OFFICE OF THE GENERAL COUNSEL

Donegal Insurance Group
Agency Agreement 2018-08 (2018 08 27 [DIG/MD] Edition)

Reviewed October 2018

This contract review includes only general information and comments, and is not intended to provide specific advice about individual legal, business or other questions. It was prepared solely for use as a guide, is not a substitute for Producers' independent evaluation of any provision in a contract, and is not a recommendation that the contract be signed or rejected. If specific legal or other expert advice is required or desired, the services of an appropriate, competent professional, such as an attorney, should be sought.

PLEASE BE ADVISED THAT THIS REVIEW FOCUSES ON ISSUES RELATING TO THE INSURANCE INDUSTRY, AND NOT GENERAL CONTRACT ISSUES.

KEY CONCERNS

- The Agency is only entitled to expiration information on direct billed business on termination of the Agreement, and then only if the Company determines the Agency is entitled to the use and control of its expirations.
- The Agency will lose its expirations if it is in default of the Agreement, including being in default for things unrelated to the payment of money due under the Agreement.
- The Agency is banned from competing with the Company or its "affiliates, agents or assignees" on expirations that the Company has acquired from the Agency.
- The definition of Company "Protected Business Information" and Company "Confidential Information" includes "customer lists" and "policyholder information", both of which should belong to the Agency.
- The Agency's expirations are not identified as Agency confidential information to be protected by the Company from improper Company use or transmission.
- The Company may be able to withdraw authority from the Agency with no notice required to be given to the Agency.
- The Agency must agree not to "make or publish any derogatory statements" about the Company, which could be interpreted to include things like defending itself in a lawsuit or moving customers to policies with other carriers whose insurance policies better meet the customers' needs.
- The commission schedule terminates with the Agreement in one Section, which directly conflicts with the reference in another Section to the commission schedule applying to the Runoff Period.
- The Company will not pay commission if the Agency exclusively represents one insurer, fails to pay money due after a written demand, or is in default of the Agreement.

- The Agency is required to comply with specific privacy policies of the Company.
- The Runoff Period is "for a specific period of time" that is not defined in any way.
- The Agreement can be amended by agreement, but that agreement is not required to be in writing and to be signed by the Agency and the Company.

REVIEW OF PROVISIONS

1. APPOINTMENT AND AUTHORITY OF AGENCY.

1.1. **Appointment and Authorization.** The Company reserves the right to modify or limit the Agency's authority under the Agreement "immediately upon written notice" to the Agency. This means that the Agency's authority could be modified or limited to nothing, effectively terminating the Agency's ability to write any business with the Company, without the Company having to comply with the requirements in Section 12. TERMINATION., including the 90-day advance notice to terminate. If the Agency is concerned about this issue, the Agency can request that the Agreement be modified to require at least 90 days' advance written notice of any reduction in authority. (See comments to Section 1.3.)

1.2. **Subject to Restrictions and Limitations.** The Agency's authority is limited by Company "guidelines, rules, manuals, procedures and/or specific instructions" it can amend at any time and "such other directions or restrictions" it establishes. The Agreement does not specify that the Agency will be provided with any of this information before being expected to comply with it. If the Agency is concerned about this issue, the Agency can request that the Agreement be modified to require that all such materials be provided to the Agency before the Agency is expected to comply with them. (See comments to Sections 2.6., 2.10., 7.1, and 8.6.)

1.3. **Declination and Cancellation of Risks.** The Company reserves the right to withdraw authority from the Agency, but there is no requirement for the Agency to be given notice by the Company if it takes such action. This would appear to be in the context of binding authority, given the ability of the Company to modify or limit the Agency's authority under Section 1.1, but that is not clear from the wording of the this Section. If the Agency is concerned about this issue, the Agency can request that the Agreement be clarified to require advance written notice of any of its authority is being withdrawn, and if it is binding authority, to state that. If it is not binding authority but any authority under the Agreement, such as is also referenced in Section 1.1., this means that the Agency's authority could be withdrawn entirely without notice, effectively terminating the Agency's ability to write any business with the Company, without the Company having to comply with the requirements in Section 12. TERMINATION., including the 90-day advance notice to terminate. If the Agency is concerned about this issue, the Agency can request that the Agreement be modified to require at least 90 days' advance written notice of authority being withdrawn. (See comments to Section 1.1.)

2. INSURANCE SERVICES – GENERALLY.

2.4. The Agency is required to "provide all usual, customary and proper services of an insurance agency in providing the Insurance Services under this Agreement." There are no definitions or descriptions of what constitutes "usual, customary and proper services…." If the

Agency is concerned that these terms are undefined and thus may expose the Agency to claims that it failed to meet the Company's expectations of what is "usual, proper and customary" the Agency can request that the Agreement be modified to delete this language and require that the Agency's performance be in accordance with applicable laws/regulations, as well as the Company's guidelines, rules, manuals, procedures and/or specific instructions once provided to the Agency. (See comments to Section 1.2.)

2.6. The Agency is required to have facilities and personnel to meet the Company's "standards" but there is no explanation of or reference to how the Agency will know what the Company's "standards" are. The Agency's authority is subject by Section 1.2. to the Company's "underwriting guidelines, rules, manuals, procedures and/or specific instructions" and the Agency also agrees to comply with Company's "underwriting guidelines, rules, manuals, procedures and specific instructions" in Section 2.10. Thus, it is not clear what the Company "standards" are that are in addition to applicable law and the things specified in Sections 1.2. and 2.10. If the Agency is concerned about this, the Agency can request that the Agreement be clarified to describe the "standards" and provide advance written notice of them to the Agency before the Agency is expected to comply with them. (See comments to Sections 1.2, 2.10., 7.1., and 8.6.)

2.10. The Agency agrees to comply with Company's "underwriting guidelines, rules, manuals, procedures, policies, and specific instructions" but the Agreement does not specify that the Agency will be provided with any of this information. If the Agency is concerned about this issue, the Agency can request that the Agreement be modified to require that all such materials be provided to the Agency before the Agency is expected to comply with them. (See comments to Sections 1.2., 2.6., 7.1., and 8.6.)

2.12. The Agency is required to inform the Company if any personnel of the Agency has been convicted of any state or federal felony. This requirement exceeds the Federal Violent Crime Control and Law Enforcement Act of 1994, which requires only that felonies involving dishonesty or a breach of trust be reported. If the Agency is concerned about this provision, the Agency can request that it be revised with language to meet the requirements of the law, such as:

> The Agency agrees to notify the Company in writing within ten (10) days of becoming aware that one of Agency's personnel has been convicted of a federal or state felony crime involving dishonesty or breach of trust. This requirement applies regardless of whether the Company has appointed such person. The Agency does not have notify the Company if the person with the conviction has received the appropriate insurance regulatory official's consent to engage or participate in the business of insurance, provided that the consent complies with the Federal Violent Crime Control and Law and Law Enforcement Act of 1994, 18 U.S.C. 1033(e)(2).

2.14. The Agency must agree that it and its staff will not "make or publish any derogatory statements" about the Company. At first glance this requirement may not seem troublesome. However, it is not hard to see how there could be a legitimate disagreement between the Company and the Agency about what constitutes a derogatory statement. For example, if the Agency defends itself in a claim or lawsuit by alleging that the Company is at fault in any way, it

is possible that the Company may consider that to be a derogatory statement against the Company and thus a breach of this Agreement. Since the Company has remedies available under the law for slander or libel if improperly maligned, this provision seems unnecessary to address that concern. Another example of how this could be applied to the Agency unfairly is if policyholders switch carriers upon learning from the Agency that a different carrier's insurance policy provides better coverage for their needs. If the Company construes that as being the equivalent of saying that the Company's insurance polices are not as good as policies available from other carriers, it could claim that it is derogatory and a breach of the Agreement. Section 6.1. makes Agency ownership of expirations conditioned on the Agency not being in default of the Agreement, so this is an important provision for the Agency to understand. If the Agency is concerned about this, the Agency can request that the provision be deleted from the Agreement.

3. HANDLING MONEY.

3.6. The Company can offset any money/debt of the Agency to the Company against any commission, profit sharing or other amounts it owes the Agency. It would appear that this is intended to allow an offset for money due under agreements other than this Agreement. If there are any other agreements between the Agency and the Company, those agreements should cover any remedies in the event either party fails to pay the other money due the other. If the Agency is concerned about this provision being used as a remedy for money/debt arising out of any separate agreements, the Agency can request that this provision be revised so that any offset be limited to money/debt due only under this Agreement. (See comments to Sections 5.6., 6.2., and 6.5.)

4. BILLING AND COLLECTIONS.

4.1.2. The Agency name will be displayed on policies, renewals, bills, and communications concerning continuation, non-renewal or termination of policies. If the Agency is concerned that its contact information will not appear with its name on these communications, or that other communications will be sent to policyholders that do not include the Agency name/contact information at all, the Agency can request that the Agreement be modified to require the Company to include the Agency name and contact information on all communications with policyholders.

4.1.3. The Company is required to provide the Agency with expiration information on direct billed business only upon termination of the Agreement and then only if the Company determines that the Agency owns the expirations. This is troublesome because the Agency should have clear ownership and control of expirations during the entire term of the Agreement, not just upon termination, and thus should be entitled to such information at any time upon a reasonable request. If this is of concern to the Agency, the Agency can request that it be provided with expiration information at any time during the term of the Agreement as well as upon termination. (See comments to Section 6. and sample language at the end of the comments to all provisions of Section 6.)

5. COMMISSIONS AND COMPENSATION.

5.1. The Agency is not allowed to "assign or pledge any commissions" without prior written consent from the Company. This means that if the Agency seeks to obtain a business loan, commissions from the Company cannot be used as collateral without the Company's prior written approval. If the Agency is concerned about this restricting its ability to obtain a business loan or requiring it to share confidential/proprietary information with Company in order to seek/obtain the Company's prior consent, the Agency can request that the provision be deleted.

5.2. The termination of the commission schedule with termination of the Agreement raises concern about what commission schedule is applicable for the Runoff Period. Although Section 12.6. provides that commission in the Runoff Period will be paid as if the Agreement remained in effect, that is in conflict with this provision stating that the commission schedule terminates with the Agreement. To avoid a conflict between different Sections of the Agreement, the Agency can request that this provision be modified by adding at the end of the sentence words like "except that the commission schedule shall remain in full force and effect during any Runoff Period."

5.4. The Agency agrees to pay return commission on business placed by another agency it succeeded to, unless agreed otherwise in writing with the Company. This means that as to return premium, the Agency is assuming a debt of the former agency. If that is of concern the Agency, it can request that the provision be modified accordingly, or, it can request a written agreement with the Company to be relieved of such liability before agreeing to succeed to another agency.

5.5. The Agency's participation in any other compensation/awards ends on the termination of the Agreement. This means that the Agency will not receive any payments the Agency would have earned under such programs based on the Agency's performance prior to the effective date of termination of this Agreement. If the Agency is concerned about this, it can request that this Agreement be modified to require the Agency be paid all amounts which it qualified for under such separate agreements prior to the effective date of termination of this Agreement. (See comments to Section 12.7.)

5.6. The Company will not pay commission to the Agency if it (a) exclusively represents one insurer, "(c) ha[s] failed to pay monies due [Company] after written demand; or (d) [is] in default of this Agreement."

As to (a), it is unclear how the Company would know if the Agency represents only one insurer, but if the Agency represents only the Company as its one insurer for any time period during the Agreement, that fact should not cancel the Agency's right to commission on business produced in that time frame. If this is of concern the Agency, it can request that the provision be deleted.

As to (c), if the Agency does not pay money demanded by the Company, the Company's should not be able to withhold all commission otherwise due the Agency; rather the Company should be able to offset any money due from the Agency under this Agreement against any money owed to the Agency under this Agreement, and not any other agreements. In addition, if the amount due the Company is less than the amount due the Agency, the Company should be obligated to pay

any balance to the Agency after an offset. For example, if the Agency owes the Company $100 under the Agreement, and the Company owes the Agency $900 in commission under the Agreement, the Company should be able to offset the $100 Agency debt against the $900 commission owed to the Agency, and the Company should be required to pay the Agency the remaining $800 in commission. And, if the amount not paid by the Agency is subject to a legitimate dispute between the Agency and Company about what is owed, the Company should not be able to withhold all of the Agency's commission. If the Agency is concerned about this, it can request that the provision be deleted, or at a minimum, modified to apply only to amounts due under the Agreement that are not subject to legitimate dispute. See comments to Sections 3.6., 6.2., and 6.5.)

As to (d), a default under the Agreement should not trigger the loss by the Agency of commission earned, even if it gives the Company the right to terminate the Agreement. Commission earned should be paid to the Agency. This is especially true when there is no right to notice of an alleged breach to give the Agency an opportunity to explain why it is not in default, and when there is no right to cure. If the Agency is concerned about this, it can request that the Agreement be modified to require payment to the Agent of commission earned, and written notice of alleged breaches with at least 10 days to cure, which would be consistent with the 10-day cure period in Section 12.1.3.

5.7. The Company can charge the Agency for business services based on "separate written instructions agreed to" by both. However, those separate written instructions are not required to be signed by the parties, like would be required for any other amendment to the Agreement. If this is of concern to the Agency, the Agency can request that the Agreement be modified to require that any such separate written instructions must be signed by the Company and Agency to be binding on them.

6. OWNERSHIP OF EXPIRATIONS.

6.1. The provision states that the Agency owns and controls its expirations and work product if it is not in default of the Agreement and pays the Company money it is due. It does not expressly restrict the Company from using or transferring the expiration information during the term of the Agreement. This is important for several reasons, including that the Agency's expiration information is not protected as confidential, unlike the extensive provisions protecting Company Confidential Information in Section 8. In addition, when read with Section 4.1.3, which entitles the Agency to expiration information only upon termination of the Agreement, it is likely to be of concern to the Agency since exclusive ownership and control of expirations and related work product go to the core of the Agency's value. It also allows the Company to keep the Agency's expirations based on defaults other than the payment of money due under the Agreement, including minor defaults capable of being cured. The only reason the Agency should lose ownership of expirations is for a failure to pay the Company money due under the Agreement. If the Agency is concerned about these issues, the Agency can request that the Agreement be modified to expressly state that the Agency solely owns and controls its expirations and work product during the term of the Agreement and after termination, but that it will lose such ownership and control if the Agent has not properly accounted for and paid the Company all sums due under the Agreement upon termination. (See comments to Sections 3.6.,

5.6., 6.5., 8.1. and 8.3.) (See the sample language at the end of the comments to all provisions of Section 6.)

6.2. This provision states that upon termination of the Agreement, the Agency loses all rights in its expirations and work product if it is either "in default" or if it has "not properly accounted for and paid all amounts" owed to the Company. This means if the Agency either has any default under the Agreement, including a minor default capable of being cured, or has not paid the Company money it claims to be due under this Agreement or any other agreement, the Agency loses its expirations unless the Agency provides the Company with security acceptable to the Company. This provision is likely to be a concern to the Agency because an Agency should not lose its expirations and work product for any default under the Agreement other than a failure to pay the Company money due under the Agreement, and should not lose its expirations and work product under this Agreement for a failure to pay money due under any other agreement, which should have its own remedies for any breaches. If the Agency is concerned about these issues, the Agency can request that the Agreement be modified to expressly state that the Agency will only lose ownership and control of its expirations if the Agency has not properly accounted for and paid the Company all sums due under the Agreement upon termination. (See comments to Sections 3.6., 5.6., and 6.5.) (See the sample language at the end of the comments to all provisions of Section 6.)

6.3. This provision authorizes the Company to communicate with policyholders "as necessary to service" them "or (c) upon termination of this Agreement" without that being construed as interfering with the Agency's ownership of expirations. This is likely to be of concern to the Agency because any required or necessary Company communications during the term of the Agreement or after its expiration are not required to reference the Agency and its contact information nor is there is any requirement that the Agency be timely provided with a copy of such communications. If this is of concern to the Agency, a request can be made to modify the Agreement to specify that any communications to policyholders will reference the Agency and its contact information, and be timely provided to the Agency at all times when the Agency owns its expirations, during the term of the Agreement and after its termination.

6.4. This provision is a ban on the Agency competing with the Company or others working with the Company on expirations that the Company has acquired from the Agency. The non-compete has no exceptions for when an insured reaches out to the Agency to write its business or to cover inadvertent contact with an insured from general marketing campaigns/lead lists. It also provides no way for the Agency to know who the Company "affiliates, agents, or assignees" even are that the Agency is supposed to not compete with, making compliance difficult or impossible. And, given the expansive right of the Company to take the Agency's expirations based on any default of the Agreement, even a minor one that could be cured, this provision could be troublesome to the Agency. If the Agency is concerned about this, it can request that the provision be modified to apply only to expirations acquired by the Company due to a failure of the Agency to pay money due under this Agreement, to allow the Agency to write business when an insured initiates the contact and requests that the Agency write its business, to exclude from the ban inadvertent contact via general marketing campaigns/lead lists, and to delete references to Company "affiliates, agents, or assignees" since the Agency has no way to know who they are.

6.5. This provision allows the Company to offset commissions earned after it acquires ownership of the Agency's expirations against any money owed the Company by the Agency. If there are any other agreements between the Agency and the Company, those agreements should cover any remedies for any failure to pay money/debt due under them, and this Agreement should not be involved. If the Agency is concerned about this provision being used as a remedy for money/debt arising out of a separate agreement, the Agency can request that this provision be revised so that any offset be limited to money/debt due only under this Agreement. (See comments to Sections 3.6., 5.6., and 6.2.) In addition, the Company is not required to sell the expirations, which the Agency may consider to be a more productive route to having any outstanding debt to the Company satisfied. If this is of concern to the Agency, it can request that the Agreement be modified to require that the Company to sell the expirations, using reasonable business judgment. (See the sample language immediately below.)

Sample Language

The use and control of the Agency's expirations, including those on direct billed business, the records thereof, and the Agency's work product, shall remain in the undisputed possession and ownership of the Agency. The Company shall not use its records or the Agency's expirations in any marketing method for the sale, service, or renewal of any form of insurance coverage or other product, nor shall the Company refer or communicate the Agency's expirations, work product, or records, or its records relating thereto, to any other agent or broker.

If the Agency has not properly accounted for and paid to Company all premiums collected by the Agency (less the Agency's commissions) as of the effective date of termination of this Agreement, prior to taking any action against the Agency's expirations, the Company shall provide written notice to the Agency specifying such unpaid and undisputed amounts and giving the Agency at least 30 days from receipt of the notice to pay the unpaid and undisputed amounts or furnish collateral security reasonably acceptable to the Company. Following the Agency's receipt of the notice, the Company may withhold commissions as an offset against any unpaid and undisputed amounts owed by the Agency. If, within the time specified in the Company's written notice, the Company does not receive reasonably acceptable collateral security or payment in full of all undisputed amounts, the use and control of the Agency's expirations shall vest in the Company.

In the exercise of its right to collect any unpaid and undisputed amounts through the use and control of the Agency's expirations, the Company shall use reasonable business judgment in selling such expirations and shall be accountable to the Agency for any sums received, which, net of expenses, exceed the amount of indebtedness. The Agency shall remain liable for the excess of the indebtedness over the sums received by the Company from any such sale. Notwithstanding any other provision of this Agreement, the Company shall not have any right to the Agency's expirations to the extent of any good faith and reasonable dispute as to amounts owed by the Agency to the Company.

7. INDEMNIFICATION.

7.1. This indemnification covers violations "of any Company rule or procedure in effect at the time of the act or omission" but there is nothing in this Section or elsewhere in the Agreement specifying how and when the Agency is notified of such rules or procedures. If this is of concern to the Agency, it can request that the provision be modified by adding words like "which have been provided to the Agency in writing" at the end of part (c). (See comments to Sections 1.2., 2.6., 2.10., and 8.6.)

8. USE, DISCLOSURE & PROTECTION OF POLICYHOLDER AND OUR COMPANY INFORMATION

8.1. The definition of Company "Protected Business Information" includes "customer lists" and "policyholder information" and is included as part of what is defined as Company "Confidential Information." However, the Agency's customer lists and policyholder information is not the Company's Confidential Information or Protected Business Information, since it belongs to the Agency. Because Confidential Information and Protected Business Information are used in other provisions of this Section to limit the Agency's use of this information, which should be owned by the Agency, this is likely to be of concern to the Agency. If the Agency is concerned about it, the Agency can request that customer lists and policyholder information be deleted from this definition. (See comments to Section 8.3.)

In addition, Confidential Information and Protected Business Information is defined only to cover information provided by the Company to the Agency. The Agency will provide to the Company information that should be similarly protected from misuse by the Company (such as information from policyholders needed to bind policies). Given that, the Agency may want to request that this provision be expanded to cover information either Party provides to the other so it is bilateral rather than just covering Company Information, or at a minimum, adds and defines Agency Confidential Information as covering expiration information and related work product, and permits the Company to use that information solely for the purpose shared with the Company, to write/renew policies during the term of the Agreement and any Runoff Period, and otherwise after termination only if the Company owns the expirations due to a failure by the Agency to pay money due the Company under the Agreement. (See the sample language at the end of the comments to all provisions of Section 6.)

8.3. This limits the Agency's use of Protected Business Information to performing duties under the Agreement or as permitted or required by applicable law. Since Protected Business Information includes the Agency's customer list and related policyholder information, the effect of this provision could be to try to prevent the Agency from moving the business because the information can only be used to perform under the Agreement, or as permitted/required by law, with no exception for use as directed by the policyholder. If this is of concern to the Agency, the exclusion of customer lists and policyholder information referenced in the comments to Section 8.1. should provide a way to modify the provision so it respects the Agency's ownership of expirations. (See comments to Section 8.1.)

8.6. The Agency is required to comply with the Company's rules and procedures when providing customers with the Notice of Adverse Action under the FCRA, but there is nothing in this Section or elsewhere in the Agreement specifying how and when the Agency is notified of such rules or procedures. If this is of concern to the Agency, it can request that the provision be modified by adding words like "which have been provided to the Agency in writing" at the end of the sentence. (See comments to Sections 1.2., 2.6., 2.10., and 7.1.)

8.7. This provision requires the Agency to comply with specified Company privacy policies. This is concerning because different companies may have different and conflicting privacy policies making it impossible for the Agency to comply with them all, and also because the Company can change its policies at any time with no notice requirement to the Agency. If this is of concern to the Agency, the Agency can request that the Agreement be modified to require that the Agency comply with applicable laws/regulations. Given the significant legal/regulatory requirements in this area, that should meet the Company's concerns without imposing burdens that may be impossible for the Agency to meet.

9. ACCESS TO COMPANY SYSTEMS AND DOCUMENTS.

9.2. The Agency is required to maintain the confidentiality of the information in the Company Systems. To the extent that any of the information in the Company systems is Agency owned, like expiration information, the Agency should be permitted to use that information as it deems appropriate. If this provision is of concern to the Agency, it can request that the provision be modified to specify that the Agency will maintain the confidentiality of all Company Information in the Company Systems, subject to the Agency's right to use its expiration information as it deems appropriate. (See comments to Sections 8.1. and 8.3.)

11. PURCHASE OR SALE OF AGENCY.

Opening Paragraph: The Agency is required to give the Company 90 days' advance written notice of a sale or transfer of any part or all of the Agency's business or expirations, or the Agency's merger or consolidation with another entity. As to the advance notice regarding the sale/transfer of expirations, the Agency should not be required to provide any advance notice to the Company at all. Such an obligation is likely to conflict with the terms of a buy-sell agreement and/or a related non-disclosure agreement. In addition, since the ownership and control of the expirations should belong to the Agency, the Agency should not be subject to notice requirements or other hurdles that may impact its ownership and control of the expirations. As to the advance notice regarding a change in ownership of all or any part of the Agency, the Agency should not be required to provide advance notice to the Company of a change of ownership, as again, such a requirement is likely to violate the terms of a buy-sell agreement or a non-disclosure agreement relating to a possible sale. Nor should the Agency have to notify the Company at all about a sale/transfer of a minority interest in the Agency. As written, a sale/transfer of even a 1% interest in the Agency would trigger the Company's right terminate the Agreement and terminate existing business if permitted by applicable law. If the Agency is concerned about these terms, it can request that the provision be modified to delete entirely the reference to expirations, to modify the change of ownership language to refer to only a sale/transfer of a controlling/majority interest or more in the Agency (which would be

consistent with the approach to a change of control or majority ownership in Section 12.1.2(b)), and to only require notice of a change in a controlling/majority interest or more in the Agency promptly upon closing, such as within 15 days. (See comments to other provisions of Section 11.)

11.1. – 11.2. The Agency should be aware that if the Company does not want to conduct business with a purchaser of the expirations, does not want to approve an assignment of the Agreement to a successor agency, or does not want to enter into a limited/new agency agreement with a successor agency, it is not required to do so. As noted in the comments to the Opening Paragraph, these provisions could be triggered by a sale/transfer of any interest in the Agency, evens as small as 1%. If the Agency is concerned about this, it can request that the provision be modified to refer to only a sale/transfer of a controlling/majority interest or more in the Agency (which would be consistent with the approach to a change of control or majority ownership in Section 12.1.2.(b)).

11.3. -11.4. If the Company elects not enter into a limited/new agency agreement after a sale of the Agency, there should be run-off provision to provide a reasonable period of time, such as one year after termination of the Agreement, during which the Company will renew all policies that meet current underwriting standards and pay the Agency commission on those renewals at the rate in place when the Agency Agreement is terminated. As noted above in the comments to the Opening Paragraph, a sale/transfer of even a minor interest in the Agency as small as 1% could trigger these provisions in the Agreement giving the Company the right to terminate existing business. If this is of concern to the Agency, it can request that the provision be modified so that a termination of the Agreement because of a sale/transfer of a majority/controlling interest or more in the Agency becomes subject to the Runoff Period provisions in Section 12. (See comments to the Opening Paragraph and to Sections 12.3-12.4.)

12. TERMINATION.

12.1.2. See comments to Section 11., Opening Paragraph.

12.1.3. See comments to Sections 3.6, 5.6.(c), 6.2., and 6.5.

12.4. The Runoff Period is described as "a specific period of time". If the Agency is concerned about this being too vague since it is totally undefined, it can request that the Agreement be clarified to specify a minimum Runoff Period, such as 1 year.

12.6. See comments to Section 5.2.

12.7. The Agency's participation in any profit sharing program ends on the termination of the Agreement. This means that the Agency will not receive any payment the Agency would have been entitled to under the profit sharing program based on the Agency's performance prior to the effective date of termination. If the Agency is concerned about this, it can request that the Agreement be modified to affirm the Agency will not lose any profit sharing for which it qualified prior to the effective date of termination. (See comments to Section 5.5.)

12.9. The Agency's failure to properly and timely service policies during the Runoff Period allows the Company to take over such servicing and not pay the Agency further commissions on that business. If the Agency is concerned that there is no requirement that the Agency be notified by the Company that it considers the Agency to be failing in its servicing obligation, it can request that the Agreement be modified to provide for a reasonable notice and cure period, such as 10 days.

13. INSURANCE.

The Agency should be aware that cyber-liability insurance is required in addition to E&O insurance. The Agency should also be aware that the insurer must not only be rated not less than A- by A.M. Best Company, but must be "otherwise acceptable" to the Company, but there are no parameters specified about the reasons the Company can reject an insurer that has the minimum required rating.

14. BROKER OF RECORD.

The Agency agrees to adhere to the Company's policies and procedures applicable to producers of record, but the Agreement does not describe them or specify that the Company will provide them to the Agency. If this is of concern to the Agency, it can request that those policies and procedures be provided to the Agency before the Agency is required to follow them.

15. DISPUTE RESOLUTION.

The Agency should be aware that this provision requires mediation of any Disputes in an effort the resolve differences between the Agency and the Company.

16. RECORD RETENTION.

16.1. The Agency agrees to comply with the Company's procedures regarding record retention. The Agreement does not state if the procedures included in this Section are all the procedures or it there are any other procedures the Agency is expected to follow. If the Agency is concerned about this, it can request that the provision be modified to require compliance with the procedures in the Agreement, and any other procedures once they are provided to the Agency in writing.

16.4. The Company has the right to inspect, audit, and copy the Records during regular business hours, but is not required by this provision to give any advance notice of such actions, though reasonable advance notice is specified in Section 2.13. If the Agency is concerned about reasonable advance notice not being included here, it can request that the Agreement be modified to require reasonable advance written notice to the Agency so this provision is consistent with Section 2.13. (See comments to Section 17.3.8.)

16.5. The Company has the right to copy the Agency's records upon termination of the Agreement, but there is no requirement that it be done during regular business hours or that the Agency be given advance notice of such action. If this is of concern to the Agency, it can

request that the provision be modified to require that the copying take place during regular business hours after reasonable advance written notice to the Agency.

17. ELECTRONIC SIGNATURES.

17.3.8. The Company has the right to inspect, audit, and copy the Records during regular business hours, but is not required by this provision to give any advance notice of such actions, though reasonable advance notice is specified in Section 2.13. If the Agency is concerned about reasonable advance notice not being included here, it can request that the Agreement be modified to require reasonable advance written notice to the Agency so this provision is consistent with Section 2.13. (See comments to Section 16.4.)

17.3.9. The Agency should be aware that it is required to have any agreement with a non-Company provider of electronic signatures include an obligation for that company to provide documents it processes for the Agency directly to the Company upon written request if this Agreement has been terminated. If an Agency is unable or unwilling to have its electronic-signature provider agree to such a contract modification, it can request that the Agreement be modified to require the Agency's reasonable assistance with requesting that the provider deliver such documents to the Company, instead of requiring that the contract with the provider be revised or amended.

17.3.12. The Agency must comply with the Company's "procedures, rules and requirements in processing, handling, storing and delivering the documents processed" via a non-Company provider, as the "procedures, rules and requirements may change from time to time in the Company's discretion or as required by law." There is no requirement that the Agency be given written notice of the procedures, rules or requirements or any changes to them. If the Agency is concerned about this, it can request that the provision be modified to require Agency compliance after receiving all such materials and any changes to them in writing.

18. MISCELLANEOUS.

18.1. The Agreement can be amended by mutual agreement of the parties. However, there is no requirement that the mutual agreement be in writing. To avoid misunderstandings, any amendments mutually agreed to should be signed by all parties. This can be addressed by adding at the end of the first sentence of this provision words like "signed by You and Us."

18.3.1. Notice by certified or express mail is a way to enhance the timely receipt of important written notices. However, this provision does not state that postage will be prepaid, or that a signed receipt or refusal to accept delivery is required, which are reliable ways accepted by the legal community to establish proof of giving written notice. It also attempts to state how either party can change its notice address, such as if its office moves, but does not do so with the specificity appropriate to the importance of written notice by compliance with this provision. These concerns can be easily addressed with the addition of the wording like:

> "Any certified mail notice must be sent return receipt requested, postage prepaid, and any express mail must be sent postage prepaid and require a signature for delivery. All

written notices shall be delivered or sent to the address for each party set forth herein or such other address as either party notifies the other of in accordance with the terms of this provision. Notices shall be deemed to have been given upon receipt or refusal to accept by the party to which the notice is delivered or sent."

18.3.2 This provision allows the Company to give written notice to the Agency by electronic transmission, including email or other communications systems used for Agency-Company communications. It does not provide the same right for the Agency to give the Company written notice. And, notice in this manner is not as certain to be seen and/or received at all or in a timely manner, nor does it provide any proof of ever being received. Given the unilateral nature of the provision and that it provides meaningfully less certainty of receipt than certified mail or express mail, if the Agency is concerned about it, the Agency can request that it be deleted from the Agreement.

18.5. This waiver provision works only in favor of the Company but should be bilateral, and does not but should require any agreement to be a written agreement signed by the parties. This can be easily addressed by wording that mirrors what is there but is bilateral and adds the missing written agreement component, such as: "Your or Our forbearance or neglect to insist upon the performance of any other terms of this Agreement at any time or under any circumstances shall not constitute a waiver unless so agreed by a writing signed by You and Us."

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