

# Martin Burlingame Insurance Agency, Inc

## Sub-Producer Agreement

This Producer Agreement is made and entered into effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **Martin Burlingame Insurance Agency, Inc**, a Colorado Company having its principal offices in Colorado Springs, CO, (hereinafter referred to as “we”, “us”, “our”, or “MBIA”) and,

\_\_\_\_\_  
Name of Producer or Agency Name

\_\_\_\_\_  
Address of Producer

\_\_\_\_\_  
Tax ID or Social Security Number

\_\_\_\_\_  
P&C License #

(hereinafter referred to as “you”, “your”, or “Producer”) agree as follows:

### I. PURPOSE OF AGREEMENT

- A. The purpose of this Agreement is to state the terms and conditions under which Producer shall solicit and service contracts of insurance to be placed through MBIA. This Agreement shall include all Schedules attached hereto now or in the future. The Commission Schedule may be added to or revised by MBIA by written notice to Producer. This contract supersedes any prior agreements between MBIA and Producer.

### II. ASSOCIATION

- A. Producer is an independent contractor and not an employee of MBIA. Producer shall have exclusive control of time, exercise his own judgment as to the persons from whom he will solicit applications; as well as the methods, details, time and place of solicitation; and nothing herein contained shall be construed to create the relationship of employer and employee between Producer and MBIA.
- B. MBIA reserves the right to change, modify, amend, reject, and/or cancel any of its programs, application forms or policies offered to Producer in connection with this Agreement, as it may deem necessary or appropriate.
- C. We reserve the right to limit your authority to specific coverages or to restrict any part or all of your authority; but the exercise of that right shall not cancel this Agreement nor relieve you of your obligations and duties to us.

### III. NOTICE

Any notices required or permitted to be given under this Agreement shall be validly given in writing and delivered personally or sent by registered or certified mail, return receipt requested, to the address provided within this Agreement, or to such other address as either party may hereafter designate in writing. Such notice shall be deemed delivered when deposited in the United States mail with prepaid postage and addressed as indicated herein.

**IV.****AUTHORITY OF PRODUCER**

- A. Under provisions of this Agreement, Producer is an independent contractor and is not an employee of MBIA or any insurer with whom we are affiliated or may place risks at the request of Producer. We shall have no right of control over Producer as to time, means, or manner of conduct of the Producer within the authority granted herein. MBIA may appoint other Producers, and Producer may represent other Managing General Agents and Insurance Companies.
- B. Producer shall have the power to:
  - 1) Receive and accept proposals for insurance coverage on such classes of risk, and in such amounts as MBIA may so authorize Producer to write,
  - 2) Collect premiums from insureds or applicants for insurance submitted by Producer to us.
- C. You must upload all applications using each appointed Company's online application system in order to submit a risk, and you must authorize the down payment to be drafted from your agency bank account, unless otherwise specified by us.
- D. You may not issue certificates of insurance, or filings with any state or municipal agency. You may not issue policies, endorsements, renewals, renewal notices, or cancellation notices, nor may you give our, or any appointed Insurance Company's rates, rules and application forms to other agencies, agent Producers, companies, or solicitors without prior written approval from MBIA or the Insurance Company in question.

**V.****EVIDENCE OF E&O INSURANCE**

- A. Producer will furnish to MBIA evidence of E&O Insurance with minimum liability limits of \$1 million per occurrence and \$1 million aggregate, and will notify MBIA promptly if the insurance is non-renewed, canceled, terminated or materially changed.

**VI.****ADMINISTRATIVE PROVISIONS**

- A. At the renewal of any policy placed through MBIA, Producer shall be responsible for requesting and applying for insurance coverage, or renewals thereof, through MBIA, and to the Insured for notification of the placement, renewal or non-renewal of coverage, and shall timely communicate any renewal quoted, or notice of non-renewal to the Insured so as to preclude the extension of coverage beyond the expiration date of the policy in question. MBIA shall not be liable for the accuracy or delivery of any renewal or cancellation notice.
- B. In the event MBIA shall have to implement any lawsuit or incur attorney's fees to enforce the obligations assumed by Producer in this Agreement, or defend any lawsuit brought against MBIA because of Producer's act, errors or omissions in connection with Producer's performance under this Agreement, MBIA shall be entitled to recover from Producer all costs, expenses, judgments, and attorney's fees incurred by MBIA in connection with any lawsuit or other proceeding. The parties further agree that El Paso County, Colorado Springs, Colorado shall be the county of proper venue for any legal action or the resolution of any dispute in connection with this Agreement.
- C. The obligations and undertaking of each of the parties to this Agreement shall be performable in El Paso County. Producer agrees to pay to MBIA at its home office in Colorado Springs, Colorado all sums of money which may become payable to MBIA under this Agreement.
- D. MBIA hereby agrees to protect and maintain the confidentiality of information provided to MBIA by Producer, and will not share the information with any other Producer or agent. MBIA will use the information only in connection with its attempt to place insurance coverage for the customer in question, and no other purpose.

- E. MBIA shall not be responsible for any expenses incurred by Producer.
- F. Any policy forms or other MBIA supplies furnished to Producer shall always remain property of MBIA, and shall be returned to MBIA upon termination of this Agreement.
- G. Producer shall keep true and complete records and accounts of the transactions with policyholders placed under this Agreement. Such records shall be open at all times to inspection by duly authorized representatives of MBIA or the Insurance Company(ies) in question in any dispute under this Agreement.
- H. Producer shall timely and completely comply with all laws, rules and regulations, including all underwriting and other rules and guidelines promulgated by MBIA or the Insurance Company(ies) in question, in the conduct of business under this Agreement, and shall not expose the MBIA or the Insurance Company(ies) to any claim, litigation, administrative proceeding, fine or penalty, in whole or in part, arising out of Producer's failure to comply.

<b>VII. COMMISSIONS PAYABLE</b>
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- A. We will pay you commissions for insurance policies written under the terms of this Agreement based on the Commission Schedule in effect at the time such business is written for each Insurance Company and for each line of business written. The current rates are set forth in the Schedule of Commission attached to and forming a part of this Agreement.
- B. We reserve the right to unilaterally change the Commission Schedule at any time during the term of this Agreement. MBIA will notify Producer in writing of any such revisions. If we continue to offer renewals after termination of this Agreement, you will be paid in accordance with the commission structure in force at the time that each policy is renewed.
- C. We agree to pay you commissions on all direct billed business set forth in each respective Insurance Company's statement within thirty (30) days of receipt by MBIA. Payment of this commission will be the Producer's sole and full compensation.
- D. We may offset any commissions due you from us against any other balances owed by you to us.
- E. You agree to refund any unearned commissions to us at the same rate that the commissions were paid to you.
- F. On all policies not named in the Schedule of Commission attached hereto, MBIA shall determine the commission and, set up rules governing compensation to be paid.

<b>VIII. OWNERSHIP OF EXPIRATIONS</b>
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- A. The use and control of the expiration rights to policies placed under this Agreement, shall remain in the undisputed ownership of Producer, and MBIA shall not use its records of those expirations for the renewal of such insurance policy(ies), nor shall MBIA communicate this expiration information to any other agent or Producer.
- B. However, in the event of termination of this Agreement, if Producer has not then properly accounted for and paid all premiums and other charges associated with business placed under this Agreement to MBIA and/or the Insurance Company(ies) in question, the use and control of such expiration rights, including all right, title and interest in and to the records thereof shall reside with MBIA as of the termination date.

**IX.****SUSPENSION OF AUTHORITY**

The right to solicit and place new business, renewals or any modification of existing business may at the sole discretion of MBIA be suspended in the event of default by Producer.

The term "default" shall mean any breach or failure to comply with the terms and conditions of this Agreement, or any Insurance Company's requirements or criterion including, but not limited to the following:

1. Failure to remit balances due as called for in this Agreement.
2. Failure to maintain Producer's license(s) or certificate(s) as required by any public authority.
3. Failure to comply with and all applicable provisions of the Colorado Insurance Code.
4. Failure to comply with MBIA's or any Insurance Company's guidelines or procedures.

In the event that MBIA determines that Producer is in default, we may, at our sole discretion, suspend any or all of Producer's authority to act on behalf of MBIA effective immediately. Said suspension shall be effective upon written notification to Producer. Within ten (10) days of such notification, MBIA shall notify Producer in writing of the nature of the default in reasonable detail.

**X.****CHANGE IN OPERATIONS / TERMINATION**

- A. Producer shall give MBIA not less than thirty (30) days prior written notice of any of the following changes to the operation of Producer's business.
  1. If Producer is an individual, and enters into a partnership, corporation, or limited liability association to act as an insurance agency with one or more persons.
  2. If Producer is an individual or partnership, and incorporates Producer's insurance Agency.
  3. If Producer plans to transfer, sell, merge, or consolidate any part of Producer's insurance agency or insurance business with any other entity.
- B. Failure of Producer to give the required notice shall terminate this Agreement on the effective date of any of the above events, and Producer shall forfeit all commissions, earned and unearned, on policies effective after the effective date of any such event.
- C. The consent by MBIA to any such occurrence shall be contingent upon a review of the background and experience of any new owner(s), the acceptance of the terms of this Agreement by the new owner(s), the receipt of indemnity agreements from any new owner(s), and any other requirements which we may reasonably request.
- D. This Agreement shall continue in force until terminated by mutual agreement, or by either party giving not less than thirty (30) days written notice of termination to the other party. However, in the event of fraud or breach of any of its conditions or provisions on the part of Producer, this Agreement may be terminated by MBIA, effective immediately.
- E. This Agreement shall terminate automatically, without notice, in the event of cancellation, revocation, suspension or forfeiture of any license required by law for Producer to perform in any respect under this Agreement. The maintenance of such license in good standing will be the responsibility of Producer as an express condition to continuation hereof. In the event of any cancellation, revocation, suspension or forfeiture of such license, Producer shall immediately notify MBIA of the complete

details associated with such event, and Producer shall forfeit all commissions, earned or unearned, on policies effective as of such cancellation, revocations, suspension or forfeiture of such license.

- F. The obligation of Producer to indemnify and hold harmless MBIA on any claim arising from failure of Producer to comply with the terms of the Agreement shall survive termination of the Agreement.
- G. In the event of termination of this Agreement, Producer shall timely notify each insured under any policy issued through MBIA of the non-renewal of that policy, so as to prevent the extension of the policy beyond its expiration date.

<b>XI. MARKETING/ADVERTISING</b>
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- A. In order for MBIA and the Insurance Companies they represent to maintain consistency in their brand usage and advertising philosophy, and to protect the integrity of the trademarks or licenses of MBIA or any Insurance Company, Producer shall not use the name or brand of MBIA or any Insurance Company in anyway without prior written consent of MBIA or the Company. Producer will not create, use, publish, distribute or circulate letters, brochures, pamphlets, internet advertising or advertising of any character or nature on behalf of or which identify and/or discuss MBIA or any Insurance Company without prior written consent. Producer shall not create websites that mention or link to MBIA or any Insurance Company that MBIA represents without prior written consent.

<b>XII. INDEMNITY AGREEMENT</b>
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As part of the consideration to MBIA to enter into this Producer Agreement, Producer and the undersigned individuals that have ownership in Producer (and if more than one, jointly and severally) agree fully to indemnify and hold harmless MBIA, its successors and assignees, from any and all legal judgments, loss, damage, cost, and expenses, including attorney's fees, which MBIA may at any time sustain because of the failure of Producer to comply fully with the terms, conditions, provisions, and obligations of this Agreement, including, but not limited to, the payment to MBIA for all sums of money which may become due MBIA from Producer hereunder. The undersigned each waive notice of change, alteration or modification of this Agreement and agree that the obligations of this Indemnity Agreement shall continue to apply after termination of this Agreement. This Indemnity Agreement is unconditional and independent and not merely one of suretyship. The taking by MBIA of security from Producer shall not relieve indemnities hereunder. Producer agrees to pay cost, expenses, and reasonable attorney's fees incurred in enforcing the obligations of this Indemnity Agreement.

Without limiting the previous paragraph, this Agreement to indemnify and hold MBIA harmless shall include the reasonable attorney's fees and related expenses incurred to prosecute or defend any lawsuit, administrative proceeding or arbitration; shall extend to any claims or assertions of bad faith, breach of covenant or fair dealing, unfair claims on insurance practices, deceptive trade practices, extra contractual or exemplary and/or punitive damages arising wholly, or in part, from the action or inaction of Producer.

The obligations of this Indemnity Agreement shall be performable in Colorado Springs and El Paso County, Colorado. Such of the undersigned as may be non-residents of the State of Colorado recognize that this Indemnity Agreement is a contract with a resident of the State of Colorado and to be performed in the State of Colorado. Such of the undersigned as may be non-residents of the State of Colorado hereby designate the Secretary of State as his, or its or their true and lawful attorney upon whom service of process may be made in connection with any suit which may be brought by MBIA to enforce the terms of this Agreement.

<b>XIII. ARBITRATION</b>
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- A. If irreconcilable difference of opinion arise as to the enforcement, validity, or interpretations of this Agreement, the difference shall be submitted to arbitration, one arbitrator to be chosen by Producer, one chosen by MBIA, and a third arbitrator chosen by the two arbitrators. The party seeking arbitration shall name its arbitrator in the initial written request for arbitration sent to the other party.

The other party shall name its arbitrator within fifteen (15) days after receiving the written request for arbitration. If the other party should fail to do so within this period, the party seeking arbitration shall name both arbitrators and they shall select the third arbitrator as provided herein. The third arbitrator shall be named by the two arbitrators within fifteen (15) days of the appointment of the second arbitrator. The arbitrators shall be disinterested persons knowledgeable about the insurance agency business.

The arbitrators shall set their own rules for hearing the dispute. All parties agree that time is of the essence in the settlement dispute. The arbitrators, therefore, shall reach a final decision in said dispute within thirty (30) days of the appointment of the third arbitrator. The arbitrators' final decision shall be final and binding upon both parties.

Each party shall bear the expense of its own arbitrator and shall jointly and equally bear the expense of the third arbitrator and the arbitration. Any arbitration shall have as its sole venue El Paso County, Colorado, unless otherwise mutually agreed upon. Notwithstanding anything herein to the contrary, the arbitrators shall have no authority to change or modify any provision of this Agreement or award punitive damages. The prevailing party shall be entitled to an award of reasonable attorneys' fees.

<b>XIV. MISCELLANEOUS</b>
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- A. The rights, privileges, interest, powers or claims of Producer arising out of this Agreement are not assignable (by sale or otherwise), and no such purported assignee shall acquire any rights hereunder, without the prior written consent of MBIA. The rights of any assignee under any assignment to which consent has been or may be given shall be subject to all of the provisions of this Agreement.
- B. This writing represents the entire Agreement and understanding of the parties with respect to the subject matter hereto; it may not be altered or amended except by a subsequent written instrument duly executed by all parties.
- C. This Agreement, and its validity, performance, and effect shall be determined and its terms construed in accordance with the laws governing the State of Colorado.
- D. This Agreement shall apply to all current insurance contracts already placed and in force at this date and all future insurance contracts which may be issued by MBIA on behalf of Producer.
- E. This Agreement shall take effect as of the date entered on the first page of this Agreement. This Agreement supersedes all previous Agreements, either written or oral between the parties.

**Martin Burlingame Insurance Agency, Inc**  
**("MBIA")**

\_\_\_\_\_  
**("Producer")**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

**GUARANTY AGREEMENT**

**\*\*\* Only required for Producers with multiple owners/partners/shareholders \*\*\***

As part of the consideration for entering into this Agreement, the individuals listed below hereby agree to jointly and severally guarantee the fulfillment of obligations under this Agreement, and/or payment of any amounts that may be due to MBIA from Producer.

**Owner/Partner/Shareholder of Producer**

**Signature:**

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**Martin Burlingame Insurance Agency, Inc**  
**Commission Schedule**

This Amendment to the Producer Agreement between **Martin Burlingame Insurance Agency, Inc**, a Colorado Limited Liability Company, having its principal offices in Colorado Springs, Colorado (hereunder referred to as “we”, “us”, “our”, or “MBIA”) and \_\_\_\_\_ (hereunder referred to as “you”, “your”, or “Producer”) shall apply to all business with an effective date of \_\_\_\_\_, 20\_\_, or thereafter.

MBIA agrees to pay to Producer in connection with business placed by Producer through MBIA, as set forth in this Commission Schedule.

**COMMISSION SCHEDULE**

<u>Carrier</u>	<u>Line of Business</u>	<u>New</u>	<u>Renewal</u>	<u>Last Amended</u>
As Designated	As Designated	75%	50%	75%