



Select Insurance Markets, LLC

A division of ONE80
INTERMEDIARIES

Producer Agreement



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Producer Agreement

This Agreement is effective as of the _____ day of _____, 2020, made by and between
(Day) (Month)

SELECT INSURANCE MARKETS, LLC., having an office located at 20333 State Highway 249, Suite 500, Houston,
TX 77070 (“SIM”) and _____, having an office located at
(Producer Company Name)

_____ (“Producer” and SIM and Producer each a “Party” and
(Producer Company Address)

together the “Parties”).

WHEREAS the Producer desires to place insurance risks through SIM, and SIM desires to consider such business.

NOW, THEREFORE, in consideration thereof and other good and valuable consideration, SIM and Producer agree to be bound by the following terms and conditions:

1. **Legal Relationship.** In the performance of all services and obligations hereunder, it is mutually understood and agreed by the Parties that Producer is at all times acting and performing as an independent contractor. It is further specifically acknowledged and agreed that nothing in this Agreement shall be considered to create more than the mutual duties, responsibilities and benefits specifically set forth herein. This Agreement is not and shall not be considered an employer-employee relationship, joint venture, or partnership of any kind and neither Party shall represent to any third persons that any such relationship exists. Producer shall have no authority to bind, represent or obligate SIM in any manner.
2. **Term.** This Agreement shall become effective as of the date above written, and shall remain in effect until terminated as set forth herein.
3. **Producer’s Authority.** Producer shall have the authority to:
 - a. Solicit applications of insurance.
 - b. Bill and collect premiums on all policies, contracts, binders, riders and endorsements pursuant to this Agreement.
4. **Limitations on Producer’s Authority.** Producer shall have no authority to:
 - a. Incur any liability, indebtedness, or expense on behalf of SIM.
 - b. Bind any insurance coverage.
 - c. Alter, change or agree to alter or change the provisions of any policy sold or serviced under this Agreement, including the amount of premium charged.
 - d. Offer or pay or allow to be offered or paid, any incentive, rebate, commission, benefit, or other inducement to a prospective insured, except as may be expressly permitted by law and in compliance with all applicable state rules, regulations, and guidelines.

5. [Licensing](#). The Producer represents and warrants that the Producer and its employees hold the licenses required to carry out the services contemplated by this Agreement and further agree to comply with applicable laws and regulations relating to its activities as a Producer under this Agreement. The Producer shall promptly inform SIM in writing of any suspension, revocation, surrender or penalty relating to its license or the license of any of its employees providing services under this Agreement. Upon request, the Producer agrees to provide SIM with evidence of such license(s).
6. [Taxpayer Identification](#). The Producer shall provide SIM with a signed, completed copy of a W-9 taxpayer identification. The Producer shall promptly advise SIM of any changes to the W-9.
7. [Sub-Brokered Business Prohibited](#). The Producer shall not solicit, accept or submit any sub-brokered business under this Agreement.
8. [Premiums](#). Producer agrees to remit to SIM the total premium due on or before the inception date of each binder or policy. All other payments are due fifteen (15) days after invoice date unless otherwise agreed to in writing by SIM.
9. [Guarantee of Payment](#). In consideration of SIM accepting business from Producer, Producer guarantees payment to SIM of all fees, applicable state taxes, earned premiums including, but not limited to, deposits, endorsements and adjustable premiums resulting from audits or applicable rating plans on every policy of insurance placed by Producer with SIM. Such payment is due SIM whether or not Producer has collected the premium. Producer understands that SIM, without limitation of its other rights and remedies, reserves the right to cancel any policy for nonpayment of premium. Producer further guarantees that it will be responsible for the return of any premiums due a finance company if funds are directly released to Producer.
10. [Surplus Lines Taxes](#). The responsibility for filing any taxes applicable to a policy shall be determined by the Parties in writing prior to the placement of the coverage.
11. [Producer Responsibilities](#).
 - a. Producer understands that SIM is relying upon the accuracy of information provided by the insured through Producer and submitted to SIM. It is the responsibility of Producer to disclose to SIM the existence of any conditions that it is or reasonably should be aware that may affect the insurability of the insured.
 - b. It is the responsibility of Producer to inform SIM as to the type and amount of insurance coverage to be considered for quotation. SIM assumes no responsibility toward Producer or the insured with regard to the adequacy, amount or form of coverage obtained through any insurance carrier.
 - c. Producer must hold all monies received pursuant to this Agreement in a fiduciary capacity.
12. [Claims](#). Producer will promptly report all claims and/or losses to SIM that it becomes aware. Producer has no authority to assign losses to be adjusted, or negotiate or settle any loss. Producer agrees to cooperate in facilitating the adjustment, settlement or payment of all claims.

13. Producer Compensation.

- a. During the term of this Agreement, SIM agrees to pay commissions to the Producer at the commission rate agreed by SIM and the Producer in connection with each policy placed under this Agreement. SIM shall pay commissions to the Producer within sixty (60) days after the end of the month in which SIM receives and records the premium for each policy.
- b. The Producer agrees that any amounts due the Producer that are held by SIM, including undistributed commissions, may be applied by SIM to offset any balances due SIM from the Producer.
- c. The Producer agrees that any amounts due the Producer that are held by SIM, including undistributed commissions, may be applied by SIM to offset any balances due SIM from the Producer.

14. Cancellation of Policies. No insurance policy placed under this Agreement may be returned to SIM for flat cancellation on or after the effective date of the policy. Earned premium shall be calculated and charged on every insurance policy cancelled after the effective date in accordance with the cancellation provisions therein.

15. Confidentiality. For purposes of this Agreement, “Confidential Information” shall include, but not be limited to, rating information, manuals, product design and specifications, loss event descriptions, business strategies, and any other information disclosed by SIM to the Producer and designated as confidential, proprietary or its equivalent; provided that Confidential Information shall not include information that was known to the Producer prior to disclosure by the insurer or SIM, if the Producer so notifies SIM within five (5) days of such disclosure, or that becomes public knowledge without fault of the Producer. Confidential Information shall also include the confidential and non-public information of the Producer, including, but not limited to, client data, trade secrets and sensitive information about Producer’s customers.

No Party shall disclose the Confidential Information of another Party to any third party or use Confidential Information for any purpose other than as set forth in this Agreement or as may be required by law. The Parties agree to make Confidential Information available only to their employees and contractors who have a need for access and only after such employees and contractors agree in writing to the use and disclosure requirements in this Section 15. Upon termination of this Agreement, all Confidential Information shall be returned to the disclosing Party, except that the receiving Party may retain Confidential Information to the extent necessary to comply with local, state or federal recordkeeping requirements. All obligations of confidentiality shall survive termination of this Agreement for any reason.

16. Injunctive Relief. The Parties acknowledge that the covenants set forth in Section 15 are reasonable and necessary in order to protect and maintain their legitimate business interests, developed by each Party at its substantial costs and expense, and that enforcement hereof will not prevent the other Party from earning a livelihood. The Parties agree that these covenants are narrowly tailored to protect each Party’s legitimate business interests. The Parties further agree that in the event of an actual or threatened breach by a Party of such covenants, the other Party would be irreparably harmed and the full extent of

the injury arising therefrom would be impossible to calculate such that the non-breaching Party would have no adequate remedy at law. Accordingly, the Parties agree that temporary and permanent injunctive relief would be appropriate remedies against such breach, without bond or security; provided, that nothing herein shall be construed as limiting any other legal or equitable remedies the non-breaching Party might have. The provisions of this Section 16 shall survive termination of this Agreement for any reason.

17. [Accounts and Records.](#) Producer shall maintain accurate records concerning all business transacted pursuant to this Agreement. All records, books of accounts and documents of any kind connected to this business shall be open to inspection and audit by SIM at any time upon reasonable advance notice to Producer.
18. [Advertisements.](#) The Producer agrees not to publish or distribute any advertisements, circulars or other materials referring to SIM, or any insurer offered through SIM, without first obtaining the written approval of SIM.
19. [Indemnification.](#) SIM agrees to indemnify and hold harmless Producer, any affiliated company, their officers, directors, employees and agents from and against any and all claims, damages, liabilities, costs or other expenses, including reasonable attorneys' fees, incurred by the Producer arising directly from any acts, omissions or breach of this Agreement by SIM except to the extent that the Producer caused, contributed to, or compounded such errors or omissions. The obligation of SIM to indemnify is conditioned upon prompt notification by the Producer to SIM of any claim made or legal action brought against the Producer that is subject to the indemnification set forth herein.

Producer agrees to indemnify and hold harmless SIM, any affiliated company, their officers, directors, employees and agents from and against any and all claims, damages, liabilities, costs or other expenses, including reasonable attorneys' fees, incurred by SIM arising from any acts, omissions or breach of this Agreement by the Producer except to the extent that SIM caused, contributed to, or compounded such errors or omissions. The obligation of the Producer to indemnify is conditioned upon prompt notification by SIM to Producer of any claim made or legal action brought against SIM that is subject to the indemnification set forth herein.

20. [Ownership/Control of Expirations.](#) Provided the Producer has accounted for and paid over all premiums for which it may be liable, Producer's records and the use and control of expirations shall remain the property of Producer and left to its undisputed possession and control.
21. [Termination.](#) This agreement may be terminated as follows:
 - a. With or without cause by either Party upon thirty (30) days advance written notice.
 - b. Notwithstanding any other provision of this Agreement, immediately upon the occurrence of any of the following: (i) the date the Producer fails to pay over on demand monies belonging to or due to SIM or an insurer; (ii) the date the authority of the Producer to act in accordance with the terms and conditions of this Agreement is terminated or suspended by any state or insurance regulatory body having authority over the Producer; (iii) the date the Producer shall be adjudicated bankrupt or shall make an assignment for the benefit of creditors, or the date a

receiver is appointed for the estate of the Producer; (iv) the date of the dissolution and/or liquidation of the Producer; (v) the date the Producer performs any action of fraud or malfeasance, withholding of funds held in a fiduciary capacity, or makes a misrepresentation regarding the business of SIM or an insurer; (vi) the date of a change in control of the Producer, whether in a single transaction or series of transactions. A change of control shall include but is not limited to (vii) a sale of a majority of the Producer's assets used in the Producer's insurance business, or (y) a sale of all or a majority of the Producer's insurance book of business; or (viii) the date Producer breaches any term of this Agreement.

The termination of this Agreement will not affect the rights of the Parties including, but not limited to, coverage, obligation to pay premiums, commissions payable and return commissions due on the date of termination.

22. Evidence of Insurance. Producer agrees to maintain, at its sole cost and expense, errors and omissions liability insurance coverage with a per-claim limit and an aggregate limit each not less than \$1,000,000, underwritten by an insurer rated not less than A- by A.M. Best Co. Producer further agrees to attach to this Agreement a certificate of insurance evidencing coverage that is acceptable to SIM and to maintain such coverage at all times while this Agreement is in effect. Producer agrees to maintain a current certificate of insurance on file with SIM at all times during the term of this Agreement.
23. Notice. Any and all notices permitted or required to be given hereunder shall be deemed duly given: (1) upon actual receipt if delivery is by hand; or (2) upon receipt by the transmitting Party of confirmation or answer back if delivery is by telex or facsimile; or (3) seventy-two (72) hours after deposit into the United States mail if delivery is by postage paid, registered or certified return receipt requested mail. Each such notice shall be sent to the respective Party at the address indicated for such Party as set forth above or to any other address as the respective Party may designate by notice delivered pursuant to this paragraph.
24. Miscellaneous.
 - ✓ Jurisdiction and Venue. This Agreement and the rights of the Parties hereto shall be governed by, construed, and enforced in accordance with the substantive laws of the state of Texas without reference to the laws of any other state or jurisdiction. The Parties agree that any legal proceeding arising out of or in connection with this Agreement or the rights of the Parties heretomust be commenced and prosecuted to conclusion in the state of Texas.
 - ✓ Entire Agreement. This Agreement represents the entire understanding between the parties with regard to the matters addressed herein and supersedes all other discussions, representations, understandings and agreements between the Parties with respect to said subject matter. The terms and conditions expressed herein shall not be supplemented, modified or amended except in a writing signed by both SIM and Producer.
 - ✓ Attorneys' Fees. If a Party institutes a legal action in any court to enforce the terms of this Agreement, the prevailing Party in such litigation shall, in addition to such other relief as the court may grant, be entitled to a reasonable award of attorneys' fees and costs.



- ✓ Severability. Should any one or more of the provisions of this Agreement be determined to be illegal or unenforceable, all other provisions of the Agreement shall be given effect separately from the provisions of this Agreement so determined and the other provisions shall not be affected by the illegality or unenforceability.
- ✓ Headings. Headings or captions of paragraphs or sections of this Agreement are for convenience of reference only and shall not be considered in the interpretation of this Agreement.
- ✓ Assignment. Neither this Agreement nor any interest therein shall be assignable by Producer without the prior written consent of SIM. SIM may assign this Agreement at any time to any parent, subsidiary, or affiliate of SIM. This Agreement shall inure to the benefit of, and be binding upon, the assigns, successors in interest, personal representatives, heirs, and legatees, of each of the Parties hereto.
- ✓ Signatures. This Agreement may be executed via facsimile or electronically, and the facsimile or electronic signature of any Party of a counterpart hereof shall be considered valid, binding and effective for all purposes.
- ✓ Waiver. No waiver or modification of this agreement shall be effective unless it be in writing and signed by a duly authorized officer of SIM. The failure of SIM to enforce any provision of this agreement shall not constitute a waiver by SIM of any such provision. The past waiver of a provision by SIM or Producer shall not constitute a course of conduct or a waiver in the future of that same provision.

By clicking here, you agree to our One80 Intermediaries [Terms of Use and Agreement](#).

Accept

IN WITNESS THEREOF, the Parties have caused this agreement to be signed as of the date above written.

SELECT INSURANCE MARKETS, LLC

PRODUCER

By

By

Name

Name

Title

Title