



Market Intermediary Agreement

Name _____

Complete Business Address _____

City _____ Province _____ Postal Code _____

Business Telephone Number _____

Fax Telephone Number _____

To be completed by Head Office

Distributor Code _____ Advisor Code _____

Dealer Code _____ Rep Code _____

Effective Date _____

Market Intermediary Agreement

THIS AGREEMENT is made

BETWEEN:

TRANSAMERICA LIFE CANADA
(hereinafter referred to as "Transamerica")

- and -

(hereinafter referred to as the "Market Intermediary").

WHEREAS the Market Intermediary wishes to act as an agent of the person named below for the purpose of soliciting applications for insurance offered by Transamerica;

AND WHEREAS the consent of Transamerica is necessary for any person to solicit such applications;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of Transamerica providing such consent to the Market Intermediary, the Market Intermediary hereby acknowledges and agrees as follows:

1. ACKNOWLEDGEMENT OF STATUS; LIMITATION OF AUTHORITY

- 1.1 The Market Intermediary hereby acknowledges and agrees that he is an agent of _____(the "Manager"), S.A. No. _____, for the purpose of soliciting applications for insurance then offered by Transamerica, and Transamerica hereby consents to the Market Intermediary soliciting such applications. The Market Intermediary further acknowledges and agrees that, to the extent that the law allows, he is not an agent or broker of Trans-america. The Market Intermediary shall not submit any Transamerica application for insurance to Transamerica directly but, rather, shall submit all such applications to the Manager and to no other person.
- 1.2 The Market Intermediary may solicit such applications only in those jurisdictions in Canada where Transamerica, the Manager and the Market Intermediary are duly licensed by the appropriate regulatory authorities.
- 1.3 The authority of the Market Intermediary is limited to that expressly granted in this Agreement, and without limiting the generality of the foregoing, the Market Intermediary is not authorized to and shall not

- (a) bind or commit Transamerica in any way to any other person or incur any debt liability or other obligation on behalf of Transamerica to any other person,
- (b) accept insurance risks on behalf of Transamerica or determine the insurability of any person,
- (c) supplement, delete from, cancel or otherwise alter, modify or amend any application, policy, rider, endorsement, or other Transamerica document or agreement of any kind, whether prior or subsequent to execution,
- (d) waive any of Transamerica's rights or requirements or waive any forfeiture,
- (e) pay any premium to Transamerica without first being paid the amount thereof by a person entitled at law to make such payment, or extend the time for the payment of, or waive the requirement for payment of, any premium or portion thereof, or quote rates of premium other than those published by Transamerica and then in effect,
- (f) issue, use or allow to be distributed or published, any brochure, advertisement or other matter in any way related to Transamerica or its products without the prior written consent of a duly authorized officer of Transamerica,
- (g) misrepresent the terms and conditions of any insurance policy or product offered by or distributed through Transamerica (including, without limitation, any application therefor) whether through illustration or otherwise, or misrepresent the information contained in any Transamerica information folder, circular or other instrument,
- (h) commence or institute any legal proceedings on behalf of Transamerica, or
- (i) accept or admit service of any legal process or document on behalf of Transamerica.

2. TERM

- 2.1 This Agreement shall take effect on and as of the date of the signature of the last party to sign this Agreement and shall continue in force thereafter until it is terminated pursuant to section 9 hereof.

3. OBLIGATIONS OF THE MARKET INTERMEDIARY

- 3.1 **Compliance with Law:** The Market Intermediary shall at all times comply with
- (a) all laws, statutes, rules and regulations of each jurisdiction to which the Market Intermediary is subject,
 - (b) all rules, regulations, guidelines and other requirements of each regulatory, administrative or governmental authority or self-regulatory body to whose jurisdiction the Market Intermediary is subject or of which the Market Intermediary is a member, and
 - (c) all court orders,
- which are in any way related to or connected with the conduct of the Market Intermediary's business, the solicitation of insurance applications, the giving of financial advice or this Agreement.

3.2 **Compliance with Transamerica's Rules and Regulations:** The Market Intermediary shall at all times comply with all then current rules, regulations and other requirements of Transamerica as may from time to time be communicated to him by or on behalf of Transamerica, to the extent, however, that such rules, regulations and requirements do not conflict with the provisions of this Agreement. Such rules, regulations and other requirements shall be deemed to be incorporated into and form a part of this Agreement.

The Market Intermediary shall at all times comply with Transamerica's Code of Ethical Market Conduct as it may from time to time be communicated to the Market Intermediary by Transamerica. Such Code of Ethical Market Conduct shall be deemed to be incorporated into and form part of this Agreement.

3.3 **Licences:** Without in any way limiting the generality of subsection 3.1 of this Agreement, the Market Intermediary shall apply for and maintain in effect, any and all licences and certificates required by any applicable law and any applicable regulatory, administrative or governmental authority or self-regulatory body to whose jurisdiction the Market Intermediary is subject or of which the Market Intermediary is a member, and to supply Transamerica with a copy of same immediately following receipt thereof by the Market Intermediary.

3.4 **Collection and Remittance of Premiums:** All monies, cheques, electronic transfers and securities received or collected by the Market Intermediary for or on behalf of Transamerica shall be deemed to have been received and shall be held by the Market Intermediary in trust for Transamerica. The Market Intermediary covenants and agrees that such funds shall not be used by the Market Intermediary for any purpose whatsoever, shall be kept completely separate from his own or other funds, and shall be immediately forwarded or paid to Transamerica without any deduction or set-off whatsoever. The Market Intermediary shall upon request of Transamerica, provide Transamerica with a complete accounting of all such funds received by him.

3.5 **Books and Records:** The Market Intermediary shall keep regular, accurate and full records of all transactions relating to Transamerica and of all matters relating to this Agreement, and notwithstanding that this Agreement may have been terminated, all books of account, vouchers, correspondence, documents, files, records, and other information, whether in written or electronic form, in the possession, power or control of the Market Intermediary and relating to Transamerica or this Agreement, shall upon demand of Transamerica, be made available to Transamerica or its authorized representatives at all times during normal business hours for the purpose of examination. Transamerica or its authorized representatives shall have the right to make copies thereof, or require the Market Intermediary to provide such copies at Transamerica's expense, and the Market Intermediary agrees to forthwith comply with such request. The Market Intermediary shall upon request furnish Transamerica and its authorized representatives with such information as they may from time to time request with reference to the said records and information.

- 3.6 **Return of Policies and Applications:** Upon demand by Transamerica or upon the termination of this Agreement, whichever shall first occur, the Market Intermediary shall deliver to Transamerica all undelivered policies, original applications, forms relating to policyholder service, and all other materials in connection with the determination of risk or the settlement of claims, whether in written or electronic form, in the possession, power or control of the Market Intermediary, which policies, applications, forms and other materials the Market Intermediary hereby acknowledges are the exclusive property of Transamerica.
- 3.7 **Return of Marketing and Other Materials:** Upon demand of Transamerica or upon the termination of this Agreement, whichever shall first occur, the Market Intermediary shall deliver to Transamerica all Transamerica marketing materials and all other information and materials of every kind and nature whatsoever, whether in written or electronic form, which were made available at any time to the Market Intermediary and which are in the possession, power or control of the Market Intermediary, which information and materials the Market Intermediary hereby acknowledges are the exclusive property of Transamerica.
- 3.8 **Information About Corporate Market Intermediaries:** The Market Intermediary shall upon execution of this Agreement provide Transamerica with a written statement containing the name of each shareholder or owner of the Market Intermediary and the respective interest of each in the Market Intermediary, and the names of each officer of the Market Intermediary, as the same existed on the effective date of this Agreement. The Market Intermediary further agrees that, in the event of any future change in the shareholders or ownership of the Market Intermediary or in the respective interests of any of them in the Market Intermediary, or in the event of any change in the officers of the Market Intermediary, it shall give written notice thereof to Transamerica prior to the effective date of the change.
- 3.9 **Additional Obligations:** The Market Intermediary shall act honestly and in good faith in his dealings with Transamerica and its policyholders and with the Manager. The Market Intermediary shall not directly or indirectly
- (a) deliver any policy to an applicant or other person unless the first premium has been fully paid and delivery of the policy is made on or prior to the last day specified by Transamerica for the delivery of the relevant policy, and
 - (b) induce or attempt to induce a policyowner to replace such policy except in accordance with the laws, statutes, rules, regulations, guidelines and requirements described in subsections 3.1 and 3.2 hereof.
- 3.10 **Errors and Omissions Insurance:** The Market Intermediary shall, at its own expense, take out and maintain or cause to be taken out and maintained throughout the term of this Agreement, an errors and omissions insurance policy or policies, the purpose of which, among others, is to protect the interest of Transamerica against loss to Transamerica by reason of any negligent act, error or omission by the Market Intermediary, arising out of services of or incidental to the business relating in any way to this Agreement. The limits of liability under such policy shall not be less than

one million (\$1,000,000) dollars Canadian per incident or such other greater minimum limits as may be prescribed by applicable regulation. The Market Intermediary shall, upon written request from Transamerica from time to time, deliver to Transamerica current photostatic copies of such insurance policy or policies and original certificates or other proofs as may be required to establish the Market Intermediary's insurance coverage in effect from time to time and the payment of premiums thereon. The Market Intermediary shall give prompt written notice to Transamerica of any loss, damage, accident, injury or condition, actual or alleged, which may give rise to a claim against any policy of insurance described in this section.

- 3.11 **Advertising and Publicity:** The Market Intermediary shall not carry out any advertising or publicity involving Transamerica and/or its policies and plans without first obtaining Transamerica's written consent. The Market Intermediary shall not use Transamerica letterhead or business cards or other similar Transamerica material.

4. INDEPENDENT CONTRACTOR

- 4.1 The parties hereto acknowledge and agree that the Market Intermediary carries on business independently and for his own account and is an independent contractor and not an employee or partner of Transamerica. Nothing contained herein shall operate or be construed as creating an employer and employee or partnership relationship between Transamerica and the Market Intermediary. The Market Intermediary may exercise his own judgement as to the time and manner in which he may perform the services required to be performed by him under this Agreement.

5. COMPENSATION; DISPUTES

- 5.1 The Market Intermediary acknowledges and agrees that
- (a) Transamerica shall have no obligation whatsoever to pay any commission, bonus or other compensation of any nature whatsoever to the Market Intermediary in connection with this Agreement or the solicitation of any Transamerica applications by the Market Intermediary,
 - (b) his sole recourse for any compensation in connection with the solicitation of Transamerica applications shall be to the Manager, and
 - (c) Transamerica shall in no way be responsible or liable for
 - (i) any compensation dispute which may occur between the Market Intermediary and the Manager arising from the sale, issue or settlement of Transamerica policies, or
 - (ii) the enforcement of any agreement or understanding between the Market Intermediary and the Manager whether or not related to compensation.
- 5.2 Subsection 5.1 hereof shall apply notwithstanding the insolvency, bankruptcy or other circumstance of the Manager.

6. TRANSAMERICA'S OTHER RIGHTS

- 6.1 In addition to all of Transamerica's other rights under this Agreement, Transamerica in its sole discretion may at any time and from time to time do any of the following:
- (a) modify or amend any policy form;
 - (b) fix maximum and minimum limits on the amount for which any policy form may be issued;
 - (c) modify or alter the terms and conditions under which any policy form may be sold or regulate its sale in any way;
 - (d) discontinue or withdraw any product or policy form;
 - (e) cease doing business in any part of Canada.
- 6.2 Transamerica may reject applications for insurance without specifying the reason therefore, or take up and cancel or rescind any policy for any reason and return the premium thereon or any part thereof.

7. INDEMNIFICATION

- 7.1 **Indemnification by the Market Intermediary:** The Market Intermediary hereby irrevocably and unconditionally covenants and agrees, at all times, to indemnify and save harmless Transamerica and its directors, officers, successors and assigns (Transamerica and such other persons being hereinafter sometimes referred to as the "Transamerica Indemnitees"), and each of them, from and against all claims, demands, causes of action, suits, damages, losses, costs, expenses, penalties, obligations and liabilities of every kind and nature whatsoever, which may be made or brought against any of the Transamerica Indemnitees or of which any of the Transamerica Indemnitees may suffer or incur (hereinafter sometimes referred to as a "Transamerica Loss"), based upon, arising out of, attributable to, related to, or in any way connected with
- (a) any breach or non-performance of any covenant or obligation to be performed by the Market Intermediary under this Agreement,
 - (b) any negligence, misconduct, unlawful conduct or non-compliance with this Agreement, or
 - (c) any misrepresentation made by the Market Intermediary to any policyholder, life insured, beneficiary, or to any prospective policyholder, life insured or beneficiary, or to any other person.
- 7.2 Without limiting the generality of Section 7.1 (a), (b) and (c) above if the Market Intermediary fails to remit to Transamerica (i) the premium or other required amount in connection with an insurance product (ii) any cheque in respect of such premium or other amount remitted to Transamerica is subsequently not honoured, or (iii) any instructions provided to Transamerica by the Market Intermediary are incorrect or incomplete or are not transmitted to Transamerica in a timely manner or correct manner, or (iv) any order entry error or other processing error is made by the Market

Intermediary, and if as a result thereof Transamerica or any of its policyholders suffer any loss, costs or damages, or incur any expenses, including without limitation losses resulting from a reversal of any investment made or other transaction taken by Transamerica in the expectation that the premium or other amount would be remitted or cheque would not be dishonoured, as a result of the Transamerica reliance on instructions received by it or from the order or transaction being incorrectly entered or processed or from the failure to process such transactions in a timely manner, then the Market Intermediary shall, indemnify and hold harmless Transamerica from such losses, costs damages or expenses and shall forthwith reimburse Transamerica for the amount thereof upon being advised of the same.

8. LITIGATION

- 8.1 Without the prior written consent of a duly authorized officer of Transamerica, the Market Intermediary shall not commence or threaten to commence any suit or other legal proceedings against any agent, broker or representative of Transamerica, or applicant to or policyholder of Transamerica, or any other third party upon any matter in any way connected with or related to the business of Transamerica. In the event of such suit or other legal proceedings, all costs, expenses and damages shall be borne by the Market Intermediary.
- 8.2 If any suit or other legal proceeding is brought against any of Transamerica, the Market Intermediary or the Manager or any number of them jointly, by reason of any alleged act, fault or failure of the Market Intermediary in connection with his activities hereunder or in connection with any other business of Transamerica, Transamerica may require the Market Intermediary to defend such proceeding. However, at its sole option, Transamerica may defend any such proceeding and expend such sums, including legal and investigative fees, as Transamerica in its sole discretion may deem necessary or advisable. The Market Intermediary shall pay to Transamerica on demand any amount which may be recovered against Transamerica in any such proceeding and any legal fees and other expenses which may have been paid by Transamerica therein, except in those cases in which Transamerica, in its sole judgment, determines that the Market Intermediary has not been at fault and should not be held responsible.

9. TERMINATION

- 9.1 **Termination By Notice:** This Agreement may be immediately terminated with or without cause by either Transamerica or the Market Intermediary upon written notice to the other party. Such rights of termination shall not be restricted by the provisions for termination set forth in subsection 9.2 hereof.
- 9.2 **Automatic Termination:** This Agreement shall automatically terminate upon the occurrence of any one or more of the following events:
- (a) the death of the Market Intermediary, if an individual;

- (b) the institution by or against the Market Intermediary of any formal or informal proceeding for the dissolution or liquidation of, or settlement of claims against or winding up of the affairs of the Market Intermediary, if the Market Intermediary is a corporation or partnership;
- (c) the suspension, revocation, non-renewal or other termination by any governmental or self-regulatory authority of any licence held by the Market Intermediary in respect of the solicitation of insurance policies or the giving of financial advice;
- (d) the expiry of the Market Intermediary's licence required pursuant to the terms of this Agreement;
- (e) the failure to maintain errors and omissions insurance in accordance with the provisions of section 3.10 of this Agreement
- (f) the Market Intermediary ceasing for any reason to conduct business;
- (g) the bankruptcy or insolvency of the Market Intermediary; the filing against the Market Intermediary of a petition in bankruptcy; the making of an authorized assignment for the benefit of creditors of the Market Intermediary; the appointment of a receiver or trustee for the Market Intermediary or for any assets of the Market Intermediary or the institution by or against the Market Intermediary of any other type of insolvency proceeding under the Bankruptcy and Insolvency Act or otherwise;
- (h) the termination for any reason of Transamerica's agreement with the Manager.

10. NOTICES

10.1 Any notice, demand or other communication required or permitted to be given hereunder shall be in writing and may be given by serving, delivering, or sending same by facsimile or registered mail in Canada, postage prepaid, and such notice, demand or other communication shall be sufficiently given to Transamerica if addressed to it at its then current national head office. Such notice, demand or other communication shall be sufficiently given to the Market Intermediary if given as aforesaid, addressed to him at his last known address according to the records of Transamerica.

Any such notice, demand or other communication sent by facsimile shall be deemed to have been received by the addressee when the transmission is complete. Any such notice, demand or other communication sent by registered mail shall be deemed to have been received by the addressee on the fourth (4th) calendar day following the day on which such notice, demand or other communication was mailed, except that notices given by Transamerica pursuant to subsection 9.1 hereof shall be deemed to have been received on the date communication is deposited in the mail. Any such notice, demand or other communication served or delivered on the addressee shall be deemed to be received when actually served or delivered. During any actual or threatened postal dispute, registered mail shall not be used to convey any notices, demands or other communications.

11. GENERAL

- 11.1 **Entire Agreement:** With respect to its subject matter, this Agreement contains the entire understanding of the parties and supersedes and replaces all prior agreements, promises, proposals, representations, understandings, and negotiations, whether written or oral, between the parties respecting the subject matter hereof provided, however, that all amounts, obligations and any other liabilities owing or incurred by the Market Intermediary to Transamerica pursuant to such prior agreements shall continue to be owing by the Market Intermediary to Transamerica.
- 11.2 **Modifications, Amendments, Waivers:** Save and except in the case of subsection 3.2 hereof where no such formality will be required, no modification, amendment, alteration, supplement to or waiver of this Agreement or any of its provisions shall be binding upon Transamerica unless it is made in writing, is duly signed by Transamerica, and expresses by its terms an intention to change this Agreement. Any such waiver shall apply only with respect to the specific instance involved and shall in no way impair the rights, remedies or powers of the party granting the waiver or the obligations of the other party in any other respect or at any other time. Any failure or delay of either party to this Agreement to enforce at any time any of the provisions of this Agreement, or to exercise any option which may herein be provided, or to require at any time performance of the provisions hereof, or to exercise any right, remedy or power accruing to such party upon any breach or default of the other, shall in no way operate or be construed (a) to be a waiver of such provisions of this Agreement, (b) to impair such right, remedy or power, or (c) to be a waiver of such breach or default.
- 11.3 **Interpretation:** In this Agreement, "hereto," "herein," "hereby," "hereunder," "hereof," and similar expressions refer to this Agreement and not to any particular article, section, subsection, paragraph, subparagraph, clause, subclause or any other portion of this Agreement. If any provision or provisions of this Agreement are held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby. Captions and section headings are not to be considered part of this Agreement and are included solely for convenience of reference and are not intended to be full or accurate descriptions of the contents thereof. Unless the context otherwise requires, words importing the singular number include the plural and vice versa and words importing gender include the masculine, feminine and neuter genders. The recitals hereto are deemed to form a part of this Agreement.
- 11.4 **Governing Law and Attornment:** This Agreement shall be deemed to have been made in and shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and the parties hereto irrevocably attorn to the jurisdiction of the courts of such province.

- 11.5 **Survival:** The provisions of sections 5 and 7, subsections 3.4, 3.5, 3.6, 3.07, 3.10 and 3.11 and clause 3.09(b) hereof and all provisions of this Agreement necessary to give effect to these, shall survive the termination of this Agreement and shall continue in full force and effect thereafter.
- 11.6 **Rights and Remedies Cumulative:** Each and every right and remedy that Transamerica may have under this Agreement shall be cumulative and shall be in addition to, and not in substitution for, any other right or remedy specifically granted in this Agreement or now or hereafter existing in equity, at law, by virtue of statute, or otherwise and every such right and remedy may be exercised by Transamerica from time to time concurrently or independently and as often and in such order as Transamerica may deem expedient.
- 11.7 **Language:** L'intermédiaire de marché a demandé que la présente entente et tous les documents qui s'y rapportent soient rédigés en langue anglaise. The Market Intermediary has requested that this Agreement and all related documents be drawn up in the English language.
- 11.8 **Assignment:** The Market Intermediary shall neither sell, assign, convey or transfer, by operation of law or otherwise this Agreement or, any of its rights or obligations hereunder. Any such attempted sale, assignment, conveyance or transfer by the Market Intermediary shall be void and of no force or effect, and shall vest no rights in the assignee or transferee. This limitation shall apply to absolute assignments and assignments as collateral security. Trans-america may assign this Agreement or any of its rights and obligations hereunder to any party upon notice to the Market Intermediary.
- 11.9 **Enurement:** This Agreement shall enure to the benefit of and be binding upon the parties hereto and the successors and assigns of Transamerica.

IN WITNESS WHEREOF Transamerica Life Canada has executed this Agreement as of the

_____ day of _____, _____.

Transamerica Life Canada

By: _____

Title: _____

IN WITNESS WHEREOF the Market Intermediary has executed this Agreement as of the

_____ day of _____, _____.

(Signature of Market Intermediary)

By: _____

Title: _____

To be completed by Market Intermediary:

Name: _____

Address: _____

Social Insurance No.: _____

Date of Birth: _____



Member of the **AEGON** Group

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Toronto, Ontario M2N 7J8

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