

**TMPAA Best Practice Designation
Confidentiality/Waiver Agreement**

Dear TMPAA Member Applicant:

In connection with (AGENCY NAME) pursuit of Target Market's Best Practice Designation we have arranged for our Independent Consultant, acting as an agent of Target Markets, to review the operations of (AGENCY NAME). An onsite review will be scheduled at your convenience. We appreciate the confidential and proprietary nature of (AGENCY NAME) operations. Accordingly, (AGENCY NAME), Target Markets agrees that:

- 1) (AGENCY NAME) seeks Target Market's Best Practice Designation.
- 2) (agency name) decision to seek Target Market's Best Practice Designation is voluntary.
- 2) (AGENCY NAME) will permit TMPAA Consultant, to visit (AGENCY NAME) and review (AGENCY NAME)
 - a) files (electronic and otherwise);
 - b) documents;
 - c) underwriting and claims procedures;
 - d) risk management procedures;
 - e) Organization Charts – including service years and experience;
 - f) Management Bios;
 - g) Procedural and Workflow Manuals – Underwriting;
 - h) Systems Feature Summary;
 - i) Samples of System Generated management Control Reports;
 - j) Operational Audit Reports to Management;
 - k) Limits of Authority – Underwriting and Rating Guidelines;
 - l) Insurer Audit Reports;
 - m) Human Resource Manuals;
 - n) Hiring, Appraisal, and Termination Procedures; and,
 - o) Procedural and Workflow Manuals- Claims.
- 3) (AGENCY NAME) will also permit TMPAA Consultant, to meet with (agency name) employees, agents and/or officers to interview and discuss those items addressed in paragraph 2 above. The activities outlined in paragraph 2 and 3 shall constitute the Review.
- 4) Upon completion of the Review, TMPAA Consultant will prepare a report of its findings with a recommendation ("Report").
- 5) The decision to confer a Best Practices Designation lies solely with the Best Practice Committee of Target Markets.
- 6) The Report will only be released to the Best Practice Committee:
 - a) with the consent of (AGENCY NAME)
- 7) The Report will be considered by the Best Practice Committee in making its determination to confer a Best Practice Designation to (AGENCY NAME)
- 8) For the purposes of this Agreement, unless otherwise specified, Target Markets shall mean and include Target Markets, its board members, officers, directors, employees, agents and all committees including but not limited to the Best Practice Committee.
- 9) **Confidential Materials.** For purposes of this Agreement, Confidential Materials shall include, but not be limited to, those items, information and things disclosed or discovered during the Review and the Report.
- 10) **No Waiver of Confidentiality or Privilege.** Except as otherwise provided herein, (AGENCY NAME) and Target Markets understand and intend that the sharing or disclosure of Confidential Materials by any party will not diminish in any way the confidentiality of such materials, or the confidentiality of any knowledge gained from Confidential Materials, and will not constitute a waiver of any applicable privilege that might for any reason be asserted against any third party.

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- 11) (AGENCY NAME) and Target Markets agree that, except as provided below, no party will disclose Confidential Materials received from the other Party, or knowledge therefrom gained, to any third party. To the extent that any documents or information disclosed pursuant to this Agreement are privileged under the attorney-client, work product or any other applicable privilege prior to disclosure, (AGENCY NAME) and Target Markets expressly intend that the transfer of such documents or other information in accordance with this Agreement shall not constitute a specific or subject matter waiver of any privilege with respect to any document or information.
- 12) **No Voluntary Disclosure of Confidential Materials.** Except as otherwise provided herein, unless compelled to do so by order of a court of competent jurisdiction, (AGENCY NAME) and Target Markets further agree that no party shall disclose the existence, content or substance of any Confidential Materials, or any knowledge gained therefrom to any other party or entity not a Party to this Agreement. Furthermore, except as otherwise provided herein, no Party who learns about any Confidential Materials pursuant to any disclosure made under this Agreement shall testify to or disclose any knowledge gained therefrom, unless compelled to do so by order of a court of competent jurisdiction. Any disclosure made pursuant to court order is subject to the disclosure obligations and limitations set forth in Paragraph 14 below.
- 13) All Confidential Materials that have been or will be provided to Target Markets by (AGENCY NAME) pursuant to this Agreement, and any knowledge gained therefrom which has been provided to Target Markets by (AGENCY NAME) pursuant to this Agreement, shall be used solely by the Target Market Board in making its determination to confer a Best Practice Designation. All materials provided by (AGENCY NAME) will be returned to (AGENCY NAME) within 48 hours of the visit.
- 14) **Requests for Disclosure by Third Parties.** If any other person or entity not a Party to this Agreement requests or demands, by subpoena or otherwise, any Confidential Materials obtained pursuant to this Agreement, any knowledge gained therefrom, including any documents reflecting such knowledge, any work product materials, including but not limited to, all notes, memoranda, reports, lists, letters, computer disks, written records, correspondence, computer files, computer records (including any and all records of back-up or deleted files), electronic mail, or any other electronic correspondence generated from, concerning or in any way referring or relating to any Confidential Materials provided pursuant to this Agreement, or requests or demands the testimony of Target Markets, regarding knowledge gained from any Confidential Materials, then Target Markets shall immediately provide written notification to (AGENCY NAME), advising of such request or demand, and shall immediately inform the person or entity seeking such materials that the requested materials are privileged and/or confidential and may not be disclosed without the express written consent of (AGENCY NAME). Thereafter, the parties agree to take all reasonable steps to cooperate with (AGENCY NAME) to protect the Confidential Materials and knowledge gained there from public disclosure or inspection
- 15) **Confidentiality.** It is the intent of (AGENCY NAME) and Target Markets that the existence of this Agreement shall be confidential, privileged from discovery and inadmissible as evidence in any legal or administrative proceedings brought against any of the Parties hereto, or their representatives by any third party, and that the existence of this Agreement, as well as its contents, shall not be disclosed except as specifically provided for in this Agreement.
- 16) **Materials Independently Obtained.** Nothing contained in this Agreement limits the right of Target Markets to disclose any documents or information that has been obtained by it independent of disclosures to it by (AGENCY NAME)
- 17) **Best Practices Committee Notes and Minutes.** – The notes, minutes, thoughts, impressions and discussions of the Best Practice Committee (“BPC Materials”) shall be the treated as Confidential Materials except (AGENCY NAME) agrees that it shall have no access nor right to review, view or discover the BPC Materials. To the extent that (AGENCY NAME) might have a right to review, view or discover the BPC Materials, (AGENCY NAME) specifically waives such right.

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- 18) **No Release.** Except as specifically provided herein, nothing in this Agreement shall waive, release or otherwise affect, in any way, any other right, claim, defense, interest, or cause of action that either Party may have with respect to the other or with respect to any other person or entity.
- 19) **No Third Party Beneficiaries.** This Agreement is not intended for the benefit of any person or entity not a party hereto and shall not be enforceable by any such third party.
- 20) **Modification of Agreement.** The terms of this Agreement may be modified or waived only by a separate writing, expressly referencing this Agreement, and signed by the Parties.
- 21) **Notice.** Any statements, communications or notices to be provided pursuant to this Agreement shall be effective only if they are in writing and sent via certified or registered mail, postage prepaid to the attention of the persons indicated below, until such time as notice of any change of person to be noticed or change of address is forwarded to all parties.
- 22) **Indemnification.** Other than that which might arise out of a breach of this Agreement, (AGENCY NAME) hereby agrees to defend, indemnify and hold harmless Target Markets, its consultants and its heirs, successors and assigns, and each of them, from and against any and all claims, actions and suits, whether groundless or otherwise, and from and against any and all liabilities, judgments, losses, damages, costs, charges, attorney's fees, and other expenses of every nature, kind and character incurred or suffered by (AGENCY NAME) in connection with the Review and Report.
- 23) **No Extra-Contractual Obligations.** THIS AGREEMENT DOES NOT ESTABLISH ANY OBLIGATION INDEPENDENT OF THE SPECIFIC TERMS OF THIS LETTER. NO PROMISES, IMPLIED OR OTHERWISE ARE MADE THAT A BEST PRACTICES DESIGNATION WILL BE CONFERED UPON (AGENCY NAME). (AGENCY NAME) SPECIFICALLY ACKNOWLEDGES THAT THE DECISION TO CONFER A BEST PRACTICES DESIGNATION IS SOLELY MADE BY TARGET MARKETS, TAKING INTO CONSIDERATION THE REPORT. TO THE EXTENT THAT (AGENCY NAME) MIGHT HAVE RIGHT TO MAKE A CLAIM AGAINST TARGET MARKETS IN CONNECTION WITH A DECISION TO CONFER OR NOT CONFER A BEST PRACTICES DESIGNATION, SUCH RIGHT IS SPECIFICALLY AND UNCONDITIONALLY WAIVED.
- 24) **Consideration** – It is hereby agreed by and between the parties that real and good consideration has been provided in connection with this agreement.
- 25) **Binding Effect.** This Agreement, and all of its obligations, shall be binding upon, and inure solely to, the benefit of the Parties, their representatives, employees, agents, subsidiaries, executors, trustees and assigns. No assignment or delegation of the obligations hereunder will release the assigning party from any of the obligations under this Agreement.
- 26) **Severability.** If any provision of this Agreement is found invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

I have read this Agreement and agree to it
this ____ day of _____, 2012.

(AGENCY NAME)

I have read this Agreement and agree to it
this ____ day of _____, 2012.

Target Markets