers, directors, employees, agents and representatives, may be deemed AGENT's acts. The Company's determination in this regard shall be final and binding.

7.4 Termination Without Cause. Notwithstanding anything to the contrary contained herein, AGENT's appointment and/or this Contract may be terminated by the Company or by AGENT at any time, for any or no reason, by giving thirty (30) days prior written notice to the other party. A termination without cause may be converted into a termination for cause prior to the expiration of the thirty (30) day period with notice to the AGENT at the sole discretion of the Company and, in such event, termination will be immediate. Any time during which AGENT is subject to probation or suspension in accordance with **Section 7.1** or **Section 7.2** will count towards the thirty (30) day notice requirement set forth in this section.

7.5 Reappointment After Termination. After termination of AGENT's appointment and/or this Contract for any reason, the Company may, without obligation, consider requests by AGENT for reappointment. The Company may withhold its approval of any such request for reappointment in its sole discretion. In addition, any reappointment request approved by the Company shall be subject to such policies, procedures and guidelines as may be adopted by the Company at any time and from time to time, and which are subject to change or discontinuation without prior notice.

7.6 Effect of Termination.

- (a) Termination of Contract. Upon termination of AGENT's appointment for any reason, this Contract shall immediately and automatically terminate, except to the extent the Company continues to rely on the Contract as provided in the last sentence of **Section 7.2**. Upon any such termination, all provisions of this Contract which do not, by their terms, expressly survive any termination of this Contract (see **Section 12.14**), shall cease to be enforceable and shall have no further force or effect.
- (b) Settlement of Accounts and Return of Materials. Upon termination of this Contract, AGENT shall immediately (i) forward all premium checks received from Customers of the Company; (ii) pay in cash any sums due hereunder or under any other agreement with the Company; (iii) cease marketing and selling activities associated with the Company or the Company's products, including the use of marketing and/or advertising materials and the Internet or any other means to disseminate information or materials that mention the Company or any of its products by name or are intended to generate interest in the Company or any of its products; and (iv) deliver to the Company any of the previously furnished materials, supplies, advertising and any other printed matter relating to the Company or its products.



- (c) Death of AGENT. Upon termination of this Contract as a result of the death of AGENT, the Company agrees that all Commissions and/or Service Fees then or thereafter due and owing will be paid only to the duly appointed executors or administrators of AGENT's estate in their capacity as executor or administrator as they may direct and, thereafter, pursuant to the final decree of distribution, if any.
- (d) Dissolution of Corporation. Upon termination of this Contract as a result of the dissolution or liquidation of any AGENT constituted as a corporation, partnership, LLP or LLC, the Company agrees that all Commissions and/or Service Fees then or thereafter due and owing will be paid only to the duly authorized receiver or agent of such AGENT or pursuant to any judicial instruction.
- (e) Merger or Acquisition. Upon termination of this contract as a result of a merger or acquisition of any AGENT constituted as a corporation, partnership, LLP or LLC, the Company agrees that all Commissions and/or Service Fees then or thereafter due and owing will be paid to the merged or acquiring entity subject to applicable state licensing requirements.
- (f) Payment of Compensation After Termination. Upon termination of this Contract, the Company shall continue to pay to AGENT, or AGENT's successors or assigns, Compensation that is based on business procured by AGENT or its Sub-Producers prior to the termination of this Contract, subject to the following restrictions:
 - (i) *Commissions.* No Commission will be paid after termination of this Contract unless such Commission is deemed to have been earned in accordance with **Sections 2.1(b)** prior to the termination of this Contract. To the extent that Commissions are deemed to have been earned prior to the termination of this Contract, such Commissions are vested and shall be paid to AGENT, subject to the other terms and conditions set forth in this **Section 7.6(e)**, **Section 9** and as they become due and payable in accordance with **Sections 2.1(c)**.
 - (ii) *Service Fees.* No Services Fee will be paid after termination of this Contract.
 - (iii) *De Minimis Commissions.* If total Commission payments during any calendar year following termination of this Contract shall be less than \$100.00, 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.
 - (iv) *Incentive and Related Programs.* Notwithstanding anything to the contrary contained herein or elsewhere, upon termination of this Contract, any reward, incentive or other promotional programs, including but not limited to conference credits, that were previously awarded to AGENT shall be null and void and AGENT shall not be eligible or entitled to qualify for any such programs or any cash equivalent thereof.
 - (v) *Termination for Cause.* Notwithstanding anything to the contrary contained herein or elsewhere, upon a termination for "cause" under **Section 7.3**, no further Compensation as described in **Section 2.1(a)**, including Commissions



and Service Fees, whether earned and/or vested or not, shall be paid or provided to AGENT.

- (vi) *Breach of Non-Solicitation Obligations.* The payment of all Compensation, including Commissions and Service Fees, whether earned and/or vested or not, shall terminate immediately and automatically, without notice, upon any breach by AGENT of its obligations under **Section 8**.

8. NON-SOLICITATION

During any period that AGENT is subject to probation or suspension under **Sections 7.1** or **7.2**, and for a period of two (2) years following the termination of this Contract by either party for any reason, AGENT shall not

- (a) directly or indirectly solicit any employee of the Company or its affiliates for employment;
- (b) directly or indirectly solicit any Customer of the Company or its affiliates for the purpose of suggesting or encouraging cancellation of such annuity or insurance policy or contract, or replacement or exchange of such annuity or insurance policy or contract with coverage issued by another insurance company; or
- (c) directly or indirectly solicit any agent of the Company or its affiliates for the purpose of suggesting or encouraging the transfer of existing annuity or insurance policies or contracts to another insurance company. In the event of breach by AGENT of the obligations hereunder, the parties acknowledge that remedies at law would be inadequate to redress such breach and that the foregoing restrictions may be enforced by temporary, preliminary and permanent injunctive relief without the necessity of posting bond. In addition, any award of injunctive relief shall include recovery of associated costs and expenses, including reasonable attorneys' fees. Such right to injunctive relief shall not affect the Company's right to seek monetary damages arising out of such breach.

9. SET-OFF AND LIEN FOR INDEBTEDNESS

Any debt or other liability of AGENT or an Affiliate of AGENT to the Company under this Contract or any other agreement, together with interest thereon at the legal rate, may be set off by the Company at any time against any sums due AGENT or an Affiliate of AGENT under this or any other agreement with the Company. A first lien is hereby reserved to the Company for the satisfaction of any such debt or liability and the Company shall be entitled to secure such a lien by filing any and all UCC-1 financing statements that it deems necessary or appropriate, in its sole discretion. Liens arising hereunder shall not be extinguished by the termination of this Contract.



10. INDEMNIFICATION

10.1 General. AGENT shall indemnify and hold the Company, its officers, directors, shareholders, employees, and attorneys, the MGA, Co-MGA, and GA, if any to whom it reports (the "Indemnified Parties" or, individually, an "Indemnified Party") harmless from and against loss, liability, damage and expense (including reasonable attorneys' fees which shall include the allocable costs of in-house counsel) arising out of (i) any breach of this Contract, (ii) any act or omission of AGENT during or after the term of this Contract, including any act or omission that results in termination of this Contract, or (iii) any claim, suit or judgment relating to conduct covered under items (i) and (ii) above.

10.2 Notice. Whenever any claim shall arise for indemnification under this **Section 10**, the Indemnified Party(ies) shall promptly notify AGENT of such claim and, when known, the facts constituting the basis for such claim (a "Notice of Claim").

10.3 Third Party Claims.

- (a) If any legal proceeding or action is brought by a third party against any Indemnified Party and the Indemnified Party gives notice to AGENT pursuant to **Section 10.2**, such Indemnified Party will be entitled in its sole discretion to either (i) defend such proceeding directly; or (ii) require AGENT to assume the defense of such proceeding using counsel satisfactory to the Indemnified Party.
- (b) If the Indemnified Party requires AGENT to assume the defense of such proceeding, the Indemnified Party shall fully cooperate with AGENT and its counsel in the defense or compromise of such claim or demand, provided that all expenses and costs incurred by Indemnified Party shall be paid by AGENT. The Indemnified Party shall, in its sole discretion, have the right to employ separate counsel (who may be selected by the Indemnified Party in its sole discretion) in any such action and to participate in the defense thereof; provided that such Indemnified Party shall pay the fees and expenses of such counsel. If AGENT is required to assume the defense of a proceeding, AGENT shall not agree to any compromise or settlement of such claims without the Indemnified Party's prior written consent.
- (c) If the Indemnified Party directly undertakes the defense, compromise or settlement of such claim, AGENT will reimburse the Indemnified Party promptly upon the request of the Indemnified Party for the costs of defending against the third party claim (including reasonable attorneys' fees and expenses), and AGENT will remain responsible for any indemnifiable amounts arising from or related to such third party claim to the fullest extent provided under this **Section 11**.

10.4 Direct Claims. If any Indemnified Party shall claim indemnification hereunder for any claim other than third party claims, such Indemnified Party shall promptly notify AGENT in writing of the basis for such claim setting forth the nature and amount of the damages resulting from such claim. AGENT shall give written notice of any disagreement with such claim within fifteen (15) days following receipt of Indemnified Party's notice of the claim, specifying in reasonable detail the nature and extent of such disagreement. If AGENT and Indemnified Party are unable to resolve any disagreement within thirty (30) days following receipt by the Indemnified Party of AGENT's notice of disagreement, either party may initiate the dispute resolution provisions set forth under **Section 12**.



10.5 Interest. Interest shall accrue on the unpaid amount of all indemnification obligations hereunder at the Prime Rate on the date of the Notice of Claim (as published from time to time in the Wall Street Journal) plus 2%. Such interest is to be calculated based on the actual number of days elapsed from the date each indemnification obligation becomes due and owing until paid in full and based on a 365-day year.

10.6 Right of Set-Off. The Indemnified Party may set-off any amount to which it may be entitled under this **Section 10** pursuant to the provisions of **Section 9**. The Company shall have priority over any other Indemnified Parties rights to offset.

11. DISPUTE RESOLUTION

11.1 Direct Negotiation.

- (a) If any dispute shall arise out of or relate to this Contract or to the interpretation, performance or non-performance of this Contract, 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 direct meeting cannot be scheduled or is otherwise inconvenient to either party, negotiations can be conducted by teleconference between both parties. 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 (or conduct a teleconference) within fourteen (14) days, either party may initiate mediation of the controversy or claim as provided hereinafter.
- (b) 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 pursuant to the Massachusetts Rules of Evidence.

11.2 Mediation.

- (a) If the dispute has not been resolved by direct negotiation under **Section 11.1**, 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 may mutually agree upon a mediator or, if they are unable to agree on one, shall jointly request 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, to the extent available, the business of life insurance and may be rejected by the parties only for bias, lack of such qualifications, or as otherwise specified in the AAA rules. 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. Each party to this Contract will bear its own expenses relating to the mediation and each party agrees to share equally all other costs of the mediation.

- (b) The parties shall maintain the confidentiality of the mediation and shall not rely on or introduce as evidence in any arbitral, judicial or other proceeding:
 - (i) views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
 - (ii) admissions made by another party in the course of the mediation proceedings;
 - (iii) proposals made or views expressed by the mediator; or
 - (iv) the fact that another party had or had not indicated willingness to accept a proposal for settlement

12. MISCELLANEOUS

12.1 Assignment. No assignment of this Contract or of any Compensation due or to become due AGENT shall be valid unless the Company in its sole discretion 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. Notwithstanding any permitted assignment of this Contract, unless otherwise agreed to in writing, AGENT shall remain fully liable for all obligations under this Contract, and any amounts that are due or become due from AGENT to the Company after such an assignment shall remain subject to the provisions of **Section 9 and Section 10**.

12.2 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.

12.3 Contact Information. AGENT agrees to maintain at all times current contact information with the Company, including but not limited to residential mailing address, business mailing address, business phone number, business fax number and email address. AGENT shall advise the Company of such changes to its contact information within thirty (30) days of such change.

12.4 Notice. Any notice or other communication which is required or which may be given hereunder, may be given as follows:

- (a) Personal Delivery. Any notice or other communication may be delivered in person or by courier to the last known address of the other party.
- (b) Mail. Any notice or other communication may be delivered by overnight, registered or certified mail, postage prepaid, to the last known address of the other party.
- (c) Facsimile. Any notice or other communication may be delivered by facsimile transmission to the last known facsimile number of the other party; or



- (d) E-mail. Any notice or other communication may be delivered by e-mail to the last known e-mail address of the other party.
- (e) Internet Web Site Postings. Any notice or other communication relating to the following may be delivered by posting on the Company's Internet web site: (i) notice of any revision to the Company's Commission and Services Fee rate levels; and (ii) notice of any new or revised Company guideline, procedure or policy (including without limitation, any new or revised Compensation policies).

12.5 Agreement To Be Available In Proceedings. AGENT agrees to cooperate with and voluntarily make itself and its records reasonably available to the Company and its legal counsel, upon request, without the necessity of obtaining a subpoena or court order, in connection with the Company's investigation preparation, prosecution, and/or defense of any actual or potential legal proceeding, regulatory action, customer complaint or internal matter involving AGENT. The Company will reimburse AGENT for reasonable out-of-pocket expenses actually incurred as a result of such requests.

12.6 Non-Waiver. The forbearance or neglect of the Company to insist upon strict compliance by AGENT with any of the provisions of this Contract, or any policy, procedure or guideline 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, privileges or defenses hereunder. No waiver of any right, privilege or defense 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.

12.7 Entire Agreement. This Contract, together with the Compensation Schedules, any amendments hereto contain the entire agreement between the Company and AGENT with respect to the subject matter hereof and supersede 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, or is in the form of a written notice from the Company to the AGENT, which expresses by its terms an intention to modify this Agreement.

12.8 Applicable Law. This Contract shall be construed in accordance with Company policies, procedures and guidelines now or hereafter established and shall be interpreted and enforced under the laws of the Commonwealth of Massachusetts without regard to any choice of law provisions or analysis. The parties hereby consent to jurisdiction in the Commonwealth of Massachusetts and venue in Suffolk County, Massachusetts.

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

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

12.11 Additional Parties. Additional parties may be added as parties to this Contract by amendment to the Contract in accordance with **Section 13.6**.

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



12.13 Effective Date. This Contract shall take effect as of the date it is executed on behalf of the Company, provided that it has first been executed by or on behalf of AGENT.

12.14 Survival. The following provisions of this Contract shall survive the termination of this Contract for any reason: all indemnification provisions including, but not limited to, those set forth in **Section 10**; **Section 2.3** (Improper Payments); **Section 3.1** (E&O Insurance); **Section 3.7** (Privacy); **Section 3.9** (Examination of Records); **Section 3.10** (Customer Complaints); **Section 7.5** (Reappointment After Termination); **Section 7.6** (Effect of Termination); **Section 8** (Non-Solicitation); **Section 9** (Set-Off and Lien for Indebtedness); **Section 11** (Dispute Resolution); **Section 12.2** (Severability); **Section 12.4** (Notice); **Section 12.5** (Agreement to be Available in Proceedings); **Section 12.6** (Non-Waiver); **Section 12.8** (Applicable Law); **Section 12.12** (Binding Effect) and **Section 12.14** (Survival).

[SIGNATURE PAGE TO FOLLOW]



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

SIGNATURE OF AGENT

If AGENT is an Individual:

Print Name: _____ Signature: _____
Date: _____

If AGENT is Business Entity:

Financial Guaranty:

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

Print Name of Business Entity: _____

By it's Authorized Signatory(ies):

Print Name: _____ Signature: _____
Date: _____

Print Name: _____ Signature: _____
Date: _____

Signature(s) of principal stockholders (if a corporation) or principal members (if a limited liability company):

Print Name: _____ Signature: _____
Date: _____

Print Name: _____ Signature: _____
Date: _____

AVIVA LIFE INSURANCE COMPANY OF NEW YORK

By: _____
Name: _____
Title: _____
Date: _____

Aviva Life Insurance Company of New York
100 Corporate Parkway Suite 300
Buffalo NY 14226