

# PRODUCER AGREEMENT

This agreement made effective \_\_\_\_\_ between \_\_\_\_\_,  
Date MGA  
\_\_\_\_\_, \_\_\_\_\_ (hereinafter referred to as "We", "Our", "Us") and  
City State  
\_\_\_\_\_, \_\_\_\_\_ (hereinafter referred to as "You" or "Your").  
Producer

Wherein it is mutually agreed as follows:

## 1. Representation and Appointment

While You are properly licensed, You are authorized to solicit, procure and transmit to the Managing General Agent (MGA) applications and deposits toward initial premiums for insurance products currently issued by Trustmark Life Insurance Company (Trustmark Life) and administered by Star Marketing and Administration, Inc. (Starmark), subject to Starmark's rules and regulations now or hereafter in force. Each application and deposit towards initial premium shall be submitted to Us immediately following the date the application is signed by the applicant or proposed insured.

## 2. Appointment Fees

Trustmark Life is responsible for any initial appointment fees due to the state(s) in which You will write business. The first completed application must be issued by Starmark within 18 months of the initial appointment. If no new applications taken by You are issued within an 18-month period, Trustmark Life will not continue to pay Your appointment fees, unless otherwise required by law. You will be allowed to remit appropriate fees to renew Your appointment through Trustmark Life otherwise, Your appointment will be canceled.

## 3. Remuneration

In consideration of the services performed in accordance with the terms of this Agreement, the commissions for each year will be the percent of the premium, as set forth in the company's standard Producer Commission Schedule, received and retained by Starmark for coverage sold and issued during the period for which commissions are payable, and during which You are recognized by Starmark as Broker of Record and You comply with applicable laws, insurance department regulations and the regulations of Starmark.

## 4. Broker of Record Changes

If, for any reason, Starmark receives a request to remove You as Broker of Record from any insured, You will have 30 days in which to retain Your status of Broker of Record. The change will take effect on the first of the month following 30 days after receipt of the request. Commissions will be payable to You for the first year the coverage is in force, after which, commissions will be paid to the new Broker of Record.

## 5. General Provisions Relating to Compensation

If legislation requiring minimum loss ratios or maximum expense ratios is enacted in any state, Starmark will comply with the law in a way that may entail reducing commissions. Any reduced commission schedule will apply to all policies and/or certificates, in such states, either as each policy or certificate renews, or as otherwise required to comply with the law.

## 6. This Agreement shall terminate:

- a. Immediately upon receipt of written notice from either party to the other party. Written notice must be delivered personally or sent by first class mail addressed to the other party's last known address;
- b. Immediately in the event of any fraud or refusal or failure by the Producer or its Representatives to comply with applicable laws or regulations or any material term of this Agreement; or
- c. Upon Your death.

## 7. Advertising

Any material, written or broadcast, published by any means, including any form of electronic media, including but not limited to, advertising, descriptive and sales material published or directed to applicants, or other producers shall first be submitted to Us and approved in writing by Starmark. No such material shall be used without Starmark's prior approval.

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## 8. Relationship

You will act as an independent contractor and nothing contained in this Agreement shall create an employer-employee relationship between You and Us or between You and Trustmark Life or Starmark.

## 9. Confidentiality

Starmark, Trustmark Life, the MGA, and You acknowledge that in fulfilling the responsibilities set forth in this Agreement, Starmark, Trustmark Life, the MGA, and You shall exchange confidential and proprietary information concerning the protected health information of Applicants and/or Covered Individuals including but not limited to personal information contained in applications, medical records and/or claim forms. Protected information also includes customer listings and the business and financial information of certificateholders. Starmark, Trustmark Life, the MGA, and You agree not to disclose any such information at any time, except as necessary to employees or agents of the parties or as required by law, rule regulation, or as required by court, administrative agency or other government body. Notwithstanding anything in this agreement to the contrary, it is expressly understood and agreed that no party shall be liable for the disclosure of confidential and proprietary information if it (1) is in the public domain at the time it is disclosed; (2) was known prior to the time of its initial receipt; (3) is disclosed with the other party's prior written approval; and/or (4) is disclosed with prior written approval of certificateholders/insureds. Starmark, Trustmark Life, the MGA, and You also agree that they shall take those actions reasonably necessary to ensure that none of their employees or agents make unauthorized disclosure of such information to any third party or parties. Starmark, Trustmark Life, the MGA, and You agree that this obligation shall survive the termination of this agreement.

## 10. HIPAA Security and Privacy Business Associate/Independent Contractor

Pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and the HIPAA Security and Privacy rule, CFR Parts 160 and 164, (hereinafter the "HIPAA Security and Privacy Rule" or the "Rule"), as well as other applicable federal and state privacy and confidentiality rules, You, as an Independent Contractor, understand that this Agreement executed between You and Us in connection with insurance products insured by Trustmark Life and administered by Starmark, addresses Your obligations under the HIPAA Security and Privacy Rule.

Specifically, this Agreement is intended to ensure that You will establish and implement appropriate safeguards (including certain administrative requirements) for "Protected Health Information" in any form or medium, including electronic, You may create, receive, maintain, transmit, use, or disclose in connection with certain functions, activities, or services (collectively "services") to be provided by You to or on behalf of Trustmark Life and/or Starmark.

In connection with the services to be provided, You may create, receive, maintain, transmit, use or disclose Protected Health Information. Protected Health Information ("PHI"), which is defined in the Rule, includes individually identifiable health information that is created or received by a covered entity (provider, health plan, clearinghouse or insurer), a health authority, employer, school or university, maintained or transmitted in any form or medium, which relates to the past, present, or future (i) physical or mental health or condition of an individual; (ii) provision of healthcare to an individual; or (iii) payment for the provision of healthcare to an individual. PHI does not include summary health information or information that has been de-identified in accordance with the standards for deidentification provided for in the Rule. Electronic Protected Health Information ("ePHI") is PHI transmitted by or maintained in Electronic Media.

In connection with the creation, receipt, maintenance, transmission, use or disclosure of PHI, You must abide by the following:

### General Terms And Conditions

- a. Definitions: All terms used in this Section shall have the meanings set forth in the Rule, unless otherwise defined herein.
- b. Where provision of this Section are different from those mandated by the Rule, but are nonetheless permitted by the Rule, the provisions of the Section shall control.
- c. Nothing express or implied in this Section is intended to confer, nor shall anything herein confer, upon any person other than You and Your respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

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## Use and Disclosure of PHI

- a. Treatment, Payment and Operations: You agree to create, receive, maintain, transmit, use, or disclose PHI only in a manner that is consistent with this Agreement or the Rule and only in connection with providing the services identified in this Agreement and amendments thereto. Accordingly, in providing services You, for example, will be permitted to use and disclose PHI for Treatment, Payment and Healthcare Operations consistent with the Rule, without obtaining authorization.
- b. Other Permissible Uses and Disclosures: As permitted by CFR §164.504(e)(4), You also may use or disclose PHI You receive in Your capacity as an Independent Contractor if:
  - i. the *use* relates to: (1) the proper management and administration of the Independent Contractor to carry out legal responsibilities of the Independent Contractor, or (2) data aggregation services relating to the healthcare operations of Trustmark Life and/or Starmark; or
  - ii. the *disclosure* of PHI received in such capacity may be made in connection with a function, responsibility, or service identified in (i)(1), *and* such disclosure is required by law *or* You obtain reasonable assurances from the person to whom the information is disclosed that it will be held confidential and the person agrees to notify You of any breaches of confidentiality.
- c. Reporting Unlawful Conduct: You may disclose PHI for the purpose of reporting violations of law to appropriate federal or state authorities consistent with CFR §164.502(j)(1).

## Obligations and Activities of the Independent Contractor

- a. Permissible Disclosures: (i) You will not use or disclose PHI other than as permitted or required by this Agreement. (ii) Except as otherwise limited in this Agreement, You may disclose PHI to other Business Associates to perform duties specifically authorized under this Agreement.
- b. Subcontractors: As an Independent Contractor, You are our subcontractor. You agree to be governed by the same restrictions and conditions that apply to all Business Associates under the Rule.
- c. Safeguards: (i) You shall maintain safeguards as necessary to ensure that PHI is not used or disclosed except as provided for by this Agreement. (ii) You will implement administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of ePHI that You create, receive, maintain or transmit as required by the Rule.
- d. Impermissible Use and Disclosure: (i) You shall report to Trustmark Life and/or Starmark any use or disclosure of PHI that is in violation of this Agreement of which You become aware, promptly, but in no event later than 5 business days of its discovery. (ii) You agree to mitigate any harmful effect that is known to You of such impermissible use or disclosure of PHI.
- e. Security Incidents: You will report to Trustmark Life and/or Starmark any security incident of which You become aware, promptly, but in no event later than 5 business days of its discovery.
- f. Accounting of Disclosures: You shall provide Trustmark Life and/or Starmark within 5 business days of receipt of Trustmark Life's and/or Starmark's request, the information necessary to provide an accounting of disclosures of PHI as provided for in CFR §164.528 of the Rule.
- g. Access to PHI: You shall report to Trustmark Life and/or Starmark within 5 business days of receipt of a request from an individual for access to PHI provided for in CFR §164.524 of the Rule. You will not respond to individual requesting Access to PHI without specific authorization of Trustmark Life and/or Starmark.
- h. Amendment of PHI: You shall report to Trustmark Life and/or Starmark within 5 business days of receipt of a request from an individual for amendment to PHI. You shall not alter or amend PHI You receive from an individual or from Trustmark Life and/or Starmark without specific authorization by Trustmark Life and/or Starmark as provided for in CFR §164.526 of the Rule.

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- i. Access to HHS: You shall make available to Trustmark Life and/or Starmark, HHS or its agents Your internal practices, books and records relating to the use and disclosure of PHI as required in CFR §164.504 of the Rule. Trustmark Life and/or Starmark will only exercise the right to request access from You if HHS has demanded access through Trustmark Life and/or Starmark.
- j. Indemnification: You agree to defend, indemnify and hold harmless Trustmark Life and/or Starmark from claim, action or loss arising directly or indirectly from: (i) Your use or disclosure of PHI inconsistent with the provisions of the Use and Disclosure of PHI; (ii) failure to comply with obligations or perform activities required in Obligations and Activities of the Independent Contractor; and (iii) any other breach or failure of obligations imposed by this Agreement, or by the Rule.
- k. Cooperation: You shall cooperate with Us and Trustmark Life and/or Starmark to comply with the Rule as well as other applicable federal and state privacy and confidentiality rules.
- l. We shall provide You with the Notice of Privacy Practices that Trustmark Life and/or Starmark produces in accordance with CFR §164.520, as well as any changes to such notice.

## Obligations of Trustmark Life and/or Starmark

- a. We will provide You with the Notice of Privacy Practices that Trustmark Life and/or Starmark produces in accordance with CFR §164.520, as well as any changes to such notice, if such changes affect Your permitted or required uses and disclosures.
- b. Trustmark Life and/or Starmark will provide You with any changes in, or revocation of, or authorization by individual to use or disclose PHI, if such changes affect Your permitted or required uses and disclosures.
- c. Trustmark Life and/or Starmark shall notify You of any restriction to the use or disclosure of PHI that Trustmark Life and/or Starmark has agreed to in accordance with CFR §164.522, if such restriction affects Your permitted or required uses and disclosures.

## Termination

- a. Termination for Cause. Trustmark Life, Starmark and/or the MGA will provide You 10 business days to cure any material breach of this Agreement. If You do not cure the breach or end the violation within the time specified, Trustmark Life, Starmark and/or the MGA shall have the right to terminate this Agreement for cause and without any penalty.
- b. If termination would cause irreparable business interruption or harm to customers of Trustmark Life and/or Starmark or is otherwise not feasible, parties shall make all efforts reasonable to cure breach or mitigate harm to individuals caused by such breach. If this occurs, Trustmark Life and/or Starmark may report the situation to the Secretary of Health and Human Services.
- c. Return or Destruction of PHI: Upon the termination or expiration of this Agreement, You agree to return the PHI to Trustmark Life, Starmark and/or the MGA, destroy the PHI (and retain no copies), or further protect the PHI if return or destruction is not feasible. Upon mutual agreement, that return or destruction of Protected Health Information is infeasible. You shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as You maintain such Protected Health Information.

## **11. Direct Deposit**

Your commissions will be deposited directly into Your bank account as specified, and You will assume responsibility for any bank service charges. This provision applies unless You have assigned Your commissions to another party.

## **12. Premium Refunds**

Premiums will be refunded to applicants, proposed insureds, certificateholders and policyholders at times in accordance with Starmark's usual business practices and applicable laws and regulations. Amounts equal to commissions paid to You on refunded premiums will, at Starmark's discretion, be either deducted from amounts otherwise payable to You and/or demanded from You and recovered by any other legal means required.

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## 13. Indebtedness

You promise to pay indebtedness incurred to Trustmark Life, Starmark, or Us on demand. Indebtedness means all advances, loans, charge-backs and other customary account charges. As security for payment of indebtedness We shall have a prior lien on any other commissions earned under this Agreement.

## 14. Termination

If in the event Our contract with Trustmark Life or Starmark terminates, and commissions are due from Trustmark Life or Starmark to Us, and commissions are due in the same month to be paid by Us to You under Your Agreement, then Trustmark Life or Starmark may pay directly to You on Our behalf the commissions which are due according to Starmark's records. A copy of the Producer Commission Schedule will be maintained at the Home Office and Our records will be conclusive in the determination of all amounts payable.

## 15. Waiver

The Producer, MGA, Trustmark Life and Starmark agree to indemnify and hold each other harmless from any loss or expense resulting from Your acts or any other persons employed by You. You will be required to maintain Errors and Omissions insurance coverage in relation to Your insurance business activities and provide, upon request, evidence of such coverage.

## 16. Background Check

In compliance with Public Law 91.508, an investigative criminal background report may be obtained providing applicable and relevant material concerning Your character, general reputation, personal characteristics and mode of living. You authorize all persons and entities to release all written and verbal information about yourself, and agree to hold each harmless from all liability and responsibility for doing so. This release, in original or copy form, is valid now and any time in the future, and You have been given a copy. Upon written request, a complete and accurate disclosure of the nature and scope of the investigative criminal background report will be provided.

## 17. Prior Contracts

This Agreement and the Producer Commission Schedule constitutes the entire contract between Us and You. Any contract or agreement between Us and You relating to Starmark's products and dated before the effective date of this Agreement is terminated.

## 18. Compliance with Laws

All parties shall comply with all applicable state and federal laws, regulations and judicial and administrative orders. Further, this agreement will be subject to applicable provisions of US Department of Health & Human Services (HHS) Administrative Simplification Regulations, including Electronic Transactions, Privacy and Security. Specific provisions of this agreement may be renegotiated at a later date to accommodate those regulations.

ACCEPTED

\_\_\_\_\_  
Effective Date

\_\_\_\_\_  
Producer

\_\_\_\_\_  
Managing General Agent

License No.

State