

---

## PRODUCER AGREEMENT

This Producer Agreement ("Agreement") is entered into as of \_\_\_\_\_ by and between Breckenridge IS, Inc., for itself and for the benefit of its affiliates<sup>1</sup> (the "Company") and \_\_\_\_\_ (the "Producer"). The Company and the Producer, collectively are referred to as the Parties, and each individually as a Party. Producer and the Company agree as follows:

### **I. Producer's Representations, Authority and Duties**

- A. Producer is an independent contractor and not an agent or employee of the Company or any insurance company represented by the Company, and nothing in this Agreement shall be construed as creating a partnership or joint venture between the Company or any insurance company represented by the Company, on the one hand, and the Producer, on the other hand.
- B. Producer represents and warrants that it is properly licensed to conduct the activities contemplated under this Agreement, including, but not limited to, being licensed in the applicable state and authorized to sell the insurance products that are the subject of this Agreement. The Producer agrees that at all times during the terms of this Agreement it will (i) maintain all such licenses and (ii) comply with all applicable laws and regulations pertaining to the conduct of business subject to this Agreement. Producer shall immediately notify the Company of any breach of this Agreement by the Producer.
- C. Producer shall provide acceptable evidence of its licensing at any time upon request of the Company. Producer forfeits all commissions and/or fees with respect to any insurance coverages placed if the Producer is not properly licensed at the time the insurance coverage is bound.
- D. Producer may, from time to time, submit proposals on behalf of its customers for the purpose of obtaining quotes for insurance coverage from insurance companies represented by the Company or for other services authorized by the Company. Producer acknowledges and agrees that the Company has the right, in its sole discretion, to decline any insurance proposals submitted by the Producer.
- E. Producer agrees to not submit business on behalf of another producer unless otherwise advance agreed to in writing by the Company.
- F. Producer shall have no authority to accept or bind coverage, issue binders, policies, endorsements, or otherwise modify coverage or send cancellation notices or effect any cancellations on behalf of the Company or any insurance company represented by the Company.
- G. For insurance business placed through the Company under this Agreement, Producer shall:
  - i. Not alter or amend any insurance coverage placed through the Company under this Agreement, unless otherwise approved in advance by the Company in writing;
  - ii. Not make representations or issue certificates of insurance not strictly in accordance with the provisions of the policies and contracts placed under the terms of this Agreement;
  - iii. Be responsible for the accuracy and completeness of insurance proposals and any other information submitted to the Company;
  - iv. Assist in the insured's compliance with loss control recommendations;
  - v. Obtain any information from each insured that may be requested by the Company or by any insurance company represented by the Company;
  - vi. Timely remit premium to the Company;
  - vii. Assist in each insured's compliance with the claims reporting requirements of any insurance policies; and
  - viii. Cooperate fully with the Company with regard to reporting, investigation and adjustment of any claim made against any insurance policy.
- H. Producer shall maintain a staff of competent and trained personnel and such supplies and equipment necessary to develop, produce and supervise all business covered by this Agreement. If, during the term of this Agreement, Producer is substantially unable to service business placed with the Company, whether due to insolvency, bankruptcy, court order, lack of licensure or otherwise, Producer agrees that the Company may, in the Company's sole discretion, directly service such business.

- I. Producer acknowledges that it has no authority to pay, settle, adjust, or compromise any claims made against any insurance policies placed through the Company under this Agreement.

## II. Premium Collection and Remittance

### A. All Insurance Products Other Than Lender Placed Insurance Products

- i. Producer agrees it has a fiduciary responsibility to the Company to secure and safeguard all premium payments, less Producer's commissions, due to the Company, on business placed or bound with the Company by or through Producer.
- ii. Producer shall be solely responsible for the collection of all premiums on business placed or bound with the Company by or through Producer. Producer shall pay to the Company all premiums, whether collectable or not, on business placed or bound with the Company by or through Producer. Producer will also pay for any and all costs of collection, including reasonable attorney's fees, incurred in an effort to collect unpaid premium from Producer, insureds, and/or others responsible for payment of premium.
- iii. Upon reasonable notice by the Company, Producer shall provide prompt access to its books and records to the Company, any applicable insurance company and any duly authorized representative of either, for the purposes of inspection or audit of any records of insurance bound hereunder and matters related thereto and shall permit each to make and retain copies of such books and records related thereto.
- iv. In the event Producer becomes aware of any discrepancy in the accounting between the Company and Producer, Producer shall notify the Company in writing as soon as practicable. Notwithstanding the foregoing, Producer shall immediately pay all undisputed premiums to the Company in accordance with the terms of this Agreement.
- v. Producer shall remit any balance due under this Agreement to the Company no later than twenty (20) days from the effective date of coverage, whether or not a policy has been issued.
- vi. Should premium be billed directly to the insured by any insurance company represented by the Company, Producer shall:
  - a. remit any premium received by Producer to the applicable insurance company;
  - b. cooperate and reasonably assist the Company and insurance company with regard to having the insured directly billed by the insurance company; and in the collection for premium.
- vii. Should premium be billed directly to Producer by any insurance company represented by the Company, Producer shall:
  - a. remit the gross premiums to the applicable insurance company for such policies;
  - b. remit the gross down payment premium if required by the Company or the insurance company; and
  - c. acknowledge and agree that the insurance company shall bill the insured on the Producer's behalf, subject to the insurance company's billing plan (if any) as accepted by all parties before binding.
- viii. In the event the Company receives payment of premiums from or through a finance company in connection with any insurance policy placed under this Agreement, upon cancellation or modification of such policy, the return premium, if any, less earned commission, will be remitted by the Company to the finance company, or the Producer, as required by applicable state laws.
- ix. The Company will send copies of all final audit worksheet statement to the Producer for collection and payment.

### B. Lender Placed Insurance Products

- i. For Lender Placed Insurance Products, Producer agrees to assist in premium collection only when requested by the Company. Producer will cooperate with the Company with regard to premium collection, including but not limited to, timely providing documents and/or information requested by the Company.

- C. All premiums collected or received by Producer in connection with this Agreement, less Producer's commissions, shall, until paid to the Company, be held by Producer as trustee for the Company in a separate fiduciary trust account at a financial institution insured by the Federal Deposit Insurance Corporation. Producer agrees that all such trust funds shall not be used by the Producer for any purpose other than those set forth in this Agreement.

- D. Producer may request to return uncollectible premium audits to the Company within twenty (20) days of Producer's receipt of the final audit worksheet statement from the Company; provided if the Producer has made a diligent effort to collect and

the Company grants such request, Producer shall not be entitled to, and shall forfeit, all rights to any commission on such audits that would normally be due and payable under this Agreement. The Company will not unilaterally deny any request to return an audit if the related insurance provider grants similar rights to the Company and the Producer has requested such return in accordance with the terms of this Section. The Company reserves the right to collect premiums related to any returned audits from the Insured in any manner deemed necessary.

### **III. Commissions**

- A. The Company agrees to pay Producer commissions from collected premium on insurance policies placed with the Company in accordance with a commission schedule to be negotiated between the Company and Producer at the time the insurance is initially placed and when renewed. Producer shall disclose all commission and fees paid to it to applicable insureds if required by law.
- B. In the event of policy cancellation, reduction of premium or for premiums not collected, commissions paid to Producer shall be refunded to the Company by Producer at the same rates at which such commissions were originally earned by Producer.
- C. Commissions are payable in consideration of faithful performance of Producer's duties and obligations as set forth in this Agreement. Any money due Producer may be applied in conjunction with state laws at any time to and as an offset, against any liability or delinquent account of Producer to the Company.
- D. Commissions due from policies billed and collected by insurance providers as outlined above will be paid to Producer by the Company following the close of the month in which the funds are received by the Company.

### **IV. Amendment and Termination of Agreement**

- A. This Agreement may be supplemented, amended, or revised only in writing executed by all Parties.
- B. If Producer has failed to pay when due any account of moneys owed the Company or breached any provision of this Agreement, the Company may by written notice to the Producer suspend, modify or terminate this Agreement; provided that such written notice shall specify when such suspension, modification, or termination becomes effective.
- C. This Agreement shall terminate automatically, without notice, in the event of Producer's bankruptcy, or license to engage in an insurance business is terminated or suspended by any public authority.
- D. Either Party may terminate this Agreement, for any reason or no reason, upon written notice to the other Party mailed or delivered not less than thirty (30) days in advance of the effective termination date.
- E. Upon the termination of this Agreement, Producer shall:
  - i. Continue to pay the Company in a timely fashion all sums due to the Company pursuant to this Agreement until paid in full;
  - ii. Continue to service all business produced by or through Producer in connection with this Agreement in the same manner and to the extent required prior to termination, unless otherwise instructed by the Company; and
  - iii. Provide the Company with continued access to Producer's books and records pertaining to business placed with Company.
- F. Following termination of this Agreement, the Company shall, if requested in writing by Producer, supply Producer, with a list of all policies by expiration date showing the name of the insured as such data appears on the Company's records.
- G. No termination or expiration of this Agreement shall relieve any party for any obligation incurred or breach occurring prior to such termination or expiration. The provisions of Sections I B, Section I H, and Section I I; Section II A, Section II B, Section II C, and Section II D; Section III B, Section III C and Section III D; Section IV E, Section IV F and Section IV G; Section V; Section VI; Section VII, Section VIII, Section IX and Section X shall survive any expiration or termination of this Agreement.

### **V. Ownership of Expirations**

Producer's records and use and control of expirations shall remain Producer's property and be left in Producer's possession; provided, however, upon the termination of this Agreement, if the Producer has not properly accounted for and paid all premiums for which the Producer is liable or has otherwise materially breached this Agreement, Producer's records shall become the property of the Company and the Company shall have sole right to use and control such expirations. The Company may retain all commissions which are payable under insurance policies represented by expirations that have transferred to the Company or renewals thereof.

### **VI. Indemnification**

- A. Producer agrees to indemnify and hold harmless the Company for all loss, damage, and/or other expenses incurred or sustained by the Company as a result of or in connection with any breach by the Producer of this Agreement.
- B. Company agrees to indemnify and hold harmless the Producer for all loss, damage, and/or other expenses incurred or sustained by the Producer as a result of or in connection with any breach by the Company of this Agreement.

- C. Producer acknowledges and recognizes that the Company has the authority to represent certain insurers under definitive agency and/or brokerage agreements and therefore, the Producer agrees that it will only act in the solicitation and placement of coverages written under this Agreement in accordance with specific instructions from the Company. Producer shall indemnify and hold the Company harmless for any costs or damages incurred by the Company, including, but not limited to, defense costs and attorney's fees, in the event the Producer fails to adhere to the specific instructions of the Company which causes the Company to be in breach or violation of any of its agency and/or brokerage contracts.

## **VII. Insurance**

- A. Producer will, at Producer's own expense, procure and maintain in full force and effect policies of insurance of the types and in the minimum amounts as follows, with insurance carriers rated by AM Best B+:VI or better, covering the Producer's operations and obligations under this Agreement:

- ✓ Producers with annual revenue of less than \$1,000,000/Errors & Omissions: \$1,000,000 per occurrence/annual aggregate;
- ✓ Producers with annual revenue of \$1,000,000 to \$20,000,000/Errors & Omissions: \$3,000,000 per occurrence/annual aggregate;
- ✓ Producers with annual revenue exceeding \$20,000,000/Errors & Omissions: \$5,000,000 per occurrence/annual aggregate;
- ✓ Commercial General Liability: \$1,000,000 per occurrence, \$2,000,000 aggregate;
- ✓ Excess Liability/Umbrella: \$1,000,000 per occurrence/annual aggregate;
- ✓ Crime: \$100,000 per occurrence;
- ✓ Technology/Cyber Liability: \$1,000,000 per occurrence/annual aggregate.

The foregoing policies will not have a deductible or retention in excess of \$25,000 or 2% of the coverage limit; whichever is greater. Producer will cause the liability it assumed under this Agreement to be specifically insured under their liability insurance policies. The liability policies will be primary without right of contribution from any insurance of the Company. Producer will provide the Company with certificates of insurance evidencing the above coverage, including all special requirements noted above, and will provide the Company with certificates of insurance evidencing renewal or substitution of such insurance prior to the effective date of such renewal or substitution.

- B. In addition to the above, Producer of Lender Placed Insurance will be required at Producer's own expense, to provide Technology/Cyber Liability insurance, with not less than a \$5,000,000 per occurrence/annual aggregate. The foregoing policy will not have a deductible or retention in excess of \$100,000.

## **VIII. Data Protection**

- A. It is agreed that:

- i. Producer's collection, access, use, storage, and destruction of Company confidential information and data will comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations;
- ii. Producer shall not sell or retain, use, or disclose Company data (which shall include confidential data about Company and its affiliates as well as personally identifiable information relating to Company and Company's affiliates' employees and customers) for any purpose other than for the specific purpose of performing the services pursuant to the Agreement;
- iii. Producer will comply with deletion and access requests submitted by Company and Company's affiliates' employees and customers pursuant to any applicable U.S. consumer privacy law (e.g., the California Consumer Privacy Act); provided, however, that Producer may deny any such request that is subject to an exception under any applicable U.S. consumer privacy law;
- iv. Producer will implement administrative, physical and technical safeguards that are no less rigorous than accepted industry practices and specific state regulations (including, but not limited to: 23 NYCRR 500 - aka: "New York State Cybersecurity Regulation"), and shall ensure that such safeguards comply with applicable data protection and privacy laws and regulations, as well as the terms of this Addendum;
- v. Producer will use effective controls, including protections and techniques commonly known as "Multi-Factor Authentication", to protect against unauthorized access to Producer information systems and Company confidential information and data;
- vi. Producer shall have an information security program designed to identify and assess internal and external information security risks and implement policies and procedures to protect from unauthorized access, use or other malicious acts; and
- vii. Producer shall implement controls, including encryption, to protect Company and client confidential information and data held or transmitted by Producer, both in transit over external networks and at rest.

- viii. Producer will conduct a periodic risk assessment of its information systems sufficient to inform the design of the information security program as required by this Section.
  - ix. Producer shall and require its subcontractors who have access to its confidential and any personal identifying information or data as defined in the Gramm-Leach Bliley Act to engage a reputable firm to conduct one of the following audits on an annual basis: (i) end-to-end SOC 2 or SOC 1 audit, (ii) an audit with ISO/IEC 27001 standards, or (iii) a comprehensive audit of the security, availability, confidentiality, and privacy-related controls of the information processing and management systems (including procedures, personnel, software, data, and infrastructure) used by Producer or subcontractor. Upon Company's request, Producer shall provide a copy of the audit report within thirty (30) days of such request and if such audit report is qualified or reveals any weaknesses or deficiencies, Producer shall promptly correct any weaknesses or deficiencies in accordance with such plan.
- B. Producer agrees to monitor its information systems for acts or attempts to gain unauthorized access to or disrupt or misuse information systems or the information stored thereon (such actions or attempts and any unauthorized release or loss of Company's and client confidential information or data, each is deemed an "Event") and to implement a written incident response plan that complies with applicable federal, state, and local laws and is designed to promptly respond to, and recover from, any such Event. In the case of any Event that directly impacts or could reasonably impact Company's or client confidential information or data or that is otherwise significant, material or requires disclosure under applicable law, Producer agrees to:
- i. Notify Company, by both telephone and email, within forty-eight (48) hours upon becoming aware of such Event;
  - ii. Provide Company with the name and contact information of a senior-level employee who shall serve as primary contact and shall be available to assist Company with the Event; and
  - iii. Provide to Company, in writing, such details concerning the Event as Company may reasonably request;
  - iv. Reasonably cooperate with Company and its affiliates, regulators, and if warranted - law enforcement, to determine the scope of the Event (including, if requested, through forensic analysis) and assist in regaining possession of Company and client confidential information and data and prevent further compromise;
  - v. Take (and document) any necessary remedial actions as may be required to prevent other or further Events.
  - vi. Producer must retain all information relating to any Event as Company may reasonably request and bear all costs associated with any Event including, without limitation, the costs associated with remedial measures (including, without limitation), notice to affected individuals, credit monitoring services, identity restoration services, fraud insurance, the establishment of a call center to respond to inquiries, and any forensic analysis required to determine the scope or remediate the damage of the Event.)

## **IX. Miscellaneous**

- A. This Agreement supersedes any and all previous brokerage and producer agreements, including any amendments thereto, whether oral or written, between the Company and Producer. This Agreement is not exclusive to either party. Producer may conduct business with other persons or entities and the Company may conduct business with other persons or entities, including other brokers or producers.
- B. This Agreement shall not inure to the benefit of any successor in interest of Producer, nor may any interest under this Agreement be, directly or indirectly, assigned, transferred or pledged by Producer, without the prior written consent of the Company, such consent to be withheld by the Company in its sole discretion. Producer shall promptly notify the Company of any direct or indirect material change in the ownership of Producer.
- C. Each Party agrees not to broadcast, publish or disseminate and not cause to be broadcasted, published or disseminated any advertising or promotional material, making reference to or using the name, or service mark of the other Party or any of its affiliates, except with the prior written approval of the other Party.
- D. The Company assumes no responsibility or liability for any rehabilitation proceedings or insolvency proceeding of any insurance carrier or carriers with which the Company may have placed Producer's business. Any such rehabilitation or insolvency proceedings shall not relieve or alter Producer's obligation under this Agreement or under any applicable law.
- E. Any unused forms, applications and other unused Company supplies furnished to Producer shall always remain the Company's property and shall be accounted for and returned by Producer to the Company upon demand.
- F. In the event any word, clause, phrase or provision of this Agreement is held invalid and unenforceable, such a finding shall not affect the validity of the remainder of this Agreement, which shall remain in force. This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.
- G. The failure of the Company to enforce the terms, covenants and provisions of this Agreement shall not be deemed a waiver thereof.

**X. Dispute Resolution**

- A. As a condition precedent to any right of action hereunder, in the event of any dispute or difference of opinion hereafter arising between the Parties with respect to this Agreement or with respect to the Parties respective obligations or performance hereunder, including without limitation disputes or disagreements with respect to the formation of the Agreement, such dispute or difference of opinion shall be submitted to mediation or arbitration through the American Arbitration Association ("AAA").
- B. Arbitrators shall be active or retired disinterested officers of a property and casualty insurance company, reinsurance company or third-party administrator.
- C. Arbitration Hearings will be held in Atlanta, Georgia and governed by Georgia law.
- D. The costs of the arbitration, inclusive of arbitrator fees and costs and expenses of the arbitration process, shall be borne equally by the Parties.
- E. Unless otherwise agreed by the Parties the mediation or arbitration(s) will be governed by AAA's commercial arbitration rules.
- F. Neither Party shall be precluded from (i) seeking injunctive relief from a court having jurisdiction in order to prevent misappropriation of its confidential or proprietary information or other property or (ii) entering a request for judgment in any court of competent jurisdiction in order to enforce the decision of the mediators or arbitrator(s) in accordance with this Section.

**This Agreement, executed in duplicate as of the date shown below, by and between the under-signed Producer, and the Company.**

**WITNESSED**

**For the term of this Agreement, the Company hereby recognizes Producer, subject to the terms and conditions set forth herein, without exclusive territorial rights, and subject to restrictions placed upon the Producer by the laws of the state or states in which the Producer is authorized to write or place insurance. The Company markets insurance programs through various insurance providers. In any transaction or business arising under this Agreement, the Company shall have the legal status of agent for the insurance providers and the Producer shall have the legal status of broker representing the insured.**

Name of Producer Firm	E-mail Address of Executing Representative
Address	
Address	
City	State
Telephone	Zip
Federal Employer Identification Number	\$ Total Annual Revenue Generated

**Signed for the Company:**

**Signed for Producer:**

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

Name: Kirk Stephens, CRCM

Title: Chief Compliance Officer

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

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

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

<sup>1</sup> Inclusive of: Breckenridge Insurance Services, LLC; Overby-Seawell Company (OSC); Breckenridge Insurance Group; BreckComp; International Placement Services, LC; Regional Excess Underwriters, LLC, and Southeastern Underwriters, Inc.