

## Managing general agency (MGA) contract review checklist TAC Rule Section 19.1204

### Section 1: Name of Entities

Name of insurer:

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Name of agency:

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### Section 2: The following provisions are mandatory unless otherwise specified. If answer is "yes," list the location of provision for each below:

1. Does the contract state that all amendments and changes to the contract must be in writing and specify the effective date?

Yes  No

Location in provision: \_\_\_\_\_

2. Does the contract specify the party that is responsible for carrying out each function?

Yes  No

Location in provision: \_\_\_\_\_

3. (a) Does the contract include a termination provision?

Yes  No

Location in provision: \_\_\_\_\_

- (b) Does the contract define events of default? (optional)

Yes  No

Location in provision: \_\_\_\_\_

- (c) Does the contract specify cures for events of default? (optional)

Yes  No

Location in provision: \_\_\_\_\_

- (d) Does the contract define the rights and obligations of parties during a period of default? (optional)

Yes  No

Location in provision: \_\_\_\_\_

(e) Does the contract state that the insurer may suspend the authority of the MGA during the pendency of any dispute regarding any event of default?

Yes  No

Location in provision: \_\_\_\_\_

4. Does the contract specify the frequency with which the MGA must remit funds due to the insurer? The period of time for the MGA to remit funds to the insurer must not exceed 90 days from the end of the month in which the coverage is issued.

Yes  No

Location in provision: \_\_\_\_\_

5. (a) Does the contract state that, on not less than a monthly basis, the MGA shall submit an account report to the insurer? The report must detail all transactions as set out in the Texas Insurance Code Section 4053.103, and shall include both insurance and reinsurance transactions. The MGA may satisfy this requirement by confirming the insurer's rendering of the account. The account must be received by or confirmed to the insurer not later than 60 days from the close of the month for which business is reported.

Yes  No

Location in provision: \_\_\_\_\_

(b) Does the contract state that the insurer must maintain the account on file for at least three years and must make the account available to the commissioner for review?

Yes  No

Location in provision: \_\_\_\_\_

6. Does the contract specify whether or not the MGA may appoint or terminate the appointment of agents?

Yes  No

Location in provision: \_\_\_\_\_

7. Does the contract state that an MGA:

(a) may not bind reinsurance or retrocessions on behalf of the insurer?

Yes  No

Location in provision: \_\_\_\_\_

(b) may not commit the insurer to participation in insurance or reinsurance syndicates?

Yes  No

Location in provision: \_\_\_\_\_

(c) may not collect a payment from a reinsurer or commit the insurer to a claim settlement with a reinsurer without the prior written approval of the insurer?

Yes  No

Location in provision: \_\_\_\_\_

(d) If prior approval is given, the MGA must promptly forward a report to the insurer?

Yes  No

Location in provision: \_\_\_\_\_

8. Does the contract state that the MGA may not assign the contract directly or indirectly in whole or in part without prior written approval of the insurer?

Yes  No

Location in provision: \_\_\_\_\_

9. Does the contract address the timely transmission of electronic claims files?

Yes  No

Location in provision: \_\_\_\_\_

10. Does the contract include the appropriate authority and limitations under which the MGA is to operate if such authority is granted?

Including the maximum annual premium volume, the basis of the rates to be charged, the lines of insurance which may be written, maximum limits of liability, applicable exclusions, territorial limitations, policy cancellation provisions, the maximum policy period, and control of policy issuance.

In accordance with the authority and limitations, appropriate underwriting guidelines will be developed by the insurer and MGA and incorporated into the contract by reference.

Yes  No

Location in provision: \_\_\_\_\_

11. Does the contract

(a) prohibit the MGA from ceding reinsurance on behalf of the insurer to a company that would not qualify for reinsurance credit under Texas Insurance Code Chapters 492 or 493 and the rules adopted by the Texas Department of Insurance?

Yes  No

Location in provision: \_\_\_\_\_

(b) specify the conditions under which the MGA may place reinsurance? The contract must comply with all provisions of the Texas Insurance Code, including Section 4053.109 and the rules adopted by the Texas Department of Insurance.

Yes  No

Location in provision: \_\_\_\_\_

12. Does the contract provide that the MGA shall not be required to return, as commission or return commission, monies greater than the total commission paid or otherwise payable to the MGA?

Yes  No

Location in provision: \_\_\_\_\_

13. Does the contract provide that, if a provision or separate written contract allows for payment of profit sharing between an insurer and an affiliated MGA before all reported claims are closed, including payment of all losses and loss adjustment expenses, then no payment shall be made before:

(a) one year from the expiration, anniversary, or closing date on which premiums for the period on which profits are to be paid are based for property, inland marine, or auto physical damage; or

Yes  No

Location in provision: \_\_\_\_\_

(b) three years from such date for automobile liability; or

Yes  No

Location in provision: \_\_\_\_\_

(c) five years from such date for liability other than automobile; or

Yes  No

Location in provision: \_\_\_\_\_

(d) two years from such date for any other non-liability lines?

Yes  No

Location in provision: \_\_\_\_\_

14. Does the contract provide that, if the MGA has claim settlement authority including the setting of loss reserves, the insurer must review and verify every open reserve for the period on which profits are to be paid prior to calculation and payment of such profit sharing under No. 13 above?

Yes  No

Location in provision: \_\_\_\_\_

15. Does the contract provide that, if the MGA has claim settlement authority including the setting of loss reserves, the insurer may elect to:

(a) make no payment of the profit sharing under No. 13 above until all reported claims for the period on which profits are to be paid are closed; or

Yes  No

Location in provision: \_\_\_\_\_

(b) pay a portion of the profit sharing on the dates specified in No. 13 above and the remaining portion(s) on future anniversaries of such dates until all reported claims for the period on which profits are to be paid are closed?

Yes  No

Location in provision: \_\_\_\_\_

16. Does the contract state

(a) the records of each insurer must be maintained separately as specified in Texas Insurance Code Section 4053.104, including underwriting files; and

Yes  No

Location in provision: \_\_\_\_\_

(b) the separate records of business for each insurer must be maintained for at least five years or until the completion of a financial examination by the insurance department of the state in which the insurer is domiciled, whichever is longer?

Yes  No

Location in provision: \_\_\_\_\_

17. (a) Does the contract state whether or not the MGA has claims settlement authority?

Yes  No

Location in provision: \_\_\_\_\_

(b) If so, does the contract state the maximum dollar amount of such authority, per claim, which in no event shall exceed 1% of the insurer's policyholder surplus as of December 31 of the last completed calendar year, or \$30,000, whichever is greater?

Yes  No

Location in provision: \_\_\_\_\_

18. If a contract permits the managing general agent to settle claims on behalf of the insurer, does the contract state that the managing general agent must send a copy of a form reporting to the insurer, within 30 days of determination, that:

(a) the claim involves a coverage dispute; and

Yes  No

Location in provision: \_\_\_\_\_

(b) the claim involves a demand in excess of policy limits, or

Yes  No

Location in provision: \_\_\_\_\_

(c) the claim includes allegations of bad faith, violations of the Deceptive Trade Practices Act, or violations of Texas Insurance Code Chapter 541?

Yes  No

Location in provision: \_\_\_\_\_

19. Does the contract specify the frequency with which the insurer shall conduct an examination of the MGAs with which it is doing business in accordance with the following schedule:

(a) If the contract is with an unaffiliated MGA, the contract must specify that the insurer shall conduct a semiannual examination of such unaffiliated MGA if such unaffiliated MGA has done business with the insurer during the previous six months.

Yes  No

Location in provision: \_\_\_\_\_

(b) If the contract is with an affiliated MGA, the contract must specify that the insurer shall conduct an annual examination of such affiliated MGA with which the insurer had done business during the previous year.

Yes  No

Location in provision: \_\_\_\_\_

(c) If the insurer's aggregate premium volume increases by 30% in any 30-day period, the insurer shall cause to be conducted an examination within 90 days of any Texas MGA that writes more than 20% of the insurer's volume and that has experienced an increase of 20% in premium volume during the same 30-day period?

Yes  No

Location in provision: \_\_\_\_\_

20. Does the contract specify that the examination required by No. 19 above must adequately provide the commissioner, at a minimum, with information about claims procedures, timeliness of claims payments, timeliness of premium reporting and collection, compliance with underwriting guidelines, and reconciliation of policy inventory?

Yes  No

Location in provision: \_\_\_\_\_

(b) must be made available to the commissioner for review?

Yes  No

Location in provision: \_\_\_\_\_

(c) must remain on file with the insurer for at least three years?

Yes  No

Location in provision: \_\_\_\_\_

21. Does the contract state that the MGA must notify the insurer in writing within 30 days if there is a change in:

(a) ownership of 10% or more of the outstanding stock of the MGA;

Yes  No

Location in provision: \_\_\_\_\_

(b) any principal officer of the MGA;

Yes  No

Location in provision: \_\_\_\_\_

(c) any director of the MGA?

Yes  No

Location in provision: \_\_\_\_\_

22. Does the contract prohibit an MGA from offsetting balances due under any contract with any offset due under any other contract?

Yes  No

Location in provision: \_\_\_\_\_

23. Does the contract state that the MGA holds all funds of the insurer in a fiduciary capacity?

Yes  No

Location in provision: \_\_\_\_\_

24. Does the contract state that the insurer retains final authority over disputes concerning claims settlement and setting of loss reserves?

Yes  No

Location in provision: \_\_\_\_\_

25. Does the contract provide for a specified settlement due date and timely settlements of amounts owed at least every 90 days in compliance with Statutory Accounting Principles published by the National Association of Insurance Commissioners in the Accounting Practices and Procedures Manual?

Yes  No

Location in provision: \_\_\_\_\_

Types of coverage written:

\_\_\_\_\_  
\_\_\_\_\_

Duties of parties:

\_\_\_\_\_  
\_\_\_\_\_

Additional comments or information:

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\_\_\_\_\_