

# BROKER AGREEMENT

BETWEEN

**TOWERSTONE, INC.**

*Hereinafter referred to as "Broker"*

AND

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*Hereinafter referred to as "Producer"*

1. **AUTHORITY AND RESPONSIBILITY**

In submitting business to Broker, Producer is Agent for the applicant for insurance and is not acting as an agent, sub-agent or sub-producer for Broker. This Agreement or the relationship between the parties and their officers and employees is not intended and shall not be construed, to create a partnership, joint venture or employment relationship between Broker and Producer. Producer is for all purposes an independent contractor.

Producer shall have no authority to bind any insurer for Broker or act as agent for Broker, or commit to or issue binders, policies, or other written evidence of insurance or make, alter or vary any terms of coverage, or waive or modify terms of payment of any premium or deposit, or incur any liability for Broker. Any custom or usage to the contrary notwithstanding, Broker is under no obligation to give Producer notice of the expiration of any policies of insurance which Producer procures through Broker.

Broker assumes no responsibility to any policyholder, sub-agent, solicitor, or sub-producer, with regard to the adequacy, amount or form of coverage obtained through Broker. Producer agrees to hold Broker harmless from any claims, or causes of action, judgments, fines or penalty, and all costs and fees, asserted against Broker in following Producer's instructions.

Broker shall have the sole right to accept or reject applications for insurance. Producer shall maintain appropriate books, records and papers for business written with Broker and permit Broker to inspect the same at all reasonable times.

2. **ADVERTISING.**

Producer shall not cause any advertisement referring to or using the name of Broker or Insurer, or issue or cause to have issued any letter, circular, pamphlet, or other publication so referring, without the express written consent of Broker. In the event Broker suffers a loss or expense arising out of any unauthorized advertisement, publication or statement of the Producer, the Producer shall be liable for and hereby agrees to indemnify Broker and hold Broker harmless from all resulting damages, penalties and costs.

3. **MARKETING TERMS**

Upon execution of this Agreement, Producer hereby consents to Broker periodically communicating with Producer via faxes and emails for product and service updates and general announcements.

4. **LICENSING AND INSURANCE**

Producer hereby warrants to Broker that Producer is and will hereafter remain properly licensed to transact business as an agent or broker in accordance with the provisions of insurance laws of any state in which Producer shall transact such business. Producer now has and shall maintain insurance agent's Errors and Omission coverage with a minimum policy limit of two million dollars (\$2,000,000.00) while this Agreement is in force and will furnish proof of such coverage when submitting this Agreement, and annually, upon E&O policy renewal.

5. **GUARANTEE OF PAYMENT**

In consideration of Broker's handling such Producer's business as is accepted and for other good and valuable consideration, Producer guarantees the payment to Broker of all premiums including deposit and adjustable premiums (except as noted in Section 6) on policies of insurance placed by Producer through Broker.

Such payment is due and shall be paid to Broker by Producer in accordance with payment terms established from time to time by Broker and is due and payable whether or not Producer has collected the premium. Producer shall be liable and shall pay return commissions at the same rate as originally credited to Producer for all return premium adjustments or cancellations. Producer assumes the credit risk of advancing premiums to Broker before collecting premiums from an insured.

This guarantee shall be performed by Producer upon demand of Broker at any time with respect to any uncollected premium or unpaid return commission then outstanding. Producer acknowledges that Broker, without limitation of other remedies, reserves the right to cancel policies for non-payment of premium to Broker.

6. **UNCOLLECTIBLE ADJUSTABLE PREMIUMS**

Notwithstanding anything to the contrary set forth in this Agreement, in any situation where premium for a policy or policies which have been issued cannot be fully determined in advance and where an adjustment or determination, after a specific time period, by audit or otherwise shall have been made, then the amount of such additional premium due shall be timely paid by the Producer to Broker on or before the due date indicated on the billing invoice. Broker shall extend to Producer the same turnback privileges, if any, as are granted to the Broker by the insurer.

7. **CANCELLATION OF INSURANCE.**

Broker will not recognize flat cancellations unless: (1) written evidence of coverage prior to the inception date of the contract for insurance is provided; and (2) such credit has been given to Broker by Insurer. Earned Premium will be computed and charged on every binder, policy, or contract cancelled after the inception date in accordance with the cancellation provision of the applicable contract and/or rules of the Insurer. If Producer does not make timely payment of any sums due Broker, then Broker may, without limitation of other remedies, initiate with Insurer to cancel the binder, policy or contract for non-payment. If coverage is bound by Broker all additional fees charged by Broker for the entire policy term shall be fully earned upon binding. Producer hereby acknowledges that neither Broker, nor its Insurers, is under duty to reinstate a policy if the policy is cancelled.

8. FINANCED PREMIUMS.

On all premiums which have been financed, Broker will remit payment for any return premium, less earned commission, directly to the Finance Company unless otherwise specified. The ultimate liability of Broker for payment to a Finance Company, Producer, or Insured shall never exceed the amount of return premium less earned commission developed. Financing arrangements do not diminish the responsibility for timely payment of premium by either Producer or Broker. Policy provisions prevail over premium financing contracts to the extent permitted by law. Reinstatement of coverage following notice to cancel by the finance company is subject to the carrier's written agreement to reinstate.

9. CLAIMS

Claims are to be reported in conformance with applicable policy terms. Producer shall notify Broker promptly of any claims, suits or notices of loss (or circumstances which might reasonably be expected to result in a claim, suit or notice of loss) and shall cooperate fully with Broker to facilitate the investigation and adjustment of any claim when and as requested by Broker.

10. FIDUCIARY RESPONSIBILITY OF PRODUCER

Any monies collected by Producer for the account of Broker shall be held by Producer in a fiduciary account in accordance with the laws or regulations of the state of Producer's domicile. Provided Producer is in compliance with all terms of this Agreement, Producer shall be entitled to any interest earned on said monies while so held by Producer.

11. COMPLIANCE WITH STATUTES

The Producer warrants that: it will comply with all applicable laws and regulations governing the conduct of business subject to this Agreement in the jurisdiction(s) involved; and Producer will promptly notify Broker of any suspension, cancellation, or disciplinary action that impairs Producer's ability to conduct business under any license or licenses.

The parties agree that if they issue, underwrite, or reinsure permanent life insurance policies (other than group life insurance policies); or annuity contracts; or any other insurance product with features of cash value or investment, then the party will certify compliance with United States Anti-Money Laundering Programs as outlined in the Patriot Act of 2001 at the request of the other party.

The parties agree that if the Producer becomes aware of any suspicious activity related to business submitted and/or placed with Broker, or any potentially fraudulent activity, they will notify the Broker immediately.

12. INDEMNIFICATION AND HOLD HARMLESS

Each party agrees and shall indemnify and hold harmless the other party, its affiliates, subsidiaries, officers, directors, employees, agents, producers, representatives and assigns (collectively hereinafter referred to as the "Indemnified Parties"), against all liability, including interest, judgments, settlements, attorney's fees and investigation and defense costs, arising in connection with this Agreement or the rights or responsibilities hereunder (other than a dispute between Broker and Producer) and including an action arising as a result of any error or omission of either party. Said liability indemnification and hold harmless shall include all judgments, settlements, interest, reasonable attorney's fees and costs incurred by the Indemnified Parties in defending or investigating any such claims. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY AND EXCEPT AS OTHERWISE PROHIBITED BY APPLICABLE LAW, NEITHER PARTY NOR ITS DIRECT OR INDIRECT SUBSIDIARIES, AFFILIATES, AGENTS, EMPLOYEES, OR REPRESENTATIVES SHALL BE LIABLE TO THE OTHER PARTY FOR ANY DAMAGES DETERMINED BY A COURT OR ARBITRATION PANEL TO HAVE BEEN CAUSED BY THE INDEMNIFIED PARTY'S NEGLIGENCE OR WILLFUL MISCONDUCT.

13. GOVERNING LAWS

This Agreement shall be deemed to have been made in and shall be governed by the laws of the State of the domicile of Broker.

14. TERM AND TERMINATION OF AGREEMENT

This Agreement shall be effective from the date of execution and shall remain in effect unless terminated by either party pursuant the terms set forth hereinbelow. This Agreement may be terminated at any time by either party giving sixty (60) days prior written notice to the other. Further, this Agreement shall terminate automatically without notice if (i) Producer loses its license to engage in the business of insurance, (ii) Producer engages in fraudulent or otherwise illegal activities of any kind involving the business of insurance, or (iii) Producer fails to timely pay Broker any premium when due. After the date of termination of this Agreement, Producer shall complete the collection and accounting to Broker for all premiums, commissions and other transactions unaccounted for on the date of termination or arising thereafter in respect of outstanding insurances, including but not limited to return premium and return commissions. Producer shall, after termination, continue to provide prompt notice and cooperate fully with Broker and the insurer regarding claims as set forth in Section 5 of this Agreement. Producer shall, at the request of Broker or any insurer whose policy is affected, give notice of cancellation or non-renewal of a policy, subject to applicable laws or regulations.

15. WAIVER OR DEFAULT  
Failure of either party to enforce any of the provisions of this Agreement or to terminate it because of a breach hereof, shall not be deemed to be a waiver of such provisions or of any breach committed by the other party. If either party fails to observe, keep or perform any provision of this Agreement and the other party incurs damages, obligations, lost revenue, judgment, or costs and expenses (including reasonable attorneys' fees), the breaching party shall pay promptly, indemnify, save and defend, and hold harmless the other party from all said damages, obligations, judgments and all costs and expenses for claims against or incurred by the other party in enforcing provisions of this Agreement or by reason of any act or omission of the breaching party.
16. MANAGING GENERAL AGENT/SURPLUS LINES BROKER/ALL LINES BROKER  
All collection of premiums from Producer and reporting of net premiums to insurers in respect of the business of Producer shall be done by Broker, a managing general agent and/or surplus lines broker and/or all lines broker.
17. OWNERSHIP OF BUSINESS AND EXPIRATION  
Producer shall own the rights to all insurance business produced by Producer under this Agreement and the use and control of all expirations with respect to such insurance obtained through Broker, and Broker will not knowingly take any action that could reasonably be construed as moving a policy from Producer to another Producer without direction from the policyholder, unless Broker is required to do so by state or federal law. If Broker places an insurance policy with a particular insurance group or company on behalf of the Producer, and that policy or policies is subsequently renewed with that same insurance group or company, Producer agrees to use Broker for such placement for a period of two renewal years or three years from the original effective date of placement, whichever is longer.
18. LATE PAYMENTS  
After 30 days' notice to Producer, Broker may charge interest up to twelve percent (12%) per annum or the maximum lawful rate of interest per annum on any undisputed amount due.
19. COLLECTION OF AMOUNTS  
If a party hereto shall bring suit to enforce collection of any amount claimed due, in addition to the amount owed the prevailing party shall be entitled to receive reasonable attorney's fees, costs of court and interest on the amount owed computed from the date the obligation became owing at the lesser of twelve percent (12%) per annum or the maximum lawful rate of interest per annum that may be incurred by contract in the state where the action is brought. Producer agrees to be subject to any jurisdiction or venue where a collection suit is filed by Broker.
20. ENTIRE AGREEMENT  
This Agreement, together with any addenda or schedules, constitutes the entire agreement between Broker and the Producer and supersedes and replaces any previous agreement between Broker and the Producer. No oral promises or representations shall be binding, nor shall this Agreement be modified, except by agreement in writing and executed on behalf of Broker. This Agreement shall apply to current policies already in force at the date hereof and all future policies which may be placed by Broker for the Producer. Producer shall not assign this Agreement or any commissions payable hereunder.
21. NOTICE  
Notices under this Agreement will be issued when properly sent by electronic mail or facsimile to the electronic mail address or facsimile number provided by the party receiving notice.
22. CONFIDENTIALITY  
The information contained in, relating to or provided in connection with any proposal for any policyholder, customer, potential policyholder or prospect is confidential information and may be used solely for the purpose of proposing, or conducting, a business relationship for that particular policyholder, customer, potential policyholder or prospect.  
Except for the purposes of carrying out this Agreement, a party shall not disclose or use any nonpublic personally identifiable customer or claimant information provided by the other party ("Customer/Claimant Information"). "Nonpublic personally identifiable information" is financial or medical information of or concerning a private person which either has been obtained from sources which are not available to the general public or obtained from the person who is the subject and which information is included in data files exchanged by the parties hereto. For the purposes hereof the terms shall include but not be limited to data elements such as names, addresses, social security numbers, account numbers and authentication information of individuals. Such Customer/Claimant Information shall not be reproduced or shared with any other party except those entities with which the receiving party may from time to time contract in accordance with the fulfillment of the terms of this Agreement and which disclosure shall comply with all state and federal statutes and regulations governing the confidentiality and disclosure of medical records and nonpublic personally identifiable information. Each party shall either have in place or shall promptly adopt and implement appropriate administrative, physical and technical safeguards to avoid improper disclosure or use of Customer/Claimant Information, such safeguards to be in compliance with all applicable federal and state regulatory requirements.  
We do not disclose any nonpublic information about you to non-affiliated third parties, except as permitted by law. The circumstances under which disclosure to non-affiliated third parties is permitted by law include disclosures to insurance companies or insurance intermediaries to obtain any insurance coverage requested by you or to process insurance claims. The circumstances under which disclosure to non-affiliated third parties is permitted by law also include to our auditors, appraisers and legal advisors, in response to a court order, governmental authorities pursuant to legal process, to prevent fraud, and/or disclosures to authorized third party service providers acting on our behalf, that perform marketing and other services for us, such as electronic enrollment service providers, to other financial institutions with which we have joint marketing agreements, such as banks, securities broker-dealers, registered investment advisors, and insurance providers.
23. SURPLUS LINES PLACEMENT AND TAXES

Broker will provide instructions regarding the payment of applicable surplus lines taxes and fees. If Producer is licensed as a Surplus Lines agent, Producer shall also be responsible for full compliance with relevant surplus lines laws of the applicable state including, but not limited to, the filing of all required documents. Further, the Producer shall provide or oversee the inclusion of the appropriate statutory and/or regulatory disclosure statements and/or legends on all such documents in accordance with the surplus lines insurance law of the pertinent state. If Producer is not licensed as a Surplus Lines agent, Producer will remit all applicable Surplus Lines taxes and fees to Broker. Notwithstanding anything herein to the contrary, Producer shall at all times be responsible for assuring compliance with and payment or procurement of payment for all state taxes and fees, if any, in all states.

24. FINANCIAL CONDITION OF INSURERS

Broker is not an insurer and does not guarantee the financial condition of insurers with whom it may place risks. Neither Producer nor Broker shall have liability for non-payment of claims whether due to the insolvency of an insurer or otherwise, under contracts of insurance placed by Broker.

25. PRODUCER COMPENSATION AND DISCLOSURE

Producer shall receive commission on each policy placed under this agreement as mutually agreed between Broker and Producer. Policies eligible to be reported for inclusion under either Broker or Producer's carrier agreement(s) will be submitted to the carrier in accordance with their guidelines. Resulting revenue earned under such carrier agreements will be retained by the Broker or Producer, respectively and will not be included in Producer's commission payable hereunder. Producer agrees to comply with all relevant local, state and/or federal compensation disclosure requirements, however implemented by such governmental body or, in the absence of such legally mandated disclosure requirements, with the requirements of the NAIC Compensation Disclosure Amendment, as adopted from time to time, to the Producer Licensing Model Act with respect to payments made to Producer under any insurer or intermediary agreements.

**NO REBROKERING.** Producer shall not act as an underwriter or rebroker (double broker) for any application or policy underwritten pursuant to this Agreement without the express written consent of Broker.

The parties agree that the obligations contained in paragraphs 5, 12 and 22 shall survive the termination of this Agreement.

EXECUTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
"Producer"\*

By \_\_\_\_\_

Printed Name & Title \_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Telephone Number Facsimile Number

\_\_\_\_\_  
Electronic Address

\_\_\_\_\_  
"Broker"

By \_\_\_\_\_

Printed Name & Title \_\_\_\_\_

\_\_\_\_\_  
Telephone Number Facsimile Number

\_\_\_\_\_  
Electronic Address

\* If Producer is an individual, the individual must sign; if the Producer is a partnership or LLP, one of the partners must sign and indicate the title of such partner; if the Producer is a corporation or LLC, an authorized officer or manager must sign and indicate the title of such authorized officer or manager.