

# MESSER

## Financial Group

### Group Contract

Management of Agent's book of business, engagement as independent contractor, confidentiality, non-solicitation and noncompetition agreement.

Agent's Book of Business, Confidentiality, Non-Solicitation and Noncompetition Agreement is made and entered into on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between \_\_\_\_\_, a citizen and resident of \_\_\_\_\_ (hereinafter referred to as "Agent"); and MESSER Financial Group, Inc., a North Carolina corporation having its principal business place of business in Charlotte, North Carolina (hereinafter referred to as the "Company").

For and in consideration of Agent's "at – will" engagement with the Company as an independent contractor (the Agent, at contracting, having been expressly informed of the terms and conditions herein and agreeing to such and signing this Agreement as of the first day of his engagement as a precondition of that contracting), the receipt and legal sufficiency of which is accepted and acknowledged by the Agent, the parties hereto do agree as follows:

#### **1. Engagement as Independent Contractor**

The Company herewith engages Agent as an Independent Contractor to serve as a Benefits Specialist with the Company. Agent agrees to serve as such under the terms and conditions herein set forth. Agent shall receive a Form 1099 each year and shall be responsible for his tax obligations to all Federal and State tax authorities.

#### **2. Compensation to Agent for New Business**

Agent shall receive as compensation for any new business that he generates on behalf of the Company an amount equal to \_\_\_ % of the first year gross commissions received by the Company for such new business.

#### **3. Obligations of Agent**

Agent shall be responsible, at his own cost and expense, for the following:

- A. His own means of transportation;
- B. Any and all expenses involved in the conduct of his sales efforts;

#### **4. Confidentiality; Agreement Not to Disclose**

The Agent acknowledges that the Company will be engaged in the business of individual and commercial insurance sales, and that the Agent will participate personally in the Company's business at one of the Company's most crucial sales or operational levels. The Agent further acknowledges that his association with the Company will provide him with access to certain confidential information of the Company and its clients, including, but not limited to, lists of suppliers, customers, clients, accounts and prices, information with respect to costs, marketing and sales, and other knowledge relating to the business methods, processes and strategies of the Company, all of which are valuable, special, and unique assets of the Company which enable it to obtain advantages over competitors in the marketplace and which is maintained by the Company as confidential and proprietary information and further regarded by the Company as, and expressly acknowledged herein by the Agent as, trade secret and proprietary information of the Company. The Agent agrees that he will not disclose and will not permit the disclosure of any such confidential information to any person,

firm, corporation, association or other entity for any purpose or any reason whatsoever during his employment with the Company or at any time thereafter, irrespective of the termination of any employment relationship between the Agent and the Company.

### **5. Noncompetition - Agreement not to Compete**

The Agent agrees that, during the period of his contract with the Company and for two (2) years thereafter, the Agent will not, directly or indirectly, either as principal, agent, employee, manager, partner, shareholder, director, officer, consultant or otherwise:

- A. In any way solicit or attempt to solicit the business or patronage of any person, firm, corporation, partnership, association or other entity whose business the company has enjoyed during the Agent's tenure with the company ("customers") or otherwise induce such customers of the company to reduce, terminate, restrict or otherwise alter their business relationships with the company in any fashion;
- B. In any way solicit or attempt to solicit the business or patronage of any customers or clients of the Company whose business the Agent solicited or attempted to solicit on behalf of the company during the Agent's tenure with the company;
- C. In any way induce or attempt to induce any existing or future Agent of the company to leave his or her position with the company to become associated with a competing business.

### **6. Acknowledgment by Agent**

The Agent acknowledges that the terms of this Agreement were discussed with him prior to his signing below and that he agreed to these terms as a condition of contracting with the Company, despite the fact that this Agreement may have been executed after the date of Agent's engagement. Agent also acknowledges that his engagement with the Company is "at will".

### **7. Injunction**

Agent acknowledges that the Company will suffer irreparable harm if Agent were to violate any of the foregoing undertakings and therefore agrees that, in addition to any other remedies which the Company may have at law or in equity, the Company shall be entitled to obtain from a Court of competent jurisdiction an injunction restraining the violation of any such MESSER Financial Group 10/2014 undertaking(s), that Agent will not object thereto, and that Agent, in such action may be held liable for the reasonable attorneys fees of the Company in prosecution such action.

### **8. Entire Agreement**

This Agreement contains the entire agreement of the parties thereto with respect to the matters herein contained, and no change, qualification or cancellation hereof shall be effective unless set forth in writing and agreed by both parties and signed by the parties hereto.

### **9. Governing Law**

This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina. IN WITNESS WHEREOF, the parties have caused this Agreement to be signed the day and year first set forth above.

MESSER Financial Group, INC.

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

William L. Rice, President and CEO

Agent: \_\_\_\_\_



# Status and Commission Advice

Name: \_\_\_\_\_  
(First) (MI) (Last)

Home Address: \_\_\_\_\_  
(Street) (City) (State) (Zip)

Corporate Name (if applicable): \_\_\_\_\_

Business Address: \_\_\_\_\_  
(Street) (City) (State) (Zip)

Mailing Address: \_\_\_\_\_  
(If different) (Street) (City) (State) (Zip)

Business Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Social Security #: \_\_\_\_\_ of Federal ID #: \_\_\_\_\_

Birthdate: \_\_\_\_\_ Sex: M F Is your E&O coverage current? Yes No

Companies currently appointed with: \_\_\_\_\_

## Appointment Fee Summary

Appointment Fee (State of: \_\_\_\_\_ Company: \_\_\_\_\_) . . . . . \$ N/A

Appointment Fee (State of: \_\_\_\_\_ Company: \_\_\_\_\_) . . . . . \$ N/A

**Total Fees Due** (Check payable to MESSER Financial Group). . . . . \$ N/A

*Note: The Representative is solely responsible for insuring that all required licenses and/or appointments have been issued and approved prior to engaging in any sales.*

**Representative Signature:** \_\_\_\_\_ Date: \_\_\_\_\_

**Recruited By** (if applicable): \_\_\_\_\_ MyMFG #: \_\_\_\_\_

**Marketing Director Signature:** \_\_\_\_\_ Date: \_\_\_\_\_

## For MESSER Hierarchy Program

Contract Level: \_\_\_\_\_

Manager Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized MFG Signature: \_\_\_\_\_ Date: \_\_\_\_\_



# Representative's Contract

THIS Contract sets out the complete agreement by and between MESSER FINANCIAL GROUP, INC. of Charlotte, NC, herein called "MFG", and , \_\_\_\_\_ herein called "Agent". By signing this Contract, the Agent agrees to be bound by its, and any similarly executed addendums, attachments or schedules, that may be executed and made a part of this Contract. MFG expects to maintain agreements for services with insurance companies, herein called "COs" which are necessary to enable you to solicit applications for insurance. WHEREIN IT IS MUTUALLY AGREED UPON AS FOLLOWS:

## **APPOINTMENT**

MFG hereby appoints the Agent to act on its behalf and be a representative of MFG only to the extent authorized herein. The Agent agrees that MFG or COs, as a condition of such appointment, may at their discretion complete an investigative report, including information regarding character, credit/income, reputation, and general health as set forth under the FAIR CREDIT REPORTING ACT

## **RELATIONSHIP**

The Agent's relationship to MFG is that of an Independent Contractor and nothing contained herein shall be construed as creating the relationship of employer and employee between MFG and the Agent. The Agent shall be free to exercise his own judgment as to the time, place and manner in which to perform the services authorized under this Contract. No authority shall be implied from the authority expressly granted.

## **LIMITATION OF AUTHORITY**

Except as expressly provided herein, the Agent or sub-agent shall have no authority, expressed or implied, actual or apparent, to act or fail to act or do anything whatsoever on behalf of MFG. The foregoing limitation of authority includes, but is not limited to the Agent and sub-agent not being authorized to (i) make any contract or incur any debt in the name or on behalf of MFG; (ii) make, modify or amend any application for insurance or any policy of insurance; (iii) extend or modify the time for making any payment which may become due on any policy; (iv) waive, alter, modify or amend any of MFG's rights, privileges or obligations under its policies or applications; (v) collect or receive premiums other than the initial premiums with applications for insurance; (vi) institute any type of administrative or legal proceedings in the name or on behalf of MFG for any cause or reason; or (vii) make any misrepresentations, promises or agreements on behalf of MFG. No act, forbearance or neglect on the part of either the Agent or MFG shall be construed as a waiver of any of the provisions of this Contract or imply the existence of any authority on behalf of the Agent not expressly granted herein.

## **ADVERTISING**

The names, logos, trademarks and other advertising of MFG or COs may not be used unless approval is received in writing, and then only while this Contract is in effect. All circulars, advertisements or other material pertaining to MFG, COs or proprietary products or services, which you shall publish, print, distribute or use in any way shall not be used until first approved in writing by MFG and/or COs.

## **CONDUCT**

MFG and COs may from time to time prescribe rules and regulations with respect to the conduct of the business covered herein. The Agent shall conform to and observe such rules and regulations as established. The Agent shall not make any misrepresentation in connection with the sale of any insurance policy or the solicitation of any application.

## **SOLICITATION**

The Agent is hereby authorized to solicit applications for the approved products offered by MFG through COs, but only in those states that MFG and COs are authorized to do business in and provided that the Agent is in compliance with all applicable regulatory licensing requirements at the time of solicitation. The Agent agrees to assist MFG in obtaining documentation necessary for COs to issue policies.

## **COLLECTION OF MONEY**

The Agent is not authorized to receive or collect any money due or becoming due to the COs with the exception of the initial premium payment on applications being obtained by the Agent. Initial premium checks should be made payable to COs or other entities as designated by MFG. The Agent shall have no authority to endorse or present for collection any check, draft or other instrument made payable to MFG or COs. Any and all monies collected shall not be used by the Agent for any personal or other purpose whatsoever, but shall be immediately sent to MFG for processing to CO's.

## **COMMISSION COMPENSATION**

As compensation to the Agent, in full, for the performance of services as authorized in the Contract, MFG will pay commissions as set forth in the attached Schedules of Commissions. The rate of commissions may be changed, altered or amended from time to time by MFG, and effective upon any business written by the Agent subsequent to the effective date of the change. The Agent will receive at least ten (10) days prior written notice of any change in the Schedule of Commissions. Commissions are calculated on the basis of the commission rate on the effective date of the policy and of original commissionable policy premium, unless the commissionable policy premium is decreased, at which time commission will be paid on the decreased premium. Commissions are not payable on administrative fees or policy application fees. In the event MFG's commissions on any in-force premium are reduced, commissions to the Agent on the same in-force premium may be reduced in the same proportion. If commissions on any premiums must be refunded by MFG to the COs, the Agent shall repay to MFG corresponding commissions that may have been previously paid to the Agent. Commission advances are at the sole discretion of MFG, and may be changed at any time by MFG without prior notice. Each advance paid to the Agent will be charged (debited) to the Agent's account, and MFG will credit the Agent's account with all commissions earned by the Agent. The Agent who receives commission advances from MFG may not market directly or indirectly the same or similar product through other commission sources within the same insurance company.

## **RECRUITING, CONTRACTING AND COMMISSIONS**

The Agent is authorized to recruit other soliciting agents for Contracting with MFG. All Contracts with such agents shall be made directly with MFG. MFG reserves the right to refuse to Contract any proposed agent, or once done, to thereafter terminate the same. Should an agent be authorized by MFG to manage subagents, the Agent shall be responsible to MFG for the fidelity and honesty of any sub-agents, and for all funds collected or business done by or entrusted to him or his subagents. The Agent shall indemnify and hold MFG harmless from the expenses, costs, causes of action and damages resulting from or growing out of acts or omissions by him, his sub-agents or employees. The Schedules of Commissions constitute the total commission payable to Agent. Commissions payable to agents will be paid directly by MFG.

## **REFUNDS**

The Agent shall make prompt refund of all commissions paid to Agent or sub-agents on which the COs declines to issue a policy and on any application on which a policy shall be issued by the COs and not accepted by the applicant. The Agent shall also make prompt refund of all commissions to MFG if the COs has to rescind all premiums due to a fraudulent application. If any premiums shall be

refunded by the COs for any reason or cause before or after termination of this Contract, the Agent shall repay to MFG all commissions previously allowed on that premium. MFG reserves the right to offset all commissions accrued or to accrue to the Agent against any refunds due from the Agent or his sub-agents.

### **DELIVERY OF POLICIES**

All policies sent to the Agent shall be delivered promptly to the applicant and whenever delivery of the policy cannot be made within 14 days of being received by the Agent, the Agent will immediately return the policy to MFG with a written report stating the specific reason for non-delivery.

### **SERVICE OF POLICIES**

The Agent shall service all policies that the Agent initially sells. Agent agrees that commissions paid to Agent in accordance with the terms herein constitute full payment for soliciting the application that resulted in the policy being issued and the continued servicing of the policyholder. In the event that the policyholder shall request another agent of record, if the soliciting agent received commission advances from MFG, then first year commissions will continue to be paid to the soliciting agent. All subsequent commissions will be paid to the requested agent of record. Should another Agent of MFG submit additional applications on a policyholder or group policyholder, the original Agent shall continue to be paid commissions on policies which Agent originally sold; however, the original Agent will not be paid commissions on the additional applications which were solicited by another Agent of MFG.

### **AGENT'S FEES AND EXPENSES**

The agent shall be responsible for the payment of all taxes, fees or levies imposed upon him for the purpose of doing business. The Agent shall pay for any and all expenses incurred by him in the performance of this Contract, unless the Company has in writing agreed to do otherwise.

### **INDEBTEDNESS**

MFG shall have a first lien on all commissions payable under this Contract or any monies due the Agent by MFG for any debt owed by the Agent or his sub-agents to MFG or to another person or persons acting for MFG. For purposes of this Contract, indebtedness shall include, but not be limited to, advanced commissions, lead costs, collection fees including attorneys fees, or other cash advances. MFG may at any time offset against all commissions accrued or to accrue to the Agent any debt due from the Agent arising from all transactions under this or any other previous Contract or any amount becoming due from a sub-agent of the Agent. The entire indebtedness of the Agent may be deemed due and payable in full within sixty (60) days of demand by MFG. MFG shall have the right to escrow an Agent's earned commissions to secure the indebtedness of sub-agents for which the Agent is responsible.

### **ASSIGNMENTS**

No assignment of this Contract or any compensation payable hereunder shall be valid and binding on MFG, unless authorized in advance, in writing by the President or Treasurer of MFG. Any assignment so authorized shall be subject to any and all indebtedness of the Agent then existing or thereafter occurring.

### **ALL SUMS PAYABLE**

Any and all sums of money due and to become due MFG from the Agent shall be payable at the MFG office in Charlotte, North Carolina.



## **ACCOUNTING**

MFG will each month, or at reasonable intervals, furnish the Agent with a statement of his account and remittance for any amount due him. The Agent hereby agrees that the ledger accounts of MFG shall be competent and sufficient prima facie evidence of the state of accounts between the parties hereto. Upon receipt of such statement, the Agent shall immediately examine same, and if not satisfied as to the accuracy and correctness of same, shall return said statement and remittance to MFG with full particulars of any discrepancy therein. Failure of the Agent to notify MFG within twenty (20) calendar days from the date he receives such statement and remittance shall be deemed an admission by the Agent of the accuracy and correctness of such statement and remittance.

## **SERVICE CHARGE/ ADMINISTRATIVE FEE**

MFG may charge a monthly service fee of up to 1.25% on any outstanding indebtedness on the Agent's statement of account. MFG may charge a monthly processing fee of up to \$10 to any Agent.

## **AGENT RESPONSIBILITIES UNDER FEDERAL AND STATE TAX LAWS**

The Agent is hereby advised that as an Independent Contractor, the Agent has certain responsibilities under the federal and state (where applicable) tax laws. The Agent must report all commissions to the Internal Revenue Service and appropriate State Department (where applicable) on the appropriate tax form and pay certain taxes due with respect to these amounts. To assist the Agent in complying with these requirements, MFG, after the close of each calendar year, furnishes the Agent with a copy of the Form 1099 that MFG is also required to send to the Internal Revenue Service and, if applicable, appropriate State Department.

## **VIOLATION OF LAWS AND MFG RULES**

The Agent shall not rebate or offer to rebate any premium or premiums on a policy of insurance issued by the COs, or induce any customer of MFG to discontinue the payment of any premiums on any policy, or induce or endeavor to induce any Contracted agent of MFG to discontinue active service, or violate any insurance law, regulation or ruling of any Insurance Commissioner or Department in any State, or violate MFG or COs prescribed rules or regulations. In the event the Agent should do any of the acts aforementioned before or after termination of the Contract, MFG shall have the right, at its discretion, to declare a complete forfeiture of any and all compensation due or to become due under this Contract.

## **TERMINATION WITHOUT CAUSE**

The Agent or MFG may terminate this Contract at any time by giving a ten (10) day written notice to the other of such termination and mail in same to the last known address of the other party. The Contract shall be terminated by the death or permanent disability of the Agent. Disability will be determined by MFG in accordance with current published federal Social Security guidelines.

## **TERMINATION WITH CAUSE**

This Contract will terminate for cause immediately if Agent violates any provision of this Contract, fails to respond in a timely manner to an agent allegation, is adjudicated bankrupt or violates any provision of the association agreement.

## **COMMISSIONS AFTER TERMINATION**

The Agent's right to receive all commissions that may accrue on account of policies issued on applications secured by Agent or his sub-agents, if vested will be payable to the Agent upon termination of this Contract without cause, unless such commissions in any one month amount to

less than \$25.00, in which case no further commissions shall be payable. If there is no surviving spouse or if the spouse dies prior to receiving all commissions payable hereunder, then such commission shall be paid to the Executors or Administrators of the Agent's Estate. If this Contract is terminated with cause, as defined in this Contract, no further commissions or other compensation or allowance will be payable.

### **ERRORS AND OMISSIONS COVERAGE**

The Agent agrees at time of initial contract with MFG to furnish satisfactory evidence of Errors and Omissions coverage to secure the faithful performance of his duties. The Agent is also required to continuously maintain such coverage, and is subject upon demand by MFG to provide proof of this coverage.

### **CLAIMS AND LITIGATION**

The Agent has no authority to institute legal proceedings in the name of MFG or COs, nor shall he institute any legal proceedings in connection with the transaction of business on behalf of MFG unless such actions shall have been approved in advance by MFG. The Agent shall defend any act or alleged act of his own at his own expense, and shall pay to the agency on demand any costs or expenses incurred by MFG should MFG be made a party to, have to answer, or defend any such suit because of the Agent's act or acts. However, MFG may, if not satisfied with the manner in which such defense is conducted, employ counsel to conduct the defense, and any expense thus incurred shall be paid by the Agent unless, in the judgment of MFG, the Agent is in no way at fault or responsible for such suit and MFG agrees in writing to bear the expenses of such litigation.

### **VENUE STATED**

Any suit between MFG and the Agent growing out of any transaction arising from, based on, or in any way connected with this Contract shall be instituted and tried only in Mecklenburg County, North Carolina. All the terms, provisions and conditions of this Contract shall be conducted according to the laws of North Carolina.

### **MODIFICATION**

This Contract cannot be changed by any verbal promise or statement by any of the parties hereto, and no written modification or change shall bind MFG, unless it is signed by the President or Treasurer of MFG and expresses an intention to modify or change this Contract. This Contract supersedes any previous contract(s) with MFG.

### **CONFIDENTIALITY**

The Agent understands and agrees that information including, but not limited to, agent lists, customer lists and trade secrets are proprietary in nature and are owned by MFG. These lists and information are extremely confidential and the Agent is expressly prohibited from disclosing any of the information contained therein to any third party and may only use the lists and information as authorized by MFG. Any disclosure or unauthorized use by the Agent will subject MFG to immediate and irreparable damage and, because such damages would be difficult to calculate, in addition to other rights and remedies available to MFG, MFG shall be entitled to injunctive relief to stop or prohibit such disclosure or unauthorized use from any court of competent jurisdiction. In addition, the Agent will forfeit any and all vesting rights as well as future renewals under this Contract.

### **VESTING**

An agent's commission will be Vested once an agent has been with MFG for a period of \_\_\_\_\_ months. Vesting pertains to all comp including the remainder of first year comp and renewals. All



comp is subject to the \$25 minimum clause mentioned previously in this contract.

### **MFG BUSINESS**

MFG may discontinue or withdraw from the Agent any policy plan and may fix commissions on any policy plan offered by MFG. MFG reserves the right without notice or liability to retire from any state or territory and at its discretion discontinue said policy plans; set minimum production requirements; change commissions; and amend, add, delete or modify any MFG procedure.

### **LEAD PROGRAM**

If the Agent is participating in a MFG lead program, the Agent agrees that such leads may only be used in the sale of products sponsored by MFG, and that these leads may not be sold or given to other agents without the express written consent of an officer of MFG. Any violation of these lead program guidelines may result in the Agent forfeiting all vesting rights and future renewals under this Contract.

### **DEFINITIONS**

Where the words "representative," "person," or the pronouns "he," "him," or "his" are used in the Contract, they are intended to mean the Agent, whether the Agent is an individual, a partnership, or a corporation. Where the word "policy" is used herein, it also means "certificate" of insurance. Where the word "commissions" is used, it means "first year and renewal commissions."

IN WITNESS WHERE OF, this Contract is executed in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (YR), and when approved by an authorized officer of The MESSER Financial Group, INC., shall be effective for all purposes as of the aforesaid date.

Agent's Signature: \_\_\_\_\_

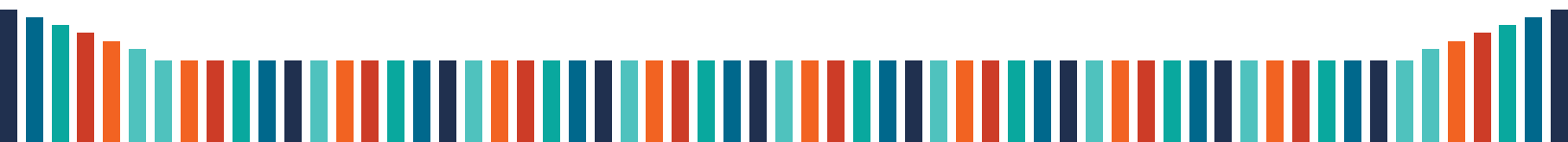
Print Agent's Name: \_\_\_\_\_

MFG Authorized Signature: \_\_\_\_\_

### **Personal Guaranty If Agent Is Not Sole Proprietor**

To induce The MESSER Financial Group, L.L.C. to execute this Contract and in consideration therefore, the undersigned does hereby unconditionally guarantee performance by the legal entity and its Agents under this Contract. The undersigned waives all notices with respect to this Guaranty, including notice of any failure of the legal entity and its Agents to perform its obligations under this Contract or to pay when due any amount due there under. This Guaranty is unconditional and absolute.

Personal Guaranty Signature: \_\_\_\_\_



# Authorization Agreement For Automatic Deposit

I (We) hereby authorize MESSER Financial Group to initiate Automated Clearing House credits and, if necessary, make debits for any entries made to my account in error.

## Agent Information

Agent or Agency Name: \_\_\_\_\_

Social Security Number/Tax ID Number: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Please Indicate Transaction Type:      Set-Up                      Change                      Cancel

Please Indicate Type of Account:      Checking                      Savings

## Financial Information

Bank Name: \_\_\_\_\_

Bank City: \_\_\_\_\_

State: \_\_\_\_\_

Bank Phone Number: \_\_\_\_\_

Bank Account Number: \_\_\_\_\_

Bank Routing Number: \_\_\_\_\_  
(Please provide the 9 digit routing number on your check, not the deposit slip)

This authorization will remain in force until written notification of termination or change is received by MESSER Financial Group in such time and in such manner as to afford MESSER Financial Group opportunity to act on it.

NOTE: Direct deposit set-up requires that the bank account and routing number must be verified for accuracy before any funds are transferred. For this reason, you may receive one or two commission checks that need to be cashed.

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

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

**Please include a copy of a voided check.**

