

## INDEPENDENT PRODUCER AGREEMENT

This Independent Producer Agreement (the “Agreement”) is made effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) by and between Premier Senior Marketing, LLC, a Delaware limited liability company (“PSMI”) and \_\_\_\_\_, an individual residing at [location] or \_\_\_\_\_, a [type of entity] employing such individual (in each case the “Producer”).

### RECITALS

A. PSMI is a Field Marketing Organization and Producer is engaged in the business of selling various insurance products.

B. Producer wishes to have access to the insurance products, support and training offered by PSMI, and PSMI has agreed to provide such access, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements contained herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, PSMI and Producer agree as follows:

### SECTION 1 - DESIGNATION AND AUTHORITY

1.1 Appointment. Producer has been, or is expected to be, appointed by the companies (the “Carriers”) offering the products listed in the attached Commission Schedule (the “Products”) to solicit applications for such Products in those states where both Producer and the Carriers are licensed.

1.2 Authority. This Agreement does not authorize Producer to act as an agent of PSMI. Notwithstanding any other provision of this Agreement to the contrary, Producer is likewise not authorized to:

- (a) issue any Product or alter, amend, waive or extend any rates, conditions or provisions thereof;
- (b) waive or extend the time of payment for any Product;
- (c) waive any breach, violation or misrepresentation on the part of any individual who applies for or purchases a Product (a “Policyholder”), or any rights or remedies of a Carrier or PSMI.
- (d) enter into any contract or incur any expense or obligation of any character involving a Carrier or PSMI except as expressly provided herein;
- (e) represent himself/herself to be, or act or hold himself/herself out as, a spokesperson for a Carrier or PSMI in any proceeding before, or inquiry by, any court or governmental or regulatory authority;

- (f) make any promise or representation to any Policyholder in connection with payment of any claim; or
- (g) do any other act not expressly authorized by this Agreement.

## **SECTION 2 - RESPONSIBILITIES OF PRODUCER**

- 2.1 Appointment of Subcontractors. Producer shall not have the right to appoint subcontractors to sell Products without PSMI's prior written consent. Any subcontractors approved by PSMI must agree to be subject to the same obligations as Producer under this Agreement.
- 2.2 Licensing. Producer represents that he/she is duly licensed to sell Products under the laws of the state or states in which he/she has been appointed by the Carriers to do so, and agrees to keep the license(s) in full force and effect during the term of this Agreement and to notify PSMI in writing immediately of any termination, qualification, suspension or expiration of such license(s). Producer will act strictly in compliance with the laws of the state(s) in which Producer sells Products. Producer shall provide a copy(ies) of its current license(s) to PSMI or to any Carrier upon request. Producer will attend such training as may be required by applicable law or by any Carrier.
- 2.3 Underwriting and Actuarial Standards. Producer shall comply with, and shall take all reasonable steps necessary to comply with, any Carrier's underwriting and actuarial standards, as set forth in writing by such Carrier. Producer may not waive any provisions of a Carrier's underwriting and actuarial standards without such Carrier's express prior written authorization. Producer further shall comply with a Carrier's rules and regulations relating to the preparation of proposals and the completion and submission of applications for products. As a material part of the consideration for the making of this Agreement by PSMI, Producer agrees that he/she shall make no representations whatsoever with respect to the nature or scope of the Products sold, except through and by means of the written material either prepared and furnished to Producer by PSMI for that purpose or approved in writing by PSMI prior to use. Producer agrees to forward any and all questions about any Carrier's underwriting and actuarial standards to PSMI. Producer understands and agrees that each Carrier, at its sole discretion, may change its underwriting and actuarial standards or its rules, regulations, practices and instructions relating to the preparation of proposals and the completion and submission of applications, including the right to limit, restrict or discontinue entirely the acceptance or writing of any Products at any time.
- 2.4 Applications. Producer represents and warrants that he/she shall review each application for a Product to ensure that the facts set forth by each applicant is true and correct. Producer warrants he/she shall not submit any information that the Producer knows or should reasonably know to be false or misleading.
- 2.5 Adverse Effect. Producer shall not conduct his/her business in such a manner as to adversely affect the business, good standing or reputation of PSMI or any Carrier.

- 2.6 Receipt of Funds. Producer shall not withhold any funds due a Carrier. Producer shall hold any and all such payments in a fiduciary capacity and shall hold and transmit such funds in accordance with instructions from PSMI or the Carrier.
- 2.7 Independent Contractor. Producer shall act solely as an independent contractor in relation to PSMI and each Carrier and, as such, shall control in all matters his/her time and effort in the placement of the Products offered hereunder. Nothing herein contained shall be construed to create the relationship of employer/employee or principal/agent or create a partnership or joint venture between Producer and PSMI or any Carrier.
- 2.8 Errors & Omissions Insurance. Producer shall maintain during the entire term of this Agreement, errors and omissions as required by the Carrier(s).
- 2.9 Reporting. When and as reasonably requested by a Carrier or PMSI, Producer will promptly prepare and transmit certain reports to the requestor. Such reports may include, without limitation, reports of information necessary for PMSI or a Carrier to comply with laws, rules or regulations or with the requirements of the Products themselves. Producer will use reasonable efforts to cooperate with PMSI or any Carrier in the event that the latter is audited by federal, state or local governmental authorities.
- 2.10 Compliance. Producer shall comply with all applicable state and federal laws, including without limitation laws relating to confidentiality, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Violent Crime Control And Law Enforcement Act of 1994. Further, Producer shall comply with all applicable current policies and guidelines of PSMI or a Carrier including, without limitation, policies relating to electronic commerce, confidentiality and account reporting.

### **SECTION 3 - COMPENSATION**

- 3.1 Compensation. PSMI shall pay Producer full compensation on business he/she writes under this Agreement in the form of commissions as described in the attached Commission Schedule. PSMI or the Carrier has the right to change the commission rates, terms and conditions of the Commission Schedule at any time by giving Producer written notice. Any such change will apply to policies with initial effective dates on or after the date of change. PSMI will provide Producer with a statement of account and remittance for any amount due, at reasonable intervals. Producer acknowledges that any Product may be modified or discontinued by a Carrier, and the modification or discontinuance of a Product may include, without limitation, the discontinuance of payment of the Commission associated therewith.
- 3.2 Refunds. Producer shall promptly refund to PSMI any commission that was paid to him/her on canceled or rescinded Products, as well as on reductions or refunds in premiums or other payments, at the same rate at which such commission was originally paid to Producer. All such refunds shall be refunded no later than thirty (30) days after request for payment is made by PSMI. In lieu of receiving a refund, PSMI may offset such amounts against sums owing to Producer by PSMI.
- 3.3 Limitations on Payment. Commissions shall be payable as follows:

- (a) Commissions on Products successfully solicited by a Producer shall be payable only for so long as (i) the Policyholder maintains the Product with its Carrier, and (ii) Producer remains the “Producer of Record” for the individual policyholder, as recognized by the Carrier.
  - (b) If this Agreement is terminated without cause, commissions shall continue to be paid subsequent to the date of termination as long as the requirements of section 3.3(a) above are met.
  - (c) If this Agreement is terminated pursuant to Section 8.2(a) hereof, any commission that has been processed through the commission system as of the date of termination shall be paid to the Producer, the executor or administrator of Producer’s estate, or to the assigns of Producer, as applicable. No other commissions are payable to Producer or Producer’s estate.
  - (d) Producer shall not assign, transfer, promise or pay all or any portion of any commissions, or make or promise any payment in respect thereof, to any person who is not a contracted Producer.
- 3.4 Errors. Notwithstanding the terms of Section 5 below, in the event that an error is made in the calculation and/or payment of commissions under this Agreement, regardless of who made the error or the reason for the error, the correction of the error requiring payments to Producer or recovery of payments from Producer shall be made retroactively from the date the error was discovered. This section shall not limit in any way PSMI’s right to collect any indebtedness of Producer to PSMI, through offset of commissions or otherwise, for reasons other than an error in calculations or payments.
- 3.5 PSMI Responsibility. Producer shall bear all expenses necessary to the performance of its duties and obligations pursuant to this Agreement, including, but not limited to, all state, local and municipal fees, taxes or other charges (including occupational and privilege taxes). Producer shall be solely responsible for compensating his/her employees.
- 3.6 Frequency of Payments. PSMI, in its sole discretion, shall determine the frequency of payments under this Agreement.

#### **SECTION 4 - RIGHTS RESERVED TO PSMI**

PSMI or a Carrier, as applicable, may in its sole discretion do the following:

- 4.1 Reject Applications. A Carrier may reject any and all applications submitted by Producer, in a manner consistent with applicable state and federal law.
- 4.2 Cancel or Discontinue Product. A Carrier may cancel or non-renew any Product, consistent with applicable state or federal law, by giving the Policyholder written notice thereof. Any Carrier may change the name or Carrier of a Product or discontinue offering certain Products and/or products at its sole discretion.

- 4.3 Continuation. Upon termination of this Agreement, continue to provide insurance services to any and all Policyholders.
- 4.4 Communication. Communicate directly with any Policyholder whenever it deems necessary or appropriate.
- 4.5 Recognition and Appointment. Refuse to appoint Producer or do business with any subcontractors of Producer, or refuse to recognize a Producer of Record letter for any reason.
- 4.6 Changes. Amend, restate, cancel or otherwise modify, without prior notice to Producer, any or all of its rules, regulations, Products, procedures or guidelines.
- 4.7 Aggregating Business. Determine whether Producer(s) can aggregate their business for any purpose under this Agreement, including, without limitation, cases where a Producer has merged his/her business into another, has formed a general or limited partnership or has entered into a joint venture.

## **SECTION 5 - INDEBTEDNESS; LIEN; OFFSET**

- 5.1 Lien: Offset. Any indebtedness of Producer to PSMI or a Carrier is due and payable on demand and shall create a first lien on all commissions paid or payable to Producer to secure such indebtedness. Any such indebtedness not fully paid when due shall vest the creditor with the authority and power to offset such indebtedness against commissions due Producer, and to seek all legal and equitable remedies against Producer.

## **SECTION 6 - ADVERTISING, PRODUCT FORMS AND SERVICE MARKS**

- 6.1 Materials. PSMI or a Carrier shall supply promotional materials and applications for Products and shall determine all Product forms and rates to be used in connection with performance under this Agreement and Producer agrees to use only those materials, applications, forms and rates. Producer shall not alter, modify or amend any such promotional materials, applications, Product forms or rates. In addition, no circular, advertisement, letterhead, telephone directory advertisement or other matter or material that includes the name of or refers to PSMI or a Carrier or the Marks, as defined below, shall be printed, published or used in any way by Producer unless PSMI has given advance written approval thereof.
- 6.2 Service Marks. Producer understands and agrees that all right, title and interest in and to any service marks, copyright, patent, trademark or other intellectual property rights of PSMI or a Carrier (collectively, the "Marks") are the property of or licensed to PSMI or a Carrier. Producer, his/her subcontractors and employees receive no rights, title or interests in or to the Marks except as expressly set forth herein. Producer shall not (i) use, modify or alter the Marks or (ii) alter, destroy or otherwise remove any proprietary notices or labels containing the Marks in any manner without the prior written consent of PSMI.

## **SECTION 7 - ASSIGNMENT**

No assignment or other transfer of any rights, title or interest in or to this Agreement, or of any benefit accruing under this Agreement (including the assignment of commission), in whole or in part, by Producer shall be valid and any such attempted assignment or transfer shall be void without the prior written consent of PSMI. PSMI reserves the right to cancel any consent to an assignment previously given, upon notice to the assignor and the assignee. PSMI reserves the right to assign its rights, title or interest in this Agreement, or any benefit accruing hereunder, in whole or in part. Any assignee of rights or benefits under this Agreement shall be subject to all of the terms and provisions of this Agreement.

## **SECTION 8 - TERMINATION**

- 8.1 Without Cause. Except as otherwise provided, either party hereto may terminate this Agreement or any business segment under this Agreement without cause by providing fourteen (14) days written notice of termination to the other party.
- 8.2 For Cause. This Agreement may be terminated by PSMI for cause without giving prior notice to Producer for any of the following occurrences:
- (a) If Producer is a natural person, the death or total disability of Producer;
  - (b) Producer's breach of any of the terms of this Agreement;
  - (c) Revocation or suspension of Producer's license(s) by the applicable state department of insurance;
  - (d) Producer's withholding, converting or misappropriating any monies, Products, receipts or property belonging to PSMI, a Carrier, or an applicant for insurance;
  - (e) Producer's commission of a fraudulent, illegal, deceitful or dishonest act as determined by PSMI, including, but not limited to, failing to provide truthful, accurate and relevant medical information obtained with respect to an applicant for insurance;
  - (f) Producer's violation of the laws, regulations or rules of any jurisdiction in which Producer operates, or of any governmental authority exercising jurisdiction over Producer;
  - (g) Producer's violation of any rule, Product, procedure or guideline of PSMI or a Carrier;
  - (h) Producer's commission of any act in the conduct of its insurance business that adversely affects PSMI's or a Carrier's business or reputation, as determined by PSMI in its sole discretion; or
  - (i) Producer intentionally or systematically induces a Policyholder to terminate or cancel a Product or Products.

Any such termination shall be effective as of the date indicated in such notice.

- 8.3 Remedy of Breach. In the event of a breach of this Agreement by PMSI, Producer will give notice of such breach to PMSI, and this Agreement shall terminate thirty (30) days after the date of such notice, unless PMSI has remedied the breach prior to expiration of the thirty (30) day period.
- 8.4 Effect. Termination of this Agreement shall not affect any duties, obligations or liabilities incurred prior to termination, except as otherwise provided in this Agreement. Neither party shall, solely by reason of its rightful termination of this Agreement, be liable to other for any damages of any nature, whether direct, incidental, consequential, punitive or otherwise.
- 8.5 Continued Service by Producer. Upon termination of this Agreement without cause pursuant to Section 8.1, Producer shall, if directed by PSMI, continue to service properly any Products that were issued prior to the effective date of termination in a manner that does not adversely affect the business or reputation of PSMI.
- 8.6 Action Upon Termination. In the event of any termination of this Agreement for cause or without cause, Producer shall, unless otherwise directed by PSMI:
- (a) immediately cease all marketing activities provided for hereunder, including soliciting applications for Products; and
  - (b) within thirty (30) days after termination of this Agreement, transfer to PSMI, at Producer's expense, all property belonging to PSMI and Carrier and all materials, books, accounts, correspondence, and records relating to this Agreement, including, without limitation, sales brochures and other items bearing any of the Marks and any copies thereof.
- 8.7 Survival. The provisions of Sections 2.7, 3.2, 3.3-3.5, 6.2, 8.4-8.7, 13.3 and Articles 5 and 9-12 shall survive the termination of this Agreement, to the extent applicable.

## **SECTION 9 - RECORDS**

- 9.1 Maintenance. Producer shall maintain at its principal office, files and records concerning this Agreement and books and records of all transactions between itself and its subcontractors, PMSI, the Carriers and Policyholders. These books and records shall be maintained in accordance with prudent standards of insurance record keeping.
- 9.2 Retention. Producer shall maintain and may not destroy any and all such books, accounts and records and the same shall be subject to audit and inspection by a Carrier, PMSI or its/their duly authorized representative(s) at all times while this Agreement is in force and for the first three (3) consecutive years after termination of this Agreement.

A Carrier or PMSI may at any time make copies of or take extracts from such books, accounts and records as it may deem necessary.

## **SECTION 10 - INDEMNITY RIGHTS**

- 10.1 Indemnification. Each party agrees to indemnify, defend and hold harmless the other party and its directors, managers, officers and employees, from and against any and all claims, actions, suits and other proceedings, together with all judgments, damages, fines, costs, expenses and other amounts, including reasonable attorneys' fees arising or alleged to have arisen out of or in connection with any negligent, unauthorized, dishonest or fraudulent act, error, omission or statement made in connection with the former party's exercise of its rights or performance of its obligations under this Agreement.

## **SECTION 11 - CONFIDENTIAL AND PROPRIETARY INFORMATION**

- 11.1 Confidential Information. Producer recognizes that in the performance of its obligations under this Agreement, it may be in possession of member protected health information. Producer may be required to enter into one or more Business Associate Agreements that describe the rules and restrictions regarding the use or disclosure of member protected health information.
- 11.2 Proprietary Information. Producer recognizes that in the performance of its obligations under this Agreement, it may be in possession of PSMI's or a Carrier's proprietary information including, but not limited to, trade secrets, financial data, marketing strategy, and provider data ("Proprietary Information"). Producer agrees that Proprietary Information may not be used or disclosed by Producer without the written consent of the owner of the Proprietary Information. Producer recognizes that a confidentiality and indemnification agreement is required to be signed before Producer is provided with Proprietary Information.
- 11.3 Producer Employees. Producer will use its best efforts to ensure that its employees understand the confidential nature of the information described in this Section and abide by the terms set forth regarding protection of such information.

## **SECTION 12 - NOTICES**

All notices required or permitted to be given under the terms of this Agreement shall be in writing and shall be deemed to be delivered if sent by confirmed facsimile, mailed to the other party via first class United States mail, postage prepaid, return receipt requested, or delivered by overnight courier (e.g., UPS or FedEx) at the address or facsimile number indicated in this Agreement or at such other address or facsimile number as that party may have designated in writing. Any such notice shall be deemed to have been given on delivery (which, in the case of delivery by United States mail, shall be on the date noted on the return receipt). Addresses and facsimile numbers are as follows:

PSMI:

Premier Senior Marketing, Inc.  
Thomas A. Schueth  
705 West Benjamin Avenue  
Norfolk, NE 68701  
Fax: (800) 396-8312



Producer:

Producer's address (as currently shown in records of PSMI)

### **SECTION 13 - MISCELLANEOUS**

- 13.1 Entire Agreement; Headings. This Agreement is the entire agreement of the parties with respect to its subject matter and supersedes any and all previous agreements (including previous Commission Schedules) and any and all prior representations and statements of the parties, whether written, oral, or implied. Headings of this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.
- 13.2 Void Provisions. If any provision of this Agreement shall be held void, illegal, or unenforceable, the validity of the remaining portions, shall not be affected thereby.
- 13.3 Governing Law. The laws of the state of Nebraska shall govern the validity, construction, interpretation and effect of this Agreement and any disputes pertaining hereto shall be adjudicated in the federal, state and/or local courts.
- 13.4 Binding. This Agreement shall be binding upon the administrators and executors, successors and permitted assigns of the parties hereto.
- 13.5 Waiver. The failure of any party to enforce or insist upon compliance with any provision of this Agreement shall not be construed as or constitute a waiver of the right to enforce or insist upon compliance with such provision or any other provision hereto; either currently or in the future.
- 13.6 Amendments. No additions, amendments, modifications or waivers of any of the provisions of this Agreement shall be valid unless in writing and signed by a duly authorized officer of PSMI.
- 13.7 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original but which together shall constitute one and the same instrument.

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PAGE FOLLOWS]***

## SIGNATURE SECTIONS

IN WITNESS WHEREOF, the Parties have executed this Independent Producer Agreement as of the day and year first written above.

### PSMI:

PREMIER SENIOR MARKETING, LLC.,  
a Delaware limited liability company

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

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

Title: \_\_\_\_\_

### PRODUCER:

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

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

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

Title: \_\_\_\_\_